1. Subject:

a. Whether the sale of interest in certain investment ("**XY interest**") is a capital transaction and therefore any costs/loss associated with the sale and gains (if any) arising therefrom should not be deductible and taxable respectively under the provisions of the Income Tax Act¹("**ITA**").

2. Relevant background and facts:

- a. ABC Trust is a listed business trust and registered under the Business Trust Act. It is managed by Company A (the "**Trustee-Manager**"). The Trustee-Manager holds the dual responsibility of safeguarding the interests of the unitholders of ABC Trust and managing ABC Trust's business.
- b. ABC Trust was established with the principal investment strategy of investing, directly or indirectly, in the business of owning a portfolio of certain stabilised, income-generating assets.
- c. ABC Trust holds the investment in its initial offering portfolio of assets in certain jurisdiction, through a business arrangement ,where it entered into an agreement as an investor ("**XY Investor**") with XY, the business operator that manages and operates the income-generating assets under the arrangement ("XY business").
- d. ABC Trust had utilised the proceeds from the listing for the purchase of the XY interest.
- e. As a XY investor, ABC Trust holds passively the XY interest and does not actively participate in or directly control the XY business, nor performs any supplementary work on or in connection with the enhancement of the value of the underlying assets.
- f. ABC Trust derived profit distribution and return of capital (i.e. cash distributions in excess of profits) from the XY interest.
- g. ABC Trust disposed of the XY interest on Date A, after holding of the interest for more than 5 years. There has been no prior sale of any part of the XY interest by ABC Trust.
- h. The Trustee-Manager did not actively solicit the divestment of the XY interest. It received a non-binding unsolicited proposal to divest its XY interest.

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

- i. There was no intention by ABC Trust to divest the XY interest until it received the unsolicited offer. ABC Trust also had difficulty in improving its distribution per unit and trade price since listing.
- j. The Trustee-Manager intends to undertake a voluntary winding up of ABC Trust after completion of the sale of the XY interest.

3. Relevant legislative provisions:

a. Income Tax Act, Chapter 134 (Revised Edition 2014) – Section 10(1)(a) and (g).

4. The ruling:

a. The sale of the XY interest is a capital transaction and therefore any costs/loss associated with the sale and gains (if any) arising therefrom is not deductible and taxable respectively under the provisions of the ITA.

5. Reason for the decision:

- a. The sale of the XY interest is regarded as capital transaction, after taking into consideration the following factors:
 - (i) Intention of ABC Trust at the time of acquiring the XY interest;
 - (ii) The holding period of the XY interest;
 - (iii) Mode of financing;
 - (iv) Frequency of similar transactions by ABC Trust;
 - (v) Circumstances of the realisation; and
 - (vi) ABC Trust's intention to wind up upon completion of the sale of the XY interest.

6. General Reference:

a. Taxpayers may refer to the factors listed on IRAS website² 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

² The said factors can be found at the following address:

https://www.iras.gov.sg/irashome/Businesses/Companies/Working-out-Corporate-Income-Taxes/Taxable-and-Non-Taxable-Income/Determining-the-Existence-of-a-Trade/

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.