

# UPDATES ON TAX RESIDENCY STATUS OF A SINGAPORE COMPANY

6 March 2024

## TAX RESIDENCY STATUS

Under Singapore tax law, a company would be considered a tax resident in Singapore if the control and management of its business is exercised in Singapore. Control and management is not defined in the Income Tax Act but is essentially determined based on the “de facto principle”.

Control and management does not mean the managing of the day-to-day business operations but rather, it refers to the policy setting and making decisions on strategic matters such as investment or divestment decisions, acquisition of new businesses, acquisition or disposal of major business assets, raising loan finance or share capital, etc.

In view of where the control and management is exercised, in practice, the location would be where the Board of Directors physically meet to make strategic decisions of the company. If the majority of these meetings are held in Singapore, the company is treated as a Singapore tax resident company. However, if, the majority of these meetings are held outside of Singapore during a particular year, the company would then be treated as a non-tax resident of Singapore during that year. This is notwithstanding that the company is a Singapore incorporated company having normal business operations in Singapore.

Circular resolutions which are not physical meetings held in Singapore will also not be taken into consideration when determining the tax residency status of a company.

The tax residence of a company is determined on a year-by-year basis.

## VIRTUAL MEETINGS

Virtual meetings are not physical meetings. Hence, in the past, virtual meetings where none of the directors are physically present at a location in Singapore do not qualify as satisfying the condition that a Board of Directors meeting was held in Singapore.

**[NEW!]** With effect from 29 November 2023, a Board of Directors meeting which involves the use of virtual meeting technology will generally be regarded as having strategic decisions made in Singapore if either of the following conditions is met:

- At least 50% of the directors (with the authority to make strategic decisions) are physically in Singapore during the meetings; or
- Chairman of the Board of Directors (if the company has such appointment) is physically in Singapore during the meeting.

## FOREIGN-OWNED INVESTMENT HOLDING COMPANIES

A foreign-owned company is a company with 50% or more of its shares held by:

- Foreign ultimate holding companies which are incorporated outside Singapore; or
- Individual shareholders who are not citizens of Singapore.

Foreign-owned investment holding companies with purely passive sources of income and receiving only foreign-sourced income are not considered as tax residents of Singapore because these companies usually act on the instructions of its foreign companies/shareholders.

However, IRAS may still treat these companies as Singapore tax residents if they can satisfy the following conditions:

- The control and management of the company's business is exercised in Singapore; and
- The company has valid reasons for setting up an office in Singapore.

This includes demonstrating that decisions on strategic matters are made in Singapore (e.g. by showing IRAS that their Board of Directors' meetings are held in Singapore).

Currently, the company must also:	[NEW!] In respect of <u>calendar year 2025 and after</u> , apart from demonstrating that decisions on strategic matters are made in Singapore, the company must also:
<ul style="list-style-type: none"> <li>• Have at least 1 director based in Singapore who holds an executive position and is not a nominee director;</li> </ul>	<ul style="list-style-type: none"> <li>• Have at least 1 director based in Singapore who holds an executive position and is not a nominee director;</li> </ul>
<ul style="list-style-type: none"> <li>• Have at least 1 key employee (e.g. CEO, CFO, COO) based in Singapore.</li> </ul>	<ul style="list-style-type: none"> <li>• Have at least 1 key employee (e.g. CEO, CFO, COO) based in Singapore; OR</li> </ul>
<ul style="list-style-type: none"> <li>• Have related companies in Singapore that are tax resident of Singapore or have business activities in Singapore; OR</li> </ul>	<ul style="list-style-type: none"> <li>• Be managed by a related company based in Singapore (e.g. the related company makes the decisions relating to the operations of the foreign-owned investment holding company or reviews the performance of the investments of the company).</li> </ul>
<ul style="list-style-type: none"> <li>• Receive support or administrative services from a related company in Singapore.</li> </ul>	

## BENEFITS OF HAVING A SINGAPORE TAX RESIDENT STATUS

A Singapore tax resident company enjoys the following:

- a) Tax exemption scheme for new start-up company;
- b) Claiming foreign tax relief;
- c) Tax exemption of foreign-sourced dividends, branch profits and service income which are received in Singapore upon certain conditions being fulfilled; and
- d) Benefits afforded under the Double Tax Treaties that Singapore has signed with other Treaty countries like reduced withholding tax rates on certain foreign-sourced income or tax exemptions on business profits derived from a foreign country where there is no fixed place of business in that country.

A company which is a non-tax resident of Singapore would not be able to enjoy the above. All foreign-sourced income received or deemed received in Singapore, although subjected to foreign taxes, would still be taxed in Singapore in the year of receipt. No benefits would also be afforded under the Double Tax Treaties and no foreign tax relief under local tax laws will be given to a company which is a non-tax resident of Singapore.

## CAN A COMPANY WHICH IS A NON-TAX RESIDENT OF SINGAPORE DECLARE ONE-TIER (TAX EXEMPT) DIVIDENDS?

No, it cannot. Only Singapore tax resident companies can declare one-tier (tax exempt) dividends.

## HOW WE CAN HELP

If you do not meet the conditions of a Singapore tax resident company and would want to know more, please contact us.

### **Disclaimer**

*As this is a general advice and not a detailed study of your specific case, no reliance should be placed on the contents herein. In addition, we will not be responsible or held accountable in any way for any damage, loss or expense whatsoever, arising directly or indirectly from any inaccuracy, incompleteness, errors or omissions in the contents above.*