

INCOME TAX (EXEMPTION) (NO. 6) ORDER 2018

PU (A) 385

31 December 2018

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 2018**.

1(2) This Order has effect from the year of assessment 2018.

INTERPRETATION

2 In this Order-

“core income generating activities” means activities undertaken by a principal hub in relation to the provision of qualifying services or qualifying trading activities;

“qualifying trading activities” means activities undertaken by a principal hub other than a commodity based company, in respect of procurement and sale of raw materials, components and finished products from the principal hub to a network company within or outside Malaysia;

“principal hub” means a principal hub as provided under paragraph 3;

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

“qualifying services” means services specified in Schedule 1;

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

“network company” means—

- (a) a related company;
- (b) an entity within the same group of company of the principal hub including a subsidiary, branch, joint venture or franchise; or
- (c) a company which relates to the principal hub’s supply chain and business with a contractual agreement.

PRINCIPAL HUB

3 A principal hub referred to under this Order is a company or, a commodity based company that integrates the supply chain management for upstream and downstream activities under its principal hub operation, which-

- (a) is incorporated under the Companies Act 2016 [Act 777] and resident in Malaysia;
- (b) has a paid-up capital of more than two million five hundred thousand ringgit (RM2,500,000.00);
- (c) is already operating in Malaysia; and

- (d) provides at least three qualifying services to its network companies which are located in three countries outside Malaysia in a basis period for a year of assessment, of which one of the qualifying services shall be from item (a) of cluster (1) of Schedule 1:

Provided that where a business in relation to qualifying trading activities in Malaysia is included in providing the qualifying services to its network companies, the annual value of sales shall be at least three hundred million ringgit (RM300,000,000.00).

EXEMPTION

- 4(1)** Subject to paragraph 5, the Minister exempts a principal hub in the basis period for a year of assessment from the payment of income tax in respect of the value added income derived from core income generating activities.
- 4(2)** The exemption referred to in subparagraph (1) shall be for a period of five consecutive years of assessment (hereinafter referred to as “the exempt years of assessment”) and the commencement of the exemption period shall be determined by the Minister.
- 4(3)** An application for exemption under this Order shall be made to the Minister through the Malaysian Investment Development Authority on or after 1 January 2018 but not later than 31 December 2020.
- 4(4)** An exemption granted under this Order shall be subject to all conditions specified in Schedule 2 and any other conditions as may be imposed by the Minister.

- 4(5)** For the purpose of subparagraph (1)-

- (a) “inflation adjusted base income” shall be determined in accordance with the following formula:

- (i) for the first year of assessment of the principal hub operation-

$$A (1 + B)$$

where A is the average statutory income of a related company or a company in Malaysia for up to three years prior to the first year of assessment of the principal hub operation; and

B is the rate of inflation for the basis year; and

- (ii) for the second year of assessment of the principal hub operation onwards-

$$C (1 + B)$$

where C is the inflation adjusted income for the preceding year; and

B is the rate of inflation for the basis year; and

- (b) “value added income” means the statutory income for the basis period for the year of assessment less the inflation adjusted base income.

- 4(6)** For the purpose of subparagraph (1), the statutory income referred to in subparagraph (5) 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 have been made.

4(7) Nothing in subparagraph (1) shall absolve or be deemed to have absolved the principal hub from complying with any requirement to submit any return or statement of accounts, or to furnish any other information, under the Act.

EXCLUSION OF INTELLECTUAL PROPERTY INCOME

5(1) In ascertaining the statutory income of a principal hub referred to in subparagraph 4(5), the following intellectual property income derived from core income generating activities of the principal hub shall be excluded:

- (a) royalties and other income derived on or after 1 July 2018 but before 1 July 2021 from new intellectual property rights that the principal hub owns; and
- (b) royalties and other income derived on or after 1 July 2021 from all intellectual property rights that the principal hub owns.

5(2) For the purposes of subparagraph (1)—

- (a) a principal hub owns an intellectual property right if the principal hub is the owner or the licensee of the right;
- (b) royalties or other income is derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right;
- (c) “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; and
- (d) “new intellectual property right” means an intellectual property right in relation to the core income generating activities of the principal hub that—
 - (i) comes into the ownership of the principal hub on or after 1 July 2018; or
 - (ii) comes into the ownership of the principal hub after 16 October 2017 but before 1 July 2018 as a result of an acquisition by the principal hub, directly or indirectly, from a related company.

