



VENTURE CAPITAL TAX INCENTIVES GUIDELINES

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1.0 INTRODUCTION

- 1.01 The *Venture Capital Tax Incentives Guidelines* is issued by the SC under section 377 of the *Capital Markets and Services Act 2007*. These guidelines supersede the *Guidelines for Annual Certification for Tax Incentives for the Venture Capital Industry*.
- 1.02 The SC, under the *Income Tax (Exemption)(No. 11) Order 2005* as amended by the *Income Tax (Exemption)(Amendment)(No. 2) Order 2006* and *Income Tax (Exemption)(Amendment) Order 2009*, and under the *Income Tax (Deduction for Investment in a Venture Company) Rules 2005*, has been given the mandate to assess and certify applications for tax incentives for the venture capital industry.
- 1.03 These guidelines, as amended from time-to-time, set out the types of incentives available for the venture capital industry, the qualifying criteria or requirements which must be fulfilled before a certification can be granted and the procedures for application.

2.0 DEFINITIONS

In these guidelines–

- | | |
|-----------------------|---|
| adjusted income | in relation to a source and a basis period, means adjusted income ascertained in accordance with the <i>Income Tax Act 1967</i> . |
| company | has the same meaning as given under the <i>Income Tax Act 1967</i> . |
| early stage financing | means financing provided by an individual or a company 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, or for 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.

MDeC means Multimedia Development Corporation Sdn Bhd.

MIDA means Malaysian Industrial Development Authority.

MSC means Multimedia Super Corridor.

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

- (a) whose operations 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; or
- (c) whose operations 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,

provided that a company shall be deemed to be a related company of another company if–

- (i) at least 20% of its issued share capital is beneficially owned, either directly or indirectly, by that other company; or
- (ii) at least 20% of the issued share capital of that other company is beneficially owned, either directly or indirectly, by the first-mentioned company.

SC	means Securities Commission Malaysia.
seed capital financing	means financing provided by an individual or a company to a venture company for the purposes of research, assessment and development of an initial concept or prototype, where the venture company's organisational structure has not been formalised.
start-up financing	means financing provided by an individual or a company to a venture company for product development and initial marketing, where the venture company is in the process of formalising its organisational structure, or if its organisational structure has been formalised, the venture company has not sold its products commercially.
venture capital company or VCC	means a company incorporated under the <i>Companies Act 1965</i> that invests in a venture company in the form of seed capital, start-up or early stage financing and that is registered with the SC.

venture company means a company incorporated under the *Companies Act 1965* that is–

- (a) resident in Malaysia for the basis year for a year of assessment; and
- (b) involved in utilising the seed capital, start-up or early stage financing for products or activities promoted by the government of Malaysia as stated under paragraph 4.01(A)(a) of these guidelines.

3.0 TAX INCENTIVES

Tax exemption

3.01 A VCC may apply for tax exemption under the *Income Tax (Exemption)(No.11) Order 2005* as amended by *Income Tax (Exemption)(Amendment)(No.2) Order 2006* and *Income Tax (Exemption)(Amendment) Order 2009*.

3.02 The exemption is from payment of income tax–

- (a) for the statutory income on all sources of income, **other than** interest income arising from savings or fixed deposits and profits from Shariah-based deposits;
- (b) for an exempt period of–
 - (i) Ten years of assessment or the years of assessment equivalent to the life of the fund established for the purposes of investing in a venture company, **whichever is the lesser**, upon meeting the criteria under paragraph 4.01(B)(a)(i); or

- (ii) Five years of assessment or the years of assessment equivalent to the life of the fund established for the purposes of investing in a venture company, **whichever is the lesser**, upon meeting the criteria under paragraph 4.01(B)(a)(ii);

and

- (c) commencing from the year of assessment in which the VCC commences business or the year of assessment of the coming into effect of the *Income Tax (Exemption)(Amendment) Order 2009*, **whichever is the later**.

3.03 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 will be carried forward to the post-exempt period.

3.04 If an applicant has applied for tax exemption and has received certification from the SC, the applicant may not apply for tax deduction under paragraphs 3.05 and 3.06 for the whole of the exempt period.

Tax Deduction

3.05 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*.

