

INCOME TAX (EXEMPTION) (NO. 7) ORDER 2016

PU (A) 160
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. 7) Order 2016**.

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

INTERPRETATION

2 In this Order, "**East Coast Economic Region**" has the meaning assigned to it in the East Coast Economic Region Development Council Act 2008 [Act 688].

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
- (f) 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;

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

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 5(3) 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 5(3) is made,
- and approved by the Minister.

EXEMPTION

- 5(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 at the rate of not less than seventy per cent and not more than one hundred per cent as may be specified by the Minister.
- 5(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 first year of assessment in which the qualifying person derives its statutory income from the special qualifying activity, which is referred to as "the exempt years of assessment" in this Order.
- 5(3) 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.
- 5(4) 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.
- 5(5) 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.
- 5(6) 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

- 6(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.
- 6(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.

LOSSES

- 7(1)** Any amount of adjusted loss incurred—
- (a) from the year of assessment in the basis period in which the special qualifying activity referred to in subparagraph 5(1) commences to the year of assessment immediately prior to the exempt years of assessment; and
 - (b) during the exempt years of assessment, shall be carried forward and deducted from the statutory income from the special qualifying activity in the post-exempt year or years of assessment until the whole amount of the adjusted loss has been utilized against the statutory income from the special qualifying activity.
- 7(2)** So much of the adjusted loss referred to in subparagraph (1) which was utilized to reduce the statutory income from the special qualifying activity for a year of assessment shall be disregarded for the purposes of subsections 43(2) and 44(2) of the Act.

AMOUNT OF STATUTORY INCOME WHICH IS NOT EXEMPTED

- 8** Any amount of statutory income which is not exempted under subparagraph 5(1) shall be deemed to be the total income or part of the total income of the qualifying person for that year of assessment.

WITHDRAWAL OF EXEMPTION

- 9(1)** The Minister may withdraw the exemption granted under subparagraph 5(1) if the qualifying person fails to comply with any condition imposed in relation to the exemption.
- 9(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 granted to the qualifying person from the first year of the period referred to in subparagraph 5(2).

SEPARATE SOURCE AND SEPARATE ACCOUNT

10(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.

10(2) The qualifying person 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 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
1.	Agriculture
2.	Agriculture related services
3.	Information, communication and technology
4.	Education and training
5.	Manufacturing
6.	Oil, gas and petrochemical
7.	Manufacturing related service
8.	Hotel
9.	Tourism
10.	Culture and heritage
11.	Other projects approved by the Minister