GATEWAY LAW CORPORATION

Advocates and Solicitors | Notary Public | Commissioners for Oaths
Patent, Design and Trade Mark Agents

39 Robinson Road
#20-03
Robinson Point
Singapore 068911
Telephone: (65) 62216360
Facsimile: (65) 62216375

RECENT UPDATES ON THE SINGAPORE'S PRODUCTIVITY AND INNOVATION CREDIT ("PIC") SCHEME

A. *Overview*

The Productivity and Innovation Credit ("**PIC**") Scheme was first introduced in the Singapore Budget in 2010, and until recently was enhanced in each succeeding Budget announcement. The PIC Scheme initially provided enhanced tax deductions for investments in innovation and productivity.

Under the PIC, businesses were then also allowed an option to convert their expenditure under the Qualifying Activities into a non-taxable cash payout. For Years of Assessment (YA) 2011 and 2012, businesses could opt to convert up to a combined cap of S$200,000 qualifying expenditure for all of the Qualifying Activities into a cash payout, at a conversion rate of 30%. A higher cash conversion rate of 60% was announced in the Singapore Budget 2012 for YAs 2013 to 2015. In the Singapore Budget 2016, it was however announced that the cash payout rate under the PIC will be lowered from the current 60% to 40%, for expenditures incurred on or after 1 August 2016.

The enhancement introduced in 2013 allowed qualifying businesses that spent a minimum of S$5,000 in PIC activities in a year to receive a cash bonus equivalent to the amount spent. This bonus was capped at S$15,000 per year, up to YA 2015.

The 2014 enhancement came in the form of a new "PIC+ Scheme", which was introduced in the Budget 2014 to provide further support to Small and Medium Enterprises ("**SMEs**") who were making more substantive investments to transform their businesses. The expenditure cap for each qualifying activity was raised to S$600,000 annually, allowing SMEs to claim enhanced tax deductions of up to S$1.8 million per activity between YA 2016 and YA 2018.

For further details about the previous PIC benefits, namely the 400% tax deductions/allowances, the cash payout option, the PIC Bonus as well as the PIC+ Scheme, please refer to our earlier write-ups on the Scheme, which can be found at:

i. http://www.gateway-law.com/newsletter/2012-1.pdf
ii. http://www.gateway-law.com/newsletter/2013-1.pdf
iii. http://www.gateway-law.com/newsletter/2014-1.pdf

B. *Introduction of PIC Cash Payout e-Services @mytax.iras.gov.sg*

A further e-Service, the "View PIC Cash Payout Application Status", was launched on 10 February 2015 in response to the public's feedback on the on-going PIC Scheme. Its aim was to facilitate and expedite the application of the Scheme.

A person who was authorised for "PIC Cash Payout Matters" via the e-Services Authorisation System ("**EASY**", in short) could log into the portal at mytax.iras.gov.sg and select the link "View PIC Cash Payout Application Status", to check the company's PIC application status. A sole proprietor could also log into mytax.iras.gov.sg directly, to check the PIC cash payout application status without any EASY authorisation.

One could also view the status of all applications made for two (2) future YAs, and also the current YA and the previous YA. For example, if one logs in on 1 March 2016, on can now view the status of applications for YAs 2015 to 2018, regardless of whether these applications were originally made via the e-Services offering.

Another useful feature introduced by the e-Service offerings is that it contained a "save draft" function that allowed the taxpayer to key in relevant information, but still save the application as a draft until it was ready for eventual submission to IRAS.

C. *New Penalties Introduced*

Given the popularity of the Scheme in recent years, abuses of the Scheme have also come to light. IRAS have signalled that they do consider any non-compliance or abuse of the PIC Scheme, a serious matter. Offenders convicted of PIC fraud will have to pay a penalty of up to four (4) times the amount of cash payout fraudulently obtained, and was also liable to be fined of up to S$50,000 and/or imprisonment of up to five (5) years. Liability for PIC offences also extended to any person who willfully assisted another person to obtain a cash payout or PIC bonus, which he or she is not entitled to.

(i) *Examples of Abusive PIC Arrangements and Anti-Abuse Measures*

Examples of abuses of PIC Scheme include claiming for the amount of goods and/or services that exceeds their open market value for no *bona fide* commercial reason, or entering into a PIC arrangement without *bona fide* commercial reasons. In such instances, the IRAS will deny PIC benefits arising from abusive arrangements, either partially or fully, depending on the circumstances of the case at hand.

In addition, penalties will be imposed on intermediaries (including vendors and consultants) who know or have reasonable grounds to believe that the arrangements they are promoting are abusive PIC arrangements. Convicted offenders will now be liable to pay a fine of up to $10,000, and/or imprisonment of up to three (3) years.

(ii) *Voluntary Disclosure of Errors in Exchange for Reduced Penalties*

Further, IRAS has now introduced a Voluntary Disclosure Programme aimed at encouraging taxpayers who have made errors in their tax returns to voluntarily come forward and correct their errors, in order to qualify for a reduced penalty.

As such, taxpayers who have made errors in claiming for their PIC benefits are also strongly encouraged to disclose the said errors to IRAS, by submitting the PIC Disclosure of Error Form (a soft copy of which is available on the IRAS website). In this regard, taxpayers who have made genuine errors will thus not be unduly penalised.

The Scheme continues to evolve with each Budget announcement, but remains a very popular Scheme which many companies in Singapore have availed themselves of.

D. *Costs incurred in certain proceedings at the Intellectual Property Office of Singapore are covered by PIC*

Recently, the Intellectual Property Office of Singapore ("**IPOS**") has clarified that costs incurred in certain contentious proceedings and hearings at IPOS would now also be covered by the PIC Scheme.

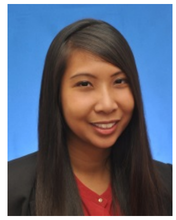
Previously, businesses could enjoy non-taxable cash payouts or tax savings in the form of deductions and/or allowances in respect of the *registration* of patents, trade marks, designs and plant varieties only. Now, IRAS allows further costs incurred by businesses to be claimed under the PIC Scheme as well, which costs may include costs incurred in trade mark oppositions, invalidations, and revocations in attempts to overcome citations by the Registrar, costs incurred in defending the trade mark application in an opposition after acceptance, and costs incurred in *ex parte* hearings.

Notwithstanding the above, businesses should note that costs incurred for opposition, invalidation and revocation proceedings that they were party to *prior* to the application for registration of their IP under the PIC Scheme will not fall within the scope of the Scheme. Similarly, costs in respect of the above-mentioned proceedings that are incurred after the application for registration has proceeded to registration or has been refused by the Registrar, will not be covered.

Should you have any queries as to how this update may affect your organisation or require further information, please do not hesitate to email us.

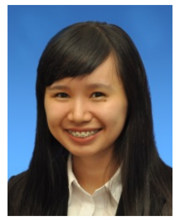
Max Ng
Managing Director
Gateway Law Corporation

Email: max.ng@gateway-law.com



Amira Nabila Budiyano
Senior Associate
Gateway Law Corporation

Email: amira.budiyano@gateway-law.com



Tran Le Luu Phuong
Associate
Gateway Law Corporation

Email: phuong.tran@gateway-law.com

This article is intended to highlight the salient issues relating to the Productivity and Innovation Credit Scheme that has been introduced in Singapore, and it is not intended to be comprehensive nor should it be construed as legal advice. This article was originally published on 5 April 2016, and has been updated to include recent developments.