



# TaXavvy

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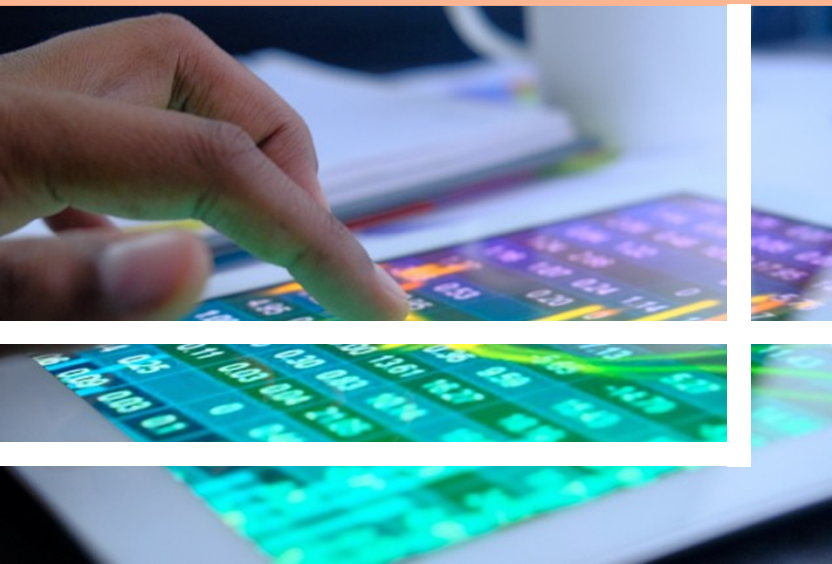


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## Form e-C for year of assessment 2019

The Inland Revenue Board (IRB) has released the year of assessment (YA) 2019 Form e-C in their ezHASIL portal and the [Company Return Form Guidebook](#) on their main website.

The YA 2019 Form e-C is a substantially shortened return form as compared to the YA 2018 Form e-C. However, the Form is now accompanied by supporting worksheets.



### What's new



Supporting worksheets are now required to be submitted



Form e-C incorporates new section on interest limitation under the Earnings Stripping Rules



Additional disclosure on controlled transactions

### Supporting worksheets

Certain information previously disclosed in the YA 2018 Form e-C have now been shifted to the supporting worksheets. For example, there are now worksheets to complete on the financial particulars of the company, particulars of directors and shareholders and also details on the claim for capital allowances and losses. These worksheets are to be submitted together with the YA 2019 Form e-C.

### Interest limitation under the Earning Stripping Rules (ESR)

Part F8 of the Form e-C for YA 2019 is to be completed where there is interest expense restricted under the ESR. ESR is to take effect from 1 January 2019. However, specific rules (e.g. the limit of interest deduction, how the restriction works, etc) have not been issued to date.

- **Additional disclosure on controlled transactions**

*Controlled transactions - Part F6 of Form e-C, supported by HK-N*

The Form MNE [Information on cross border transactions] has traditionally been used by the IRB to obtain detailed information on intercompany transactions. The information requested is normally on a selected taxpayer basis.

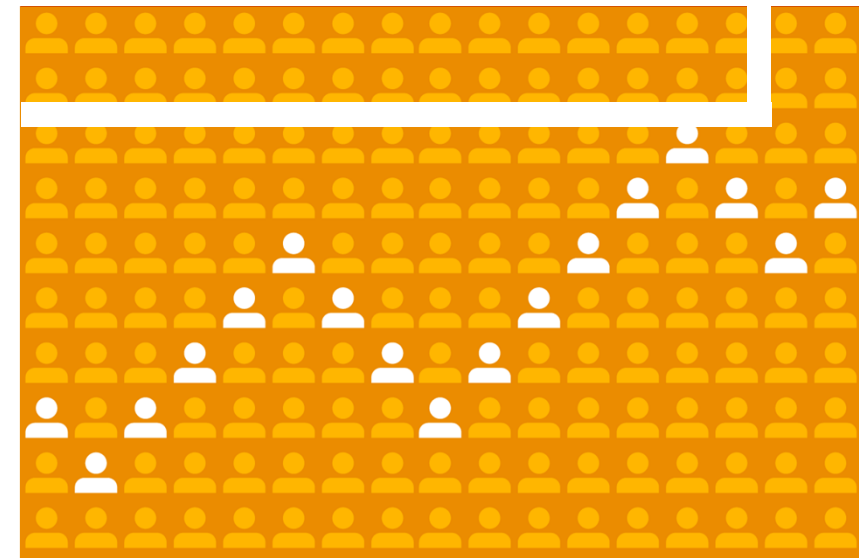
HK-N has imported Part D [transactions with related companies] of the Form MNE into its template. HK-N requires disclosure in categories ranging from sales, purchases and loans which were previously also required in the YA 2018 Form e-C. What is new is the requirement to break down the amounts previously disclosed as “total other expenses” and “other income” in Part N of the YA 2018 Form e-C into the following categories:

