

## **Bio-Gal Ltd.**

On March 18, 2009, we announced that we had entered into an asset purchase agreement with Bio-Gal Ltd, a Gibraltar private company, for the rights to a use patent on Recombinant Erythropoietin ("rHuEPO") for the prolongation of multiple myeloma patients' survival and improvement of their quality of life. On December 31, 2009, we amended the asset purchase agreement with Bio-Gal Ltd., so that XTL shall acquire a XTEPO Ltd. (a special purpose company that was established by Bio-GAL Ltd.'s shareholders who received from Bio-Gal all of Bio-Gal's right on rHuEPO and raised approximately \$1.5 million). We intend to develop rHuEPO for the prolongation of MM patients' survival and improvement of their quality of life. MM is a severe and incurable malignant hematological cancer of plasma cells. In accordance with the terms of the amended asset purchase agreement, we will issue to XTEPO's shareholders ordinary shares representing approximately 69.44% of our then issued and outstanding ordinary share capital. In addition, the parties agreed to cancel a \$10 million cash milestone payment to Bio-Gal upon the successful completion of a Phase 2 clinical trial, which was under the original asset purchase agreement. We are also obligated to pay 1% royalties on net sales of the product, as well as a fixed royalty payment in the total amount of \$350,000 upon the successful completion of Phase 2. Such payment of \$350,000 mentioned above shall be made to Yeda upon the earlier of (i) six months from the Successful Completion of Phase 2 or (ii) the completion of a successful fundraising by XTL or XTEPO at any time after the completion of the Phase 2 of an amount of minimum \$2 million. The closing of the transaction is subject to closing conditions including mainly: XTL's shareholders' approval, which was obtained at a shareholder meeting on March 2, 2010, and receiving an approval from XTEPO's shareholders and XTL's Board to the proposed pre-ruling agreement of the Israeli Tax Authorities. Management believes that closing of the transaction shall take place in the third quarter of 2010.

## **Bicifadine License**

In November 2008, we announced that the Phase 2b clinical trial failed to meet its primary and secondary endpoints, and as a result we ceased development of Bicifadine for diabetic neuropathic pain in 2008. In January 2007, XTL Development had signed an agreement with DOV to in-license the worldwide rights for Bicifadine. XTL Development was developing Bicifadine for the treatment of diabetic neuropathic pain. In accordance with the terms of the license agreement, XTL Development paid an initial up-front license fee of \$7.5 million in cash in 2007. In addition, XTL Development would have been required to make milestone payments of up to \$126.5 million over the life of the license. These milestone payments would have been made in either cash and/or our ordinary shares, at our election, with the exception of \$5 million in cash, due upon or after regulatory approval of the product. XTL Development was also obligated to pay royalties to DOV on net sales of Bicifadine. Following our announcement of the failure of the phase 2b clinical trial, we ceased development of Bicifadine for diabetic neuropathic pain in 2008 and all rights under the agreement reverted to DOV. Since the failure of the Bicifadine phase 2b clinical trial, both XTL Development and DOV ceased the prosecution and maintenance of those patents relating to Bicifadine. In March 2010, the agreement was formally terminated.

In addition, XTL Development was committed to pay a transaction advisory fee to certain third party intermediaries in connection with the in-license of Bicifadine from DOV. Once the Bicifadine license agreement was terminated, the commitment to pay a further transaction advisory fee ceased. In March 2010, we formally terminated the license agreement and therefore all unvested SARs have automatically expired. See also "Item 10. Additional Information - Material Contracts." See "Item 5 - Operating and Financial Review and Prospects - Obligations and Commitments."

## **Exchange Controls**

Under Israeli Law, Israeli non-residents who purchase ordinary shares with certain non-Israeli currencies (including dollars) may freely repatriate in such non-Israeli currencies all amounts received in Israeli currency in respect of the ordinary shares, whether as a dividend, as a liquidating distribution, or as proceeds from any sale in Israel of the ordinary shares, provided in each case that any applicable Israeli income tax is paid or withheld on such amounts. The conversion into the non-Israeli currency must be made at the rate of exchange prevailing at the time of conversion.

