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IRAS e-Tax Guide

Avoidance of Double Taxation Agreements ("DTAs")

(Third Edition)

Avoidance of Double Taxation Agreements (“DTAs”)

Published by
Inland Revenue Authority of Singapore

Published on 23 Oct 2021

First edition on 11 Oct 2017
Second edition on 15 Jun 2018

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1 Aim

1.1 This e-Tax Guide provides taxpayers with guidance on

- The interpretation and application of Singapore’s DTAs; and
- The mutual agreement procedure (“MAP”) under Singapore’s DTAs.

1.2 This e-Tax Guide is relevant to you if you have cross-border transactions with or investments in a jurisdiction that has a DTA with Singapore.

2 At a glance

2.1 Singapore’s recent DTAs are largely based on the Organisation of Economic Co-operation and Development Model Tax Convention on Income and on Capital (“OECD MTC”), with some modifications. Reference may generally be made to the OECD’s commentary on the OECD MTC (“OECD Commentary”) (which may be updated or revised by the OECD from time to time) as a guide to the interpretation of the provisions of Singapore’s DTAs. However, it should be noted that there are some differences between Singapore’s DTAs and the OECD MTC. Singapore has reflected the main areas of differences in the “Non-OECD economies’ positions on the OECD Model Tax Convention” of the OECD MTC.

2.2 For various reasons, Singapore’s DTA partners may not always share the same interpretation of the DTA provisions as Singapore. Notwithstanding this, this e-Tax Guide provides guidance on IRAS’ interpretation and application of key provisions of Singapore’s DTAs.

2.3 Taxpayers relying on the provisions of a DTA will generally need to prove that they are tax resident in Singapore or the other DTA jurisdiction by producing a certificate of residence.

2.4 If taxpayers encounter double taxation or believe that provisions in a DTA have not been applied correctly by a tax authority, they may apply for assistance from their tax authorities or IRAS, as the case may be, under the MAP provision in the DTA to resolve the issue.

3 Introduction

- 3.1 Tax rules differ from jurisdiction to jurisdiction. While some aspects of taxation may be universal or largely similar across different tax systems, there will inevitably also be significant differences.
- 3.2 For example, differences may be found in the following:
- Definitions of what is income;
 - Definitions of tax base and the scope of taxation of non-residents;
 - Definitions of tax residency;
 - Computation rules for determining the amount of income;
 - Special rules for re-characterising or deeming facts or events;
 - Timing rules for the recognition of income or expenses;
 - Tax rates;
 - Tax incentives for economic development;
 - Special rules relating to evidence or documentation; and
 - Rules relating to appeals and dispute resolution.
- 3.3 Juridical double taxation results when the same income is being taxed twice – once in the jurisdiction where the income arises and another time in the jurisdiction where the income is received. Economic double taxation can arise when two jurisdictions tax the same economic transaction differently because of conflicting rules relating to the inclusion of income and deduction of expenses.
- 3.4 Since there will usually be differences in the tax rules of two jurisdictions, a taxpayer in jurisdiction A who invests in or trades with persons in jurisdiction B may be subject to taxation in both jurisdictions that may not be based on consistent principles. This may lead to double taxation that may not necessarily be relieved under the domestic laws of jurisdiction A. There is therefore a potential disincentive for the taxpayer in jurisdiction A to invest in or trade with persons in jurisdiction B.
- 3.5 Even if jurisdiction A may provide adequate relief from double taxation under its domestic laws, the absence of a DTA based on accepted international standards may create uncertainty for taxpayers in jurisdiction A and have the effect of discouraging inbound trade and investment into jurisdiction B from jurisdiction A.
- 3.6 From that perspective, for each contracting jurisdiction to a DTA, a DTA serves to:
- Harmonise and rationalise international tax outcomes according to accepted international standards; and
 - Signal adherence to accepted international standards of taxation for the purpose of inbound trade and investment.

- 3.7 DTAs (and other forms of tax treaties for the exchange of information) are also vital in facilitating co-operation between tax authorities in the form of exchange of information and resolution of disputes in accordance with accepted international standards.
- 3.8 Singapore has concluded two types of DTAs: (1) comprehensive DTAs which cover all types of income; and (2) limited DTAs which cover only income from shipping and/ or air transport activities. The full texts of Singapore's DTAs are available on IRAS' website (www.iras.gov.sg).
- 3.9 This e-Tax Guide provides guidance to taxpayers on the purpose of DTAs, and how to interpret and apply provisions that are commonly found in Singapore's DTAs. It also provides practical guidance to taxpayers on how to access DTA benefits, and avoid or resolve DTA-related disputes.

4 Singapore's DTA Policy

- 4.1 Singapore believes that trade and investment are important for the growth of the global economy. DTAs are important for promoting international trade and investment by improving transparency of information and certainty of tax positions. They are also essential for the elimination of double taxation that can arise from cross-border transactions, thereby reducing business costs.
- 4.2 DTAs serve the following important functions:
- Harmonising international tax outcomes;
 - Encouraging foreign investments by providing certainty of tax treatment of cross border transactions; and
 - Creating a platform for dialogue and co-operation between tax authorities.
- 4.3 By entering into a DTA, we believe that both parties to the DTA have made a binding commitment in good faith to depart appropriately from domestic laws for the purpose of building stronger economic relations.
- 4.4 We believe that benefits from DTAs go beyond taxation and the purpose of DTAs must also be considered in that light. At the same time, DTAs must not be abused in ways that were never intended by the contracting parties – DTAs are never intended to be used or applied to give benefit to entirely artificial arrangements or structures with no commercial purpose. With the new preamble to be added to DTAs by the Multilateral Convention to Implement the Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (see next Section), it is further emphasised that contracting parties to a DTA do not intend for the DTA to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance.

