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INCOME TAX ACT (CHAPTER 134)

INCOME TAX (CONCESSIONARY RATE OF TAX FOR INTELLECTUAL PROPERTY INCOME) REGULATIONS 2021

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred by section 43ZI(11) of the Income Tax Act, the Minister for Finance makes the following Regulations:

Citation and commencement

1. These Regulations are the Income Tax (Concessionary Rate of Tax for Intellectual Property Income) Regulations 2021 and come into operation on 22 January 2021.

Definitions

2.—(1) In these Regulations —

“approval date”, in relation to an approved company, means the date on which the company is approved as such;

“cost-sharing agreement” means any agreement or arrangement entered into by an approved company and one or more other persons to share the expenditure of research and development activities to be carried out under the agreement or arrangement, whether the agreement or arrangement was entered into by the approved company before, on or after it became an approved company;

“elected qualifying IPR” means any qualifying IPR elected or treated as elected by the approved company for a year of assessment under section 43ZI(7) or (8) of the Act;

“family of qualifying IPRs” means 2 or more intellectual property rights mentioned in paragraphs (a), (b) and (c) of the definition of “qualifying IPR” that are interlinked;

“qualifying intellectual property income”, in relation to an approved company, means royalties or other income receivable by the approved company, in so much of a basis period for a year of assessment as falls within the tax relief period for that approved company, as consideration for the commercial exploitation of an elected qualifying IPR;

“qualifying intellectual property right” or “qualifying IPR” means any of the following:

- (a) any patent under the Patents Act (Cap. 221) or the equivalent law of any country or territory (called in these Regulations a patent);
- (b) an application for a patent under the Patents Act or the equivalent law of any country or territory (called in these Regulations a patent application);
- (c) any copyright subsisting in software by virtue of the Copyright Act (Cap. 63) or the equivalent law of any country or territory (called in these Regulations a software copyright),

and includes a family of qualifying IPRs.

(2) In the definition of “family of qualifying IPRs” in paragraph (1), a qualifying IPR (*A*) is interlinked with another qualifying IPR (*B*), if —

- (a) it is reasonable to conclude that it is not possible to identify which part of a specific source of income for the whole of the basis period (or the part of the basis period) concerned is derived solely from using *A*, and which part of such income is derived solely from using *B*;
- (b) it is reasonable to conclude that it is not possible to identify which part of any expenditure incurred in the research and development resulting in the creation of those rights is incurred solely in the creation of *A*, and which part of such expenditure is incurred solely in the creation of *B*; or
- (c) *A* and *B* are part of a chain of 3 or more qualifying IPRs each of which is interlinked with another in the manner described in sub-paragraph (a) or (b).

(3) In these Regulations, an approved company ceases to have a qualifying IPR if —

- (a) for a qualifying IPR that is a software copyright — the approved company sells, transfers or assigns the software copyright or the copyright expires;
- (b) for a qualifying IPR that is a patent —
 - (i) the patent comes to an end without being subsequently revived;
 - (ii) the approved company sells, transfers or assigns the patent; or
 - (iii) a final order, judgment or decision revoking the patent or confirming such revocation has been made by a court or other competent authority under the Patents Act or the equivalent law of any country or territory;
- (c) for a qualifying IPR that is a patent application —
 - (i) the approved company withdraws or abandons the patent application;

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- (ii) the approved company sells, transfers or assigns the patent application; or
 - (iii) a final order, judgment or decision refusing the patent application or confirming such refusal has been made by a court or other competent authority under the Patents Act or the equivalent law of any country or territory; and
- (d) for a qualifying IPR that is a family of qualifying IPRs — the approved company ceases to have every qualifying IPR in the family of qualifying IPRs.

(4) For the purposes of these Regulations, an agreement or arrangement is entered into by an approved company and another person at arm's length if the conditions of the agreement or arrangement do not differ from conditions that would be made or imposed if the approved company and that other person were not related parties and dealing independently with one another in comparable circumstances.

