



INLAND REVENUE BOARD OF MALAYSIA

**TAX INCENTIVE FOR
INVESTMENT IN
BIONEXUS STATUS COMPANY**

PUBLIC RULING NO. 10/2018

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

1. Objective

The objective of this Public Ruling (PR) is to explain the tax incentives offered to an investor who has invested in a BioNexus Status Company in Malaysia.

2. Relevant Provisions of the Law

2.1 This PR takes into account laws which are in force as at the date this PR is published.

2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are sections 2, 7 and 8.

2.3 The relevant subsidiary legislations referred to in this PR are as follows:

- a) Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016 [P.U.(A) 306/2016];
- b) Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [P.U.(A) 373/2007] are revoked and replaced by P.U.(A) 306/2016 above with effect from year of assessment 2016.

3. Interpretation

The words used in this PR have the following meaning:

3.1 "Investment" means –

- (a) investment in the form of cash for which there is no obligation for the investment to be repaid; or
- (b) investment in the form of holding of paid-up capital.

3.2 "Investment in the form of holding of paid-up capital" means investment in the form of holding of paid-up capital which is paid in cash in respect of ordinary shares.

3.3 "Resident" means resident in Malaysia for the basis year for a year of assessment (YA) by virtue of section 7 or 8 of the ITA.

3.4 "Chargeable income" in relation to a person and a year of assessment, means chargeable income ascertained in accordance with the ITA.

3.5 "Statutory income" in relation to a person, a source and a year of assessment, means statutory income ascertained in accordance with the ITA.

- 3.6 "Adjusted income" in relation to a source and a basis period, means adjusted income ascertained in accordance with the ITA.
- 3.7 "Initiation of commercialization stage" means the stage of research, assessment and development of an initial concept or prototype before the technology or product is commercialized, but excludes the increase of product capacity, product development or product marketing.
- 3.8 "New business" means the first biotechnology business undertaken by a BioNexus status company.
- 3.9 "Related company" has the same meaning assigned to it in section 2 of the Promotion of Investments Act 1986.
- 3.10 "BioNexus Status Company" means a company incorporated under the Companies Act 2016 including those incorporated under the Companies Act 1965 which is engaged in a business of life sciences such as biology, medicine, anthropology, ecology or any other branches of science, which deal with living organisms and their organization, life processes and relationships to each other and their environment.

4. Introduction

The Government had granted a tax incentive for investments made by an investor in an approved Bionexus Status Company (BSC) at the initiation of commercialization stage. Both the investor and the BSC would have to comply with the relevant rules relating to the tax incentive. In order to qualify for the tax incentive, all prospective investors are required to submit an application to the Malaysian Bioeconomy Development Corporation Sdn Bhd (Bioeconomy Corporation), which was formerly known as Malaysian Biotechnology Corporation Sdn Bhd, to ensure that the eligibility criteria are met and to accredit them as approved investors. For more information, please refer to Malaysian Bioeconomy Development Corporation Sdn Bhd's website at www.bioeconomycorporation.my.

5. Criteria for Investor

A company or an individual may invest in a BSC which has been approved by the Minister of Finance. To qualify for a deduction on the amount equivalent to the actual value of investment made in a BSC, the investor would have to fulfill the following criteria:

- (a) Where the investor is a company -
- (i) the company has to be incorporated under the Companies Act 2016 including those incorporated under the Companies Act 1965;

- (ii) its related company has not been allowed the deduction under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016 [P.U.(A) 306/2016] or Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [P.U.(A) 373/2007].
- (b) Where the investor is an individual -
 - (i) the individual has to be a Malaysian citizen, resident and has business income source;
 - (ii) only three applications are allowed for the purpose of approval of deductions under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016 [P.U.(A) 306/2016];
 - (iii) each approval would be granted in respect of an investment made in three different activities of a new business which are agriculture, healthcare or industrial; and
 - (iv) the investments are to be made in a BSC which any of its paid-up capital is not owned by the:-
 - (A) spouse of the individual;
 - (B) brother or sister, of the individual or to the spouse of the individual;
 - (C) parent, of the individual or of spouse of the individual;
 - (D) the child, including a step child or child adopted in accordance with any law, of the individual;
 - (E) grandparent or grandchild, of the individual or of the spouse of the individual;
 - (F) spouse of any of the individual referred to in subsubparagraph (B); or
 - (G) uncle, aunt or cousin, of the individual or of the spouse of the individual.

