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***TaXavvy***

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***TaXavvy*** is a bi-monthly publication which aims to provide concise updates on developments in tax laws, cases, guides, administrative practices and other regulatory developments

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## Tax Laws



### ***Income Tax (Deduction for Cash Contribution to Bantuan Pelajar Miskin 1Malaysia Fund) Rules 2013***

The above was gazetted on 15 November 2013 and is effective for the years of assessment 2012 to 2017. The Rules provide for a double deduction for the cash contribution paid by the following persons to the Bantuan Pelajar Miskin 1Malaysia Fund:

- 1) a resident in Malaysia who has sources of income consisting of a business only or a combination of business and other sources of income,
- 2) a Malaysian incorporated company,
- 3) a limited liability partnership, or
- 4) a co-operative society.

The following are not eligible for the double deduction:

- business trust,
- investment holding company,
- insurance company,
- takaful operator, and
- a company that has made a claim for a deduction under any rules made under section 154 of the Income Tax Act 1967 (ITA).



### ***Income Tax (Exemption) (No. 14) Order 2013***

The Income Tax (Exemption) (No. 14) Order 2013 was gazetted on 19 December 2013 and is effective for year of assessment 2013. The exemption order provides income tax exemption of RM2,000 on the chargeable income of resident individuals, provided that their aggregate income for the year does not exceed RM96,000.

# Tax Administration



## Filing Programme for 2014

Income tax returns with statutory filing deadlines falling in the 2014 calendar year

Submission via	Grace period for submission of income tax return forms (ITRF)	Grace period for payment of balance of taxes under section 103(1) of the ITA and debt due / payable under the Finance Acts 2007 (Act 683) and 2009 (Act 693)
e-Filing of Forms BE, B, BT, M, MT, P, TP, TJ & TF	15 days (calendar days) from the stipulated filing due date	<b>Taxes:</b> <u>15 days</u> (calendar days) from the stipulated filing due date
e-Filing of Forms C & R – <b>YA 2013</b> where due date of submission falls within the calendar year 2014	<u>15 days</u> (calendar days) from the stipulated filing due date.	<b>Taxes:</b> <u>15 days</u> (calendar days) from the stipulated filing due date  <b>Debt:</b> <u>15 days</u> (calendar days) from the stipulated filing due date
e-Filing of Forms C & R - <b>YA 2014</b> where due date of submission falls within the calendar year 2014	<u>1 month</u> from the stipulated filing due date.	<b>Taxes:</b> <u>1 month</u> from the stipulated filing due date  <b>Debt:</b> <u>1 month</u> from the stipulated filing due date
Hand delivery <sup>a</sup>	Not applicable	Not applicable

<sup>a</sup> Forms BE, B, BT, M, MT, P, TP, TJ, TF, C1, PT, TA, TC, TR and TN. Forms C&R for YA 2013 only.

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## Tax Administration



### Filing Programme for 2014 (con't)

Submission via	Grace period for submission of income tax return forms (ITRF)	Grace period for payment of balance of taxes under section 103(1) of the ITA and debt due / payable under the Finance Acts 2007 (Act 683) and 2009 (Act 693)
Post <sup>a</sup>	ITRF received by IRB within 3 working days from the stipulated filing due date	<b>Taxes:</b> 3 working days from the stipulated filing due date

If submissions are not made within the grace period, the submission will be deemed to be late and penalties under Section 112(3) of the ITA will be computed from the stipulated filing due date and not the extended due date.

### Form E (due on or before 31 March 2014)

A grace period until 30 April 2014 is given for Form E furnished via e-Filing. If filing is done by post, the form must be received within 3 working days from the stipulated filing due date. No grace period is given for filing by hand delivery.

### Application for extension of time (Forms C, R, C1, PT, TA, TC, TR, TN for submission in calendar year 2014 and Form E for year 2013 only)

Application for extension of time for submission of the above forms and for payment of balance of taxes must be received by IRB **at least 30 days before** the due date of submission of the relevant form.

### Reduction in the rate of penalty under section 112(3) of ITA for cases other than Form C

For cases other than Form C which are liable for penalty under section 112(3) of the ITA, the rate of penalty stipulated by IRB can be reduced by 5% if the income tax return form is submitted via e-Filing.

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## Tax Administration



### **Public Ruling 11/2013 – Pre-Operational Business Expenditure**

The Inland Revenue Board (IRB) has issued *Public Ruling 11/2013 – Pre-Operational Business Expenditure* on 18 November 2013. This public ruling replaces *Public Ruling 2/2010 – Allowable Pre-Operational and Pre –Commencement of Business Expenses* with effect from its publication date.

