

INCOME TAX (EXEMPTION) ORDER 2011

PU (A) 44

2 February 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 2011**.

1(2) This Order shall have effect from the year of assessment 2010 until the year of assessment 2014.

INTERPRETATION

2 In this Order, unless the context otherwise requires—

"export sales" means direct export sales from Malaysia of products made by a company but does not include—

(a) export sales to any company in a zone gazetted as free industrial zones or free commercial zones under the Free Trade Zone Act 1990 [Act 438];

(b) export sales to any company which is approved under the Customs Act 1967 [Act 235] as licensed manufacturing warehouse; or

(c) export sales to Langkawi, Labuan, Tioman tax free zones or to any other zone gazetted as tax free zone under the Free Zones Act 1990 or the Customs Act 1967;

"motor vehicles" means motor vehicles which have been classified according to the different classes as provided in subsection 5(1) Road Transport Act 1987 [Act 333];

"value added" means the difference between the sale price of motor vehicles, automobile components or parts at ex-factory price and the total cost of raw materials;

"value of increased export" means the difference between the free on board value of export sales for a product in a basis period and that of the immediately preceding basis period, where the duration of each basis period is twelve months;

"products" means motor vehicles, automobile components or parts manufactured in Malaysia by a company;

"company" means a company which is—

(a) incorporated under the Companies Act 1965 [Act 125]; and

(b) resident in Malaysia.

EXEMPTION

3 The Minister exempts a company carrying on activities of manufacturing the products for export sales from the payment of income tax in respect of statutory income derived from export sales in the basis period for a year of assessment.

AMOUNT OF STATUTORY INCOME TO BE EXEMPTED FROM TAX

- 4(1)** The amount of statutory income to be exempted referred to in paragraph 3 shall be an amount equal to—
- (a) thirty per cent of the value of increased export where the export sales of products of the company attained at least thirty per cent of value added; or
 - (b) fifty per cent of the value of increased export where the export sales of products of the company attained at least fifty per cent of value added.
- 4(2)** Where the amount of statutory income to be exempted has been determined under subparagraph (1) for a year of assessment, so much of the statutory income of that business for that year of assessment which is equal to the amount referred to in subparagraph (1)(a) or (b) shall be exempted from tax:
- Provided that the amount exempted shall not exceed seventy per cent of the statutory income.
- 4(3)** Subject to subparagraph (4), the statutory income referred to in subparagraph (2) shall be determined after deducting any allowance which fall to be made under Schedule 3 of the Act notwithstanding that no claim for such allowance has been made.
- 4(4)** Where an asset used for the purposes of the business of manufacturing the products for export sales is also used for the purpose of a business other than that business, then the allowance which falls to be made under Schedule 3 of the Act shall be deducted as is reasonable having regard to the extent to which the asset is used for the purpose of the first mentioned business.

INSUFFICIENCY OF INCOME

- 5** Where, by reason of the restriction to seventy per cent of the statutory income or of an insufficiency or absence of statutory income from the business of the company for the basis period for a year of assesment, effect cannot be given or cannot be given in full to the amount as determined to which the company is entitled under subparagraph 4(1) for that year of assessment, then so much of that amount as 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 business and for subsequent years of assessment, but not exceeding seventy per cent of the statutory income for each year of assessment until the whole of the amount to which it is so entitled is exempted.

APPLICATION OF PARAGRAPHS 5 AND 6 OF SCHEDULE 7A OF THE ACT

- 6** Paragraphs 5 and 6 of Schedule 7A of the Act shall apply *mutatis mutandis* to the amount of statutory income derived from export sales of products exempted under paragraph 3.

MAINTANING SEPARATE RECORD

- 7** The company shall maintain a separate record for income derived from export sales of products for each year of assessment for the purpose of exemption under paragraph 3.

NON-APPLICATION

- 8 This Order shall not apply to a company if, in the basis period for a year of assessment, the company—
- (a) has been granted any incentive under the Promotion of Investment Act 1986 [*Act 327*];
 - (b) has made a claim for reinvestment allowance under Schedule 7A of the Act;
 - (c) has been granted investment allowance for service sector under Schedule 7B of the Act;
 - (d) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act; or
 - (e) has qualified for a deduction under any rules made under section 154 of the Act including any rules that provides higher fraction for an asset for the purpose of qualifying plant expenditure under Schedule 3 of the Act.