

TECHNICAL

Direct Taxation

[INCOME TAX \(EXEMPTION\) \(NO.6\) ORDER 2017 \[P.U.\(A\) 237/2017\]](#)

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 have effect from the year of assessment (YA) 2016 until YA 2025.

Definitions

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

Word	Meaning
Qualifying activity (QA)	the activity carried out to ensure effective and efficient coordination, implementation and operation of the Waste Eco Park (WEP), including – (a) promoting and advertising the WEP; (b) managing facilities and infrastructures in the WEP; (c) ensuring the supply of types and amount of the waste received in the WEP is according to the capacity of the facility and infrastructure in the WEP; (d) managing segregation and separation of the waste for the feedstock of the operator referred to in the Income Tax (Exemption) (No. 4) Order 2017 and the Income Tax (Exemption) (No. 5) Order 2017 .
Manager	A company incorporated under the Companies Act 2016 and resident in Malaysia who carries on a QA
Waste Eco Park	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\(5\)](#).

Exemption (Paragraph 3)

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

- A manager is exempted (subject to conditions) from payment of income tax in respect of 70% of statutory income (SI) derived from a QA in the basis period for a YA.
- The application for exemption which is made to the Minister through the [Malaysian Investment Development Authority](#) (MIDA), must be made on or after 1.1.2016 but not later than 31.12. 2020.

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 developer;

- The total waste tonnage received monthly needs to be processed and a maximum of 30% from the total processed waste is allowed to be disposed to the landfill;
- 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 manager.
- The manager 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 was 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 manager 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 manager 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 manager is entitled under subparagraph 3(1).”

(CTIM's note: Under this Order, exemption is granted “in respect of seventy percent of the statutory income derived from a qualifying activity.” This means that the exemption is only available when there is SI for that YA, and the amount exempted is equal to 70% of the whole amount of the SI for a YA (the balance of 30% being taxable). When there is no SI, (i.e. when SI is zero or negative) 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 manager fails to comply with any condition imposed in relation to the exemption. (Refer [para. 5](#))
- If the manager 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 a manager which (in the basis period for a YA) has been granted an exemption under S127 in respect of the same QA.

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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