Advance Ruling Summary No. 12/2020 Published on 1 Dec 2020

1. Subject:

Whether the provisions of sections 12(7)(a), 12(7)(b), 12(7)(d), 45 and 45GA of the Income Tax Act ("ITA")¹ are applicable to the payments made by a Singapore payer ("Payer") to a foreign payee ("Payee") to stage an art performance in Singapore.

2. Relevant background and facts:

- a. Payer is a company incorporated and tax resident in Singapore.
- b. Payee is an arts production company, tax resident in Country A. Its principal activity is to stage and present theatre performances.
- c. Payer collaborated with Payee to stage a production in Singapore for a specified period of time ("the Production").
- d. The Production Agreement sets out the terms of the contract for Payer to present the Production by Payee in Singapore. Payer and Payee are the contractual parties to the Production Agreement and the performers are the employees of Payee.
- e. Under the terms of the Production Agreement, Payer will make, among others, the following payments to Payee:
 - i. A fixed fee for Payee to deliver the Production for Payer to present the performance and to cover some of its fixed cost.
 - ii. A variable fee computed based on a fixed percentage of the net adjusted gross box office receipts. It is a form of profit sharing for Payee, being the owner and performer of the Production.
- f. The event was subsequently cancelled. Notwithstanding this, Payer is contractually liable to make payments to Payee under the terms of the agreement. As at the time of the cancellation of the event, a portion of the fixed fee had been paid to Payee in accordance with the payment clause of the Production Agreement.

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¹ Income Tax Act, Chapter 134 (Revised Edition 2014)

3. Relevant legislative provisions:

a. Income Tax Act, Chapter 134 (Revised Edition 2014) – sections 12(7)(a), 12(7)(b), 12(7)(d), 45 and 45GA.

4. The ruling:

a. The fixed fee payment made by Payer to Payee does not fall within the scope of sections 12(7)(a), 12(7)(b), 12(7)(d), 45 and 45GA of the ITA.

5. Reason for the decision and clarifications:

- a. The fixed fee and variable fee payable to Payee under the Production Agreement are fees for the staging of an art performance in Singapore and do not come within the provisions of sections 12(7)(a), 12(7)(b), 12(7)(d), 45 and 45GA of the ITA.
- b. However, the payments made by Payee to its employees in respect of their income derived from Singapore as public entertainers are subject to Singapore withholding tax. To the extent that the employees are residents of jurisdictions which have concluded Avoidance of Double Taxation Agreements ("DTAs") with Singapore, the provisions of the relevant DTAs will apply.

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