

## RESPONSES TO

### Query from the Chartered Tax Institute of Malaysia (CTIM) Promotion of Investments (Criteria For Grant of Pioneer Status to a Small Company) Order 2013 [P.U. (A) 139]

1. Paragraph 2(1)(b)(iii)(B) reads as follows:

*“twenty per cent and above of the paid-up capital in respect of ordinary shares of the related company cannot be directly or indirectly owned by the first mentioned company having shareholder’s funds of more than five hundred thousand ringgit; or”*

- (a) Please confirm that the term “first mentioned company” throughout Paragraph 2(1)(b) refers to the company mentioned in Paragraph 2(1)(b). If so, the proviso in Paragraph 2(1)(b)(iii)(B) contradicts the condition stipulated in Paragraph 2(1)(b).
- (b) Please clarify the objective of this Paragraph 2(1)(b)(iii)(B). Does it mean that the small company cannot invest in 20% or more of the ordinary share capital of another company?

#### Responses

- a) *Yes; the first mentioned company in Paragraph 2(1)(b)(iii)(B) refers to the small company i.e. the applicant in 2(1)(b). We note of your comments and we will take necessary action.*
- b) *Paragraph 2(1)(b)(iii)(B) is one of the qualifying criteria for the eligibility of the pioneer status/incentive, whereby the related company referred to in that provision must not have shareholder’s funds of more than RM500,000. This incentive is specifically designed for small scale companies only, which cannot own and be owned by a company having shareholder’s funds of more than RM500,000.*

2. Paragraph 2(1)(c)(iii)(B) and 2(1)(d)(iii)(B) are similarly worded except for the words after “shareholder’s funds”, which read “of more than two million five hundred thousand ringgit;”

- (a) Please confirm that the term “first mentioned company” throughout the Paragraphs 2(1)(c)(iii)(B) and 2(1)(d)(iii)(B) refer to the company mentioned in Paragraphs 2(1)(c) and 2(1)(b) respectively. If so, similar contradiction as above [1(b)] above would arise.
- (b) Please clarify the objective of this Paragraph 2(1)(c)(iii)(B) and 2(1)(d)(iii)(B). Does it mean that small company cannot invest in 20% or more of the ordinary share capital of another company?
- (c) What is the difference between Paragraphs 2(1)(c)(iii)(B) and 2(1)(d)(iii)(B).

#### Responses

- a) *The first mentioned company in Paragraph 2(1)(c)(iii)(B) and Paragraph 2(1)(d)(iii)(B) refer to the small company, i.e. the applicant in 2(1)(c) and 2(1)(d). We note of your comments and we will take necessary action.*

*b) Paragraph 2(1)(c)(iii)(B) and Paragraph 2(1)(d)(iii)(B) are among the qualifying criteria for the eligibility of the pioneer status/ incentive , whereby the related company referred to in that provision must not have shareholder's funds exceeding RM2.5 million. This incentive is specifically designed for small scale companies only, which cannot own and be owned by a company having shareholder's funds of more than RM2.5 million.*

*c) Both Paragraphs have the same meaning. However:*

- Paragraph 2(1)(c)(iii)(B) is applicable for small companies engaged in promoted activities or producing promoted products mentioned in the Promotion of Investments (Promoted Activities and Promoted Products for Small Scale Companies) Order 2012 [P.U. (A) 63/2012].*
- Paragraph 2(1)(d)(iii)(B) is applicable for small companies engaged in promoted activities or producing promoted products mentioned in the Promotion of Investments (Promoted Activities and Promoted Products) Order 2012 [P.U. (A) 62/2012].*

3. Please confirm whether the above paragraphs are intended to convey the same meaning (or conditions) as that which is found in paragraph 2B of Schedule 1 of the Income Tax Act 1967 [the condition under (b)] which reads as follows:

*“The provisions of paragraph 2A shall not apply to a company referred to in that Paragraph if more than –*

- (a) 50 per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;*
- (b) 50 per cent of the paid up capital in respect of the ordinary shares of the related company is directly or indirectly owned by the first mentioned company;*
- (c) 50 per cent of the paid up capital in respect of ordinary shares of the first mentioned company and the related company is directly and indirectly owned by another company.”*

**RESPONSES**

*Yes; the above paragraphs are intended to convey the same meaning (or conditions) as found in paragraph 2B of Schedule 1 of the Income Tax Act 1967, except that the percentage of the paid-up capital in respect of ordinary shares is capped at 20%, since this is relating to the grant of incentives under the Promotion of Investments Act 1986.*

Ministry of International Trade and Industry  
23 July 2013