

# INCOME TAX (EXEMPTION) (NO. 6) ORDER 2023

PU (A) 384

19 December 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. 6) Order 2023**.

**1(2)** This Order comes into operation on 1 January 2019.

## INTERPRETATION

**2** In this Order—

“qualifying activity” means an activity as provided under paragraph 3;

“qualifying company” means a BioNexus status company as provided under paragraph 4.

## QUALIFYING ACTIVITY

**3(1)** The qualifying activity referred to in this Order is—

(a) a new business which involves the first biotechnology activity undertaken by a BioNexus status company; and

(b) an expansion project undertaken by a BioNexus status company in expanding its existing biotechnology activity—

(i) which involves new investment in qualifying activity; and

(ii) which has never been granted exemption under—

(A) the Income Tax (Exemption) (No. 4) Order 2023 [P.U. (A) 382/2023]; and

(B) the Income Tax (Exemption) (No. 5) Order 2023 [P.U. (A) 383/2023].

**3(2)** Biotechnology activity referred to in subparagraph (1) is an activity relating to agricultural biotechnology, industrial biotechnology and healthcare biotechnology as approved by the Minister.

## QUALIFYING COMPANY

**4** A qualifying company referred to in this Order is a BioNexus status company that carries out qualifying activity that has been granted an exemption from the payment of income tax under—

(a) the Income Tax (Exemption) (No. 4) Order 2023 [P.U. (A) 382/2023]; or

(b) the Income Tax (Exemption) (No. 5) Order 2023 [P.U. (A) 383/2023].

## CITATION AND COMMENCEMENT

- 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 for a period of ten consecutive years of assessment commencing immediately after the exempt years 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. not less than six months before the expiry of the exempt years of assessment; 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 statutory income referred to in subparagraph (1) in the basis period for each year of assessment shall be determined in accordance with the following formula:

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

- where
- A is the amount of tax charged on the chargeable income of the qualifying company from the qualifying activity 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 activity at the rate of twenty per cent;
  - B is the amount of tax charged on the chargeable income of the qualifying company from the qualifying activity 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 qualifying company from the qualifying activity.

- 5(5)** 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(6)** In this paragraph, “exempt years of assessment” are the years of assessment where a qualifying company has been granted an exemption from the payment of income tax under the Income Tax (Exemption) (No. 4) Order 2023 [P.U. (A) 382/2023] or the Income Tax (Exemption) (No. 5) Order 2023 [P.U. (A) 383/2023], as the case may be.

## **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” 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;

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

## **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 that qualifying activity.

## **CHARGEABLE INCOME**

- 8(1)** The chargeable income of a qualifying company in relation to the source consisting of a qualifying activity for a year of assessment shall be the statutory income from that source reduced by any amount of deduction falling to be made pursuant to subsection 43(2) of the Act relating to that source.
- 8(2)** Amount of deduction referred to in subparagraph (1) which has not been deducted from the statutory income for the year of assessment where the period referred to in subparagraph 5(1) ends shall only be deductible in accordance with subsection 43(2) of the Act for a period of seven consecutive years of assessment commencing from the end of the period referred to in subparagraph 5(1) and any amount or balance of the amount which is not deductible at the end of the second mentioned period shall be disregarded for the purpose of the Act.
- 8(3)** The chargeable income in relation to the source or sources other than the source consisting of a qualifying activity for a year of assessment shall be the statutory income from that source or the aggregate of the statutory income from each of those sources, as the case may be, reduced by any deduction falling to be made pursuant to subsections 43(2) and 44(2) of the Act.
- 8(4)** For the purposes of subparagraph (3), in making the deductions under subsections 43(2) and 44(2) of the Act, no regard shall be made to the adjusted loss, if any, from the source consisting of the qualifying activity.

## **SEPARATE SOURCE AND SEPARATE ACCOUNT**

- 9(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.
- 9(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).