
TECHNICAL

Direct Taxation

[INCOME TAX \(EXEMPTION\) \(NO.10\) ORDER 2018 \[P.U. \(A\) 389/2018\]](#)

General

This Exemption Order was gazetted on 31 December 2018 (refer to our [e-CTIM TECH-DT 3/2019](#) dated 9 January 2019). It provides exemption from income tax on statutory income of a Multimedia Super Corridor status (MSC status) company which meets with the requirements set out in this Order. It came into operation on 1 January 2019.

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 qualifying company in Malaysia to provide services in relation to promoted activities for Multimedia Super Corridor (MSC) as approved under the award of the MSC status.
Multimedia Super Corridor status	The MSC status awarded by the Government of Malaysia to the qualifying company.
<i>The meanings of words underlined below are provided in this paragraph.</i>	

Qualifying company (QC) (paragraph 3)

QC means a company incorporated under the Companies Act 2016 and resident in Malaysia which –

- (a) fulfils the following requirements:
 - (i) has not issued any invoice for the CIG activities in Malaysia on the date the application for the award of the MSC status is made: or
 - (ii) has 60% Malaysian equity ownership and has not issued any invoice for the CIG activities in Malaysia more than 12 months prior to the date the application for the MSC status is made;
- (b) has made an application to the Minister for the award of the MSC status on or after 1 January 2019; and
- (c) has been awarded the MSC status by the Government of Malaysia.

Exemption [subparagraph 4(1)]

Exemption from income tax may be granted to a QC in the basis period for a YA in respect of the statutory income (SI) derived from the CIG activities for a period of 5 years commencing from a date to be determined by the Minister.

Conditions for exemption [subparagraph 4(3)]

Exemption is granted subject to the QC complying with all conditions imposed by the Minister, as specified in the approval letter, which shall include the following:

- (a) The QC shall employ a minimum number of full time employees to carry on CIG activities as specified in [Schedule 2](#) (of this Order) or such other number as determined by the Minister;
- (b) The full time employees referred to above shall have a minimum amount of monthly base salary as specified in Schedule 2 or such other amount as determined by the Minister; and

- (c) The QC must incur a minimum amount of annual operating expenditure and investment in fixed asset to carry on the CIG activities as specified in Schedule 2 or such other amount as determined by the Minister.

Statutory Income (SI)

The qualifying factors relating to the word “statutory income” for the purpose of this Order are provided in [subparagraphs 4\(4\) to 4\(9\)](#). Among the important points to note are the following:

Subparagraph	Provision
4(4) -	The amount of SI derived from the CIG activities in the basis period for a YA which is exempted from income tax is either 100% or 70% of the SI, as approved by the Minister in accordance with Schedule 2 and as specified in the approval letter.
4(5) -	The Minister may determine that SI referred to in subparagraph 4(1) shall be <i>value added income</i> *.
4(8) -	SI that is exempted shall not include any income from royalty and other income derived from an <i>intellectual property right</i> * if it is receivable as consideration for the commercial exploitation of that right.

* The meanings of these words are given in subparagraphs 4(10)(a) to 4(10)(c)

Extension of exemption period and withdrawal of exemption

- Paragraph 5 provides for authority for the Minister to extend the exemption period and other matters relating to the application for extension and conditions for extension.
- Paragraph 6 provides for authority for the Minister to withdraw the exemption.

The following points are highlighted:

Subparagraph	Provision
5(1) -	The Minister may extend the exemption period for another period of 5 years subject to the QC complying with all the conditions specified in subparagraph 4(3).
6(1) -	The Minister may withdraw the exemption granted if the QC fails to comply with any of the conditions referred to in subparagraph 4(3) or any provisions under the ITA or this Order.

Other Provisions

- Paragraph 7 provides that where a QC carries on an activity (other than CIG activities) in addition to the CIG activities and is granted an exemption under subparagraph 4(1), each activity must be treated as a separate and distinct source of income and separate accounts must be kept for each activity.
- Paragraph 8 lists the situations wherein this Order is not applicable (i.e. where the QC has been granted, or made claims for, incentives provided under any of the legislation specified in this paragraph.)

Special Provision (Paragraph 9)

Subparagraph 9(1) provides for an *existing* QC to be exempted from income tax in the basis period for a YA, in respect of SI derived from CIG activities, for a period to be determined by the Minister. The conditions are set out in subsubparagraphs 9(2)(a) to 9(2)(d). The following are among the important points to note:

Subsubparagraph	Provision
9(2)(a) -	“Existing QC” means a company incorporated under the Companies Act 2016 and resident in Malaysia, which, prior to 1 January 2019, has been awarded the

MSC status and granted –

- (i) pioneer status under the Promotion of Investments Act 1986; or
- (ii) income tax exemption under the Income Tax (Exemption) (No. 2) Order 2015 [P.U. (A) 50/2015];

and the exemption period thereunder has not commenced, or has commenced but has not expired on or after 1 January 2019;

- 9(2)(b) - The CIG activities shall be the activities approved under the MSC status of the existing QC;
- 9(2)(c) - The percentage of the SI to be exempted shall be the percentage approved under the award of the MSC status of the existing QC.
- 9(2)(d) - All provisions under this Order shall apply to the existing QC, except subparagraphs 3(a) and (b) and subparagraphs 4(1), (4) and (5).
- 9(3) - Provides for authority to extend the exemption period of an existing QC which has ended, by the Minister, for a period of 5 years commencing from a date to be determined by the Minister.
- 9(4) - Provides for the conditions / requirements for granting of above extension and other matters relating the granting of extension of the exempt period.

Schedules

The schedules contain the following:

Schedule

- 1 List of promoted activities
- 2 Relevant information relating to exemption granted under this Order and details of requirements referred to in subsubparagraphs 4(3)(a) to (c).

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

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