



TaXavvy

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Allowance for increased exports - new gazette orders

Three gazette orders have been issued in relation to the Allowance for Increased Exports (AIE) incentive for export of manufactured products and agriculture produce. Two of the gazette orders:

- revoke the earlier gazette orders, and
- update the AIE incentive by imposing new qualifying conditions.

The third gazette order covers the new AIE incentive for Small and Medium Enterprises (SMEs) as announced in Budget 2016.



Existing AIE incentive updated

The following two gazette orders (“the 2019 Orders”) effective from year of assessment (YA) 2016 have been issued.

	Normal AIE	AIE for significant increase in exports, penetration into new markets, Export Excellence Award
Gazette order	Income Tax (Exemption) (No.6) Order 2019 [PU(A) 162/2019] <i>revokes Income Tax (Allowance for Increased Exports) Rules 1999 [PU(A) 128/1999]</i>	Income Tax (Exemption) (No.5) Order 2019 [PU(A) 161/2019] <i>revokes Income Tax (Exemption) (No. 17) Order 2005 [PU(A) 158/2005]</i>
Incentive - amount of income exempted [no change from revoked orders]	<u>Manufactured products</u> <ul style="list-style-type: none">• 10% of the value of increased exports where 30% value added is attained;• 15% of the value of increased exports where 50% value added is attained. <u>Agriculture produce</u> <ul style="list-style-type: none">• 10% of the value of increased exports.	<u>Manufactured products or agriculture produce</u> <ul style="list-style-type: none">• 30% of the value of increased exports where there is 50% increase in exports;• 50% of the value of increased exports where new markets are penetrated; or• 100% of the value of increased exports where “Export Excellence Award” is received.

What's new in the 2019 Orders?

1. Changes to qualifying conditions

- The shareholding requirements of the qualifying company (QC) has been tightened whereby 60% of the issued share capital now has to be owned by a Malaysian citizen.
- The agriculture produce must be planted, reared or caught by QC; and products must be manufactured by QC.

2. Determination of value of increased exports

Two methods of determining the value of increased exports:

Basis period of current YA and immediately preceding YA	Value of increased exports
12 months ending on same date	Difference between the free-on-board (FOB*) value of sales for the two YAs.
Not 12 months ending on same date	Difference between the average FOB* value of export sales for the two YAs

* Value shall not be zero.

3. "Savings" provision

As there is a gap from YA 2016 to the date of gazetting of the above-mentioned orders, there is a "savings provision" that allows for incentives granted under the revoked orders to continue to apply.

New AIE incentive for SMEs

Pursuant to Budget 2016, the Income Tax (Exemption) (No. 7) Order 2019 [PU(A) 163/2019], which is effective from YA 2016 to 2020, provides income tax exemption to SMEs on their income from export sales.

The amount of income exempted is based on the value of increased exports as follows:



Manufactured products

- 10% of the value of increased exports where 20% of value added is attained;
- 15% of the value of increased exports where 40% of value added is attained.



Agriculture produce

- 10% of the value of increased exports of the agriculture produce.

A qualifying company is a company:

- incorporated under the Companies Act 2016,
- resident in Malaysia,
- with paid-up ordinary share capital not exceeding RM2,500,000 at the beginning of the basis period for a YA.

The method for determination of value of increased exports is the same as the previous two AIE incentives.

Integrated Logistics Services incentive (second round) - new guideline

The Malaysian Investment Development Authority (MIDA) has issued a new Guideline for second round of the Integrated Logistics Services incentive (“the guideline”). Under this second round incentive, an existing approved logistics company may enjoy either of the following:

- Income tax exemption of 70% of statutory income for a period of 5 years, or
- Income tax exemption of 60% of qualifying capital expenditure incurred within 5 years to be set off against 70% of statutory income.



Existing approved logistics company may be considered for a second round of the integrated logistics services (ILS) incentive if expansion and / or diversification activities are undertaken.

The following qualifying conditions must be met:

1. Increase in fixed asset investments where the company undertakes any of the following activities:

Activity	% increase
Expansion	50%
Diversification	30%
Expansion & diversification	30%

2. Where the activity undertaken involves diversification (whether by itself or together with expansion):
 - the company must increase local skilled workers to at least 5 persons (minimum monthly wage of RM4,000 each) before expiry of the second round of ILS incentive, and
 - the activities must be for logistic-related services.
3. Maintain activities as approved in the first round of ILS incentive.
4. Maintain separate accounts for the new activities

Application has to be submitted to MIDA by 31 December 2020. The guideline is available on MIDA’s website www.mida.gov.my (Resources > Forms and Guidelines > Services Sector).

