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ECONOMIC EXPANSION INCENTIVES (RELIEF FROM INCOME TAX) ACT (CHAPTER 86)

ECONOMIC EXPANSION INCENTIVES (RELIEF FROM INCOME TAX) (INTELLECTUAL PROPERTY INCOME) REGULATIONS 2018

ARRANGEMENT OF REGULATIONS

Regulation

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In exercise of the powers conferred by section 102(1) of the Economic Expansion Incentives (Relief from Income Tax) Act, the Minister for Trade and Industry (Trade) makes the following Regulations:

Citation and commencement

1. These Regulations are the Economic Expansion Incentives (Relief from Income Tax) (Intellectual Property Income) Regulations 2018 and come into operation on 4 May 2018.

Definitions

2.—(1) In these Regulations —

“existing intellectual property right”, in relation to a pioneer service company or a development and expansion company, means an intellectual property right that comes into the ownership of the company before 1 July 2018, and is not a right mentioned in paragraph (b) of the definition of “new intellectual property right”;

“intellectual property right” means a right conferred by any patent, copyright, trade mark, registered design, geographical indication, layout-design of integrated circuit or the grant of protection of a plant variety;

“new intellectual property right”, in relation to a pioneer service company or a development and expansion company, means an intellectual property right that —

- (a) comes into the ownership of the company on or after 1 July 2018; or
- (b) comes into the ownership of the company after 16 October 2017 but before 1 July 2018 as a result of an acquisition by the company, directly or indirectly, from a related party, where the main purpose or one of the main purposes of the acquisition is to avoid income tax in Singapore or elsewhere.

(2) For the purposes of these Regulations, a pioneer service company or a development and expansion company owns an intellectual property right if the company is the owner of the right or a grantee of a licence to the right.

(3) For the purposes of these Regulations, royalties or other income is derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right.

(4) For the purposes of these Regulations, a person (*X*) is a related party of a pioneer service company or a development and expansion company (*Y*) if —

- (a) *X*, directly or indirectly, controls *Y*;
- (b) *Y*, directly or indirectly, controls *X*; or
- (c) *X* and *Y* are, directly or indirectly, controlled by a common person.

Prescribed intellectual property income

3.—(1) The intellectual property income prescribed for the purposes of section 3 of the Act is —

(a) for a pioneer service company or a development and expansion company that is approved as such before 1 July 2018 —

(i) subject to sub-paragraph (ii), royalties and other income derived on or after 1 July 2018 but before 1 July 2021, from new intellectual property rights, but not from existing intellectual property rights, that the company owns;

(ii) where the company is given, on or after 1 July 2018, an extension of its tax relief period, royalties and other income derived on or after the first day of the extension from all intellectual property rights that the company owns; and

(iii) royalties and other income derived on or after 1 July 2021 from all intellectual property rights that the company owns; and

(b) for a pioneer service company or a development and expansion company that is approved as such on or after 1 July 2018, royalties and other income derived on or after the first day of the tax relief period (or if there is more than one tax relief period, the period commencing first) under the approval, from all intellectual property rights that the company owns.

(2) For the purposes of paragraph (1)(a)(i), where it is unclear whether any royalties or other income is derived from new intellectual property rights or existing intellectual property rights, then the Schedule applies for the purpose of determining whether it is derived from one or the other.

THE SCHEDULE

Regulation 3(2)

PART 1

RULES TO DETERMINE WHETHER INCOME DERIVED IS FROM NEW INTELLECTUAL PROPERTY RIGHTS OR EXISTING INTELLECTUAL PROPERTY RIGHTS

1. Where it is unclear whether any royalties or other income derived in a basis period is derived from new intellectual property rights or existing intellectual property rights, then the following provisions apply for the purpose of determining whether the income is derived from one or the other:

- (a) in a case where the income is predominantly derived from existing intellectual property rights, then such income is treated as derived from existing intellectual property rights;
- (b) in a case where the income is predominantly derived from new intellectual property rights, then such income is treated as derived from new intellectual property rights;
- (c) if sub-paragraphs (a) and (b) do not apply, then —
 - (i) if the percentage of new intellectual property rights owned by the company in the basis period is 80% or more, all of such income is treated as derived from new intellectual property rights, and none of such income is treated as derived from existing intellectual property rights;
 - (ii) if the percentage of new intellectual property rights owned by the company in the basis period is 20% or more but less than 80%, that same percentage of such income is treated as derived from new intellectual property rights, and the remainder is treated as derived from existing intellectual property rights; and
 - (iii) if the percentage of new intellectual property rights owned by the company in the basis period is less than 20%, none of such income is treated as derived from new intellectual property rights, and all of such income is treated as derived from existing intellectual property rights.

THE SCHEDULE — *continued*

PART 2

CALCULATING PERCENTAGE OF NEW
INTELLECTUAL PROPERTY RIGHTS

1. For the purposes of paragraph 1(c) of Part 1 for any basis period, the percentage of new intellectual property rights of the company is calculated in accordance with the formula:

$$\left[\left(100 - \left(\frac{A}{B} \times 100 \right) \right) \right] \%,$$

where —

- (a) A is the amount of existing intellectual property rights that the company owns on 30 June 2018 and continues to own on the last day of the basis period concerned, ascertained in accordance with paragraph 3; and
- (b) B is the amount of all the intellectual property rights that the company owns on the last day of that basis period, ascertained in accordance with paragraph 3.

2. In paragraph 1(a) and (b), a reference to the last day of the basis period, in the case where the basis period is one in which 30 June 2021 falls, is a reference to 30 June 2021.

3. For the purpose of ascertaining A and B in paragraph 1, the amount of intellectual property rights is ascertained by using the measure provided by the company to the Comptroller —

- (a) in the company's return of income for the first year of assessment to which the basis period concerned relates; or
- (b) in such other manner within such time as the Comptroller may allow.

4. The measure provided by the company to the Comptroller under paragraph 3 will be used for ascertaining A and B in paragraph 1 in relation to the company for every basis period, and the company may not change the measure for any basis period.

5. If the Comptroller is of the opinion that the use of the measure provided by the company will lead to an unreasonable quantification of the existing intellectual property rights and all the intellectual property rights mentioned in paragraph 1(a) and (b), respectively —

- (a) the Comptroller may substitute the measure with another measure; and

THE SCHEDULE — *continued*

(b) the substituted measure will be used for ascertaining A and B in paragraph 1 in relation to the company for every basis period, and the company and the Comptroller may not change the measure for any basis period.

6. In this Part, “measure”, in relation to intellectual property rights, means —

- (a) the total number of the intellectual property rights;
- (b) the value of the intellectual property rights; or
- (c) any other measure for quantifying the intellectual property rights.

Made on 23 April 2018.

LOH KHUM YEAN
Permanent Secretary,
Ministry of Trade and Industry,
Singapore.

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(To be presented to Parliament under section 102(4) of the Economic Expansion Incentives (Relief from Income Tax) Act).