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### Advance Ruling Summary No. 10/2022

The Inland Revenue Authority of Singapore (IRAS) published the following advance ruling summary on 1 June 2022. We have provided an overview of the issue, background information, and the outcome, as well as our comments below.

#### Issue

- Whether Company A, a non-tax resident of Singapore, has a taxable source or tax liability in Singapore under Section 10(1) [read with Section 12(1)] of the Income Tax Act (ITA) by virtue of its activities performed in Singapore; and

- Singapore withholding tax treatment on technical service fees payable by customers in Singapore to Company A.

## **Background**

- Company A engaged its Singapore-affiliated company (Company B) to provide sales support and technical services to Company A's Singapore-based customers under a subcontracting agreement.
- Company A contracts and invoices customers directly for the sale of its products and technical services, with the title passing directly from Company A to the Singapore-based customers.
- Company B's sales support services to Company A will include identifying potential customers, maintaining relationships, introducing new products, and administrative tasks related to placing customer orders.
- Company B is required to follow pre-approved guidelines and parameters pertaining to the pricing and terms established by Company A within which Company B may quote customers.
- In the provision of sales support services to Company A, Company B does not:
  - habitually exercise an authority to conclude contracts on behalf of Company A in Singapore; or
  - maintain in Singapore a stock of goods or merchandise belonging to Company A from which it regularly fills orders on behalf of Company A.
- Company B will also provide technical services to Company A's Singapore-based customers. The services in Singapore are performed solely by employees of Company B without any physical supervision from Company A.
- The payment by Singapore-based customers to Company A for the technical services rendered does not include any royalty payment to Company A.
- Company A engages third-party warehouse providers in Singapore to store and deliver its products and spare parts to customers.
- Aside from the engagement of Company B and third-party warehouse providers, Company A does not carry out any other activities in Singapore.
- Company B will be remunerated at an arm's length basis for the services it provides to Company A. Such income derived from Company A would be included in Company B's taxable income and subject to Singapore tax.
- Other than those arising from Company B's activities under the subcontracting agreement, Company A does not perform any other functions, use any assets, or assume any risks in Singapore.

## **Outcome**

- Company A does not have a tax liability in Singapore under Section 10(1) [read with Section 12(1)] of the ITA by virtue of its activities performed in Singapore.

- The technical service fees payable by customers in Singapore to Company A falls within the ambit of Section 12(7)(b) of the ITA. Accordingly, Company A's customers in Singapore are required to withhold tax at prevailing corporate tax rate of 17% on the gross payment for the technical service fees payable to Company A.
- If Company A wishes to claim for the expenses incurred in deriving the technical service income, it can forward the certified accounts and tax computation for IRAS' examination. When the net income and tax have been determined, any tax withheld in excess of the tax on the net income will be refunded.



More details can be found on IRAS' website

### Deloitte Singapore's view

Gains or profits from a trade or business is generally sourced to the place where the business is carried on. The 'operations test' is relevant in this regard; if the business operations giving rise to the income are carried out in Singapore, the income derived from the operations should be sourced in Singapore and thus taxable in Singapore.

The business of an enterprise is usually carried on by persons who are dependent on the enterprise. Such persons include employees and other persons receiving instructions from the enterprise (e.g., dependent agents). A business may also be carried on without human involvement (fully automated machinery, etc.), but there is no indication of this factor being relevant in the ruling summary. As such, when applying the 'operations test', one generally looks at the nature and scale of activities that are carried on in Singapore by employees or dependent agents of the enterprise.

In the case at hand, the IRAS is of the view that Company A's profits are not sourced in Singapore (except for fees for technical services derived by Company A from Singapore customers, see below). In particular, it appears that the IRAS has placed reliance on the fact that Company A does not have any employees to perform any services/activities in Singapore the activities of Company B in Singapore are not viewed as an extension of Company A's trade/business into Singapore, and Company B is regarded to be an independent agent trading with Company A in its ordinary course of business (based on the present facts and background).

The IRAS also reiterated its view that the mere storage of goods in a warehouse in

Singapore, without carrying on a business in Singapore, will not give rise to Singapore tax liability.

Separately, in a situation where a Singapore resident contracts with a non-resident (NR) vendor for the provision of services (which are to be performed in Singapore) and the NR vendor outsources the performance of such services to a Singapore service provider, the IRAS takes the position that those services are still considered as performed by the NR vendor for the purpose of determining withholding tax liability of the payer. Consequently, fees payable by the Singapore resident to the NR vendor should be subject to Singapore withholding tax. As such, Company's A customers in Singapore are required to withhold tax on service fee payments to Company A.

That said, the IRAS may, subject to conditions, agree to waive the requirement to withhold tax on service fee payments to non-residents where services that are to be performed in Singapore is outsourced by that non-resident to a Singapore service provider. The conditions are prescriptive and taxpayers are advised to seek clarification from their advisors or the IRAS on the appropriate withholding tax treatment.

## 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](#).

### **Low Hwee Chua**

Head of Tax

Deloitte Singapore

+65 6216 3290

[hwlow@deloitte.com](mailto:hwlow@deloitte.com)

### **Daniel Ho**

Partner

Deloitte Singapore

+65 6216 3189

[danho@deloitte.com](mailto:danho@deloitte.com)

### **Chua Kong Ping**

Partner

Deloitte Singapore

+65 6800 2966

[kchua@deloitte.com](mailto:kchua@deloitte.com)

### **Alvin Ang**

Tax Manager

Deloitte Singapore

+65 6216 3373

[alvang@deloitte.com](mailto:alvang@deloitte.com)



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