## **Taxation**

Subject to the completion of Bio-Gal transaction, we will issue XTEPO's shareholders ordinary shares representing approximately 69.44% of our then issued and outstanding ordinary share capital. As a result of the shifts of ownership, which exceeds 50% over the three year lookback period, the Company's US carry back losses will be subject to certain limitations.

The following discussion of Israeli and US tax consequences material to our shareholders is not intended and should not be construed as legal or professional tax advice and does not exhaust all possible tax considerations. To the extent that the discussion is based on new tax legislation, which has not been subject to judicial or administrative interpretation, the views expressed in the discussion might not be accepted by the tax authorities in question. This summary does not purport to be a complete analysis of all potential tax consequences of owning ordinary shares or ADRs. In particular, this discussion does not take into account the specific circumstances of any particular shareholder (such as tax-exempt entities, certain financial companies, broker-dealers, shareholders subject to Alternative Minimum Tax, shareholders that actually or constructively own 10% or more of our voting securities, shareholders that hold ordinary shares or ADRs as part of straddle or hedging or conversion transaction, traders in securities that elect mark to market, banks and other financial institutions or shareholders whose functional currency is not the US dollar), some of which may be subject to special rules.

*We urge shareholders to consult their own tax advisors as to the US, Israeli, or other tax consequences of the purchase, ownership and disposition of ordinary shares and ADRs, including, in particular, the effect of any foreign, state or local taxes. For purposes of the entire Taxation discussion, we refer to ordinary shares and ADRs collectively as ordinary shares.*

#### **Israeli Tax Considerations**

The following discussion refers to the current tax law applicable to companies in Israel, with special reference to its effect on us. This discussion also includes specified Israeli tax consequences to holders of our ordinary shares and Israeli Government programs benefiting us.

#### **Corporate Tax Rate**

The income of the Company is subject to corporate tax at the regular rate; the guidance of the amendment to the Income Tax Ordinance, 2005 from August 2008 prescribes a gradual reduction in the corporate tax rates and the resulting corporate tax rates starting 2007 are as follows: 2007 - 29%, 2008 - 27%, 2009 - 26% and 2010 and thereafter - 25%.

On July 14, 2009, the "Knesset" (Israeli Parliament) passed the Law for Economic Efficiency (Amended Legislation for Implementing the Economic Plan for 2009 and 2010), 2009, which prescribes, among others, an additional gradual reduction in the corporate tax rates starting 2011 to the following tax rates: 2011 - 24%, 2012 - 23%, 2013 - 22%, 2014 - 21%, 2015 - 20%, 2016 and thereafter - 18%.

#### **Tax Benefits for Research and Development**

Israeli tax law allows, under specific conditions, a tax deduction in the year incurred for expenditures, including capital expenditures, relating to scientific research and development projects, if the expenditures are approved by the relevant Israeli government ministry, determined by the field of research, and the research and development is for the promotion of the company and is carried out by or on behalf of the company seeking the deduction. Expenditures not so approved are deductible over a three-year period. In the past, expenditures that were made out of proceeds made available to us through government grants were automatically deducted during a one year period.

#### **Special Provisions Relating to Taxation under Inflationary Conditions**

The Income Tax Law (Inflationary Adjustments), 1985, generally referred to as the Inflationary Adjustments Law, represents an attempt to overcome the problems presented to a traditional tax system by an economy undergoing rapid inflation. The Inflationary Adjustments Law is highly complex. Its features, which were material to us, can be described as follows:

- where a company's equity, as defined in the law, exceeds the cost of fixed assets as defined in the Inflationary Adjustments Law, a deduction from taxable income that takes into account the effect of the applicable annual rate of inflation on the excess is allowed up to a ceiling of 70% of taxable income in any single tax year, with the unused portion permitted to be carried forward on a linked basis. If the cost of fixed assets, as defined in the Inflationary Adjustments Law, exceeds a company's equity, then the excess multiplied by the applicable annual rate of inflation is added to taxable income; and
- subject to specified limitations, depreciation deductions on fixed assets and losses carried forward are adjusted for inflation based on the increase in the consumer price index.

