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Singapore income taxation

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SECTION 1 OVERVIEW

Charging Provision

28.1.1 Section 10(1) of the Income Tax Act (Cap. 134, 2014 Rev. Ed.) (“**ITA**”) is the charging provision which provides for income tax to be payable for each year of assessment (“**YA**”) upon the income of any person. Income is taxable if it falls within one of the enumerated heads of charge under sections 10(1)(a) to (g).

Income is taxable only if it is sourced in Singapore, i.e. accruing in or derived from Singapore, or received in Singapore from outside Singapore, subject to variations.

Only revenue (and not capital) receipts are taxable, and only revenue (and not capital) expenses are deductible for the purpose of computing the taxable income of a person.

Year of Assessment

28.1.2 Singapore adopts a preceding year basis of assessment, which means that tax for any given YA is paid on the income earned or derived in the preceding calendar year or, in the case of a company, the financial year ending in the year preceding that YA. For example, the basis period of a company with a financial year end of 30 June for YA 2018 is from 1 July 2016 to 30 June 2017.

Statutory, Assessable and Chargeable Income

28.1.3 Statutory income is computed by aggregating all the sources of income of an entity (excluding exempt income), and deducting the allowable expenses and capital allowances.

Assessable income is derived by deducting allowable losses and approved donations from statutory income.

Finally, chargeable income is calculated by deducting reliefs and deductions from assessable income. Income tax is payable on the chargeable income of an entity.

Business Vehicles/ Structures

28.1.4 There are six main business vehicles/ structures in Singapore: 1) sole proprietorships; 2) companies; 3) general partnerships; 4) limited partnerships; 5) limited liability partnerships (“**LLPs**”); and 6) trusts.

Profits generated by a sole proprietor from his trade, business, profession or vocation are included as part of the individual’s taxable income and are chargeable to income tax at the prevailing personal income tax rates.

Companies are separate taxable entities from their shareholders and directors; their income is chargeable to tax at the prevailing corporate tax rate.

For income tax purposes, general partnerships are treated as being tax-transparent. The income of the partnership is divided according to the partnership agreement, to be included as part of each partner’s taxable income and taxed accordingly.

Limited Partnerships (“**LPs**”) are similar to general partnerships for income tax purposes.

Limited ability Partnerships (“**LLPs**”) are generally accorded the same tax treatment as general partnerships as far as income is concerned.

Trust income is generally treated as the income of the trustee and chargeable to tax on the trustee at the prevailing corporate income tax rate. However, tax transparency treatment is accorded to resident beneficiaries who are entitled to trust income. In such a case, the trust income due to the beneficiaries will be included as part of their taxable income.

Residence Tests

28.1.5 For individuals, resident means "a person who, in the year preceding the year of assessment, resides in Singapore except for such temporary absences therefrom as may be reasonable and not inconsistent with a claim by such person to be resident in Singapore, and includes a person who is physically present or who exercises an employment (other than as a director of a company) in Singapore for 183 days or more during the year preceding the year of assessment": see definition of "Resident of Singapore" in section 2(1). Broadly, there is a qualitative test, as well as two quantitative tests (physical presence test and employment test), embodied in the definition of "resident", and satisfaction of any of these would be sufficient to establish an individual as a resident. The qualitative test depends on the meaning of the words "resides" and "temporary absence". In *MY v Comptroller-General of Inland Revenue* [1972] 2 MLJ 110, the Malaysian Federal Court of Civil Appeal considered a number of factors to be relevant in determining the residence of the appellant taxpayer, including: his substantial business connection with Malaysia, past history of residence, present habit and mode of life, and the fact that the appellant taxpayer had a place for his stay in Malaysia reserved for his use at all times. It should also be noted that a person may have two residences where supported by facts: per Lord Denning MR in *Fox v Stirk*, [1970] 3 All ER 7.

28.1.6 In the case of a company or a body of persons, "resident" means one the control and management of whose business is exercised in Singapore. In *NB v Comptroller of Income Tax* (2006) MSTC 5,571, the ITBR took the view that the statutory "control and management" test is no different from that of the common law, which is captured in the oft-cited passage of Lord Chancellor Loreburn in *De Beers Consolidated Mines Ltd v Howe* [1906] 5 TC 198: “We ought... to see where [a company] really can keep house and do business... The decision of Kelly CB and Huddleston B in *Calcutta Jute Mills v Nicholson* and *Cesena Sulphur Company v Nicholson* [1876] 35 LT 275; 1 Ex D 428... involved the principle that a company resides, for purposes of income tax, where its real business is carried on. Those decisions have been acted upon since. I regard that as the true rule; and the real business is carried on where the central management and control actually abides.”

28.1.7 Where there is more than one decision-making body in a company, the management and control of the business of that company lies with the body holding the paramount authority on major questions of policy: see *American Thread Co. v Joyce* (1913) 6 TC 163. The residence of a company is to be determined by its actual place of management, based on the actual circumstances of the company and not on the interpretation of the constitution of the company. The management and control of a company generally lies with its board of directors. However, the management and control of the company may be usurped by an outsider, such as the holding company, where the company´s board of directors stand aside from their directorial duties and do not purport to function as a board of management: see *Unit Construction Co. Ltd. v Bullock* [1960] AC 351. However, the control and management of a company is not usurped by an outsider who instructs the board of directors on what to do, so long as the board exercises its discretion when making decisions, and would have refused to carry out an improper or unwise transaction: see *Esquire Nominees Ltd v Federal Commissioner of Taxation* [1973] 129 CLR 177, *Unigate Overseas Ltd v McGregor* [1996] STC (SCD) 1).

28.1.8 Other than determining the applicable tax rates, the tax residency of a taxpayer is also important as certain types of exemption are applicable depending on whether the taxpayer is resident in Singapore or not. Also, tax reliefs are available only to resident individuals.

