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ECONOMIC SUBSTANCE AND THE TAX TREATMENT OF FOREIGN-SOURCED GAINS IN SINGAPORE

Singapore subjects both Singapore-sourced income and foreign-sourced income that is received in Singapore to income tax. The tax treatment of the latter has undergone two major changes in the past quarter century. The foreign-sourced exemption regime was introduced from 2003–2004 to reduce the administrative and compliance burden in tracking foreign tax credits. While potentially broad, a strong emphasis on economic substance and strict conditions for exemptions has meant that Singapore has carefully guarded against abusive tax practices. Section 10L of the Income Tax Act 1947 (2020 Rev Ed) was implemented in 2024 to ensure that gains (including capital gains) from the disposal of foreign assets are subject to tax in Singapore unless a taxpayer has adequate economic substance. However, there is no evidence that the pre-s 10L regime posed any risk of abusive tax practices. Broadly drafted, many taxpayers fall within its potential scope but most with adequate economic substance in Singapore should not face expanded tax liability. Several uncertainties about the new section remain, but the Inland Revenue Authority of Singapore has provided substantial guidance, especially on the highly fact-specific test for adequate economic substance.

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I. Introduction

1 Singapore subjects income accruing in or derived from Singapore (sourced in Singapore) or received in Singapore from outside Singapore to income tax.[2] This has been a core feature of Singapore's income tax system since it was first introduced in 1947[3] and has its origins in the Model Income Tax Ordinance for the Colonies.[4] The past quarter century has seen two major changes to the tax treatment of foreign-sourced gains in Singapore: first, from 2003 to 2004, when the foreign-sourced income exemption ("FSIE") Regime was introduced; and then on 1 January 2024, when s 10L of Income Tax Act 1947[5] ("ITA") came into force.

2 The introduction of s 10L was a highly significant development of Singapore's income tax system for two main reasons. Firstly, it expands the scope of income tax to potentially catch capital gains under certain circumstances.[6] That Singapore taxes income but not capital gains[7] is such a cornerstone of the Singapore tax system[8] that it has applied since the introduction of income tax, with only one interesting exception in its history.[9] While Singapore generally still does not tax capital gains except

2 Singapore Income Tax Act 1947 (2020 Rev Ed) ("ITA") s 10(1).

3 Enacted as the Income Tax Ordinance 1947 (No 39 of 1947), following the publication of R B Heasman, *Income Tax: A Report to Their Excellencies the Governors of the Malayan Union and Singapore, with Recommendations, including a Draft Bill and Proposals for Administration and Staffing* (Kuala Lumpur) (Malayan Union Government Press, 1947) ("Heasman Report").

4 *Report of the Inter-Departmental Committee on Income Tax in the Colonies Not Possessing Responsible Government* (Cmd 1788, Dec 1922) ("1922 Model Ordinance").

5 2020 Rev Ed.

6 It should be noted that s 10L(1) of the ITA expressly states that the relevant gains caught by the provision are "treated as income chargeable to tax under section 10(1)(*g*)". As such, s 10L does not technically tax capital gains, having statutorily provided that such gains are to be treated as income. However, s 10L is broad enough to catch certain gains that would otherwise be considered to be capital gains under the common law, but for the effect of the statutory provision. For the latest version of s 10L, please refer to <https://sso.agc.gov.sg/Act/ITA1947>.

7 *CIT v BBO* [2014] 2 SLR 609 at [17].

8 Singapore Parl Debates; Vol 95, Sitting No 113; Page 90; [3 October 2023] (Usha Chandradas, Nominated Member).

9 In 1965, capital gains tax was introduced when Singapore was still part of Malaysia. Following Singapore's separation from Malaysia, the capital gains tax was repealed (19 days after its announcement) and did not result in any revenue being collected. See Singapore Parl Debates; Vol 24, Sitting No 2; Col 65; [13 December 1965] (Lim Kim San, Minister for Finance). See Budget speech of the Malaysian Minister of Finance November 1964. Malaysia repealed its capital gains tax in 1966, a year after its adoption.

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under very limited circumstances, further developments to implement the GloBE Rules mean that s 10L is not unique in this respect.[10]

3 Secondly, s 10L begins with the words "Despite anything in this Act", meaning that it has the potential to override any of the various tax exemptions in the ITA unless there is express provision to the contrary. As one of the most prominent tax exemptions in the ITA, the FSIE Regime is an obvious candidate for analysis of its interactions with s 10L. It provides a broad exemption for certain categories of foreign-sourced income received in Singapore provided certain conditions are met. As "gains from the sale of foreign assets" may sometimes fall within the scope of the FSIE Regime, there may be situations where s 10L negates the effect of the former and subjects such gains to income taxation.

4 As a starting point, it is important to lay out some preliminary limitations of the scope of s 10L. It does not apply to individuals,[11] is limited to gains from the disposal of foreign assets which are received in Singapore,[12] and taxpayers who are able to demonstrate adequate economic substance are effectively excluded.[13] As such, this article will focus on legal persons (as opposed to individuals) and gains from the disposal of foreign assets (as opposed to other categories of income).

5 This article considers the history of Singapore's tax position on foreign-sourced gains, discussing the pre-FSIE era since the introduction of the ITA,[14] to the impetus for the FSIE Regime, and the rationale for enacting s 10L and its practical operation. It notes that while economic substance lies at the heart of s 10L, this requirement has long been present in Singapore. Even before economic substance entered the spotlight in the global international tax discussion, Singapore required it to be established as a precondition for the granting of Certificates of Residence ("CORs"), a practical pre-requisite (though not strictly legally required) for a taxpayer to avail itself of treaty benefits from Singapore's Avoidance of Double Taxation Agreements ("DTAs") in most cases. Coupled with strict conditions under the FSIE Regime, there were strong safeguards in place in Singapore against abusive tax practices, even though the tax exemption on foreign-sourced gains appeared to be a broad one. While

10 Since then, the Multinational Enterprise (Minimum Tax) Act 2024 (Act 36 of 2024) has been enacted in Singapore to give effect to the GloBE Rules (see Organisation for Economic Co-operation and Development ("OECD"), *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)* (OECD, 2021)).

11 Income Tax Act 1947 (2020 Rev Ed) s 10L(16)(*a*).

12 Income Tax Act 1947 (2020 Rev Ed) s 10L(1).

13 Income Tax Act 1947 (2020 Rev Ed) s 10L(8).

14 Enacted as the Income Tax Ordinance 1947 (No 39 of 1947).

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s 10L now operates to ensure that gains (including capital gains) from the disposal of foreign assets are subject to tax in Singapore unless a taxpayer has adequate economic substance, there is no evidence that the pre-s 10L regime posed any risk of abusive tax practices, especially with all the above-mentioned safeguards.

6 Aside from properly contextualising the enactment of s 10L against the development of the taxation of foreign-sourced gains in Singapore, this article studies the detailed operation of the new regime, comparing it with other existing mechanisms within the ITA and commenting on their cross-interactions. The article ends by noting the considerable amount of effort which the Inland Revenue Authority of Singapore ("IRAS") has expended in attempting to ensure tax certainty for taxpayers, even though adequate "economic substance" may not always be easy to determine.

II. Background: the pre-foreign sourced income exemption era

A. The basis of taxation

7 As a starting point, two broad bases of taxation are commonly used in tax systems around the world. Under a worldwide basis of taxation, a jurisdiction may tax the global income of their residents, regardless of where such income is derived. Under a "pure territorial" basis of taxation, a jurisdiction may tax income that is sourced in that jurisdiction. Singapore's position is somewhere in between, taxing income that is sourced in Singapore, but also foreign-sourced income that is received in Singapore from outside Singapore. Notably, there are also a range of "deemed source"[15] and "deemed receipt"[16] provisions in the ITA. Thus, Singapore has sometimes been described as having a "quasi-territorial" system, though it is probably better to describe the system rather than ascribe a somewhat vague label to it.

8 The basis of taxation in Singapore's income tax system is a result of its colonial past and has been a core feature since the very beginning.[17] Even then, not all foreign-sourced income was necessarily taxed when received in Singapore. A special exemption for temporary residents in the Colony was provided, applying to those there for a temporary purpose, without any intention to establish residence, and who had not resided for

15 Income Tax Act 1947 (2020 Rev Ed) s 12.
16 Income Tax Act 1947 (2020 Rev Ed) s 10(25).
17 Income Tax Ordinance 1947 (No 39 of 1947) s 10(1).

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an aggregate period of six months in the Colony for the relevant Year of Assessment ("YA").[18]

9 While there are several categories of income listed under the Heads of Charge in the ITA, this article focuses on gains from the disposal of assets, since only such gains fall within the potential scope of s 10L. The relevant provisions for the taxation of gains from the disposal of assets are s 10(1)(*a*), which taxes "gains or profits from any trade, business, profession or vocation" and the "sweeping-up provision", s 10(1)(*g*), which taxes "any gains or profits of an income nature not falling within any of the preceding paragraphs."[19] Read together, the two provisions effectively catch all forms of income gains from the disposal of assets, which means that gains (whether Singapore-sourced or foreign-sourced gains received in Singapore) will only fall outside the scope of those provisions if they are capital gains.

