

TECHNICAL

Direct Taxation

TAX INCENTIVE FOR EAST COAST ECONOMIC REGION (ECER) – TAX EXEMPTION FOR AN APPROVED DEVELOPER

[Income Tax \(Exemption\) \(No. 8\) Order 2016 \[P.U. \(A\) 161/2016\]](#)

The above Order was gazetted on 13 June 2016. It is deemed to have come into operation on 13 June 2008.

The salient points in the Order are summarized below:

Definitions (Paragraphs 2 – 3)

The meanings of the following words are provided in paragraphs 2 - 4:

Para	Word	Meaning
2	building	A building which is constructed by an approved developer and located in the ECER
	disposal	Sell, convey, transfer, assign, settle or alienate, whether by agreement or by force of law, including the withdrawal of stock in trade pursuant to S24(2) of the ITA.
	Industrial park (IP)	An industrial park within the ECER
	East Coast Economic Region (ECER)	Has the same meaning as assigned in the East Coast Economic Development Council Act 2008
	free zone (FZ)	Any area located within the ECER which is declared as a free commercial zone or free industrial zone under the Free Zones Act 1990
3	Approved developer (AD)	<p>An AD is a company which –</p> <ul style="list-style-type: none"> (a) is incorporated under the Companies Act 1965 and resident in Malaysia; (b) is approved by the Minister; (c) purchases or acquires any right over part or the whole of the land within the ECER; and (d) which carries on the development of an IP approved by the ECER Development*, or a free zone <p>* There may be a typo here as it appears that a word has been omitted.</p>

Exemption (paragraph 4)

- i. Exemption from income tax is granted in respect of statutory income (SI) of an approved developer for the basis period for a year of assessment (YA), which is derived from the following activities:
 - (a) the disposal of any right over any land, or disposal of a building, or rights over a building or part of a building located in an IP or FZ; or
 - (b) the rental of a building or part of a building located in an IP or FZ.
- ii. The period of exemption is 10 consecutive years of assessment (YA) commencing from the first YA in which the AD derives SI from the disposal or rental activities (which is referred to as “exempt years of assessment” in this Order).
- iii. The exemption applies to any disposal or rental activity, which will be/ has been carried on in the ECER not more than 1 year prior to the date of application for exemption.
- iv. An application for exemption is made to the Minister through the ECER Development Council* on or after 13 June 2008 but not later than 31 December 2020.

* This is defined as the council established under the ECER Development Council Act 2008.

Please refer to [paragraph 4](#) for other conditions for exemption.

Statutory income (paragraph 5)

- i. SI for the purpose of exemption is determined after deducting allowances under Sch. 3 of the ITA, notwithstanding that no claim for such allowances has been made.
- ii. Where an asset used for the purposes of an activity referred to in paragraph 4(1) of this Order, is also used in another (non-qualifying) activity, the amount of allowances allowed to be deducted under Schedule 3 of the ITA must be “reasonable” having regard to the extent to which the asset is used for the purposes of the activity that qualifies for exemption.

Losses (paragraph 6)

- i. Any amount of adjusted loss which is incurred prior to or during the exempt years of assessment arising from the activity referred to in paragraph 4(1)(b) of this Order, shall be carried forward and deducted from the SI from that activity in the post-exempt year or years of assessment until the whole amount of adjusted loss is fully deducted from SI of that respective activity.
- ii. Any amount of adjusted loss which is utilized for a YA as stated above is disregarded for the purposes S43(2) and S44(2) of the ITA.

Special provision for AD

The income of the AD derived from the activity referred to in paragraph 4(1)(a) of this Order shall be subjected to the Income Tax (Property Development) Regulations 2007 [P.U. (A) 277/2007].

Other matters (paragraphs 8 – 10)

- i. The exemption may be withdrawn if the AD fails to comply with any condition imposed in relation to the exemption. If the exemption is withdrawn, the exemption granted on any amount of SI under paragraph 4(1) of this Order is deemed to have not been given to the AD from the first year of the exempt years of assessment. (Refer to point (ii) under “Exemption” above.)
- ii. If the AD carries on an activity which qualifies for exemption under this Order as well as another (non-qualifying) activity, each activity is to be treated as a separate and distinct source of income. Separate accounts must be maintained for each activity. (Paragraph 9)
- iii. The disposal of a building held for investment by the AD from which it has derived rental income which was exempted under this Order, is subject to tax under the Real Properties Gains Tax Act 1976. (Paragraph 10)

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

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