TAXATION OF PARTNERSHIPS

This article examines the tax status of partnerships under the Singapore Income Tax Act. The author considers the common law and statutory rules respecting the formation of partnerships, with particular reference to the use of a partnership as an income-splitting device. Calculation of income at the partnership level and the rules for taxing income in the hands of the individual partners are also considered. The tax advantages of the partnership form are reviewed.

The administrative mechanism for collecting taxes from partners is also examined, with particular reference to the position where some partners default on their tax obligations respecting partnership income. The position of non-resident partners of a Singapore partnership is also considered.

PARTNERSHIPS occupy a peculiar status for income tax purposes. Although a partnership is required to file a return showing income earned each year,[1] the partnership does not constitute a taxable entity. The partnership is recognized as an entity for the sole purpose of calculation of taxable income.

The income of the partnership is treated for tax purposes as if it were distributed to the individual partners each year. As the income "flows through" the partnership to the partners it retains its characteristics as to type and source.

Each partner is obliged to include in his income for a year his share of the income earned from a partnership — irrespective of whether it is withdrawn — for the fiscal period of the partnership ending in that calendar year.[2] Thus, income earned by the partnership is attributed on an annual basis to the individuals who make up the partnership and taxed in their hands.

I. PARTNERSHIP DEFINED

The term "partnership" is not defined in the Act. One must examine the general law in order to assign a meaning to the term as it is used in the statute. Although the concept is a fundamental one in the common law it is surprisingly difficult in many cases to determine whether a given business entity is a partnership. While corporations have a certificate which is conclusive evidence of their status,[3] there is, by contrast, no equivalent procedure for partnerships which would make identification of their status a simple matter.[4] Instead, courts

[1] S.71(1), Income Tax Act, Cap. 141, (1970) Rev. Ed. (Reprint, 1984) (hereafter referred to as "the Act").

[2] *Ibid., s. 36.*

[3] Companies Act, Cap. 185, s. 398.

[4] Partnerships are required to register under the Business Registration Act, No. 36 of 1973, s. 5. Such registration is not conclusive of their status. It is merely evidence of the intention of the parties.

have consistently maintained a determination to consider the issue of existence of a partnership in the context of the peculiar facts of each case.

The United Kingdom Partnership Act 1890[5] (adopted in Singapore[6]) defines a partnership as "the relation which subsists between persons carrying on a business in common with a view of profit".[7] This general definition is followed by several sections which attempt to elaborate on the general rules by referring to the partnership consequences of some common arrangements.

The rules in the Partnership Act provide that common ownership of property and sharing of gross returns will not of themselves amount to a partnership.[8] While receipt of a share of the profits is *prima facie* evidence of a partnership,[9] contracts with creditors to be paid out of profits will not of themselves make the creditor a partner.[10] Similarly, employees, widows and orphans receiving a share of the profits will not be affected by the presumption of partnership which generally applies to persons receiving a share of the partnership profits.[11]

Where, on all the facts, parties to a venture can be said to have intended to carry on business in common with a view of profit, it will be irrelevant that parties have provided that they are not to be regarded as partners. Conversely, it is not enough for the creation of a partnership for parties to declare themselves to be one. The determination of the existence of a partnership is one for the courts, not for the parties themselves.[12]

The existence of a formal written partnership agreement is evidence of the intention of the parties but it is not conclusive proof of partnership. Other factors which the court may take into account as *indicia* of partnership are registration (under the Business Registration Act[13] and, where applicable, with an appropriate professional body[14]), the existence of a partnership bank account into which receipts are banked and out of which expenses are paid, the basis of sharing profits and losses, and the representations apparent on the firm's stationery. The joint holding of business premises and notifications to the public would provide additional evidence of the existence of a partnership.[15]

Partnerships are not restricted to having natural persons as partners in the firm. Any legal entity could be a participant in the partnership.

[5] Partnership Act 1890, 53 & 54 Vict. c. 39 ("Partnership Act").

[6] Received into Singapore by virtue of the Civil Law Act, Cap. 24, (Rev. Ed.) s.5(1).

[7] Partnership Act, s. 1(1).