5 Multilateral Convention to Implement the Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

- 5.1 On 7 June 2017, Singapore signed the Multilateral Convention to Implement the Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, commonly referred to as the Multilateral Instrument (“MLI”). The MLI is a multilateral agreement intended to swiftly implement various treaty related proposals arising out of the G20/OECD Base Erosion and Profit Shifting Project (“BEPS Project”). As a multilateral agreement concluded between a large number of jurisdictions, the MLI has a mix of mandatory provisions and optional provisions (that signatory jurisdictions can make reservations against). Signatory jurisdictions may also choose which of their DTAs they wish to be modified by the MLI. A DTA is only modified by the MLI if both parties to the DTA choose for the DTA to be modified by the MLI. Likewise, the DTA is only modified under the MLI to the extent that it is agreed by both parties (i.e. to the extent that both parties do not make reservations on the optional provisions in the MLI). The modifications to a DTA by the MLI take effect only after both parties to the DTA ratify the MLI according to their respective domestic procedures.
- 5.2 For various reasons, including the fact that not all of Singapore’s DTA partners participated in the negotiation of the MLI, not all of Singapore’s DTAs will be amended by the MLI. Please refer to IRAS’ website (www.iras.gov.sg) for the DTAs that would be amended by the MLI.
- 5.3 For the DTAs that will be amended by the MLI, the main changes made by the MLI are:
- (a) the inclusion of a new preamble which states that the purpose of the DTA is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance;
 - (b) the inclusion of a “principal purpose test” provision which is an anti-abuse rule to deny DTA benefits in abusive cases; and
 - (c) the inclusion in some DTAs of provisions which allow taxpayers to request for mutual agreement procedure cases to be resolved through an arbitration process if the competent authorities are unable to reach an agreement within a specified time period.

These changes only take effect after the MLI has been ratified by both Singapore and the DTA jurisdiction. The specific textual changes that will be made to the DTA will be provided through subsidiary legislation made under the Income Tax Act and will also be published on IRAS’ website (www.iras.gov.sg).

6 Common DTA Provisions

- 6.1 A key function of DTAs is to allocate taxation rights between the two contracting jurisdictions. Under a DTA, the taxation rights over income derived by a resident of one jurisdiction (“Residence State”) from the other jurisdiction (“Source State”) can be allocated in any of the following ways:
- Taxation rights are allocated to only one jurisdiction and the other jurisdiction foregoes the right to tax the income. Typically, the DTA will state that the income shall be taxable only in one jurisdiction;
 - Taxation rights are allocated to both jurisdictions but with limitation of taxation in the Source State to no more than a specified level. Typically, the DTA will state that the income may be taxed in one jurisdiction, and may also be taxed in the other jurisdiction but the tax shall not exceed a specified rate. The Residence State provides tax relief for the tax paid in the Source State (as specified in the DTA) to eliminate double taxation; and
 - Taxation rights are allocated to both jurisdictions without limitation. Typically, the DTA will state that the income may be taxed in one jurisdiction, and may also be taxed in the other jurisdiction. The Residence State provides tax relief for the tax paid in the Source State to eliminate double taxation.
- 6.2 While a jurisdiction is entitled to subject income arising from its territory to full taxation under its domestic laws, the presence of a DTA could limit the taxation of the income. There are non-fiscal reasons why a jurisdiction may agree to do so e.g. to attract foreign investment.
- 6.3 In contrast, a jurisdiction *generally* does not limit the taxation of its residents under a DTA. However, the jurisdiction would be obliged under a DTA to eliminate any double taxation arising under the DTA by providing some form of tax relief to its residents for the foreign tax that had been paid in accordance with the DTA.
- 6.4 The provisions of a DTA are organised under various articles. **As the specific provisions in each DTA may be different**, this guide only highlights briefly the general principles of the key articles of a typical DTA. **Please always refer to the specific provisions of the relevant DTA in interpreting and applying the DTA.** The following are the typical articles in a DTA.

Persons Covered

- 6.5 The scope of Singapore’s DTAs is always limited to residents of Singapore and that of the DTA partner. Non-residents of both jurisdictions do not qualify for the treatment provided under the DTA.

- 6.6 In Singapore's context, a Singapore Limited Liability Partnership (“LLP”) or Singapore Limited Partnership (“LP”) is not regarded as a resident of Singapore since they are treated as transparent for tax purposes. Instead, the partners of the LLP or LP would qualify as a tax resident of Singapore if they meet the tax residency criteria under Singapore tax laws. Similarly, a trust in Singapore would not have a residency status in Singapore. Instead, the trustee of the trust, which is the person liable to tax for the income of the trust, would qualify as a tax resident of Singapore if it meets the tax residency criteria under Singapore tax laws.

Taxes Covered

- 6.7 This article states that the provisions of the DTA shall apply to taxes on income and capital. In Singapore's context, it is the income tax. Other taxes like GST, customs and excise duties are outside the scope of Singapore's DTAs.
- 6.8 This article also provides that any identical or substantially similar taxes that are imposed by either contracting jurisdiction after the signature of the DTA may also be covered by the DTA. If you encounter any foreign tax that is identical or similar to the taxes covered by the DTA but is not stated in the DTA, you may write to us for clarification.

General Definitions

- 6.9 Various terms commonly used in the DTA are defined in this article. If a term is not defined in the DTA, it would normally assume, unless the context otherwise requires, the meaning that it has at that time under the domestic tax laws of the jurisdiction for the purposes of the taxes covered by the DTA.

Resident

- 6.10 This article defines the residents of each contracting partner who will be entitled to the DTA benefits. A person is a resident of a jurisdiction if he is liable to tax under the domestic tax law by reason of his domicile, residence, place of management or any other criterion of a similar nature. In Singapore's context, a resident of Singapore is defined in Section 2 of the Income Tax Act. Please refer to the IRAS website (www.iras.gov.sg) for the eligibility criteria for tax residency in Singapore and the procedures for requesting a certificate of residence.
- 6.11 When a person is a resident of both contracting jurisdictions based on the respective domestic rules, the DTA provides the “tie-breaker” rules for determining the tax residency of the person for the purpose of the DTA.

6.12 In the case of individuals, the rules to be applied, in order of priority, are:

- a) In which jurisdiction does the individual have a permanent home available to him;
- b) To which jurisdiction are the individual's personal and economic relations closer;
- c) In which jurisdiction does the individual have a habitual abode; and
- d) Of which jurisdiction is the individual a national.

If the above rules fail to determine the tax residency of the individual, the DTA will generally provide that the competent authorities¹ will settle the question by mutual agreement.

6.13 In the case of non-individuals, the person is deemed to be a resident only of the jurisdiction in which its place of effective management is situated. For an entity, the place of effective management is the place where the key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made. Generally, this would be identical to the test for residence for companies under the Income Tax Act, which is based on central management and control. In some of Singapore's DTAs, an additional sentence has been included to allow the competent authorities to discuss the issue of tax residency if the place of effective management of the person cannot be determined.

