

SIGNIFICANT 2010 SINGAPORE TAX CHANGES AND UPDATE

1 Productivity and Innovation Credit Scheme

The Government has announced the introduction of a new broad-based Productivity and Innovation Credit ("PIC") scheme in the 2010 Budget Statement on 22 February 2010 to provide significant enhanced tax deductions / allowances to **all** businesses (including Singapore branches or subsidiaries of foreign corporations) for investments in 6 types of qualifying activities below:

- (i) Registration of Intellectual Property rights ("IPRs")
- (ii) Research and Development ("R&D") Expenditure
- (iii) Training Expenditure
- (iv) Investments in Approved Design
- (v) Investment in Automation (Acquisition or leasing of prescribed automation equipment)
- (vi) Acquisition of IPRs

Qualifying Period

The PIC scheme is available for five Years of Assessment ("YAs") from YA 2011 to YA 2015 (both years inclusive). The qualifying expenditure must be incurred during the basis periods for the YA 2011 to YA 2015.

"Basis period" refers to the accounting year ending in the year preceding the YA. For example, for a business with an accounting year ending on 30 September, the basis period for YA 2011 would be 1 October 2009 to 30 September 2010.

Enhanced Deductions / Allowances

All businesses will be allowed tax deductions or allowances from their income a total of 250% (referred to as "qualifying deductions or allowances", comprising 100% "based deduction / allowance" and 150% "enhanced deduction / allowance") of their qualifying expenditure incurred (i.e. net of grant or subsidy received from the Government or a statutory board) for each YA from YA 2011 to YA 2015 for each of the 6 types of qualifying activities under the PIC, subject to the following caps:-

- (a) For YA 2011 and YA 2012, the 250% qualifying deductions / allowances for each YA will be allowed up to a combined qualifying expenditure cap of \$600,000 for each activity as follows:-
 - (i) for the YA 2011, on the lower of qualifying expenditure incurred for that particular qualifying activity during the basis period for that YA; and \$600,000 cap; and
 - (ii) for the YA 2012, on the lower of qualifying expenditure incurred for that particular qualifying activity during the basis period for that YA; and the balance after deducting from \$600,000 cap in YA 2011.

- (b) For the YA 2013 to YA 2015, the 250% qualifying deductions / allowances will be allowed on the first \$300,000 of the qualifying expenditure incurred for each type of qualifying activities during the basis period for each YA.

Cash Conversion Option

For the YA 2011 to YA 2013 (both years inclusive), an eligible business may opt to convert the qualifying deductions or allowances (comprising 150% enhanced deductions / allowances, and 100% base deductions / allowances arising from the relevant qualifying expenditure) into a cash payout (non-taxable). This is subject to the overall cap of \$300,000 qualifying deductions / allowances for all the 6 types of qualifying activities computed as follows:-

- (a) For the YA 2011 and YA 2012, it can convert up to a combined total of \$600,000 (but not less than \$1,500) of such qualifying deductions or allowances for the two YAs at a rate of 7%, which means a total cash payout of up to \$42,000 ($\$600,000 \times 7\%$) in the following manner:-
- (i) for the YA 2011, on the lower of the qualifying deductions or allowances or part thereof in respect of the election made for that YA; and \$600,000 cap; and
 - (ii) for the YA 2012, on the lower of the qualifying deductions or allowances or part thereof in respect of the election made for that YA; and the balance after deducting from \$600,000 cap in YA 2011.
- (b) For the YA 2013, it can convert only up to a cap of \$300,000 (but not less than \$1,500) of such qualifying deductions or allowances for the YA at a rate of 7%, which means a cash payout of up to \$21,000 ($\$300,000 \times 7\%$).

An eligible business means any sole-proprietorship or partnership or company (includes a registered business trust) that employs and makes contributions to the CPF of at least 3 local employees (i.e. Singapore Citizens and Singapore Permanent Residents) based on the payroll for the last month of its basis period for the qualifying YA. Sole-proprietors, partners under contracts for service and shareholders who are also directors of the company are excluded.

An eligible business can only make a one-time irrevocable election for the cash payout in prescribed form (i.e. PIC Cash Payout Application Form) for each qualifying YA. The claim for cash payout for the YA 2011 to YA 2013 must be made by:

- (a) 15 April of the YA for sole-proprietors and partnerships; and
- (b) 30 November of the YA for companies and registered business trusts.

The cash payout will first be used to offset any tax arrears (including GST and property tax) of the business before any remaining amount is paid to the taxpayer.

There is a minimum ownership of one year imposed for the purchase of prescribed automation equipment and IPRs, and IPRs for which registration costs are claimed, when the qualifying deductions and allowances for such qualifying expenditures are converted into a cash payout under PIC.

If the qualifying assets are disposed within a year, the full amount of the cash payout will be recovered by the IRAS. Balancing charge or allowance adjustment is not applicable. In the case of IPRs, if they are disposed within 2 to 5 years, a proportionate amount of the cash payout granted previously will be recovered by the IRAS and the balance of unclaimed enhanced WDA will be forfeited. For IPRs that are disposed after 5 years, balancing charge will be restricted to the base WDA granted.

The taxpayer is required to complete and submit the Disposal of Qualifying Assets Form to IRAS within 30 days of such sale, transfer, assignment or lease, and repay the cash payout upon receipt of IRAS' **Productivity & Innovation Cash Payout Recovery** notice.

