

INCOME TAX (GREEN TECHNOLOGY INCENTIVE) (PROJECT) (EXEMPTION) ORDER 2024

PU (A) 244
17 September 2024

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

CITATION AND COMMENCEMENT

- 1(1)** This order may be cited as the **Income Tax (Green Technology Incentive) (Project) (Exemption) Order 2024**.
- 1(2)** This Order is deemed to have effect from the year of assessment 2020.

INTERPRETATION

2 In this Order—

“green technology asset” means a green technology product, equipment or system which is used to conserve the natural environment and resources, to minimize or reduce the negative impact of human activities;

“Malaysian Investment Development Authority” means the Malaysian Investment Development Authority established under the Malaysian Investment Development Authority (Incorporation) Act 1965 [Act 397];

“Malaysian Green Technology and Climate Change Corporation” means a company incorporated under the Companies Act 2016 [Act 777];

“qualifying capital expenditure” means an expenditure as provided under paragraph 4;

“qualifying company” means a company as provided under paragraph 3.

QUALIFYING ACTIVITY

- 3(1)** A qualifying company referred to in this Order is a company which—
- (a) is incorporated under the Companies Act 2016 and resident in Malaysia;
 - (b) has made an application for approval that the company is carrying on a qualifying activity in writing to the Minister through the Malaysian Investment Development Authority and the application is received on or after 1 January 2020 but not later than 31 December 2023;
 - (c) has not made any qualifying capital expenditure earlier than the date the application referred to in subparagraph (b) is submitted;
 - (d) has obtained a letter of approval in relation to the application referred to in subparagraph (b);
and

(e) has requested for the determination of a commencement date of the exemption period from the Malaysian Green Technology and Climate Change Corporation within the period as specified in column (4) of the Schedule after obtaining a letter of approval referred to in subparagraph (d).

3(2) For the purposes of this Order, “qualifying activity” means an activity as specified in column (3) of the Schedule in relation to the sector as specified in column (2) of the Schedule.

QUALIFYING CAPITAL EXPENDITURE

4(1) A qualifying capital expenditure referred to in this Order is a capital expenditure incurred by a qualifying company in relation to the purchase of a green technology asset used in Malaysia solely for the purpose of carrying on a qualifying activity.

4(2) The qualifying capital expenditure referred to in subparagraph (1) shall not include capital expenditure incurred on the purchase of a green technology asset 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 clerical staff, of that qualifying company.

EXEMPTION

5(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 the statutory income derived from a qualifying activity or activity other than a qualifying activity, which is equivalent to the amount of qualifying capital expenditure incurred by the qualifying company in the basis period for that year of assessment.

5(2) The exemption referred to in subparagraph (1) shall be for an exemption period of three consecutive years commencing from the date the first qualifying capital expenditure is incurred by the qualifying company subject to any condition imposed by the Minister and the compliance of the conditions shall be verified by the Malaysian Green Technology and Climate Change Corporation.

5(3) Where a qualifying company derives statutory income from a qualifying activity as specified in subparagraph (1), the qualifying company shall incur an approved adequate annual operating expenditure in Malaysia to carry on the qualifying activity for the purposes of its business and the annual operating expenditure shall include local services provided by local service provider.

5(4) Nothing in subparagraph (1) shall absolve or is deemed to have absolved the qualifying company from complying with any requirement to submit any return or statement of account or to furnish any other information under the Act.

5(5) For the purposes of this paragraph, “local service provider” means a person resident in Malaysia which provides services including services in relation to insurance, legal, banking, information and communication technology, and transportation.

STATUTORY INCOME

6(1) Subject to subparagraph (2), the statutory income referred to in subparagraph 5(1) in the basis period for each year of assessment shall be determined after deducting the allowances which falls to be made under Schedule 3 to the Act notwithstanding that no claim for such allowances has been made.

- 6(2)** Where a green technology asset that is used for the purposes of a qualifying activity is also used for the purposes of an activity other than the qualifying activity, then the amount of allowances 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 green technology asset is used for the purposes of the qualifying activity.
- 6(3)** The amount of statutory income so exempt referred to in subparagraph 5(1) shall not exceed seventy per cent for each year of assessment.
- 6(4)** Where, by reason of the restriction of the exemption to seventy per cent of the statutory income pursuant to subparagraph (3) or of the absence or insufficiency of the statutory income of the qualifying company from the qualifying activity, exemption cannot be granted or cannot be granted in full as the qualifying company is entitled under subparagraph 5(1) for that year of assessment, so much of the amount as cannot be exempt for that year of assessment shall be deemed to be a qualifying capital expenditure incurred for the purposes of subparagraph 5(1) for the first subsequent year of assessment and so on for subsequent years of assessment until such amount to which the qualifying company is so entitled is exempted.

