

14 December 2015 | Issue 21-2015

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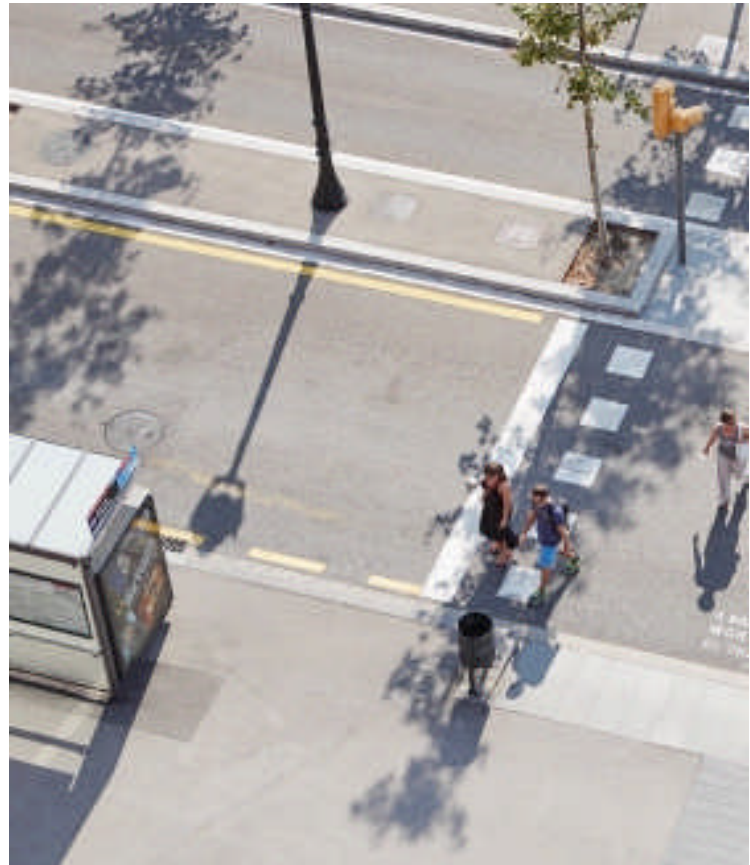
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Amendments to the Non-Application Rules of the Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2014

The Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2014 (ACA Rules) which was gazetted in July 2014 has been amended by the Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment (Amendment) Rules 2015 . The Non-Application provision of the ACA Rules has been replaced and will now only exclude accelerated capital allowance (ACA) claim in respect of an Information and Communication Technology (ICT) equipment if the claimant is eligible and has claimed either of the following incentives with respect to that ICT equipment during the basis period for a year of assessment (YA):

1. Investment tax allowance under the Promotion of Investments Act 1986
2. Reinvestment allowance under Schedule 7A of the Income Tax Act 1967 (Act)
3. Investment allowance for approved service projects under Schedule 7B of the Act
4. ACA under any rules made under Section 154 of the Act
5. Exemption on statutory income under Section 127 of the Act where the exemption is computed based on the cost of the ICT equipment.

The amended non-application provisions take effect from YA 2014.

History of the ACA Rules in brief:

- The ACA Rules was gazetted in July 2014. It provides for the ACA claim on ICT equipment which expired in YA 2013 to be extended from YA 2014 to YA 2016. Such ICT equipment includes specified computer software and hardware.
- The Non-Application provisions of the ACA Rules stipulates conditions which preclude the ACA to be made to the claimant under certain conditions. This includes persons who “has qualified for a deduction under any other rules made under Section 154 of the Act”. Some of the common deductions made under Section 154 include audit, secretarial and tax filing fees. In view of this, most companies would have found it difficult to make the ACA claim since they would have qualified for deduction for audit, secretarial and tax filing fees at the same time. The IRB has in its last communication to the Chartered Tax Institute of Malaysia on the matter clarified that the ACA claim can only be made after amendments to the ACA Rules are made.

New Public Ruling 9/2015 – Deduction of Interest Expense and Recognition of Interest Income for Loan Transactions between Related Persons

The IRB has issued a new *Public Ruling No. 9/2015 – Deduction of Interest Expense and Recognition of Interest Income for Loan Transactions between Related Persons*, dated 3 December 2015. This Public Ruling (PR) explains the tax treatment for loan transactions between related persons where the tax implications is subject to the date when interest is “due to be paid” arising from the introduction of Section 33(4) and Section 29(3) of the Act with effect from (w.e.f.) YA 2014. Comparison to tax treatments for loan transactions between non-related persons are also set out in the PR.