[8] *Ibid.*, s.2(1) and (2).

[9] *Ibid.*, s.2(3).

[10] *Ibid.*, s.2(3)(a) and (d).

[11] *Ibid.*, s. 2(3)(b) and (c).

[12] See *Cullen* v. *The Queen* 85 DTC 409 (1985) for a recent decision of the Canadian courts considering this point in the fiscal context.

[13] *Supra,* note 4.

[14] For example, under the Legal Profession Act, Cap. 217 (Rev. Ed.).

[15] However, where the parties agree that each participant retains the right to dispose of and deal separately with his interest in real estate the courts are unlikely to regard the relationship as one amounting to partnership. See Partnership Act s. 2(1). For judicial consideration of that point see *A.E. LePage* v. *Kamex Developments Ltd.* (1977) 78 D.L.R. (3d) 223.

Thus a party who wished to participate in a partnership without incurring the risk of full personal liability for debts of the firm could incorporate a company to hold his partnership share.

The characterization of joint ventures is a thorny problem. Can a project involving two or more parties be so limited either in objectives or in the "joint" nature of their participation that it does not amount to a partnership? One might think that the requirement of "carrying on business" would mean that an enterprise formed for a single venture could not be a partnership. Yet the Partnership Act specifically contemplates that a partnership may be entered into for a "single adventure or undertaking".[16] Limited objectives will therefore not in themselves preclude the existence of a partnership.

It is possible, however, for parties to work side by side on a business venture and escape characterization as a partnership. There is no presumption that participants in a joint venture are not each intending to carry on their own separate business.[17] Where parties do not share profits or risks of the enterprise they may not be classified as a partnership even though they employ their energies for a common end.[18] In such circumstances parties would be taxable upon their individual profits from the project. There would be no calculation of taxable income at the enterprise level.

In the fiscal arena the issue of partnership is frequently contested in the context of an income splitting family partnership.[19] In the usual case, the high income individual in the family attempts to structure his or her business affairs so that income flows into a partnership with subsequent attribution to family members. In this way, the high income may be spread among several individuals, realizing the benefit of lower marginal tax rates.

In order to limit use of this device the Singapore Income Tax Act uses a rather blunt weapon. That Act provides that the income of a married woman derived from any "trade, business, profession, or vocation" of her husband is not separately assessed as her own income.[20] Exceptions are provided for a professional woman working as a "duly qualified accountant, advocate and solicitor, architect, dentist, engineer, medical practitioner or pharmacist."[21]

The Act makes no special provision for minors who are members of a partnership. Although minors suffer from some legal disabilities

16 S.32(b).

17 *Lindley on Partnership* (Scamell and Banks, eds., 15th ed. 1984).

18 Thus, for example a syndicate of insurance underwriters would not be regarded as being a partnership.

19 See the discussion of this point in Lawton, Goldberg and Fraser, *The Law of Partnership Taxation, (2nd ed., 1979)* commencing at p. 9. For Australian cases on the subject see Baxt *et al Cases and Materials on Taxation* (Sydney, 1984) cap. 9. For a recent Canadian case where a family made an unsuccessful attempt to obtain an income split though a partnership see *Cullen* v. *The Queen* 85 DTC 409.

20 S. 51(5).

21 *Ibid.* The Minister of Finance is provided with power under the section to expand the list through notification in the Gazette. By S. 10/78 the Minister added persons holding a Diploma in Physiotherapy from the United Kingdom Chartered Society of Physiotherapists to the classes set out in s. 51(5).

which would restrict the extent of their participation,[22] these limitations will bear only obliquely on the tax consequences of their participation in a partnership.[23] In principle there is no reason why a partnership could not include children of a partner.

Fiscal authorities have taken an understandably sceptical view of such arrangements. Partnerships with minors may be regarded as a sham where it is felt that the children are included for the sole purpose of providing income splitting advantages. Such schemes have been successfully attacked by revenue authorities in Britain on the ground that there was in truth no partnership, because the father and his children were not carrying on business in common with a view of profit.[24]

Another possible approach for revenue authorities attacking such arrangements is to claim that the partnership interest conferred upon the child amounts to a settlement. That term has been defined very broadly in the Singapore Income Tax Act.[25]

Where Revenue succeeds in characterizing a transfer of an interest in a partnership as a settlement, the provisions of section 33A of the Act will apply. That section provides that income of an unmarried minor (under 21 years of age) from a settlement is attributed to the settlor. Where that provision applies, the income splitting advantages of bringing a minor into a partnership would be lost.

