

Advance Ruling Summary No. 10/2023
Published on 1 Aug 2023

1. Subject:

Whether the gains derived by Company A from the disposal of ordinary shares in Company B (the “**Shares**”) is capital in nature and not subject to tax under section 10(1) of the Income Tax Act 1947 (2020 Revised Edition) (“**ITA**”).

2. Relevant background and facts:

- a. Company A is a Singapore private company limited by shares.
 - b. Company A had acquired the Shares as long-term investment. There was no change of intention throughout the duration of ownership of the Shares by Company A.
 - c. The Shares were financed by way of a capital injection by Company A’s parent company into Company A.
 - d. In year X, Company C made an offer to acquire all the shares in Company B (“**Proposed Acquisition**”).
 - e. At the time of sale, Company A held a minority stake in the total share capital of Company B. The stockholders’ agreement contained drag-along provisions which would be triggered if a certain percentage of Company B’s stockholders approved the Proposed Acquisition and this would compel Company A to sell its Shares. Ultimately, Company B’s stockholders supported and voted in favour of the Proposed Acquisition.
 - f. Company A had not actively sought buyers for the Shares and the sale was initiated by Company C.
 - g. The sale of the Shares was the first and only such transaction entered into by Company A.
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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 disposal of the Shares to Company C is a capital transaction. Hence, the gain arising therefrom is not taxable under the provisions of the ITA.

5. Reasons for the decision:

- a. The disposal of the Shares to Company C is a capital transaction after taking into consideration the following factors:
 - i. Intention of Company A at the time of acquiring the Shares;
 - ii. Frequency of similar transactions by Company A; and
 - iii. Circumstances for sale of the Shares.

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.

Disclaimer

The published summary of the advance ruling is for general reference only. It is binding only in respect of the applicant of the advance ruling and the specified transaction under consideration of the advance ruling. All taxpayers should exercise caution in relying upon the published summary of the advance ruling, as the Comptroller is not bound to apply the same tax treatment to a transaction that is similar to the specified transaction.

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

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>