B. Providing relief from double taxation: double taxation agreements and unilateral tax credits

10 When there is a disposal of assets in a source State and the foreign-sourced income is received in Singapore, the potential for double taxation arises as it is likely that the source State will want to exercise its taxing rights. Under s 10(1), such income would be taxable in Singapore too, barring any exemptions. Before the introduction of the FSIE, there were three main ways in which taxpayers could seek relief from double taxation. If Singapore has entered into a DTA with the source State, then relief will be provided as *per* the treaty.[20] In the absence of any applicable DTA, Singapore may still provide unilateral tax relief.[21] These two mechanisms continue to apply to this day. Prior to YA 2010, there was a specific provision providing tax relief for income from Commonwealth countries as well.[22]

18 Income Tax Ordinance 1947 (No 39 of 1947) s 13(3). The same provision can be found in s 25 of the 1922 Model Ordinance.
19 See Vincent Ooi, "Taxing All Other Income in Singapore and Malaysia" (2019) 19(2) *Oxford University Commonwealth Law Journal* 204.
20 Income Tax Act 1947 (2020 Rev Ed) ss 49 and 50.
21 Income Tax Act 1947 (2020 Rev Ed) s 50A.
22 Income Tax Act 1947 (2020 Rev Ed) s 48, since repealed.

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III. Introduction of foreign-sourced income exemption

A. Purpose of foreign-sourced income exemption

11 While double taxation could be avoided under the above-mentioned two methods, both the taxpayers and the IRAS faced a significant administrative and compliance burden in having to track and compute the applicable foreign tax credits.[23] If the foreign-sourced income was being derived in jurisdictions with a reasonably high income tax rate (Singapore eventually drew the line at 15%), Singapore might well not obtain much revenue from insisting on the remittance basis of taxation, in light of the tax relief that it would have to offer.

12 A key stated purpose of the FSIE was to "mirror and simplify" the tax credit system.[24] By carefully crafting certain conditions for the FSIE to apply, Singapore could achieve the same effect of relieving double taxation as under the foreign tax credit system for certain types of more commonly received foreign income,[25] but without the administrative and compliance burden. While beyond the scope of this article (which focuses on corporate taxpayers), the FSIE was also extended to cover all categories of foreign-sourced income received by individuals,[26] so as to encourage individuals to remit their offshore funds to Singapore for investment and management.[27]

B. Scope and operation of foreign-sourced income exemption

13 The FSIE was not a "blanket exception" but had various conditions for the exemption to be granted. In relation to persons, not

23 Robin Ng & Yves Van Brussel, "Singapore" in *Cahiers de Droit Fiscal International (Volume 105A)* (David C Duff & Daniel Gutmann eds) (International Fiscal Association, 2020) at p 721.

24 Quek Hui Ling & Deborah Lau, "Heads of Charge and Exemptions" in *The Law and Practice of Singapore Income Tax* (Darren Koh, Poh Eng Hin & Tang Siau Yan gen eds) (LexisNexis, 3rd Ed, 2020) at p 266.

25 Robin Ng & Yves Van Brussel, "Singapore" in *Cahiers de Droit Fiscal International (Volume 105A)* (David C Duff & Daniel Gutmann eds) (International Fiscal Association, 2020) at p 721.

26 The income is exempt if received by an individual who is not resident in Singapore; or an individual who is resident in Singapore if the Comptroller is satisfied that the tax exemption would be beneficial to that individual, but it excludes income received through a partnership in Singapore (see s 13(7A) of the ITA). Note that the exemption for the former existed even before the introduction of the foreign-sourced income exemption ("FSIE").

27 Quek Hui Ling & Deborah Lau, "Heads of Charge and Exemptions" in *The Law and Practice of Singapore Income Tax* (Darren Koh, Poh Eng Hin & Tang Siau Yan gen eds) (LexisNexis, 3rd Ed, 2020) at p 266.

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being individuals, who are resident in Singapore, the FSIE operates to exempt income if the following conditions are met: (a) the income must be of one of three specified categories (dividend income, branch profits, or professional or consultancy income);[28] (b) the income must be subject to income tax under the law of the territory from which it is received;[29] (c) the highest rate of income tax from the territory from which the income is received must not be less than 15%;[30] and (d) the Comptroller must be satisfied that the tax exemption would be beneficial to the person resident in Singapore.[31]

14 The FSIE conditions reflect the stated purpose of "simplification". Common categories of received foreign income were covered, with express provision that the income had to be derived from outside Singapore. In the case of gains from the disposal of foreign assets, since capital gains are generally not taxable in Singapore, the most relevant category of income under the FSIE would be "any profit derived from any trade or business carried on by a branch in any territory outside Singapore of a company resident in Singapore".[32] The conditions that the income must be subject to tax and the minimum 15% headline corporate tax rate in the territory from which the income was received also demonstrate that the FSIE was really intended to apply in cases where there would be little net revenue gain to Singapore after the foreign tax credit was provided.[33] At that point, the corporate income tax rate in Singapore was 22% and the current rate of 17% is even closer to 15%.

15 The requirement that the Comptroller must be satisfied that the tax exemption would be beneficial to the person resident in Singapore appears to operate as a safeguard to ensure that the taxpayer is not disadvantaged by the application of the FSIE. A taxpayer who considers that it would be more beneficial to make a claim for foreign tax credits can choose to do so instead of being compelled to accept the exemption

28 Income Tax Act 1947 (2020 Rev Ed) s 13(8). Specifically: (a) any dividend derived from any territory outside Singapore; (b) any profit derived from any trade or business carried on by a branch in any territory outside Singapore of a company resident in Singapore; and (c) any income derived from any professional, consultancy and other services rendered in any territory outside Singapore only if the Comptroller is satisfied that the income is derived, for the purposes of this Act, from outside Singapore.

29 Income Tax Act 1947 (2020 Rev Ed) s 13(9)(*a*). Specifically, tax of a similar character to income tax (by whatever name called).

30 Income Tax Act 1947 (2020 Rev Ed) s 13(9)(*b*). At the time when the income is received in Singapore.

31 Income Tax Act 1947 (2020 Rev Ed) s 13(9)(*c*).

32 Income Tax Act 1947 (2020 Rev Ed) s 13(8)(*b*).

33 Also see Tang Siau Yan, *Singapore Tax Law* (LexisNexis, 2022) at p 402.

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under the FSIE.[34] When determining if it would be more advantageous to opt for the FSIE or foreign tax credits, there are two points which should be noted. Losses in relation to income exempted under the FSIE cannot be deducted at all, while losses in relation to foreign-sourced income that is subject to tax under s 10(1) can potentially be deducted against other foreign-sourced income.[35] Also, in a situation where it is possible for a taxpayer to avail itself of the foreign tax credit pooling system,[36] then a taxpayer may be better off opting for it if certain conditions are met, *eg*, if the foreign tax paid is greater than the Singapore tax payable for one type of foreign income and the inverse for another type of foreign income.[37]

16 In addition to the broad exemptions under the FSIE, the Minister has the power to make an order to exempt from tax, wholly or in part, the income received by a person resident in Singapore from such source outside Singapore, even if the conditions in ss 13(8) and 13(9) are not met.[38] The IRAS has provided for seven specified scenarios. These can be broadly understood as applying where the income was derived from substantive business operations in a jurisdiction with a headline tax rate of at least 15%, but for some reason the conditions under s 13(9) are not met, *eg*, because the income then passed through another jurisdiction before being received in Singapore. However, to qualify for the s 13(12) tax exemption in any of the seven scenarios, there are further conditions, such as a requirement that the taxpayer is able to track the source of

34 Tang Siau Yan, *Singapore Tax Law* (LexisNexis, 2022) at p 402.

35 That said, it seems clear that foreign losses cannot be deducted against Singapore-sourced income, since unlike foreign income, foreign losses cannot be "received" in Singapore (See Jee Chang, "Expenditures" in *The Law and Practice of Singapore Income Tax* (Pok Soy Yoong, Ng Keat Seng & Steven Timms eds) (LexisNexis, 2nd Ed, 2013) at p 458).

36 The requirements under s 50C of the ITA must be satisfied. See Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Foreign Tax Credit Pooling" (3rd Ed) (30 January 2026).

37 See Khoo Teng Aun & Clement Tan, "Foreign Tax Credit Pooling System: Is It Always Better? (Part 1 of 3)" (2015) (January 2015) *IS Chartered Accountant* 56–59. Also see the other two articles in the series: Clement Tan & Khoo Teng Aun, "Foreign Source Income Tax Exemption and Pooling System: Which works Better? (Part 2 of 3)" (2015) (February 2015) *IS Chartered Accountant* 56–59, and Khoo Teng Aun & Clement Tan, "Splitting Specified Foreign Sourced Income between Tax Exempt and Taxable Portions: An Optimal Solution (Part 3 of 3)" (2015) (March 2015) *IS Chartered Accountant* 56–59.

38 Income Tax Act 1947 (2020 Rev Ed) s 13(12). The relevant order from the Minister is the Income Tax (Exemption of Foreign Income – REITs and Other Special Cases) Order 2006.

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income, that there is no round tripping of locally-sourced income, and that the taxpayer receiving the foreign income cannot be a shell company.[39]

C. The (implicit) requirement of economic substance

17 Apart from the safeguards built into the FSIE with its conditions for qualifying for the exemption, Singapore prevented abuse of its DTAs by applying the requirement of economic substance. This was even before the concept of economic substance entered the spotlight in the global international tax discussion through the Base Erosion and Profit Shifting ("BEPS") Project,[40] though Singapore further tightened its substance-related standards since joining the BEPS Inclusive Framework as a BEPS Associate in June 2016.[41]

18 Economic substance has always been at the core of the BEPS Project,[42] even though there are numerous perspectives on what the concept actually means in practice and the appropriate standards to apply to determine whether it exists in any particular situation.[43] Broadly, "substance" refers primarily to economic or commercial activity or "value creation" and many of the BEPS Action Plans attempt to use the concept to counter tax abuse and identify whether "real activity and value" of businesses lie.[44] In Singapore, the concept of "substance" and how it applies in different contexts was comprehensively discussed by Wong and Tang, who argue that "substance" may be used as a threshold, a measure and a guide.[45] In this article, "economic substance" is used in a broad sense to mean a requirement for real commercial activity and value

39 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Exemption under Section 13(12) for Specified Scenarios, Real Estate Investment Trusts and Qualifying Offshore Infrastructure Project/Asset" (12th Ed) (7 January 2026) at para 4.

