

**TECHNICAL**

**Direct Taxation**

**[INCOME TAX \(EXEMPTION\) \(NO.7\) ORDER 2017 \[P.U. \(A\) 238/2017\]](#)**

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:

<b>Word</b>	<b>Meaning</b>
Qualifying activity (QA)	The rental of building, waste receipt and separation facility and waste water treatment facility in the Waste Eco Park (WEP).
Developer	A company incorporated under the Companies Act 2016 and resident in Malaysia who – (a) developed the WEP; (b) invested in fixed asset, except land, the minimum value of which is RM 50 million within 3 years from the date the first capital expenditure was made.
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 <a href="#">para. 3(5)</a> .	

**Exemption (Paragraph 3)**

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

- A developer 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](#) in this Order), State Governments and local authorities before the QA is executed;
- The developer must maintain records of all wastes and products flowing in and out of the WEP and submit periodic reports of these records to the authorities specified in the [Schedule](#) in this Order;
- 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 waste 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 developer.

- The developer 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 developer 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 developer 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 developer 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 developer fails to comply with any condition imposed in relation to the exemption. (Refer [para. 5](#))
- If the developer 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)
- Any disposal of a building which is held for investment by the developer, for which rental income has been exempted under this Order, shall be subject to the Real Property Gains Tax Act 1976. (Para. 7)

#### **Non-application**

This Order does not apply to a developer 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](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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