

Advance Ruling Summary No. 9/2022
Published on 1 Jun 2022

1. Subject:

- a. Whether the transfer of Company A's Fixed Assets (as elaborated below) to a newly incorporated Singapore company ("**NewCo**") is regarded as a capital transaction, such that any gain arising therefrom is capital in nature and not subject to income tax under the provisions of the Income Tax Act ("**ITA**")¹.
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2. Relevant background and facts:

- a. Company A is a limited liability company incorporated in Singapore.
 - b. Company A was carrying a trade in Singapore, before it was converted to an investment holding company in year X. It owns a leasehold land, an office building and other fixed assets comprising motor vehicles, furniture, fixtures and office equipment (collectively, the "**Fixed Assets**").
 - c. Company A has held the Fixed Assets for a long period of time, especially the leasehold land and office building which have been held for over 10 years. The Fixed Assets were acquired / constructed for the purpose of its trade conducted prior to year X, and the Fixed Assets were sublet to derive passive rental income thereafter.
 - d. Company A will be transferring the Fixed Assets to NewCo pursuant to a restructuring within the group.
 - e. Company A will derive a gain from the transfer of the Fixed Assets to Newco.
 - f. 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) - Section 10(1)
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4. The ruling:

¹ Income Tax Act 1947 (2020 Revised Edition)

- a. The transfer of Company A's Fixed Assets to NewCo is a capital transaction and therefore any gain arising therefrom is not taxable under the provisions of the ITA.
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5. Reasons for the decision:

- a. The transfer of Company A's Fixed Assets to NewCo is regarded as a capital transaction after taking into consideration the following factors:
- (i) Intention of Company A at the time of acquiring the Fixed Assets;
 - (ii) The holding period of the Fixed Assets;
 - (iii) Frequency of similar transactions by Company A; and
 - (iv) Circumstances of the realisation.
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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.
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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.

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

² 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>