3.06 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 in a venture company, upon fulfilling the qualifying criteria under paragraph 4.01(A) and 4.01(C) of these guidelines.

3.07 If an applicant has applied for tax deduction and has received certification from the SC, the applicant may not apply for tax exemption under paragraphs 3.01 to 3.03 above.

4.0 QUALIFYING CRITERIA

4.01 The tax incentives may be given to an applicant upon fulfilling the following criteria:

(A) Common qualifying criteria for tax exemption and tax deduction

(a) Financing provided by the applicant for the venture companies must be utilised at seed, start-up or early stage for–

(i) products or activities promoted under the *Promotion of Investments Act 1986* where the venture companies may have been granted special status and/or have received incentives such as the following:

- Pioneer status or investment tax allowance incentive granted by MIDA or Ministry of International Trade and Industry;
- High technology incentives granted by MIDA;
- MSC status granted by MDeC; or
- Financial assistance from Small and Medium Industries Development Corporation;

(ii) technology-based activities listed in **APPENDIX A**¹;

¹The list of technology-based activities was adopted from the SC's *Guidelines on the Offering of Equity and Equity-linked Securities for the MESDAQ Market* which has been disappplied.

- (iii) products or activities which have been developed under the Industrial Research and Development Grant Scheme, granted by the Ministry of Science, Technology and Innovation; or
 - (iv) products or activities which have been developed under the MSC Research & Development Grant Scheme granted by MDeC.
- (b) Where the applicant is a company, the investment made by the applicant should **not** be 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

- (a) The VCC must, for each year of assessment for the period of exemption, obtain a certification from the SC confirming that–
- (i) relating to an exempt period of 10 years of assessment as mentioned in paragraph 3.02(b)(i), it has invested either–
 - (aa) at least 70% of its invested funds in venture companies in the form of seed capital, start-up and/or early stage financing; or
 - (bb) at least 50% of its invested funds in venture companies in the form of seed capital;or
 - (ii) relating to an exempt period of five years of assessment as mentioned in paragraph 3.02(b)(ii), it has–

- (aa) invested at least 30% of its invested funds in venture companies in the form of seed capital, start-up and/or early stage financing at the point of first investment; and
 - (bb) made an application for the exemption to the SC between 30 August 2008 and 31 December 2013.
- (iii) The certification for tax exemption is for a specific year of assessment applied for and is granted on a year-to-year basis upon application.

(C) Additional qualifying criteria for tax deduction

- (a) An individual or a company must be a resident in Malaysia.
 - (i) Investment made in the venture company must be certified by the SC and must be—
 - (aa) 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
 - (bb) made at least two years prior to the date of its disposal.

5.0 APPLICATION PROCEDURES

5.01 Applications for tax exemption must be made by completing the *Application Form for Certification of Tax Exemption for the Venture Capital Industry*. Applications for tax deduction must be made by completing the *Application Form for Certification of Tax*

Deduction for the Venture Capital Industry. Both forms are available on the SC's website at www.sc.com.my.

5.02 The first application must be accompanied by the following documents (where applicable):

(a) A copy of the certification letter on "Pioneer Status" or "Investment Tax Allowance" or other supporting documentary evidence in relation to the venture companies for the purpose of compliance with paragraph 4.01(A)(a);

(b) A copy of the applicant's Memorandum and Articles of Association or other constituent documents; and

(c) Latest audited financial report of the applicant.

5.03 Subsequent applications must be accompanied by additional, updated or latest documents mentioned in paragraph 5.02 (where applicable).

5.04 Applications must be submitted to the SC at the following address:

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

5.05 In considering the applications, the SC may request for additional information. Any amendments to the information submitted in the application form must be made by submitting a new form.

5.06 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.

LIST OF TECHNOLOGY-BASED BUSINESS ACTIVITIES

For the purpose of complying with the requirement of paragraph 4.01(A)(a)(ii) of these guidelines on involvement in technology-based business activities, the venture company should be involved in design, development and manufacture/production/application in any of the areas under sections I to XII below. The SC may from time-to-time add to, vary or delete the areas specified below.

