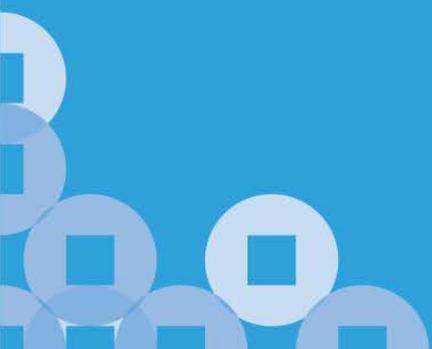




INLAND REVENUE
AUTHORITY
OF SINGAPORE

IRAS e-Tax Guide

Income Tax Treatment of Hybrid Instruments (Second Edition)



Published by
Inland Revenue Authority of Singapore

Published on 21 Oct 2019

First edition on 19 May 2014

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1. Aim

- 1.1 This e-Tax guide sets out the income tax treatment of hybrid instruments, including the factors generally used to determine whether they are debt or equity instruments for income tax purposes.
- 1.2 This guide will be relevant to you if you are an issuer, investor or potential investor of hybrid instruments.

2. At a glance

- 2.1 Hybrid instruments exhibit both debt-like and equity-like features. This table shows the tax treatment of hybrid instruments that are regarded as debt or equity instruments for income tax purposes:

	Regarded as debt	Regarded as equity
Issuer	Distribution is tax deductible as interest expense if the deduction rules are met	Distribution is not tax deductible
Investor	Distribution is taxable as interest income unless specifically exempted from tax	Dividend is generally exempted from tax unless it is a foreign dividend that does not qualify for exemption ¹
		Distribution by REITs is taxable ²

- 2.2 The first step in determining the characterisation of a hybrid instrument is to determine its legal form, which involves an examination of the legal rights and obligations created by the instrument. A hybrid instrument is generally characterised as equity if the legal terms of the instrument indicate ownership interests in the issuer.
- 2.3 If the legal form of a hybrid instrument is not indicative of or does not reflect the legal rights and obligations, the facts and circumstances surrounding the instrument and a combination of factors would be examined. These factors include (but are not limited to):
 - (a) nature of interest acquired,
 - (b) investor's right to participate in issuer's business,
 - (c) voting rights conferred by the instrument,

¹ For details of tax exemption of foreign-sourced dividend, please refer to e-Tax guide "Tax Exemption for Foreign-Sourced Income".

² Under section 10(1)(a) or section 10(1)(g) of the Income Tax Act ("ITA").

- (d) obligation to repay the principal amount,
- (e) payout,
- (f) investor's right to enforce payment,
- (g) classification by other regulatory authority and
- (h) ranking for repayment in the event of liquidation or dissolution.

2.4 The issuer of a hybrid instrument should analyse the factors discussed in paragraph 5 of this e-Tax guide to determine the income tax treatment of the hybrid instrument, and communicate the tax treatment adopted clearly to investors or prospective investors.

3. Glossary

3.1 Foreign issuer

A foreign issuer is an issuer other than a Singapore-based issuer.

3.2 Hybrid instruments

These refer to financial instruments that exhibit both debt-like and equity-like features. Examples include convertible bonds, perpetual notes and profit participating loans.

3.3 Real Estate Investment Trust (“REIT”)

A REIT³ is a trust that is constituted as a collective investment scheme authorised under section 286 of the Securities and Futures Act (Cap. 289) and listed on the Singapore Exchange, and that invests or proposes to invest in immovable property and immovable property-related assets.

3.4 Singapore-based issuer

A Singapore-based issuer includes an issuer which is:

- (a) an entity incorporated in Singapore;
- (b) a trustee of a REIT; or
- (c) a Singapore branch of a company incorporated outside Singapore, where the issuance of the hybrid instrument by the Singapore branch meets the requirements provided in paragraph 6.2.

