

Answer-to-Question-_6_

We are told that Lumiere is a Singapore incorporated company and GST-registered trader under the Goods and Services Act 1993 of Singapore ("GSTA").

Section 8 of GSTA provides that GST is chargeable where there is a supply of goods and services in Singapore by a taxable person in the course or furtherance of its business. Since Lumiere is a taxable person under the GSTA, we will examine each of the following transactions for the purpose of GST.

(1) This is a sale or standard supply of goods in Singapore (goods will be consumed by its customers in Singapore). Accordingly, Lumiere has to charge GST on the supply using the standard-rate of 9%.

(2) The sale of furniture to its Australian customers represents a direct export of goods which would require Lumiere to charge GST at 0%. Lumiere has to ensure that the relevant and requisite export documents are in place within 60 days from the date of export.

(3) This transaction relates to the supply of international services and the relevant provision is section 21(3)(j) of GSTA. Lumiere would be able to charge GST at 0% if certain conditions are satisfied.

We need to ascertain whether the belonging status of the contracted party (i.e., the Malaysian corporate client). In this regard, it is necessary to examine whether this Malaysian client has a business establishment (BE) or fixed establishment (FE) in Singapore. If it doesn't have either a BE or FE, we need to know whether its usual place of residence.

Since it is a corporate client, we will typically refer to its country of incorporation which is presumably Malaysia. Assuming this Malaysian client doesn't have a BE or FE in Singapore, its belonging status is outside Singapore. Next, we will also ensure whether the services performed by Lumiere will directly benefit this Malaysian corporate client which presumably belongs outside Singapore. And assuming the corporate client is also the direct beneficiary of the services, Lumiere

will be entitled to zero rate the (international) services, especially when the services were rendered in Malaysia.

However, it is unclear from the question why the part of the services were performed in Singapore. If the reason for that is because the Malaysian corporate client also has a BE or FE in Singapore, then the extent of such services that performed in Singapore may have to be standard rated at 9% by Lumiere.

(4) It is unclear whether the sale of downloadable design templates is a sale of goods or service. If it is a sale of goods and the supply was made to customers in Singapore and Malaysia it may attract GST at 9%. However, if it is a supply of service, the considerations set out in answer (3) above should be taken into account.

(5) The receipt of dividend income from share investment is an "out of scope" transaction which would not have any GST implications. It is technically not a supply of goods or services within the GSTA.

(6) The renting (lease) of a Singapore residential property is an Exempt supply under the GSTA.

(7) This transaction relates to the GST input tax recovery, i.e., whether the expenses incurred on taxable supplies (retail business) and on exempt supply (residential rental activity). It is noted that since Lumiere is supplying both taxable and exempt supplies, it is known as a partial exempt trader.

The input tax on expenses directly attributable to taxable supplies (standard or zero rated) is claimable or recoverable. However, the input tax on expenses directly attributable to exempt supplies are not recoverable.

In relation to any common expenses for both types of supplies, the input tax may be apportioned, or where those expenses attributable to exempt supplies fall under the exceptions of GST Regulation 33 and Regulation 28 (De Minimis Rule), all input taxes on the exempt supplies are claimable. Reg 33 relates to those exempt supplies which are incidental and integral to the provision of taxable suppliers such as deposit of money, foreign exchange, provision of loan, etc. Reg 28 comes with two

conditions, namely, the total value of the exempt supplies made by a taxable person is no more than: (i) an average of \$40,000 per month; and (ii) 5% of the total value of all taxable and exempt supplies made in that period.

However, the relevant quantitative information is not given in the question to apply the above rules.

Answer-to-Question-__4__

We are told that Greta is a resident in Country D.

Since Greta is taking up a 2-year senior executive role with Onyx in Singapore, she is exercising employment in Singapore and her remuneration will be Singapore sourced and be subject to Singapore tax under section 10(1)(b) of Income Tax Act 1947 ("ITA").

