

INCOME TAX (EXEMPTION) (NO. 2) ORDER 2015

PU (A) 50

19 March 2015

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. 2) Order 2015**.

1(2) This Order has effect from the year of assessment 2015.

INTERPRETATION

2 In this Order—

"qualifying activity" means any activity to which the award of the status of a Multimedia Super Corridor company relates, and—

- (a) which is carried out by the qualifying company outside an area that is determined by the Government of Malaysia as the Multimedia Super Corridor cyber city or cyber centre, within the exemption period as specified in subparagraph 3(1); or
- (b) which is carried out by the qualifying company within an area that is determined by the Government of Malaysia as the Multimedia Super Corridor cyber city or cyber centre within the extended exemption period granted under paragraph 4;

"pioneer business" has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986 [Act 327];

"qualifying company" means a company—

- (a) incorporated under the Companies Act 1965 [Act 125];
- (b) resident in Malaysia;
- (c) which has made an application to the Minister of Finance and Minister of International Trade and Industry to be awarded the status of a Multimedia Super Corridor company on or after 1 January 2015 and has not carried out the qualifying activity at the time the application was made; and
- (d) has been awarded the status of a Multimedia Super Corridor company;

"exemption period" means the exemption period as specified in subparagraph 3(1) or any extended exemption period granted under paragraph 4, as the case may be.

EXEMPTION

- 3(1)** The Minister exempts a qualifying company from the payment of income tax in the basis period for a year of assessment in respect of statutory income derived from a qualifying activity for the period of five years beginning from the date as determined by the Minister.
- 3(2)** The exemption granted under subparagraph (1) shall be subject to the qualifying company complying with the conditions imposed in respect of the award of the status of a Multimedia Super Corridor company to it and any other conditions imposed by the Minister.
- 3(3)** 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.

EXTENSION ON EXEMPTION PERIOD

- 4(1)** The Minister may extend the exemption period referred to in subparagraph 3(1) for another period of five years subject to condition as determined by the Minister.
- 4(2)** An application for the extension of the exemption period shall be made by the qualifying company in writing to the Minister not later than ninety days before the expiry of the exemption period referred to in subparagraph 3(1).
- 4(3)** The extension of the exemption period shall begin from the subsequent date after the expiry of the exemption period referred to in subparagraph 3(1) and continues for a period of five years.

STATUTORY INCOME

- 5(1)** The statutory income of a qualifying company which is derived from a qualifying activity in the basis period for a year of assessment shall be determined after deducting the allowances which should be claimed under Schedule 3 to the Act notwithstanding that no claim for such allowances has been made.
- 5(2)** The income of the qualifying company for each accounting period of its qualifying activity shall be computed in accordance with the Act by—
- (a) treating each such accounting period as the basis period for the year of assessment, which includes the last day of the accounting period in question; and
 - (b) ascertaining the income in question as if it were the statutory income from the business for that year of assessment.
- 5(3)** The amount of statutory income derived from the qualifying activity in the basis period for a year of assessment in respect of which the payment of the income tax is exempted under this Order is as follows:
- (a) seventy percent of the statutory income for the exemption period referred to in subparagraph 3(1); or
 - (b) one hundred percent of the statutory income for the extended exemption period granted under paragraph 4.

- 5(4)** The amount of statutory income referred to in subparagraph (3) shall be reduced by—
- (a) current year adjusted loss from any business other than pioneer business, any approved business exempted under the Income Tax (Exemption) (No. 11) Order 2006 [*P.U. (A) 112/2006*] and qualifying activity exempted under this Order; and
 - (b) any unabsorbed adjusted loss or current year adjusted loss from—
 - (i) any pioneer business;
 - (ii) any approved business exempted under the Income Tax (Exemption) (No. 11) Order 2006 [*P.U. (A) 112/2006*]; and
 - (iii) any qualifying activity exempted under this Order.
- 5(5)** So much of the adjusted losses referred to in subparagraphs (4)(a) and (b) which was utilized to reduce the statutory income of the qualifying activity for a year of assessment shall not be taken into account for the purposes of subsections 43(2) and 44(2) of the Act, sections 21A and 25 of the Promotion of Investments Act 1986 or the Income Tax (Exemption) (No. 11) Order 2006, as the case may be.
- 5(6)** Any amount of unabsorbed adjusted loss and current year adjusted loss, from the qualifying activity that are not utilized to reduce the statutory income during the exemption period shall be taken into account to reduce the total income of the qualifying company in accordance with subsections 43(2) and 44(2) of the Act in its subsequent basis period after the expiry of the exemption period for that year of assessment and subsequent years of assessment.
- 5(7)** Thirty percent of the amount of income which is not exempted under subparagraph (3)(a) shall be deemed to be the total income or part of the total income of the qualifying company for that year of assessment.

