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INCOME TAX ACT
(CHAPTER 134)

INCOME TAX
(DEDUCTION FOR ACQUISITION OF
SHARES OF COMPANIES)
REGULATIONS 2012

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In exercise of the powers conferred by section 37L(24) 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 (Deduction for Acquisition of Shares of Companies) Regulations 2012 and shall be deemed to have come into operation on 1st April 2010.

PART I
GENERAL

Definition

2. In these Regulations, “elected qualifying acquisition” means any acquisition of ordinary shares in a target company elected by an acquiring company under 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.

PART II
ELECTION OF QUALIFYING ACQUISITIONS

Elected qualifying acquisitions

3. For the purpose of section 37L of the Act and these Regulations, an acquiring company may elect for the following acquisitions of ordinary shares in a target company by the acquiring company and its acquiring subsidiaries to be its qualifying acquisitions 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:

(a) in place of the acquisitions referred to in section 37L(4)(a) and (b) of the Act —

(i) one of the following acquisitions:

(A) the acquisition referred to in section 37L(4)(a) of the Act;

(B) an acquisition of ordinary shares in the target company where the date of the acquisition is after the date of the acquisition referred to in sub-paragraph (i)(A) but before the end of the basis period of the acquiring company in which the acquisition referred to in sub-paragraph (i)(A) falls; and

(ii) the acquisitions of ordinary shares in the target company that took place in a period of 12 months ending on and including the date of the acquisition referred to in sub-paragraph (i)(A) or (B), as the case may be; and

(b) in place of the acquisitions referred to in section 37L(4)(c) and (d) of the Act —

(i) one of the following acquisitions:

(A) the acquisition referred to in section 37L(4)(c) of the Act;

(B) an acquisition of ordinary shares in the target company where the date of the acquisition is after the date of the acquisition referred to in sub-paragraph (i)(A) but before the end of the basis period of the acquiring company in which the acquisition referred to in sub-paragraph (i)(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 referred to 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 referred to in section 37L(4)(a) or (b) of the Act, or paragraph (a), as the case may be, and ending on and including the date of the acquisition referred to in sub-paragraph (i)(A) or (B), as the case may be,

provided that at the end of that basis period of the acquiring company in which the acquisition referred to in paragraph (a)(i)(A) or (b)(i)(A), as the case may be, falls, the acquiring company and its acquiring subsidiaries own together in total more than 50% (in the case of paragraph (a)) or 75% or more (in the case of paragraph (b)) of the total number of ordinary shares in the target company.

Capital expenditure of elected qualifying acquisitions

4. Notwithstanding section 37L(3) of the Act, for the purposes of section 37L(7) to (13) of the Act, where the date of an elected qualifying acquisition falls in a basis period of the acquiring company prior to the basis period of the acquiring company in which the elected qualifying acquisition referred to in regulation 3(a)(i) or (b)(i) falls, as the case may be, the capital expenditure for the first-mentioned elected qualifying acquisition shall be treated as being incurred in the second-mentioned basis period.

PART III

CONDITIONS FOR DEDUCTIONS

Application of conditions for deductions

5. Section 37L(16)(a)(i)(C) and (b)(i)(C) of the Act shall not apply in respect of any qualifying acquisition or elected qualifying acquisition, as the case may be, where the date of the acquisition —

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- (a) is after the date of the acquisition referred to in section 37L(4)(a) or (c) of the Act, as the case may be; but
 - (b) on or before the end of the basis period in which the date of the acquisition referred to in section 37L(4)(a) or (c) of the Act falls, or the period referred to in regulation 3(a)(ii) or (b)(ii), as the case may be.

PART IV DIVESTMENTS

Definitions of this Part

6. In this Part —

“relevant acquisition period” means —

- (a) in relation to qualifying 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, the basis period of the acquiring company referred to in section 37L(4)(b) or section 37L(4)(d) of the Act, as the case may be; and
- (b) in relation to elected qualifying acquisitions referred to in regulation 3(a) or (b), the period referred to in regulation 3(a)(ii) or (b)(ii), respectively;

“relevant divestment period” —

- (a) in relation to qualifying 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, means the same period as the relevant acquisition period relating to those acquisitions; and
- (b) in relation to elected qualifying acquisitions, the period beginning on the first day of the relevant acquisition period relating to those acquisitions and ending on the last day of the basis period of the acquiring company in which the relevant acquisition period ends;

“relevant specified period”, in relation to elected qualifying acquisitions, means the period —

- (a) beginning on the day immediately following the end of the relevant acquisition period relating to those elected qualifying acquisitions; and
- (b) ending on the last day of the relevant divestment period relating to those elected qualifying acquisitions.

