交易者还是投资者？新加坡的税务问题

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新加坡不征收资本利得税，因此处置收益属于资本性质还是收入性质，决定了它究竟是否需要纳税。《1947年所得税法》依据第10(1)(a)条对来自贸易或业务的收入征税，依据第10(1)(g)条对其他具有收入性质的收益或利润征税。处置作为资本账户持有的投资所得的收益，不在征税范围之内。[1]新加坡国内税务局（IRAS）在其关于数字代币所得税处理的电子税务指南（首次发布于2020年4月17日）中，将贸易标志（badges of trade）适用于加密资产。[2]这些标志就是普通法中人们熟悉的清单：资产的性质、持有时间的长短、交易的频率、附加的加工工作、变现的情形、动机以及融资方式。

新加坡的分析与瑞士有三点不同。第一，没有数量化的安全港。第二，该分析同样适用于公司，而在瑞士，公司的所有收益不论性质一律征税。第三，自2024年1月1日起，第10L条规定，跨国集团的实体在新加坡收到的出售境外资产的收益，除非该实体在新加坡具有充分的经济实质，否则视为收入。在境外交易所持有加密资产的控股公司会受到影响。[3]

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判断步骤

1. 确定纳税人。对于个人，贸易标志适用于个人持仓。对于公司，还须考察公司的经营宗旨和实际活动是否使数字资产交易成为其业务；如果是，则所有收益均属收入性质。
2. 将贸易标志适用于该年度的持仓模式。频繁交易、短期持有、借入资金和系统化方法指向贸易。长期持有、交易稀少和以闲余资金购买则指向投资。
3. 将收入性收款分开处理。质押奖励、在经营业务过程中取得的挖矿收入、因提供服务而获得的空投，以及作为商品或服务对价而收取的代币，均在收到时作为收入。IRAS认为，无偿获得的空投不征税，除非受领人从事代币交易。[4]
4. 对于跨国集团的实体，检验第10L条：所处置的资产是否属于境外资产，收益是否在新加坡收到，该实体是否满足经济实质要求？如果前两个问题的答案为是，而第三个为否，那么即使收益属于资本性质，也须纳税。
5. 核查属地原则和汇入规则。个人的境外来源收入在新加坡免税；公司的境外来源收入在汇入时征税，但可依据第13(8)条的豁免条件免税。[5]
6. 记录取得资产时的意图。记载投资意图的董事会会议记录、禁止活跃交易的资金库政策，以及将长期钱包与运营钱包分开，正是IRAS要寻找的证据。

指标	投资者（不征税）	交易者（按17%的公司税率或累进个人税率征税）
频率	每年交易寥寥	每日或每周交易
持有期	数年	数天至数月
融资	闲余资金	借款

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指标	投资者（不征税）	交易者（按17%的公司税率或累进个人税率征税）
组织	被动持有	系统、员工、做市
意图证据	会议记录、政策、分离的钱包	以交易业务的形象对外推广
跨国集团中的实体	须满足第10L条的实质检验	无论如何均属交易收入

跨境视角

年中从楚格迁居新加坡的创始人，同一年度要接受两套制度的检验。瑞士对居住期间征税，并对该期间适用第36号通函。新加坡则从成为居民之日起适用贸易标志。落在瑞士期间且具有职业性质的处置，在瑞士作为自雇收入征税。同样的处置如果落在新加坡期间，且持仓属于资本性质，则可能无需纳税。将长期持仓的处置安排在新加坡期间，并将停止活跃交易的时间安排在瑞士期间，只要迁居是真实的，就属于两地税务机关都接受的正当筹划。关于居民身份的检验，见第P部分第I章。

注释

1. Income Tax Act 1947，第10(1)(a)条及(g)项；参见第M部分第I章及第II章。↩
2. IRAS e-Tax Guide，Income Tax Treatment of Digital Tokens，第一版，2020年4月17日，经更新；参见第M部分第I章。↩
3. Income Tax Act 1947，第10L条，由Income Tax (Amendment) Act 2023增订，自2024年1月1日起生效；参见第M部分第II章。↩
4. IRAS e-Tax Guide，Income Tax Treatment of Digital Tokens，第5–7节；参见第M部分第I章。↩

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5. Income Tax Act 1947，第10(25)条及第13(8)条；参见第M部分第II章。↩

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