

INCOME TAX (EXEMPTION) (NO. 8) ORDER 2012

PU (A) 421
28 November 2012

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. 8) Order 2012**.
- 1(2)** This Order is deemed to have come into operation on 8 October 2011 and shall have effect subject to paragraph 3.

INTERPRETATION

2 In this Order—

"Malaysian Investment Development Authority" means a body corporate established under the Malaysian Investment Development Authority (Incorporation) Act 1965 (Revised – 1989) [Act 397];

"qualifying person" means—

- (a) a society which is established under the Societies Act 1966 [Act 335] prior to 8 October 2011 or a company which is incorporated under the Companies Act 1965 [Act 125];
- (b) resident in Malaysia;
- (c) registered with the Ministry of Education Malaysia and has complied with terms and regulations as determined by that Ministry under the Education Act 1996 to carry on the business of private school or international school on or after 8 October 2011; and
- (d) approved by the Minister;

"pre-school education" has the meaning assigned to it in the Education Act 1996 [Act 550];

"international school" means a school which is not a government school that provides pre-school education until the A-Level programme but shall not include a school which provides solely pre-school education;

"private school" means a school which is not a government school that provides—

- (a) private primary or secondary education or both, that comply with the requirements of the National Curriculum and examinations prescribed under the Education Act 1996 together with the provision of private pre-school education therein, if any;
- (b) private religious primary or secondary education or both, that comply with the requirement of the National Curriculum prescribed under the Education Act 1996 together with the provision of private pre-school education therein, if any; or

- (c) private chinese primary or secondary education or both, together with the provision of private pre-school education therein, if any, that comply with guidelines issued by Ministry of Education, but shall not include a school which provides solely pre-school education.

APPLICATION

- 3** This Order shall apply to a qualifying person—
- (a) who has made an application to the Malaysian Investment Development Authority on or after 8 October 2011 but not later than 31 December 2015; and
 - (b) who has not commenced its business of private school or international school prior to the application referred to in subparagraph (a).

EXEMPTION

- 4(1)** The Minister exempts a qualifying person from the payment of income tax in a basis period for a year of assessment in respect of the statutory income derived from a business of private school or international school in Malaysia.
- 4(2)** The statutory income as referred to in subparagraph (1) shall be exempt for a period of five years (hereinafter referred to as “exempt period”) commencing from a date as determined by the Malaysian Investment Development Authority and computed in the manner prescribed under paragraph 5.
- 4(3)** The tax exemption on the statutory income of the business referred to in subparagraph (1) is subject to conditions as stated by the Minister in the approval letter of the business.
- 4(4)** 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 Act.

STATUTORY INCOME

- 5(1)** The statutory income from the business of private school or international school in Malaysia in the basis period for a year of assessment during the exempt period shall be determined after deducting allowances which may be made according to Schedule 3 to the Act although no claim for such allowances has been made:

Provided that where an asset used for the purposes of the business referred to in subparagraph (1) is also used for the purposes of a business other than that business, then the allowances which may 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 purposes of the first-mentioned business.

- 5(2)** The amount of statutory income of the business of private school or international school in Malaysia to be exempt in the basis period for a year of assessment during the exempt period shall be determined according to the following manner:

- (a) seventy per cent of the statutory income; and
 - (b) the amount of statutory income referred to in subparagraph (2)(a) shall be reduced—
 - (i) first, by current year adjusted loss from a business or businesses other than the business of private school or international school in Malaysia, as the case may be; and
 - (ii) next, by any unabsorbed adjusted loss or current year adjusted loss from the business of private school or international school in Malaysia exempted under this Order, as the case may be.
- 5(3)** So much of the adjusted loss referred to in subparagraphs (2)(b)(i) and (ii) which was utilised to reduce the statutory income of the business of private school or international school in Malaysia for a year of assessment shall not be taken into account for the purposes of subsections 43(2) and 44(2) of the Act.
- 5(4)** Any amount of statutory income of a qualifying person for a year of assessment from a source consisting of a business of private school or international school in Malaysia which is not exempt under this Order shall be deemed to be the total income of that person.
- 5(5)** Any amount of unabsorbed adjusted loss and current year adjusted loss from a business of private school or international school in Malaysia that are not utilised to reduce the statutory income during the exempt period referred to in subparagraph (2)(b), shall be available to reduce the statutory income or total income of that person in accordance with subsections 43(2) and 44(2) of the Act in the basis period following the cessation of that exempt period for the year of assessment and subsequent years of assessment, as the case may be.

CAPITAL ALLOWANCE

- 6** For the purpose of this Order, notwithstanding the provisions of Schedule 3 to the Act—
- (a) the residual expenditure of an asset used prior to the date of commencement of the exempt period where that asset continues to be in use in the basis period for the year of assessment in which the day of commencement of the exempt period falls shall be deemed to be the residual expenditure of that asset on the day of commencement of that exempt period;
 - (b) any capital expenditure incurred in respect of an asset in the basis period prior to the date of commencement of the exempt period and that asset continues to be in use in the basis period for the year of assessment in which the exempt period falls shall be deemed to have been incurred on the day of commencement of that exempt period;
 - (c) the residual expenditure of an asset used in the exempt period and that asset continues to be in use in the basis period for the year of assessment in which the date of cessation of the exempt period falls shall be deemed to be the residual expenditure of that asset on the day following the cessation of that exempt period;
 - (d) any capital expenditure incurred in respect of an asset during the exempt period and that asset continues to be in use in the basis period for a year of assessment in which the date of cessation of exempt period falls shall be deemed to have been incurred on the day following the cessation of that exempt period;
 - (e) where an asset used for the purposes of the business of private school or international school in Malaysia is also used for other purposes than that business—

- (i) then, the allowances which may 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 first-mentioned business; and
- (ii) the residual expenditure arrived at under subparagraphs (a) or (c), shall be reduced by the amount of any deduction made under subparagraph (i);
- (f) unabsorbed capital allowance prior to the commencement of the exempt period shall be utilised to reduce the statutory income of the business of private school or international school in Malaysia in the basis period for the year of assessment of the exempt period; and
- (g) unabsorbed capital allowance during the exempt period of the business of private school or international school in Malaysia shall be utilised to reduce the statutory income of that business in the basis period following the cessation of that exempt period for the year of assessment and any subsequent years of assessment.

SEPARATE SOURCE

- 7** Where a qualifying person carries on a business of private school or international school in Malaysia and other business or businesses, each of such businesses shall be treated as a separate and distinct source of business.

NON-APPLICATION

- 8** This Order shall not apply to a qualifying person in the basis period for the year of assessment if that person for that year of assessment—
- (a) has made a claim for reinvestment allowance under Schedule 7A or investment allowance under Schedule 7B to the Act ;
 - (b) has been granted any incentive under the Promotion of Investments Act 1986 [Act 327];
 - (c) has been granted an exemption under section 127 of the Act;
 - (d) has made a claim for a deductions under any Rules made under section 154 of the Act except for allowance under Schedule 3 to the Act; or
 - (e) fails to satisfy the conditions as specified by the Minister in his approval letter referred to in subparagraph 4(3).