TaXavvy

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Stamp duty rates on instrument of transfer of property valued more than RM1 million

The stamp duty ad-valorem rates of 1-3% shall continue to apply to instrument of transfer of property valued more than RM1 million from 1 January 2018. The Budget 2017 proposal to increase the upper ad-valorem rate from 3% to 4% on the value of property in excess of the first RM1 million, which was to be effective from 1 January 2018, has since not materialized with the withdrawal of the Stamp (Amendment) Bill 2017.

The existing ad-valorem rates are as follows:

Value of property	Ad-valorem rate
First RM100,000	1%
Next RM400,000	2%
In excess of RM500,000	3%

Filing programme for the year 2018

The IRB has recently issued the Filing Programme for the year 2018. The following are the salient points in relation to the filing of the following income tax return forms (ITRF) and payment of income tax.

1. Grace period for submission of ITRF and payment of balance of tax

(a) Individuals, partnerships, associations, deceased persons' estate and Hindu joint families – year of assessment 2017

Forms	Method of submission	Grace period for submission of ITRFs and payment of balance of tax under section 103(1) of the Income Tax Act 1967 (ITA)
Forms e-BE, e-B, e-BT, e-M, e-MT, e-P, e-TF	e-filing	**15 days (**calendar days) from the stipulated filing due date
Forms BE, B, BT, M, MT, P, TP, TJ & TF	Postal delivery	**3 working days** from the stipulated filing due date
Forms BE, B, BT, M, MT, P, TP, TJ & TF	Hand delivery	None

(b) Companies, co-operative societies, limited liability partnerships (LLP) and trust bodies – year of assessment 2018

Forms	Method of submission	Grace period for submission of ITRFs and payment of balance of tax under section 103(1) of the ITA
Form e-C, e-C1	e-filing	**1 month** from the stipulated filing due date
Forms C1, PT, TA, TC, TR & TN	Postal delivery	**3 working days** from the stipulated filing due date
Forms C1, PT, TA, TC, TR & TN	Hand delivery	None

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

(c) Petroleum income tax return and return on exploration expenditure during exploration period – year of assessment 2018

Forms	Method of submission	Grace period for submission of ITRFs and payment of balance of tax under section 48(1) of Petroleum Income Tax Act 1967
Form CPE, CPP	Postal delivery	**3 working days** from the stipulated filing due date
Form CPE, CPP	Hand delivery	None

2. Companies, LLP, trust bodies & co-operative societies – dormant and/or have not commenced business

- Similar to the Filing Programme for the year 2017, the IRB is reiterating the requirement for the above entities which are dormant and/or have not commenced business to submit the ITRFs.
- The above entities are not required to submit Form CP204 if they have not commenced operations.
- The relevant entities which own shares, real properties, fixed deposits and other similar investments are not considered dormant.
- For the purpose of e-filing of Form C, the mandatory fields in the ITRF of dormant companies are accounting period, basis period, business / partnership statutory income, and business code.

3. Return by employer (Form E) for the year of remuneration 2017

Method of submission	Grace period for submission of Form E
e-Filing	**1 month** from stipulated filing due date of 31 March 2018
Postal delivery	**3 working days** from the stipulated filing due date
Hand delivery	None

- The return by employer is only considered complete if both the Form E and CP 8D are submitted in the format as stipulated by IRB. The CP 8D has to be furnished on or before the due date for submission of the form.

- Further details on the other requirements for the submission of Form E and CP 8D can be found in the filing programme.

4. Repayment cases

The following appendices / working sheets used for the tax computation have to be submitted together with the ITRF for repayment cases:

- Appendix B2 / HK-6 – tax deduction under section 110 of the ITA.
- Appendix B3 / HK-8 – claim for tax relief under section 132 of the ITA.
- Appendix B4 / HK-9 – claim for tax relief under section 133 of the ITA.

5. Removal of the reduction in the rate of penalty under section 112(3) of ITA for cases other than Company

For cases other than company, the rate of penalty stipulated by the IRB in respect of penalty under section 112(3) of ITA can **no longer** be reduced by 5% if the ITRF is submitted late via e-Filing.

6. Concession for the payment of tax under section 103(2) of the ITA.

For assessment raised under sections 91, 92, 96A, 90(3), 101(2) of the ITA, the tax or balance of tax must be paid within 30 days from the date of assessment. However, there is grace period of 7 days.

The Filing Programme for year 2018 can be downloaded from IRB's website www.hasil.gov.my (Download > Forms / Info > ITRF Filing Programme for Year 2018).

