

# **INCOME TAX (EXEMPTION) (NO. 11) ORDER 2018**

P.U. (A) 390

31 December 2018

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. 11) Order 2018**.

**1(2)** This Order is deemed to have effect from 20 November 2012.

## **INTERPRETATION**

**2(1)** In this Order—

“qualifying activity” means an activity determined by the Minister as specified in Schedule 1 and Schedule 2;

“Sabah Development Corridor” has the same meaning assigned to it in the Sabah Economic Development and Investment Authority Enactment 2009 [No. 1/2009];

“related company” has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986 [Act 327].

**2(2)** Except for subparagraphs 5(1) and (2), paragraphs 46 and 55 of Schedule 3 to the Act shall apply in relation to any reference to “incurred” in, this Order and the word “incurs” shall be construed accordingly.

## **QUALIFYING COMPANY**

**3(1)** The qualifying company referred to in this Order is a company which—

(a) is incorporated under the Companies Act 2016 [Act 777];

(b) is resident in Malaysia; and

(c) has obtained approval from the Minister to undertake a qualifying activity for the Sabah Development Corridor.

**3(2)** Where the qualifying company 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.

## **QUALIFYING CAPITAL EXPENDITURE**

**4(1)** Subject to subparagraph (2), a qualifying capital expenditure referred to in this Order is a capital expenditure as set out in column (4) of Schedule 1 and Schedule 2 incurred by a qualifying company in relation to a building, factory, machinery or plant used in Malaysia solely for the purpose of carrying on a qualifying activity.

- 4(2)** Unless otherwise stated in the Schedules, qualifying capital expenditure shall not include capital expenditure incurred on—
- (a) any building which is used as living accommodation for a person; or
  - (b) any machinery or plant which is provided wholly or partly for the use of a director or an individual who is a member of the management, administration or clerical staff of that qualifying company.

## **EXEMPTION**

- 5(1)** The Minister exempts a qualifying company in the basis period for a year of assessment from the payment of income tax in respect of statutory income derived from the qualifying activity, which is equivalent to the amount of allowance of one hundred per cent of the qualifying capital expenditure incurred by the qualifying company.
- 5(2)** The exemption referred to in subparagraph (1) shall be for a period of—
- (a) five consecutive years in respect of the qualifying activity as specified in Schedule 1; or
  - (b) ten consecutive years in respect of the qualifying activity as specified in Schedule 2,
- commencing from the date of the first qualifying capital expenditure incurred by the qualifying company as determined by the Sabah Economic Development and Investment Authority.
- 5(3)** The commencement date referred to in subparagraph (2) shall not be earlier than three years before the date of the application for exemption is made and shall not be earlier than 20 November 2012.
- 5(4)** Where a qualifying company incurs its first qualifying capital expenditure in relation to the qualifying activity referred to in subparagraph (1) which is about to carry on, then that expenditure shall be deemed to be incurred in the basis period for a year of assessment in which the qualifying company commences to carry on that qualifying activity.
- 5(5)** An application for exemption under this Order shall be made to the Minister through the Sabah Economic Development and Investment Authority on or after 20 November 2012 but not later than 31 December 2020.
- 5(6)** For the purpose of qualifying activities under Item 1 of Schedule 1 and Item 1 of Schedule 2, this Order shall apply to a qualifying company which undertakes a qualifying activity as an operator.
- 5(7)** An exemption granted under this Order is subject to the qualifying company complying with all the conditions imposed by the Minister in relation to the exemption.
- 5(8)** Nothing in subparagraph (1) shall absolve or be deemed to have absolved the qualifying company from complying with any requirement to submit any return or statement of accounts or to furnish any other information, under the Act.
- 5(9)** For the purpose of this paragraph, the “Sabah Economic Development and Investment Authority” means the authority established under the Sabah Economic Development and Investment Authority Enactment 2009.

## **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 qualifying activity is also used for the purposes of an activity other than a 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 qualifying activity.
- 6(3)** Where an exemption is granted to a qualifying company under subparagraph 5(1) for a year of assessment, an amount equal to the amount of the allowance referred to in subparagraph 6(1) shall be exempted from tax for that year of assessment.
- 6(4)** 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 subparagraph 5(1) 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 granted exemption for the first subsequent year of assessment for the basis period for which the qualifying company has statutory income from the qualifying activity, 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 subparagraph 5(1).

## **DISPOSAL OF BUILDING, FACTORY, MACHINERY OR PLANT WITHIN TWO YEARS**

- 7** Where a qualifying capital expenditure is incurred by a qualifying company on a building, factory, machinery or plant used for the purposes of a qualifying activity and such building, factory, machinery or plant is disposed of at any time within the period of two years from the date of acquisition of the building, factory, machinery or plant, the exemption granted in respect of the amount of statutory income which is equal to the amount of allowance for such qualifying capital expenditure shall be withdrawn in the basis period for the year of assessment in which the building, factory, machinery or plant is disposed of.

## **DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE FOR BUILDING, FACTORY, MACHINERY OR PLANT DISPOSED TO RELATED COMPANY**

- 8** Where the qualifying company disposes to its related company any building, factory, machinery or plant in respect of which an exemption is applied by the qualifying company under this Order, the amount of the qualifying capital expenditure incurred by the related company shall be deemed to be a sum equal to zero.

