

INCOME TAX (EXEMPTION) (NO. 13) ORDER 2013

PU (A) 294
30 August 2013

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. 13) Order 2013**.

1(2) This Order has effect from the year of assessment 2013 and subsequent years of assessment.

INTERPRETATION

2 In this Order—

"research and development findings" means research and development findings for the non-resource based activity or product listed in the Schedule and wholly owned by a public research institute or public institute of higher learning in Malaysia;

"training scheme" means the Skim Latihan 1Malaysia programme of eight to twelve continuous months for the unemployed graduates approved by the Economic Planning Unit under the Prime Minister's Department of Malaysia;

"incurred" has the same meaning assigned to it in subsection 33(1) and in paragraphs 46 and 55 of Schedule 3 to the Act;

"investment" means an investment in the form of cash in a qualifying company for which the qualifying company has no obligation to repay, or the holding of paid-up share capital in respect of ordinary shares in a qualifying company;

"commercialisation" means a process of transforming research and development findings into a product or process that has an industrial application or that is marketable;

"investor company" means a company incorporated under the Companies Act 1965 [Act 125]—

(a) which has made an investment for the purpose of a commercialisation project in a qualifying company;

(b) which directly owns at least seventy (70) per centum of paid-up share capital in respect of ordinary shares of the qualifying company;

"qualifying company" means a company incorporated under the Companies Act 1965—

(a) where at least seventy (70) per centum of its paid-up shares 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) which carries on a commercialisation project.

EXEMPTION

- 3(1)** Subject to subparagraph (2), the Minister exempts a qualifying company resident in Malaysia from the payment of income tax in respect of statutory income derived from a business in relation to the carrying on a commercialisation project for a period of ten consecutive years of assessment (exempt years of assessment).
- 3(2)** The tax exemption on the statutory income derived from a business in relation to the carrying on a commercialisation project referred to in subparagraph (1) is subject to such conditions as stated by the Minister in the approval letter for the commercialisation project.
- 3(3)** The commencement of the exempt years of assessment shall be determined by the Minister or the Minister of International Trade and Industry, as the case may be.
- 3(4)** 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 utilization for the commercialization project shall be treated as income under paragraph 4(c) of the Act.
- 3(5)** The statutory income of the business referred to in subparagraph (1) 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 to the Act notwithstanding that no claim for such allowances has been made.
- 3(6)** Where an asset used for the purpose of the business is also used for the purpose of a business other than that business, 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 business in relation to the carrying on a commercialisation project.
- 3(7)** 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 accounts or to furnish any other information under the Act.

TAX TREATMENT FOR A QUALIFYING COMPANY THAT HAS SUFFERED LOSSES

- 4(1)** Where a qualifying company 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 in relation to the carrying on a commercialisation project, the amount of adjusted loss shall be disregarded from the source consisting of the business or businesses other than the business in relation to the carrying on a commercialisation project.
- 4(2)** Where a qualifying company 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 business in relation to the carrying on a commercialisation project, the amount of adjusted loss shall be disregarded from the source consisting of the business or businesses other than the business in relation to the carrying on the commercialisation project.
- 4(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 business in relation to the carrying on a commercialisation project 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.

APPLICATION OF DEDUCTIONS FOR PROMOTION OF EXPORTS UNDER THE PROMOTION OF INVESTMENTS ACT 1986

- 5 For the purpose of computing the adjusted income from the business or project referred to in subparagraph 3(1), an expenditure which would be allowed as a deduction during the exempt years of assessment under section 41 of the Promotion of Investments Act 1986 [Act 327] shall be accumulated and the aggregate amount of the expenditure shall be allowed as a deduction in the first basis period for a year of assessment after the exempt years of assessment.

APPLICATION OF DEDUCTION FOR RESEARCH UNDER SECTION 34A OF THE ACT

- 6(1) For the purpose of computing the adjusted income from the business or project referred to in subparagraph 3(1), an expenditure which would be allowed as a deduction during the exempt years of assessment for research under section 34A of the Act shall be accumulated and the aggregate amount of the expenditure shall be allowed as a deduction in the first basis period for a year of assessment after the exempt years of assessment.
- 6(2) The amount of deduction to be made under subparagraph (1) shall be equal to the amount of expenditure incurred.
- 6(3) Where a deduction has been made under this Order in respect of an expenditure referred to in subparagraph (1), such expenditure shall not be eligible for any deduction under the Act.

CAPITAL ALLOWANCE

- 7 For the purpose of this Order, Schedule 3 to the Act shall apply.

WITHDRAWAL OF TAX EXEMPTION

- 8 The Minister or the Minister of International Trade and Industry, as the case may be, may withdraw the tax exemption on the statutory income of the business or project referred to in subparagraph 3(1), if the qualifying company fails to comply with the conditions as determined by the Minister referred to in subparagraph 3(2).

MAINTAINING OF SEPARATE ACCOUNT

- 9 The qualifying company which is exempted under paragraph 3 shall maintain a separate account for the income derived from the business or project referred to in subparagraph 3(1) for the basis period for each year of assessment of the exempt years of assessment and that income shall be treated as a separate and distinct business source of the qualifying company.

APPLICATION OF PARAGRAPHS 5 AND 6 OF SCHEDULE 7A

- 10 Paragraphs 5 and 6 of Schedule 7A to the Act shall apply, *mutatis mutandis*, to the amount of statutory income exempted from the business or project referred to in subparagraph 3(1).

NON-APPLICATION

- 11 This Order shall not apply to a qualifying company in the basis period for a year of assessment which has been granted—
- (a) a deduction under the Income Tax (Allowance for Increased Exports) Rules 1999 [P.U. (A) 128/1999];
 - (b) a deduction under the Income Tax (Deduction for Cost of Acquisition of Foreign Owned Company) Rules 2013 [P.U. (A) 218/2013];
 - (c) a deduction under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006 [P.U. (A) 55/2006];
 - (d) an exemption on the value of increased exports under the Income Tax (Exemption) (No. 17) Order 2005 [P.U. (A) 158/2005];
 - (e) a reinvestment allowance under Schedule 7A to the Act;
 - (f) any incentives (except deductions for promotion of exports) under the Promotion of Investments Act 1986;
 - (g) an exemption for an approved food production project under the Income Tax (Exemption) (No. 10) Order 2006 [P.U. (A) 51/2006];
 - (h) an exemption under the Income Tax (Exemption) (No. 40) Order 2005 [P.U. (A) 307/2005];
 - (i) an exemption under the Income Tax (Exemption) (No. 41) Order 2005 [P.U. (A) 308/2005];
 - (j) an exemption under the Income Tax (Exemption) (No. 42) Order 2005 [P.U. (A) 309/2005];
 - (k) an exemption for venture capital company under the Income Tax (Exemption) (No. 11) Order 2005 [P.U. (A) 75/2005];
 - (l) a deduction under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [P.U. (A) 76/2005]; or
 - (m) a deduction under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [P.U. (A) 373/2007].

SCHEDULE

[Rule 3]

1. Electrical and electronics;
2. Medical devices;
3. Technical or functional textiles;
4. Machinery and equipment;
5. Metals; and
6. Transport equipment.