

INCOME TAX (EXEMPTION) (NO. 4) ORDER 2017

PU (A) 235
23 May 2017

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. 4) Order 2017**.

1(2) This Order shall be deemed to have effect from the year of assessment 2016.

INTERPRETATION

2(1) In this Order—

"qualifying activity" means waste treatment, waste recovery or waste recycling in the Waste Eco Park;

"operator" means a company incorporated under the Companies Act 2016 [Act 777] and resident in Malaysia who undertakes at least one of the qualifying activities;

"qualifying capital expenditure" means the capital expenditure incurred by an operator in relation to a machinery or plant used in Malaysia solely for the purpose of carrying on a qualifying activity, but does not include capital expenditure incurred on any machinery or plant which is 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 operator;

"investment" means an investment in the form of cash in a qualifying company for which the qualifying company has no obligation to repay, or the holding of paid-up share capital in respect of ordinary shares in a qualifying company;

"related company" has the same meaning assigned to it under the Promotion of Investments Act 1986 [Act 327];

"Waste Eco Park" means a place for waste recycling, recovery and treatment activities to be carried out which incorporates the following minimum elements:

- a. basic infrastructure such as roads, drainage system, utilities and sewerage;
- b. building and facility for waste receipt and separation;
- c. waste water treatment facility;
- d. building for waste recycling, recovery or treatment facility; and
- e. building for education and awareness centre.

2(2) Except for subparagraphs 3(1) and (2), paragraphs 46 and 55 of Schedule 3 to the Act shall apply in relation to any reference to "incurred" in this Order, and the word "incurs" shall be construed accordingly.

EXEMPTION

- 3(1)** Subject to subparagraph (5), the Minister exempts an operator 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 which is equivalent to the amount of allowance of one hundred percent of the qualifying capital expenditure incurred by the operator.
- 3(2)** The exemption referred to in subparagraph (1) is for a period of five consecutive years commencing from the date of the first qualifying capital expenditure incurred by the operator as determined by the Malaysian Investment Development Authority.
- 3(3)** The commencement date referred to in subparagraph (2) shall not be earlier than three years before the date of the application for exemption is made and shall not be earlier than 1 December 2015.
- 3(4)** An application for exemption under subparagraph (1) shall be made to the Minister through the Malaysian Investment Development Authority on or after 1 January 2016 but not later than 31 December 2020.
- 3(5)** An exemption granted under subparagraph (1) shall be subject to the following conditions:
- a. the Waste Eco Park has been approved by the relevant authorities specified in the Schedule, State Governments and local authorities before the qualifying activity is executed;
 - b. the operator shall maintain records of all wastes and products flowing in and out of the Waste Eco Park and submit periodic reports of the records to the manager;
 - c. only waste obtained within Malaysia, including free zones or licensed manufacturing warehouse, are being recycled, recovered or treated in the Waste Eco Park and the operator is not allowed to import waste into Malaysia; and
 - d. the operator complies with all the written laws, guidelines, conditions and directions in relation to the exemption granted under this Order and in relation to waste management.
- 3(6)** Nothing in subparagraph (1) shall absolve or be deemed to have absolved the operator from complying with any requirement to submit any return or statement of accounts or to furnish any other information, under the Act.
- 3(7)** Where the operator has been granted an exemption under subparagraph (1), any related company to the operator shall not be entitled to be granted an exemption under subparagraph (1) in relation to the same qualifying activity.
- 3(8)** In this paragraph—

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

"manager" means the manager referred to in the Income Tax (Exemption) (No. 6) Order 2017 [P.U. (A) 237/2017].

STATUTORY INCOME

- 4(1)** Subject to subparagraph (2), the statutory income referred to in subparagraph 3(1) in the basis period for each exempt 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.
- 4(2)** Where a machinery or plant used for the purposes of a qualifying activity is also used for the purposes of an activity other than a qualifying activity, then the amount of 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 machinery or plant is used for the purposes of the qualifying activity.
- 4(3)** The amount of statutory income so exempted under subparagraph 3(1) shall not exceed seventy percent for each year of assessment.
- 4(4)** Where, by reason of the absence or insufficiency of the statutory income, exemption cannot be granted or cannot be granted in full as the operator is entitled under subparagraph 3(1) for that year of assessment, then so much of the statutory income in respect of which exemption cannot be granted for that year of assessment, shall be granted exemption for the first subsequent year of assessment for the basis period for which the operator has statutory income from a qualifying activity, and for subsequent year or years of assessment until the exemption is granted in respect of the whole statutory income as the operator is entitled under subparagraph 3(1).

DISPOSAL OF MACHINERY OR PLANT WITHIN FIVE YEARS

- 5** Where a qualifying capital expenditure is incurred by an operator on a machinery or plant used for the purposes of a qualifying activity and such machinery or plant is disposed of at any time within the period of five years from the date of acquisition of the machinery or plant, the exemption granted in respect of the amount of statutory income which is equal to the amount of allowance for such qualifying capital expenditure shall be withdrawn in the basis period for the year of assessment in which the machinery or plant is disposed of.

DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE FOR MACHINERY OR PLANT DISPOSED TO RELATED COMPANY

- 6** Where the operator disposes to its related company any machinery or plant in respect of which an exemption is applied by the operator under this Order, the amount of the qualifying capital expenditure incurred by the related company shall be deemed to be a sum equal to zero.

WITHDRAWAL OF EXEMPTION

- 7(1)** The Minister may withdraw the exemption granted under subparagraph 3(1) if the operator fails to comply with any condition imposed in relation to the exemption.
- 7(2)** Where the exemption is withdrawn in accordance with subparagraph (1), the exemption granted under subparagraph 3(1) in respect of any amount of the statutory income shall be deemed to have not been granted to the operator from the first year of the period referred to in subparagraph 3(2).

SEPARATE SOURCE AND SEPARATE ACCOUNT

- 8(1)** Where an operator carries on a qualifying activity and an activity other than a qualifying activity, each activity shall be treated as a separate and distinct source of the activity.
- 8(2)** The operator who is granted an exemption under subparagraph 3(1) shall maintain a separate account for the income derived from qualifying activity.

NON-APPLICATION

- 9** This Order shall not apply to an operator 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 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 section 127 of the Act in respect of the same qualifying activity; or
 - d. has made a claim for a deduction under any rules made under section 154 of the Act except—
 - i. an allowance under Schedule 3 to the Act;
 - ii. the Income Tax (Deduction for Audit Expenditure) Rules 2006 [P.U. (A) 129/2006];
 - iii. the Income Tax (Deduction for Cost relating to Training for Employees for the Implementation of Goods and Services Tax) Rules 2014 [P.U. (A) 334/2014]; or
 - iv. the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [P.U. (A) 336/2014].

SCHEDULE

(1) No.	(2) Authority	(3) Type of Waste
1.	Suruhanjaya Perkhidmatan Air Negara	Sewage
2.	Department of Agriculture	Agricultural waste
3.	National Solid Waste Management Department	Solid waste
4.	Department of Environment	Scheduled wastes
5.	Atomic Energy Licensing Board	Radioactive waste
6.	Department of Minerals and Geosciences	Mining