(5) For the purposes of these Regulations, a person (*X*) is a related party of an approved 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.

Percentage and computation of qualifying intellectual property income subject to concessionary rate of tax

3.—(1) The percentage of qualifying intellectual property income derived by an approved company from each elected qualifying IPR in the part of a basis period for a year of assessment that falls within its tax relief period (called in these Regulations the subject basis period and subject year of assessment, respectively), to which the concessionary rate of tax in section 43ZI(5) of the Act applies, is determined in accordance with the formula specified in Part 1 of the Schedule.

(2) Despite paragraph (1), where the subject basis period is a basis period specified in Division 1 or 2 of Part 2 of the Schedule, then the percentage mentioned in that paragraph is determined in accordance with the requirements of that Part.

(3) In determining the income of the approved company subject to tax at a concessionary rate under section 43ZI of the Act, the Comptroller must have regard to —

- (a) any expenses, allowances and donations allowable under the Act as are, in the Comptroller's opinion, to be deducted;
- (b) the manner and extent to which any losses arising from deriving the qualifying intellectual property income may be deducted under the Act; and
- (c) the allowances under sections 18C to 22 of the Act attributable to the qualifying intellectual property income, whether or not a claim for the allowances has been made.

Change in composition of elected family of qualifying IPRs

4.—(1) This regulation applies where an approved company elects or is treated as having elected a family of qualifying IPRs for a year of assessment for the purposes of section 43ZI of the Act.

(2) The approved company must provide, in the tax return for that year of assessment, such information as the Comptroller may reasonably require of —

- (a) any qualifying IPR that ceases to be part of the elected family of qualifying IPRs during the basis period; and
- (b) any qualifying IPR that becomes part of the elected family of qualifying IPRs during the basis period.

Deemed income

5.—(1) This regulation applies where —

- (a) an approved company has been assessed to tax under section 43ZI(1) of the Act for qualifying intellectual property income of the approved company that is derived

from a patent application (not being a patent application in relation to a software in which copyright subsists); and

- (b) the Comptroller discovers, in any year of assessment (called in this regulation the discovery year of assessment), that the approved company has ceased to have the patent application.

(2) The approved company is deemed to have derived, in the basis period for the discovery year of assessment, an amount of income chargeable to tax at the rate of tax under section 43(1)(a) of the Act.

(3) The amount of deemed income in paragraph (2) is derived by the formula

$$(A - B) \times \frac{(M - N)}{M},$$

where —

- (a) A is the sum of the qualifying intellectual property income derived by the approved company from the patent application in the basis period for each year of assessment before the discovery year of assessment, that has been subject to tax at the concessionary rate under section 43ZI(1) of the Act, but adding back all expenses, allowances, losses and donations deducted from it under regulation 3(3);
- (b) B is the sum of —
- (i) the amount of expenses incurred in each basis period mentioned in sub-paragraph (a) that was deducted under regulation 3(3);
 - (ii) the amount of allowances that arose in each basis period mentioned in sub-paragraph (a) that was deducted under regulation 3(3); and
 - (iii) the amount of donations made in each basis period mentioned in sub-paragraph (a) that was deducted under regulation 3(3);

- (c) M is the rate of tax under section 43(1)(a) of the Act for the discovery year of assessment; and
- (d) N is the concessionary rate of tax under section 43ZI(1) of the Act applicable to the approved company in the year of assessment immediately before the discovery year of assessment.

