

TECHNICAL

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Direct Taxation

**[LHDNM's Practice Note No.2/2018 on Clarification in Relation to the Non-Application Provisions as Stated in the Income Tax Order \(ITO\) and the Income Tax Rules \(ITR\) Under the Income Tax Act 1967 \(ITA\)](#)**

The Inland Revenue Board of Malaysia (LHDNM) has uploaded the [Practice Note No.2/2018](#) (PN) (issued date: 1 June 2018) (*available only in Bahasa Malaysia*) on its website.

The objective of this PN is to explain the concept of non-application provisions as stated in the ITO and the ITR in relation to any taxpayer who has been granted any exemption under Section 127 of the ITA.

The non-application provisions explain the incentives which are mutually exclusive. In other words, where the incentives are mutually exclusive, only one incentive can be claimed by a taxpayer in the same particular year of assessment.

This PN explains the meaning of non-application provisions as stated in the ITO and the ITR in relation to any taxpayer which has been granted any exemption under section 127 of the ITA. The implication arising from this condition is that taxpayer which has been granted any exemption under section 127 of the ITA (even though no claim has been made) will not be eligible to make any incentive claims which have been granted under the ITO and the ITR.

Exemptions under section 127 of the ITA are divided into 3 categories as follows:-

- (a) subsection 127(1) of the ITA is an exemption stated under Schedule 6 of the ITA;
- (b) paragraph 127(3)(b) of the ITA is an exemption granted by the Minister via gazette order; and
- (c) subsection 127(3A) of the ITA is an exemption granted by the Minister in particular cases.

Exemptions under Section 127(3)(b) and 127(3A) of the ITA are based on certain situations and need to comply with the stipulated procedures. These exemptions are specific in nature and based on the merits of the case. However, exemptions under Schedule 6 of the ITA are general in nature and are clearly stated in the ITA. As such, the non-application provision in relation to a taxpayer being granted any exemption under section 127 of the ITA as stated in the ITO and the ITR refers to the exemptions which have been specifically granted and are based on the merits of the case, i.e. under paragraph 127(3)(b) and subsection 127(3A) of the ITA.

With this, a taxpayer who has been granted an exemption under Schedule 6 of the ITA, is still eligible to make incentive claims under the ITO and the ITR for other income, subject to compliance with the other prescribed conditions.

Examples 1 and 2 in this PN illustrate the non-application provision in relation to a taxpayer who has been granted an exemption under section 127 of the ITA.

Members may read the PN in full (*available only in Bahasa Malaysia*) on the websites of the [Institute](#) and the [LHDNM](#).

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