CAPITAL ALLOWANCE

- 6** For the purposes of this Order, notwithstanding the provision of Schedule 3 to the Act—
- (i) the residual expenditure of an asset used prior to the date of commencement of the exemption period and that asset continues to be used in the basis period for the year of assessment in which the date of commencement of the exemption period falls shall be deemed to be the residual expenditure of that asset on the date of commencement of that exemption period;
 - (ii) any capital expenditure incurred in respect of an asset in the basis period prior to the date of commencement of the exemption period and that asset continues to be used in the basis period for the year of assessment in which the date of commencement of the exemption period falls shall be deemed to have been incurred on the date of commencement of that exemption period;
 - (iii) the residual expenditure of an asset used during the exemption period and that asset continues to be used in the basis period for the year of assessment in which the date of expiry of the exemption period falls shall be deemed to be the residual expenditure of that asset on the date following the expiry of that exemption period;

- (iv) any capital expenditure incurred in respect of an asset during the exemption period and that asset continues to be used in the basis period for a year of assessment in which the date of expiry of the exemption period falls shall be deemed to have been incurred on the date following the expiry of that exemption period;
- (v) where an asset used for the purposes of the qualifying activity is also used for the purposes of other than the qualifying activity during the exemption period and after the expiry of the exemption period—
 - (i) the allowances which fall to be made under Schedule 3 to the Act shall be reduced as is reasonable having regard to the extent to which the asset is used for the purposes of the qualifying activity; and
 - (ii) the residual expenditure determined under subparagraphs (a) until (d) shall be reduced by the amount of any deduction made under subsubparagraph (i);
- (vi) unabsorbed capital allowance prior to the commencement of the exemption period shall be utilized to reduce the statutory income of the qualifying company which is derived from the qualifying activity in the basis period for the year of assessment to which the exemption period applies; and
- (vii) unabsorbed capital allowance during the exemption period of the qualifying activity shall be utilized to reduce the statutory income of the qualifying company which is derived from the qualifying activity in the basis period following the expiry of that exemption period for the year of assessment and any subsequent years of assessment.

WITHDRAWAL OF EXEMPTION

- 7(1)** The Minister may withdraw the exemption granted under this Order if the qualifying company fails to comply with any conditions imposed by the Minister.
- 7(2)** Where the exemption granted under this Order is withdrawn, the withdrawal shall be deemed to be effective—
 - (a) from the date the exemption comes into effect; or
 - (b) if the Minister thinks fit, from such date after the date the exemption comes into effect, as determined by the Minister.

SURRENDERING OF EXEMPTION

- 8(1)** The Minister may, at any time, except where the qualifying company fails to comply with any conditions imposed by the Minister, allow the qualifying company to surrender the exemption granted under this Order by notice in writing to the Minister.
- 8(2)** The surrender of the exemption shall have effect—
 - (a) on the date the approval of the award of the status of a Multimedia Super Corridor company is granted to the qualifying company; or

- (b) in case where the exemption period has commenced—
 - (i) on the date of the application for surrender of the exemption is received by the Minister; or
 - (ii) on the first day in the basis period for the year of assessment in which the application for surrender of the exemption is received by the Minister.

SEPARATE ACCOUNT

- 9** The qualifying company which is granted the exemption under this Order shall maintain a separate account for the income derived from the qualifying activity for the basis period for each year of assessment of the exemption period and the qualifying activity shall be treated as a separate and distinct source of income.

NON-APPLICATION

- 10** This Order shall not apply to a qualifying company which in the basis period for that year of assessment—
- (a) has made a claim for reinvestment allowance under Schedule 7A to the Act or investment allowance under Schedule 7B to the Act;
 - (b) has been granted any incentive under the Promotion of Investments Act 1986 in respect of similar qualifying activity;
 - (c) has been granted an exemption under section 127 of the Act in respect of similar qualifying activity; or
 - (d) has made a claim for deduction under any rules made under section 154 of the Act except—
 - (i) allowance under Schedule 3 to the Act;
 - (ii) the Income Tax (Deduction for Audit Expenditure) Rules 2006 [*P.U. (A) 129/2006*];
 - (iii) the Income Tax (Deduction for Cost relating to Training for Employees for the Implementation of Goods and Services Tax) Rules 2014 [*P.U. (A) 334/2014*]; or
 - (iv) the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [*P.U. (A) 336/2014*].