Advance Ruling Summary No. 2/2023
Published on 1 Mar 2023

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1. Subject:

Whether:

a. the amount of X% in excess of the principal amount of the notes due in Year (T+10) (the "**Notes**") in the computation of the Purchase Price (defined below) for the Notes (the "**Tender Fees**") would be treated as "break cost" (as defined in Section 13(16) of the Income Tax Act 1947 (2020 Revised Edition) ("**ITA**")) under the qualifying debt securities ("**QDS**") scheme, in which case the Tender Fees would not be subject to withholding tax when paid or deemed paid by the issuer of the Notes ("**Issuer**") to non-resident holders of the Notes ("**Noteholders**"); and

b. Noteholders would also be entitled to the QDS tax exemptions and concessions in respect of such amount under Sections 13(1)(ba) and 43H of the ITA and individuals deriving such income (other than through a partnership in Singapore or from the carrying on of a trade, business or profession in Singapore) would be exempt from tax on such income pursuant to Section 13(1)(zk) of the ITA.

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2. Relevant background and facts:

a. The Issuer is a company incorporated in Singapore. It had issued the Notes under a debt issuance programme (the "**Programme**"). The Notes are QDS for the purposes of the ITA.

b. The Programme is constituted by a trust deed and is governed by Singapore law (the "**Trust Deed**"). The terms and conditions of the Notes are set out in the Trust Deed ("**Conditions**").

c. Following a group restructuring, the Issuer had invited (the "**Invitation**") all Noteholders to, among other corporate actions, offer to sell for cash to the Issuer, any and all of the outstanding Notes held by them at the Purchase Price (the "**Tender Offer**"), in each case subject to the terms and conditions of the invitation memorandum dated Year T in respect of the Notes ("**Invitation Memorandum**").

d. The Invitation will give the Noteholders an opportunity to exit their investments in the Issuer and also allow the Issuer to retire the Notes (either by way of the offers to sell or through the exercise of a call option which provides for an early redemption option at the option of the Issuer by complying with certain notice requirement).

e. Subject to the terms in the Invitation Memorandum, the Issuer will purchase, or procure the purchase of, the Notes validly offered for sale ("**Offered Notes**") at the Purchase Price together with the relevant amount of accrued interest on the Notes (the "**Settlement Amount**"). The Settlement Amount will be paid for Notes validly offered for sale on or prior to the Expiration Time (as defined in the Invitation Memorandum), subject to the fulfilment and/or waiver of the Tender Settlement Conditions (as defined in the Invitation Memorandum).

f. Subject to the fulfilment and/or waiver of the Tender Settlement Conditions, the purchase price payable by the Issuer for the Notes accepted by the Issuer for purchase pursuant to the Tender Offer (the "**Purchase Price**") is (100 + X)% of the principal amount of the Notes to Noteholders who have delivered valid offers to sell on or prior to the Expiration Time. The amount of X% in excess of the principal amount of the Notes (i.e., the additional amount over the principal amount of the Notes) in the computation of the Purchase Price for the Notes is the Tender Fees.

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3. Relevant legislative provisions:

a. Income Tax Act 1947 (2020 Revised Edition) – Sections 13(1)(ba), 13(1)(zk), 13(2F), 13(16) and 43H

b. Income Tax (Qualifying Debt Securities) Regulations

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4. The rulings:

a. The Tender Fees would be treated as "break cost" under the QDS scheme. Therefore, subject to meeting all the other requisite conditions under Sections 13(2F) and 43H of the ITA, and the QDS Regulations, where applicable:

- Noteholders deriving the Tender Fees would be entitled to the tax exemptions and tax concessions available under Section 13(1)(ba) and 43H of the ITA, and individuals deriving such income (other than through a partnership in Singapore or from the carrying on of a trade, business or profession in Singapore) would be exempt from tax on such income pursuant to Section 13(1)(zk) of the ITA; and

- The Tender Fees would not be subject to withholding tax when paid or deemed paid by the Issuer to non-resident Noteholders.

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5. Reasons for the decision:

a. The Notes are QDS. The purchase of the Notes pursuant to the Tender Offer by the Issuer before the Notes' maturity date of Year (T+10) constitutes an early redemption of the Notes.

b. The Tender Fees was determined taking into consideration the loss or liability incurred by the Noteholders in connection with the redemption of the Notes. Accordingly, the Tender Fees falls within the definition of "break cost" under Section 13(16) of the ITA.

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