# Advance Ruling Summary No. 13/2022 Published on 1 Aug 2022

## 1. Subject:

## Whether:

- a. the senior guaranteed undated notes (the "**Notes**") will be regarded as "debt securities" for the purpose of section 43H(4) of the Income Tax Act 1947 (2020 Revised Edition) ("**ITA**") and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations ("**QDS Regulations**"); and
- b. interest (including any payment of Accrual of Interest, as defined below) made under the Notes will be regarded as interest payable on indebtedness and eligible for the tax concessions and exemptions available for qualifying debt securities ("QDS"), assuming the other requisite conditions for the Notes to be QDS are satisfied.

## 2. Relevant background and facts:

- a. The issuer of the Notes ("**Issuer**") is a company incorporated outside Singapore.
- b. It issued a tranche of Notes at par value. The Notes are listed on the Bonds Market of the Singapore Exchange Securities Trading Limited.
- c. The key features of the Notes include the following:
  - i. The Notes confer a right to the holders of the Notes (the "Noteholders") to receive interest at a fixed rate per annum (the "Rate of Interest"), payable semi-annually in arrears. The Rate of Interest does not depend on the profit performance of the Issuer.
  - ii. The Notes do not have a fixed redemption date. The Issuer has the option to redeem the Notes in certain instances.
  - iii. Each Note will cease to bear interest from the date of its redemption unless upon due presentation thereof, payment of principal is improperly withheld or refused. In such event, interest will continue to accrue at the prevailing Rate of Interest (the "Accrual of interest") until the earlier of: (a) the date on which all amounts due in respect of the Notes have been paid; and (b) in accordance with the specified procedure and manner for payment of the accrued interest and the principal amount of the Notes.
  - iv. The Notes are direct, unconditional, unsubordinated and unsecured obligations of the Issuer and rank *pari passu*, without any preference

among themselves, with all other outstanding unsecured and unsubordinated obligations of the Issuer, present and future, but, in the event of insolvency, only to the extent permitted by applicable laws relating to creditors' rights.

- v. The Noteholders will not be reflected in the Issuer's Register of Members.
- vi. The Noteholders do not have any right to attend and vote at general meetings of the Issuer.
- vii. The Noteholders do not have any right to participate in the profits of the Issuer.

# 3. Relevant legislative provisions:

- a. Income Tax Act 1947 (Revised Edition 2020) Sections 13(16) and 43H
- b. Income Tax (Qualifying Debt Securities) Regulations

## 4. The rulings:

a. The Notes are regarded as "debt securities" for the purposes of section 43H(4) of the ITA and Regulation 2 of the QDS Regulations.

- b. The interest (including any payment of Accrual of interest) made under the Notes will be regarded as interest payable on indebtedness.
- c. Subject to the Notes satisfying the governing conditions<sup>1</sup> under the QDS scheme, the Noteholders will be entitled to the tax concessions and exemptions under section 43H and section 13(1)(a) of the ITA respectively.

#### 5. Reasons for the decision:

- a. Based on the facts and representations provided, the key features of the Notes described in paragraph 2c above generally support the character of the Notes as "debt securities" for the purpose of section 43H(4) of the ITA and Regulation 2 of the QDS Regulations.
- b. Following the characterisation of the Notes as a debt instrument for tax purposes, the interest (including any payment of Accrual of interest) are regarded as interest payable on indebtedness. The Notes will be regarded as QDS under the ITA and the interest (including any payment of Accrual of interest) will enjoy the tax concessions and exemptions available for

2

<sup>&</sup>lt;sup>1</sup> Under sections 43H, 13(2) and 13(16) of the ITA and the QDS Regulations.

QDS provided that the other requisite conditions for the Notes to be QDS are satisfied.

#### 6. General Reference:

a. Taxpayers may refer to the IRAS e-Tax Guide "Income Tax Treatment of Hybrid Instruments" ("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.

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<sup>&</sup>lt;sup>2</sup> The said e-Tax Guide can be found at the following link: https://www.iras.gov.sg/media/docs/default-source/e-tax/etaxguide\_cit\_income-tax-treatment-of-hybrid-instruments\_2014-05-19.pdf?sfvrsn=f30e87d7\_9