Rates

28.1.9 The rate of tax applicable depends on the type of person whose income is under assessment. Different tax rates apply to residents and non-residents. In addition, the applicable tax rates differ for individuals, companies, bodies of persons and other types of taxpayers. The rates for YA 2018 may be summarised as follows:

(See **https://www.iras.gov.sg/irashome/Individuals/Locals/Working-Out-Your-Taxes/Income-Tax-Rates**)

	Individual		Companies, Bodies of Persons, and Trustees
Resident	First $20,000	2%	17%
	Next $10,000	3.5%	

	Next $10,000	7%	
	Next $40,000	11.5%	
	Next $40,000	15%	
	Next $40,000	18%	
	Next $40,000	19%	
	Next $40,000	19.5%	
	Next $40,000	20%	
	In excess of $320,000	22%	
Non-resident	Employees: 15% Director´s fees, consultation fees and all other incomes (generally): 22%		17%

28.1.10 In the case of a general partnership (not a legal entity), section 36 provides that income is to be taxed in the hands of all the partners of that partnership on such share of the partnership profit to which each of those partners are entitled, as though it were income of a trade, business, profession or vocation carried on or exercised by that partner. Therefore, the share of partnership income of each partner is subject to tax at the marginal individual tax rate of that partner (or corporate tax rate in the case where that partner is a company). Similar see-through treatment applies to LLPs and LPs under sections 36A and 36C respectively, and therefore each partner in an LLP or LP will also be taxed on his share of partnership profits at his marginal individual tax rate or, where the partner is a company, at the prevailing corporate tax rate.

28.1.11 In the case of a trust, tax is usually payable by the trustee and distributions received by the beneficiaries are treated as after-tax receipts by virtue of section 35(11). The only case where tax transparency will be accorded and tax payable by the beneficiary instead of the trustee is where the resident beneficiaries are entitled to the trust income under section 43(2), in which case the marginal tax rate applicable to the beneficiary (or corporate tax rate, if the beneficiary is a corporation) applies. Entitlement to trust income is a question of fact. However, as an administrative practice, the Comptroller of Income Tax (“**Comptroller**”) regards a beneficiary, to whom trust income is distributed within the same year as that income is derived, as one who is "entitled to the income". Registered Business Trusts are treated for the purposes of the ITA as a company under section 36B.

28.1.12 Besides the prevailing rates aforementioned, there are numerous provisions in the ITA providing for concessionary rates of tax with respect to particular types of incentivised activities (sections 43A - 43ZH) and exemption of certain types of income arising from desirable activities (Part IV). Corporate tax exemptions and tax rebates may also apply, with more generous tax exemptions for new start-up companies. (See **https://www.iras.gov.sg/irashome/Businesses/Companies/Learning-the-basics-of-Corporate-Income-Tax/Corporate-Tax-Rates--Corporate-Income-Tax-Rebates--Tax-Exemption-Schemes-and-SME-Cash-Grant**.)

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SECTION 2 HEADS OF CHARGE

The Various Heads of Charge

28.2.1 The various heads of charge for which tax is imposed are enumerated in section 10(1):

(a): gains or profits from any trade, business, profession or vocation

(b): gains or profits from any employment

(c): [Deleted]

(d): dividends, interest or discounts

(e): any pension, charge or annuity

(f): rents, royalties, premiums and any other profits arising from property

(g): any other gains or profits of an income nature

Section 10(1)(a): Gains or Profits from Any Trade, Business, Profession or Vocation

Trade

28.2.2 There is no statutory definition of "trade". Judicial definitions have also been given sparingly. In *Ransom v. Higgs* [1974] 1 WLR 1594, Lord Reid held that the word "is commonly used to denote operations of a commercial character by which the trader provides to customers for reward some kind of goods or services". Lord Wilberforce noted that "[t]rade normally involves the exchange of goods or services for reward... there must be something which the trade offers to provide by way of business" and that "trade... presupposes a customer." Since there is no single satisfactory definition of trade, one has to consider the boundary lines in order to ascertain whether a transaction falls within the scope of a trade. The question of whether something is purchased for investment or for trade purposes is one of fact to be decided after taking into account all the surrounding circumstances. The test is an objective one.

28.2.3 The local courts have consistently followed the English courts in applying certain "badges of trade" in ascertaining whether a transaction may be classified as trade: 1) subject matter of realization; 2) frequency of similar transactions; 3) supplemental work on the property realized; 4) motive; 5) circumstances responsible for the realization; and 6) length of period of ownership. No one factor is conclusive. Other badges of trade have also been considered by the courts (e.g. method of financing). (See *NP and another v Comptroller of Income Tax* [2007] 4 SLR(R) 599)

Business

28.2.4 In *MSI Pte Ltd v. Comptroller of Income Tax* (1997) MSTC 5221, it was held that "... in general, "business" is used to indicate a wide group of activities that are not purely recreational, that are commercially undertaken and usually, but not necessarily, for profit. In section 10(1)(a), the word "business" is placed together with "trade", "profession" or "vocation" and should therefore be interpreted in that light." Trade is therefore a subset of business in that all trades are businesses, while not all businesses are trades.

28.2.5 In *MSI v CIT*, the Income Tax Board of Review ("**ITBR**") relied on the dictum of the court in *Ferguson v FCT* 79 ATC 4261 in identifying certain general characteristics of \`business´, which included (a) the profit-making nature of its activities, (b) repetition and regularity of activities, (c) organizational structure, (d) keeping of books and records, (e) volume of operations, and (f) amount of capital employed. There is no presumption that a taxpayer is in business. In that case, the ITBR referred to the characteristics of a \`business´ and concluded that the Appellant taxpayer in that case was not in business, but was merely acting as a landlord, and that income derived from the properties held by the Appellant taxpayer was therefore rightly classified as rental income to be taxed under section 10(1)(f).

28.2.6 To ascertain what business a taxpayer is engaging in, one should look at what the company actually carries on rather than what it professes to carry on. The objects clause in a company's memorandum of association could provide some useful guide as to the nature of its business, but is not conclusive: see *T Ltd v Comptroller of Income Tax* [2006] 2 SLR 618. In the context of property developers, a company which describes its business as property development or itself as a property developer is prima facie more likely to be treated as carrying on the business of property development for sale, and not for investment or both. See *Mount Elizabeth Pte Ltd v Comptroller of Income Tax* [1986] SLR 421.

Profession

28.2.7 The word "profession" is not defined in the ITA. In the words of Scrutton LJ in *IRC v. Maxse* 12 TC 41, "... a \`profession´ in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangement for the production or sale of commodities." However, where an individual exercises professional skills under the employment of another (for example, a doctor by a hospital), the individual is considered an employee and should be taxed under section 10(1)(b) rather than section 10(1)(a).

Vocation

28.2.8 The word "vocation" is not defined in the ITA. According to Denman J. in *Patridge v. Mallandaine* (1886) 2 TC 179, "... the word `vocation´ is analogous to `calling´, a word of wide significance, meaning the way in which a person passes his life." Therefore a bookmaker who accepts bets or an individual who habitually supplies racing forecasts to newspapers for reward is carrying on a vocation: see *Graham v. Arnott* (1941) 24 TC 257.

