

INCOME TAX (EXEMPTION) (NO. 5) ORDER 2016

PU (A) 158
8 June 2016

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. 5) Order 2016**.

1(2) This Order is deemed to have come into operation on 13 June 2008.

INTERPRETATION

2(1) In this Order—

"**related company**" has the same meaning assigned to it in section 2 of the Promotion of Investments Act 1986 [*Act 327*];

"**East Coast Economic Region**" has the same meaning assigned to it in the East Coast Economic Region Development Council Act 2008 [*Act 688*].

2(2) Except for subparagraphs 6(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.

QUALIFYING PERSON

3(1) The qualifying person referred to in this Order is—

- (a) a company incorporated under the Companies Act 1965 [*Act 125*] and resident in Malaysia;
- (b) an agro-based co-operative society;
- (c) a Farmers' Organization;
- (d) an Area Fishermen's Association, a National Fishermen's Association or a State Fishermen's Association; or
- (e) an association solely engaged in agriculture and resident in Malaysia.

3(2) Where the qualifying person is a company which has been granted an exemption under this Order, any related company to the company is not entitled to be granted an exemption under this Order in relation to the same qualifying activity.

3(3) For the purposes of this paragraph—

"**agro-based co-operative society**" has the same meaning assigned to it in the Farmers' Organization Act 1973 [*Act 109*];

"Area Fishermen's Association" has the same meaning assigned to it in the Fishermen's Associations Act 1971 [*Act 44*];

"National Fishermen's Association" has the same meaning assigned to it in the Fishermen's Associations Act 1971;

"State Fishermen's Association" has the same meaning assigned to it in the Fishermen's Associations Act 1971;

"Farmers' Organization" has the same meaning assigned to it in the Farmers' Organization Act 1973.

QUALIFYING ACTIVITY

- 4** A special qualifying activity referred to in this Order is an activity as set out in column (2) of the Schedule—
- (a) which has not been carried on in the East Coast Economic Region on the date the application referred to in subparagraph 6(4) is made; or
 - (b) which has been carried on in the East Coast Economic Region not more than one year prior to the date the application referred to in subparagraph 6(4) is made,
- and approved by the Minister.

QUALIFYING CAPITAL EXPENDITURE

- 5(1)** Subject to subparagraph (2), a qualifying capital expenditure referred to in this Order is a capital expenditure as set out in column (3) of the Schedule incurred by a qualifying person in relation to a building, factory, machinery or plant used in Malaysia solely for the purpose of carrying on a special qualifying activity.
- 5(2)** Unless otherwise stated in the Schedule, qualifying capital expenditure shall not include capital expenditure incurred on—
- (a) any building which is used as living accommodation for a person; or
 - (b) 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 qualifying person.

EXEMPTION

- 6(1)** The Minister exempts a qualifying person in the basis period for a year of assessment from the payment of income tax in respect of the statutory income derived from a special qualifying activity, which is equivalent to the rate of allowance as specified by the Minister which shall not be less than sixty per cent and shall not be more than one hundred per cent of the qualifying capital expenditure incurred by the qualifying person.

- 6(2)** The exemption referred to in subparagraph (1) shall be for a period of consecutive years of assessment as the Minister may determine, commencing from the date of the first qualifying capital expenditure incurred by the qualifying person as determined by the East Coast Economic Region Development Council.
- 6(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 13 June 2008.
- 6(4)** An application for exemption under this Order shall be made to the Minister through the East Coast Economic Region Development Council on or after 13 June 2008 but not later than 31 December 2020.
- 6(5)** An exemption granted under this Order is subject to the qualifying person complying with all the conditions imposed by the Minister in relation to the exemption.
- 6(6)** Nothing in subparagraph (1) shall absolve or be deemed to have absolved the qualifying person from complying with any requirement to submit any return or statement of accounts or to furnish any other information, under the Act.
- 6(7)** For the purposes of this paragraph, the "**East Coast Economic Region Development Council**" means the council established under the East Coast Economic Region Development Council Act 2008.

