

Advance Ruling Summary No. 6/2022
Published on 4 May 2022

1. Subject:

- a. Whether the Redeemable Preference Shares (“**RPS**”) that Company A will be subscribing to will be treated as equity for Singapore income tax purposes.
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2. Relevant background and facts:

- a. Company A is a limited liability company incorporated in Singapore.
- b. Company A is proposing to enter into an agreement with Company B, a company incorporated outside Singapore to establish a new joint venture company, Company X. Company X will be incorporated under the laws of Singapore and will be a tax resident of Singapore.
- c. Company X’s only corporate purpose is as follows:
- (i) the ownership of equity participation in a special purpose company engaged in the development, financing, construction, operation and maintenance of certain project(s) outside Singapore (the “**Project Company**”); and
 - (ii) making of loans to the Project Company for the purpose of financing the development of the project(s).
- d. It is proposed that Company A will subscribe to the RPS that will be issued by Company X.
- e. The RPS fall within the definition of “shares” under the Companies Act 1967 (2020 Revised Edition), and the RPS holder(s) will be reflected in the Electronic Register of Members.
- f. The key features of the RPS, which Company A will be subscribing to, include the following:

Factors	RPS Features
Tenor	<ul style="list-style-type: none">• There is no specific date in which the RPS will be automatically redeemed.• There is a specific event which can result in an automatic redemption (“automatic redemption event”).• They may stay as RPS until the conversion to ordinary shares.
Dividends	<ul style="list-style-type: none">• Fixed rate dividend per annum.

Factors	RPS Features
	<ul style="list-style-type: none"> Dividends are cumulative. Any dividend entitlement not paid in full shall be compounded at a fixed rate per annum on the last day of each dividend period.
Dividend Declaration	<ul style="list-style-type: none"> At the discretion of the Board of Directors Can only be declared and paid out of profits
Right to vote	<p>The RPS holder has voting rights on Reserved Matters of Company X, as defined in the Shareholders' Agreement between Company A and Company B. Such Reserved Matters include, among others, the making of any change in the principal business conducted by the Company X, election or replacement of members of the Board and key officers, approval of projects to be undertaken under the Shareholders' Agreement.</p>
Redemption right	<p>Redeemable at the option of Company X (unless automatic redemption event occurs), provided all current dividend entitlements and accrued dividends entitlements are paid.</p>
Preference in Liquidation	<ul style="list-style-type: none"> Paid before the ordinary shares No right to participate in distribution of surplus assets of Company X
Conversion into ordinary shares	<ul style="list-style-type: none"> The RPS will be automatically converted into ordinary shares upon the Preference Shares ("PS") Conversion Date (as defined in the Shareholders' Agreement) if it has not been redeemed. To the extent that, on the PS Conversion Date, any current dividend entitlements and accrued dividends entitlements remain owing by Company X, the aggregate of such amounts shall, on and from the PS Conversion Date, constitute a loan owed by Company X to such shareholder(s) which carries a fixed interest rate per annum, compounded annually.
Step-in Rights in situation of non-payment of dividends after commercial operation	<p>If over a rolling 2 year period commencing after the commercial operation date of the project (as defined in the Shareholders' Agreement), and there are no restrictions (such as currency conversion or other government restrictions) that prevents the payment of the dividend, Company A, as the RPS holder, has a number of actions it is allowed to take. These include the removal/replacement of employees or directors of the Project Company, requiring the Project Company to make</p>

Factors	RPS Features
date of the project	further capital expenditure to improve the underlying projects' performance.

3. Relevant legislative provisions:

- a. Income Tax Act 1947 (2020 Revised Edition) - Section 10(1)(d)

4. The rulings:

- a. The RPS that Company A will be subscribing to is an equity instrument for Singapore income tax purposes.
- b. Accordingly, the distributions made with respect to the RPS will be treated as dividends in the hands of Company A for Singapore income tax purposes.

5. Reasons for the decision:

- a. On balance of the features and terms of the RPS, the RPS is regarded as an equity instrument for the following reasons:
- (i) The RPS fall within the definition of "shares" under the Companies Act 1967 (2020 Revised Edition);
 - (ii) The RPS holder(s) will be reflected in the Electronic Register of Members;
 - (iii) The terms of the RPS indicate ownership interests in Company X (such as voting rights, participation in the business of Company X); and
 - (iv) While the fixed dividend rate and the cumulative and compounding feature of the RPS may support debt characterisation of the RPS, dividends paid are subject to the approval from Company X's Board of Directors and availability of profits for distribution. Thus, this feature alone will not result in RPS being treated as a debt instrument for tax purposes.
- b. Following the characterisation of the RRS as an equity instrument for tax purposes, the distributions are regarded as dividends in the hands of Company A for Singapore income tax purposes.
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