INCOME TAX (DEDUCTION FOR COST OF ACQUISITION OF FOREIGN OWNED COMPANY) RULES 2013

PU (A) 218
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IN exercise of the powers conferred by paragraphs 154(1)(b) and 33(1)(d) of the Income Tax Act 1967 [*Act 53*], the Minister makes the following rules:

CITATION AND COMMENCEMENT

1(1) These rules may be cited as the **Income Tax (Deduction for Cost of Acquisition of Foreign Owned Company) Rules 2013**.

1(2) These Rules are deemed to have come into operation on 3 July 2012.

INTERPRETATION

2 In these Rules—

"**manufacturing**" has the same meaning assigned to it in paragraph 9 of Schedule 7A of the Act read together with the Income Tax (Prescription of Activity Excluded from the Definition of "Manufacturing") Rules 2012 [*P.U. (A) 23/2012*];

"**business**" means the business of manufacturing or provision of services (excluding financial and utilities) referred to in paragraph 3(b);

"**foreign owned company**" means a company as provided under rule 4;

"**locally owned company**" means a company as provided under rule 3;

"**high technology**" means new and emerging technology.

LOCALLY OWNED COMPANY

3 Subject to rule 5, a locally owned company eligible for deduction under these Rules is a company which is—

(a) incorporated under the Companies Act 1965 [*Act 125*] and resident in Malaysia; and

(b) carrying on the business of manufacturing of product or the provision of selected services in Malaysia approved by the Minister—

(i) for a company which is not listed on the stock exchange established under subsection 15(2) of the Capital Markets and Services Act 2007 [*Act 671*], which at least sixty per cent of its paid-up capital in respect of ordinary shares are directly owned by Malaysian citizen; or

(ii) for a company which is listed on the stock exchange established under subsection 15(2) of the Capital Markets and Services Act 2007—

(A) which at least sixty per cent of its paid-up capital in respect of ordinary shares are directly owned by the Malaysian citizen on the first day of listing on the stock exchange; and

(B) which at least fifty per cent of its ordinary shares are directly owned by the Malaysian citizen.

FOREIGN OWNED COMPANY

4 A foreign owned company referred to for the purpose of deduction under these Rules is a company located outside Malaysia—

(a) which is established under any written law relating to the establishment of a company outside Malaysia;

(b) which is wholly owned, directly or indirectly, by non-Malaysian citizen; and

(c) which owns and uses high technology in the activity of manufacturing or provision of selected services outside Malaysia.

APPLICATION

5 These Rules shall apply to a locally owned company which—

(a) submits an application for deduction for cost of acquisition of foreign owned company on or after 3 July 2012 but not later than 31 December 2016 to the Malaysian Investment Development Authority, and the said application has been approved by the Minister;

(b) acquires at least fifty one percent of paid-up capital in respect of ordinary shares of a foreign owned company in the form of cash transaction;

(c) uses the high technology acquired from that foreign company in his business for the purpose of creating or increasing a demand on the product manufactured in Malaysia or services provided in Malaysia, as the case may be and with the objective of using the said technology for—

(i) the production or improvement of material, devices, products, produce or processes; or

(ii) the improvement of processing or quality of the selected services; and

(d) has not been granted any incentives under the Promotion of Investments Act 1986 [*Act 327*] except pioneer status or investment tax allowance as a high technology company.

DEDUCTION

6(1) For the purpose of ascertaining the adjusted income from the business of a locally owned company which has paid cost of acquisition of a foreign owned company in the basis period for a year of assessment, a deduction shall be allowed of an amount equal to one-fifth of that cost for that year of assessment and for each of the four following years of assessment.

6(2) The cost of acquisition of a foreign owned company approved by the Minister is deemed to be made in the basis period for the year of assessment in which the date of the full settlement for the acquisition falls as verified by the Malaysian Investment Development Authority.

6(3) The acquisition must be completed within three years from the date of application to the Malaysian Investment Development Authority.

6(4) Subject to subrule (5), where the cost of acquisition of foreign owned company is paid by a pioneer company, the pioneer company may make an election that the deduction referred to in subrule (1) be allowed commencing from the year of assessment in the first basis period in respect of its post-pioneer business and the four following years of assessment.

6(5) Where the paid-up capital in respect of ordinary shares of the acquired foreign owned company is disposed of within five years from the date of completion of the acquisition, the deduction referred to in subrule (1) shall be withdrawn and be treated as gross income of the locally owned company in the year of assessment in which those shares are disposed of in the respective years of assessment where such deduction has been allowed.

6(6) In this rule—

(a) "**disposed of**" means sold, conveyed, transferred or assigned, or alienated with or without consideration; and

(b) "**post-pioneer business**" and “pioneer company” has the same meaning as assigned to it in section 2 of the Promotion of Investments Act 1986.

INELIGIBILITY FOR DEDUCTION

7(1) The deduction under these Rules is not eligible for a locally owned company which in the basis period for a year of assessment—

(a) has made a claim for reinvestment allowance under Schedule 7A or investment allowance for service sector under Schedule 7B of the Act;

(b) has been granted an exemption under section 127 of the Act;

(c) has made a claim for a deduction under any Rules made under section 154 of the Act except for allowance under Schedule 3 to the Act; or

(d) is a related company of a locally owned company which application for deduction under these Rules has been approved.

7(2) In this rule, "**related company**" has the same meaning assigned to it in section 2 of the Promotion of Investments Act 1986.