1. Subject:

Whether the initial and subsequent gains derived from the sale of shares in Company B should constitute as capital gains and not as trading income assessable under section 10(1)(a) of the Income Tax Act 1947 (2020 Revised Edition) ("ITA").

2. Relevant background and facts:

- a. Company A is an investment holding company incorporated and tax resident in Singapore. It is part of Group X which owns a joint venture stake in a project (the "**Project**") with two other joint venture partners, Group Y and Group Z.
- b. Group Y announced its decision to exit its stake in the Project and Group X won the bid for Group Y's stake. Group Y's stake in the Project was held through a non-Singapore incorporated company, Company N.
- c. Company B (a wholly-owned subsidiary of Company A) and Company C (a wholly-owned subsidiary of Company B) are investment holding companies incorporated in Singapore. Company B was incorporated with the intention for Group X to acquire (indirectly via Company C) Group Y's stake in the Project through the acquisition of Company N ("proposed acquisition") for long term strategic purposes. The proposed acquisition would increase Group X's total participating interest in the Project and would require Group Z's consent.
- d. Group Z withheld consent to the proposed acquisition.
- e. Various parties, including a third party buyer (the "Buyer"), then approached Group Y to inquire about an acquisition of its stake in the Project. Group Y indicated to these parties that it would not seek to run another sale process and directed the Buyer to discuss the acquisition with Group X.
- f. In year T, Company A sold its shares in Company B to the Buyer for an initial consideration of \$XX and an additional amount of \$YY, payable according to certain payment milestones upon completion of the proposed acquisition. The proposed acquisition was subsequently completed in the same year.
- g. Company A will recognise an initial gain in year T and subsequent gains on the sale of shares in years T, T+1 and T+2. The second and third

milestone payments will only be recognised in Company A's books upon receipt of cash in years T+1 and T+2 respectively.

h. The sale of the shares in Company B was the first and only such transaction entered into by Company A.

3. Relevant legislative provisions:

a. Income Tax Act 1947 (2020 Revised Edition) – Section 10(1)(a)

4. The rulings:

a. The initial gain and subsequent gains derived from the sale of shares in Company B to the Buyer are capital gains and hence not taxable under the provisions of the ITA.

5. Reasons for the decision:

- a. The sale of shares in Company B to the Buyer is a capital transaction after taking into consideration the following factors:
 - i. Intention of Company A at the time of incorporating Company B;
 - ii. Frequency of similar transactions by Company A; and
 - iii. Circumstances for sale of the shares in Company B.

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.

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

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