

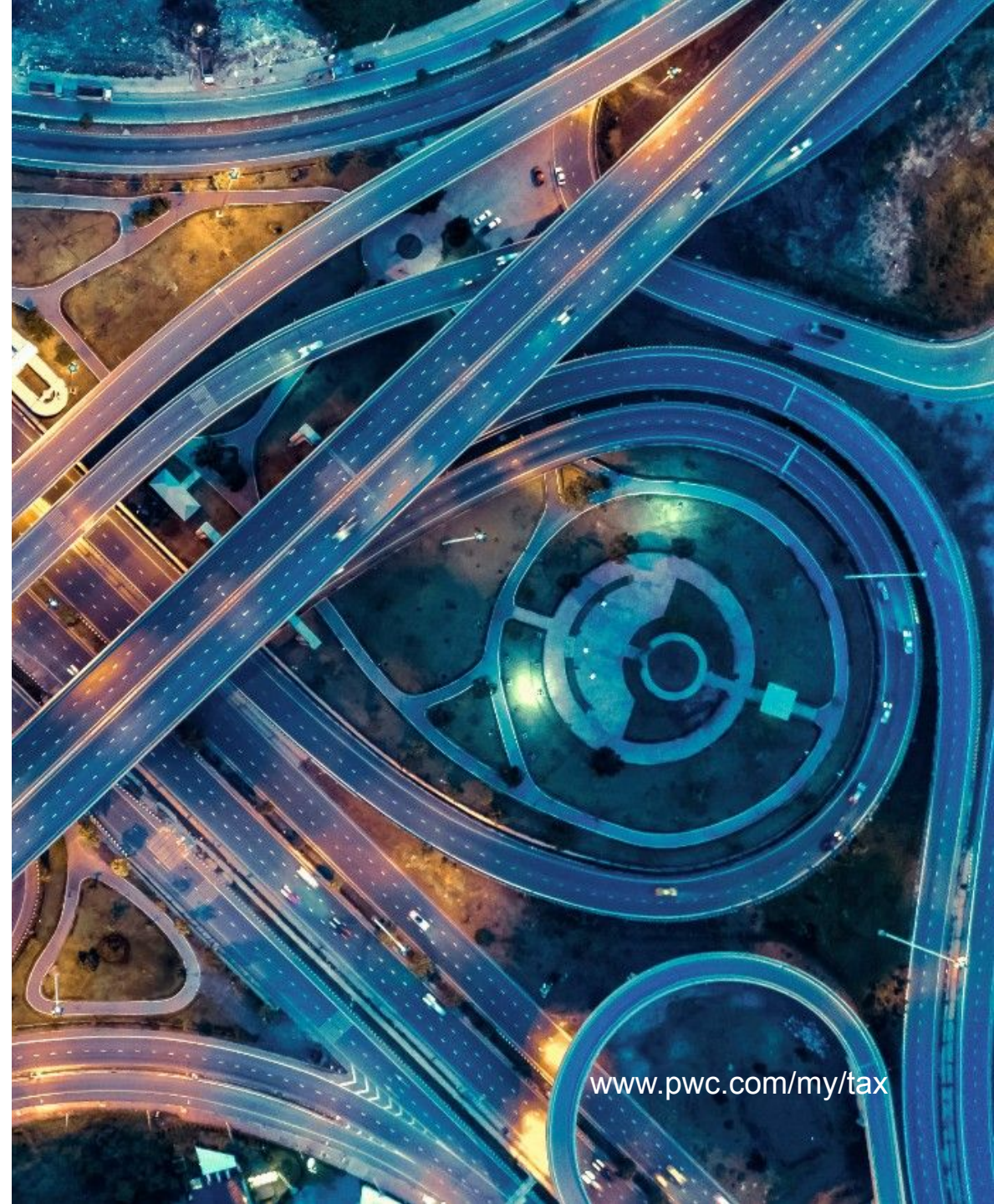


TaXavvy

6 December 2019 | Issue 19-2019

In this issue

- Operational Guidelines GPHDN 2/2019 - Application for Tax Clearance Letter
- Public Ruling 5/2019 - Perquisites from employment
- Public Ruling 6/2019 - Tax Treatment on Expenditure for Repairs and Renewals of Assets
- Public Ruling 7/2019 - Taxation of Foreign Fund Management Company