40 OECD, *Action Plan on Base Erosion and Profit Shifting* (OECD, 2013).

41 Inland Revenue Authority of Singapore, "Singapore Joins Inclusive Framework for Implementing Measures against Base Erosion and Profit Shifting (BEPS)", media release (16 June 2016) <https://www.iras.gov.sg/news-events/newsroom/singapore-joins-inclusive-framework-for-implementing-measures-against-base-erosion-and-profit-shifting-(beps)> (accessed 10 October 2026).

42 See Miranda Stewart, "Abuse and Economic Substance in a Digital BEPS World" (2015) 69(6/7) *Bulletin for International Taxation* 399.

43 See, *eg*, Ronnie Yearwood & Alicia Nicholls, "The European Union's Economic Substance Rules in Commonwealth Caribbean Jurisdictions: What Is the Purpose?" (2020) 74(9) *Bulletin for International Taxation* 516.

44 See Miranda Stewart, "Abuse and Economic Substance in a Digital BEPS World" (2015) 69(6/7) *Bulletin for International Taxation* 399.

45 Cindy Wong & Tang Siau Yan, "'Substance' – A Singapore's Perspective" (2017) 6(1) *Singapore Management University School of Accountancy Research Paper Series* (Paper No 2018-S-76) at para 48 <https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=2873&context=soa_research> (accessed 10 October 2026).

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creation (assessed through fair and robust standards), and the prevention of abusive tax practices.

19 As a matter of administrative practice, a Certificate of Residence ("COR") must typically be submitted to the tax authority of a treaty partner to prove that the taxpayer is a Singapore tax resident before it may avail itself of treaty benefits in that State. In determining whether to issue a COR, even before the BEPS Project, the IRAS applied a strict standard, imposing requirements such as "beneficial ownership", "business substance" and "business rationale".[46] Since then, the process has been further tightened, with the strict requirement that the Comptroller must be satisfied that the taxpayer has commercial substance in Singapore and clear guidelines on where the IRAS would decline to issue a COR at all.[47] Currently, a taxpayer wishing to obtain a COR must demonstrate clearly by evidence that its control and management is exercised in Singapore and that it has economic substance in Singapore.[48]

20 Without a COR, a taxpayer would generally not be able to avail itself of treaty benefits from Singapore's DTAs. Further, even as a matter of domestic tax law, Singapore's FSIE has conditions preventing taxpayers without economic substance from utilising the exemption. For example, the requirement that the taxpayer receiving the foreign income cannot be a shell company.[49]

46 Edmund Leow, "Tax Treaties and Interpretation" in *The Law and Practice of Singapore Income Tax* (Darren Koh, Poh Eng Hin & Tang Siau Yan eds) (LexisNexis, 3rd Ed, 2020) at p 828.

47 Tang Siau Yan, *Singapore Tax Law* (LexisNexis, 2022) at p 110. Also see Robin Ng & Yves Van Brussel, "Singapore" in *Cahiers de Droit Fiscal International (Volume 105A)* (David C Duff & Daniel Gutmann eds) (International Fiscal Association, 2020) at p 722.

48 Edmund Leow, "Tax Treaties and Interpretation" in *The Law and Practice of Singapore Income Tax* (Darren Koh, Poh Eng Hin and Tang Siau Yan eds) (LexisNexis, 3rd Ed, 2020) at p 828. Also see Cindy Wong & Tang Siau Yan, "'Substance' – A Singapore's Perspective" (2017) 6(1) *Singapore Management University School of Accountancy Research Paper Series* (Paper No 2018-S-76) <https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=2873&context=soa_research> (accessed 10 October 2026).

49 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Exemption under Section 13(12) for Specified Scenarios, Real Estate Investment Trusts and Qualifying Offshore Infrastructure Project/Asset" (12th Ed) (7 January 2026) at para 4.

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IV. Background to enactment of s 10L

A. The European Union Code of Conduct Group

21 As the previous section has shown, Singapore has strict requirements for economic substance both as a matter of its statutory framework for the FSIE and its administrative practice in the issuance of CORs. This prompts a natural question as to why s 10L was enacted. In brief, s 10L came about as part of a clear and intentional effort to align Singapore's tax position with guidance from the European Union Code of Conduct Group ("EU COCG").[50] Against a global backdrop of rising calls for tax transparency and increasing state action against tax avoidance, the EU initially established the EU Code of Conduct (Business Taxation) to promote fair tax competition between EU States.[51]

22 In 2022, the EU COCG issued new guidance on FSIEs with an intention of promoting fair tax competition in jurisdictions beyond the EU.[52] Under the updated guidance, the COCG observed that FSIEs that are broad enough to exclude from taxation passive income (including dividends, interest, royalties and capital gains) without any conditions, can result in ring-fencing and a lack of substance. It noted that the exemption of passive income without clear conditions such as an explicit link to some real activity in the jurisdiction would contravene the principles underlying the EU Code of Conduct.[53] It therefore went on to stipulate that in relation to foreign-sourced income, jurisdictions should either introduce taxation of passive income; or if they exclude from taxation certain types of passive income, such jurisdictions must: (a) implement adequate substance requirements; (b) have robust anti-abuse rules in place; and (c) remove administrative discretion in determining the income to be excluded from taxation.[54] Notably, the EU COCG was concerned about two main features of FSIEs which they

50 Singapore Parl Debates; Vol 95, Sitting No 113; [3 October 2023] (Don Wee, former Member of Parliament for Chua Chu Kang).

51 Anna Pingen, "Conclusions on Progress of Code of Conduct Group in 2022", *eucrim* (2023) <https://eucrim.eu/news/conclusions-on-progress-of-code-of-conduct-group-in-2022/> (accessed 10 October 2026).

52 Council of the European Union, *Code of Conduct Group (Business Taxation) – Report to the Council* (Report No 14674/22, 24 November 2022) <https://data.consilium.europa.eu/doc/document/ST-14674-2022-INIT/en/pdf> ("COCG Report") (accessed 10 October 2026).

53 Council of the European Union, *Code of Conduct Group (Business Taxation) – Report to the Council* (Report No 14674/22, 24 November 2022) at p 20 <https://data.consilium.europa.eu/doc/document/ST-14674-2022-INIT/en/pdf> (accessed 10 October 2026).

54 Council of the European Union, *Code of Conduct Group (Business Taxation) – Report to the Council* (Report No 14674/22, 24 November 2022) at p 21 <https://

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found objectionable. First, the "ring-fencing" of the regime such that the exemptions would only apply to non-residents and not to residents of a jurisdiction. Second, exemptions without clear conditions. There was also a broad concern about ensuring sufficient economic substance.[55]

23 The COCG publishes an EU list of non-cooperative jurisdictions for tax purposes that is constantly reviewed, to encourage change in tax legislation and practices outside of the EU. The EU's practice of listing "non-cooperative jurisdictions" for tax purposes effectively serves as a blacklist that highlights which jurisdictions have failed to or refused to address risks of tax evasion or avoidance within their tax systems. There is also a "grey list" of jurisdictions which "do not yet comply with all international tax standards but have committed to implementing reforms".[56]

24 On 19 May 2021, the COCG sought commitments from Hong Kong and Malaysia to "repeal or amend their harmful FSIE regimes" (they were subsequently added to the EU's grey list); Singapore was found to be compliant.[57] Subsequently, Hong Kong revised its FSIE regime[58] and was taken off the grey list.[59] Malaysia took slightly more

data.consilium.europa.eu/doc/document/ST-14674-2022-INIT/en/pdf> (accessed 10 October 2026).

55 Council of the European Union, *Code of Conduct Group (Business Taxation) – Report to the Council* (Report No 14674/22, 24 November 2022) at p 20 <https://data.consilium.europa.eu/doc/document/ST-14674-2022-INIT/en/pdf> (accessed 10 October 2026).

56 Council of the European Union, "EU List of Non-cooperative Jurisdictions for Tax Purposes"<https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/> (accessed 10 October 2026).

57 Council of the European Union, *Code of Conduct Group (Business Taxation) – Report to the Council* (Report No 14674/22, 24 November 2022) at p 14 <https://data.consilium.europa.eu/doc/document/ST-14674-2022-INIT/en/pdf> (accessed 10 October 2026).

58 Hong Kong Inland Revenue Department, "Foreign-sourced Income Exemption", <https://www.ird.gov.hk/eng/tax/bus_fsie.htm> (accessed 10 October 2026). The main amendments to the legislation in Hong Kong are contained in ss 15I–15S of the Inland Revenue Ordinance (Cap 112) (HK), though a variety of other supplementary provisions were also amended (see Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 (HK) and Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 (HK)).

59 Council of the European Union, "Taxation: Bahamas, Belize, Seychelles and Turks and Caicos Islands Removed from the EU List of Non-cooperative Jurisdictions for Tax Purposes" <https://www.consilium.europa.eu/en/press/press-releases/2024/02/20/taxation-bahamas-belize-seychelles-and-turks-and-caicos-islands-removed-from-the-eu-list-of-non-cooperative-jurisdictions-for-tax-purposes/> (accessed 10 October 2026).

