

TECHNICAL

Direct Taxation

**EXEMPTION ORDERS RELATED TO QUALIFYING ACTIVITIES AND SPECIAL QUALIFYING ACTIVITIES IN THE EAST COAST ECONOMIC REGION**

The following Orders were gazetted on 13 June 2016:

1. [Income Tax \(Exemption\) \(No. 6\) Order 2016 \[P.U.\(A\) 159/2016\]](#)
2. [Income Tax \(Exemption\) \(No. 7\) Order 2016 \[P.U.\(A\) 160/2016\]](#)

Both Orders are deemed to have come into operation on 13 June 2008.

**1. [Income Tax \(Exemption\) \(No. 6\) Order 2016 \[P.U.\(A\) 159/2016\]](#)**

The salient points in the Order (referred to hereafter as “the first Order”) are summarized below:

**Definitions** (Paragraphs 2 – 4)

The meanings of following words are provided in paragraphs 2 - 4:

Para	Word	Meaning
2	East Coast Economic Region (ECER)	Has the same meaning as assigned in the East Coast Economic Region Development Council Act 2008.
3(1)	Qualifying person (QP)	(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*; or (e) an association solely engaged in agriculture and resident in Malaysia. * These terms are defined in subparagraph 3(3).
3(3)	related company	Has the same meaning as provided in S2 of the Promotion of Investments Act 1986
3(2)	If a QP which is a <i>company</i> is granted exemption under this Order, its <i>related company</i> is not entitled to any exemption under this Order in relation to the same qualifying activity.	
4	Qualifying activity	A QA is an activity as set out in column (3) of the

	(QA)	<p><a href="#">Schedule</a> in relation to the sector as set out in column (2) –</p> <p>(a) Which has not been carried on in the ECER on the date the application referred to in subparagraph 5(3) is made; or</p> <p>(b) Which has been carried on in the ECER not more than one year prior to the date the application referred to in subparagraph 5(3) is made,</p> <p>and approved by the Minister.</p>
--	------	---

### Exemption (paragraph 5)

- i. Exemption from income tax is granted in respect of statutory income (SI) for the basis period for a year of assessment (YA) of a QP which is derived from a QA.
- ii. The exemption is granted for 10 consecutive YA commencing from the first YA in which the QP derives SI from the QA (referred to as “the exempt years of assessment” in this Order.)
- 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 5](#) for other conditions for exemption.

\* This means the council established under the ECER Development Council Act 2008.

### Statutory income (paragraph 6)

- 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. Where a building, factory, machinery or plant used for the purposes of a QA is also used in another (non-qualifying) activity, the amount of allowances allowed to be deducted under Schedule 3 of the ITA must be “reasonable” having regard to the extent to which the building etc. is used for the purposes of the QA.

### Losses (paragraph 7)

- i. Any amount of adjusted loss relating to the QA which is incurred –
  - a. from the YA in the basis period in which the QA commences to the YA immediately prior to the exempt years of assessment; and
  - b. during the exempt years of assessment.

shall be carried forward and deducted from the SI from the QA in the post-exempt year or years of assessment until the whole amount of the adjusted loss has been utilized against the SI from the QA.
- ii. Any amount of adjusted loss which is utilized for a YA as stated above is disregarded for the purposes S43(2) and S44(2) of the ITA.

### Other matters (paragraphs 8 – 10)

- i. The exemption may be withdrawn by the Minister 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 to have not been given to the QP from the first year of the exempt years of assessment. (Refer to point (ii) under "Exemption" above.)

- 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 9)
- iii. This Order does not apply to a QP who –
  - (a) commences a QA after 1 year from the date of approval by the Minister or after such extended period as approved by the Minister; or
  - (b) has, in the basis period for a YA, made claims for or been granted other incentives specified under [subparagraphs 10 \(b\)\(i\), \(ii\) and \(iii\)](#).

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

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

## 2. [Income Tax \(Exemption\) \(No. 7\) Order 2016 \[P.U.\(A\) 160/2016\]](#)

The salient points are summarized below:

### Definitions (paragraphs 2 – 4)

- i. The meanings of the following words are provided in paragraphs 2 - 4:

Para	Word	Meaning
2	East Coast Economic Region (ECER)	These words have the same meanings as defined in the first Order (refer above)
3(1)	Qualifying person (QP)	
3(3)	related company	
3(2)	If a QP which is a <i>company</i> is granted exemption under this Order, its <i>related company</i> is not entitled to any exemption under this Order in relation to the same qualifying activity.	
4	Special qualifying activity (SQA)	A SQA is an activity as set out in column (2) of the <a href="#">Schedule</a> – (a) which has not been carried on in the ECER on the date the application referred to in subparagraph 5(3) is made; or (b) which has been carried on in the ECER not more than 1 year prior to the date the application referred to in subparagraph 5(3) is made, and approved by the Minister.

**Exemption** (paragraph 5)

- i. Exemption from income tax is granted in respect of statutory income (SI) for the basis period for a year of assessment (YA) of a QP which is derived from a SQA, at the rate of not less than 70% and not more than 100% as may be specified by the Minister;
- ii. The exemption is granted for a period of consecutive YAs as determined by the Minister, commencing from the first YA in which the QP derives SI from the SQA (referred to as "the exempt years of assessment" in this Order).
- iii. The other provisions relating to the exemption found under [paragraph 5](#) of this Order (subparagraphs 5(3) to (6)) are similar to those of subparagraphs 5(3) to (6) of the first Order. (Please refer to point (iii) under "Exemption" above.)

**Statutory income** (paragraph 6)

The provisions of paragraph 6 in this Order are the same as in paragraph 6 of the first Order. (Please refer above.)

**Losses** (paragraph 7)

The provisions of paragraph 7 in this Order are the same as in paragraph 7 of the first Order. (Please refer above.)

**SI which is not exempt** (paragraph 8)

Any amount of SI not exempted under subparagraph 5(1) of this Order is deemed to be total income or part of total income of the QP for that YA.

**Other matters** (paragraph 9 to 11)

The provisions of paragraphs 9, 10 and 11 of this Order are the same as in paragraphs 8, 9 and 10 (respectively) of the first Order. (Please refer above.)

The [Schedule](#) in this Order sets out the SQA that are eligible for exemption under this Order.

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

**Disclaimer**

This document is meant for the members of the Chartered Tax Institute of Malaysia (CTIM) only. CTIM has taken all reasonable care in the preparation and compilation of the information contained in this E-CTIM. CTIM herein expressly disclaims all and any liability or responsibility to any person(s) for any errors or omissions in reliance whether wholly or partially, upon the whole or any part of this E-CTIM.