

INCOME TAX (EXEMPTION) (NO. 7) ORDER 2012

PU (A) 420
28 November 2012

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. 7) Order 2012**.
- 1(2)** This Order is deemed to have come into operation on 8 October 2011 and shall have effect subject to paragraph 3.

INTERPRETATION

2 In this Order—

"incurred" has the same meaning assigned to it in paragraph 46 and 55 of Schedule 3 to the Act;

"Malaysian Investment Development Authority" means a body corporate established under the Malaysian Investment Development Authority (Incorporation) Act 1965 (Revised – 1989) [Act 397];

"qualifying person" means—

- (a) a society which is established under the Societies Act 1966 [Act 335] prior to 8 October 2011 or a company which is incorporated under the Companies Act 1965 [Act 125];
- (b) resident in Malaysia;
- (c) registered with the Ministry of Education Malaysia and has complied with terms and regulations as determined by that Ministry under the Education Act 1996 to carry on the business of private school; and
- (d) approved by the Minister;

"pre-school education" has the meaning assigned to it in the Education Act 1996 [Act 550];

"qualifying capital expenditure" means capital expenditure incurred by a qualifying person on a building, plant or machinery used in Malaysia in connection with and for the purpose of an activity relating to teaching and training in a private school:

Provided that such qualifying capital expenditure shall not include capital expenditure incurred on any building used as living accommodation, plant and machinery which are provided wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff;

"private school" means a school which is not a government school that provides—

- (a) private primary or secondary education or both, that comply with the requirements of the National Curriculum and examinations prescribed under the Education Act 1996 together with the provision of private pre-school education therein, if any;
- (b) private religious primary or secondary education or both, that comply with the requirement of the National Curriculum prescribed under the Education Act 1996 together with the provision of private pre-school education therein, if any; or
- (c) private Chinese primary or secondary education or both, together with the provision of private pre-school education therein, if any, that comply with guidelines issued by the Ministry of Education,

but shall not include a school which provides solely pre-school education;

"related company" has the same meaning as defined under section 2 of the Promotion of Investments Act 1986 [Act 327].

APPLICATION

3 This Order shall apply to a qualifying person—

- (a) who has made an application to the Malaysian Investment Development Authority on or after 8 October 2011 but not later than 31 December 2015; and
- (b) who has not commenced its business of private school prior to the application referred to in subparagraph (a).

EXEMPTION

4(1) The Minister exempts a qualifying person from the payment of income tax in a basis period for a year of assessment in respect of the statutory income derived from a business of private school in Malaysia which is equivalent to the amount of allowance as determined in subparagraph (2).

4(2) The amount of allowance referred to in subparagraph (1) shall be—

- (a) at a rate of one hundred per cent of the qualifying capital expenditure; and
- (b) given in respect of the qualifying capital expenditure incurred in the basis period for a year of assessment for a period of five years commencing from a date determined by the Malaysian Investment Development Authority.

4(3) The tax exemption on the statutory income of the business referred to in subparagraph (1) is subject to conditions as stated by the Minister in the approval letter of the business.

4(4) Nothing in subparagraph (1) shall absolve or is deemed to have absolved that qualifying person from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provision of the Act.

STATUTORY INCOME

- 5(1)** The statutory income in the basis period for a year of assessment referred to in subparagraph 4(1) for the period referred to in subparagraph 4(2)(b) shall be determined after deducting allowances which may be made according to Schedule 3 to the Act although no claim for such allowances has been made:

Provided that where an asset used for the purpose of the business of a private school in Malaysia is also used for the purpose of a business other than that business, then the allowances which may be made under Schedule 3 to the Act shall be deducted as is reasonable having regard to the extent to which the asset is used for the purpose of the first-mentioned business.

- 5(2)** The amount of statutory income so exempt referred to in 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 or restriction of the rate as determined by the Minister in subparagraph (2), the exemption cannot be given or cannot be given in full to the amount as determined to which the qualifying person is entitled under subparagraph 4(1) for that year of assessment, then so much of that amount as cannot be exempt for that year of assessment shall be exempted for the first subsequent year of assessment for the basis period for which there is statutory income from that business, and for subsequent years of assessment until the whole of the amount to which it is so entitled is exempted.

DETERMINATION OF QUALIFYING CAPITAL EXPENDITURE THAT IS SUBJECT TO CONTROL TRANSFER

- 6** Where paragraphs 39 and 40 of Schedule 3 to the Act applies on the disposal of a building, plant or machinery to its related company in which an allowance under subparagraph 4(2) has been made on the asset, then the amount of qualifying capital expenditure to be taken by the related company shall be equal to the disposer's residual expenditure on the first day of the disposer's final period.

WITHDRAWAL OF TAX EXEMPTION

- 7** Where the qualifying person disposes of the asset at any time within two years from the date of acquisition of such asset, the amount of income exempted in respect of the allowance of that asset shall be deemed to have not been exempted to the qualifying person to which it would otherwise be entitled.

SEPARATE ACCOUNT

- 8** The qualifying person shall maintain a separate account for the income derived from the business referred to in subparagraph 4(1) in the basis period for each year of assessment until the business received the whole of allowance or allowances to which it is so entitled.

NON-APPLICATION

9(1) This Order shall not apply to a qualifying person in the basis period for the year of assessment if that qualifying person for that year of assessment—

- (a) has made a claim for reinvestment allowance under Schedule 7A or investment allowance under Schedule 7B to the Act ;
- (b) has been granted any incentive under the Promotion of Investments Act 1986;
- (c) has been granted an exemption under section 127 of the Act;
- (d) has made a claim for deductions under any Rules made under section 154 of the Act except for allowance under Schedule 3 to the Act; or
- (e) fails to satisfy the conditions as specified by the Minister in his approval letter referred to in subparagraph 4(3).