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- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)

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Restriction of Tax Deduction on Payments Made to Labuan Company by Resident

Following the 2019 Budget announcement, the Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 has been gazetted to prescribe the amount not allowed for tax deduction in respect of payments made by a resident to a Labuan company as shown below:-

Type of Payment	Amount not allowed for deduction
Interest payment	33% of the amount of payment
Lease rental	33% of the amount of payment
Other payments	97% of the amount of payment

The above Rules have effect from 1st January 2019.

Requirements for Insurer / *Takaful* Operator Carrying on Re-insurance / Re-*takaful* Business

The amendments to Section 60A / Section 60AA(1) of the Income Tax Act 1967 [“the Act”] under the Finance Act 2018 provides that an insurer / *takaful* operator carrying on re-insurance / re-*takaful* business will be subject to a standardised tax rate of 8%, subject to the requirements as prescribed by the Minister.

Following the above amendments, the Income Tax (Requirements for Insurer Carrying on Re-insurance Business) Rules 2018 and Income Tax (Requirement for *Takaful* Operator Carrying on Re-*takaful* Business) Rules 2018 have been gazetted which stipulates that the following requirements must be satisfied:-

- has at least 10 (for insurer) or 5 (for *takaful* operator) full-time employees in Malaysia; and
- incurs an annual operating expenditure of at least RM4,000,000 in Malaysia.

“Full-time employees” means high-skilled staff who are managers, professionals, technicians or associate professionals involved in formulating, planning, organising and executing policies, conducting research or applying scientific methods.

The above Rules shall have effect from the year of assessment [“YA”] 2019.

Hyperlinks

➤ [Income Tax \(Deductions Not Allowed for Payment Made to Labuan Company by Resident\) Rules 2018](#)

➤ [Income Tax \(Requirements for Insurer Carrying on Re-insurance Business\) Rules 2018](#)

➤ [Income Tax \(Requirements for *Takaful* Operator Carrying on Re-*takaful* Business\) Rules 2018](#)

Hyperlinks

Malaysia's Participation in FHTP

As a member of the Forum on Harmful Tax Practices ["FHTP"] and commitment to implement the Base Erosion and Profit Sharing ["BEPS"] Action 5 introduced by the Organisation of Economic Co-operative and Development ["OECD"], various statutory orders pertaining to companies enjoying tax incentives have been issued to address the transition into the new regime.

Two (2) main focuses emphasized in the international tax standard are as follows:-

- i. Substantive Requirements
 - The qualifying company must have:-
 - adequate number of full-time employees; and
 - adequate amount of annual operating expenditure or investment in fixed assets,
 to carry on the qualifying activity ["QA"] or core income generating activity (as the case may be).
- ii. Exclusion of Intellectual Property ["IP"] Income
 - In ascertaining the income of the qualifying company which qualifies for tax relief, the following shall be excluded:-
 - royalty and other income derived on or after 1st July 2018 but before 1st July 2021 from new IP rights, but not from an existing IP right, that the company owns; and
 - royalty and other income derived on or after 1st July 2021 from all IP rights that the company owns.
 - "IP right" refers to a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable.
 - "existing IP right" refers to an IP right in relation to the QA or core income generating activities (as the case may be) of the qualifying company that comes into ownership of the qualifying company before 1st July 2018.
 - "new IP right" refers to an IP right in relation to the QA or core income generating activities (as the case may be) of the qualifying company that:-
 - comes into the ownership of the qualifying company on or after 1st July 2018; or
 - comes into the ownership of the qualifying company from 16th October 2017 to 30th June 2018 as a result of an acquisition by the qualifying company, directly or indirectly, from a related company.

Further details of the various statutory orders issued recently pertaining to companies enjoying various tax incentives (such as an approved company for pioneer status, principal hub, Bionexus / Multimedia Super Corridor / Iskandar Development Region / East Coast Economic status company and Green Technology company) are provided in the ensuing paragraphs.

Hyperlinks

- [Promotion of Investments \(Exclusion of Income for MSC Status Company\) Regulations 2018](#)

Exclusion of Income for MSC Status Company

In compliance with the OECD's BEPS Action 5 and following the amendments to Section 21E(2A) of the Promotion of Investments Act 1986 ["PIA 1986"] to exclude income derived from IP right for pioneer status incentive as announced in the 2019 Budget, the Promotion of Investments (Exclusion of Income for MSC Status Company) Regulations 2018 has been gazetted to include similar requirements.

