

INCOME TAX (EXEMPTION) (NO. 17) 2007 (AMENDMENT) ORDER 2018

PU (A) 395
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. 17) 2007 (Amendment) Order 2018**.
- 1(2)** This Order is deemed to have effect from 16 October 2017 except paragraph 2, subparagraphs 3(a) and (b), and paragraph 6.
- 1(3)** Paragraph 2, subparagraph 3(a) and paragraph 6 are deemed to have effect from 1 May 2005.
- 1(4)** Subparagraph 3(b) is deemed to have effect from 11 August 2016.

GENERAL AMENDMENT

- 2** The Income Tax (Exemption) (No. 17) Order 2007 [P.U. (A) 371/2007], which is referred to as the “principal Order” in this Order, is amended by substituting for the words “approved business” wherever appearing the words “qualifying activity”.

AMENDMENT PARAGRAPH 2

- 3** Paragraph 2 of the principal Order is amended—
 - (a) by inserting before the definition of “incurred” the following definition:

‘ “qualifying activity” means an activity as set out in the Schedule and approved by the Minister;’;
 - (b) by substituting for the definition of “Malaysian Biotechnology Corporation Sdn. Bhd.” the following definition:

‘ “Malaysian Bioeconomy Development Corporation Sdn Bhd” means a company incorporated under the Companies Act 1965 [Act 125] whose function is for the purpose of developing the biotechnology industry in Malaysia;’ and
 - (c) in the definition of “BioNexus status company”—
 - (i) by substituting for the word “1965” the word “2016”; and
 - (ii) by inserting after the words “life sciences” the words “which fulfills the requirements in paragraph 3(1A)”.

AMENDMENT PARAGRAPH 3

4 Paragraph 3 of the principal Order is amended—

- (a) in subparagraph (1) by substituting for the words “Subject to subparagraph (2),” the words “Subject to this paragraph and paragraph 3A,”;
- (b) by inserting after subparagraph (1) the following subparagraph:

“(1A) A BioNexus status company referred to in this Order shall fulfill the following requirements:

- (a) has an approved adequate number of full time employees and knowledge workers in Malaysia to carry on the qualifying activity; and
- (b) incurs an approved adequate amount of annual operating expenditure to carry on the qualifying activity or an approved adequate investment in fixed asset in Malaysia to carry on the qualifying activity.”; and
- (c) by inserting after subparagraph (2) the following subparagraphs:

“(2A) Subject to subparagraph (2B), where a BioNexus status company has been granted an exemption under subparagraph (1) on or before 16 October 2017, the requirements referred to in subparagraph (1A) shall not apply to that BioNexus status company until 30 June 2021.

(2B) Where a BioNexus status company carries on a new qualifying activity after 16 October 2017, subparagraph (2A) shall not apply and the BioNexus status company shall be granted an exemption under subparagraph (1) in relation to that new qualifying activity until 31 December 2018.

(2C) Where a BioNexus Status company has been granted an exemption under subparagraph (1) after 16 October 2017, the requirements referred to in subparagraph (1A) shall not apply to that BioNexus Status company until 31 December 2018.”.

NEW AMENDMENT PARAGRAPH 3

5 The principal Order is amended by inserting after paragraph 3 the following paragraph:

“Exclusion of intellectual property income

- 3A(1) In ascertaining the statutory income of a BioNexus Status company referred to in subparagraph 3(1), the following intellectual property income derived from a qualifying activity of the BioNexus Status company 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 BioNexus Status company owns; and
 - (b) royalties and other income derived on or after 1 July 2021 from all intellectual property rights that the BioNexus Status company owns.

3A(2) For the purpose of subparagraph (1)—

- (a) a BioNexus Status company owns an intellectual property right if the BioNexus Status company is the owner or 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;”
- (d) “new intellectual property right” means an intellectual property right in relation to the qualifying activity of the BioNexus Status company that—
 - (i) comes into the ownership of the BioNexus Status company on or after 1 July 2018; or
 - (ii) comes into the ownership of the BioNexus Status company after 16 October 2017 but before 1 July 2018 as a result of an acquisition by the BioNexus Status company, directly or indirectly, from a related company; and
- (e) “related company” has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986 [Act 327].

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

NEW SCHEDULE

6 The principal Order is amended by inserting after paragraph 11 the following Schedule:

“SCHEDULE

(1) No.	(2) Qualifying activity
1.	Industrial biotechnology
2.	Healthcare biotechnology
3.	Agricultural biotechnology”.