



Suruhanjaya Sekuriti
Securities Commission

**GUIDELINES FOR THE ANNUAL
CERTIFICATION FOR TAX INCENTIVES
FOR THE VENTURE CAPITAL INDUSTRY**
(Amended - Effective 2007)

GUIDELINES FOR THE ANNUAL CERTIFICATION FOR TAX INCENTIVES FOR THE VENTURE CAPITAL INDUSTRY

[Pursuant to the Income Tax (Exemption)(No. 11) Order 2005 as amended by the Income Tax)(Exemption) (Amendment) (No. 2) Order 2006 and the Income Tax (Deduction for Investment in a Venture Company) Rules 2005]

1. DEFINITION

1.1 In these Guidelines:

"early stage financing" means a financing provided by a company or an individual to a venture company as –

- (a) capital expenditure or working capital to initiate commercialisation of a technology or product;
- (b) additional capital expenditure or additional working capital to increase production capacity, marketing or product development; or
- (c) an interim financing for the purpose of being listed on the official list of a stock exchange;

"individual" means an individual who has a business source;

"related company", in relation to a company, means a company –

- (a) the operations of which are or can be controlled either directly or indirectly, by the first mentioned company;
- (b) which controls or can control, either directly or indirectly, the operations of the first mentioned company;
- (c) the operations of which are or can be controlled, either directly or indirectly, by a person or persons who control or can control, either directly or indirectly, the operations of the first mentioned company ;
- (d) which beneficially owns, either directly or indirectly, at least twenty per cent of the issued share capital of the first mentioned company; or
- (e) whose issued share capital of at least twenty per cent is beneficially owned, either directly or indirectly, by the first mentioned company;

"seed capital financing" means a financing provided by a company or an individual to a venture company for the purposes of research, assessment and development of an initial concept or prototype. Generally the venture company's organisational structure has not been formalised;

"start-up financing" means a financing provided by a company or an individual to a venture company for product development and initial marketing. Generally the venture company is in the process of formalising the

organisational structure, or if the organisational structure has been formalised, the venture company has not sold its products commercially;

"venture capital company" means a company incorporated under the Companies Act 1965, investing in a venture company in the form of seed capital, start-up or early stage financing and that is registered with the Securities Commission;

"venture company" means a company incorporated under the Companies Act 1965, which is –

(a) resident in Malaysia for the basis year for a year of assessment; and

(b) involved in utilising the financing at seed capital, start-up or early stage financing for products or activities promoted by the Government as stated under clause 5.1(A)(i) of these Guidelines.

2. EFFECTIVE DATE

Incentive for Tax Exemption

2.1 The incentive for tax exemption is provided under the Income Tax (Exemption)(No.11) Order 2005, which is effective from the year of assessment 2003. From the year of assessment 2007, the incentives for tax exemption are provided under the Income Tax (Exemption) (No. 11) Order 2006 as amended by the Income Tax (Exemption) (Amendment) (No . 2) Order 2006.

Incentive for Tax Deduction

2.2 The incentive for tax deduction is provided under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005, which is effective from the year of assessment 2003.

3. ELIGIBILITY AND CERTIFICATION FOR TAX INCENTIVE

- 3.1 A venture capital company (VCC) may apply for tax exemption under the Income Tax (Exemption)(No.11) Order 2005.
- 3.2 An individual or a company, including a VCC, may apply for tax deduction under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005.
- 3.3 If an applicant has applied for tax exemption under the Income Tax (Exemption)(No.11) Order 2005 and has received certification from the SC, the applicant may not apply for tax deduction under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005 for the whole of the exemption period.
- 3.4 If an applicant has applied for tax deduction under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005 and has received certification from the SC, the applicant may not apply for tax exemption under the Income Tax (Exemption)(No.11) Order 2005.

4. TAX INCENTIVES

Incentive for Tax Exemption

- 4.1 Upon fulfilling the criteria stipulated under clauses 5.1(A) and 5.1(B) of these Guidelines, a VCC can apply for **tax exemption** from payment of income tax–
 - (i) in respect of the statutory income on all sources of income, **other than** interest income arising from savings or fixed deposits and profits from Syariah-based deposits;
 - (ii) for ten (10) years of assessment or the years of assessment equivalent to the life of the fund established (if any), **whichever is the lesser**;
 - (iii) commencing from the year of assessment in the basis period the VCC commences business or the year of assessment of the coming into effect of the Income Tax (Exemption) (No.11) Order 2005, **whichever is the later**; and
 - (iv) where a VCC incurs a loss from the disposal of shares in a venture company in the basis period for any year of assessment within the exempt period, such loss shall be carried forward to the post-exempt period.

Incentive for Tax Deduction

- 4.2 In ascertaining the adjusted income, an individual or a company, including a VCC, may apply for **tax deduction** for an amount equivalent to the value of the investment made, upon fulfilling the criteria stipulated under clauses 5.1(A) and 5.1(C) of these Guidelines.