II. PARTNERSHIPS AND SERVICE CORPORATIONS

In Singapore certain professions are prohibited from carrying on business in the corporate form.[26] This prohibition does not, however, extend to areas of the business which provide support for the professional practice. Thus, professional partnerships may incorporate a service company to own assets which the partnership uses in carrying out its business and to employ and administer the support staff.

The service corporation could lease assets and employ and administer the support staff which assists the partnership in exchange for a management fee. The result is that some of the profits of the partnership could be channelled into a limited company. Are there tax advantages in such an arrangement?

One writer in Singapore takes the position that as corporations are taxed at an amount equivalent to the maximum personal rate there are not sufficient advantages to warrant the cost of operating a service

[22] Where the partnership is a professional one there are likely to be restrictions imposed by the governing body which prevent the admission of minors. The Legal Profession Act, Cap. 217, 1970 (Rev. Ed.), for example, provides in s. 10 that a person must be at least 21 years of age before he can be an advocate. In addition, minor partners cannot be held responsible for the debts of a partnership until they reach the age of majority.

[23] They might, for example, lend credence to an argument by the fiscal authorities that the minor is not a genuine partner.

[24] See *Alexander Bulloch and Co.* v. *IRC* [1976] STC 514.

[25] The definition contained in s. 33A of the Act defines a settlement as including "any disposition, trust, covenant, agreement, whether reciprocal or collateral, arrangement or transfer of assets or income...".

[26] The policy reason for it is the concern that the prestige of the profession will suffer if members of it are permitted to limit liability to the public for errors and wrongdoing.

corporation.[27] This approach overlooks two other factors which merit consideration.

The first is that in the imputation system for corporate taxation (which Singapore uses), distributed corporate profits are effectively taxed at the rate of the individual shareholder who receives them. Where spouses of partners have little or no other income, they could be made the shareholders of the service corporation. Profits of the corporation distributed to the spouses would ultimately be taxed at their low marginal rates. Where fees paid to the service corporation are reasonable, the result would be a perfectly legitimate income splitting arrangement.

The other advantage of service corporations is that they provide a useful opportunity to moderate the tax impact of income fluctuations of members of the professional partnership. In years where the partnership is profitable, profits can be accumulated and retained within the service corporation. Dividends can be declared to partners who are shareholders in the service corporation in years when profits — and, hence, the marginal rates of the partners — are low.

III. Calculation of Income at the Partnership Level

Although taxes on income of the firm are paid by the individual partners, calculation of taxable income for the business is done at the partnership level. There is no special regime for taxation of partnership income. With minor exceptions,[28] taxable income is calculated in much the same way as it is for any other taxable entity.

For most taxpayers in Singapore, the threshold inquiry for any entity concerned with its tax position is the issue of residence. In the context of partnership, residence is of limited significance since partners are the taxable entity and they are taxable upon profits derived from Singapore whether they are resident here or not.[29]

Partnership returns must be filed on an earnings basis. In common with other businesses, partnerships are entitled to select a fiscal period that differs from the calendar year.[30] This means that income of the accounting period ending in the basis year is subject to tax in the assessment year. As a result, a partnership can be used to obtain a limited deferral on taxation of profits. For example, if the fiscal period ends on October 31, income which accrues during the remainder of the calendar year will be treated as income of the succeeding basis year.[31]

27 Soin, Brij, *Singapore Master Tax Guide. (6th ed., 1985)* paras. 418-420.

28 For example, no deduction is permitted to the partnership for interest on loans provided by partners.

29 Although the Act sets out in s. 4, rules for the determination of residence of individuals, corporations and "bodies of persons" the latter phrase is defined so as to exclude partnerships. As a result, there is no statutory guidance to assist in settling the residence of partnerships.

