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The International Comparative Legal Guide to:

Private Client 2019

8th Edition

A practical cross-border insight into private client work

Published by Global Legal Group with contributions from:

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Toni Hayward

Senior Editors
Caroline Collingwood
Rachel Williams

CEO
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
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Printed by
Stephens & George
Print Group
January 2019

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ISBN 978-1-912509-52-2
ISSN 2048-6863

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FOREWORD

Welcome to the 2019 edition of The International Comparative Legal Guide to Private Client which I am delighted to introduce this year. The Guide covers a comprehensive and diverse range of articles that would pique the interest of any domestic or international practice client adviser. The publication is designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

The Guide is divided into two sections and the first section contains seven general chapters. Each topical chapter is written by a different firm which will be most helpful for advisers with international clients.

The second section contains insightful country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 35 jurisdictions.

As an overview, the Guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work. The articles are provided by some of the most authoritative and respected advisers in the private client industry and I trust that you will find them just as valuable.

George Hodgson, CEO, STEP (Society of Trust & Estate Practitioners)

Singapore

WongPartnership LLP

Sim Bock Eng



Tan Shao Tong



1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Singapore taxes income which is accrued in or derived from Singapore, or is received in Singapore from outside Singapore. Tax residents and non-tax residents are subject to income tax on income falling within the foregoing definition, but potentially at different rates as different exemptions/relief may apply. Domicile or habitual residence is less relevant, save to the extent that only Singapore tax residents would be entitled to relief from double taxation under Singapore's double tax treaties with other jurisdictions.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

See question 1.1 above. There is no definition of domicile or habitual residence in the Income Tax Act Cap. 134.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

See question 1.1 above.

1.4 If residence is relevant, how is it defined for taxation purposes?

"Resident in Singapore" is defined in section 2 of the Income Tax Act.

In relation to an individual, it means a person who, in the year preceding the year of assessment, resides in Singapore except for such temporary absences therefrom as may be reasonable and not inconsistent with a claim by such person to be resident in Singapore, and includes a person who is physically present or who exercises an employment (other than as a director of a company) in Singapore for 183 days or more during the year preceding the year of assessment.

In relation to a company or body of persons, it means a company or body of persons the control and management of whose business is exercised in Singapore.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

As a general rule, nationality is not relevant to the issue of liability to taxation in Singapore.

1.6 If nationality is relevant, how is it defined for taxation purposes?

This is not applicable.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

None other than those stated in question 1.1 above.

2 General Taxation Regime

2.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

Singapore does not have gift taxes or estate duties.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

There is no capital gains tax in Singapore. Singapore taxes income which is accrued in or derived from Singapore, or is received in Singapore from outside Singapore. Tax resident individuals are subject to income tax at progressive rates capped at 22%, while corporates are subject to income tax at 17%.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

Other than income tax, persons are required to pay property tax in respect of their ownership of Singapore immovable properties as well as stamp duties on documents transferring interests in shares and Singapore immovable properties.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

Goods and services tax of 7% is applicable to the supply of goods and services in Singapore. Customs and excise duties also apply, but only to dutiable goods such as intoxicating liquors, tobacco products, motor vehicles, as well as petroleum products and biodiesel blends.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

While there are no specific anti-avoidance taxation provisions specifically targeted at offshore arrangements, there are general anti-avoidance provisions in the Income Tax Act, Goods and Services Tax Act Cap. 117A and Stamp Duties Act Cap. 312. In addition, transactions between related parties are required to be at arm's length and to meet transfer pricing requirements.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

See question 2.5 above.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

There are no such arrangements.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

Singapore does not have any estate or gift taxes.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Singapore does not have capital gains tax.

There are various tax relief and exemption schemes which an individual or company entering into the Singapore jurisdiction may be able to avail itself. Additionally, it is possible to apply for a tax ruling from the tax authorities to obtain certainty on the tax treatment of transactions. The tax authorities may decline to issue a tax ruling in certain circumstances (where for example, a ruling would require the tax authority to determine a question of fact, or the correctness of the ruling depends on the making of assumptions in respect of a future event or any other matter).

Singapore has more than 80 double tax treaties with other jurisdictions, which reduces the tax burden on many types of cross jurisdictional transactions and entities.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

See question 3.2 above.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

Income from investments are *prima facie* subject to income tax, though there are many exemptions. For example, foreign-sourced income received by tax resident individuals are exempt from tax, provided that such income is not received by the individual through a partnership in Singapore. Interest from debt securities derived by individuals (except where such income is derived through a partnership in Singapore or from the carrying on of a trade, business or profession) is also tax exempt.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Goods and services tax at the rate of 7% is chargeable on the importation of assets into Singapore. Customs and excise duties also apply to dutiable goods such as intoxicating liquors, tobacco products, motor vehicles, as well as petroleum products and biodiesel blends.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