All information in connection with an election for a cash payout must be true and correct. Otherwise, the person giving any incorrect information without any reasonable excuse or through negligence shall be guilty of an offence, and shall on conviction, be punished with penalty by way of fine or imprisonment or both.

Utilised Trade Loss and/ or Allowance arising from PIC

Any enhanced deduction / allowance given under PIC that could not be fully utilised in any YA will form part of the unutilised trade loss and/or allowance of a business.

The unutilised trade loss and/or allowance can be set-off against other income of the business. The amount of unutilised trade loss or allowance can be:

- (a) carried forward to set-off against the business income for future YAs subject to shareholding test and the business continuity test;
- (b) carried back to the immediate preceding YA to be offset against the prior year income under the loss carry-back relief system; and
- (c) transferred to and set-off against the income of a related Singapore company under the group relief system or a spouse in the case of sole-proprietor or partner.

General Conditions For Enhanced Deductions / Allowances under PIC

I. Registration of IPRs

The enhanced deduction will be granted as long as the business has incurred the IP registration costs regardless of the outcome of the application. However, no enhanced deduction will be allowed for IP renewal costs. In addition, the claim for enhanced deduction will only be allowed to a person only if there is an undertaking by that person that he would be the proprietor of the patent or registered trade mark, the registered owner of the registered design or the grantee of the plant variety, as the case may be.

Where a business has claimed enhanced deductions on the qualifying registration costs of an IPR, and that the IPR is sold within a year from the date of filing of the application, the lower of the sale price of IPR or the amount granted previously shall be deemed as income in the year of disposal. For IPR that is sold within a year with cash payout claimed, it must notify the IRAS within 30 days of the occurrence of such event and the cash payout will be fully recovered by IRAS. Penalties may apply if the notification requirement is not complied with.

It is important to note that if an eligible business opts to convert the qualifying enhanced deductions into cash payout, partial conversion is not allowed. The conversion has to be done on a "per registration basis" on the full amount of base and enhanced deductions. If the total amount of the base and enhanced deductions of an IPR is greater than the cash payout cap, the excess deduction will be forfeited and will not be available for deduction against the business income.

The table below summarises the claw-back provisions:-

Qualifying deductions comprising	Claim deduction on registration costs		Convert qualifying deductions into Cash Payout	
	IPR disposed of within 1 year	IPR disposed of after 1 year	IPR disposed of within 1 year	IPR disposed of after 1 year
Base deduction	Lower of sale price of IPR or deduction granted previously will be deemed as income in the year of disposal (as per existing tax treatment)		Full cash payout will be recovered by IRAS	No recovery of cash payout by the IRAS
Enhanced deduction	Deemed as income in the year of disposal and chargeable to tax	No claw-back	Claw-back of enhanced deduction not applicable	Claw-back of enhanced deduction not applicable

The qualifying IP registration costs for the enhanced deduction are broadly divided into two categories, i.e. official fees and professional fees, as follows:-

- (a) Official fees refers to payments made to the Registry of Patents, Registry of Trade Marks, Registry of Designs or the Registry of Plant Variety in Singapore or elsewhere for –
- (i) Filing of an application for a patent, for registration of a trade mark or design, or for the grant of protection of a plant variety;
 - (ii) Search and examination report on the application for a patent;
 - (iii) Examination report on the application for grant of protection for a plant variety; or
 - (iv) Grant of a patent.
- (b) For professional fees, it must be incurred in relation to the registration or the qualifying IPRs and will cover payments made to any person acting as an agent for –
- (i) Applying for any patent, for registration of a trade mark or design, or for the grant of protection of a plant variety, in Singapore or elsewhere;
 - (ii) Preparing specification or other documents for the purpose of the Patent Act, the Trade Mark Act, the Registered Design Act, the Plant Variety Protection Act or the intellectual property law of any other country in respect of patents, trademarks, designs or plant varieties; or
 - (iii) Giving advice on the validity or infringement of any patent, trade mark, design or plant variety.

II. R&D Expenditure

With the 250% enhanced deduction for R&D done in Singapore under the PIC, the following R&D tax incentive schemes will be phased out:-

- (a) Research and Development Allowance (RDA); and
- (b) R&D Incentive for Start-up Enterprises (RISE).

No RDA will be granted on the chargeable income from YA 2011, and RISE will cease to provide cash grant with effect from YA 2011.

For taxpayers with unutilised RDA granted for YA 2009 and YA 2010, they may opt to utilise the RDA as further deductions against their incremental R&D expenses from YA 2011 until YA 2016. Alternatively, instead of utilising RDA, they can elect to claim the 250% tax deduction on the first \$300,000 of their qualifying R&D expenses incurred for each YA for the period from YA 2011 to YA 2015.

The qualifying expenditure refers to any expenditure attributable to the R&D that is incurred on staff costs, consumables and any other matters as prescribed by the Minister after netting off grants or subsidies from the Government or a statutory board, which qualifies for an additional 50% enhanced deduction under Section 14DA of the Income Tax Act.

For out-sourced R&D activities conducted in Singapore, 60% of the total payments made to the R&D organisation will be deemed as qualifying staff costs and consumables allowed for enhanced deduction. If more than 60% of such payments are made up of staff costs and consumables, the enhanced deduction based on the actual percentage of staff costs or consumables incurred is allowed. Copies of invoices issued by the R&D organisation which identify the amount relating to staff costs and consumables must be retained for verification purposes.