4. Background

4.1 Issuers of hybrid instruments are often concerned about the tax deductibility of distributions made on such instruments. Whether the distribution is tax deductible in the hands of the issuers is dependent on whether the hybrid instrument is a debt or equity instrument and whether other conditions for deduction are met.

³ This is provided in section 43(10) of the ITA.

(A) INCOME TAX TREATMENT

5 Characterisation of hybrid instruments

5.1 Presently, there are no specific provisions in the ITA which stipulate the considerations or factors for determining the nature of a hybrid instrument, i.e. whether it is a debt or an equity instrument.

5.2 In determining the characterisation of a hybrid instrument, the Comptroller of Income Tax (the "CIT") takes the approach that the characterisation is first determined based on its legal form. This involves the examination of the legal rights and obligations created by the instrument. A hybrid instrument, such as redeemable preference shares, is generally characterised as equity given that the legal terms of such an instrument would generally indicate ownership interests⁴ in the issuer. However, where there are specific terms or features of a hybrid instrument which may not be aligned to its legal form, or if the legal form is not indicative of or does not reflect the legal obligations and rights of the hybrid instrument, then the characterisation of the hybrid instrument would be determined based on facts and circumstances and a combination of factors listed below.

5.3 The factors that the CIT considers when determining the characterisation of a hybrid instrument include but are not limited to the following:

(a) Nature of interest acquired

If the capital provided by an investor results in him acquiring shareholding and residual interest in the entity which issues the hybrid instrument, it suggests that the instrument is an equity instrument.

(b) Right to participate in issuer's business

A right for an investor to participate in the business operation of the issuer pursuant to the investor's investment in such instrument suggests that the instrument is an equity instrument.

(c) Voting rights conferred by the instrument

If a hybrid instrument provides an investor with voting rights at general meetings, it implies that the instrument is an equity instrument.

⁴ Such as the contribution of capital in exchange for capital gains/ losses, periodic returns (e.g. dividends), voting rights or participation in the business.

(d) Obligation to repay the principal amount

The presence of a fixed repayment date in a reasonably foreseeable future in a hybrid instrument that requires the issuer of such instrument to unconditionally repay the principal amount on or by that date, regardless of the business performance of the issuer (i.e. whether it is deriving any profits), suggests debt characterisation of an instrument. In the absence of a fixed repayment date, the existence of a step-up feature⁵ may imply that the issuer has an obligation to repay the principal amount. In contrast, if the repayment is conditioned on the financial well-being of the issuer of such instrument and there is no fixed repayment date or step-up feature in the hybrid instrument, it implies that the instrument is an equity instrument.

(e) Payout

Where –

(i) there exists a non-contingent obligation⁶ for an issuer to make a periodic distribution of a pre-determined amount to the investor, regardless of the business performance of the issuer (e.g. whether it is deriving any profits); and

(ii) the distribution is cumulative⁷,

it supports debt characterisation of an instrument. On the other hand, where the payment of the distribution is at the discretion of the issuer, or when the distribution is non-cumulative or dependent on the issuer's profits, it suggests that the instrument is an equity instrument.

Notwithstanding that a distribution on an instrument is at the discretion of the issuer and is non-cumulative, a dividend stopper / restrictive clause⁸ in the terms of the instrument could motivate the issuer to make periodic distribution payments on the instrument. In particular, where the issuer is a listed company or a REIT, there is general expectation from the shareholders and REIT unitholders to receive dividends and REIT distributions respectively. If so, the presence of

⁵ Refers to a feature which provides for an increase in the rate of distribution at a specific point in time or interval.

⁶ Where there exists a non-contingent obligation for an issuer to make a periodic distribution to the investor, the issuer's obligation to make the periodic distribution is not dependent on any event, condition or circumstance (e.g. the periodic distribution must still be made to the investor even if the issuer is not profitable).

