

# **INCOME TAX (GREEN TECHNOLOGY INCENTIVE) (SERVICES) (EXEMPTION) ORDER 2024**

PU (A) 246

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) (Services) (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];

“related company” has the meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986 [Act 327];

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

## **QUALIFYING COMPANY**

**3(1)** 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 carrying on a qualifying activity in writing to the Minister through the Malaysian Investment Development Authority and the application is received—

(i) on or after 1 January 2020 but not later than 31 December 2023; and

(ii) before the company issued the first invoice in relation to its qualifying activity; and

(c) has obtained a letter of approval in relation to the application referred to in subsubparagraph (b).

**3(2)** For the purposes of this Order, “qualifying activity” means an activity as specified in column (3) of the Schedule in relation to the sector as specified in column (2) of the Schedule.

## 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 seventy per cent of its statutory income derived from a qualifying activity in the basis period for that year of assessment.
- 4(2)** The exemption referred to in subparagraph (1) shall be for an exemption period of three consecutive years of assessment commencing from the year of assessment where the date of the first invoice in relation to the qualifying activity is issued by the qualifying company as verified by the Malaysian Green Technology and Climate Change Corporation and that date shall not be earlier than the date of application under subparagraph 3(b) is received by the Malaysian Investment Development Authority.
- 4(3)** The qualifying company shall request for the determination of a commencement date of the exemption period from the Malaysian Green Technology and Climate Change Corporation within the period of twelve months from the date the letter of approval referred to in subparagraph 3(c) is granted.
- 4(4)** The exemption granted under subparagraph (1) is subject to the qualifying company complying with all the conditions imposed by the Minister in relation to the exemption as specified in the letter of approval, which shall include the following conditions:
- (a) has at least five permanent full-time employees in Malaysia which shall include two competent personnel in green technology to carry on the qualifying activity;
  - (b) incurs an approved adequate amount of annual operating expenditure in Malaysia to carry on the qualifying activity for the purposes of its business and the annual operating expenditure shall include local services provided by local service provider; and
  - (c) undertakes at least three qualifying activities from the respective sectors as specified in column (3) of the Schedule.
- 4(5)** Where a qualifying company has been granted an exemption under subparagraph (1), any related company to the qualifying company is not entitled to be granted an exemption under this Order.
- 4(6)** 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.
- 4(7)** For the purposes of this paragraph—
- “competent personnel” means a person who is—
- (a) registered with a respective professional body or qualifications agency;
  - (b) certified with Continuing Professional Development points by the respective professional body or qualifications agency; or
  - (c) actively practising in the respective field;
- “local service provider” means a person resident in Malaysia which provides services including services in relation to insurance, legal, banking, information and communication technology, and transportation.

## **EXCLUSION OF INTELLECTUAL PROPERTY INCOME**

- 5(1)** In ascertaining the statutory income of a qualifying company referred to in subparagraph 4(1), the following intellectual property income derived from a qualifying activity by the qualifying company shall be excluded:
- (a) royalties and other income derived on or after 1 July 2018 but before 1 July 2021 from new intellectual property rights that the qualifying company owns; and
  - (b) royalties and other income derived on or after 1 July 2021 from all intellectual property rights that the qualifying company owns.
- 5(2)** For the purposes of subparagraph (1)—
- (a) a qualifying company owns an intellectual property right if the qualifying company is the owner or the licensee of the right; and
  - (b) royalties or other income is derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right.
- 5(3)** Any intellectual property income excluded in subparagraph (1) is subject to tax under the Act.
- 5(4)** In this paragraph—
- “intellectual property right” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable;
- “new intellectual property right” means an intellectual property right in relation to the qualifying activity of the qualifying company that comes into the ownership of the qualifying company—
- (a) on or after 1 July 2018; or
  - (b) after 16 October 2017 but before 1 July 2018 as a result of an acquisition by the qualifying company, directly or indirectly, from a related company.

