

Advance Ruling Summary No. 4/2023
Published on 2 May 2023

1. Subject:

Whether the gains arising from disposal of Management Shares (defined below) held in Special Purpose Vehicle (“**SPV**”) A and SPV B (collectively, the “**Funds**”) by Company A to Company Z would be capital in nature and not subject to tax under the Income Tax Act 1947 (2020 Revised Edition) (“**ITA**”).

2. Relevant background and facts:

- a. Company A is a Singapore tax resident.
- b. SPV A and SPV B were incorporated more than 10 years ago to serve as investment funds.
- c. Investors participate in the Funds by subscribing for shares in SPV A and SPV B. Company A was the manager of the Funds. To facilitate this arrangement, the share capital of both Funds was structured so as to allow for issue of two classes of shares:
 - i. “Participating Shares”, which were issued to investors and which entitled the holders to dividends declared by the Funds but did not entitle the holders to vote at general meetings of the Funds; and
 - ii. “Management Shares”, which were intended to enable the management of the Fund. Accordingly, these shares did not entitle the holder to any dividend declared by the Funds, but did entitle the holder to the right to vote at general meetings of the Funds.
- d. Prior to year X, the structure by which Company A managed the Funds was as follows:
 - i. The Management Shares were held by Company B, a wholly-owned subsidiary of Company A.
 - ii. Company A would act as the appointed manager of the Funds, and exercise management control over the Funds generally through Company B, which it controlled as its wholly-owned subsidiary.
- e. In year X, as part of a corporate streamlining effort, the Management Shares were transferred from Company B to Company A for a nominal consideration. The sole motive of Company A in acquiring the Management Shares was to enable the group to manage the Funds.

- f. The proposed disposal of the Management Shares to Company Z is part of the wider transfer of the management of the Funds from Company A to Company Z.
 - g. Company A determined that it would be operationally advantageous to harmonise the administration of the entire suite of products offered by Company A to its clients by having such products managed by Company Z.
 - h. Company A will derive a gain on the proposed disposal.
 - i. Company A is not in the business of acquiring and disposing investments for profit. Company A does not have any precedent of disposing of fund entities which are going concerns.
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3. Relevant legislative provisions:

- a. Income Tax Act 1947 (2020 Revised Edition) – Section 10(1)
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4. The rulings:

- a. The sale of the management of the Funds to Company Z via the disposal of Management Shares is a capital transaction. Hence, any gain arising therefrom is not taxable under the provision of the ITA.
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5. Reasons for the decision:

- a. The sale of the management of the Funds to Company Z via the disposal of Management Shares is a capital transaction after taking into consideration the following factors:
 - i. Intention of Company A at the time of acquiring the Management Shares;
 - ii. Nature of the Management Shares;
 - iii. Frequency of similar transactions by Company A; and
 - iv. Circumstances for sale of the Management Shares.
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6. General Reference:

- a. Taxpayers may refer to the factors listed on IRAS website¹ that the Comptroller of Income Tax considers when determining whether or not a trade is being carried on.

¹ The said factors can be found at the following address:
<https://www.iras.gov.sg/taxes/corporate-income-tax/income-deductions-for-companies/taxable-non-taxable-income>

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