30 The Act s. 35(2).

31 Section 72A of the Act permits the Comptroller to raise an assessment for the income of the full calendar year where the accounting year ends before year end. Where the accounting period ends on September 30 or earlier, the Comptroller is likely to utilize this power to assess income for the calendar year. In this manner, the Comptroller can prevent taxpayers from achieving a significant deferral of taxation through the selection of a fiscal period ending early in the calendar year.

Income of the partnership for tax purposes will rarely coincide with partnership income for accounting purposes. One important reason for this is that no deduction is allowed from profits for interest or salaries paid to partners.[32] These payments are instead treated as an allocation of profits and not as a deductible expense.[33]

Technically, each business of a partnership must be accounted for separately even if they are carried on by the same partners.[34] This rule would prevent losses from one business of a partnership from being offset against gains from another. This would have to be done at the individual partner level.

IV. Taxation of Income in the Hands of the Partners

Once the question of the existence of a partnership has been settled, it remains to consider the tax consequences for the attribution of partnership shares. Although writers in Singapore have gone to some lengths to distinguish between various types of partners, the fact is that whatever he may be called, a person is either a partner or he is not. If he carries on business in common with others with a view of profit he is a partner.

Use of terminology such as "salaried partner", "sleeping partner" and "limited partner" is perilous as it could lead parties to believe that their description of a party controls legal characterization of his status. Thus, for example, while the term "salaried partner" is frequently used to describe a mere employee who has his name on the firm letterhead, such a party will nevertheless be a partner and assessable as such if he is carrying on business in common with a view of profit. Even if he is paid a fixed wage and is not regarded as a full partner by his colleagues, he may still be characterized as a partner by the court where he meets the test of partnership.[35]

The terms "sleeping partner" and "limited partner" are particularly misleading in the Singapore context. Many Commonwealth countries have adopted a Limited Partnerships Act which confers a special status upon parties who choose to participate in a partnership as passive

[32] As a partnership is not treated as a legal entity separate from its constituent partners, a partner cannot be an employee of his own partnership. *Re Thorne and New Brunswick Workmen's Compensation Board* (1962) 33 D.L.R. (2d) 167.

[33] Rent paid to a partner who owns the premises in which the partnership is carried on would, by contrast, be deductible. *Heastie* v. *Veitch* (1933) 18 T.C. 305. There may, however, be some difficulty where the legal estate in the property is vested in all of the partners jointly. *Rye* v. *Rye* [1962] A.C. 496.

[34] This is implicit in the Act s. 36. Also see Lawton *et al, The Law of Partnership Taxation, op. cit.* 3.

[35] In *Stekel* v. *Ellice* [1973] 1 All E.R. 465 at p. 473, Megarry J. made this helpful comment on the point:

> It seems to me impossible to say that as a matter of law a salaried partner is or is not necessarily a partner in the true sense. He may or may not be a partner, depending on the facts. What must be done, I think, is to look at the substance of the relationship between the parties; and there is ample authority for saying that the question whether or not there is a partnership depends on what the true relationship is and not on any mere label attached to that relationship. A relationship that is plainly not a partnership is no more made into a partnership by calling it one than a relationship which is plainly a partnership is prevented from being one by a clause negativing partnership.

investors.[36] In such jurisdictions the term "limited partner" is a term of art. As Singapore has not adopted a Limited Partnerships Act, the term has no technical significance here.[37]

These terms may be used in a colloquial sense to indicate a partner who plays a limited role in management of the firm. Where a partner contributes to a partnership as a passive investor and takes no active role in management, that partner may be denied the earned income relief under s. 39(1)(b) against such income.[38] In all other respects, categorization as a sleeping partner is irrelevant for purposes of taxation.

Income of the firm is attributed to the partners in the proportion in which they are entitled to share in the profits.[39] It forms part of their ordinary assessable income.

The local case of *Ng Chwee Poh* v. *Public Prosecutor*[40] contains an interesting qualification on this general rule. In that case a partner was being prosecuted by the Comptroller for tax evasion for failing to declare partnership income on the firm's return over a ten year period. The Comptroller took the position that the liability for all of the tax evaded on the partnership profits fell on the individual partner being prosecuted.

