

INCOME TAX (EXEMPTION) (NO. 10) ORDER 2018

PU (A) 389

31 December 2018

PARAGRAPH 1 CITATION AND COMMENCEMENT

1(1) This order may be cited as the **Income Tax (Exemption) (No. 10) Order 2018**.

1(2) This Order comes into operation on 1 January 2019.

PARAGRAPH 2 INTERPRETATION

2 In this Order—

"promoted activities for Multimedia Super Corridor" means activities as set out in column (2) of Schedule 1 as approved by the Minister, but not including trading, manufacturing activities or provision of telecommunication services;

"core income generating activities" means activities undertaken by a qualifying company in Malaysia to provide services in relation to promoted activities for Multimedia Super Corridor as approved under the award of the Multimedia Super Corridor status;

"Multimedia Super Corridor cyber city or cyber centre" means an area that is recognized by the Government of Malaysia as the Multimedia Super Corridor cyber city or cyber centre from time to time;

"designated premises" means premises within the Multimedia Super Corridor cyber city or cyber centre designated as such by the Government of Malaysia from time to time;

"approval letter" means the approval letter issued to the qualifying company in respect of the award of the Multimedia Super Corridor status;

"Multimedia Super Corridor status" means the Multimedia Super Corridor status awarded by the Government of Malaysia to the qualifying company;

"exemption period" means the exemption period as specified in subparagraph 4(1) or any extended exemption period as specified in subparagraph 5(1), as the case may be.

PARAGRAPH 3 QUALIFYING COMPANY

3 Qualifying company means a company which is incorporated under the Companies Act 2016 [Act 777] and resident in Malaysia—

(a) which fulfills the following requirements:

- (i) has not issued any invoice for the core income generating activities in Malaysia on the date the application for the award of the Multimedia Super Corridor status is made; or
- (ii) has sixty per cent Malaysian equity ownership and has not issued any invoice for the core income generating activities in Malaysia more than twelve months prior to the date the application for the award of the Multimedia Super Corridor status is made;

(b) which has made an application to the Minister for the award of the Multimedia Super Corridor status on or after 1 January 2019; and

(c) which has been awarded the Multimedia Super Corridor status by the Government of Malaysia.

PARAGRAPH 4 EXEMPTION

- 4(1) Subject to this paragraph, the Minister may exempt a qualifying company in the basis period for a year of assessment from the payment of income tax in respect of the statutory income derived from the core income generating activities for a period of five years commencing from a date to be determined by the Minister.
- 4(2) The qualifying company shall, within twenty four months from the date of the award of the Multimedia Super Corridor status, request for the determination of the commencement date of the exemption period.
- 4(3) An exemption granted under subparagraph (1) is subject to the qualifying company complying with all the conditions imposed by the Minister in relation to the exemption as specified in the approval letter, which shall include the following:
- (a) the qualifying company shall employ a minimum number of full time employees to carry on the core income generating activities as specified in Schedule 2 or such other number as determined by the Minister;
 - (b) the full time employees referred to in subparagraph (a) shall have a minimum amount of monthly base salary as specified in Schedule 2 or such other amount as determined by the Minister; and
 - (c) the qualifying company shall incur a minimum amount of annual operating expenditure and investment in fixed asset to carry on the core income generating activities as specified in Schedule 2 or such other amount as determined by the Minister.
- 4(4) The amount of statutory income derived from the core income generating activities in the basis period for a year of assessment in respect of which the payment of income tax is exempted under this Order shall be either one hundred per cent or seventy per cent of the statutory income, as approved by the Minister in accordance with Schedule 2 and specified in the approval letter.
- 4(5) The Minister may determine that the statutory income referred to in subparagraph (1) shall be the value added income.
- 4(6) The statutory income referred to in subparagraph (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.
- 4(7) 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.
- 4(8) For the avoidance of doubt, the statutory income of a qualifying company referred to in subparagraph (1) shall not include any income from royalty and other income derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right.
- 4(9) Any income derived from intellectual property right referred to in subparagraph (8) is subject to tax under the Act.
- 4(10) For the purpose of this paragraph—
- (a) **"value added income"** means the statutory income for the basis period for the year of assessment less the inflation adjusted base income;

(b) **"inflation adjusted base income"** shall be determined in accordance with the following formula—

(i) for the first year of assessment of the qualifying company's operation:

$$A (1 + B)$$

where A is the average statutory income of a qualifying company for up to three years prior to the first year of assessment of the qualifying company's operation; and

B is the rate of inflation for the basis year;

(ii) for the second year of assessment of the qualifying company's 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

(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.

PARAGRAPH 5 EXTENSION OF EXEMPTION PERIOD

5(1) The Minister may extend the exemption period referred to in subparagraph 4(1) for another period of five years subject to the qualifying company complying with all of the conditions specified in subparagraph 4(3).

5(2) An application for the extension of the exemption period shall be made by the qualifying company in writing to the Minister not later than thirty days before the expiry of the exemption period referred to in subparagraph 4(1).

5(3) The extension of the exemption period shall begin from the subsequent date after the expiry of the exemption period referred to in subparagraph 4(1) and continues for a period of five years.

5(4) No extension of the exemption period shall be granted where the exemption granted is on value added-income as referred to in subparagraph 4(5).