5(3) Any intellectual property income excluded in subparagraph (1) is subject to tax under the Act.

TAX TREATMENT FOR PRINCIPAL HUB THAT SUFFERED LOSSES

6(1) Where a principal hub is ascertained to have an adjusted loss under subsection 44(2) of the Act for the basis period for a year of assessment during the exempt years of assessment in respect of a business source consisting of the provision of qualifying services or qualifying trading activities, the amount of adjusted loss shall be disregarded from the source consisting of the provision of qualifying services or qualifying trading activities in Malaysia and other businesses.

6(2) Where a principal hub is ascertained to have an adjusted loss under subsection 43(2) of the Act for the basis period for a year of assessment during the exempt years of assessment in respect of a business source consisting of the provision of qualifying services or qualifying trading activities, the amount of adjusted loss shall be disregarded from the source consisting of the provision of qualifying services or qualifying trading activities in Malaysia and other businesses.

6(3) Any amount of adjusted loss ascertained pursuant to subsections 43(2) and 44(2) of the Act in respect of a business source consisting of the provision of qualifying services or qualifying trading activities shall be disregarded for the purposes of the Act in the year of assessment in which the last date of the exempt years of assessment of the principal hub falls and in the following years of

assessment after the exempt years of assessment, as the case may be.

EXTENSION OF EXEMPTION YEARS OF ASSESSMENT

- 7(1)** The Minister may extend the exempt years of assessment for another period of five years of assessment subject to the principal hub fulfilling the following conditions:
- (a) the total number of its full-time new employees in Malaysia with a minimum salary of five thousand ringgit (RM5,000.00) per month is more than thirty per cent of the total number of its full-time new employees in Malaysia at the time when the first application is made under subparagraph 4(3); and
 - (b) the total amount of its annual operating expenditure is more than thirty per cent of the total amount of its annual operating expenditure at the time when the first application is made under subparagraph 4(3).
- 7(2)** An application for the extension of the exempt years of assessment shall be made by the principal hub in writing to the Minister through the Malaysian Investment Development Authority not later than sixty days before the expiry of the exempt years of assessment.
- 7(3)** The extension of the exempt years of assessment shall begin from the subsequent year of assessment after the expiry of the exempt years of assessment and continues for a period of five years of assessment.

WITHDRAWAL OF EXEMPTION

- 8(1)** The Minister may withdraw the exemption granted under subparagraph 4(1) if the principal hub fails to comply with any condition imposed in relation to the exemption.
- 8(2)** Where the exemption is withdrawn in accordance with subparagraph (1), the exemption granted in respect of any amount of the value added income under subparagraph 4(1) shall be deemed to have not been given to the principal hub from the first year of assessment of the exempt years of assessment.

NON-APPLICATION

- 9** This Order shall not apply to a principal hub who 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;
 - (c) has been approved by the Minister as an operational headquarters, international procurement centre or regional distribution centre status;
 - (d) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) 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 2014 [P.U. (A) 336/2014].

SCHEDULE 1

(1) No.	(2) Cluster	(3) Qualifying service
1.	Strategic services	<ul style="list-style-type: none"> (a) Regional profit and loss or business unit management (b) Strategic business planning and corporate development (c) Corporate finance advisory services (d) Brand management (e) Intellectual property management (f) Senior-level talent acquisition and management
2.	Business services	<ul style="list-style-type: none"> (a) Bid and tender management (b) Treasury and fund management (c) Research, development and innovation (d) Project management (e) Sales and marketing (f) Business development (g) Technical support and consultancy (h) Information management and processing (i) Economic or investment research analysis (j) Strategic sourcing, procurement and distribution (k) Logistics services
3.	Shared services	<ul style="list-style-type: none"> (a) Corporate training and human resource management (b) Finance and accounting (transactions, internal audit)

SCHEDULE 2

Conditions for a principal hub which provides qualifying services or qualifying trading activities	
Minimum number of full-time new employees in Malaysia with a minimum salary of five thousand ringgit (RM5,000.00) per month and at least fifty percent of that new employees are Malaysians (to be complied with beginning from the third year of the exempt years of assessment)	30 persons
Minimum number of full-time new employees in Malaysia with a minimum salary of twenty five thousand ringgit (RM25,000.00) per month	4 persons
Minimum amount of annual operating expenditure in Malaysia (in ringgit Malaysia) (to be complied with beginning from the third year of the exempt years of assessment)	5,000,000.00