

**Advance Ruling Summary No. 13/2021**  
**Published on 1 Sep 2021**

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**1. Subject:**

Whether Exchange Fee on certain notes issued can be regarded as:

- a. a gain (or loss) on disposal of the Notes by holders of the Notes ("**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 the 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.

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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.
- b. The Issuer had issued a tranche of notes (the "**Notes**") under its multicurrency debt issuance 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 Exchange Offer

- d. The Issuer invited all Noteholders ("**Invitation**") to offer to exchange with the Issuer their outstanding Notes for an exchange consideration ("**Exchange Consideration**") pursuant to the terms and conditions of the Invitation ("**Exchange Offer**").

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

- e. The Exchange Consideration in respect of the offered Notes accepted for exchange by the Issuer pursuant to the Exchange Offer comprises:
  - i. new notes to be issued by the Issuer pursuant to the Programme (the “**New Notes**”);
  - ii. an amount in cash;
  - iii. the Exchange Fee; and
  - iv. accrued and unpaid interest.
- f. 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 Exchange Offer constitutes the payment of consideration by the Issuer for such purchase.
- g. With respect to the Exchange Offer, the New Notes are also intended to be QDS. Notes not exchanged in the Invitation will remain outstanding.

#### The Exchange Fee

- h. 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.
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### **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
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### **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 and 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 under the QDS Scheme.

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**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.

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