

AURTUS

Taxation of Gains on Disposal of Foreign Assets



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Introduction and Overview

To proactively align Singapore's tax regime with European Union's guidance, the Ministry of Finance (MOF) has introduced Section 10L to impose tax on gains from sale or disposal of foreign assets. This change will dilute the prominent feature of Singapore tax regime, i.e., is non taxation of capital gains.

The foreign-sourced disposal gains will be subject to tax (at the time of receipt in Singapore) for the scenario specified below :

Where disposal of the 'foreign asset*' occurs on or after 1 January 2024

by a 'covered entity' (unless it falls within 'exceptions' or fulfils the economic substance rules)

where such gains are 'received' in Singapore
(although a non-remittance may have adverse tax treaty implications in certain cases)

**Some examples where assets are determined to be situated outside Singapore (Foreign Assets)*

- a) immovable property is situated outside Singapore;
- b) equity securities and debt securities are registered in a foreign exchange;
- c) unlisted shares are issued by a company incorporated outside Singapore;
- d) loans where the creditor is a resident in a jurisdiction outside Singapore;
- e) IPRs where the owner is a resident in a jurisdiction outside Singapore

Key Features of Section 10L

Foreign Assets

Section 10L covers all the **immovable assets, securities and IPRs** situated outside Singapore at the time of sale.

Economic Substance Requirement

Section 10L exempts entities meeting the '**economic substance**' test in Singapore

Exceptions to Section 10L

Section 10L carves out certain types of entities as mentioned on Page 3

Separate Treatment of IP

A specified approach is applied to make a distinction between qualifying and non-qualifying IPRs

Computation of net gains

Open market price is considered for computing gains where transaction price is less than the open market price

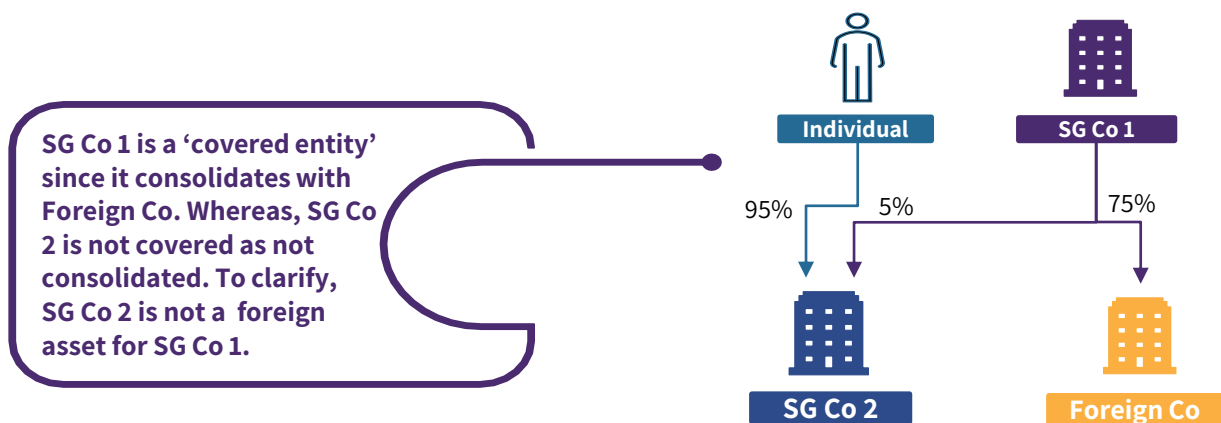
Relevant Group and Covered Entity

The provisions of Section 10L are applicable only to a 'covered entity' that falls under the meaning of 'relevant group'.

A covered entity is a member of a group:

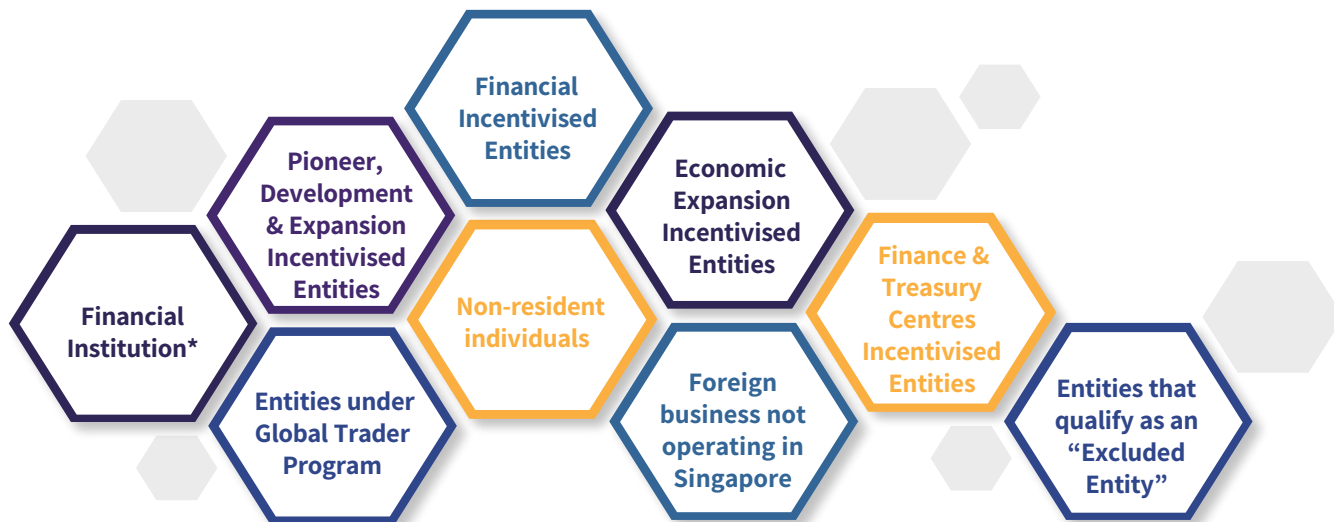
- where at least one member of such group is located outside Singapore
- if its financials are consolidated with the financial statements of the group.