III. Training Expenditure

For the purpose of claiming enhanced tax deduction under the PIC, qualifying training expenditure will cover:-

- (a) In-house training expenditure incurred directly in providing:
- (i) a Workforce Skills Qualification (“WSQ”) training course accredited by SWDA and conducted by a WSQ in-house training provider;
 - (ii) a course approved by the Institute of Technical Education (“ITE”) under the ITE Approved Training Centre (“ATC”) scheme;
 - (iii) on-the job training by a on-the-job training centre certified by the ITE; and
 - (iv) any other in-house training courses which the Minister may prescribe by regulation.

The qualifying training costs for PIC will include any salary and other remuneration (excluding directors’ fees) of in-house trainers for conducting such courses and training courses (based on the hours spent in conducting the courses and training), rental of external training premises, expenditure on meals, refreshments training material and stationery, but exclude the followings:

- salary and other remuneration paid to in-house trainers for their duties, including time spent in the preparation of course contents and training material for accredited WSQ or other training courses,
- salary and other remuneration paid to employees who provide administrative support to the training department,
- salaries and other remuneration of any employee attending the training course,
- accommodation, air tickets, travelling and transport expenditure, and
- imputed overheads like rental and utilities.

- (b) Outsourced training – course fees paid to the external training service provider, including registration or enrolment fees, examination fees, tuition fees and aptitude test fees, but excludes any accommodation, travelling or transport expenditure in respect of employees attending or conducting the course, or any expenditure to the extent that it is subsidised by grants or subsidies from the Government or a statutory board. There is no specific requirement for the external trainer to be a certified trainer.

IV. Investments in Approved Design

To qualify for enhanced deductions under PIC, the design or trademarks must be registered in the company’s / partnership’s / sole-proprietorship’s capacity. No enhanced deduction is claimable by a person in the trade of providing design services.

Design projects can be conducted either in-house with eligible designers or outsourced to eligible design service providers. 100% of staff costs to conduct approved design projects in-house will qualify. Where the approved design project is outsourced to eligible design service providers, 60% of the invoice amount will qualify. If a cost breakdown to indicate that manpower costs exceeds 60% of the invoiced amount is provided, 100% of eligible manpower costs for carrying out activities of approved design project will be allowed.

The design projects must meet the following set of criteria:-

- (a) The design project must relate to industrial and product design activities, resulting in the final design of a physical design (creation of new products or industrial designs). Examples of possible product categories include consumer products and furniture.
- (b) The design project must result in the creation of new intellectual property through the Intellectual Property Office of Singapore, in the form of a registered design or a patented innovation.
- (c) The design project must include design activities in all of the following design phases:-
 - (i) Design research;
 - (ii) Ideal generation;
 - (iii) Concept development;
 - (iv) Technical development; and
 - (v) Communication.
- (d) The design project must be conducted in Singapore.
- (e) The design project must be completed within 2 years.

This new incentive will be administered by the Design Singapore Council. Businesses must submit an application to DesignSingapore at least 2 months before the commencement of the design project, subject to the approval of the design project and the eligibility of designers and/or design service providers.

Where the design project had already commenced or will commence before 1 January 2011, application must be made before 1 November 2010. If the design project had been completed or will complete before 1 November 2010, application can be made after the completion of the project, but before 1 January 2011 and with the application form entitled "Application Form – Post Project".

Businesses must submit the letter of approval from the DesignSingapore to IRAS for the tax deduction claim. To apply for the cash payout, businesses will need to submit a separate application form to IRAS.

"Industrial or product design" means the professional specifications of creating and developing concepts or specifications that optimise the functions, value and appearance of physical products, taking into account users' needs, marketability and production.

"Qualifying design expenditure" means –

- (a) expenditure incurred by the person on the staff costs of in-house qualified designers which are attributable to an industrial or product design project approved by the Minister or such person as he may appoint and undertaken in Singapore directly by that person; and
- (b) where an approved design service provider has been engaged by the person to undertake in Singapore for the trade or business in question an industrial or product design project approved by the Minister or such person as he may appoint:
 - (i) where more than 60% of all payments made by the person to the approved design service provider for the project are staff costs, the total amount of staff costs; or

- (ii) in all other cases, 60% of those payments,

but does not include any expenditure or payment to the extent that it is subsidised by grants or subsidies from Government or a statutory board.

“Staff costs” means any salary, wages and other benefits whether in the form of money or otherwise (excluding directors’ fees), paid or granted in respect of the employment of any in-house qualified designer which are attributable to the industrial or product design project.

V. Investment in Automation (Acquisition or leasing of prescribed automation equipment)

Besides the normal capital allowance claim, a person can also claim 250% enhanced allowance / deduction on the first \$300,000 of the combined qualifying expenditure incurred (net of grants and subsidies received from the Government or a statutory board) on the purchase or leasing of any prescribed automation equipment during the basis period for each YA from YA 2011 to YA 2015 (both years inclusive).

The prescribed automation equipment will be based on the list of automation equipment specified in the “Income Tax (Automation Equipment) Rules 2004”, which will be updated and expanded to include a wider range of equipment and software for automating processes.

