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**TECHNICAL**

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**Direct Taxation**

**INCENTIVES FOR COMPANIES UNDERTAKING A PROJECT FOR MODERNIZING OR AUTOMATING ITS EXISTING MANUFACTURING ACTIVITY**

**Background**

Please refer to the [e-CTIM TECH-DT 73/2015 \(REV\)](#) dated 8 October 2015 for information relating to the above incentives which were first announced in the 2015 Budget.

The following statutory orders granting the above incentives were gazetted on 30 August 2017 (reported in our [e-CTIM TECH-DT 71/2017](#) dated 13 October 2017).

**I. [Income Tax \(Accelerated Capital Allowance\) \(Automation Equipment\) Rules 2017 \[P.U.A\) 252/2017\]](#)**

This Order is deemed to take effect from the year of assessment (YA) 2015.

**Definitions**

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

Word	Meaning
Automation equipment (AE)	Any plant or machinery used directly in a qualifying project which adopts technology that is more advanced than the current technology used by the qualifying company.
Qualifying capital expenditure (QCE)	A capital expenditure relating to AE used in Malaysia solely for the purpose of carrying on a qualifying project.
Qualifying project (QP)	a project undertaken by qualifying company for modernizing or automating its existing manufacturing activity of a product.
Qualifying company (QC)	The company referred to in paragraph 3(a) of this order.

**Application** (paragraph 3)

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

These rules apply to the following:

(a) [Paragraph 3(a)] – A QC which –

- (i) is incorporated under the Companies Act 2016 and resident in Malaysia;
- (ii) is engaged in a manufacturing activity in compliance with the Industrial Co-ordination Act 1975;
- (iii) has a business licence issued by the local authority;
- (iv) has carried on a QP for a period of at least 36 months;
- (v) falls under *one* of the following categories:
  - (A) A QC undertaking a QP relating to rubber, plastic, wood, furniture and textile, and has incurred QCE in the basis period for the YA 2015 until the YA 2017.
  - (B) A QC undertaking a QP other than those specified under (A) above, and has incurred QCE in the basis period for the YA 2015 until the YA 2020.
- (vi) has made an application for capital allowance (CA) through the Malaysian Investment

Development Authority (MIDA) within the period stated below:

- For a QP that falls under (A) above – on or after 1 January 2015 but not later than 31 December 2017;
- For a QP that falls under (B) above – on or after 1 January 2015 but not later than 31 December 2020.

(b) [Paragraph 3(b)] – AE certified by the Director General of the Standards and Industrial Research Institute of Malaysia as adopting a technology that is more advanced than the current technology used by the QC.

### Incentive

- The CA (under Sch. 3 of the ITA) allowed to be claimed by a QC is shown below:

Table 1

QC that falls under paragraph (..) of this Order	Initial allowance (Paragraph 5)	Annual Allowance (Paragraph 6)
3(a)(v)(A) (Category A under point (a)(v) above)	one-fifth of the first RM 4 million of QCE	four-fifths of the first RM 4 million of QCE
3(a)(v)(B) (Category B under point (a)(v) above)	one-fifth of the first RM 2 million of QCE.	four-fifths of the first RM 2 million of QCE

- (Under paragraph 4) where a QC incurs QCE under a hire purchase (HP) agreement for the purchase of any AE for the purposes of its business –
  - (a) the QC will be treated as the owner of such AE, and
  - (b) the QCE incurred by the QC in the basis period for a YA is taken to be the capital portion of any instalment payment (or, if there are more than 1 instalment payment, the aggregate of those payments) made by the QC under that HP agreement in that basis period.

### Non-application

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

## II. [Income Tax \(Exemption\) \(No. 8\) Order 2017 \[P.U.\(A\) 253/2017\]](#)

This Order is deemed to have come into effect from the YA 2015.

### Definitions (Paragraph 2)

The words defined in paragraph 2 of this Order are the same as those found in the [Rules](#) outlined above.

### Application (Paragraph 3)

The provisions under paragraph 3 of this Order are the same as those found in paragraph 3 of the Rules outlined above except for the reference to the appropriate incentive. (Refer section headed “Application” above.)

### Exemption (Paragraph 4)

- A QC is exempted from payment of income tax in respect of statutory income (SI) derived from a QP in the basis period for a YA in an amount which is equal to an allowance of 100%

of the amount of allowance for which the QP is entitled to under rules 5 & 6 of the [Income Tax \(Accelerated Capital Allowance\) \(Automation Equipment\) Rules 2017](#). (Refer to Table 1 above.)

- The exemption is subject to the QC complying with all conditions imposed in relation to the exemption.

#### **Statutory Income** (Paragraph 5)

- SI (mentioned in subparagraph 4(1) of this Order) is determined after deducting allowances allowed under schedule 3, notwithstanding that no claim for such allowances were made.
- The amount of SI which is exempted under subparagraph 4(1) ("the exempt amount") shall not exceed 70% for each YA.
- 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 QC has SI from a QP, and for the subsequent year(s) until the full amount of exemption to which the QC is entitled to is granted.

#### **Withdrawal of exemption** (paragraph 6)

- 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 SI which is equal to the allowance for QCE incurred, shall be withdrawn in the basis period for a YA in which the asset is disposed of.
- Any amount of exemption so withdrawn is deemed to have been not granted to the QC and is treated as included in SI of the QC for the basis period in the YA in which the exemption is withdrawn.
- An exemption may also be withdrawn if the QC fails to comply with any condition imposed in relation to the exemption.

#### **Other Provisions**

- If the asset on which exemption is applied is disposed of to a [related company](#) (defined), the QCE incurred by the related company is deemed to be zero. (Paragraph 7)
- If the QC carries on a QP as well as some other (non-qualifying) project, each activity is treated as a separate and distinct source of income, and a separate account must be kept for income derived from the QP. (Paragraph 8)

#### **Non-application**

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

Members may read the Rules and 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 above gazette orders so that we may raise them to the LHDNM.

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