

TECHNICAL

Direct Taxation

[INCOME TAX \(DEDUCTION FOR INVESTMENT IN QUALIFYING ACTIVITY\) RULES 2016 \[P.U. \(A\) 166-2016\]](#)

The above Rules were gazetted on 13 June 2016. They are deemed to have come into operation on 13 June 2008.

The salient points in these rules are summarized below:

Definitions (Rules 2 – 5)

The meanings of the following words are provided in Rules 2 - 5:

No.	Word	Meaning
Rule 2	Qualifying activity (QA)	A QA is an activity set out in the Schedule which – (a) is carried on by a related company; (b) is not of the same kind with the activity which has been carried on by the related company on the date of the application (made under these rules); and (c) has been granted exemption under the following Orders – i. Income Tax (Exemption) (No. 4) Order 2016 [P.U.(A) 157-2016]; ii. Income Tax (Exemption) (No. 5) Order 2016 [P.U.(A) 158-2016];; iii. Income Tax (Exemption) (No. 6) Order 2016 [P.U.(A) 159-2016]; or iv. Income Tax (Exemption) (No. 7) Order 2016 [P.U.(A) 160-2016];;
Rule 3	Qualifying person (QP)	QP refers to a company – (a) incorporated under the Companies Act 1965 and resident in Malaysia; and (b) which makes an investment in a related company.
Rule 4	Investment	Refers to an investment which is made – (a) either in the form of cash contribution where the related company has no obligation to repay, or as paid up capital in respect of ordinary shares in a related company; (b) for the sole purpose of financing a QA; (c) for a period and up to an amount approved by the Minister; and (d) in the basis period for the same year of assessment (YA) with the YA where the related company has incurred expenditure in carrying on the QA.
Rule 5	Related company	Refers to a company – (a) incorporated under the Companies Act 1965 and resident in Malaysia; and (b) in which at least 70% of its paid up capital on ordinary shares is directly owned by a QP.

Deduction (Rule 6)

- i. In ascertaining the adjusted income of a QP from his business in the basis period for a YA, a deduction is allowed for the value of the investment made by the QP in an amount which is equal to an amount incurred by the related company in that basis period in relation to the QA in respect of which the investment is made.
- ii. An application for deduction is made to the Minister through the East Coast Economic Region (ECER) Development Council* on or after 13 June 2008 but not later than 31 December 2020, and must be submitted concurrently with the application by the related company for the QA to be exempted under the relevant order named in paragraph 2(c) of these rules.

* This is defined as the council established under the ECER Development Council Act 2008.

Withdrawal of deduction (Rule 7)

- i. The deduction allowed under subrule 6(1) to a QP making an investment in the form of paid-up ordinary shares capital in a related company will be withdrawn if:
 - (a) the QP disposes of the investment in ordinary shares in the related company within 5 years from the date of the last investment made, and
 - (b) receives any consideration for such disposal. Comment – Except for the change of format, I don't see how this amendment adds to the info that is in the original draft (PI see COMMENT below)
- ii. The withdrawal is effected by adding the consideration received from the disposal of the investment to the adjusted income of the QP for the YA in the basis period in which the consideration is received. The amount so added shall not exceed the total deduction allowed in relation to the investment.

Cessation of deduction (Rule 8)

The deduction under rule 6 will cease in the basis period of a YA upon the related company having its first statutory income from the QA in respect of which investment is made by the QP.

Non-application (Rule 9)

These rules do not apply to a QP if –

- (a) the QA in respect of which investment is made by the QP, is commenced by the related company after 1 year from the date of the approval by the Minister, or such extended period as approved by the Minister; or
- (b) the QP has, in the basis period for a YA, made claims for or been granted
 - (i) Reinvestment Allowance under Schedule 7A to Income Tax Act 1967 (ITA) or Investment Allowance under Schedule 7B to the ITA;
 - (ii) an exemption under Section 127 of ITA in respect of the same QA; or
 - (iii) any incentive under Promotion of Investments Act 1986 in respect of the same QA

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

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