The enhanced capital allowance of 250% for the purchase of one or more prescribed automation equipment is generally granted on the full cost of the equipment. If the total expenditure incurred on the purchase of one or more prescribed automation equipment exceeded the cap, the enhanced allowance can be claimed on the partial cost of one piece of equipment which make up to a total expenditure cap of \$300,000 per YA.

If an eligible business opts to convert the qualifying allowance (comprising 150% enhanced allowance and 100% base allowance arising from the relevant qualifying expenditure) for the purchase of one or more prescribed automation equipment into a cash payout, partial conversion is not allowed. The conversion has to be made on a “per equipment basis” on the full amount of base and enhance allowance, where applicable. Where the base and enhanced allowance of an equipment is greater than the cash payout cap, the excess allowance for that equipment will be forfeited and will no longer be available for deduction against the business income concerned. Therefore, enhanced allowances on any qualifying equipment acquired on hire purchase with repayment schedule straddling over two or more basis periods cannot be partially converted into cash.

Enhanced allowance will also be granted for the purchase of software upgrades or development of software if the software falls within the list in the Income Tax (Automation Equipment) Rules 2004. However, no enhanced deduction will be allowed on any expenditure incurred on:-

- (a) the lease payments of software unless the lease payment cannot be separated from the lease payment of the entire qualifying equipment;
- (b) the lease payments of prescribed automation equipment that is sub-leased to another person during the basis period or for the purpose of leasing such equipment;
- (c) any prescribed automation equipment purchased under hire purchase agreement which was signed before the basis period for the YA 2011; and
- (d) any prescribed automation equipment for which an investment allowance has been fully claimed or is used for a project approved under Part XIID of the EEIA.

The claw-back provisions on the purchase of prescribed automation equipment are summarised in the table below:

Qualifying allowances comprising	Claim CA on equipment		Converted allowances into cash	
	Equipment disposed of within one year	Equipment disposed of after one year	Equipment disposed of within one year	Equipment disposed of after one year
Base allowance	Balancing adjustments/charges will be made and restricted to amount allowed previously		Full cash payout will be recovered by IRAS	No recovery of cash payout by IRAS
Enhanced allowance (EA)	EA allowed will be deemed as income and chargeable to tax in the year of disposal.	No adjustment is required.	Balancing adjustment/charge not applicable.	Balancing adjustment/charge not applicable

Where the qualifying prescribed automation equipment is acquired on hire purchase, the enhanced allowance will be computed up-front based on the full cost of equipment. Thereafter, the enhanced allowance will be allowed based on the actual principal repayments made during the year.

For qualifying automation equipment acquired and disposed within a year with enhanced allowance claimed, balancing adjustments will be computed on the base allowance of 100%, and the enhanced allowance of 150% granted previously will be clawed-back and deemed as income chargeable to tax in the year of disposal. For qualifying automated equipment that is disposed within a year with cash payout claimed, the cash payout will be fully recovered by the IRAS. No balancing adjustment needs to be computed.

An eligible business can opt to convert the lease payments made for leasing of one or more prescribed automation equipment under a qualifying lease or leases during the basis period for that YA between YA 2011 and YA 2013 (both years inclusive) subject to the overall cap of \$300,000 for the 6 qualifying activities under the PIC for each qualifying YA. The tax treatments to the lessor and lessee of such prescribed automation equipment under PIC will be as follows:

Types of leases	Existing Tax Treatment (Before YA 2011)		Tax Treatment under PIC (for YA 2011 to YA 2015)	
	Lessor	Lessee	Lessor	Lessee
Operating lease	100% CA on the cost of equipment	100% deduction on the lease payments	100% CA on the cost of equipment	250% deduction on the lease payments
Finance lease	100% CA on the cost of equipment	100% deduction on the lease payments (inclusive of finance charges)	100% CA on the cost of equipment	250% deduction on the lease payments (inclusive of finance charges*)
Finance lease treated as sales agreement	Not applicable	100% CA on the cost of equipment	Not applicable	250% CA on the cost of equipment#

*included as a concession to avoid the administrative difficulties faced in having to separate the finance charges from the principal sum.

VI. Acquisition of IPRs

Generally, writing-down allowance (“WDA”) is granted over five years (i.e. at 20% for each YA) on the qualifying capital expenditure incurred by any company or partnership in acquiring IPRs for use in its trade or business.

Under PIC, WDA will be granted on 250% of the first \$300,000 of qualifying capital expenditure incurred in acquiring one or more IPRs during the basis period for each YA (i.e. comprising 150% enhanced WDA and 100% base WDA from YA 2011 to YA 2015 (both years inclusive) for use in its trade or business, subject to certain conditions. Expenditure exceeding \$300,000 will continue to enjoy 100% based WDAs.

The above PIC enhanced WDAs are applicable only where IPRs are legally and economically owned by the company or partnership in Singapore. IPRs granted a waiver of the legal ownership condition under Section 19B(2B) of the ITA and IPRs pertaining to media and digital entertainment contents approved by EDB are excluded.

IPRs acquisition shall cover acquisition of patent, copyright, trademark, registered design, geographical indication, lay-out design of integrated circuits, trade secret or information that has commercial value, and plant varieties. The enhanced WDA is generally granted on the full cost of the IPR. However, if the total expenditure incurred on the acquisition of IPR exceeded the cap, enhanced WDA can still be claimed on the partial cost of one IPR.

