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INCOME TAX ACT (CHAPTER 134)

INCOME TAX (QUALIFYING PROJECT DEBT SECURITIES) REGULATIONS 2008

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In exercise of the powers conferred by section 13(1)(b), (2E) and (16) of the Income Tax Act, the Minister for Finance hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Qualifying Project Debt Securities) Regulations 2008 and shall be deemed to have come into operation on 1st November 2006.

Definitions

2. In these Regulations —

“approved bond intermediary”, “break cost”, “debt securities”, “financial institution”, “financial sector incentive (bond market) company”, “financial sector incentive (project finance) company”, “prepayment fee”, “qualifying project

debt securities” and “redemption premium” have the same meanings as in section 13(16) of the Act;

“Authority” means the Monetary Authority of Singapore;

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“offering documents” means the prospectuses, offering circulars, information memoranda, pricing supplements or other documents issued to investors in connection with an issue of securities;

“programme” includes a medium term note programme, a commercial paper programme or any similar programme for the issue of debt securities;

“tranche” means a particular issue of debt securities under a programme.

Prescribed conditions for tax exemption on income from qualifying project debt securities

3. The exemption from tax under section 13(1)(b) of the Act shall not apply if the issuer of the qualifying project debt securities, or such other person as the Authority may direct, has not furnished to the Authority —

(a) a return on the qualifying project debt securities within such period as the Authority may specify; and

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(b) such other particulars in connection with the qualifying project debt securities as the Authority may require.

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Arrangements for qualifying project debt securities

4.—(1) The arrangements referred to in paragraph (a) of the definition of “qualifying project debt securities” in section 13(16) of the Act are as follows:

(a) where the qualifying project debt securities are not issued under a programme —

(i) the lead manager for the issue of the qualifying project debt securities is a financial sector incentive (bond

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- market) company or a financial sector incentive (project finance) company; or
- (ii) the issue of the qualifying project debt securities is arranged by a financial institution in Singapore, of which the staff who are based in Singapore have a leading and substantial role in originating and structuring the issue and its distribution;
- (b) where the qualifying project debt securities are issued under a programme, the programme as a whole is arranged by a financial sector incentive (bond market) company or a financial sector incentive (project finance) company;
- (c) where the qualifying project debt securities are issued by a new issuer who joins an existing programme which does not satisfy the requirement in sub-paragraph (b) —
- (i) the participation of the new issuer in the programme is arranged by a financial sector incentive (bond market) company or a financial sector incentive (project finance) company; and
- (ii) the existing programme as a whole was arranged —
- (A) on or before 31st December 2003, by an approved bond intermediary or an affiliate of an approved bond intermediary; or
- (B) on or after 1st January 2004, by a financial sector incentive (bond market) company or a financial sector incentive (project finance) company or an affiliate of a financial sector incentive (bond market) company or financial sector incentive (project finance) company; and
- (d) where the qualifying project debt securities are issued under a tranche of a programme which does not satisfy the requirement in sub-paragraph (b) or (c), the dealers for more than half of the qualifying project debt securities issued under that tranche are —

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- (i) financial institutions in Singapore, of which the staff who are based in Singapore have a leading and substantial role in the distribution of the qualifying project debt securities;
 - (ii) financial sector incentive (bond market) companies; or
 - (iii) financial sector incentive (project finance) companies.

(2) For the purposes of paragraph (1)(a)(ii) and (d)(i), the staff of a financial institution in Singapore (other than an approved bond intermediary, a financial sector incentive (bond market) company or a financial sector incentive (project finance) company) who are based in Singapore shall be deemed not to have a leading and substantial role in originating and structuring an issue of qualifying project debt securities, or in its distribution, if the staff of that financial institution, its affiliate or otherwise, who are based outside Singapore have a major role in the originating, structuring or distribution of the issue.

Prescribed infrastructure assets or projects

5. The infrastructure assets and projects prescribed for the purposes of paragraph (b) of the definition of “qualifying project debt securities” in section 13(16) of the Act are as follows:

- (a) electricity generation, distribution or transmission or alternative energy generation;
- (b) gas distribution, transmission or generation;
- (c) waste management, including waste treatment and incineration;
- (d) road or rail infrastructure;
- (e) a maritime port or an airport, or a terminal thereof;
- (f) broadcasting or communication facilities or networks;
- (g) telecommunication facilities or networks;
- (h) water treatment, including desalination, or water distribution;
- (i) a hospital or clinic; or

- (j) a school, including any tertiary institution.

Determination of income exempted from tax

6.—(1) In determining the income of a person to be exempted from tax under section 13(1)(b) of the Act (referred to in this regulation as the exempt income) —

- (a) the Comptroller shall have regard to such expenses and capital allowances allowable under the Act as are, in his opinion, to be deducted from the exempt income;

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- (b) there shall be deducted from the exempt income any allowances under section 19, 19A, 20, 21 or 22 of the Act attributable to that income notwithstanding that no claim for those allowances has been made;

- (c) any balance of the allowances mentioned in sub-paragraph (b) and any losses incurred in respect of any qualifying project debt securities from which the exempt income is derived shall only be deducted against exempt income derived from such qualifying project debt securities for the same and subsequent years of assessment, and any balance of such allowances and losses shall not be deducted against any other income; and

- (d) any balance of the allowances and losses mentioned in sub-paragraph (c) remaining unabsorbed as at the end of the period for which the exemption from tax under section 13(1)(b) of the Act applies shall, subject to paragraph (2), be available as a deduction against any other income for the year of assessment which relates to the basis period in which the tax exemption ceases, and any subsequent year of assessment in accordance with section 23 or 37 of the Act, as the case may be.

(2) Section 37B of the Act shall apply to any amount of allowances and losses available as a deduction against any other income as provided under paragraph (1)(d) as if they were unabsorbed allowances or losses in respect of the income of a company subject to tax at a lower rate of tax under that section; and for this purpose the

rate of tax shall be taken to be the concessionary rate of tax in accordance with the regulations made under section 43N of the Act.

Waiver of withholding of tax in respect of interest, etc., paid to non-resident person

7. The conditions referred to in sections 45(9)(b) and 45A(2B)(b) of the Act are as follows:

- (a) an issuer of any qualifying project debt securities shall include in all offering documents a statement to the effect that any person whose interest, discount, prepayment fee, redemption premium or break cost from those securities is not exempt from tax shall include such interest, discount, prepayment fee, redemption premium or break cost in a return of income made under the Act; and
- (b) an issuer of any qualifying project debt securities, or such other person as the may direct, shall furnish to Authority the Authority a return on those securities within such period as the Authority may specify and such other particulars in connection with those securities as the Authority may require.

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Made this 12th day of June 2008.

TEO MING KIAN
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