## **STATUTORY INCOME**

- 6(1)** Subject to subparagraph (2), the statutory income referred to in subparagraph 4(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 an asset is used for the purposes of a qualifying activity is also used for the purposes of an activity other than the qualifying activity, 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 asset is used for the purposes of the qualifying activity.
- 6(3)** The amount of statutory income referred to in subparagraph (1) shall be reduced by—
- (a) current year adjusted loss from an activity or activities other than a pioneer business or pioneer businesses under the Promotion of Investments Act 1986, or from the qualifying activity exempted under this Order, as the case may be; and

- (b) any unabsorbed adjusted loss or current year adjusted loss from a pioneer business or pioneer businesses under the Promotion of Investments Act 1986 and from the qualifying activity exempted under this Order, as the case may be.
- 6(4)** So much of the adjusted loss referred to in subparagraphs (3)(a) and (b) which was utilised to reduce the statutory income of the qualifying activity for a year of assessment shall not be taken into account for the purposes of subsections 43(2) and 44(2) of the Act and section 21A of the Promotion of Investments Act 1986, as the case may be, in determining the income of a business other than the pioneer business or pioneer businesses and the qualifying activity under this Order.
- 6(5)** Notwithstanding subparagraph (3), any amount of unabsorbed adjusted loss and current year adjusted loss from the qualifying activity that are not utilised to reduce the statutory income during the exemption period referred to in subparagraph 4(2), shall be available to reduce the total income of the qualifying company in accordance with subsections 43(2) and 44(2) of the Act in the basis period for the year of assessment following the cessation of that exemption period and any subsequent years of assessment.

## **WITHDRAWAL OF EXEMPTION**

- 7(1)** Where a qualifying company which has been granted an exemption under subparagraph 4(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.
- 7(2)** The Minister may withdraw the exemption granted under subparagraph 4(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.
- 7(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 4(1) shall be deemed to have not been granted to the qualifying company from the first year of the exemption period.

## **CESSATION OF APPLICATION**

- 8(1)** Subject to paragraph 7, 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.
- 8(2)** The cessation of application of this Order shall have effect—
- (a) on the date of the application for the cessation of application of this Order is received by the Minister through the Malaysian Investment Development Authority from the qualifying company; or
  - (b) 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.

## **SEPARATE SOURCE AND SEPARATE ACCOUNT**

- 9(1)** Where a qualifying company carries on a qualifying activity and activity other than a qualifying activity, each activity shall be treated as a separate and distinct source of activity for the qualifying company.
- 9(2)** The qualifying company which is granted an exemption under subparagraph 4(1) shall maintain a separate account for the income derived from each activity referred to in subparagraph (1).

## **NON-APPLICATION**

- 10** 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 activity;
  - (c) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act in respect of the same qualifying activity;
  - (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]; or
  - (e) has a related company which has been granted an exemption under the Income Tax (Green Technology Incentive) (Solar Photovoltaic System Leasing) (Exemption) Order 2024 [P.U. (A) 247/2024].

**SCHEDULE**

**[Subparagraph 3(2) and subparagraph 4(4)(c)]**

(1) No.	(2) Sector	(3) Qualifying activity
1.	Renewable energy	Services in relation to— (a) audit (b) engineering (c) procurement (d) consultancy or advisory (e) system design (f) testing (g) commissioning (h) installation (i) maintenance, repair and overhaul (j) funding (k) certification or verification (l) feasibility study
2.	Energy efficiency	
3.	Green building	
4.	Green data centre	
5.	Green certification and verification	
6.	Green township	
7.	Electric vehicle	

(1) No.	(2) Sector	(3) Qualifying activity
		<ul style="list-style-type: none"><li data-bbox="786 387 1054 421"><i>(e)</i> system design</li><li data-bbox="786 450 963 483"><i>(f)</i> testing</li><li data-bbox="786 512 1059 546"><i>(g)</i> commissioning</li><li data-bbox="786 575 1010 609"><i>(h)</i> installation</li><li data-bbox="786 638 1283 672"><i>(i)</i> maintenance, repair and overhaul</li><li data-bbox="786 701 970 734"><i>(j)</i> funding</li><li data-bbox="786 763 1185 797"><i>(k)</i> certification or verification</li><li data-bbox="786 826 1066 860"><i>(l)</i> feasibility study</li><li data-bbox="786 889 1267 954"><i>(m)</i> operation of the electric vehicle charging station</li></ul>