

**1. Subject:**

Whether:

- a. the amount of X% in excess of the principal amount of the Existing Securities (as defined below) (the “**Cash Premium**”) will be regarded as “early redemption fee” and/or “redemption premium” (as defined in section 13(16) of the Income Tax Act 1947 (the “**ITA**”)), in which case:
    - (i) Existing Securityholders (as defined below) deriving the Cash Premium would be entitled to the 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 Cash Premium would not be subject to withholding tax when paid by the Issuer to non-resident Existing Securityholders of the Accepted Securities (as defined below) under the Qualifying Debt Securities (“**QDS**”) scheme;
  - b. the Securities (as defined below) will be regarded as “debt securities” for the purpose of section 43H(4) of the ITA and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations (“**QDS Regulations**”);
  - c. the Distributions, including any Optional Distribution (capitalised terms as defined below) payable on the Securities will be regarded as interest payable on indebtedness and will enjoy the tax concessions and exemptions available for QDS assuming that the other requisite conditions for the Securities to be QDS are satisfied; and
  - d. the Issuer should also be entitled to tax deductions on the Distributions (including any Optional Distribution) as the Distributions are interest under section 14(1)(a) of the ITA.
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**2. Relevant background and facts:**

- a. The Issuer is the trustee of a real estate investment trust (the “**REIT**”) established and listed in Singapore. The former trustee of the REIT had issued a tranche of Fixed Rate Subordinated Perpetual Securities (the “**Existing Securities**”). The Existing Securities are QDS for the purposes of the ITA. The former trustee had retired, and the Issuer was appointed the new trustee of the REIT.

- b. The Issuer invited all holders of the Existing Securities ("**Existing Securityholders**") to make an offer to exchange the Existing Securities ("**Exchange Offer**"), subject to the terms and conditions set forth in the offer memorandum in respect of the Existing Securities, for a like principal amount of Fixed Rate Subordinated Perpetual Securities ("**New Securities**").
- c. The Issuer undertook the Exchange Offer in order to refinance the Existing Securities, improve the overall capital structure of the REIT and strengthen the REIT's balance sheet profile and cash flow management.
- d. In respect of the offered Existing Securities accepted for exchange by the Issuer pursuant to the Exchange Offer ("**Accepted Securities**"), the consideration payable ("**Exchange Consideration**") by the Issuer comprises:
  - i. a principal amount of the New Securities equal to 100% per cent of the principal amount of Accepted Securities;
  - ii. Cash Premium; and
  - iii. accrued interest.
- e. Existing Securities not exchanged pursuant to the Exchange Offer will remain outstanding.
- f. The Exchange Offer and the exchange settlement date occurred after 15 February 2023.
- g. In addition to the New Securities, the Issuer also issued additional perpetual securities ("**Additional New Securities**") to investors regardless of whether they are Existing Securityholders ("**New Issue**"). The New Securities to be issued as part of the Exchange Consideration and the Additional New Securities issued pursuant to the New Issue will be fungible and shall consolidate into the same series ("**Securities**"). The Securities are also intended to be QDS.
- h. The proceeds from the issuance of the Additional New Securities are intended to be used for general corporate purposes of the REIT and its subsidiaries.
- i. The key features of the Securities include the following:
  - i. The Securities confer a right to the holders of the Securities ("**Securityholders**") to receive fixed rate distributions ("**Distributions**"), payable semi-annually in arrears (each a "**Distribution Payment Date**"). The distribution rate does not depend on the profit performance of the Issuer.

- ii. The Issuer may, at its sole discretion, elect not to pay a Distribution (or to pay only part of a Distribution) scheduled to be paid on a Distribution Payment Date by complying with certain notice requirements. Distributions that are deferred are non-cumulative and do not accrue interest.
  - iii. The Issuer may, at its sole discretion, and at any time, elect to pay an amount up to the amount of distribution which is unpaid (“**Optional Distribution**”) (in whole or in part) by complying with certain notice requirements.
  - iv. Subject to certain exceptions, if the payments of all Distributions scheduled to be made are not made in full by reason of the exercise of the Issuer’s discretion, the Issuer and the subsidiaries of the REIT are not allowed to:
    - declare or pay any dividends, distributions or make any other payment on, and will procure that no dividend, distribution or other payment is made on, any of the Issuer’s junior obligations or (except on a *pro-rata* basis) any of the Issuer’s parity obligations; or
    - redeem, reduce, cancel, buy-back or acquire for any consideration and will procure that no redemption, reduction, cancellation, buy-back or acquisition for any consideration is made in respect of, any of the Issuer’s junior obligations, or (except on a *pro-rata* basis) parity obligations,

