

# **INCOME TAX (EXEMPTION) (NO. 12) ORDER 2013**

PU (A) 287

11 September 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. 12) Order 2013**.

**1(2)** This Order is deemed to have come into operation from the year of assessment 2012.

## **APPLICATION**

**2(1)** This Order applies to a qualifying company—

- (a) which carries on a business of qualifying services;
- (b) which acquires a small and medium enterprise carrying on a business of same qualifying services pursuant to a scheme of acquisition;
- (c) whose scheme of acquisition has been verified by the Small and Medium Enterprises Corporation Malaysia; and
- (d) whose acquisition is completed on or after 3 July 2012 but not later than 2 July 2015.

## **INTERPRETATION**

**3** In this Order—

"business of qualifying services" means a business in relation to services as specified in the Schedule;

"small and medium enterprises" has the same meaning assigned to it under section 2 of the Small and Medium Enterprises Corporation Malaysia Act 1995 [Act 539];

"scheme of acquisition" means a scheme involving an acquisition of a small and medium enterprise by another small and medium enterprise in accordance with generally accepted practice in Malaysia;

"qualifying company" means—

- (a) a small and medium enterprise incorporated as a company under the Companies Act 1965 [Act 125]; and
- (b) resident in Malaysia.

## EXEMPTION

**4(1)** Subject to paragraphs 8, the Minister exempts a qualifying company, in respect of statutory income derived from the carrying on of business of qualifying services for the basis period for a year of assessment, from the payment of income tax for a period of five consecutive years of assessment commencing from the date the acquisition is completed.

**4(2)** Subject to paragraphs 5 and 6, the statutory income referred to in subparagraph (1) shall be determined in accordance with the following formula:

(a) in relation to a qualifying company which has a paid-up capital in respect of its ordinary shares of two million five hundred thousand ringgit and less after the acquisition is completed—

(i) for every ringgit of the first RM500,000.00 of the chargeable income, the prevailing tax rate for the said amount as provided for in paragraph 2A of Part I of Schedule 1 to the Act applies;

(ii) for every ringgit exceeding RM500,000.00 of the chargeable income, the statutory income shall be calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

where

A	is the amount of tax charged for every ringgit exceeding RM500,000.00 of the chargeable income of the qualifying company at the prevailing tax rate as provided for in paragraph 2A of Part I of Schedule 1 to the Act reduced by the amount of tax charged on such chargeable income for every ringgit exceeding RM500,000.00 at the rate of twenty per cent;
B	is the amount of tax charged for every ringgit exceeding RM500,000.00 of such chargeable income at the prevailing tax rate as provided for in paragraph 2A of Part I of Schedule 1 to the Act; and
C	is the amount of such chargeable income exceeding RM500,000.00.

(b) in relation to a qualifying company which has a paid-up capital in respect of its ordinary shares of more than two million five hundred thousand ringgit after the acquisition is completed—

$$\frac{A}{B} \times C$$

**4(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 provisions of the Act.

## TOTAL STATUTORY INCOME OF THE QUALIFYING COMPANY

**5(1)** For the purpose of paragraph 4, the total statutory income of the qualifying company shall be determined after deducting the allowances which fall to be made under Schedule 3 to the Act notwithstanding that no claim for such allowances has been made.

- 5(2)** Where an asset used for the purpose of a business of qualifying services referred to in subparagraph 4(1) is also used for the purpose of a business other than that business of qualifying services, then the allowances which fall 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 that business of qualifying services.

## **CHARGEABLE INCOME**

- 6(1)** For the purpose of paragraph 4, the chargeable income of a qualifying company from its source consisting of business of qualifying services and any other source consisting of any other activity or business for a year of assessment, shall be the statutory income from that source reduced by any deduction falling to be made pursuant to subsections 43(2) and 44(1) of the Act relating to that source:

Provided that the shareholders of that qualifying company, on the last day of the basis period for the year of assessment where the scheme of acquisition falls in which the amount of adjusted loss is ascertained, shall be substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which such amount would otherwise be deductible under that subsection, and such amount disregarded shall not be allowed as a deduction in subsequent years of assessment pursuant to subsections 44(5A), (5B) and (5C) of the Act.

- 6(2)** For the purpose of subparagraph (1), in making the deduction under subsection 43(2) of the Act, no regard shall be made to the adjusted loss, if any, from the source of the business of the small and medium enterprise which is acquired by the qualifying company.

## **SEPARATE SOURCE AND ACCOUNT**

- 7(1)** If a qualifying company carries on business of qualifying services and any other activity or business, the income derived from the business of qualifying services and each of such other activity or business shall be treated as a separate and distinct source of activity or business of that qualifying company.
- 7(2)** The qualifying company which is exempted under subparagraph 4(1) shall maintain a separate account for the income derived from the business of qualifying services referred to in that subparagraph.

## **DISQUALIFICATION FROM EXEMPTION**

- 8** A qualifying company in the basis period for the year of assessment shall not qualify to be exempted under this Order where, for that year of assessment, the qualifying company—
- (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; or
  - (d) has made a claim for deduction under any rules made under section 154 of the Act except for allowances under Schedule 3 to the Act.

## SCHEDULE

1. Professional services—
  - (a) accounting and taxation
  - (b) medical and dental specialists
  - (c) architectural
  - (d) engineering
2. Courier services
3. Technical and vocational secondary education services (generic and special needs) as certified by the Ministry charged with the responsibility for technical and vocational secondary education
4. Skills training services as certified by the Ministry charged with the responsibility for skills training