3-2021

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Citation

OOI, Vincent. Adapting taxation for the digital Economy in Singapore. (2021). *Asia Pacific Tax Bulletin*. 27, (1), 1-10.

Available at: https://ink.library.smu.edu.sg/sol_research/3296

Singapore

Adapting Taxation for the Digital Economy in Singapore

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Issue: Asia-Pacific Tax Bulletin, 2021 (Volume 27), No. 1
Published online: 3 March 2021

The advent of the digital economy has had profound implications for taxation. Jurisdictions have been forced to adapt their tax systems as they become increasingly unsuited to the realities of modern commerce. While Singapore has largely followed international developments, particularly in the area of international taxation, it has often made innovative policy decisions in line with its national interests. The various policy decisions that Singapore has made on taxing the digital economy span both international and domestic taxation. In the area of domestic tax, the policies have been further divided by subject matter, such as e-commerce, digital tokens, automation, and electronic instruments. Other jurisdictions will face similar choices when considering how to adapt their domestic tax systems for the digital economy, and the tax policy decisions made by a small, highly open economy such as Singapore may provide insights for such jurisdictions.

1. Introduction

The core principles of both international and domestic tax law were developed decades, if not centuries, before the advent of the digital economy, at a time when it was impossible to predict the ways that technological developments would affect commerce. Over the course of time, some of these principles have shown signs of becoming increasingly unsuited to the realities of modern commerce. New technologies have given rise to new forms of doing business, altering both the global tax base as well as the allocation of taxing rights internationally. While there have been numerous efforts over the years to modernize tax law to reflect the increasing importance of the digital economy, the fundamental structures of both international and domestic tax law have largely remained unchanged. Those changes that have been made have occurred in a largely piecemeal fashion, with no fundamental review of the overall structure.

While every jurisdiction has been affected by increasing digitalization to varying extents, Singapore stands out as a particularly useful case study in showing the response of a small, highly open international economy to these global changes in business models due to technological developments. Singapore has made numerous policy decisions on taxing the digital economy in both the international and domestic tax contexts. This article begins by considering the developments in international tax law and Singapore's responses to these developments. It then goes on to address Singapore's policy decisions on taxing the digital economy in the domestic law context across various specific areas, namely, e-commerce, digital tokens, automation, and electronic instruments.

While Singapore has largely followed international developments, particularly in the area of international taxation, it has also often made innovative policy decisions in some areas in line with its national interests. For example, with respect to the income tax and goods and services tax (GST) treatment of e-commerce, Singapore has largely followed global trends closely, adapting its tax treatment of such activities in tandem with international developments. In the context of digital tokens, Singapore has made a conscious decision to offer a favourable tax regime, with a statutory exemption from GST for the use of digital payment tokens as a form of digital currency. We will also see that Singapore has decided to incentivize automation rather than tax it. Finally, Singapore has largely decided to treat electronic and non-electronic documents in a similar manner when it comes to stamp duties.

It is submitted that numerous other jurisdictions will face similar choices when considering how to adapt their domestic tax systems for the digital economy. In light of this, the experience of Singapore in making these policy decisions may provide a useful case study for other jurisdictions preparing to move forward.

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2. International Tax Law

2.1. International developments

2.1.1. The OECD Model Convention

The first bilateral double tax agreement (DTA) dealing with direct taxation can be traced back to 1899,[1] though many modern DTAs are based on the Organisation for Economic Co-operation and Development (OECD) Model Convention, which was first released in 1963.[2] While the OECD has periodically released revised models and accompanying commentaries to aid in the interpretation of these models, the overall structure and features of even the most recent model in 2017[3] still bear a strong resemblance to the first model convention. Tax treaties still follow the basic structure of using a schedular system,[4] and the underlying structure was clearly not designed with the digital economy in mind. In fact, it has been argued that there has been a prevailing view for some time that the international tax rules are not fit for purpose.[5] However, changes to the international tax system have generally been difficult to make due to the considerable number of treaties that countries tend to enter into, which would normally have to be individually renegotiated to effect any proposed changes.[6]

2.1.2. The Base Erosion and Profit Shifting Project

The OECD has had some success over the years in modernizing and adapting existing tax concepts to ever-developing commercial situations. A process of implementing significant changes to the international tax system was started in 2013, when the OECD commenced a major review through the Base Erosion and Profit Shifting (BEPS) Project.[7] While only one of the 15 Action Plans released by the OECD expressly focused on the digital economy, many of the other Action Plans were designed with the need to address digital economy taxation issues in mind.[8]

In Action 1 of the BEPS Action Plans, the OECD started from the position that it was not possible to ring-fence the digital economy from the rest of the economy for tax purposes.[9] It stated that the "digital economy is increasingly becoming the economy itself"[10] and declined to draw what it considered to be "arbitrary lines between the digital and non-digital."[11] Rather, the OECD was of the view that the other Action Plans proposed in the BEPS initiative were designed to address both digital and non-digital issues of taxation.[12]