Section 10(1)(b): Gains or Profits from Any Employment

28.2.9 Section 10(2) defines gains or profits from any employment as:

“(a) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance (other than a subsistence, travelling, conveyance or entertainment allowance which is proved to the satisfaction of the Comptroller to have been expended for purposes other than those in respect of which no deduction is allowed under section 15) paid or granted in respect of the employment whether in money or otherwise;

(b) the value of any food, clothing or lodging provided or paid for by the employer;”

(c) housing provided by the employer; and

(d) sums which an individual is entitled to withdraw upon retirement or from which payments are made on the retirement of the individual.

28.2.10 “Gains or profits from employment” also include gains or profits from share option schemes (s 10(6), see *Comptroller of Income Tax v HY* [2006] 2 SLR(R) 405) and excess contributions to the Central Provident Fund (“**CPF**”) or other designated pension or provident funds (s 10C).

28.2.11 Payments made by non-employers are not precluded from being assessed as employment income under s 10(1)(b). Any gain or benefit obtained by a person in his capacity as an employee would constitute a gain or benefit from employment and be taxable as income. (See Chao JA’s summary of the legal position in *ABB v CIT* [2010] 2 SLR 837 at [38]). Also note the case of *BRE v Comptroller of Income Tax* (2018) MSTC 70-041, where Choo J affirmed (at [9]) the established common law principle that tax may be levied on illegally earned income.

28.2.12 In practice, the Comptroller has made a number of concessions on the taxability of certain types of benefits-in-kind received by an employee. See **https://www.iras.gov.sg/irashome/Businesses/Employers/Tax-Treatment-of-Employee-Remuneration/List-of-Benefits-in-Kind-Granted-Administrative-Concession-or-Exempt-from-Income-Tax**.

Section 10(1)(g): Any Other Gains or Profits of an Income Nature

28.2.13 Section 10(1)(g) acts as a very wide catch-all provision which captures any other payments of an income nature which do not fall within any of the descriptions in paragraphs (a) to (f) of that subsection. In *DWTH v Comptroller of Income Tax* (2005) MSTC 5,347, the ITBR held (at [39]) that “Section 10(1)(g) can apply to profits arising out of a transaction which is not an activity in the ordinary course of trade or business, or an ordinary incident of some other business activity, and at the time the transaction was entered into the taxpayer had the intention or purpose of making a profit from that transaction. The means or mode of realizing the profit need not be specific or precisely determined at the outset.”

28.2.14 However, the ITBR also clarified (at [39]) that “the words “gains or profits of an income nature” would preclude capital gains arising from the disposal of long-term investments from being taxed under section 10(1)(g).” Subsequently, in *GBU v Comptroller of Income Tax* (2017) MSTC 50-028, the ITBR confirmed (at [3]) that “the concept of “long-term” investments is merely a safe harbour which would satisfy the Board that the gain was capital in nature, but does not automatically render a gain derived without the intention to hold the purchase as a long-term investment as being an income gain. All the facts and circumstances of the case must be considered.” (Also see *BQY and another v Comptroller of Income Tax* (2018) MSTC 70-040).

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SECTION 3 SOURCE RULES

28.3.1 Singapore adopts a territorial basis of taxation. Under section 10(1), income tax is levied only on income "accruing in or derived from Singapore or received in Singapore from outside Singapore" in respect of one of the charges set out under section 10(1)(a) to (g). In other words, the source of the income must be in Singapore before it can be subject to Singapore income tax.

Source of Trade or Business Income

28.3.2 Ascertaining the actual source of income is a practical matter of fact: see *CH Pte Ltd v Comptroller of Income Tax* (1988) 1 MSTC 7,022). In *CIR v Hang Seng Bank Ltd* [1991] 1 AC 306, Lord Bridge of Harwich proposed a "broad guiding principle" to determine the source of a trade or business income. An inquiry on source should be based on a consideration of "what the taxpayer has done to earn the profit in question". This is affirmed by Lord Jauncey of Tullichettle in *CIR v HK-TVB International Ltd* [1992] 3 WLR 439 at 444: “the question is to be addressed by reference to what the taxpayer has done to earn the profit in question and where he has done it.”

28.3.3 The *Hang Seng Bank* case was relied on by the ITBR in *TTT Pte Ltd v Comptroller of Income Tax* (1995) 2 MSTC 5189. In that case, it was held that incomes arising from the sale of securities by a Singapore-incorporated subsidiary of an overseas company effected on an overseas exchange by way of instruction to an overseas broker by taxpayer´s non-resident director outside of Singapore are not incomes "accruing in or derived from Singapore". While the broad guiding principle is clear, it is less obvious how it is to be applied. For example, in the case of *TTT v CIT*, the ITBR considered the place where whereby the contract was made and executed to be a relevant factor in its decision. In contrast, in *CH v CIT*, interest on overdraft facilities procured by a Singapore incorporated company for disbursement to be made in Singapore and credited to its Singapore account is held to be sourced in Singapore, even though both the execution of the loan agreement and the handing over of cheque took place in Malaysia.

28.3.4 In *ING Baring Securities (Hong Kong) Ltd v Commissioner of Inland Revenue* [2007] HKCU 1666 Hong Kong Court of Final Appeal clarified that focus of the inquiry should be “on establishing the geographical location of the taxpayer´s profit-producing transactions themselves as distinct from activities antecedent or incidental to those transactions. Such antecedent activities will often be commercially essential to the operations and profitability of the taxpayer´s business, but they do not provide the legal test for ascertaining the geographical source of profits for the purposes of section 14...” The focus is therefore on the profit-producing transaction, rather than the antecedent or incidental activities.

Source of Employment Income

28.3.5 There are several statutory exceptions and variations to the employment income source rule. Section 12(4) deems gains or profits from employment exercised in Singapore to be derived from Singapore for the purposes of section 10(1), regardless of whether it is a Singapore employment or a foreign employment. It is a deeming provision, not a charging provision. It serves to remove any ambiguity caused by the application of the charging provision under section 10(1), by deeming certain types of incomes to be Singapore-sourced. Section 13(6) provides for the exemption of income derived in Singapore by short-term visiting employees. In addition, under the Not Ordinarily Resident (“**NOR**”) scheme (section 13N), an NOR individual can enjoy time apportionment of Singapore employment income if the individual has spent at least 90 days outside Singapore for business reasons, and his total Singapore employment income must be at least $160,000.

