

TECHNICAL

Direct Tax

**[INCOME TAX \(EXEMPTION\) \(NO.2\) ORDER 2015 \[P.U. \(A\) 50/2015\]](#)**

The above Exemption Order [P.U. (A) 50/2015] was gazetted on 19 March 2015 and was made pursuant to paragraph 127(3)(b) of the Income Tax Act 1967 (Act). It will take effect from the year of assessment (YA) 2015.

The main provisions of the Order are summarised below:

<b>Para. No.</b>	<b>Summary</b>
2.	<p><b>Definitions</b></p> <p><b>Qualifying activity (QA)</b> – any activity to which the award of the status of a Multimedia Super Corridor (MSC) company relates, and which is carried out by the <i>qualifying company (QC)</i></p> <p>(a) outside an area which is determined by the Government of Malaysia as the MSC cyber city or cyber centre, within the exemption period (EP) specified in subparagraph 3(1); or</p> <p>(b) within an area which is determined by the Government of Malaysia as the MSC cyber city or cyber centre, within the extended EP granted under paragraph 4.</p> <p><b>Qualifying company (QC)</b> – a company which –</p> <p>(a) is incorporated under the Companies Act 1965;</p> <p>(b) is resident in Malaysia;</p> <p>(c) has made an application to the Minister of Finance and the Minister of International Trade and Industry to be awarded the status of MSC company on or after 1 January 2015 and has not carried out the QA at the time the application was made; and</p> <p>(d) has been awarded the status of a MSC company.</p> <p>Other terms defined are “pioneer business” and “exemption period”.</p>
3	<p><b>Exemption</b></p> <p>A QC is granted income tax exemption (subject to conditions) on statutory income derived from a QA for the basis period for a YA for a period of 5 years, beginning from the date which is determined by the Minister.</p> <p>The exemption granted shall be subject to the QC complying with the conditions imposed. The QC is not absolved from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the Act.</p>
4.	<p><b>Application for extension of EP</b></p> <p>The EP referred to in paragraph 3(1) of the Order may be extended by the Minister (subject to conditions) for another period of 5 years. The application for extension must be made in writing by the QC not later than 90 days before the expiry of the EP.</p>
5	<p><b>Computation of Statutory Income (SI)</b></p> <ul style="list-style-type: none"> <li>The amount of SI of a QC which is derived from a QA is determined after deducting allowances under <a href="#">Schedule 3</a> of the Act, notwithstanding that no claim</li> </ul>