As part of the BEPS Project, the OECD introduced a multilateral instrument (MLI) that could address the difficulties of individually amending tax agreements to incorporate the BEPS proposals. Countries could individually agree to adopt provisions in the MLI or, in the event, that two countries both agree to adopt the same provision, then such a provision would apply to their DTA, without the need to expressly amend that agreement.[13]

2.1.3. BEPS 2.0

When Action 1 was released, certain countries such as the United States were (and in fact, still are) very resistant indeed to the idea of a separate system for taxing the digital economy.[14] However, by 2019, with the largely successful implementation of the BEPS Project, the political landscape had shifted and the OECD released its plans for a new approach to taxing the digital economy (BEPS 2.0).[15] While resistance from some countries still remained, the threat of a proliferation of unilateral digital

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1. S. Jogarajan, *Double Taxation and the League of Nations* (1st ed., CUP 2018), at p. 1.
2. *Fundamentals and Sources of International Tax Law* , in P. Harris, *International Commercial Tax* (2nd ed., CUP 2020), 19.
3. *OECD Model Tax Convention on Income and on Capital* (2017), Treaties & Models IBFD.
4. Harris, *supra* n. 2 , 21.
5. C. Elliffe, *International Tax Frameworks: Assessing the 2020s Compromise from the Perspective of Taxing the Digital Economy in the Great Lockdown* , 74 Bull. Intl. Taxn. 9, 4 (2020), Journal Articles & Opinion Pieces IBFD.
6. Harris, *supra* n. 2 , 21.
7. For an overview of the BEPS Project, *see* generally OECD, *About – OECD BEPS* (OECD 2019), available at https://www.oecd.org/tax/beps/about/) (accessed 16 Jan. 2021).
8. OECD/G20, *Addressing the Tax Challenges of the Digital Economy – Action 1: Final Report 2015* , paras. 370-371 (OECD 2015), Primary Sources IBFD [hereinafter *Action 1*).
9. Id., para. 364.
10. Id.
11. Id.
12. Id.
13. Harris, *supra* n. 2 , 29-31. *See also* D. Kleist, *The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS – Some Thoughts on Complexity and Uncertainty* , Nordic Tax J. (2018), 31-48, at 32. Kleist also notes that through the adoption of the MLI, the risk of states deviating from BEPS measures during treaty renegotiation is reduced. It does so not by replacing existing tax treaties but instead either by operating in conjunction with existing tax treaties, or by replacing or adding provisions to existing treaties.
14. M. Gianni, *OECD BEPS (In)Action 1: Factor Presence as a Solution to Tax Issues of the Digital Economy* , The Tax Lawyer 255, at footnote 96 (2018). Gianni notes that the United States was not a signatory to the MLI.
15. OECD, *Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note* (OECD 2019).

services tax (DST) measures by countries around the world[16] encouraged all parties to work together with the OECD to try to achieve a global consensus on the taxation of the digital economy.

An alternative approach is also being proposed by the United Nations, which would involve the introduction of a new article 12B on Automated Digital Services in the UN Model Convention. This would give a market jurisdiction the right to tax income from automated digital services in its jurisdiction, notwithstanding the absence of a permanent establishment.[17]

2.2. Singapore's response to developments in international tax law

Singapore has been an active participant in all these developments. Its first DTA was signed in 1961 with Japan,[18] and today Singapore has a wide network of DTAs, with 60 comprehensive DTAs and 7 limited DTAs in force.[19] Singapore's DTAs largely follow the OECD Model Convention,[20] though they may sometimes incorporate terms from the UN Model Convention instead.[21]

When the BEPS Project was introduced, Singapore was very receptive, taking numerous steps to implement all the BEPS Actions and to ensure compliance with international tax standards. In particular, strong progress has been made on the four minimum standards comprising BEPS Actions 5, 6, 13 and part of 14.[22] In October 2016, Singapore reviewed its tax incentives to ensure compliance with the current international tax standards through the Forum on Harmful Tax Practices, in particular, implementing a fresh Intellectual Property regime that complies with Action 5 (harmful tax practices).[23] In order to better comply with Action 6 (prevention of treaty abuse), the Inland Revenue Authority of Singapore (IRAS) has updated its guidance on the application process for a Certificate of Residency.[24]

Singapore has made progress on Action 13 (transfer pricing documentation and country-by-country reporting) as well, with regular updates of its Transfer Pricing Guidelines involving the arm's length principle[25] and the enactment of legislation to impose country-by-country reporting requirements.[26] In 2018, due to Singapore's compliance with Action 14 (dispute resolution), it was certified under the OECD's Peer Review Report as meeting mutual agreement procedure (MAP) availability and access requirements.[27] Singapore has ratified the MLI, which came into force in Singapore on 1 April 2019. Further, Singapore is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes and was given a rating of "compliant" in the most recent peer review report in 2018.[28]