28.3.6 The leading case to date on the issue of source of income received by an employee is the Court of Appeal´s decision in *Comptroller of Income Tax v HY* [2006] 2 SLR(R) 405, in which the majority considered the place where the activities which taxpayers had done which earned him the profits or gains were carried out to be a key factor in determining the source of employment income. Yong CJ opined that: “[I]n deciding whether income was derived from or accruing in Singapore, one must look to the originating source of those gains or profits. This is essentially a question of fact to be determined based on a scrutiny of the circumstances in each individual case. It is impossible to lay down fixed legal rules or tests, and a practical approach based on what a practical man would regard as the real source of income is to be adopted. The broad guiding principle is to focus on what the taxpayer had done which earned him the gains or profits in question, and then to identify the location where those activities that he had engaged in or the work he had done took place. This may be a difficult inquiry, bearing in mind that the gains or profits may typically be derived from a series of activities which may take place in more than one country."

28.3.7 The choice of the words "broad guiding principle" suggests that there may be situations where the location of where the employment is exercised may not correspond with the location of the originating source, but the location where the employment is exercised is *prima facie* one of the key factors in deciding whether or not income from an employment is sourced in Singapore. However, as the case involved income under section 10(1)(g) and not section 10(1)(b), it is unclear whether this broad guiding principle also applies to section 10(1)(b) employment income.

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SECTION 4 RECEIPTS AND EXPENDITURE

Receipts

28.4.1 As income tax is a tax on income only, gains of a capital nature are not taxable. Similarly, only revenue expenses are deductible, whereas capital expenses are not (see s 15(1)(c)) (although a capital allowance may be granted in certain cases). The ITA does not define what is meant by "income". Therefore the distinction between income and capital is an issue to be determined on a case-by-case basis by reference to common law. On the characterisation of receipts, the court is not bound by accounting evidence; rather, it is for the court to decide whether a particular item should be regarded as accrued income for the purposes of tax liability. See *Pinetree Resort Pte Ltd v Comptroller of Income Tax* [2000] 3 SLR(R) 136 and *ABD Pte Ltd v Comptroller of Income Tax* [2010] 3 SLR 609.

28.4.2 It is not easy to determine whether a particular payment constitutes an income receipt or a capital receipt. The classic test to distinguish between capital and income receipts is to distinguish between sale of fixed capital of a business (which produces capital receipt) and sale of its circulating capital (which produces income receipt) (See *John Smith & Son v Moore* (1921) 12 TC 266). However, this distinction may not be easy to apply in practice. The classification of an asset depends upon the trade in question, and this can prove to be quite difficult to determine. For example, a computer may be a fixed asset for a law firm, but the same item will be the circulating asset of a computer manufacturer. An alternative test is to distinguish between receipts which relate to assets forming part of the permanent structure of the business and those which do not. This distinction is often helpful in cases where the receipt is compensation received by a trader in lieu of the destruction of certain contracts.

28.4.3 There is no simple infallible test that can be applied to all cases. Therefore, it is essential that the decided cases be read and considered for guidance. In the absence of precise rules, we may draw guidance from the "five basic propositions" laid out in Whiteman on Income Tax, as cited by the High Court in *ABD v CIT* (see *supra*) at [74]:

1. Payments for the sale of the assets of a business are prima facie capital receipts.
2. Payments received for the destruction of the recipient's profit-making apparatus are receipts of a capital nature.
3. Payments in lieu of trading receipts are of a revenue character.
4. Payments made in return for the imposition of substantial restrictions on the activities of a trader are on capital account.
5. Payments of a recurrent nature are more likely to be treated as revenue receipts.

28.4.4 It is noted that these five basic propositions were cited by the court in the context of the deductibility of expenses. Thus, strictly speaking, they are *obiter* as far as the taxability of receipts are concerned.

28.4.5 Besides the requirement that the receipt be of an income nature, it must also have accrued to the recipient before it can be taxed in his hands. The word "accrue" means "to which any person has become entitled": see *Pinetree Resort v CIT* (*supra*), where the Court of Appeal held that the entrance fee had accrued to the club as income once a member was admitted to membership. The fact that the entrance fee is to be paid in instalments does not make a difference because the club would be legally entitled to the entrance fee at the point of admission to membership.

Expenses

Distinguishing Capital and Revenue Expenditure

28.4.6 Sections 15(1)(c) and (d) specifically prohibit the deduction of expenses and losses of a capital nature. There are four main common law tests for drawing the distinction between capital and revenue expenditure: the 1) once and for all test; 2) enduring benefit of the trade test; 3) fixed and circulating capital test; and 4) identifiable asset test. The four tests were considered by Phang JA in *ABD v CIT* (see *supra*), who laid out a composite and integrated approach (at [71]-[75]): “First, the court must, as a matter of general principle, look closely at the purpose of the expenditure and ascertain whether or not such expenditure either created a new asset or opened new fields of trading not hitherto available to the taxpayer in which case the expenditure concerned would be capital (and not revenue) in nature. In the former respect, I would think that an expenditure which strengthens an existing asset would also be one that is capital in nature.”

28.4.7 Phang JA then went on to state (at [75]) that in ascertaining whether or not the expenditure relates to the creation of a new asset or field of trading, the purpose of the expenditure must be ascertained, and the court must have regard to the manner of the expenditure and consequence or result of the expenditure. (Also note the five basic propositions as laid out by the court at [74], see para 28.3.3, *supra*).

28.4.8 In *Comptroller of Income Tax v IA* [2006] 4 SLR(R) 161 the Court of Appeal applied the enduring benefit test, clarifying (at [106]) that “a payment may be made and be deductible as revenue expenditure even though it provides a long term advantage to the trade.” The words "enduring benefit" mean "a benefit which endures in the way that fixed capital endures; not a benefit that ensures in the sense that for a good number of years it relieves you of a revenue payment": see *Anglo Persian Oil Co, Ltd v Dale (HM Inspector of Taxes)* (1931) 16 TC 253 (as applied in *CIT v IA* at [106], *supra*). Considerable economy, saving in working expenses and improved efficiency of business are considered "revenue benefits".