Public Rulings

The Inland Revenue Board (IRB) has issued the following public rulings in December 2017:

- Public Ruling 7/2017 – Disposal of Plant or Machinery (Part I - Other than controlled sales) ("PR 7/2017")
- Public Ruling 8/2017 – Professional Indemnity Insurance ("PR 8/2017")
- Public Ruling 9/2017 – Reinvestment Allowance (Part I – Manufacturing activity) ("PR 9/2017")
- Public Ruling 10/2017 – Reinvestment Allowance (Part II – Agricultural and integrated activities) ("PR 10/2017")
- Public Ruling 11/2017 – Residence status of individuals ("PR 11/2017")

Public Ruling 7/2017 – Disposal of Plant or Machinery (Part I Other than controlled sales)

PR 7/2017 explains the tax treatment arising from the disposal of plant and machinery which are not subject to control transfer provisions.

The notable points covered in this public ruling include the following:

1) Disposal value

- The disposal value of an asset, depending on the circumstances, may be the market value, net proceeds of sale, or insurance or compensation money received.
- In the case of disposal to the Government, State Government or a local authority, the disposal value is the net proceeds of the disposal.
- Where the disposal is by way of gift to a technical or vocational training institute, or an approved research institute, the disposal value is deemed to be zero.
- Where several assets are disposed in a bundle, the allocation of the disposal price to each asset should be fair and reasonable.
- For assets written off due to obsolescence or irreparable damage, the market value is considered to be zero.

2) Balancing charge / balancing allowance

Balancing charge / balancing allowance is computed as the difference between the disposal value of the asset and the residual expenditure. The amount of balancing charge added back is restricted to the total allowances made in respect of the disposed asset.

In a situation where notional allowance is involved, for the purposes of determining the restriction on the amount of balancing charge, the notional allowances are not included as part of the total allowances.

3) Replacing part of an asset

Where a significant part of an asset is replaced, the replaced part is deemed to be disposed. A significant part is an essential part of an asset which makes the assets complete, such as an aircraft engine.

Balancing charge / balancing allowance is to be computed for the disposed part. The cost of the disposed part is determined based on approved accounting principles.

4) Clawback of capital allowances claimed on assets owned less than 2 years

The clawback of capital allowances claimed does not apply to disposals made with valid commercial reasons referred to as "bona fide" disposals, such as:

- Disposal due to damage.
- Disposal of asset not suitable for use or which is no longer needed in the business.
- Disposal due to fire and theft.

Public Ruling 8/2017 – Professional Indemnity Insurance

PR 8/2017 replaces Public Ruling 3/2009 – Professional Indemnity Insurance.

The main updates to the public ruling are:

Updates	Previously
The compensation paid to the claimant is allowed a tax deduction under section 33(1) as expenses incurred in the ordinary course of the business.	Such compensation was not given a tax deduction previously because the IRB regarded it as a compensation for loss of personal asset.
The definition of “person” in PR 8/2017 is now consistent with the definition in the ITA, that is, it includes a company, a body of persons, a limited liability partnership and a corporation sole.	Person was defined to include an individual, a partnership and a company.
PR 8/2017 now states that the insurance proceeds received by the professional or compensation paid directly to the claimant, are taxable under section 22(2) of the ITA.	The specific section under which the receipts will be taxable was not stated.

Public Ruling 9/2017 – Reinvestment Allowance (Part I – Manufacturing activity)

The former public ruling on reinvestment allowance (RA), Public Ruling 6/2012 is updated by two public rulings, namely PR 9/2017 which covers manufacturing activity, and PR 10/2017 which covers agricultural and integrated activities.

Salient matters from PR 9/2017 are as follows:

Item	Salient points
Qualifying project (i.e. expanding, modernising, automating or diversifying projects)	
Information for tax audit purposes	Similar to PR 6/2012, it is stated that a qualifying project should result in an increase in production capacity, cost and time savings, etc. and that such improvement should be verified by the production engineer/technician. PR 9/2017 adds that the relevant documents / data which had enabled the engineer / technician to make such verification be made available for tax audit purposes.
Scope of “expanding”	Backward integration, e.g. a garment manufacturer going into fabric manufacturing is now considered as an expansion project.

