Advance Ruling Summary No. 01/2021
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1. Subject:

Whether Sections 10(6) of the ITA is applicable to shares subscribed by employees under a leveraged share plan

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2. Relevant background and facts:

a. The Singapore employer is part of a group of companies whose parent is incorporated in France.

b. Under the employee share plan, the employees of the group are offered rights to subscribe for new shares through a collective shareholding vehicle (“A”) that is established and governed pursuant to certain provisions of the French Monetary and Financial Code.

c. The features of the leveraged plan are as follows:

    (i) A acting on behalf of the participating employee will subscribe for shares at a certain subscription price.

    (ii) Pursuant to the terms of the plan, the employees will pay Y% of the subscription price of the shares to A, also known as Personal Contribution. A will then enter into a swap arrangement with a bank, under which the bank will pay to A an amount equivalent to the remaining of the subscription price of the shares i.e. 100%-Y%.

    (iii) With the payment from the employees and the proceeds from the swap arrangement from the bank, A will subscribe for shares on behalf of the employees. The employees will not be liable for the remaining of the subscription price (i.e. 100% - Y%) that is contributed to A under the swap arrangement from the bank.

    (iv) The employee will receive units in A in an amount corresponding to the amount that he has invested. Such units granted under the Leveraged Plan may not be redeemed for a period of N years from the date of issue of the units i.e. the lock-up period, subject to certain exceptions.

    (v) During the life of the Leveraged Plan, A will pay to the Bank the amount of any dividends received on the shares.

(vi) At the end of the lock-up period, the employee is entitled to a Leveraged Amount which is his Personal Contribution plus a return, calculated in accordance with a certain Leveraged Formula. The employee may redeem the Leveraged Amount in the form of cash or shares or continue to keep the investment by electing to transfer the units to another similar vehicle which hold shares.

(vii) In order to achieve the economics described above, the following will occur at the end of the lock-up period:

(a) A will owe to the Bank an amount equal to the market value of the Shares (as determined under the Swap Agreement) held by A, minus the Leveraged Amount; to settle this obligation, A will sell Shares to the Bank; and

(b) If the share price has fallen such that pursuant to the calculation made under the Leveraged Formula, the Employees would receive less than the Personal Contribution which they made, the Bank will pay a gross up to A to ensure that each Employee will still receive an amount equal to the Personal Contribution which he or she initially made.

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3. Relevant legislative provisions:

Income Tax Act (Revised Edition 2014) ("ITA") - Section 10(1)(b), 10(6) and 10(7)

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4. The ruling:

The employee's share gains derived from the leveraged share plan is income subject to tax under Section 10(1)(b) pursuant to Section 10(6). The taxable amount is the actual Leveraged Amount received upon the expiry of the lock-up period or upon early exit, less the employee's Personal Contribution.

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5. Reasons for the decision:

a. Section 10(6) covers gains from stock options and share award plans which allow an eligible employee of the company to own or acquire shares in a company. As the employees of the company are offered rights to subscribe new shares during their employment in Singapore, the gains derived from rights to buy shares will fall within the provision of Section 10(6).

b. As the Leveraged Amount represents the market value of the number of shares or units which the employee is entitled to redeem upon the expiry of lock-up period or upon an early exit event, the taxable gains (if any) would be the Leveraged Amount less his Personal Contribution.

c. The arrangements under the Leveraged Plan where the employee only pays a percentage of the subscription price of the shares while the bank pays the balance, is a matter of financing the purchase of shares and should not have any impact on the tax treatment of the gains derived from the rights to acquire the shares.

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