Borrowing Cost Deductions

28.4.9 In *BFC v Comptroller of Income Tax* [2014] 4 SLR 33, the Court of Appeal applied (at [29]) the principle laid down in *T Ltd v Comptroller of Income Tax* [2006] 2 SLR(R) 618 (at [24]) and *CIT v IA* (see, *supra*) (at [15]) that “all borrowing costs, of which interest is one, owe their existence to a loan and are thus derivative in nature. Therefore, whether borrowing costs are capital expenditure or revenue expenditure depends on whether the loan in question is capital or revenue in nature.” The nature of the loan “in turn depended on the purpose of the loan itself” (see *BFC v CIT* at [29]). If there is insufficient linkage established between the loan and the main transaction for which it was taken, “the purpose of the loan must, *ex hypothesi*, be merely to add to the capital structure of the taxpayer and is therefore capital in nature.” (see *CIT v IA* at [79])

Deductibility of Expenditure

28.4.10 An expense is *prima facie* deductible if it satisfies the general deduction formula under section 14(1), which provides for the deduction of "outgoings and expenses wholly and exclusively incurred during that period... in the production of the income" or if it is otherwise specifically authorized pursuant to, *inter alia*, sections 14(1)(a) to (h). However, an expense is not deductible if it falls within the prohibitions set out in section 15(1). Sections 15(1)(c) and (d) specifically prohibit the deduction of expenses and losses of a capital nature. Therefore, expenses are deductible if expended in the process of producing income but not if their expenditure is reflected as part of the continuing capital of the enterprise and capable of subsequent disposal.

i. Wholly and Exclusively

28.4.11 In addition, the expense for which a deduction is sought must also be "wholly and exclusively" in the production of the income. The words "wholly and exclusively" suggest that dual purpose expenses are not deductible. Therefore expenditure incurred by a solicitor in purchasing a notebook computer and a briefcase are not deductible as these items are capable of other uses not connected to the production of his or her income: see *TGLR v Comptroller of Income Tax* (1998) MSTC 5244.

28.4.12 The burden of proving that the expenditure is wholly and exclusively incurred in the production of the income lies with the taxpayer. *In NE v Comptroller of Income Tax* [2006] SGHC 199, the Singapore High Court adopted the following propositions as elucidated by Millet LJ in *Vodafone Cellular Ltd v Shaw* [1997] STC 734 on the application of the exclusivity test:

1. The words "for the purposes of the trade" (in the UK Income Tax Act, which is in substance similar to `for the production of the income´ in the ITA) mean to serve the purposes of the trade, not of the taxpayer.
2. To ascertain whether the payment was made for the purposes of the taxpayer´s trade, it is necessary to discover his object in making the payment. This involves an inquiry into the taxpayer´s subjective intentions at the time of the payment.
3. The object of the taxpayer in making the payment must be distinguished from the effect of the payment. A payment may be made exclusively for the purpose of the trade even though it also secures a private benefit, provided the securing of the private benefit was not the object of the payment but merely a consequential and incidental effect of the payment.
4. Although the taxpayer´s subjective intentions are determinative, these are not limited to the conscious motives at the time of payment. Some consequences are so inevitably and inextricably involved in the payment that, unless merely incidental, must be taken to be a purpose for which the payment was made.
5. The question does not involve an inquiry on whether the taxpayer consciously intended to obtain a trade or personal advantage by the payment. Rather, the question is whether the particular object of the taxpayer was in making the payment. Once ascertained, its characterization as a trade or private purpose is a matter for the court, and not the taxpayer.

ii. Incurred

28.4.13 For an expenditure to be considered to have been “incurred”, a taxpayer must be committed to it, even if the liability is defeasible. However, the term “incurred” does not include a loss or expenditure which is no more than impending, threatened, or expected: see *ABD v CIT*, *supra* at [109].

iii. In the Production of Income

28.4.14 There must be a nexus between the incurrence of expenditure and the production of income. In *Pinetree Resort v CIT* (at [47]) (see, *supra*), Yong CJ considered that the nexus between the incurrence of an expense and the production of income should be determined by looking at the business "as a whole set of operations directed toward producing income, in which case an expenditure which is not capital expenditure is usually considered as having been incurred in gaining or producing income". This wider nexus test was adopted by the Court of Appeal in *CIT v IA* (see, *supra*), in which Phang JA noted (at [99]) that "[a] holistic view that eschews artificiality and technicality ought to prevail" in the application of the nexus test. Therefore, prepayment penalty and guarantee expenses incurred in relation to the early repayment of interest to a syndicated loan facility taken to fund the construction of a condominium project by the respondent property development company were deductible, as they were incurred to obtain substantial interest savings for the respondent and could therefore be regarded as having been incurred "in the production of income".

28.4.15 The relevant business must have commenced before an expense is deductible, since tax is payable only "for whatever period of time [a] trade, business, profession or vocation may have been carried on or exercised" under section 10(1)(a). For a business to commence, the taxpayer must have in place an income-generating asset or income-earning structure. Any expenses incurred in respect of a business prior to the commencement of that business, are therefore not deductible: see *T Ltd v CIT* (*supra*)). However, note that Inland Revenue Authority of Singapore (“**IRAS**”) grants a concession where it treats businesses as having commenced their operations on the first day of the accounting year in which they earn their first dollar from the business. In addition, section 14U expressly provides that revenue expenses that were incurred within a year before the business commenced will be deductible as if they would have been deductible when the business commenced.

Borrowing Cost Deductions

28.4.16 Borrowing costs are potentially deductible under both the general deduction formula under section 14(1) and the specific provision in section 14(1)(a). However, the prohibition on deduction of capital expenditure in section 15(1)(c) means that borrowing costs incurred on a loan that is capital in nature will not be deductible under section 14(1). Yet, there is an exception to the section 15(1)(c) prohibition in section 14(1)(a) that allows the deduction of borrowing costs where the Comptroller is satisfied that such costs are "payable on capital employed in acquiring the income", notwithstanding that such borrowing costs are capital in nature: see *BFC v CIT* at [41] (*supra*).

28.4.17 However, section 14(1)(a) is more stringent than section 14(1). In In *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR(R) 484, the Singapore Court of Appeal held (at [48]) that the investment must produce income for the interest expense on the investment to be deductible. Where the investment does not produce income, the interest expense will not be deductible. Further, there must be a direct link between the money borrowed and the income produced: see *Andermatt Investments Pte Ltd v Comptroller of Income Tax* [1995] 2 SLR(R) 866 at [27]. Therefore, where interest expenses are incurred to maintain a portfolio of share investments in which some share investment counters do not yield dividend income, only the part of the interest expenses attributable to the income-producing share investment counters are deductible: see *JD v CIT*, *supra*.

28.4.18 In *BML v Comptroller of Income Tax* (2017) MSTC 70-038, Choo J held (at [19]) that the test of "whether there is a direct link between the money borrowed and the income produced, requires more than a look at the company's balance sheet. The link has to be real, tangible, precise, and factual, and this requires the consideration of a number of factors, which includes but is not limited to whether the original source of income (to which capital was originally employed towards) can be said to be the same source as the income against which a deduction is now sought."