⁷ A distribution is considered to be cumulative if the issuer is required to pay a distribution in the future when the distribution is not made at the point when it is due. Therefore, when the distribution is cumulative, the obligation for the issuer to pay the distribution remains.

⁸ The dividend stopper / restrictive clause prohibits the issuer from declaring distributions to other categories of investors if the distributions on the hybrid instrument is not paid.

a dividend stopper / restrictive clause could tilt the instrument towards being regarded as a debt.

(f) Investor's right to enforce payment

If an investor has an unconditional right to enforce the payment of distribution and repayment of the principal amount, it supports debt characterisation of an instrument. Conversely, if the hybrid instrument does not provide the investor with any means to enforce the payment of distribution and repayment of the principal amount, it suggests that the instrument is an equity instrument.

(g) Classification by other regulatory authority

If any other regulatory authority in Singapore does not regard the hybrid instrument as debt for regulatory purpose, it implies that the instrument is an equity instrument. For example, a regulatory authority may determine that the issuance of the hybrid instrument would not affect any borrowings limit that may be imposed on the issuer if the regulatory authority regards the instrument as equity.

(h) Ranking for repayment in the event of liquidation or dissolution

If –

- (i) the right of an investor to repayment of the principal amount is subordinated⁹ to that of general creditors or to holders of subordinated debt of the issuer; or
- (ii) the investor is required to bear the current or future losses of the issuer by way of either a write-down of the principal amount of such instrument or conversion to ordinary shares of the issuer,

this suggests that the instrument is an equity instrument.

5.4 The presence of any single factor may not suffice to classify the hybrid instrument as either debt or equity. To determine the characterisation of the hybrid instrument, a combination of factors and the facts and circumstances of the case have to be taken into account. Once the characterisation of a hybrid instrument is determined, the corresponding tax treatment would follow.

5.5 For accounting purposes, the characterisation of hybrid instruments is largely governed by the Singapore Financial Reporting Standards ("Standards").

⁹ If the right of an investor to repayment of the principal amount is subordinated to that of general creditors, the investor ranks below the general creditors with respect to the claims on the principal amount and will not be paid the principal amount until the general creditors are paid in full.

The Standards predominantly look at the substance of the instrument to determine whether it should be classified as debt or equity in the issuer's financial accounts. Notwithstanding that a hybrid instrument is classified as a financial liability under the Standards, the characterisation of such instrument for tax purposes would still be based on the approach indicated in paragraphs 5.2 and 5.3.

- 5.6 Please refer to Appendices 1 to 3 for illustrations showing how a hybrid instrument is characterised as debt or equity for tax purposes.

6. Issuer of hybrid instruments

- 6.1 The CIT will apply the approach stated in paragraphs 5.2 and 5.3 to a Singapore-based issuer. Where a hybrid instrument is issued by a foreign issuer, the CIT will examine the facts and circumstances, including the characterisation of the hybrid instrument (i.e. whether debt or equity) in the tax jurisdiction in which the issuer is based, and the factors indicated in paragraph 5.3, for the purpose of determining the characterisation of the distribution derived by investors in Singapore.

- 6.2 Where the issuer is a Singapore branch of a company incorporated outside Singapore, the following requirements must be met before the issuer is regarded as a Singapore-based issuer:

- (a) the instrument is issued solely and separately by (and not through) the branch;
- (b) the instrument is reflected in the branch's accounts;
- (c) the proceeds are used by the branch; and
- (d) the instrument is not issued by the head office and transferred to the branch.

- 6.3 Accordingly, if the CIT characterises the hybrid instrument issued by the Singapore branch as an equity instrument and the tax jurisdiction in which the head office is located also determines the character of the instrument as such, then the distribution from such instrument would be regarded as a dividend. Similarly, where the hybrid instrument is characterised as debt by both tax jurisdictions, the distribution from such instrument would be regarded as interest income that is deemed to be sourced in Singapore. In the event of a mismatch between how Singapore and the jurisdiction in which the head office is located characterises the hybrid instrument, the CIT will evaluate the basis for the different characterisations taking into consideration the specific facts of the case, before it determines the character of the instrument for Singapore income tax purpose.

