

# INCOME TAX (EXEMPTION) (NO. 2) ORDER 2023

PU (A) 251  
23 August 2023

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. 2) Order 2023**.

**1(2)** This Order is deemed to have effect from the year of assessment 2019.

## INTERPRETATION

**2** In this Order—

“core income generating activities” means activities undertaken by a principal hub in relation to the qualifying services or qualifying trading activities;

“qualifying trading activities” means activities undertaken by a principal hub in respect of procurement and sale of raw materials, components and finished products from the principal hub to a network company within or outside Malaysia;

“principal hub” means a principal hub as provided under paragraph 3;

“Malaysian Investment Development Authority” means the Malaysian Investment Development Authority established under the Malaysian Investment Development Authority (Incorporation) Act 1965 [Act 397];

“qualifying services” means services specified in Schedule 1;

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

“network company” means—

- (a) a related company;
- (b) an entity within the same group of company of the principal hub including a subsidiary, branch, joint venture or franchise; or
- (c) a company which has a contractual agreement with the principal hub or the principal hub’s ultimate holding company which relates to the principal hub’s supply chain and business for at least three years.

## PRINCIPAL HUB

**3** A principal hub referred to under this Order is a company which—

- (a) is incorporated under the Companies Act 2016 [Act 777] and resident in Malaysia;

- (b) is already operating in Malaysia which—
  - (i) does not have an operational headquarters, international procurement centre or regional distribution centre status; or
  - (a) has been approved by the Minister as having an operational headquarters, international procurement centre or regional distribution centre status; and—
    - (A) has been approved incentive for operational headquarters, international procurement centre or regional distribution centre; or
    - (B) has not been approved incentive for operational headquarters, international procurement centre or regional distribution centre; and
    - (C) has a paid-up capital of more than two million five hundred thousand ringgit.

## EXEMPTION

- 4(1)** Subject to paragraph 5, the Minister exempts a principal hub in the basis period for a year of assessment from the payment of income tax in respect of the statutory income derived from core income generating activities.
- 4(2)** An application for exemption shall—
  - (a) be made in writing by a principal hub and received by the Minister through the Malaysian Investment Development Authority on or after 1 January 2019 but not later than 31 December 2020; and
  - (b) comply with the conditions imposed by the Minister.
- 4(3)** An exemption granted under subparagraph (1) shall be subject to the principal hub complying with—
  - (a) the conditions for the principal hub specified in Schedule 2 or Schedule 3; and
  - (b) any other conditions imposed by the Minister in the approval letter.
- 4(4)** The exemption granted under subparagraph (1) shall be for a period of five consecutive years of assessment (hereinafter referred to as “the exempt years of assessment”) and the commencement of the exemption period shall be determined by the Minister.
- 4(5)** The statutory income derived from core income generating activities referred to in subparagraph (1) in the basis period for each year of assessment shall be determined in accordance with the following formula:
  - (a) in relation to qualifying services carried on by the principal hub—

$$\frac{A}{B} \times C$$

where

- A is the amount of tax charged on the chargeable income of the principal hub from the qualifying services at the prevailing tax rate as provided for in paragraph 2 of Part I of Schedule 1 to the Act reduced by the amount of tax charged on such chargeable income from the qualifying services at the rate of ten per cent;
- B is the amount of tax charged on the chargeable income of the principal hub from the qualifying services at the prevailing tax rate as provided for in paragraph 2 of Part I of Schedule 1 to the Act; and
- C is the amount of the chargeable income of the principal hub from the qualifying services;  
or

(b) in relation to qualifying trading activities carried on by the principal hub—

$$\frac{A}{B} \times C$$

where

- A is the amount of tax charged on the chargeable income of the principal hub from the qualifying trading activities at the prevailing tax rate as provided for in paragraph 2 of Part I of Schedule 1 to the Act reduced by the amount of tax charged on such chargeable income from the qualifying trading activities at the rate of ten per cent;
- B is the amount of tax charged on the chargeable income of the principal hub from the qualifying trading activities at the prevailing tax rate as provided for in paragraph 2 of Part I of Schedule 1 to the Act; and
- C is the amount of the chargeable income of the principal hub from the qualifying trading activities.

**4(6)** The statutory income referred to in subparagraph (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.

**4(7)** Nothing in subparagraph (1) shall absolve or be deemed to have absolved the principal hub from complying with any requirement to submit any return or statement of accounts, or to furnish any other information, under the Act.