Example 1

Rara, an approved investor is a mother to one of the shareholders in Halfesto Green Sdn Bhd, an approved BSC. Rara makes an investment in Halfesto Green Sdn Bhd.

For the purpose of the tax incentive on investment in BSC, the investment made by Rara in Halfesto Green Sdn Bhd is not eligible for the incentive

as it is an investment in an investee company of which one of the shareholders is Rara's child.

- (v) the individual who has obtained an approval for the incentive under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [P.U.(A) 373/2007], may apply for an incentive under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016 [P.U.(A) 306/2016] provided that an investment to be made must be in a different activity [as stated in subparagraph 5(b)(iii) in this PR] from the previous approval.

Example 2

Ramona, an engineer at AEM Moonrise Sdn Bhd, owns a self-serviced laundry and derives business income since the year 2012.

She has been granted an approval from the Minister of Finance on 1.2.2014 to invest RM20,000 in Verdezyne Sdn Bhd, an approved BSC with pharmaceutical activity, under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [P.U.(A) 373/2007].

In 2018, she plans to invest in a different activity from the previous approval. She may apply for an incentive under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016 [P.U.(A) 306/2016] if the new activity falls under the approved activity other than healthcare.

- (c) An application to make an investment in a BSC must be submitted to the Minister of Finance through Bioeconomy Corporation for approval on or after 1.1.2016.

6. Tax Incentive

6.1 The tax incentive granted to an investor is a deduction from its business source to determine the adjusted business income. The deduction allowed in the basis period for a year of assessment (YA) is an amount equal to the actual value of the investment made by the investor in the basis period in a company approved by the Minister of Finance as a BSC.

6.2 The investment made by the investor has to be made -

- (a) for a period not earlier than 1.1.2016 and not later than 31.12.2020;
- (b) for the value as approved by the Minister of Finance; and

- (c) for the sole purpose of financing activities at the initiation of commercialization stage of a new business approved by the Minister of Finance.

6.3 The investment made by an investor prior to the commencement of a new business are deemed to be made on the date the new business commences as determined by Bioeconomy Corporation.

Example 3

CTC Lipido Sdn Bhd (CTCL) is a wholly-owned subsidiary of CTC Corporation Bhd (CTC) and conducts commercial production activities for structured lipids involving enzymes and purification technologies. The company's financial year ends on 31 December annually. CTCL has been awarded the status as a BSC on 27.3.2015. CTCL will set up a sophisticated enzymatic plant supported by research and development (R & D) facilities in Malaysia for large-scale commercial production of enzymatic structured lipids. The commencement date for CTCL to carry out the qualifying business activities was set out on 18.8.2016. CTCL has issued its first sales invoice on 2.1.2018.

CTC was granted an approval from the Minister of Finance to invest RM200 million in CTCL under this incentive. The period allowed to make this investment is for 2016 and 2017.

CTC has invested 46 million shares @ RM1 per share to CTCL as an initial investment to finance CTCL's qualified activities in the year 2016 and additional shares of 154 million shares @ RM1 per share in the year 2017.

CTCL used the paid-up share capital earned for:

- (i) research, development, assessment and development of enzyme products using enzyme modification and purification technology; and
- (ii) capital expenditure and working capital to commence commercialization of such output.

CTC has the following sources of income for each year ending 31st December:

Details	YA 2016 RM	YA 2017 RM
Adjusted income	300,050,000	560,000,000
Capital allowance	15,000,000	16,500,000

Computation for chargeable income:

Details	YA 2016 RM	YA 2017 RM
Adjusted income	300,050,000	560,000,000
Deduction for investment in BSC	46,000,000	154,000,000
Adjusted income	254,050,000	406,000,000
Capital allowance	15,000,000	16,500,000
Statutory income	239,050,000	389,500,000
Tax payable @ 24%	57,372,000	93,480,000

Since CTCL has issued its first sales invoice on 2.1.2018, the deduction claim by CTC ceased on that date.