7 Tax treatment of hybrid instruments characterised as debt

- 7.1 If a hybrid instrument is characterised as a debt instrument for tax purposes, the distribution from the issuer to the investor is regarded as interest.
- 7.2 The issuer of such instrument may be allowed a tax deduction on the interest expense incurred if the conditions governing deductibility of expenses under section 14(1) and if applicable, section 14(1)(a) of the ITA are met, and the deduction is not prohibited under any other provisions of the ITA.
- 7.3 The interest income from such instrument is taxable in the hands of the investor unless it is specifically exempted from tax under the ITA¹⁰.

8 Tax treatment of hybrid instruments characterised as equity

- 8.1 If a hybrid instrument issued by a company or REIT is characterised as an equity instrument for tax purposes, distributions from the issuer to the investor are regarded as either dividends or distributions.
- 8.2 No deduction will be allowed to the issuer of such instrument in respect of distributions paid to investors.
- 8.3 Where the dividend is paid by a company resident in Singapore, the dividend, being a one-tier dividend, is exempted from tax in the hands of the investor¹¹. In all other cases, the dividend received by investors in Singapore will be subject to tax. Nevertheless, the foreign-sourced dividend may qualify for tax exemption under either sections 13(7A), 13(8) or 13(12) of the ITA.
- 8.4 In respect of distributions on instruments issued by a REIT, the distributions are taxable¹² in the hands of the instrument holders being returns on investments, regardless of the underlying receipts from which the distributions are made by the REIT.

9 Timing of deductions and taxability of distributions

- 9.1 Where a hybrid instrument issued by an issuer is treated as a debt instrument for tax purposes, the interest expenses are generally considered as incurred by the issuer when its liability to pay the interest to the investor is crystallised. The interest would be deductible in the issuer's hands, if all the requirements

¹⁰ For example, interest derived by a qualifying non-resident or individual from qualifying debt securities is exempted from tax under section 13(1)(a) of the ITA.

¹¹ Under section 13(1)(za) of the ITA

¹² Under section 10(1)(a) or section 10(1)(g) of the ITA

under section 14(1) or 14(1)(a) of the ITA (as applicable) are met and the deduction is not prohibited under section 15 of the ITA.

- 9.2 However, if the interest payment is deferred, the issuer’s obligation to pay the interest would not be considered as crystallised on the scheduled interest payment date. In this scenario, the interest is not considered to have been incurred by the issuer and the issuer would not be allowed a deduction on the deferred interest.
- 9.3 Similarly, the investor is liable to tax on the interest from such instrument when its legal entitlement to the income is crystallised.
- 9.4 An exception to the tax treatment in paragraphs 9.2 and 9.3 above is when the hybrid instrument¹³ issued falls within the scope of Financial Reporting Standard (“FRS”) 39 or FRS 109¹⁴, and the issuer or the investor prepares its financial accounts in accordance with FRS 39 (and does not opt out of the FRS 39 tax treatment) or FRS 109 for accounting purposes¹⁵. The provisions under section 34A (with respect to FRS 39) or section 34AA (with respect to FRS 109) of the ITA would apply to the timing of the deduction and taxability of the interest arising on the hybrid instrument.
- 9.5 The following summarises the timing of deduction of interest expense in the hands of the issuer:

Accounting classification of hybrid instrument	Tax treatment of hybrid instrument	
	Debt on revenue account	Debt on capital account
	Interest expense deduction allowed under Section 14(1) of ITA	Interest expense deduction allowed under Section 14(1)(a) of ITA
A financial instrument under FRS 39 / FRS 109	<ul style="list-style-type: none"> Sections 34A(1) and 34AA(1) of the ITA applies. Deduction follows accounting treatment: 	<ul style="list-style-type: none"> Sections 34A(2)(e) and 34AA(3)(e) of the ITA applies. Deduction does not follow accounting treatment:

¹³ An instrument classified as equity under FRS 32 for accounting purposes falls outside the scope of FRS 39 and FRS 109, and the provisions of sections 34A(1) and 34AA(1) of the ITA would not apply to such an instrument.

