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INCOME TAX ACT (CHAPTER 134)

INCOME TAX (DEDUCTION FOR ACQUISITION OF SHARES OF COMPANIES) (AMENDMENT) REGULATIONS 2021

In exercise of the powers conferred by section 37L(24) of the Income Tax Act, the Minister for Finance makes the following Regulations:

Citation and commencement

1.—(1) These Regulations are the Income Tax (Deduction for Acquisition of Shares of Companies) (Amendment) Regulations 2021 and, except for regulations 6(2), 8(2), 10(c) and (d), 11(c), (d) and (e) and 13, are deemed to have come into operation on 1 April 2015.

(2) Regulation 13 is deemed to have come into operation on 1 April 2010.

(3) Regulations 10(c) and (d) and 11(c), (d) and (e) are deemed to have come into operation on 1 April 2016.

(4) Regulations 6(2) and 8(2) are deemed to have come into operation on 1 January 2018.

Amendment of regulation 2

2. Regulation 2 of the Income Tax (Deduction for Acquisition of Shares of Companies) Regulations 2012 (G.N. No. S 584/2012) (called in these Regulations the principal Regulations) is amended by deleting the words “regulation 3 in place of the acquisitions referred to in section 37L(4)(a) and (b) or section 37L(4)(c) and (d) of the Act, as the case may be” and substituting the words “regulation 3 or 3A(1)”.

Amendment of regulation 3

3. Regulation 3 of the principal Regulations is amended —
- (a) by deleting the words “in place” wherever they appear and substituting in each case the word “instead”; and
 - (b) by deleting the regulation heading and substituting the following regulation heading:

“Election of acquisitions in place of acquisitions under section 37L(4)(a) and (b), or (4)(c) and (d), of Act”.

New regulation 3A

4. The principal Regulations are amended by inserting, immediately after regulation 3, the following regulation:

“Election of acquisitions in place of acquisitions under section 37L(4A)(c) and (d), or (4A)(e) and (f), of Act

3A.—(1) For the purpose of section 37L of the Act and these Regulations, an acquiring company (*A*) may elect for the acquisitions of ordinary shares in a target company specified in paragraph (2) made by *A* and *A*’s acquiring subsidiaries as *A*’s qualifying acquisitions instead of the acquisitions mentioned in any of the following provisions of the Act:

- (a) section 37L(4A)(c) and (d);
 - (b) section 37L(4A)(e) and (f).
- (2) The acquisitions mentioned in paragraph (1) are —
- (a) instead of the acquisitions mentioned in section 37L(4A)(c) and (d) of the Act —
 - (i) one of the following acquisitions:
 - (A) the acquisition mentioned in section 37L(4A)(c) of the Act;
 - (B) an acquisition of ordinary shares in the target company, the date of which is after the date of the acquisition mentioned in sub-paragraph (A) but before the end of

the basis period of *A* in which the acquisition mentioned in sub-paragraph (A) falls; and

- (ii) the acquisitions of ordinary shares in the target company that took place in the shorter of the following periods, as may be applicable:
 - (A) a period of 12 months ending on and including the date of the acquisition mentioned in sub-paragraph (i)(A) or (B), as the case may be;
 - (B) the period commencing immediately after the latest acquisition in respect of which a deduction under section 37L of the Act has been claimed on the basis that it is a qualifying acquisition mentioned in section 37L(4A)(a) or (b) of the Act (as the case may be) and ending on (and including) the date of the acquisition mentioned in sub-paragraph (i)(A) or (B), as the case may be; and
- (b) instead of the acquisitions mentioned in section 37L(4A)(e) and (f) of the Act —
 - (i) one of the following acquisitions:
 - (A) the acquisition mentioned in section 37L(4A)(e) of the Act;
 - (B) an acquisition of ordinary shares in the target company, the date of which is after the date of the acquisition mentioned in sub-paragraph (A) but before the end of the basis period of *A* in which the acquisition mentioned in sub-paragraph (A) falls; and
 - (ii) the acquisitions of ordinary shares in the target company that took place in the shorter of the following periods, as may be applicable:

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- (A) a period of 12 months ending on and including the date of the acquisition mentioned in sub-paragraph (i)(A) or (B), as the case may be;
 - (B) the period commencing immediately after the latest acquisition in respect of which a deduction under section 37L of the Act has been claimed on the basis that it is a qualifying acquisition mentioned in —
 - (BA) section 37L(4)(a) or (b) of the Act or regulation 3(a); or
 - (BB) section 37L(4A)(c) or (d) of the Act or sub-paragraph (a),(as the case may be) and ending on (and including) the date of the acquisition mentioned in sub-paragraph (i)(A) or (B), as the case may be.
- (3) *A* may make the election mentioned in paragraph (1) only if *A* and *A*'s acquiring subsidiaries own together in total —
- (a) in the case of paragraph (2)(a) — more than 50% of the total number of ordinary shares in the target company at the end of *A*'s basis period in which the acquisition mentioned in paragraph (2)(a)(i)(A) falls; or
 - (b) in the case of paragraph (2)(b) — 75% or more of the total number of ordinary shares in the target company at the end of *A*'s basis period in which the acquisition mentioned in paragraph (2)(b)(i)(A) falls.”.

