

▶▶ Tax Flash



October 2013

Tax Exemption for Merger or Acquisition of Small and Medium Service Providers

The Income Tax (Exemption) (No. 11) Order 2013 and Income Tax (Exemption) (No. 12) Order 2013 have been gazetted to provide tax exemption to qualifying companies established pursuant to a scheme of merger of small and medium enterprises ["SME"] as well as qualifying companies acquiring SME in respect of income derived from the business of qualifying services.

Pursuant to these Orders, such qualifying companies are given exemption on statutory income derived from the business of qualifying services for a period of 5 consecutive years of assessment commencing from the date of completion of the merger/acquisition. The exemption of statutory income shall be computed based on prescribed formulas.

The scheme of merger/acquisition of SME must have been verified by the Small and Medium Enterprises Corporation Malaysia and the merger/acquisition must be completed between 3rd July 2012 and 2nd July 2015.

For the purposes of these Orders:-

"Qualifying company" means a SME incorporated as a company under the Companies Act 1965 and resident in Malaysia.

"Qualifying services" means:-

- Professional services
 - Accounting and taxation
 - Medical and dental specialists
 - Architectural
 - Engineering
- Courier services
- Technical and vocational secondary education services (generic and special needs) as certified by the relevant Ministry
- Skills training services as certified by the relevant Ministry

These Orders are deemed to have come into operation from the year of assessment ["YA"] 2012.

Hyperlinks

Advent Consulting Group
Inland Revenue Board

References

Income Tax (Exemption)
(No. 11) Order 2013

Income Tax (Exemption)
(No. 12) Order 2013

Tax Exemption of Income Derived from Carrying on a Commercialisation Project

Following the 2013 Budget announcement, the Income Tax (Exemption) (No. 13) Order 2013 has been gazetted to provide that a qualifying company is exempted from payment of income tax in respect of the statutory income derived from a business of carrying on a commercialisation project of research and development findings for non-resource based activities or products for 10 consecutive years of assessment ["exempt years of assessment"].

In addition, it is noteworthy that:-

- Interest income derived by the qualifying company from the depositing of excess investment received from the investor company in any bank or financial institution temporarily before utilisation for the commercialisation project shall be treated as income under Section 4(c) of the Income Tax Act 1967 ["the Act"].
- Any adjusted loss or balance of adjusted loss ascertained under Section 43(2) and Section 44(2) of the Act during the exempt years of assessment in respect of the business source of carrying on a commercialisation project shall be disregarded from other business sources and in the subsequent years after the exempt years of assessment.
- Any deduction of expenditure incurred for promotion of exports under Section 41 of the Promotion of Investments 1986 and research and development under Section 34A of the Act during the exempt years of assessment in respect of the business source of carrying on a commercialisation project are allowed to be accumulated and the aggregate amount of the expenditure are allowed for deduction in the first basis period after the exempt years of assessment.

For the purpose of the above Order, "qualifying company" means a locally incorporated company where:-

- a. at least 70% of its paid up share capital in respect of ordinary shares are directly owned by an investor company that has made an investment in the qualifying company for the purpose of a commercialisation project; and
- b. carries on a commercialisation project.

The above Order shall have effect from the YA 2013.

Income Tax (Exemption)
(No. 13) Order 2013

Stamp Duty Exemption on Instruments for Merger or Acquisition of Small and Medium Service Providers

Pursuant to the Stamp Duty (Exemption) (No. 11) Order 2013, exemption from stamp duty is granted on the following instruments executed by a qualifying person pursuant to a scheme of merger or scheme of acquisition approved by the Small and Medium Enterprises Corporation Malaysia:-

- contracts or agreements for sale or lease of properties (land, building, machinery and equipment);
- the instrument of transfer and memorandum of understanding;
- loan or financing agreement; and
- first tenancy agreement.

The qualifying person must be a resident in Malaysia and carries on business of providing qualifying services, which:-

- a. is fully and directly owned by a citizen; and
- b. has achieved annual sales turnover of less than RM5 million; or
- c. has less than 50 full-time employees.

“Qualifying services” has the same meaning as defined under the Income Tax (Exemption) (No.11) Order 2013 and Income Tax (Exemption) (No.12) Order 2013 mentioned above.

The above exemption applies to instruments executed between 3rd July 2012 and 2nd July 2015.

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for this advice. Accordingly, Advent Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team.

Stamp Duty (Exemption)
(No. 11) Order 2013