If the company or partnership opts to convert the qualifying allowance into cash, partial conversion is not allowed. The conversion has to be done up-front on a “per IPR basis” in the year of IPR acquisition (notwithstanding the writing-down period of 5 years) on the full amount of base and enhanced WDA, where applicable. Where the base and enhanced WDA of the IPR is greater than the cash payout cap, the excess WDA will be forfeited and will not be available for deduction against the business income.

Companies and partnership must own the related IPRs for a minimum period of 1 year from the date of acquisition of IPR. If the IPR is sold within a year or within 2 to 5 years with enhanced WDA claimed, the balancing charge will be restricted to base WDA granted previously, and if the sale price is less the based tax written down value (TWDV), no balance allowance will be allowed. For IPRs that are disposed after 5 years, balancing charge will be restricted to the base WDA granted.

With regard to the enhanced WDA granted in respect of IPRs sold within a year, the entire amount will be deemed as income chargeable to tax in the year of sale and the balance of unclaimed enhanced WDA will be forfeited. As for IPRs sold within 2 to 5 years with enhanced WDA claimed, there will be no claw-back of enhanced WDA previously granted, but the balance of unclaimed enhanced WDA will be forfeited. For IPRs that are disposed after 5 years, no enhanced WDA granted will be clawed-back.

As for IPR that is sold within a year with cash payout claimed, the cash payout will be fully recovered by IRAS. For IPR that is sold within 2 to 5 years of claiming enhanced WDA, only the proportionate amount of cash payout will be recovered by the IRAS as follows:

$$\text{Amount to be recovered} = [(5 - \text{No. of completed years which the IPRs was held}) / 5] \times \text{cash payout}$$

The balancing adjustment on such IPR converted into cash payout is not applicable as any excess of allowance will be forfeited upon conversion. For IPRs that are disposed after 5 years with cash payout claimed, no claw-back will be made.

The claw-back provisions for IPRs are summarised in the table below:

	Disposal of IPR within 1 year	Disposal of IPR within 2 to 5 years	Disposal of IPR after 5 years
Base WDA	If sale price > TWDV, BC will be capped at WDA allowed and subjected to tax. If sale price ≤ TWDV, no BA will be allowed.		Compute BC
Enhanced WDA	Enhanced WDA granted previously will be deemed as income and subject to tax in the year of disposal. Balance WDA unclaimed will be forfeited	No claw-back of Enhanced WDA previously granted. Balance WDA unclaimed will be forfeited	No claw-back
Election of Cash Payout	Full cash payout will be recovered by IRAS	Proportionate amount of cash payout* will be recovered by IRAS	No claw-back
*Amount to be recovered = [(5 – No. of completed years which the IPRs was held) / 5] x cash payout			

Enhanced Deduction and Allowance Cap for Individual and Partnership

For an individual who carries on one or more trades or businesses through two or more firms (excluding partnerships) and has incurred qualifying expenditure on each of the 6 types of qualifying activities during the basis period for any YA between the YA 2011 and YA 2015 in respect of such firms for the purposes of those trades or businesses, the aggregate of the enhanced deductions or allowances for all such qualifying expenditure that may be allowed to him in respect of those trades or businesses will be restricted to the cap on each of the 6 types of qualifying activities for each YA.

Similarly, where a single partnership carries on one or more trades or businesses and has incurred qualifying expenditure on each of the 6 types of qualifying activities during the basis period for any YA between the YA 2011 and YA 2015 in respect of such firms for the purposes of those trades or businesses, the aggregate of the enhanced deductions or allowances for all such qualifying expenditure that may be allowed to all the partners in respect of those trades or businesses will be restricted to the cap on each of the 6 types of qualifying activities for each YA.

However, for partnership businesses with different composition of partners, they will be treated as separate and distinct partnership business entities and will have separate expenditure cap on each of the 6 types of qualifying activities for each YA.

2 Phase out of Industrial Building Allowance (IBA)

Industrial building allowance (IBA) will no longer be allowed to a person who incurs capital expenditure on or after 23 February 2010 on the construction or purchase of an industrial building or structure unless it satisfied the transitional rules and met the conditions for granting IBA on the capital expenditure incurred during a specified period on or after 23 February 2010. In addition, where an existing building or structure is not used by a person as an industrial building or structure as of 22 February 2010 and is subsequently used as an industrial building or structure, no IBA will be granted to him on such industrial building unless the industrial building or structure has only fallen into temporary disuse as of 22 February 2010 in accordance with Section 18(2) of the ITA.

However, IBA on qualifying capital expenditure incurred on the construction or purchase of industrial buildings or structures on or before 22 February 2010 by the existing claimants will, subject to existing IBA rules, continue to be allowed until such time the qualifying capital expenditure is fully written down, or the relevant building is disposed of, demolished or destroyed or otherwise ceases altogether to be used. In the latter mentioned situations, balancing adjustments shall also apply accordingly.