- |                                       |                                 |
|---------------------------------------|---------------------------------|
| - Management fees                     | - Research and development      |
| - Advertisement, marketing, promotion | - Tangible assets               |
| - Rent or lease of assets             | - Interest                      |
| - Guarantee                           | - Cost contribution arrangement |
| - Others not specified above          |                                 |

*Foreign sourced exempt income received in Malaysia - Part F7 of the Form e-C*

The taxpayer is required to provide details of the country where the income was received from and whether the foreign income was received from related company(s). The taxpayer also needs to state the type of income and amount received.

Given the new disclosure requirements on controlled transactions, it becomes imperative for companies to evaluate their related party transactions for gaps that need to be addressed in order to align such transactions with the arm's length principle. As this will continue to be a focus area of the IRB, there must be continuous and timely monitoring of the commercial validity of such transactions, supported with appropriate transfer pricing documentation that meets Malaysian transfer pricing requirements.



## Guidelines on taxation of electronic commerce transactions

Due to the fast changing e-commerce landscape, the IRB has issued a new [Guidelines on Taxation of Electronic Commerce Transactions](#) dated 13 May 2019. This guideline supersedes the Guidelines on Taxation of Electronic Commerce issued on 1 January 2013 (“superseded guideline”).

The IRB’s new guideline seeks to provide guidance on the tax treatment of e-commerce transactions. The guideline defines what is meant by an “e-commerce” transaction and identifies the common e-commerce business models now in existence. The guideline then covers the scope of tax liability for:

- e-commerce business income
- e-commerce transactions falling under “section 4A - special classes of income”
- e-commerce transactions regarded as “royalty” under the new expanded definition of “royalty” in section 2, effective from YA 2017

The salient points of the guideline are as follows:

### Definition of an e-commerce transaction

“e-commerce transaction” means any sale or purchase of goods or services, conducted over any networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered through those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations.

Note: The guideline also states that taxpayers should refer to IRB’s [Practice Note 1/2018 - Tax treatment on digital advertising provided by a non-resident](#) for further guidance on the taxation of e-commerce transactions. IRB’s Practice Note 1/2018 has been covered in [TaXavvy 6-2018](#).





## Common e-commerce business models identified in the guideline



### Online trading / service providers

Sale or purchase of goods / services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders.



### App stores

A digital distribution platform for software which is accessible through consumers' devices whereby consumers can browse, view, purchase and automatically download and install apps on their devices.



### Online advertising

The use of internet as a medium to target and deliver marketing messages to customers in the form of display advertisements on webpages.



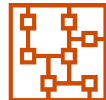
### Cloud computing

Provision of standardised, configurable, on-demand, online computer services which can include computing, storage, software, data management, using shared physical and virtual resources.



### Payment services

Payment via online transaction between online purchasers and sellers.



### Digital currency token

Mining, buying and selling of digital currency or digital token.



## Taxation of e-commerce transactions

Similar to the superseded guideline, the IRB adopts the principle of neutrality where both e-commerce and conventional transactions are subject to the same tax treatment. As such, taxpayers in similar situations and carrying out similar transactions should be subjected to the same tax treatment.

- **Scope of tax liability for business income**

Where the business operations are carried on in Malaysia, the income of a person attributable to those business operations is deemed to be derived from Malaysia. The determination of whether or not an income is derived from Malaysia is a question of fact. IRB's position on this matter remains consistent in both the new and superseded guideline.