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time to make reforms that the EU COCG considered sufficient,[60] but was also eventually taken off the grey list.[61] These developments in the tax systems across the Asia-Pacific were carefully tracked by commentators, who described them as taking "a balanced approach to ensure their jurisdictions remain attractive to investors."[62] Brunei currently remains on the grey list,[63] having been granted an extension to make its reforms by 22 December 2026.[64]

B. Singapore's proactive response

25 While Singapore was found to be compliant, the EU COCG's guidance raised a technical issue. As noted above, Singapore does not tax capital gains. As such, there was technically no "test" of economic substance to determine whether foreign-sourced capital gains should be "exempt" from taxation in Singapore. However, it would be inaccurate to frame this as an "exemption" of foreign-sourced capital gains, since such gains never fell within the scope of Singapore's income tax regime in the first place. It should be noted that this treatment of capital gains has been a cornerstone of the Singapore tax system since income tax was first introduced in 1947 and there was no "ring-fencing" of the regime such that residents and non-residents were treated differently. This was a policy decision (with strong historical foundations) made by a sovereign nation, without any discrimination between residents and

60 Inland Revenue Board of Malaysia, *Guidelines: Tax Treatment in Relation to Income Received from Abroad (Amendment)* (LHDN.AG.600–1/7/3) (2022). The main amendment that was made to the legislation in Malaysia was to the Income Tax Act 1967 (No 53 of 1971) (M'sia) Sch 6, para 28, though a variety of other supplementary provisions were also amended (see Finance Act 2021 (No 833 of 2021) (M'sia)). Subsidiary legislation was also enacted in the form of then Income Tax (Exemption) Order 2022 (PU(A) 96/2022) (M'sia); Income Tax (Exemption) Order (No 5) 2022 (PU(A) 234/2022) (M'sia); and Income Tax (Exemption) Order (No 6) 2022 (PU(A) 235/2022) (M'sia).

61 Council of the European Union, *Code of Conduct Group Report to the Council on the Update of the EU List* (Report No 13890/24, 27 September 2024) at p 8 <https://data.consilium.europa.eu/doc/document/ST-13890-2024-INIT/en/pdf> (accessed 10 October 2026).

62 Carrie Lui *et al*, "Foreign-Source Income Exemption Changes in Hong Kong, Malaysia, and Singapore" (2024) 113 *Tax Notes International* 281.

63 Council of the European Union, *The Council Conclusions on the Revised EU List of Non-Cooperative Jurisdictions for Tax Purposes* (Report No 6322/25, 18 February 2025) at p 8 <https://data.consilium.europa.eu/doc/document/ST-6322-2025-INIT/en/pdf> (accessed 10 October 2026).

64 Council of the European Union, *Council Conclusions of 9 October 2026 on the Revised EU List of Non-Cooperative Jurisdictions for Tax Purposes* (Report No 13854/26, 9 October 2026) at p 7 <https://www.consilium.europa.eu/media/qjto30yl/st13854en26.pdf> (accessed 10 October 2026).

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non-residents and with no evidence that the regime posed any risk of abusive tax practices.

26 That said, there would be technical "non-compliance" based on the way that the EU COCG Guidance was framed and Singapore responded proactively to definitively address this issue. On 3 October 2023, Singapore announced the introduction of a new FSIE regime, starting in 2024 that would tax foreign-sourced disposal gains when received in Singapore by entities of multinational enterprise groups that do not have economic substance in Singapore.[65] This was done in an effort to make its tax regime "consistent with international standards".[66] Notably, Senior Minister of State for Finance, Chee Hong Tat, reiterated in Parliament that the "policy objective is not to tax capital gains in Singapore" and that s 10L was not expected to have an adverse impact on the economy as the country's "focus has always been on attracting and anchoring real economic activities in Singapore".[67] Rather, the purpose of the legislation was to align key areas of the Singapore tax regime with international norms, such as rules against harmful tax practices under Action 5 of BEPS 1.0 as well as the EU guidance on foreign sourced income exemption regimes.[68] This reform was crucial since, as a small open economy, it is in Singapore's interest for its tax rules to stand up to international scrutiny, to facilitate the continued flow of trade and investments.[69]

V. The new tax regime under s 10L

27 Very broadly, s 10L operates to tax gains from the disposal of foreign assets which are received in Singapore if the seller entity is part of a group that is not wholly within Singapore. It does so by deeming such gains to be chargeable income under s 10(1)(*g*) of the ITA.[70] The new tax regime does not apply to individuals and has broad exemptions if the seller entity satisfies economic substance requirements (which are less

65 Singapore Parl Debates; Vol 95, Sitting No 113; Page 75 [3 October 2023] (Chee Hong Tat, Senior Minister of State for Finance). Also see Income Tax (Amendment) Bill (Bill No 30/2023), Explanatory Statement at p 85.

66 The Inclusive Framework on Base Erosion and Profit Shifting ("BEPS") and the EU Guidance on FSIE Regimes were expressly referenced.

67 Singapore Parl Debates; Vol 95, Sitting No 113; Page 75 [3 October 2023] (Chee Hong Tat, Senior Minister of State for Finance).

68 Singapore Parl Debates; Vol 95, Sitting No 113; Page 75 [3 October 2023] (Chee Hong Tat, Senior Minister of State for Finance).

69 Singapore Parl Debates; Vol 95, Sitting No 113; Page 107 [3 October 2023] (Chee Hong Tat, Senior Minister of State for Finance).

70 This is not uncommon as there are several other provisions in the ITA which operate to deem sums as income chargeable to tax under s 10(1)(*g*), see ss 10G, 14J, 36A, 36C, 45E and 45EA of the ITA.

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stringent if it is a "pure equity-holding entity" ("PEHE")). Section 10L overrides other provisions of the ITA, with the practical implications of this being that it can potentially catch certain capital gains (not just income) and disregard Singapore's FSIE regime.[71] Due to the sheer scope of s 10L at first instance, it is crucial to take it into consideration when engaging in any transactions with a Singapore link. While the exceptions within s 10L significantly scale down its practical scope, a failure to properly structure a transaction to fall within the scope of the exceptions can have very serious tax consequences.

28 The application of the new tax regime under s 10L can broadly be conceptualised as having three main stages. Firstly, one has to determine whether the gains in question *prima facie* fall within the scope of the regime. The relevant considerations at this stage include whether the seller is part of a "relevant group",[72] the situs of the assets disposed of,[73] when the assets were disposed of,[74] and whether the gains were "received in Singapore".[75] Secondly, one has to determine whether, notwithstanding that the gains *prima facie* fall within the scope of the regime, the gains or the seller entity fall within any of the exceptions within s 10L. The most important exception is where the seller entity is an "excluded entity".[76] Both "PEHEs" and "non-PEHEs" can potentially be excluded entities, though they are subject to varying levels of economic substance requirements.[77] There are several other more limited exceptions, such as those applying to the gains from the disposal of "qualifying intellectual property rights",[78] and gains from the disposal of foreign assets "carried out as part of, or incidental to, the business activities or operations of" a "prescribed financial institution"[79] or an entity that benefits from specified incentive regimes.[80] Lastly, assuming that the seller is unable to avail itself of any of the exceptions in s 10L, one has to determine the quantum of tax payable under the regime. In determining the net gains subject to tax under s 10L, there are several subsections which provide for rules on applying an open-market price to the sale of the asset,[81]

71 That said, as s 10L does not apply to individuals, the broad FSIE exemption for individuals in s 13(7A) of the ITA will continue to apply.
72 Income Tax Act 1947 (2020 Rev Ed) s 10L(5)(*b*).
73 Income Tax Act 1947 (2020 Rev Ed) s 10L(15).
74 Income Tax Act 1947 (2020 Rev Ed) s 10L(4).
75 Income Tax Act 1947 (2020 Rev Ed) s 10L(9).
76 Income Tax Act 1947 (2020 Rev Ed) s 10L(8)(*d*).
77 Income Tax Act 1947 (2020 Rev Ed) s 10L(16).
78 Income Tax Act 1947 (2020 Rev Ed) s 10L(6).
79 Income Tax Act 1947 (2020 Rev Ed) s 10L(8)(*a*).
80 Income Tax Act 1947 (2020 Rev Ed) ss 10L(8)(*b*) and 10L(8)(*c*).
81 Income Tax Act 1947 (2020 Rev Ed) ss 10L(10) and 10L(11).

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rules governing the deductibility of relevant expenses,[82] and rules of apportioning the amount deductible across basis periods.[83]

A. When gains will prima facie *fall under scope of regime*

(1) The determination of "relevant group" under s 10L

29 The new tax regime under s 10L only operates to tax gains from the disposal of assets made and received by a "seller entity" that is part of a "relevant group". "Entity" includes any legal person, partnerships and trusts, but notably excludes individuals.[84] An entity is a member of a group if its assets, liabilities, income, expenses, and cash flows are included in the consolidated financial statements of the parent entity of the group.[85] A group is a "relevant group" that falls within the scope of s 10L if the entities of the group are not all incorporated, registered or established in Singapore; or if any entity of the group has a place of business outside Singapore.[86]

30 Based on these conditions, a seller entity would not fall under the scope of the regime as long as it belongs to a group with only Singapore entities which operate only in Singapore. However, if any of the entities in the group has a "place of business" in a foreign jurisdiction, it would still fall within the ambit of s 10L. The term "place of business" is not expressly defined in the legislation, but guidance from the IRAS suggests that a branch or permanent establishment in a foreign jurisdiction would qualify.[87] Further, the guidance indicates that a Singapore company which is a single entity and not part of a group will not fall under the scope of the regime even if it has an overseas branch as the company and its overseas branch are considered one legal entity.[88]

82 Income Tax Act 1947 (2020 Rev Ed) ss 10L(12) and 10L(13).
83 Income Tax Act 1947 (2020 Rev Ed) s 10L(14).
84 Income Tax Act 1947 (2020 Rev Ed) s 10L(16).
85 Income Tax Act 1947 (2020 Rev Ed) s 10L(5)(*a*). Or are excluded on size or materiality grounds or on the grounds that the entity is held for sale.
86 Income Tax Act 1947 (2020 Rev Ed) s 10L(5)(*b*).
87 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at para 5.4.
88 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at para 5.5.

