



## Tax Bytes

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Greetings from your Tax & Legal team at Deloitte Singapore.

We are pleased to update you on the following new content from the Inland Revenue Authority of Singapore (IRAS).

On 2 January 2024, the IRAS has updated its website on:

[Economic substance requirement](#)—Income tax advance ruling on adequacy of economic substance

### **Taxing gains on sale or disposal of foreign assets**

To recap, from 1 January 2024, section 10L of the Income Tax Act 1947 was passed in the Income Tax (Amendment Bill) 2023 on 30 October 2023. Section 10L prescribes that certain gains from the sale or disposal of foreign assets are treated as income chargeable to tax when received in Singapore. Foreign-sourced disposal gains from the sale or disposal of a foreign asset (not being an intellectual property right) will not be treated as income chargeable to tax in Singapore if the entity has adequate economic substance in Singapore.

To obtain certainty, taxpayers may apply to the IRAS for an advance ruling to seek certainty on the adequacy of economic substance (known as an “ESR AR application”) if their proposed sale or disposal of foreign asset is expected to occur within one year from the date of the application.

Our previous commentary on Section 10L can be found:

- [here](#), in relation to draft Income Tax (Amendment Bill) 2023 on 6 June 2023;

- [here](#), in relation to key feedback received by the Ministry of Finance (MOF) on the draft Income Tax (Amendment Bill) 2023; and
- [here](#) in relation to the publication of the [e-Tax Guide: Income Tax—Tax treatment of gains or losses from the sale of foreign assets](#) on 8 December 2023.

### Scope of income tax advance ruling

As the income tax advance ruling on adequacy of economic substance is a type of income tax advance ruling, the standard [income tax advance ruling](#) rules are also applicable.

### Application procedure

In applying for an advance ruling on economic substance adequacy, entities can choose to apply<sup>1</sup> individually or collectively.

The appeal of this ruling lies in its validity for up to five years of assessment, covering not only the year planned for the contemplated foreign asset transaction but also extending to subsequent sales, contingent upon unchanged facts and tax laws.

The application necessitates submission of the following documents:

- a. [Application form for income tax advance ruling](#) (as per all income tax advance ruling applications);
- b. [Form for income tax advance ruling on the adequacy of economic substance](#) (ESR Form) (new);
- c. [Annex to ESR form](#), if applicable (new);
- d. A copy of the outsourcing service agreement, if applicable (new);
- e. Any [additional information](#) that may assist to expedite the review of the ruling application (new).

### Additional remarks

At first glance, as referenced above an ESR AR application appears to require much more documentation than a ruling application that does not involve economic substance matters. A closer examination of such additional information and the form(s) involved will however make it clear that most of these are factual in nature; taxpayers which are well-organised in their tax affairs/have good tax governance frameworks should be in a strong position to compile these documents readily.

Other than the upfront certainty aspect helping to minimise future disputes with the authorities which tend to be relatively more expensive and time-consuming, the fact that the ruling can cover group applicants and may be valid for up to five years of assessment, may make it a worthwhile option considering the costs and efforts involved in such ESR AR applications.

 [Read more](#)

<sup>1</sup> One may make an application on an entity basis or submit a group application. In the case of a group application, the application must be made jointly by all entities of the group to be covered under the advance ruling.

A group application may be submitted only under the following circumstances:

- where the economic activities of the entities of the group to be covered by the advance ruling are outsourced to an outsourced entity under a single service agreement; or
- where the economic substance test is to be applied at the holding company level on behalf of its special purpose vehicles.

## Contacts

Should you have any comments or questions arising from this newsletter, please contact either the listed contacts below, or any member of the [Singapore Tax & Legal team](#).



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