Amendment of regulation 4

5. Regulation 4 of the principal Regulations is amended by inserting, immediately after the words “or (b)(i)”, the words “, or regulation 3A(2)(a)(i) or (b)(i),”.

New regulation 4A

6.—(1) The principal Regulations are amended by inserting, immediately before regulation 5 in Part III, the following regulation:

“Definitions of this Part

4A. In this Part —

“acquirer” means the acquiring company or its acquiring subsidiary that made the acquisition in question;

“FRS 28” and “SFRS for Small Entities” have the meanings given by section 37L(16F) of the Act.”.

(2) Regulation 4A of the principal Regulations, as inserted by paragraph (1), is amended by inserting, immediately after “ “FRS 28” ” in the definitions of “ “FRS 28” and “SFRS for Small Entities” ”, “, “SFRS(I) 1-28” ”.

Amendment of regulation 5

7. Regulation 5 of the principal Regulations is amended —

(a) by deleting the words “Section 37L(16)(a)(i)(C) and (b)(i)(C) of the Act shall” and substituting the words “Section 37L(16A)(c) of the Act does”;

(b) by deleting the words “referred to in section 37L(4)(a) or (c)” in paragraph (a) and substituting the words “mentioned in section 37L(4)(a) or (c), or (4A)(c) or (e),”; and

(c) by deleting paragraph (b) and substituting the following paragraph:

“(b) on or before the end of —

(i) the basis period in which the date mentioned in paragraph (a) falls; or

(ii) the period mentioned in regulation 3(a)(ii) or (b)(ii), or regulation 3A(2)(a)(ii) or (b)(ii),

as the case may be.”.

New regulation 5A

8.—(1) The principal Regulations are amended by inserting, immediately after regulation 5, the following regulation:

“Conditions for deductions for acquisitions under section 37L(4A)(a) and (b) of Act

5A.—(1) The prescribed conditions for the purposes of section 37L(16E) of the Act are that —

- (a) the target company is, in accordance with paragraph (3), considered an associate of the acquirer within the meaning of FRS 28 or SFRS for Small Entities, as amended from time to time; and
- (b) subject to paragraph (2), at least one director of any of the following companies is the acquirer’s nominee in accordance with paragraphs (4) and (5):
 - (i) the target company;
 - (ii) a subsidiary that —
 - (A) is wholly owned by the target company either directly, or indirectly through one or more intermediate companies;
 - (B) carries on a trade or business in Singapore or elsewhere on the date of the qualifying acquisition mentioned in section 37L(4A)(a) or (b) of the Act, as the case may be; and
 - (C) has in its employment at least 3 employees at all times during the period of 12 months immediately before that date;
 - (iii) a company that is wholly owned (either directly, or indirectly through one or more intermediate companies) by the target company, and that wholly owns (either directly, or indirectly through one or more intermediate companies) the subsidiary mentioned in sub-paragraph (ii).

(2) The requirement in paragraph (1)(b) is not satisfied by nominating an individual who, at the time of the nomination, is already a director of —

- (a) the target company mentioned in paragraph (1)(b)(i);
- (b) the subsidiary mentioned in paragraph (1)(b)(ii); or
- (c) the company mentioned in paragraph (1)(b)(iii),

as the case may be.

(3) For each year of assessment set out in the first column of the following table, the requirement in paragraph (1)(a) must be satisfied throughout the period set out opposite that year of assessment in the second column of the table:

<i>First column</i>	<i>Second column</i>
<i>Year of Assessment</i>	<i>Period</i>
Year of assessment for the basis period in which the date of the qualifying acquisition mentioned in section 37L(4A)(a) of the Act falls	Between the date of that acquisition and the last day of the basis period (both inclusive).
Year of assessment for any subsequent basis period	The whole basis period.

