

**Advance Ruling Summary No. 14/2020**  
**Published on 1 Dec 2020**

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**1. Subject:**

Whether:

- a. the perpetual capital securities ("**Securities**") will be regarded as "debt securities" for the purpose of section 43N(4) of the Income Tax Act <sup>1</sup>("ITA") and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations ("**QDS Regulations**");
  - b. the Distributions (including Arrears of Distributions and any Additional Distribution Amounts) 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.
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**2. Relevant background and facts:**

- a. The Issuer is a foreign issuer<sup>2</sup> and is tax resident in Country X.
- b. The Issuer had issued Securities at 100% of their principal value. The Securities are listed on the debt securities market of the Singapore Exchange Securities Trading Limited. The Securities are constituted by a trust deed between the Issuer and trustee for the holders of the Securities ("**Securityholders**").
- c. 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 Rate of Distribution does not depend on the profit performance of the Issuer. Distributions may be made even if the Issuer does not have profits for the payment of dividends. There is a step-up feature.
  - ii. The Issuer may in its sole discretion elect not to pay a Distribution which would otherwise be payable on a Distribution Payment Date ("**Arrears of Distribution**"), except in certain specified situations.
  - iii. Distributions will accrue on each Arrears of Distribution for so long as such Arrears of Distribution remains outstanding at the same Rate of Distribution as the Principal Amount of the Securities bears at

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<sup>1</sup> Income Tax Act, Chapter 134 (Revised Edition 2014)

<sup>2</sup> As defined in paragraph 3.1 of IRAS e-Tax Guide "Income Tax Treatment of Hybrid Instruments".

such time ("**Additional Distribution Amounts**") and will be added to such Arrears of Distribution (and thereafter bear Distributions accordingly) on each Distribution Payment Date.

- iv. The Issuer is not subject to any limit as to the number of times Distributions and Arrears of Distribution may be deferred.
- v. If on any Distribution Payment Date, payment of all Distributions scheduled to be made is not made in full by reason of the Issuer deferring such Distributions in accordance with the terms of the Securities, the Issuer is not allowed to pay discretionary dividends, distributions or make any other discretionary payment on any class of the Issuer's Junior Securities (other than a dividend, distribution or other payment in respect of an employee benefit plan or similar arrangement), or to redeem, reduce, cancel, buy-back or acquire for any consideration any of the Issuer's Junior Securities (other than a redemption, reduction, cancellation, buy-back or acquisition in respect of an employee benefit plan or similar arrangement) until the Issuer has satisfied in full all outstanding Arrears of Distribution; or is permitted to do so with the consent of the Securityholders of at least a majority in aggregate principal amount of the Securities then outstanding.
- vi. The Securities have no fixed redemption date. The Issuer has the option to redeem the Securities in certain instances.
- vii. The Securities constitute direct, unconditional, unsecured and unsubordinated obligations of the Issuer and will at all times rank pari passu with each other and with all other outstanding, unsecured and unsubordinated obligations of the Issuer, past and future, but, in the event of insolvency, only to the extent permitted by applicable laws relating to creditors' rights.
- viii. The Securities do not confer any voting rights on Securityholders.
- ix. The Securities are treated as equity for tax purposes in Country X in accordance with Country X's accounting rules.

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**3. Relevant legislative provisions:**

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

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**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 Distributions and any Additional Distribution Amounts) due and payable on the Securities will be regarded as interest payable on indebtedness.
  - c. Subject to satisfying the governing conditions for the Securities to be regarded as QDS, the Securityholders will be entitled to the tax concessions and exemptions available for QDS.
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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 2c 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 Distributions 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 Distributions 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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#### **6. General Reference:**

- a. Taxpayers may refer to the IRAS e-Tax Guide “Income Tax Treatment of Hybrid Instruments”<sup>3</sup> (“**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.
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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,

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<sup>3</sup> 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](https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_CIT_Income%20Tax%20treatment%20of%20Hybrid%20Instruments_2014-05-19.pdf)

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.