Advance Ruling Summary No. 14/2021 Published on 1 Oct 2021

1. Subject:

a. Whether tax deferred distributions derived by Company A from a foreign trust would be subject to Singapore income tax.

2. Relevant background and facts:

- a. Company A is a private limited liability company that is incorporated and tax resident in Singapore.
- b. Company A is a unitholder of a property trust in Country X ("X Property Trust"). The X Property Trust holds another trust ("Y Trust") which in turn holds several sub-trusts ("Sub-Trusts"), where each of these Sub-Trusts owns a property located in Country X.
- c. The Sub-Trusts are special purpose vehicles set up specially to hold the properties acquired at different points in time (i.e. one Sub-Trust for each property). This is for financing purposes.
- d. X Property Trust will make the following distributions to Company A:

(i) Distributions of recurring net rental income

 X Property Trust will derive trust distributions from Y Trust, which in turn will derive sub-trust distributions originating from rental income of property located in Country X. X Property Trust, Y Trust and the Sub-Trusts are tax transparent. As such, the tax (if any) on distribution income from the X Property Trust will be borne by its unitholders and Company A will be subject to withholding tax in Country X.

(ii) Tax deferred distributions

• When X Property Trust makes cash distributions in excess of its net taxable income, these are referred to as tax deferred distributions and are usually attributable to building allowances, tax depreciation and other tax timing differences. Such tax deferred distributions are not taxable when received, rather they reduce the cost base of the units in the trust in the hands of the unitholder from Country X's point of view.

There are books and accounting records in place to keep track of the fund flows in paragraph 2d(i) and (ii) above.

e. The tax deferred distributions are recorded as return of capital in the books of Company A.

3. Relevant legislative provisions:

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

4. The rulings:

- a. The tax deferred distributions derived by Company A from the X Property Trust, to the extent of the amount of capital invested into the X Property Trust, will not be subject to tax in Singapore. Instead, the tax deferred distributions would be treated as a reduction of the cost of the investment in the X Property Trust by Company A.
- b. Should it be determined subsequently that Company A is a trader of the investment in X Property Trust, the gains from the disposal of the said investment will be computed based on the original cost incurred less the tax deferred distributions derived by the Company.

5. Reasons for the decision:

a. The tax deferred distributions from X Property Trust, are treated as return of capital in the hands of Company A and accordingly, the tax treatment in paragraph 4 will ensue.

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