Advance Ruling Summary No. 9/2023
Published on 3 Jul 2023

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1. Subject:

a. Whether the transfer of certain business segment ("**Business Segment X**") from Company A to a newly incorporated Singapore company ("**NewCo"**) is a capital transaction and therefore the gain (if any) arising therefrom is not subject to tax under the Income Tax Act 1947 (2020 Revised Edition) (the "**ITA**"), except for the transfer of inventory (where the rules under Section 32 of the ITA will apply, where applicable), and the computation of balancing charges as required under Section 20 of the ITA where capital allowances were claimed previously.

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2. Relevant background and facts:

a. Company A is a limited liability company incorporated in Singapore.

b. Due to group restructuring (the "**Restructuring**"), Company A will be transferring its Business Segment X (including employees, certain assets and business contracts) to NewCo. NewCo would be sold to a third party as part of the Restructuring.

c. The list of assets to be transferred to NewCo comprises leasehold building, plant and machinery, inventories as well as trade and other receivables.

d. Company A will be transferring the assets at net book value as at the date of transfer of the Business Segment X to NewCo, except for the leasehold building which will be transferred at fair market value.

e. Company A had issued shares to its immediate holding company to obtain the necessary fundings which were used for the purchase the leasehold building.

f. The leasehold building has been used as manufacturing and office building for the Business Segment X since the date of acquisition by Company A.

g. Following Company A's transfer of its Business Segment X, Company A will continue to carry on the remaining segments of its business in Singapore.

h. NewCo will carry on the Business Segment X in Singapore.

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3. Relevant legislative provisions:

a. Income Tax Act 1947 (2020 Revised Edition) - Sections 10(1), 20 and 32

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4. The rulings:

a. The transfer of Company A's Business Segment X to NewCo as a result of the Restructuring is a capital transaction.

b. The tax implications arising from the business transfer would depend on the nature of the specific underlying assets that make up the business that is being divested. The tax treatment of the various assets transferred is as follows:

(i) Inventories
The value of the inventories transferred for tax purpose would be the consideration that Company A receives from the transfer.

(ii) Plant and machinery
The gains, if any, arising from the disposal of the plant and machinery are capital in nature and are therefore not subject to tax. The provisions in Section 20 of the ITA will apply to determine the amount of balancing charge/balancing allowance arising from the disposal, where applicable.

(iii) Trade and other receivables
The gains, if any, arising therefrom are therefore capital in nature and are not subject to tax.

(iv) Leasehold building
The sale of the property is a capital transaction.

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5. Reasons for the decision:

a. The transfer of Company A's Business Segment X to NewCo as a result of the Restructuring is regarded as a capital transaction after taking into consideration the following factors:
(i) Circumstances of the transfer;
(ii) Nature of Company A's Business Segment X and assets;
(iii) Frequency of similar transactions by Company A.

b. Inventories
As the conditions stipulated under Section 32(1)(a) of the ITA would be satisfied, the value of the inventories transferred for tax purpose would be the consideration that Company A receives from the transfer.

c. <u>Plant and machinery</u>
The plant and machinery are fixed capital assets employed for use by Company A in carrying on its Business Segment X. Hence, any gains arising from the disposal of these assets are capital in nature and therefore not subject to tax.

d. <u>Trade and other receivables</u>
In line with the position taken to regard the transfer of Business Segment X as a capital transaction, the gains, if any, arising from the transfer of trade and other receivables are therefore capital in nature and are not subject to tax.

e. <u>Leasehold building</u>
The sale of the leasehold building is regarded as capital in nature, taking into consideration the following factors:
(i) The use of the leasehold building since its acquisition;
(ii) Frequency of similar transaction by Company A;
(iii) Mode of financing the acquisition of the leasehold building; and
(iv) Circumstances of the realisation.

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