

INCOME TAX (EXEMPTION) (NO. 9) ORDER 2018

PU (A) 388
31 December 2018

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. 9) Order 2018.
- 1(2) This Order has effect from the year of assessment 2018.

INTERPRETATION

2 In this Order—

"**qualifying activity**" means an activity as provided under paragraph 4;

"**Malaysian Investment Development Authority**" means the Malaysian Investment Development Authority established under the Malaysian Investment Development Authority (Incorporation) Act 1965 [Act 397];

"**Malaysian Green Technology Corporation**" means a company limited by guarantee without share capital incorporated under the Companies Act 2016 [Act 777];

"**new company**" means a qualifying company which has not carried out a qualifying activity prior to applying for an exemption under subparagraph 5(3);

"**existing company**" means a qualifying company which carries on a qualifying activity prior to applying for an exemption under subparagraph 5(3);

"**qualifying company**" means a company as provided under paragraph 3.

QUALIFYING COMPANY

3(1) A qualifying company referred to in this Order is a new company or an existing company incorporated under the Companies Act 2016 and resides in Malaysia, which—

- (a) carries on a qualifying activity in relation to green technology approved by the Malaysian Green Technology Corporation for the purpose of its business;
- (b) has a green policy related to environmental sustainability;
- (c) has at least one competent personnel in green technology;
- (d) has at least five full time employees in Malaysia to carry on the qualifying activity; and
- (e) incurs an adequate amount of annual operating expenditure in Malaysia as approved to carry on the qualifying activity for the purpose of its business and that expenditure shall include local services provided by local service provider.

3(2) For the purpose of this paragraph—

"**green policy**" means a statement about the commitment to sustainability and environment management by a qualifying company;

"**competent personnel**" means a person who holds a certificate of competency as a service provider in green technology; and

"**local service provider**" means a person resident in Malaysia which provides services for insurance, legal, banking, information and communication technology, and transportation.

QUALIFYING ACTIVITY

- 4** A qualifying activity referred to under this Order is an activity as set out in column (3) of the Schedule in relation to the sector as set out in column (2) of the Schedule that has obtained annual verification from the Malaysian Green Technology Corporation and the activity results in—
- (a) minimizing the degradation of the environment or reducing greenhouse emission;
 - (b) promoting health and improvement of environment; and
 - (c) conserving the use of energy, water and other forms of natural resources or promoting the use of renewable energy or ability to recycle waste material resources.

EXEMPTION

- 5(1)** Subject to paragraphs 6 and 7, the Minister exempts a qualifying company in the basis period for a year of assessment from the payment of income tax in respect of the statutory income derived from a qualifying activity for a period of five years or until the year of assessment 2020 whichever is earlier (hereinafter referred to as “exempt period”).
- 5(2)** The exempt period referred to in subparagraph (1) in relation to—
- (a) a new company, shall commence from the year of assessment where the date of the first invoice in relation to the qualifying activity issued by the qualifying company falls and that date shall not be earlier than 1 January 2018; or
 - (b) an existing company, shall commence from the year of assessment where the date of the first invoice in relation to the qualifying activity issued by the qualifying company falls and that date shall not be earlier than the date of application for exemption is received by the Malaysian Investment Development Authority.
- 5(3)** An application for exemption under this Order shall be made to the Minister through the Malaysian Investment Development Authority on or after 1 January 2018 but not later than 31 December 2020.
- 5(4)** An exemption granted under this Order shall be subject to the qualifying company complying all conditions imposed by the Minister in relation to the exemption.
- 5(5)** Nothing in subparagraph (1) shall absolve or be 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.

EXCLUSION OF INTELLECTUAL PROPERTY INCOME

- 6(1)** In ascertaining the statutory income of a qualifying company referred to in subparagraph 5(1), the following intellectual property income derived from a qualifying activity of the qualifying company shall be excluded:
- (a) royalties and other income derived on or after 1 July 2018 but before 1 July 2021 from new intellectual property rights that the qualifying company owns; and
 - (b) royalties and other income derived on or after 1 July 2021 from all intellectual property rights that the qualifying company owns.

- 6(2)** For the purpose of subparagraph (1)—
- (a) a qualifying company owns an intellectual property right if the qualifying company is the owner or the licensee of the right;
 - (b) royalties or other income is derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right;
 - (c) “intellectual property right” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable; and
 - (d) “new intellectual property right” means an intellectual property right in relation to the core income generating activities of the qualifying company that—
 - (i) comes into the ownership of the qualifying company on or after 1 July 2018; or
 - (ii) comes into the ownership of the qualifying company after 16 October 2017 but before 1 July 2018 as a result of an acquisition by the qualifying company, directly or indirectly, from a related company.
- 6(3)** For the purpose of subsubsubparagraph (2)(d)(ii), “related company” has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986 [Act 327].
- 6(4)** Any intellectual property income excluded in subparagraph (1) is subject to tax under the Act.