Permanent Establishment

6.14 A permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on, and normally includes a place of management, a branch, an office, a factory, a workshop and a place of extraction of natural resources, etc.

6.15 The terms of the DTA may also provide that the existence of a permanent establishment will be determined by the existence or extent of certain specified activities in the State where the activities are carried out. Such activities include:

- A building site or a construction, assembly or installation project that lasts more than a specified period;
- Supervisory activities connected with a building site or a construction, assembly or installation project that lasts more than a specified period;
- Services (including consultancy services) furnished by an enterprise through its employees that continue for more than a specified period;
- The presence of a dependent agent (i.e. not an agent of independent status) who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of an enterprise.

¹ A competent authority is a person who has been appointed to perform a designated function for the purpose of the DTA.

- 6.16 Some activities by themselves are not regarded as creating a permanent establishment, for example the use of facilities solely for the purpose of storage, display or delivery of goods. These specific exclusions from the concept of a permanent establishment are listed in the Permanent Establishment article of a DTA. In particular, a fixed place of business for the purpose of carrying on an activity (or a combination of activities) of a preparatory or auxiliary character (in relation to the business of the enterprise) is deemed not to be a permanent establishment.
- 6.17 The concept of a permanent establishment is used mainly to determine whether there exists in a State a sufficient presence or nexus so as to provide the basis for the taxation, of the business profits of a non-resident enterprise, who is a resident of the Residence State in the State where the activities are carried out. If the non-resident enterprise has a permanent establishment in that State, business profits of the enterprise that are attributable to the permanent establishment would be taxable in that State. The remaining business profits of the enterprise that are not attributable to the permanent establishment would be taxable only in the Residence State.

Income from Immovable Property

- 6.18 Income from immovable property, such as rental income from real estate, is usually taxed in both the State where the property is situated and the Residence State of the recipient. In such circumstance, the Residence State will provide relief for the tax paid in the State where the property is situated. The term "immovable property" is defined in this article and it generally refers to the domestic law meaning for immovable property.

Business Profits

- 6.19 If an enterprise of a Residence State carries on business in a Source State, the profits derived from the business will not be subject to tax in the Source State unless the business is carried on through a permanent establishment in the Source State. If the business is carried on through a permanent establishment situated in the Source State, the Source State has the right to tax all profits attributable to the permanent establishment as if it were an independent enterprise (i.e. profits are to be calculated on an arm's length basis). In arriving at the taxable profit, the enterprise is allowed to deduct expenses which are reasonably attributable to the permanent establishment, subject to the relevant deduction rules in the Source State.

- 6.20 In some of Singapore's older DTAs, the term "profits of an enterprise" is defined to exclude income from management activities and/ or personal services. This would mean that the Business Profits article would not apply to such income as the Business Profits article in these DTAs applies to "profits of an enterprise". Such income would therefore have to be considered under the other provisions in the DTA². For example, in the case of the Singapore-Pakistan DTA, the taxation of income from such services would be considered under Article 13 (Fees for technical services), Article 15 (Personal services) or Article 22 (Other income) of the DTA.

Shipping and Air Transport

- 6.21 This article generally provides for either full or partial exemption of tax in the State where the airline or shipping profits are derived by an enterprise of the Residence State. Such exemption or reduced taxation is applicable to profits derived from the operation of aircraft or ships in international traffic (which may include income from specified activities or sources connected with the operation of aircraft or ships). Hence, this article generally applies to operators of international transport that are residents of either contracting jurisdiction.
- 6.22 Singapore takes the position that this article does not apply to the income derived from activities which are ancillary to the operation of international transport, unless it is specifically covered by this article in the DTA. For example, income derived by enterprises from the leasing of aircrafts or ships on a bareboat basis do not fall within the scope of this article unless it is specifically covered by the provisions of the DTA. On the other hand, income derived from the leasing of aircraft or ships fully equipped, crewed and supplied is covered by this article.

² Such language can be found in Singapore's DTAs with Australia, Pakistan, Sweden and Taiwan. In the case of the Singapore-Australia DTA, the competent authorities of Singapore and Australia have reached a mutual agreement on 1 May 2018 to apply the relevant DTA provisions in the following manner from that date:

- (i) The exclusion from "profits of a Singapore enterprise" or "profits of an Australian enterprise" under Article 2(1)(k)(iii) only applies to income covered by Article 11;
- (ii) In the case of an individual deriving income from providing personal (including professional) services, whether those services are performed by that individual or his employees, Article 11(1) would be the applicable article and consequently, a Contracting State would have the right to tax the income if the services are performed in that State;
- (iii) In the case of a non-individual (e.g. companies) deriving income from the provision of services through employees or other personnel engaged by the non-individual, the service income would be considered as profits of an enterprise and Articles 4 and 5 would be the applicable articles. Consequently, a Contracting State would have the right to tax the service income only if the provision of services constitutes a permanent establishment in that State under the provisions of Article 4; and
- (iv) Article 12(1) would apply to remuneration derived by an employee.

Associated Enterprises

- 6.23 Enterprises of the two jurisdictions that are related parties are required to deal with each other on an arm's length basis. Please refer to IRAS' e-Tax Guide entitled "Transfer Pricing Guidelines" for more details.
- 6.24 In the event that one jurisdiction makes a transfer pricing adjustment³ in relation to a transaction or arrangement involving an enterprise of the other jurisdiction, the other jurisdiction is obliged to give a corresponding adjustment for the same transaction or arrangement in relation to its enterprise if it agrees that the transfer pricing adjustment is justified on an arm's length basis. The competent authorities of both jurisdictions may consult together with a view to resolving the economic double taxation which may arise as a result of the transfer pricing adjustment.
- 6.25 Notwithstanding the absence of the provision for making corresponding adjustments⁴ in some of Singapore's DTAs, IRAS will accept a request for competent authority assistance under the MAP article in the DTA (please refer to Section 7 below for more information on MAP). However, such a request will be subject to acceptance by the relevant foreign competent authority.