5. QUALIFYING CRITERIA

5.1 The tax incentives referred to in clause 4 may be given to an applicant upon fulfilling the following criteria:

(A) **Common Qualifying Criteria for Tax Exemption and Tax Deduction Incentive**

- (i) The venture companies must be involved in utilising the financing at seed capital, start-up or early stage for–
- (a) products or activities promoted under the Promotion of Investments Act 1986 such as the following:
 - Pioneer status or investment tax allowance incentive granted by Malaysian Industrial Development Authority (MIDA) or Ministry of International Trade and Industry (MITI);
 - High technology incentives granted by MIDA;
 - Multimedia Super Corridor (MSC) status granted by Multimedia Development Corporation (MDeC); and
 - Small and Medium Industries Development Corporation (SMIDEC);
 - (b) technology-based activities listed under the MESDAQ Market of Bursa Malaysia;
 - (c) products or activities which have been developed under the Industrial Research and Development Grant Scheme, granted by the Ministry of Science, Technology and Innovation (MOSTI) or
 - (d) products or activities which have been developed under the MSC Research & Development Grant Scheme granted by MDeC.
- (ii) For products or activities that are not on the technology-based activities listed under the MESDAQ Market of Bursa Malaysia, any early stage financing must be provided from the seed capital or start-up stage where such early stage financing is provided as –
- (a) additional capital expenditure or additional working capital to increase production capacity, marketing or product development; or
 - (b) an interim financing for the purpose of being listed on the official list of a stock exchange.
- (iii) In relation to a company, the investment should **not** be made in a venture company, which is a related company at the point of first investment. This limitation does not apply to subsequent investments in that venture company for the purposes of additional capital.

(B) **Additional Qualifying Criteria for Tax Exemption Incentive**

- (i) At least 70% of the invested funds for the year of assessment must be invested in venture companies and in the form of seed capital, start-up or early stage financing, or
- (ii) From the year of assessment 2007, at least 50% of the invested funds for the year of assessment must be invested in venture companies and in the form of seed capital.
- (iii) The above percentages for the year of assessment, are based on the following:
 - (a) The amount of funds invested in venture companies as at end of previous year of assessment;
 - (b) The amount of funds invested in venture companies as at end of the current year of assessment;
 - (c) The amount of divestments made as at end of previous year of assessment;
 - (d) The amount of divestments made as at end of the current year of assessment.

(C) **Additional Qualifying Criteria for Tax Deduction Incentive**

- (i) A company or an individual must be a resident in Malaysia and invests in a venture company.
- (ii) Investments made in the venture company shall be certified by the SC and must be–
 - (a) in the form of the holding of shares which at the time of acquisition are not listed for quotation in the official list of a stock exchange; and
 - (b) made at least two years prior to the date of its disposal.

6. APPLICATION PROCEDURE

- 6.1 To obtain certification for the tax incentives, the applicant must apply to the SC on an **annual** basis.
- 6.2 Application must be made to the SC by completing the attached form (**see Appendix 1**) entitled "Application Form for Certification of Tax Incentive for the Venture Capital Industry".

6.3 The **first application** form submitted to the SC must be accompanied with the following documents where applicable:

- (i) A copy of the certification letter on "Pioneer Status" or "Investment Tax Allowance", or other supporting documentary evidence for the purpose of compliance with clause 5.1(A)(i);
- (ii) Ownership structure (name of shareholders and percentage of shareholding) of the applicant;
- (iii) Organisation structure (with details of staff members indicated) of the applicant;
- (iv) A copy of the applicant's Memorandum of Association and Articles of Association or other constituent documents;
- (v) Latest audited Balance Sheet of the applicant;
- (vi) Latest audited Profit and Loss Statement of the applicant; and
- (vii) Details on divestment(s) in venture companies, specifying the investment date(s), divestment date(s), exit mechanism(s) used and reason(s) for divestment(s).

6.4 **Subsequent application** should include the following documents where applicable:

- (i) A copy of the certification letter on "Pioneer Status" or "Investment Tax Allowance", or other supporting documentary evidence for the purpose of compliance with clause 5.1(A)(i) if not submitted previously under clause 6.3(i);
- (ii) Ownership structure (name of shareholders and percentage of shareholding) of the applicant if there are changes since the previous submission;
- (iii) Organisation structure (with details of staff members indicated) of the applicant if there are changes since the previous submission;
- (iv) A copy of the applicant's Memorandum of Association and Articles of Association or other constituent documents if there are changes since the previous submission;
- (v) Latest audited Balance Sheet of the applicant;
- (vi) Latest audited Profit and Loss Statement of the applicant; and
- (vii) Details on divestment(s) in venture companies, specifying the investment date(s), divestment date(s), exit mechanism(s) used and reason(s) for divestment(s).

- 6.5 All application forms and other additional documents as requested in these Guidelines and form must be submitted to the SC at the following address:

**Market Development Department
Securities Commission
No. 3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
Tel: (603) 6204 8000
Fax: (603) 6201 5082**

- 6.6 For purposes of this application, the SC may request for additional information.
- 6.7 Once the applicant has obtained a certification from the SC, the applicant must attach the letter of certification to the income tax return form for submission to the Inland Revenue Board.