Singapore is watching the development of BEPS 2.0 carefully. Thus far, it has not announced any plans to introduce a unilateral DST and will likely follow the global consensus on BEPS 2.0 should it successfully move forward. It is noted that Singapore actively participated in the debate on article 12B through the submission of numerous comments on the draft article and commentary that were subsequently discussed in the August 2020 UN subcommittee meeting.[29]

The general approach taken by Singapore in this area can be said to be one of active participation and seeking consensus. The key principles which IRAS has adopted include: (i) a review of international tax rules based on sound tax principles; (ii) a level playing field between large and small economies; (iii) for international tax rules to remain pro-innovation and pro-growth; and (iv) for tax jurisdictions to work towards a consensus-based solution.[30]

This is a wise and carefully considered approach that will allow Singapore to actively contribute to the global consensus and help maintain order in the international tax system in the face of increased unilateralism, which given Singapore's small size, would be in its national interest.

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16. OECD, *Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy* (OECD 2020), 7.
17. United Nations, Committee of Experts on International Cooperation in Tax Matters, *Twentieth Session: Tax Consequences of the Digitalized Economy – Issues of Relevance for Developing Countries* (2020) (E/C.18/2020/CRP.41), Commentary on New Article 12B, para. 6 [hereinafter UN Report].
18. *Agreement Between the Government of the Republic of Singapore and the Government of Japan for the Avoidance of Double Taxation and The Prevention of Fiscal Evasion with respect to Taxes on Income*, Annex E (9 Apr. 1994), Treaties & Models IBFD.
19. Ministry of Finance, *Tax Treaties (Double Taxation Agreements)* (4 Dec. 2017), available at https://www.iras.gov.sg/irashome/Quick-Links/International-Tax/List-of-DTAs--limited-treaties-and-EOI-arrangements/ (accessed 16 Jan. 2021).
20. *Supra* n. 3.
21. United Nations, *United Nations Model Double Taxation Convention between Developed and Developing Countries* (2017), Treaties & Models IBFD.
22. S. Phua & J. Lai, *Chapter 14: The Adoption of BEPS in Singapore*, in *Tax Design and Administration In A Post-BEPS Era* 256 (K. Sadiq, A. Sawyer & B. McCredie eds., Fiscal Publications 2019).
23. Id., 247-248.
24. Id., 249.
25. Id.
26. Id., 250.
27. Id., *see also* OECD, *Inclusive Framework on BEPS: Action 14 – Making Dispute Resolution More Effective – MAP Peer Review Report – Best Practices: Singapore*, available at https://www.oecd.org/tax/beps/beps-action-14-peer-review-best-practices-singapore.pdf (accessed 16 Jan. 2021).
28. OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: Singapore 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, 13.
29. *See* UN Report, *supra* n. 17, where no fewer than 14 of Ms Yong Sing Yuan's (of IRAS) comments were addressed by the subcommittee.
30. Presentation given by Ms Yong Sing Yuan at the Digital Economy Taxation workshop at Singapore Management University on 1 Feb. 2019.

3. Domestic Tax Law

3.1. Overview of domestic tax law

The development of Singapore's tax law can be traced back to long before the advent of the digital economy. Income tax was first imposed in Singapore on 1 January 1948, following the enactment of the Income Tax Ordinance (No. 39 of 1947) (the 1947 Ordinance). However, the 1947 Ordinance can be traced back much further, to the UK Income Tax Act of 1918, where the overall structure and many of the provisions are recognizably similar.[31]This is reasonably close, in historical terms, to the first bilateral DTA dealing with direct taxation which was signed in 1899.[32]The 1947 Ordinance itself predates the first OECD Model Convention released in 1963.[33]

This is the case even for the GST, which one might rightfully recognize to be a fairly recent tax, having been introduced in Singapore only in 1993 with the enactment of the Goods and Services Tax Act (Act 31 of 1993);[34]however, the origins of the tax and its fundamental structure can also be traced back to at least 1911 when a value added tax (VAT) was discussed in America by T.S. Adams,[35]though it would be 1954 before France became the first country to adopt it.[36]Stamp duties have a similarly lengthy pedigree, being enacted in Singapore by the Stamp Ordinance 1929 (Ordinance 16 of 1929).

On the whole, it is fair to say that Singapore's tax law, along with most international tax systems, was not fundamentally designed to operate in a highly digitized world. Attempts to modernize the tax system have also not changed its fundamental structure. It therefore comes as no surprise that Singapore's tax law faces many issues when it comes to dealing with the digital economy. Nonetheless, various attempts to modernize the domestic tax system have been quite successful over the years.