Dividends

- 6.26 Generally, from a DTA perspective, the source of dividends is in the jurisdiction where the company paying the dividends is resident. Typically, the Source State would agree under the DTA to limit the taxation of dividends arising from its jurisdiction. Any taxation by the Source State is typically levied through a withholding tax.
- 6.27 In some DTAs, dividends may be exempt from tax in the Source State if they are paid to specified parties or paid under certain specified arrangements. Please refer to the specific DTAs for details.

Interest

- 6.28 Generally, from a DTA perspective, the source of interest is in the jurisdiction where the person paying the interest is resident (or where a permanent establishment or fixed base bearing such interest exists). Typically, the Source State would agree under the DTA to limit taxation of interest arising from its jurisdiction. Any taxation by the Source State is typically levied through a withholding tax.

³ When related parties do not transact with each other at arm's length prices, tax authorities may, for tax purposes, substitute the price of the transaction with one that would have been charged if the parties were unrelated. The adjustment to arrive at that price is known as a transfer pricing adjustment.

⁴ The provision which is equivalent to paragraph 2 of Article 9 of the OECD MTC.

- 6.29 The kind of payments that are regarded as interest for the purpose of this article would be defined in the DTA. In particular, payments under derivative contracts are not generally regarded as interest. Such payments could be considered under the “Business Profits” or “Other Income” articles, depending on the facts and circumstances of the case.
- 6.30 In some DTAs, interest may be exempt from tax in the Source State if it is paid to a bank or a financial institution of the Residence State or other specified parties, or if it is paid under certain specified arrangements. Please refer to the specific DTAs for details.

Royalties

- 6.31 Generally, from a DTA perspective, the source of royalties is in the jurisdiction where the person paying the royalties is resident (or where a permanent establishment or fixed base bearing such royalties exists). Typically, the Source State would agree under the DTA to limit taxation of royalties arising from its jurisdiction. Any taxation by the Source State is typically levied through a withholding tax.
- 6.32 The kind of payments that are regarded as royalties for the purpose of this article would be defined in the DTA. In particular, in some DTAs, payments for the use of, or the right to use, industrial, commercial or scientific equipment (generally referred to as equipment leasing income) would be regarded as royalties for the purpose of the DTA.
- 6.33 In some DTAs, royalties may be exempt from tax in the Source State if they are paid to specified parties, or if they are paid under certain specified arrangements. Please refer to the specific DTAs for details.

Fees for Technical Services

- 6.34 Some of Singapore’s DTAs include a provision allowing source taxation of fees earned from providing technical services. Such taxation would typically be in the form of a withholding tax. This provision would typically limit the withholding tax rate in the Source State to a specified tax rate. Typically, the withholding tax is not applicable if the technical services are provided through a permanent establishment in the Source State. Technical services covered by this provision and the scope of taxation would be defined in the DTA. Please refer to the specific DTAs for details. In general, Singapore would not propose to have such provisions in our DTAs since a withholding tax on the gross amount of fees paid does not take into account the costs in providing the services and is likely to lead to excessive taxation. Nonetheless, where a DTA provides for such withholding tax, businesses should consider the cost of such taxes when doing business in the relevant jurisdiction.

Capital Gains

- 6.35 This article deals with gains from the disposal or sale of capital assets such as immovable properties and shares. The right to tax gains arising from the sale of immovable property and gains from sale of shares are defined in this article. Generally, capital gains arising from immovable property and business property may be taxed in the State where the property is situated, whereas capital gains arising from shares shall be taxed only in the Residence State (this may be subject to certain exceptions).

Independent Personal Services

- 6.36 Generally, income of an individual from the provision of professional services or activities of an independent character may be taxed in the Source State if the services are provided through a fixed base in the Source State (the concept of a fixed base is similar to that of a permanent establishment) or are provided in the Source State for more than a specified period (this period is typically aligned to the corresponding period in the Permanent Establishment article for services rendered by enterprises). Examples of individuals rendering professional services include physicians, lawyers, engineers, architects, dentists and accountants.

Dependent Personal Services

- 6.37 Generally, income of an individual from employment (other than pensions, director's fees and remuneration for government services) may be taxed in the Source State if the employment is exercised in the Source State. However, where the employment is exercised in the Source State for less than a specified period (typically 183 days in any 12-month period), the employer is not a resident of the Source State, and the income is not paid or borne by a permanent establishment or fixed base of the employer in the Source State, then the income shall only be taxable in the Residence State of the individual.

Pensions

- 6.38 In respect of pensions and other similar remuneration, this article usually provides for either:
- a) The Residence State to have sole taxing right; or
 - b) Both the Residence State and the Source State to have the right to tax the income.
- 6.39 Some of Singapore's DTAs provide that pensions and other similar remuneration paid under the social security system of a contracting jurisdiction shall be taxable only in the jurisdiction in which the pensions arose.

Government Service

- 6.40 This article provides that government employees who are working in a foreign jurisdiction would enjoy tax exemption in that jurisdiction on their remuneration paid by their government, subject to them meeting specified conditions. If the employee is a resident of the foreign jurisdiction and (i) is a national of that foreign jurisdiction; or (ii) did not become a resident of that foreign jurisdiction solely for the purpose of rendering the government duties, then his remuneration shall be taxable only in the foreign jurisdiction. The tax exemption in the foreign jurisdiction is not applicable if the employer, while being government-owned, is carrying on a business. In such a case, the provisions of the Dependent Personal Services article would apply accordingly.
- 6.41 Normally, there are also separate articles in a DTA specifying the allocation of taxation rights for director’s fees, income derived by entertainers and sportspersons and income derived by students and business apprentices.

Other Income/ Income not Expressly Mentioned

- 6.42 This article covers items or sources of income not dealt with in the other articles of a DTA. The provisions of this article in Singapore’s DTAs may provide for Source State taxation or Residence State taxation with certain exceptions (please refer to the specific DTAs for details). Examples of such exceptions include trust distributions from Real Estate Investment Trusts (“REIT”) and withdrawals from Supplementary Retirement Scheme (“SRS”) accounts (unless they have been specifically covered under another article in the DTA⁵).

