

INCOME TAX (EXEMPTION) (NO. 8) ORDER 2013

PU (A) 44

29 January 2013

IN exercise of the powers conferred by subsection 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 2013**.

1(2) This Order 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 there to in paragraphs 46 and 55 of Schedule 3 of 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 project" means project undertaken by a qualifying person, in expanding modernizing, automating or in diversifying its existing qualifying activity which is exempted under the Income Tax (Exemption) (No. 6) Order 2013 [P.U. (A) 40/2013] within the same industry and carried out by a qualifying person in RAPID Complex for RAPID;

"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 project; 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 project 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 under 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 in writing in respect of its qualifying project to the Malaysian Investment Development Authority within ninety days before the expiry of the exemption period under the Income Tax (Exemption) (No. 6) Order 2013 [P.U. (A) 40/2013].

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 project 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 five 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) shall be in the basis period for a year of assessment where the first qualifying capital expenditure is incurred by that qualifying person falls.

- 4(4)** Where a qualifying person incurs its first qualifying capital expenditure in relation to the qualifying project 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 account 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 notwithstanding that no claim for such allowances has been made.
- 5(2)** Provided that where an asset used for the purpose of the qualifying project, is also used for the purpose of an activity or business other than that qualifying project, 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 project.
- 5(3)** Where an allowance is given to a qualifying person under paragraph 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 exempt 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 shall be exempted for the first subsequent year of assessment for the basis period for which there is statutory income from that qualifying project, 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 project 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 such allowance has been made on the asset, then the amount of qualifying capital expenditure to be taken by the related company shall be deemed for a sum equal to zero.

SEPARATE SOURCE AND ACCOUNT

- 8** A qualifying person shall maintain a separate account for the income derived from the qualifying project in a basis year for each year of assessment until that qualifying project 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 for the Income Tax (Promotion of Exports) Rules 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].