The partner took the position that liability for the unpaid taxes ought to be shared among the partners even in the event that evaded taxes were collected through prosecution. The court ruled against the taxpayer. The court took the position that the usual rule in section 36 of the Act that partnership profits should be apportioned among the partners applies only where the profits are declared in the normal course. The court indicated that "the Act does not provide for any apportionment of evaded taxable income among its partners where a prosecution has already been instituted against one partner in respect of the evaded taxable income".[41]

A partner's share includes only income paid or owing to him in his capacity as a partner. A partner's salary, interest on capital loaned by him to the partnership and his share of profits are included within his assessable income *qua* partner.[42] By contrast, monies received by a partner in a capacity other than partner is not taxable as partnership income. Thus, rent received by a partner *qua* landlord would not be taxable in his hands as partnership profits.[43] This distinction is relevant in determining what expenses are deductible by the partnership in calculating partnership income.

36 See, for example, the British Limited Partnerships Act, 1907 [7 Edw. 7 c. 241.

37 See s. 5(2) of the Civil Law Act, Cap. 30. For commentary on the point see Soe, Myint, *The General Principles of Singapore Law,* (1981) p. 376.

38 The definition of that term in s. 2(1) of the Act suggests that money generated from "any trade, business, profession, vocation or employment" must involve some active effort on the part of the recipient in order to qualify as "earned income". Where a receipt does not qualify as such, the modest deduction provided in s. 39(1)(b) cannot be taken against such income.

39 The Act, s. 36.

40 [1977] 2 M.L.J. 230.

41 *Ibid.*, p. 240.

42 *Lewis* v. *IRC* (1933) 18 T.C. 174.

43 *Heastie* v. *Veitch* (1933) 18 T.C. 305.

A partner's share of partnership income is determined in accordance with the partnership agreement. Creative accounting approaches which result in a partner recognizing a loss for accounting purposes in a year in which the partnership earned a profit will not assist a partner except in the very unusual case where the partnership agreement actually does leave him with a loss in that year.

A partner's assessable income from a partnership is determined by examining his entitlement to profits in his capacity as partner. *Actual* payments from the partnership are irrelevant. Thus, a partner is not taxed upon the sums he received by way of salary, interest on capital, or by reason of his other drawings but rather upon the amounts he was *entitled* to receive from those sources.[44]

Income attributed to a partner retains its original character in his hands for purposes of taxation. For example, when dividends accrue to the partnership they are apportioned to the partners in the same manner as any other profits. As a result, where tax was deducted at source from a dividend paid to the partnership the dividend tax credit can be claimed by the partners receiving the payment.[45]

Other tax concessions will similarly be passed down for utilization at the partner level. The Act provides capital cost allowance to the party who incurred the expenditure on the property.[46] In one sense, it could be said that the firm and not the partners have incurred the expense. Yet as the firm is not a juridical person the partners are regarded as the true owners of any property held by the firm and entitled to the capital cost allowance thereon. Thus, the capital cost allowance on firm property is made available to the individual partners.[47]

The rule that income flowing through a partnership retains its characteristics as to source also allows a firm to pass untaxed profits like capital gains to its partners without incurring any tax cost. In this respect, partnerships in Singapore enjoy an advantage over the corporate form. Companies in Singapore must make a deduction under section 44 of the Income Tax Act when dividends are paid out. One result of this rule is that some types of profits (capital profits, for example) which were not subject to tax when received by the corporation may be subject to a levy when paid out as a dividend.[48] This levy is not applicable to profits distributed by a partnership.

When a partnership has an excess of allowable deductions over assessable income the partnership will suffer a loss for taxation purposes.[49] As with profits, this partnership loss is not available to the

[44] The Act, s.36(a).

[45] The Act, s. 46.

[46] The Act, ss. 16(1) and 19(1).

[47] Regulations under the Canadian tax statute, by contrast, require the deduction to be taken at the partnership level. The capital cost allowance deduction is not available to the individual partners. See Regulation 1102(la) of the *Income Tax Regulations,* Consolidated Regulations of Canada, c. 945 promulgated pursuant to *Income Tax Act,* Statutes of Canada, 1970-71-72 c. 63.