## **WITHDRAWAL OF EXEMPTION**

- 9(1)** The Minister may withdraw the exemption granted under subparagraph 5(1) if the qualifying company 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 under subparagraph 5(1) in respect of any amount of the statutory income shall be deemed to have not been granted to the qualifying company from the first year of the period referred to in subparagraph 5(2).

## **SEPARATE SOURCE AND SEPARATE ACCOUNT**

- 10(1)** Where a qualifying company 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.
- 10(2)** The qualifying company 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 company which in the basis period for a year of assessment—
- (a) has engaged in a qualifying activity prior to the date the application is made to the Minister in subparagraph 5(5);
  - (b) has made a claim for reinvestment allowance under Schedule 7A to the Act or investment allowance under Schedule 7B to the Act;
  - (c) has been granted any incentive under the Promotion of Investments Act 1986 in respect of the same qualifying activity;
  - (d) has been granted an exemption under the Income Tax (Exemption) (No. 12) 2018 [*P.U. (A) 391/2018*];
  - (e) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act in respect of the same qualifying activity; or
  - (f) has made a claim for deduction under any rules made under section 154 of the Act except—
    - (i) the 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*].

### Schedule 1

(1) No.	(2) Sector	(3) Qualifying activity	(4) Qualifying capital expenditure
1.	Hotel and resort	Hotel or resort business	<p>(a) Construction or purchase of hotel building of approved standard in Malaysia</p> <p>(b) Alteration, extension and renovation of hotel building</p> <p>(c) Provision of machinery, plant or other facilities</p>
2.	Creative	<p>(a) Design academy</p> <p style="padding-left: 20px;">(i) Product design</p> <p style="padding-left: 20px;">(ii) Fashion or accessories design</p> <p>(b) Academy of art</p> <p style="padding-left: 20px;">(i) Art and crafts</p> <p style="padding-left: 20px;">(ii) Drawing</p> <p style="padding-left: 20px;">(iii) Sculpture</p> <p>(c) School of performing arts</p> <p style="padding-left: 20px;">(i) Dance</p> <p style="padding-left: 20px;">(ii) Drama</p> <p style="padding-left: 20px;">(iii) Music</p>	Construction or purchase of building, machinery or plant

(1) No.	(2) Sector	(3) Qualifying activity	(4) Qualifying capital expenditure
3.	Downstream manufacturing of livestock and animal feed	<ul style="list-style-type: none"> <li>(a) Cattle feed</li> <li>(b) Dairy-based products</li> <li>(c) Meat-based products</li> </ul>	<ul style="list-style-type: none"> <li>(a) Construction or purchase of factory</li> <li>(b) Construction or purchase of building</li> <li>(c) Provision of machinery or plant</li> </ul>
4.	Manufacturing downstream activities of palm oil products	<ul style="list-style-type: none"> <li>(a) Oleochemical</li> <li>(b) Biofuel</li> <li>(c) Trans fat free food products</li> </ul>	<ul style="list-style-type: none"> <li>(a) Construction or purchase of factory</li> <li>(b) Construction or purchase of building</li> <li>(c) Provision of machinery or plant</li> </ul>
5.	Manufacturing downstream activities of medium and heavy industries	<ul style="list-style-type: none"> <li>(a) Urea and ammonia production</li> <li>(b) Solar panel</li> <li>(c) Marine supply base and fabrication yard</li> <li>(d) Iron ore pellets</li> <li>(e) Hot briquette iron</li> <li>(f) Combined cycle power plant</li> </ul>	<ul style="list-style-type: none"> <li>(a) Construction or purchase of factory</li> <li>(b) Construction or purchase of building</li> <li>(c) Provision of machinery or plant</li> </ul>

(1) No.	(2) Sector	(3) Qualifying activity	(4) Qualifying capital expenditure
6.	Education hub	<p>(a) Private universities</p> <p>(b) Private colleges</p> <p>(c) Training centres</p> <p>(d) Skill training centres</p>	Construction or purchase of building, machinery or plant
7.	Marine downstream activities	Manufacturing of aquatic product	<p>(a) Construction or purchase of factory</p> <p>(b) Construction or purchase of building</p> <p>(c) Provision of machinery or plant</p>
8.	Shipping	Ship building repairs	<p>(a) Construction or purchase of factory</p> <p>(b) Construction or purchase of building</p> <p>(c) Provision of machinery or plant</p>

## Schedule 2

(1) (No.)	(2) Halal product/process	(3) Qualifying activity	(4) Qualifying capital expenditure
1.	<p>Production of Halal product</p> <p>(a) Downstream processing of agricultural produce</p> <p>(b) Development and production of Halal products</p> <p>(c) Development of Halal process</p>	<p>(a) Pharmaceuticals or biopharmaceuticals</p> <p>(b) Biodiagnostics</p> <p>(c) Food or feed supplements</p> <p>(d) Horticultural product</p> <p>(e) Nutraceuticals</p> <p>(f) Microbial and probiotics</p> <p>(a) Cell or tissue cultures</p> <p>(b) Biopolymers</p> <p>(c) Biomaterials</p> <p>(a) Biotechnology process for waste treatment</p>	<p>(a) Construction or purchase of factory</p> <p>(b) Construction or purchase of building</p> <p>(c) Provision of machinery or plant</p>