We need to determine whether Greta is a Singapore (SG) tax resident as there are several benefits that are only available to SG tax residents but not non-residents, including the claiming of personal reliefs and be taxed a progressive tax rates as opposed to a flat rate of 17% or 24% (as applicable). Applying the quantitative criteria set out in the ITA, Greta would be exercising employment in SG or be physically present in SG for more than 183 days, she would be considered an SG tax resident. Since she arrived in SG on 1 July 2024 and that employment income is to be assessed on a calendar year basis, for YA2025 (1/7/2024-31/12/2024), she had clocked 183 days assuming she hadn't left SG for a day during YA2025. For YA2026 (calendar year 2025), we are told that she had spent about 210 days in SG. It is quite clear that Greta would be a SG tax resident for YA2026 although not necessary for YA2025. However, IRAS has given a 2-year concession if the period of stay in SG for the 2 years are more than 183 days. It is evident that Greta would have satisfied this concession. As such, it is submitted that Greta would be considered an SG tax resident for both YA 2025 and YA 2026.

Given that Greta is potentially a dual-tax resident, both in Country D and SG, we need to apply the "tie-breaker rules" provided in Article 4(2) of the OECD Model Tax Convention 2017 (OECD MTC 2017). First, we need to consider whether Greta has a permanent home in SG and Country D. Based on the facts, this factor is neutral as she has probably maintained a permanent home in both countries. Next, we look at her centre of vital interests (COVI) - where her social and economic interests lie. While Country D domestic law has viewed Greta as a tax resident there on the basis of permanent home and COVI, and if IRAS were to agree with this basis, then Greta is a tax resident of Country D, and in turn a non-resident individual in SG. If Greta wants to be an SG tax resident she has to argue that the two factors above are neutral and request to examine her habitual abode and nationality (unclear from the question). Eventually, the dual residency tie may be resolved via the mutual agreement procedures (MAP) under Article 25 of the OECD MTC 2017.

It should be noted that the SG adopts a territorial-remittance tax system where only income accrues in or derived from SG, or received in SG from outside SG is subject to tax. The receipt of foreign sourced income is governed by s10(25) ITA.

Assuming Greta is an **SG tax resident**,

(1) her employment income from Onyx (paid into her SG bank account) is Singapore sourced income which is fully taxable under s10(1)(b) ITA.

(2) the independent consulting fees may be argued to be a SG sourced income if bulk of the services (remotely) were performed in SG. It is arguable that her visit to country D may be incidental to her SG employment. However, there are also indicia that such consulting fee income may be treated as foreign sourced income since the fees are credited in Greta's bank account in Country D and part of the work was performed in Country D. If it is a SG sourced income, it is subject to SG tax. If it is a foreign sourced income, it will only be taxed in SG when it is received or deemed received in SG: s10(25) ITA. Based on the facts, it appears that such consulting fee income was kept overseas and not remitted to SG. Accordingly, it is not taxable in SG. Even if it is remitted to Singapore and on the assumption that Greta is a SG tax resident, such income will be exempt from SG tax: s13(7A) ITA.

(3) The dividend income is considered foreign sourced and is not taxable in Singapore. Even if it is remitted back to SG, it will be exempt in the hands of Greta: s13(7A).

(4) Interest income from a Singapore (approved) bank would be tax exempt under s13 ITA.

(5) Rental income is also foreign sourced as the underlying property giving rise to the income is situated overseas. Again, such foreign sourced income is not taxable in SG, or if received in SG, it will be exempt income in the hands of Greta: s13(7A) ITA.

If Greta is considered a non-resident in SG, only her SG sourced income (namely, employment income and arguably her consulting fee income) would be taxable in SG. Her foreign income would not be subject to SG tax.

Answer-to-Question-_5__

Apex is an SG incorporated and tax resident company.