[48] The difficulties with the operation of the corporate imputation mechanism in Singapore have been subject to considerable scrutiny. See generally "Report of the Fiscal and Financial Subcommittee (of the Economic Committee)" Tay *et al* (1986). See also Hay "Taxation of Corporate Distributions in Singapore" (1985) 3 Asian Pacific Tax and Investment Bulletin 371.

[49] Strictly speaking, losses accrue for years of assessment, not for accounting periods: The Act, s. 37(2).

partnership entity as such. It is distributed to partners in the proportion in which they have agreed to share losses.

The loss can be set off against other income of the partners for the year in question. Where it cannot be fully utilized in the year in which it occurs, it can be carried forward indefinitely [50] even in cases where the partnership has been terminated.[51] There is no provision in the Act for carrying losses back. Of course, where the partner is a company, the tests laid down in the Act for continuity of ownership must be satisfied in order for the loss to be carried forward.[52]

The treatment of losses provides investors in a partnership with another significant advantage over the position of shareholders in a corporation. When a corporate entity accumulates losses, those losses are available for use only against corporate profits. The losses cannot be used by the individual shareholders to reduce their taxable income from other sources. In the event that a corporation with significant accumulated losses is wound up, tax tragedy strikes. The losses are not available to the shareholder investors as they would be to partners in a firm.

Is the liability to satisfy the burden of income tax on partnership profits personal to each partner or does it rest jointly upon all? Where one partner fails to pay taxes owing on his share of partnership profits the issue assumes considerable practical importance.

In the United Kingdom income tax is assessed upon partnership profits in the name of the partnership.[53] As the Partnership Act imposes joint liability upon partners for partnership debts,[64] the U.K. position is that partners are in consequence jointly liable for the debts of the partnership.[55]

The Singapore Income Tax Act takes a fundamentally different approach on this point. As section 36 of the Act provides that partners are to be assessed individually upon their share of partnership income, debts for taxes on that income form part of the liability of the partners in their *personal* capacity. Taxes owing upon partnership income are not partnership debts and thus one partner cannot be made liable for the default of another.

V. TAXATION OF NON-RESIDENT PARTNERS

Non-resident partners are liable to tax upon the income of a partnership which is "accruing in or derived from Singapore or received

[50] The Act, s. 37(2).

[51] The U.K. Act specifically provides for this by statute: *Income and Corporation Taxes Act 1970 c.* 10, s. 154. The same result would obtain in Singapore by virtue of the Act, s. 37(2)(a) as the loss, once ascertained and attributed to the partner is personal to him.

[52] The Act, s. 37.

[53] Income and Corporation Taxes Act 1970, (c: 10) s. 152. That section, the main provision in the U.K. Act dealing with taxation of partnerships, reads:

> Where a trade or profession is carried on by two or more persons jointly, income tax in respect thereof shall be computed and stated jointly, and in one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name.

[54] Partnership Act, 1890, s. 9.

[55] *Stevens* v. *Britten* [1954] 3 All E.R. 385.

in Singapore from outside Singapore." They are subject to tax at the recently revised non-resident rate of 33%.

Under section 53(8) of the Act the income of a non-resident partner is assessable in the name of either the partnership, a resident partner, or any Singapore agent of the partnership.[56] This procedure is merely compliance machinery and it would not affect, for example, the applicable tax rate.

For reasons of administrative simplicity, the revenue authorities in Singapore do not open a separate file for every non-resident member of a partnership who earns income subject to Singapore tax. In the absence of a specific request, they adopt a procedure of lumping all profits paid to the non-resident partners together and taxing them at the non-resident rate. Technically, this procedure is not authorized under the statute though the complexity of opening separate files for partnerships which may have hundreds of non-resident partners makes one sympathetic to the position of the revenue authorities on this point.

