

**TECHNICAL**

**Direct Taxation**

**[INCOME TAX \(EXEMPTION\) \(NO.9\) ORDER 2018 \[P.U. \(A\) 388/2018\]](#)**

**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 company carrying on a qualifying activity in relation to green technology and meets with all the requirements set out in this Order. This Order has effect from the year of assessment (YA) 2018.

**Definitions**

Meanings of words used in this Order are found in paragraph 2. Among them are the following:

Word	Meaning
Qualifying activity	An activity as provided under paragraph 4
New company	A qualifying company (QC) which has not carried out a qualifying activity (QA) prior to applying for an exemption under subparagraph 5(3).
Existing company	A QC which carries on a qualifying activity prior to applying for an exemption under subparagraph 5(3).
Qualifying company	A company as provided under paragraph 3.
<i>The meanings of words underlined below are provided in this paragraph.</i>	

**Qualifying activity**

“Qualifying activity” (QA) is defined in [paragraph 4](#) which refers to the Schedule to this Order. The Schedule lists the sectors that come within paragraph 4 and the types of activities related to each specified sector that qualifies for exemption under this Order.

**Qualifying company (paragraph 3)**

QC means a new company or an existing company incorporated under the Companies Act 2016 and resides in Malaysia, which –

- carries on a QA in relation to green technology approved by the Malaysian Green Technology Corporation for the purpose of its business;
- has a *green policy*\* related to environmental sustainability;
- has at least one *competent personnel*\* in green technology;
- has at least 5 full time employees in Malaysia to carry on the QA; and
- incurs an adequate amount of annual operating expenditure in Malaysia as approved to carry on the QA for the purpose of its business and that expenditure shall include local services provided by a *local service provider*\*.

\* These terms (in italics) are defined in subparagraph 3(2).

**Exemption (paragraph 5)**

Exemption from 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 for a period of 5 years or until YA 2020, whichever is the earlier (referred to hereinafter as “the exempt period”). (Subparagraph 5(1))

The following are some points to note from paragraph 5:

**Subparagraph**

**Provision**

- 5(2) - The exempt period shall commence from the YA where the date of the first

invoice in relation to the QA issued by the QC falls and shall not be earlier than:

- (a) – for a **new company**, 1 January 2018; or
  - (b) – for an **existing company**, the date of application for exemption is received by the Malaysian Investment Development Authority (MIDA).
- 5(3) - The application for exemption is made to the Minister through MIDA on or after 1 January 2018 but not later than 31 December 2020.
- 5(4) - The exemption is granted subject to the QC complying with all conditions imposed by the Minister in relation to the exemption

### Ascertainment of statutory income and exclusion of intellectual property (IP) income

Paragraph 6 provides for the exclusion of IP income from SI that is exempted while paragraph 7 deals with the ascertainment of the amount of SI that is exempted.

Among the important points to note are the following:

Subparagraph	Provision
6(1) -	The following IP income derived from a QA of the QC is to be excluded in ascertaining SI which is exempted: <ul style="list-style-type: none"><li>(a) royalties and other income derived on or after 1 July 2018 but before 1 July 2021 from <i>new intellectual property rights</i> that the QC owns; and</li><li>(b) royalties and other income derived on or after 1 July 2021 from all <i>IP rights</i> that the QC owns.</li></ul> <p>* These terms (in italics) are defined in subparagraph 6(2).</p>
6(4) -	Any IP income excluded (as stated above) is subject to tax under the ITA.
7(1) -	The SI to be exempted under subparagraph 5(1) is ascertained after deducting allowances under Schedule 3 of the ITA notwithstanding that no claim for such allowances has been made. <p>Other details relating to the process of ascertaining the amount of SI under subparagraph 5(1) are provided in <a href="#">subparagraphs 7(4) to (6)</a>.</p>

### Other Provisions

The following summarizes briefly the provisions of paragraphs 8 to 11.

Paragraph	Provision
8 -	Empowers the Minister to withdraw the exemption granted if the QC fails to comply with any of the conditions imposed in relation to the exemption.
9 -	The minister may, at any time (except where a QC fails to comply with any condition imposed in relation to the exemption), allow the QC to surrender the exemption granted, by notice in writing to the Minister through MIDA.
10 -	Where a QC carries on an activity (other than a QA) in addition to the QA and is granted an exemption under subparagraph 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 -	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 legislation specified in this paragraph.

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

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