

TECHNICAL

Direct Taxation

AMENDMENTS TO TAX INCENTIVES – BIONEXUS INCENTIVES

General

We refer to our [e-CTIM TECH-DT 90/2018](#) which highlighted the information provided by the Ministry of Finance on **Malaysia's Participation in the Forum on Harmful Tax Practices (FHTP)**. In line with Malaysia's commitment to FHTP, amendments to legislation relating to tax incentives that have been identified for FHTP evaluation have been gazetted. The following Amendment Orders that were issued (Gazetted date 31/12/2018) (refer to our [e-CTIM TECH-DT 3/2019](#) dated 9 January 2019) relate to **BioNexus incentives**.

P.U.(A)	Citation	Commencement Deemed to have effect from –						
381	Income Tax (Exemption) (No. 2) 2009 (Amendment) Order 2018	16/10/2017, except for paragraphs 2 and 3 which are deemed to have come into operation on 2/9/2006.						
395	Income Tax (Exemption) (No. 17) 2007 (Amendment) Order 2018	16/10/2017, except for the following: <table><tr><th><u>Paragraph/ subparagraph</u></th><th><u>Deemed to have effect from –</u></th></tr><tr><td>2, 3(a), 6</td><td>1/5/2005</td></tr><tr><td>3(b)</td><td>11/8/2016</td></tr></table>	<u>Paragraph/ subparagraph</u>	<u>Deemed to have effect from –</u>	2, 3(a), 6	1/5/2005	3(b)	11/8/2016
<u>Paragraph/ subparagraph</u>	<u>Deemed to have effect from –</u>							
2, 3(a), 6	1/5/2005							
3(b)	11/8/2016							

Main Amendments and Objectives

The table below highlights the *main* amendments in each Order, and the purpose of the amendment (in relation to compliance with FHTP requirements). Please refer to the Amendment Order for the wording of each amendment, as well as other amendments not highlighted here.

P.U.(A)	Paragraph (#) of this Order	Amendment	Purpose
381	<i>Principal Order (PO) – Income Tax (Exemption) (No. 2) Order 2009 [P.U.(A) 156/2009]</i>		
	3(b)	Amends paragraph 3 of the PO by inserting subparagraphs (2A), (2B) and (2C) after subparagraph (2)	Introduces grandfathering rules that apply to existing companies enjoying this incentive.
	4	Inserts a new paragraph 3A after paragraph 3 of the PO.	Excludes intellectual property (IP) income from exemption under this incentive.
	Note 1 – Although substance requirements are not specified in this Order, the PO states that a BioNexus status company is one which has been granted exemption under <i>Income Tax (Exemption) (No. 17) Order 2007</i> , which has been amended by P.U.(A) 395/2018 (see below). Subparagraph 3(1A) of the second-mentioned Order (as amended) lists the substance requirements that must be met by a		Requirement for substantial activities (see Note 1)

	BioNexus status company.		
395	<i>PO – Income Tax (Exemption) (No. 17) Order 2007 [P.U.(A) 371/2007]</i>		
	4(b)	Amends paragraph 3 of the PO by inserting subparagraph (1A) after subparagraph 3(1)	Lays down the conditions relating to the requirement for substantial activities for preferential tax treatment.
	4(c)	Inserts subparagraphs (2A), (2B) and (2C) after subparagraph 3(2)	Introduces grandfathering rules that apply to existing companies enjoying this incentive.
	5	Inserts a new paragraph 3A after paragraph 3.	Excludes intellectual property (IP) income from exemption under this incentive.
	6	Inserts a new Schedule after paragraph 11	Lists the following as “qualifying activities”: 1. Industrial biotechnology 2. Healthcare biotechnology 3. Agricultural biotechnology

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

Disclaimer

This document is meant for the members of the Chartered Tax Institute of Malaysia (CTIM) only. CTIM has taken all reasonable care in the preparation and compilation of the information contained in this e-CTIM. CTIM herein expressly disclaims all and any liability or responsibility to any person(s) for any errors or omissions in reliance whether wholly or partially, upon the whole or any part of this e-CTIM.