Agreements for the purchase of residential properties are subject to stamp duties in Singapore. The stamp duty rate for residential properties is tiered and capped at 4%, computed on the higher of consideration and the market value of the residential property. In addition, additional buyer's stamp duty of 20% (also computed on the higher of consideration and market value) applies to foreigners buying any residential property. Corporates buying residential property are also subject to additional buyer's stamp duty at the rate of 25% to 30%.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

Singapore taxes income which is accrued in or derived from Singapore or is received in Singapore from outside Singapore. A corporation, whether tax resident or not, can be subject to income tax in Singapore on this basis.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

The corporate tax rate in Singapore is 17%.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

Branches of foreign corporations, like other companies in Singapore, are taxed on income accruing in or derived from Singapore, or received in Singapore from outside Singapore by the branch. A main difference is, however, that a branch is generally regarded as non-tax resident and therefore would not be able to enjoy the benefits of the double tax treaties that Singapore has entered into with other jurisdictions.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Yes, Singapore has more than 80 double tax treaties with other jurisdictions. Singapore does not have capital gains tax.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

Singapore's double tax treaties generally follow the OECD model.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Singapore does not have estate or gift taxes.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

Issues of succession are governed by either the law of the place of the deceased's domicile (the "*lex domicilii*") (in the case of movable property) or the law where the immovable property is situated (the "*lex situs*") (in the case of immovable property). (See *Banque Indosuez v Madam Sumilan Awal also known as Aw Kim Lan and Others* [1998] SGHC 22.)

There is a presumption of survivorship in respect of jointly owned assets, such that until rebutted, the survivor of a jointly owned asset will be considered as the owner of the assets. The court in *Banque Indosuez* was of the view that the entitlement to jointly owned assets is to be governed by the *lex situs* of the asset.

Under Singapore law, a will is formally valid if its execution conforms to the law in force of any of the following: (a) the place where the will was executed; (b) the jurisdiction where the testator was domiciled either at the time of the execution of the will or at his death; (c) the jurisdiction in which the testator was habitually resident either at the time of the execution of the will or at his death; or (d) the jurisdiction in which the testator was a national either at the time of the execution of the will or at his death (Section 5 Wills Act Cap. 352).

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

Singapore private international law rules will apply the *lex situs* to real estate wheresoever situated.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

The general rule under Singapore law is that testamentary freedom is unrestricted except for Muslims who are domiciled in Singapore.

In accordance with section 111 of the Administration of Muslim Law Act Cap. 3, no Muslim domiciled in Singapore may dispose of his property by will except in accordance with the provisions of the school of Muslim law professed by him. Under Muslim law, a Muslim is subject to two main restrictions: (a) he may not give away more than one third of his estate; and (b) he may not increase or reduce the share of any of his legal heirs as determined according to Muslim law.

The rule as to testamentary freedom for non-Muslims is subject to the provisions of the Inheritance (Family Provision) Act Cap. 138 which allows the court to provide reasonable maintenance to the deceased's dependant out of the deceased's net estate. "Dependent" is defined as a spouse, a child (of any gender or age) who is by reason of physical or mental incapacity incapable of maintaining himself or herself, an infant son or an unmarried daughter.

Funds held through a deceased's Central Provident Fund account (applicable to Singapore citizens and permanent residents) cannot be disposed of via a will, but only through the appropriate instrument of nomination.

8 Trusts and Foundations

8.1 Are trusts recognised/permitted in your jurisdiction?

Trusts are recognised in Singapore.

8.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

As the settlor has divested his assets into the trust, generally, the settlor would not be subject to income tax.

Trustees (whether an individual or company) are subject to tax at the prevailing corporate rate (currently 17%). Trusts can be accorded tax transparency in certain scenarios (in other words, the trustee is not subject to tax at the trustee level, and instead, the beneficiaries are subject to tax). There are also specific tax incentives and tax exemptions that may apply to trusts.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

The validity and operation of trusts are not affected by succession and forced heirship rules in Singapore. See question 7.3 above.

In *Shafeeg bin Salim Talib v Fatimah bte Abud bin Talib* [2010] SGCA 11, the Court of Appeal opined that a Muslim had complete freedom to dispose of his property *inter vivos*, even at the expense of his legal heirs under Muslim law. Accordingly, any assets of a Muslim settled into a trust in his lifetime will be treated as trust assets and not part of the estate and effects of the Muslim (which is subject to the application of Syariah succession laws).

In relation to foreign persons who are subject to forced heirship rules elsewhere, section 90 of the Trustees Act Cap. 337 provides that no rule relating to inheritance or succession shall affect the

validity of a trust or the transfer of any property to be held on trust if the person creating the trust or transferring the property had the capacity to do so under the law applicable in Singapore, the law of his domicile or nationality or the proper law of the transfer. In order for this provision to apply, the following conditions must be met: (a) at the time of the creation of the trust or transfer of the property to be held on trust, the person creating the trust or transferring the property is neither a Singapore citizen nor domiciled in Singapore; and (b) the trust is expressed to be governed by Singapore law and the trustees are resident in Singapore.