¹⁴ For details of the tax implications of FRS 39 and FRS 109 on financial instruments, please refer to the IRAS e-Tax Guides, “Income Tax Implications Arising from the Adoption of FRS 39 – Financial Instruments: Recognition & Measurement” revised on 16 Mar 2015”, and “Income Tax: Income Tax Treatment Arising from Adoption of FRS 109 – Financial Instruments” published on 22 Nov 2017.

¹⁵ For annual periods beginning on or after 1 January 2018, entities would have to apply FRS 109 for accounting purposes which replaces the existing FRS 39. For annual periods beginning before 1 Jan 2018, entities may choose to adopt FRS 109 early.

Accounting classification of hybrid instrument	Tax treatment of hybrid instrument	
	Debt on revenue account	Debt on capital account
	Interest expense deduction allowed under Section 14(1) of ITA	Interest expense deduction allowed under Section 14(1)(a) of ITA
	<ul style="list-style-type: none"> - deduction allowed in the basis period the interest is accounted for in the hybrid instrument issuer's financial statement. - deduction is regardless of whether the interest is legally due and payable to the holders. 	<ul style="list-style-type: none"> - deduction allowed on the interest incurred based on the contractual interest rate (subject to the relevant interest adjustment rules¹⁶). - interest must be legally due and payable to the holders to be deductible (i.e. interest must be incurred and the liability to pay the interest has crystallised).
Not a financial instrument under FRS 39 / FRS 109 e.g. an equity under FRS 32	<ul style="list-style-type: none"> • Sections 34A and 34AA of the ITA do not apply. • Interest must be legally due and payable to the holders to be deductible (i.e. interest must be incurred and the liability to pay the interest has crystallised). 	<ul style="list-style-type: none"> • Deduction of interest expense allowed under Section 14(1) of the ITA. • Deduction of interest expense allowed under Section 14(1)(a) of the ITA, subject to the relevant interest adjustment rules¹⁵.

(B) ADMINISTRATIVE PROCEDURES

10 Issuer of a hybrid instrument

¹⁴ Please refer to the IRAS e-Tax Guide "Income Tax: Total Asset Method for Interest Adjustment" published on 16 Dec 2016.

- 10.1 The issuer must communicate the characterisation of the hybrid instrument to investors or prospective investors through the appropriate channels such as offering circular, information memorandum and website.

11 Investor of a hybrid instrument

- 11.1 An investor of a hybrid instrument should refer to the offering circular, information memorandum, other document or information provided by the issuer to understand the tax treatment of the hybrid instrument. The investor should then apply the appropriate tax treatment on the income derived from such instrument.
- 11.2 An investor should seek clarification from the issuer if there are any doubts on the characterisation of the hybrid instrument.

12 Keeping of records

- 12.1 Both issuers and investors are required to maintain documents, for example offering circular, information memorandum or any other relevant documents relating to the hybrid instruments. These documents are to be provided to the CIT upon request.

