

1. Subject:

The taxing point of the benefits, if any, derived by the employees from subscribing into an overseas fund managed by the parent company of the employer.

2. Relevant background and facts:

- a. The Singapore company is a subsidiary of a private equity company, Company A which is incorporated in Country Y.
- b. The principal activities of Company A include managing investment funds. To attract talent to join the Singapore company, eligible employees of the company are given the opportunity to subscribe to one of the overseas funds, Fund X. The Fund is set up in Country Y and is managed by Company A, which shall be solely responsible for identifying, evaluating, selecting and implementing all investments and divestments on behalf of the Fund. The purpose of the Fund is to make, directly or indirectly, investments principally in medium-sized platform companies whose securities are not traded on a regulated financial market. It has a duration of 10 years and may be extended for another 2 years.
- c. Fund X which is in a limited partnership, has 2 different categories of partners:
 - i. The unlimited partner which is jointly and severally liable for all liabilities which cannot be paid out of all or part of the assets of the Fund; and
 - ii. The limited partners whose liabilities are limited to the amount of their respective investment in the Fund.
- d. Based on the Limited Partnership Agreement, the types of limited partners are as follows:
 - i. Class A priority limited partner shares ("A Shares")
 - ii. Class A2 priority limited shares ("A1 Shares")
 - iii. Class B ordinary limited partner shares ("B Shares")
- e. Eligible employees will be invited to purchase B shares by paying the market value of the shares upon subscription. The value of the shares will be established periodically and certified every half-yearly. The subscription/acquisition cost of the B shares incurred by the individuals will be borne by them.

- f. Individuals who acquired the B shares will become the Limited Partners (“LP”) of the Fund and they may transfer their shares at any time subject to notification requirements and the Manager’s approval. Where the Manager refuses, it may offer all or part of the LP’s shares to the other LPs and subsequently to other third-party investors if the LPs do not want to take up the offer.
 - g. The B shares are subject to a vesting schedule which mandates a transfer of shares of all or in part of a Partner’s B shares back to Company A, via a call option when either the Partner leaves employment or the management of the company changes.
 - h. The LPs are eligible for their share of any distribution in line with the distribution waterfall. B shares partners would only be entitled to receive any distribution from the Fund with respect to their shares (i) after the expiration of a five-year period from the incorporation date of the Fund and (ii) once an aggregate amount of at least equal to the paid-up amount of A shares and A2 shares has been distributed respectively to the A and A2 limited partners.
 - i. The Singapore employees mainly support the team of Company A to research and visit potential targets for the portfolio companies, and to meet potential acquirers. They do not have any right to conclude contracts or make investment decisions independently on behalf of the Fund or the Group.
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3. Relevant legislative provisions:

- a. Income Tax Act 1947 (Revised Edition 2020) (“ITA”) – Section 10(1)(b), Section 10(6) and Section 13(7A)
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4. The ruling:

- a. The B shares in the Fund are not shares in a company and hence Section 10(6) will not apply to B shares acquired by the employees.
- b. Any taxable benefits derived by the employees from the acquisition of the B shares will be at the point the employee acquires legal ownership of them. The taxable value of the benefits (if any) will be the market value of the B shares at the point of acquisition less any amount paid by the individuals.
- c. Any gains arising from the distributions from the Fund are foreign-sourced and, if remitted, are tax-exempt under Section 13(7A) if it is beneficial to the Singapore partner of B shares.

- d. Any gains arising from the subsequent disposal of the B shares by the Singapore partner prior to the expiry of the Fund or in the event of winding up are capital in nature.
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5. Reasons for the decision:

The Fund is a limited partnership and not a company. The employees become limited partners of the Fund once they acquire the B shares. The subsequent payouts distributed to them in accordance with the terms and conditions of the Limited Partnership Agreement are given in their capacity as limited partners. Such distributions from an overseas fund received by a partner in Singapore will be considered as foreign-sourced.

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