Transitional Rules and conditions for capital expenditure incurred on or before 22 February 2010, and on or after 23 February 2010

IBA (i.e. initial allowance and annual allowances) will continue to be allowed to a person who incurs capital expenditure on or after 23 February 2010 on:-

- (i) the construction of a building or structure; or
- (ii) the purchase of a new building or structure (including the purchase of a lease hold interest therein) and on any renovation or refurbishment works carried out on the building or structure upon purchase and up to the end of basis period for the YA 2016; or
- (iii) the extension works, renovation or refurbishment works on an existing industrial building or structure (not being an industrial building or structure as of 22 February 2010) up to the end of basis period for the YA 2016,

which has been approved on or before 22 May 2010 by the Minister to be an industrial building or structure for the purposes of a trade in intensive poultry production, or a project for the promotion of the tourist industry (other than a hotel) in Singapore, falling under Section 18(1)(f) or (i) of the ITA; or for prescribed services or industries falling under Section 18(1)(j) of the ITA as follows:-

- agriculture, horticulture or the farming of fish or other forms of aquatic life;
- repair or maintenance of aircraft;
- auctioning of pigs through electronic means;
- telecommunication services to the public;
- organisation or management of exhibitions and conferences;
- logistics services;
- postal services; and
- repair or maintenance of aircraft components.

In respect of capital expenditure incurred on or after 23 February 2010 on the purchase of an existing building or structure (including the purchase of a lease hold interest therein) which has been approved on or before 22 May 2010 by the Minister to be an industrial building or structure under Section 18(1)(f), (i) or (j) of the ITA, only annual allowance will be granted.

IBA (i.e. IA and/or AA), subject to the existing IBA rules, will also be allowed to a person who incurs capital expenditure on the construction or purchase of a building or structure and on extension works, renovation or refurbishment works on an existing building or structure which falls within the following scenarios:-

- (a) Purchase of an existing or a new industrial buildings or structures where the option to purchase was granted on or before 22 February 2010 or the agreement to purchase was signed on or before 22 February 2010.

- (b) Qualifying expenditure incurred up till the earlier of the date of Temporary Occupation Permit (TOP) or the last day of the basis period for YA 2016 on the construction of new industrial buildings or structures on land for which an application to bid, buy or lease the land from the Government was submitted on or before 22 February 2010; or for which an option or agreement to purchase or lease the land on which the industrial building is to be built was signed with the private land owner on or before 22 February 2010; and the development application to build the industrial buildings or structures on land is submitted to the Urban Redevelopment Authority (URA) by 31 December 2010.
- (c) Qualifying expenditure incurred up till the earlier of the date of TOP or the last day of the basis period for YA 2016 on the extension or alternation works to an existing industrial buildings or structures, or conversion works to an existing buildings or structures to convert the buildings or structures to industrial buildings or structures, for which a qualified person had been engaged on or before 22 February 2010 to carry out the works and the development application for such works is submitted to the URA by 31 December 2010.
- (d) Qualifying capital expenditures incurred up till the earlier of the date of completion of renovation works or the last day of the basis period for YA 2016 on renovation works (that do not require a development application) on existing industrial buildings or structures, or on existing non-industrial buildings or structures to convert them to industrial buildings or structure; and a building building/renovation contractor had been engaged on or before 22 February 2010 to carry out the renovation works.

Section 24 election

The election under Section 24 of the ITA will no longer be available to the transferor and transferee who are related, for the sale or transfer of an industrial building or structure where:

- (a) the option to purchase is granted on or after 23 February 2010; or
- (b) the agreement for sale or transfer is signed on or after 23 February 2010.

Consequently, balancing adjustment will be made on the transferor and the transferee will not be entitled to claim any IBA on the industrial building.

However, where an industrial building is transferred pursuant to a qualifying amalgamation under Section 34C of the ITA and the industrial building is transferred from an amalgamating company to an amalgamated company on the date of amalgamation and for which IBA had been made to the amalgamating company, the amalgamating and amalgamated companies are deemed to have made an election under Section 24 of the ITA. The deemed election shall continue to apply to such transfer of industrial building for amalgamations with the date of amalgamation on or after 23 February 2010. In such cases, balancing adjustment will not be applied on the amalgamating company and the amalgamated company will continue to be granted IBA based on current rules.

It is important to note that IBA will only continue to be allowed provided that the transfer of such industrial building or structure made pursuant to a qualifying amalgamation from an amalgamating company to the amalgamated company is in respect of which IBA has been allowed to the amalgamating company under Section 18C of the ITA on the date of amalgamation and the said industrial building or structure is used before the transfer by the amalgamating company and after the transfer by the amalgamated company in the production of income.

3 Land Intensification Allowance (LIA) Incentive

To promote the intensification of industrial land use for higher value activities, LIA, a more targeted scheme to support enhanced land productivity among industrial users has been introduced to replace IBA.

LIA is given on an approval basis to a qualifying person who incurs certain costs (such as design fees, piling, construction and renovations, stamp duties and other related costs) on the renovation or construction of a building or structure which meets prescribed criteria.

A person who intends to incur qualifying capital expenditure on the construction or renovation of a building or structure on industrial land (for which an application for planning permission or conservation permission is made to the competent authority in accordance with the Planning Act on or after 23 February 2010) to be used for purposes of a trade prescribed by regulations may apply between 1 July 2010 and 30 June 2015 (both dates inclusive) to the Minister or such person as he may appoint, for such construction or renovation to be approved for the purposes of claiming an allowance in respect of such expenditure incurred by him.

LIA will be allowed on the qualifying capital expenditure as follows:

- (a) Initial allowance of 25% on the qualifying expenditure; and
- (a) Annual allowance of 5% of the qualifying expenditure.

However, no annual allowance will be granted for any YA unless more than 80% of the total floor area of the building or structure is used by a single person or partnership for the purposes of the specified trade at the end of the basis period for that YA.