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(2) Situs *of assets*

31 The regime only operates to tax gains from the sale or disposal of any moveable or immovable property situated outside of Singapore (or rights or interest therein). The statute lists various situations and provides that the determination of the situation of assets is to be determined in accordance with such provisions.[89] This is particularly useful because the determination of *situs* can be very straightforward in some cases, like immovable property and tangible movable property, but less straightforward when it comes to intangible property such as equity interests in entities which are not companies[90] or goodwill.[91] Further, the statute provides that any intangible moveable property or right or interest therein not specifically mentioned is situated where the relevant ownership rights would be primarily enforceable.[92]

(3) *Timing*

32 The regime only applies to gains from a sale or disposal of a foreign asset that occurs on or after 1 January 2024.[93] Thus, the material time for the purposes of determining whether the transaction is taxable is when the asset is sold, not when the asset is first acquired by the seller entity or when the gains are received in Singapore. Assets acquired before 1 January 2024 are still potentially subject to the regime if they are sold after this date. Conversely, gains from assets sold before 1 January 2024 are not subject to the regime even if such gains are only received in Singapore after that date.[94] Under the statute, the time when the foreign asset vests in the buyer or transferee under the law governing the sale or disposal, is treated as the time of sale or disposal of the foreign asset.[95]

(4) *Gains "received in Singapore"*

33 Under the remittance basis of taxation in the general income tax charging provision, foreign-sourced gains are only subject to tax

89 Income Tax Act 1947 (2020 Rev Ed) s 10L(15).
90 Section 10L(15)(*h*) of the ITA, provides that such interests are situated where the operations of the entity are principally carried out.
91 Section 10L(15)(*j*) of the ITA provides that the goodwill relating to a trade, business or profession is situated where the latter is principally carried on.
92 Income Tax Act 1947 (2020 Rev Ed) s 10L(15)(*l*).
93 Income Tax Act 1947 (2020 Rev Ed) s 10L(3).
94 See Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at paras 4.1– 4.3.
95 Income Tax Act 1947 (2020 Rev Ed) s 10L(4). The statute provides that this applies "unless the circumstances require otherwise", but there is no guidance provided on what this might mean.

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if received in Singapore.[96] However, there are several provisions for "deemed receipt", where the law treats a gain as received in Singapore even if there is no actual receipt of the gains.[97] The new regime mirrors the general income tax charging provisions in both of these aspects. Gains from the sale of foreign assets will only be taxable under the new regime if they are received in Singapore.[98] There are also identical "deemed receipt" provisions under the new regime, which will treat the following gains from the sale of foreign assets as received in Singapore: (a) any amount from such gains that is remitted to, or transmitted or brought into Singapore; (b) any amount of such gains that is applied in or towards satisfaction of any debt incurred in respect of a trade or business carried on in Singapore; and (c) any amount from such gains that is applied to the purchase of any movable property which is brought into Singapore.[99] These are obvious targeted anti-avoidance rules which operate to treat gains as received in Singapore if the economic effect is that they are applied in Singapore, even if there is no actual receipt.[100]

B. Exceptions to tax under s 10L

(1) Excluded entities

(a) Pure equity-holding entities

34 Even if the gains from the sale of foreign assets *prima facie* fall within the scope of the regime, the statute provides for various exceptions, with the main exception being where the seller entity is an "excluded entity". The regime requires that "excluded entities" must meet certain thresholds of economic substance. The regime draws a distinction between two types of excluded entities: PEHEs and non-PEHEs.[101] An entity is a PEHE where: (a) its function is to hold shares or equity interests in any other entity; and (b) it has no income other than from three narrowly specified categories relating to its holdings.[102] The three limited categories are: (a) dividends or similar payments from the shares or equity interests; (b) gains on the sale or disposal of the shares or equity

96 Income Tax Act 1947 (2020 Rev Ed) s 10(1).
97 Income Tax Act 1947 (2020 Rev Ed) s 10(25). "Deemed receipt" provisions were introduced in the Income Tax (Amendment) Act 1995 (Act 34 of 1995) as clarificatory provisions "for the avoidance of doubt".
98 Income Tax Act 1947 (2020 Rev Ed) s 10L(1).
99 Income Tax Act 1947 (2020 Rev Ed) s 10L(9).
100 See Liu Hern Kuan, "Foreign Sourced Income – The Received Basis of Income Taxation" (1993) *Singapore Journal of Legal Studies* 57 at 60–66, which may have been the impetus for the introduction of the provisions.
101 Income Tax Act 1947 (2020 Rev Ed) s 10L(16).
102 Income Tax Act 1947 (2020 Rev Ed) s 10L(16).

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interests; or (c) income incidental to its activities of holding shares or equity interests in any other entity.

35 Two terms in the definition of a PEHE may be of particular interest. "Equity interests" are expressly defined in the statute as "an interest that carries rights to the profits, capital or reserves of [an] entity and is accounted for as equity under generally accepted accounting standards".[103] Thus, entities which hold common categories of investments such as debentures or real property are unlikely to be PEHEs. "Income incidental" to activities of holding shares or equity interests is not expressly defined. Guidance from the IRAS does provide some examples, which include bank interest income, and foreign exchange gains arising from dividends or similar payments, sale or disposal of shares, and bank interest income. The guide also clarifies that interest income derived from shareholder loans will not qualify as such "incidental income" and that an entity which provides interest-free loans to shareholders will not be regarded as a PEHE.[104]

36 For a PEHE to meet the relevant economic substance requirements and be excluded from the scope of the regime, there are a few (regulatory) conditions. Firstly, the entity must submit to the relevant public authorities any return, statement or account which it is regularly required to submit. Secondly, the operations of the entity must be managed and performed in Singapore (whether by its employees or by other persons where the activities performed by such other persons for the entity are subject to the direct and effective control of the entity). Finally, the entity must have adequate human resources and premises in Singapore to carry out its operations.[105] It would appear that if a PEHE is indeed only engaged in the holding of shares or equity interests as its activities, the threshold for satisfying adequate economic substance is not a high one and is easily satisfied by showing that its operations are managed and performed in Singapore by sufficient personnel in suitable premises.

(b) Non-pure equity-holding entities

37 Entities which are non-PEHEs are subject to considerably more stringent economic substance requirements. Firstly, the operations of the entity must be managed and performed in Singapore (whether by

103 Income Tax Act 1947 (2020 Rev Ed) s 10L(16).

104 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at p 23.

105 Income Tax Act 1947 (2020 Rev Ed) s 10L(16).

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its employees or by other persons where the activities performed by such other persons for the entity are subject to the direct and effective control of the entity). Secondly, the entity must have adequate economic substance, as assessed by taking into account four key factors: (a) the number of full-time employees of the entity (or other persons managing or performing the entity's operations) in Singapore; (b) the qualifications and experience of such employees or other persons; (c) the amount of business expenditure incurred by the entity in respect of its operations in Singapore; and (d) whether the key business decisions of the entity are made by persons in Singapore.[106]

38 The highly fact-specific nature of the factors means that it will be practically difficult to have a high level of certainty of when a non-PEHE has adequate economic substance. Such concerns were raised in the public consultation process conducted by the Ministry of Finance ("MOF"). In the feedback received, there was a request to prescribe some bright-line tests in legislation to establish whether economic substance requirements are met, to reduce uncertainty for taxpayers.[107] However, this was rejected on the basis that it was not practical to do so, given that business models and scale of operations of entities may vary even within the same sector. Instead, guidance would be provided through an IRAS e-Tax Guide, including examples for certain sectors.[108]

39 The e-Tax Guide also provides more specific guidance on when entities which outsource some or all of its economic activities to third parties or group entities may be regarded as having adequate economic substance. For an outsourcing arrangement to satisfy the economic substance requirement, the following conditions must be satisfied: (a) the economic activities are to be carried out by the outsourced entity in Singapore; (b) the outsourcing entity has a direct and effective control over the outsourced activities carried out by the outsourced entity on its behalf (*ie*, the outsourcing entity has exercised adequate monitoring and control of the economic activities carried out by the outsourced entity); and (c) the outsourced entity providing the outsourced services

106 Income Tax Act 1947 (2020 Rev Ed) s 10L(16).

107 See Ministry of Finance, "Annex A: MOF's Responses to Key Feedback on the Draft Income Tax (Amendment) Bill 2023" (2023).

108 Singapore Parl Debates; Vol 95, Sitting No 113; Page 107 [3 October 2023] (Chee Hong Tat, Senior Minister of State for Finance). See the examples in Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Asset"s (3rd Ed) (6 June 2025) at pp 9–10 and Annex B: Guidance on the Core Income Generating Activities in Relation to the Economic Substance Requirement for Each Sector.

