

Advance Ruling Summary No. 18/2022
Published on 1 Dec 2022

1. Subject:

Whether:

- a. Company A's preference shares are characterised as an equity instrument from a Singapore tax perspective; and
 - b. the distributions payable by Company A on the preference shares will be regarded as dividends. Accordingly, the dividend payment should not be tax deductible to Company A and there should be no Singapore withholding tax on the payment.
-

2. Relevant background and facts:

- a. Company A is a limited liability company incorporated in Singapore.
- b. The capital structure of Company A comprises both issued ordinary and preference shares. The preference shares are wholly held by Entity Z, an entity established outside Singapore.
- c. Entity Z is reflected as a shareholder of Company A in the business profile with the Accounting and Corporate Regulatory Authority, being a holder of only preference shares.
- d. Based on the Constitution of Company A, no dividend shall be paid otherwise than out of Company A's profits.
- e. The following are the key terms and conditions conferring the rights and privileges of Company A's preference shares:

Factors	Key terms and conditions
Voting rights	• The preference shareholder will not be entitled to vote except on a resolution to: • wind up the company voluntarily; or • vary any right attached to a specified share and conferred on the preference shareholder, and each preference share will carry at least one vote on a poll in respect of the above resolutions.
Rights to payouts	• The preference shareholder is entitled to dividend distributions ("Preference Dividend"). • The gross amount of Preference Dividend payable will be equivalent to x% of Company A's net profit

Factors	Key terms and conditions
	for the financial year (if any) (“Default Rate”), unless the Board of Directors proposes or recommends a distribution lower than the Default Rate for that financial year (“Recommended Rate”). The Recommended Rate shall not be less than y% of Company A’s net profit for that financial year (if any). • Where there is no distributable profit at Company A level in any particular financial year, no Preference Dividend will accrue or be payable. • A Preference Dividend will rank and be paid in priority to any dividend or other distribution in respect of the ordinary shares.
Rights to profits	• Other than the rights to payouts set out above, the preference shares will not confer any further rights of participating in the profits of Company A.
Returns on liquidation	• In a liquidation of, or on a return of capital (other than a purchase) by Company A, assets of Company A available for distribution among the members will be applied in repaying the preference shareholders and ordinary shareholders in proportion to their respective shareholding percentages on a <i>pari passu</i> basis.

3. Relevant legislative provisions:

- a. Income Tax Act 1947 (2020 Revised Edition) - Section 10(1)(d)

4. The rulings:

- a. Company A’s preference shares is regarded as an equity instrument for Singapore income tax purposes.
- b. Accordingly, the Preference Dividend will be treated as dividends for Singapore income tax purposes. The Preference Dividend would not be tax deductible to Company A and there would be no Singapore withholding tax on the payment of the Preference Dividend by Company A.
-

5. Reasons for the decision:

- a. On balance of the features and terms of Company A's preference shares, the preference shares is regarded as an equity instrument for the following reasons:
 - (i) The preference shares fall within the definition of "shares" under the Companies Act 1967 (2020 Revised Edition);
 - (ii) Entity Z is reflected as a shareholder of Company A, being a holder of only preference shares; and
 - (iii) The terms of the preference shares indicate ownership interests in Company A (for instance, the Constitution of Company A does not provide for any rights for the preference shareholders to request or require redemption of preference shares or to require payment of the distributions).
- b. Following the characterisation of the preference shares as an equity instrument for tax purposes, the distributions are regarded as dividends for Singapore income tax purposes.

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, 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.