

Advance Ruling Summary No. 4/2021
Published on 3 May 2021

1. Subject:

Whether:

- a. the subordinated perpetual securities ("**Securities**") would be regarded as "debt securities" for the purpose of section 43N(4) of the Income Tax Act ("**ITA**")¹ and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations ("**QDS Regulations**");
 - b. the distributions ("**Distributions**") (including Arrears of Distribution and any Additional Distribution Amount, as defined below) payable on the Securities would be regarded as interest payable on indebtedness and eligible for the tax concessions and exemptions available for qualifying debt securities ("**QDS**"), assuming the other requisite conditions for the Securities to be QDS are satisfied; and
 - c. the issuer would be entitled to tax deductions on the Distributions as interest, in accordance with section 14(1)(a) of the ITA.
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2. Relevant background and facts:

- a. The issuer is a company incorporated in Singapore.
- b. It issued a tranche of Securities at par value. The Securities are listed on the Bonds Market of the Singapore Exchange Securities Trading Limited ("**SGX-ST**").
- c. The net proceeds from the issue of the Securities will be used by the issuer for financing the general corporate funding requirements or investments of the Issuer, its subsidiaries and/or associated companies.
- d. The key features of the Securities include the following:
 - i. The Securities confer the right to receive fixed rate distributions, payable semi-annually in arrears (each a "**Distribution Payment Date**"). The distribution rate does not depend on the profit performance of the issuer. There is a step-up feature.
 - ii. The issuer may in its sole discretion elect to defer the payment of Distribution scheduled to be paid on a Distribution Payment Date. Distributions that are deferred ("**Arrears of Distribution**") will bear

¹ Income Tax Act, Chapter 134 (Revised Edition 2014)

interest at the prevailing Distribution Rate (“**Additional Distribution Amount**”).

- iii. The issuer is not allowed to pay dividends, distributions or make any other payment to any of the issuer’s junior obligations (which includes the ordinary shares of the issuer) or to redeem, reduce, cancel, buy-back or acquire any of the issuer’s junior obligations unless and until the issuer has satisfied in full all outstanding Arrears of Distribution; or permitted to do so by an extraordinary resolution of the holders of the Securities (“**Security-holders**”).
- iv. The issuer is required to satisfy all outstanding Arrears of Distribution on the earliest of the date of redemption of the Securities, the occurrence of certain events or on the winding up of the issuer.
- v. The Securities do not have a fixed redemption date. The issuer has the option to redeem the Securities in certain instances. Any redemption by the issuer would be at the principal value of the Securities, together with Distributions accrued (including Arrears of Distribution and Additional Distribution Amount) (if any) to the date of redemption.
- vi. The Securities are direct, unconditional, subordinated and unsecured obligations of the issuer. In the event of winding up of the issuer, the rights of the Security-holders rank junior to the senior creditors of the issuer but *pari passu* with all other subordinated obligations of the issuer and in priority to the holders of the ordinary shares of the issuer.
- vii. The Security-holders will not be reflected in the issuer’s Register of Members and are not entitled to the rights conferred upon shareholders by the Companies Act² (“**CA**”). The Securities are not subject to the capital maintenance rules under the CA or the requirement that Distributions must be paid out of distributable profits.

3. Relevant legislative provisions:

- a. Income Tax Act, Chapter 134 (Revised Edition 2014) – Sections 13(16), 14(1)(a) and 43N
 - b. Income Tax (Qualifying Debt Securities) Regulations
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² Companies Act, Chapter 50

4. The rulings:

- a. The Securities are regarded as “debt securities” for the purposes of section 43N(4) of the ITA and Regulation 2 of the QDS Regulations.
 - b. The Distributions (including Arrears of Distribution and any Additional Distribution Amounts) payable on the Securities will be regarded as interest payable on indebtedness.
 - c. Subject to the Securities satisfying the governing conditions³ under the Qualifying Debt Securities (“**QDS**”) scheme, the Security-holders will be entitled to the tax concessions and exemptions under section 43N and section 13(1)(a) of the ITA respectively.
 - d. The deductibility of the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) is subject to a detailed examination of the use of the proceeds from the issuance of the Securities. The issuer will be allowed a tax deduction under section 14(1)(a) of the ITA on the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) if the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) are incurred on capital (raised through the issuance of the Securities) employed in acquiring the income of the issuer that is chargeable to tax. This is on the condition that all requirements under section 14 of the ITA are met and the deduction is not prohibited under any other provisions of the ITA.
 - e. The Distributions (including Arrears of Distribution and any Additional Distribution Amounts) will be deductible only when they are legally due and payable and not based on their scheduled distribution payment dates.
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5. Reasons for the decision:

- a. Based on the facts and representations provided, the key features of the Securities described in paragraph 2d above generally support the character of the Securities as “debt securities” for the purpose of section 43N(4) of the ITA and Regulation 2 of the QDS Regulations.
 - b. Following the characterisation of the Securities as a debt instrument for tax purposes, the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) are regarded as interest payable on indebtedness. The Securities will be regarded as QDS under the ITA and the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) will enjoy the tax concessions and exemptions available for QDS provided that the other requisite conditions for the Securities to be QDS are satisfied.
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³ Under sections 43N, 13(2) and 13(16) of the ITA and the QDS Regulations.

6. General Reference:

- a. Taxpayers may refer to the IRAS e-Tax Guide “Income Tax Treatment of Hybrid Instruments”⁴ (“**e-Tax Guide**”) for further guidance. In particular, paragraph 5 of the e-Tax Guide states the approach and factors that the Comptroller of Income Tax considers when determining the characterisation of a hybrid instrument. Paragraphs 7 and 9 of the e-Tax Guide further explains the deductibility of distributions from the issuer to the investor and the timing of deductions by the issuer.

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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.

⁴ The said e-Tax Guide can be found at the following link:
<https://go.gov.sg/etaxguide-cit-income-tax-treatment-of-hybrid-instruments>