## 1. Subject:

Whether:

- a. the Notes issued by the Issuer meet all the requirements as set out in section 13(16) of the Income Tax Act 1947 (2020 Revised Edition) ("ITA") and the Income Tax (Qualifying Debt Securities) Regulations ("QDS Regulations") to be treated as Qualifying Debt Securities ("QDS"); and
- b. the Issuer is allowed a tax deduction under section 14(1)(a) of the ITA on interest expenses incurred under the Notes.

### 2. Relevant background and facts:

- a. The Issuer is the trustee of an unregistered business trust (the "Trust").
- b. The sponsor of the Trust (the "**Sponsor**") is a Singapore incorporated company listed on the Singapore stock exchange. One of its wholly-owned subsidiaries acts as the fund manager of the Trust, while another of its wholly-owned subsidiaries is a unitholder of the Trust. The two (2) other unitholders of the Trust are not related to the Sponsor (collectively the "**Unitholders**").
- c. None of the Unitholders (including their associated entities) own shares either directly or indirectly in the Issuer and vice versa, or have common directors with the Issuer. There are also no common shareholders (apart from public shareholders), either directly or indirectly, between the Issuer and any of the Unitholders.
- d. The Issuer issued the Notes to finance the acquisition of properties. Each of the three (3) Unitholders (collectively the "Noteholders"; each a "Noteholder") subscribed to the Notes in the same proportion as their units held in the Trust.
- e. The key features of the Notes include the following:
  - i. The Notes confer the right to the Noteholders to receive fixed rate interest payments ("**Interest**"), payable quarterly in arrears. The interest rate does not depend on the profit performance of the Issuer.
  - ii. The Notes are direct, unconditional, subordinated and unsecured obligations of the Issuer. In the event of winding up of the Issuer, the Noteholders rank *pari passu* with the holders of other instruments or securities of the Issuer (or guaranteed by the Issuer) where the

making of payments thereon or distributions in respect thereof are fully at the discretion of the relevant issuer (the "**Parity Obligations**"), senior to the holders of junior obligations of the Issuer (including the holders of ordinary units of the Trust) (the "**Junior Obligations**") and junior to the claims of senior creditors of the Issuer.

- iii. The Issuer may, at its sole discretion, elect to defer the payment of any Interest (or to pay only part of any Interest) by complying with certain notice requirements.
- iv. The deferred Interest constitutes arrears of interest which shall bear additional interest ("Additional Interest") as if it constituted the principal of the Notes at a fixed rate per annum.
- v. If there is any deferral of Interest, the Issuer (i) shall not 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, (ii) shall not 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 of a pro rata basis) any of the Issuer's Parity Obligations, unless and until a redemption of all the outstanding Notes has occurred, the Issuer has satisfied in full all outstanding arrears of interest (and including any additional interest amounts on such arrears of interest), or the Issuer is permitted to do so by an Extraordinary Resolution of the Noteholders.
- vi. The Notes will mature X years from the issue date and will be redeemed at their principal amount on the maturity date unless otherwise previously extended, redeemed or purchased and cancelled. The Noteholders may by Extraordinary Resolution agree with the Issuer to extend the maturity by a further Y years or such other date as specified in such Extraordinary Resolution.
- vii. The Noteholders are reflected in the Issuer's register of noteholders.

#### 3. Relevant legislative provisions:

- a. Income Tax Act 1947 (2020 Revised Edition) Sections 13(1)(a), 13(2), 13(16), 14(1)(a) and 43H
- b. Income Tax (Qualifying Debt Securities) Regulations

# 4. The rulings:

- a. The Notes will be regarded as "debt securities" for the purposes of section 43H(4) of the ITA and Regulation 2 of the QDS Regulations.
- b. Accordingly, the Interest and the Additional Interest ("**Total Interest**") due and payable on the Notes will be regarded as interest payable on indebtedness.
- c. The Issuer is not regarded as a related party to any of the Noteholders for the purpose of section 13(16) of the ITA.
- d. Subject to satisfying the governing conditions under the QDS Regulations, sections 43H, 13(2) and 13(16) of the ITA for QDS, the Notes will be regarded as QDS and the Noteholders will be entitled to the tax concessions and exemptions under section 43H and section 13(1)(a) of the ITA respectively.
- e. The deductibility of the Total Interest is subject to a detailed examination of the purpose of the debt and the use of the proceeds. The Issuer will be allowed a tax deduction under Section 14(1)(a) of the ITA on the Total Interest if:
  - (i) such interest is incurred on the capital (raised through the issuance of the Notes) employed in acquiring the income of the Issuer that is chargeable to tax; and
  - 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 Total Interest will be deductible only when they are legally due and payable and not based on their scheduled payment dates.

### 5. Reasons for the decision:

- a. The facts and representations provided, including the key features of the Notes described in paragraph 2e above, generally support the characterisation 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 Total Interest are regarded as interest payable on indebtedness. The Notes will be regarded as QDS under the ITA and the Total Interest will enjoy the tax concessions and exemptions available for QDS, provided that the other requisite conditions for the Notes to be QDS are satisfied.

- c. One of the requisite conditions is that during the primary launch of the debt securities, either (i) the debt securities must be issued to at least four (4) persons, or (ii) 50% or more of the issue of the debt securities must not be beneficially held or funded, directly or indirectly, by related parties of the issuer of those debt securities.
- d. The Noteholders are not regarded as related parties of the Issuer for the purpose of section 13(16) of the ITA. Based on paragraph 2(c), none of the Noteholders have control over the Issuer (or vice versa); and the Issuer and each of the three (3) Noteholders are not under the control of a common person.

## 6. General Reference:

a. Taxpayers may refer to the IRAS e-Tax Guide "Income Tax Treatment of Hybrid Instruments"<sup>1</sup> ("**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>1</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\_11