

INCOME TAX (EXEMPTION) (NO. 5) ORDER 2011

PU (A) 325
22 August 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. 5) Order 2011**.
- 1(2) This Order shall have effect from the year of assessment 2009 and subsequent years of assessment, subject to paragraph 3 and subparagraph 5(5)(b).

INTERPRETATION

2 In this Order—

"Board of Architects Malaysia" means a board which is established under section 3 of the Architects Act 1967 [Act 117];

"person" means a person resident in Malaysia and with respect to a company, refers to a company incorporated under the Companies Act 1965 [Act 125];

"qualifying expenditure" means an additional expenditure incurred in relation to the construction of a building, alteration, renovation, extension or improvement of an existing building, or plant or machinery for the purpose of obtaining greenbuildingindex certificate as certified by the Board of Architects Malaysia.

APPLICATION

- 3 This Order shall apply to a person who has obtained his first greenbuildingindex certificate issued on or after 24 October 2009 but not later than 31 December 2014 by the Board of Architects Malaysia in respect of—
- (a) any building constructed, owned and used by the person for the purpose of his business;
 - (b) any building constructed—
 - (i) under a privatization project and private financing initiatives approved by the Privatisation/PFI Committee, Public Private Partnership Unit, Prime Minister's Department; and
 - (ii) pursuant to an agreement entered into between the person and the Government of Malaysia or a statutory authority on a build-lease-transfer basis, build-lease-maintain-transfer basis or any other similar arrangement and for which no consideration has been paid by the Government of Malaysia or a statutory authority to that person.

NON-APPLICATION

- 4 This Order shall not apply to a person who has incurred qualifying expenditure on a building, plant or machinery for a basis period for a year of assessment where during that basis period the person has claimed in respect of that building, plant or machinery—
- (a) investment tax allowance under the Promotion of Investments Act 1986 [*Act 327*];
 - (b) reinvestment allowance under Schedule 7A to the Act;
 - (c) investment allowance for service sector under Schedule 7B to the Act;
 - (d) accelerated capital allowance under any rules made under section 154 of the Act except for a building prescribed by the Minister as industrial building under paragraph 80 Schedule 3 to the Act; or
 - (e) tax exemption under any order made under section 127 of the Act partly or equivalent to the amount of the expenditure incurred.

EXEMPTION

- 5(1) The Minister exempts a person in the basis period for a year of assessment from the payment of income tax in respect of the statutory income from his business.
- 5(2) The amount of exemption in respect of a business referred to in subparagraph (1) shall be an amount equal to the qualifying expenditure incurred by the person for the purpose of obtaining a greenbuildingindex certificate issued by the Board of Architects Malaysia for a building used for the purpose of that business.
- 5(3) The qualifying expenditure incurred by the person referred to in subparagraph (2) shall be deemed to have been incurred on the day the greenbuildingindex certificate is issued by the Board of Architects Malaysia.
- 5(4) Where the qualifying expenditure has been incurred by the person prior to the commencement of his business, the qualifying expenditure shall be claimed in the basis period for a year of assessment that person commences his business.
- 5(5) Where by reason of an absence or insufficiency of statutory income of a person from his business for the basis period for a year of assessment—
- (a) an exemption cannot be given or cannot be given in full to the amount which the person is entitled under subparagraph (1) for that year of assessment; and
 - (b) the amount, which cannot be given exemption or cannot be given exemption in full as referred to in subparagraph (a) for that year of assessment, shall be exempted for the first subsequent year of assessment for the basis period for which there is statutory income from that business, and for subsequent years of assessment until the whole of the amount to which the person is so entitled is exempted.
- 5(6) Notwithstanding subparagraph (5), where qualifying expenditure is incurred on a building, plant or machinery and such building, plant or machinery is disposed of at any time within a period of two years from the date of acquisition, the exemption which the person would otherwise qualify for, shall be deemed to have not been given to the person and where such exemption has been given, such exemption shall be withdrawn in the basis period the building, plant or machinery is disposed of.

- 5(7)** For the purposes of this paragraph, “disposed of”—
- (a) in respect of a building, shall have the meaning assigned to it in paragraph 48 of Schedule 3 to the Act; or
 - (b) in respect of a plant or machinery, shall have the meaning assigned to it in paragraph 61 of Schedule 3 to the Act.
- 5(8)** In the case of a disposal of a building, plant or machinery under paragraph 38 of Schedule 3 to the Act, the acquirer shall be deemed to have incurred qualifying expenditure in relation to the building, plant or machinery of an amount equal to the sum of the disposer’s residual expenditure on the first day of the disposer’s final period.
- 5(9)** Nothing in subparagraph (1) shall absolve or be deemed to have absolved the 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.

QUALIFYING EXPENDITURE UNDER A HIRE-PURCHASE AGREEMENT

- 6(1)** Where the person entitled for an exemption in accordance with subparagraph 5(1) becomes a party to a hire-purchase agreement for the purchase of a plant or machinery for the purpose of his business in relation to a building which is issued with the greenbuildingindex certificate by the Board of Architects Malaysia, the amount of exemption to be given in respect of the qualifying expenditure incurred by the person for the basis period for a year of assessment shall be—
- (a) the capital portion of any installment payment made by the person under a hire-purchase agreement; or
 - (b) where there is more than one payment, the aggregate of those payments made by the person under a hire-purchase agreement.
- 6(2)** For the purpose of this Order, the person shall be deemed to be the owner of the plant or machinery purchased under a hire-purchase agreement.

CAPITAL ALLOWANCE AND INDUSTRIAL BUILDING ALLOWANCE

- 7** For the purpose of this Order, a person who incurs a qualifying expenditure referred to in subparagraph 5(2) shall only be entitled to make a claim for a capital allowance and industrial building allowance under Schedule 3 to the Act if the qualifying expenditure is a qualifying capital expenditure under that Schedule.

APPLICATION OF PARAGRAPHS 5 AND 6 OF SCHEDULE 7A

- 8** Paragraphs 5 and 6 of Schedule 7A to the Act shall apply, *mutatis mutandis*, to the amount of statutory income exempted from income tax which is derived from the business referred to in paragraph 5.

REVOCATION

- 9** The Income Tax (Exemption) (No. 8) Order 2009 [*P.U. (A) 414/2009*] is revoked.