1. Subject:

Whether:

- a. The Pool profits (excluding interest income) remitted to non-resident entities (i.e. the Foreign Pool Participants) from the Singapore Bank Accounts of Company D that are managed by Company A shall be exempted from corporate income tax in Singapore, including withholding tax, on the basis that the beneficial owner of the Pool distributions (excluding interest income) are the Pool Participants, notwithstanding that the commercial management services and other administrative functions are mainly performed in Singapore by Company A. This is also on the basis that Company A will be appropriately remunerated for the activities it undertakes on behalf of the Pool Participants in Singapore; and
- b. The Pool profits (excluding interest income) received by Company A shall be exempt from income tax under Section 13A and / or Section 13E of the Income Tax Act 1947 (2020 Revised Edition) ("ITA") where Company A is a Pool Participant and is entitled to receive the Pool profits (excluding interest income) on the basis that the distributions (excluding interest income) are qualifying shipping income falling within the scope of Section 13A and / or Section 13E of the ITA, where appropriate.

2. Relevant background and facts:

- a. Company A is a Singapore tax resident and has been granted the Maritime Sector Incentive Approved International Shipping Enterprise ("MSI-AIS") status by the Maritime and Port Authority of Singapore. It provides commercial management services and other administrative functions for a vessel pooling arrangement ("Pool").
- b. Company A's parent company, Company C was under a service agreement with Company B to provide assistance to Company D in relation to the chartering and general coordination of the vessels ("Member Vessels") in the Pool. The Member Vessels are contributed by various vessel owners (i.e. Pool Participants). The Member Vessels ply both between Singapore and other countries, and between places outside Singapore. Company D (as the Pool Management Company) subcontracted the provision of pool management services to Company B and Company C.
- c. Company A has entered into a new service agreement ("Service Agreement") with Company B and Company D, with effect from a certain

date to take over the provision of pool management services from Company C. Company A will be remunerated on an arm's length basis for the services it rendered under the Service Agreement.

- d. The commercial management of the vessels and the administration of the Pool [including the management and administration of the flow of funds through the Singapore bank accounts to be opened by Company D ("Singapore Bank Accounts")] would be undertaken by Company A in Singapore. Company A would have employees in Singapore to perform such services.
- e. Company A, B and D are acting as an agent and trustee of the Pool Participants.
- f. Company D is an entity incorporated outside Singapore. Company D's presence in Singapore is only through the activities carried on by Company A. Company D does not carry on any activities on its own in Singapore.
- g. The Pool Participants are as follows:
 - i. Company A;
 - ii. Company B;
 - iii. Company C; and
 - iv. Various entities incorporated outside Singapore.

(Entities in (ii) to (iv) to be collectively referred to as "Foreign Pool Participants).

(Entities in (i) to (iv) to be collectively referred to as "**Pool Participants**).

- h. The Foreign Pool Participants are not tax residents of Singapore.
- i. The Foreign Pool Participants are shipping companies carrying on shipping operations in their home countries and their presence in Singapore is merely through the participation in the Pool. The Foreign Pool Participants undertake all the risks and rewards incidental to the ownership of the vessels contributed / committed to the Pool.
- j. The Foreign Pool Participants would not undertake any further activities in respect of the Member Vessels in Singapore, other than those undertaken by Company A on behalf of Company D and the Pool Participants in Singapore.
- k. The Pool Participants are the beneficial owners of the Pool's cash balances, e.g. income derived from the operation of the Member Vessels derived from the agreements.

I. At all times, the legal ownership of the Member Vessels remains with the respective Pool Participants.

3. Relevant legislative provisions:

a. Income Tax Act 1947 (2020 Revised Edition) – Sections 2, 13A, 13E, 45A(2D) and 45A(2DA)

4. The rulings:

- a. <u>Taxability of the Pool distributions (excluding interest income) derived by the Foreign Pool Participants</u>
 - i. There will be no further attribution of profits to the Permanent Establishment ("**PE**") of the Foreign Pool Participants in Singapore arising from the activities or functions undertaken by Company A in Singapore in respect of the pool arrangement.
 - ii. The Comptroller reserves the right to request transfer pricing documentation to satisfy itself that Company A has been remunerated with an arm's length fee.
- b. <u>Singapore withholding tax on Pool distributions (excluding interest income) made to the Foreign Pool Participants</u>

Singapore withholding tax is not required on the Pool distributions (excluding interest income and finance lease payments for ships) made to the Foreign Pool Participants pursuant to the pool agreement.

- c. <u>Taxability of Pool distributions (excluding interest income) payable to Company A, a Singapore participant</u>
 - i. Where the Member Vessel employed under the pool arrangement is a Singapore/ foreign ship for the purpose of Section 13A(16) of the ITA, the net income from the pool arrangement will be tax exempt provided that the net income is a distribution out of qualifying income falling within the scope of Section 13A of the ITA.
 - ii. Where the Member Vessel employed under the pool arrangement is a foreign ship for the purpose of Section 13E(6) of the ITA, the net income from the pool arrangement will be tax exempt provided that the net income is a distribution out of qualifying income falling within the scope of Section 13F of the ITA.
 - iii. The tax treatment stated in paragraphs 4c(i) and (ii) is subject to Company A meeting the conditions stipulated in Sections 13A and 13E of the ITA, where applicable.

d. The rulings in paragraphs 4(a) and (b) do not cover the activities or functions undertaken by Company B in Singapore (if any) other than as a Foreign Pool Participant in respect of the pool arrangement.

5. Reasons for the decision:

- a. By virtue of the activities to be carried out by Company A in Singapore, a Foreign Pool Participant may crystallise a PE in Singapore arising from the pool arrangement. However, to the extent that Company A is remunerated at arm's length in respect of its services rendered under the Service Agreement and the Foreign Pool Participants will not undertake any further activities or functions in Singapore other than those undertaken by Company A in Singapore, no further profits will be attributable to the PE of the Foreign Pool Participants in Singapore arising from the activities or functions undertaken by Company A in Singapore in respect of the pool arrangement.
- b. Under Sections 45A(2D) and 45A(2DA) of the ITA, withholding tax shall not apply to any payment liable to be made on or after 17th February 2012 under any agreement or arrangement for the charter of any ship (excluding finance lease payments for ships).
- c. The taxability of the Pool distributions (excluding interest income) derived by a company which is an approved international shipping enterprise, will follow the existing provisions under Sections 13A and 13E of the ITA, where applicable.

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