Advance Ruling Summary No. 9/2021 Published on 2 Aug 2021

1. Subject:

Whether:

- a. the income of Company A (the amalgamated company) would be regarded as income arising from the same trade or business as that of Company B (the amalgamating company) immediately before the amalgamation; and
- b. the unabsorbed losses and unabsorbed investment allowances ["Unabsorbed Loss Items"] of Company B can be allowed for set-off against the income of Company A, in accordance with section 34C(25) of the Income Tax Act ("ITA")¹ and Regulation 13(5) of the Income Tax (Amalgamation of Companies) Regulations ("Amalgamation Regulations").

2. Relevant background and facts:

- a. Company A and Company B are companies incorporated in Singapore.
- b. Company A is in the X business and holds the licenses to carry on type 1, 2 and 3 works to derive contract revenue from the X business.
- c. Company B is in the X business and holds the licenses to carry on type 3 works to derive contract revenue from the X business.
- d. Company B will be amalgamated into Company A under section 215 of the Companies Act² on the intended amalgamation date.
- e. Company B has been and will continue to be in the business of providing type 3 works services until the intended amalgamation date.
- f. Post-amalgamation, Company A will continue to carry on the X business in providing type 1, 2 and 3 works to derive contract revenue from the X business. Company A will continue to service any X business contracts taken over and carry on the business of Company B.

3. Relevant legislative provisions:

a. Income Tax Act, Chapter 134 (Revised Edition 2014) - Section 34C

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

² Companies Act, Chapter 50

4. The ruling:

- a. The Unabsorbed Loss Items of Company B could be deducted against the income of Company A in accordance with section 34C(25) of the ITA and Regulations 13(5) of the Amalgamation Regulations.
- b. The ruling is subject to Company A and Company B meeting the applicable conditions in sections 34C(23) and (24) of the ITA and Regulations 13(2) of the Amalgamation Regulations for the Unabsorbed Loss Items of the amalgamating company to be deducted against the income of the amalgamated company.

5. Reason for the decision:

a. Company A can set off Company's B Unabsorbed Loss Items because immediately before the amalgamation, Company A carried out the same trade or business as that of Company B (i.e. X business) and the income of Company A would be regarded as arising from the same trade or business as that of Company B immediately before the amalgamation [section 34C(25) of the ITA], provided that the other conditions for the deduction in the ITA and the Amalgamation Regulations are satisfied.

6. General Reference:

a. Taxpayers may refer to the IRAS e-Tax Guide "Tax Framework for Corporate Amalgamations" ("e-Tax Guide") in particular, paragraphs 6.12, 6.13, D1 and D4 of Annex A for further guidance on the conditions for utilisation of an amalgamating company's Unabsorbed Loss Items by an amalgamated company.

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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.

https://go.gov.sg/etaxguide-cit-tax-framework-for-corporate-amalgamations

³ The said e-Tax Guide can be found at the following link:

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