

INCOME TAX (EXEMPTION) (NO. 5) ORDER 2023

PU (A) 383

11 September 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. 5) 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);

"**qualifying capital expenditure**" means a capital expenditure as provided under paragraph 6;

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

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

"**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 relating 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) involve new investment in qualifying activity; and

(b) has never been granted exemption under this Order and the Income Tax (Exemption) (No. 6) Order 2023 [P.U. (A) 384/2023].

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 new business or an expansion project, as the case may be, which is equivalent to the amount of the qualifying capital expenditure incurred by the qualifying company in the basis period for that year of assessment.
- 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 condition 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 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 for a period of five consecutive years (hereinafter referred to as “the exemption period”) commencing from the date of the first qualifying capital expenditure incurred by the qualifying company as determined by the Malaysian Bioeconomy Development Corporation Sdn. Bhd.
- 5(5)** The date of the first qualifying capital expenditure incurred by the qualifying company shall not be earlier than three years from the date of approval by the Minister as specified in the approval letter.
- 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.

QUALIFYING CAPITAL EXPENDITURE

- 6(1)** Subject to subparagraph (2), a qualifying capital expenditure referred to in this Order is the capital expenditure incurred by a qualifying company on an asset used in Malaysia for the purposes of a new business or expansion project, as the case may be, as follows:
- (a) in relation to manufacturing or manufacturing based research, a factory, a building used for activity of research and development, plant and machinery; or
- (b) in relation to agriculture or agriculture based research, the clearing and preparation of land, the planting of crops (first planting or planting of trial crops), the provision of irrigation or drainage system, the provision of plant and machinery, the purchase or construction of a building used for the activity of research and development, or the activity of agriculture (including buildings provided for the welfare or living accommodation of persons who are working in the farm), construction of access roads, bridge and any improvement of permanent structure on land which form as part of the land used for the business.

6(2) The qualifying capital expenditure referred to in subparagraph (1) shall not include capital expenditure incurred on—

(a) any building which is used as living accommodation; 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 or administration, or clerical staff, of that qualifying 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 amount of statutory income so exempt referred to in subparagraph 5(1) shall not exceed seventy per cent for each year of assessment.

7(4) Where, by reason of the restriction of the exemption to seventy per cent of the statutory income pursuant to subparagraph (3) or of absence or insufficiency of the statutory income of the qualifying company from the qualifying activity, 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 amount as cannot be exempt for that year of assessment shall be deemed to be a qualifying capital expenditure incurred for the purposes of subparagraph 5(1) for the first subsequent year of assessment and so on for subsequent years of assessment until such amount to which it is so entitled is exempted.

DISPOSAL OF ASSET WITHIN TWO YEARS

8 Where a qualifying capital expenditure is incurred by a qualifying company on an asset used for the purposes of the qualifying activity and such asset is disposed of at any time within the period of two years from the date of acquisition of the asset, the exemption granted in respect of the amount of statutory income which is equal to the amount of qualifying capital expenditure shall be withdrawn in the basis period for the year of assessment in which the asset is disposed of.

DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE FOR ASSET DISPOSED TO RELATED COMPANY

9(1) Where the qualifying company disposes to its related company any asset 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.

9(2) For the purposes of this paragraph, “related company” has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986 [Act 327].

WITHDRAWAL OF EXEMPTION

10(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.

10(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 exemption period.

SEPARATE SOURCE AND SEPARATE ACCOUNT

- 11(1) Where a qualifying company carries on the qualifying activity and activity other than qualifying activity, each activity shall be treated as a separate and distinct source of the activity for that qualifying company.
- 11(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

- 12 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

- 13 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; or
 - (b) in relation to expansion project, 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; and
 - (c) in the basis period for a year of assessment—
 - (i) 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;
 - (ii) has been granted any incentive under the Promotion of Investments Act 1986 in respect of the same qualifying activity;
 - (iii) 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
 - (iv) has made a claim for 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*].