The Regulations apply to a MSC status company which has been granted pioneer status under the PIA 1986 on or before 30th June 2018.

Salient points of the above Regulations are as follows:-

- i. Exclusion of IP Income
 - In ascertaining the income of a MSC status company for the purpose of tax relief, the following shall be disregarded:-
 - royalty and other income derived for the period from 1st July 2018 to 30th June 2021 from new IP rights, that the MSC status company owns; and
 - royalty and other income derived on or after 1st July 2021 from all (both new and existing) IP rights that the MSC status company owns.
- i. Exclusion of Non-IP Income
 - In ascertaining the income of an MSC status company that has been granted pioneer status on or before 16th October 2017, for the purpose of tax relief, the following shall be disregarded:-
 - Non-IP income derived after 30th June 2021; and
 - Non-IP income derived after 31st December 2018 from any promoted activity approved after 16th October 2017 as the pioneer business of the MSC status company.
 - In ascertaining the income of an MSC status company which has been granted pioneer status after 16th October 2017, non-IP income derived after 31st December 2018 shall be disregarded.
 - "Non-IP income" means income derived from the pioneer business of the MSC Status company which is not an income derived from the IP rights as defined in the above Regulations.

The above Regulations is deemed to have come into operation on 1st July 2018.

Hyperlinks

Promoted Activities and Promoted Products for High Technology Companies

The Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) Order 2012 stipulates the list of promoted activities and promoted products that qualify for tax incentives under PIA 1986 (*Note*).

In line with the amendments to Section 21E(2A) of the PIA 1986, the Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) (Amendment) Order 2018 has been gazetted to amend the above principal Order on the exclusion of IP income.

In ascertaining the income of a high technology company arising from promoted activities and promoted products of the high technology company, the following shall be disregarded:-

- royalty and other income derived for the period from 1st July 2018 to 30th June 2021 from new IP rights that the high technology company owns; and
- royalty and other income derived on or after 1st July 2021 from all IP rights that the high technology company owns.

The above amendment Order is deemed to have come into operation on 1st July 2018.

Note: For detailed list of the promoted activities and promoted products, kindly refer to our *Tax Flash – April 2012 issue*.

Determination of Assets under Section 29B of the PIA 1986 in Respect of MSC Status Companies

The Promotion of Investments (Determination of Assets under Section 29B in respect of MSC Status Companies) Order 2001 stipulates the assets as determined by the Minister for which capital expenditure incurred in respect thereof qualifies for investment tax allowance.

The Promotion of Investments (Determination of Assets under Section 29B in respect of MSC Status Companies) (Revocation) Order 2018 has been gazetted to provide for revocation of the above principal Order.

Under the transitional provisions of the revocation Order, any investment tax allowance given under Section 29B of the PIA 1986 to any MSC status companies immediately before this revocation Order comes into operation (i.e. 1st January 2019) shall be continued.

The above revocation Order is deemed to have come into operation on 1st January 2019.

➤ [Promotion of Investments \(Promoted Activities and Promoted Products for High Technology Companies\) \(Amendment\) Order 2018](#)

➤ [Tax Flash – April 2012](#)

➤ [Promotion of Investments \(Determination of Assets under Section 29B in Respect of MSC Status Companies\) \(Revocation\) Order 2018](#)

Hyperlinks

Tax Exemption for MSC Status Companies in Respect of Statutory Income from Core Income Generating Activities

The Income Tax (Exemption) (No. 10) Order 2018 has been gazetted to provide tax exemption to a qualifying company (as defined in this Order), i.e. a MSC status company in respect of 70% or 100% of the statutory income derived from the core income generating activities for a period of 5 years beginning from the date determined by the Minister. The MSC status company is to request for the determination of the commencement date of the exemption period within 24 months from the date of the award of the MSC status.

