# Advance Ruling Summary No. 2/2020 Published on 30 Apr 2020

## 1. Subject:

#### Whether:

a. the Securities issued by the Company would be regarded as "debt securities" for the purpose of sections 13(16) and 43N(4) of the Income Tax Act ("ITA")<sup>1</sup> and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations ("QDS Regulations");

- b. the distributions (including Arrears of Distribution and any Additional Distribution Amount) ("**Distributions**") made in respect of the Securities would be regarded as interest payable on indebtedness; and
- c. the Distributions are considered to be "incurred" for the purpose of section 14(1)(a) of the ITA on each distribution payment date, notwithstanding that the distributions may be deferred.

# 2. Relevant background and facts:

- a. The Company is incorporated in Singapore. It has issued Securities at par value. The Securities are listed on the Bonds Market of the Singapore Stock Exchange Trading Limited.
- b. The net proceeds from the issue of the Securities will be used by the Company and its subsidiaries (collectively referred to herein as "**Group**") for the furtherance of its business activities, including financing of the Group's business expansion and general working capital.
- c. The key features of the Securities include the following:
  - i. The Securities do not fall within the definition of "share" under the Companies Act<sup>2</sup>.
  - ii. The holders of the Securities ("**Security-holders**") are not reflected in the Register of Shareholders.
  - iii. The Security-holders have no rights to participate in the business operation of the Company or to vote at the Company's general meetings.

<sup>&</sup>lt;sup>1</sup> Income Tax Act, Chapter 134 (Revised Edition 2014)

<sup>&</sup>lt;sup>2</sup> Companies Act, Chapter 50

- iv. The Securities confer the Security-holders a right to receive fixedrate distributions, payable semi-annually in arrears. There is a stepup feature.
- v. The distributions on the Securities are discretionary and the Company may elect to defer any scheduled distributions, by giving notice of such election to the Security-holders.
- vi. Any deferred distributions ("Arrears of Distribution") are cumulative and will bear interest as if it constituted the principal of Securities at the prevailing Distribution Rate ("Additional Distribution Amount").
- vii. The Company is not allowed to pay dividends, distributions or make any payment on any of its junior obligations (which includes ordinary share of the Company) or to redeem or repurchase its junior obligations until all outstanding Arrears of Distribution and any Additional Distribution Amount are fully paid.
- viii. The Securities have no maturity date.
- ix. The principal value of the Securities plus any accrued Distributions are payable on redemption of the Securities.
- x. The Security-holders have no rights to request or require redemption of the Securities and also no rights to request or require payment of the Distributions
- xi. The Securities are direct, unconditional, unsubordinated and unsecured obligations of the Company. On winding-up or insolvency, the Securities rank at least *pari passu* with all other unsecured obligations (other than subordinated obligations and priorities created by law) of the Company, and ahead of the equity holders.

## 3. Relevant legislative provisions:

- a. Income Tax Act, Chapter 134 (Revised Edition 2014) Sections 13(16), 14(1)(a) and 43N
- b. Income Tax (Qualifying Debt Securities) Regulations

# 4. The rulings:

- a. The Securities are regarded as "debt securities" for the purpose of sections 13(16) and 43N(4) of the ITA and Regulation 2 of the QDS Regulations.
- b. The Distributions due and payable on the Securities are regarded as interest payable on indebtedness.

- c. Subject to satisfying the governing conditions<sup>3</sup> for the Securities to be Qualifying Debt Securities ("QDS"), the Security-holders will be entitled to the tax concessions and exemptions under section 43N and section 13(1)(a) of the ITA respectively.
- d. The deductibility of the Distributions is subject to a detailed examination of the use of the proceeds from the issuance of the Securities. The Company will be allowed a tax deduction under section 14(1)(a) of the ITA on the Distributions if the Distributions are incurred on capital (raised through the issuance of the Securities) employed in acquiring the income of the Company that is chargeable to tax. This is on the condition that all requirements under section 14 are met and the deduction is not prohibited under any other provisions of the ITA.
- e. The Distributions will be considered to have been incurred by the Company and deductible only when they are legally due and payable and not based on their scheduled distribution payment dates.

\_\_\_\_\_

## 5. Reasons for the decision:

a. Based on the facts and representations provided, the key features of the Securities described in paragraph 2c above generally support the character of the Securities as "debt securities".

- b. Following the characterisation of the Securities as a debt instrument for tax purposes, the Distributions due and payable on the Securities are regarded as interest payable on indebtedness. The Securities will be regarded as QDS under section 43N and section 13(1)(a) of the ITA respectively, and the Distributions will enjoy the tax concessions and exemptions available for QDS, provided that the governing conditions for the Securities to be QDS are satisfied.
- c. The Distributions are considered as incurred by the Company when its liability to pay the Distributions to the investor has crystallised. If the Company validly elects to defer the payment of Distributions in accordance with the conditions of the Securities, its obligation to pay the Distributions is not considered as crystallised on the scheduled distribution payment dates. The Distributions will be deductible in the Company's hands only when they are legally due and payable, and provided that all the requirements under section 14(1)(a) are met and the deduction is not prohibited under any other provisions of the ITA.

<sup>&</sup>lt;sup>3</sup> Under sections 43N, 13(2) and 13(16) of the ITA and the QDS Regulations.

#### 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.

<sup>&</sup>lt;sup>4</sup> The said e-Tax Guide can be found at the following link: https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-

Tax\_Guides/etaxguide\_CIT\_Income%20Tax%20treatment%20of%20Hybrid%20Instruments\_2014-05-19.pdf