The new public ruling includes the tax treatment of expenditure on franchise fees.



### **Public Ruling 12/2013 – Rescuing Contractor and Developer**

The IRB has issued *Public Ruling 12/2013 – Rescuing Contractor and Developer* (dated 17 December 2013) on 18 December 2013. It explains the tax treatment of a rescuing contractor or developer, including:

- Tax incentives,
- Special deductions,
- Tax treatment of income from rehabilitating abandoned projects,
- Stamp duty exemption.

The public rulings are available for download on IRB's website at [www.hasil.gov.my](http://www.hasil.gov.my) (Laws and Regulations > Public Ruling).



### **Clarification on private retirement schemes and the proposed amendment to section 75A of the Income Tax Act 1967**

IRB has issued a media release dated 23 December 2013 to clarify matters regarding concerns on private retirement schemes (PRS) and the proposed amendment to section 75A of the Income Tax Act 1967 (ITA). The clarifications are summarised as follows:

#### **Private Retirement Scheme (PRS)**

- IRB is of the view that the current tax relief of up to RM9,000 (life insurance payments, EPF and PRS) is reasonable.
- The 8% withholding tax is to curb early withdrawals of the PRS to help ensure that taxpayers have sufficient retirement funds.
- IRB has listed down 5 exceptions whereby early withdrawals of the PRS would not be subject to the 8% withholding tax.

#### **Proposed amendment to section 75A of the ITA**

The proposed amendment to the definition of 'director' under section 75A (reduction of percentage of ownership of a company's ordinary shares from exceeding 50% to at least 20%) is in line with the definition of "controlled company" as set out in section 2 of the ITA and the IRB is of the view that this amendment is not intended to expand the scope of tax liability on the company's shareholders. Rather it is a measure to ensure that each shareholder is responsible for its company's tax obligations, thereby avoiding arrears in tax. Additionally, this amendment applies to only company directors who have management and control of the company.

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The following cases were decided by the courts recently:

Case	Issue(s)	Decision/ Status
<b>Federal Court</b>		
LHDN v Alam Maritim Sdn Bhd	Whether the charter fee payment made by the taxpayer to non-resident companies in Singapore is subject to withholding tax under section 109B(1) of the ITA, read together with section 4A(iii) and section 24(8) and whether the non-resident companies are entitled for relief under Article 4 of the old double taxation agreement between Malaysia and Singapore signed in 1968.	IRB's appeal allowed  <i>High Court: In favour of taxpayer</i> <i>Court of Appeal: In favour of taxpayer</i>
<b>High Court</b>		
Kerajaan Malaysia v Central Strata Sdn Bhd	This is an application for summary judgement.  <u>Issue:</u> Whether the notices of assessment were effectively served under section 145 of the ITA.	Government's application allowed
KPHDN v Firgos (Malaysia) Sdn Bhd	<ol style="list-style-type: none"> <li>Whether fire-fighting equipment, electrical fittings and warehouse space qualified for reinvestment allowance under Schedule 7A of the ITA.</li> <li>Whether principle in Success Electronics High Court decision would apply to the present case.</li> <li>Whether reinvestment allowance claim should be restricted to production area only.</li> </ol>	IRB's appeal dismissed          <i>SCIT: In favour of taxpayer</i>

## Tax Cases

Case	Issue(s)	Decision/ Status
<b>High Court</b>		
Datuk Yap Pak Leong v Ketua Pengarah Hasil Dalam Negeri	<ol style="list-style-type: none"> <li>Whether staff quarters upkeep and sanitation expenses were deductible under section 33(1) of the ITA.</li> <li>Whether electronic gadgets and furniture were eligible for capital allowance.</li> <li>Whether the penalty imposed under section 113(2) was correct.</li> </ol>	<p>Taxpayer's appeal dismissed</p> <p><i>SCIT: In favour of IRB</i></p>
Penfabric Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri	Whether certain capital expenditure incurred for the business of manufacturing textile products qualify for reinvestment allowance under Schedule 7A of the ITA.	<p>Taxpayer's appeal allowed</p> <p><i>SCIT: In favour of IRB</i></p>
<b>Special Commissioners</b>		
MM Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri	<ol style="list-style-type: none"> <li>Whether the IRB had any legal basis to invoke section 140(1) of the ITA and adjust the commission rate received by the taxpayer.</li> <li>Whether the IRB had any factual basis to invoke section 140(1) of ITA to disregard the business process improvement services and regional services charges paid by the taxpayer on the basis that the services were never provided.</li> <li>Whether the EDP charges paid were royalty under Article XII of the Malaysia–Denmark Double Taxation Agreement.</li> </ol>	Taxpayer's appeal allowed



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