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

Bill No. 9/2020.

Read the first time on 3 February 2020.

A BILL

i n t i t u l e d

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. This Act is the Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2020 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 17

2. Section 17 of the Economic Expansion Incentives (Relief from Income Tax) Act (called in this Act the principal Act) is amended by inserting, immediately after the words “engaged in” in subsections (1), (1A), (5)(b) and (6)(c)(ii), the words “or desires to engage in”.

Amendment of section 19J

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

(a) by inserting, immediately after the words “engaged in” in subsection (1), the words “, or which desires to engage in,”;

(b) by inserting, immediately after the words “engaged in” in subsections (1A), (5)(b) and (5A)(c)(ii), the words “or desires to engage in”.

New Part IV

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

“PART IV

TRANSFER OF AWARDS

Interpretation of this Part

20. In this Part, unless the context otherwise requires —

“average corresponding income” means the average corresponding income mentioned in section 19J(6);

“development and expansion award” means an approval given by the Minister to a company under Part IIIB to be a development and expansion company for a Part IIIB qualifying activity;

“development and expansion company” means a development and expansion company as defined in section 19I;

“Part III commencement day”, in relation to a Part III qualifying activity, has the meaning given to “commencement day” in section 16; 5

“Part III qualifying activity” means any qualifying activity as defined in section 16;

“Part IIIB commencement day”, in relation to a Part IIIB qualifying activity, has the meaning given to “commencement day” in section 19I; 10

“Part IIIB qualifying activity” means any qualifying activity as defined in section 19I;

“pioneer industry award” means an approval given by the Minister to a company under Part II to be a pioneer enterprise for a pioneer product; 15

“pioneer service award” means an approval given by the Minister to a company under Part III to be a pioneer service company for a Part III qualifying activity;

“pioneer service company” means a pioneer service company as defined in section 16. 20

Application of this Part

21.—(1) This Part applies where, because of a transfer or proposed transfer to a company (called in this Part a transferee company) of any business of a pioneer enterprise, pioneer service company or development and expansion company (called in this Part a transferor company) to which the transferor company’s pioneer industry award, pioneer service award or development and expansion award (as the case may be) relates — 25

- (a) a pioneer product under the pioneer industry award (called in this Part the subject product) is or will be produced by the transferee company instead of the transferor company; 30

(b) a Part III qualifying activity under the pioneer service award (called in this Part the subject activity) is or will be engaged in by the transferee company instead of the transferor company; or

5 (c) a Part IIIB qualifying activity under the development and expansion award (also called in this Part the subject activity) is or will be engaged in by the transferee company instead of the transferor company.

10 (2) In subsection (1), a transferee company includes a company that results from an amalgamation or merger involving the transferor company.

Application for transfer of award

15 **22.**—(1) The transferor company may apply to the Minister to transfer to the transferee company the whole or part of its pioneer industry award, pioneer service award or development and expansion award (called in this Part the subject award) that relates to the subject product or subject activity, as the case may be.

20 (2) The application under subsection (1) must be made in writing, in the form and containing the particulars specified by the Minister.

(3) The Minister may approve the application under subsection (1) if the Minister is satisfied that —

25 (a) because of a transfer or proposed transfer to the transferee company of any business of the transferor company to which the subject award relates, the transferee company instead of the transferor company is or will be producing the subject product, or is or will be engaging in the subject activity; and

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(b) it is in the public interest to approve the transfer.

(4) In approving an application under subsection (1), the Minister may —

- (a) impose on the transferee company as conditions of the subject award transferred to it any conditions that the Minister thinks fit, which may be the same as or different from the conditions imposed on the transferor company for the subject award; and 5
- (b) add to the conditions, or vary or remove any conditions, imposed on the transferor company for the subject award that relates to any pioneer product, Part III qualifying activity or Part IIIB qualifying activity (as the case may be) under the subject award that the transferor company continues to produce or engage in. 10

(5) In approving an application under subsection (1) that relates to a development and expansion award, the Minister may, despite section 19J(7), (8) and (9) — 15