- 6.4 Investments in the form of holding of paid-up capital should not be disposed of within 5 years from the date of the last investment. If there is any disposal within the 5 year period, the consideration for the disposal of such shares has to be added in ascertaining the adjusted business income of the investor for the YA in the basis period the consideration is received. The amount added back shall not exceed the total deduction allowed in relation to the investment in the form of holding of paid-up capital.

Example 4

Aqbal has been certified as an approved investor by the Bioeconomy Corporation. He had invested 500,000 unit of shares @ RM1 per share from his own private funds in a new company, Orient Biotech Sdn Bhd on 1.1.2016. Orient Biotech Sdn Bhd has been certified as a BSC by the Bioeconomy Corporation on 2.1.2014 and the investment application was forwarded to the Minister of Finance for approval. Orient Biotech Sdn Bhd closes its accounts on 31 December each year.

In 2018 (within 5 years from the date of the investment), due to economic downturn, Aqbal disposed of his shares in Orient Biotech Sdn Bhd at a market value of RM1.50 per share.

Adjusted income/(loss) from Aqbal's business:

YA	RM
2016	150,000
2017	300,000
2018	20,000

Computation for Aqbal's adjusted income:

Details	YA 2016 RM	YA 2017 RM	YA 2018 RM
Adjusted income/(loss)	150,000	300,000	20,000
Less: adjusted loss c/f		(350,000)	(50,000)
Less: approved investment in BSC	(500,000)		
Add: sale of investment in BSC			500,000 (*)
Adjusted income/(loss)	(350,000)	(50,000)	470,000

Note:

*Proceeds from sale of investment in BSC

500,000 units of shares x RM1.50 market value per share = RM750,000.

Amount to be added back is restricted to RM500,000 (total deduction allowed for the investment).

7. Cessation of Tax Incentive

The tax incentive allowed to an investor under the Income Tax Rules as specified in subparagraph 2.3(a) of this PR ceases in the basis period for a year of assessment when the:

- (a) amount of approved investment has been fully claimed; or
- (b) BSC commences the commercialisation of the activities in respect of which the investment is made which is based on the date of the first sales invoice;

whichever is earlier.

8. Non-application

These Rules as specified in subparagraph 2.3(a) of this PR do not apply to an investor in the basis period for a YA if the investor:

- (a) has made an investment in a BSC which has been granted an exemption under the Income Tax (Exemption) (No. 18) Order 2007 [P.U.(A) 372/2007];
- (b) has made a claim for an allowance under Schedule 7A or Schedule 7B of the ITA;
- (c) has been granted any incentives under the Promotion of Investments Act 1986;

- (d) has been granted an exemption under subsection 127(3A) or paragraph 127(3)(b) of the ITA; or
- (e) has made a claim for deductions under any Rules made under section 154 of the ITA except:
 - (i) allowance under Schedule 3 to the ITA;
 - (ii) Income Tax (Deduction for Audit Expenditure) Rules 2006 [P.U.(A) 129/2006];
 - (iii) Income Tax (Deductions for Cost relating to Training for Employees for the Implementation of Goods and Services Tax) Rules 2014 [P.U.(A) 334/2014]; or
 - (iv) Income Tax (Deduction for Expenses in relation to Secretarial Fees and Tax Filing Fee) Rules 2014 [P.U.(A) 336/2014].

9. Revocation

Any deduction for the investment which has been approved under the revoked Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [P.U.(A) 373/2007] shall continue to apply as if the Rules have not been revoked.

10. Disclaimer

The examples in this PR are for illustration purposes only and are not exhaustive.

11. This PR need to be read together with Public Ruling No. 8/2018 on Tax Incentives for Bionexus Status Companies.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia**