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SECTION 5 COMPUTING TAXABLE PROFITS

General Formula

28.5.1 The general formula for computing taxable profits can be represented as follows:

$$A - B - C - D - E - F,$$

Where:

A is the sum of income receipts accrued to the taxpayer;

B is the sum of expenses incurred by the taxpayer which are of an income nature;

C is the total allowances to be made to the taxpayer;

D is any loss relief to be accorded to the taxpayer;

E is any deductions for donations made by the taxpayer; and

F is any relief to which the taxpayer is entitled, provided he is an individual taxpayer

Capital Allowances

28.5.2 Capital expenditure incurred on the provision of machinery or plant qualifies for capital allowances if such expenditure was incurred for the purpose of a trade, business or profession. The Act is silent on what is meant by "machinery" or "plant". The Privy Council´s definition of "machinery" in a non-tax case, *Corporation of Calcutta v Chariman, Cossipore and Chitpore Municipality* [1922] ILR 49 Cal., is instructive: “"machinery" when used in ordinary language, prima facie, means some mechanical contrivances, which by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation, of their respective parts generate power, or evoke, modify, apply, or direct natural forces with the object in each case, of effecting so definite and a specific result."

28.5.3 The classic case law definition of "plant" can be found in Lindley J.´s judgment in *Yarmouth v. France* (1887) 19 QBD 467: "... in its ordinary sense, ["plant"] includes whatever apparatus is used by a businessman for carrying on his business - not his stock-in-trade, which he buys or makes for sale; but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in his business." This definition has been approved by the Singapore Court of Appeal in the leading case of *ZF v Comptroller of Income Tax* [2011] 1 SLR 1044 (at [22]).

28.5.4 In *ZF v CIT* (see, *supra*), Phang JA laid out (at [70]) the general test for determining if something is "plant". "(a) There is a basic distinction between "plant" on the one hand and buildings on the other. (b) "Plant" consists in apparatus that is utilised for carrying on the trade or business concerned. (c) "Building", on the other hand, consists of a permanent structure or part of a permanent structure that houses the trade or business. It is often described, in a shorthand manner, as the place in which a trade or business is carried on. … In order to ascertain whether or not a particular asset is a "building" or "plant", the following factors are helpful:

(i) The exact operational role which the asset plays in the taxpayer's business.

(ii) The physical nature and characteristics of the asset.

(iii) Whether the asset concerned is intended only to be temporarily located.

(iv) Where it appears that the asset, although not a building proper as such, is nevertheless inextricably connected with a building, it can be regarded as part of the building for income tax purposes.

(d) In the final analysis, much will depend upon the precise factual matrix and context concerned."

28.5.5 Under Phang JA's framework, "plant" and "building" are mutually exclusive but not exhaustive, for he acknowledges at least three other categories of things that would not be classified as either "plant" or "building". Phang JA cites (at [48] in *ZF v CIT*) *Wimpy International Ltd v Warland (Inspector of Taxes)* [1989] STC 273 at 170-172 for the proposition that the definition of "plant" firstly excludes "anything which is not used for carrying on the business. Secondly, it excludes stock-in-trade both expressly and because, although used for the purposes of the business, its use lacks permanence. Thirdly, it excludes things which are not 'apparatus … goods and chattels, fixed or moveable, live or dead' or not employed in the business. This excludes the premises or place in or upon which the business is conducted."

28.5.6 Under section 19, an initial allowance of 20% of the expenditure incurred in acquiring a capital asset is generally made to a taxpayer in respect of the asset that is claimed, and this allowance is normally made in the YA relating to the basis period in which the expenditure was incurred. An annual allowance is then to be made to the taxpayer in subsequent YAs, where at the end of the basis period for that YA, the machinery or plant is in use by the taxpayer for the purpose of his trade, profession or business. The amount of annual allowance to be made is determined by dividing the qualifying cost (after deducting any initial allowance granted) by the statutory working life of the asset as defined under the Sixth Schedule. Section 19A(1) allows capital allowances to be made at an accelerated rate of 33 1/3% per annum over a period of 3 years. Accelerated capital allowance under section 19A(1) is made on a due claim basis, and therefore, taxpayers may choose to defer claiming capital allowances even after the 3-year period. Sections 19 and 19A are mutually exclusive - therefore a taxpayer may not claim capital allowance under both sections for the same asset. Once a taxpayer has elected to claim capital allowance under section 19A, it may not claim under section 19 in subsequent years.

28.5.7 Besides the difference in the rate at which capital allowance may be made, section 19 also differs from section 19A in that the machinery or plant must be in use at the end of the basis period for a particular year of assessment, in order for a capital allowance to be made under section 19 in that year of assessment. In *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR(R) 948, the Singapore High Court held that the purpose and object of the capital allowances provisions in the Act is for capital allowances to be available to the person who still has the machinery in use. As such, in a sale of plant or machinery between related parties, the buyer (as opposed to the seller) would be entitled to the remaining capital allowances as if no sale had taken place. In contrast, section 19A(11) specifically prevents a claim for accelerated capital allowance from being barred, for the sole reason that the machinery or plant is not being used by that person at the end of the basis period for that year of assessment.

Balancing Allowances and Charges

28.5.8 A balancing allowance or a balancing charge generally arises where:

a. the fixed asset (i.e. plant, machinery, building or structure etc.) ceases to belong to the taxpayer;
b. the trade in which the fixed asset is used is discontinued;
c. in the case of machinery or plant provided for research and development and not for the purpose of the taxpayer´s trade, profession or business, the fixed asset permanently ceases to be used for any research and development; or
d. in all other cases, the fixed asset is no longer used for the trade, profession or business.

28.5.9 If part of the cost of a fixed asset has previously been claimed as a capital allowance, adjustments (balancing charges) will have to be made to ensure that the sale price of that asset does not deviate from the portion of the cost price not yet been claimed. In determining the balancing charge, expenditure incurred in dismantling or disposing of the fixed assets can be deducted from the sales proceeds. Compensation money to defray the costs of relocation of business, however, should not be taken into account: see *UPI Pte Ltd v Comptroller of Income Tax* (2008) MSTC 5,689.

