

TECHNICAL

Direct Taxation

TAX INCENTIVE FOR EAST COAST ECONOMIC REGION (ECER) – TAX EXEMPTION FOR A DEVELOPMENT / PARK MANAGER

[Income Tax \(Exemption\) \(No. 9\) Order 2016 \[P.U. \(A\) 162/2016\]](#)

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

The salient points in the Order are summarized below:

Definitions (Paragraphs 2 – 3)

The meanings of following words are provided in paragraphs 2 - 3:

Para	Word	Meaning
2	East Coast Economic Region Development Council	The council established under the ECER Development Council Act 2008.
	Industrial park (IP)	An industrial park within the ECER
	East Coast Economic Region (ECER)	Has the same meaning as assigned in the East Coast Economic Development Council Act 2008.
	free zone (FZ)	Any area located within the ECER which is declared as a free commercial zone or free industrial zone under the Free Zones Act 1990.
3	Qualifying person (QP)	<p>A QP is –</p> <p>(a) a development manager, that is a company which is –</p> <ul style="list-style-type: none"> • incorporated under the Companies Act 1965 and resident in Malaysia; • approved by the Minister; and • appointed by an approved developer to carry on a qualifying activity; or <p>(b) a park manager, that is a company –</p> <ul style="list-style-type: none"> • incorporated under the Companies Act 1965 and resident in Malaysia; • approved by the Minister; and • carries on a qualifying activity.

	Approved developer (AD)	<p>An AD is a company which –</p> <ul style="list-style-type: none"> (a) is incorporated under the Companies Act 1965 and resident in Malaysia; (b) is approved by the Minister; (c) purchases or acquires any right over part or the whole of the land within the ECER; and (d) which carries on the development of an IP approved by the ECER Development Council, or a free zone
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Qualifying activity (QA)

- i. A QA is an activity set out in subparagraph 4(2) of this Order –
 - (a) which has not been carried out in the ECER on the date the application for exemption under this Order is made; or
 - (b) which has been carried out in the ECER not more than 1 year prior to the date the application for the exemption under this Order is made. and approved by the Minister.
- ii. The activity set out in subparagraph 4(2) of this Order is as follows:-
 - (a) In relation to a development manager, an activity in respect of the provision of management, supervisory or marketing services relating to the development of an IP or FZ;
 - (b) In relation to a park manager, an activity in respect of the provision of park management services including maintenance, marketing and rental of common facilities and utilities services in the IP or FZ.

Exemption (paragraph 5)

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

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 an asset (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 asset is used for the purposes of the QA.

Losses (paragraph 7)

- i. Any amount of adjusted loss which is incurred in relation to the QA –
 - (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 adjusted loss is fully deducted from 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 – 9)

- 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, the exemption granted on any amount of SI under subparagraph 5(1) of 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 another (non-qualifying) activity, each activity is to be treated as a separate and distinct source of income. Separate accounts must be maintained for each activity. (Paragraph 9)

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

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