

INCOME TAX (EXEMPTION) (NO. 8) ORDER 2016

PU (A) 161
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. 8) Order 2016**.

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

INTERPRETATION

2 In this Order—

"**building**" means a building which is—

- (a) constructed by an approved developer; and
- (b) located in the East Coast Economic Region;

"**disposal**" means sell, convey, transfer, assign, settle or alienate, whether by agreement or by force of law, including withdrawal of stock in trade pursuant to subsection 24(2) of the Act;

"**industrial park**" means an industrial park within the East Coast Economic Region;

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

"**free zone**" means any area located within the East Coast Economic Region which is declared as a free commercial zone or free industrial zone under the Free Zones Act 1990 [*Act 438*].

APPROVED DEVELOPER

3 An approved developer is a company—

- (a) incorporated under the Companies Act 1965 [*Act 125*] and resident in Malaysia;
- (b) which is approved by the Minister;
- (c) which purchases or acquires any right over part or the whole of the land within the East Coast Economic Region; and
- (d) which carries on the development of—
 - (i) an industrial park approved by the East Coast Economic Region Development; or
 - (ii) a free zone.

EXEMPTION

- 4(1)** The Minister exempts an approved developer in the basis period for a year of assessment from the payment of income tax in respect of the statutory income derived from the following activities:
- (a) the disposal of any right over any land or disposal of a building or rights over a building or part of a building located in an industrial park or a free zone; or
 - (b) the rental of a building or part of a building located in an industrial park or a free zone.
- 4(2)** The exemption referred to in subparagraph (1) shall be for a period of ten consecutive years of assessment commencing from the first year of assessment in which the approved developer derives statutory income from the disposal or rental activities, as the case may be, which is referred to as "exempt years of assessment" in this Order.
- 4(3)** The exemption referred to in subparagraph (1) shall apply to any disposal or rental activity, as the case may be, which will be or 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 (4) is made.
- 4(4)** An application for an 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.
- 4(5)** An exemption granted under this Order is subjected to the approved developer complying with all the conditions imposed by the Minister in relation to the exemption.
- 4(6)** Nothing in subparagraph (1) shall absolve or be deemed to have absolved the approved developer from complying with any requirement to submit any return or statement of accounts, or to furnish any other information, under the Act.
- 4(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

- 5(1)** Subject to subparagraph (2), the statutory income referred to in subparagraph 4(1) in the basis period for each year of the exempt years 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.
- 5(2)** Where an asset used for the purposes of the activity referred to in subparagraph 4(1) is also used for the purposes of an activity other than the activity referred to in subparagraph 4(1), 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 asset is used for the purposes of the activity referred to in subparagraph 4(1).

LOSSES

- 6(1)** Any amount of adjusted loss incurred prior or during the exempt years of assessment arising from the activity referred to in subsubparagraph 4(1)(b) shall be carried forward and deducted from the statutory income from that 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 that respective activity.
- 6(2)** So much of the adjusted loss which was utilized to reduce the statutory income from the activity referred to in subsubparagraph 4(1)(b) for a year of assessment shall be disregarded for the purposes of subsections 43(2) and 44(2) of the Act.

SPECIAL PROVISION FOR APPROVED DEVELOPER

- 7** For the purposes of this Order, the income of the approved developer derived from the activity referred to in subsubparagraph 4(1)(a) shall be subjected to the Income Tax (Property Development) Regulations 2007 [*P.U. (A) 277/2007*].

WITHDRAWAL OF EXEMPTION

- 8(1)** The Minister may withdraw the tax exemption granted under subparagraph 4(1) if the approved developer fails to comply with any condition 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 4(1) shall be deemed to have not been granted to the approved developer from the first year of the period referred to in subparagraph 4(2).

SEPARATE SOURCE AND SEPARATE ACCOUNT

- 9(1)** Where an approved developer carries on an activity referred to in subparagraph 4(1) and activity other than the activity referred to in subparagraph 4(1), each activity shall be treated as a separate and distinct source of the activity.
- 9(2)** The approved developer which is granted an exemption under subparagraph 4(1) shall maintain a separate account for the income derived from each activity referred to in subparagraph (1).

DISPOSAL OF BUILDING

- 10** Any disposal of a building which is held for investment by the approved developer for which rental income has been exempted under this Order shall be taxed under the Real Property Gains Tax Act 1976 [*Act 169*].