(4) The requirement in paragraph (1)(b) must be satisfied —

- (a) as soon as possible after the date of the qualifying acquisition mentioned in section 37L(4A)(a) of the Act; and
- (b) in any case no later than the date by which the acquiring company must submit the return of its income for the year of assessment relating to the basis period in which the acquisition falls or any later date that the Comptroller may allow.

(5) For each year of assessment set out in the first column of the following table, the requirement in paragraph (1)(b) must be

satisfied throughout the period set out opposite that year of assessment in the second column of the table:

<i>First column</i>	<i>Second column</i>
<i>Year of Assessment</i>	<i>Period</i>
Year of assessment for the basis period in which the date the requirement is satisfied in accordance with paragraph (4) (called in this regulation the initial date) falls	Between the initial date and the last day of the basis period (both inclusive).
Year of assessment for any subsequent basis period	The whole basis period.

(6) The requirement in paragraph (1)(b) is treated as satisfied throughout a period mentioned in paragraph (5) even though at any time during that period, the acquirer's nominee (including any replacement for the nominee) ceases to be a director of the company mentioned in paragraph (1)(b)(i), (ii) or (iii) (as the case may be), if the acquirer satisfies the Comptroller that —

- (a) there is reasonable cause for the cessation; and
- (b) (unless the Comptroller in a particular case determines that such replacement is not possible) the acquirer has made reasonable efforts to replace the director with another nominee for the remaining period.

(7) The conditions in paragraph (1) do not apply to any year of assessment if during the basis period for that year of assessment —

- (a) the acquiring company or its acquiring subsidiary makes a further acquisition of ordinary shares in the target company;
- (b) the acquiring company and its acquiring subsidiaries own together in total more than 50% of the total number of ordinary shares in the target company as a

result of the acquisition mentioned in sub-paragraph (a); and

- (c) such total ownership in sub-paragraph (b) remains at more than 50% of the total number of ordinary shares in the target company between the date of the acquisition mentioned in sub-paragraph (a) and the last day of that basis period (both inclusive).

(8) The conditions in paragraph (1) do not apply to any year of assessment subsequent to the year of assessment mentioned in paragraph (7) if, during the basis period for the firstmentioned year of assessment, the total ownership of ordinary shares in the target company of the acquiring company and its acquiring subsidiaries remains at more than 50% of the total number of ordinary shares in the target company for the whole basis period.”.

(2) Regulation 5A(1) of the principal Regulations, as inserted by paragraph (1), is amended by inserting, immediately after “FRS 28” in sub-paragraph (a), “, SFRS(I) 1-28”.

Amendment of regulation 6

9. Regulation 6 of the principal Regulations is amended —

- (a) by deleting the definition of “relevant acquisition period” and substituting the following definition:

““relevant acquisition period” means —

- (a) in relation to qualifying acquisitions, the basis period of the acquiring company mentioned in —

- (i) section 37L(4)(b) of the Act if the acquisitions are those mentioned in section 37L(4)(a) and (b) of the Act;
- (ii) section 37L(4)(d) of the Act if the acquisitions are those

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- mentioned in section 37L(4)(c) and (d) of the Act;
- (iii) section 37L(4A)(b) of the Act if the acquisitions are those mentioned in section 37L(4A)(a) and (b) of the Act;
- (iv) section 37L(4A)(d) of the Act if the acquisitions are those mentioned in section 37L(4A)(c) and (d) of the Act; or
- (v) section 37L(4A)(f) of the Act if the acquisitions are those mentioned in section 37L(4A)(e) and (f) of the Act; and
- (b) in relation to elected qualifying acquisitions, the period mentioned in —
- (i) regulation 3(a)(ii) if the acquisitions are those mentioned in regulation 3(a);
- (ii) regulation 3(b)(ii) if the acquisitions are those mentioned in regulation 3(b);
- (iii) regulation 3A(2)(a)(ii) if the acquisitions are those mentioned in regulation 3A(2)(a); or
- (iv) regulation 3A(2)(b)(ii) if the acquisitions are those mentioned in regulation 3A(2)(b);”;

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- (b) by deleting the words “referred to in section 37L(4)(a) and (b) or section 37L(4)(c) and (d)” in paragraph (a) of the definition of “relevant divestment period” and substituting the words “mentioned in section 37L(4)(a) and (b), section 37L(4)(c) and (d), section 37L(4A)(a) and (b), section 37L(4A)(c) and (d) or section 37L(4A)(e) and (f)”;
- and
- (c) by inserting, immediately after the words “elected qualifying acquisitions,” in paragraph (b) of the definition of “relevant divestment period”, the word “means”.

