Advance Ruling Summary No. 8/2022
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1. Subject:

a. Whether the transfer of Company A's operating business as a going concern to a newly incorporated Singapore company ("**NewCo**") is regarded as a capital transaction, such that the gains arising therefrom are capital in nature and not subject to income tax under the provisions of the Income Tax Act (**"ITA"**)[1]; and

b. Company A and NewCo meet the requisite conditions under Section 24 of the ITA and, should they so decide, are eligible to make a Section 24 election in respect of the transfer of Qualifying Assets (as elaborated below) from Company A to NewCo.

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2. Relevant background and facts:

a. Company A is a limited liability company incorporated in Singapore.

b. Company A is a wholly owned subsidiary of Company B. Company B is in turn held by Company X, Company Y and Company Z.

c. Due to group restructuring, Company A will be transferring its operating business to NewCo in its entirety as a going concern. This includes the novation or assignment of Company A's existing employee and commercial/business contracts to NewCo, as well as the transfer of assets and liabilities relating to the operating business.

d. Company X and Company Y would, at the time of transfer, hold more than 50% of the ordinary shares and more than 50% of the voting rights in both Company A (indirectly via their shareholdings in Company B) and NewCo. There is no intention for there to be any change to the shareholders' voting rights in NewCo post-transfer.

e. The list of assets to be transferred to NewCo comprises property, plant and equipment (the "**PPE**"), inventories, business contracts and goodwill. The PPE include plant and machinery, motor vehicles, computer and office equipment; some of which qualify as "plant and machinery" ("**Qualifying Assets**") for which capital allowances ("**CA**") had previously been claimed on by Company A under Section 19A of the ITA.

f. Company A's inventories would be transferred to NewCo at the net book value stated in Company A's management accounts as at the date of the

[1] Income Tax Act 1947 (2020 Revised Edition)

transfer. As such, there would not be any gain / loss arising from the transfer of the inventories. The conditions stipulated under Section 32(1)(a) of the ITA will be satisfied by Company A and NewCo:

(i) The inventory is sold or transferred for valuable consideration to a person who carries on or intends to carry on a trade or business in Singapore (i.e. NewCo); and

(ii) The cost whereof may be deducted by the transferee (i.e. NewCo) as an expense in computing the trade gains or profits.

g. The Qualifying Assets are used by Company A in the production of income chargeable to tax under the provisions of the ITA and will be similarly used by NewCo. The Qualifying Assets are not leased by Company A to NewCo before the restructuring.

h. Post-settlement of any outstanding liabilities after the restructuring, Company A will be liquidated.

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3. Relevant legislative provisions:

a. Income Tax Act 1947 (2020 Revised Edition) - Sections 10(1), 20, 24 and 32

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4. The rulings:

a. The transfer of Company A’s operating business to NewCo as a result of the restructuring is a capital transaction.

b. The tax implications arising from the business transfer would depend on the nature of the specific underlying assets that make up the business that is being divested. The tax treatment of the various assets to be transferred is as follows:

(i) <u>Inventories</u>
The value of the inventories transferred for tax purpose would be the consideration that Company A receives from the transfer.

(ii) <u>PPE</u>
The gain arising from disposal of the PPE is capital in nature and is therefore not subject to tax. The provisions in Section 20 of the ITA will apply to determine the amount of balancing charge/balancing allowance arising from the disposal, where applicable.

(iii) <u>Goodwill and business contracts</u>
The gains, if any, arising therefrom are capital in nature and are not subject to tax.

c. An election under Section 24 of the ITA can be made for the Qualifying Assets that Company A will transfer to and vest in NewCo as a result of the restructuring.

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5. Reasons for the decision:

a. The transfer of Company A's operating business to NewCo is regarded as a capital transaction after taking into consideration the following factors:
   (i) Circumstances of the realisation;
   (ii) Nature of Company A's operating business and assets;
   (iii) Frequency of similar transactions by Company A;
   (iv) Length of ownership of the business; and
   (v) Company A's intention to liquidate upon completion of the restructuring and post-settlement of any outstanding liabilities.

b. <u>Inventories</u>
   As the conditions stipulated under Section 32(1)(a) of the ITA would be satisfied, the value of the inventories transferred for tax purpose would be the consideration that Company A receives from the transfer.

c. <u>PPE</u>
   The PPE are fixed capital assets employed for use by Company A in carrying on its trade. Hence, the gain arising from disposal of the PPE is capital in nature and is therefore not subject to tax.

d. <u>Goodwill and Business Contracts</u>
   In line with the position taken to regard the transfer of the operating business as a capital transaction, the gains, if any, arising from the transfer of goodwill and business contracts are therefore capital in nature and are not subject to tax.

e. An election under Section 24 of the ITA can be made for the Qualifying Assets in view of the following:

   (i) The "control" condition in Section 24 of the ITA is met given that Company X and Y hold more than 50% of the ordinary shares in Company A (indirectly via their shareholdings in Company B) and NewCo;

   (ii) The conditions stipulated in Section 24(4) are met; and

   (iii) The transfer of the Qualifying Assets by Company A to NewCo is not one to which Section 33 of the ITA applies, as the transfer took place pursuant to the restructuring.

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