Given the four streams of income are foreign sourced and are received and remitted to SG, we will consider whether Apex can avail itself of the foreign source income exemption (FSIE) scheme under, mainly, s13(8), 13(9) and 13(12) of ITA.

There are only three types of foreign sourced incomes under s13(8), namely, dividends, branch profits and service income. Given the facts, the foreign sourced incomes (dividends and branch profits) are relevant and fall within the scope of s13(8). Additionally, for these foreign sourced dividends and branch profits to be exempted from SG tax, Apex has to satisfy three conditions under s13(9), namely:

- 'subject to tax'
- the headline tax of the foreign country must be at least 15%
- in the view of the Comptroller of Income Tax, the exemption is

beneficial to Apex.

Dividend from Titan (based in Country A)

Country A's headline tax is 25% which is higher than 15%. However, we are told that Titan was subject to a concessionary tax rate of 5% and that there is no withholding tax in Country A respecting dividends. Accordingly, the headline tax requirement under s13(9) may not be satisfied. However, Apex may apply to the Finance Minister for full or partial tax exemption on the dividend income. The Minister may approve such application if he is of the opinion that the repatriation of the foreign sourced dividend income would help promote or enhance the economic or technological development of SG: s13(12) ITA. Alternatively, the Minister may grant a concessionary rate of tax on the foreign dividend income. As a practical concession, IRAS may grant exemption if the following conditions are satisfied:

- Apex must be able to track the source of income
- there is no round tripping of locally sourced income through overseas investment
- Apex is not a shelf company
- IRAS is satisfied that all the conditions above are met

Dividend from Nova Corp (based in Country B)

Country B's headline tax of 20% is higher than the requisite 15% condition. There is no withholding tax suffered by Apex on this foreign sourced dividend. However, underlying corporate tax was duly paid before the dividend distribution. Hence, the first two conditions under s13(9), ie., at least 15% of headline tax and subject-to-tax conditions are met. Provided that the Comptroller is satisfied also that 'beneficial' condition is also met, the dividend from Nova Corp will be tax exempt in SG.

Dividend from Origin LLC

Given that country C's headline tax is only 12% which is below the minimum headline tax of 15% requirement, the dividend from Origin fails the s13(9) conditions. However, Apex may apply to the Finance Minister or try to satisfy IRAS's concessionary conditions to entitle itself of

the tax exemption of this dividend under the FSIE scheme, as elaborated in the discussion on dividends from Titan above.

Branch profits from Apex's branch in country D

Since the branch income was already taxed at 30% (higher than the headline tax of 15%), the subject to tax condition is also met. Provided the 'beneficial' condition is further met, the branch profits will be exempted from tax in SG.

In the event that any of the foreign sourced incomes is not exempted from tax under the FSIE scheme, Apex (a SG tax resident) may still be able to claim double tax relief (DTR) under s50A ITA (where there is tax treaty between SG and the dividend paying state) or unilateral tax relief (UTR) under s50B ITA (where there is no tax treaty between SG and the dividend paying country) for any foreign tax suffered. The DTR or UTR is the lower of the Singapore effective tax on the foreign sourced income and the foreign tax suffered.

Answer-to-Question-2__

We need to determine the tax residency of Nexcess. Based on the material facts, Nexcess is more likely a tax resident of Country L. In this regard, it is noted that senior management and board decisions are made in Country L (i.e. place of effective management or central management and control is in Country L).

It should be noted that key commercial negotiations with large clients are conducted by a group of SG employees who regularly meet customers, negotiate pricing and finalise commercial terms and without material modification by Nexcess suggest that there is a high risk of dependent agent permanent establishment

being created. According to s2(1) ITA, a person shall be deemed to have a PE in SG if Nexcess has another person (the SG based employees) acting on Nexcess's behalf in SG who has and habitually exercises an authority to conclude contracts.

Nexcess should assess whether maintaining a co-working office in SG which is used by its SG staff would constitute a permanent establishment (PE) which is a taxable presence. If a PE is created in SG, Nexcess's business profits that are attributable to the PE would be taxable in SG.