- (a) specify an amount as the average corresponding income of the transferee company for the subject activity for the year of assessment for which the approval is given and subsequent years of assessment, which may be — 20
 - (i) the average corresponding income of the transferor company for the subject activity immediately before the specified date mentioned in subsection (6)(a); or
 - (ii) any other amount that the Minister thinks fit; and 25
- (b) substitute, with effect from the year of assessment for which the approval is given and subsequent years of assessment, the average corresponding income of the transferor company for any Part IIIB qualifying activity under the subject award that it continues to engage in on or after the specified date mentioned in subsection (6)(a), with any amount that the Minister thinks fit. 30

(6) Where the Minister approves an application under subsection (1), then —

5 (a) on a date specified by the Minister (called in this Part the specified date), the transferor company ceases to be, as the case may be —

(i) a pioneer enterprise for the subject product;

(ii) a pioneer service company for the subject activity; or

10 (iii) a development and expansion company for the subject activity;

(b) starting on the specified date, the transferee company is treated as having been approved as a pioneer enterprise, a pioneer service company, or a development and expansion company for the subject product or subject activity, as the case may be;

15 (c) the transferee company's production day of the subject product, Part III commencement day of the subject activity, or Part IIIB commencement day of the subject activity (as the case may be) is the same as that of the transferor company, for the purposes of determining the transferee company's tax relief period under Part II, III or IIIB;

20 (d) where the subject award is a development and expansion award, the transferee company is treated as having, for the purposes of section 19J(5E), (5EA), (5EB), (5EC) and (5F), the same concessionary rate of tax for each part of the tax relief period for its expansion income derived on or after the specified date from the subject activity, as that of the transferor company had the transferor company remained a development and expansion company for the subject activity;

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(e) the Minister must —

(i) amend the certificate for the subject award issued to the transferor company to remove the subject product or subject activity, as the case may be; or

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(ii) cancel the certificate for the subject award if the transferor company no longer produces any pioneer product, or engages in any Part III qualifying activity or Part IIIB qualifying activity (as the case may be), specified in the certificate; and

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(f) the Minister must issue a certificate to the transferee company for the subject award transferred to it for the subject product or subject activity (as the case may be) in accordance with section 23.

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(7) The Minister may, instead of approving the application under subsection (1), require the transferee company to apply for a new pioneer industry award, pioneer service award or development and expansion award, as the case may be.

(8) To avoid doubt —

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(a) the specified date may be the same as or different from the date on which the Minister approves the application; and

(b) the tax relief in Part II, III or IIIB (as the case may be) does not apply to any income derived by the transferee company before the specified date.

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Certificate for transferred awards

23.—(1) A certificate issued to a transferee company under section 22(6)(f) must specify —

(a) in the case of a pioneer industry award —

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(i) the subject product; and

(ii) the production day mentioned in section 22(6)(c);

(b) in the case of a pioneer service award —

- (i) the subject activity; and
- (ii) the Part III commencement day mentioned in section 22(6)(c); or

5 (c) in the case of a development and expansion award —

- (i) the subject activity;
- (ii) the Part IIIB commencement day mentioned in section 22(6)(c); and
- (iii) the concessional rate of tax to be levied for the subject activity.

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(2) Where the Minister approves an application under section 22(1) involving 2 or more pioneer products, 2 or more Part III qualifying activities or 2 or more Part IIIB qualifying activities (as the case may be), the Minister may issue a single certificate to the transferee company in respect of those pioneer products, Part III qualifying activities or Part IIIB qualifying activities if —

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- (a) the tax relief periods of the transferee company for all the pioneer products, Part III qualifying activities or Part IIIB qualifying activities (as the case may be) expire on the same day; and
- (b) the Minister is satisfied that the transferee company is producing or will produce all the pioneer products, or is engaging in or will engage in all the Part III qualifying activities or Part IIIB qualifying activities, as part of the same project.

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(3) A certificate issued to a transferee company under section 22(6)(f) is treated as a pioneer certificate, a certificate issued under section 17 or a certificate issued under section 19J, as the case may be.”

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Amendment of section 57

5. Section 57(1) of the principal Act is amended by deleting the words “desires to obtain” and substituting the words “has obtained, or desires to obtain.”.

