

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

PU (A) 245

10 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 order:

CITATION AND COMMENCEMENT

1(1) This order may be cited as the **Income Tax (Green Technology Incentive) (Green Building) (Exemption) Order 2024**.

1(2) This Order is deemed to have effect from the year of assessment 2020.

INTERPRETATION

2 In this Order—

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

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

QUALIFYING COMPANY

3 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 a company that incurred a qualifying expenditure 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 after obtaining a Provisional Green Building Certificate;
- c) has obtained a letter of approval in relation to the application referred to in subparagraph (b); and
- d) 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 of twenty-four months from the date of the letter of approval referred to in subparagraph (c) or any period as the Minister may allow, after obtaining the letter of approval.

QUALIFYING EXPENDITURE

- 4(1)** A qualifying expenditure referred to in this Order is an additional expenditure incurred on or after 1 January 2020 in relation to the construction of a building, or alteration, renovation, extension or improvement of an existing building, or plant or machinery for the purpose of obtaining Final Green Building Certificate from the relevant green building rating tools recognized by the Malaysian Green Technology and Climate Change Corporation.
- 4(2)** A qualifying expenditure referred to in subparagraph (1) shall be verified by the Malaysian Green Technology and Climate Change Corporation.
- 4(3)** For the purposes of subparagraph (1), a qualifying expenditure shall not be earlier than three years from the date of the application for approval referred to in subparagraph 3(b) is received by the Minister.

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 its business, which is equivalent to the amount of qualifying 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 of the first qualifying expenditure is incurred by the qualifying company.
- 5(3)** The qualifying expenditure incurred by the qualifying company referred to in subparagraph (1) shall be deemed to have been incurred on the day the Final Green Building Certificate is issued by the relevant green building rating tools recognized by the Malaysian Green Technology and Climate Change Corporation.
- 5(4)** The exemption referred to in subparagraph (1) shall be 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(5)** 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.

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 building, plant or machinery is used for the purposes of a business is also used for the purposes of other businesses other than the business, 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 building, plant or machinery is used for the purposes of the business.

- 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 business, 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 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 BUILDING, PLANT OR MACHINERY

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

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

- 8(1)** Where the qualifying company disposes to its related company any building, plant or machinery in respect of which an exemption is applied by the qualifying company under this Order, the amount of the qualifying 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 require 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
 - (b) In the case of a qualifying company which has incurred qualifying 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.

MAINTAINING SEPARATE RECORDS

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

NON-APPLICATION

- 12** 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 building, plant or machinery;
 - (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 a building, plant or machinery 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 a building, plant or machinery which has not been granted exemption under this Order; or
 - 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 a building, plant or machinery under this Order; 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].