In addition, no annual allowance will be granted for any YA which is after 15 years from the YA in which an annual allowance was first made to the person who carried out the approved construction or approved renovation, notwithstanding that there may still be capital expenditure remaining unutilised after the 15 years.

Any qualifying capital expenditure incurred by a person on the approved construction or approved renovation prior to the commencement of his trade shall be deemed to have been incurred on the first day he carries on that trade.

Where a person fails to comply with any condition imposed at the time the building or structure is first used after the completion of the approved construction or approved renovation, an amount computed in accordance with the provisions in Section 18C(8)(a) of the ITA is to be deemed as the income of that person chargeable to tax for the YA in which the failure occurs; and the Minister or such person appointed by him may withdraw the approval granted.

The Comptroller is empowered to apportion the allowance to be made against different streams of income derived from carrying on the specified trade for any YA where one stream is chargeable to tax and the other is exempt from tax for that YA in such manner as may appear reasonable to him.

The qualifying criteria for LIA are as follows:

- (a) The user of the building or structure belongs to one of the following nine industry sectors:
 - (i) Pharmaceuticals,
 - (ii) Petrochemicals,
 - (iii) Petroleum,
 - (iv) Specialties,

- (v) Other Chemicals,
 - (vi) Semiconductor-Water fabrication,
 - (vii) Aerospace,
 - (viii) Marine and Offshore Engineering; and
 - (ix) Solar Cell Manufacturing.
- (b) The industrial land on which the building or structure is to be built is zoned as Business 1 or Business 2 (excluding Business 1 White and Business 2 White) under the URA Master Plan.
- (c) The building or structure meets the Gross Plot Ratio (GPR) benchmark relevant to the industry sector of the building user. The GPR benchmark is based on that applicable at the time the business submits to URA the development application for the building structure. To encourage intensification, the benchmarks for each industry sector will be set around the 75th percentile of actual GRPs for the sector.

The LIA incentive will be in place for 5 years and will be administered by the Economic Development Board (“EDB”).

4 Tax deduction for qualifying investments in qualifying start-up companies

The Government has introduced a new tax incentive for angel investors to invest in qualifying start-up companies and help them to grow. An individual may, between 1 July 2010 and 31 March 2015 (both dates inclusive), apply to the Minister or a person appointed by him to be approved as a qualifying person for the purposes of claiming deductions for expenditure incurred in making qualifying investments in qualifying start-up companies during the period between 1 July 2010 to 31 March 2015; or if the Minister or a person appointed by him so approves, during the period between 1 March 2010 to 30 June 2010.

Where the Minister or the appointed by him is satisfied that the individual possesses the necessary experience, skills or expertise to nurture and grow a qualifying start-up company, he may approve the individual as a qualifying person subject to such conditions as he may impose.

Under this new incentive, a qualifying person is required to invest at least \$100,000 into a qualifying start-up company or companies in a YA; and must directly and beneficially held the qualifying investment for 2 years from the relevant date (i.e. the date of last investment in the company within the period of one year from the date of first investment) in order for him to enjoy a tax deduction of his investment at the end of his second year of holding of such investment against the remainder of his statutory income (i.e. after the deduction of unabsorbed trade losses for previous YAs and the amount incurred for current year). The amount of deduction allowable to a qualifying person will be ascertained as follows:

$$50\% \times A,$$

where A is the aggregate amount of expenditure incurred by the qualifying person on the qualifying investment in a qualifying start-up company or companies for each YA or \$500,000, whichever is the lower.

For the purpose of computing the aggregate amount of expenditure incurred by the qualifying person, the followings expenditure incurred in respect of qualifying investment shall be excluded:

- (a) if the total amount incurred on the date of first investment and within one year from that date (but excluding any expenditure incurred on qualifying investment that is disposed of during the relevant holding period) is less than \$100,000;
- (b) to the extent that it is matched by any investment in the company by the company known as SPRING SEEDS Capital Pte Ltd under the SPRING Start-up Enterprise Development Scheme administered by the second-mentioned company or any other scheme designated by the Minister or such person as he may appoint;
- (c) if all the shares which are the subject of the qualifying investment are disposed of during the relevant holding period;
- (d) where the loan which is the subject of the qualifying investment is partially or fully repaid during the relevant holding period;
- (e) if all the share capital of the qualifying start-up company is acquired by a person or partnership other than the qualifying person, or the qualifying start-up company is wound up at any time during a period of 2 years from the relevant date;
- (f) if the qualifying person is not a member of the board of directors of the qualifying start-up company during the relevant holding period;
- (g) if the qualifying start-up company is not resident in Singapore for the years of assessment relating to the basis periods falling within the relevant holding period; or
- (h) the qualifying person has acquired more than 50% of the issued share capital, or has provided more than 50% of the debt capital, of the qualifying start-up company during the relevant holding period.

Where a part of a qualifying investment (being shares) made by a qualifying person in a qualifying start-up company is disposed of within the relevant holding period, the amount of expenditure incurred in respect of that part of the investment that is disposed of is to be excluded from the aggregate amount of expenditure incurred by him for the purposes of computing the amount of deduction allowable.

Any amount of deduction for any qualifying person for any YA which is not utilised in that YA as a result of insufficient statutory income (after deduction of qualifying losses under sec 37(3)(a)) will be disregarded and not available as a deduction against his income for any subsequent YA.