STATUTORY INCOME

- 7(1)** Subject to subparagraph (2), the statutory income referred to in subparagraph 6(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 a building, factory, machinery or plant is used for the purposes of a special qualifying activity is also used for the purposes of an activity other than a special qualifying activity, 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 building, factory, machinery or plant is used for the purposes of the special qualifying activity.
- 7(3)** Where an exemption is granted to a qualifying person under subparagraph 6(1) for a year of assessment, an amount equal to the amount of the allowance referred to in subparagraph 6(1) shall be exempted from tax for that year of assessment.
- 7(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 qualifying person is entitled under subparagraph 6(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 qualifying person has statutory income from the special qualifying activity, and for subsequent year or years of assessment until the exemption is granted in respect of the whole statutory income as the qualifying person is entitled under subparagraph 6(1).

DISPOSAL OF BUILDING, FACTORY, MACHINERY OR PLANT WITHIN TWO YEARS

- 8 Where a qualifying capital expenditure is incurred by a qualifying person on a building, factory, machinery or plant used for the purposes of a special qualifying activity and such building, factory, machinery or plant is disposed of at any time within the period of two years from the date of acquisition of the building, factory, 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 building, factory, machinery or plant is disposed of.

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

- 9 Where the qualifying person disposes to its related company any building, factory, machinery or plant in respect of which an exemption is applied by the qualifying person 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

- 10(1) The Minister may withdraw the exemption granted under subparagraph 6(1) if the qualifying person fails to comply with any condition imposed in relation to the exemption.
- 10(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 6(1) shall be deemed to have not been granted to the qualifying person from the first year of the period referred to in subparagraph 6(2).

SEPARATE SOURCE AND SEPARATE ACCOUNT

- 11(1) Where a qualifying person carries on a special qualifying activity and activity other than a special qualifying activity, each activity shall be treated as a separate and distinct source of the activity.
- 11(2) The qualifying person who is granted an exemption under subparagraph 6(1) shall maintain a separate account for the income derived from each activity referred to in subparagraph (1).

NON-APPLICATION

12 This Order shall not apply to a qualifying person who—

- (a) commences a special qualifying activity after one year from the date of the approval by the Minister or after such extended period approved by the Minister; or
- (b) in the basis period for a year of assessment—
 - (i) has made a claim for reinvestment allowance under Schedule 7A to the Act or investment allowance under Schedule 7B to the Act;
 - (ii) has been granted any incentive under the Promotion of Investments Act 1986 in respect of the same special qualifying activity; or
 - (iii) has been granted any exemption under section 127 of the Act in respect of the same special qualifying activity.

SCHEDULE

(1) No.	(2) Special qualifying activity	(3) Qualifying capital expenditure
1.	Agriculture	(a) Clearing and preparation of land (b) Planting of crops (c) Provision of irrigation or drainage systems (d) Provision of machinery or plant (e) Construction of access roads including bridges (f) Construction or purchase of buildings (including those provided for the welfare of employees or as living accommodation for employees) (g) Structural improvements on land and other structures on land, for agriculture and, agriculture based research and development
2.	Agriculture related services	(a) Construction or purchase of factory (b) Construction or purchase of building to be used for warehousing, packaging, distribution and marketing (c) Provision of machinery or plant
3.	Information, communication and technology	Construction or purchase of building, machinery or plant
4.	Education and training	Construction or purchase of building, machinery or plant
5.	Manufacturing	(a) Construction or purchase of factory (b) Construction or purchase of building (c) Provision of machinery or plant
6.	Oil, gas and petrochemical	(a) Construction or purchase of factory (b) Construction or purchase of building (c) Provision of machinery or plant
7.	Manufacturing related services	Any asset used in Malaysia
8.	Hotel	(a) Construction or purchase of hotel building of approved standard in Malaysia (b) Alteration, extension and renovation of hotel building (c) Provision of machinery, plant or other facilities
9.	Tourism	(a) Clearing and preparation of land (b) Planting of trees and plants (c) Construction of roads and other infrastructure facilities for the tourism project and relating to the tourism project (d) Provision of birds, animals and other exhibits (e) Provision of machinery or plant (f) Construction or purchase of buildings (including those provided for the welfare of employees or as living accommodation for employees) (g) Structural improvements on land and other structures on land, forming part of the land relating to the tourism project
10.	Culture and heritage	Construction or purchase of building, machinery or plant
11.	Other projects approved by the Minister	Any asset used in Malaysia