Salient points of the above Order are as follows:-

- i. To be eligible for the above incentive, the following substantive requirements must be fulfilled:-
 - must have adequate number of full-time employees with certain minimum amount of monthly salary; and
 - incurs an adequate amount of annual operating expenditure and investment in fixed assets to carry on the core income generating activities.
- ii. Exclusion of IP Income
 - In ascertaining the statutory income of the MSC status company, the royalty and other income derived from an IP right if it is receivable as consideration for the commercial exploitation of that right shall be excluded.
- iii. The Minister of Finance may extend the exemption period for another period of 5 years, subject to the compliance with all the conditions imposed, including the substantive requirements mentioned in (i) above. Application for extension of the exemption period shall be made by the MSC status company not later than 30 days before the expiry of the exemption period.
- iv. The MSC status company must maintain a separate account for the income derived from the core income generating activities for the basis period for each year of assessment and each core income generating activities shall be treated as separate and distinct source of income.

The above Order is deemed to have come into operation on 1st January 2019.

- [Income Tax \(Exemption\) \(No.10\) Order 2018](#)

Hyperlinks

Tax Exemption for MSC Status Companies in Respect of Statutory Income from QA

Pursuant to the Income Tax (Exemption) (No. 2) Order 2015, tax exemption is given to a qualifying company (as defined in the amendment Order) i.e. a MSC status company carrying out QA outside or within the MSC cyber city or cyber centre in respect of 70% of the statutory income derived from the QA for a period of 5 years [“exemption period”] beginning from the date determined by the Minister.

The Income Tax (Exemption) (No. 2) 2015 (Amendment) Order 2018 has been gazetted to amend the above principal Order. Salient amendments made are as follows:-

- i. The principal Order is deemed to have effect from the YA 2015 until 30th June 2021.
- ii. To be eligible for the above incentive, the following substantive requirements must be fulfilled:-
 - must have an adequate number of full-time employees; and
 - incurs an adequate amount of annual operating expenditure or investment in fixed assets to carry on the QA.
- iii. Where a MSC status company has been granted an exemption on or before 16th October 2017, the substantive requirements in (ii) above shall not apply until 30th June 2021.
- iv. Where a MSC status company carries on a new QA, has been granted an exemption on after 16th October 2017, the substantive requirements in (ii) above shall not apply until 31st December 2018.
- v. Exclusion of IP Income
 - In ascertaining the income of the MSC status, the following shall be disregarded:-
 - royalty and other income derived for the period from 1st July 2018 to 30th June 2021 from new IP rights that the MSC status company owns; and
 - royalty and other income derived on or after 1st July 2021 from all IP rights that the MSC status company owns.
 - Such IP income is subject to tax under the Act
- vii. The Minister may on or before 30th June 2018 extend the exemption period for another period of 5 years.

The amendment Order is deemed to have come into operation from 1st July 2018 until 30th June 2021 except for paragraph 2 and subparagraph 5(b) of the said Order which are effective 31st December 2018.

Note: For further information relating to the exemption of income under the previous Income Tax (Exemption) (No. 2) Order 2015, please refer to our Tax Flash – April 2015 issue.

➤ [Income Tax \(Exemption\) \(No. 2\) 2015 \(Amendment\) Order 2018](#)

➤ [Tax Flash – April 2015](#)

Hyperlinks

Tax Incentives for PH

Further to the Guidelines issued by Malaysian Investment Development Authority ["MIDA"] on 6th April 2015 and 7th July 2017 (revised) on tax incentives for Principal Hub ["PH"], the following statutory orders have been gazetted:-

- Income Tax (Exemption) (No.6) Order 2018
- Income Tax (Exemption) (No.7) Order 2018
- Income Tax (Exemption) (No.8) Order 2018

A PH is a locally incorporated company that uses Malaysia as a base for conducting its regional or global business and operation, and to manage, control and support its key functions including management of risks, decision making, strategic business activities, trading, finance, management and human resources.

