INCOME TAX (EXEMPTION) (NO. 3) ORDER 2011

PU (A) 166
29 April 2011

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. 3) Order 2011**.

1(2) This Order is deemed to have come into operation on 1 October 2005.

INTERPRETATION

2 In this Order, unless the context otherwise requires—

"qualified person" means a company incorporated under the Companies Act 1965 [*Act 125*], an agro-based co-operative society, an Area Farmers' Association, a Federal Farmers' Association, a State Farmers' Association, an Area Fishermen's Association, a Federal Fishermen's Association, a State Fishermen's Association and sole proprietorship, partnership or association solely engaged in agriculture or fishery;

"new project" means the first project carried out by a qualified person for the purpose of undertaking an approved food production project and the new project is approved by the Minister;

"expansion project" means a project carried out by a qualified person for the purpose of expanding its existing approved food production project where the expansion project—

(a) has not been granted an exemption under this Order;
(b) involves a new area of land; and
(c) is approved by the Minister;

"approved food production project" means a project in relation to—
(a) planting of kenaf, vegetables, fruits, herbs or spices;
(b) aquaculture;
(c) rearing of cows, buffaloes, goats or sheep; or
(d) deep sea fishing,

which is deemed to be as a separate and distinct business.

APPLICATION

3 This Order shall apply to a new project or expansion project—

(a) for which the application is made to the Minister through the Minister charged with the responsibility for that project, on or after 1 October 2005 but not later than 31 December 2015;
(b) which has not commenced at the date the application is made to the Minister; and
(c) which commences within a year from the date of approval given by the Minister.

EXEMPTION

4(1) Subject to subparagraph (2), the Minister exempts a qualified person resident in Malaysia from the payment of income tax in relation to—

(a) a new project for a period of ten consecutive years of assessment (referred to in this Order as the "exempt years of assessment") in respect of its statutory income, commencing from the first year of assessment in which the qualified person derived statutory income in relation to that project; or

(b) an expansion project for a period of five consecutive years of assessment (referred to in this Order as the "exempt years of assessment") in respect of the statutory income from its existing and expansion projects, commencing from the first year of assessment in which the qualified person derived statutory income in relation to the existing and expansion projects, and the first year of assessment shall not be earlier than the year of assessment in the basis period in which the date of approval from the Minister falls.

4(2) The statutory income of the project referred to in subsubparagraph (1)(a) or (b) in the basis period for each of the exempt years of assessment shall be determined after deducting allowances which fall to be made under Schedule 3 of the Act notwithstanding that no claim for such allowances has been made:

Provided that where an asset used for the purposes of the project referred to in subsubparagraph (1)(a) or (b) is also used for the purposes of a project other than that project, then the allowances which fall to be made under Schedule 3 of the Act shall be deducted as is reasonable having regard to the extent to which the asset is used for the purposes of the first-mentioned project.

4(3) Nothing in subparagraph (1) shall absolve or is deemed to absolve the qualified person from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provision of the Act.

LOSSES

5(1) Any amount of adjusted loss incurred—

(a) from the year of assessment in the basis period in which the project referred to in subsubparagraph 4(1)(a) or (b) commenced to the year of assessment immediately prior to the exempt years of assessment; and

(b) during the exempt years of assessment,

shall be carried forward and deducted against the statutory income of the project in its post-exempt year or years of assessment until that project 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 the project referred to in subsubparagraph 4(1)(a) or (b) in its post-exempt year or years of assessment shall be disregarded for the purposes of the subsections 43(2) and 44(2) of the Act.

WITHDRAWAL OF TAX EXEMPTION

6 The Minister may withdraw the exemption on the statutory income of the project referred to in subparagraph 4(1) if the qualified person fails to comply with the conditions imposed by the Minister.

APPLICATION OF PARAGRAPHS 5 AND 6 OF SCHEDULE 7A OF THE ACT

7 Paragraphs 5 and 6 of Schedule 7A of the Act shall only apply, *mutatis mutandis*, to the amount of income exempted from the projects referred to under subsubparagraph 4(1)(a) or (b) for a company incorporated under the Companies Act 1965.

MAINTAINING OF SEPARATE ACCOUNTS

8 The qualified person which is exempted under subsubparagraph 4(1)(a) or (b) shall maintain a separate account for the income derived from the projects referred to in that subsubparagraph.

NON-APPLICATION

9 This Order shall not apply to a qualified person for a year of assessment in the basis period if the qualified person—

(a) has been granted any incentive under the Promotion of Investments Act 1986 [*Act 327*];
(b) has made a claim for allowance under Schedule 7A or Schedule 7B of the Act;
(c) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act; or
(d) has made a claim for deduction under any rules made under section 154 except an allowance under Schedule 3 of the Act.