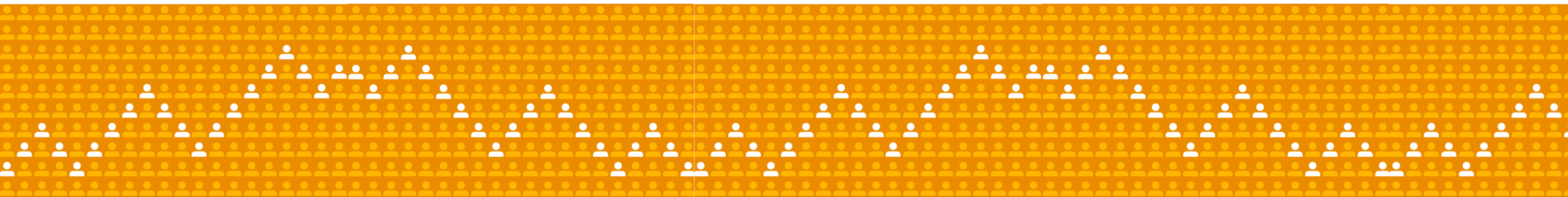
It is to be noted that the entire section on the use of placement and location of servers and websites in determining the source of where e-commerce income is derived from (paragraphs 5 and 6 of the superseded guidelines), has been deleted from the new guideline.

- **Scope of tax liability for special classes of income**

The new guideline includes a section to address e-commerce transactions that will be subject to withholding tax under section 109B of the Income Tax Act 1967 (ITA) if the transactions fall under the scope of "section 4A - Special classes of income" and are performed in Malaysia.

- **Scope of tax liability for royalty**

The new guideline refers to the amended definition of "royalty" whereby the word "software" has been added to the definition of "royalty" with effect from YA 2017.



The guideline has set down examples on how certain e-commerce transactions payments will be treated for tax purposes. Examples 3, 4 and 5 are summarised as follows:

Income regarded as “royalty”

MB Sdn Bhd (MB) undertakes online trading in scarves and accessories. MB uses a renowned social media company as a platform to advertise the sales of its products. The social media company allows its customers to create its own advertisement campaign using its platform.

*Tax treatment:* Payment to the social media company is regarded as “royalty” and therefore subject to withholding tax (WHT) under section 109 of the ITA.

[Example 3]

OL Sdn Bhd (OL) is a manufacturing company that uses accounting software for its financial reporting. It purchased a software solution from a foreign company for RM70,000 and will pay an annual licensing fee of RM3,000.

*Tax treatment:* Both payments are for the “use of or the right to use software”, and therefore regarded as “royalty” which is subject to WHT under section 109 of the ITA.

[Example 4]

Mixed income situations

Saloma Enterprise (Saloma) runs an online business, selling its items worldwide through an online selling platform owned by AhBay (a non-resident). Saloma will receive payment for goods sold via an online payment service platform provided by Bayarkawan (a non-resident).

[Example 5]

Payee	Payment by Saloma	Classification of payment	Applicable WHT provision
AhBay	Monthly subscription fee (USD19.95) [for the right to use AhBay’s application]	Royalty	Section 109
AhBay	Transaction fee for every successful sale (8% per successful transaction) [in relation to services performed by AhBay]	Section 4A - special classes of income	The guideline states that as the services were performed outside Malaysia the fees are not subject to WHT
Bayarkawan	3.9% per transaction, deducted from the value of each transaction.		

## Guidelines on tax treatment related to the implementation of MFRS 121 (or other similar standards) - revised

The Chartered Tax Institute of Malaysia (CTIM) has received the IRB's revised Guidelines on the tax treatment related to the implementation of MFRS 121 (or other similar standards) dated 16 May 2019. The guideline issued on 24 July 2015 has been superseded.



The following are some of the key changes from the superseded guideline:

### When foreign exchange differences are considered as realised

#### *Revised guideline*

The timing of realisation is the *date of settlement* for the asset or liability.