Limitation of Relief (“LOR”)

- 6.43 Some of Singapore’s DTAs (mostly older DTAs or renegotiated DTAs based on an older DTA) contain an LOR provision which limits the benefits of the DTA for a Singapore resident to foreign-sourced income that is received in Singapore. As Singapore’s tax policies have long changed, we consider such provisions to be obsolete and counter-productive for cross-border investment. The effect of such provisions is to require Singapore investors to repatriate profits and returns from their foreign investments, regardless of the economic logic in doing so. We consider these effects to be undesirable for both Singapore and the DTA partner (being the investment destination) and will continue to ask for the removal of such provisions whenever possible.

⁵ For example, REIT distributions are specifically covered under the dividends article in the Singapore-Spain DTA, Singapore-UK DTA and Singapore-Russia DTA (Protocol signed on 17 Nov 2015) while the dividends article in the Singapore-Germany DTA covers distributions from an investment trust, which would cover a REIT.

- 6.44 In DTAs where an LOR provision exists, it should be noted that the provision only applies to income that is regarded as foreign-sourced under Singapore law. Under the Income Tax Act, income derived from a business carried on in Singapore is regarded as Singapore-sourced, even if the income may be paid by a person outside Singapore or is paid in respect of work done outside Singapore. The taxation of such business income in Singapore is not dependent on the receipt of the income in Singapore and the LOR provision does not apply to such income.

Elimination of Double Taxation

- 6.45 Within the framework of co-operation under a DTA, the Residence State would be obliged to relieve any double taxation on its residents resulting from taxation imposed by the Source State in accordance with the DTA. Usually, a Residence State would do so under its domestic law and may either give tax credits to its residents for the foreign tax paid, or exempt the foreign-sourced income from tax.
- 6.46 Under Singapore’s DTAs, Singapore is typically obliged to relieve double taxation by providing tax credits (including underlying tax credits⁶ in the case of foreign-sourced dividends) for foreign tax paid by taxpayers in the other DTA jurisdiction in accordance with the provisions of the relevant DTA. Tax credits to relieve double taxation will be provided to Singapore tax residents⁷ regardless of whether the income taxed in Singapore is treated as Singapore-sourced or foreign-sourced income under the Income Tax Act, as long as the foreign tax is paid in accordance with the provisions of the DTA. As an alternative under the Income Tax Act, taxpayers may also claim foreign-sourced income exemption (and avoid the need to claim any tax credits in respect of the foreign-sourced income), subject to meeting the conditions for exemption under the Income Tax Act.

Mutual Agreement Procedure

- 6.47 This is described in greater detail in Section 7 below.

Exchange of Information

- 6.48 This article allows treaty partners to exchange information for tax purposes and the exchange is generally not limited to the taxes or persons covered by the DTA. Please refer to IRAS’ website (www.iras.gov.sg) for more details on this matter.

⁶ Underlying tax credit is given in respect of the tax paid by the company paying out the dividend on its profits out of which the dividend is paid to its shareholders.

⁷ Non-residents with permanent establishments (e.g. branches) in Singapore are not entitled to tax credits since they are not residents of Singapore. The taxpayer may be able to claim tax credits in the jurisdiction of which it is a tax resident.

Entitlement to Treaty Benefits

- 6.49 This provision includes a Principal Purpose Test ("PPT") which seeks to deny benefits provided under the DTA in abusive cases where it is reasonable to conclude that the principal purpose or one of the principal purposes of the arrangement or transaction in question is to obtain the benefits under the DTA in a manner that would not be in accordance with the object and purpose of the relevant DTA provisions.
- 6.50 The principal purpose of an arrangement or transaction is a question of fact and has to be determined by carrying out an objective analysis of the aims and objects of all persons involved in the arrangement or transaction, taking into account all facts and circumstances surrounding the arrangement or transaction. Based on such objective analysis, it must be reasonable to conclude that one of the principal purposes was to obtain the benefits of the DTA in an improper and abusive manner before the PPT may be invoked to deny the DTA benefits. The principal purposes of an arrangement or transaction would not be determined just by reviewing the effects of the arrangement or transaction but should also take into account all relevant facts and circumstances concerning the arrangement or transaction. Where the arrangement is connected with a core commercial activity and its form is not contrived, it would not be reasonable to conclude that one of the principal purposes of the arrangement was to obtain a DTA benefit.

7 Mutual Agreement Procedure and Arbitration

- 7.1 Where two or more tax authorities take different positions in applying the provisions of a DTA, it could result in taxation not in accordance with the provisions of the DTA for the taxpayer.
- 7.2 When a Singapore tax resident taxpayer is of the assessment that the taxation imposed by the tax authorities is not in accordance with the provisions of the relevant DTA, it can choose to resolve the issue through:
- Seeking legal remedies in the jurisdiction in which tax was imposed in a manner that is not in accordance with the applicable DTA; and/ or
 - Requesting IRAS to resolve the issue through the Mutual Agreement Procedure ("MAP").

What is MAP?

- 7.3 MAP is a dispute resolution facility provided under the MAP article in Singapore's DTAs⁸. It is a facility through which IRAS and the relevant foreign competent authority resolve disputes regarding the application of the DTA. Usually, a MAP is entered into between two competent authorities but it is possible for IRAS to enter into a multilateral MAP involving three or more competent authorities. MAP provides an amicable way for IRAS and the relevant foreign competent authority to agree on the application of the DTA with a view to resolve taxation that is not in accordance with the provisions of the DTA. Where the agreed outcome between IRAS and the relevant foreign competent authority is accepted by the relevant taxpayer(s), it is binding on the relevant parties.
- 7.4 Mandatory binding arbitration provisions are included in some of Singapore's DTAs⁹, following bilateral discussions with our DTA partners or where the DTA is modified by the MLI to include the mandatory binding arbitration provisions in Part VI of the MLI. Please refer to Section 5 above for more information on the MLI.
- 7.5 The following paragraphs set out the process, expectations and compliance rules relating to the application for IRAS' assistance under the MAP article in respect of non-transfer pricing issues. For issues relating to transfer pricing, please refer to the IRAS e-Tax Guide entitled "Transfer Pricing Guidelines".

⁸ Details of Singapore's DTAs and MAP relating to DTA matters are available at www.iras.gov.sg.

⁹ Details of Singapore's DTAs and mandatory binding arbitration provisions are available at www.iras.gov.sg.

Who can apply for MAP?

7.6 MAP is available to:

- Taxpayers that are Singapore tax residents; and
- Taxpayers who are not Singapore tax residents but have a branch in Singapore. However, such applications are to be made by the taxpayers in the jurisdiction in which they are tax residents and with which Singapore has a DTA.