Record-keeping requirements

6.—(1) An approved company must, beginning on the approval date, keep records of the following:

- (a) information sufficient to establish that any given income of the company is qualifying intellectual property income;
- (b) all expenditure that is incurred in producing the qualifying intellectual property income of the company;
- (c) details of each elected qualifying IPR that is used to derive the qualifying intellectual property income and, if the elected qualifying IPR is a family of qualifying IPRs, the basis for determining this;
- (d) all expenditure included in the formula mentioned in paragraph 1 of Part 1 of the Schedule to determine the percentage of the qualifying intellectual property income derived from each elected qualifying IPR, including the following:
 - (i) details of the connected R and D and the basis for determining that the research and development is such connected R and D;
 - (ii) details of how each specified right is obtained and the basis for determining that any expenditure incurred is for the purpose of obtaining the specified right;
- (e) where expenditure is incurred under a cost-sharing agreement or other agreement mentioned in the Schedule for connected R and D or to obtain a specified right, whether the agreement is entered into at arm's length and the basis for determining this;

- (f) where the subject basis period is —
- (i) a transitional basis period under Division 1 of Part 2 of the Schedule; or
 - (ii) a basis period or part of a basis period that is within the interim period under Division 2 of Part 2 of the Schedule,
- that fact.

(2) In this regulation, “connected R and D” and “specified right” have the meanings given to them by paragraph 7 of Part 1 of the Schedule as modified (where applicable) by Part 2 of the Schedule.

THE SCHEDULE

Regulations 3 and 6

PART 1

PERCENTAGE OF QUALIFYING INTELLECTUAL PROPERTY INCOME SUBJECT TO CONCESSIONARY RATE

1. For the purposes of regulation 3, the percentage of qualifying intellectual property income from an elected qualifying IPR is determined in accordance with the formula

$$\frac{C \times 130\%}{C + D},$$

where —

- (a) C is the sum total of the following expenditures, less excluded expenditures:
 - (i) expenditure incurred in the period with records by the approved company (except under a cost-sharing agreement) —
 - (A) for connected R and D carried out directly by the approved company; and
 - (B) for connected R and D carried out on behalf of the approved company by —
 - (BA) a person that is not a related party of the approved company; or

THE SCHEDULE — *continued*

- (BB) a person resident in Singapore that is a related party of the approved company, where the research and development is carried out in Singapore;
- (ii) payments made in the period with records by the approved company under a cost-sharing agreement (not being an excluded cost-sharing agreement) to carry out connected R and D; and
- (b) D is the sum total of the following expenditures, less excluded expenditures:
- (i) expenditure incurred in the period with records by the approved company (except under a cost-sharing agreement) in obtaining from another person (whether by acquisition, licensing, amalgamating with another company or otherwise), a specified right;
 - (ii) expenditure incurred in the period with records by the approved company (except under a cost-sharing agreement) for connected R and D carried out on behalf of the approved company by a person that is a related party of the approved company, where the person is not resident in Singapore or the research and development is not carried out in Singapore;
 - (iii) payments made in the period with records by the approved company under an excluded cost-sharing agreement to carry out connected R and D;
 - (iv) payments made in the period with records by the approved company in order to become a party to a cost-sharing agreement, to the extent that such payments were made to obtain a specified right.
2. For the purpose of calculating the percentage in paragraph 1 —
- (a) where any expenditure mentioned in paragraph 1(a) or (b) was incurred by the approved company for connected R and D that was connected to the elected qualifying IPR and any other qualifying IPR, the amount of the expenditure must be apportioned to each of the elected qualifying IPRs according to the extent to which the expenditure was incurred in relation to each IPR;
 - (b) in a case where the elected qualifying IPR is not a family of qualifying IPRs and the approved company ceases to have the qualifying IPR at any time during the subject basis period, the expenditure mentioned in

THE SCHEDULE — *continued*

paragraph 1(a) or (b) is such expenditure that is incurred up to (and including) the day of such cessation;

- (c) in a case where the elected qualifying IPR is a family of qualifying IPRs, the expenditure mentioned in paragraph 1(a) or (b) are those that are identifiable as being incurred in relation to the following IPRs:
- (i) those qualifying IPRs in the elected family that the approved company still has as of the last day of the subject basis period;
 - (ii) if the approved company does not have any of those qualifying IPRs on the last day of the subject basis period — all of those qualifying IPRs if the company ceases to have them on the same day, or the last of those qualifying IPRs that the company ceases to have if the company ceases to have them on different days; and
- (d) except as provided in paragraph 1(b)(iv), a reference in paragraph 1(a) or (b) to a payment made by an approved company under a cost-sharing agreement does not include any payment made in order for the approved company to become a party to the cost-sharing agreement.