We have provided a set of illustrative structures below to understand whether an entity in a group is a 'covered entity' or not:



Exceptions to Section 10L

The provisions of Section 10L shall not apply to the following entities:



Importantly, the funds availing **fund tax incentive** under Section 130 and Section 13U or other investment holding company availing **safe harbour exemption** under Section 13W are not covered in the exception list i.e., Section 10L is still applicable to such entities (unless they fall under the exclusion – see below).

**As defined in the Financial Services & Markets Act*

Excluded Entities – Substance Based

An entity having economic substance in Singapore falls under the definition of ‘excluded entity’ and the disposal of a foreign asset (not being an IPR) is not taxable under Section 10L. The criteria of economic substance differs based on the type of entity as described below:

Pure equity-holding entity

An entity whose primary function is to hold shares or equity interests in other entities and has no income other than dividends, disposal gains and income incidental to holding activities.

Economic substance criteria:

- the entity is compliant with its relevant **filing obligations**;
- the operations **are managed and performed in Singapore** (whether by its employees or outsourced) **and**
- the entity has adequate **human resources and premises in Singapore** to carry out the operations of the entity

Non pure equity-holding entity

An entity that is not a pure equity-holding entity.

Economic substance criteria:

- the operations **are managed and performed in Singapore** (whether by its employees or other persons); **and**
- the entity has **reasonable economic substance** in Singapore determined by the following:
 - Number and qualifications of **local full-time employees**.
 - Amount of **business expenditure** related to Singapore operations.
 - Whether **key decision-makers** based in Singapore.

For SPVs, economic substance test is applied at the holding company level on behalf of its SPV

Outsourcing of Economic Activities

Further, the economic substance requirement takes into account outsourcing arrangements, where an entity delegates its activities to third parties or group entities. To meet the economic substance requirement, the outsourcing arrangement must fulfil the following conditions:

The economic activities are to be carried out by the outsourced entity in Singapore

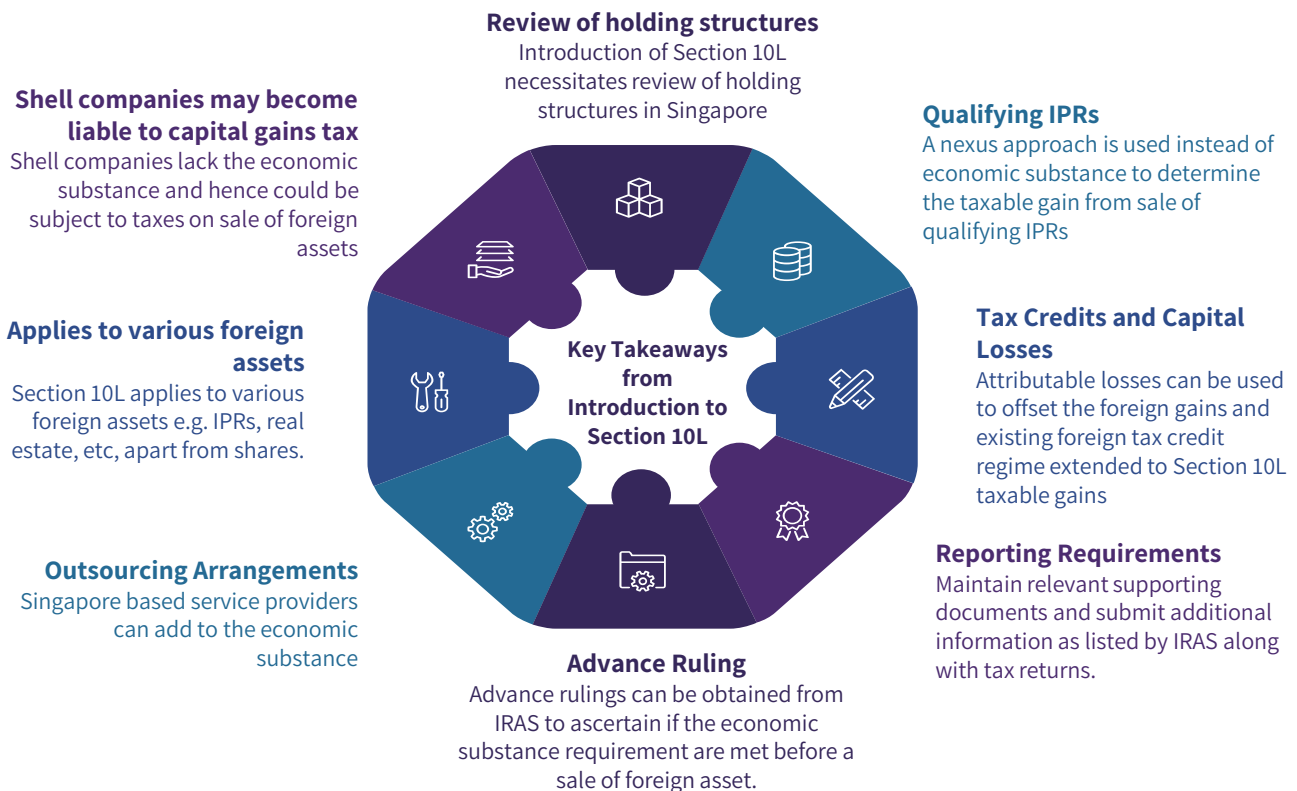
The outsourcing entity has a direct and effective control over the outsourced activities carried out by the outsourced entity on its behalf