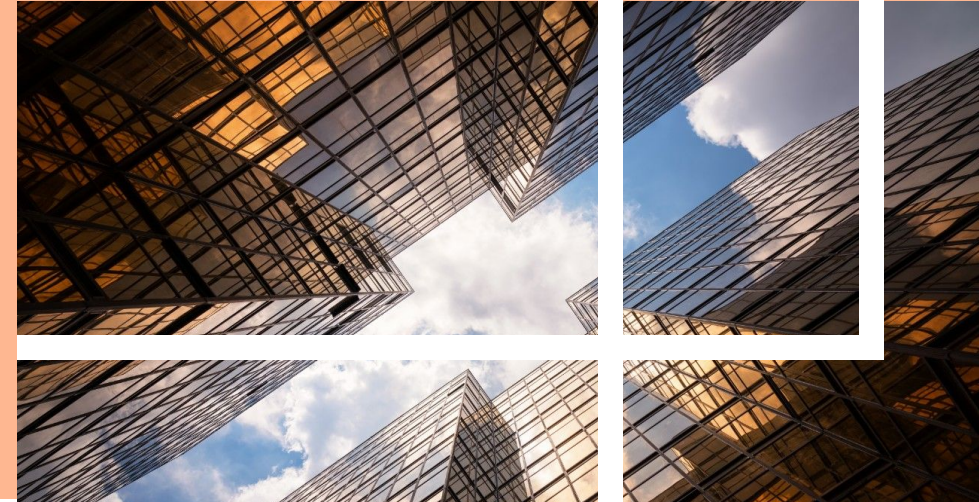


www.pwc.com/my/tax

Operational Guidelines GPHDN 2/2019 - Application for Tax Clearance Letter

The Inland Revenue Board (IRB) has issued the operational guidelines GPHDN 2/2019 - Application for tax clearance letter for company, Limited Liability Partnership (LLP) and Labuan entity ("GPHDN 2/2019"), dated 12 November 2019. GPHDN 2/2019 replaces GPHDN 3/2016 - Application for tax clearance letter for company, LLP and Labuan entity dated 31 July 2016 ("GPHDN 3/2016").

GPHDN 2/2019 is essentially similar to GPHDN 3/2016 but updated to incorporate the information or documentation required under the Companies Act 2016 for purposes of application for a tax clearance letter.



Application forms and documentation required to apply for tax clearance letter

The Companies Act 2016 which replaced the Companies Act 1965 (old Act) had effected amongst others, changes to the administrative requirements of companies, including liquidation procedures. For example, certain forms used in relation to a liquidation under the old Act have been renamed and revised. GPHDN 2/2019 has been updated to reflect these changes and also to incorporate the following:

- A checklist of forms and documents that needs to be completed and submitted to the IRB, based on the various categories of dissolution for a company, LLP and Labuan entity.
- The following sample tax clearance application forms are also provided:
 - CP7(C) [2019] for company.
 - CP7(PT) [2019] for LLP.
 - CP7(LE) [2019] for Labuan entity.
 - CP7 [2019] for defunct company.

Issuance of tax clearance letter

In addition to the submission of complete documentation to the IRB, full payment of taxes and submission of tax returns to the IRB, the tax clearance letter will only be issued where no legal action (criminal and / or civil), has been instituted against the taxpayer.

Closure of income tax file

GPHDN 2/2019 also provides a list of documents that need to be submitted to the IRB by a company, LLP and Labuan entity, in order to close an income tax file after receiving the tax clearance letter.

The guidelines is available on IRB's website www.hasil.gov.my (Legislation > Operational Guidelines).

Public Ruling 5/2019 - Perquisites from employment

Public Ruling 5/2019 - Perquisites from employment (“PR 5/2019”) replaces the earlier Public Ruling 2/2013 on the same topic. The changes made in PR 5/2019 are essentially to bring the public ruling up to date with current legislation.