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must set aside dedicated resources (*eg*, manhours) to provide the outsourced services.[109]

(c) Advance rulings

40 As noted above, the highly fact-specific nature of the test for adequate economic substance is likely to result in uncertainty. While the IRAS has provided numerous examples in the e-Tax Guide, another key mechanism in resolving the uncertainty comes in the form of advance rulings.[110] Recognising the need for certainty in this context, the IRAS has created a separate advance ruling procedure specific to determining the adequacy of economic substance.[111] To date, no fewer than eleven advance rulings on economic substance in the context of s 10L have been published.[112] Together, the advance rulings provide a much clearer picture of the situations in which the economic substance requirement will be satisfied, supplementing the guidance provided in the e-Tax Guide. However, it should be noted that advance rulings technically only apply to the applicant and the particular arrangement that was the subject of the ruling, though they may provide guidance to other taxpayers.

41 Advance rulings are a practical way for taxpayers to achieve tax certainty on their arrangements. Where complete and accurate particulars are provided to the IRAS, advance rulings are binding on the Comptroller but not on the taxpayer.[113] However, should the taxpayer choose not to rely on the advance ruling, it must declare this in its income tax return.[114] It should also be noted that advance rulings may only be

109 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at pp 11–13.

110 Indeed, setting up a system of advanced rulings was one of the suggestions made in Parliament to alleviate some of the difficulties that could be caused by the adequate economic substance requirement – see Singapore Parl Debates; Vol 95, Sitting No 113; Page 90 [3 October 2023] (Usha Chandradas, Nominated Member).

111 Inland Revenue Authority of Singapore, "Economic Substance Requirement" <https://www.iras.gov.sg/taxes/corporate-income-tax/specific-topics/advance-ruling-system-for-income-tax/economic-substance-requirement> (accessed 10 October 2026). In fact, the Inland Revenue Authority of Singapore has indicated that it will give a ruling within four weeks of receiving the necessary information for such advance rulings (as compared with the usual eight weeks for regular advance rulings).

112 Advance Rulings Nos 7/2025, 10/2025, 13/2025, 14/2025, 2/2026, 3/2026, 5/2026, 8/2026, 9/2026,11/2026 and 21/2026. See Inland Revenue Authority of Singapore, "Advance Ruling System for Income Tax" <https://www.iras.gov.sg/taxes/corporate-income-tax/specific-topics/advance-ruling-system-for-income-tax> (accessed 10 October 2026).

113 Income Tax Act 1947 (2020 Rev Ed) Seventh Schedule, Pt 1, para 5.

114 Income Tax Act 1947 (2020 Rev Ed) Seventh Schedule, Pt 1, para 17.

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relied on if the relevant facts and representations made for the purpose of the ruling application remain unchanged and there is no change in the tax laws or interpretation of the tax laws.

(2) Disposal of qualifying intellectual property rights

42 Apart from the exceptions from tax where a seller entity is an "excluded entity", there are several other exceptions which apply to relatively niche situations. One example is an exception which applies to income from the disposal of qualifying intellectual property rights. For context, Singapore's IP Development Incentive provides a concessionary rate of tax for the qualifying intellectual property income of an approved company.[115] This exception in the new tax regime excludes qualifying intellectual property income that would have qualified for concessionary tax rates under the Incentive if certain conditions are met (bearing in mind that s 10L would otherwise override the operation of the Incentive).[116]

(3) Prescribed financial institutions

43 Another exception under the new tax regime is one which applies to "prescribed financial institutions". Thus, income from the disposal of foreign assets is exempt from the new tax regime if "carried out as part of, or incidental to, the business activities of a prescribed financial institution".[117] The definition of a "prescribed financial institution" is a relatively restrictive one, only extending to five categories of institutions.[118] All five categories of institutions are heavily regulated under other regulatory regimes and in all likelihood, will have adequate economic substance in Singapore to be granted their respective licenses.

44 It is noted that the current definition of "prescribed financial institution" is considerably narrower in scope than initially defined in

115 Income Tax Act 1947 (2020 Rev Ed) s 43X.

116 Income Tax Act 1947 (2020 Rev Ed) ss 10L(6) and 10L(7). For more details on this exception, see Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at para 9.

117 Income Tax Act 1947 (2020 Rev Ed) ss 10L(8)(*a*).

118 The five categories are: (a) a bank licensed under the Banking Act 1970 (2020 Rev Ed); (b) a merchant bank licensed under the Banking Act 1970; (c) a finance company licensed under the Finance Companies Act 1967 (2020 Rev Ed); (d) an insurer licensed or regulated under the Insurance Act 1966 (2020 Rev Ed); or (e) a holder of a capital markets services licence under the Securities and Futures Act 2001 (2020 Rev Ed). See s 10L(16) of the ITA.

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the draft Income Tax (Amendment) Bill 2024,[119] which was subsequently amended before enactment. The initial definition referred to the definition of "financial institution" in the Financial Services and Markets Act 2022[120] which includes the five categories of institutions eventually listed in s 10L, but also a variety of other regulated institutions such as financial advisers licensed under the Financial Advisers Act 2001[121] and designated financial holding companies under the Financial Holding Companies Act 2013.[122] Due to the eventual exclusion of the other categories of financial institutions from s 10L as enacted, such financial institutions will likely have to qualify as excluded entities by meeting the prescribed conditions for PEHEs or non-PEHEs to fall outside the scope of the new tax regime. It is quite possible that as regulated institutions, they will have adequate economic substance to qualify as excluded entities, but there is no blanket exclusion for them as was initially drafted in the Income Tax (Amendment) Bill 2024.

(4) Specified incentive regimes

45 Finally, the other two categories of exceptions exclude from the scope of the new tax regime, gains from a sale or disposal of a foreign asset (not being an intellectual property right) that is "carried out as part of, or incidental to, the business activities or operations of an entity, being activities or operations from which the entity derives income that is exempt from tax, or that is taxed at a concessionary rate of tax" under specific sections in the ITA[123] or Economic Expansion Incentives (Relief from Income Tax) Act 1967,[124] for the year of assessment for the basis period in which the sale or disposal occurred. An examination of the various sections named in the provision under the first category of exceptions will reveal that such tax exemptions are available to businesses in a narrow range of sectors (*eg*, insurance, airline and shipping industries).[125]

46 The second category of exceptions provide tax exemptions to an even narrower range of businesses, namely businesses in industries

119 See s 10L(6)(*a*) of the Income Tax (Amendment Bill) 2024 (Bill No 32/2024) (as released for public consultation by the Ministry of Finance on 6 June 2023).
120 Financial Services and Markets Act 2022 (Act 18 of 2022) s 2.
121 2020 Rev Ed.
122 Act 13 of 2013.
123 Income Tax Act 1947 (2020 Rev Ed) ss 13A, 13E, 13P, 43C, 43E, 43I, 43J, 43L, 43N, 43P, 43Q, 43R or 43U.
124 Economic Expansion Incentives (Relief from Income Tax) Act 1967 (2020 Rev Ed) Pts 2, 3 or 4.
125 See, *eg*, ss 13A, 13E, 13P, 43L and 43U of the ITA in relation to applicable tax exemptions for the shipping industry.

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or producing products approved by the Minister as a "pioneer industry or product",[126] companies approved by the Minister as a "pioneer service company"[127] or companies approved by the Minister as a "development and expansion company".[128]

C. Determining quantum of gains chargeable to tax under regime

47 Assuming that gains from the sale of foreign assets *prima facie* fall under the new tax regime and no exceptions apply to take such gains out of the scope of s 10L, it will be necessary to compute the amount of the gains chargeable to tax. The starting point is that (net) gains are chargeable to tax, not the amounts received. Thus, there must be a mechanism for ascertaining the amount received in Singapore from outside Singapore first (with a deeming provision to apply an open-market price to the sale of the asset)[129] and then rules governing the deductibility of relevant expenses to determine the net amount of gains.[130] Finally, there are also rules for apportioning the relevant expenses deductible,[131] so as to ensure that only a reasonable proportion of the relevant expenses can be deducted against gains partially remitted to Singapore.

(1) Gains ascertained by reference to open-market price

48 Before any relevant expenses are deducted, it is first necessary to determine the amount received in Singapore from outside Singapore attributable to the sale of a foreign asset. The new tax regime has in place an anti-avoidance rule designed to provide for situations where transactions are made at an undervalue. The formula provided in the statute allows the Comptroller to deem the following amount to be the amount of the gains received in Singapore from outside Singapore: A + B – C, where A is the amount of the gains actually received in Singapore from outside Singapore; B is the open-market price for the foreign asset; and C is the actual price for the sale or disposal of the foreign asset.[132] Thus, where the open-market price is equivalent to the actual sale price of the foreign asset, the two will cancel each other out in the formula, leaving

126 Economic Expansion Incentives (Relief from Income Tax) Act 1967 (2020 Rev Ed) s 4.
127 Economic Expansion Incentives (Relief from Income Tax) Act 1967 (2020 Rev Ed) s 17.
128 Economic Expansion Incentives (Relief from Income Tax) Act 1967 (2020 Rev Ed) s 21.
129 Income Tax Act 1947 (2020 Rev Ed) ss 10L(10) and 10L(11).
130 Income Tax Act 1947 (2020 Rev Ed) ss 10L(12) and 10L(13).
131 Income Tax Act 1947 (2020 Rev Ed) s 10L(14).
132 Income Tax Act 1947 (2020 Rev Ed) s 10L(10).

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only the amount of gains actually received in Singapore to be subject to tax. However, if the sale is made at an undervalue, then the difference between the open-market price and the actual price will be added to the amount of gains received in Singapore, with the provision effectively deeming the foreign asset to have been sold at its open-market value.

