

# INCOME TAX (EXEMPTION) ORDER 2023

PU (A) 240  
15 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)** These rules may be cited as the **Income Tax (Exemption) Order 2023**.

**1(2)** This Order is deemed to have effect from the year of assessment 2021.

## INTERPRETATION

**2(1)** In these Order —

“qualifying activity” means a new manufacturing activity undertaken by a qualifying company but does not include any activity specified in the Schedule;

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

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

“existing company” means a company which—

- (a) is incorporated under the Companies Act 2016 [Act 777] and resident in Malaysia;
- (b) has an existing manufacturing operation in Malaysia; and
- (c) relocate its manufacturing operations to Malaysia for a new business where the product from the new business is not an expansion project for the existing product;

“qualifying company” means an existing company which qualify for exemption under subparagraph 3(1).

**2(2)** Except for subparagraphs 5(1) and (4), paragraphs 46 and 55 of Schedule 3 to the Act shall apply in relation to any reference to “incurred” in this Order, and the word “incurs” shall be construed accordingly.

## EXEMPTION

**3(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, which is equivalent to the amount of the qualifying capital expenditure made by the qualifying company in the basis period for that year of assessment.

- 3(2)** An application for exemption under subparagraph (1) shall—
- (a) be made in writing by a qualifying company and received by the Minister through the Malaysian Investment Development Authority on or after 1 July 2020 but not later than 31 December 2024; and
  - (b) comply with the conditions imposed by the Minister.
- 3(3)** An exemption granted under subparagraph (1) pursuant to the application referred to in subparagraph (2) is 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) incurs the minimum amount of investment in fixed asset excluding land of more than three hundred million ringgit (RM300,000,000.00) within three years from the date of the first qualifying capital expenditure made; and
  - (b) employs at least eighty per cent full-time Malaysian employees on or before the third year from the date of the first invoice in relation to the qualifying activity issued by the qualifying company until the exemption period ends.
- 3(4)** The exemption referred to in 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 made by the qualifying company, as determined by the Malaysian Investment Development Authority.
- 3(5)** The date of the first qualifying capital expenditure made by the qualifying company shall not be earlier than 1 July 2020.
- 3(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.
- 3(7)** Where the qualifying company has been granted an exemption under subparagraph (1), any related company to the company is not entitled to be granted an exemption under subparagraph (1) in respect of the same qualifying activity.

## **QUALIFYING CAPITAL EXPENDITURE**

- 4(1)** Subject to subparagraph (2), a qualifying capital expenditure referred to in this Order is the capital expenditure incurred by a qualifying company in relation to a factory, machinery or plant used in Malaysia solely for the purposes of carrying on a qualifying activity.
- 4(2)** The qualifying capital expenditure referred to in subparagraph (1) shall not include capital expenditure incurred on—
- (c) any building which is used as living accommodation; or
  - (d) 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**

- 5(1)** Subject to subparagraph (2), the statutory income referred to in subparagraph 3(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.
- 5(2)** Where a factory, machinery or plant is used for the purposes of a qualifying activity is also used for the purposes of an activity other than a qualifying activity, then 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 factory, machinery or plant is used for the purposes of the qualifying activity.
- 5(3)** Where an exemption is granted to the qualifying company under subparagraph 3(1) for a year of assessment, an amount equal to the amount of the qualifying capital expenditure referred to in subparagraph 5(1) shall be exempted from tax for that year of assessment.
- 5(4)** Where, by reason of the 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 3(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 purpose of subparagraph 3(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 FACTORY, MACHINERY OR PLANT WITHIN FIVE YEARS**

- 6** Where a qualifying capital expenditure is incurred by a qualifying company on a factory, machinery or plant used for the purposes of a qualifying activity and such factory, machinery or plant is disposed of at any time within the period of five years from the date of acquisition of the factory, machinery or plant, the exemption granted in respect of the amount of statutory income which is equal to the amount of allowance for such qualifying capital expenditure shall be withdrawn in the basis period for the year of assessment in which the factory, machinery or plant is disposed of.

## **DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE FOR FACTORY, MACHINERY OR PLANT DISPOSED TO RELATED COMPANY**

- 7** Where the qualifying company disposes to its related company any factory, machinery or plant 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.

