Advance Ruling Summary No. 10/2022 Published on 1 Jun 2022

1. Subject:

- a. Whether Company A has a taxable source or tax liability in Singapore under Section 10(1) (read with Section 12(1)) of the Income Tax Act ("ITA")¹ by virtue of its activities performed in Singapore; and
- b. Singapore withholding tax treatment on technical service fees payable by customers in Singapore to Company A.

2. Relevant background and facts:

- a. Company A is incorporated outside Singapore and is not a tax resident of Singapore.
- b. Company A has engaged its affiliated company in Singapore, Company B, to provide certain services to Company A's Singapore-based customers under a sub-contracting agreement. Such services include provision of sales support and technical services.
- c. Company A contracts and invoices customers directly for the sale of its products and technical services, with title of the products passing from Company A directly to the Singapore-based customers.
- d. Sales support services to be provided by Company B consist of identifying potential customers, maintaining relationships, introducing new products and assisting Company A with the administrative tasks related to placing with customers' orders. Company B's sales support activities are subject to pre-approved guidelines and parameters pertaining to the pricing and terms set out by Company A within which Company B may quote to the customers. In the provision of the above services to Company A, Company B does not:
 - (i) habitually exercise an authority to conclude contracts on behalf of Company A in Singapore; or
 - (ii) maintain in Singapore a stock of goods or merchandise belonging to Company A from which it regularly fills orders on behalf of the Company A.
- e. Company B also provides technical services to Company A's Singaporebased customers. The services in Singapore are performed solely by

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¹ Income Tax Act 1947 (2020 Revised Edition)

employees of Company B without any physical supervision of Company A.

- f. The payment by Singapore-based customers to Company A for the technical services rendered does not include any royalty payment to Company A.
- g. Company A engages third-party warehouse providers in Singapore for the purpose of storage and delivery of its products and spare parts to customers.
- h. Aside from Company's engagement of Company B and third-party warehouse providers, Company A does not have any other activities carried out in Singapore.
- Company B will receive an arm's length service fee from Company A for the services it performs. Such income derived from Company A would be reflected as part of Company B's taxable income and would be subject to Singapore tax.
- j. Company A does not perform any other functions, use any assets or assume any risks in Singapore other than those arising from Company B's activities under the sub-contracting agreement.

3. Relevant legislative provisions:

a. Income Tax Act 1947 (2020 Revised Edition) - Sections 10(1), 12(1), 12(7)(b) and 12(7A)

4. The rulings:

- Company A does not have a tax liability in Singapore under Section 10(1) (read with Section 12(1)) of the ITA by virtue of its activities performed in Singapore.
- b. The technical service fees payable by customers in Singapore to Company A falls within the ambit of Section 12(7)(b) of the ITA. Accordingly, Company A's customers in Singapore are required to withhold tax at the prevailing corporate tax rate of 17% on the gross payment for the technical service fees payable to Company A.
- c. If Company A wishes to claim for the expenses incurred in deriving the technical service income, it can forward the certified accounts and tax computation for IRAS' examination. When the net income and tax have been determined, any tax withheld in excess of the tax on the net income will be refunded.

5. Reasons for the decision:

- a. Company A does not have a tax liability by virtue of its activities performed in Singapore in view of the following:
 - (i) The mere storage of goods in warehouse without carrying on business in Singapore will not give rise to any tax liability; and
 - (ii) Company A does not have any employees to perform any of its services in Singapore and has engaged a service provider in Singapore to perform sales support to its customers, as well as technical services to Singapore-based customers.
- b. Company A's customers in Singapore are required to withhold tax at the prevailing corporate tax rate of 17% on the gross payment for the technical service fees payable to Company A. This is in view of the following:
 - (i) Based on Sections 12(7)(b) and 12(7A) of the ITA, income from technical services performed in Singapore (i.e. service in connection with the application or use of scientific, technical, industrial or commercial knowledge or information) is deemed to be sourced in Singapore if the payments for the services are borne by a person resident in Singapore or are deductible against any income accruing in or derived from Singapore.
 - (ii) Under Section 45A of the ITA, where the Singapore-based customers are liable to pay to another person not known to him to be resident in Singapore (i.e. Company A) any income referred to in Section 12(7) of the ITA, they are to withhold tax in respect of the payment for the technical services.

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Please note that IRAS will not update the published ruling to reflect changes in the tax laws or our interpretations of the tax laws.