Example

A foreign company can apply to the competent authority of the jurisdiction in which it is a tax resident for a MAP for its branch operating in Singapore. The branch has to alert IRAS of the application.

In the case of an overseas branch of a Singapore tax resident company, that Singapore company can apply to IRAS for a MAP concerning its overseas branch's tax affairs in a DTA jurisdiction.

When to apply for MAP?

- 7.7 Taxpayers should only initiate a MAP application when taxation not in accordance with the provisions of the DTA has occurred or is almost certain. Double taxation should not be just a possibility, such as the mere occurrence of audit or examinations. Taxpayers may seek resolution on issues that recur over multiple tax years, subject to the time limits provided in the relevant DTA.
- 7.8 MAP should be initiated within the time limit specified (e.g. three years) in the MAP article of the relevant DTA. Failure to do so may result in the competent authorities rejecting the MAP request. Depending on the relevant provision in the MAP article, the time limit is determined with reference to the date of the notice of assessment issued to the taxpayer or the date of the tax authority's official request for withholding tax payment (in the absence of a notice of assessment).

Understanding expectations and obligations

- 7.9 Upon accepting the MAP application, IRAS will engage the relevant foreign competent authorities to conclude the MAP. IRAS will apply its best efforts to bring every case to closure in a prompt, efficient and effective manner. While IRAS endeavours to achieve timely resolution of a MAP case, the complexity of issues involved in each case will determine the actual time needed to resolve the case.

7.10 The MAP negotiation is between the competent authorities and so, taxpayers do not participate in or attend as observers at the negotiations unless they are called upon to make any clarification.

7.11 The success of the MAP process depends on co-operation from taxpayers. Taxpayers should therefore:

- Act in good faith throughout the process;
- Comply with all the requirements pertaining to the MAP application process;
- Provide access to all relevant documentation;
- Be forthcoming in providing complete and reliable information and good quality analysis relating to the MAP applications;
- Adhere to all the stipulated timelines when providing any clarification, information and analysis that may be requested by IRAS and the relevant foreign competent authorities;
- Update IRAS on all information that they have provided to or received from the relevant foreign competent authorities on a timely basis; and
- Provide the same set of information to IRAS and the relevant foreign competent authorities.

7.12 The lack of taxpayers' cooperation may result in:

- Their applications being rejected;
- The MAP process being discontinued; or
- No consensus being reached between IRAS and the relevant foreign competent authorities.

In such instances, taxpayers will have to rely on other remedies to eliminate double taxation under the relevant domestic tax law.

7.13 The success of the MAP process also depends on the agreement between IRAS and the relevant foreign competent authorities. Taxpayers should not assume that IRAS would always be able to reach agreement for all MAP cases. There may be valid constraints such as:

- The lack of co-operation from taxpayers, as mentioned above;
- The tax adjustment cannot be varied due to domestic tax law or the adjustment has already been finalised through the domestic tax appeal process or litigation.

- 7.14 Taxpayers must understand that the MAP process can be time-consuming and resource intensive. Therefore, taxpayers should evaluate their own situations and apply for MAP only if:
- The incidence of double taxation is certain or highly probable for the financial years covered by the MAP application;
 - They have a robust basis and sufficient documentation to justify their claim that the provision of the DTA has been incorrectly applied;
 - They have the necessary resources to support the MAP process; and
 - They have evaluated the suitability of a MAP route by conducting an in-depth cost-benefit analysis for their tax situations.
- 7.15 Taxpayers would be able to access MAP even if they have accepted/decided to accept a tax settlement with a foreign tax authority. That said, taxpayers must also recognise that it could be challenging for IRAS and the foreign competent authority to negotiate and come to an agreement on a position that deviates from the tax settlement outcome that was already accepted by the taxpayer(s) involved.
- 7.16 MAP does not deprive taxpayers of other remedies available under their respective domestic tax law. Taxpayers should inform IRAS and the relevant foreign competent authority if the matter is adjudicated through any legal or judicial proceedings while the MAP process is still ongoing. The competent authorities will discuss and decide if the MAP process should continue, cease or be suspended. Where the matter has been subjected to litigation and determination by the Singapore tribunals and courts, IRAS is unlikely to depart from the determination of the Singapore tribunals and courts.
- 7.17 Taxpayers are not obliged to accept the outcome agreed between the competent authorities. They may withdraw the application, terminate the process or reject the agreed outcome. However, as the MAP process may demand substantial investment in time and resources from the taxpayers and competent authorities, taxpayers should not terminate the process unless there are valid reasons for doing so.

Discontinuation of MAP

- 7.18 The lack of co-operation during any part of the MAP process may result in IRAS discontinuing the MAP process.

7.19 The table below lists some examples where IRAS may discontinue the MAP:

No.	Examples	When IRAS will discontinue the MAP process
1	<u>Insufficient support during MAP process</u> IRAS and the taxpayer agreed on the specified timeline by which the taxpayer is to submit the information required by IRAS. If the taxpayer fails to provide the information by the timeline and it remains outstanding for an extended period of time, IRAS will consider that the taxpayer has withdrawn from the MAP process.	When taxpayer fails to provide the information within 3 months after the agreed timeline.
2	<u>Failure to provide complete information</u> The taxpayer should provide any relevant and material information that may affect the outcome of the MAP to IRAS on a timely basis. If the taxpayer fails to provide any material information that could have affected the outcome of the MAP, IRAS will consider discontinuing the MAP process.	When it is found that the taxpayer has not provided such material information.

7.20 Where a MAP process has been discontinued under any of the above situations or has been withdrawn by the taxpayer, and the taxpayer subsequently wishes to resume the MAP process, IRAS will consider the request as if it is a new application. IRAS will assess the merits of the request based on its prior experience.

7.21 IRAS may revoke or cancel a MAP agreement, even retroactively, in the case of fraud or misrepresentation of information during a MAP process, or when a taxpayer fails to comply with the terms and conditions of the MAP agreement.

7.22 Before IRAS discontinues a MAP process or cancels or revokes a MAP agreement, it will notify the relevant foreign competent authorities of its intention and the reasons for such action.

How to apply for MAP?

