

# **INCOME TAX (EXEMPTION)(NO.2) ORDER 2022**

PU (A) 115  
13 April 2022

IN exercise of the powers conferred by paragraph 127(3)(b) of the Income Tax Act 1967, the Minister makes the following order:

## **CITATION AND COMMENCEMENT**

**1(1)** This order may be cited as the **Income Tax (Exemption) (No.) Order 2022**.

**1(2)** This Order is deemed to have effect from the year of assessment 2018.

## **INTERPRETATION**

**2** In this Order –

“seed capital financing” means a financing provided by a venture capital company to a venture company for the research, assessment and development of an initial concept or prototype purposes;

“early stage financing” means a financing provided by a venture capital company to a venture company as –

- (a) capital expenditure or working capital to initiate commercialisation of a technology or product;
- (b) additional capital expenditure or additional working capital to increase production capacity, marketing or product development; or
- (c) an interim financing for a venture company that is expected to be listed on the official list of a stock exchange;

“start-up financing” means a financing provided by a venture capital company to a venture company for product development and initial marketing;

“Securities Commission Malaysia” means the Securities Commission Malaysia established under Securities Commission Malaysia Act 1993

“venture capital company” means a company which –

- (a) is incorporated under the Companies Act 2016;
- (b) is registered with the Securities Commission Malaysia; and
- (c) invests in one or more than one venture company in the form of seed capital financing, start-up financing or early stage financing;

“venture company” means a company which is –

- (a) incorporated under the Companies Act 2016;
- (b) resident in Malaysia in the basis period for a year of assessment; and
- (c) involved in utilising the seed capital financing, start-up financing or early stage financing for –
  - i. activities or products promoted under the Promotion of Investment Act 1986;

- ii. technology-based business activities as specified in the guideline in relation to venture capital tax incentive issued by the Securities Commission Malaysia;
- iii. products or activities that have been developed under the research and development scheme approved by the Ministry of Science, Technology and Innovation; or
- iv. products, services or activities that have been developed under the research, development and commercialisation grant scheme approved by the Malaysia Digital Economy Corporation Sdn. Bhd.

## **EXEMPTION**

- 3(1)** The Minister exempts a venture capital company from the payment of income tax in respect of the statutory income on all sources of income which shall –
- (a) commence from the year of assessment in the basis period the venture capital company obtains its first certification from the Securities Commission Malaysia; and
  - (b) the first certification received shall not be later than 31 December 2026.
- 3(2)** The exemption referred to in subparagraph (1) shall be for a period of five years of assessment or the years of assessment equivalent to the remaining life of the fund established for the purpose of investing in a venture company, whichever is the lesser (hereinafter referred to as “the exemption period”).
- 3(3)** Nothing in subparagraph (1) shall absolve or be deemed to have absolved the venture capital company from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the Act.
- 3(4)** The exemption under this Order shall not apply to interest income arising from savings or fixed deposits and profits from syariah-based deposits.

## **CONDITIONS TO QUALIFY FOR THE EXEMPTION**

- 4(1)** For the purpose of exemption under subparagraph 3(1), the venture capital company shall, for each year of assessment in the exemption period, obtain a certification from the Securities Commission Malaysia confirming that –
- (a) it has invested at least fifty percent of its invested funds in the form of seed capital financing, start-up financing, early stage financing or any combination of such financing in venture companies;
  - (b) it is registered with the Securities Commission Malaysia on or after 27 October 2017 but not later than 31 December 2023; and
  - (c) it has not invested in a venture company, which is a related company of the venture capital company at the point the first investment is made.
- 4(2)** For the purpose of subparagraph (1), “related company” has the same meaning assigned to it under subsection 2(1) of the Promotion of Investments Act 1986.

## **LOSSES FROM DISPOSAL OF INVESTMENT**

- 5** Where a venture capital company incurs a loss from the disposal of investment in a venture company in the basis period for any year of assessment within the exemption period under this Order, such loss shall Be –
- (a) carried forward to the year of assessment following the post-exemption period; and
  - (b) deducted from the statutory income on all sources of income.

## **REVOCAION, SAVINGS AND TRANSITIONAL**

- 6(1)** The Income Tax (Exemption) (No. 11) Order 2005 [P.U. (A) 75/2005], which is referred to as the “repealed Order” in this paragraph, is revoked with effect from the year of assessment 2018.
- 6(2)** Where a venture capital company has been granted an exemption under the repealed Order, such exemption shall continue to remain in effect for the remainder year of assessment in the exemption period of that venture capital company as if the repealed Order was not revoked by this Order.
- 6(3)** Any application for an exemption under the repealed Order which is pending on the date of the coming into operation of this Order shall, on that date, cease to be dealt with under the repealed Order and shall be dealt with under this Order.