## **EXCLUSION OF INTELLECTUAL PROPERTY INCOME**

**5(1)** In ascertaining the statutory income of a principal hub referred to in subparagraph 4(1), the following intellectual property income derived from core income generating activities of the principal hub shall be excluded:

- (a) royalties and other income are derived on or after 1 July 2018 but before 1 July 2021 from new intellectual property rights that the principal hub owns; and
- (b) royalties and other income are derived on or after 1 July 2021 from all intellectual property rights that the principal hub owns.

- 5(2)** For the purposes of subparagraph (1)—
- (a) a principal hub owns an intellectual property right if the principal hub is the owner or the licensee of the right; and
  - (b) royalties and other income are derived from an intellectual property right if they are receivable as consideration for the commercial exploitation of the right.
- 5(3)** Any intellectual property income referred to in subparagraph (1) is subject to tax under the Act.
- 5(4)** In this paragraph—
- “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;
- “new intellectual property right” means an intellectual property right in relation to the core income generating activities of the principal hub that comes into the ownership of the principal hub—
- (a) on or after 1 July 2018; or
  - (b) after 16 October 2017 but before 1 July 2018 as a result of an acquisition by the principal hub, directly or indirectly, from a related company.

## **TAX TREATMENT FOR PRINCIPAL HUB THAT SUFFERED LOSSES**

- 6(1)** Where a principal hub is ascertained to have an adjusted loss under subsection 44(2) of the Act for the basis period for a year of assessment during the exempt years of assessment in respect of a business source consisting of qualifying services or qualifying trading activities, the amount of adjusted loss shall be disregarded from the source consisting of qualifying services or qualifying trading activities and other businesses.
- 6(2)** Where a principal hub is ascertained to have an adjusted loss under subsection 43(2) of the Act for the basis period for a year of assessment during the exempt years of assessment in respect of a business source consisting of qualifying services or qualifying trading activities, the amount of adjusted loss shall be disregarded from the source consisting of qualifying services or qualifying trading activities and other businesses.
- 6(3)** Any amount of adjusted loss ascertained pursuant to subsections 43(2) and 44(2) of the Act in respect of a business source consisting of qualifying services or qualifying trading activities shall be disregarded for the purposes of the Act in the year of assessment in which the last date of the exempt years of assessment of the principal hub falls and in the following years of assessment after the exempt years of assessment, as the case may be.

## **WITHDRAWAL OF EXEMPTION**

- 7(1)** The Minister may withdraw the exemption granted under subparagraph 4(1) if in any year of assessment of the exempt years of assessment, the principal hub fails to comply with any conditions imposed in relation to the exemption.

- 7(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 given to the principal hub for that year of assessment.
- 7(3)** Notwithstanding subparagraphs (1) and (2), where in any year of assessment of the exempt years of assessment, the principal hub fails to comply with any conditions imposed in relation to the exemption, paragraph 4 shall not apply.

## **SURRENDER OF EXEMPTION**

- 8(1)** The Minister may, at any time, except where the principal hub fails to comply with any conditions imposed in relation to the exemption, allow the principal hub to surrender the exemption granted under this Order by notice in writing to the Minister through the Malaysian Investment Development Authority.
- 8(2)** The surrender of the exemption shall have effect from the year of assessment in which the application for surrender of the exemption is received by the Minister through the Malaysian Investment Development Authority provided that all conditions for the relevant category of principal hub specified in Schedule 2 or Schedule 3 are complied with.

## **SEPARATE SOURCE AND SEPARATE ACCOUNT**

- 9(1)** Where a principal hub carries on qualifying services, qualifying trading activities or activity other than core income generating activities, each activity shall be treated as a separate and distinct source of activity of the principal hub.
- 9(2)** The principal hub which 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(1)** This Order shall not apply to a principal hub which in the exempt years of assessment—
- (a) has made a claim for reinvestment allowance under Schedule 7A to the Act or investment allowance for service sector under Schedule 7B to the Act;
  - (b) has been granted any incentive under the Promotion of Investments Act 1986;
  - (c) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act; or
  - (d) 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];
    - (iii) the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [P.U. (A) 336/2014]; or
    - (iv) the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [P.U. (A) 162/2020].