- 7.23 If taxpayers intend to apply for MAP, they should observe the following four-step MAP process:

Four-step MAP process:

		Step 3	Step 4
Step 1	Step 2	Review & negotiation	Implementation
MAP application	Evaluation		
Taxpayer submits MAP application to IRAS within the time limit specified in the MAP article of the DTA.	IRAS evaluates taxpayer's MAP application and may contact taxpayer for more information. Where the application is accepted, an acceptance letter will be issued within one month from the date of receipt of all the required information.	IRAS informs taxpayer of the MAP outcome within one month from reaching agreement by the competent authorities.	Taxpayer and IRAS implements the MAP outcome.

Step 1 – MAP application

- 7.24 Once the MAP route is decided on, the taxpayer should proceed to submit its application. There is no prescribed application form to be completed. Any MAP application should be made in a letter in soft copy only and include all the details and documentation based on the guidance provided in Annex A.

- 7.25 The MAP application letter should be addressed to:

The Competent Authority
International Tax and Relations Division
Inland Revenue Authority of Singapore
55 Newton Road
Revenue House
Singapore 307987

The MAP application can be submitted electronically to the email addresses provided in the list of Singapore's competent authorities available on IRAS' website (www.iras.gov.sg).

- 7.26 IRAS does not impose a fee for MAP application.

Step 2 – Evaluation

- 7.27 IRAS will review and evaluate the taxpayer's MAP application. IRAS may seek clarification or further information from the taxpayer, hold discussions with the taxpayer or conduct site visits to the taxpayer's premises which include interviewing the taxpayer's key personnel.
- 7.28 IRAS will issue letters of acceptance to the taxpayer and the relevant foreign competent authority within one month from the date of receipt of all required information. If IRAS rejects the application, it will notify the taxpayer and the relevant foreign competent authority in writing with reasons.

Step 3 – Review and negotiation

- 7.29 Upon acceptance of the MAP application, IRAS will proceed to discuss the MAP case with the foreign competent authority with a view to resolve any taxation which is not in accordance with the provisions of the DTA.
- 7.30 IRAS will regularly update the taxpayer on the progress and the outcome of the competent authorities' negotiations. In general, IRAS aims to resolve a MAP case within 24 months from receiving the taxpayer's complete application.

Step 4 – Implementation

- 7.31 When an outcome is reached between IRAS and the relevant foreign competent authority, IRAS will write to inform the taxpayer within one month of reaching agreement and advise the taxpayer on the next course of action. The taxpayer will have to decide whether the agreed outcome is acceptable.

- 7.32 Unless the taxpayer rejects the outcome, IRAS and the relevant foreign competent authority will proceed to exchange letters to conclude the MAP and to implement the agreement in a timely manner in accordance with domestic procedures.
- 7.33 If any interest or penalties have been imposed in a jurisdiction in connection with the taxation imposed that is the subject of the MAP, the MAP agreement may address whether any refund of such interest or penalties should appropriately be made.

Other compliance matters

- 7.34 Taxpayers who have appointed tax agents or other representatives to act on their behalf on matters relating to their MAP application are required to provide IRAS with a letter of authorisation (“LOA”). The LOA is to enable IRAS to correspond and discuss with the appointed tax agents and representatives on the matters relating to the application. A sample of an LOA is in Annex B.
- 7.35 IRAS does not accept tax agents’ requests to initiate MAP discussion for clients who wish to preserve anonymity. Taxpayers should therefore engage IRAS without masking their identity if they are serious about applying for MAP.
- 7.36 All information obtained during the MAP process is protected by the confidentiality provisions in the Income Tax Act and the relevant DTA.
- 7.37 IRAS is not precluded from conducting an audit on the taxpayer if there is non-compliance with Singapore tax law.

What is Arbitration?

- 7.38 Arbitration clauses in the DTA provide for addressing issues which remained unresolved by the competent authorities, where these have been submitted to an arbitration panel for resolution after a specified time period (generally two or three years from the “start date”¹⁰ of the MAP case or a different time period as agreed between the competent authorities and communicated to the taxpayer before the specified time period is reached), if the taxpayer requests in writing to do so.

¹⁰ For MAP cases that are eligible for arbitration, taxpayers will be notified of the “start date” during the initial stage of their MAP requests.

- 7.39 The arbitration panel is required to render a decision within a specified time period. Typically, Singapore's arbitration clauses provide for the panel's decision to be final and binding on the competent authorities, unless the taxpayer chooses to disagree with the decision, or the taxpayer chooses to pursue other domestic recourse in Singapore or in the foreign jurisdiction to resolve the dispute. In addition, in some of our DTAs, there is a clause which provides that the arbitration panel's decision is not binding on the competent authorities and shall not be implemented if the competent authorities agree on a different resolution of all unresolved issues within three calendar months after the arbitration panel's decision has been delivered to them.
- 7.40 The following paragraphs outline the application process and rules relating to arbitration.

Who can apply for Arbitration?

7.41 Taxpayers may submit their request in writing for a MAP case to be submitted for arbitration if all the following criteria are met:

- The mandatory binding arbitration provisions have taken effect with respect to the MAP case¹¹.
- The competent authorities are unable to reach an agreement to resolve all the issues with respect to the MAP case within the time period specified in the DTA and there was no prior agreement between the competent authorities to extend the time period for the specific MAP case. Where the competent authorities have reached an agreement on a different time period, the taxpayer will be informed accordingly¹².
- The unresolved issues are not excluded from the arbitration provisions, by virtue of the reservations made by Singapore or the DTA partner under Article 28(2)(a) of the MLI¹³, or the reservations specified in the DTA.
- A decision on the unresolved issues arising from the MAP case has not already been rendered by a court or administrative tribunal of Singapore or the DTA partner¹⁴.

¹¹ The mandatory binding arbitration provisions shall have effect with respect to the MAP case presented to the competent authority on or after the latest date on which the MLI enters into force for Singapore and its DTA partner. With respect to the MAP case presented to the competent authority prior to the latest date on which the MLI enters into force for Singapore and its DTA partner, Singapore has reserved the right for the case to be eligible for arbitration only to the extent that the two competent authorities agree that the case can be submitted for arbitration.

¹² The time period may also be extended under Articles 19(2) and (3) of the MLI.