8.4 Are private foundations recognised/permitted in your jurisdiction?

Singapore does not have foundation (in the sense as it is used in European countries such as Lichtenstein) as a legal entity, though foundations (which are duly set up in the European countries) are recognised as foreign entities.

Whilst self-funded non-profit and charitable organisations can use the word “Foundation” in their names, these typically take the form of a society, a company limited by guarantee or a trust.

8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

Foundations/founders/beneficiaries are taxed depending on whether they have income accrued in or derived from Singapore or received in Singapore from outside Singapore. There are also specific tax incentives and tax exemptions which may apply to the foundation/founders/beneficiaries.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

See question 8.3.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Civil partnerships/same-sex marriages are neither permitted nor recognised in Singapore (see section 12 of the Women’s Charter Cap. 353).

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

Singapore adopts a deferred community approach where the matrimonial assets may only be divided once the marriage has been legally terminated – see section 112 Women’s Charter and *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520.

Matrimonial assets are defined under section 112(10) Women’s Charter as: (a) any asset acquired before marriage by either or both parties to the marriage which are ordinarily used or enjoyed by the family or which have been substantially improved during the marriage; and (b) any asset acquired during the marriage. Matrimonial assets excludes gifts and inheritance unless this is the matrimonial home or an asset which has been substantially improved during the marriage by the other party. Gifts between spouses are, however, considered as matrimonial assets.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Pre-/post-marital agreements are permitted/recognised in Singapore. These agreements would be subject to the usual contractual principles such as intention to enter into a contract, consideration, vitiating factors (i.e. misrepresentation, duress, undue influence and fraud) and is subject to scrutiny of the Singapore Courts as to whether the agreements are against public policy and are fair and just, and where involving the children of the marriage, are in the best interests of the children. In the division of matrimonial assets or the determination as to custody care and control of children or the maintenance to be paid to the wife of the children, the pre-/post marital agreements are only one of various other factors to be taken into account by the courts.

In its scrutiny of an agreement, the courts may also take into account whether the parties sought legal advice and were provided with full disclosure of information relating to the matrimonial assets or other relevant information prior to entering into the agreement.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

In relation to the division of matrimonial assets, the Singapore courts apply the “just and equitable” principle. In general, in order to arrive at what is “just and equitable” for the parties, the Court takes a “structured approach” by computing what amounts to parties’ direct and indirect (financial and non-financial) contributions to determine their share of the matrimonial assets. The “average ratio” (being the averages of the ratios allocated to parties’ respective financial and non-financial contributions) are non-binding figures, and the court is at liberty to make adjustments whenever the parties’ collective direct contribution did not carry the same weight as that of the parties’ collective indirect contribution. See *ANJ v ANK* [2015] 4 SLR 1043.

In relation to the amount of maintenance to be paid by a man to his wife or former wife or by a woman to her incapacitated husband or incapacitated former husband, or by either party for the child of the marriage, sections 114 and 127 of the Women’s Charter require the court to have regard to all the circumstances of the case, including: the income, earning capacity, property and financial resources of each party; the financial needs, obligations and responsibilities of each party; the needs of the child of the marriage; and the standard of living enjoyed during the marriage.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

In principle, a visa is required for entry into Singapore, though there is a list of nationalities for which a visa is not required (e.g. ASEAN countries).

Foreigners who wish to enter Singapore to work will require the relevant work passes.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

Serial entrepreneurs, high-calibre innovators and experienced investors (as defined by the scheme) who want to operate a

business in Singapore may apply for the Singapore Entrepreneur Pass (“EntrePass”) to remain in Singapore for up to one year. The applicant must meet the innovative criteria for an entrepreneur, innovator or investor.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Singapore nationality is obtained either by birth, by descent (whether maternal or paternal), or by registration.

To apply for Singapore citizenship by registration, the applicant must have been a Singapore Permanent Resident (“PR”) for at least two years. Each application is, however, considered according to prevailing policies based on the merits of the application.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

There are generally no Singapore tax implications arising solely because of obtaining nationality in Singapore.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

The Global Investor Programme (“GIP”) allows eligible foreign investors with substantial business track records and successful entrepreneurial backgrounds who intend to drive their business and investment growth from Singapore to apply for Singapore Permanent Residence (“PR”).

Under the GIP, eligible foreign investors can either invest at least S\$2.5 million in a new business entity or in the expansion of an existing business operation, or to set up a family office with assets under management in excess of S\$200 million. Such applicants’ spouses and unmarried children below the age of 21 years old are also eligible to apply for PR under the GIP application.

