

INCOME TAX (EXEMPTION) (NO. 20) 2007 (AMENDMENT) ORDER 2018

P.U. (A) 382
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. 20) 2007 (Amendment) Order 2018**.
- 1(2)** This Order is deemed to have come into operation on 16 October 2017 except for paragraph 2, subparagraph 3(a), subparagraphs 5(a), (b) and (c), and paragraphs 7, 8 and 9.
- 1(3)** Paragraph 2, subparagraph 3(a), subparagraphs 5(a), (b) and (c), and paragraphs 7, 8 and 9 are deemed to have come into operation from the year of assessment 2007 except for paragraph 9 in relation to item 6 of the Schedule.
- 1(4)** Paragraph 9 in relation to item 6 of the Schedule is deemed to have come into operation on 1 November 2016.

GENERAL AMENDMENT

- 2** The Income Tax (Exemption) (No. 20) Order 2007 [P.U. (A) 418/2007], which is referred to as the “principal Order” in this Order is amended in the national language text by substituting for the words “aktiviti kelayakan” wherever appearing the words “aktiviti yang layak”.

AMENDMENT OF PARAGRAPH 2

- 3** Paragraph 2 of the principal Order is amended in subparagraph (1)—
 - (a) in the definition of “qualifying activity”, by substituting for the words “determined by the Minister” the words “specified in column (3) of the Schedule in relation to the sector as set out in column (2) of the Schedule which is approved by the Minister;”;
 - (b) by substituting for the definition of “IDR-status company” the following definition:

‘ “IDR-status company” means the company referred to in paragraph 2A;’.

NEW PARAGRAPH 2A

- 4** The principal Order is amended by inserting after paragraph 2 the following paragraph:

“Application

- 2A** This Order shall apply to an IDR-status company—
 - (a) incorporated under the Companies Act 2016 [Act 777];
 - (b) resident in Malaysia;
 - (c) approved by the Minister; and

- (d) which fulfills the following requirements:
 - (i) carries on a qualifying activity in an approved node;
 - (ii) has an approved adequate number of full-time employees in an approved node to carry on the qualifying activity; and
 - (iii) incurs an approved adequate amount of annual operating expenditure to carry on the qualifying activity or an approved adequate investment in fixed asset in an approved node to carry on the qualifying activity.”.

AMENDMENT OF PARAGRAPH 3

5 Paragraph 3 of the principal Order is amended—

- (a) by substituting for subparagraph (1) the following subparagraph:

“(1) Subject to this paragraph and paragraph 3A, the Minister exempts an IDR-status company from the payment of income tax in respect of its statutory income derived from a qualifying activity for a period of ten years commencing from the date of commencement of that qualifying activity (hereinafter referred to as “exempt period”).”;

- (b) by inserting after subparagraph (1) the following subparagraph:

“(1A) An exemption granted under subparagraph (1) is subject to the IDR-status company complying with all the conditions imposed by the Minister in relation to the exemption.”;

- (c) by deleting subparagraph (2); and

- (d) by inserting after subparagraph (2) as deleted the following subparagraphs:

“(2A) Subject to subparagraph (2B), where an IDR-status company has been granted an exemption under subparagraph (1) on or before 16 October 2017, the requirements referred to in subparagraphs (b) and (c) in the definition of “IDR-status company” shall not apply to that IDR-status company until 30 June 2021.

(2B) Where an IDR-status company carries on a new qualifying activity after 16 October 2017, subparagraph (2A) shall not apply and the IDR-status company shall be granted an exemption under subparagraph (1) in relation to that new qualifying activity until 31 December 2018.

(2C) Where an IDR-status company has been granted an exemption under subparagraph (1) after 16 October 2017, the requirements referred to in subparagraphs (b) and (c) in the definition of “IDR-status company” shall not apply to that IDR-status company until 31 December 2018.”.

