

INCOME TAX (EXEMPTION) (NO. 2) ORDER 2014

PU (A) 166
20 June 2014

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) (No. 2) Order 2014**.

1(2) This Order is deemed to have come into operation from the year of assessment 2011.

QUALIFYING COMPANY

2(1) In this Order—

“**qualifying activity**” means any of the following activity, carried out by a qualifying person in RAPID Complex:

- (a) blending, processing or cracking of crude, condensates, feedstock or intermediate feedstock;
- (b) productions, manufacturing or product development of petroleum, petrochemical, chemicals, intermediate, final products or its related by-products;
- (c) storing, formulating, blending, distributing or marketing of petroleum, petrochemical, chemicals, intermediate, final products or its related by-products;
- (d) re-gasification of LNG to gas and its relevant distribution; or
- (e) generation, distribution or sales of all forms of utilities including but not limited to electricity, water, steam, gases, hydrogen, air or waste treatment;

“**RAPID Complex**” means a complex which consists of liquid cracker plants, refinery plants, petrochemical or chemical production plants and all support and auxiliary facilities including but not limited to liquid natural gas (LNG), Receiving and Re-gasification Terminal (RGT), COGEN power plant, storage facilities or waste disposal facilities and located in Pengerang, Johor;

“**qualifying person**” means—

- (a) Petroliam Nasional Berhad;
- (b) any other company incorporated under the Companies Act 1965 [Act 125] where Petroliam Nasional Berhad holds at least fifty-one per cent paid up capital in ordinary shares; or
- (c) any other company incorporated under the Companies Act 1965 which carries out qualifying activity within the RAPID Complex where Petroleum Nasional Berhad holds, either directly or indirectly, ordinary shares in that company;

“**exemption period**” means the period where a qualifying person has been given exemption from payment of income tax under the Income Tax (Exemption) (No. 7) Order 2013 [P.U. (A) 41/2013].

- 2(2)** For the purpose of this Order, “RAPID” is an abbreviation for Refinery and Petrochemical Integrated Development.

APPLICATION

- 3** This Order shall apply to a qualifying person who has made an application in writing in respect of its qualifying activity to the Malaysian Investment Development Authority within ninety days before the expiry of the exemption period under the Income Tax (Exemption) (No. 7) Order 2013.

EXEMPTION

- 4(1)** Subject to subparagraph (2), the Minister exempts a qualifying person resident in Malaysia from the payment of income tax in respect of fifty percent of its statutory income derived from a qualifying activity for a period of five consecutive years of assessment commencing from the year of assessment in the basis period immediately after the exemption period (hereinafter referred to as the “exempt years of assessment”).
- 4(2)** The statutory income referred to in subparagraph (1) in the basis period for each year of assessment shall be determined after deducting allowances which fall to be made under Schedule 3 of the Act notwithstanding that no claim of such allowances have been made.
- 4(3)** Provided that where an asset used for the purpose of qualifying activity referred to in the subparagraph (1) is also used for the purpose of an activity or project, as the case maybe, other than that qualifying activity, then 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 asset is used for the purpose of the first-mentioned activity.
- 4(4)** Nothing in subparagraph (1) shall absolve or is deemed to have absolved the qualifying person from complying with any requirement to submit any return or statement of account or to furnish any other information under the provision of the Act.

LOSSES

- 5(1)** Any amount of adjusted loss incurred from the qualifying activity prior or during the exempt years of assessment under the Income Tax (Exemption) (No. 7) Order 2013 and this Order, shall be carried forward and deducted against the statutory income of the qualifying activity referred to in subparagraph 4(1) in the years following the exempt years of assessment until that activity has utilized the whole amount of the adjusted loss to which it is so entitled.
- 5(2)** So much of the adjusted loss that was utilized to reduce the statutory income of that activity referred to in subparagraph 4(1), in its post-exempt years shall be disregarded for the purposes of the subsections 43(2) and 44(2) of the Act.

SEPARATE SOURCE AND ACCOUNT

- 6(1)** Where a qualifying carries on a qualifying activity referred to in subparagraph 4(1) and other activity or project within or outside RAPID Complex, each of such activity or project shall be treated as a separate and distinct source of activity or business.
- 6(2)** The qualifying person who is exempted under subparagraph 4(1) shall maintain a separate account for the income derived from the qualifying activity referred to in that paragraph.

CONDITION

- 7 The tax exemption on the statutory income of the qualifying activity referred to in subparagraph 4(1) is subject to such conditions as stated by the Malaysian Investment Development Authority in the approval letter for the application referred to in paragraph 3.

NON-APPLICATION

- 8 This Order shall not apply to a qualifying person who in the basis period for each exempt year of assessment the person—
- (a) has made a claim for reinvestment allowance under Schedule 7A or investment allowance under Schedule 7B of the Act;
 - (b) has been granted any incentive under the Promotion of Investment Act 1986 [*Act 327*];
 - (c) has made a claim for a deduction under any Rules made under section 154 of the Act except—
 - (i) the Income Tax (Deduction for Pre-Commencement Expenses in relation to Refinery and Petrochemical Integrated Development) Rules 2013 [*P.U. (A) 43/2013*]; or
 - (ii) where the Minister has prescribed a building as industrial building under paragraph 80 of Schedule 3 to the Act or the amount of allowances which fall to be made under Schedule 3 of the Act; or
 - (d) fails to comply with the approval conditions specified by the Malaysian Investment Development Authority.