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## No. S 636

### INCOME TAX ACT (CHAPTER 134)

#### INCOME TAX (EXEMPTION OF INTEREST AND OTHER PAYMENTS ON ECONOMIC AND TECHNOLOGICAL DEVELOPMENT LOANS AND FINANCE LEASES) (NO. 4) NOTIFICATION 2016

##### ARRANGEMENT OF PARAGRAPHS

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In exercise of the powers conferred by section 13(4) of the Income Tax Act, the Minister for Finance makes the following Notification:

###### **Citation and commencement**

1. This Notification is the Income Tax (Exemption of Interest and Other Payments on Economic and Technological Development Loans and Finance Leases) (No. 4) Notification 2016 and is deemed to have come into operation on 17 February 2012.

*[S 338/2021 wef 24/02/2015]*

###### **General definitions**

2. In this Notification, unless the context otherwise requires —

“approved container investment enterprise” has the same meaning as in section 43ZA of the Act, and includes a partnership approved by the Minister (or such person as the

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Minister may appoint) under section 43ZA of the Act as applied by section 36 of the Act;

“Authority” means the Maritime and Port Authority of Singapore established by section 4 of the Maritime and Port Authority of Singapore Act (Cap. 170A);

*[S 338/2021 wef 24/02/2015]*

“container” and “intermodal equipment” have the same meanings as in section 43ZA(7) of the Act;

“finance lease”, in relation to one or more containers, means a lease of the container or containers (including any arrangement or agreement in connection with the lease) which has the effect of transferring substantially the obsolescence, risks or rewards incidental to the ownership of the container or containers to the lessee;

*[S 338/2021 wef 24/02/2015]*

“original container” means any of the containers mentioned in paragraph 3(2)(a), (b), (ba), (bb) or (c) or 5(1), but excludes a container that replaces another container under the terms of the agreement for the applicable loan or applicable finance lease (as the case may be) after that other container is disposed of or lost at sea;

*[S 338/2021 wef 24/02/2015]*

“qualifying payment”, in relation to an applicable loan or applicable finance lease, means any of the following payments made in connection with the applicable loan or applicable finance lease:

(a) either —

(i) in the case of an applicable loan — interest; or

(ii) in the case of an applicable finance lease — any payment liable to be made by the lessee to the lessor under the finance lease that is not attributable to the repayment of principal;

(b) front-end fees;

(c) commitment fees;

- (d) interest rate swap payments;
- (e) currency swap payments;
- (f) arranger fees;
- (g) arrangement fees;
- (h) retainer fees;
- (i) agency fees;
- (j) security trustee fees;

*[S 338/2021 wef 24/02/2015]*

“specified person”, in relation to an applicable loan or applicable finance lease, means a person who —

- (a) is not resident in Singapore; and
- (b) either —
  - (i) does not (alone or in association with others) carry on a business in Singapore, and does not have a permanent establishment in Singapore; or
  - (ii) carries on a business in Singapore (alone or in association with others) or has a permanent establishment in Singapore, but no arrangement, management or service relating to the applicable loan or applicable finance lease is made or performed through that business or that permanent establishment.

*[S 338/2021 wef 24/02/2015]*

### **Meaning of “applicable loan”**

**3.—(1)** In this Notification, an applicable loan is a loan (or other arrangement similar to a loan) obtained on or before 31 May 2021 by an approved container investment enterprise —

- (a) that is obtained solely for a purpose specified in sub-paragraph (2); or

- (b) where the purposes for which it is obtained include any one or more purposes specified in sub-paragraph (2).

