

TECHNICAL

Direct Taxation

[INCOME TAX \(EXEMPTION\) \(NO. 8\) ORDER 2018 \[P.U. \(A\) 387/2018\]](#)

General

In our e-CTIM TECH-DT [3/2019](#), [113/2019](#) and [114/2019](#), we highlighted the contents of the following Exemption Orders:

1. [Income Tax \(Exemption\) \(No.6\) Order 2018 \[P.U. \(A\) 385/2018\]](#)
2. [Income Tax \(Exemption\) \(No.7\) Order 2018 \[P.U. \(A\) 386/2018\]](#)

Both of the above provide for income tax exemption in respect of income of a “principal hub”, the meaning of which is specified in paragraph 3 of each respective Order.

Income Tax (Exemption) (No. 8) Order 2018

This (No. 8) Order (reported in our e-CTIM TECH-DT [3/2019](#)) which was gazetted on 31 December 2018 and has effect from the year of assessment (YA) 2018 also provides for income tax exemption in respect of a “principle hub” of a third category, as defined in paragraph 3 of this Order. Paragraph 3 of each respective Order lists the same eligibility requirements, except the ones highlighted below:

Order	Paragraph	Requirement
(No. 6)	3(c)	Is already operating in Malaysia;
(No. 7)	3(c)	Does not have an existing entity or related entity in Malaysia which carries on any qualifying services in Malaysia prior to the application referred to in paragraph 4(3) is made;
(No. 8)	3(c)	Is already operating in Malaysia;
	3(d)	Has been approved by the Minister as an operational headquarters (OHQ), an international procurement centre (IPC) or a regional distribution centre (RDC) status and- (i) has been approved incentive for OHQ, IPC or RDC; or (ii) has not been approved incentive for OHQ, IPC or RDC;

The other requirements which are the same are set out in the table below.

<u>Requirement</u>	Order (No. #)		
	<u>(No. 6)</u>	<u>(No. 7)</u>	<u>(No. 8)</u>
	(Paragraph)		
- is incorporated under the Companies Act 2016 and resident in Malaysia	3(a)	3(a)	3(a)
- has a paid-up capital of more than RM2,500,000;	3(b)	3(b)	3(b)
- provides at least 3 qualifying services (QS) to its <u>network companies</u> which are located in 3 countries outside Malaysia in a basis period for a 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 <u>network companies</u> , the annual value of sales shall be at least RM300,000,000.	3(d)	3(d)	3(e) (see Note 1 under “Other Provisions”)

Definitions (paragraph 2)

The words used in this Order, the meanings of which are given in paragraph 2 are the same as found in Order (No. 6) and Order (No. 7). (Refer to our e-CTIM TECH-DT [113/2019](#) and [114/2019](#))

Exemption (paragraph 4)

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

The provisions of paragraph 4 relating to the exemption are the same as in paragraph 4 of Order (No. 6). The points to note are set out in our e-CTIM TECH-DT [113/2019](#).

Other Provisions

- The following table lists the paragraphs that are also similar to those found in Order (No. 6) (except where the difference is highlighted):

<u>Subject</u>	Order	
	<u>(No. 6)</u>	<u>(No. 8)</u>
	Paragraph	
Exclusion of intellectual property income	5	5
Tax treatment for principal hub that suffered losses	6	6
Extension of exempt years of assessment * The following provision of paragraph 7(4) of Order (No. 8) are not found in the Order (No. 6): <i>"This paragraph shall not apply to a principal hub which has been approved incentive for OHQ, IPC or RDC and the incentive period has not ended."</i>	7	7* (See Note 1 below)
Withdrawal of exemption	8	8
<i>The brief summary of each paragraph are also the same as found in e-CTIM TECH-DT 113/2019.</i>		

- Paragraph 9 lists the situations wherein this Order is not applicable (i.e. where the PH has been granted, or made claims for, incentives / exemptions listed under any of the legislations specified in this paragraph).
- Schedules
 - Schedule 1 (list of qualifying services) is the same as found in Order (No. 6);
 - Schedule 2 lists the conditions referred to in paragraph 4(4) that apply to the following:
 - a PH that has been approved by the Minister as an OHQ, IPC or a RDC and has been approved incentive for OHQ, IPC or RDC;
 - a PH that has been approved by the Minister as an OHQ, IPC or a RDC and has not been approved incentive for OHQ, IPC or RDC.
 (See also Note 1 below.)

Note 1 (Amendments to this Order):

Amendments to this Order have been made via [Income Tax \(Exemption\) \(No. 8\) 2018 \(Amendment\) Order 2019](#) [P.U. (A) 43/2019] (Gazette date 19/2/2019) (reported in our e-CTIM TECH-DT [13/2019](#)). The words "which are located in 3 countries outside Malaysia" in paragraph 3(e) have been deleted. The other amendments are made to paragraph 7(1) and Schedule 2. The amendments are deemed to have effect from YA 2018.

Please refer to the (Amendment) Order for the full details.

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

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