Adjustment of deductions allowable following divestments in relevant divestment period

7.—(1) Subject to regulations 8 and 9, where —

- (a) the acquiring company or the acquiring subsidiary, as the case may be, has made qualifying acquisitions or elected qualifying acquisitions in a relevant acquisition period; and
- (b) the acquiring company or the acquiring subsidiary, as the case may be, has also divested any of its ordinary shares in the target company in the relevant divestment period relating to those acquisitions,

then, the amount of allowable deduction for those acquisitions under section 37L(7) of the Act shall be computed in accordance with the formula referred to in paragraph (2) for the year of assessment relating to the basis period in which the acquisition referred to in section 37L(4)(a) or (c) of the Act or regulation 3(a)(i)(A) or (b)(i)(A), as the case may be, falls, and subsequent years of assessment.

(2) The formula referred to in paragraph (1) is —

$$\frac{(H - I) - (J - K)}{H} \times L$$

where H is the total number of ordinary shares in the target company acquired by the acquiring company or the acquiring subsidiary, as the case may be, through the qualifying acquisitions or elected qualifying acquisitions, as the case may be, in the relevant acquisition period;

I is the total number of ordinary shares in the target company divested by the acquiring company or the

acquiring subsidiary, as the case may be, during the relevant acquisition period;

J is —

- (a) in the case of qualifying acquisitions, zero; and
- (b) in the case of elected qualifying acquisitions, the total number of ordinary shares in the target company divested during the relevant specified period relating to those elected qualifying acquisitions, if any; and

K is —

- (a) in the case of qualifying acquisitions, zero; and
- (b) in the case of elected qualifying acquisitions, the total number of ordinary shares in the target company acquired during the relevant specified period relating to those elected qualifying acquisitions, if any; and

L is the total of all amounts computed in accordance with the formula in section 37L(8) of the Act for the qualifying acquisitions or elected qualifying acquisitions (when read with regulation 4), as the case may be.

(3) For the purpose of the formula in paragraph (2), where the part of the formula “(J – K)” gives a result that is less than zero, that part of the formula shall be treated as zero.

Adjustment or disallowance of deductions allowable following divestments after relevant divestment period

8.—(1) Subject to section 37L(17) of the Act in relation to paragraphs (c) and (d) of that subsection and regulation 9, where —

- (a) the acquiring company or the acquiring subsidiary, as the case may be, has made qualifying acquisitions or elected qualifying acquisitions of ordinary shares in a target company in a relevant acquisition period;

- (b) the acquiring company or the acquiring subsidiary, as the case may be, divests any of those shares in a basis period of the acquiring company that is after the relevant divestment period relating to those acquisitions; and
- (c) the total number of ordinary shares in the target company divested in the period —
- (i) beginning on the day immediately following the end of the relevant divestment period; and
 - (ii) ending on the last day of the basis period of the acquiring company referred to in sub-paragraph (b),
- exceeds the total number of ordinary shares in the target company acquired by the acquiring company or acquiring subsidiary, as the case may be, in that same period,

then, the amount of allowable deduction for the acquisitions referred to in sub-paragraph (a) under section 37L(7) of the Act shall be pro-rated in accordance with the formula specified in paragraph (2) for the year of assessment relating to the basis period of the acquiring company referred to in sub-paragraph (b), and subsequent years of assessment.

(2) The formula referred to in paragraph (1) is —

$$\frac{(H - I) - [(J + M) - (K + N)]}{H} \times L$$

where H, I, J and K have the same meanings as in regulation 7(2) (read with regulation 7(3));

L is the total of all amounts computed in accordance with the formula in section 37L(8), (9) or (10) of the Act for the qualifying acquisitions or elected qualifying acquisitions, as the case may be;

M is the total number of ordinary shares in the target company divested in the period referred to in paragraph (1)(c); and

N is the total number of ordinary shares in the target company acquired in the period referred to in paragraph (1)(c).

(3) For the purpose of the formula in paragraph (2), where the part of the formula “[$(J + M) - (K + N)$]” gives a result that is less than zero, that part of the formula shall be treated as zero.

Disregarding of acquisitions and divestments in certain cases

9.—(1) Without prejudice to any other provision in this regulation, where —

(a) the relevant divestment period in relation to one set of qualifying acquisitions or elected qualifying acquisitions, as the case may be, of ordinary shares in a target company (referred to in this regulation as the first set of acquisitions) overlaps with the relevant acquisition period in relation to a second set of qualifying acquisitions or elected qualifying acquisitions, as the case may be, of ordinary shares in the same target company (referred to in this regulation as the second set of acquisitions); and

(b) the relevant acquisition period of the second set of acquisitions commences on any date after the last day of the relevant acquisition period of the first set of acquisitions,

then, any divestment or acquisition taken into account as “J” or “K” in the application of the formula in regulation 7 to the first set of acquisitions shall be disregarded in the application of the formulae in regulations 7 and 8 to the second set of acquisitions, if “ $J - K$ ” gives a result that is more than zero.

