

INCOME TAX (FOR AN INDIVIDUAL RESIDENT WHO IS NOT A CITIZEN AND HOLDS C SUITE POSITION IN AN APPROVED COMPANY) RULES 2023

PU (A) 242
15 August 2023

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

CITATION AND COMMENCEMENT

- 1(1)** This rules may be cited as **Income Tax (For An Individual Resident Who Is Not A Citizen And Holds C Suite Position In An Approved Company) Rules 2023**.
- 1(2)** These Rules are deemed to have effect from the year of assessment 2021.

INTERPRETATION

2 In this Rules –

“qualifying individual” means any individual as provided under subrule 4(2);

“C Suite position” means the position of top senior executives which relies on functional know-how and technical skills such as Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and Chief Information Officer;

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

“approved company” means a company as provided under rule 3.

APPROVED COMPANY

3 An approved company under these Rules shall refer to a company that has been granted -

(a) a tax exemption under the Income Tax (Exemption) Order 2023 [P.U. (A) 240/2023]; or

(b) an incentive scheme under –

- i. the Income Tax (Relocation of Manufacturing Business Incentive Scheme) Rules 2023 [P.U. (A) 241/2023]; or
- ii. the Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022 [P.U. (A) 398/2022].

APPLICATION FOR INCENTIVE

- 4(1)** A qualifying individual may apply for an incentive under these Rules subject to -
- (a) the application shall be made in writing by an approved company and received by the Minister through the Malaysian Investment Development Authority –
 - i. in relation to an approved company under paragraph 3(a) and subparagraph 3(b)(i), on or after 7 November 2020 but not later than 31 December 2024; and
 - ii. in relation to an approved company under paragraph 3(b)(ii), on or after 7 November 2020 but not later than 31 December 2022; and
 - (b) the qualifying individual has never been granted an incentive under these Rules.
- 4(2)** For the purposes of these Rules, a qualifying individual is an individual resident who is not a citizen employed by an approved company and holding the C Suite position during the specified years of assessment.
- 4(3)** The number of qualifying individual referred to in subrule (2) for every approved company is limited to five only.

ELIGIBILITY CONDITIONS FOR INCENTIVE

- 5** A qualifying individual which his application under rule 4 is approved shall fulfill the conditions imposed by the Minister as specified in the approval letter, which shall include the following:
- (a) resident in Malaysia for each year of assessment in the specified years of assessment;
 - (b) receives income from an employment with an approved company in the specified years of assessment;
 - (c) holds C Suite position in the approved company in the specified years of assessment; and
 - (d) receives a minimum basic salary of twenty-five thousand ringgit per month.

APPLICABLE RATE

- 6(1)** The rate of income tax which shall be charged under these Rules for the specified years of assessment upon the chargeable income of a qualifying individual having and exercising employment in an approved company is fifteen per cent.
- 6(2)** The chargeable income of a qualifying individual referred to in subrule (1) shall be determined in accordance with the following formula:

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

| | | |
|-------|---|--|
| where | A | is the statutory income from employment with the approved company in a basis period for a year of assessment during the specified years of assessment; |
| | B | is the aggregate income in the basis period for a year of assessment during the specified years of assessment provided that in the case of a combined assessment under subsection 45(2) of the Act, the aggregate income from all sources shall include income from the wife or husband, as the case may be; and |
| | C | is the chargeable income in the basis period for a year of assessment during the specified years of assessment. |

- 6(3)** Where chargeable income from employment of a qualifying individual has been determined under subrule (2), any excess of chargeable income of that qualifying individual which is subject to tax shall be charged to income tax for that year of assessment under Part I of Schedule 1 to the Act at the rate that would have been applicable for his chargeable income if the individual had not been approved as a qualifying individual under these Rules.

SPECIFIED YEARS OF ASSESSMENT

- 7** The specified years of assessment referred to in these Rules is a period of five consecutive years of assessment commencing from the year of assessment as determined by the Minister in the approval letter referred to in rule 5.

WITHDRAWAL OF INCENTIVE

- 8(1)** The Minister may withdraw the incentive granted under these Rules if the qualifying individual fails to comply with any condition under rule 5.
- 8(2)** Where the incentive is withdrawn in accordance with subrule (1), the incentive shall be deemed to have not been granted to the qualifying individual from the first year of the specified years of assessment.

CESSATION OF APPLICATION

- 9** Where the qualifying individual ceases to be employed by the approved company in a basis period for a year of assessment during the specified years of assessment, these Rules shall cease to apply to the qualifying individual from the year of assessment during which such qualifying individual ceases to be employed.