

INCOME TAX (EXEMPTION) (NO. 6) ORDER 2013

PU (A) 40

7 February 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. 6) Order 2013**.

1(2) This Order is deemed to have come into operation from the year of assessment 2011.

INTERPRETATION

2(1) In this Order—

"qualifying activity" means any of the following activity carried out by a qualifying person in RAPID Complex:

- (a) blending, processing or cracking of crude, condensates, feedstock or intermediate feedstock;
- (b) production, manufacturing or product development of petroleum, petrochemical, chemicals, intermediate, final products or its related by-products;
- (c) storing, formulating, blending, distributing or marketing of petroleum, petrochemical, chemicals, intermediate, final products or its related by-products;
- (d) re-gasification of LNG to gas and relevant distribution; or
- (e) generation, distribution or sales of all forms of utilities including but not limited to electricity, water, steam, gases, hydrogen, air or waste treatment;

"incurred" has the same meaning assigned to it in paragraphs 46 and 55 of Schedule 3 to the Act;

"disposed of" means sold, discarded, destroyed or if it ceases to be used for the purpose of qualifying activity;

"RAPID Complex" means a complex which consists of liquid cracker plants, refinery plants, petrochemical or chemical production plants and all support and auxiliary facilities including but not limited to liquid natural gas (LNG), Receiving and Re-gasification Terminal (RGT), COGEN power plant, storage facilities or waste disposal facilities, and located in Pengerang, Johor;

"qualifying person" means—

- (a) Petroliam Nasional Berhad;
- (b) any other company incorporated under the Companies Act 1965 [Act 125] where Petroliam Nasional Berhad holds at least 51 per cent paid up capital in respect of ordinary shares; or

- (c) any other company incorporated under the Companies Act 1965 which carries out qualifying activity within the RAPID Complex where Petroliam Nasional Berhad holds, either directly or indirectly, ordinary shares in that company.

"qualifying capital expenditure" in relation to manufacturing or processing, means capital expenditure incurred on—

- (a) the provision of any plant and machinery and construction of a factory used in Malaysia in connection with and for the purpose of the qualifying activity; or
- (b) the provision of any plant and machinery and construction of a building used in Malaysia in connection with and for the purposes of the qualifying activity relating to in-house research,

provided that such qualifying capital expenditure shall not include capital expenditure incurred on building which are used as living accommodation for person, plant and machinery which are provided wholly or partly for the use of a director or an individual who is a member of the management, administration or clerical staff of that qualifying person;

"related company" has the same meaning as defined in section 2 of the Promotion of Investments Act 1986 [Act 327].

- 2(2)** For the purpose of this Order, "RAPID" is an abbreviation for Refinery and Petrochemical Integrated Development.

APPLICATION

- 3** This Order shall apply to a qualifying person who has made an application to the Malaysian Investment Development Authority Minister on or after 10 October 2011.

EXEMPTION

- 4(1)** The Minister exempts a qualifying person resident in Malaysia in the basis period for a year of assessment from the payment of income tax in respect of statutory income derived from a qualifying activity which is equivalent to the amount of allowance as determined in subparagraph (2).
- 4(2)** The amount of allowance referred to in subparagraph (1) shall be one hundred per cent of the qualifying capital expenditure incurred in the basis period for a year of assessment for ten consecutive years of assessment (hereinafter referred to as the "exempt years of assessment")
- 4(3)** The commencement of the exempt years of assessment referred to in subparagraph (2)—
 - (a) shall be in the basis period for a year of assessment where the first qualifying capital expenditure is incurred by that qualifying person falls as determined by Malaysian Investment Development Authority; and
 - (b) shall not be earlier than three years of assessment in the basis period the date of application referred to paragraph 3 is received,

but not earlier than the year of assessment 2011.

- 4(4)** Where a qualifying person incurs its first qualifying capital expenditure in relation to the qualifying activity referred to in subparagraph (1) which is about to carry on, then that expenditure shall be deemed to be incurred in the basis period for a year of assessment in which the qualifying person commences to carry on that activity.
- 4(5)** Nothing in subparagraph (1) shall absolve or is deemed to have absolved the qualifying 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.

STATUTORY INCOME

- 5(1)** The statutory income referred to in subparagraph 4(1) in the basis period for each of the exempt years of assessment shall be determined after deduction of allowances which fall to be made under Schedule 3 to the Act although no claim for such allowances has been made.
- 5(2)** Provided that where an asset used for the purpose of the qualifying activity, is also used for the purpose of an activity or business other than that qualifying activity, then the allowance which falls 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 qualifying activity.
- 5(3)** Where an allowance is given to a qualifying person under subparagraph 4(1) for each of the exempt years of assessment, so much of the statutory income of the activity of that person for each exempt year of assessment as is equal to the amount of the allowance shall be exempted from tax for each exempt year of assessment.
- 5(4)** Where, by reason of the absence or insufficiency of the statutory income, effect cannot be given or cannot be given in full to the amount as determined to which the qualifying person is entitled under subparagraph 4(1) for each of that exempt years of assessment, then so much of that amount which cannot be exempted 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 qualifying activity, and for subsequent years of assessment until the whole of the amount to which it is so entitled is exempted.

WITHDRAWAL OF QUALIFYING CAPITAL EXPENDITURE

- 6** Where qualifying capital expenditure is incurred by a qualifying person on an asset used for the purpose of qualifying activity and such asset is disposed of at any time within two years from the date of acquisition of the asset, the amount of income exempted in respect of the allowance of such asset is deemed to have not been exempted to that person to which it would otherwise be entitled.

DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE ON DISPOSAL OF ASSET TO A RELATED COMPANY

- 7** Any disposal of a factory, building, plant or machinery by a qualifying person to its related company in which allowance has been made on the asset under subparagraph 4(2), then the amount of qualifying capital expenditure to be taken by the related company shall be deemed for a sum equal to zero.

SEPARATE ACCOUNT

- 8 A qualifying person shall maintain a separate account for the income derived from the qualifying activity in a basis year for each year of assessment until that qualifying activity utilized the whole allowance or allowances to which it is so entitled.

NON-APPLICATION

- 9 This Order shall not apply to a qualifying person who in the basis period for each exempt year of assessment—
 - (a) has made a claim for reinvestment allowance under Schedule 7A or investment allowance under Schedule 7B of the Act ;
 - (b) has been granted any incentive under the Promotion of Investment Act 1986 [Act 327] except under section 41 of the Promotion of Investment Act 1986;
 - (c) has been granted any other exemption under section 127 of the Act except for Income Tax (Exemption) (No. 5) Order 2013 [P.U. (A) 39/2013];