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Economic Expansion Incentives (Relief from Income Tax) (Amendment) Bill

Bill No. 1/2018.

Read the first time on 8 January 2018.

A BILL

intituled

An Act to amend the Economic Expansion Incentives (Relief from Income Tax) Act (Chapter 86 of the 2005 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1.—(1) This Act is the Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2018 and, except for section 4, comes into operation on a date that the Minister appoints by notification in the *Gazette*.

(2) Section 4 is deemed to have come into operation on 19 April 2016.

Amendment of section 3

2. Section 3 of the Economic Expansion Incentives (Relief from Income Tax) Act (called in this Act the principal Act) is amended by inserting, immediately after the definition of “foreign loan certificate”, the following definition:

““intellectual property income” means any intellectual property income prescribed by the Minister under section 102;”.

Amendment of section 8

3. Section 8 of the principal Act is amended by deleting the section heading and substituting the following section heading:

“Provisions governing separate trade or business”.

Amendment of section 15

4. Section 15 of the principal Act is amended by deleting the words “basis period in which the tax relief expiry date falls” in subsections (2) and (3) and substituting in each case the words “basis period in which the new trade or business commences”.

New section 19A

5. The principal Act is amended by inserting, immediately after section 19, the following section:

“Exclusion of intellectual property income from sections 10 and 15

19A.—(1) In ascertaining the income of a pioneer service company from a qualifying activity under section 10 (as applied

by section 19), any intellectual property income produced by the activity, as well as any allowance for capital expenditure incurred for the purposes of that activity that is attributable to or apportioned by the Comptroller to any intellectual property income, must be excluded. 5

(2) For the purposes of the application of section 15 (as applied by section 19), a reference to income in section 15(1) excludes any intellectual property income.

(3) To avoid doubt, intellectual property income excluded under subsection (1) remains chargeable to tax under the Income Tax Act (Cap. 134).” 10

Amendment of section 19J

6. Section 19J of the principal Act is amended —

(a) by deleting the words “subsection (5D)” in subsection (5C) and substituting the words “subsections (5D), (5DA), (5E) and (5EB) (whichever is applicable)”; 15

(b) by inserting, immediately after subsection (5D), the following subsections:

“(5DA) The Minister may, on the Minister’s own initiative or on the application of a development and expansion company, amend the company’s certificate by substituting the concessionary rate of tax specified in the certificate in accordance with subsection (5D), with a concessionary rate of either 5% or 10%, and in that event the concessionary rate is the rate as substituted. 20 25

(5DB) Subsection (5DA) applies whether the development and expansion company was approved as such before, on or after the date of commencement of section 6(b) of the Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2018.”; 30

(c) by deleting the word “In” in subsection (5E) and substituting the words “Subject to subsection (5EA), in”;

(d) by inserting, immediately after subsection (5E), the following subsections:

5 “(5EA) The Minister may, on the Minister’s own initiative or on the application of a development and expansion company mentioned in subsection (5E), amend the company’s certificate for any qualifying activity by substituting the rate of tax specified in the certificate in accordance with that subsection (called in this section the initial rate) for expansion income derived from that activity during a part of the tax relief period, with a rate of tax that complies with subsection (5EC) (called in this section the substituted rate).

(5EB) Where subsection (5EA) applies, then —

15 (a) if the date of the substitution is the first day of that part of the tax relief period, the concessionary rate of tax that applies to the expansion income derived from that activity during that part of the tax relief period is the substituted rate; and

20 (b) if the date of the substitution is not the first day of that part of the tax relief period —

25 (i) the concessionary rate of tax that applies to the expansion income derived from that activity during the period beginning on the first day of that part of the tax relief period and ending on the day immediately before the date of the substitution is the initial rate; and

30 (ii) the concessionary rate of tax that applies to the expansion income derived from that activity during the balance of that part of the tax relief period is the substituted rate.

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(5EC) The substituted rate for a part of the tax relief period mentioned in subsection (5EA) is a rate computed by the formula $A + B$, where —

(a) A is the difference between —

(i) the sum arrived at by totalling the concessionary rate of tax that applies to the company's expansion income from that activity on the first day of each part of the tax relief period up to and including that part of the tax relief period for that activity, or would have so applied had it not been substituted under subsection (5DA) or (5EA) (as the case may be); and

(ii) the sum arrived at by totalling the concessionary rate of tax that applies to the company's expansion income from that activity on the day immediately before the first day of each part of the tax relief period up to and including that part of the tax relief period for that activity; and

(b) B is either 5% or 10%, as determined by the Minister.”; and

(e) by deleting the words “subsection (5E)” in subsection (5F) and substituting the words “subsections (5E), (5EA), (5EB) and (5EC)”.

Amendment of section 19K

7. Section 19K(3C) of the principal Act is amended by deleting the words “18th February 2008 and 17th February 2018” and substituting the words “18 February 2008 and 31 December 2023”.

