Advance Ruling Summary No. 01/2022
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1. Subject:

Whether the gains/profits derive from the shares to be issued to employees under a proposed Partner Equity Plan fall to be taxable at the time when the employees acquired the shares or later.

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2. Relevant background and facts:

a. Co A is a newly set up Singapore company and a member firm of an international network of independent firms providing professional services.

b. Two of Co A's overseas member firms invested an initial sum of equity in the Company via the incorporation of a foreign registered investment vehicle, Co B. Co B in turn set up a Singapore holding company, Co C to acquire 100% shares of Co A.

c. The objective of the initial equity was to provide Co A with the investment funds needed to address immediate business issues and to plug gaps in service line capabilities. With the intention that Co A should ultimately be locally controlled by the management team that ran the business, the 2 overseas member firms made a commitment to enable the partners who are employees of Co A to participate in the ownership of shares in Co C, and eventually become the shareholders of the business via the equity plan within 2 years from the injection of the initial equity. This was seen as an essential step to ensuring the partners were incentivised to build equity value in the business which would align with the ambitions of the group network.

d. The partners (employees) would be invited to purchase shares based on their seniority and performance criteria. There was no limit on the number of equity partners who may be admitted to the equity plan. The shares would be allotted in a few tranches. The partners would own a majority of the shares in Co C once all of them have subscribed for their maximum allotment.

e. The partners eligible to subscribe for the very first tranche of shares would be invited to purchase their shares at a nominal value to kick-start the programme. The market value of the shares at the time of their acquisition was determined to be higher than the amount required to be paid by the partners to acquire them.

f. The shares acquired by the partners would not be subject to further vesting period. They can sell their shares any time as there was no moratorium imposed on the sale of the shares. However, a partner wishing to sell his shares can only sell them:

i. back to Co C, who would not cancel them, but hold them as treasury shares for re-issue to incoming partners; or

ii. to Co B, where the ability of Co C to acquire and hold the shares as treasury shares was not permitted by the Singapore Companies Act.

g. The selling price would be the lower of the most recent annual valuation preceding the disposal date and the annual valuation immediately following the disposal date. Effectively, the sellers would be receiving an amount equal to the open market value of the shares.

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3. Relevant legislative provisions:

Income Tax Act 1947 (Revised Edition 2020) - Sections 10(1)(b), 10(6)

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4. The ruling:

The shares acquired by the partners (employees) of Co A will be taxable based on the open market value as at the date of acquisition of the shares, less any amount paid by them for the shares.

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5. Reasons for the decision:

The restriction imposed on the partners on the share disposal pertains to whom they could sell the shares. This does not amount to a "restriction on the sale of the shares so acquired" within the meaning of Section 10(6)(b). The gains/profits arising from shares acquired by the partners are therefore taxable under Section 10(1)(b) at the time they acquire the shares.

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