The salient points of this PR include:

1. Deductibility of interest expense

- a) W.e.f YA 2014, in addition to existing rules, interest expense payable for a YA is only eligible for deduction against income from that YA when such interest is due to be paid.
- b) If payment of interest is made before it is due to be paid, tax deduction for the amount paid is to be claimed after payment has been made. Refer to Paragraph 4.4 and Example 6 of the PR.
- c) Interest payable up to YA 2013 is not affected by the “due to be paid” requirement under Section 33(4). Refer to Paragraph 4.2 and Example 4 of the PR.
- d) Where interest deduction for a YA(s) is to be claimed in the future against income from that YA(s) when the interest is due to be paid, taxpayers are required to inform the IRB via a letter attaching the amended tax computations from the date such interest is due to be paid.
- e) Illustration involving interest restriction is set out. Refer to Example 7 of the PR.

2. Recognition of interest income

- a) W.e.f YA 2014, Section 29(3) of the Act deems interest receivable from related persons (as defined) to be obtainable on demand when such interest is due to be paid. Section 29(3) read together with Section 29(1) and Section 27 of the Act operate together to treat interest income receivable for a particular YA from related persons as deemed to be received when the interest is due to be paid. Interest income is to be brought to tax when it is deemed to be received. However, tax in respect of the interest deemed received is to be assessed back to the YA(s) for which it is receivable.
- b) Procedures to bring to tax interest income which is receivable in a prior YA but “due to be paid” in the current YA is explained.
- c) Apportionment of interest income which overlaps one basis period is explained.

The PR is available on IRB’s website www.hasil.gov.my (Laws and Regulations > Public Ruling).

New Public Ruling 8/2015 – Loan or Advances to Director by a Company

The IRB has issued *Public Ruling No. 8/2015 – Loan or Advances to Director by a Company*. This PR explains the tax treatment for loans or advances made by Companies to its directors out of internal funds due to the introduction of Section 140B of the Act w.e.f. YA 2014.

The salient points of this PR include:

1. Definitions

“Internal funds” are surplus funds that may arise from the injection of capital, retained earnings and company reserves.

“External funds” refer to financial resources acquired by a company through loans from third parties such as banks or related companies specifically used to finance loans or advances to directors. The decision to acquire loans from external funds can be referred from the board of directors resolution or board of directors meeting minutes.

2. Commencement date of Section 140B for companies

Although Section 140B came into effect from YA 2014, for companies with a basis period which commenced prior to 1 January 2014, the deemed interest income under Section 140B is to be computed only on loans or advances outstanding from 1 January 2014 onwards. Refer to Paragraph 5.2 of the PR.

3. Loans or advances made by dormant companies

Loans or advances made by a dormant company trigger commencement of operations. Refer to Paragraph 6 of the PR.

4. Tax treatment for directors who are also employees

Interest costs incurred by companies arising from external borrowings obtained to finance the loan given to its directors represent a taxable perquisite in the hands of such directors.

5. Loans advanced to partnerships

Partnership is not a taxable person and does not have a separate legal identity. Loans given to partnerships are considered given to the individual partners of the partnership. Where such partners are also directors of the Company, the provisions of Section 140B will apply to the Company. Refer to Paragraph 4.4 and Examples 8 to 10 of the PR.

The PR is available on IRB’s website www.hasil.gov.my (Laws and Regulations > Public Ruling).

Application for verification of capital expenditure which qualifies for Investment Tax Allowance incurred on private healthcare facilities which promote healthcare travel

A company which establishes new private healthcare facilities or undertakes expansion, modernisation or refurbishment of its existing private healthcare facility for purposes of promoting healthcare travel may apply for Investment Tax Allowance (ITA). The ITA which is computed as 100% on the qualifying capital expenditure (QCE) incurred within 5 years can be used to offset up to 100% of statutory income. This incentive applies to applications received by the Malaysian Investment Development Authority (MIDA) during the period 1 January 2015 to 31 December 2017.

QCE incurred is required to be verified by the Ministry of Health. MIDA has recently released a list of QCE items for the purpose of application for such verification.

The main categories of plant/ machinery/ medical devices/ other facilities are:

- Medical equipment and instrument items
- Infection control items
- Information technology & communications items
- Furniture & fitting items
- Medical facility items
- Motor vehicles (patient transport)

The detailed description of the items, application form and process flowchart are available on MIDA's website www.mida.gov.my (Sitemap > Forms & Guidelines > Services Sector > H – Private Health Care Facilities).

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