Since there is no DTA between SG and Country L, we will examine s2(1) of ITA to determine whether there is a PE. A PE is defined as a fixed place where a business is wholly or partly carried on including a place of management, an **office**, a factory, etc. In general, a fixed place would bear some degree of permanence and is at the disposal of Nexcess, and from which Nexcess business is being carried out. As this is a co-working office, it is arguable that it may not be at the disposal of Nexcess. Assuming the scope of duties of its SG-based staff are those relating to contract or pricing negotiations and conclusions, it is very likely, as also observed above, a PE has been created in SG.

Given that Nexcess has a PE in SG, its business profits attributable to the PE would be taxed in SG at 17%. Nexcess may claim business deductions in arriving at such business profits.

Regarding Nexcess's software platform is hosted on servers located in Country L, this may expose Nexcess in creating a PE in country L since it is only owning and controlling those servers which could be treated as a fixed place of business from which Nexcess business is substantially or partly carried out.

Dividends to Nexcess shareholders

Given that Nexcess is a non-SG tax resident, the dividend paid by it would be considered foreign sourced income vis-a-vis the 40% SG individual resident shareholders and the 30% SG corporate shareholder.

The foreign sourced dividend income is exempt from tax in the hands of SG individual resident shareholders when remitted to or received in SG: s13(7A) ITA. If these dividends are not received or remitted to SG, they

are not taxable.

On the receipt of such foreign sourced dividends by the 30% SG corporate shareholder, they are not taxable if not received in SG. However, if they are received in SG, the corporate shareholder may avail itself of the foreign sourced income exemption scheme under s13(9) and 13(8) ITA. Dividend income is one of the three qualifying foreign sourced incomes. However, there are 3 conditions to be satisfied: (i) headline tax rate of Country L must be at least 15%, (ii) the dividend must have been taxed in Country L; and (iii) the exemption is beneficial to Nexcess.

It is unclear from the question what the headline tax rate of Country L is and whether the profits of Nexcess has been subject to tax prior to dividend distributions.

Answer-to-Question-__1__

Helios is a SG tax resident. Orion is a German tax resident.

The granting of exclusive licence and sub-licence to Orion will give Helios licensing fee income (70% of gross receipts). Such licensing fee is likely to be treated as royalty payments under the SG and German tax laws as well as the SG-Germany DTA. The licensing fee is sourced in Germany since it is borne by Orion which is subject to tax in Germany. Hence, Orion may withhold tax on the licensing fee payment to Helios. According to Article 12 of the SG-Germany DTA, Germany has the sole taxing right of royalties. Given that Orion is a resident in Germany, such licensing fees are taxed in Germany but not subject to SG tax. Even though under the ITA, foreign sourced income received in SG by Helios should be taxable but the DTA removes that taxing right of SG.

The small rep office maintained by Orion in SG (staffed by 2 employees) would not constitute a permanent establishment (PE) as a rep office is not permitted to conclude contracts which is also the factual situation as mentioned in the question.

The SG engineers from Helios for 2 to 3 months may not be sufficient to create a service PE in Germany as the period is shorter than that as set out in the SG-Germany DTA.

The servers located in Ireland may not create a PE there as it is owned by a third-party cloud provider (not controlled and or owned by Helios) even though it may appear to be a fixed place of business.

Helios employing a regional sales director negotiating and concluding high value licensing agreements with Orion may risk creating a PE in Germany. However, the question is unclear as to where those negotiations or contract conclusions took place - is it in Germany or is it remotely via video conferencing? If it is the former, there is a risk of Helios creating a PE in Germany pursuant to the dependent agent PE mechanism under the DTA - the regional sales director has habitually or has been habitually playing the principal role in concluding contracts on behalf of Helios without material modifications by Helios. If a PE is created in Germany, business profits attributable to the PE in Germany would be subject to German tax.