

INCOME TAX (EXEMPTION) (NO. 12) ORDER 2018

PU (A) 391

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. 12) Order 2018**.
- 1(2)** This Order is deemed to have effect from 20 November 2012 except for subsubparagraphs 3(1)(b) and (c), subparagraphs 4(6) and (7), and paragraph 5.
- 1(3)** Subsubparagraphs 3(1)(b) and (c), subparagraphs 4(6) and (7), and paragraph 5 are deemed to have effect from 16 October 2017.

INTERPRETATION

2 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].

QUALIFYING COMPANY

- 3(1)** The qualifying company referred to in this Order is a company which is incorporated under the Companies Act 2016 [Act 777], resident in Malaysia and approved by the Minister which fulfills the following requirements—
- (a) carries on a qualifying activity in Sabah Development Corridor;
 - (b) has an approved adequate number of full time employees in Sabah Development Corridor to carry on the qualifying activity; and
 - (c) incurs an approved adequate amount of annual operating expenditure to carry on the qualifying activity or an approved adequate investment in fixed asset in Sabah Development Corridor to carry on the qualifying activity.
- 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.

EXEMPTION

- 4(1)** Subject to this paragraph and paragraphs 5 and 6, the Minister exempts a qualifying company 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.
- 4(2)** The exemption referred to in subparagraph (1) shall be for a period of—
- (a) five consecutive years of assessment in respect of the qualifying activity as specified in Schedule 1; or
- (b) ten consecutive years of assessment in respect of the qualifying activity as specified in Schedule 2,
- commencing from the first year of assessment in which the qualifying company derives its statutory income from the qualifying activity, which is referred to as “the exempt years of assessment” in this Order.
- 4(3)** 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.
- 4(4)** 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.
- 4(5)** 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.
- 4(6)** Subject to subparagraph (7), where a qualifying company has been granted an exemption under subparagraph (1) on or before 16 October 2017, the requirements for the qualifying company referred to in subparagraphs 3(1)(b) and (c) shall not apply to that qualifying company until 30 June 2021.
- 4(7)** Where the qualifying company carries on a new qualifying activity after 16 October 2017, subparagraph (6) shall not apply and the qualifying company shall be granted an exemption under subparagraph (1) in relation to that new qualifying activity until 31 December 2018.
- 4(8)** Where a qualifying company has been granted an exemption under subparagraph (1) after 16 October 2017, the requirements for the qualifying company referred to in subparagraphs 3(1)(b) and (c) shall not apply to that qualifying company until 31 December 2018.
- 4(9)** 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.
- 4(10)** For the purposes of this paragraph, “Sabah Economic Development and Investment Authority” means the authority established under the Sabah Economic Development and Investment Authority Enactment 2009.

EXCLUSION OF INTELLECTUAL PROPERTY INCOME

- 5(1)** In ascertaining the statutory income of a qualifying company referred to in subparagraph 4(1), the following intellectual property income derived from a qualifying activity of the qualifying company shall be excluded—
- (a) royalties and other income derived on or after 1 July 2018 but before 1 July 2021, from new intellectual property rights that of the qualifying company owns; and
 - (b) royalties and other income derived on or after 1 July 2021 from all intellectual property rights that the qualifying company owns.
- 5(2)** For the purposes of subparagraph (1)—
- (a) a qualifying company owns an intellectual property right if the qualifying company is the owner or the licensee of the right;
 - (b) royalties or other income is derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right;
 - (c) “intellectual property right”, means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable; and
 - (d) “new intellectual property right” means an intellectual property right in relation to the qualifying activity of the qualifying company that—
 - (i) comes into the ownership of the qualifying company on or after 1 July 2018; or
 - (ii) comes into the ownership of the qualifying company after 16 October 2017 but before 1 July 2018 as a result of an acquisition by the qualifying company, directly or indirectly, from a related company.
- 5(3)** Any intellectual property income excluded in subparagraph (1) is subject to tax under the Act.

STATUTORY INCOME

- 6(1)** Subject to subparagraph (2), the statutory income referred to in subparagraph 4(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.

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 4(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 4(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 the subsections 43(2) and 44(2) of the Act.

WITHDRAWAL OF EXEMPTION

- 8(1)** The Minister may withdraw the exemption granted under subparagraph 4(1) if the qualifying company 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 qualifying company from the first year of the period referred to in subparagraph 4(2).

SEPARATE SOURCE AND ACCOUNT

- 9(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.
- 9(2)** The qualifying company who 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).

NON-APPLICATION

- 10** 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 4(3);
 - (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. 11) Order 2018 [*P.U. (A) 390/2018*];
 - (e) has been granted any other 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
1.	Creative	<ul style="list-style-type: none">(a) Design academy<ul style="list-style-type: none">(i) Product design(ii) Fashion or accessories design(b) Academy of art<ul style="list-style-type: none">(i) Arts and crafts(ii) Drawing(iii) Sculpture(c) School of performing arts<ul style="list-style-type: none">(i) Dance(ii) Drama(iii) Music
2.	Shipping	Ship building and repairs

SCHEDULE 2

(1) No.	(2) Sector	(3) Qualifying activity
1.	Hotel and resort	Hotel or resort business
2.	Manufacturing downstream livestock products and animal feed	<ul style="list-style-type: none"> (a) Cattle feed (b) Dairy-based products (c) Meat-based products
3.	Manufacturing downstream activities of palm oil products	<ul style="list-style-type: none"> (a) Oleochemical (b) Biofuel (c) Trans fat free food products
4.	Manufacturing downstream activities of medium and heavy industries	<ul style="list-style-type: none"> (a) Urea and ammonia production (b) Solar panel (c) Marine supply base and fabrication yard (d) Iron ore pellet (e) Hot briquette iron (f) Combined cycle power plant
5.	Education Hub	<ul style="list-style-type: none"> (a) Private universities (b) Private colleges (c) Training centres (d) Skill training centres
6.	Marine downstream activities	Manufacturing of aquatic products