Labuan Investment Committee - Pronouncement 1-2019

The Labuan Investment Committee, comprising the Ministry of Finance (MOF), Labuan Financial Services Authority ("Labuan FSA") and Inland Revenue Board (IRB), has been established to recommend policies and monitor enforcement on the substantial activity requirements for Labuan IBFC. The Committee has issued its first Pronouncement 1-2019 dated 19 June 2019 to clarify the following:

1. Non-application of restriction of the deduction for payments made to Labuan entities
2. Compliance with substantial activity requirements
3. Meaning of full-time employees

Non-application of restriction of the deduction for payments made to Labuan entities

With effect from 1 January 2019, deduction for payments made by a resident to a Labuan entity has been restricted as follows:

Type of payment	% not deductible*
Interest expense	33%
Lease rental	33%
Other payments	97%

The Pronouncement clarifies that such restriction is not applicable to payments made by:

- A resident general insurer to a Labuan re-insurer pursuant to section 60(5)(b)(ii) and 60(7) of the Income Tax Act 1967 ("ITA 1967"), and
- A resident to a Labuan entity which has made an election to be taxed under the ITA 1967.

Compliance with substantial activity requirements

- Labuan entities are to submit a self-declaration of their compliance to the substance regulations to the IRB by March 2020 (or the IRB's approved extended period) together with their annual tax filing.
- First basis year to be declared is 2019 and the manner of declaration will be made known at a later date.
- Labuan entities which are dormant, struck-off, under liquidation or wound up need not comply with the substantial activity requirements if they do not derive any income.

Meaning of full-time employees

Full-time employees shall include:

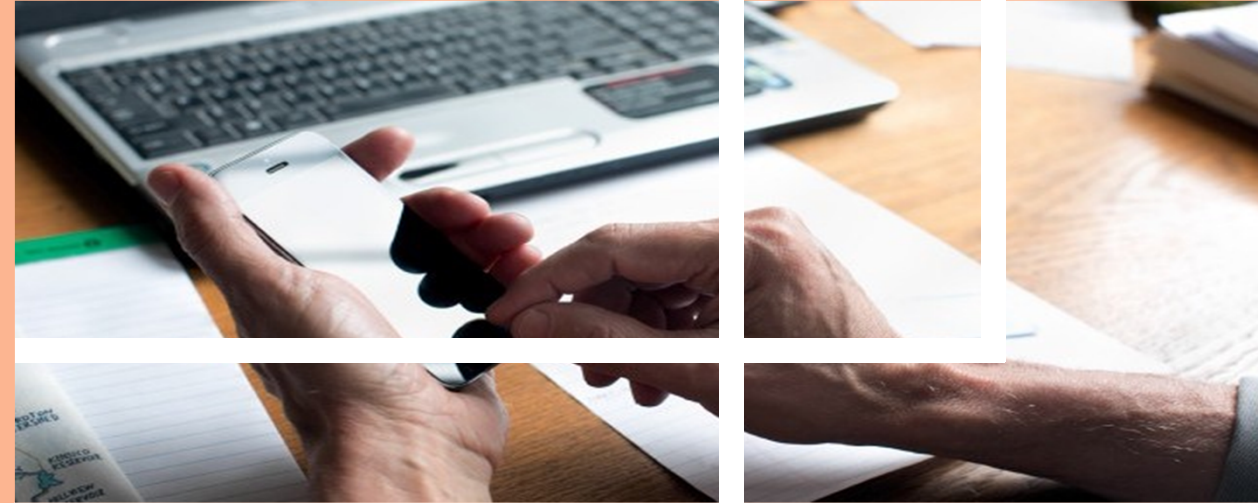
- At least an officer of a managerial capacity, and
- Other employees, including non-managerial and clerical staff) who may be employed on permanent / contract basis to serve the Labuan entity on a dedicated basis.

** Pursuant to section 39(1)(r) of the ITA 1967 and the Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018*

Pronouncement 1-2019 is available on Labuan FSA's website www.labuanibfc.com (Legislation & Guidelines > Guidelines > General).

Further deduction for employment of ex-convict, senior citizens etc.

Following the Budget 2019 proposal, the Income Tax (Deduction for Employment of Senior Citizen, Ex-Convict, Parolee, Supervised Person and Ex-Drug Dependant) Rules 2019 (“the Rules”) has been gazetted. The Rules is effective for years of assessment 2019 and 2020 and provides employers a further deduction for the remuneration paid to an employee who is a citizen and resident in Malaysia.



