

The Basic Tax Concept

Singapore taxation is based on territory concept and only incomes accrued in, earned from Singapore, or received in Singapore from outside Singapore are subject to tax. Taxpayers who derive foreign-sourced incomes are not subject to tax when the incomes are not received or deemed as received in Singapore. The government is constantly reviewing the tax policy and has gradually removed the taxation of foreign-sourced incomes that are received or deemed as received in Singapore. However, as a general rule, foreign-sourced incomes are still taxable when received in Singapore.

The Misconception

The term "foreign-sourced income" is not defined anywhere in the Singapore Income Tax Act ("ITA"). Based on tax literature and case laws, sources of income are more certain in the case of royalty, interest, dividend and rental. The sources of these incomes are normally where the relevant assets are deployed or utilised. For royalty and rental income, it is usually the place where the properties are situated. Interest income is accrued at the location where the principal sum is utilised. Dividends are sourced from the country in which the dividend paying company is a tax resident.

In the case of service income, it should be the place of operation where the services are rendered. Owing to the lack of understanding of Singapore tax laws, foreign tax practitioners quite often share a common misconception that due to the territory tax concept, offshore service incomes derived by a Singapore resident company are not subject to tax in Singapore unless the incomes are remitted or deemed as remitted to Singapore.

Offshore Service Incomes Received in Singapore

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Positions taken by the Inland Revenue Authority of Singapore

The above is a general misconception of some foreign tax practitioners. The Inland Revenue Authority of Singapore ("IRAS") will not regard service incomes as foreign-sourced unless they are derived from a fixed place of operation outside Singapore. Another important position the IRAS has taken is that all Singapore resident companies are deemed to be operating from Singapore unless they carry out their activities through a fixed place of operation outside Singapore. Consequently, service incomes derived by Singapore resident companies from the provision of services are normally deemed as sourced in Singapore unless proven otherwise.

The IRAS has clarified in its tax circular dated 30 July 2004 that service income is considered foreign-sourced if the service is rendered in the course of a person's trade, business or profession, through a fixed place of operation in a foreign jurisdiction. It also clarified that a fixed place of operation refers to a place of management, an office, or a certain amount of floor space ("premises or facility") at the disposal of a person carrying on a trade, business or profession of rendering services, through which he or his employees perform the activities that produce the profits of his trade, business or profession in the rendering of services. Such a place must also have features of permanence. Whether the premise or facility that is at the person's disposal has features of permanence is a question of fact. It is not of a temporary nature, but should be at the disposal of the person on an on-going basis and is being used regularly by the person to carry on his trade, business or profession of rendering services. A place of operation where only activities that are auxiliary or preparatory in character are performed does not qualify as a fixed place of operation.

Based on the above position, a team of auditors sent by a Singapore accounting firm for short-term overseas assignment outside Singapore will not be considered as rendering of foreign-sourced services unless the "features of permanence" as described above are met. As such, the audit fees derived from the services rendered outside Singapore are still deemed as sourced in Singapore.

Should you wish to seek further clarifications on offshore service incomes or on any other tax matters, please do not hesitate to contact us.

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