Under the Israel Income Tax Law (Adjustments for Inflation) (Amendment No. 20), 2008 (hereinafter - the Amendment), the provisions of the Adjustments Law no longer apply to our Company since 2008 tax year and thereafter, and therefore, the results of our company are measured for tax purposes in nominal terms. The amendment includes a number of transition provisions which includes the continued adjustment of depreciation deductions through the end of the 2007 tax year.

#### **Israeli Estate and Gift Taxes**

Generally, Israel does not currently impose taxes on inheritance or bona fide gifts. For transfer of assets by inheritance or gift that would normally be subject to capital gains tax or land appreciation tax, the recipient's tax cost basis and date of purchase are generally deemed to be the same as those for the transferor of the property.

#### **Capital Gains Tax on Sale of our Ordinary Shares by Both Residents and Non-Residents of Israel**

Israeli law generally imposes a capital gains tax on the sale of capital assets located in Israel, including shares in Israeli resident companies, by both residents and non-residents of Israel, unless a specific exemption is available or unless a treaty between Israel and the country of the non-resident provides otherwise. The law distinguishes between the inflationary surplus and the real gain. The inflationary surplus is the portion of the total capital gain, which is equivalent to the increase of the relevant asset's purchase price attributable to the increase in the Israeli consumer price index from the date of purchase to the date of sale. The real gain is the excess of the total capital gain over the inflationary surplus. A non resident that invests in taxable assets with foreign currency may elect to calculate the inflationary amount by using such foreign currency.

Non-Israeli residents will be exempt from Israeli capital gains tax on any gains derived from the sale of shares publicly traded on a stock exchange recognized by the Israeli Ministry of Finance (including the Tel-Aviv Stock Exchange and NASDAQ), provided such shareholders did not acquire their shares prior to an initial public offering and that such capital gains are not derived by a permanent establishment of the foreign resident in Israel. Notwithstanding the foregoing, dealers in securities in Israel are taxed at the regular tax rates applicable to business income. However, Non-Israeli corporations will not be entitled to such exemption if an Israeli resident (1) has a controlling interest of 25% or more in such non-Israeli corporation, or (2) is the beneficiary of, or is entitled to, 25% or more of the revenue or profits of such non-Israeli corporation, whether directly or indirectly. In any event, the provisions of the tax reform shall not affect the exemption from capital gains tax for gains accrued before January 1, 2003, as described in the previous paragraph.

The capital gains tax imposed on Israeli tax resident individuals on the sale of securities is 20%. With respect to an Israeli tax resident individual who is a "substantial shareholder" on the date of sale of the securities or at any time during the 12 months preceding such sale, the capital gains tax rate was increased to 25%. A "substantial shareholder" is defined as someone who alone, or together with another person, holds, directly or indirectly, at least 10% in one or all of any of the means of control in the corporation. With respect to Israeli tax resident corporate investors, capital gains tax at the regular corporate rate will be imposed on such taxpayers on the sale of traded shares.

In addition, pursuant to the Convention Between the Government of the United States of America and the Government of Israel with Respect to Taxes on Income, as amended (the "United States-Israel Tax Treaty"), the sale, exchange or disposition of ordinary shares by a person who qualifies as a resident of the US within the meaning of the United States-Israel Tax Treaty and who is entitled to claim the benefits afforded to such person by the United States-Israel Tax Treaty (a "Treaty United States Resident") generally will not be subject to the Israeli capital gains tax unless such "Treaty United States Resident" holds, directly or indirectly, shares representing 10% or more of our voting power during any part of the twelve-month period preceding such sale, exchange or disposition, subject to certain conditions or if the capital gains from such sale are considered as business income attributable to a permanent establishment of the US resident in Israel. However, under the United States-Israel Tax Treaty, such "Treaty United States Resident" would be permitted to claim a credit for such taxes against the US federal income tax imposed with respect to such sale, exchange or disposition, subject to the limitations in US laws applicable to foreign tax credits.