¹³ Singapore has made the following reservations under Article 28(2)(a) of the MLI to exclude the following cases from the scope of arbitration:

- a) any case involving the application of Singapore's general anti-avoidance rules contained in Section 33 of the Income Tax Act, case law or juridical doctrines, and any subsequent provisions that replace, amend or update these anti-avoidance rules; and
- b) where Singapore's DTA partner has made a reservation with reference to its domestic law provisions, any case that involves the application of Singapore's domestic law, or any subsequent provisions which replace, amend or update those provisions, which are analogous to those domestic law provisions of the DTA partner. The competent authority of Singapore will consult with the competent authority of its DTA partner in order to specify any such analogous provisions in Singapore's domestic law in the agreement concluded between the two competent authorities (see Competent Authority Agreement on Arbitration).

The reservations made by Singapore or its DTA partner under Article 28(2)(a) of the MLI, or the reservations specified in the DTA, will also be detailed in the relevant Competent Authority Agreement on Arbitration.

¹⁴ If such a decision is subsequently rendered before the arbitration panel delivers its decision, the arbitration process will be terminated.

How to apply for Arbitration?

- 7.42 Taxpayers must submit their request in writing to the competent authority of the contracting jurisdiction of residence. The request must contain sufficient information to identify the MAP case. Please refer to the relevant Competent Authority Agreement (“CAA”) on Arbitration for more information.
- 7.43 Any request for arbitration to the competent authority of Singapore should be addressed to:

The Competent Authority
International Tax and Relations Division
Inland Revenue Authority of Singapore
55 Newton Road
Revenue House
Singapore 307987

The request for arbitration can be submitted electronically to the email addresses provided in the list of Singapore’s competent authorities available on IRAS’ website (www.iras.gov.sg).

Arbitration Process

- 7.44 The CAA will contain information on the arbitration process. There are two types of arbitration processes, namely “final offer” and “independent opinion”.
- 7.45 Singapore has adopted the “final offer” arbitration process under the MLI, which is the default arbitration process. Hence, DTAs which contain arbitration provisions would generally follow the “final offer” arbitration process.
- 7.46 The two types of arbitration processes are briefly explained below:
- Final offer – The competent authorities of Singapore and its DTA partner will each submit to the arbitration panel a proposed resolution. The arbitration panel will select one of the proposed resolutions as its final decision.
 - Independent opinion – The arbitration panel will consider the information submitted by the competent authorities and the relevant sources of law, to arrive at its final decision.

CAA on Arbitration

7.47 The competent authorities of Singapore and its DTA partner are required to conclude a CAA to settle the mode of application of the mandatory binding arbitration provisions. Broadly, the CAA will contain the following information:

- how the request for submission of a case to arbitration is to be made;
- minimum information necessary to undertake substantive consideration of the case;
- appointment of arbitrators;
- arbitration process;
- communication of information and confidentiality;
- operating procedures;
- costs;
- failure to communicate the decision within the required period;
- final decision;
- implementing the arbitration decision;
- entry into effect of the mandatory binding arbitration provisions; and
- cases that are excluded from the scope of arbitration.

7.48 The concluded CAAs will be published as an Annex to the DTAs on IRAS’ website (www.iras.gov.sg).

8 Notes on Specific DTAs

8.1 In the course of MAP discussions, IRAS may agree on particular interpretations or applications of DTA provisions with foreign competent authorities. In order to provide greater transparency and clarity to taxpayers, IRAS will assess whether it is appropriate to provide guidance arising from such discussions in this section in future editions of this Guide.

9 Contact Information

9.1 If you have any enquiries or need clarification on this Guide, please call IRAS at 1800 356 8622 (for companies) or 1800 356 8300 (for individuals)

10 Updates and amendments

	Date of amendment	Amendments made
1	15 June 2018	Updated Section 6 on common DTA provisions to include a footnote 3 on the mutual agreement reached on 1 May 2018 between the competent authorities of Singapore and Australia on the interpretation of Articles 2(1)(k)(iii), 4, 5, 11 and 12 of the Singapore-Australia DTA and other minor editorial changes throughout the guide.
2	23 October 2021	Updated Section 7 to provide guidance on arbitration provisions found in Singapore's DTAs. Updated footnote 2 to remove the reference to the DTA with South Korea and editorial changes made throughout the guide for greater clarity.

Annex A: Guide on minimum information required when filing a MAP application

1. Taxpayer's name, address, tax identification number, contact details and main business activities;
2. Letter of authorisation (see Annex B) stating the engagement of tax agents or other representatives to act for the taxpayer (where applicable);
3. The specific DTA including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied;
4. The relevant facts of the case including any documentation to support these facts, the taxation years or period involved and the amounts involved;
5. Analysis of the issue(s) involved, including taxpayer's interpretation of the application of the specific DTA provision(s), to support the claim that the provision of the specific DTA is not correctly applied, together with relevant documentation (e.g. copies of tax assessments, audits conducted by the tax authorities leading to the incorrect application of the DTA provision);
6. Whether the taxpayer has pursued domestic remedies such as tax tribunals or courts in the foreign jurisdiction. If yes, a copy of the decision is to be provided;
7. Whether similar issue(s) has been previously dealt with or is currently being considered in an advance ruling, advance pricing arrangement, settlement arrangement or similar proceedings or by any tax tribunal or court. If yes, a copy of these rulings or decisions should be provided where relevant and available;
8. How the taxpayer has reflected the issue(s) in its Singapore income tax return (e.g. income not brought to tax, foreign tax credit claimed); and
9. A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the CA in a timely manner.

Annex B: Sample of letter of authorisation

Note: The letter is to be printed on the taxpayer's letterhead

[Date]

International Tax and Relations Division
Inland Revenue Authority of Singapore
55 Newton Road
Singapore 307987
Attention: [IRAS Case Officer, where available]

Dear Sir/ Madam,

**LETTER OF AUTHORITY – APPLICATION FOR MUTUAL AGREEMENT
PROCEDURE BY [NAME OF TAXPAYER]**

This is to advise that we have appointed *[Tax agent/ representative (Name and contact information)] to represent us on all matters relating to the above application. We authorise IRAS to communicate with them via letters, phone calls, electronic means (e.g. emails), etc. on all matters relating to the above application.

Yours faithfully,

[Name of signatory]
[Designation of signatory]
[Name of taxpayer]

* Please delete accordingly.