PARAGRAPH 6 WITHDRAWAL OF EXEMPTION

6(1) The Minister may withdraw the exemption granted under subparagraph 4(1) if the qualifying company fails to comply with any of the conditions referred to in subparagraph 4(3) or with any provisions under the Act or this Order.

6(2) Where the exemption granted under subparagraph (1) is withdrawn, the withdrawal shall be effective—

- (a) from the date the exemption comes into effect; or
- (b) if the Minister thinks fit, from such other date after the date the exemption comes into effect, as determined by the Minister,

as the case may be.

PARAGRAPH 7 SEPARATE SOURCE AND SEPARATE ACCOUNT

7(1) Where a qualifying company carries on a core income generating activities and activity other than the core income generating activities, each activity shall be treated as a separate and distinct source of the activity.

7(2) The qualifying company which is granted an exemption under subparagraph 4(1) shall maintain a separate account for the income derived from each activity referred to in subparagraph (1).

PARAGRAPH 8 NON-APPLICATION

8 This Order shall not apply to a qualifying company 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 under Schedule 7B to the Act;
- (b) has been granted any incentive under the Promotion of Investments Act 1986 [Act 327] in respect of the core income generating activities;
- (c) has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act in respect of the core income generating activities; or
- (d) 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*].

PARAGRAPH 9 SPECIAL PROVISION

9(1) The Minister may exempt an existing qualifying company in the basis period for a year of assessment from the payment of income tax in respect of the statutory income derived from the core income generating activities, for a period to be determined by the Minister.

9(2) For the purpose of the exemption granted under subparagraph (1)—

- (a) "**existing qualifying company**" means a company incorporated under the Companies Act 2016 and resident in Malaysia, which, prior to 1 January 2019, has been awarded the Multimedia Super Corridor status and granted—
 - (i) pioneer status under the Promotion of Investments Act 1986; or
 - (ii) income tax exemption under the Income Tax (Exemption) (No. 2) Order 2015 [*P.U.(A) 50/2015*],

and the exemption period thereunder has not commenced or has commenced but has not expired on or after 1 January 2019;

- (b) the core income generating activities shall be the activities approved under the award of the Multimedia Super Corridor status of the existing qualifying company;
- (c) the percentage of the statutory income to be exempted shall be the percentage approved under the award of the Multimedia Super Corridor status of the existing qualifying company; and
- (d) all provisions under this Order shall apply to the existing qualifying company, except—
 - (i) subparagraphs 3(a) and (b); and
 - (ii) subparagraphs 4(1), (4) and (5).

9(3) The Minister may grant an extension of the exemption period to an existing qualifying company which exemption period has ended, in respect of statutory income derived from the core income generating activities, for a period of five years commencing from a date to be determined by the Minister.

9(4) For the purpose of the extension granted under subparagraph (3)—

- (a) **"existing qualifying company which exemption period has ended"** means a company incorporated under the Companies Act 2016 and resident in Malaysia, which, prior to 1 January 2019, has been awarded the Multimedia Super Corridor status and granted—
 - (i) pioneer status under the Promotion of Investments Act 1986; or
 - (ii) income tax exemption under the Income Tax (Exemption) (No. 2) Order 2015, and the first five years of the exemption period thereunder has expired before 1 January 2019;
- (b) the percentage of the statutory income to be exempted shall be one hundred per cent; and
- (c) all provisions under this Order shall apply to the existing qualifying company which exemption period has ended, except—
 - (i) subparagraphs 3(a) and (b);
 - (ii) subparagraphs 4(1), (2), (4) and (5); and
 - (iii) paragraph 5.

SCHEDULE 1

(1) No	(2) Promoted activity
1.	Big data analytics
2.	Artificial intelligence
3.	Financial technology
4.	Internet of things
5.	Cybersecurity (technology/software/design and support)
6.	Data centre and cloud (technology/software/design and support)
7.	Blockchain
8.	Creative media technology
9.	Sharing economy platform
10.	User interface and user experience
11.	Integrated circuit design and embedded software
12.	3D printing (technology/software/design and support)
13.	Robotic (technology/software/design)
14.	Autonomous (technology/software/design and support)
15.	Systems or network architecture design and support
16.	Global business services or knowledge process outsourcing excluding: <ul style="list-style-type: none"> (a) Non-technical (b) Low value call centre (c) Data entry (d) Recruitment process outsourcing

SCHEDULE 2

Qualifying company	Category 1		Category 2		Category 3	
Percentage of income tax exemption	100%				70%	
Exemption period	5 years				5 years	
Extension of exemption period	5 Years				May apply for an extension of exemption period provided that the qualifying company changed from Category 3 to Category 1 or Category 2 and fulfills the conditions imposed, as the case may be	
Location where core income generating activities are carried out	Designated Premises within Multimedia Super Corridor cyber city or cyber centre	Within Multimedia Super Corridor cyber city or cyber centre		Not subjected to location condition		
Conditions						
Minimum number of full time employees	50 persons	30 persons	50 persons	30 persons	30 persons	20 persons
	Data Centre: 5 persons					
Minimum amount of monthly base salary for full time employees (RM)	5,000.00	10,000.00	5,000.00	10,000.00	5,000.00	8,000.00
	Data Centre: 5,000.00					
Minimum amount of annual operating expenditure and investment in fixed asset (RM)	3,500,000.00				1,000,000.00	
	Data Centre: 10,000,000.00					