NEW PARAGRAPH 3A

6 The principal Order is amended by inserting after paragraph 3 the following paragraph:

“Exclusion of intellectual property income

- 3A. (1) In ascertaining the statutory income of an IDR-status company referred to in subparagraph 3(1), the following intellectual property income derived from a qualifying activity of the IDR-status 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 the IDR-status company owns; and
 - (b) royalties and other income derived on or after 1 July 2021 from all intellectual property rights that the IDR-status company owns.
- (2) For the purposes of subparagraph (1)—
- (a) an IDR-status company owns an intellectual property right if the IDR-status 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;
 - (d) “new intellectual property right” means an intellectual property right in relation to the qualifying activity of the IDR-status company that—
 - (i) comes into the ownership of the IDR-status company on or after 1 July 2018; or
 - (ii) comes into the ownership of the IDR-status company after 16 October 2017 but before 1 July 2018 as a result of an acquisition by the IDR-status company, directly or indirectly, from a related company; and
 - (e) “related company” has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986 [*Act 327*].
- (3) Any intellectual property income excluded in subparagraph (1) is subject to tax under the Act.”.

NEW PARAGRAPH 4A

7 The principal Order is amended by inserting after paragraph 4 the following paragraph:

“Withdrawal of exemption

- 4A. (1) The Minister may withdraw the exemption granted under subparagraph 3(1) from the date in the basis period for a year of assessment the IDR-status company fails to comply with any condition imposed in relation to the exemption.
- (2) Where the exemption is withdrawn in accordance with subparagraph (1), the exemption granted under subparagraph 3(1) in respect of any amount of the statutory income shall be deemed to have not been granted to the IDR-status company from the date mentioned in subparagraph (1).”.

AMENDMENT OF PARAGRAPH 7

- 8** Paragraph 7 of the principal Order is amended by substituting for the words “31 December 2015” the words “31 December 2020”.

NEW SCHEDULE

- 9** The principal Order is amended by inserting after paragraph 7 the following Schedule:

Schedule

| (1) No. | (2) Sector | (3) <i>Qualifying activity</i> |
|------------|--|--|
| 1. | Creative industries and related services | <p>(a) creative and design services;</p> <p>(b) creative talent management services;</p> <p>(c) film and television:</p> <p style="padding-left: 20px;">(i) pre-production;</p> <p style="padding-left: 20px;">(ii) production;</p> <p style="padding-left: 20px;">(iii) post-production; and</p> <p style="padding-left: 20px;">(iv) distribution;</p> <p>(d) games and animation:</p> <p style="padding-left: 20px;">(i) content creation;</p> <p style="padding-left: 20px;">(ii) production;</p> <p style="padding-left: 20px;">(iii) post-production; and</p> <p style="padding-left: 20px;">(iv) distribution;</p> <p>(e) online and mobile content generation and advertising;</p> <p>(f) online and mobile content aggregation and enablers;</p> <p>(g) creative research and development;</p> <p>(h) distribution and marketing of creative content;</p> <p>(i) integrated media and content services; and</p> <p>(j) visual and performing arts.</p> |

| (1) No. | (2) Sector | (3) Qualifying activity |
|------------|---------------------------------|--|
| 2. | Educational services | <p>(a) universities;</p> <p>(b) colleges;</p> <p>(c) skills training institutions;</p> <p>(d) research and development institutions; and</p> <p>(e) regional training centres.</p> |
| 3. | Healthcare and related services | <p>(a) hospitals and alternative medicine (traditional and complementary medicine) centres;</p> <p>(b) integrated dental and orthodontic services;</p> <p>(c) healthcare research and development; and integrated laboratory services.</p> |
| 4. | Logistics services | <p>(a) integrated supply chain services; and</p> <p>(b) high value supply chain services and solutions.</p> |
| 5. | Tourism | <p>(a) hotels;</p> <p>(b) theme parks, amusement and family entertainment centres and cultural centres;</p> <p>(c) conference centres and exhibition centres; and</p> <p>(d) regional operation of hotel and leisure services.</p> |
| 6. | Global business services | <p>(a) information technology outsourcing;</p> <p>(b) business process outsourcing; and</p> <p>(c) knowledge process outsourcing.</p> |