

Advance Ruling Summary No. 8/2020
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1. Subject:

Whether:

- a. the Securities would be regarded as “debt securities” for the purpose of section 43N(4) of the Income Tax Act (“**ITA**”)¹ and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations (“**QDS Regulations**”);
 - b. the distributions (“**Distributions**”) (including Arrears of Distribution and any Additional Distribution Amount, as defined below) payable on the Securities would be regarded as interest payable on indebtedness and eligible for the tax concessions and exemptions available for qualifying debt securities (“**QDS**”), assuming the other requisite conditions for the Securities to be QDS are satisfied; and
 - c. the issuer would be entitled to tax deductions on the Distributions as interest, subject to the provisions of section 14(1)(a) of the ITA.
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2. Relevant background and facts:

- a. The issuer is a company incorporated in Singapore and listed on the Singapore Exchange Securities Trading Limited (“**SGX-ST**”).
- b. On Date A, the issuer issued a tranche of Securities at 100% of their principal value (“**Initial Securities**”).
- c. On Date B (i.e. Date A plus X number of days), the issuer issued a tranche of Securities at 100% of their principal value plus accrued distribution from (and including) Date A to (but excluding) Date B (“**Additional Securities**”). The Distribution Commencement Date for the Additional Securities was set at Date A which was earlier than the issue date of Date B.
- d. The Initial Securities and Additional Securities are collectively termed as “**Securities**”.
- e. The Securities are listed on the Bonds Market of the SGX-ST.
- f. The net proceeds from the issue of the Securities are intended to be used by the issuer for refinancing existing borrowings and financing working capital requirements.

¹ Income Tax Act, Chapter 134 (Revised Edition 2014).

- g. The key features of the Securities include the following:
- i. The Securities are not “shares” under the Companies Act (“**CA**”) and not subject to the capital maintenance rules under the CA. Distributions may still be made on the Securities if the issuer does not have distributable profits.
 - ii. The holders of the Securities (“**Securityholders**”) are reflected in the issuer’s register of debenture holders and they are not entitled to vote at the issuer’s general meeting.
 - iii. The Securities confer the right to receive fixed rate distributions, payable semi-annually in arrears (each a “**Distribution Payment Date**”). The distribution rate does not depend on the profit performance of the issuer. There is a step-up feature.
 - iv. The issuer may in its sole discretion elect to defer the payment of Distributions scheduled to be paid on a Distribution Payment Date.
 - v. Distributions that are deferred (“**Arrears of Distribution**”) are cumulative. Arrears of Distribution will bear interest at the prevailing Distribution Rate (“**Additional Distribution Amount**”). The issuer may further elect to defer any Arrears of Distribution.
 - vi. The issuer is not allowed to pay dividends, distributions or make any other payment to any of the issuer’s junior obligations or to redeem, reduce, cancel, buy-back or acquire any of the issuer’s junior obligations unless and until the issuer has satisfied in full all outstanding Arrears of Distribution; or permitted to do so by an extraordinary resolution of the Securityholders.
 - vii. The Securities are subordinated perpetual securities and have no maturity date. The issuer has the option to redeem the Securities in certain instances. Any redemption by the issuer would be at the principal value of the Securities, together with Distributions accrued (including Arrears of Distribution and Additional Distribution Amount) (if any) to the date of redemption.
 - viii. In the event of winding up, the rights of the Securityholders rank junior to the other creditors but immediately ahead of the holders of the ordinary shares of the issuer.

3. Relevant legislative provisions:

- a. Income Tax Act, Chapter 134 (Revised Edition 2014) – Sections 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 section 43N(4) of the ITA and Regulation 2 of the QDS Regulations.
 - b. The Distributions (including Arrears of Distribution and any Additional Distribution Amounts) payable on the Securities will be regarded as interest payable on indebtedness. Subject to satisfying the governing conditions for the Securities to be QDS, the Securityholders will be entitled to the tax concessions and exemptions available for QDS.
 - c. The Distribution from (and including) Date A to (but excluding) Date B in respect of the Additional Securities (“**Relevant Distribution**”) will not be tax deductible.
 - d. For the rest of the Distributions, the deductibility is subject to a detailed examination of the purpose of the Securities and the use of the proceeds from the issuance of the Securities. The issuer will be allowed a tax deduction under section 14(1)(a) of the ITA on the Distributions (including Arrears of Distribution and any Additional Distribution Amounts but excluding the Relevant Distribution) if such Distributions are incurred on capital (raised through the issuance of the Securities) employed in acquiring the income of the issuer that is chargeable to tax. This is on the condition that all requirements under section 14 of the ITA are met and the deduction is not prohibited under any other provisions of the ITA.
 - e. The Distributions (including Arrears of Distribution and any Additional Distribution Amounts but excluding the Relevant Distribution) will be deductible only when they are legally due and payable and not based on their scheduled distribution payment dates.
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5. Reasons for the decision:

- a. Based on the facts and representations provided, the key features of the Securities described in paragraph 2g above generally support the character of the Securities 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 Securities as a debt instrument for tax purposes, the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) due and payable on the Securities are regarded as interest payable on indebtedness. The Securities will be regarded as QDS under the ITA and the Distributions (including Arrears of Distribution and any Additional Distribution Amounts) will enjoy the tax

concessions and exemptions available for QDS, provided that the governing conditions for the Securities to be QDS are satisfied.

- c. There was no debtor-creditor relationship between the issuer and the holders of the Additional Securities (“**Additional Securityholders**”) before Date B. The Relevant Distribution would be a partial repayment of the issue price of the Additional Securities paid upfront by the Additional Securityholders and will not be tax deductible.
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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. 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.
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