Apart from the GIP scheme, the Professionals, Technical Personnel and Skilled Workers scheme allows Employment Pass or S Pass holders working in Singapore to apply for permanent residence. Such persons can also apply for permanent residence for their spouse and children at the same time.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Singapore has concluded various international tax agreements on the exchange of information: (a) Singapore and the US signed a Foreign Account Tax Compliance Act (“FATCA”) Model 1 IGA on 9 December 2014; (b) Singapore endorsed and implemented the Common Reporting Standards (“CRS”); (c) Singapore signed the Multilateral Competent Authority Agreement on the exchange

of CbC Reports in 2017; and (d) Singapore is a party to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting and is a participant in the Convention on Mutual Administrative Assistance in Tax Matters.

FATCA reporting obligations have been incorporated into Singapore’s domestic legislative framework via the Income Tax (International Tax Compliance Agreements) (United States of America) Regulations 2015, which came into force on 18 March 2015.

The first exchange pursuant to CRS will take place by September 2018. The reporting requirements of the CRS have been incorporated into Singapore’s domestic legislative framework via the Income Tax (International Tax Compliance Agreements) (Common Reporting Standard) Regulations 2016, which entered into force on 1 January 2017. As of 9 April 2018, Singapore has activated about 52 Automatic Exchange of Financial Account Information relationships for exchange in 2018 (see [https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/Quick_Links/International_Tax/List%20of%20Reportable%20Jurisdictions_2017%20CRS%20reporting%20\(9%20Apr%202018\).pdf](https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/Quick_Links/International_Tax/List%20of%20Reportable%20Jurisdictions_2017%20CRS%20reporting%20(9%20Apr%202018).pdf)).

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

The obligations imposed by the agreements referred to in question 11.1 above have generally been ratified and given effect under Singapore’s domestic law. Therefore, structures which fall within the disclosure/reporting requirements as required under such agreements will need to be disclosed.

Save for the above, there is no general reporting requirement imposed on individuals in Singapore to report any trust, companies or other structures which they may have established outside Singapore.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

The identity and details of the shareholders, board of directors and company secretary of companies and registered foreign companies are publicly available.

While companies and registered foreign companies (unless exempted) are required to maintain a register of registrable controllers (i.e. persons with significant interest or significant control over the company) and to maintain a register of nominee directors, such registers must not be disclosed or made available to any member of the public. These registers are to be produced to the Registrar of Companies and an officer of the Authority on their request.

In relation to trusts, there are no public registers of owners, beneficial owners, trustees or other persons with significant control or influence over trusts established or resident in Singapore.

**Sim Bock Eng**

WongPartnership LLP
12 Marina Boulevard
Marina Bay Financial Center Tower 3
#28-00, Singapore 018982
Singapore

Tel: +65 6416 8108
Email: bockeng.sim@wongpartnership.com
URL: wongpartnership.com

Sim Bock Eng is the Joint Head of the Private Wealth Practice, Head of the Specialist & Private Client Disputes Practice and Partner in the International Arbitration, Banking & Financial Disputes Practices. She has over 20 years of experience in trusts, estate and family laws – both front-end, as well as litigation.

Bock Eng is a leading Trusts & Estates lawyer in *Best Lawyers 2019* and *Asialaw Leading Lawyers*. She is also a recommended lawyer in the areas of Dispute Resolution and Private Wealth in *The Legal 500: Asia Pacific*. Bock Eng serves on the Disciplinary Panel of the CPA Australia. She is appointed as a Mediator for the Small Claims Tribunal of Singapore, a Commissioner for Oaths and a Notary Public and a course co-ordinator for Probate in Preparatory Course Leading to Part B of the Singapore Bar Examinations. She is also a committee member of the Society of Trust and Estate Practitioners (Singapore).

**Tan Shao Tong**

WongPartnership LLP
12 Marina Boulevard
Marina Bay Financial Center Tower 3
#28-00, Singapore 018982
Singapore

Tel: +65 6416 8186
Email: shaotong.tan@wongpartnership.com
URL: wongpartnership.com

Tan Shao Tong is a Partner in the Tax Practice. His main practice areas are income tax, goods & services tax, stamp duty and property tax. Shao Tong is recommended in *The Legal 500: Asia Pacific – The Client's Guide to the Asia Pacific Legal Profession 2018* for the area of Tax.

Shao Tong is a contributing editor for *Singapore Civil Procedure 2017 and Goods and Services Tax Law & Practice (2nd Edition)*. He also co-authored the Singapore chapter of *Global Legal Insights – Corporate Tax*, 2014, 2015 and 2017 editions. He is an Accredited Tax Practitioner (Income Tax) with the Singapore Institute of Accredited Tax Professionals and is also a member of the ACCA.



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59 Tanner Street, London SE1 3PL, United Kingdom
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