The outsourced entity providing the outsourced services must set aside dedicated resources (e.g., manhours) to provide the outsourced services

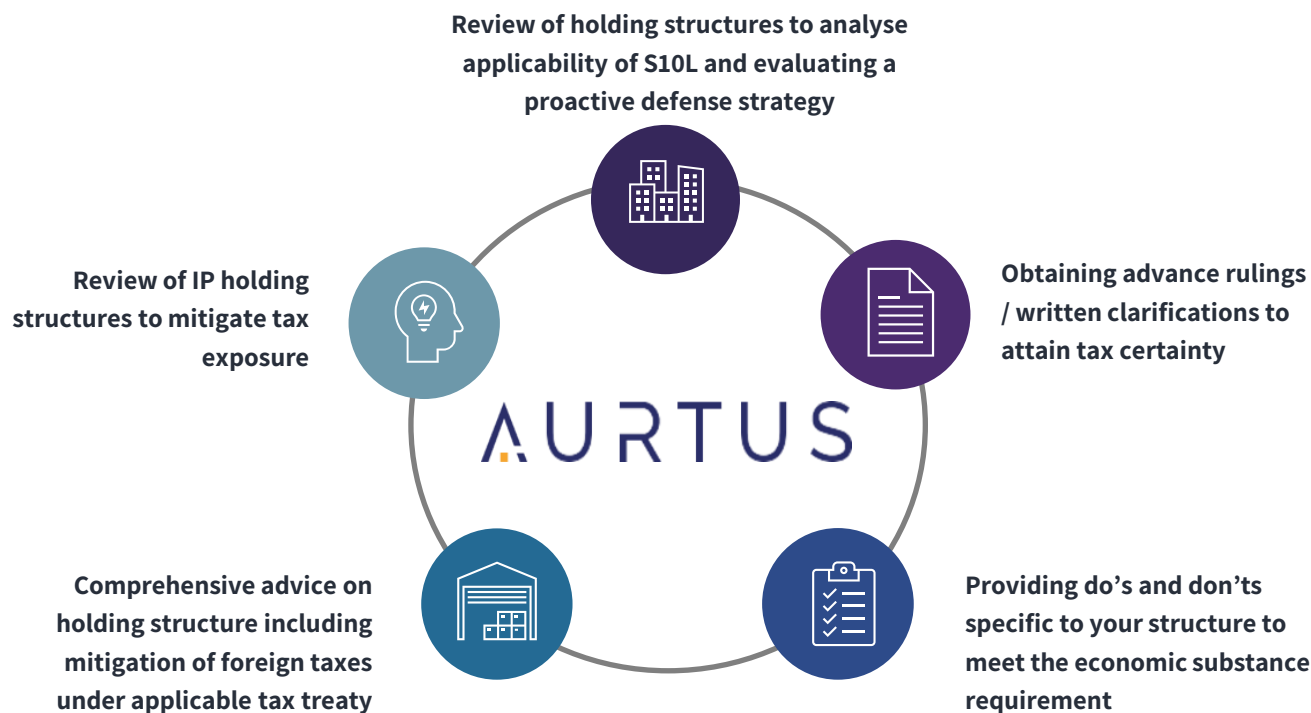
The outsourced entity can provide support to more than one entity, provided that its resources are commensurate with the complexity and level of services it provides to other entities.

The outsourcing rules highlight the significance of legal documentation, particularly the monitoring mechanism. Thus, it is crucial for entities to carefully draft and review their outsourcing agreements, trust deeds, investment management agreements, internal policies, etc., ensuring compliance with Section 10L's outsourcing requirements.

Key Takeaways



How Can Aurtus Assist?



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