e-CIRCULAR TO MEMBERS

CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

e-CTIM TECH-DT 23/2019 **20 March 2019**

TO ALL MEMBERS

TECHNICAL

Direct Taxation

PUBLIC RULING N0. 8/2018 - TAX INCENTIVES FOR BIONEXUS COMPANIES

This Public Ruling was issued by the LHDNM on 9 October 2018 (reported in our e-CTIM TECH-DT 69/2018 dated 12 October 2018). A summary of its contents is given below.

Para. #		All sections quoted below refer to sections of the ITA unless otherwise stated.
1		**Objective**
		The objective is to explain the tax treatment in respect of tax incentives for a BioNexus Status Company ("BSC") in Malaysia.
2		**Relevant Provisions of the Law**
		States the relevant provisions of the Income Tax Act 1967 ("ITA") and other subsidiary legislation under which the incentives are granted.
3		**Interpretation**
		Provides definitions of terms used in the PR.
4		**Introduction**
		Makes mention of the National Biotechnology Policy as well as the Malaysian Bioeconomy Development Corporation Sdn Bhd (Bioeconomy Corporation) ("BCorp") and its functions.
5		**BioNexus Status Companies**
	5.1	BioNexus ("BNx") status is a special status awarded to qualified international and domestic biotechnology companies undertaking value-added biotechnology and life sciences activities. Such companies may enjoy fiscal incentives, funding assistance and other benefits to assist in their growth.
	5.2	Applications for BNx status are made to BCorp which is empowered to assess and certify applications for tax incentives for BSC for approval by the Minister of Finance ("MOF"). (Refer to the BCorp website at www.bioeconomycorporation.my for guidance).
	5.3	Tax incentives available for an approved BSC resident in Malaysia are:
		(a) Exemption on statutory income ("SI") in relation to a new business or an expansion project under the following – i) *IT (Exemption)(No. 17) Order 2007* [P.U. (A) 371/2007]; (See paragraph 6.1.) ii) *IT (Exemption)(No.18) Order 2007* [P.U. (A) 372/2007], in respect of an amount equivalent to an allowance of 100% of the qualifying capital expenditure ("QCE") incurred (see paragraph 6.2): for the number of years of assessment ("YA") specified in the relevant Order. (b) Further exemption (after expiry of the specified tax exempt period) on SI from an approved business for a period of 10 consecutive YAs under the *IT (Exemption)(No. 2) Order 2009* P.U. (A) 156/2009]. (See paragraph 6.3.) (c) Industrial building allowance ("IBA") at 10% annually for buildings used solely for qualifying activities, under the *IT (IBA) (BSC) Rules 2007* [P.U. (A) 374/2007]. (See paragraph 7.)

<table>
<tr><th colspan="2">Para. #</th><th>All sections quoted below refer to sections of the ITA unless otherwise stated.</th></tr>
<tr><td colspan="2">6</td><td>Tax Incentives</td></tr>
<tr><td></td><td>6.1</td><td>Exemption on SI in respect of –
(a) a new business of a qualifying BSC is granted for 10 consecutive YAs commencing from the first YA in which the company derived SI from the new business;
(b) an expansion project and existing approved business is granted for 5 consecutive YAs commencing from the first YA in which the BSC derived SI from the existing approved business and expansion project, provided that the first YA must not be earlier than the YA for the basis period in which the date of approval from the MOF falls. The following are examples provided to show the determination of exempt YAs and post exempt YAs:

A. New Business Scenario
<table><tr><th>Example #</th><th>Scenario</th></tr><tr><td>1</td><td>Company commences business</td></tr><tr><td>2</td><td>Company commences a non-biotechnology business and subsequently undertakes research and development in an approved biotechnology activity.</td></tr><tr><td>3</td><td>Company commences an approved biotechnology activity and subsequently undertakes a new additional approved biotechnology activity</td></tr><tr><td colspan="2">B. Expansion Project Scenario</td></tr><tr><td>4</td><td>Company commences an approved biotechnology activity and subsequently expands its existing biotechnology activity.</td></tr></table></td></tr>
<tr><td></td><td>6.2</td><td>Exemption on SI equal to allowance of 100% of the QCE</td></tr>
<tr><td></td><td></td><td>The exemption is in respect of SI from a new business or an expansion project, in an amount equal to an allowance of 100% of QCE incurred within a period of 5 years. The date of commencement of the exemption period is determined by BCorp and is, in relation to:
(a) a new business, the date the first QCE was incurred, provided that date is not earlier than 1.5.2005 or 3 years from the date of approval as a BSC, whichever is later; or
(b) an expansion project, the date the first QCE was incurred, provided that the date is not earlier than the date of application received by BCorp. (Refer paragraph 6.2(b) for conditions for granting exemption.)
The following are examples provided to show the determination of exemption periods:

<table><tr><th>Example #</th><th>Scenario</th></tr><tr><td>5</td><td>New business incurred capital expenditure.</td></tr><tr><td>6</td><td>Expansion project</td></tr><tr><td>7</td><td>Illustrates the computation of chargeable income and QCE during the tax exemption period.</td></tr></table></td></tr>
<tr><td></td><td>6.3</td><td>Further tax exemption on SI</td></tr>
<tr><td></td><td></td><td>A BSC that has enjoyed the tax exemptions explained in paragraphs 6.1 and 6.2 may enjoy a further incentive of being subject to tax at a special rate of 20% on SI from an approved business (new business or expansion project) for a period of 10 consecutive YAs after the end of the exemption period. The exempted SI is computed in accordance with the formula found in paragraph 6.3.
(Example 8)</td></tr>
<tr><td colspan="2">7</td><td>Capital Allowances / Industrial Building Allowances</td></tr>
<tr><td colspan="2"></td><td>A BSC may claim IBA at the rate of 10% on qualifying building expenditure (QBE) incurred in the basis period for a YA. The date of the first QBE is</td></tr>
</table>

Para. #	All sections quoted below refer to sections of the ITA unless otherwise stated.
	determined by BCorp, and this date shall not be earlier than 2.9.2006. (Refer paragraphs 7.1 and 7.2 for further explanation.) (Example 9)
8	**Treatment on Losses Incurred by a BSC**
	Any loss incurred before the exempt YA commences (after the commencement of the new business or expansion project) and within the period of exemption, may be carried forward to the YA after the exempt period ends, to be deducted from the SI of the new business or expansion project until it is fully utilized. The treatment of brought forward losses under S43(2) and current year losses under S44(2) shall not apply to the BSC with regard to the losses that have been deducted. (Example 10)
9	**Deductions for Promotion of Export**
	Revenue expenditure under S33 incurred for the promotion of export under S41 of the Promotion of Investment Act, 1986 (which qualifies for deduction in the YA the expense was incurred) is eligible for additional deduction by a BSC, and shall be accumulated to be absorbed in the YA after the exempt period ends, and subsequent YAs until the amount is fully absorbed. (Example 11)
10	**Deduction for Research and Development (R&D) Expenditure**
	Expenditure incurred on R&D activities approved by the MOF under S34A qualify for double deduction and may be claimed in the year it was incurred. For a BSC, such expenditure are accumulated and are eligible for deduction in the YA after the tax exempt period ends, and subsequent YAs. (Example 12)
11	**Non-application**
	The tax incentives granted under the Exemption Orders named in paragraph 5.3 [items (a) (i) and (ii)] shall not apply to: (a) a new business/ expansion project that commences after 1 year from the date of approval, or after such extended period approved by the MOF. (b) a company which, in the basis period for a YA, has been granted tax exemption or other incentives provided under specified legislations which are listed under paragraph 11(b) (items i. to xiii.).
12	**Withdrawal of Tax Incentives**
	The MOF has the right to withdraw all tax exemptions that have been granted if a BSC fails to comply with stipulated conditions of approval.
13	**Compliance with ITA**
	An approved company is not absolved from complying with any requirement to submit a return or statement of account or other information that is imposed by the ITA.
14	**Disclaimer**
	The examples in this PR are illustrative and not exhaustive.

Members may view the above PR in full on the websites of the Institute and the LHDNM.

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the PR.

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