3. If the percentage calculated under paragraph 1 is more than 100%, it is treated as 100%.

4. Where —

- (a) the approved company obtains a specified right by amalgamating with another company having the right that is resident in Singapore; or
- (b) the approved company —
 - (i) acquires all equity interests in another company that is resident in Singapore and owns a specified right prior to the acquisition; and
 - (ii) subsequently acquires or licenses the specified right from the other company,

and the other company has records in relation to the specified right that satisfy the requirements of regulation 6 (modified by substituting the reference to an approved company with the other company) for the whole period where that other company carried out research and development connected to the specified right, then C and D are modified in accordance with paragraph 5.

5. For the purposes of paragraph 4, C and D are modified by substituting C with “C + C1” and D with “D + D1 – D2”, where —

THE SCHEDULE — *continued*

- (a) C1 is the amount of C if each reference to the approved company in paragraph 1(a) were substituted with a reference to the other company mentioned in paragraph 4(a) or (b);
 - (b) D1 is the amount of D if each reference to the approved company in paragraph 1(b) were substituted with a reference to that other company; and
 - (c) D2 is the expenditure incurred by the approved company in obtaining the specified right.
6. To avoid doubt, paragraph 2 applies for the purpose of determining the amount of C and D in paragraph 4, as modified in accordance with paragraph 5.
7. In this Schedule —
- “connected R and D” means any research and development connected to the elected qualifying IPR;
 - “equity interest”, in relation to a company, means an issued share in the company that is not a treasury share;
 - “excluded cost-sharing agreement” means a cost-sharing agreement under which none of the research and development that is the subject of the cost-sharing agreement is carried out —
 - (a) by the approved company itself; or
 - (b) on behalf of the approved company by a person (not being another party to the cost-sharing agreement) that —
 - (i) in a case where the research and development is carried out in Singapore — is resident in Singapore and a related party of the approved company; or
 - (ii) in any other case — is not a related party of the approved company;
 - “excluded expenditure” means —
 - (a) an interest payment;
 - (b) any deductible borrowing costs mentioned in the Income Tax (Deductible Borrowing Costs) Regulations 2008 (G.N. No. S 115/2008); or
 - (c) a payment for any land or building, or for any alteration, addition or extension to any building;

THE SCHEDULE — *continued*

“period with records”, in relation to an approved company, means the period —

(a) from and including the approval date of the approved company; and

(b) up to and including the last day of the subject basis period,

and, if the approved company has records for any period that ends immediately before the approval date that satisfy the requirements of regulation 6 (read as if a reference to an approved company were a reference to the approved company before its approval), inclusive of that period;

“specified right” means —

(a) the elected qualifying IPR; or

(b) any qualifying IPR on which the approved company has carried out connected R and D.

PART 2

TRANSITIONAL MODIFICATIONS
IN ABSENCE OF RECORDS*Division 1 — Absence of records on or after approval date*

1. Subject to paragraph 8, where —

(a) the approval date of the approved company (called in this paragraph the approval date) is the first day of the subject basis period or the basis period immediately after it; or

(b) the approval date is any day (other than the first day) of the subject basis period or any of the 2 basis periods after it,

and that company does not have records in relation to the elected qualifying IPR that satisfy the requirements of regulation 6 (modified by substituting the reference to the approved company with a reference to that company) for the subject basis period and the 2 preceding basis periods, then the subject basis period is a transitional basis period, and Part 1 is modified for the purposes of that basis period in accordance with paragraph 2.