Salient points of the above Orders are as follows:-

- i. Income Tax (Exemption) (No. 6) Order 2018
 - Tax exemption is granted to the PH on the value-added income (determined based on a prescribed formula) derived from core income generating activities (i.e. qualifying services or qualifying trading activities) for a period of 5 consecutive years of assessment.
 - In ascertaining the statutory income of a PH, the IP income derived on or after 1st July 2018 to 30th June 2021 from new IP rights that the PH owns and on or after 1st July from all IP rights that the PH owns shall be excluded. Such IP income is subject to tax under the Act.
 - To be eligible for the above incentive, the following conditions must be fulfilled, among others:-
 - the company is already operating in Malaysia.
 - must have adequate number of full-time new employees.
 - incurs adequate amount of annual operating expenditure in Malaysia.
 - Application of exemption must be submitted to MIDA from 1st January 2018 to 31st December 2020.
- ii. Income Tax (Exemption) (No. 7) Order 2018
 - Tax exemption is granted on the statutory income (determined based on a prescribed formula) derived from core income generating activities (i.e. qualifying services or qualifying trading activities) for a period of 5 consecutive years.
 - In ascertaining the statutory income of a PH, the IP income derived on or after 1st July 2018 to 30th June 2021 from new IP rights and on or after 1st July 2021 from all IP rights from the core income generating activities shall be excluded. Such IP income is subject to tax under the Act.

➤ [Income Tax \(Exemption\) \(No. 6\) Order 2018](#)

➤ [Income Tax \(Exemption\) \(No. 7\) Order 2018](#)

Hyperlinks

- To be eligible for the above incentive, the following conditions must be fulfilled, among others:-
 - does not have an existing entity or related entity in Malaysia which carries on any qualifying services in Malaysia.
 - must have adequate number of full-time new employees.
 - incurs adequate amount of annual operating expenditure.
 - The Minister may allow the PH to surrender the exemption granted under this Order by providing notice in writing to the Minister through MIDA, except in situations where the PH fails to comply with any conditions imposed.
 - The surrender of the exemption shall take effect from the year of assessment in which the application for the surrender of the exemption is received by MIDA.
 - Application of exemption must be submitted to MIDA from 1st January 2018 to 31st December 2020.
- iii. Income Tax (Exemption) (No. 8) Order 2018
- Tax exemption is granted to the PH on the value-added income (determined based on a prescribed formula) derived from core income generating activities (i.e. qualifying services or qualifying trading activities) for a period of 5 consecutive years.
 - In ascertaining the statutory income of a PH, the IP income derived on or after 1st July 2018 to 30th June 2021 from new IP rights and on or after 1st July 2021 from all IP rights from the core income generating activities shall be excluded. Such IP income is subject to tax under the Act.
 - To be eligible for the above incentive, the following conditions must be fulfilled, among others:-
 - the company is already operating in Malaysia.
 - the company has been approved as an operational headquarters [“OHQ”], international procurement center [“IPC”] or a regional distribution center [“RDC”] and has or has not been approved incentives for OHQ, IPC or RDC
 - must have adequate number of full-time new employees.
 - incurs adequate amount of annual operating expenditure.
 - Application of exemption must be submitted to MIDA from 1st January 2018 to 31st December 2020.

The above orders shall have effect from the YA 2018.

Note: For further information relating to the Guidelines on PH incentives, please refer to our Tax Flash – May 2015 and December 2017 issues.

➤ [Income Tax \(Exemption\) \(No. 8\) Order 2018](#)

➤ [Tax Flash – May 2015](#)

➤ [Tax Flash – December 2017](#)

Hyperlinks

Tax Exemption for SDC in Respect of Statutory Income from QA Based on 100% QCE

The Income Tax (Exemption) (No. 11) Order 2018 has been gazetted to provide exemption to a qualifying company from payment of income tax in the basis period for a year of assessment in respect of the statutory income derived from a QA. The exemption is equivalent to the amount of allowance of 100% of the qualifying capital expenditure ["QCE"] incurred by the qualifying company.

