

Advance Ruling Summary No. 3/2021
Published on 1 Apr 2021

1. Subject:

Whether the franchise income derived by Company A is sourced outside Singapore and is taxable only upon remittance or deemed remittance to Singapore under the provisions of the Income Tax Act (“ITA”)¹.

2. Relevant background and facts:

- a. Group X is one of the world’s largest technology suppliers in certain industry.
- b. Group X currently has a subsidiary, Company B, that owns the legal and economic rights to certain intellectual property (“IP”) and other intangible properties. Company B has entered into a franchise agreement (“**Franchise Agreement**”) with a related company, Company C, granting the latter the rights to operate certain elements of the Group’s business model and the use of its IP rights. Both Company B and Company C are incorporated and operate outside Singapore.
- c. Due to internal organisational restructuring, Group X is considering to incorporate a new company, Company A, in Singapore to acquire the legal and economic rights to the IP and other intangible properties from Company B, as well as all the rights related to Company B’s Franchise Agreement signed with Company C.
- d. Company A will replace Company B and be responsible for all activities currently conducted by Company B as the owner of the IP rights, including activities related to the Franchise Agreement.
- e. Company A will derive franchise income from the Franchise Agreement, subsequent to the planned restructuring.
- f. To enable Company A to replace Company B in its role and responsibilities without disrupting the global relations and transactions, Company A will maintain similar contracts that Company B has with affiliated and non-affiliated companies necessary to carry out its activities as the owner of its IP rights. All significant operating management and decision making as the owner of its IP rights will be done outside Singapore by non-resident employees outside of Singapore. All management activities with regard to portfolio evaluation and adjustment, process improvement, asset enhancement, business development, sales and marketing, etc. will be performed outside Singapore by affiliated entities.

¹ Income Tax Act, Chapter 134 (Revised Edition 2014)

- g. All contracts relating to the IP rights will be negotiated and executed outside of Singapore.
 - h. Company A will establish Singapore tax residency by ensuring its Board of Directors (the “**Board**”), a majority of whom will be Singapore residents, will hold their meetings in Singapore where all material strategic decisions regarding the direction of its activities carried on outside Singapore will be made.
 - i. Company A will employ a Managing Director (“**MD**”) in Singapore and a few staff to support the MD in Singapore. The MD’s main responsibilities will include:
 - (i) Monitoring the franchisee’s compliance with terms and conditions of Franchise Agreement and report any non-compliance to its Board;
 - (ii) Providing regular reports to the Board and the Board’s designated agents outside of Singapore responsible for the day-to-day management of the Company’s operations;
 - (iii) Providing quarterly updates to the Board and monthly updates to the Board’s designated agents outside Singapore responsible for the day-to-day operations with regards to the franchisee performance;
 - (iv) Ensuring required performance under all agreements with its affiliates and external parties and by monitoring and reporting on contract performance and immediately notifying the Board or the Board’s designated affiliate outside Singapore tasked with addressing non-compliance and contract enforcement;
 - (v) Maintaining the company’s books and records;
 - (vi) Establishing annual budgets and the company business plan; and
 - (vii) Developing long-term staffing plans, as required.
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3. Relevant legislative provisions:

- a. Income Tax Act (Revised Edition 2014) - Sections 10(1) and 10(25)
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4. The ruling:

- a. The franchise income derived by Company A is sourced in Singapore, and it is taxable on an accrual basis under the provisions of the ITA.
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5. Reasons for the decision:

The franchise income is regarded as sourced in Singapore in view of the following:

- a. Company A intends to establish Singapore tax residency by ensuring that the Board will hold its meetings in Singapore where all material strategic decisions regarding the direction of its activities carried on outside Singapore will be made;
- b. The active management of the Franchise Agreement, regular monitoring of the Franchise Agreement and updating to Company A's Board will be performed in Singapore by the MD supported by the staff in Singapore;
- c. Company A will be the legal and economic owner of the IP rights; and
- d. Company A will be the entity that would be signing the Franchise Agreement, although the contract would be signed outside Singapore.

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