

# INCOME TAX (EXEMPTION) (NO. 2) ORDER 2020

PU (A) 141  
27 April 2020

IN exercise of the powers conferred by Paragraph 127(3)(b) of the Income Tax Act 1967[Act 53], the Minister makes the following order:

## CITATION AND COMMENCEMENT

- 1(1) This order may be cited as the **Income Tax (Exemption) (No. 2) Order 2020**.
- 1(2) This Order is deemed to have come into operation from the year of assessment 2018.

## INTERPRETATION

- 2(1) In this Order, "**qualifying company**" means a company which is incorporated or deemed to be registered under the Companies Act 2016 [Act 777] which is resident in Malaysia.
- 2(2) Except for subparagraphs 4(1) and (3), paragraphs 46 and 55 of Schedule 3 to the Act shall apply in relation to any reference to "incurred" in this Order, and the word "incurs" shall be construed accordingly.

## QUALIFYING CAPITAL EXPENDITURE

- 3(1) Subject to subparagraph (2), a qualifying capital expenditure referred to in this Order is the following capital expenditure incurred by a qualifying company in relation to a building or medical device used in Malaysia solely for the purpose of a qualifying project mentioned in subparagraph 4(2)—
- (a) in relation to a building, the cost of purchasing or constructing a new building, or the cost of the modification or refurbishment of the existing building, the building being in accordance with the standards required under the Private Healthcare Facilities and Services Act 1998 [Act 586], and the establishment, maintenance and operation of the building as a private healthcare facility has been approved and licensed by the Director General of Health, Malaysia under the Private Healthcare Facilities and Services Act 1998; and
- (b) in relation to the medical device, the cost of expenditure for the medical device each of which costs more than fifty thousand ringgit and the medical device has been verified by the Minister of Health as related to the qualifying project.
- 3(2) The qualifying capital expenditure referred to in subparagraph (1) shall not include capital expenditure incurred on any building used as living accommodation which is provided wholly or partly for the use of a director or an individual who is a member of the management or administration, or an employee, of the qualifying company.

## EXEMPTION

- 4(1) The Minister exempts a qualifying company in the basis period for a year of assessment from the payment of income tax in respect of statutory income derived from a qualifying project referred to in subparagraph (2), which is equivalent to the amount of qualifying capital expenditure incurred by that qualifying company in the basis period for that year of assessment.

- 4(2)** The qualifying project referred to in subparagraph (1) is—
- (a) a business of providing private healthcare services at a new private healthcare facility; or
  - (b) a project of expansion, modernization or refurbishment of the existing business of providing private healthcare services,
- which has been approved by the Minister of Health and registered with the Malaysia Healthcare Travel Council.
- 4(3)** The exemption referred to in subparagraph (1) shall be for a period of five consecutive years commencing from the date of the first qualifying capital expenditure incurred by the qualifying company, as determined by the Malaysian Investment Development Authority.
- 4(4)** For the purpose of subparagraph (3)—
- (a) the date determined in relation to the qualifying project referred to in subparagraph (2)(a)—
    - (i) shall not be earlier than 1 January 2018; and
    - (ii) subject to subparagraph (i), shall not be earlier than three years immediately preceeding the date of application for exemption is received by the Malaysian Investment Development Authority; or
  - (c) the date determined in relation to the qualifying project referred to in subparagraph (2)(b) shall not be earlier than the date of application for exemption is received by the Malaysian Investment Development Authority.
- 4(5)** The exemption under subparagraph (1) shall apply to—
- (a) an application for exemption which is received by the Malaysian Investment Development Authority on or after 1 January 2018 but not later than 31 December 2020 and such application has been approved by the Minister;
  - (b) a qualifying company which—
    - (i) in relation to the qualifying project referred to in subparagraph (2)(a), has not undertaken a business of providing private healthcare services on the date the application for exemption is received by the Malaysian Investment Development Authority; or
    - (ii) in relation to the qualifying project referred to in subparagraph (2)(b), has not incurred any qualifying capital expenditure on the qualifying project on the date the application for exemption is received by the Malaysian Investment Development Authority; and
  - (c) the qualifying company which has not been granted any exemption under this Order, the Income Tax (Exemption) (No. 3) Order 2017 [*P.U. (A) 203/2017*] or the Income Tax (Exemption) Order 2012 [*P.U. (A) 22/2012*].