#### **Taxation of Dividends**

Non-residents of Israel are subject to income tax on income accrued or derived from sources in Israel.

The tax rate imposed on dividends distributed by an Israeli company to Israeli tax resident individuals or to non-Israeli residents is set at a rate of 20%. With respect to "substantial shareholders," as defined above, the applicable tax rate is 25%. The taxation of dividends distributed by an Israeli company to another Israeli corporate tax resident is generally exempt from tax.

In any case, dividends distributed from the taxable income attributable to an Approved Enterprise, to both Israeli tax residents and non-Israeli residents remains subject to a 15% tax rate.

Notwithstanding, dividends distributed by an Israeli company to Israeli tax resident individuals or to non-Israeli residents are subject to a 20% withholding tax (15% in the case of dividends distributed from the taxable income attributable to an Approved Enterprise), unless a lower rate is provided in a treaty between Israel and the shareholder's country of residence. Dividends distributed by an Israeli company to another Israeli tax resident company are generally exempt, unless such dividends are distributed from taxable income attributable to an Approved Enterprise, in which case such dividends are taxed at a rate of 15%, or unless such dividends are distributed from income that was not sourced in Israel, in which case such dividends are taxed at a rate of 25%.

Under the United States-Israel Tax Treaty, the maximum Israeli tax and withholding tax on dividends paid to a holder of ordinary shares who is a resident of the US is generally 25%, but is reduced to 12.5% if the dividends are paid to a corporation that holds in excess of 10% of the voting rights of company during the company's taxable year preceding the distribution of the Dividend and the portion of the company's taxable year in which the dividend was distributed. Dividends of an Israeli company derived from the income of an Approved Enterprise will still be subject to a 15% dividend withholding tax; if the dividend is attributable partly to income derived from an Approved Enterprise, and partly to other sources of income, the withholding rate will be a blended rate reflecting the relative portions of the two types of income. A non-resident of Israel who has dividend income derived from or accrued in Israel, from which tax was withheld at the source, is generally exempt from the duty to file tax returns in Israel in respect of such income, provided such income was not derived from a business conducted in Israel by the taxpayer.

#### ***US Federal Income Tax Considerations***

The following discusses the material US federal income tax consequences to a holder of our ordinary shares, who qualifies as a US holder, which is defined as:

- a citizen or resident of the US;

- a corporation created or organized under the laws of the US, the District of Columbia, or any state; or
- a trust or estate, treated, for US federal income tax purposes, as a domestic trust or estate.

This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended, which we refer to as the Code, current and proposed Treasury regulations promulgated under the Code, and administrative and judicial decisions as of the date of this report, all of which are subject to change, possibly on a retroactive basis. This discussion does not address any aspect of state, local or non-US tax laws. Except where noted, this discussion addresses only those holders who hold our shares as capital assets. This discussion does not purport to be a comprehensive description of all of the tax considerations that may be relevant to US holders entitled to special treatment under US federal income tax laws, for example, financial institutions, insurance companies, tax-exempt organizations and broker/dealers, and it does not address all aspects of US federal income taxation that may be relevant to any particular shareholder based on the shareholder's individual circumstances. In particular, this discussion does not address the potential application of the alternative minimum tax, or the special US federal income tax rules applicable in special circumstances, including to US holders who:

- have elected mark-to-market accounting;
- hold our ordinary shares as part of a straddle, hedge or conversion transaction with other investments;
- own directly, indirectly or by attribution at least 10% of our voting power;
- are tax exempt entities;
- are persons who acquire shares in connection with employment or other performance of services; and
- have a functional currency that is not the US dollar.

Additionally, this discussion does not consider the tax treatment of partnerships or persons who hold ordinary shares through a partnership or other pass-through entity or the possible application of US federal gift or estate taxes. Material aspects of US federal income tax relevant to a holder other than a US holder are also described below.

Each shareholder should consult its tax advisor regarding the particular tax consequences to such holder of ownership and disposition of our shares, as well as any tax consequences that may arise under the laws of any other relevant foreign, state, local, or other taxing jurisdiction.

