

TECHNICAL

Direct Taxation

EXEMPTION ORDERS RELATING TO MERGERS AND ACQUISITION OF SMALL SERVICE PROVIDERS

1. *Background*

The 2013 Budget proposed to provide incentives for small service providers to merge into larger entities in order to strengthen their global competitiveness in view of the liberalisation of the services sector.

2. The following Orders were gazetted on 11 September 2013 to give effect to the above proposal:

P.U.(A)	Citation	Effective from
285	Stamp Duty (Exemption) (No. 11) Order 2013	From 3 July 2012 till 2 July 2015
286	Income Tax (Exemption) (No. 11) Order 2013	Year of assessment (YA) 2012
287	Income Tax (Exemption) (No. 12) Order 2013	YA 2012

3. **Stamp Duty (Exemption) (No. 11) Order 2013 [P.U.(A) 285/2013]**

Main Provisions of P.U.(A) 285/2013	Para (No.)
Exemption Exemption from payment of stamp duty is granted in respect of instruments (as specified in the First Schedule of the Order) executed on or after 3 July 2012 but not later than 2 July 2015, by a <i>qualifying person</i> pursuant to a scheme of merger or scheme of acquisition which has been approved by the Small and Medium Enterprises Corporation Malaysia (SME Corp) and shall be carried out between qualifying persons on or after 3 July 2012 but not later than 2 July 2015.	2(1), 2(2)(b) and 3.
Qualifying person (QP) A QP is a person who is resident in Malaysia and carries on a business of providing <i>qualifying services</i> (as specified in Second Schedule), which <ul style="list-style-type: none"> (i) is fully and directly owned by a citizen; (ii) has achieved annual sales turnover of less than RM5 million; or (iii) has less than 50 full-time employees; 	2(2)(a)
Qualifying services (QS) The QS specified in Second Schedule of the Order are as follows – <ul style="list-style-type: none"> 1. Professional services (accounting and taxation; medical and dental specialists; architectural; engineering) 2. Courier services; 3. Technical and vocational secondary education services (generic and special needs) as certified by the relevant Ministry; 4. Skills training services as certified by the relevant Ministry. 	Schedule 2

4. Income Tax (Exemption) (No. 11) Order 2013 [P.U.(A) 286/2013]

Main Provisions of P.U.(A) 286/2013	Para (No.)
<p>Exemption</p> <p>Exemption from payment of income tax is granted to a <i>qualifying company</i> (QC) in respect of statutory income derived from a <i>business of qualifying services</i>, for a period of 5 consecutive years of assessment commencing from the date the merger is completed</p>	4(1)
<p>Eligibility</p> <ul style="list-style-type: none"> • The Order applies to a <i>qualifying company</i> (QC) – <ul style="list-style-type: none"> (a) which carries on a <i>business of qualifying services</i>* (b) which is established pursuant to a <i>scheme of merger</i>*; (c) whose scheme of merger has been verified by the SME Corp; and (d) whose merger is completed on or after 3 July 2012 but not later than 2 July 2015. • A QC is <u>disqualified</u> from exemption for a YA if the QC – <ul style="list-style-type: none"> (a) has made a claim for reinvestment allowance; (b) has been granted any incentive under Promotion of Investments Act 1986; (c) has been granted exemption under section 127 of the ITA; (d) has claimed deduction under any rules made under section 154 of the ITA, other than Schedule 3, ITA, allowances. • Qualifying company is defined as <ul style="list-style-type: none"> (a) a <i>small and medium enterprise</i>* incorporated as a company under the Companies Act 1965; and (b) resident in Malaysia. 	2 8 3
<p>Determination of Statutory Income (SI)</p> <p>SI is determined as follows:</p> <ul style="list-style-type: none"> • For a QC with paid-up capital in respect of ordinary shares of RM2,500,000 and less after the merger is completed, the method of determination of SI is set out in paragraph 4(2)(a). • For a QC with paid-up capital in respect of ordinary shares of more than RM2,500,000 after the merger is completed, the method of determination of SI is set out in paragraph 4(2)(b). 	4(2)
<p>Qualifying services (QS)</p> <p>These are listed in the Schedule of this Order and are the same as those found in the <i>Stamp Duty (Exemption) (No. 11) Order 2013</i>.</p>	Schedule in this Order
<p>Chargeable income (CI)</p> <p>The CI of the QC from its business sources of QS and non-QS as well as any other sources in the basis period for a YA where the scheme of merger falls is the SI from those sources, and any deduction under section 43(2) of the Income Tax Act 1967 (ITA) is disregarded.</p> <p>In the subsequent years of assessment following the YA where the scheme of merger falls, the CI shall be aggregate of SI from each source reduced by any deduction under sections 43(2) and 44(1) of the ITA, in arriving at CI.</p>	6

5. Income Tax (Exemption) (No. 12) Order 2013

Main Provisions of P.U.(A) 287/2013	Para (No.)
<p>Exemption</p> <p>Exemption from payment of income tax is granted to a QC in respect of statutory income for the basis period for a YA from <i>a business of qualifying services</i>, for a period of 5 consecutive years of assessment commencing from the date the acquisition is completed</p>	4(1)
<p>Eligibility</p> <ul style="list-style-type: none"> The Order applies to a <i>qualifying company</i> (QC) – <ul style="list-style-type: none"> (a) which carries on a <i>business of qualifying services</i>* (b) which acquires a <i>small and medium enterprise</i>* carrying on a business of same QS pursuant to a <i>scheme of acquisition</i>*; (c) whose scheme of acquisition has been verified by the SME Corp; and (d) whose acquisition is completed on or after 3 July 2012 but not later than 2 July 2015. A QC is <u>disqualified</u> from the exemption for a YA under the same circumstances as those provided in Income Tax (Exemption) (No.11) Order 2013 [P.U.(A) 286/2013]. A Qualifying company (QC) is defined as <ul style="list-style-type: none"> (a) a small and medium enterprise incorporated as a company under the Companies Act 1965;and (b) resident in Malaysia. <p>* These terms are defined in Paragraph 3 of this Order</p>	<p>2</p> <p>8</p> <p>3</p>
<p>Determination of Statutory Income (SI)</p> <p>SI is determined as follows:</p> <ul style="list-style-type: none"> For a QC with paid-up capital in respect of ordinary shares of RM2,500,000 and less after the acquisition is completed, the method of determination of SI is set out in paragraph 4(2)(a). For a QC with paid-up capital in respect of ordinary shares of more than RM2,500,000 after the acquisition is completed, the method of determination of SI is set out in paragraph 4(2)(b). 	4(2)
<p>Qualifying services (QS)</p> <p>These are listed in the Schedule in this Order and are the same as those found in the <i>Stamp Duty (Exemption) (No. 11) Order 2013</i>.</p>	Schedule in this Order
<p>Chargeable income (CI)</p> <p>The CI of the QC from its business sources of QS and non-QS as well as any other sources for a YA is the SI from that source/s, reduced by any deduction allowed under sections 43(2) and 44(1) of the ITA, provided that the shareholders of the company must remain “substantially the same” in the time frame referred to. Please refer to Paragraph 6 of the Order for further details.</p> <p>In addition, in making the deduction under section 43(2) of the ITA, any adjusted loss from the business of the enterprise acquired by the QC will be disregarded.</p>	6

For full details of the provisions in each of the Exemption Orders, please refer to the respective Orders at the [Federal Government Gazette](#) website.

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any concern or comments you may have on the Orders.

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