

Advance Ruling Summary No. 8/2024
Published on 2 Dec 2024

1. Subject:

Whether:

- a. the gains that will be derived by Company A, arising from the transfer of its shares in Company B, are tax-exempt under section 13W of the Income Tax Act 1947 (the “**ITA**”); or
 - b. the gains that will be derived by Company A arising from the transfer of its shares in Company B are capital in nature and will not be subject to tax under section 10(1)(a) or section 10(1)(g) of the ITA.
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2. Relevant background and facts:

- a. Company B is a wholly-owned subsidiary of Company A.
 - b. Company A intends to dispose of the shares in Company B, after holding the shares in Company B for more than 30 years.
 - c. Company B currently owns several units (“**Investment Units**”) in a commercial building (the “**Property**”) which was jointly developed with another company. Upon completion of the development more than five years ago, the units were partitioned and distributed to these two companies based on an agreed ratio.
 - d. Company B has held the Investment Units for recurrent rental income and for investment purposes. Company B’s income from the Investment Units is chargeable to tax under section 10(1)(a) of the ITA, subject to the provisions of section 10D.
 - e. For the purpose of letting out the Investment Units on certain storey of the Property, Company B has erected an outdoor structure on the common property of the Property. The building works required an approval from the Commissioner of Building Control under the Building Control Act 1989. The property development activity was undertaken by Company B during the 60-month period before the proposed date of transfer of shares by Company A.
 - f. Company A has not disposed of any shares in its subsidiaries before.
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3. Relevant legislative provisions:

- a. Income Tax Act 1947 – Sections 10(1)(a), 10(1)(g), 13W(8)(ba)(iii)(B) and 13W(9)

4. The rulings:

- a. Company A will not be able to avail itself of the tax exemption under section 13W of the ITA.
 - b. Company A's transfer of shares in Company B is a capital transaction, and therefore any costs/loss associated with the transfer and gains (if any) arising therefrom is not deductible and not taxable respectively under the ITA.
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5. Reasons for the decision:

- a. Company B had undertaken property development activity which falls within the definition of "property development" under section 13W(9) of the ITA. The condition in section 13W(8)(ba)(iii)(B) is not confined to property development activities carried out on a company's own property given the wordings "any property development in Singapore or elsewhere...". As the property development activity was undertaken during the 60-month period before the proposed date of transfer of shares by Company A, the condition in section 13W(8)(ba)(iii)(B) is not satisfied.
 - b. Company A's transfer of shares in Company B is regarded as a capital transaction, after taking into consideration the following factors:
 - (i) Intention of Company A at the time of acquiring Company B;
 - (ii) The holding period of the shares in Company B;
 - (iii) Mode of financing; and
 - (iv) Frequency of similar transactions by Company A.
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6. General Reference:

- a. Taxpayers may refer to the factors listed on IRAS website¹ 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,

¹ The said factors can be found at the following address:
<https://www.iras.gov.sg/irashome/Businesses/Companies/Working-out-Corporate-Income-Taxes/Taxable-and-Non-Taxable-Income/Determining-the-Existence-of-a-Trade/>

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.