STATUTORY INCOME

- 7(1)** Subject to subparagraph (2), the statutory income referred to in subparagraph 5(1) in the basis period for each year of assessment 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.
- 7(2)** Where an asset is used for the purposes of a qualifying activity is also used for the purposes of an activity other than a qualifying activity, then the allowances 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 purposes of the qualifying activity.
- 7(3)** Where an exemption is granted to a qualifying company under subparagraph 5(1) for a year of assessment, the statutory income for the qualifying activity of that company for that year of assessment shall be exempt from tax.
- 7(4)** The amount of statutory income determined under subparagraph (1) shall be reduced by—
- (a) first, current year adjusted loss from an activity or activities other than a pioneer business or pioneer businesses under the Promotion of Investments Act 1986, or from the qualifying activity exempted under this Order, as the case may be; and
 - (b) next, any unabsorbed adjusted loss or current year adjusted loss from a pioneer business or pioneer businesses under the Promotion of Investments Act 1986 and from the qualifying activity exempted under this Order, as the case may be.
- 7(5)** So much of the adjusted loss referred to in subsubparagraphs (4)(a) and (b) which was utilised 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 and section 21A of the Promotion of Investments Act 1986, as the case may be, in determining the income of a business other than the pioneer business or pioneer businesses and the qualifying activity under this Order.

- 7(6)** Notwithstanding subparagraph (2), any amount of unabsorbed adjusted loss and current year adjusted loss, from the qualifying activity that are not utilised to reduce the statutory income during the exempt period referred to in subsubparagraph (4)(b), shall be available to reduce the total income of the company 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 any subsequent years of assessment.

WITHDRAWAL OF EXEMPTION

- 8(1)** The Minister may withdraw the exemption granted under subparagraph 5(1) if the qualifying company fails to comply with any conditions imposed in relation to the exemption.
- 8(2)** Where the exemption is withdrawn in accordance with subparagraph (1), the exemption granted in respect of any amount of the statutory income under subparagraph 5(1) shall be deemed to have not been given to the qualified company from the first year of the period referred to in subparagraph 5(2).

SURRENDERING OF EXEMPTION

- 9(1)** The Minister may, at any time, except where the qualifying company fails to comply with any conditions imposed in relation to the exemption, allow the qualifying company to surrender the exemption granted under this Order by notice in writing to the Minister through the Malaysian Investment Development Authority.
- 9(2)** The surrender of the exemption shall have effect—
- (a) on the date of the application for surrender of the exemption is received by the Minister through the Malaysian Investment Development Authority; or
 - (b) 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 through the Malaysian Investment Development Authority.

SEPARATE SOURCE AND SEPARATE ACCOUNT

- 10(1)** Where a qualifying company carries on a qualifying activity and activity other than a qualifying activity, each activity shall be treated as a separate and distinct source of the activity.
- 10(2)** The qualifying company who is granted an exemption under subparagraph 5(1) shall maintain a separate account for the income derived from each activity referred to in subparagraph (1).

NON-APPLICATION

- 11** This Order shall not apply to a qualifying company who in the basis period for a year of assessment—
- (a) has made a claim for reinvestment allowance under Schedule 7A to the Act or investment allowance for service sector under Schedule 7B to the Act;
 - (b) has been granted any incentive under the Promotion of Investments Act 1986 in respect of the same qualifying activity;
 - (c) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act in respect of the same qualifying activity; or

- (d) has made a claim for deduction under any rules made under section 154 of the Act except—
- (i) the rules in relation to allowance under Schedule 3 to the Act;
 - (ii) the Income Tax (Deduction for Audit Expenditure) Rules 2006 [*P.U. (A) 129/2006*]; or
 - (iii) the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [*P.U. (A) 336/2014*].

(1) No.	(2) Sector	(3) Qualifying activity
1.	Renewable energy	Services related to renewable energy project such as system design and feasibility study, advisory and consultancy, testing and commissioning
2.	Energy efficiency	Services related to energy efficiency such as advisory and consultancy, energy and management audit, measurement and verification, testing and commissioning
3.	Electric vehicle	(a) Services related to installation, maintenance and repair of electric vehicle charging equipment, infrastructure and electric vehicle charging station (b) Services related to operation of the electric vehicle charging station (c) Services related to maintenance, repair and overhaul of electric vehicle
4.	Green building	Services related to testing and commissioning of green building equipment and system, and services related to green building design and consultancy services
5.	Green data centre	Services related to system design and feasibility study, advisory and consultancy, testing and commissioning of green data centre or information and communication technology infrastructure
6.	Green certification and verification	Services related to green certifications of products, equipment and buildings
7.	Green township	Services related to advisory and consultancy, design and feasibility study in green township and low carbon cities planning