

## TECHNICAL

### Direct Taxation

#### [INCOME TAX \(EXEMPTION\) \(NO.6\) ORDER 2018 \[P.U. \(A\) 385/2018\]](#)

##### General

This Order provides for income tax exemption on the income of a company which comes within the meaning of a “principal hub” as set out in paragraph 3 of the Order and meets with the requirements laid out in the Order. This Order was gazetted on 31 December 2018 (refer to our [e-CTIM TECH-DT 3/2019](#) dated 9 January 2019) and has effect from the year of assessment (YA) 2018.

##### Definitions

Meanings of words used in this Order are found in paragraph 2. Among them are the following:

Word	Meaning
Core income generating activities (CIG activities)	Activities undertaken by a principal hub in relation to the provision of qualifying services or qualifying trading activities;
Qualifying trading activities	Activities undertaken by a PH other than a commodity based company, in respect of procurement and sale of raw materials, components and finished products from the PH to a <u>network company</u> within or outside Malaysia;
Principal hub (PH)	A PH as provided under paragraph 3
Qualifying services (QS)	services specified in <a href="#">Schedule 1</a>
<i>The meanings of words underlined here and below are also provided in this paragraph.</i>	

##### Principal hub (paragraph 3)

A PH referred to in this Order is a company or, a commodity based company that integrates the supply chain management for upstream and downstream activities under its PH operation, which –

- is incorporated under the Companies Act 2016 and resident in Malaysia;
- has a paid-up capital of more than RM2,500,000;
- is already operating in Malaysia;
- provides at least 3 QS to its network companies *which are located in 3 countries outside Malaysia* (see Note below) in a basis period for a year of assessment (YA) of which one of the QS shall be from item (a) of cluster (1) of Schedule 1:

Provided that where a business in relation to qualifying trading activities in Malaysia is included in providing the QS to its network companies, the annual value of sales shall be at least RM300,000,000.

Note:

The words “which are located in 3 countries outside Malaysia” have since been deleted Under [Income Tax \(Exemption\) \(No. 6\) 2018 \(Amendment\) Order 2019](#) [P.U. (A) 41/2019] (Gazette date 19/2/2019) (refer to our [e-CTIM TECH-DT 13/2019](#) dated 25 February 2019). The amendment is deemed to have effect from YA 2018.

##### Exemption (paragraph 4)

A PH is exempted from payment of income tax in respect of *value added income* derived from CIG activities in the basis period for a YA. (paragraph 4(1))

The following are some points to note from paragraph 4, relating to the exemption:

##### Paragraph

##### Provision

- 4(2) - The exemption shall be for a period of 5 consecutive YAs (hereinafter referred to

- as “the exempt YAs”), the commencement of which period shall be determined by the Minister.
- 4(3) - The application for exemption is made to the Minister through the Malaysian Investment Development Authority (MIDA) on or after 1/1/2018 but not later than 31/12/2020.
  - 4(4) - The exemption is granted subject to all conditions specified in Schedule 2 and any other condition which may be imposed by the Minister.
  - 4(5) - “value added income” means the statutory Income (SI) for the basis period for the YA less the *inflation adjusted base income*\*.  
\* The formula used to determine this (term in italics) is provided in paragraph 4(5)(a).
  - 4(6) - SI referred to above is determined after deducting allowances under Schedule 3 of the Income Tax Act 1967 (ITA) notwithstanding that no claim for such allowances has been made.

### Exclusion of intellectual property (IP) income (paragraph 5)

Among the important points to note are the following:

<u>Paragraph</u>	<u>Provision</u>
5(1) -	The following IP income of a PH derived from its CIG activities is to be excluded in ascertaining SI which is exempted:
(a)	<i>royalties and other income derived on or after 1/7/ 2018 but before 1/7/ 2021 from new intellectual property rights that the PH owns; and</i>
(b)	<i>royalties and other income derived on or after 1/7/2021 from all IP rights that the PH owns.</i>
	* The meanings of these terms and phrases (in italics) are explained in <u>paragraph 5(2)</u> .
	Any IP excluded as stated above is subject to tax under the ITA.

### Other Provisions

The following are brief summaries of the other provisions of this Order:

<u>Paragraph</u>	<u>Provision</u>
6 -	Sets out the tax treatment for a PH that suffered losses. The losses referred to are an adjusted loss for the basis period for a YA, ascertained in accordance with the following sections of the ITA: (1) S44(2) (2) S43(2) which is incurred during the exempt YAs in respect of a business source consisting of the provision of QS or qualifying trading activities. Such a loss is to be disregarded from the source consisting of the provision of QS or qualifying trading activities in Malaysia and other businesses. (paragraphs 6(1) and 6(2)) Any amount of adjusted loss ascertained pursuant to S43(2) and S44(2) of the ITA in respect of a business source consisting of the provision of QS or qualifying trading activities shall be disregarded for the purposes of the ITA in the YA in which the last date of the exempt YAs of the PH falls and in the following YAs after the exempt YAs, as the case may be. (paragraph 6(3))
7 -	Subject to conditions stated in paragraph 7(1)(a) and (b), the Minister may extend the exempt YAs for another period of 5 YAs. The requirements relating to the application for extension of the exempt YAs are stated in paragraph 7(2) and 7(3).
8 -	Empowers the Minister to withdraw the exemption granted if the PH fails to comply with any of the conditions imposed.

- 9 - Lists the situations wherein this Order is not applicable (i.e. where the PH has been granted, or made claims for, incentives / exemptions provided under any of the legislations specified in this paragraph.)

Schedule 1 - Lists the QS that comes under each of the following clusters:

1. Strategic services
2. Business services
3. Shared services

Schedule 2 - Conditions for a PH which provides QS or qualifying trading activities. The conditions stated are in relation to the minimum number of full-time new employees in Malaysia with:

- a minimum salary of RM5,000 per month;
- a minimum salary of RM25,000 per month;

and the minimum amount of annual operating expenditure (RM) in Malaysia per month.

Members may read the Order in full at the official website of the [Attorney General's Chambers](#).

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