

INCOME TAX ACT 1967

INCOME TAX (RELOCATION OF PROVISION OF SERVICES BUSINESS INCENTIVE SCHEME) RULES 2022

PU (A) 398
21 December 2022

IN exercise of the powers conferred by paragraph 154(1)(b) read together with subsection 6(1A) of, and paragraph 2 of Part XVII of Schedule 1 to, the Income Tax Act 1967 [Act 53], the Minister makes the following rules:

CITATION AND COMMENCEMENT

- 1(1)** These rules may be cited as the **Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022**.
- 1(2)** These Rules have effect from the year of assessment 2021.

APPLICATION

- 2** These Rules shall apply to a qualifying company which applies in writing for the Relocation of Provision of Services Business Incentive Scheme to the Minister through the Malaysian Investment Development Authority and such application is received on or after 7 November 2020 but not later than 31 December 2022.

INTERPRETATION

- 3** In these Rules—

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

“Relocation of Provision of Services Business Incentive Scheme” means an incentive scheme for the qualifying company to undertake a qualifying activity and approved by the Minister;

“new company” means a company—

- (a) which is incorporated under the Companies Act 2016 [Act 777] and resident in Malaysia;
- (b) which is established for the purpose of carrying on a qualifying activity under these Rules—
- (i) which does not have an existing entity or related entity in Malaysia prior to the application referred to in rule 2 being made; or
- (ii) which has an existing entity or related entity in Malaysia which has not carried on a qualifying activity in Malaysia prior to the application referred to in rule 2 being made; and

- (c) which—
 - (i) relocates its facility for the qualifying activity from outside Malaysia into Malaysia;
 - (ii) relocates a new qualifying activity into Malaysia which is different from the existing qualifying activity outside Malaysia; or
 - (iii) establish a new operation in Malaysia;

“existing company” means a company—

- (a) which is incorporated or registered under the Companies Act 2016 and resident in Malaysia; and
- (b) which is already operating in Malaysia and carrying on a qualifying activity for a new business segment separated from the operation of the existing qualifying activity;

“qualifying company” means a new company or an existing company which fulfils the eligibility condition imposed by the Minister under the Act and these Rules.

QUALIFYING ACTIVITY

- 4** A qualifying activity referred to under these Rules is any of the following service activities which adopt Industrial Revolution 4.0 and digitalisation technology undertaken by a qualifying company:
- (a) provision of technology solution or technology company which develops technology and provides technology solutions based on substantial scientific or engineering challenges;
 - (b) provision of infrastructure and technology for cloud computing;
 - (c) research and development or design and development activities;
 - (d) medical devices testing laboratory and clinical trials; or
 - (e) any service activity or manufacturing related service activity as determined by the Minister.

APPLICABLE RATE

- 5** The rate of income tax which shall be charged under these Rules for the specified years of assessment on the chargeable income of a qualifying company which carries on business in respect of a qualifying activity under the Relocation of Provision of Services Business Incentive Scheme is—
- (a) in the case of a new company, not more than ten per cent; and
 - (b) in the case of an existing company, ten per cent.

SPECIFIED YEARS OF ASSESSMENT

- 6** The specified years of assessment referred to under these Rules is a period of up to ten consecutive years of assessment for the implementation of the Relocation of Provision of Services Business Incentive Scheme commencing from the year of assessment as determined by the Minister.

CONDITIONS FOR THE RELOCATION OF PROVISION OF SERVICES BUSINESS INCENTIVE SCHEME

- 7 A qualifying company which applies for the Relocation of Provision of Services Business Incentive Scheme under these Rules shall comply with the conditions imposed by the Minister as specified in the approval letter and the Guidelines and Procedures for the Application of Special Tax Incentive for Selected Services Activities under the National Economy Recovery Plan (PENJANA) issued or as revised by the Malaysian Investment Development Authority and approved by the Minister, which shall include the following conditions:
- (a) employ 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 end of the specified years of assessment; and
 - (b) incur an approved adequate amount of annual operating expenditure to carry on the qualifying activity or an approved adequate investment in fixed asset to carry on the qualifying activity.

SURRENDER OF THE RELOCATION OF PROVISION OF SERVICES BUSINESS INCENTIVE SCHEME

- 8(1) The Minister may, at any time, except where the qualifying company fails to comply with any conditions imposed in relation to the Relocation of Provision of Services Business Incentive Scheme, allow the qualifying company to surrender the Relocation of Provision of Services Business Incentive Scheme granted under these Rules by notice in writing to the Minister through the Malaysian Investment Development Authority.
- 8(2) The surrendering of the Relocation of Provision of Services Business Incentive Scheme shall have effect on the first day in the basis period for the year of assessment in which the application for surrender of the Relocation of Provision of Services Business Incentive Scheme is received by the Minister through the Malaysian Investment Development Authority.

NON-APPLICATION

- 9 These Rules shall not apply to a qualifying company which in the specified years 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 [Act 327];
 - (c) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act;
 - (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].