Among others, it is noteworthy that:-

- i. The qualifying company must be a locally incorporated company which is resident in Malaysia and has obtained approval from the Minister to undertake a QA for the Sabah Development Corridor ["SDC"].
- ii. The tax exemption shall be for a period of 5 and 10 consecutive years in respect of the QA listed in Appendix A and Appendix B respectively, commencing from the date of the first QCE incurred by the qualifying company as determined by the Sabah Economic Development and Investment Authority.
- iii. For QA under item 1 (i.e. hotel and resort sector) of Appendix A and item 1 (i.e. production of Halal product) of Appendix B, the qualifying company must undertake the QA as an **operator**.
- iv. QCE is a capital expenditure incurred by a qualifying company in relation to a building, factory, machinery or plant used in Malaysia solely for the purpose of carrying on a QA.
- v. If there is absence or insufficiency of the statutory income in the basis period for a year of assessment where the exemption for the statutory income cannot be granted or cannot be granted in full for that year of assessment, then so much of the statutory income in respect of which exemption cannot be granted shall be allowed against the statutory income of the qualifying company derived from the QA in the subsequent years until it is fully exempted.
- vi. Where the qualifying company is a company which has been granted an exemption, any related company to the company is not entitled to be granted an exemption in relation to the same QA.
- vii. The application for the above exemption shall be made to the Minister through the Sabah Economic Development and Investment Authority on or after 20th November 2012 but not later than 31st December 2020.

The Order is deemed to have effect from 20th November 2012.

➤ [Income Tax \(Exemption\) \(No. 11\) Order 2018](#)

➤ [Appendix A](#)
➤ [Appendix B](#)

Hyperlinks

Tax Exemption for SDC in Respect of Statutory Income from QA

The Income Tax (Exemption) (No. 12) Order 2018 has been gazetted to provide exemption to a qualifying company from payment of income tax in the basis period for a year of assessment in respect of the statutory income derived from a QA.

Among others, it is noteworthy that:-

- i. The qualifying company must be a locally incorporated company which is resident in Malaysia and approved by the Minister which fulfill the following requirements:-
 - carries on a QA in SDC;
 - has an approved adequate number of full time employees; and
 - incurs an approved adequate amount of annual operating expenditure or adequate investment in fixed asset.
- ii. The tax exemption shall be for a period of 5 and 10 consecutive years in respect of the QA listed in Appendix C and Appendix D respectively, commencing from the first year of assessment in which the qualifying company derives its statutory income from the QA.
- iii. For QA under item 1 (i.e. creative sector) of Appendix C and item 1 (i.e. hotel and resort sector) of Appendix D, the qualifying company must undertake the QA as an **operator**.
- iv. In ascertaining the statutory income of the qualifying company exempted from tax, the IP income derived from 1st July 2018 to 30th June 2021 from new IP rights and on or after 1st July 2021 from all IP rights shall be excluded. Such IP income is subject to tax under the Act.
- v. Any adjusted loss incurred in relation to the QA:-
 - from the year of assessment in the basis period in which the QA activity commences to the year of assessment immediately prior to the exempt years of assessment; and
 - during the exempt years of assessment, shall be carried forward and deducted from the statutory income from the QA in the post-exempt years of assessment until it is fully utilised.
- vi. Where the qualifying company is a company which has been granted an exemption, any related company to the company is not entitled to be granted an exemption in relation to the same QA.
- vii. Where a qualifying company has been granted an exemption on or before 16th October 2017, the substantive requirements referred to in (i) above shall not apply until 30th June 2021.

➤ [Income Tax \(Exemption\) \(No. 12\) Order 2018](#)

➤ [Appendix C](#)

➤ [Appendix D](#)

Hyperlinks

- viii. Where a qualifying company carries on a new QA / has been granted an exemption after 16th October 2017, the substantive requirements referred to in (i) above shall not apply until 31st December 2018.
- ix. The application for the above exemption shall be made to the Minister through the Sabah Economic Development and Investment Authority on or after 20th November 2012 but not later than 31st December 2020.

The Order is deemed to have effect from 20th November 2012 except for the paragraphs 3(1)(b), 3(1)(c), 4(6), 4(7) and 5 of the Order which are deemed to have effect from 16th October 2017.

Tax Exemption for ECER in Respect of Statutory Income from QA / SQA

In 2008, the Government has announced tax incentives for various industries to promote development and investments in the region of East Coast Economic Region ["ECER"] which covers the states of Kelantan, Terengganu, Pahang and the district of Mersing, Johor.

Pursuant to Income Tax (Exemption) (No. 6) Order 2016, tax exemption of 100% of the statutory income is given to a qualifying person for a period of 10 consecutive years of assessment commencing from the first year of assessment in which that qualifying person derives statutory income from a QA (as specified in the Schedule of this principal Order).

