Advance Ruling Summary No. 12/2023
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1. Subject:

Whether the Tender Premium (as defined below) is regarded as "break cost" under section 13(16) of the Income Tax Act 1947 (2020 Revised Edition) ("**ITA"**), and the following tax treatment therefore applies in respect of the Tender Premium:

a. The Tender Premium would not be subject to withholding tax when paid or deemed paid by the Issuer to Noteholders (as defined below) who are not known to the Issuer to be tax resident in Singapore under section 45A(2B)(a) of the ITA;

b. Noteholders would be entitled to the tax concessions and exemptions available for qualifying debt securities ("**QDS**") in respect of the Tender Premium under sections 13(1)(ba) and 43H of the ITA; and

c. 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 under section 13(1)(zk) of the ITA.

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2. Relevant background and facts:

a. The Issuer is a Singapore incorporated company.

b. It had issued a tranche of notes (the "**Existing Notes**") under its multicurrency debt issuance programme.

c. The Existing Notes are QDS for the purposes of the ITA.

d. The Issuer had invited the holders of the Existing Notes ("**Noteholders**") to offer to sell for cash to the Issuer all or some of the outstanding Existing Notes held by the Noteholders at the Purchase Consideration (as defined below) subject to and upon the terms and conditions of the Invitation Memorandum.

e. The consideration payable by the Issuer for the purchase of the Existing Notes ("**Purchase Consideration"**) is 10x% of the principal amount of the Existing Notes in addition to accrued interest.

f. The Tender Premium refers to the excess of the Purchase Consideration over the principal amount of the purchased Existing Notes less the accrued interest.

g. The commercial rationale for the payment of the Tender Premium is to compensate Noteholders for any loss or liability incurred by them in connection with the early redemption of the Existing Notes.

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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), 43H and 45A(2B)(a)

b. Income Tax (Qualifying Debt Securities) Regulations

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4. The rulings:

a. The Tender Premium falls under the definition of "break cost" under section 13(16) of the ITA. Subject to satisfying the governing conditions under sections 43H and 13(2F) of the ITA, and the Income Tax (Qualifying Debt Securities) Regulations, where applicable:

   (i) Noteholders deriving the Tender Premium would be entitled to tax exemptions and concessions available 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 under section 13(1)(zk) of the ITA; and

   (ii) The Tender Premium would not be subject to withholding tax when paid or deemed paid by the Issuer to non-resident Noteholders under section 45A(2B)(a) of the ITA.

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5. Reasons for the decision:

a. The Tender Premium falls within the definition of "break cost" under section 13(16) of the ITA as it represents the amount payable to Noteholders to compensate Noteholders for the loss incurred by them in connection with such early redemption of the Existing Notes.

Disclaimer

Please note that IRAS will not update the published ruling to reflect changes in the tax laws or our interpretations of the tax laws.