REGULATORY UPDATE ON TAX TREATMENT OF NON-FUNGIBLE TOKENS (NFTS)

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Introduction

In our earlier CNPupdate article published on 27 September 2018, we discussed the tax implications in relation to Initial Coin Offerings ("ICOs"). Subsequently, we published a two-part series providing an update on the then latest tax guidelines issued by the Inland Revenue Authority of Singapore ("IRAS"), viz. the e-Tax Guide on the Goods and Services Tax treatment of digital Payment Tokens published 19 November 2019 (the "GST Guide") and the e-tax guide in relation to the income tax treatment of digital tokens published on 17 April 2020 (the "e-Tax Guide"). Due to recent developments regarding the e-Tax guides, in this article, we will discuss the tax treatment of Non-Fungible Tokens ("NFTs").

New tax treatment of NFTs

Singapore's Finance Minister Lawrence Wong announced on 11 March 2022 that Singapore's prevailing income tax rules will apply to transactions involving NFTs. The income tax treatment for NFTs will be determined based on the nature and use case of the specific NFT. This will apply to a person who derives income from NFT transactions or are trading in NFTs. The Finance Minister also clarified, that due to the absence of a capital gains tax regime in Singapore, a person deriving capital gains from the NFT transactions will not be taxable on such capital gains. He added that the IRAS would consider a variety of factors when determining whether a person is trading in NFTs or earning income from NFT transactions, including the nature of the asset, the length of the period of holding, the intent of purchase, the frequency and volume of similar transactions, and the grounds for sell-off.

Regulation of NFTs

In February 2022 Singapore's central bank said it will not regulate the NFT market. Tharman

Shanmugaratnam, Senior Minister and Chairman of the Monetary Authority of Singapore (MAS), says Singapore's regulator has opted for a “tech-neutral stance” and added that it “looks through” to the underlying features of the token to determine if it is to be regulated by the regulatory authority. An NFT will be subject to MAS’ regulatory requirements if it has the characteristics of a capital markets product under the Securities and Futures Act 2001.
If you wish to read more about NFTs in general and their legal implications, please refer to our three-part CNPupdate here.

Tax haven

It is noteworthy to mention that Singapore is considered by many globally as a relative tax haven in relation to capital gains from stocks and crypto assets. Also, Singapore’s income tax rates (personal and corporate) rank among the lowest in the world. On top of that, the absence of the capital gains tax regime in general has made it an attractive destination of choice for ultra-high net worth and high net worth individuals who plan to expand their businesses and investments into Asia. Singapore’s superb infrastructure, clear laws and regulations, and efficient legal system also attract wealthy individuals to take up residence in Singapore.

Conclusion

The new income tax treatment of NFTs appears to be an unavoidable development as the NFT market continues to expand and mature. It is also a step forward in the right direction, providing greater clarity and transparency in the regulatory and tax treatment of NFTs. For more information on the e-Tax Guide, you may access the Guide via the following link.