3.2. Singapore's tax position on e-commerce

The technological development that has probably had the most significant impact on the digitalization of taxation is the Internet. Indeed, the Internet is effectively ubiquitous in most areas of the world, something acknowledged by the concept of the Internet of Things. There are perhaps three main ways in which the Internet has been used for e-commerce: (i) to facilitate trade in physical goods that are then delivered by conventional means; (ii) services provided over the Internet (e.g. financial services, advertising, etc.); and 3) "digitized goods" such as music, software and information. However, novel ways of doing business have sprung up even within these three categories that further complicate taxation. Singapore has responded to these developments in the way business is conducted, providing extensive guidance on digital economy taxation as early as 20 years ago.[37]

3.2.1. Income tax

The starting point is to note that at the current moment, there are no separate provisions within the current Income Tax Act (ITA)[38]that deal specifically with e-commerce. Thus, it is a case of applying existing (general) income tax laws to determine the tax liability arising from e-commerce transactions. The core concept is that the charge to income tax only arises on income accruing in or derived from Singapore, or received in Singapore from outside Singapore.[39]In this respect, IRAS has helpfully provided some guiding principles for businesses in the digital space in its e-Tax Guide on e-commerce. Apart from the "source" requirement, IRAS will also apply an "operations test" to see whether business operations that are carried out in Singapore underpin the e-commerce transaction and give rise to the income.[40]Whether business operations are carried out in Singapore is largely a question of fact and degree.[41]

While there are potentially many different business models and much will depend on the facts of each individual case, the general guidelines provided by the IRAS e-Tax Guide should apply correctly in the majority of common situations.[42]Businesses can be broken down along a few lines: (i) physical or digitized goods; (ii) where the goods are manufactured; (iii) whether a

31. The UK Income Tax Act of 1918 was the model for the Model Colonial Territories Income Tax Ordinance 1922, which formed the basis of the Heasman Report that was eventually enacted as the 1947 Ordinance after a few modifications. *See* Y.K. Leung, *The Context of the Birth of the 1947 Income Tax Ordinance and its Imprint* , in Tax Academy of Singapore, *Singapore's Tax Continuum* (2017), 1-5, 1.
32. *See* Harris, *supra* n. 2 , 18.
33. Id., 19.
34. Cap 117A, 1993 Ed. (GSTA).
35. R. Lindholm, *The Origin of the Value-Added Tax* , 6 J Corp L 11, 12 (1980).
36. A. Charlet & J. Owens, *An International Perspective on VAT* , 59 Tax Notes International 12, 943 (2010).
37. IRAS, *IRAS e-Tax Guide: Income Tax Guide to e-Commerce* (first published on 31 Aug. 2000, and the latest edition published on 18 Aug. 2015).
38. Cap 134, 2014 Rev. Ed.
39. Sec. 10 ITA.
40. *Supra* n. 37 , para. 4.3.
41. Id., para. 4.3.
42. Id., para. 5.

branch in another country exists; and (iv) where the website is hosted. The following may serve as a very general guide to determining where income from e-commerce activities is sourced.

Broadly speaking, in the absence of an overseas branch, income will be taken to be sourced from the country where the goods are manufactured or business obligations fulfilled, regardless of where the website is hosted. Where there is an overseas branch, generally, income derived from the activities of the parent company and income derived from the activities of the overseas branch will be taken to be sourced from each of the countries they are in respectively. The question is where the income from e-commerce transactions on the website should be taken to be sourced. This in turn depends on the type and degree of activities undertaken by the overseas branch to support the e-commerce transactions. IRAS has indicated that as a general rule, the income arising from e-commerce transactions through the website would be considered to be the income of the overseas branch if the branch undertakes to market and sell the goods electronically as well as complete the obligations arising from those transactions.[43]

Another possible business model is that of being an e-commerce intermediary, whereby the intermediary facilitates e-commerce transactions between trading parties. This can be done by providing various services such as hosting, Internet connectivity and exchange platform services.[44] IRAS has indicated that income generated by intermediaries with personnel and technical know-how in Singapore (and therefore substantial presence) will be considered to be income derived in Singapore.[45]

The income taxation of e-commerce in Singapore is broadly in line with global trends. As a highly open economy with a small domestic market, Singapore generally does not play a major role in shaping the international consensus on the taxation of e-commerce. It is in Singapore's interest to update its guidance on the taxation of e-commerce to facilitate compliance on the part of taxpayers, as the potential revenue contributed by these activities continues to grow. Moving forward, Singapore is likely to adopt the OECD BEPS 2.0 and/or the UN article 12B approaches to the taxation of e-commerce if international consensus on these proposals can be found.

3.2.2. GST

Unlike income tax where there are no provisions that specifically deal with digital economy taxation, Singapore introduced a statutory regime to tax the import of digital services for the purposes of GST, i.e. the Overseas Vendor Registration Regime (OVRR). The OVRR works in tandem with the more general reverse charge mechanism which taxes the import of digital and non-digital services into Singapore.[46]

Both measures are intended to apply to e-commerce companies, which typically adopt either a business-to-consumer model (B2C) or a business-to-business model (B2B) as regards their revenue model.[47] In the case of the former, the company deals directly with the consumer, who receives the final product. In the case of the latter, the company deals with another business entity and not the end-consumer. The OVRR and reverse charge mechanism are intended to apply to B2C and B2B situations respectively.