PR 5/2019 explains the tax treatment on perquisites received by an employee from an employment. Perquisites are benefits in cash or in kind which are convertible into money. Other than updates that bring the public ruling in line with current legislation, the notable additions to PR 5/2019 are:

Payment in lieu of notice / buy-out payment

A new paragraph 6.17 and example 10 have been inserted to explain the tax treatment of payments made by an employer to his new employee's previous employer (whether directly or via the new employee) in lieu of the termination notice period that the new employee was to have served in the previous employment. These payments are considered as perquisites and treated as gross income of that new employee under section 13(1)(a) of the Income Tax Act 1967 (ITA).

Keeping of records

In line with the requirements of sections 82 and 82A of the ITA, where an employer or employee has failed to furnish the tax return within the stipulated deadline for a year of assessment (YA), the employer or employee is required to keep and retain records relating to that YA, for 7 years from the end of the YA in which the tax return is furnished.

The public ruling is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).

Public Ruling 6/2019 - Tax Treatment on Expenditure for Repairs and Renewals of Assets

Public Ruling 6/2019 - Tax Treatment on Expenditure for Repairs and Renewals of Assets (“PR 6/2019”) outlines the tax treatment of expenditure incurred on the various types of repairs undertaken in the course of a taxpayer’s business.

The following are the salient points of PR 6/2019:

- **Definition of “repair”**
“Repair” is defined by reference to the ordinary dictionary meaning. Generally, “repair” means *“to restore (a composite, structural and others) to good condition by renewing or replacing the damaged parts.”*
- **Categories of repairs or renewals**
PR 6/2019 classifies the various types of repairs into the following categories and provides examples to explain their tax treatment:

| Category of repairs or renewals | Tax treatment |
|--|--|
| Restoring assets to their original condition | Deductible as it does not improve the asset (revenue expenditure) |
| Initial repairs of assets acquired in a state of disrepair or unusable state | Not deductible as it is an initial expense (capital expenditure) |
| Replacement of the entirety or part of the entirety of an asset | Deductible where it is replacement of <u>part</u> of the entire asset (revenue expenditure) Not deductible where it is replacement of the <u>entire</u> asset (capital expenditure) |
| Replacement or improvement | Not deductible where it improves the structure or function of the asset (capital expenditure) |
| Implements, utensils or articles with a life span of less than two years | Not deductible when incurred for the first time (capital expenditure) Deductible when incurred for the second time (revenue expenditure) |

The public ruling is available on IRB’s website www.hasil.gov.my (Legislation > Public Rulings).

Public Ruling 7/2019 - Taxation of Foreign Fund Management Company

Public Ruling 7/2019 - Taxation of Foreign Fund Management Company ("PR 7/2019") supersedes Public Ruling 6/2014 - Taxation of Foreign Fund Management Company ("PR 6/2014").

PR 7/2019 essentially updates PR 6/2014 to incorporate changes to the legislation since PR 6/2014 was issued.

Background

Foreign fund management companies are companies that provide fund management services to foreign and local investors. In general, the management fee income earned from foreign investors is subject to tax at 10% whilst the fee income earned from local investors is taxed at the prevailing corporate tax rate of 24%. Tax exemption is available for management fee income earned by foreign fund management companies which manages investors' funds based on syariah principles.

Updates to PR 7/2019

The following developments have been incorporated into the new public ruling:

- Extension of tax exemption period (from YA 2016 to YA 2020) for income earned by a foreign fund management company from provision of fund management services based on syariah principles.
- Management fee income earned by a foreign fund management company from foreign investors will be subject to a tax rate of 24% instead of 10% from YA 2021. The tax rate increase is to meet the Forum on Harmful Tax Practices' requirements.

A summary of the applicable tax rates is as follows:

| Shareholding of a Foreign Fund Management Company # | Type of Investors | Tax Rate (%) | |
|---|-------------------|-------------------------------|-----------------|
| | | YA 2020 and prior | YA 2021 onwards |
| 100% foreign equity | Foreign | 10 | 24 |
| At least 30% local equity | Foreign | 10 | 24 |
| At least 30% local equity | Local | Prevailing corporate tax rate | |

A foreign fund management company which provides services to local investors must have at least 30% local shareholdings pursuant to the Guidelines for the establishment of foreign fund management companies issued on 1 July 2000 by the Securities Commission.

The public ruling is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).