Pursuant to Income Tax (Exemption) (No. 7) Order 2016, tax exemption of 70% to 100% of the statutory income is given to a qualifying person for a period of consecutive years of assessment as determined by the Minister, commencing from the first year of assessment in which that qualifying person derives its statutory income from a special qualifying activity ["SQA"] (as specified in the Schedule of this principal Order).

The Income Tax (Exemption) (No. 6) 2016 (Amendment) Order 2018 and Income Tax (Exemption) (No. 7) 2016 (Amendment) Order 2018 have been gazetted to amend the above principal Orders. Salient points of the amendment Orders are as follows:-

- i. The qualifying person shall fulfill the following substantive requirements to carry on the QA / SQA (per Appendix E):-
 - has an approved adequate number of full time employees; and
 - incurs an approved adequate amount of annual operating expenditure or adequate investment in fixed asset.
- ii. Where a qualifying person has been granted an exemption on or before 16th October 2017, the above substantive requirements shall not apply until 30th June 2021.

- [Income Tax \(Exemption\) \(No. 6\) 2016 \(Amendment\) Order 2018](#)
- [Income Tax \(Exemption\) \(No. 7\) 2016 \(Amendment\) Order 2018](#)
- [Appendix E](#)

Hyperlinks

- iii. Where a qualifying person carries on a new QA / has been granted an exemption after 16th October 2017, the above substantive requirements shall not apply until 31st December 2018.
- iv. Exclusion of income derived from an IP right
 - In ascertaining the statutory income from the QA / SQA, the following shall be excluded:-
 - royalty and other income derived on/after 1st July 2018 to 30th June 2021 from new IP rights that the qualifying person owns; and
 - royalty and other income derived on/after 1st July 2021 from all IP rights that the qualifying person owns.
 - The IP income excluded above is subject to tax under the Act.
- v. The term “information, communication and technology” is to be replaced with “information, communication and technology related services”.

The above amendment Orders are deemed to have come into operation on 16th October 2017.

Note: For further information on the tax incentives for ECER, kindly refer to our Tax Flash – August 2016 issue.

➤ [Tax Flash – August 2016](#)

Tax Exemption for IDR in Respect of Statutory Income from QA

Pursuant to Income Tax (Exemption) (No. 20) Order 2007, income tax exemption is given to an Iskandar Development Region [“IDR”] status company in respect of 100% of statutory income derived from a QA provided to persons situated:-

- both within an approved node and outside Malaysia; or
- outside Malaysia only.

The exemption is for a period of 10 years commencing from the date of commencement of the QA.

The Income Tax (Exemption) (No. 20) 2007 (Amendment) Order 2018 has been gazetted to amend the above principal Order. Salient points of the amendment Order are as follows:-

➤ [Income Tax \(Exemption\) \(No. 20\) 2007 \(Amendment\) Order 2018](#)

- i. The definition of “qualifying activity” has been outlined in the new Schedule of the amendment Order (per Appendix attached).
- ii. The IDR status company shall fulfill the following substantive requirements:-
 - carries on a QA in an approved node;
 - has an approved adequate number of full time employees; and
 - incurs an approved adequate amount of annual operating expenditure or adequate investment in fixed asset.

Hyperlinks

- iii. Where an IDR status company has been granted an exemption on or before 16th October 2017, the substantive requirements shall not apply until 30th June 2021.
- iv. Where an IDR status company carries on a new QA / has been granted an exemption after 16th October 2017, the substantive requirements shall not apply until 31st December 2018.
- v. Exclusion of income derived from an IP right
 - In ascertaining the statutory income, the following shall be excluded:-
 - royalty and other income derived on or after 1st July 2018 to 30th June 2021 from new IP rights that the IDR status company owns; and
 - royalty and other income derived on or after 1st July 2021 from all IP rights that the IDR status company owns.
 - The IP income excluded above is subject to tax under the Act.
- vi. The Minister may withdraw the exemption granted from the date in the basis period for a year of assessment the IDR status company fails to comply with any condition imposed.

The date of commencement of a QA in an approved node is extended to 31st December 2020.