(2) Without prejudice to any other provision in this regulation, where a divestment is, in relation to one set of qualifying acquisitions or elected qualifying acquisitions of ordinary shares in a target company, a divestment referred to in section 37L(17)(c) or (d) of the Act, as the case may be, the divestment shall be disregarded in the application of the formulae in regulations 7 and 8 to another set of qualifying acquisitions or elected qualifying acquisitions of ordinary shares in the same target company, where the relevant acquisition

period of the other set of acquisitions commences on any date after the date of commencement of the relevant divestment period of the first set of acquisitions, whether or not the 2 periods overlap.

(3) Without prejudice to any other provision in this regulation, in the application of regulations 7 and 8 to qualifying acquisitions or elected qualifying acquisitions made in a relevant acquisition period, any divestment that is made before the first acquisition in the relevant acquisition period shall be disregarded.

PART V

APPLICATION TO BUSINESS TRUSTS

Application to business trusts

10.—(1) Section 37L of the Act shall apply to a business trust registered under the Business Trusts Act (Cap. 31A) which satisfies the requirements specified in Part I of the Schedule, as it applies to a Singapore 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 (if it had been an acquiring company) that section would have applied to it, with the provisions specified in the second column of Part II of the Schedule modified in the manner specified in the third column of Part II of the Schedule.

(2) For the purposes of section 37L(19) of the Act —

- (a) where more than 50% of the units of a business trust are held directly, or indirectly through other business trusts, by one or more companies in a group of companies, the business trust shall be treated as if it were a company in the group of companies; and
- (b) where the shares of any company form any part of the trust property of the business trust, the business trust shall be treated as a company holding shares in the first-mentioned company, for the purpose of determining whether the first mentioned company is part of the group of companies.

THE SCHEDULE

Regulation 10(1)

PART I

The requirements referred to in regulation 10(1) are as follows:

- (a) the trustee-manager of the trust in his capacity as such carries on a trade or business in Singapore;
- (b) the business of the trust is controlled and managed in Singapore;
- (c) the trust is established in Singapore; and
- (d) the trust deed of the trust is executed in Singapore and is governed by Singapore law.

PART II

<i>S/No.</i>	<i>Provision</i>	<i>Modification</i>
1.	Section 37L(16)(a)(i)(C) and (b)(i)(C) of the Act	<p>A reference to the acquiring company being connected to the target company shall be read as a reference to —</p> <ul style="list-style-type: none"> (a) at least 75% of the units of the registered business trust referred to in regulation 10(1) being beneficially held (directly or indirectly) by the target company or at least 75% of the shares of the target company being beneficially held (directly or indirectly) by the registered business trust referred to in regulation 10(1); or (b) at least 75% of the units of the registered business trust referred to in regulation 10(1) and at least 75% of the shares of the target company being beneficially held (directly or indirectly) by another company.
2.	Section 37L(16)(a)(i)(A) and (b)(i)(A) of the Act	A reference to the acquiring company carrying on a trade or business in Singapore shall be read as a reference to the trustee manager of the registered business trust referred to in regulation 10(1) in his capacity as such

THE SCHEDULE — *continued*

		carrying on a trade or business in Singapore.
3.	Section 37L(16)(a)(i)(B) and (b)(i)(B) of the Act	A reference to the acquiring company having in its employment at least 3 local employees shall be read as a reference to the trustee-manager of the registered business trust referred to in regulation 10(1) having in its employment at least 3 local employees in respect of the business of the registered business trust.
4.	Section 37L(16)(a)(i)(D) and (b)(i)(D) of the Act	A reference to the acquiring company having a Singapore company as its ultimate holding company shall be read as a reference to 50% or more of the units in the registered business trust referred to in regulation 10(1) being held directly or indirectly by a Singapore company that is not itself a subsidiary of another person.
5.	Section 37L(18), (21), (22) and (28) of the Act	A reference to the shareholders of the acquiring company shall be read as a reference to the unitholders of the registered business trust referred to in regulation 10(1), and a reference to shares of the acquiring company shall be read as a reference to the units of the trust.

Made this 19th day of November 2012.

LIM SOO HOON
Permanent Secretary
(Finance) (Performance),
Ministry of Finance,
Singapore.

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