#### **Taxation of Dividends Paid on Ordinary Shares**

Subject to the description of the passive foreign investment company rules below, a US holder will be required to include in gross income as ordinary income the amount of any distribution paid on ordinary shares, including any Israeli taxes withheld from the amount paid, to the extent the distribution is paid out of our current or accumulated earnings and profits as determined for US federal income tax purposes. Distributions in excess of these earnings and profits will be applied against and will reduce the US holder's basis in the ordinary shares and, to the extent in excess of this basis, will be treated as gain from the sale or exchange of ordinary shares.

Certain dividend income may be eligible for a reduced rate of taxation. Dividend income will be taxed to a non-corporate holder at the applicable long-term capital gains rate if the dividend is received from a "qualified foreign corporation," and the shareholder of such foreign corporation holds such stock for more than 60 days during the 121 day period that begins on the date that is 60 days before the ex-dividend date for the stock. The holding period is tolled for any days on which the shareholder has reduced his risk of loss. A "qualified foreign corporation" is either a corporation that is eligible for the benefits of a comprehensive income tax treaty with the US or a corporation whose stock, the shares of which are with respect to any dividend paid by such corporation, is readily tradable on an established securities market in the United States. However, a foreign corporation will not be treated as qualified if it is a passive foreign investment company (as discussed below) for the year in which the dividend was paid or the preceding year. Distributions of current or accumulated earnings and profits paid in foreign currency to a US holder will be includible in the income of a US holder in a US dollar amount calculated by reference to the exchange rate on the day the distribution is received. A US holder that receives a foreign currency distribution and converts the foreign currency into US dollars subsequent to receipt will have foreign exchange gain or loss based on any appreciation or depreciation in the value of the foreign currency against the US dollar, which will generally be US source ordinary income or loss.

As described above, we will generally be required to withhold Israeli income tax from any dividends paid to holders who are not resident in Israel. See "- Israeli Tax Considerations-Taxation of Dividends" above. If a US holder receives a dividend from us that is subject to Israeli withholding, the following would apply:

- You must include the gross amount of the dividend, not reduced by the amount of Israeli tax withheld, in your US taxable income.
- You may be able to claim the Israeli tax withheld as a foreign tax credit against your US income tax liability. However, to the extent that 25% or more of our gross income from all sources was effectively connected with the conduct of a trade or business in the US (or treated as effectively connected, with limited exceptions) for a three-year period ending with the close of the taxable year preceding the year in which the dividends are declared, a portion of this dividend will be treated as US source income, possibly reducing the allowable foreign tax.
- The foreign tax credit is subject to significant and complex limitations. Generally, the credit can offset only the part of your US tax attributable to your net foreign source passive income. Additionally, if we pay dividends at a time when 50% or more of our stock is owned by US persons, you may be required to treat the part of the dividend attributable to US source earnings and profits as US source income, possibly reducing the allowable credit.
- A US holder will be denied a foreign tax credit with respect to Israeli income tax withheld from dividends received on the ordinary shares to the extent the US holder has not held the ordinary shares for at least 16 days of the 31-day period beginning on the date which is 15 days before the ex-dividend date or, alternatively, to the extent the US holder is under an obligation to make related payments with respect to substantially similar or related property. Any days during which a US holder has substantially diminished its risk of loss on the ordinary shares are not counted toward meeting the 16-day holding period required by the statute.
- If you do not elect to claim foreign taxes as a credit, you will be entitled to deduct the Israeli income tax withheld from your XTL dividends in determining your taxable income.
- Individuals who do not claim itemized deductions, but instead utilize the standard deduction, may not claim a deduction for the amount of the Israeli income taxes withheld.
- If you are a US corporation holding our stock, the general rule is that you cannot claim the dividends-received deduction with respect to our dividends. There is an exception to this rule if you own at least 10% of our ordinary shares (by vote) and certain conditions are met.

Special rules, described below, apply if we are a passive foreign investment company.