13 Other information

- 13.1 This guide discusses the factors that the CIT will take into account in determining the nature of hybrid instruments and the corresponding Singapore income tax consequences. It does not deal with all forms of hybrid instruments currently available in the financial markets. As the financial market grows and becomes more sophisticated, new hybrid instruments with more complex features may be developed. Hence, the use of this guide may be limited by new forms of hybrid instruments as well as changes in tax treatments adopted by foreign tax jurisdictions which may have an impact on the Singapore income tax consequences.
- 13.2 The characterisation of a hybrid instrument should be made based on full facts, circumstances and a combination of relevant factors including those provided in this guide. There is no simple or single factor that can be employed in all cases.
- 13.3 This guide is issued based on the current tax laws of Singapore and the interpretation and practice of the CIT. Accordingly, the guide may not apply if there is any change in the tax laws and/ or change in the interpretation and practice of the CIT.
- 13.4 This guide does not preclude the CIT from disregarding or varying the arrangement and making such adjustments as he considers appropriate if

the hybrid instrument is issued in connection with a tax avoidance arrangement to which section 33 of the ITA applies.

14 Contact information

14.1 If you have any enquiries or require clarification on this guide, please call:

- (a) 1800-3568622 (Corporate)
- (b) 1800-3568300 (Individual)

15 Updates and amendments

	Date of amendment	Amendments made
1	21 October 2019	<p>Amendments have been made to clarify / update:</p> <ul style="list-style-type: none"> a. The tax treatment of hybrid instruments issued by REITs in the hands of the issuer and the investor (i.e. sections 2.1 and 8.4 in this guide) b. That the dividend stopper / restrictive clause in the terms of a hybrid instrument may tilt an instrument towards being a debt in the context of a listed company / a REIT issuer (i.e. section 5.3e in this guide) c. The timing of deduction on interest payments by the issuer on hybrid instruments treated as debt for tax purposes, and the application of sections 34A and 34AA of the ITA which allows issuers and investors to adopt the FRS 39 or FRS 109 accounting treatment for tax purposes (i.e. section 9 in this guide) d. That all issuers (whether Singapore-based or foreign) of hybrid instruments can apply the factors discussed in the guide to determine the debt or equity characterisation of the instruments, and they should clearly communicate the tax treatment of the instruments to the

		<p>investors whether or not an advance ruling is made (i.e. sections 2.4 and 10.1 in this guide)</p> <p>e. The case facts of the examples in Appendices 1 and 2.</p> <p>f. The treatment of a hybrid instrument issued by a REIT as a case example in Appendix 3.</p>
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CASE EXAMPLE OF A HYBRID INSTRUMENT TREATED AS DEBT FOR TAX PURPOSE

ABC is an issuer who issued subordinated perpetual securities (“Securities”). The Securities are issued at par. The Securities are constituted by a trust deed between the issuer and the trustee for holders of the Securities.

The main features of the Securities and the CIT’s analysis to determine the character of the Securities for tax purpose are summarised in the table below.

	Factors	Features	Analysis
1	Nature of interest acquired	<ul style="list-style-type: none"> a. Does not fall within the definition of “share” under the Companies Act. b. Holders of the Securities are not reflected in the Register of Shareholders but instead in Register of Debenture Holders. c. Not subject to capital maintenance rules under the Companies Act or the requirement that distributions be paid out of distributable profits. d. No approval from common equity holders is required for the issuance of the Securities. 	The features tend to support that the Securities are debt instruments.
2	Right to participate in issuer’s business	No right to participate in the management of the issuer.	A debt feature.
3	Voting rights	No statutory right to attend and vote at general meetings of issuer	A debt feature.
4	Obligation to repay the principal amount	<ul style="list-style-type: none"> a. No fixed repayment date but a step-up feature is present. b. Securities may be redeemed in certain circumstances e.g. at the option of the issuer or occurrence of certain events. 	The step-up feature may result in higher cost for the issuer to keep the instrument, which may then lead to the issuer exercising its call option to redeem the instrument.