GST imposition on B2C services

The OVRR is targeted at overseas businesses that supply digital services to customers in Singapore. Such businesses are defined as those involved in services that are "delivered over the Internet, or an electronic network and the nature of which renders their supply essentially automated and involving minimal human interaction, and impossible to ensure in the absence of information technology."[48] These businesses must register themselves if they have an actual or expected global turnover exceeding SGD 1 million in the calendar year and they supply or expect to supply digital services exceeding SGD100,000 annually to non-GST registered customers in Singapore.[49] The liability for vendors to do so is determined on a retrospective basis for each calendar year and on a prospective basis for any 12-month period.[50]

Under the OVRR, overseas vendors are required to determine whether the services are supplied to customers belonging in Singapore.[51] A corporate customer is treated as belonging in Singapore if it has a business establishment or fixed establishment only in Singapore.[52] If the company has either type of establishment both within and outside of Singapore,

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43. Id., para. 5.6.5.
44. Id., para. 6.1.
45. Id., para. 6.3.
46. For more on this, *see* L. Hern Kuan & V. Ooi, *Proposed Reforms to Singapore's Goods and Services Tax for the Digital Age* , 93 Tax Notes International 5, 521-530 (2019).
47. E.H. Poh, *Extending the Singapore Goods and Services Tax to Imports of Services* , 29 Intl. VAT Monitor 5, 191 (2018), Journal Articles & Opinion Pieces.
48. IRAS, *IRAS e-Tax Guide GST: Taxing imported services by way of an overseas vendor registration regime (Second Edition)* para. 3.3 (26 Aug. 2019).
49. Id., para. 7.1.4.
50. Id.
51. Id., para. 8.1.
52. Id., para. 8.3.

the customer will only be treated as belonging in Singapore if the services are most directly used in Singapore.[53]If the company has no establishment in any country but is incorporated in Singapore, then the customer will be treated as belonging in Singapore.[54]As for individuals, a customer whose usual place of residence is in Singapore is treated as belonging in Singapore.[55]This is the case where the individual either resides in Singapore for a settled purpose or where his stay has some degree of continuity such that it forms the regular and habitual pattern of their life.[56]

In view of the difficulty in properly verifying the belonging status of customers since digital services are transacted over the Internet, IRAS allows for the use of proxy indicators.[57]At least two pieces of non-conflicting evidence must be obtained and maintained by an overseas vendor.[58]One piece of evidence must comprise a *payment proxy* , such as credit card information or bank account details.[59]The second piece of evidence may either be a *residence proxy* , such as a billing or home address, or an *access proxy* such as a country code of a SIM card or an IP address.[60]Should a vendor be unable to obtain and maintain such information due to exceptional business circumstances, the vendor may adopt alternative methods of determining the belonging status of the customer.[61]This is subject to approval from the Comptroller in writing.[62]

GST imposition on B2B services

The reverse charge mechanism applies to both digital and non-digital imported services. It requires the following two groups of businesses importing services into Singapore to account for GST as if they were the suppliers themselves: (i) GST-registered persons who are either not entitled to full input tax credit or belong to tax groups that are not entitled to full input tax credit; and (ii) non-GST-registered persons who procure services exceeding SGD 1 million in a 12-month period but would not be entitled to full input tax credit even if GST-registered.[63]

While the reverse charge mechanism applies to all imported services in general, it is likely that the current focus of Singapore in applying it is on imported digital services. The mechanism has, in fact, been statutorily provided for since the GSTA was first enacted in 1993.[64]However, it remained dormant for more than 25 years until 1 January 2020, when it was activated likely in response to global developments in VAT and GST.

Background behind the introduction of the OVRR and activation of the reverse charge mechanism

Before the two mechanisms were implemented in Singapore, GST was levied on local supplies of goods and services and supplies of imported goods, but not supplies of imported services. This created a situation where local suppliers of services had to charge and account for GST but overseas suppliers did not. Both these mechanisms thus have the effect of ensuring that supplies of imported services are similarly subject to GST, thus levelling the playing field.

The implementation of the two mechanisms was, however, not a purely domestic decision. Rather, it was likely triggered by the guidance of the OECD on strengthening indirect taxation of the digital economy.[65]Singapore's reform of its system of taxing e-commerce in terms of GST took place alongside the implementation of the OECD guidance in a considerable number of jurisdictions as well.[66]As such, Singapore's timing in introducing these new GST measures can be said to be excellent. The measures were introduced amidst strong global adoption, giving Singapore a strong justification for adopting these measures as well. They are also likely to raise more revenue for Singapore, particularly at a time when GST is becoming increasingly important as a tax. Over the years, the GST rate in Singapore has been raised from 3% (in 1993) to the current 7%. It is expected to be further raised to 9% within the next few years. Under such conditions, following the global trend and maximizing revenue collection through these measures is a wise decision.