Amendment of section 19KA

8. Section 19KA(1) of the principal Act is amended by deleting the words “1st April 2010 and 31st March 2020” and substituting the words “1 April 2010 and 30 June 2017”.

5 Amendment of section 19M

9. Section 19M of the principal Act is amended —

(a) by deleting the words “such adjustments as may be necessary to give effect to any direction given under section 19P” in subsection (1) and substituting the words “the deductions and adjustments in subsection (1A)”;

(b) by inserting, immediately after subsection (1), the following subsections:

“(1A) The deductions and adjustments for subsection (1) are as follows:

(a) the deduction of intellectual property income derived from any qualifying activity or qualifying activities;

(b) such adjustments as may be necessary to give effect to any direction given under section 19P.

(1B) To avoid doubt, intellectual property income deducted under subsection (1) (read with subsection (1A)) remains chargeable to tax under the Income Tax Act.”; and

(c) by inserting, immediately after subsection (2), the following subsection:

“(2A) In subsection (2), a reference to allowances for capital expenditure incurred for the purposes of a qualifying activity excludes any such allowance that is attributable to or apportioned by the Comptroller to intellectual property income.”.

Amendment of section 97ZA

10. Section 97ZA of the principal Act is amended by deleting the definition of “qualifying equipment” and substituting the following definition:

“ “qualifying equipment”, in relation to a company that is issued an approval letter for an approved project, means — 5

(a) for a project that is approved under section 97ZB(2) before 21 February 2017 —

(i) any new productive equipment; or 10

(ii) any second-hand productive equipment (other than productive equipment sold and repurchased by the company),

to be provided to and used by a project company solely for manufacturing any product for the firstmentioned company or providing specialised engineering or technical services on behalf of or to the firstmentioned company under the approved project; and 15

(b) for a project that is approved under section 97ZB(2) on or after 21 February 2017 — 20

(i) any new productive equipment; or

(ii) any second-hand productive equipment (other than productive equipment sold and repurchased by the company), 25

to be provided to and used by a project company solely or primarily for manufacturing any product for the firstmentioned company or providing specialised engineering or technical services on behalf of or to the firstmentioned company under the approved project;”. 30

Amendment of section 97ZB

11. Section 97ZB of the principal Act is amended —

(a) by deleting subsection (3) and substituting the following subsections:

5 “(3) The IIA in respect of the fixed capital expenditure for an approved project is an amount that is the lower of the following:

10 (a) an amount equal to the percentage (specified in the approval letter for the approved project), of $C \times D$;

(b) an amount specified in the approval letter for that approved project for the purpose of this subsection, if any.

(3A) For the purpose of subsection (3) —

15 (a) C is the fixed capital expenditure incurred on the qualifying equipment for the approved project; and

20 (b) D is 100% or, if the qualifying equipment is primarily used for manufacturing or providing the specialised engineering or technical services, the percentage determined by the Minister, and specified in the approval letter for the approved project, of the primary use.”;

25 (b) by deleting the word “and” at the end of subsection (4)(c);

(c) by deleting the full-stop at the end of paragraph (d) of subsection (4) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

30 “(e) shall specify such other matters that are required to be specified in the approval letter.”;

(d) by inserting, immediately after subsection (7), the following subsections:

“(7A) The Minister may, in the Minister’s discretion, amend an approval letter by adding to, removing or substituting (as the case may be) any matter required to be specified in the approval letter under subsection (4).”

(7B) An amendment in subsection (7A) takes effect from the date of the amended approval letter or, if specified in the amended approval letter, the effective date of the amendment.”; and

(e) by deleting the words “17th February 2012 and 28th February 2017” in subsection (8) and substituting the words “17 February 2012 and 31 December 2022”.

Amendment of section 97ZC

12. Section 97ZC(2) of the principal Act is amended by deleting the words “or (2B)” in paragraph (b) and substituting the words “, (2B) or (2BAA)”.

Repeal and re-enactment of section 97ZH and new section 97ZHA

13. Section 97ZH of the principal Act is repealed and the following sections substituted therefor:

“Prohibition against selling, leasing out or disposing of qualifying equipment

97ZH.—(1) Except as permitted under subsection (2), a company must not sell, lease (except to the project company) or otherwise dispose of any qualifying equipment in respect of which an IIA has been given to the company, during the qualifying period of the equipment and within 2 years after the end of such qualifying period.

(2) Subsection (1) does not apply if the company obtains the written approval of the Minister for the sale, lease or disposal.

