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### Advance Ruling Summary No.1/2023

The Inland Revenue Authority of Singapore (IRAS) has published Advance Ruling Summary No. 1/2023 addressing the tax treatment of gain on transfers of partial interest in property and date of conversion of remaining interest in property from a capital asset to trading stock. The ruling was published on 3 January 2023.

This is the first ruling addressing the valuation of trading stock that is converted from a non-trade or capital asset and provides guidance on how the IRAS interprets the phrase “... open market value of the property... at the date it *becomes* trading stock...” (emphasis added) within the context of Section 32A(1) of the ITA.

## Background and facts

- Company A owns a commercial office building ("Property") in Singapore.
- The Property was developed for long-term investment purposes to generate rental income.
- Rental and other ancillary income (e.g., car park income) derived by Company A from the Property is taxed under section 10(1)(a) of the ITA, subject to section 10D provisions.
- It is intended that Company B and Company C will each acquire partial interests in the Property.
- The Property will be demolished and redeveloped into a mixed-use development comprising 3 components of different usage, each of which will be owned separately by Companies A, B, and C.
- The component owned by Company A ("Component 1") shall be developed for sale.
- Company A has not undertaken other similar transactions prior to the contemplated transfers of partial interests in the Property. No supplementary improvement works were undertaken by Company A for the purpose of improving the marketability of the Property.

## Issue

The advance ruling was requested by the taxpayer to confirm that:

- the gains arising from the transfers of partial interests in the Property to Company B and Company C will be regarded as capital in nature, and therefore will not give rise to an income tax liability for Company A; and
- for the purpose of section 32A(1) of the Income Tax Act ("ITA"), the date of conversion of Company A's remaining interests in the Property (i.e. Component 1) from a capital asset to trading stock (following the abovementioned transfers) will be the date of issuance of the Written Permission by the Urban Redevelopment Authority ("URA") allowing the redevelopment of the Property.

## Ruling

- Based on the balance of facts and an analysis of the badges of trade, the gains arising from the transfers of the partial interests in the Property to Company B and Company C will be capital in nature and hence not subject to tax under the provisions of the ITA.

- The open market value of Component 1 shall be determined as at the date of the Directors' Resolution approving the development of Component 1 for sale by Company A, instead of the date when Written Permission is issued by the URA authorising the redevelopment of the Property.



**More details can be found on IRAS' website**

### **Deloitte Singapore's view**

Based on the ruling's facts, Company A has represented itself to be in the business of making investments under Section 10D (formerly numbered as Section 10E). The "business of making investments" in section 10D of the ITA includes the business of letting immovable properties. In relation to the latter, the section applies where the property is acquired by a taxpayer with the intent to be held as a capital asset (as opposed to an asset that is held for trading) and in the course of renting out the property, that taxpayer also carries out activities that are systematic, habitual or repetitive with respect to the letting of the property. The adoption of section 10D treatment, in conjunction with an analysis of the badges of trade, likely supported the ruling outcome that the Property is a capital asset.

Separately, the IRAS took the view that the date when a capital asset **becomes** trading stock within the context of Section 32A(1) is when there is a committed plan of action, rather than a legal test. In Company A's case, this is the date of the Directors' Resolution approving the development of Component 1 for sale, instead of when the URA issued its Written Permission authorising the redevelopment of the Property.

The determination of the date of conversion of a capital asset to trading stock may entail detailed enquiries into questions of fact. Further, the date of conversion may have significant implications on the tax base (i.e., cost) of the trading stock and consequently the amount of assessable gains when that trading stock is subsequently sold. This is especially so during periods of market volatility. Hence, companies may wish to consult their tax advisors to arrive at a robust determination of the date of conversion of a capital asset to trading stock.

Companies should also maintain contemporaneous documentation detailing decisions taken in relation to the appropriation of trading stock or the conversion of capital assets. These documents should be retained and made available to the Comptroller of Income Tax upon request.

## Contact

Should you have any comments or questions arising from this newsletter, please contact either the listed contacts below, or any member of the [Singapore Tax & Legal team](#).

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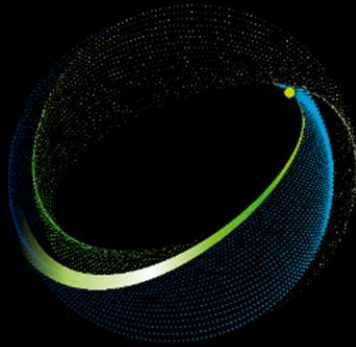
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