#### *Superseded guideline*

Previously, the date when proceeds were paid into a foreign currency account for settlement would not be regarded as the date of realisation as there was no *physical conversion* of the amount received to Ringgit Malaysia (RM)

[Example 5 refers]

### Entities with non-RM as functional currency (FC)

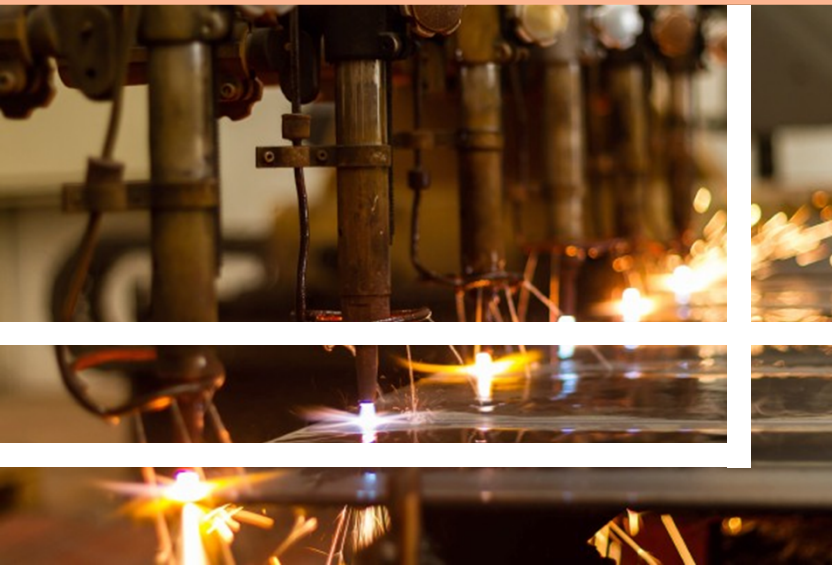
#### - foreign exchange rates to be used for reporting in the tax returns

- An entity may translate its non-RM FC financial statements into presentation currency (i.e. RM) using MFRS 121 prescribed exchange rates
- An entity's audited non-RM FC financial statements shall be translated into RM by using either:
  - exchange rate as prescribed in MFRS 121 (only for entities adopting MFRS or other similar standards); or
  - average exchange rate issued by the Accountant General's Department, based on the rate published by Bank Negara Malaysia



## Guidelines and procedures for the applications for Automation Capital Allowance - revised

The Malaysian Investment Development Authority (MIDA) has revised their [guideline on application for automation capital allowance](#) ("automation CA") on 23 March 2019. The guideline issued on 25 June 2018 has been superseded. The incentive provides a 200% capital allowance on qualifying expenditure incurred on automation equipment from YA 2015 to YA 2020. The application period for the incentive expires on 31 December 2020.



The changes in the guideline mainly relate to the procedures for application. The application will be jointly evaluated by MIDA and the Standards and Industrial Research Institute of Malaysia (SIRIM), with MIDA evaluating the non-technical aspects while SIRIM undertakes the technical aspects of the application. The superseded guideline had only specified that MIDA & SIRIM will jointly evaluate the application.

As the time period for application for this incentive will expire on 31 December 2020, companies are encouraged to review their eligibility so as not to miss the opportunity to apply for the incentive.

### Eligibility criteria

The eligibility criteria remains largely the same. The changes noted are:

- A company which has obtained a confirmation letter of exemption from manufacturing licence from MIDA will be eligible to apply for this incentive.
- The removal of the paragraph specifying that the automation equipment should enhance productivity and adopt advanced technology. It is presumed that the detailed requirements for the automation equipment will now be specified by SIRIM.
- The inclusion of the paragraph to specify that the automation CA is mutually exclusive from the incentives of reinvestment allowance, pioneer status, investment tax allowance and allowance for increased exports. This is in line with the gazette orders relating to automation CA.

### Mechanism of claiming the incentive

The guideline now makes reference to the following gazette orders that stipulates the claim for automation CA:

- [Income Tax \(Accelerated Capital Allowance\) \(Automation Equipment\) Rules 2017](#).
- [Income Tax \(Exemption\) \(No 8\) Order 2017](#).

### Approval

MIDA's guideline no longer specifies that an approval letter will be issued. Instead, a Consideration Letter will be issued and this has to be kept by the company for the purposes of an audit by IRB.