## **Taxation of the Disposition of Ordinary Shares**

Subject to the description of the passive foreign investment company rules below, upon the sale, exchange or other disposition of our ordinary shares, a US holder will recognize capital gain or loss in an amount equal to the difference between the US holder's basis in the ordinary shares, which is usually the cost of these shares, and the amount realized on the disposition. Capital gain from the sale, exchange or other disposition of ordinary shares held more than one year is long-term capital gain and is eligible for a reduced rate of taxation for non-corporate holders. In general, gain realized by a US holder on a sale, exchange or other disposition of ordinary shares generally will be treated as US source income for US foreign tax credit purposes. A loss realized by a US holder on the sale, exchange or other disposition of ordinary shares is generally allocated to US source income. However, regulations require the loss to be allocated to foreign source income to the extent certain dividends were received by the taxpayer within the 24-month period preceding the date on which the taxpayer recognized the loss. The deductibility of a loss realized on the sale, exchange or other disposition of ordinary shares is subject to limitations for both corporate and individual shareholders.

A US holder that uses the cash method of accounting calculates the US dollar value of the proceeds received from a sale of ordinary shares as of the date that the sale settles, and will generally have no additional foreign currency gain or loss on the sale, while a US holder that uses the accrual method of accounting is required to calculate the value of the proceeds of the sale as of the trade date and may therefore realize foreign currency gain or loss, unless the US holder has elected to use the settlement date to determine its proceeds of sale for purposes of calculating this foreign currency gain or loss. In addition, a US holder that receives foreign currency upon disposition of our ordinary shares and converts the foreign currency into US dollars subsequent to receipt will have foreign exchange gain or loss based on any appreciation or depreciation in the value of the foreign currency against the US dollar, which will generally be US source ordinary income or loss.

## **Tax Consequences If We Are A Passive Foreign Investment Company**

Special tax rules apply to the timing and character of income received by a US holder of a PFIC. We will be a PFIC if either 75% or more of our gross income in a tax year is passive income or the average percentage of our assets (by value) that produce or are held for the production of passive income in a tax year is at least 50%. The IRS, has indicated that cash balances, even if held as working capital, are considered to be assets that produce passive income. Therefore, any determination of PFIC status will depend upon the sources of our income, and the relative values of passive and non- passive assets, including goodwill. Furthermore, because the goodwill of a publicly-traded corporation such as us is largely a function of the trading price of its shares, the valuation of that goodwill is subject to significant change throughout each year. A determination as to a corporation's status as a PFIC must be made annually. We believe that we were likely not a PFIC for the taxable years ended December 31, 2009, 2008, 2005 and 2004. However, we believe that we were a PFIC for the taxable years ended December 31, 2007 and 2006. Although such a determination is fundamentally factual in nature and generally cannot be made until the close of the applicable taxable year, based on our current operations, we believe that we may be classified as a PFIC in the 2010 taxable year and possibly in subsequent years. In addition, even though we may not be a PFIC in any one particular year, the PFIC taint remains, and the special PFIC tax regime will continue to apply.

If we are classified as a PFIC, a special tax regime would apply to both (a) any "excess distribution" by us (generally, the US holder's ratable share of distributions in any year that are greater than 125% of the average annual distributions received by such US holder in the three preceding years or its holding period, if shorter) and (b) any gain recognized on the sale or other disposition of your ordinary shares. Under this special regime, any excess distribution and recognized gain would be treated as ordinary income and the federal income tax on such ordinary income is determined under the following steps: (i) the amount of the excess distribution or gain is allocated ratably over the US holder's holding period for our ordinary shares; (ii) tax is determined for amounts allocated to the first year in the holding period in which we were classified as a PFIC and all subsequent years (except the year in which the excess distribution was received or the sale occurred) by applying the highest applicable tax rate in effect in the year to which the income was allocated; (iii) an interest charge is added to this tax calculated by applying the underpayment interest rate to the tax for each year determined under the preceding sentence from the due date of the income tax return for such year to the due date of the return for the year in which the excess distribution or sale occurs; and (iv) amounts allocated to a year prior to the first year in the US holder's holding period in which we were classified as a PFIC or to the year in which the excess distribution or the disposition occurred are taxed as ordinary income and no interest charge applies.

