

TECHNICAL

Direct Taxation

INCOME TAX (EXEMPTION) (NO. 6 & 7) 2016 (AMENDMENT) ORDERS 2018 [P.U. (A) 393 & 394/2018]

General

We refer to our [e-CTIM TECH-DT 90/2018](#) which highlighted the information provided by the Ministry of Finance on **Malaysia's Participation in the Forum on Harmful Tax Practices (FHTP)**. In line with Malaysia's commitment to FHTP, amendments to legislation relating to tax incentives that have been identified for FHTP evaluation have been gazetted. The following Amendment Orders that were gazetted on 31/12/2018 (refer to our [e-CTIM TECH-DT 3/2019](#)) relate to incentives for the East Coast Economic Region (ECER).

| P.U.(A) | Citation | Commencement Deemed to have effect from – |
|----------|--|--|
| 393/2018 | Income Tax (Exemption) (No. 6) 2016 (Amendment) Order 2018 | 16/10/2017 |
| 394/2018 | Income Tax (Exemption) (No. 7) 2016 (Amendment) Order 2018 | 16/10/2017 |

Main Amendments and Objectives

The table below highlights the *main* amendments in each Order, and the purpose of the amendment (in relation to compliance with FHTP requirements). Please refer to the Amendment Order for the wording of each amendment, as well as other amendments not highlighted here.

| P.U.(A) | Paragraph (#) of this Order | Amendment | Purpose/ Remarks |
|----------|--|--|--|
| 393/2018 | <i>Principal Order (PO) – Income Tax (Exemption) (No. 6) Order 2016 [P.U.(A) 159/2016]</i> | | |
| | 2 | Amends paragraph 3 of the PO by inserting paragraph (1A) after paragraph (1). | Lays down the conditions relating to the requirement for substantial activities for preferential tax treatment. |
| | 3(b) | Amends paragraph 5 by inserting new paragraphs (4A), (4B) and (4C) after paragraph (4) | Introduces grandfathering rules relating to compliance with above substance requirements that apply to existing companies enjoying this incentive. |
| | 4 | Inserts a new paragraph 5A after paragraph 5. | Excludes intellectual property (IP) income from exemption under this incentive. |
| | 5 | Amends the Schedule to the PO. | Item 3 under "Sector" [column (2)] is amended to read "Information, communication and technology related services". |
| 394/2018 | <i>PO – Income Tax (Exemption) (No. 7) Order 2016 [P.U.(A) 160/2016]</i> | | |
| | 2 | Same as for above Order | Same as for above Order. |
| | 3(b) | Same as for above Order | Same as for above Order. |

| P.U.(A) | Paragraph (#) of this Order | Amendment | Purpose/ Remarks | | | | | | | | | | | | | | |
|---------------|---|--|---|---------------|----------------|-----|----------------|-----|----------------------------|-----|--------------------|-----|---|-----|---|-----|---------------------------------------|
| | 4 | Same as for above Order | Same as for above Order. | | | | | | | | | | | | | | |
| | 5(a) and (b) | The existing Schedule is renumbered Schedule 1 | Item 3 under “Special Qualifying Activity” [column (2)] is amended to read “Information, communication and technology related services”. Item 11 and the particulars relating to it have been deleted. | | | | | | | | | | | | | | |
| | 5(c) | A new Schedule 2 is inserted after the renumbered Schedule 1 | Schedule 2 shows the following headings in each column: <table><tr><th><u>Column</u></th><th><u>Heading</u></th></tr><tr><td>(1)</td><td>No. (1. to 3.)</td></tr><tr><td>(2)</td><td>Exempt years of assessment</td></tr><tr><td>(3)</td><td>Exemption rate (%)</td></tr><tr><td>(4)</td><td>Types of product or special qualifying activity</td></tr><tr><td>(5)</td><td>Minimum amount of annual operating expenditure (RM)</td></tr><tr><td>(6)</td><td>Minimum number of full time employees</td></tr></table> | <u>Column</u> | <u>Heading</u> | (1) | No. (1. to 3.) | (2) | Exempt years of assessment | (3) | Exemption rate (%) | (4) | Types of product or special qualifying activity | (5) | Minimum amount of annual operating expenditure (RM) | (6) | Minimum number of full time employees |
| <u>Column</u> | <u>Heading</u> | | | | | | | | | | | | | | | | |
| (1) | No. (1. to 3.) | | | | | | | | | | | | | | | | |
| (2) | Exempt years of assessment | | | | | | | | | | | | | | | | |
| (3) | Exemption rate (%) | | | | | | | | | | | | | | | | |
| (4) | Types of product or special qualifying activity | | | | | | | | | | | | | | | | |
| (5) | Minimum amount of annual operating expenditure (RM) | | | | | | | | | | | | | | | | |
| (6) | Minimum number of full time employees | | | | | | | | | | | | | | | | |

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

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