

INCOME TAX (EXEMPTION) (NO. 4) ORDER 2023

PU (A) 382

17 November 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. 4) Order 2023**.

1(2) This Order is deemed to have come into operation on 1 January 2019.

INTERPRETATION

2 In this Order—

"**qualifying activity**" means an activity as provided under subparagraph 3(2);

"**new business**" means the first qualifying activity undertaken by a BioNexus status company;

"**expansion project**" means project as provided under subparagraph 4(2);

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

"**BioNexus status company**" means a company incorporated under the Companies Act 2016 [Act 777] which is engaged in a business of life sciences such as biology, medicine, anthropology, ecology or any other branches of science, which deal with living organisms and their organization, life processes and relationships to each other and their environment;

"**qualifying company**" means a company as provided under paragraph 4.

QUALIFYING ACTIVITY

3(1) Any BioNexus status company which carries out qualifying activity is eligible to apply for an exemption to the Minister pursuant to subparagraph 5(2) of this Order.

3(2) Qualifying activity referred to in this Order is an activity relation to agricultural biotechnology, industrial biotechnology and healthcare biotechnology as approved by the Minister.

QUALIFYING COMPANY

4(1) A qualifying company referred to in this Order is a BioNexus status company—

(a) which carries out qualifying activity under subparagraph 3(2) in relation to new business or expansion project; and

(b) which has been granted exemption under this Order and complies with the conditions imposed by the Minister relating to the exemption.

4(2) For the purposes of this Order, expansion project is a project undertaken by a BioNexus status company in expanding its existing qualifying activity.

- 4(3)** The existing qualifying activity referred to in subparagraph (2) shall—
- (a) involves new investment in qualifying activity; and
 - (b) has never been granted exemption under this Order and the Income Tax (Exemption) (No. 5) Order 2023 [*P.U. (A) 383/2023*].

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 a qualifying activity.
- 5(2)** An application for exemption shall—
- (a) be made in writing by a BioNexus status company and received by the Minister through the Malaysian Bioeconomy Development Corporation Sdn. Bhd. on or after 1 January 2019 but not later than 31 December 2022; and
 - (b) comply with any conditions imposed by the Minister in relation to the application.
- 5(3)** An exemption granted under subparagraph (1) shall be subject to the qualifying company complying with all the conditions imposed by the Minister in relation to the exemption as specified in the approval letter, which shall include the following:
- (a) employs an adequate number of full-time employees and knowledge workers in Malaysia approved by the Minister to carry on the qualifying activity; and
 - (b) incurs an adequate amount of annual operating expenditure in Malaysia or an adequate amount of investment in fixed asset in Malaysia, approved by the Minister to carry on the qualifying activity.
- 5(4)** The exemption granted under subparagraph (1) shall be—
- (a) in relation to a new business, for a period of ten consecutive years of assessment commencing from the first year of assessment in which the qualifying company derived its statutory income from the new business; or
 - (b) in relation to an expansion project, for a period of five consecutive years of assessment commencing from the first year of assessment in which the qualifying company derived its statutory income from the expansion project, and that first year of assessment shall not be earlier than the year of assessment in the basis period in which the date the company is approved as BioNexus status company by the Minister.
- 5(5)** Where a qualifying company has been granted an exemption under subparagraph (1), a related company to the qualifying company is also entitled to be granted exemption under subparagraph (1) subject to the related company complying with all the conditions imposed by the Minister.
- 5(6)** 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(7)** For the purposes of this Order, the period as specified in subsubparagraph 4(a) or (b) is referred to as “exempt years of assessment”.

EXCLUSION OF INTELLECTUAL PROPERTY INCOME

- 6(1)** In ascertaining the statutory income of a qualifying company referred to in subparagraph 5(1), the following intellectual property income derived from a qualifying activity of the qualifying company 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 qualifying company owns; and
 - (b) royalties and other income are derived on or after 1 July 2021 from all intellectual property rights that the qualifying company owns.
- 6(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; and
 - (b) royalties and other income are derived from an intellectual property right if they are receivable as consideration for the commercial exploitation of that right.
- 6(3)** Any intellectual property income referred to in subparagraph (1) is subject to tax under the Act.
- 6(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 qualifying activity of the qualifying company that comes into the ownership of the qualifying company—
- (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 qualifying company, directly or indirectly, from a related company.