	Factors	Features	Analysis
			Hence, this factor points the Securities towards a debt character.
5	Payout	<p>a. The Securities bear a fixed periodic distribution. Although the issuer has sole discretion to defer the payment of distributions, any deferred distributions are cumulative.</p> <p>b. The deferred distributions will eventually become payable on the redemption of the Securities.</p> <p>c. There are restrictive terms in the conditions of the Securities which do not allow the issuer to pay regular dividends to its ordinary shareholders if distributions on the Securities are not paid to the security holders (e.g. dividend stopper clause).</p> <p>d. The fixed rate of distribution is independent of the economic performance of the issuer.</p>	<p>Any deferred amounts will bear additional interest at the prevailing distribution rate. This is likely to incentivise the issuer to make distribution payments on the scheduled dates instead of deferring the payments.</p> <p>The restrictive terms will trigger periodic distribution payments to be made by the issuer, if the issuer also pays dividends to its shareholders regularly (e.g. if the issuer is listed).</p> <p>The above provides support that periodic distributions will be made by the issuer, notwithstanding the issuer's discretion to defer the payment of distributions. Thus, this factor points the Securities towards being a debt.</p>
6	Right to enforce payment	The holders of the Securities have no rights to request or require redemption of the Securities and also no rights to request or require payment of the distributions.	As the Securities do not provide the holders with any means to enforce the redemption of the Securities, this feature suggests that the Securities are equity instruments.
7	Classification by other regulatory authority	Securities are listed on the bond market of the Singapore Exchange.	A neutral factor.

	Factors	Features	Analysis
8	Ranking for repayment in the event of liquidation or dissolution	In the event of liquidation or dissolution, the Securities rank junior to the senior creditors of the issuer but <i>pari passu</i> with all other subordinated obligations of the issuer and ahead of the shareholders of the issuer.	This feature supports a debt characterisation.
	Conclusion		Treated as debt

CASE EXAMPLE OF A HYBRID INSTRUMENT TREATED AS EQUITY FOR TAX PURPOSE

DEF is a non-listed issuer which issued perpetual securities (“Securities”). The Securities are issued at 100% of the principal value.

The main features of the Securities and the CIT’s analysis to determine the character of the Securities for tax purpose are summarised in the table below.

	Factors	Features	Analysis
1	Nature of interest acquired	<p>a. As the Securities are legally subordinated debt instruments, no approval from common equity holders is required in respect of the issuance of the Securities.</p> <p>b. Holders of Securities have the option to convert the Securities to the issuer’s shares.</p>	While feature (a) suggests that the Securities are debt instruments, feature (b) suggests that the Securities are equity instruments
2	Voting rights	The Securities are legally subordinated debt instruments which carry no equity voting rights.	A debt feature
3	Obligation to repay the principal amount	The Securities have no maturity date and there is no step-up feature in the distribution rate. There is an obligation on the issuer to repay the holder, the principal value plus any accrued distributions on the termination by the issuer and upon the exercise of its optional redemption rights.	<p>With no step-up feature, the issuer may have no incentive to redeem the Securities and repay the principal amount. This is notwithstanding that the issuer is obliged to repay the principal value and any accrued distributions on its termination or on an optional redemption date.</p> <p>This suggests that the Securities are equity instruments.</p>
4	Payout	The Securities confer the holders a right to receive fixed-rate distributions, semi-annually in arrears. The distributions are	As the payment of the distribution is discretionary in nature and any missed

	Factors	Features	Analysis
		discretionary and the issuer may elect not to pay a distribution. Any missed distribution is non-cumulative. However, the issuer has the discretion to make an optional payment equal to the amount of any missed distributions.	payment is non-cumulative, these features point towards the instrument being equity in nature.
5	Right to enforce payment	The holders of the Securities have no rights to request or require redemption of the Securities and also no rights to request or require payment of the distributions.	As the Securities do not provide the holders with any means to enforce the redemption of the Securities, this feature suggests that the Securities are equity instruments.
6	Classification by other regulatory authority	The regulatory authority which regulates the issuer does not regard the Securities as "borrowings".	This feature suggests that the Securities are equity instruments.
7	Ranking for repayment in the event of liquidation or dissolution	In the event of the winding up of the issuer, the holders are regarded as if they are holders of a preferred class of equity in the issuer, ranking ahead of holders of common equity of the issuer but junior to the claims of all other present and future creditors of the issuer.	This feature points the Securities towards being equity in nature.
	Conclusion		Treated as equity

