

Advance Ruling Summary No. 17/2021
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1. Subject:

Whether:

- a. the subordinated perpetual securities (“**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 Optional Distributions, 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 (“**Issuer**”) would be entitled to tax deductions on the Distributions (including Optional 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 real estate investment trust established in Singapore and listed on the Singapore Exchange Securities Trading Limited (“**SGX-ST**”).
- b. It issued a tranche of Securities at its principal value. The Securities are listed and quoted on the Bonds Market of the SGX-ST.
- c. The net proceeds from the issue of Securities are intended to be used by the Issuer to refinance existing borrowings, meet capital expenditure requirements and/or for working capital purposes.
- d. The key features of the Securities include the following:
 - i. The Securities confer a right to the holders of the Securities (“**Security-holders**”) 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.
 - ii. The Issuer may in its sole discretion elect not to pay a Distribution (or to pay only part of a Distribution) scheduled to be paid on a

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

Distribution Payment Date by complying with certain notice requirements.

- iii. The Issuer may in its sole discretion elect to pay an amount up to the amount of Distribution which is unpaid (“**Optional Distribution**”) by complying with certain notice requirements.
- iv. The Issuer is not allowed to pay dividends, distributions or make any other payment to any of the Issuer’s junior obligations or any of the Issuer’s specified parity obligations or to redeem, reduce, cancel, buy-back or acquire any of the Issuer’s junior obligations or any of the Issuer’s specified parity obligations unless and until (A) a redemption of all outstanding Securities has occurred, or the next scheduled Distribution or any Optional Distribution payable has been paid in full; or (B) the Issuer is permitted to do so by an extraordinary resolution of the Security-holders.
- v. The Securities do not have a fixed redemption date. However, the Issuer can exercise an option to redeem the Securities in certain instances.
- vi. The Securities are direct, unconditional, subordinated and unsecured obligations of the Issuer. In the event of winding up of the Issuer, the Security-holders rank *pari passu* with the holders of the Issuer’s preferred units which have a preferential right to return of assets in the winding up of the Issuer, ahead of the holders of junior obligations of the Issuer, and junior to the claims of all other present and future creditors of the Issuer.
- vii. The Security-holders are not reflected in the Issuer’s register of unitholders and do not have any statutory right to attend and vote at general meetings of the Issuer.

3. Relevant legislative provisions:

- a. Income Tax Act, Chapter 134 (Revised Edition 2014) - Sections 13(16), 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 purposes of section 43N(4) of the ITA and Regulation 2 of the QDS Regulations.
- b. The Distributions (including Optional Distributions) payable on the Securities will be regarded as interest payable on indebtedness.

- c. Subject to satisfying the governing conditions for the Securities to be regarded as QDS, the Security-holders will be entitled to the tax concessions and exemptions under section 43N and section 13(1)(a) of the ITA respectively.
 - d. The deductibility of the Distributions (including Optional Distributions) is subject to a detailed examination of the purpose of the Securities and the use of the proceeds. The Issuer will be allowed a tax deduction under section 14(1)(a) of the ITA on the Distributions (including Optional Distributions) if:
 - i. such Distributions (including Optional 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; and
 - ii. 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.
 - e. The Distributions (including Optional Distributions) 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 2d 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 Optional Distributions) are regarded as interest payable on indebtedness. The Securities will be regarded as QDS under the ITA and the Distributions (including Optional Distributions) will enjoy the tax concessions and exemptions available for QDS, provided that the other requisite conditions for the Securities to be QDS are satisfied.
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6. General References:

- a. Taxpayers may refer to the IRAS e-Tax Guide “Income Tax Treatment of Hybrid Instruments”² (“**e-Tax Guide**”) for further guidance. In particular,

² The said e-Tax Guide can be found at the following link:
<https://go.gov.sg/etaxguide-cit-income-tax-treatment-of-hybrid-instruments>

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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