

1. Subject:

Whether:

- a. The subordinated perpetual securities (the “**Securities**”) will be regarded as “debt securities” for the purpose of Section 43H(4) of the Income Tax Act 1947 (“**ITA**”) and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations (“**QDS Regulations**”);
 - b. The Distributions (including Arrears of Distribution and any Additional Distribution Amounts) (capitalised terms defined below) payable on the Securities will be regarded as interest payable on indebtedness and eligible for the tax concessions and exemptions available for qualifying debt securities (“**QDS**”) under the ITA assuming that the other requisite conditions for the Securities to be QDS are satisfied; and
 - c. The issuer of the Securities (“**Issuer**”) will be entitled to tax deductions on the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) as interest in nature, in accordance with Section 14(1)(a) of the ITA.
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2. Relevant background and facts:

- a. The Issuer is a company incorporated in Singapore and has issued the Securities.
- b. The key features of the Securities include the following:
 - i. The Securities confer a right to the holders of the Securities (“**Securityholders**”) to receive distributions (“**Distributions**”), payable semi-annually in arrears (each a “**Distribution Payment Date**”).
 - ii. The rate of distribution payable on the Securities does not depend on the profit performance of the Issuer and bears a step-up feature which provides for an increase in the rate of distribution at a specific point in time.
 - iii. Except for specified circumstances, the Issuer may, at its sole discretion, elect to defer, in whole or in part, any Distribution scheduled to be paid on a Distribution Payment Date (“**Arrears of Distribution**”) by complying with certain notice requirements.

- iv. The Issuer may also, at its sole discretion, elect to defer any Arrears of Distribution (i.e. Distributions which have been deferred) by complying with the notice requirements applicable to any deferral of an accrued Distribution.
 - v. There is no limit on the number of times Distributions and Arrears of Distribution can or shall be deferred.
 - vi. Arrears of Distribution will bear interest at the prevailing Distribution rate (the “**Additional Distribution Amounts**”). The Additional Distribution Amounts accrued up to any Distribution Payment Date will be added, for the purpose of calculating the Additional Distribution Amounts accruing thereafter, to the amount of Arrears of Distribution remaining unpaid on such Distribution Payment Date so that it will itself become Arrears of Distribution.
 - vii. If the payment of Distributions scheduled to be made are not made in full, the Issuer or any of its subsidiaries is not allowed to declare or pay any dividends, distributions or make any other payment on, or redeem, reduce, cancel, buy-back or acquire for any consideration in respect of any of the Issuer’s junior obligations or (except on a *pro rata* basis) parity obligations, unless and until either all outstanding Arrears of Distribution have been settled in full, or an extraordinary resolution by the Securityholders has permitted such payments.
 - viii. Under specified circumstances, the Issuer is obliged to satisfy any outstanding Arrears of Distribution (in whole but not in part).
 - ix. The Securities have no maturity date but may be redeemed at the option of the Issuer under certain instances.
 - x. In the event of the winding-up of the Issuer, the rights of the Securityholders to payment of principal of and distribution on the Securities rank below the claims of senior creditors of the Issuer but at least *pari passu* with all other subordinated obligations of the Issuer that are not expressed by their terms to rank junior to the Securities, and in priority to the claims of shareholders of the Issuer.
- c. The Securityholders are reflected in the Issuer’s Register of Debenture Holders.
 - d. For accounting purposes, the Securities are treated as equity in accordance with Singapore Financial Reporting Standard 32.
 - e. The net proceeds from the issue of the Securities will be used by the Issuer to refinance existing borrowings and for financing working capital requirements.
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3. Relevant legislative provisions:

- a. Income Tax Act 1947 – Sections 14(1)(a) and 43H(4)
 - b. Income Tax (Qualifying Debt Securities) Regulations
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4. The rulings:

- a. 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.
 - b. The Distributions (including Arrears of Distribution and any Additional Distribution Amounts) 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.
 - c. The deductibility of the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) is subject to a detailed examination of the use of the proceeds from the issuance of the Securities. The Issuer will be allowed a tax deduction under Section 14(1)(a) of the ITA on the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) if:
 - i. such Distributions are incurred on capital (raised through the issuance of the Securities) employed in acquiring the income of the Issuer that is chargeable to tax; and
 - ii. the conditions governing the deductibility of expenses under Section 14 of the ITA are met and the deduction is not prohibited under any other provisions of the ITA.
 - d. The Distributions (including Arrears of Distribution and any Additional Distribution Amounts) 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. The facts and representations provided, including the key features of the Securities described in paragraph 2b above, generally 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.
- b. Following the characterisation of the Securities as a debt instrument for tax purposes, the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) are regarded as interest payable on indebtedness. The Securities will be regarded as QDS under the ITA and

the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) will enjoy the tax concessions and exemptions available for QDS provided that the other requisite conditions for the Securities 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.
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