Where the partnership is profitable, little turns on this deviation from strict compliance with the statute. In any event, the revenue authorities are simply concerned to see that profits remitted to non-residents are taxed at a 33% rate. Where the partnership is operating at a loss, however, the requirement for allocation of losses to the individual partners becomes more significant. The reason is that the loss should be available by a partner for deduction against any other Singapore income he may have[57] and carry forward of the loss should be done in his name. It would not be technically correct to simply take losses attributed to non-residents as a *group* in one year against profits attributed to non-residents as a group in future years.

Non-resident partners are not generally obliged to pay tax on income of the firm which has been earned offshore as long as it cannot be considered to have been derived from or accrued in Singapore. However, such fees may in any event become taxable in Singapore if they were received here by the firm.[58] (On the other hand, of course, mere collection of fees offshore for work done in Singapore will not render the receipts non-taxable here.)

Allocation of costs as between the Singapore and foreign offices of a partnership also poses difficulties. One interesting question concerns the treatment of management or administrative costs incurred by a foreign office to monitor the operations of the Singapore branch of the partnership. Where this expense of the Singapore office forms part of the income of the foreign office, could it be regarded as a manage-

[56] The usual procedure adopted by the Singapore authorities is to ask the partnership to identify the resident "precedent partner". Assessments are made in his name.

[57] Under s. 37(2)(a) of the Act.

[58] Section 13(3) of the Income Tax Act provides that income from sources arising outside Singapore is tax exempt in the hands of a non-resident *individual*. Where that income is received by a partnership and later attributed to the non-resident partner the taxability of that income is not entirely clear. On the Singapore law and practice of taxation of non-residents generally see the excellent piece by Graham Clark in the International Fiscal Association publication, *Studies on International Law,* (1985) Volume 70A at page 595.

ment fee which is deemed to be derived from Singapore under s. 12(7)(c) of the Act? In such circumstances, it could be taxable in the hands of the non-resident partners as Singapore source income.

VI. CHANGES IN THE COMPOSITION OF THE PARTNERSHIP

Whenever there is a change in the composition of a partnership formed prior to 1st January 1969 the partnership is deemed to have come to an end.[59] Where partners choose to continue the newly constituted business, another partnership comes into being for taxation purposes. These rules apply notwithstanding that many partnership agreements expressly provide otherwise.

Partners are obliged under the Act to apprise the revenue authorities of the impending retirement of one of their members.[60] In addition, they are not entitled to pay sums owing to the retiring partner without the consent of the revenue authorities.[61] Failure to observe these requirements can result in a penalty equal to the amount of the uncollected tax being imposed upon the partner who neglected to advise the authorities.[62]

These rules have no substantive impact upon taxation of the partnership. They are merely compliance machinery. The rules are designed to ensure that revenue authorities receive advance notice in any circumstances where collection of taxes owing from a partner may become difficult.[63]

VII. CONCLUSION

Partnerships pose peculiar problems in the fiscal arena. Unlike corporations, the partnership entity can elude easy identification. For most purposes a partnership is even denied status as a legal or taxable entity.

Calculation of taxable income is done at the partnership level though the assessment is actually made at the level of the individual partners. The partners are assessed on income attributed to them as partners regardless of whether the profits are actually distributed. Losses are similarly available for deduction by the individual partners against their income. Unlike in the United Kingdom, partners will not generally be liable jointly for taxes on partnership income which are not paid by another resident partner.

Non-resident partners are subject to tax upon income earned by a Singapore partnership and attributed to them. For compliance reasons, that tax (levied at a rate of 33%) is actually assessed upon a partner resident in Singapore.

[59] The Act. s.35A(4).
[60] The Act, s.68(8).
[61] The Act, s.68(10).
[62] The Act, s.91(5).
[63] The Act also requires partners present in Singapore to give notice to Revenue where a partner intends to be absent from Singapore for more than three months. Application of this rule is waived where a partner is frequently required to be absent from Singapore: the Act, s. 69(9).

Partnerships enjoy a peculiar tax position which provides some attractions for particular investors. The rules respecting loss carry-forward and direct flow-through of capital gains for example, provide significant benefits to partners which are denied to shareholders in a corporation. The tax considerations are such that the partnership form ought to be carefully considered by investors setting up a business enterprise.

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