Recovery of IIA

5 **97ZHA.**—(1) Where a company has contravened section 97ZH(1) or failed to comply with any term or condition specified in the approval letter issued to the company, an amount equal to the whole of the IIA given in respect of a qualifying equipment must be recovered in the following manner:

(a) where the IIA given had been credited to the normal IIA account —

10 (i) the amount of the IIA must be deducted from that account; and

(ii) where the credit in that account is insufficient to enable full recovery of the IIA, an assessment or additional assessment in respect of the shortfall must, subject to section 74 of the Income Tax Act (Cap. 134), be made upon the company;

15 (b) where the IIA given had been credited to the concessionary IIA account —

20 (i) the amount of the IIA must be deducted from that account; and

(ii) where the credit in that account is insufficient to enable full recovery of the IIA, an assessment or additional assessment in respect of the shortfall must, subject to section 74 of the Income Tax Act, be made upon the company.

25 (2) The Minister may waive, wholly or partly, the recovery of the IIA under subsection (1).”.

Validation

30 **14.**—(1) This section applies to any substitution made by the Minister, before the date of commencement of section 6, of the concessionary rate of tax specified in a certificate issued to a development and expansion company for expansion income derived from any qualifying activity, with another concessionary rate.

(2) Every substitution mentioned in subsection (1) is, and is taken always to have been, by force of this section, validly made; and no legal proceedings may be instituted on or after 8 January 2018 in any court on account of or in respect of any such substitution.

(3) The collection and recovery of any tax, or any other thing done, before the date of commencement of section 6 on the basis of the substituted rate is, and is taken always to have been, by force of this section, validly done under the principal Act and the Income Tax Act (Cap. 134).

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EXPLANATORY STATEMENT

This Bill seeks to amend the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86) for the following main purposes:

- (a) to remove prescribed intellectual property income from the tax incentive scheme for pioneer service companies under Part III of the Act;
- (b) to remove prescribed intellectual property income from the tax incentive scheme for development and expansion companies under Part IIIB of the Act;
- (c) to expressly enable the Minister to substitute the concessionary rate of tax given to a development and expansion company for any qualifying activity or activities with a concessionary rate of either 5% or 10%;
- (d) to extend the last day for the Minister to extend the tax relief period of a relevant development and expansion company for a qualifying activity from 17 February 2018 to 31 December 2023;
- (e) to bring forward the last day for the Minister to approve a development and expansion company for international legal services from 31 March 2020 to 30 June 2017;
- (f) to extend the scheme for integrated investment allowance in Part XIID of the Act to certain equipment that is primarily used for manufacturing any product or providing specialised engineering or technical services in an approved project.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 3 to insert the definition for the term “intellectual property income” to support the amendments in clauses 5 and 9.

Clause 3 amends section 8 by deleting and substituting the section heading with a new section heading, to more accurately reflect the subject of the section.

Clause 4 amends section 15(2) and (3) to clarify that the balance of any loss which remains unabsorbed on the tax relief expiry date of the old trade or business is only available as a deduction for the year of assessment which relates to the basis period in which the new trade or business commences.

Clause 5 inserts a new section 19A to provide that in ascertaining the income of a pioneer service company from a qualifying activity under section 10 (as applied by section 19), any intellectual property income produced by the activity, as well as any allowance for capital expenditure incurred for the purposes of that activity that is attributable to or apportioned by the Comptroller of Income Tax (the Comptroller) to any intellectual property income, must be excluded. The excluded income remains chargeable to tax under the Income Tax Act (Cap. 134). The clause also provides that for the purposes of the application of section 15, a reference to income in section 15(1) excludes any intellectual property income.

Clause 6 inserts a new subsection (5DA) into section 19J to expressly enable the Minister to amend a certificate issued to a development and expansion company by substituting the concessionary rate of tax specified in the certificate for any qualifying activity or activities, with a concessionary rate of either 5% or 10%.

The clause also inserts new subsections (5EA), (5EB) and (5EC) into section 19J to provide for substitutions to be made in respect of a development and expansion company that is approved as such on or after 29 February 2012, or that has been granted an extension of its tax relief period for any qualifying activity on or after that date.

The examples below illustrate the operation of the new section 19J(5EA), (5EB) and (5EC).

Taxpayer (A) is approved as a development and expansion company for a qualifying activity for an initial tax relief period of 10 years. The concessionary tax rate for that period is 5%. The tax relief period is then extended for another 5 years and the concessionary tax rate specified for that extension, in accordance with section 19J(5E), is 5.5%. The tax relief period is given a second extension of 3 years and the concessionary tax rate specified for the second extension (which begins on the first day of the 16th year and ends on the last day of the 18th year), in accordance with section 19J(5E), is 6%.

Example 1

On the first day of the 17th year of the tax relief period, the concessionary tax rate of 6% is substituted under the new section 19J(5EA). Applying the new section 19J(5EA), (5EB) and (5EC), and assuming that the Minister determines 10% to be the value of “B” under the new section 19J(5EC), the concessionary tax rate applicable to the expansion income derived by *A* from the qualifying activity in the tax relief period after the second extension is as follows:

From the beginning of the 16th year of the tax relief period to the day before the date of the substitution	6%
From the date of the substitution to the end of the 18th year of the tax relief period	11%

The rate of 6% in the second column of the table is the initial rate that applies pursuant to section 19J(5EB)(b)(i).

