

1. Subject:

Whether:

- a. The gains arising from the transfer of intellectual property rights ("**IPRs**") are taxable under Section 10(1) of the Income Tax Act 1947 ("**ITA**").
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2. Relevant background and facts:

- a. Company A and Company B own, develop, manage the group's key IPRs, perform key value chain functions and assume the associated economic risks. The group's global operations are led and overseen by Company A which is the entrepreneur for the regions outside Asia Pacific ("**APAC**"), while Company B is the regional entrepreneur for the APAC region.
- b. Pursuant to an earlier group reorganisation, Company A transferred the IPRs relating to the APAC market to Company B. Since then, Company B has been operating as the regional entrepreneur for the APAC region and assumes the responsibility for the production, marketing and research and development ("**R&D**") activities of the group in the APAC region. Company B derives revenue from the sale of its products and royalty income from licensing of IPRs.
- c. Company B is the economic owner of the IPRs transferred, as well as the IPRs subsequently developed under the R&D cost sharing agreement with Company A. Company B's IPRs are categorised as Section 19B IPRs and Residual IPRs as detailed below.
- d. Company B claimed 5-year writing down allowances under section 19B of the ITA ("**WDA**") on certain IPRs ("**Section 19B IPRs**").
- e. The Residual IPRs comprise mainly IPRs for which no WDAs were claimed and IPRs developed under the R&D cost sharing agreement for which tax deductions under sections 14(1) and 14C of the ITA have been claimed on the payments made.
- f. In a move to transition to a new operating model, Company A intends to acquire the IPRs relating to the APAC region, i.e., the Section 19B IPRs and Residual IPRs, from Company B at market value.
- g. Following the transfer of the IPRs to Company A, Company B will cease to be the IP owner and the APAC regional hub and will no longer derive revenue from sale of products and royalty income from licensing of IPRs.

Company B will become a service company for a period and eventually become dormant.

3. Relevant legislative provisions:

- a. Income Tax Act 1947 – Sections 10(1) and 19B(5)
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4. The rulings:

- a. The transfer of the Section 19B IPRs and Residual IPRs to Company A is capital in nature and therefore, any gain or loss arising therefrom is not taxable or deductible respectively.
- b. A charge based on the lower of the price which the Section 19B IPRs are transferred or the capital expenditure incurred in acquiring the Section 19B IPRs, will be imposed and subject to tax in the Year of Assessment relating to the basis period in which the transfer occurs.
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5. Reasons for the decision:

- a. The tax treatment is based on a consideration of the nature of Company B's business since it acquired the IPRs from Company A and that the transfer of the IPRs is due to an internal group reorganisation. Furthermore, there will be a complete sterilisation of Company B's profit-making apparatus following which it will become a service company and eventually become dormant.
- b. The Section 19B IPRs will be transferred to Company A after the writing-down period for the WDA claim. The charge is imposed pursuant to section 19B(5), subject to section 19B(10J) of the ITA.
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