
TECHNICAL

Direct Taxation

[INCOME TAX \(EXEMPTION\) \(NO.5\) ORDER 2017 \[P.U. \(A\) 236/2017\]](#)

This Exemption Order was gazetted on 15 August 2017 and was reported in our [e-CTIM TECH-DT 61/2017](#) dated 22 August 2017. It is deemed to take effect from the year of assessment (YA) 2016.

Definitions

Among the words which are defined in paragraph 2 are the following:

Word	Meaning
Qualifying activity (QA)	Waste treatment, waste recovery or waste recycling in the Waste Eco Park
Operator	A company incorporated under the Companies Act 2016 and resident in Malaysia who undertakes at least one of the QA
Waste Eco Park (WEP)	Means a place for waste recycling, recovery and treatment activities to be carried out which incorporates the following minimum elements: (a) Basic infrastructure such as roads, drainage system, utilities and sewerage; (b) Building and facility for waste receipt and separation; (c) Waste water treatment facility; (d) Building for waste recycling, recovery or treatment facility; and (e) Building for education and awareness centre.
The words underlined below are defined in para. 3(7) .	

Exemption (Paragraph 3)

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

- An operator is exempted (subject to conditions) from payment of income tax in respect of 100% of statutory income (SI) derived from a QA in the basis period for a YA.
- The exemption is for a period of 5 consecutive years commencing from a date which is to be determined by the Malaysian Investment Development Authority (MIDA).
- The application for exemption which is made to the Minister through MIDA, must be made on or after 1.1.2016 but not later than 31.12. 2020.
- Where an operator has been granted the above exemption for a QA, any related company of the operator is not entitled to a similar exemption for the same QA.

Conditions for exemption

Exemption is granted subject to the following conditions:

- The WEP has been approved by the relevant authorities (specified in the [Schedule](#) to this Order), State Governments and local authorities before the QA is executed;
- The operator must maintain records of all wastes and products flowing in and out of the WEP and submit periodic reports of these records to the manager;
- Only wastes obtained within Malaysia, including free zones or licensed manufacturing warehouse, are recycled, recovered or treated in the WEP. No waste is allowed to be imported into Malaysia by the operator.
- The operator must comply with all written laws, guidelines, conditions and directions relating to the exemption granted and to waste management.

Statutory Income (Para. 4)

- SI (mentioned in subpara. 3(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 QA as well as some other activity (not a QA), 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 QA.
- Subpara. 4(3) of this Order states –
“Where, by reason of the absence or insufficiency of the SI, exemption cannot be granted or cannot be granted in full as the operator is entitled under subparagraph 3(1) for that year of assessment, then so much of the SI in respect of which exemption cannot be granted for that year of assessment, shall be granted exemption for the first subsequent year of assessment for the basis period for which the operator has statutory income from a qualifying activity, and for subsequent year or years of assessment until the exemption is granted in respect of the whole SI as the operator is entitled under subparagraph 3(1).”

(CTIM's note: It is noted that under this Order, exemption is granted “in respect of hundred percent of the statutory income derived from a qualifying activity.” In other words, the exemption is an amount equal to the whole amount of the SI for a YA. Therefore, when there is no (zero) SI the amount to be exempted is also zero. Hence, the issue of carrying forward an (unabsorbed) amount of entitlement to exemption which cannot be granted in a YA due to “absence or insufficiency of SI” does not arise. The application of this paragraph is therefore uncertain.)

Other Provisions

- The Minister may withdraw an exemption that has been granted if the operator fails to comply with any condition imposed in relation to the exemption. (Refer [para. 5](#))
- If the operator carries on a QA as well as some other (non-qualifying) activity, each activity is treated as a separate and distinct source of income, and a separate account must be kept for income derived from the QA. (Para. 6)

Non-application

This Order does not apply to an operator which (in the basis period for a YA) has made a claim for Reinvestment Allowance or Investment Allowance; or has been granted any incentive under the Promotion of Investments Act 1986 in respect of the same QA; or comes within the application of specified provisions of the ITA which are listed under [paragraph 7\(c\) to \(d\)](#) of this Order.

Members may read the Order in full at the official website of the [Attorney General's Chambers](#). You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the [Order](#).

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