Amendment of section 66

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6. Section 66 of the principal Act is amended —

(a) by deleting the words “or 43ZH” in the definition of “concessionary income” in subsection (1) and substituting the words “, 43ZH or 43ZI”;

(b) by inserting, immediately after the definition of “construction operations” in subsection (1), the following definition:

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““corporate partnership” means a partnership, limited liability partnership or limited partnership comprising solely of partners that are companies;”;

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(c) by deleting the words “or (g)” in paragraph (a) of the definition of “fixed capital expenditure” in subsection (1) and substituting the words “, (g) or (k)”;

(d) by deleting the words “or (i)” in paragraph (c) of the definition of “fixed capital expenditure” in subsection (1) and substituting the words “, (i) or (k)”;

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(e) by deleting the full-stop at the end of the definition of “space satellite” in subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following definition:

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““submarine cable system” means a network of interconnected submarine cables, and includes its submarine landing terminating equipment, terrestrial or submarine optical fibre systems, network equipment and any other equipment ancillary to the submarine cable system.”;

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(f) by deleting the words “or (i)” in subsection (2)(c) and substituting the words “, (i) or (k)”; and

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

“*(3)* For the purposes of this Part, fixed capital expenditure incurred by a company in relation to a project under section 67(1)(k) excludes any such expenditure to the extent that it is or is to be subsidised by grants or subsidies from the Government or a statutory board.”.

New section 66A

7. The principal Act is amended by inserting, immediately after section 66, the following section:

“Application of Parts X and XIV and section 3 in relation to corporate partnerships and partners of corporate partnerships

66A.—(1) Regulations may be made under section 102(1) to apply the provisions of Parts X and XIV and section 3 (called in this section the applied provisions) for the following purposes:

- (a) to enable an investment allowance to be given to a corporate partnership;
- (b) to apportion the investment allowance given to the corporate partnership to its partners.

(2) Without limiting section 102(1), the regulations mentioned in subsection (1) may make provision —

- (a) to make any modification to any of the applied provisions that is necessary or expedient for the purposes mentioned in subsection (1);
- (b) to specify the circumstances under which a corporate partnership is considered to have sold, leased out or otherwise disposed of any assets in respect of which an investment allowance has been given; and

- (c) for the recovery of an investment allowance given to a corporate partnership from its partners, and the waiver of any liability of a partner to repay any part of the investment allowance.”.

Amendment of section 67

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8. Section 67 of the principal Act is amended —

- (a) by deleting the word “or” at the end of subsection (1)(i);
- (b) by deleting the comma at the end of paragraph (j) of subsection (1) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

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“(k) for the construction and operation by the company of any submarine cable system with one or more landing stations in Singapore, and any such landing station,”;

- (c) by deleting the words “or (i)” in subsection (3) and substituting the words “, (i) or (k)”; and
- (d) by inserting, immediately after subsection (8), the following subsection:

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“(9) Approval under this section may only be granted during the period between 20 February 2018 and 31 December 2023 (both dates inclusive) to a company in respect of any fixed capital expenditure incurred by the company on or after 20 February 2018 on a submarine cable system or a landing station mentioned in subsection (1)(k), for a project under that subsection.”.

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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 enable an approval given by the Minister responsible for the administration of this Act (the Minister) to a company under Part II, III or IIIB to be transferred from one company to another;
- (b) to enable investment allowances under Part X to be given to a company that incurs fixed capital expenditure in carrying out a project for the construction and operation of a submarine cable system with one or more landing stations in Singapore, and any such landing station;
- (c) to enable regulations to be made under section 102(1) to apply the provisions of Parts X and XIV and section 3 to enable an investment allowance to be given to a corporate partnership, and to apportion the investment allowance given to the corporate partnership to its partners.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 17 to clarify that a company may apply for and be granted approval as a pioneer service company for any qualifying activity under Part III before it begins engaging in that qualifying activity.

Clause 3 amends section 19J to clarify that a company may apply for and be granted approval as a development and expansion company for any qualifying activity under Part IIIB before it begins engaging in that qualifying activity.

Clause 4 inserts a new Part IV to enable an approval given by the Minister to a company —

- (a) under Part II to be a pioneer enterprise for a pioneer product (defined as a “pioneer industry award”);
- (b) under Part III to be a pioneer service company for a qualifying activity under that Part (defined as a “pioneer service award”); and
- (c) under Part IIIB to be a development and expansion company for a qualifying activity under that Part (defined as a “development and expansion award”),

to be transferred from the company (the transferor company) to another company (the transferee company).