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

The [guideline](#) dated 15 May 2019 has been revised to bring it up to date with current legislation and practices. It supersedes the version of the guideline issued in January 2005. This guideline covers the types of approved institution or organisation, the criteria and conditions for approval, the powers of IRB and the tax treatment of donors, amongst others.



The following are some of the significant points to note from the guideline:

### Objective is not for profit seeking purposes

The institution / organisation must be established in Malaysia and is not established primarily for profits. Examples of such institutions / organisation are:

- A public or charitable institution.
- A public association conducting research and activities related to finding the cause, prevention or treatment of human disease.
- An organisation established to increase funding for granting scholarship or gift to an individual(s) for study or research work.
- An organisation that provides sanctuary and protection for animals.
- An organisation assisted by government grants for industrial / commercial development.
- An organisation for the maintenance and protection of the environment.

### Operational period to be eligible to apply for approval under section 44(6)

The institution / organisation must be in operation for at least 24 months. This is required to ensure the the institution / organisation carries out the objectives as planned and is registered with the relevant bodies in Malaysia.

### Person eligible to submit the application

Persons eligible to submit the application on behalf of the institution / organisation are:

- Its president, chairman, director, secretary, or
- A certified representative legally appointed by the institution / organisation.

## Prohibition

Some of the matters the institution / organisation is prohibited from are:

- Engaging in political or trade union activities, or financing such activities.
- Purchasing of asset or property which is not in line with its objectives.

## Approval

- The approved period under section 44(6) is for a period of 5 years.
- For extension of the approval period, an written application has to be made to IRB within 6 months prior to the expiry of the approved period.

If the institution / organisation violates any of the conditions of approval, the approval granted may be revoked.

## Responsibilities

The following are some of the responsibilities of a section 44(6) approved institution / organisation:

- Issue official receipts for all donations, containing the required information (e.g. serial number, personal details of donor, collector's designation).
- Not to issue receipts to donors who do not provide complete personal information.
- Provide IRB with early notification prior to the:
  - Acquisition / disposal of asset and properties.
  - Change in its board of directors / trustees / committee / members.
  - Amendment to its constitution / trust deed.
- Obtain prior written approval from the Minister of Finance for any activities abroad.

## Minimum spending

The guidelines states that “*at least 50% of the income earned in the **previous year** must be spent in the following year for activities to achieve the institution's or organisation's objectives*”

To illustrate this point, the guideline has provided several examples. The minimum spending is essentially computed as follows:

- 50% of the **funds available in a year\*** must be spent in that year; and
- The balance of funds unspent from that year must be spent in the following year.

*\* consist of funds received during that year plus unspent funds brought forward from the previous year*

[Examples 1 to 3]

## Dissolution of institution / organisation

- IRB is to be notified within 14 days from the date of the dissolution.
- Any balance of assets and money after settlement of all liabilities shall be donated to the government or to another institution / organisation approved by IRB.

## Guidelines on Labuan – revised to remove of ring-fencing features

The Labuan FSA has updated their guidelines to remove ring-fencing features for Labuan entities, in line with the criteria set by the Forum on Harmful Tax Practices (FHTP).

Ring-fencing features have been removed from the following guidelines:

- [Guidelines on Co-Location of Labuan Holding Company](#)
- [Guidelines on Investment Banking Business](#)
- [Guidelines on Entry Criteria for Labuan Bank](#)
- [Guidelines on Insurance Broker](#)
- [Guidelines on the Establishment of Labuan Fund Manager](#)
- [Guidelines on the Establishment of Labuan Securities Licensee including Islamic Securities Licensee](#)
- [Guidelines on Carrying Out Factoring Business in Labuan](#)
- [Company Management Business in Labuan IBFC](#)

Essentially the key amendments to the above guidelines were to remove:

- the requirement for business transactions to be only conducted in foreign currencies and
- the prohibition on dealing with Malaysian residents.