## **WITHDRAWAL OF EXEMPTION**

- 8(1)** The Minister may withdraw the exemption granted under subparagraph 3(1) if the qualifying company fails to comply with any condition imposed in relation to the exemption in any year of assessment within the exemption period.
- 8(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 3(1) shall be deemed to have not been granted to the qualifying company.

- 8(3)** Notwithstanding subparagraphs (1) and (2), where in any year of assessment within the exemption period, the qualifying company fails to comply with any condition imposed in relation to the exemption, paragraph 3 shall not apply.

## **SURRENDER OF EXEMPTION**

- 9(1)** The Minister may, at any time, except where the qualifying company fails to comply with any condition imposed in relation to the exemption, allow the qualifying company to surrender the exemption granted under this Order by notice in writing to the Minister through the Malaysian Investment Development Authority.
- 9(2)** The surrender of the exemption shall have effect on the first day in the basis period for the year of assessment in which the application for surrender of the exemption is received by the Minister through the Malaysian Investment Development Authority.

## **SEPARATE SOURCE AND SEPARATE ACCOUNT**

- 10(1)** Where a qualifying company carries on a qualifying activity and activity other than a qualifying activity, each activity shall be treated as a separate and distinct source of activity for the qualifying company.
- 10(2)** The qualifying company which is granted an exemption under subparagraph 3(1) shall maintain a separate account for the income derived from each activity referred to in subparagraph (1).

## **NON-APPLICATION**

- 11** This Order shall not apply to a qualifying company which in the basis period for a year 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 in respect of the same qualifying activity;
  - (c) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act in respect of the same qualifying activity;
  - (d) has been approved by the Minister an incentive scheme under any rules made under section 154 of the Act; or
  - (e) 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*]; or
    - iii. the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [*P.U. (A) 162/2020*].

## SCHEDULE

### [PARAGRAPH 2]

(1) No.	(2) Industry	(3) Non-qualifying activity
1.	Iron and steel	All products for iron and steel considered sensitive except products listed in the promoted activities or promoted products under the Promotion of Investments Act 1986 under the category of manufacture of iron and steel, and manufacture of non-ferrous metal and their products
2.	Machinery and equipment	Weapon and ammunitions
3.	Electrical	Electrical products supplied to generate power for consumption of Tenaga Nasional Berhad and Petronas such as general cables, wire harness, distribution boards, control panels, switching apparatus, transformers
4.	Beverages and tobacco	(a) Liquor and alcoholic beverages (b) Tobacco and tobacco products including cigarette (c) Beverages
5.	Palm oil	Palm oil milling and refining
6.	Food manufacturing	(a) Production of food products that only involve mixing, blending and cooking such as sauces, paste, premix food products (b) Sugar (c) Pineapple canning
7.	Paper, printing and publishing	(a) Paper-based packaging materials from waste paper except for coated duplex board (b) Printing and publishing
8.	Wood and wood products	Wood-based products including furniture, plywood, sawn timber and others

(1) No.	(2) Industry	(3) Non-qualifying activity
9.	Automotive or motor vehicle	(a) Remanufacturing or reconditioning or reassembly of motor vehicles and related components  (b) Non-energy efficient vehicle
10.	Aerospace for military or defense application	Drones and rocket aerospace related products for military or defense application (Non-commercial segment)
11.	Petroleum	Refinery of crude petroleum oil
12.	Rubber	Passenger car tires
13.	Plastic	General plastic products such as plastic bags, bottles
14.	Construction	Manufacturing of construction material except for the following products:  (a) Industrial Building System  (b) Panels  (c) Boards  (d) Tiles  (e) Blocks or similar articles of natural and synthetic fibre agglomerated with cement, plaster or other mineral binding substance
15.	Textile	Textiles products except for the following activities:  (a) Natural or man-made fibres  (b) Yarn of natural or man-made fibres  (c) Woven fabrics  (d) Knitted fabrics  (e) Non-woven fabrics

(1) No.	(2) Industry	(3) Non-qualifying activity
		(f) Finishing of fabrics such as bleaching, dyeing and printing (g) Specialised apparel (h) Technical textiles or functional textiles and textile products
16.	All	(a) Recycling of any types of waste (b) Gloves