	<p>was made for the allowances.</p> <ul style="list-style-type: none"> <li>The amount of SI derived from the QA which is exempted is: <ul style="list-style-type: none"> <li>70% of the SI for the income for the EP referred to in paragraph 3(1) [of the Order]; or</li> <li>100% of the extended EP referred to in paragraph 4.</li> </ul> </li> <li>The SI which is exempted is further reduced by: <ul style="list-style-type: none"> <li>(a) current year adjusted loss* from businesses which are specified in paragraph 5(4)(a), and</li> <li>(b) unabsorbed adjusted loss* or current year adjusted loss* from businesses specified under paragraph 5(4)(b).</li> </ul> </li> </ul> <p>* The amount of adjusted loss utilised to reduce the SI of the QA shall not be taken into account for the purposes of <u>S.43(2)</u> and <u>S.44(2)</u> of the Act, S.21A and 25 of the Promotion of Investments Act 1986 or the Income Tax (Exemption)(No. 11) Order 2006 [P.U. (A) 112/2006].</p> <ul style="list-style-type: none"> <li>Any amount of unabsorbed adjusted loss and current year adjusted loss from the QA which is not utilized to reduce SI during the EP is available to reduce total income of the QC pursuant to <u>S.43(2)</u> and <u>S.44(2)</u> of the Act in the subsequent basis period after expiry of the EP.</li> <li>30% of the SI [the unexempted portion under paragraph 5(3)(a) of the Order] is deemed to be total income or part of total income of the QC for that YA.</li> </ul>												
6	<p><b>Capital Allowances [determination of Capital Expenditure (Capex) and Residual Expenditure (RE)]</b></p> <p>Notwithstanding the provisions of <u>Schedule 3</u> of the Act:</p> <ul style="list-style-type: none"> <li>For an asset used <i>prior</i> to the date of commencement of the EP and that asset continues to be used in the basis period for the YA in which the date of commencement of the EP falls: <table border="1"> <tr> <td>RE</td><td>RE of the asset prior to date of commencement of EP shall be deemed to be the RE of that asset on the date of commencement of that EP.</td></tr> <tr> <td>Capex</td><td>Capex incurred in that basis period prior to date of commencement of EP is deemed to have been incurred on the date of commencement of that EP.</td></tr> </table> </li> <li>For an asset used <i>during</i> the EP and that asset continues to be used in the basis period for the YA in which the date of expiry of the EP falls: <table border="1"> <tr> <td>RE</td><td>RE of the asset on the date on the expiry of the EP shall be deemed to be the RE of that asset on the date following the expiry of the EP.</td></tr> <tr> <td>Capex</td><td>Capex incurred during the EP is deemed to have been incurred on the date following the expiry of that EP.</td></tr> </table> </li> <li>For an asset used for the purposes of the QA and for the purposes of other than the QA during the EP and after the expiry of the EP: <table border="1"> <tr> <td>Schedule 3 Allowances</td><td>Schedule 3 allowances shall be reduced as is reasonable having regard to the extent the asset is used for the purposes of the QA.</td></tr> <tr> <td>RE</td><td>The RE determined under paragraphs 6(a) to 6(d) of the Order shall be reduced by the amount of deduction made under</td></tr> </table> </li> </ul>	RE	RE of the asset prior to date of commencement of EP shall be deemed to be the RE of that asset on the date of commencement of that EP.	Capex	Capex incurred in that basis period prior to date of commencement of EP is deemed to have been incurred on the date of commencement of that EP.	RE	RE of the asset on the date on the expiry of the EP shall be deemed to be the RE of that asset on the date following the expiry of the EP.	Capex	Capex incurred during the EP is deemed to have been incurred on the date following the expiry of that EP.	Schedule 3 Allowances	Schedule 3 allowances shall be reduced as is reasonable having regard to the extent the asset is used for the purposes of the QA.	RE	The RE determined under paragraphs 6(a) to 6(d) of the Order shall be reduced by the amount of deduction made under
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	<p>paragraph 6(e)(i) of the Order.</p> <ul style="list-style-type: none"> <li>Unabsorbed CA is utilized as follows: <table border="1"> <tr> <td>Prior to commencement of EP</td><td>Utilized to reduce SI of the QC from the QA in the basis period for the YA to which the EP applies,</td></tr> <tr> <td>During the EP</td><td>Utilized to reduce SI of the QC from the QA in the basis period following the expiry of that EP for the YA and any subsequent YA.</td></tr> </table> </li> </ul>	Prior to commencement of EP	Utilized to reduce SI of the QC from the QA in the basis period for the YA to which the EP applies,	During the EP	Utilized to reduce SI of the QC from the QA in the basis period following the expiry of that EP for the YA and any subsequent YA.
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7 & 8	<p><b>Withdrawal and surrendering of exemption</b></p> <ul style="list-style-type: none"> <li>The exemption may be withdrawn by the Minister if the QC fails to comply with any condition imposed by the Minister. The date of the withdrawal shall be deemed to be effective from the date the exemption comes into effect or such date as determined by the Minister.</li> <li>The Minister may, at any time, allow the QC to surrender the exemption (except where the QC has failed to comply with conditions imposed by the Minister) by notice in writing to the Minister. The surrender shall be effective from <ul style="list-style-type: none"> <li>➤ the date of approval of the award of MSC company status or</li> <li>➤ in the case where EP has commenced – <ul style="list-style-type: none"> <li>○ Date of application for surrender received by the Minister, or</li> <li>○ First day in the basis period for the year of assessment in which the application for surrender is received by the Minister.</li> </ul> </li> </ul> </li> </ul>				
9	<p><b>Separate accounts</b></p> <p>A QC which is granted exemption under this Order must keep separate accounts in respect of income from the QA for the basis period for each YA of the EP, and the QA is to be treated as a separate and distinct source of income.</p>				
10	<p><b>Non-application</b></p> <p>The exemption Order shall not apply to a QC which has</p> <ul style="list-style-type: none"> <li>made a claim for Reinvestment Allowance (Sch.7A) or Investment Allowance (Sch.7B), made a claim for deduction under any rules made under S.154 of the Act (except claims for Schedule 3 allowance, deductions for audit expenditure (P.U. (A) 129/2006), tax filing fee and secretarial fee (P.U. (A) 336/2014) and cost relating to training for employees for the implementation of Goods and Services Tax (P.U. (A) 334/2014))</li> <li>been granted any incentive under Promotion of Investment Act 1986 or exemption under S.127 of the Act in respect of similar qualifying activity.</li> </ul>				

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

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