Note: For purposes of PR 7/2019, a foreign fund management company refers to a company incorporated in Malaysia and licensed under the Capital Markets and Services Act 2007, and excludes a foreign fund management company that issues, offers or makes an invitation to subscribe or purchase units of conventional unit trust funds.

Connect with us

Kuala Lumpur

Jagdev Singh

jagdev.singh@pwc.com
+60(3) 2173 1469

Penang & Ipoh

Tony Chua

tony.chua@pwc.com
+60(4) 238 9118

Johor Bahru

Benedict Francis

benedict.francis@pwc.com
+60(7) 218 6000

Melaka

Benedict Francis

benedict.francis@pwc.com
+60(7) 218 6000

Tan Hwa Yin

hwa.yin.tan@pwc.com
+60(6) 283 6169

Kuching

Bryan Chen

bryan.chen@pwc.com
+60(82) 527 218

Labuan

Jennifer Chang

jennifer.chang@pwc.com
+60(3) 2173 1828

Corporate Tax Compliance & Advisory

Consumer & Industrial Product Services

Margaret Lee

margaret.lee.seet.cheng@pwc.com
+60(3) 2173 1501

Steve Chia

steve.chia.siang.hai@pwc.com
+60(3) 2173 1572

Emerging Markets

Fung Mei Lin

mei.lin.fung@pwc.com
+60(3) 2173 1505

Energy, Utilities & Mining

Lavindran Sandragasu

lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Financial Services

Jennifer Chang

jennifer.chang@pwc.com
+60(3) 2173 1828

Services & Infrastructure

Lim Phaik Hoon

phaik.hoon.lim@pwc.com
+60(3) 2173 1535

Technology, Media, and Telecommunications

Heather Khoo

heather.khoo@pwc.com
+60(3) 2173 1636

Specialist services

Corporate Services

Lee Shuk Yee

shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Dispute Resolution

Tai Weng Hoe

weng.hoe.tai@pwc.com
+60(3) 2173 1600

Global Mobility Services

Sakaya Johns Rani

sakaya.johns.rani@pwc.com
+60(3) 2173 1553

Hilda Liow

hilda.liow.wun.chee@pwc.com
+60(3) 2173 1638

Indirect Tax

Raja Kumaran

raja.kumaran@pwc.com
+60(3) 2173 1701

Yap Lai Han

lai.han.yap@pwc.com
+60(3) 2173 1491

Chan Wai Choong

wai.choong.chan@pwc.com
+60(3) 2173 3100

International Tax Services / Mergers and Acquisition

Gan Pei Tze

pei.tze.gan@pwc.com
+60(3) 2173 3297

Tax Technology

Tax Reporting & Strategy

Yap Sau Shiung

sau.shiung.yap@pwc.com
+60(3) 2173 1555

Pauline Lum

pauline.ml.lum@pwc.com
+60(3) 2173 1059

Transfer Pricing

Jagdev Singh

jagdev.singh@pwc.com
+60(3) 2173 1469

China Desk

Lorraine Yeoh

lorraine.yeoh@pwc.com
+60(3) 2173 1499

Japanese Business Consulting

Yuichi Sugiyama

yuichi.sugiyama@pwc.com
+60(3) 2173 1191

Clifford Yap

clifford.eng.hong.yap@pwc.com
+60(3) 2173 1446



www.pwc.com/my/tax

TaXavvy is a newsletter issued by PricewaterhouseCoopers Taxation Services Sdn Bhd. Whilst every care has been taken in compiling this newsletter, we make no representations or warranty (expressed or implied) about the accuracy, suitability, reliability or completeness of the information for any purpose. PricewaterhouseCoopers Taxation Services Sdn Bhd, its employees and agents accept no liability, and disclaim all responsibility, for the consequences of anyone acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Recipients should not act upon it without seeking specific professional advice tailored to your circumstances, requirements or needs.

© 2019 PricewaterhouseCoopers Taxation Services Sdn Bhd. All rights reserved. "PricewaterhouseCoopers" and/or "PwC" refers to the individual members of the PricewaterhouseCoopers organisation in Malaysia, each of which is a separate and independent legal entity. Please see www.pwc.com/structure for further details.