in each case, subject to certain exceptions, unless and until (1) a redemption of all the outstanding Securities has occurred, the next scheduled distribution has been paid in full, or an Optional Distribution equal to the amount of a distribution payable with respect to the most recent Distribution Payment Date that was unpaid in full or in part, has been paid in full, or (2) the Issuer is permitted to do so by an extraordinary resolution of the Security-holders.
  - v. The Securities do not have a fixed redemption date but may be redeemed at the option of the Issuer in certain instances.
  - vi. The Securities constitute direct, unconditional, subordinated and unsecured obligations of the Issuer and shall at all times rank *pari passu*, without any preference or priority among themselves, and *pari passu* with any parity obligations of the Issuer.
  - j. The Securityholders will not be reflected in the Issuer’s register of unitholders.
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### **3. Relevant legislative provisions:**

- a. Income Tax Act 1947 – Sections 13(1)(ba), 13(1)(zk), 13(2F), 13(16), 14(1)(a), 43H and 45A(2B)(a)
  - b. Income Tax (Qualifying Debt Securities) Regulations
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### **4. The rulings:**

- a. The Cash Premium would be regarded as “early redemption fee” and/or “redemption premium” under section 13(16) of the ITA. Subject to satisfying the governing conditions under sections 43H and 13(2F) of the ITA, and the QDS Regulations, where applicable:
  - i. Existing Securityholders deriving the Cash 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 Cash Premium would not be subject to withholding tax when paid or deemed paid by the Issuer to non-resident Existing Securityholders under section 45A(2B)(a) of the ITA.
- b. The Securities will be regarded as “debt securities” for the purpose of section 43H(4) of the ITA and Regulation 2 of the QDS Regulations.
- c. The Distributions (including Optional Distributions) payable on the Securities will be regarded as interest payable on indebtedness and will enjoy the tax concessions and exemptions available for QDS provided that the other requisite conditions for the Securities to be QDS are satisfied.
- d. The deductibility of the Distributions (including any Optional Distribution) payable on the New Securities follows that of the Accepted Securities. If interest deductions were previously allowed on the Accepted Securities, the Distributions (including any Optional Distribution) payable on the New Securities will be accorded similar interest deductions. If interest deductions previously allowed on the Accepted Securities was subject to adjustments under the total asset method (“**TAM**”), the TAM similarly applies to the New Securities.
- e. The deductibility of the Distributions (including any Optional Distribution) on the Additional New Securities is subject to a detailed examination of the use of the proceeds from the issuance of the Additional New Securities. The Issuer will be allowed a tax deduction under section 14(1)(a) of the ITA on the Distributions (including any Optional Distribution) on the said Additional New Securities if:

- i. such Distributions (including any Optional Distribution) are incurred on the capital (raised through the issuance of the Additional New Securities) employed in acquiring the income of the Issuer that is chargeable with tax; and
    - ii. the conditions governing deductibility of expenses under section 14 of the ITA are met and the deduction is not prohibited under any other provisions of the ITA.
  - f. The Distributions (including any Optional Distribution) payable on the Securities will be deductible only when they are legally due and payable and not based on their scheduled Distribution Payment Dates.
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**5. Reasons for the decision:**

- a. With effect from 15 February 2023, the scope of qualifying income under the QDS scheme has been streamlined such that all payments made by the issuer of the QDS on the redemption of the QDS upon its maturity or on the early redemption of the QDS are qualifying income.
- b. The exchange of the Existing Securities by the Issuer pursuant to the Exchange Offer constitutes an early redemption of the Existing Securities, given that the Existing Securities do not have a fixed redemption date. There is a fee payable by the Issuer in relation to the early redemption of the Existing Securities. Accordingly, the Cash Premium falls within the definition of “early redemption fee” and/or “redemption premium” under section 13(16) of the ITA.
- c. Based on the facts and representations provided, the key features of the Securities described in paragraph 2i above support the characterisation of the Securities as “debt securities” for the purpose of section 43H(4) of the ITA and Regulation 2 of the QDS Regulations.
- d. Following the characterisation of the Securities as a debt instrument for tax purposes, the Distributions (including any Optional Distribution) payable on the Securities are regarded as interest payable on indebtedness. The Securities will be regarded as QDS under the ITA and the Distributions (including any Arrears of Distribution, any Additional Distribution Amounts and the Relevant Period Distribution) will enjoy the tax concessions and exemptions available for QDS provided that the other requisite conditions for the Securities to be QDS are satisfied.
- e. As the New Securities were issued to re-finance the Existing Securities, the characterisation of the New Securities follows that of the Accepted Securities that was re-paid. The deductibility of the Distributions (including any Optional Distribution) payable on the New Securities follows that of

the Accepted Securities based on the direct link test under section 14(1)(a) of the ITA.

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