## SCHEDULE 1

[Paragraph 2]

(1) Item	(2) Cluster	(3) Qualifying Service
1.	Strategic services	(a) Regional profit and loss or business unit management (b) Strategic business planning and corporate development (c) Corporate finance advisory services (d) Brand management (e) Intellectual property management (f) Senior-level talent acquisition and management
2.	Business services	(a) Bid and tender management (b) Treasury and fund management (c) Research, development and innovation (d) Project management (e) Sales and marketing (f) Business development (g) Technical support and consultancy (h) Information management and processing (i) Economic or investment research analysis (j) Strategic sourcing, procurement and distribution (k) Logistics services
3.	Shared services	(a) Corporate training and human resource management (b) Finance and accounting (transactions, internal audit)

## SCHEDULE 2

[Paragraphs 4 and 8]

No.	Conditions for a principal hub which does not have an operational headquarters, an international procurement centre or a regional distribution centre status which carries on core income generating activities	
1.	Minimum number of full-time new employees in Malaysia with a minimum salary of five thousand ringgit per month and at least fifty per cent of that new employees are Malaysians	(a) 30 persons; or (b) existing number of full-time employees plus thirty per cent,  whichever is higher
2.	Minimum number of full-time new employees in Malaysia with a minimum salary of twenty five thousand ringgit per month	5 persons
3.	Minimum amount of annual operating expenditure in Malaysia (in Ringgit Malaysia)	(a) RM10,000,000.00; or (b) average operating expenditure for the three years of assessment immediately preceding the exempt years of assessment plus thirty per cent,  whichever is higher
4.	Minimum number of qualifying services	4 (including two qualifying services from items (a) and (b) of cluster 1 of Schedule 1)
5.	Minimum amount of annual value of sales (in Ringgit Malaysia) (additional condition for a principal hub which carries on qualifying trading activities)	(a) RM500,000,000.00; or (b) average annual value of sales for the three years of assessment immediately preceding the exempt years of assessment,  whichever is higher

### SCHEDULE 3

[Paragraphs 4 and 8]

No.	Conditions for principal hub that has been approved by the Minister as an operational headquarters, an international procurement centre or a regional distribution centre status and has been approved incentive for operational headquarters, international procurement centre or regional distribution centre which carries on core income generating activities	
1.	Minimum number of full-time new employees in Malaysia with a minimum salary of five thousand ringgit per month and at least fifty per cent of that new employees are Malaysians	(a) 60 persons; or (b) existing number of full-time employees plus twenty per cent,  whichever is higher
2.	Minimum number of full-time new employees in Malaysia with a minimum salary of twenty five thousand ringgit per month	5 persons
3.	Minimum amount of annual operating expenditure in Malaysia (in Ringgit Malaysia)	(a) RM13,000,000.00; or (b) average operating expenditure for the three years of assessment immediately preceding the exempt years of assessment plus twenty per cent,  whichever is higher
4.	Minimum number of qualifying services	4 (including two qualifying services from items (a) and (b) of cluster 1 of Schedule 1)
5.	Minimum amount of annual value of sales (in Ringgit Malaysia) (additional condition for a principal hub which carries on qualifying trading activities)	(a) RM500,000,000.00; or (b) average annual value of sales for the three years of assessment immediately preceding the exempt years of assessment,  whichever is higher

No.	Conditions for principal hub that has been approved by the Minister as an operational headquarters, an international procurement centre or a regional distribution centre status and has not been approved incentive for operational headquarters, international procurement centre or regional distribution centre which carries on core income generating activities	
1.	Minimum number of full-time new employees in Malaysia with a minimum salary of five thousand ringgit per month and at least fifty per cent of that new employees are Malaysians	Existing number of full-time employees plus thirty per cent
2.	Minimum number of full-time new employees in Malaysia with a minimum salary of twenty five thousand ringgit per month	5 persons
3.	Minimum amount of annual operating expenditure in Malaysia (in Ringgit Malaysia)	(a) RM10,000,000.00; or (b) average operating expenditure for the three years of assessment immediately preceding the exempt years of assessment plus thirty per cent,  whichever is higher
4.	Minimum number of qualifying services	4 (including two qualifying services from items (a) and (b) of cluster 1 of Schedule 1)
5.	Minimum amount of annual value of sales (in Ringgit Malaysia) (additional condition for a principal hub which carries on qualifying trading activities)	(a) RM500,000,000.00; or (b) average annual value of sales for the three years of assessment immediately preceding the exempt years of assessment,  whichever is higher