Losses

28.5.10 Just as capital gains are not taxable in Singapore, capital losses are similarly not deductible for income tax purposes. However, losses arising from carrying on a trade, business, profession or vocation can be utilized in the following order (see section 37):

(a) within the first year of assessment after the year in which the loss was incurred:

i. firstly, against statutory income from the same trade, business, profession or vocation of the taxpayer;
ii. secondly, against statutory income from any other trade, business, profession or vocation of the taxpayer;
iii. thirdly, against statutory income from any other source;

(b) in the same manner described in subparagraphs (a) (i) to (iii) supra in the next year of assessment, and so on.

Donations

28.5.11 Donations to approved institutions of public characters (IPCs) and other approved beneficiaries qualify for double tax deductions. Donations made to registered grant-making philanthropic organisations also qualify for double tax deductions, provided that such donations are subsequently channeled to approved IPCs in Singapore within a specific time frame. A tax deduction of 2.5 times the value of a donation may be claimed for donations made from YAs 2017 to 2022. Unabsorbed donations can be carried forward for a period of up to 5 years to set-off against future income. In the alternative, unabsorbed donations can be transferred to a related party under the group relief framework, provided that certain conditions are met.

Group Relief Framework

28.5.12 Section 37C sets out the framework for the transfer of loss items between companies belonging to the same group. Under the group relief system, a Singapore-incorporated company belonging to a group of companies is allowed to transfer qualifying loss items (which are basically unabsorbed capital allowances, including industrial building allowance and other types of writing down allowances, unabsorbed business losses and unabsorbed donations) to another Singapore incorporated company within the group provided, *inter alia*, that both companies:

a. have the same accounting year-end;
b. are members of the same group (i.e. 75% of the total number of issued ordinary shares of either company are beneficially held, directly or indirectly, by the other; or 75% of the total number of issued ordinary shares of both companies are

beneficially held, directly or indirectly, by a third Singapore company) on the last day of the basis period for that year of assessment; and

c. have submitted a written election to transfer or claim the loss items as qualifying deductions together with their income tax returns.

Generally, qualifying deductions are to be transferred to a claimant company in accordance with the following priority: allowances, losses and donations. Companies which have been granted relief under the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86) may be excluded from group relief.

Capital Allowance/ Loss Carryback

28.5.13 Under the capital allowance/ loss carry-back relief system, any person carrying on a trade, business, profession or vocation may, subject to certain conditions, carry back his unabsorbed capital allowances and unabsorbed trade losses for any YA against his assessable income for the immediate preceding YA. The deduction is capped at the amount of assessable income for the immediate preceding year of assessment, or $100,000, whichever is less. Assessable income is determined in accordance with section 37.

Personal Reliefs

28.5.14 A number of reliefs are available under sections 39 to 40D to different categories of individual taxpayers. The more common reliefs include wife relief, child relief, aged parent/grandparent relief, relief for life insurance premiums and contributions to approved pension, provident funds or society, relief for course fees, relief for CPF contributions by self-employed person and relief for contribution under the Supplementary Retirement Scheme. Individual taxpayers may claim particular reliefs only if they satisfy the conditions thereunder.

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SECTION 6 WITHHOLDING TAX

28.6.1 Sections 45 to 45I set out the framework for the withholding tax mechanism. The withholding tax was devised as a convenient means to collect taxes on certain forms of income payments from non-residents. Generally, when a payment made to a payee not known to the payer to be a resident in Singapore is Singapore-sourced income, the local payer must withhold a certain percentage of the payment which represents a final tax payable by the non-resident payee. The types of payment covered by the withholding tax regime are interest (section 45), royalty fee, management fee and other fees referred to in section 12(6) and (7) (section 45A), deemed income when the conditions for tax exemption under s 13(4) have been breached (section 45AA), non-resident director´s remuneration (section 45B), certain types of unit trust distributions (section 45C), gains from disposal of real property (section 45D), withdrawals from Supplementary Retirement Scheme (SRS) account by non-citizen SRS members (section 45E), investments made using funds from an SRS account by non-citizen SRS members (section 45EA), income from vocation or profession carried on by non-resident individual or firm (section 45F), distributions from real estate investment trusts (section 45G), income derived by a public entertainer in Singapore in his capacity as a public entertainer (section 45GA), and commission or other payment to licensed international market agents (section 45H).

28.6.2 Any amount which a local payer fails to deduct in satisfaction of his withholding obligations under the ITA is treated as a debt due from him to the Government, and may be recovered as such: see section 45(3). It is noted that there is no limitation period/time bar on the recoverability of such a debt by the Government. In addition, there are penalties for late payment and for failure to give notice to the Comptroller of any amount deducted in accordance with the withholding tax provisions under the Act: see sections 45(4) and (5).

28.6.3 The payer is more than a mere collecting agent. He has *locus standi* to contest withholding tax disputes with IRAS: see *Comptroller of Income Tax v ACC* [2010] 2 SLR 1189 at [12]. The position taken by IRAS is that, pending the resolution of a dispute, the payer is still required to withhold tax on the payment and remit the tax to IRAS. However, in *CIT v ACC* (see, *supra*), Chan CJ said (at [28]) that “Section 89(4) of the ITA, which empowers the Comptroller to issue a certificate conclusive of (inter alia) the amount of tax due for the purposes of proceedings under s 89, only precludes a taxpayer from disputing the quantum of tax demanded, and not his liability to pay that amount. It would follow that the respondent could simply have ignored the Comptroller's demand for payment and waited for the Comptroller to commence proceedings against it under s 89 to recover the amount which was allegedly payable." In practice, however, it is prudent to withhold tax pending resolution of the dispute, considering the personal liability on the part of the payer should the dispute be resolved against the payer.

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SECTION 7 TAX TREATIES

28.7.1 The principle of domestic tax sovereignty gives rise to problems of double income taxation. Cross-border transactions are exposed to the risk of taxation under the tax laws of multiple jurisdictions. Sovereign states therefore enter into double taxation agreements ("**DTAs**") to mitigate such inequity. Over the years, Singapore has established an extensive network of comprehensive DTAs and limited treaties covering income from shipping and/or air transport. To mitigate the problem of double taxation of particular types of income, treaties may provide for the exemption of income that has already been taxed in one state by the other state. Alternatively, treaties may allow a tax credit to be taken in one state for tax paid in the other state, or in certain cases, a tax-sparing credit to be taken in one state for tax which would otherwise have been paid in one treaty state but was not, i.e. "spared", under special laws in that state, usually to promote economic development. Section 50 sets out the manner in which a tax credit under a DTA is to be given. Singapore essentially adopts an ordinary credit method which limits the amount of foreign tax credit allowable on the income in question to the amount of income tax it would otherwise have been subject to in Singapore but for the tax credit: see section 50(3)).