*[S 338/2021 wef 17/02/2012]*

*[S 338/2021 wef 24/02/2015]*

- (2) The purposes mentioned in sub-paragraph (1) are —

- (a) the acquisition by the enterprise of one or more containers;

- (b) the acquisition by the enterprise of all the shares of a special purpose vehicle that has sole legal and beneficial ownership of one or more containers;

*[S 338/2021 wef 24/02/2015]*

- (ba) the acquisition by the enterprise of all the shares issued by a special purpose vehicle (called in this paragraph the additional shares) where —

- (i) the enterprise has sole legal and beneficial ownership of all the shares of the special purpose vehicle immediately before the additional shares are issued;

- (ii) the acquisition of the additional shares is for the purpose of financing the acquisition by the special purpose vehicle of one or more containers; and

- (iii) the special purpose vehicle has sole legal and beneficial ownership of each container mentioned in sub-paragraph (ii);

*[S 338/2021 wef 24/02/2015]*

- (bb) the grant of a loan by the enterprise to a special purpose vehicle where —

- (i) the enterprise has sole legal and beneficial ownership of all the shares of the special purpose vehicle;

- (ii) the loan is granted by the enterprise for the purpose of financing the acquisition by the special purpose vehicle of one or more containers; and

- (iii) the special purpose vehicle has sole legal and beneficial ownership of each container mentioned in sub-paragraph (ii); or

*[S 338/2021 wef 24/02/2015]*

- (c) the financing of qualifying payments on a previous loan that is obtained by the enterprise solely for any of the following purposes, or where the purposes for which it is obtained by the enterprise include any one or more of the following:
- (i) the acquisition of one or more containers;
  - (ii) the acquisition of all the shares of a special purpose vehicle that has sole legal and beneficial ownership of one or more containers;
  - (iii) the acquisition of the additional shares mentioned in sub-paragraph (ba) for the purpose of financing the acquisition of one or more containers mentioned in that sub-paragraph in the circumstances mentioned in sub-paragraph (ba)(i), (ii) and (iii);
  - (iv) the grant of a loan by the enterprise in connection with the acquisition of one or more containers mentioned in sub-paragraph (bb) in the circumstances mentioned in sub-paragraph (bb)(i), (ii) and (iii).

[S 338/2021 wef 24/02/2015]

(2A) For the purposes of sub-paragraph (2)(b), (ba), (bb) and (c)(ii), any treasury share in a special purpose vehicle is to be disregarded when determining whether an approved container investment enterprise —

- (a) has sole legal and beneficial ownership of all the shares in the special purpose vehicle; or
- (b) acquires all the shares issued by the special purpose vehicle.

[S 338/2021 wef 24/02/2015]

(3) A reference to the acquisition of one or more containers in the provision in the first column of the following table includes any one or more of the activities mentioned in sub-paragraph (3A) if (and only if) the circumstance in the second column of the table corresponding to that provision exists:

<i>First column</i>	<i>Second column</i>
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(a) Sub-paragraph (2)(a) or (c)(i)	The loan or previous loan (as the case may be) obtained by the container investment enterprise is for both the acquisition of the container or containers by the enterprise and the activity or activities
(b) Sub-paragraph (2)(ba)(ii) or (c)(iii)	The acquisition by the container investment enterprise of the additional shares in the special purpose vehicle is for both the acquisition of the container or containers by the special purpose vehicle and the activity or activities
(c) Sub-paragraph (2)(bb)(ii) or (c)(iv)	The loan granted by the container investment enterprise to the special purpose vehicle is for both the acquisition of the container or containers by the special purpose vehicle and the activity or activities.

[S 338/2021 wef 24/02/2015]

(3A) For the purposes of sub-paragraph (3), the activities are as follows:

- (a) the purchase or installation of any equipment within or on any of the containers;
- (b) the inspection of any of the containers before accepting its delivery, and the obtaining of any report of such inspection;
- (c) the purchase of any intermodal equipment.

[S 338/2021 wef 24/02/2015]

(4) In this paragraph, a special purpose vehicle is a company —

- (a) that is incorporated for the purpose of owning or both owning and leasing —
  - (i) any container; or
  - (ii) any container and any intermodal equipment; or
- (b) whose only business is the owning or both the owning and leasing of —
  - (i) any container; or

(ii) any container and any intermodal equipment.