Categories of qualifying employees

- Senior citizen (60 years & above)
- Ex-convict who has served his sentence of imprisonment
- Parolee (as defined in the Prison Act 1995)
- A supervised person who is a prisoner and directed to work such labour outside the limits of prison
- Ex-drug dependant who has undergone treatment & rehabilitation or supervision; or placed under supervision

Conditions of deduction

- The employer has only business source income and is not a relative (defined) of the employee.
- The employee is employed on a full-time basis with a remuneration that does not exceed RM4,000.
- The employer and employee are not the same person.
- The employer must obtain written confirmation from the Malaysian Prison Department or National Anti-Drugs Agency, confirming the status of the employee.

The Rules does not state whether the RM4,000 is on a monthly or annual basis although it was announced in Budget 2019 *“To ensure that ex-convicts are not left behind as the country moves forward and are able to contribute to economic growth, the Government will provide an additional tax deduction for companies who employ ex-convicts up to a **monthly salary** of RM4,000.”*

Approved social enterprise - application guideline

Budget 2019 announced that income tax deduction will be provided for contributions to a social enterprise to support the government's efforts in uplifting underprivileged and marginalised communities.

The MOF has now issued a Guideline on the Application of Social Enterprise to be approved under section 44(11C) of the Income Tax Act 1967 ("the guideline") which explains the procedures and conditions for approval for a social enterprise.



1. Application procedure

- Application is to be made to MOF in writing from 1 January 2019 to 31 December 2020.
- Information to be provided includes audited accounts, accreditation documents and source of funding.
- Approval is given for a period of 3 consecutive years of assessment.

2. Qualifying conditions for approval of the social enterprise

- Incorporated, carrying on business in Malaysia and has been in operation for at least 2 years.
- Its objective is to provide positive social and environmental impact in a stable financial environment.
- Is accredited by the Ministry of Entrepreneur Development.
- The only recipients of its social benefits are Malaysian citizens.
- Is not an approved organisation or institution under section 44(6) of the Income Tax Act 1967.

3. Conditions that need to be met to keep the approval obtained

An approved social enterprise has to:

- a) Prepare and submit to MOF separate accounts annually for contributions received.
- b) Submit its income tax return, list of donors and report on expenditure, to the Inland Revenue Board (IRB).
- c) Use contributions received solely for its social objectives.
- d) Keep a copy of the list of donors and official receipts for audit purposes.

The approval may be revoked if the conditions are not fulfilled.

4. Deduction for donations to a social enterprise

- The deduction is only allowed for cash donations and is limited to aggregate income of 7% (individuals or non-companies) and 10% (companies).
- The deduction can only be claimed when the donation is made and official receipt issued.

5. Revocation or dissolution

The balance of contributions have to be channeled to another approved social enterprise or approved institution / organisation.

More information on social enterprises can be obtained from the Social Enterprise Accreditation Guidelines available on the Ministry of Entrepreneur Development's website www.med.gov.my. The guideline is available on MOF's website www.treasury.gov.my (Tax > Exemption guidelines).

Other updates

- Guideline on tax treatment related to the implementation of MFRS 121
- Guideline for approval of Director General of Inland Revenue under Subsection 44(6) of the Income Tax Act 1967 - revised
- National Home Ownership Campaign 2019 – extension of stamp duty exemptions



Guideline on tax treatment related to the implementation of MFRS 121

The IRB has uploaded a revised guideline on tax treatment related to the implementation of MFRS 121 (“the revised guideline”) dated 16 May 2019 on their website. This revised guideline was released on 20 June 2019 and supersedes the earlier guideline dated 24 July 2015.

The contents of the revised guideline is identical to the version received by the Chartered Tax Institute of Malaysia, as covered in [TaXavvy 8-2019](#).

Guideline for approval of Director General of Inland Revenue under Subsection 44(6) of the Income Tax Act 1967 - revised

[TaXavvy 8-2019](#) had reported on the abovementioned guideline which had an Appendix that sets out examples on the computation of the 50% spending requirement for a section 44(6) approved institution / organisation.

The IRB has subsequently removed the above-mentioned Appendix.

National Home Ownership Campaign 2019 - extension of stamp duty exemptions

Two stamp duty exemption orders were gazetted on 15 March 2019 to provide stamp duty exemption on loan agreement and instrument of transfer for the purchase of residential properties (valued at more than RM300,000 but not more than RM2,500,000). The stamp duty exemption period was from 1 January 2019 until 30 June 2019. Please refer to [TaXavvy 6-2019](#).

The Government has now extended the exemption period by another 6 months to 31 December 2019 via amendment orders.

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