

# INCOME TAX (EXEMPTION) (NO. 8) ORDER 2017

PU (A) 253

30 August 2017

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. 8) Order 2017**.

1(2) This Order is deemed to have come into operation from the year of assessment 2015.

## INTERPRETATION

2 In this Order—

"**automation equipment**" means any plant or machinery used directly in a qualifying project which adopts technology that is more advanced than the current technology used by a qualifying company;

"**qualifying capital expenditure**" means a capital expenditure relating to automation equipment used in Malaysia solely for the purpose of carrying on a qualifying project;

"**qualifying project**" means a project undertaken by a qualifying company for modernizing or automating its existing manufacturing activity of a product;

"**qualifying company**" means the company referred to in paragraph 3(a).

## APPLICATION

3 This Order shall apply to—

(a) a qualifying company which fulfills the following conditions:

- (i) incorporated under the Companies Act 2016 [*Act 777*] and resident in Malaysia;
- (ii) which engages in a manufacturing activity in compliance with the Industrial Co-ordination Act 1975 [*Act 156*];
- (iii) which holds a business license issued by the relevant local authority;
- (iv) which has carried on a qualifying project for a period of at least thirty-six months;
- (v) which has incurred qualifying capital expenditure—

(A) in relation to a qualifying company which undertakes a qualifying project relating to rubber, plastic, wood, furniture and textile, in the basis period for the year of

assessment 2015 until the year of assessment 2017; or

- (B) in relation to a qualifying company which undertakes a qualifying project other than those specified under subsubparagraph (A) as determined by the Minister, in the basis period for the year of assessment 2015 until the year of assessment 2020; and
- (vi) which has made an application for exemption of income tax through the Malaysian Investment Development Authority established under the Malaysian Investment Development Authority (Incorporation) Act 1965 [Act 397]—
  - (A) in relation to the qualifying company referred to in subsubsubparagraph (v)(A), on or after 1 January 2015 but not later than 31 December 2017; or
  - (B) in relation to the qualifying company referred to in subsubsubparagraph (v)(B), on or after 1 January 2015 but not later than 31 December 2020; and
- (b) automation equipment certified by the Director General of the Standards and Industrial Research Institute of Malaysia as adopting a technology that is more advanced than the current technology used by the qualifying company.

## **EXEMPTION**

- 4(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 project which is equivalent to the amount of allowance as determined in subparagraph (3).
- 4(2)** The exemption granted under this Order shall be subject to the qualifying company complying with all the conditions imposed in relation to the exemption.
- 4(3)** The amount of allowance referred to in subparagraph (1) shall be one hundred per cent of the amount of allowance for which the qualifying company is entitled under rules 5 and 6 of the Income Tax (Accelerated Capital Allowance) (Automation Equipment) Rules 2017 [*P.U. (A) 252/2017*].
- 4(4)** 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.

## **STATUTORY INCOME**

- 5(1)** Subject to subparagraph (2), the statutory income referred to in subparagraph 4(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)** The amount of statutory income so exempted under subparagraph 4(1) shall not exceed seventy per cent for each year of assessment.

- 5(3)** Where, by reason of the absence or insufficiency of the statutory income, exemption cannot be granted or cannot be granted in full as the qualifying company is entitled under subparagraph 4(1) for that year of assessment, then so much of the statutory income in respect of which exemption cannot be granted for that year of assessment, shall be granted exemption for the first subsequent year of assessment for the basis period for which the qualifying company has statutory income from the qualifying project and for the subsequent year or years of assessment until the exemption is granted in respect of the whole statutory income as the qualifying company is entitled under subparagraph 4(1).

## **WITHDRAWAL OF EXEMPTION**

- 6(1)** Where qualifying capital expenditure is incurred by a qualifying company on an automation equipment used for the purpose of a qualifying project and such automation equipment is disposed of at any time within five years from the date of acquisition of the automation equipment, the exemption granted in respect of the amount of statutory income which is equal to the amount of allowance for the qualifying capital expenditure shall be withdrawn in the basis period for the year of assessment in which the automation equipment is disposed.
- 6(2)** Where a qualifying company fails to comply with any condition imposed in relation to the exemption granted to the qualifying company under subparagraph 4(1) the exemption granted shall be withdrawn.
- 6(3)** Where the exemption is withdrawn in accordance with subparagraph (1) or (2), the exemption granted in respect of any amount of the statutory income under subparagraph 4(1) shall be deemed to have not been granted to the qualifying company.
- 6(4)** The amount of statutory income in respect of which is deemed to have not been granted exemption under subparagraph (3) shall be part of the qualifying company's statutory income in the basis period for the year of assessment in which the exemption is withdrawn.

## **DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE FOR AUTOMATION EQUIPMENT DISPOSED TO RELATED COMPANY**

- 7(1)** Where a qualifying company disposes to its related company any automation equipment 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.
- 7(2)** For the purposes of this paragraph, "**related company**" has the same meaning assigned to it in section 2 of the Promotion of Investments Act 1986 [Act 327].

## **SEPARATE SOURCE AND SEPARATE ACCOUNT**

- 8(1)** Where a qualifying company carries on a qualifying project and project other than a qualifying project, each project shall be treated as a separate and distinct source of the project.
- 8(2)** The qualifying company which is granted an exemption under subparagraph 4(1) shall maintain a separate account for the income derived from each project referred to in subparagraph (1).

## NON-APPLICATION

- 7 This Order shall not apply to a qualifying company if in the basis period for a year of assessment—
- (a) the qualifying company has been granted any incentive under the Promotion of Investments Act 1986 [*Act 327*];
  - (b) the qualifying company 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;
  - (c) the qualifying company has been granted any exemption under section 127 of the Act; or
  - (d) the qualifying company 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*];
    - (iii) the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [*P.U. (A) 336/2014*];
    - (iv) the Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2014 [*P.U. (A) 217/2014*]; or
    - (v) the Income Tax (Accelerated Capital Allowance) (Automation Equipment) 2017 [*P.U. (A)252/2017*]