

INCOME TAX (EXEMPTION) (NO. 5) ORDER 2019

PU (A) 161
16 May 2019

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 2019**.
1(2) This Order is deemed to have come into operation from the year of assessment 2016.

INTERPRETATION

2 In this Order—

"export" means direct export from Malaysia of agricultural produce or product from manufacturing but does not include—

- (a) sales to any company in an area declared as free zones under the Free Zones Act 1990 [*Act 438*];
- (b) sales to any company which is granted a licence for warehousing or a licence to carry on any manufacturing process under section 65 or 65A of the Customs Act 1967 [*Act 235*], as the case may be; and
- (c) sales to any company within Langkawi, Labuan or Tioman;

"agricultural produce" means fresh and dried fruits, fresh and dried flowers, ornamental plant, and includes ornamental fish, frozen raw prawn, frozen cooked and peeled prawn, frozen raw cuttlefish and frozen raw squid;

"manufacturing" has the meaning assigned to it in paragraph 9 of Schedule 7A to the Act;

"qualifying company" means a company incorporated under the Companies Act 2016 [*Act 777*] and resident in Malaysia.

EXEMPTION

- 3(1)** Subject to subparagraphs (2), (3) and (4), and paragraph 4, the Minister exempts a qualifying company which achieves increase in export sales of agricultural produce or product from manufacturing from the payment of income tax in respect of the income derived from export sales in the basis period for a year of assessment.
- 3(2)** The exemption under subparagraph (1) applies to a qualifying company—
- (a) the value of increased exports of which is at least fifty per cent in a basis period for a year of assessment;

- (b) which penetrates a new market for export as determined by the Malaysia External Trade Development Corporation; or
- (c) which is awarded an Export Excellence Award by the Minister charged with the responsibility for international trade and industry to a company for achieving the highest increase in export sales for a year of assessment.

3(3) The exemption referred to in subparagraph (1) is subject to the following conditions:

- (a) at least sixty per cent of the issued share capital of the qualifying company is owned directly by Malaysian citizen;
- (b) the agricultural produce is planted, reared or caught by the qualifying company; and
- (c) the product from manufacturing is manufactured by the qualifying company.

3(4) The exemption under subparagraph (1) does not apply to the export of—

- (a) product from manufacturing which is subject to prohibition of exports under the Customs Act 1967; and
- (b) product from manufacturing which is listed in the Schedule.

AMOUNT OF INCOME TO BE EXEMPTED

4(1) The amount of income exempted under paragraph 3 is an amount equal to—

- (a) in relation to a qualifying company referred to in subparagraph 3(2)(a), thirty per cent of the value of increased exports;
- (b) in relation to a qualifying company referred to in subparagraph 3(2)(b), fifty per cent of the value of increased exports; or
- (c) in relation to a qualifying company referred to in subparagraph 3(2)(c), one hundred per cent of the value of increased exports.

4(2) Notwithstanding subparagraph (1), the amount of income exempted shall not exceed seventy per cent of the statutory income of the qualifying company for a year of assessment.

DETERMINATION OF VALUE OF INCREASED EXPORTS

5(1) The value of increased exports shall be determined based on the difference between—

- (a) the free-on-board value of export sales in a basis period with the free-on-board value of export sales in the basis period immediately preceding that basis period, where both basis periods of the qualifying company are twelve months period ending on the same date; or
- (b) the average free-on-board value of export sales in a basis period with the average free-on-board value of export sales in the basis period immediately preceding that basis period, where both basis periods of the qualifying company are not twelve months period ending on the same date due to the change of the basis period of the qualifying company or the qualifying company is newly incorporated.

5(2) For the purpose of subparagraph (1), the value of free-on-board export sales in a basis period or the basis period immediately preceding that basis period shall not be equal to zero.

INSUFFICIENCY OF INCOME

- 6** 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 company is entitled under paragraph 3 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 given exemption for the first subsequent year of assessment for the basis period for which the qualifying company has statutory income from the export of agricultural produce or product from manufacturing and for subsequent year or years of assessment until the exemption is granted in respect of the whole statutory income as the qualifying company is entitled under paragraph 3 but shall not exceed seventy per cent from the statutory income for each year of assessment.

SEPARATE SOURCE AND SEPARATE ACCOUNT

- 7(1)** Where a qualifying company carries on an activity in relation to the export of agricultural produce or product from manufacturing and activity other than the activity in relation to the export of agricultural produce or product from manufacturing, each activity shall be treated as a separate and distinct source of the activity.
- 7(2)** The qualifying company which is granted an exemption under paragraph 3 shall maintain a separate account for the income derived from each activity referred to in subparagraph (1).

NON-APPLICATION

- 8** This Order shall not apply to a qualifying company in respect of the same export of agricultural produce or product from manufacturing if in the basis period for a year of assessment—
- (a) the qualifying company has been granted reinvestment allowance under Schedule 7A to the Act or investment allowance for service sector under Schedule 7B to the Act;
 - (b) the qualifying company has been granted any incentive under the Promotion of Investments Act 1986 [Act 327];
 - (c) the qualifying company has been granted any exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act; or
 - (d) the qualifying company has made a claim for deduction under any rules made under section 154 of the Act except—
 - (i) rules in relation to allowance under Schedule 3 to the Act;
 - (ii) the Income Tax (Deduction for Audit Expenditure) Rules 2006 [P.U. (A) 129/2006]; or
 - (iii) the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [P.U. (A) 336/2014].

REVOCATION

- 9(1)** The Income Tax (Exemption) (No. 17) Order 2005 [P.U. (A) 158/2005] is revoked.
- 9(2)** Notwithstanding subparagraph (1), the Order referred to in subparagraph (1) shall continue to apply to any exemption which has been granted under that Order as if that Order has not been revoked.

SCHEDULE

<i>No.</i>	<i>Product</i>	<i>Harmonized system code (H.S)</i>
1.	Tin ingot or slab, tin ore and concentrate	80.01; 2609.00 000
2.	Natural rubber sheet and slab, standard Malaysian rubber, crepe natural rubber, natural rubber latex and natural gum	4001.10; 4001.21 4001.22; 4001.29 4001.30
3.	Crude palm kernel oil, palm kernel cake and crude palm oil	1513.21 100; 2306.60 000; 1511.10 000
4.	Copra, copra cake and crude coconut oil	1203.00 000; 1513.11 000; 2306.50 000
5.	Log, sawn timber (ungraded and non-kiln dry) and wood chip (except briquette)	44.08; 44.07; 44.01; 44.30
6.	Petroleum oil (crude and other than crude oil) and petroleum gas and other gaseous hydrocarbon (liquefied or in gaseous state) hydrogen, nitrogen and oxygen	2709.00; 2710.00; 27.11; 27.12; 27.13; 2804.10 000; 2804.30 000; 2804.40 000