49 The deeming provision does create an interesting situation in that if a foreign asset is sold at an undervalue, technically, it might give rise to deemed gains regardless of whether any gains are actually received in Singapore. In such a situation, since B is more than C, even if A is zero, the formula will still produce a sum greater than zero. The IRAS has pre-empted this issue by clearly stating in its e-Tax Guide that if no amount of the gain is received in Singapore, the Comptroller will not tax the difference between the open-market value and the sale price of the foreign asset, waiting instead for a basis period where gains are actually received in Singapore.[133] It is noted that the statute states that the Comptroller "may" invoke the mechanism of the deeming provision, meaning that there is nothing which compels him to do so and he may indeed choose not to apply it if no amount of the gain is received in Singapore.[134]

50 As for how the open-market price for a foreign asset will be ascertained, where the Comptroller is satisfied by reason of the special nature of the foreign asset that it is not practicable to determine the open-market price, he can prescribe such value to the asset as appears to the Comptroller to be reasonable in the circumstances.[135] One possible way of doing so might be to look at the value of the asset as reported in the entity's most recent accounts.

(2) Deductions when ascertaining gains

(a) Deductible expenditure

51 At a basic level, there are two main provisions governing deductions under the new tax regime. The first lays out the kinds of expenditures and losses which may generally be deducted,[136] while the second restricts the deductibility of such items in certain situations.[137] In terms of deductible expenditure, the statute provides that there are three

133 See Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at para 11.3.
134 Income Tax Act 1947 (2020 Rev Ed) s 10L(10).
135 Income Tax Act 1947 (2020 Rev Ed) s 10L(11).
136 Income Tax Act 1947 (2020 Rev Ed) s 10L(12).
137 Income Tax Act 1947 (2020 Rev Ed) s 10L(13).

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categories of expenditures that may be deducted in computing the gains subject to tax under s 10L. They are expenditure incurred by the seller entity to: (a) acquire, create or improve the foreign asset (including any expenditure that would be deductible under s 14(1)(*a*) if the foreign asset were capital employed in acquiring income); (b) protect or preserve the value of the foreign asset; or (c) sell or dispose of the foreign asset.[138]

52 At first glance, the fact that there are only three prescribed categories of expenditures that may be deducted in computing the gains subject to tax under s 10L may appear to be somewhat restrictive in comparison to the general deductions provision in the ITA, which allows for "all outgoings and expenses wholly and exclusively incurred … in the production of income" to be deducted.[139] However, it is noted that there is no express requirement for the expenditure to be "wholly and exclusively incurred", making the new tax regime arguably more generous in some respects.[140] It is noted that the current provisions as enacted are actually more generous than in the initial draft of the Income Tax (Amendment) Bill,[141] which only provided for two categories, leaving out any expenditure incurred to "protect or preserve the value of the foreign asset".

53 Under the first category of deductible expenditure, the statute allows for the deduction of any expenditure incurred by the seller entity to acquire, create or improve the foreign asset (including any expenditure that would be deductible under s 14(1)(*a*) if the foreign asset were capital employed in acquiring income).[142] The express reference to s 14(1)(*a*) here is to clarify that interest (or relevant borrowing costs) expenditure incurred on capital used to acquire, create or improve the foreign asset can also be deducted. This is a welcome clarification, since this puts it beyond doubt that interest expenditure can also be considered to be expenditure incurred to "acquire, create or improve" a foreign asset.

(b) Deductible losses

54 There may also be deducted, any loss incurred by the seller entity from the sale or disposal of any other foreign asset: (a) where, had the sale or disposal resulted in gains and all of those gains had been

138 Income Tax Act 1947 (2020 Rev Ed) s 10L(12)(*a*).

139 Income Tax Act 1947 (2020 Rev Ed) s 14(1).

140 There is a very broad resemblance to the provisions allowing for the deduction of acquisition and disposal costs in s 38 of the UK Taxation of Chargeable Gains Act 1992 (c 12) (UK); but that section does include the "wholly and exclusively" requirement.

141 Income Tax (Amendment Bill) 2024 (Bill No 32/2024) (as released for public consultation by the Ministry of Finance on 6 June 2023) s 10L(10).

142 Income Tax Act 1947 (2020 Rev Ed) s 10L(12)(*a*).

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received in Singapore, they would have been chargeable to tax under s 10L(1); and (b) to the extent that the losses had not already been deducted against any gains chargeable to tax under s 10L(1).[143] This is a more generous treatment that does not require "source-by-source" matching of losses to sources (that would be the case for s 10(1)(*g*) income).[144] In other words, losses from the sale or disposal of foreign assets can be generally deducted against gains from the sale or disposal of foreign assets, without the need to prove that the gains and losses came from the same source. It is noted that only losses which are (actually) incurred from the sale or disposal of other foreign assets may be deducted, meaning that such losses will need to be realised and not merely unrealised (or "paper") losses.[145]

55 This amendment to allow for a more generous treatment of losses from the sale of foreign assets came about by virtue of feedback given by various stakeholders in the public consultation process, which was accepted by the MOF. One concern enunciated in the feedback was whether foreign-sourced disposal losses could be set-off against foreign-sourced disposal gains. MOF accepted this concern, stating that it would allow the set-off of foreign-sourced disposal losses against foreign-sourced disposal gains that are subject to tax. The set-off will be restricted to foreign-sourced disposal losses that would have otherwise been brought to tax if they were gains. In addition, unutilised foreign-sourced disposal losses may be carried forward indefinitely for set-off against foreign-sourced disposal gains in future years.[146]

(c) Restrictions on deductions

56 As for restrictions on deductions, the statute provides that two categories of expenditure are not deductible under the new tax regime. Firstly, any expenditure deducted under the ITA against any other income (whether or not chargeable to or exempt from tax). Secondly, capital expenditure computed by the following formula: D – E, where D is the amount of capital expenditure for which any allowance (including any balancing allowance) is made under this Act against any other income (whether or not chargeable to or exempt from tax); and E is the amount of any balancing charge (or similar charge) made under the Act on the

143 Income Tax Act 1947 (2020 Rev Ed) s 10L(12)(*b*).

144 *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR(R) 484 at [45]. Also see Vincent Ooi, "Taxing All Other Income in Singapore and Malaysia" (2019) 19(2) *Oxford University Commonwealth Law Journal* 204 at 222.

145 Income Tax Act 1947 (2020 Rev Ed) s 10L(12)(*b*).

146 See Ministry of Finance "Annex A: MOF's Responses to Key Feedback on the Draft Income Tax (Amendment) Bill 2023" (2023) <https://isomer-user-content.by.gov.sg/153/e24a4e98-f9e8-49bd-a644-b09173f0765a/sor-ita-bill-2023_annex-a.pdf>.

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sale or disposal of the foreign asset.[147] The rationale for this is to prevent taxpayers from deducting the same expenditure twice (one under the general ITA and then again under the new tax regime). Thus, the statute restricts the deductibility of expenditure which has already been deducted under the ITA against any other income (whether or not chargeable to or exempt from tax) or under the general capital allowance regime.[148]

(3) Apportionment of deductions across basis periods

57 It should be recalled that s 10L taxes gains only when they are received in Singapore from outside Singapore. As such, it is well possible for a foreign asset to be sold, but the gains only remitted (or deemed remitted) in part to Singapore. The gains may also be remitted to Singapore in portions, over different basis periods. As such, it is necessary to have rules for apportioning the relevant expenses deductible, so as to ensure that only a reasonable proportion of the relevant expenses can be deducted against gains partially remitted to Singapore. Otherwise, taxpayers may seek to deduct the entirety of relevant expenses against only a fraction of gains remitted to Singapore. Thus, the statute provides that where not all the gains from the sale or disposal of a foreign asset are received in Singapore in the same basis period, a portion of the amount deductible under sub-s (12)(*a*) as the Comptroller considers reasonable is deductible for each basis period in which any such gains are received in Singapore.[149] This is clearly an anti-avoidance rule, but uncertainty may still remain as to how the allowable expenditure may be determined in situations where only a portion of the gains derived from the disposal of the foreign asset is received in Singapore.

VI. Interaction with other provisions of Income Tax Act

58 One key feature of s 10L is how the provision begins with "despite anything in this Act". Most notably, where s 10L applies, it will override the operation of the FSIE and render the otherwise exempt foreign-sourced income taxable in Singapore under s 10(1)(*g*). However, there are also a number of other provisions in the ITA which provide for tax exemptions, raising questions as to how they would apply in light of s 10L.

147 Income Tax Act 1947 (2020 Rev Ed) s 10L(13).
148 Income Tax Act 1947 (2020 Rev Ed) s 10L(13)(*a*).
149 Income Tax Act 1947 (2020 Rev Ed) s 10L(14).

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A. Tax transparency and individuals

59 In line with the general exemption for income received by individuals under the FSIE,[150] s 10L is not intended to apply to individuals. However, the definition of "entity" in s 10L is broadly drafted to catch not just companies but also partnerships and trusts.[151] Thus, the possibility arises that foreign-sourced income caught by s 10L may be taxable even if the income is ultimately accorded transparent tax treatment and treated as the income of individuals. Section 13(1)(*zu*) appears to forestall this possibility, by providing that there is exempt from tax "any gains from the sale or disposal of an asset that are treated as income under s 10L and are assessable as the income of an individual under the provisions of this Act". This interpretation is supported by the IRAS e-Tax Guide, which expressly states that this tax exemption "will be given on the capital gains derived from the sale or disposal of a foreign asset where the gains are assessable as the income of an individual". It further provides, as an example, the case of a partnership where tax transparency treatment applies.[152]

60 However, it is stated that the tax exemption will not be given if the gains are business revenue gains.[153] It is not readily apparent why this should be the case just by looking at the plain wording of s 13(1)(*zu*), which does not make specific reference to either capital gains or business revenue gains. Nevertheless, the position taken by the IRAS on this point is correct. If a partnership makes business revenue gains, a partner entitled to a share of the income cannot claim an exemption under s 13(7A) because the provision expressly excludes "such income received by the individual through a partnership in Singapore". Neither can the partner claim an exemption under s 13(8)(*b*), because of the express reference to a "company resident in Singapore". It follows that the FSIE does not exempt such income in the first place, meaning that it will be taxed under the general charging provision in s 10(1) and does not fall under s 10L at all. It thus cannot be exempted under s 13(1)(*zu*). On the other hand, capital gains are not taxable under any other provision in the ITA other than s 10L. Accordingly, s 13(1)(*zu*) can operate to exempt them when they are treated as income and assessable in the hands of a partner. The net effect is to preserve the general (pre-s 10L) position

150 Income Tax Act 1947 (2020 Rev Ed) s 13(7A).

151 Income Tax Act 1947 (2020 Rev Ed) s 10L(16).

152 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at para 13.1.

