

1. Subject:

Whether any gains or profits derived under the management incentive plan by the subscription members will be deemed to be taxable under section 10(6) at the time when the subscription member subscribes for and is issued with the Class X Shares under the plan.

2. Relevant background and facts:

- a. Co A is a foreign company. Co A incorporated a Singapore company, Co B, with the intention of creating an investment platform in the Asia Pacific region.
- b. Co A has implemented a management incentive plan ("MIP") for each of its management teams in the United States and Europe and intends to administer a similar MIP for the Asia Pacific platform, whereby the management team developing the platform may subscribe for and be issued Co B's Class X Shares.
- c. Features of the Class X Shares are:
 - i. They are redeemable preference shares issued under the MIP to subscription members.
 - ii. They do not carry voting rights and the holders of Class X Shares will not be entitled to information relating to Co B, other than as provided in the subscription plan or under applicable laws. The Class X Shares are subject to redemption.
 - iii. The subscription members will be entitled to share in distributions and allocations from Co B if and to the extent that the base return has been exceeded. The base return is the amount required to repay the capital members (as holders of the Class Y Shares and Class Z Shares) for their investments in Co B, plus a specified rate of return on such investments.
- d. The mechanics of the MIP are:
 - i. Legal ownership - The subscription member has full legal rights to the shares and will be registered as shareholder on the date of issuance of the Class X Shares.
 - ii. Deferred vesting of economic rights - The economic rights attributable to Class X Shares vest in N% tranches over M years, with the remaining (100% - N(M)%) of the economic rights vesting at the time of a vesting event, i.e., Co B or substantially all of its assets are sold. The subscription

member is only entitled to receive distributions with respect to the Class X Shares in which the economic rights have vested.

- iii. Transferability of Class X Shares – The shares may be transferred in the following circumstances: (a) the transfer is approved in writing by the Board of Directors; (b) the transfer is made for estate planning purposes; and (c) the transfer is a transfer of Class X Shares which are or become Class X Shares (Vested Economic Rights) upon the death of any subscription member and is made pursuant to such subscription member's will or intestacy laws.
- e. The design of the MIP is to ensure that the incentives of the management team and the capital members of Co B remain aligned throughout the life of the Asia Pacific investment platform and to facilitate the retention of the management team.

3. Relevant legislative provisions:

Income Tax Act 1947 ("ITA") - Section 10(6)

4. The ruling:

Any gains or profits derived under the MIP by the subscription members will be deemed to be taxable under section 10(6) of the ITA at the time when the subscription member subscribes for and is issued with the Class X Shares under the plan on the basis that:

- a. the deferred vesting of the economic rights does not amount to a vesting restriction; and
 - b. there are no restrictions on the sale of the Class X Shares, as contemplated under Section 10(6)(b) of the ITA.
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5. Reasons for the decision:

- a. Under the mechanics of the MIP, the subscription members are legal owners of the Class X Shares upon issuance of the shares as evident by all the legal formalities completed to recognise them as the legal owner of the Class X Shares.
- b. Other than legal ownership, the subscription members are not able to realise other benefits such as voting rights or economic rights to dividends, but this is in line with the features of the Class X Shares of which the shareholders are not expected to realise any other benefits immediately upon acquisition of the shares.
- c. The deferred vesting of the economic rights which affects the distributions and allocations from Co B that may accrue to a subscription member holding the Class X Shares is akin to a restrictive dividend policy put in place by Co B. It does not amount to a vesting restriction.

- d. Based on the terms and conditions stated in the Shareholders Agreement, the Constitution and the subscription plan, there is no explicit evidence that the vesting of economic rights affect the transferability of the Class X Shares.
 - e. As the transferability conditions are not imposed on the right or benefit to acquire the Class X Shares, they do not constitute a restriction on the sale of the Class X Shares, as contemplated under Section 10(6)(b) of the ITA.
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