

INCOME TAX (EXEMPTION) (NO. 2) 2015 (AMENDMENT) ORDER 2018

PU (A) 396

31 December 2018

REGULATION 1 CITATION AND COMMENCEMENT

- 1(1) This order may be cited as the **Income Tax (Exemption) (No. 2) 2015 (Amendment) Order 2018**.
- 1(2) This Order is deemed to have effect from 1 July 2018 until 30 June 2021 except for paragraph 2 and subparagraph 5(b) come into operation on the date of publication of this Order in the Gazette.

REGULATION 2 AMENDMENT OF PARAGRAPH 1

- 2 The Income Tax (Exemption) (No. 2) Order 2015 [P.U. (A) 50/2015] which is referred to as the “principal Order” in this Order is amended in subparagraph 1(2) by inserting after the word “2015” the word “, and ends on 30 June 2021”.

REGULATION 3 AMENDMENT OF PARAGRAPH 2

- 3 The principal Order is amended in paragraph 2 by substituting for the definition of “qualifying company” the following definition:

‘ “qualifying company” means the company referred to in paragraph 2A;’.

REGULATION 4 NEW PARAGRAPH 2A

- 4 The principal Order is amended by inserting after paragraph 2 the following paragraph:

“Qualifying company

2A Qualifying company means a company—

- (a) incorporated under the Companies Act 2016 [Act 777];
- (b) resident in Malaysia;
- (c) which has made an application to the Minister of Finance and Minister of Trade and Industry to be awarded the status of a Multimedia Super Corridor company on or after 1 January 2015 and has not carried out qualifying activity at the time the application was made;
- (d) has been awarded the status of a Multimedia Super Corridor company on or after 30 June 2018; and
- (e) which fulfills the following requirements:
 - (i) has an approved adequate number of full time employees in Malaysia to carry on the qualifying activity; and
 - (ii) 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.”.

REGULATION 5 AMENDMENT OF PARAGRAPH 3

5 Paragraph 3 of the principal Order is amended—

- (a) in subparagraph (1) by substituting for the words “The Minister exempts” the words “Subject to this paragraph and paragraphs 3A and 5, the Minister exempts”; and
- (b) by inserting after subparagraph (2) the following subparagraph:
 - (2A) Subject to subparagraph (2B), where the qualifying company has been granted an exemption by the Minister under subparagraph (1) on or before 16 October 2017, the requirements for the qualifying company referred to in subparagraph 2A(e) in this Order shall not apply to that qualifying company until 30 June 2021.
 - (2B) Where the qualifying company carries on a new qualifying activity after 16 October 2017, subparagraph (2A) shall not apply and the qualifying company shall be granted an exemption under subparagraph (1) in relation to that new qualifying activity until 31 December 2018.
 - (2C) Where the qualifying company has been granted an exemption under subparagraph (1) after 16 October 2017, the requirements referred to in subparagraph 2A(e) in this Order shall not apply to that qualifying company until 31 December 2018.”.

REGULATION 6 NEW PARAGRAPH 3A

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

“Exclusion of intellectual property income

- 2A(1) In ascertaining the statutory income of a qualifying company referred to in subparagraph 3(1), the following intellectual property income derived from a qualifying activity of the qualifying 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 the qualifying company owns; and
 - (b) royalties and other income derived on or after 1 July 2021 from all intellectual property rights that the qualifying company owns.
- (2) In ascertaining the statutory income of a qualifying company referred to in subparagraph 3(1), the following intellectual property income derived from a qualifying activity of the qualifying company shall be excluded:
- (a) a qualifying company owns an intellectual property right if the qualifying company 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, trademark 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 qualifying activity of the qualifying company that—

- (i) comes into the ownership of the qualifying company on or after 1 July 2018; or
- (ii) comes into the ownership of the qualifying company after 16 October 2017 but before 1 July 2018 as a result of an acquisition by the qualifying company, directly or indirectly, from a related company; and
- (iii) “related company” has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986 [Act 327].

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

REGULATION 7 AMENDMENT OF PARAGRAPH 4

7 Paragraph 4 of the principal Order is amended in subparagraph (1) by inserting after the words “The Minister may” the words “, on or before 30 June 2018,”.