# Advance Ruling Summary No. 7/2021 Published on 1 Jul 2021

## 1. Subject:

#### Whether:

a. the subordinated notes ("**Notes**") would be regarded as "debt securities" for the purpose of section 43N(4) of the Income Tax Act ("**ITA**")<sup>1</sup> and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations ("**QDS Regulations**"); and

b. the interest ("Interest") (including Arrears of Interest and any Additional Interest Amount, as defined below) payable on the Notes would be regarded as interest payable on indebtedness and eligible for the tax concessions and exemptions available for qualifying debt securities ("QDS"), assuming that the other requisite conditions for the Notes to be QDS are satisfied.

## 2. Relevant background and facts:

a. The issuer has issued a tranche of Notes at 100% of their principal value. The Notes are listed and quoted on the Singapore Exchange Securities Trading Limited.

- b. The key features of the Notes include the following:
  - i. The holders of the Notes ("**Noteholders**") are not reflected in the issuer's register of members. The Noteholders do not have any statutory right to attend and vote at general meetings of the issuer.
  - ii. The Notes confer the right to receive fixed rate Interest payable semi-annually in arrears (each an "Interest Payment Date"). The interest rate does not depend on the profit performance of the issuer.
  - iii. The issuer may in its sole discretion elect to defer the payment of Interest scheduled to be paid on an Interest Payment Date.
  - iv. Interest that are deferred ("Arrears of Interest") will bear interest at the prevailing Interest Rate ("Additional Interest Amount"). The issuer may further elect to defer any Arrears of Interest.
  - v. The issuer is not allowed to pay dividends, distributions or make any other payment to any of the issuer's junior obligations (including

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

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contribution of any monies to a sinking fund for the payment of any dividends, distributions or other payments to any such junior obligations) or to redeem, reduce, cancel, buy-back or acquire any of the issuer's junior obligations (including contribution of any monies to a sinking fund for the redemption, capital reduction, buy-back or acquisition of any such junior obligations) unless and until the issuer has satisfied in full all outstanding Arrears of Interest; or permitted to do so by an extraordinary resolution of the Noteholders.

- vi. The Notes have a maturity date. The issuer has the option to redeem the Notes in certain instances. Any redemption by the issuer would be at the principal value of the Notes, together with Interest accrued (including Arrears of Interest and Additional Interest Amount) (if any) to the date of redemption.
- vii. The issuer is required to satisfy all outstanding Arrears of Interest on the earliest of the date of redemption of the Notes, the occurrence of certain events or on the winding up of the issuer.
- viii. The Notes constitute direct, unsecured and subordinated obligations of the issuer and shall at all times rank *pari passu* and without preference among themselves. On the winding-up of the issuer, the Notes will rank below other creditors but immediately ahead of the issuer's shares.

#### 3. Relevant legislative provisions:

 Income Tax Act, Chapter 134 (Revised Edition 2014) – Sections 13(16), 43N

b. Income Tax (Qualifying Debt Securities) Regulations

## 4. The rulings:

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- a. The Notes are regarded as "debt securities" for the purpose of section 43N(4) of the ITA and Regulation 2 of the QDS Regulations.
- b. The Interest (including Arrears of Interest and any Additional Interest Amount) payable on the Notes will be regarded as interest payable on indebtedness.
- c. Subject to the Notes satisfying the governing conditions<sup>2</sup> under the QDS scheme, the Noteholders will be entitled to the tax concessions and exemptions under section 43N and section 13(1)(a) of the ITA respectively.

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

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## 5. Reasons for the decision:

a. Based on the facts and representations provided, the key features of the Notes described in paragraph 2b above generally support the character of the Notes as "debt securities", for the purpose of section 43N(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 Interest (including Arrears of Interest and any Additional Interest Amount) due and payable on the Notes are regarded as interest payable on indebtedness. The Notes will be regarded as QDS under the ITA and the Interest (including Arrears of Interest and any Additional Interest Amount) will enjoy the tax concessions and exemptions available for QDS, provided that the other requisite conditions for the Notes to be QDS are satisfied.

#### 6. General References:

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.

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## **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.

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<sup>&</sup>lt;sup>3</sup> The said e-Tax Guide can be found at the following link:

<a href="https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-">https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-</a>

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