

INCOME TAX (EXEMPTION) (NO. 10) ORDER 2021

PU (A) 370

21 September 2021

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) These rules may be cited as the **Income Tax (Exemption) (No. 10) Order 2021**.

1(2) This Order is deemed to have come into operation on 1 January 2020.

INTERPRETATION

2(1) In these Order —

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

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

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

2(2) Except for subparagraphs 5(1) and (4), 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 COMPANY

3 The qualifying company referred to in this Order is a company which—

- (a) is incorporated or deemed to be registered under the Companies Act 2016 [Act 777] which is resident in Malaysia;
- (b) is involved in a manufacturing activity in electrical and electronic sector in compliance with the Industrial Co-ordination Act 1975 [Act 156] for the purpose of reinvestment in the qualifying project referred to in subparagraph 5(2);
- (c) holds a business licence issued by the relevant local authority;
- (d) holds a manufacturing licence issued by the licensing officer pursuant to Industrial Co-ordination Act 1975 or a confirmation letter of exemption from manufacturing licence issued by the Malaysian Investment Development Authority, as the case may be; and
- (e) has made a claim for the following incentive for which the period of that incentive has ended in the year of assessment 2019 or any other preceding years of assessment in respect of the same qualifying project:
 - i. reinvestment allowance under Schedule 7A to the Act; and
 - ii. any incentive under the Promotion of Investments Act 1986 [Act 327].

QUALIFYING CAPITAL EXPENDITURE

- 4(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, factory, machinery or plant used in Malaysia solely for the purpose of carrying on a qualifying project referred to in subparagraph 5(2):
- (a) in relation to a building or factory, the cost of purchasing or constructing a building or factory; and
 - (b) in relation to a machinery or plant, the cost of providing a machinery or plant.
- 4(2)** The qualifying capital expenditure referred to in subparagraph (1) shall not include capital expenditure incurred on—
- (a) any building used as living accommodation; or
 - (b) any machinery or plant 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 statutory income derived from a qualifying project referred to in subparagraph (2), which is equivalent to the amount of allowance of fifty per cent of the qualifying capital expenditure incurred by that qualifying company.
- 5(2)** The qualifying project referred to in subparagraph (1) is a project approved by the Minister which is undertaken by a qualifying company in expanding, modernizing, automating or diversifying its business of carrying on manufacturing activity in electrical and electronic sector.
- 5(3)** The exemption period referred to in subparagraph (1) shall be for a period of five consecutive years (hereinafter referred to as “the exemption period”) commencing from the date of the first qualifying capital expenditure incurred by the qualifying company, as determined by the Minister or the Minister charged with the responsibility for international trade and industry, as the case may be.
- 5(4)** The date of the first qualifying capital expenditure incurred by the qualifying company shall not be earlier than 1 January 2020.
- 5(5)** Where a qualifying company incurs its first qualifying capital expenditure and qualifying capital expenditure in relation to the qualifying project referred to in subparagraph (1), prior to the commencement of the qualifying project which is about to carry on, then that expenditure shall be deemed to be incurred in the basis period for a year of assessment in which the qualifying company commences to carry on that qualifying project.
- 5(6)** An application for exemption under this Order shall be made to the Minister through the Malaysian Investment Development Authority on or after 1 January 2020 but not later than 31 December 2021.

- 5(7)** An exemption granted under this Order is subject to the qualifying company complying with the conditions imposed by the Minister which include—
- (a) the qualifying company shall invest in the qualifying project at least one million and five hundred thousand ringgit within the exemption period;
 - (b) the qualifying company shall incur an approved adequate amount of annual operating expenditure in Malaysia to carry on the qualifying project;
 - (c) the qualifying company shall employ an approved adequate number of full-time employees in Malaysia to carry on the qualifying project; and
 - i. undertakes vendor development programme by developing at least two new local vendor companies; or
 - ii. undertakes human capital development programme by fulfilling one of the following conditions:
 - A. undertakes internship programme with local university or polytechnic by taking at least five students who are Malaysian citizens for each year of assessment and undertakes internship programme for a minimum period of three months during the exemption period;
 - B. collaborates with local university on curriculum enhancement in relation to electrical and electronic syllabus; or
 - C. undertakes upskilling or reskilling programme with local university, polytechnic or technical institution.
- 5(8)** Nothing in subparagraph (1) shall absolve or be 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.

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 fall to be made under Schedule 3 to the Act notwithstanding that no claim for such allowances has been made.
- 6(2)** Where a building, factory, machinery or plant is used for the purposes of a qualifying project, is also used for the purposes of a project other than a qualifying project, then the amount of the allowances which fall to be made under Schedule 3 to the Act shall be deducted as is reasonable having regard to the extent to which the building, factory, machinery or plant is used for the purposes of the qualifying project.
- 6(3)** The amount of statutory income so exempt referred to in subparagraph 5(1) shall not exceed fifty per cent for each year of assessment.

- 6(4)** Where, by reason of the restriction of the exemption to fifty per cent of the statutory income pursuant to subparagraph (3) or absence or insufficiency of the statutory income of the qualifying company from the qualifying project, 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, then 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 purpose of subparagraph 5(1) for a period of seven consecutive years of assessment and that period commences immediately after the end of the exemption period, and any amount of exemption at the end of that period which has not been given to that qualifying company, by reason of the restriction of the exemption to fifty per cent of the statutory income or of insufficiency or absence of statutory income for that period, shall be disregarded for the purpose of this paragraph.

DISPOSAL OF BUILDING, FACTORY, MACHINERY OR PLANT WITHIN TWO YEARS

- 7** Subject to here a qualifying capital expenditure is incurred by a qualifying company on a building, factory, machinery or plant used for the purposes of a qualifying project and such building, factory, machinery or plant is disposed of at any time within the period of two years from the date of acquisition of the building, factory, machinery or plant, the exemption granted under subparagraph 5(1) shall be withdrawn in the basis period for the year of assessment in which the building, factory, machinery or plant is disposed of.

DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE FOR BUILDING, FACTORY, MACHINERY OR PLANT DISPOSED TO RELATED COMPANY

- 8(1)** Where the qualifying company disposes to its related company any building, factory, machinery or plant 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 purpose of this paragraph, "related company" has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986.

WITHDRAWAL OF EXEMPTION

- 9(1)** The Minister may withdraw the exemption granted under subparagraph 5(1) if the qualifying company fails to comply with any condition imposed in relation to the exemption.
- 9(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 5(1) shall be deemed to have not been granted to the qualifying company from the first year of the exemption period.

SEPARATE SOURCE AND SEPARATE ACCOUNT

- 10(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 project for the qualifying company.
- 10(2)** The qualifying company which is granted an exemption under subparagraph 5(1) shall maintain a separate account for the income derived from each project referred to in subparagraph (1).

NON-APPLICATION

- 11 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;
 - (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. 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*].

NON-APPLICATION

- 10(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 project for the qualifying company.
- 10(2)** The qualifying company which is granted an exemption under subparagraph 5(1) shall maintain a separate account for the income derived from each project referred to in subparagraph (1).