

TECHNICAL

Direct Tax

INCOME TAX EXEMPTION – NEW ORDER ISSUED: ANGEL INVESTOR

The following Exemption Order made under paragraph 127(3)(b) of the Income Tax Act 1967 (ITA) have been recently gazetted:

Income Tax (Exemption) (No. 3) Order 2014 [P.U.(A) 167]

This Order is deemed to have come into operation on 1 January 2013.

The main provisions are summarized below:

Exemption	
<u>Para. No. & Heading</u> 3 “Exemption”	<u>Summary</u> <ul style="list-style-type: none"> The Minister exempts an <i>angel investor</i>*, in respect of his aggregate income for the basis period for a year of assessment (YA), from the payment of income tax in the second YA following the YA in which an <i>investment</i>* is made by the angel investor in an <i>investee company</i>*. * These terms are defined in paragraph 2 of the Order The amount of income tax which is exempted is equal to the amount of investment made by the angel investor in that investee company. Where the amount of investment exceeds the aggregate income of the angel investor for the basis period for the YA, the excess amount shall not be refunded to that angel investor or be available as a credit to set-off his tax liability for that YA or any subsequent YA. The exemption granted is subject to the following: <ul style="list-style-type: none"> The investment must not be disposed of (fully or in part) within 2 years from the date the investment is made; and The conditions specified by the Minister of Finance in the approval letter for the investment have been complied with.
Definitions	
2. “Interpretation”	The following terms are defined: <ul style="list-style-type: none"> “<i>investment</i>” means a holding of shares paid for in cash in respect of ordinary shares in an investee company. “<i>angel investor</i>” (AI) means an individual referred to in paragraph 5(a) of this Order; “<i>investee company</i>” (IC) means a company referred to in paragraph 5 (b) of this Order.
Conditions of Eligibility	
5 “Application”	For the provisions of this Order to apply to an “angel investor”, 5 conditions) must be met. These are stated in Para. 5(a)(i) to (v). The first 2 of these specify that an AI is one –

	<ul style="list-style-type: none"> • who is resident in Malaysia and whose sources of income is not solely derived from business; • who has applied to the Minister of Finance on or after 1 January 2013 but not later than 31 December 2017, to make an investment in an IC; <p><i>(Please refer to the Order for the full list.)</i></p> <p>Similarly, 3 conditions must be met for the provisions of this Order to apply to an “investee company”. Para. 5(b) states that an IC must –</p> <ul style="list-style-type: none"> • be incorporated under the Companies Act 1965 and a resident in Malaysia; • have at least 51% of its issued ordinary share capital directly owned by a shareholder (other than an AI) who is a citizen; and • Carry on activities approved by the Minister.
6. “Non-application”	An AI who has made a claim for a deduction under the Income Tax (Deduction for Investment In a Venture Company) Rules 2005 is not eligible for exemption under this Order.
Withdrawal by the Minister	
4. “Withdrawal of tax exemption”	Tax exemption may be withdrawn by the Minister if the AI fails to comply with conditions specified by the Minister in the approval letter for the investment.

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

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