A US holder may generally avoid the PFIC regime by electing to treat his PFIC shares as a "qualified electing fund." If a US holder elects to treat PFIC shares as a qualified electing fund, also known as a "QEF Election," the US holder must include annually in gross income (for each year in which PFIC status is met) his *pro rata* share of the PFIC's ordinary earnings and net capital gains, whether or not such amounts are actually distributed to the US holder. A US holder may make a QEF Election with respect to a PFIC for any taxable year in which he was a shareholder. A QEF Election is effective for the year in which the election is made and all subsequent taxable years of the US holder. Procedures exist for both retroactive elections and the filing of protective statements. A US holder making the QEF Election must make the election on or before the due date, as extended, for the filing of the US holder's income tax return for the first taxable year to which the election will apply.

A QEF Election is made on a shareholder-by-shareholder basis. A US holder must make a QEF Election by completing Form 8621, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund, and attaching it to the holder's timely filed US federal income tax return. We have complied with the record-keeping and reporting requirements that are a prerequisite for US holders to make a QEF Election for the 2007 and 2006 tax years. For this purpose, we have made our 2007 and 2006 PFIC annual information statement available under a link entitled "PFIC Annual Information Statement" under the "Investor Information" section on our corporate website, which you may access at [www.xtllbio.com](http://www.xtllbio.com). While we plan to continue to comply with such requirements, if, in the future, meeting those record-keeping and reporting requirements becomes onerous, we may decide, in our sole discretion, that such compliance is impractical and will so notify US holders.

Alternatively, a US holder may also generally avoid the PFIC regime by making a so-called "mark-to-market" election. Such an election may be made by a US holder with respect to ordinary shares owned at the close of such holder's taxable year, provided that we are a PFIC and the ordinary shares are considered "marketable stock." The ordinary shares will be marketable stock if they are regularly traded on a national securities exchange that is registered with the Securities and Exchange Commission, or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or an equivalent regulated and supervised foreign securities exchange.



If a US holder were to make a mark-to-market election with respect to ordinary shares, such holder generally will be required to include in its annual gross income the excess of the fair market value of the PFIC shares at year-end over such shareholder's adjusted tax basis in the ordinary shares. Such amounts will be taxable to the US holder as ordinary income, and will increase the holder's tax basis in the ordinary shares. Alternatively, if in any year, a United States holder's tax basis exceeds the fair market value of the ordinary shares at year-end, then the US holder generally may take an ordinary loss deduction to the extent of the aggregate amount of ordinary income inclusions for prior years not previously recovered through loss deductions and any loss deductions taken will reduce the shareholder's tax basis in the ordinary shares. Gains from an actual sale or other disposition of the ordinary shares with a "mark-to-market" election will be treated as ordinary income, and any losses incurred on an actual sale or other disposition of the ordinary shares will be treated as an ordinary loss to the extent of any prior "unreversed inclusions" as defined in Section 1296(d) of the Code.

The mark-to-market election is made on a shareholder-by-shareholder basis. The mark-to-market election is made by completing Form 8621, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund, and attaching it to the holder's timely filed US federal income tax return for the year of election. Such election is effective for the taxable year for which made and all subsequent years until either (a) the ordinary shares cease to be marketable stock or (b) the election is revoked with the consent of the IRS.

A US holder who did not make an election either to (i) treat us as a "qualified electing fund," or (ii) mark our ordinary shares to market, will be subject to the following:

- gain recognized by the US holder upon the disposition of, as well as income recognized upon receiving certain excess distributions on the ordinary shares would be taxable as ordinary income;
- the US holder would be required to allocate the excess distribution and/or disposition gain ratably over such US holder's entire holding period for such ordinary shares;
- the amount allocated to each year other than the year of the excess distribution or disposition and pre-PFIC years would be subject to tax at the highest applicable tax rate, and an interest charge would be imposed with respect to the resulting tax liability;
- the US holder would be required to file an annual return on IRS Form 8621 for the years in which distributions were received on and gain was recognized on dispositions of, our ordinary shares; and
- any US holder who acquired the ordinary shares upon the death of the shareholder would not receive a step-up to market value of his income tax basis for such ordinary shares. Instead such US holder beneficiary would have a tax basis equal to the decedent's basis, if lower.