Where a qualifying person who has been allowed a deduction in respect of any qualifying investment (being shares) made by him, disposes of such investment or part thereof after 2 years from the relevant dates, and the gains or profits from the disposal of those shares are chargeable to tax, then the amount of deduction which has been allowed to him in respect of those shares in YA under this section shall not be deductible under Section 14 as part of the cost of his investment in computing the gains or profits from the disposal which is chargeable to tax. This is to ensure that the qualifying person cannot claim his cost of investment twice.

“date of first investment” in relation to a qualifying investment by a qualifying person in a qualifying company means –

- (a) unless paragraph (b) applies, the date on which a qualifying investment is first made by the qualifying person in the qualifying start-up company since he was approved as such under subsection (2); or
- (b) if approval has been obtained under Section (4)(a)(ii) of the ITA and the qualifying person has made at least one qualifying investment in the qualifying start-up company during the period between 1 March 2010 and 30 June 2010, the date of that qualifying investment or the first of such qualifying investments

“qualifying investment” in relation to a qualifying start-up company means:-

- (a) the acquisition using cash of –
 - (i) new shares not being of a preference nature, issued by the company;
 - (ii) new shares of a preference nature issued by the company which do not fall within (iii) and which do not provide for payment of a fixed or guaranteed dividend for the relevant holding period;
 - (iii) new redeemable shares of preference nature issued by company which do not carry a right to redemption during the relevant holding period and which do not provide for payment of a fixed or guaranteed dividend for the relevant holding period, other than shares which are issued pursuant to any employee stock option or share award scheme or any conversion of any loan or debt securities; or
- (b) the provision of convertible loans of cash to the company where there is no provision for interest payment for the relevant holding period or loan repayment during the relevant holding period.

“qualifying start-up company” means a company which is not one limited by guarantee and which –

- (a) on the date of first investment, was incorporated in Singapore for 3 years or less and whose shares are not listed on any stock exchange in Singapore or elsewhere;
- (b) on the date of first investment, does not have any shareholder who is a relative of the qualifying person;
- (c) on the date of first investment, has more than 50% of its total issued share capital beneficially held by no more than 20 individual shareholders (excluding any qualifying person);
- (d) has no more than 25% of its issued share capital or 25% of its debt capital beneficially held by the qualifying person (including any of his relatives) within a period of 2 years prior to the date of first investment; and
- (e) which, during the relevant holding period, does not engage in any activity specified by the Minister or such person as he may appoint for the purposes of this section.

“relative”, in relation to any individual, means —

- (a) his spouse;
- (b) his children, step-children, grandchildren, step grandchildren and their spouses;
- (c) his parents, including step-parents;
- (d) his grandparents, including step-grandparents;
- (e) his parents-in-law, including step-parents-in-law;
- (f) his brother, step-brother, sister, step-sister and their spouses and children;
- (g) his spouse’s grandparents, including step-grandparents;
- (h) his spouse’s brother, step-brother, sister, step-sister and their spouses and children;
- (i) his parent’s brother, step-brother, sister, step-sister and their spouses;
- (j) his parent-in-law’s brother, step-brother, sister, stepsister and their spouses;
- (k) the children of the brother, step-brother, sister or stepsister of his parent or step-parent, including stepchildren, and their spouses;
- (l) the children of the brother, step-brother, sister or stepsister of his parent-in-law or step-parent-in-law, including step-children, and their spouses;
- (m) the children of his brother, step-brother, sister or stepsister, including step-children, and their spouses; and
- (n) the children of his spouse’s brother, step-brother, sister or step-sister, including step-children, and their spouses;

In the above definition of “relative”, relationships that may be established by blood may also be established by adoption in accordance with any written law relating to the adoption of children.

“relevant date” in relation to a qualifying person making a qualifying investment in a qualifying start-up company means the date on which the last qualifying investment is made by the qualifying person in that company within one year from the date of first investment.

“relevant holding period” in relation to a qualifying person making a qualifying investment in a qualifying start-up company means the period commencing from the date of first investment in the qualifying start-up company to the end of the 2 year period from the relevant date.

This new incentive will be administered by SPRING Singapore.

5 Merger & Acquisition (M&A) allowance and stamp duty remission for qualifying M&A deals

To encourage companies to consider M&A as a strategy for growth and internationalisation, the Minister has introduced a new M&A allowance scheme and a stamp duty relief scheme to help defray a port of the acquisition costs. Under this new incentive,

- (a) qualifying M&As executed from 1 April 2010 to 31 March 2015 (both dates inclusive) will be granted an M&A allowance equivalent to 5% of the value of the acquisition, subject to a cap of \$5 million per YA. The allowance will be written down equally over 5 years; and
- (b) stamp duty payable on the transfer of unlisted shares for qualifying M&A executed from 1 April 2010 to 31 March 2015 (both dates inclusive), subject to a capped of \$200,000 per year, will also be remitted.

The IRAS will release details of the M&A allowance and stamp duty relief.

Meanwhile, full stamp duty on such transfers of unlisted shares will continue to be payable on all transfers of unlisted shares until details of the scheme including the definition of qualifying M&A deals are finalised. IRAS will refund stamp duty paid if a deal, executed on and after 1 April 2010 but before the finalisation of the rules, can satisfy the finalised rules.

Contacts

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