

TECHNICAL

Direct Taxation

TAX INCENTIVE FOR EAST COAST ECONOMIC REGION (ECER) – EXEMPTION OF STATUTORY INCOME FROM A QUALIFYING ACTIVITY IN THE ECER

[Income tax \(Exemption\) \(No.4\) Order 2016 \[P.U \(A\) 157/2016\]](#)

The above Order was gazetted on 13 June 2016 and is deemed to have come into operation from 13 June 2008.

The salient points in the Order are summarized below:

Definitions (Paragraphs 2 – 5)

- i. The following words are defined in paragraph 2:

Word	Meaning
related company	Has the same meaning as provided in S2 of the Promotion of Investments Act 1986.
East Coast Economic Region (ECER)	Has the same meaning as assigned in the East Coast Economic Development Council Act 2008.
incurred	Meaning to be construed in accordance with paragraphs 46 and 55 of Sch.3 of ITA [except for its use in subparagraph 6(1) and (2) of this Order]

- ii. “Qualifying person” (QP) is defined in subparagraph 3(1) as:
- (a) a company incorporated under the Companies Act 1965 and resident in Malaysia;
 - (b) an agro-based co-operative society*;
 - (c) a Farmers’ Organization*;
 - (d) an Area Fishermen’s Association*, a National Fishermen’s Association* or a State Fishermen’s Association*;
 - (e) an association solely engaged in agriculture and resident in Malaysia.

* *These terms are defined in subparagraph 3(3).*

If a QP which is a *company* is granted exemption under this Order, its related company is not entitled to any exemption under this Order in relation to the same qualifying activity.

- iii. “Qualifying activity” (QA) refers to the activity set out in column (3) of the [Schedule](#) in relation to the sector as set out in column (2) which –
- (a) has not been carried on in the ECER on the date the application for exemption is made;
 - (b) has been carried on in the ECER not more than 1 year prior to the date of application for exemption;
- and approved by the Minister.

- iv. “Qualifying capital expenditure” (QCE) refers to capital expenditure as set out in column (4) of the [Schedule](#) incurred by a QP in relation to a building, factory, machinery or plant used in Malaysia solely for the purpose of carrying on a QA.

QCE does not include expenditure incurred on the following (unless otherwise stated in the schedule):

- (a) any building used as living accommodation for a person; or
- (b) any machinery or plant which is provided wholly or partly for the use of a director or an individual who is a member of management, administration or clerical staff of that QP.

Exemption (Paragraph 6)

- i. Exemption from income tax is granted to a QP in respect of statutory income (SI) for the basis period for a year of assessment (YA) derived from a QA, which is equivalent to an amount of allowance of 100% of the QCE incurred by the QP.
- ii. The exemption is granted for 5 consecutive years commencing from the date of incurrance of the first QCE by the QP as determined by the ECER Development Council (defined in subparagraph 6(7)). The commencement date must not be earlier than 3 years before the date on which application for exemption is made and not earlier than 13 June 2008.
- iii. An application for exemption is made to the Minister through the ECER Development Council on or after 13 June 2008 but not later than 31 December 2020.

Please refer to [paragraph 6](#) for other conditions for exemption.

Statutory income (Paragraph 7)

- i. SI for the purpose of exemption is determined after deducting allowances under Sch. 3 of the ITA, notwithstanding that no claim for such allowances has been made.
- ii. The amount of SI exempted from tax is the amount of the allowance stated in subparagraph 6(1). (Refer to the point (i) under “Exemption” above.)
- iii. Where SI for a YA is insufficient for the exemption to be granted or be granted in full, the amount of SI in respect of which exemption cannot be effected, will be granted exemption for the first subsequent YA for which there is SI from the QA, and subsequent YA until exemption is granted on the whole amount of SI that is entitled to be exempted.

Disposal of assets (Paragraph 8 & 9)

- i. Where QCE has been incurred on assets (building, factory, machinery or plant) which are disposed of within 2 years from the date of acquisition of the asset, the amount of SI that has been exempted which is equal to the amount of allowance relating to QCE on such assets, will be withdrawn in the basis period for the YA in which the asset was disposed of. (Paragraph 8)
- ii. If a QP disposes of assets on which exemption under this Order has been applied, to a related company, the amount of QCE incurred by the related company is deemed to be zero. (Paragraph 9)

Other matters (Paragraphs 10 – 12)

- i. The exemption may be withdrawn if the QP fails to comply with any condition imposed in relation to the exemption. If the exemption is withdrawn, any amount of SI which is

granted exemption under this Order is deemed not to have been granted exemption from the first year of the exemption period stated in paragraph 6(2). (Refer to point (ii) under “Exemption” above.) (Paragraph 10)

- ii. If the QP carries on a QA as well as an activity other than the QA, each activity is to be treated as a separate and distinct source of income. Separate accounts must be maintained for each activity. (Paragraph 11)
- iii. This Order does not apply to a QP who –
 - (a) commences a QA more than 1 year from the date of approval by the Minister or after such extended period approved by the Minister; or
 - (b) has, in the basis year for a YA, made claims for/ granted other incentives specified under [subparagraphs 12 \(b\)\(i\), \(ii\) and \(iii\)](#).

The [Schedule](#) in this Order lists the QA in the different Sectors that are eligible for exemption and the types of QCE in respect of each sector.

Members may read the Order in full at the official website of the [Attorney-General’s Chambers](#).

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