***In view of the complexity of the issues regarding our treatment as a PFIC, US shareholders are urged to consult their own tax advisors for guidance as to our status as a PFIC.***

#### **US Federal Income Tax Consequences for Non-US holders of Ordinary Shares**

Except as described in "Information Reporting and Back-up Withholding" below, a Non-US holder of ordinary shares will not be subject to US federal income or withholding tax on the payment of dividends on, and the proceeds from the disposition of, ordinary shares, unless:

- the item is effectively connected with the conduct by the Non-US holder of a trade or business in the US and, in the case of a resident of a country which has a tax treaty with the US, the item is attributable to a permanent establishment in the US;

- the non-US holder is subject to tax under the provisions of US tax law applicable to US expatriates; or
- the individual non-US holder is present in the US for 183 days or more in the taxable year of the disposition and certain other conditions are met.

#### **Information Reporting and Back-Up Withholding**

US holders generally are subject to information reporting requirements with respect to dividends paid in the US on ordinary shares. Existing regulations impose back-up withholding on dividends paid in the US on ordinary shares unless the US holder provides IRS Form W-9 or otherwise establishes an exemption. US holders are subject to information reporting and back-up withholding on proceeds paid from the disposition of ordinary shares unless the US holder provides IRS Form W-9 or otherwise establishes an exemption.

Non-US holders generally are not subject to information reporting or back-up withholding with respect to dividends paid on, or upon the disposition of, ordinary shares, provided that the non-US holder provides a taxpayer identification number, certifies to its foreign status, or otherwise establishes an exemption to the US financial institution holding the ordinary shares.

Prospective investors should consult their tax advisors concerning the effect, if any, of these Treasury regulations on an investment in ordinary shares. Back-up withholding is not an additional tax. The amount of any back-up withholding will be allowed as a credit against a holder's US federal income tax liability and may entitle the holder to a refund, provided that specified required information is furnished to the IRS on a timely basis.

#### **US Federal Income Tax Consequences for XTL**

As of March 18, 2009, we did not have a "permanent establishment" in the US. Our board of directors consists of a majority of Israeli residents and our CEO is domiciled in Israel. However, for the period we did have a "permanent establishment" in the US, any income attributable to such US permanent establishment would be subject to US corporate income tax in the same manner as if we were a US corporation. The maximum US corporate income tax rate (not including applicable state and local tax rates) is currently at 35%. In addition, if we had income attributable to the permanent establishment in the US, we may be subject to an additional branch profits tax of 30% on our US effectively connected earnings and profits, subject to adjustment, for that taxable year if certain conditions occur, unless we qualified for the reduced 12.5% US branch profits tax rate pursuant to the United States-Israel tax treaty. We would be potentially able to credit any foreign taxes that may become due in the future against its US tax liability in connection with income attributable to its US permanent establishment and subject to both US and foreign income tax.

As of December 31, 2009, we did not earn any taxable income for US federal tax purposes and we do not have a permanent establishment. If we eventually earn taxable income attributable to our US permanent establishment, we would be able to utilize accumulated loss carryforwards to offset such income only to the extent these carryforwards were attributable to our US permanent establishment. As of December 31, 2009, we estimate that these US net operating loss carryforwards are approximately \$23 million. These losses, subject to limitation in the case of shifts in ownership of the Company, e.g., a planned offering or capital raise, resulting in a more than 50 percentage point change over a three year lookback period, can be carried forward to offset future US taxable income and expire through 2029.

*The above comments are intended as a general guide to the current position. Any person who is in any doubt as to his or her taxation position, and who requires more detailed information than the general outline above or who is subject to tax in a jurisdiction other than the United States should consult professional advisers.*