

TECHNICAL

Direct Taxation

INCOME TAX (DEDUCTION FOR INVESTMENT IN A BIONEXUS STATUS COMPANY) RULES 2016 [P.U. (A) 306/2016]

The above Rules were gazetted on 7 December 2016, and takes effect from the year of assessment (YA) 2016.

These Rules were reported in our [e-CTIM TECH-DT 1/2017](#) dated 11 January 2017 and its contents are summarized below.

Definitions

The following are some of the terms defined in Rule 2 ("Interpretation")

Word	Meaning
Qualifying person (QP)	(a) a company incorporated under the Companies Act 1965; or (b) an individual who is a Malaysian citizen, resident and has business income source;
Investment	(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 paid-up capital.
BioNexus status company (BSC)	A company 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.

The other terms defined in Rule 2 are "Malaysia Bioeconomy Development Corporation Sdn Bhd.", "investment in the form of holding of paid-up capital" and "new business".

Deduction and Conditions for Deductions

The deduction for investment in a BSC and conditions for claim are provided for in Rules 3 and 4. They are summarized below:

Rule 3 – Deduction	
3(1)	<p><i>Deduction</i></p> <p>In ascertaining the adjusted income from the business of a QP, a deduction is allowed in the basis period (BP) for a YA, of an amount which is equal to the actual value of investment made by the QP in the BP, in a company which has been approved by the Minister as a BSC.</p>
3(2) to 3(7)	<p><i>Some rules relating to the claim for deduction</i></p> <ul style="list-style-type: none"> The investment referred to in Subrule 3(1) must be: <ul style="list-style-type: none"> made for a period not earlier than 1/1/2016 and not later than 31/12/2020; for the value as approved by the Minister; for the sole purpose of financing activities at the <i>initiation of commercialization stage</i> of a <i>new business</i> approved by the Minister. <p>(The terms in italics are defined in Subrule 3(7) and Rule 2 respectively.)</p>

	<ul style="list-style-type: none"> The investment made by the QP prior to the commencement of a new business shall be deemed to be made on the date the new business commences as determined by Malaysia Bioeconomy Development Corporation Sdn. Bhd. Where the investment is in the form of holding of paid-up capital, the ordinary shares must not be disposed of within 5 years from the date of the last investment. Otherwise, the following consequence will apply: <ul style="list-style-type: none"> the amount received in consideration for the shares disposed of by the QP who has claimed a deduction in respect of the investment will be added on in arriving at his adjusted income for the YA in the BP in which the amount is received. The amount of consideration added on to adjusted income shall not exceed the total deduction allowed in respect of that investment.
Rule 4 – Conditions for deduction	
4(1) to 4(2)	<p><i>Conditions applicable to companies and individuals</i></p> <p>The deduction is allowed subject to the following conditions:</p> <ul style="list-style-type: none"> The QP has submitted an application to the Minister through Malaysia Bioeconomy Development Corporation Sdn. Bhd. for an approval to make an investment in a BSC on or after 1/1/2016, and the application has been approved by the Minister. If the QP is a company: – No “<i>related company</i>” (defined in Subrule 4(2)) of the QP has been allowed the deduction under these Rules or the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [P.U. (A) 373/2007] (“the 2007 Rules”) If the QP is an individual : <ul style="list-style-type: none"> only 3 applications for deductions will be allowed under these Rules; each approval will be granted in respect of an investment made in 3 different activities of the new business, which are agriculture, healthcare or industrial; and the paid up capital of the BSC in which the investment is made must not be owned by persons who are related to the individual in specific ways which are listed in paragraph 4(1)(c)(iii). (Please refer to the complete list (A to G) under that Subrule.) Where an application to make an investment by an individual has been approved under the 2007 Rules, the approval under these Rules shall only be given in respect of the activity other than the activity approved under the 2007 Rules subject to the conditions specified in these Rules.

Cessation of Deduction

Rule 5 provides that the deduction allowed will cease in the BP for a YA upon the BSC’s commencement of commercialization of the activities in respect of which the investment is made, which is based on the date of the first sales invoice.

Non-application

These Rules do not apply to a QP who has made an investment in a BSC which has been granted exemption under the Income Tax (Exemption)(No. 18) Order 2007 [P.U. (A) 372/2007], or has been granted any incentive/exemption or has made a claim for allowance/deduction under legislations which are specifically named in Rule 6(a) to (e). (Please refer to the complete list in [Rule 6](#).)

Revocation

The 2007 Rules are revoked. However, for any deduction for the investment which has been approved under those Rules, the Rules will continue to apply as if they have not been revoked.

Members may read the Rules in full at the website of the [Attorney General's Chambers](#).

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