153 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at para 13.2.

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that gains or profits in the nature of income from the sale of foreign assets which are received in Singapore are taxable in the hands of partners but not if the gains or profits are in the nature of capital gains.

61 A more fundamental issue arises in that s 10L is expressly stated to apply "despite anything in this Act" and s 13(1)(*zu*) is not situated in s 10L itself. This can be readily resolved through an application of purposive interpretation.[154] Recalling the parliamentary statements made in the second reading for the Income Tax (Amendment) Bill, the purpose of s 10L was not simply to tax capital gains in general, but rather to tax capital gains made by foreign entities in certain circumstances to align tax treatments of foreign sourced income with approaches adopted internationally (particularly in the EU).[155] Further, in defining "entity", s 10L(16) expressly provides that "entity" includes "any legal person (including a limited liability partnership) but not an individual". This arguably evinces the parliamentary intention that where gains from the sale of foreign assets are treated as individual income, they should be exempt from taxation under s 10L. Of course, a more straightforward argument is that s 13(1)(*zu*) expressly makes reference to s 10L, can only apply to gains treated as income under s 10L, and would be rendered otiose if it were interpreted as subject to s 10L.

B. Foreign tax credits

62 As s 10L covers foreign-sourced gains, there is the possibility that the gains would also be subject to tax in the source State and thus, the risk of double taxation arises. As noted above, there are two main ways in which taxpayers can seek relief from double taxation: under a DTA or unilateral tax relief. The IRAS e-Tax Guide clarifies that these methods can still apply even where gains are taxable under s 10L.[156] This position can be reconciled with the fact that s 10L is expressly stated to apply "despite anything in this Act" in a number of ways. Section 49, which gives effect to DTAs is also stated to "have effect despite anything in any written law." Section 50A, which provides for unilateral tax credits is stated to apply "even if there are no arrangements in force under section 49". It is arguable that the nature of the relief from double taxation provisions is such that they must be able to apply to override

154 Interpretation Act 1965 (2020 Rev Ed) s 9A; *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [37]; *Ting Choon Meng v Attorney-General* [2017] 1 SLR 373 at [59]; *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [67].

155 Singapore Parl Debates; Vol 95, Sitting No 113; Page 75 [3 October 2023] (Chee Hong Tat, Senior Minister of State for Finance).

156 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025) at para 12.1.

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other provisions in the ITA. Also, more fundamentally, it could be argued that ss 49, 50 and 50A relate to tax credits and not exemptions. There is no inconsistency between these provisions and s 10L, since they do not purport to exempt gains from being assessed as taxable income, but merely provide a credit for taxes already paid in foreign jurisdictions to offset the tax payable on that income in Singapore under s 10L.

C. Funds tax incentive schemes

63 Given the importance of the private wealth sector in Singapore, the interaction of s 10L with the funds tax incentive schemes is a crucial issue to be discussed. In the upshot, it is unlikely that s 10L will detrimentally affect entities which qualify for the tax incentives that are offered under ss 13O, 13OA and 13U of the ITA. These incentives require that funds meet several stringent requirements. For example, the s 13O (and 13OA) and 13U schemes require an applicant fund to meet the minimum assets under management ("AUM") requirement of S$20m/S$50m respectively at the point of application and throughout the incentive period. There are also minimum requirements for the employment of investment professionals and for local business spending.[157] Given the stringency of these requirements, entities able to qualify for these incentives are most likely to be able to fulfil the economic substance requirements under s 10L.

D. The safe harbour for disposal of ordinary or preference shares

64 Very briefly, s 13W is a "safe harbour" provision that provides certainty to taxpayers that if they are "significant" and "long-term" shareholders of a company, the disposal of their shares will not be subject to income tax. It serves to resolve the uncertainty in determining whether gains from such disposals are in the nature of income or capital gains, by simply exempting them altogether. The conditions have been revised for disposals made on or after 1 January 2026, but the broad idea is that a divesting company must have held shares in the investee company for a continuous period of at least 24 months immediately before disposal

157 Monetary Authority of Singapore, "Fund Tax Incentive Schemes for Family Offices" (5 July 2023) <https://www.mas.gov.sg/schemes-and-initiatives/fund-tax-incentive-scheme-for-family-offices> (accessed 10 October 2026).

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and must have legally and beneficially owned at least 20% of the ordinary or preference[158] shares in the investee company.[159]

65 While intended as a safe harbour provision, the effect of s 13W is that if the relevant conditions are met, gains from the disposal of shares will simply be exempt from tax whether the gains are in the nature of income or capital gains. This creates a potential conflict with s 10L, which could apply to override the exemption and subject those gains to tax under s 10(1)(*g*) anyway if they are foreign-sourced gains and meet the other conditions in s 10L. It is likely that the fact that s 10L is expressly stated to apply "despite anything in this Act" will mean that it will override s 13W. In other words, the safe harbour provision will not have any effect in cases where s 10L applies. However, it is worth bearing in mind that s 10L is only triggered where the entity is part of a relevant group where one or more of the members of the group is not registered or established in Singapore or has a place of business beyond Singapore.[160] Thus, the safe harbour provision would still be useful for the taxpayer in many other situations. Interpreting s 10L as taking precedence over s 13W does not render s 13W nugatory (unlike the case with s 13(1)(*zu*)).

VII. Conclusion

66 The tax treatment of foreign-sourced gains has become a somewhat contentious issue, with the EU COCG carefully scrutinising the FSIE regimes of jurisdictions around the world. Hong Kong, Malaysia and Brunei were each placed on the EU "grey list" and took steps to repeal or amend their "harmful FSIE regimes". The position in Singapore is more complex. While sharing the same colonial roots as these jurisdictions, the early emphasis on economic substance and lack of an FSIE regime that advantaged non-residents meant that Singapore was not directly made to amend its tax system. However, Singapore spotted a technical issue raised by the EU COCG's Guidance on the non-taxation of foreign-sourced capital gains and chose to proactively respond to it, notwithstanding that there was no "exemption" of such gains to begin with.

158 While up until 1 January 2026, only ordinary shares were considered, preference shares were later included, but only if they are accounted for as equity under applicable accounting principles adopted by the investee company (see Inland Revenue Authority of Singapore, "IRAS e-Tax Guide –Certainty of Non-taxation of Companies' Gains on Disposal of Equity Investments" (4th Ed) (30 September 2025)).

159 Income Tax Act 1947 (2020 Rev Ed) s 13W(1A). There are also provisions extending this to the situation where the required shareholding is held by companies in the same group as the divesting company (see s 13W(1B)).

160 Income Tax Act 1947 (2020 Rev Ed) s 10L(5).

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67 This article analysed the tax treatment of foreign-sourced gains in Singapore over three periods, bounded by the introduction of the ITA, introduction of the FSIE and then enactment of s 10L. It has sought to argue that while Singapore's FSIE regime may appear to be broad, its main purpose was to simplify the administrative and compliance burden in having to track and compute the applicable foreign tax credits. Stringent requirements under the FSIE and for the issuance of CORs meant that there were strong safeguards against abusive tax practices even before the enactment of s 10L. There was no evidence to suggest that the pre-s 10L regime posed any risk of abusive tax practices.

68 That said, the sheer breadth of scope of s 10L has meant that numerous taxpayers fall within its potential scope. Even if it was not intended to tax capital gains or expected to have an adverse impact on the economy,[161] taxpayers still cannot avoid a careful analysis of the provision to ensure that they are truly in the clear, particularly since the test for adequate "economic substance" is a highly fact-specific one. In this respect, the IRAS has made significant efforts to try to ensure tax certainty for taxpayers, offering numerous examples in its comprehensive e-Tax Guide[162] and creating a separate advance ruling mechanism specifically for determining the adequacy of economic substance in relation to s 10L.[163] Several advance rulings have been published since the introduction of s 10L, providing taxpayers with additional guidance beyond what is already in the e-Tax Guide. There remain some uncertainties with respect to the operation of s 10L and its interaction with other provisions in the ITA, but on the whole, it seems clear that taxpayers who have economic substance in Singapore need not fear that s 10L will greatly expand their tax liability.

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161 Singapore Parl Debates; Vol 95, Sitting No 113, Page 75 [3 October 2023] (Chee Hong Tat, Senior Minister of State for Finance).

162 Inland Revenue Authority of Singapore, "IRAS e-Tax Guide – Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" (3rd Ed) (6 June 2025).

163 Inland Revenue Authority of Singapore, "Economic Substance Requirement" <https://www.iras.gov.sg/taxes/corporate-income-tax/specific-topics/advance-ruling-system-for-income-tax/economic-substance-requirement> (accessed 10 October 2026).

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