Item	Salient points
Qualifying project (i.e. expanding, modernising, automating or diversifying projects)	
Scope of "automating"	In PR 6/2012, automating refers to a process whereby manual operations are substituted by mechanical operations with human judgement and control. PR 9/2017 adds that such human judgement and control should be minimal or reduced. This aligns the scope with the definition of automating under the law for RA purposes which took effect from year of assessment (YA) 2016.
Qualifying expenditure (i.e. capital expenditure incurred on factory, plant or machinery)	
Scope of "plant and machinery"	In line with the new definition inserted into the law, plant and machinery is now restricted to those which are: (i) directly used in the manufacturing activity, and (ii) used in a factory. Examples of items excluded under the new definition are forklifts used to unload raw materials from outside of a factory building and commercial vehicles used to transport products for sale. An example of item that is considered to be directly used in the manufacturing activity is computer equipment that is directly linked to production equipment.
Incurrence and disposals	
Date when plant or machinery is incurred: trial run v. production run	In determining the date a plant or machinery is deemed incurred for RA purposes (i.e. when the plant or machinery is "capable of being used"), it is set out in an example that when a machine is put into a trial run prior to the actual production run, the date when the machine is considered capable of being used (and hence deemed incurred) is when the machine is put to actual production run and not the date of the trial run.
Assets ceased to be used (including change in use) are deemed disposed (or partially disposed)	With effect from YA 2016, an asset is deemed to be disposed if it is ceased to be used. PR 9/2017 further provides that in a case of a factory, where there is a change in the usage of the floor area, that floor area is considered as ceased to be used and hence deemed disposed for RA purposes.
Clawback of RA in respect of assets disposed within 5 years	In the event the RA claims from an asset which is not utilized when it is disposed within 5 years, no clawback of the RA claimed is required. Instead, the unabsorbed RA from such asset is to be disregarded and not be available to be carried forward.
Others	
RA period extension of up to 3 years	Companies which have exhausted its RA period of 15 years are eligible to claim RA for another 1 to 3 YAs as follows:

YA in which the 15-year period ended	Additional YA to claim RA
2015 or prior YAs	2016, 2017 and 2018
2016	2017 and 2018
2017	2018

Item	Salient points
Others	
Portion of statutory income which qualifies to be set off with RA claims	A new Example 31 is set out to illustrate that in the event a company's statutory income from its business consists of income from qualifying project and income which is not from qualifying project, RA claimed is only allowed to be set off against the portion of the statutory income which relates to the qualifying project. The example also provides cost of sales as an example of a basis to be adopted in apportioning the statutory income into income from qualifying project and income which is not from qualifying project.
Unabsorbed RA from qualifying project in respect of a business which has ceased	Such unabsorbed RA cannot be set off against statutory income.

Public Ruling 10/2017 – Reinvestment Allowance Part II – Agricultural and integrated activities

Part II of the RA public rulings explains the RA treatment for agricultural and integrated projects. It provides examples of how RA is computed and claimed for integrated projects where both manufacturing and agricultural activities are related and carried out by the same company.

The public ruling has also specified that apart from oil palm, similar crops such as coffee, cocoa and coconut are not eligible for RA as such crops are not considered cultivation of fruits.

Public Ruling 11/2017 – Residence status of individuals

PR 11/2017 replaces Public Ruling 6/2011 – Residence status of individuals.

The main updates to the public ruling are in respect of the new paragraph 6.3.3 and new examples 14 and 15 which relate to determining the residence status of an individual who has been in Malaysia for more than 90 days in a YA, and is resident or present in Malaysia for 90 days or more in each of the 3 preceding YAs.

The above public rulings are available on IRB's website www.hasil.gov.my (Laws and Regulation > Public Rulings).

Gazette orders

The following are some of the gazette orders that have been issued recently:

Gazette Order	Effective rpm	Summary
Income Tax (Set-off for Tax Charged on Actuarial Surplus under Takaful Business) Rules 2017	YA 2015	Provides the formula to ascertain the portion of the actuarial surplus in respect of which tax charged is set-off against under a takaful business.
Income Tax (Exemption) (No. 3) 2014 (Amendment) Order 2017	28 December 2017	Extension of the incentive period for income tax exemption for angel investor to 31 Dec 2020 as announced in Budget 2018.
Income Tax (Exemption) (No. 11) 2016 (Amendment) Order 2017	28 December 2017	Extension of the incentive period for income tax exemption for group inclusive tour to YA 2020 as announced in Budget 2018.
Income Tax (Exemption) (No. 12) 2016 (Amendment) Order 2017	28 December 2017	Extension of the incentive period for income tax exemption for domestic tour to YA 2020 as announced in Budget 2018.
Stamp Duty (Exemption) (No. 2) Order 2017.	1 January 2018	Provides stamp duty exemption on the contract note executed on or after 1 January 2018 but not later than 31 December 2020 for trading of Exchange Traded Funds and Structured Warrants as announced in Budget 2018.
Stamp Duty (Exemption) (No. 5) 2013 (Amendment) Order 2017 Stamp Duty (Exemption) (No. 6) 2013 (Amendment) Order 2017	28 December 2017	Extension of the incentive period for stamp duty exemption to revive abandoned housing projects to 31 December 2020 as announced in Budget 2018.

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