*[S 338/2021 wef 24/02/2015]*

(5) In this Notification, a reference to an applicable loan obtained by an approved container investment enterprise includes a reference to a loan obtained by the enterprise before it is approved as such.

### **Exemption in relation to applicable loan**

4.—(1) Subject to sub-paragraphs (2) to (6) and the conditions imposed by the Minister under section 13(4) of the Act —

(a) a qualifying payment that an approved container investment enterprise is liable to make before 24 February 2015 to a specified person under an agreement for an applicable loan is exempt from tax if (and only if) the applicable loan is for a purpose mentioned in paragraph 3(2)(a), (b) or (c)(i) or (ii); and

(b) a qualifying payment that an approved container investment enterprise is liable to make on or after 24 February 2015 to a specified person under an agreement for an applicable loan is exempt from tax.

*[S 338/2021 wef 24/02/2015]*

(2) For the purposes of sub-paragraph (1), a qualifying payment in relation to an applicable loan excludes interest on that part of the principal of the loan that is capitalised interest on the loan.

(3) Where an applicable loan is obtained by the enterprise for the purpose of financing qualifying payments on a previous loan mentioned in paragraph 3(2)(c), the exemption under sub-paragraph (1) does not apply to interest on any part of the principal of the applicable loan that is used to finance interest on any part of the principal of the previous loan that is capitalised interest on the previous loan.

(4) The exemption under sub-paragraph (1) does not apply to any payment or part of any payment liable to be made under a loan obtained before 24 February 2015, being a payment or part of a payment that is exempt from tax under any other exemption granted under the Act or any subsidiary legislation made under the Act.

*[S 338/2021 wef 24/02/2015]*

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(5) The exemption under sub-paragraph (1) only applies to a qualifying payment liable to be made —

(a) at any time on or after the date the enterprise makes a declaration, in relation to the applicable loan, to the Authority, in the form specified by the Authority for the purposes of this sub-paragraph; or

*[S 338/2021 wef 24/02/2015]*

(b) if the declaration is made on or before the 15th day of a month, at any time on or after the first day of the previous month.

(6) The exemption under sub-paragraph (1) does not apply to any qualifying payment liable to be made —

(a) after the day that any original container is disposed of or is lost at sea, unless the terms of the agreement for the applicable loan —

(i) require that all original containers disposed of and lost at sea be replaced in the event that the value of such containers exceeds a sum stipulated in the agreement; or

(ii) require the repayment of that part of the principal of the loan attributable to the cost of acquiring all original containers disposed of and lost at sea in the event that the value of such containers exceeds a sum stipulated in the agreement;

(b) after the day that the enterprise disposes of any share in the special purpose vehicle, if the loan is for a purpose mentioned in paragraph 3(2)(b), (ba), (bb) or (c)(ii), (iii) or (iv); or

*[S 338/2021 wef 24/02/2015]*

(c) on or after the day that the approval of the approved container investment enterprise as such is revoked or withdrawn.

(7) Where —

(a) sub-paragraph (1) has operated to exempt from tax any qualifying payment liable to be made under an agreement

for an applicable loan mentioned in that sub-paragraph;  
and

- (b) the term of the approval of the approved investment container enterprise as such subsequently expires,

then any qualifying payment liable to be made under that agreement by the enterprise on or after the date of the expiry to a person mentioned in that sub-paragraph, is also exempt from tax.

(8) The exemption under sub-paragraph (7) is subject to the conditions mentioned in sub-paragraph (1) and to sub-paragraphs (2), (3), (4) and (6), and for this purpose those sub-paragraphs apply as if a reference to an approved container investment enterprise were a reference to a container investment enterprise.