28.7.2 A tax treaty may have the effect of allocating taxing rights of certain types of income solely to either contracting state. This means that under a DTA, Singapore may not have the right to tax certain kinds of income. Where a DTA conflicts with a provision in domestic tax law, the DTA provision must prevail. This may affect the liability of a taxpayer to withhold tax under domestic law. Caution should be exercised in this area, for the definition of a type of income may differ from treaty to treaty.

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SECTION 8 ANTI-AVOIDANCE

28.8.1 Section 33 is a General Anti-Avoidance Rule ("**GAAR**") which empowers the Comptroller to disregard the legal form of transactions in certain circumstances, to counteract impermissible tax advantages obtained by a taxpayer. In *AQQ v Comptroller of Income Tax* [2014] 2 SLR 847, the Court of Appeal laid out (at [110]) a three-limbed test for the application of the GAAR. Firstly, the court will consider whether an arrangement *prima facie* falls within any of the three threshold limbs of section 33(1). Essentially, an arrangement will be caught by section 33(1) if the Comptroller is satisfied that the purpose or effect of any arrangement is directly or indirectly to gain a tax advantage. Secondly, the court will consider whether the arrangement was carried out for *bona fide* commercial reasons and had not as one of its main purposes the avoidance or reduction of tax (the exception in section 33(3)(b)). Finally, the court will consider whether Parliament specifically intended to confer the tax advantage (via another statutory provision).

28.8.2 An arrangement that falls within any of the three threshold limbs of section 33(1) will be subject to the Comptroller's broad power to make appropriate adjustments to counteract any tax advantage resulting from the arrangement, unless it falls within the exception in section 33(3)(b), or the tax advantage was intended to be conferred by Parliament. The question of whether the arrangement was carried out for *bona fide* commercial reasons, and had not as one of its main purposes the avoidance or reduction of tax is to be determined by way of a subjective inquiry (see [71]). The first part of the question is concerned with the taxpayer's subjective commercial motives for entering into a transaction, and the second part is concerned with the subjective consequences that the taxpayer wishes to obtain. Thus, similarly structured transactions may be taxed differently depending on whether the taxpayer had set out to create a result whereby his tax liability was avoided or reduced (see [74]).

28.8.3 While the test for the exception in section 33(3)(b) is to be determined by reference to the subjective intentions of the taxpayer, the ITBR held (at [10]) in *GBF v Comptroller of Income Tax* (2016) MSTC 50-019 that this has to be done "by drawing the requisite inferences from the surrounding objective evidence or features of the arrangement. After all, subjective intentions can be perfected with time".

28.8.4 In addition to the GAAR, there are also several Specific Anti-Avoidance Rules ("**SAARs**") in the ITA. For example, under section 34D, the Comptroller has the power to make adjustments to transactions between related parties, which are not conducted at arm's-length. A similar provision exists to ensure that deductions claimed for payments made to related parties of employees are reasonable (section 14(2)).

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SECTION 9 OBJECTIONS AND APPEALS

28.9.1 The Comptroller may issue an Additional Notice of Assessment within four years of a relevant YA if he is of the opinion that a taxpayer has been assessed at a lower amount that ought to have been charged (section 74(1)). In the absence of fraud or willful default, the Comptroller is bound by this time bar and may not amend its assessment after four years have elapsed (section 74(2)). In practice, this means that IRAS may issue protective assessments if it has not yet completed its assessment when the time bar is approaching.

28.9.2 Under section 76(3), a taxpayer may object to an assessment raised by the Comptroller within 30 days of receipt of the Notice of Assessment. Corporate taxpayers may object within 2 months of receipt. Once this period has elapsed, the assessment is considered final unless (a) there is an error or mistake within the meaning of section 93A, or (b) the Comptroller decides by virtue of section 74(4) to extend the time period because the taxpayer was unable to object within the stipulated time owing to absence, sickness or other reasonable cause. The purpose of the 30-day, or 2 months, window for objection to an assessment is to have finality in taxation matters.

28.9.3 While there is no prescribed form that an objection must take, the objection must be sufficiently "precise". In *HR Lancey Shipping Co Pty Ltd v FCT* (1951) 9 ATD 267, Williams J held (at 273) that the grounds of the objection "should be sufficiently explicit to direct the attention of the Commissioner to the particular respects in which the taxpayer contends that the assessment is erroneous and his reasons for that contention. In each case the sufficiency of the grounds is a matter for the court." It is likely that an objection that is a bare assertion that the assessment is excessive will be found to be insufficiently "precise".

28.9.4 An error or mistake under section 93A is "something done incorrectly through ignorance or inadvertence". Therefore, if there is "a change of opinion of the auditors or accountants in respect of the accounts", or if there is "a change of mind of the directors of the company in connection with how any part of the accounts should be made up", the original opinion or decision cannot be regarded as an error or mistake within the meaning of section 93A. (See *Extramoney v CIR* [1997] 2 HKC 38 at 50)

28.9.5 In the event where the Comptroller is unable to agree with the taxpayer on the amount of tax liable to be paid, he will issue a Notice of Refusal to Amend (commonly known as the "IR 23"). The taxpayer may then bring an appeal against the tax assessment before the ITBR, an administrative tribunal established under section 78. The losing party will have a right of appeal to the High Court. The Court of Appeal is the final appellate court on taxation matters in Singapore.

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SECTION 10 ADVANCE RULING SYSTEM (ARS)

28.10.1 Taxpayers may apply, for a fee, to IRAS for an advance ruling by the Comptroller under the ARS on the tax treatment that will be accorded to any proposed business arrangement based on an interpretation of current income tax legislation. The application should be made in accordance with Part I, Seventh Schedule of the ITA. The Comptroller is bound to apply the law in the manner set out in a ruling made under the ARS once it is issued.

28.10.2 Although such a ruling is final and binding on the Comptroller, a taxpayer may choose not to follow the ruling if it is not in the favour of the taxpayer. However, the taxpayer must indicate in his tax return whether he had previously sought an advance ruling and, if so, whether he had relied on that ruling. The Comptroller may make any necessary amendments in accordance with the advance ruling in the course of assessment. The taxpayer may then appeal against the assessment under section 76(2), and the ordinary appeal will follow.

28.10.3 IRAS charges a non-refundable application fee of $620, with a further fee of $155 per hour (or part thereof) beyond the first four hours, spent in consideration of the application, including any time spent consulting with the applicant. IRAS may also levy an additional fee of up to two times that normally charged in cases where an urgent advance ruling is required.

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