Amendment of regulation 7

10. Regulation 7 of the principal Regulations is amended —

- (a) by deleting the words “of the Act or regulation 3(a)(i)(A) or (b)(i)(A), as the case may be,” in paragraph (1) and substituting the words “or (4A)(a), (c) or (e) of the Act, regulation 3(a)(i)(A) or (b)(i)(A), or regulation 3A(2)(a)(i)(A) or (b)(i)(A) (as the case may be)”;
- (b) by deleting the definition of “L” in paragraph (2) and substituting the following definition:

“L is the total of all amounts computed in accordance with the formula in —

- (a) section 37L(8) of the Act (read with section 37L(11), (11B) and (12) of the Act); or
- (b) section 37L(8A) of the Act (read with section 37L(11A), (11B) and (12) of the Act),

for the qualifying acquisitions or elected qualifying acquisitions (when read with regulation 4), as the case may be.”;

- (c) by deleting “(11B)” in paragraph (a) of the definition of “L” in paragraph (2) and substituting “(11B), (11C)”; and
- (d) by deleting “(11B)” in paragraph (b) of the definition of “L” in paragraph (2) and substituting “(11AB), (11B), (11C)”.

Amendment of regulation 8

11. Regulation 8 of the principal Regulations is amended —

- (a) by deleting the words “paragraphs (c) and (d)” in paragraph (1) and substituting the words “paragraphs (c), (d) and (da)”; and
- (b) by deleting the definition of “L” in paragraph (2) and substituting the following definition:

“L is the total of all amounts computed in accordance with the formula in —

- (a) section 37L(8) of the Act (read with section 37L(11), (11B) and (12) of the Act);
- (b) section 37L(8A) of the Act (read with section 37L(11A), (11B) and (12) of the Act); or
- (c) section 37L(9), (9A), (10) or (10A) of the Act (read with section 37L(11), (11A), (11B) and (12) of the Act),

for the qualifying acquisitions or elected qualifying acquisitions, as the case may be;”;

- (c) by deleting “(11B)” in paragraph (a) of the definition of “L” in paragraph (2) and substituting “(11B), (11C)”; and
- (d) by deleting “(11B)” in paragraph (b) of the definition of “L” in paragraph (2) and substituting “(11AB), (11B), (11C)”; and

- (e) by deleting “(11B)” in paragraph (c) of the definition of “L” in paragraph (2) and substituting “(11AB), (11B), (11C)”.

Amendment of regulation 9

12. Regulation 9(2) of the principal Regulations is amended by deleting the words “section 37L(17)(c) or (d)” and substituting the words “section 37L(17)(c), (d) or (da)”.

Amendment of regulation 10

13. Regulation 10 of the principal Regulations is amended by deleting paragraph (1) and substituting the following paragraphs:

“(1) Section 37L of the Act and regulations 2 to 9 (called in this regulation the applicable provisions) apply to a business trust registered under the Business Trusts Act (Cap. 31A) that satisfies the requirements in Part I of the Schedule, as they apply to an acquiring company, if the trustee-manager of the registered business trust has incurred capital expenditure to acquire ordinary shares in a target company in circumstances where, had the reference in that section to an acquiring company been to the trustee-manager or (as the context requires) the registered business trust, that section would have applied to it.

(1A) For the purpose of paragraph (1), the applicable provisions specified in the second column of Part II of the Schedule are modified in the manner specified in the third column of Part II of the Schedule.”.

Amendment of Part II of Schedule

14. Part II of the Schedule to the principal Regulations is amended —

- (a) by deleting the words “Section 37L(16)(a)(i)(C) and (b)(i)(C)” in item 1 under the heading “*Provision*” and substituting the words “Section 37L(16A)(c)”;
- (b) by deleting the words “Section 37L(16)(a)(i)(A) and (b)(i)(A)” in item 2 under the heading “*Provision*” and substituting the words “Section 37L(16A)(a)”;

- (c) by deleting the words “Section 37L(16)(a)(i)(B) and (b)(i)(B)” in item 3 under the heading “*Provision*” and substituting the words “Section 37L(16A)(b)”;
- (d) by deleting the words “Section 37L(16)(a)(i)(D) and (b)(i)(D)” in item 4 under the heading “*Provision*” and substituting the words “Section 37L(16A)(d)”;
- (e) by inserting, immediately after item 5, the following item:

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6.	Regulation 5A	A reference to the acquirer’s nominee is to be read as a reference to a nominee of the trustee manager in its capacity as such.
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Made on 7 May 2021.

TAN CHING YEE
*Permanent Secretary,
Ministry of Finance,
Singapore.*

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