3.3. Singapore's tax position on digital tokens

There is currently no internationally agreed definition of digital tokens, although the Financial Action Task Force (cited by the OECD) has defined "a virtual asset" as "a digital representation of value that can be digitally traded or transferred, and

53. Id.
54. Id.
55. Id., para. 8.4.
56. Id.
57. Id., para. 8.5.
58. Id., para. 8.6.
59. Id., para. 8.7.
60. Id.
61. Id., para. 8.9.
62. Id.
63. Id., para. 1.3.
64. Sec. 14(1) GSTA.
65. *Action 1* , *supra* n. 8 , Annex D.
66. In the Asia-Pacific alone, these jurisdictions include, inter alia, Australia, Japan, New Zealand and South Korea.

can be used for payment or investment purpose."[67]Digital tokens are increasingly being used around the world, prompting tax authorities from a multitude of jurisdictions to offer guidance on the tax treatment of transactions involving the use of digital tokens.[68]Singapore is no exception, with IRAS releasing two e-tax guides on the income tax[69]and GST[70]treatment of transactions involving digital tokens.

While transactions involving digital tokens may take place in ways that appear novel and unprecedented, they are well-covered by existing tax principles, which can be applied to such transactions without much modification. Legislation specifically passed to address such transactions are a minority, with most of the guidance provided by tax authorities around the world largely being in the nature of the interpretation of existing tax laws. Further, without specific legislation, the mere fact that different types of digital tokens are involved in a transaction does not in itself affect the relevant tax treatment. Whether payment, utility or security tokens are involved, the focus should be on the circumstances surrounding the transaction and not the nature of the token itself.[71]

Singapore has made numerous policy decisions when it comes to the taxation of digital tokens. At a broad level, these can be divided into three main principles: (i) tax certainty; (ii) favourable tax treatment; and (iii) administrative efficiency. The first can clearly be seen from the comprehensive guidance provided by the Singapore tax authorities. Further, the GSTA has been amended to provide a definition for digital payment tokens[72]and has provisions specifically referencing digital payment tokens to clarify their tax treatment.[73]

As for favourable tax treatment, Singapore has taken the step of expressly exempting the supply of digital payment tokens from GST.[74]Supplies of security tokens are also likely to be exempted from GST as most of them may fall into the categories of "financial instruments" provided for under Part I of the Fourth Schedule to the GSTA. Further, unlike other jurisdictions such as the United Kingdom, Singapore does not tax tokens received from "hobby mining", instead only taxing mining activities when they are part of a trade or business.[75]Tax certainty and favourable tax treatment certainly have the effect of making Singapore a more attractive jurisdiction in which to do business and may have positive effects on the development of the FinTech scene in the country.

This brings us to the next point of administrative efficiency. In some situations, Singapore may choose not to tax certain transactions because it might not be worthwhile to expend the resources to chase after potentially small amounts of revenue. Building on the example raised above, it is possible that the Singapore authorities may be of the view that it may be more efficient to simply treat all tokens received from "hobby mining" as not taxable, since the amount of tax potentially collectable may be low and that to consider such proceeds as taxable may also result in taxpayers seeking to claim the deduction of losses in such cases. The administrative effort involved may simply not be worthwhile for the tax authority. This may also explain why tax authorities seldom provide express guidance on airdrops;[76]the amounts involved may simply be too insignificant to warrant the attention of the tax authorities.

The taxation of digital tokens is an area where jurisdictions around the world have adopted a multitude of different approaches,[77]making it a particularly good area to study the policy decisions which Singapore has made for adopting specific policy measures. The biggest issue in this area for tax administrations is arguably the lack of certainty generated by the novelty of the subject matter, which can serve as a considerable impediment to commerce. Singapore has not only dealt with this lack of certainty through comprehensive guidance, but has implemented favourable tax policies to further incentivize businesses to grow their operations in Singapore.

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67. OECD, *Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues* , 10 (2020) [hereinafter OECD Virtual Currencies], citing Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (2019).
68. Id., 16.
69. IRAS, *IRAS e-Tax Guide: GST: Digital Payment Tokens* , para.4.3 (1st ed., 19 Nov. 2019).
70. IRAS, *IRAS e-Tax Guide: Income Tax Treatment of Digital Tokens* , para. 5.1 (17 Apr. 2020) [hereinafter e-Tax: Digital Income Tax).
71. Nonetheless, certain circumstances affecting tax liability are more likely to occur when the different types of digital tokens are involved. For example, it is far more likely for payment tokens than security tokens or utility tokens to be created through mining. Thus, the question of whether mining of tokens produces taxable business or trade income is likely to be more relevant to payment tokens.
72. Defined in sec. 2A as a digital representation of value that has all the following characteristics: (i) it is expressed as a unit; (ii) it is designed to be fungible; (iii) it is not denominated in any currency, and is not pegged by its issuer to any currency; (iv) it can be transferred, stored or traded electronically; and (v) it is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, without any substantial restrictions on its use as consideration.
73. Sec. 44, art. 8 of the First Schedule, art. 11 of the Third Schedule, and art. 1B of the Fourth Schedule GSTA. *See also* regulations 33 and 34 of the Goods and Services Tax (General) Regulations (Rg 1, 2008 Rev. Ed.).
74. Para. 7 Goods and Services Tax (Excluded Transactions) Order (S 103/1994) expressly provides that the "provision of digital payment tokens as consideration in respect of any transaction (other than a transaction for a supply of money or digital payment tokens), is treated as neither a supply of goods nor a supply of services."
75. e-Tax: Digital Income Tax, *supra* n. 70 , 9-10.
76. OECD Virtual Currencies, *supra* n. 67 , 23.
77. OECD Virtual Currencies, *supra* n. 67 , Chap. 2.