The amendment Order is deemed to have come into operation on 16th October 2017 except:-

- Paragraphs 2, 3(a), 5(a), 5(b), 5(c), 7, 8 and 9 (items 1 to 5) - deemed to have come into operation from the YA 2007
- Paragraph 9 (item 6) - deemed to have come into operation on 1st November 2016

Tax Exemption for BSC

The Income Tax (Exemption) (No. 17) Order 2007 provides tax exemption on statutory income of a BioNexus Status company ["BSC"] as follows:-

- For a new business, tax exemption for 10 consecutive years of assessment from the first year of assessment in which the company derived statutory income from the new business.
- For an expansion project, tax exemption for 5 consecutive years of assessment from its existing approved business and expansion project, commencing from the first year of assessment in which the company derived statutory income from existing approved business and expansion project.

The Income Tax (Exemption) (No. 17) 2007 (Amendment) Order 2018 has been gazetted to amend the above principal Order. Salient amendments made are as follows:-

- [Income Tax \(Exemption\) \(No. 17\) 2007 \(Amendment\) Order 2018](#)

Hyperlinks

- i. The words “approved business” in the principal Order are to be replaced with “qualifying activity” which is defined as:-
 - Industrial biotechnology
 - Healthcare biotechnology
 - Agricultural biotechnology
- ii. The following substantive requirements have to be satisfied:-
 - has adequate number of full time employees and knowledge workers in Malaysia; and
 - incurs adequate amount of annual operating expenditure or an approved adequate investment in fixed assets.
- iii. Where a BSC has been granted an exemption on or before 16th October 2017, the substantive requirements in (ii) above shall not apply until 30th June 2021.
- iv. Where a BSC carries on a new QA / has been granted an exemption after 16th October 2017, the substantive requirements in (ii) above shall not apply until 31st December 2018.
- v. Exclusion of IP Income
 - In ascertaining the statutory income of a BSC, the following IP income derived from a QA shall be excluded:-
 - royalties and other income derived on or after 1st July 2018 to 30th June 2021, from new IP rights that the BSC owns; and
 - royalties and other income derived on or after 1st July 2021 from all IP rights that the BSC owns.
 - The IP income excluded above is subject to tax under the Act.

The above amendment Order shall deem to have come into operation on 16th October 2017 except:-

- Paragraph 2, subparagraph 3(a) and paragraph 6 deem to have come into operation on 1st May 2005.
- Subparagraph 3(b) deem to have come into operation on 11th August 2016.

Tax Incentive for BSC - Concessionary Tax Rate of 20%

Pursuant to the Income Tax (Exemption) (No. 2) 2009, a concessionary tax rate of 20% on income derived from an approved business is provide to an approved company for a period of 10 consecutive years of assessment commencing after the exempt years of assessment relating to the approved company.

“Approved company” refers to a BSC that has been given an exemption from payment of income tax under the Income Tax (Exemption) (No. 17) Order 2007 or the Income Tax (Exemption) (No. 18) Order 2007, as the case may be.

The Income Tax (Exemption) (No. 2) 2009 (Amendment) Order 2018 has been gazetted to amend the principal Order. In line with the amendments made under the Income Tax (Exemption) (No. 17) 2007 (Amendment) Order 2018, similar amendments are made in the Income Tax (Exemption) (No. 2) 2009 (Amendment) Order 2018 for the approved company mentioned above that enjoys the 20% concessionary tax rate after the exempt years of assessment.

The above amendment Order (except paragraphs 2 and 3 of the amendment Order) shall deem to have come into operation on 16th October 2017. Paragraphs 2 and 3 of the amendment Order shall deem to have come into operation on 2nd September 2006.

Tax Exemption for Green Technology

The Income Tax (Exemption) (No. 9) Order 2018 has been gazetted to provide exemption to a qualifying company from payment of income tax in the basis period for a year of assessment in respect of 100% from the statutory income derived from a QA.

