## 1. Subject:

Whether the Exchange Fee can be regarded as:

- a. a gain (or loss) on disposal by Noteholders and does not fall under section 12(6) of the Income Tax Act ("ITA")<sup>1</sup>, in which case the tax treatment to Noteholders would depend on their personal circumstances (i.e. whether such gain is capital in nature and not taxable or income in nature and taxable) and such Exchange Fee payable to non-resident Noteholders would not be subject to Singapore withholding tax; or
- b. "break cost" or "prepayment fee" (as defined in section 13(16) of the ITA) under the Qualifying Debt Securities ("QDS") scheme, in which case the Exchange Fee would not be subject to withholding tax when paid or deemed paid by the Issuer to non-resident Noteholders. Noteholders would also be entitled to the QDS tax concessions and exemptions in respect of such amount under sections 13(1)(ba) and 43N 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 pursuant to section 13(1)(zk) of the ITA.

### 2. Relevant background and facts:

- a. The Issuer is a company incorporated in Singapore and listed on the Singapore Exchange Securities Trading Limited.
- b. The Issuer had issued two tranches of Notes under its multicurrency medium term note programme ("**Programme**"). The Notes are qualifying debt securities ("**QDS**") for the purposes of the ITA.
- c. The Notes are constituted by a trust deed between the Issuer and a trustee, which includes the terms and conditions of the Notes issued under the Programme ("**Conditions**") and is governed by Singapore law.

### The Tender and Exchange Offer

- d. As part of the Issuer's financial management strategy, the Issuer invited all Noteholders to make an offer to the Issuer to either ("Invitation"):
  - i. sell for cash in aggregate principal amount of the Notes to the Issuer; or
  - ii. exchange outstanding Notes for New Notes pursuant to the terms of the Invitation ("**Exchange Offer**").

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

- e. With respect to the Exchange Offer, the New Notes are also intended to be QDS. Notes not exchanged in the Invitation will remain outstanding.
- f. In respect of the offered Notes accepted for purchase by the Issuer pursuant to the Tender Offer ("**Tendered Offered Notes**"), the consideration for such Tendered Offered Notes comprises the sum of an amount in cash equal to 100% of the principal amount of the Tendered Offered Notes and the Accrued Interest.
- g. In respect of the offered Notes accepted for exchange by the Issuer pursuant to the Exchange Offer ("Exchanged Offered Notes"), the consideration ("Exchange Consideration") for such Exchanged Offered Notes comprises:
  - i. a principal amount of New Notes equal to 100% of the principal amount of such Exchanged Offered Notes;
  - ii. the Exchange Fee; and
  - iii. the Accrued Interest.
- h. By participating in the Invitation, each Noteholder agrees that any exchange of its offered Notes for New Notes constitutes a purchase of its offered Notes by the Issuer pursuant to the Conditions, and the receipt of the Exchange Consideration by such Noteholder pursuant to the terms and conditions of the Invitation constitutes the payment of consideration by the Issuer for such purchase.

# The Exchange Fee

i. The Exchange Fee represents the amount payable to Noteholders (over the principal amount of the Notes) by the Issuer pursuant to the Exchange Offer to compensate Noteholders for the loss incurred by them in connection with such early redemption of the Notes.

### 3. Relevant legislative provisions:

- a. Income Tax Act, Chapter 134 (Revised Edition 2014) Sections 12(6)(a) and 13(16)
- b. Income Tax (Qualifying Debt Securities) Regulations

# 4. The rulings:

- a. The Exchange Fee is a payment which falls under section 12(6)(a) of the ITA.
- b. The Exchange Fee does not fall within the definition of "prepayment fee" under section 13(16) of the ITA.

- c. The Exchange Fee falls within the definition of "break cost" under section 13(16) of the ITA. Therefore, subject to satisfying the governing conditions under the Income Tax (Qualifying Debt Securities) Regulations, sections 43N, 13(2F) of the ITA, where applicable:
  - i. Noteholders deriving the Exchange Fee will be entitled to tax exemptions and concessions available under sections 13(1)(ba) and 43N 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 Exchange Fee will not be subject to withholding tax when paid by the Issuer to non-resident Noteholders of the Notes under the QDS Scheme.

### 5. Reasons for the decision:

- a. The Exchange Fee falls under section 12(6)(a) of the ITA as it is a payment in connection with the underlying indebtedness of the principal sum of the Notes.
- b. The Exchange Fee does not fall within the definition of "prepayment fee" under section 13(16) of the ITA as the Conditions do not provide for an amount for early redemption of the Notes.
- c. The Exchange Fee 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 Notes.

# Disclaimer

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