
TECHNICAL

Direct Taxation

[INCOME TAX \(EXEMPTION\) \(NO.11\) ORDER 2018 \[P.U. \(A\) 390/2018\]](#)

General

This Order provides exemption from income tax on the income of a qualifying company undertaking a qualifying activity in the Sabah Development Corridor, and meets with the requirements set out in this Order.

This Order was gazetted on 31 December 2018 (reported in our [e-CTIM TECH-DT 3/2019](#)) and is deemed to have effect from 20/11/2012.

Definitions

Among the words used in this Order that are defined in paragraph 2 are the following:

Word	Meaning
Qualifying activity (QA)	An activity determined by the Minister as specified in Sched. 1 and Sched. 2 of this Order.
Sabah Development Corridor (SDC)	Has the same meaning assigned to it in the Sabah Economic Development and Investment Authority Enactment 2009.
Related company	Has the same meaning assigned to it in section 2(1) of the Promotion of Investments Act 1986.
Except for paragraphs 5(1) and (2), paragraphs 46 and 55 of Sched. 3 of the ITA shall apply in relation to any reference to “incurred” in this Order and the word “incurs” shall be construed accordingly. [paragraph 2(2)]	

Qualifying company (QC) (paragraph 3)

QC means a company which –

- (a) is incorporated under the Companies Act 2016,
- (b) is resident in Malaysia; and
- (c) has obtained approval from the Minister to undertake a QA for the SDC.

Qualifying capital expenditure (QCE) (paragraph 4)

QCE referred to in this Order is a capital expenditure as set out in column (4) of Sched. 1 and Sched. 2 incurred by a QC in relation to a building, factory, machinery or plant used in Malaysia solely for the purpose of carrying on a QA, but (unless otherwise stated in the Schedules) does not include capital expenditure incurred on the following:

- (a) any building which is used as living accommodation for a person; or
- (b) any machinery or plant which is provided wholly or partly for the use of a director or an individual who is a member of the management, administration or clerical staff of the QC.

Exemption [paragraph 5(1)]

Exemption from the payment of income tax may be granted to a QC in the basis period for a YA in respect of statutory income (SI) derived from a QA in an amount equal to 100% of the QCE incurred by the QC. Some salient points to note from paragraph 5 are highlighted below:

Paragraph

Provision

- 5(2) - The exemption shall be for a period of
 (a) 5 consecutive years in respect of the QA as specified in Sched. 1; or
 (b) 10 consecutive years in respect of QA as specified in Sched. 2,
 commencing from the date of the first QCE incurred by the QC as determined by the *Sabah Economic Development and Investment Authority* (SEDIA) (defined in paragraph 5(9)).
- 5(3) - The commencement date referred to in paragraph 5(2) shall not be earlier than 3 years before the date the application for exemption is made, and not earlier than 20/11/2012.
- 5(5) - An application for exemption under this Order shall be made to the Minister through the SEDIA on or after 20/11/2012 but not later than 31/11/2020.
- 5(7) - An exemption granted under this Order is subject to the QC complying with all conditions imposed by the Minister relating to the exemption.
 (Please refer to the Order for details of the other provisions under [paragraph 5.](#))

Statutory Income (SI)

Provisions relating to the word “statutory income” for the purpose of this Order are found in [paragraph 6](#). Among the important points to note are the following:

Paragraph

Provision

- 6(1) - the SI that is exempted under paragraph 5(1) in the basis period for a year of assessment (YA) is determined after deduction allowances under Sched. 3 of the ITA notwithstanding that no claim for such allowances has been made.
- 6(3) - where a QC has been granted exemption for a YA under this Order, an amount equal to the amount of allowance referred to in paragraph 6(1) shall be exempted from tax for that YA.
- 6(4) - where (due to insufficiency or absence of SI) exemption cannot be granted or cannot be granted to the QC in the full amount to which it is entitled, then so much of the amount that cannot be granted for that YA shall be granted exemption for the first subsequent YA for the basis period for which the QC has SI from the QA, and for the subsequent year/s until exemption is granted in respect of the whole amount to which the QC is entitled.

Other Provisions

The following briefly summarizes the other paragraphs of the Order:

Paragraph

Provision

- 7 Disposal of building, factory, machinery or plant within two years
 - where the assets (of the kind named above) on which QCE were incurred by the QC, were disposed of within 2 years from the date of acquisition of the asset, the exemption granted in respect of SI equal to the amount of the allowance for such QCE shall be withdrawn in the basis period for the YA in which the asset is disposed of.
- 8 Determination of QCE for building, factory, machinery or plant disposed to related company
 - Where the relevant asset in respect of which an exemption has been applied by the

QC, is disposed of to a *related company*, the amount of QCE incurred by the related company shall be deemed to be zero.

9 Withdrawal of exemption

- Empowers the Minister to withdraw the exemption granted if the QC fails to comply with any of the conditions imposed.

10 Separate source and separate account

- Where a QC carries on an activity (other than a QA) in addition to the QA and is granted an exemption under paragraph 5(1), each activity must be treated as a separate and distinct source of income and separate accounts must be kept for each activity.

11 Non-application

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

Schedules

The schedules contain the following:

Schedule 1 – Lists the following:

Column	Heading
(1)	No. (1. to 8.)
(2)	Sector (8 sectors listed)
(3)	Qualifying activity
(4)	Qualifying capital expenditure

Schedule 2 – Similar to Schedule 1 but lists only one product in column (2), as shown below:

Column	Heading
(1)	No. (1.)
(2)	Halal product/ process
(3)	Qualifying activity
(4)	Qualifying capital expenditure

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

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