Salient points of the abovementioned Order include:-

- i. The qualifying company must be a locally incorporated company which is resident in Malaysia and has obtained approval from the Malaysian Green Technology Corporation to undertake a QA in relation to green technology.
- ii. The tax exemption shall be for a period of 5 consecutive years or until YA 2020, whichever is earlier.
- iii. The QA as stipulated in the Schedule of the Order must obtain annual verification and the activity results in:-
 - minimising the degradation of the environment or reducing greenhouse emission;
 - promoting health and improvement of environment; and
 - conserving the use of energy, water and other forms of natural resources or promoting the use of renewable energy or ability to recycle waste material resources.
- iv. The application for the above exemption shall be made to the Minister through MIDA on or after 1st January 2018 but not later than 31st December 2020.
- v. In ascertaining the statutory income of the qualifying company exempted from tax, the following shall be disregarded:-
 - royalty and other income derived on or after 1st July 2018 to 30th June 2021 from new IP rights that the qualifying company owns; and
 - royalty and other income derived for the period on or after 1st July 2021 from all IP rights that the qualifying company owns.
 - The IP income excluded above is subject to tax under the Act.

Hyperlinks

➤ [Income Tax \(Exemption\) \(No. 2\) 2009 \(Amendment\) Order 2018](#)

➤ [Income Tax \(Exemption\) \(No. 9\) 2018](#)

- vi. The above exemption shall be deemed to have not been given to the qualified company from the first year of exemption and be withdrawn if the qualified company fails to comply with any conditions imposed.

The above Order shall have effect from YA 2018.

RPGT Exemption for IDR Company on Disposal of Building in Node Medini

The Real Property Gains Tax (Exemption) (No. 2) Order 2018 has been gazetted to provide exemption from payment of real property gains tax ["RPGT"] to an IDR status company in respect of the chargeable gains accruing on the disposal of a building or part of the building or a parcel of the building in Node Medini which was acquired directly from the developer. The disposal must be made between the period from 1st January 2010 until 31st December 2020.

The IDR status company must be a company that:-

- is incorporated under the Companies Act 2016 and resides in Malaysia;
- undertakes qualified activity in Node Medini; and
- is approved by the Minister.

The above Order is deemed to have come into operation on 1st January 2010.

RPGT Exemption for Disposal of Chargeable Asset for Malaysian Citizens / Permanent Residents

Pursuant to the Real Property Gains Tax (Exemption) (No. 3) Order 2018, exemption from payment of RPGT is granted to a Malaysian citizen or a permanent resident in respect of the chargeable gain accruing on the disposal of a chargeable asset (except shares), on or after 1st January 2019 with the following conditions:-

- the disposal of the chargeable asset is made in the 6th year after the date of acquisition of the chargeable asset, or any year thereafter;
- the contract for the disposal of the chargeable asset is conditional whereby it requires the approval of the Government or a State Government as provided under Paragraphs 16(a) or (b) of Schedule 2 to the RPGT Act and is executed before 1st January 2019; and
- the approval by the Government or a State Government for the disposal of the chargeable asset is obtained in the year 2019 or any year thereafter.

The above Order comes into operation on 1st January 2019.

Hyperlinks

➤ [Real Property Gains Tax \(Exemption\) \(No. 2\) Order 2018](#)

➤ [Real Property Gains Tax \(Exemption\) \(No. 3\) Order 2018](#)

Sales Tax

The General Guide on Sales Tax (as at 25th September 2018) is withdrawn and replaced by the General Guide on Sales Tax (as at 18th January 2019).

Service Tax

The following guides dated 9th January 2019 were withdrawn and replaced by the revised guides dated 22nd January 2019 (currently only made available in our National language):-

- Guide on Amusement Park;
- Guide on Cleaning Services; and
- Guide on Consultancy, Training and Coaching Services.

Requirements for Labuan Entity Carrying on Labuan Business Activity

Following the 2019 Budget announcement, the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 has been gazetted to provide that the Labuan entity carrying on a Labuan business activity must have:-

- an adequate number of full time employees in Labuan; and
- minimum amount of annual operating expenditure in Labuan,

The number of full time employees and amount of annual operating expenditure vary depending on the types of Labuan business activity as specified in the Schedule to the above Regulations.

The Regulations came into operation on 1st January 2019.

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for advice. Accordingly, Advent MS Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team.

Hyperlinks

- [General Guide on Sales Tax](#)
- [Guide on Amusement Park \(in Bahasa Malaysia\)](#)
- [Guide on Cleaning Services \(in Bahasa Malaysia\)](#)
- [Guide on Consultancy, Training and Coaching Services \(in Bahasa Malaysia\)](#)
- [Labuan Business Activity Tax \(Requirements for Labuan Business Activity\) Regulations 2018](#)