2. The modifications for the purposes of paragraph 1 are as follows:

(a) the expenditure mentioned in paragraph 1(b)(i) and (iv) of Part 1 excludes any expenditure mentioned in paragraph 1(a) of Part 1;

THE SCHEDULE — *continued*

(b) the following definitions apply in place of their equivalent in paragraph 7 of Part 1:

- (i) “connected R and D” means any research and development;
- (ii) “period with records” means the subject basis period and the 2 preceding basis periods;
- (iii) “specified right” means any qualifying IPR.

3. Despite paragraph 2, the modification in paragraph 2(b)(i) does not apply to paragraph 2(a) of Part 1.

4. Subject to paragraph 8, where the approved company has carried out research and development connected with the elected qualifying IPR for a period that is less than the subject basis period and the 2 preceding basis periods, and that company does not have records in relation to the elected qualifying IPR that satisfy the requirements of regulation 6 (modified by substituting the reference to an approved company with a reference to that company) for such period of research and development, then the subject basis period is a transitional basis period, and Part 1 is modified for the purposes of that basis period in accordance with paragraph 5.

5. The modifications for the purposes of paragraph 4 are as follows:

- (a) the expenditure mentioned in paragraph 1(b)(i) and (iv) of Part 1 excludes any expenditure mentioned in paragraph 1(a) of Part 1;
- (b) the following definitions apply in place of their equivalent in paragraph 7 of Part 1:
 - (i) “connected R and D” means any research and development;
 - (ii) “period with records” means the period of the research and development mentioned in paragraph 4;
 - (iii) “specified right” means any qualifying IPR.

6. Paragraph 4 applies even if any part of the period in which the research and development is carried out is before the approval date of the approved company.

7. Despite paragraph 5, the modification in paragraph 5(b)(i) does not apply to paragraph 2(a) of Part 1.

8. This Division does not apply to any qualifying intellectual property income of an approved company from any elected qualifying IPR, if any income of that approved company from that qualifying IPR is —

- (a) exempt from tax under section 13 of the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86) (as applied to a pioneer service company under section 19 of that Act); or

THE SCHEDULE — *continued*

(b) taxed at a concessionary rate of tax under section 19J of that Act, in a year of assessment for any basis period before the basis period in which the approval date falls.

Division 2 — Absence of records before approval date

1. Subject to paragraph 2, where —

- (a) the commencement date for the initial tax relief period is before the approval date of an approved company; and
- (b) the company does not have records in relation to the elected qualifying IPR that satisfy the requirements of regulation 6 (modified by substituting the reference to the approved company with a reference to that company) for the period starting on the commencement date and ending on any date before the basis period in which the approval date falls (called in this paragraph the interim period),

then, for the purposes of regulation 3, the percentage of qualifying intellectual property income from an elected qualifying IPR derived by the company during any basis period or part of a basis period of the company that is within the interim period, is the percentage that is determined as follows:

- (c) if, at the end of the interim period, Division 1 applies — the percentage (for the basis period of the company in which the approval date falls) calculated in accordance with the formula specified in Part 1 as modified by Division 1;
- (d) if, at the end of the interim period, Division 1 does not apply — the percentage (for the basis period of the company in which the approval date falls) calculated in accordance with the formula specified in Part 1.

2. This Division does not apply to any qualifying intellectual property income of an approved company from any elected qualifying IPR, if any income of that approved company from that qualifying IPR is —

- (a) exempt from tax under section 13 of the Economic Expansion Incentives (Relief from Income Tax) Act (as applied to a pioneer service company under section 19 of that Act); or
- (b) taxed at a concessionary rate of tax under section 19J of that Act,

in a year of assessment for any basis period before the basis period in which the commencement date falls.

Made on 16 January 2021.

TAN CHING YEE
*Permanent Secretary,
Ministry of Finance,
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