STATUTORY INCOME

- 7(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.
- 7(2)** Where an asset is used for the purposes of a qualifying activity is also used for the purposes of an activity other than that qualifying activity, then the amount of 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 asset is used for the purposes of the qualifying activity.
- 7(3)** The statutory income referred to in subparagraph 5(1) derived from the qualifying activity shall be seventy per cent of the statutory income in the exempt years of assessment.

LOSSES

- 8(1)** Any amount of adjusted loss incurred in relation to the qualifying activity from the year of assessment in the basis period in which the qualifying activity referred to in subparagraph 5(1) commences until the year of assessment immediately prior to the exempt years of assessment, and during the exempt years of assessment, shall be carried forward and deducted from the statutory income from the qualifying activity for a period of seven consecutive years of assessment and that period commences immediately following the end of the exempt years of assessment and any amount or balance of the amount which is not deductible at the end of that period shall be disregarded for the purpose of the Act.
- 8(2)** So much of the adjusted loss referred to in subparagraph (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 subsections 43(2) and 44(2) of the Act.

APPLICATION OF DEDUCTIONS FOR PROMOTION OF EXPORTS UNDER THE PROMOTION OF INVESTMENTS ACT 1986

- 9** For the purposes of computing the adjusted income from the qualifying activity referred to in subparagraph 5(1), an expenditure which would be allowed as a deduction during the exempt years of assessment under section 41 of the Promotion of Investments Act 1986 shall be accumulated and the aggregate amount of the expenditure shall be allowed as a deduction in the first basis period for a year of assessment after the exempt years of assessment.

APPLICATION OF DEDUCTION FOR RESEARCH UNDER SECTION 34A OF THE ACT

- 10(1)** For the purposes of computing the adjusted income from the qualifying activity referred to in subparagraph 5(1), an expenditure which would be allowed as a deduction during the exempt years of assessment for research under section 34A of the Act shall be accumulated and the aggregate amount of the expenditure shall be allowed as a deduction in the first basis period for a year of assessment after the exempt years of assessment.
- 10(2)** The amount of deduction to be made under subparagraph (1) shall be equal to the amount of expenditure incurred.
- 10(3)** Where a deduction has been made under this Order in respect of an expenditure referred to in subparagraph (1), such expenditure shall not be eligible for any deduction under the Act.

CAPITAL ALLOWANCE

- 11** For the purposes of this Order, Schedule 3 to the Act shall apply.

WITHDRAWAL OF EXEMPTION

- 12(1)** The Minister may withdraw the exemption granted under subparagraph 5(1) from the date in the basis period for a year of assessment the qualifying company fails to comply with any condition imposed in relation to the exemption.
- 12(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 date mentioned in subparagraph (1).

SEPARATE SOURCE AND SEPARATE ACCOUNT

- 13(1)** Where a qualifying company carries on a qualifying activity and activity other than the qualifying activity, each activity shall be treated as a separate and distinct source of activity for the qualifying company.

- 13(2)** The qualifying company which 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).

APPLICATION OF PARAGRAPHS 5 AND 6 OF SCHEDULE 7A TO THE ACT

- 14** Paragraphs 5 and 6 of Schedule 7A to the Act shall apply, mutatis mutandis, to the amount of statutory income exempted under subparagraph 5(1).

NON-APPLICATION

- 15** This Order shall not apply to a qualifying company which—
- (a) in relation to new business, which commences—
 - (i) service activity after twelve months from the date of the approval by the Minister or after such extended period approved by the Minister; or
 - (ii) manufacturing activity after twenty four months from the date of the approval by the Minister or after such extended period approved by the Minister;
 - (b) in relation to expansion project, that completes the expansion project after twenty four months from the date of the approval by the Minister or after such extended period approved by the Minister;
 - (c) its status as a BioNexus status company has been revoked by the Minister; or
 - (d) in the exempt years of assessment—
 - (i) has failed to comply with the conditions referred to in subparagraphs 5(2) and (3);
 - (ii) 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;
 - (iii) has been granted any incentive under the Promotion of Investments Act 1986 in respect of the same qualifying activity;
 - (iv) 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
 - (v) has made a claim for a deduction under any rules made under section 154 of the Act except—
 - (A) the rules in relation to allowance under Schedule 3 to the Act;
 - (B) the Income Tax (Deduction for Audit Expenditure) Rules 2006 [*P.U. (A) 129/2006*];
 - (C) the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [*P.U. (A) 336/2014*]; or
 - (D) the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [*P.U. (A) 162/2020*].