

1. Subject:

- a. Whether the proposed transfer of the entire banking business of Bank A to a new Singapore branch (the “**Transferee**”) of a foreign bank (“**Bank B**”) is treated as a capital transaction and any gains arising therefrom should not result in any income tax liability to Bank A under the Income Tax Act 1947 (the “**ITA**”).
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2. Relevant background and facts:

- a. Bank A holds a licence granted by the Monetary Authority of Singapore to conduct banking activities under the Banking Act 1970 (the “**Banking Act**”).
- b. Both Bank A and B share the same ultimate owners.
- c. Due to group restructuring, Bank A is proposing to transfer the entirety of its business as a going concern to the Transferee (the “**Proposed Restructuring**”) by way of a statutory scheme of transfer (the “**Scheme**”) pursuant to sections 55B and 55C of Part 7A, Division 1 of the Banking Act.
- d. The list of assets and liabilities to be transferred to the Transferee comprises cash and cash equivalents, loans and advances to non-bank customers, inter-company balances, other receivables, other liabilities, deposits of non-bank customers, investments, impairment allowances, provision/accrual balances, and property, plant and equipment (the “**PPE**”). Bank A has claimed capital allowances on the PPE to the extent that they qualify for capital allowances (the “**Qualifying PPE**”).
- e. Bank A has held its cash and cash equivalents, deposits of non-bank customers and investments on revenue account.
- f. It is intended that the consideration for the transfer of business would be generally at open market value on the effective date of the Scheme.
- g. Bank A has adopted Financial Reporting Standard (“**FRS**”) 109 *Financial Instruments* (“**FRS 109**”) for accounting purposes¹.

¹ When a taxpayer adopts FRS 109 for accounting purpose, the tax treatment of its financial assets and financial liabilities will generally follow the accounting treatment, except where specific tax treatment has been established under case law or provided under the statutes, or where accounting treatment deviates significantly from tax principles (referred to as “**FRS 109 tax treatment**”).

- h. The Transferee has applied for the same licences and exemptions under the Banking Act as those held by or granted to Bank A prior to the date on which the Scheme becomes effective.
 - i. Following the transfer of business, it is intended that Bank A will surrender its banking license and thereafter, will make the necessary applications or filings to be wound up or struck off.
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3. Relevant legislative provisions:

- a. Income Tax Act 1947 – sections 10(1)(a), 14G(4A), 20, 24 and 34AA(5)
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4. The rulings:

- a. The transfer of the entire banking business of Bank A to the Transferee as a result of the Proposed Restructuring is a capital transaction.
- b. The tax implications of the business transfer would depend on the nature of the respective underlying assets and liabilities being transferred. The tax treatment of the various assets and liabilities to be transferred is as follows:
 - (i) Cash and cash equivalents, deposits of non-bank customers and investments
 - (1) The transfer of the above assets/liabilities would not give rise to any income tax liability to Bank A.
 - (2) To avoid doubt, any gains or losses recognised in the profit and loss account (“**P&L**”) of Bank A upon derecognition of the above assets/liabilities prior to the transfer to the Transferee will be taxed or allowed as a deduction in accordance with the FRS 109 tax treatment, being assets/liabilities held on revenue account.
 - (ii) Loans and advances to non-bank customers and the associated impairment allowances
The transfer of the above would not give rise to any income tax liability to Bank A.
 - (iii) Inter-company balances, other receivables, other liabilities and provision/accrual balances
The gains, if any, arising therefrom are capital in nature and are not subject to tax.
 - (iv) PPE
The gains, if any, arising from the disposal of the PPE are capital in nature and are therefore not subject to tax. The provisions in section

20 of the ITA will apply to determine the amount of balancing charge/balancing allowance arising from the disposal, where applicable.

- c. An election under section 24 of the ITA can be made for the Qualifying PPE that Bank A will transfer to and vest in the Transferee as a result of the Proposed Restructuring.
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5. Reasons for the decision:

- a. The transfer of Bank A's entire banking business to the Transferee as a result of the Proposed Restructuring is regarded as a capital transaction after taking into consideration the following factors:

- (i) Circumstances of the transfer;
- (ii) Nature of Bank A's operating business and assets;
- (iii) Frequency of similar transactions by Bank A;
- (iv) Bank A's intention to surrender its banking license and thereafter, to make the necessary applications or filings to be wound up or struck off.

- b. Cash and cash equivalents, deposits of non-bank customers and investments

As the book values of the above assets/liabilities are reflective of the asset's open market values, there would not be any additional gains or losses to be recognised in the P&L of Bank A arising from the transfer of the said assets/liabilities pursuant to the proposed transfer of business. Consequently, the transfer of the above assets/liabilities would not give rise to any income tax liability to Bank A.

- c. Loans and advances to non-bank customers and the associated impairment allowances

The deduction of the transferred impairment losses (for both credit-impaired and non-credit-impaired loans) previously allowed to Bank A is treated as having been allowed to the Transferee, as provided for in sections 14G(4A) and 34AA(5) of the ITA. Consequently, any subsequent reversal amount of the transferred impairment losses is treated as a trading receipt of the Transferee in the Year of Assessment of the basis period in which the reversal amount is recognised in the P&L. No indexation of the reversal amount is required. Hence, the transfer of the above would not give rise to any income tax liability to Bank A.

- d. Inter-company balances, other receivables, other liabilities and provision/accrual balances

The sale of the above assets and liabilities is incidental to and form part and parcel of the transfer of Bank A's business. In line with the position taken to regard the transfer of Bank A's banking business as a capital transaction, the gains, if any, arising therefrom are therefore capital in nature and are not subject to tax.

- e. PPE
The PPE are fixed capital assets employed for use by Bank A in its banking business. Therefore, any gains arising from the disposal of these assets are capital in nature and are therefore not subject to tax.
 - f. An election under section 24 of the ITA can be made for the Qualifying PPE in view of the following:
 - (i) The “control” condition in section 24 of the ITA is met given that both Bank A and the Transferee share the same ultimate owners;
 - (ii) The conditions stipulated in section 24(4) will be met; and
 - (iii) The transfer of the Qualifying PPE by Bank A to the Transferee is not one to which section 33 of the ITA applies, as the transfer took place pursuant to the Proposed Restructuring.
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