

1. Subject:

Whether:

- a. the Securities will 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 any Optional Distribution, as defined below) payable on the Securities will be regarded as interest payable on indebtedness and will enjoy the tax concessions and exemptions available for “qualifying debt securities” (“**QDS**”) assuming that the other requisite conditions for the Securities to be QDS are satisfied;
- c. for the Tranche 002 Securities, the Distribution attributable to the Relevant Period paid by the Issuer to the holders of the Tranche 002 Securities (“**Tranche 002 Security-holders**”) (the “**Relevant Period Distribution**”) is in the nature of interest income and will enjoy the tax concessions and exemptions available for QDS assuming that the other requisite conditions for the Securities to be QDS are satisfied; and
- d. the Issuer should also be entitled to tax deductions on the Distributions (including any Optional Distribution) (including the Relevant Period Distribution) as the Distributions are interest under section 14(1)(a) of the ITA.

2. Relevant background and facts:

- a. The Issuer is the trustee of a real estate investment trust (“**the REIT**”) established in Singapore and listed on the Mainboard of the Singapore Exchange Securities Trading Limited (“**SGX**”).
- b. The Issuer had issued Tranche 001 Securities at 100% of their principal value on X date.
- c. In addition, the Issuer issued Tranche 002 Securities on Y date at 100% of their principal value plus the accrued distribution from (and including) X date to (but excluding) Y date (“**the Relevant Period**”).
- d. The Tranche 002 Securities will be consolidated and form a single series with the Tranche 001 Securities (together, the “**Securities**”). The Securities are listed on the Bonds Market of the SGX-ST.

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

- e. The Tranche 002 Security-holders will receive Distributions on the same Distribution Payment Dates (as defined below) and of the same amount as the holders of the Tranche 001 Securities (the “**Tranche 001 Security-holders**”, and together with the Tranche 002 Security-holders, the “**Security-holders**”).
- f. It is envisaged that the net proceeds from the issuance of the Securities would be used for various purposes, including the refinancing of existing perpetual securities, financing or refinancing of acquisitions and/or investments, on-lending and for general working capital purposes.
- g. The key features of the Securities include the following:
 - i. The Securities confer the right to the Securityholders 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.
 - ii. The distribution commencement date for the Tranche 002 Securities was set as the same date as the Tranche 001 Securities to facilitate the administration of the Distributions. The issue price of the Tranche 002 Securities included accrued distribution attributable to the Relevant Period as the Tranche 002 Security-holders would receive the Distribution part of which would be attributable to the Relevant Period (i.e. the Relevant Period Distribution) on the first Distribution Payment Date.
 - iii. The Issuer may, at its sole discretion, elect not to pay a Distribution (or to pay only part of a Distribution) which is scheduled to be paid on a Distribution Payment Date by complying with certain notice requirements.
 - iv. There is no limit on the number of times or the extent of the amount with respect to which the Issuer can elect not to pay Distributions
 - v. Distributions that are deferred are non-cumulative and will not accrue interest.
 - vi. The Issuer may, at its sole discretion, and at any time, elect to pay an amount up to the amount of distribution which is unpaid (“**Optional Distribution**”) (in whole or in part) by complying with the notice requirements.
 - vii. Subject to certain exceptions, if on any Distribution Payment Date, payments of all Distributions scheduled to be made are not made in full, the Issuer shall procure that the REIT and its subsidiaries shall not:
 - (i) declare or pay any dividends, distributions or make any other payment on any of the Junior Obligations of the REIT or (except on a pro-rata basis) any of the Parity Obligations of the REIT; or
 - (ii) redeem, reduce, cancel, buy-back or acquire for any consideration in respect of, any of the Junior Obligations of the REIT, or (except on a pro-rata basis) any of the Parity Obligations of the REIT

in each case, unless and until either a redemption of all the outstanding Securities has occurred, the next scheduled distribution has been paid in full or an Optional Distribution equal to the amount of a distribution payable with respect to the most recent Distribution Payment Date that was unpaid in full or in part, has been paid in full or the Issuer is permitted to do so by an Extraordinary Resolution of the Security-holders.

- viii. The Securities have no fixed redemption date. The Issuer has the option to redeem the Securities in certain instances.
- ix. The Securities constitute direct, unconditional, subordinated and unsecured obligations of the Issuer and shall at all times rank *pari passu*, without any preference or priority among themselves, and *pari passu* with any Parity Obligations of the REIT.
- x. In the event of the Winding-Up of the REIT, the Security-holders rank *pari passu* with the holder of one of a class of preferred units in the capital of the REIT having a preferential right to return of assets in the winding-up of the REIT, and so rank ahead of the holders of junior obligations of the REIT but junior to the claims of all other present and future creditors of the REIT.
- xi. The Security-holders will not be reflected in the REIT's register of unitholders. The Security-holders will not be entitled to the rights conferred upon unitholders such as the statutory right to attend and vote at general meetings of the REIT.
- xii. The Securities are treated as equity in the REIT's books for accounting purposes.

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

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 any Optional Distributions) due and payable on the Securities will be regarded as interest income and will enjoy the tax concessions and exemptions available for QDS provided that the other requisite conditions for the Securities to be QDS are satisfied.

- c. The Relevant Period Distribution is not in the nature of interest and will not be tax deductible.
 - d. The deductibility of the Distributions (including any Optional Distribution but excluding the Relevant Period Distribution) is subject to a detailed examination of the purpose of the debt and the use of the proceeds. The Issuer will be allowed a tax deduction under Section 14(1)(a) of the ITA on the Distribution (including any Optional Distribution but excluding the Relevant Period Distribution) if:
 - (i) such Distributions are incurred on the capital (raised through the issuance of the Securities) employed in acquiring the income of the Issuer that is chargeable to tax; and
 - (ii) the conditions governing deductibility of expenses 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 any Optional Distribution but excluding the Relevant Period Distribution) will be deductible only when they are legally due and payable subject to paragraph 4d(i) and 4d(ii).
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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 2g 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 any Optional Distribution) are regarded as interest income. The Securities will be regarded as QDS under the ITA and the Distributions (including any Optional Distribution) will enjoy the tax concessions and exemptions available for QDS, provided that the other requisite conditions for the Securities to be QDS are satisfied.
 - c. The Distribution Commencement Date for Tranche 002 Securities was on X date. The Tranche 002 Securities were issued on Y date at 100 per cent of the principal amount plus accrued distribution from (and including) X date to (but excluding) Y date. Hence, Tranche 002 Security-Holders would have paid the Relevant Period Distribution as part of the issue price on Y date. Given that there was no debtor-creditor relationship between the Issuer and Tranche 002 Security-Holders before Y date and that it would be a partial repayment of the issue price of the Tranche 002 Securities paid upfront by the Tranche 002 Security-Holders, the Relevant Period Distribution is not in the nature of interest and will not be tax deductible.
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6. General Reference:

- a. Taxpayers may refer to the IRAS e-Tax Guide “Income Tax Treatment of Hybrid Instruments”² (“**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

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.

² The said e-Tax Guide can be found at the following link: https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_CIT_Income%20Tax%20treatment%20of%20Hybrid%20Instruments_2014-05-19.pdf