
TECHNICAL

Direct Taxation

[INCOME TAX \(EXEMPTION\) \(NO.12\) ORDER 2018 \[P.U. \(A\) 391/2018\]](#)

General

This Order provides exemption from income tax on the income of a qualifying company (QC) undertaking a qualifying activity (QA) in the Sabah Development Corridor (SDC) and meets with the requirements set out in this Order. This is an alternative exemption to that which is granted to qualifying companies under the [Income Tax \(Exemption\) \(No. 11\) Order 2018](#) [P.U.(A) 390/2018] ("Order (No. 11)") (refer to our [e-CTIM TECH-DT 117/2019](#)) as the two incentives are mutually exclusive.

This Order was gazetted on 31 December 2018 (refer to our [e-CTIM TECH-DT 3/2019](#)) and is deemed to have effect from 20/11/2012 except for paragraphs 3(1)(b) and 3(1)(c), paragraphs 4(6) and 4(7) and paragraph 5, which are deemed to have effect from 16/10/2017.

Definitions

The words that are found in paragraph 2 of this Order are the same as found in paragraph 2 of the Order (No. 11) and they are similarly defined. (Refer to our above mentioned [e-CTIM TECH-DT 117/2019](#)).

Qualifying company [paragraph 3(1)]

QC means a company which is incorporated under the Companies Act 2016, is resident in Malaysia and approved by the Minister, and meets the following requirements:

- (a) carries on a QA in SDC;
- (b) has an approved adequate number of full time employees in SDC to carry on the QA; and
- (c) incurs an approved adequate amount of annual operating expenditure to carry on the QA or an approved adequate investment in fixed assets in SDC to carry on the QA.

Exemption [paragraph 4(1)]

Exemption from the payment of income tax may be granted to a QC in the basis period for a year of assessment (YA) in respect of statutory income (SI) derived from a QA. Some salient points to note from paragraph 4 are highlighted below:

<u>Paragraph</u>	<u>Provision</u>
4(2)	<p>- The exemption shall be for a period of –</p> <ul style="list-style-type: none">(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, <p>commencing from the first YA in which the QC derives its SI from the QA (referred to as "the exempt years of assessment").</p>
4(3)	<p>- An application for exemption under this Order shall be made to the Minister through the Sabah Economic Development and Investment Authority (SEDIA) (defined in paragraph 4(10)) on or after 20/11/2012 but not later than 31/11/2020.</p>
4(5)	<p>- An exemption granted under this Order is subject to the QC complying with all conditions imposed by the Minister relating to the exemption.</p>
4(6)	<p>- Subject to paragraph 4(7), where a QC has been granted exemption under this Order on or before 16/10/2017, the requirements under paragraphs 3(1)(b) and 3(1)(c) shall not apply to the QC until 30/6/2021.</p>
4(7)	<p>- Where the QC carries on a new QA after 6/10/2017, paragraph 4(6) shall not apply and the QC shall be granted exemption under paragraph 4(1) in relation to the</p>

new QA, until 31/12/2018.

- 4(8) - Where a QC has been granted exemption under this Order after 16/10/2017, the requirements under paragraphs 3(1)(b) and 3(1)(c) shall not apply to that QC until 31/12/2018.

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 QC derived from a QA is to be excluded in ascertaining SI which is exempted: (a) <i>royalties and other income derived*</i> on or after 1/7/2018 but before 1/7/2021 from <i>new intellectual property rights*</i> that <i>the QC owns</i> ; and (b) royalties and other income derived on or after 1/7/2021 from all <i>IP rights*</i> that the QC owns*. * The meanings of the terms and phrases (in italics) are explained in paragraph 5(2) .
5(3)	- Any IP excluded as stated above is subject to tax under the ITA.

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:

<u>Paragraph</u>	<u>Provision</u>
6(1)	- The SI that is exempted under paragraph 4(1) in the basis period for a YA is determined after deducting allowances under Sched. 3 of the ITA notwithstanding that no claim for such allowances has been made.
6(2)	- Where a building, factory, machinery or plant is used for the purpose of a QA as well as another activity (not a QA), the allowances under Sched. 3 of the ITA shall be deducted as is reasonable, having regard to the extent to which the asset is used for the purpose of each (qualifying and non-qualifying) activity.

Other Provisions

The following briefly summarizes the other paragraphs of the Order:

<u>Paragraph</u>	<u>Provision</u>
7 <u>Losses</u>	- Paragraph 7(1) provides for the carry forward of losses for deduction from the SI from the QA in the post-exempt years of assessment. “Losses” refer to any amount of adjusted loss incurred in relation to the QA – (a) from the YA in the basis period in which the QA referred to in paragraph 4(1) commences to the YA immediately prior to the exempt YAs; and (b) during the exempt YAs. Refer to paragraph 7(2) for other details.
8 <u>Withdrawal of exemption</u>	- Empowers the Minister to withdraw the exemption granted if the QC fails to comply with any of the conditions imposed.
9 <u>Separate source and account</u>	- Where a QC carries on another activity (other than a QA) in addition to the QA and is granted an exemption under paragraph 4(1), each activity must be treated as a separate and distinct source of income and separate accounts must be kept for each activity.
11 <u>Non-application</u>	- 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 qualifying activities for the following Sectors:

1. Creative
2. Shipping

Schedule 2 – Lists the qualifying activities for the following Sectors:

1. Hotel and resort
2. Manufacturing downstream livestock products and animal feed
3. Manufacturing downstream activities of palm oil products
4. Manufacturing downstream activities of medium and heavy industries
5. Education Hub
6. Marine downstream activities

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

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