INCOME TAX (EXEMPTION) (NO. 4) ORDER 2013

PU (A) 28
30 January 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. 4) Order 2013**.

1(2) This Order shall have effect from the year of assessment 2013.

INTERPRETATION

2 In this Order—

"building" means a building located within the Tun Razak Exchange which is constructed by the approved developer in accordance with the development plan for the Tun Razak Exchange;

"disposal" includes withdrawal of stock in trade pursuant to subsection 24(2) of the Act;

"approved developer" means—

(a) a company incorporated under the Companies Act, 1965 [*Act 125*] and resident in Malaysia which undertakes development within the Tun Razak Exchange in accordance with the Tun Razak Exchange approved master plan; and

(b) a company approved by the Minister;

TUN RAZAK EXCHANGE

3 Tun Razak Exchange means the area referred to in the approved development plan for the Tun Razak Exchange on part of Lot 1164, Lot 1207, Lot 1209, Lot 1210, Lot 1217, PT 122 Section 62, Lot 205 – lot 208, part of Lot 209, Lot 733, Lot 956, Lot 1309 – Lot 1311, Lot 1313, Lot 1314, Lot 1393, Lot 1364, PT 86, PT 109 – PT 121, PT 123 Section 67 at Jalan Tun Razak/Jalan Davis, Wilayah Persekutuan, Kuala Lumpur including any subsequent changes thereto as approved by Dewan Bandaraya Kuala Lumpur.

EXEMPTION

4(1) The Minister exempts an approved developer from the payment of income tax in respect of seventy percent of its statutory income derived from—

(a) the disposal of any building or rights over any building or part of a building up to the year of assessment 2022, subject to a maximum five (5) consecutive years of assessment commencing from the year of assessment in which the approved developer first derives statutory income from such disposal (hereinafter referred to as “exempt years of assessment”); and

(b) the rental of a building or part of a building up to the year of assessment 2027, subject to a maximum five (5) consecutive years of assessment commencing from the first year of assessment in which the approved developer first derives statutory income from the rental activity (hereinafter referred to as “exempt years of assessment”).

4(2) Any amount of statutory income of an approved developer for a year of assessment from a source consisting of a business referred to in subsubparagraph 3(1)(a) or (b) which is not exempt under this Order shall be deemed to be the total income of that approved developer.

4(3) The Minister shall withdraw the tax exemption on the statutory income referred to in subparagraph (1) if the approved developer fails to undertake the development activity in accordance with the Tun Razak Exchange master plan or fails to comply with any approval conditions as determined by the Minister.

4(4) The statutory income referred to in subparagraph (1) in the basis period for each exempt year 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.

4(5) Provided that where an asset used for the purpose of the activity referred to in subparagraph (1) is also used for the purpose of an activity or a business other than the first-mentioned activity, 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 purpose of the first-mentioned activity.

4(6) Nothing in subparagraph (1) shall absolve or be deemed to have absolved the approved developer 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.

SPECIAL PROVISION FOR APPROVED DEVELOPER

5 For the purpose of this Order the income from the approved developer for the activity referred to in subparagraph 3(1)(a) shall apply to—

(a) the Income Tax (Property Development) Regulations 2007 [P.U.(A) 277/2007] in relation to the sell-then-build method; or

(b) the Income Tax (Property Development) Regulations 2007 [P.U. (A) 277/2007] except for regulation 6, in relation to the build-then-sell method.

SEPARATE SOURCE AND ACCOUNT

6(1) Where the approved developer carries on an activity referred to in paragraph 3(1)(a) or (b), and other activity or business, each of such activity or business shall be treated as a separate and distinct source of activity or business.

6(2) The approved developer shall maintain separate accounts for the income derived from each of the activities referred to in paragraphs 3(1)(a) or (b) and other activity or business.

DISPOSAL OF BUILDING

7 Any disposal of a building which is held for investment by the approved developer for which rental income has been exempted under this Order shall be taxed under the Real Property Gains Tax Act 1976 [*Act 169*].

LOSSES

8 In relation to subsubparagraph 3(1)(b)—

(a) any amount of adjusted loss incurred prior and during the exempt years of assessment arising from that activity referred to in paragraphs 3(1)(b) shall be carried forward and deducted against the statutory income of that activity in the post-exempt year or years of assessment until the whole amount of the adjusted loss has been utilised against the statutory income of that respective activity; and

(b) so much of the adjusted loss that was utilised to reduce the statutory income of that activity referred to in subsubparagraph 3(1)(b) in the post-exempt year or years of assessment, shall be disregarded for the purposes of the subsections 43(2) and 44(1) of the Act.

NON-APPLICATION

9 This Order shall not apply to an approved developer which in the basis period for a year of assessment has claimed for a deduction under the Income Tax (Industrial Building Allowance) (Tun Razak Exchange Marquee Status Company) Rules 2013 [P.U. (A) 27/2013].