

**Income Tax (Concessionary Rate of Tax for Intellectual Property Income)
Regulations 2021**

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THE SCHEDULE

No. S 36

**INCOME TAX ACT
(CHAPTER 134)**

**INCOME TAX
(CONCESSIONARY RATE OF TAX FOR
INTELLECTUAL PROPERTY INCOME)
REGULATIONS 2021**

In exercise of the powers conferred by section 43ZI(11) of the Income Tax Act, the Minister for Finance makes the following Regulations:

Citation and commencement

1. These Regulations are the Income Tax (Concessionary Rate of Tax for Intellectual Property Income) Regulations 2021 and come into operation on 22 January 2021.

Definitions

2.—(1) In these Regulations —

“approval date”, in relation to an approved company, means the date on which the company is approved as such;

“cost-sharing agreement” means any agreement or arrangement entered into by an approved company and one or more other persons to share the expenditure of research and development activities to be carried out under the agreement or arrangement, whether the agreement or arrangement was entered into by the approved company before, on or after it became an approved company;

“elected qualifying IPR” means any qualifying IPR elected or treated as elected by the approved company for a year of assessment under section 43ZI(7) or (8) of the Act;

“family of qualifying IPRs” means 2 or more intellectual property rights mentioned in paragraphs (a), (b) and (c) of the definition of “qualifying IPR” that are interlinked;

“qualifying intellectual property income”, in relation to an approved company, means royalties or other income receivable by the approved company, in so much of a basis period for a year of assessment as falls within the tax relief period for that approved company, as consideration for the commercial exploitation of an elected qualifying IPR;

“qualifying intellectual property right” or “qualifying IPR” means any of the following:

- (a) any patent under the Patents Act (Cap. 221) or the equivalent law of any country or territory (called in these Regulations a patent);
- (b) an application for a patent under the Patents Act or the equivalent law of any country or territory (called in these Regulations a patent application);
- (c) any copyright subsisting in software by virtue of the Copyright Act (Cap. 63) or the equivalent law of any country or territory (called in

these Regulations a software copyright),
and includes a family of qualifying IPRs.

(2) In the definition of “family of qualifying IPRs” in paragraph (1), a qualifying IPR (*A*) is interlinked with another qualifying IPR (*B*), if —

- (a) it is reasonable to conclude that it is not possible to identify which part of a specific source of income for the whole of the basis period (or the part of the basis period) concerned is derived solely from using *A*, and which part of such income is derived solely from using *B*;
- (b) it is reasonable to conclude that it is not possible to identify which part of any expenditure incurred in the research and development resulting in the creation of those rights is incurred solely in the creation of *A*, and which part of such expenditure is incurred solely in the creation of *B*; or
- (c) *A* and *B* are part of a chain of 3 or more qualifying IPRs each of which is interlinked with another in the manner described in sub-paragraph (a) or (b).

(3) In these Regulations, an approved company ceases to have a qualifying IPR if —

- (a) for a qualifying IPR that is a software copyright — the approved company sells, transfers or assigns the software copyright or the copyright expires;
- (b) for a qualifying IPR that is a patent —
 - (i) the patent comes to an end without being subsequently revived;
 - (ii) the approved company sells, transfers or assigns the patent; or
 - (iii) a final order, judgment or decision revoking the patent or confirming such revocation has been made by a court or other competent authority under the Patents Act or the equivalent law of any country or territory;
- (c) for a qualifying IPR that is a patent application —
 - (i) the approved company withdraws or abandons the patent application;
 - (ii) the approved company sells, transfers or assigns the patent application; or
 - (iii) a final order, judgment or decision refusing the patent application or confirming such refusal has been made by a court

or other competent authority under the Patents Act or the equivalent law of any country or territory; and

- (d) for a qualifying IPR that is a family of qualifying IPRs — the approved company ceases to have every qualifying IPR in the family of qualifying IPRs.

(4) For the purposes of these Regulations, an agreement or arrangement is entered into by an approved company and another person at arm's length if the conditions of the agreement or arrangement do not differ from conditions that would be made or imposed if the approved company and that other person were not related parties and dealing independently with one another in comparable circumstances.

(5) For the purposes of these Regulations, a person (*X*) is a related party of an approved company (*Y*) if —

- (a) *X*, directly or indirectly, controls *Y*;
- (b) *Y*, directly or indirectly, controls *X*; or
- (c) *X* and *Y* are, directly or indirectly, controlled by a common person.

Percentage and computation of qualifying intellectual property income subject to concessionary rate of tax

3.—(1) The percentage of qualifying intellectual property income derived by an approved company from each elected qualifying IPR in the part of a basis period for a year of assessment that falls within its tax relief period (called in these Regulations the subject basis period and subject year of assessment, respectively), to which the concessionary rate of tax in section 43ZI(5) of the Act applies, is determined in accordance with the formula specified in Part 1 of the Schedule.

(2) Despite paragraph (1), where the subject basis period is a basis period specified in Division 1 or 2 of Part 2 of the Schedule, then the percentage mentioned in that paragraph is determined in accordance with the requirements of that Part.

(3) In determining the income of the approved company subject to tax at a concessionary rate under section 43ZI of the Act, the Comptroller must have regard to —

- (a) any expenses, allowances and donations allowable under the Act as are, in the Comptroller's opinion, to be deducted;
- (b) the manner and extent to which any losses arising from deriving the qualifying intellectual property income may be deducted under the Act; and

- (c) the allowances under sections 18C to 22 of the Act attributable to the qualifying intellectual property income, whether or not a claim for the allowances has been made.

Change in composition of elected family of qualifying IPRs

4.—(1) This regulation applies where an approved company elects or is treated as having elected a family of qualifying IPRs for a year of assessment for the purposes of section 43ZI of the Act.

(2) The approved company must provide, in the tax return for that year of assessment, such information as the Comptroller may reasonably require of —

- (a) any qualifying IPR that ceases to be part of the elected family of qualifying IPRs during the basis period; and
- (b) any qualifying IPR that becomes part of the elected family of qualifying IPRs during the basis period.

Deemed income

5.—(1) This regulation applies where —

- (a) an approved company has been assessed to tax under section 43ZI(1) of the Act for qualifying intellectual property income of the approved company that is derived from a patent application (not being a patent application in relation to a software in which copyright subsists); and
- (b) the Comptroller discovers, in any year of assessment (called in this regulation the discovery year of assessment), that the approved company has ceased to have the patent application.

(2) The approved company is deemed to have derived, in the basis period for the discovery year of assessment, an amount of income chargeable to tax at the rate of tax under section 43(1)(a) of the Act.

(3) The amount of deemed income in paragraph (2) is derived by the formula

$$(A - B) \times \frac{(M - N)}{M},$$

where —

- (a) A is the sum of the qualifying intellectual property income derived by the approved company from the patent application in the basis period for each year of assessment before the discovery year of assessment, that has been subject to tax at the concessionary rate under section 43ZI(1) of the Act,