The new section 22 provides that the Minister may approve an application by a transferor company seeking to transfer the whole or part of its pioneer industry award, pioneer service award or development and expansion award (the subject award) if the Minister is satisfied that —

- (a) because of a transfer or proposed transfer of any business of the transferor company to which the subject award relates, the transferee company instead of the transferor company is or will be producing, or is or will be engaging in, the pioneer product under the pioneer industry award (the subject product), the qualifying activity under Part III under the pioneer service award (the subject activity), or the qualifying activity under Part IIIB under the development and expansion award (the subject activity); and
- (b) it is in the public interest to approve the transfer.

In approving an application under the new section 22, the Minister may impose on the transferee company as conditions of the award given to it any conditions that the Minister thinks fit, which may be the same as or different from the conditions imposed on the transferor company for the subject award. If the transferor company continues to produce any pioneer product or continues to engage in any qualifying activity under Part III or IIIB under the subject award, the Minister may also add to the conditions, or vary or remove any condition, imposed on the transferor company for the subject award.

In approving an application that relates to a development and expansion award, the Minister may, despite section 19J(7), (8) and (9) —

- (a) specify an amount as the average corresponding income of the transferee company for the subject activity for the year of assessment for which the approval is given and subsequent years of assessment, which may be —
 - (i) the average corresponding income of the transferor company for the subject activity immediately before a date specified by the Minister when approving the application (the specified date); or
 - (ii) any other amount that the Minister thinks fit; and
- (b) substitute, with effect from the year of assessment for which the approval is given and subsequent years of assessment, the average corresponding income of the transferor company for any Part IIIB qualifying activity under the subject award that it continues to engage in on or after the specified date mentioned in the new section 22(6)(a), with any amount that the Minister thinks fit.

The new section 22(6) sets out various consequences arising from an approval of the application by the Minister. In effect, the transferee company steps into the shoes of the transferor company for the remainder of the tax relief period for the subject award that is transferred to the transferee company. The new section 22(6) also requires the Minister to amend or cancel the certificate issued to the transferor

company for the subject award as is necessary, and issue a certificate to the transferee company for the subject award transferred to it.

In addition, the new section 22(7) enables the Minister to require the transferee company to apply for a new pioneer industry award, pioneer service award or development and expansion award (as the case may be) instead of approving the application.

The new section 23 sets out the matters that must be specified in the certificate issued to the transferee company under the new section 22, and the circumstances under which the Minister may issue a single certificate to the transferee company where the Minister approves an application involving 2 or more pioneer products, or 2 or more qualifying activities under Part III or IIIB, as the case may be.

Clause 5 amends section 57 to clarify that a company that has obtained a loan of not less than \$20 million from a non-resident person by means of an agreement under which credit facilities are granted for the purchase of productive equipment for the purposes of its trade or business, may apply to the Minister for that loan to be approved as an approved foreign loan. Currently, section 57 provides that a company that desires to obtain such a loan may make the application.

Clause 6 amends section 66 to insert new definitions of “corporate partnership” and “submarine cable system”, and to make amendments that are consequential to the amendment of section 67 by clause 8.

Clause 7 inserts a new section 66A to enable regulations to be made under section 102(1) to apply the provisions of Parts X and XIV and section 3 for the following purposes:

- (a) to enable an investment allowance to be given to a corporate partnership;
- (b) to apportion the investment allowance given to the corporate partnership to its partners.

The new section 66A also specifies a non-exhaustive list of matters that may be provided for under the regulations.

Clause 8 amends section 67 to enable investment allowances to be given to a company that proposes to carry out a project for the construction and operation by the company of any submarine cable system with one or more landing stations in Singapore, and any such landing station. Approval of the investment allowance may only be granted during the period between 20 February 2018 and 31 December 2023 (both dates inclusive) to a company in respect of any fixed capital expenditure incurred by the company on or after 20 February 2018 on a submarine cable system, or a landing station of that submarine cable system in Singapore, for such a project.

EXPENDITURE OF PUBLIC MONEY

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