- 4(6)** The exemption under subparagraph (1) is subject to—
- (a) the number of the health traveller who receive the private healthcare services from the qualifying project is at least ten per cent of the total patients from the qualifying project for each year of assessment; and
  - (b) at least ten per cent of the gross income of the qualifying company from the qualifying project is generated from the health traveller for each year of assessment.
- 4(7)** Nothing in subparagraph (1) shall absolve or deemed to have absolved the qualifying company from complying with any requirement to submit any return or statement of accounts or to furnish any other information, under the Act.
- 4(8)** The healthcare services referred to in subparagraphs (2), (5) and (6) shall be the healthcare services as determined by the Minister.
- 4(9)** In this paragraph—
- "private healthcare facility"** has the same meaning assigned to it under the Private Healthcare Facilities and Services Act 1998;
- "Malaysian Investment Development Authority"** means the Malaysian Investment Development Authority established under section 3 of the Malaysian Investment Development Authority (Incorporation) Act 1965 [Act 397];
- "Malaysia Healthcare Travel Council"** means a council incorporated under the Companies Act 2016 for the purpose of developing and promoting the health travel industry in Malaysia;
- "health traveller"** means an individual who receives private healthcare services in Malaysia who is—
- (a) a non-Malaysian citizen who participates in the *Malaysia My Second Home* programme and his dependants;
  - (b) an expatriate who is a non-Malaysian citizen holding a Malaysian work permit and his dependants; or
  - (c) a non-Malaysian citizen who visits Malaysia;
- "healthcare services"** has the same meaning assigned to it under the Private Healthcare Facilities and Services Act 1998;
- "private healthcare services"** means any healthcare services provided by a private healthcare facility.

## **STATUTORY INCOME**

- 5(1)** Subject to subparagraph (2), the statutory income referred to in subparagraph 4(1) in the basis period for each of the exemption period shall be determined after deducting the allowances which fall to be made under Schedule 3 to the Act notwithstanding that no claim for such allowances has been made.

- 5(2)** Where an asset is used for the purpose of a qualifying project is also used for the purpose of a project other than a qualifying project, then the allowance which falls to be made under Schedule 3 to the Act shall be deducted as is reasonable having regard to the extent to which the asset is used for the purpose of that qualifying project.
- 5(3)** Where an exemption is granted to a qualifying company under subparagraph 4(1) for a year of assessment, an amount equal to the amount of the allowance referred to in subparagraph 4(1) shall be exempted from tax for that year of assessment.
- 5(4)** Where, by reason of the absence or insufficiency of the statutory income, exemption cannot be granted or cannot be granted in full as the qualifying company is entitled under subparagraph 4(1) for that year of assessment, then so much of the statutory income in respect of which exemption cannot be granted for that year of assessment, shall be granted exemption for the first subsequent year of assessment for the basis period for which the qualifying company has statutory income from the qualifying project, and for subsequent year or years of assessment until the exemption is granted in respect of the whole statutory income as the qualifying company is entitled under subparagraph 4(1).

## **DISPOSAL OF ASSET WITHIN FIVE YEARS**

- 6** Where a qualifying capital expenditure is incurred by a qualifying company on an asset used for the purpose of a qualifying project and such asset is disposed of at any time within the period of five years from the date of acquisition of the asset, the exemption granted in respect of the amount of statutory income which is equal to the amount of allowance for such qualifying capital expenditure shall be withdrawn in the basis period for the year of assessment in which the asset is disposed of.

## **DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE FOR ASSET DISPOSED TO RELATED COMPANY**

- 7(1)** Where the qualifying company disposes to its related company any asset in respect of which an exemption is applied by the qualifying company under this Order, the amount of the qualifying capital expenditure incurred by the related company shall be deemed to be a sum equal to zero.
- 7(2)** For the purpose of subparagraph (1), “**related company**” has the same meaning assigned to it in section 2 of the Promotion of Investments Act 1986 [Act 327].

## **WITHDRAWAL OF EXEMPTION**

- 8(1)** The Minister may withdraw the exemption granted under subparagraph 4(1) if the qualifying company fails to comply with any condition imposed in relation to the exemption.
- 8(2)** Where the exemption is withdrawn in accordance with subparagraph (1), the exemption granted in respect of any amount of the statutory income under subparagraph 4(1) shall be deemed to have not been granted to the qualifying company.

## **SEPARATE SOURCE AND SEPARATE ACCOUNT**

- 9(1)** Where a qualifying company carries on a qualifying project and project other than a qualifying project, each project shall be treated as a separate and distinct source of the project.
- 9(2)** The qualifying company who is granted an exemption under subparagraph 4(1) shall maintain a separate account for the income derived from each project referred to in subparagraph (1).

## NON-APPLICATION

- 10** This Order shall not apply to a qualifying company which in the basis period for the year of assessment—
- (a) has made a claim for reinvestment allowance under Schedule 7A to the Act or investment allowance for service sector under Schedule 7B to the Act;
  - (b) has been granted any incentive under the Promotion of Investments Act 1986 in respect of the same qualifying project;
  - (c) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act in respect of the same qualifying project; or
  - (d) has made a claim for deduction under any rules made under section 154 of the Act except—
    - (i) allowance under Schedule 3 to the Act;
    - (ii) the Income Tax (Deduction for Audit Expenditure) Rules 2006 [*P.U. (A) 129/2006*]; or
    - (iii) the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [*P.U. (A) 336/2014*].