*[S 338/2021 wef 24/02/2015]*

### **Meaning of “applicable finance lease”**

5.—(1) In this Notification, an applicable finance lease is a lease of one or more containers (at least one of which is a container within the meaning of “container” in section 43ZA(7) of the Act) under a finance lease entered into before 12 December 2018 that is treated as a sale pursuant to regulations made under section 10D of the Act.

(2) The reference in sub-paragraph (1) to a lease of one or more containers under a finance lease includes any one or both of the following activities if (and only if) the finance lease is for both the leasing of the container or containers and the activity or activities:

- (a) the leasing of any equipment installed or to be installed within or on any of the containers;
- (b) the leasing of any intermodal equipment.

*[S 338/2021 wef 24/02/2015]*

### **Exemption in relation to applicable finance lease**

6.—(1) Subject to sub-paragraphs (2) to (5) and the conditions imposed by the Minister under section 13(4) of the Act, any qualifying payment that an approved container investment enterprise is liable to make between 24 February 2015 and

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11 December 2018 (both dates inclusive) to a specified person under an applicable finance lease, is exempt from tax.

(2) Where any container that is not within the meaning of “container” in section 43ZA(7) of the Act is leased under the applicable finance lease, the exemption applies only to the amount of the qualifying payment derived by the formula  $\frac{A}{B} \times C$ , where —

- (a) A is that part of the principal of the applicable finance lease that is attributable to —
  - (i) the leasing of those containers that are each within the meaning of “container” in section 43ZA(7) of the Act;
  - (ii) the leasing of equipment installed or to be installed within or on those containers mentioned in sub-paragraph (i); and
  - (iii) the leasing of intermodal equipment under the applicable finance lease;
- (b) B is the principal of the applicable finance lease; and
- (c) C is the qualifying payment.

(3) The exemption under sub-paragraph (1) does not apply to any payment or part of a payment under a finance lease entered into before 24 February 2015, being a payment or part of a payment that is exempt from tax under any other exemption granted under the Act or any subsidiary legislation made under the Act.

(4) The exemption under sub-paragraph (1) only applies to a qualifying payment liable to be made —

- (a) at any time on or after the date the enterprise makes a declaration, in relation to the applicable finance lease, to the Authority in the form specified by the Authority for the purposes of this sub-paragraph; or
- (b) if the declaration is made on or before the 15th day of a month, at any time on or after the first day of the previous month.

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(5) The exemption under sub-paragraph (1) does not apply to any payment liable to be made —

- (a) after the day that the applicable finance lease ceases to be treated as a sale pursuant to regulations made under section 10D of the Act;
- (b) after the day that any original container (being a container that is within the meaning of “container” in section 43ZA(7) of the Act) is disposed of or is lost at sea, unless the terms of the agreement for the applicable finance lease —
  - (i) require that all original containers disposed of and lost at sea be replaced in the event that the value of such containers exceeds a sum stipulated in the applicable finance lease; or
  - (ii) require the repayment of that part of the principal of the applicable finance lease attributable to the cost of acquiring all original containers disposed of and lost at sea in the event that the value of such containers exceeds a sum stipulated in the applicable finance lease; or
- (c) on or after the day that the approval of the approved container investment enterprise as such is revoked or withdrawn.

(6) Where —

- (a) sub-paragraph (1) has operated to exempt from tax any qualifying payment liable to be made under an applicable finance lease mentioned in that sub-paragraph; and
- (b) the term of the approval of the approved container investment enterprise as such subsequently expires,

then any qualifying payment liable to be made under that applicable finance lease by the enterprise on or after the date of the expiry to a person mentioned in that sub-paragraph, is also exempt from tax.

(7) The exemption under sub-paragraph (6) is subject to the conditions mentioned in sub-paragraph (1) and to

sub-paragraphs (2), (3) and (5), and for this purpose those sub-paragraphs apply as if a reference to an approved container investment enterprise were a reference to a container investment enterprise.

*[S 338/2021 wef 24/02/2015]*

Made on 12 December 2016.

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