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SINGAPORE BUDGET 2018 – NEW TAX CHANGES TO ENCOURAGE INNOVATION & THE USE OF INTELLECTUAL PROPERTY RIGHTS

1. Introduction

With the expiry of the Production and Innovation Credit ("PIC") scheme this year, small businesses that wish to tap into the tax incentives available for embracing technology and innovation through the use of intellectual property rights ("IPRs") may now find some relief in the prospective tax changes announced in the recent Budget 2018. Having identified "pervasive innovation" as the first key contribution to a productive and competitive economy, Finance Minister Heng Swee Keat has now laid out two important tax changes that aim to support predominantly small and medium businesses in: (1) building their own innovations; and (2) buying and using new innovative solutions.[1]

In relation to the former, in order to help companies build and protect their IPRs, the Budget 2018 proposes to double the percentage of total tax deduction from 100% to 200% for qualifying IP registration fees (subject to an expenditure cap).[2] At the same time, with regard to the latter, tax deductions on licensing payments for the commercial use of IPRs will also be enhanced.[3] We set out below a brief explanation of these upcoming tax changes and how they may benefit smaller businesses.

2. Enhanced Tax Deduction for Qualifying IP Registration Costs

a) Extended availability of 100% base deduction till YA2025

Under Section 14A(1) of the Income Tax Act ("ITA"), patenting costs and other "qualifying" IP registration costs (which include the official fees and professional fees for registering trade marks, designs, and plant varieties)[4] incurred during certain stipulated periods of time are subject to a base deduction of 100%. Prior to the Budget 2018, these qualifying periods were limited to the Year of

[1] Budget 2018 Speech, paragraphs B12.a.i, B15, B18-19.
[2] Ibid, para B19.a.
[3] Ibid. para B18.b.
[4] S 14A(6) of ITA

Assessment ("YA") 2020. However, the Finance Minister has announced in the recent Budget that the availability of this base deduction will be extended to YA2025.

	Before Budget 2018	After Budget 2018
Patents	1 June 2003 to last day of basis period for YA2010	1 June 2003 to last day of basis period for YA2025
Trade Marks, Designs, and Plant Varieties	Between YA2011 and YA2020	Between YA2011 and YA2025

Table 1. Comparison Between The Qualifying Periods Before and After The Budget 2018

b) <u>Changes in enhanced tax deduction</u>

In addition to this (now extended) base deduction, to provide further incentives for businesses to invest in innovation, the same qualifying IP registration costs may also be subject to an enhanced tax deduction. Prior to YA2018, this further incentive came in the form of an additional 300% tax deduction under the PIC scheme. However, upon its expiry this year, the Minister has introduced a new enhanced tax deduction of 100% in the recent Budget. This makes the total tax deduction available to qualifying IP registration costs 200%, subject to an expenditure cap of SGD 100,000.[5] This expenditure cap, according to the Finance Minister, is intended to "[ensure] that smaller businesses will benefit more from this measure."[6]

	YA2011-2018	YA2019-2025
Base deduction	100%	100%
Enhanced deduction	300%	100%
Total tax deduction	400%	200%
Expenditure cap limit?	Yes	Yes
Deduction on balance of costs exceeding the cap	100%	100%

Table 2. Comparison Between The Amount of Tax Deduction Before and After The Budget 2018

3. Enhanced Tax Deduction for IP In-Licensing

After the expiry of the PIC scheme, IP licensing expenditure incurred after YA2018 for the purposes of a qualifying research and development ("R&D") project may only be subject to a 100% tax deduction under Section 14 or 14D of the ITA. However, the recent Budget has announced that this tax deduction will be increased to 200%, on up to SGD 100,000 of qualifying IP licensing

[5] Ibid.
[6] Supra note 1, B18.b.ii.

expenditure.[7] In addition, for licensing expenditure in excess of this cap, the 100% tax deduction will continue to apply.

Despite this proposed general enhancement, it is important for small businesses[8] that wish to buy or use new innovative solutions to take note of the ***various exclusions*** from the scope of this tax incentive. Some examples are payments made for the use of trade marks per se, legal fees and other costs related to the licensing of IPRs, and expenditure on the transfer of ownership of the rights.[9]

4. Conclusion

It remains to be seen how effective these proposed tax incentives will be in replacing the PIC scheme and promoting innovation and technological competitiveness within Singapore economy moving forward. However, with the explicit aim of becoming a "Global-Asia node of technology, innovation and enterprise,"[10] the continuing significance of IP, particularly for small businesses in Singapore, has now been somewhat strengthened by the recent announcements in the Budget 2018.

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[7] Ibid, B18.b.1; Annex A-5 to The Budget 2018 Speech, pages 2-3.
[8] Again, as indicated by the Finance Minister, the expenditure cap for this new tax measure is intended to ensure that small businesses benefit more. See supra note 8.
[9] See ss 14, 14D, and 19B of ITA.
[10] Supra note 1, para B13.