3.4. Singapore's tax position on automation[78]

In recent times, rapid developments in robot dexterity, machine learning, processing power, and sensor capabilities[79]have greatly increased the potential for many jobs to be automated, with machines capable of displacing human workers. While automation generally results in efficiency gains, the main difficulty that it creates for societies is that the gains are not evenly distributed, and neither are the resultant externalities.

Business owners are likely to be the main beneficiaries of the efficiency gains from automation, while the displaced workers disproportionately suffer the costs.[80]Society also has to bear the costs of supporting and retraining displaced workers.[81]While one possible solution to this is to force businesses that automate to internalize the externalities through an automation (or "robot") tax, Singapore has taken a very different approach, choosing instead to continue promoting productivity gains, including productivity gains obtained through automation.[82]

This reflects a clear policy decision. With generally low rates of unemployment, Singapore has chosen to focus on the need to maintain high levels of productivity to be internationally competitive. To deal with the problems of structural unemployment of displaced workers, extensive support schemes are instead provided by the government to assist such workers with re-training and up-skilling so that they can find new employment.[83]

3.5. Singapore's tax position on electronic instruments[84]

The increasing use of electronic instruments instead of physical documents has had a considerable impact on the levying of stamp duties in Singapore. Stamp duties are taxes levied on particular instruments as specified in the First Schedule to the Stamp Duties Act (SDA).[85]Some common instruments that trigger stamp duty liability include instruments for the conveyance, assignment or transfer of immovable property interests (buyer's stamp duty, additional buyer's stamp duty and/or seller's stamp duty),[86]conveyance of equity interests in property-holding entities (known as additional conveyance duties),[87]and the sale of any stock or shares.[88]

Specific legislative provisions have been introduced to deal with these changing circumstances. On 10 September 2018, Parliament enacted the Stamp Duties (Amendment) Act 2018.[89]This Act extends the scope of the SDA to electronic instruments,[90]which refers to any electronic methods used to identify persons and their intentions in respect of the information of the electronic record.[91]This thus makes it clear that the SDA now applies to electronic instruments.

The main issues that Singapore has dealt with in this area have to do with the tax treatment of electronic instruments and situations where potentially no instruments are required at all.[92]Singapore's general approach, as seen from the amendment of the SDA, has been to try to equalize the tax treatment of transactions regardless of whether they are conducted using electronic instruments or physical instruments.

3.5.1. Instruments executed outside Singapore

Moving away from the weakening of the concept for a moment, section 43 of the SDA provides that an instrument executed outside Singapore need only be stamped within 30 days after it has first been received in Singapore. If it is never received in Singapore, then it will not need to be stamped at all. While this rule has been in force for a long time, the development of communication technologies (in particular, email) has forced taxpayers to carefully consider the impact of this rule on the way they conduct their transactions.

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78. For more on this, *see* V. Ooi & G. Goh, *Taxation of Automation and Artificial Intelligence as a Tool of Labour Policy* (SMU Centre for AI & Data Governance Research Paper No. 2019/01).
79. Id., 3.
80. Id., 6.
81. Id., 7.
82. *See* , for example, secs. 14D, 14DA, 14A, 19B(1AA), and 43ZI Income Tax Act.
83. *See* the numerous initiatives by SkillsFuture Singapore and Workforce Singapore, available at https://www.ssg-wsg.gov.sg/individuals/programmes-initiatives.html (accessed 16 Jan. 2021).
84. For more on this, *see* V. Ooi, *The New Additional Conveyance Duties Regime in the Stamp Duties Act* , 30 Singapore Academy of Law Journal 119-148 (2018); and V. Ooi, *Stamp Duty Issues in Singapore Corporate Practice* , 30 Singapore Academy of Law Journal 949-977 (2018).
85. Cap 312, 2006 Rev. Ed.
86. Arts. 3(a)(ii), 3(bf) and 3(bg)(b) First Schedule to the SDA.
87. Art. 3A First Schedule to the SDA.
88. Art. 3(c) First Schedule to the SDA.
89. Stamp Duties (Amendment) Act 2018 (No. 37 of 2018).
90. Secs. 59-60H SDA.
91. Sec. 60B SDA.
92. A conceptual issue arises because stamp duties are taxes levied on instruments and not transactions. Thus, if a transaction is conducted without requiring an instrument, it will not be subject to stamp duties. *See* Y.K. Leung & K.K. Tan, *LexisNexis Annotated Statutes of Singapore: Stamp Duties Act 2015* (LexisNexis 2015), 20-21.

