INCOME TAX (EXEMPTION) (NO. 5) ORDER 2012

PU (A) 204
30 July 2012

IN exercise of the powers conferred by paragraph 127(3)(b) of the Stamp Act 1949 [*Act 378*], the Minister makes the following order:

CITATION AND COMMENCEMENT

1(1) This order may be cited as the **Income Tax (Exemption) (No. 5) Order 2012**.

1(2) This Order shall have effect from the year of assessment 2012.

INTERPRETATION

2 In this Order—

"treasury management centre" means a company which is—

(a) incorporated under the Companies Act 1965 [*Act 125*] and resident in Malaysia;

(b) carrying on a business of providing qualifying services in Malaysia as specified by the Minister;

(c) approved by the Minister upon fulfilling conditions specified by him;

"related company" has the same meaning as defined under section 2 of the Promotion of Investments Act 1986 [*Act 327*];

EXEMPTION

3(1) The Minister exempts a treasury management centre from the payment of income tax for five consecutive years of assessment in respect of the statutory income from the provision of qualifying services to its related companies located outside Malaysia and its related companies located in Malaysia (hereinafter referred to as the “exempt years of assessment”).

3(2) For the purpose of subparagraph (1), the provision of qualifying services by the treasury management centre shall be made at least to three of its related companies located outside Malaysia in a basis period for each exempt years of assessment.

3(3) The commencement of the exempt years of assessment shall be determined by the Minister.

3(4) The statutory income exempted as referred to in subparagraph (1) shall be on—

(a) 70% the statutory income from the provision of qualifying services to its related companies located outside Malaysia; and

(b) a part of the income from the provision of qualifying services to its related companies located in Malaysia and shall be determined in accordance with the following formula:

$$\frac{A}{B} \times C$$

where,

A is the amount as determined in accordance with the following formula:

$$\frac{20}{80} \times \text{the amount of all income from the provision of qualifying services;}$$

B is the amount of gross income from the provision of qualifying services to its related companies in Malaysia; and

C is the amount of statutory income from the provision of qualifying services to its related companies in Malaysia.

3(5) The statutory income of the exempt business in the basis period for the year of assessment in the exempt period shall be determined after deducting allowances which should have been made under Schedule 3 of the Act notwithstanding that no claim for any allowances has been made.

SPECIAL PROVISION FOR TREASURY MANAGEMENT CENTRE

4(1) Where the treasury management centre carries on its business in Malaysia—

(a) any payment in relation to the provision of qualifying services received, or paid by the centre from, or to any of its related companies located outside Malaysia or in Malaysia, shall be at arm's length;

(b) any interest charged, or paid by the centre from, or to any of its related companies located outside Malaysia or in Malaysia, shall be at market rate.

4(2) Where the Director General is of the opinion that in the basis period for a year of assessment—

(a) any payment in relation to the provision of qualifying services under subparagraph (1)(a), is less than or greater than the arm's length price; or

(b) any interest charged, or paid under subparagraph (1)(b) is excessive,

he may substitute the price in respect of the provision of qualifying services, or disallow the excessive amount of interest charged or paid, in determining of the adjusted income of the centre.

SEPARATE SOURCE

5 Where the treasury management centre carries on a business of providing qualifying services to its office or related company located outside Malaysia or located in Malaysia, the business of providing qualifying services in Malaysia shall be treated as a separate and distinct source of business.

TAX TREATMENT FOR TREASURY MANAGEMENT CENTRE THAT HAS SUFFERED LOSSES

6(1) Where the treasury management centre is ascertained to have an adjusted loss under subsection 44(2) of the Act for the basis period for a year of assessment during any exempt years of assessment in respect of a business source consisting of the provision of qualifying services to its related companies located outside Malaysia, the amount of adjusted loss shall be disregarded from the source consisting of the provision of qualifying services in Malaysia and other businesses.

6(2) Where the treasury management centre is ascertained to have a loss under subsection 43(2) of the Act for the basis period for a year of assessment during any exempt years of assessment in respect of a business source consisting of the provision of qualifying services to its related companies located outside Malaysia, the amount of adjusted loss shall be disregarded from the source consisting of the provision of qualifying services in Malaysia and other businesses.

6(3) Any balance of adjusted loss ascertained pursuant to subsections 43(2) and 44(2) of the Act in respect of a business source consisting of the provision of qualifying services to its related companies located outside Malaysia shall be disregarded for the purposes of this Act in the subsequent year or years of assessment after the exempt years of assessment, as the case may be.

NON-APPLICATION

7 This Order shall not apply—

(a) to the treasury management centre in the basis period for the year of assessment if the centre, for that year of assessment—

(i) has made a claim for reinvestment allowance under Schedule 7A or investment allowance under Schedule 7B of the Act;

(ii) has been granted any incentive under the Promotion of Investment Act 1986 [*Act 327*];

(iii) has been granted an exemption under section 127 of the Act;

(iv) has made a claim for a deduction under any Rules made under section 154 of the Act except allowance under Schedule 3 of the Act; or

(v) fails to satisfy the conditions as specified by the Minister.

(b) any application made to the Malaysia Investment Development Authority on or after 1 January 2017.