DISPOSAL OF GREEN TECHNOLOGY ASSET

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

DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE FOR GREEN TECHNOLOGY ASSET DISPOSED TO RELATED COMPANY

- 8(1)** Where the qualifying company disposes to its related company any green technology 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.
- 8(2)** For the purposes of subparagraph (1), “related company” has the meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986 [Act 327].

WITHDRAWAL OF EXEMPTION

- 9(1)** Where a qualifying company which has been granted an exemption under subparagraph 5(1) fails to comply with any condition imposed in relation to the exemption, the Minister may by notice in writing requires the qualifying company to show cause in writing why the exemption should not be withdrawn within thirty days from the date of service of the notice in writing.
- 9(2)** The Minister may withdraw the exemption granted under subparagraph 5(1) where—
- (a) the qualifying company has failed to provide written reasons within thirty days from the date of the notice in writing is served on it under subparagraph (1); or

- (b) the Minister is not satisfied with the reasons given by the qualifying company for failing to comply with any of the conditions imposed in relation to the exemption.

9(3) Where the exemption is withdrawn in accordance with subparagraph (2), the exemption granted in respect of any amount of the statutory income under subparagraph 5(1) shall be deemed to have not been granted to the qualifying company from the first year of the exemption period.

CESSATION OF APPLICATION

10(1) Subject to paragraph 9, any qualifying company may, at any time, apply in writing to the Minister through the Malaysian Investment Development Authority so that this Order ceases to apply to the qualifying company.

10(2) The cessation of application of this Order shall have effect—

- (a) on the date of approval of the granting of the exemption by the Minister through the Malaysian Investment Development Authority; or
- (b) in the case of a qualifying company which has incurred qualifying capital expenditure, on the first day in the basis period for the year of assessment in which the application for the cessation of application of this Order is received by the Minister through the Malaysian Investment Development Authority.

SEPARATE SOURCE AND SEPARATE ACCOUNT

11(1) Where a qualifying company carries on a qualifying activity and activity other than a qualifying activity, each activity shall be treated as a separate and distinct source of activity for the qualifying company.

11(2) The qualifying company which is granted an exemption under subparagraph 5(1) shall maintain a separate account for the income derived from each activity referred to in subparagraph(1).

MAINTAINING SEPARATE RECORDS

12 The qualifying company shall maintain a separate record for qualifying capital expenditure which the qualifying company incurred for the purposes of exemption under subparagraph 5(1).

NON-APPLICATION

13 This Order shall not apply to a qualifying company which in the basis period for a 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 in respect of the same green technology asset;
- (b) has been granted any incentive under the Promotion of Investments Act 1986 except for—
 - (i) pioneer status; or

- (ii) investment tax allowance in respect of an asset which has not been granted exemption under this Order;
- (c) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act except—
 - (i) the Income Tax (Exemption) (No. 11) Order 2006 [P.U. (A) 112/2006];
 - (ii) the Income Tax (Exemption) (No. 12) Order 2006 [P.U. (A) 113/2006] in respect of an asset which has not been granted exemption under this Order;
 - (iii) the Income Tax (Exemption) (No. 22) Order 2006 [P.U. (A) 207/2006] in respect of a grant other than the grant given for the purchase of a green technology asset under this Order; or
 - (iv) the Income Tax (Green Technology Incentive) (Asset) (Exemption) Order 2024 [P.U. (A) 243/2024] in respect of a green technology asset under rainwater harvesting system; or
- (d) has made a claim for a deduction under any rules made under section 154 of the Act except—
 - (i) the rules in relation to 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 2020 [P.U. (A) 162/2020].

SCHEDULE
[Subsubparagraph 3(1)(e) and subparagraph 3(2)]

(1) No.	(2) Sector	(3) Qualifying activity	(3) Period to apply for the determination of a commencement date of the exemption period
1.	Renewable energy	<p>Commercial and industrial business entities which undertake generation of energy in the form of electricity, steam, heat and chilled water using renewable energy resources as follows:</p> <ul style="list-style-type: none"> (a) biomass (b) biogas (c) mini hydro (d) geothermal (e) solar power 	<ul style="list-style-type: none"> (a) 12 months from the date of the letter of approval is granted or any period as the Minister may allow in relation to renewable energy resources from solar power; or (b) 24 months from the date of the letter of approval is granted or any period as the Minister may allow in relation to renewable energy resources from biomass, biogas, mini hydro and geothermal
2.	Energy efficiency	Companies investing in energy efficient equipment or technologies and invest in energy saving equipment	12 months from the date of the letter of approval is granted or any period as the Minister may allow
3.	Green data centre	Companies that purchased any energy efficient product or solution for green data centre which have obtained a Provisional Green Building Certificate from locally developed rating tool or certification body approved by the Government	12 months from the date of the letter of approval is granted or any period as the Minister may allow
4.	Integrated waste management	Companies which undertake or invest in waste recycling or waste recovery or waste treatment and additional activities such as composting, storage, collection or disposal	24 months from the date of the letter of approval is granted or any period as the Minister may allow