CASE EXAMPLE OF A HYBRID INSTRUMENT ISSUED BY A REIT TREATED AS DEBT FOR TAX PURPOSE

GHI is a REIT listed on the Singapore Exchange Securities Trading Limited which issued fixed rate subordinated perpetual securities (“Securities”). The Securities are issued at par. The Securities are constituted by a trust deed between the issuer and the trustee for holders of the Securities.

The main features of the Securities and the CIT’s analysis to determine the character of the Securities for tax purpose are summarised in the table below.

	Factors	Features	Analysis
1	Nature of interest acquired	Holders are not entitled to an undivided share or interest in the deposited property of the issuer [unlike the holders of REIT units (“unitholders”)], and thus the holders do not have any rights to the residual profits and assets of the issuer.	This feature suggests that the Securities are debt instruments.
2	Right to participate in the issuer’s business	No right to participate in the business operations of the issuer.	A debt feature.
3	Voting rights	The Securities are legally subordinated debt instruments which carry no equity voting rights.	A debt feature.

	Factors	Features	Analysis
4	Obligation to repay the principal amount	<p>The Securities have no maturity date and there is no step-up feature in the distribution rate.</p> <p>There is an obligation on the issuer's trustee to repay the holder, the principal value plus any accrued distributions ahead of the unitholders of the issuer on the termination of the issuer or upon the exercise of the issuer's optional redemption rights.</p>	<p>With no step-up feature, the issuer may have no incentive to redeem the Securities and repay the principal amount. This is notwithstanding that the issuer is obliged to repay the principal value and any accrued distributions on its termination or on an optional redemption date.</p> <p>This suggest that the Securities are equity-like instruments.</p>
5	Payout	<p>The Securities confer the holders a right to receive fixed-rate distributions, semi-annually in arrears. The distributions are discretionary and the issuer may elect not to pay a distribution. Any missed Distribution is non-cumulative. However, the issuer has the discretion to make an optional payment equal to the amount of any missed distributions.</p> <p>There are restrictive terms in the conditions of the Securities, which do not allow the issuer to make regular distributions to its unitholders if the distributions on the Securities are not paid to the security holders.</p>	<p>A REIT is generally expected to make regular distributions to its unitholders based on the terms of the trust deed constituting the REIT. In addition, a REIT is required to distribute at least 90% of its taxable income to its unitholders in the same year in which the income is derived by the REIT in order to qualify for the tax transparency treatment and remain tax efficient.</p> <p>Hence, while the payment of the distribution is discretionary in nature and any missed payment is non-cumulative, it is expected that the issuer would make periodic distributions to the security holders so as not to invoke any restrictive terms and conditions of the Securities, which may prevent the REIT from making its regular distributions to its unitholders.</p>

	Factors	Features	Analysis
			The above would tilt the Securities towards being a debt.
6	Right to enforce payment	The holders of the Securities have no rights to request or require redemption of the Securities and also no rights to request or require payment of the distributions.	As the Securities do not provide the holders with any means to enforce the redemption of the Securities, this feature suggests that the Securities are equity instruments.
7	Classification by other regulatory authority	Under the Property Funds Appendix of the Code on Collective Investment Schemes, the Securities are classified as equity securities by the Monetary Authority of Singapore, for the purpose of determining the Aggregate Leverage of the issuer.	This feature supports an equity characterisation.
8	Ranking for repayment in the event of liquidation or dissolution	In the event of the winding up of the issuer, the Securities constitute direct and subordinated obligations of the issuer, and the holders are ranked ahead of the unitholders of the issuer but junior to the claims of all other present and future creditors of the issuer.	This feature supports a debt characterisation.
	Conclusion		Treated as debt