

Section 13Z - Updated e-Tax Guide



Introduction

A time extension and narrowing of tax exemption under Section 13Z was announced during the 2020 Singapore Budget and these proposed changes have since been enacted into legislation. The Inland Revenue Authority of Singapore (IRAS) has now also reissued the relevant e-Tax Guide: *“Certainty of Non-taxation of Companies’ Gains on Disposal of Equity Investments (Third Edition)”*.

This Tax Alert summarises the relevant changes for taxpayer awareness.

Background

By way of background, gains of a capital nature are not taxable in Singapore, whereas gains of a revenue nature are taxable at the prevailing corporate tax rate of 17%.

Section 13Z of the Singapore Income Tax Act was introduced to provide a specific tax exemption for gains realised by a divesting company in certain situations. Eligibility criteria includes a requirement to hold at least

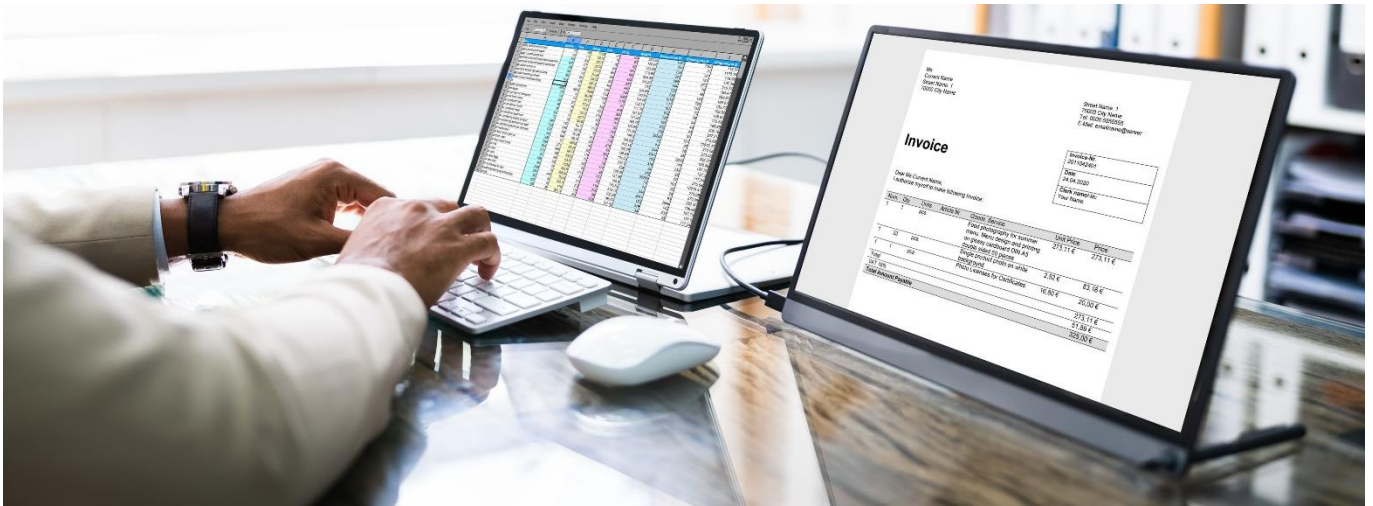
20% of the ordinary share capital for a continuous period of at least 24 months.

The 2020 Budget announced changes to the application of Section 13Z in relation to property-related businesses and certain real-estate transactions.

What has changed?

The changes to Section 13Z are to *“extend and refine the upfront certainty of non-taxation of companies’ gains on disposal of ordinary shares”*. Specifically and with effect from 1 June 2022, Section 13Z no longer applies to the disposal of non-listed shares where the investee company is in the business of:

- property development (including nominated construction activities); or
- trading in immovable property; or
- the holding of immovable property that derive no or passive income. This is regardless whether the immovable property is situated in Singapore or abroad.



Attention should be given to the meaning of “property development” which includes the construction of any building, or part of a building, the acquisition of land or building for such construction, structural changes made to a building where additions and alternations are made, etc. Such works are limited to those that require the approval of the Commissioner of Building Control under the Building Control Act (Cap. 29) or (if carried out in a country outside of Singapore) would have required such approval if it had been carried out in Singapore.

Section 13Z will still apply to investee companies where:

- the immovable property developed is used by the company to carry on its own trade or business (e.g. a self-developed industrial building used to carry on its manufacturing business, a commercial building is developed to carry on a business of letting out the units, etc.); and
- the company did not undertake any property development in Singapore or elsewhere for at least 60 consecutive months before the disposal of shares.

Our observations

The changes to the scope of Section 13Z to limit its application is an important integrity measure. However, taxpayers need to consider a range of

potential implications. Specifically, real estate fund managers, real estate development companies, or operating companies that deal with immovable property in their trade (here or abroad), should consider the application of Section 13Z going forward.

For those carrying out, or have carried out, “property development” in Singapore or abroad and had relied on the old Section 13Z exemption for a tax-free disposal, should now assess whether any future property development is caught by this new application.

This change will have broad application and businesses with properties subject to a regular refurbishment program (e.g. hotels) should also consider if any structural changes to currently owned properties might be considered as “property development”.

It is also worthwhile noting that this latest e-Tax Guide clarifies that an investee company that is in the business of letting immovable properties, also known as a Section 10E company, is a qualifying investee company for disposals undertaken before 1 June 2022. This clarification is welcome as it was not explicit in previous e-Tax Guide (i.e. the second edition).

How we can help

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

About Tax Alert

KPMG Tax Alert highlights the latest tax developments, impending change to laws or regulations, current practices and potential problem areas that may impact your company. As certain issues discussed herein are time sensitive it is advisable to make plans accordingly.

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