A key question is whether this rule is triggered if a potentially dutiable instrument such as a share transfer form is "carbon copied" to an email account belonging to someone in Singapore. In such a case, would the instrument be considered to have been "received in Singapore" notwithstanding that the recipient of the email never intended to receive that email and never opened the attached document? This question has never been litigated to date and it is perhaps unrealistic to expect taxpayers to readily alert the authorities that they have received such an instrument.

To provide more clarity on these issues, the Stamp Duties (Amendment) Act 2018 introduced section 60C into the SDA making clear the legal position on when an electronic instrument is signed. As illustrated in Example 1 of section 60C,[93] an electronic instrument comprising two emails on the sale of a property is treated as executed at the time that the buyer sends his email of acceptance, inclusive of his electronic signature. It is submitted that with section 60C of the SDA and its requirement for the application of an electronic signature, it is unlikely that mere receipt of the document would constitute an execution of the electronic instrument.

3.5.2. The central depository settlement system

Singapore has had to make policy decisions due to technological developments as early as February 1987, when the central depository or book-entry settlement system was introduced to the Singapore Stock Exchange, with all existing securities eventually being converted to the scripless system.[94] This represented a major change in the way that shares trading was done in Singapore. Previously, shares would have to be transferred through the execution of share transfer forms, the movement of securities certificates and the registration of transfers. At least one of these documents would have to be stamped and the corresponding duties payable. With the introduction of the scripless system, no such documents are necessary for shares of listed companies, as each party would have an account with the Central Depository (Pte) Ltd that would be updated with each relevant transaction. For all intents and purposes, the account holder would be entitled to enjoy the rights associated with being a shareholder of the shares reflected in his account.[95] Eventually, the records and operations of the scripless system were digitized, largely doing away with the need for any paper records or transfer forms.

It is noted that even though the doing away with the need for the abovementioned documents to be executed in the transfer of shares of listed companies resulted in no imposition of stamp duties in such cases, no legislative attempt has been made to deem such transfers as chargeable.[96] In fact, this has created a divergence in the tax treatment of transfers of shares in listed and unlisted companies. The former, which use the scripless system, do not attract stamp duties, while the latter, which still require the use of transfer documents, are subject to the relevant duties on the transfer of shares. This divergence in tax treatment appears to be entirely intentional, with the Stamp Duties (Agreements for Sale of Equity Interests) (Remission) Rules 2018 being introduced to maintain this divergence, by expressly providing that there should be remission of additional conveyance duty on agreements for sale of book-entry securities, when no such remission exists for non-book-entry securities.[97]

4. Conclusion

Singapore provides many lessons on the digitalization of a tax system. It has actively participated in developments in international tax law, playing a role in helping to build global consensus and avoid unilateral measures as far as possible. It has contributed to the maintenance of an international rules-based system anchored on sound tax principles and readily adapted its own tax system to comply with international norms and developments. These are wise decisions for a small country to make in the face of increased unilateralism. In the e-commerce space, Singapore has largely followed global trends in adapting its guidance and legislation to tax new forms of digital businesses that are becoming an increasingly important source of revenue. This has helped Singapore level the playing field between local and overseas businesses, particularly in the context of GST.

However, there are also areas where Singapore has made policy decisions based on its own specific circumstances rather than adopting the approaches of other jurisdictions in a wholesale manner. Examples include the digital tokens space, where Singapore made an active decision to exempt digital payment tokens from GST, and the rejection of automation taxation, where Singapore has instead chosen to continue to incentivize automation and provide support to displaced workers in more direct ways. Then there are areas that have largely domestic impact, such as stamp duties, where Singapore has implemented policies based on the specific characteristics of the domestic stock market and property markets, while attempting to maintain tax neutrality between paper and electronic transactions.

93. Sec. 60C SDA.
94. Leung & Tan, *supra* n. 92 , 10-11.
95. Id., 11, which helpfully cites the Court of Appeal in *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [134]-[136] for a useful summary of the scripless trading system.
96. Id.
97. The full background of the introduction of these rules is comprehensively covered in K.L. Ong & M. Koh, *One Step Forward or One Step Back?* . Singapore Law Gazette (July 2018).

Another important point to note is the consistent commitment to tax certainty through the publication of comprehensive guidance at relatively early stages of development of new technologies. Digitalization inevitably throws up uncertainty as existing tax principles need to be applied to new situations. In such cases, timely and comprehensive guidance can go a long way to promote tax certainty. In Singapore, guidance typically comes in the form of e-Tax guides that are released online and are readily accessible to the general public. In appropriate situations, Singapore has gone further and amended its legislation to make the tax position even clearer to taxpayers, as in the exemption of digital payment tokens from GST.

The overall approach of Singapore towards the digitalization of tax can be said to be focused on careful consideration of the specific needs and interests of the country. While it follows global trends and implements the most suitable international developments, it is also willing to create innovative solutions and chart its own path where domestic circumstances differ.