The rate of 11% in the second column of the table is the substituted rate that applies pursuant to section 19J(5EB)(b)(ii), arrived at by totalling 10% (being the value of “B” determined by the Minister) and 1%. 1% is the difference between the sums mentioned in sub-paragraphs (i) and (ii) of section 19J(5EC)(a).

The sum in sub-paragraph (i) of section 19J(5EC)(a) is 11.5%. This sum is arrived at by adding the concessionary tax rate that applies to the company’s expansion income from that activity on the first day of the 11th year of the tax relief period for that activity (5.5%), and the concessionary tax rate that applies on the first day of the 16th year of the tax relief period (6%).

The sum in sub-paragraph (ii) of section 19J(5EC)(a) is 10.5%. This sum is arrived at by adding the concessionary tax rate that applies on the day immediately before the first day of the 11th year of the tax relief period (5%), and the concessionary tax rate that applies on the day immediately before the first day of the 16th year of the tax relief period (5.5%).

Example 2

The rate of 6% is substituted under the new section 19J(5EA) on the first day of the second extension of the tax relief period. Applying the new section 19J(5EB)(a), the concessionary tax rate applicable to the expansion income derived by *A* from the qualifying activity in the tax relief period after the second extension is 11%, derived in the same way as the substituted rate in Example 1.

Clause 7 amends section 19K(3C) to extend the last day for the Minister to extend the tax relief period of a relevant development and expansion company for a qualifying activity, from 17 February 2018 to 31 December 2023.

Clause 8 amends section 19KA(1) to bring forward the last day for the Minister to approve a development and expansion company for international legal services, from 31 March 2020 to 30 June 2017.

Clause 9 amends section 19M(1) and inserts new subsections (1A) and (1B). The new subsection (1A) sets out the existing requirement that in ascertaining the qualifying income of a development and expansion company from a qualifying activity or qualifying activities in accordance with the provisions of the Income Tax Act, adjustments as may be necessary to give effect to any direction under section 19P must be made. The new subsection (1A) also sets out a new requirement that in conducting such ascertainment, intellectual property income must be deducted from the company's income from the qualifying activity or activities. The new subsection (1B) provides that the deducted income remains chargeable to tax under the Income Tax Act.

The clause also inserts a new subsection (2A) into section 19M to provide that in subsection (2), a reference to allowances for capital expenditure incurred for the purposes of a qualifying activity excludes any such allowance attributable to or apportioned by the Comptroller to intellectual property income.

Clause 10 amends section 97ZA to expand the definition of "qualifying equipment" to include equipment that is primarily but not solely used for specified purposes in an approved project. The existing definition continues to apply to projects that are approved before 21 February 2017, whereas the expanded definition applies to projects that are approved on or after 21 February 2017.

Clause 11 amends section 97ZB —

- (a) to provide for the calculation of integrated investment allowance in respect of fixed capital expenditure for an approved project, taking into account the expanded definition of "qualifying equipment" in section 97ZA (as amended by clause 10);
- (b) to enable the Minister to, in the Minister's discretion, amend an approval letter by adding to, removing or substituting any matter required to be specified in the approval letter under subsection (4); and
- (c) to extend the last day for the Minister to approve a project for the purposes of Part XIID from 28 February 2017 to 31 December 2022.

Clause 12 makes an amendment to section 97ZC(2) that is consequential to the insertion, by the Income Tax (Amendment) Act 2014 (Act 37 of 2014), of a new subsection (2BAA) into section 19A of the Income Tax Act.

Clause 13 repeals and re-enacts section 97ZH with an amended section 97ZH and inserts a new section 97ZHA. The amended section 97ZH reproduces the prohibition against selling, leasing or disposing of any qualifying equipment in respect of which an integrated investment allowance has been given. The new section 97ZHA expands the circumstances in which recovery of the integrated investment allowance given to a company will take place. The circumstances now include a contravention of section 97ZH(1) (as amended by the clause), as well as a failure by a company to comply with any term or condition specified in the approval letter issued to the company. Section 97ZHA also sets out the mechanism for the recovery of integrated investment allowance that is currently set out in section 97ZH.

Clause 14 is a validation provision for any substitution, made by the Minister to the concessionary rate of tax specified in a certificate issued to a development and expansion company for any qualifying activity or activities, with another concessionary rate before the date of commencement of clause 6. The clause also validates the collection and recovery of any tax, or any other thing done, under the Economic Expansion Incentives (Relief from Income Tax) Act and the Income Tax Act on the basis of the rate as substituted before the date of commencement of clause 6.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
