

INCOME TAX (EXEMPTION) (NO. 9) ORDER 2016

PU (A) 162
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. 9) 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 Development Council" means the council established under the East Coast Economic Region Development Council Act 2008 [*Act 688*];

"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;

"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*].

QUALIFYING PERSON

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

- (a) a development manager, that is a company—
 - (i) incorporated under the Companies Act 1965 [*Act 125*] and resident in Malaysia;
 - (ii) which is approved by the Minister; and
 - (iii) appointed by an approved developer to carry on a qualifying activity; or
- (b) a park manager, that is a company—
 - (i) incorporated under the Companies Act 1965 and resident in Malaysia;
 - (ii) which is approved by the Minister; and
 - (iii) which carries on a qualifying activity.

3(2) An approved developer referred to in subsubsubparagraph (1)(a)(iii) is a company—

- (a) incorporated under the Companies Act 1965 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 Council; or
 - (ii) a free zone.

QUALIFYING ACTIVITY

4(1) A qualifying activity referred to in this Order is an activity as set out in subparagraph (2)—

- (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.

4(2) The activity referred to in subparagraph (1) is—

- (a) in relation to a development manager, an activity in respect of the provision of management, supervisory or marketing services relating to the development of an industrial park or free zone; or
- (b) in relation to a park manager, an activity in respect of the provision of park management services including maintenance, marketing and rental of common facilities and utilities services in the industrial park or free zone.

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 qualifying activity.

5(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 qualifying person derives its statutory income from the qualifying activity, which is referred to as “exempt years of assessment” in this Order.

5(3) 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.

5(4) An exemption granted under this Order is subjected 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.

STATUTORY INCOME

- 6(1)** Subject to paragraph (2), the statutory income referred to in subparagraph 5(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.
- 6(2)** Where a building, factory, machinery or plant 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 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 building, factory, machinery or plant is used for the purposes of the qualifying activity.

LOSSES

- 7(1)** Any amount of adjusted loss incurred in relation to the qualifying activity—
- (a) from the year of assessment in the basis period in which the 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 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 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 qualifying activity for a year of assessment shall be disregarded for the purposes of subsections 43(2) and 44(2) of the Act.

WITHDRAWAL OF EXEMPTION

- 8(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.
- 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 granted to the qualifying person from the first year of the period referred to in subparagraph 5(2).

SEPARATE SOURCE AND SEPARATE ACCOUNT

- 9(1)** Where a qualifying person 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.
- 9(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 that subparagraph (1).