- I. Advanced electronics and information technology
 - (a) Components
 - (i) Input/output technologies
 - (ii) Storage and batteries
 - (iii) Smart cards
 - (iv) Integrated circuits
 - (v) Micro-processors

 - (b) Systems and architectures
 - (i) Operating systems environments
 - (ii) Software component architectures
 - (iii) Computing platforms
 - (iv) Micro-processor based products
 - (v) Security
 - (vi) Neural networks
 - (vii) Fuzzy logic systems
 - (viii) Display systems
 - (ix) Pattern recognition system and image processing
 - (x) Machine vision

 - (c) Software
 - (i) Fuzzy logic systems

- (ii) Application development environments
- (iii) Database management systems
- (iv) Groupware, workflow, document and knowledge management
- (v) Systems and network management
- (vi) Animation, graphics, visualisation, image solutions, computer aided design (CAD), shrink-wrap software

(d) Applications

- (i) Electronic commerce
- (ii) Data warehousing
- (iii) Corporate applications

(e) Communications

- (i) Transmission media
- (ii) Networking systems and protocols
- (iii) Internet and intranet

(f) Supporting products and services

- (i) Uninterrupted power supply
- (ii) Network equipment/modem, server, etc.

II. Telecommunications

- (a) Telecommunication network
- (b) Cellular/fixed lines services
- (c) International gateway facilities
- (d) Value-added interactive voice and data services
- (e) Value-added network data services
- (f) Radio paging
- (g) Satellite-based communications
- (h) Maritime and broad band communication
- (i) Equipment, components and parts

III. Equipment/instrumentation, automation and flexible manufacturing systems

- (a) Scientific, laboratory and medical equipment
- (b) Medical implants, devices and prostheses
- (c) Computer process control systems/equipment
- (d) Wireless technology and wireless processes
- (e) Process instrumentation
- (f) Robotics
- (g) Computer numerical control (CNC) machine tools
- (h) High precision cutting/measurement/calibration machines
- (i) Precision moulding
- (j) Powder metallurgy
- (k) Advanced factory machine operations
- (l) Rapid tooling and prototyping

IV. Biotechnology, bioconversion and genetic engineering

- (a) Genetically engineered organisms
- (b) Cell cultures
- (c) Biopolymers
- (d) Metabolytes
- (e) Food and food supplements
- (f) Fine chemicals
- (g) Biodiagnostics
- (h) Waste, waste minimisation and waste treatment
- (i) Waste optimisation/utilisation
- (j) Waste remediation
- (k) Bioconversion processes

V. Healthcare

- (a) Pharmaceuticals
- (b) Medical products
- (c) Diagnostic and imaging

- (d) Telemedicine
- (e) Healthcare management organisations

VI. Electro-optics, non-linear optics and optoelectronics

- (a) Optical lenses
- (b) Laser application equipment and peripherals
- (c) Photonics, including fibre-optics communication equipment and peripherals
- (d) Optoelectronics systems components
- (e) Optical systems components
- (f) Photocopiers
- (g) Semiconductor lasers

VII. Advanced materials

- (a) Polymers, biopolymers and other biomaterials
- (b) Superconductors
- (c) Fine ceramics and advanced ceramics
- (d) High strength composites
- (e) Specialty materials, rare earth elements, smart materials and new alloys
- (f) Magnetic and permanent magnetic materials

VIII. Energy

- (a) Fuel cells
- (b) Advanced batteries
- (c) Solar cells
- (d) Renewable energy
- (e) Hybrid energy technology
- (f) Energy efficiency methods

IX. Aerospace

- (a) Aircraft and aircraft equipment, components, accessories and parts
- (b) Aircraft modification, conversion and refurbishment

- (c) Equipment, components, accessories or parts for satellites and micro satellites
- (d) Equipment, components, accessories or parts for satellite earth observation and aerial surveillance applications

X. Transportation

- (a) Split engines
- (b) High performing engines
- (c) Micro engines
- (d) Transport navigation and tracking systems

XI. Value-add services

- (a) Education and training relating to application of smart technologies
- (b) Education and training of knowledge workers
- (c) System developers, system integrators, content or solution providers

XII. Emerging technologies

- (a) Emerging technologies as may be added from time-to-time or considered on a case-by-case basis