Advance Ruling Summary No. 5/2023 Published on 2 May 2023

1. Subject:

Whether:

a. the payments made under an agreement in respect of a service program ("Agreement") should be regarded as sourced in Singapore, and hence subject to withholding tax.

2. Relevant background and facts:

- a. Companies A and B (collectively referred to as "**Seller**") are Country X-resident corporations with their principal place of business in Country X.
- b. Companies C and D (collectively referred to as "**Buyer**") are Singapore resident companies with their registered offices in Singapore.
- c. The service program is an agreement under which Seller will repair and make available an exchange pool of spare parts to Buyer, including a one-off sale of certain spare parts to Buyer at a specified time ("**Program**").
- d. Under the arrangement, Seller will maintain a specified pool of spare parts in warehouse facilities in and outside Singapore. In respect of the pool of spare parts in Singapore, some of the parts are located in Buyer's facility and the title to these parts belongs to Seller. The rest of the parts are held in the Singapore warehouse of a third-party logistic provider ("Logistic Provider"). The Logistic Provider is paid for the logistics on commercial terms.
- e. Buyer is required to have their own inventory of parts to support their operations. The Program is a source of parts only in situations when Buyer do not have enough parts inventory. Where available, a part has to be drawn from Buyer's own inventory. If the part is not available in the Buyer's inventory pool, it may be drawn from the on-site inventory pool consigned to them by Seller. It is only if the part is also not available from the on-site consignment inventory is the Buyer to draw the part from Logistic Provider's warehouse.
- f. In consideration for having access to the exchange pool of spare parts, Buyer will pay Seller based on the specified rate for the relevant period covered under the Agreement ("Exchange Pool Rate"). The payment for the access to Seller's pool of parts is regardless of whether there is any exchange of parts from the pool of parts.

- g. The Agreement also provides that at a specified time, Seller will transfer to Buyer ownership of certain parts at a pre-determined price.
- h. Seller will cover the maintenance, repair, and overhaul ("MRO") of certain spare parts at a specified rate ("MRO Rate"). The list of parts whose repair is covered by the MRO Rate is a different list from the list of parts for which inventory support is provided at the Exchange Pool Rate.
- i. The repair of any parts that are not covered by the MRO Rate are billed job-by-job based on time and materials. The Agreement guarantees Buyer that its total cost of job-by-job time and materials repair bills will not exceed a specified rate.
- j. When Seller delivers a spare part to Buyer, in exchange Buyer will deliver to Seller the equivalent faulty spare part that has been identified for exchange. All right, title and interest in the part passes from Seller to Buyer and vice versa at the point of exchange. Buyer is responsible for making ready the parts for pick-up by Seller's designated logistics provider at Buyer's premises.
- k. Thereafter, Seller will proceed with the required repairs at any one of the designated repair stations specified in the Agreement. The designated repair stations are located in various countries including Singapore and comprise both third-party and related entities. The appropriate repair station in any particular instance depends on the facilities/capabilities, the part, available capacity, anticipated turnaround time, proximity, cost, etc. Each repair station is a separate legal entity and is paid by Seller on commercial terms. The parts are returned to the pool maintained by Logistics Provider in their Singapore warehouse after they are repaired and rebuilt.
- I. Seller carries on business in Country X and has no operations, employees, or place of business in Singapore. The Program is a service under which Seller manages the MRO supply chain and provides an exchange pool of spare parts for the Buyer. These operations consist in the application of proprietary artificial intelligence, data analytics and automation to provide advanced management of the spare parts' systems to maximize the efficiency of Buyer's business operations and control costs. These services are carried out by Seller in their principal place of business in Country X.
- m. The warehousing of parts, logistics, repairs, etc., which are performed locally are carried out by separate legal entities for arm's length remuneration for the services provided.

3. Relevant legislative provision:

a. Income Tax Act 1947 (2020 Revised Edition) – Section 12(7)

4. The ruling:

a. The payments made under the Agreement as mentioned in paragraphs 2f, 2g and 2h above would not be regarded as sourced in Singapore, and hence not be subject to withholding tax.

5. Reason for the decision:

a. The crux of the Agreement is for the provision of a service of managing and making available a pool of spare parts to meet Buyer's operational requirements. The management of the Program is carried out by Seller outside Singapore and the services do not fall within the scope of Section 12(7) of the Income Tax Act 1947(2020 Revised Edition).

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