

INCOME TAX (EXEMPTION) ORDER 2012

PU (A) 2

27 December 2011

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) Order 2012**.

1(2) This Order shall have effect from 1 January 2010 until 31 December 2014.

INTERPRETATION

2 In these Order—

"incurred" has the same meaning assigned to it in paragraphs 46 and 55 of Schedule 3 to the Act;

"private healthcare facility" has the same meaning assigned to it under section 2 of the Private Healthcare Facilities and Services Act 1998 [Act 586];

"new private healthcare facility" means an approved private healthcare facility establishment undertaken by a qualifying company;

"Malaysian Industrial Development Authority" means a body corporate established under section 3 of the Malaysian Industrial Development Authority (Incorporation) Act 1965 [Act 397];

"Malaysian Healthcare Travel Council" means a council established under the Ministry of Health Malaysia for the purpose of developing and promoting the healthcare travel industry in Malaysia;

"healthcare traveller" means—

- (a) a non-Malaysian citizen who participates in the *Malaysia My Second Home Programme*;
- (b) an expatriate who is a non-Malaysian citizen holding a Malaysian work permit and his dependents; or
- (c) a non-Malaysian citizen who visits and receives treatment from private healthcare facilities in Malaysia;

"qualifying capital expenditure" means capital expenditure incurred by a qualifying company on an asset used in Malaysia solely for the purpose of qualifying project—

- (a) in relation to a building, the cost of purchasing or constructing new building of an approved standard and that building—
 - (i) has been licensed with the Ministry of Health; and
 - (ii) has been registered with the Malaysian Healthcare Travel Council; and
- (b) in relation to plant and machinery, the medical devices or other facilities used for the purpose of the qualifying project shall be verified by the Ministry of Health and approved by the Minister:

Provided that such qualifying capital expenditure shall not include capital expenditure incurred on building used as living accommodation which are 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;

"expansion, modernization or refurbishment project" means a project undertaken by a qualifying company in expanding, modernizing or refurbishing its existing private healthcare facility business, including infrastructure and functional services, and that business—

- (a) has not been granted any exemption under this Order; and
- (b) involves new investment;

"qualifying project" means—

- (a) any new private healthcare facilities business; or
- (b) any project for the expansion, modernization or refurbishment of existing private healthcare facility business, approved by the Ministry of Health and verified by the Malaysian Healthcare Travel Council; and

"qualifying company" means a company which—

- (a) is incorporated under the Companies Act 1965 [*Act 125*];
- (b) is a resident in Malaysia; and
- (c) undertakes a qualifying project.

APPLICATION

3 This Order applies to—

- (a) a qualifying company which has not commenced its business or a new private healthcare facility business on the date an application is made to the Malaysian Industrial Development Authority; or
- (b) a qualifying company which has not incurred any qualifying capital expenditure on expansion, modernization or refurbishment project on the date an application is made to the Malaysian Industrial Development Authority; and
- (c) an application made by a qualifying company to the Malaysian Industrial Development Authority on or after 1 January 2010 but not later than 31 December 2014.

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 which is equivalent to the amount of allowance as determined in subparagraph (2).
- 4(2)** The amount of allowance referred to in subparagraph (1) shall be one hundred per cent of the qualifying capital expenditure incurred in the basis period for a year of assessment within a period of five years.

- 4(3)** The date of commencement of the period referred to in subparagraph (2) shall be determined by the Malaysian Industrial Development Authority and, in relation to—
- (a) a new private healthcare facility business, on the date the first qualifying capital expenditure has been incurred and that date shall not be earlier than 1 January 2010 or shall be three years from the date of approval as a private healthcare facility business for healthcare travel, whichever is the later; or
 - (b) an expansion, modernization or refurbishment project, on the date the first qualifying capital expenditure has been incurred and that date shall not be earlier than the date of application received by the Malaysian Industrial Development Authority.
- 4(4)** 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 provision of the Act.

STATUTORY INCOME

- 5(1)** The statutory income referred to in subparagraph 4(1) in the basis period for each of the exempted period shall be determined after deduction of allowances which fall to be made under Schedule 3 to the Act notwithstanding that no claim for such allowances has been made:
- Provided that where an asset used for the purpose of the qualifying project, is also used for the purpose of a business other than that 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 the qualifying project.
- 5(2)** The amount of allowance so exempt referred to in subparagraph 4(1) shall be equal to the amount of the statutory income for each year of assessment.
- 5(3)** Where by reason of the absence or insufficiency of the statutory income effect cannot be given or cannot be given in full to the amount as determined to which the qualifying company is entitled under subparagraph 4(1) for that year of assessment, then so much of that amount which cannot be exempted for that year shall be exempted for the first subsequent year of assessment for the basis period for which there is statutory income from that qualifying project, and for subsequent years of assessment until the whole of the amount to which it is so entitled is exempted.

DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE

- 6(1)** For the purpose of this Order, a qualifying company which incurs a qualifying expenditure shall only be entitled to make a claim for a capital allowance under Schedule 3 to the Act if the qualifying expenditure is a qualifying capital expenditure under that Schedule.
- 6(2)** Where qualifying capital expenditure is incurred by a qualifying company on an asset used for the purpose of qualifying project and such asset is disposed of at any time within five years from the date of acquisition of the asset, the amount of income exempted in respect of the allowance of such asset is deemed to have not been exempted to the company to which it would otherwise be entitled.

WITHDRAWAL OF TAX EXEMPTION

- 7 The Minister may withdraw the tax exemption on the statutory income of the qualifying project referred to in subparagraph 4(1) if the qualifying company fails to comply with the conditions as approved by the Minister.

SEPARATE ACCOUNT

- 8 A qualifying company shall maintain a separate account for the income derived from the qualifying project in a basis year for each year of assessment until that qualifying project received the whole allowance or allowances to which it is so entitled.

NON-APPLICATION

- 9 This Order shall not apply to a qualifying company in the basis period for a year of assessment if that qualifying company for that year of assessment has—
- (a) made a claim for reinvestment allowance under Schedule 7A or investment allowance under Schedule 7B to the Act;
 - (b) been granted any incentive under the Promotion of Industrial Act 1986 [*Act 327*];
 - (c) been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) to the Act;
or
 - (d) made a claim for a deduction under any Rules made under section 154 of the Act except for allowance under Schedule 3 to the Act.