

**TECHNICAL**

**Direct Taxation**

**[INCOME TAX \(EXEMPTION\) \(NO.3\) ORDER 2017 \[P.U. \(A\) 203/2017\]](#)**

**1. Background**

Budget 2015 included a proposal to grant tax exemption to new companies and existing companies engaged in expansion, modernization and refurbishment of healthcare facilities that provide private healthcare services to qualified healthcare travelers, subject to the condition that the qualified healthcare travelers must be at least 5% of total patients.

**2. Exemption Order**

To give effect to the proposal, the *Income Tax (Exemption) (No.3) Order* ("this Order") was gazetted on 21 July 2017. It is deemed to have come into operation from YA 2015.

(All sections cited hereinafter refer to sections of the Income Tax Act 1967 (ITA) unless otherwise stated.)

**3. Definitions**

(The meanings of words which are underlined below are defined in Subpara. 4(9).)

The following words have meanings which are provided in this Order:

<b>Word</b>	<b>Meaning</b>
Qualifying company <i>Para. 2(1)</i>	a company incorporated or deemed to be registered under the Companies Act 2016 which is resident in Malaysia
Incurred <i>Para. 2(2)</i>	The meaning is construed in accordance with para. 46 and 55 of Sch. 3 of the ITA, except for its use in subpara. 4(1) and (3) of this Order.
Qualifying capital expenditure (QCE) <i>Para. 3(1)</i>	<ul style="list-style-type: none"> <li>Capital expenditure (CE) incurred by a QC in relation to a building or medical device used in Malaysia solely for the purpose of a qualifying project (QP) –               <ul style="list-style-type: none"> <li>(a) in relation to a building, the cost of purchasing or constructing a new building, or the cost of the modification or refurbishment of the existing building, the building being in accordance with the standards required under the Private Healthcare Facilities and Services Act 1998 and the establishment, maintenance and operation of the building as a healthcare facility has been approved and licensed by the Director General of Health (DGH) Malaysia under the Private Healthcare Facilities and Services Act 1998; and</li> <li>(b) in relation to the medical device, the cost of expenditure for the medical device each of which costs more than RM 50,000, and has been verified by the Minister of Health (MOH) as related to the QP.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>QCE does not include CE on any building used (wholly or partly) as living accommodation for a director or an individual who is a member of the management or administration, or an employee of the QC.</li> </ul>
Qualifying Project (QP) Para. 4(2)	<p>Refers to –</p> <p>(a) a business of providing <u>private healthcare services</u> at a new <u>private healthcare facility</u>; or</p> <p>(b) a project of expansion, modernization or refurbishment of the existing business of providing private healthcare services* – which has been approved by the MOH and registered with the <u>Malaysian Healthcare Travel Council</u>.</p> <p>* <i>Note: Refers to <u>healthcare services</u> as determined by the Minister.</i></p>

#### 4. Exemption (Paragraph 4)

A QC is exempted from payment of income tax in respect of statutory income (SI) from a QP in the basis period for a YA in an amount which is equal to the amount of QCE incurred by that QC in the basis period for that YA. (subpara. 4(1)) The exemption –

- is for a period of 5 consecutive years, commencing from the date QCE was first incurred by the QC, which is determined by the Malaysian Industrial Development Authority (MIDA). For a QP under subpara. 4(2)(a) that date shall not be earlier than 1 January 2015 and (subject to this condition) not earlier than 3 years immediately preceding the date on which the application for exemption is received by MIDA. For a QP under subpara. 4(2)(b) the date shall not be earlier than the date the application is received by MIDA.
- is applicable to the following:
  - an application for exemption which is received by MIDA on or after 1 January 2015 but not later than 31 December 2017, which has been approved by the Minister;
  - a QC undertaking a QP
    - under para.4(2)(a), the QC has not undertaken a business of providing private healthcare services on the date the application for exemption is received by MIDA; or
    - under para.4(2)(b), the QC has not incurred any QCE on the QP on the date the application for exemption is received by the MIDA; and
  - a QC which has not been granted any exemption under this Order or the Income Tax (Exemption) Order 2012 [P.U. (A) 22/2012].
- is subject to the following conditions:
  - the number of health travelers receiving private healthcare services from the QP is at least 5% of the total patients from the QP for each YA; and
  - at least 5% of the gross income of the QC from the QP is generated from the health traveler for each YA.

## 5. Statutory Income

- SI (under subpara. 4(1) of this Order) is determined after deducting allowances allowed under schedule 3, notwithstanding that no claim for such allowances were made.
- If an asset is used for the purpose of a QP as well as some other project, the Sch. 3 allowances that are due must be reasonably apportioned, having regard to the extent to which the asset is used for the purpose of the QP.
- A QP which is granted exemption under subpara. 4(1) of this Order is exempted from tax on an amount of SI equal to *the allowance referred to in subparagraph 4(1)* ("the exempt amount").
- If SI is insufficient (or nil) so that the exempt amount cannot be allowed in full (or cannot be allowed) the amount of exemption which cannot be granted for that YA shall be granted for the first subsequent YA for which the QP has SI, and for the subsequent year(s) until the full amount of exemption to which the QC is entitled to is granted.

## 6. Disposal of Asset

- If an asset on which QCE was incurred is disposed of within 5 years of the date of acquisition, the amount of exemption granted in respect of QCE incurred on that asset shall be withdrawn in the basis period for a YA in which the asset is disposed of.
- If the asset (in respect of which an exemption is applied by the QC under this Order) is disposed of to a related company (defined) by the QC, the QCE incurred by the related company is deemed to be zero. (Para. 7)

## 7. Other Provisions

- The Minister may withdraw an exemption that has been granted if the QC fails to comply with any condition imposed in relation to the exemption. (Refer [para. 8](#))
- If the QC carries on a QP as well as some other projects, each project is treated as a separate and distinct source of income, and separate accounts must be kept for income derived from each project. (Para. 9)

## 8. Non-application

This Order does not apply to a QC which (in the basis period for a YA) has been granted Reinvestment Allowance, or Investment Allowance under Schedules 7A and 7B respectively of the ITA, or any incentive under the Promotion of Investments Act 1986, or comes within the application of specified provisions of the ITA which are listed under [paragraph 10\(c\) to \(d\)](#) of this Order.

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

You may write to the Institute at [technical@ctim.org.my](mailto:technical@ctim.org.my) or [secretariat@ctim.org.my](mailto:secretariat@ctim.org.my) in respect of any suggestions, concern or comments you may have on the [Order](#).

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