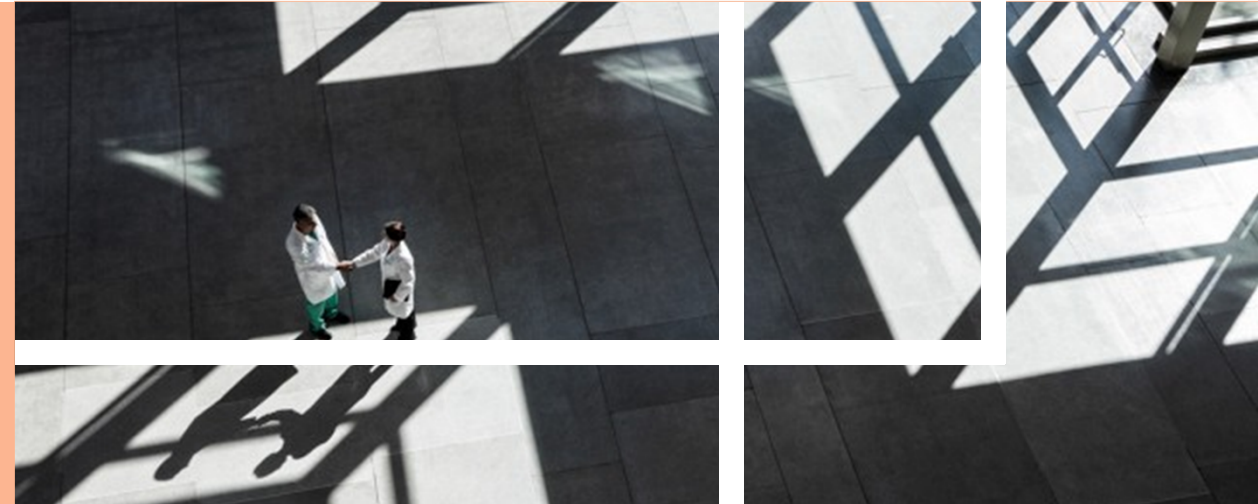


## Guideline for Principal Hub incentive - revised

The [MIDA guideline](#) has been revised to be in line with the amendment orders legislated in February 2019.

## Income tax exemption for religious services provided by non-residents

An income tax exemption order has been legislated to exempt income earned by non-residents from the provision of religious services.



### Guideline for Principal Hub incentive - revised

#### *Location for provision of qualifying services*

As informed in [TaXavvy 3/2019](#), amendment orders had been legislated to remove the requirement for a Principal Hub (PH) to provide qualifying services to its network companies located in at least 3 countries outside Malaysia. The PH guideline has been revised to align to this change.

#### *Exclusion of intellectual property income*

Additionally, the bulk of the section in the PH guideline dealing with the exclusion of intellectual property (IP) income from the PH incentive has been removed. Instead, a link has been provided to the Ministry of Finance's (MoF) announcement on Malaysia's commitment in International Tax Standards. The MoF's announcement on the treatment of IP income is consistent with what was previously reflected in the PH guideline.

### Income tax exemption for religious services provided by non-residents

The [Income Tax \(Exemption\) \(No 3\) Order 2019](#) has been legislated and is effective from 1 February 2019. The order provides income tax exemption to a non-resident for income derived from Malaysia from the provision of the following services:

- religious lectures or study of religious books (including translation), or
- presiding over prayers or rites of worship.

The religious programme or activity must be conducted or organized for free, exclusively for religious purposes and not for commercial or profit purposes by a religious institution / organization established in Malaysia. The programme or activity must have commenced on or after 1 February 2019.

In addition, the religious institution / organization must have been:

- established exclusively to manage the place of worship in relation to religion and not operated primarily for profit; and
- registered with the Registrar of Societies Malaysia or under any written law governing such entities.

## Withholding tax exemption in relation to software for personal use

The [Income Tax \(Exemption\) \(No 4\) Order 2019](#) ("Exemption Order") has been gazetted to provide exemption from withholding tax (WHT) under section 109 of the Income Tax Act 1967 for payments made to non-residents in relation to software for personal use.

The salient points of the Exemption Order are as follows:

### Commencement

The Exemption Order comes into operation on 1 March 2019.

### Key conditions

The payments are made by a person who:

- is an individual resident of Malaysia;
- is the end user; and
- purchased software or acquired any right to use software for personal usage and not for usage in that individual's business.

### List of software covered

Software or right to use software in respect of:



shrink-wrapped software



downloadable software; or



site-license



software bundled with personal computer hardware, smartphone or tablet.

## Special Voluntary Disclosure Programme - updated FAQ

The [FAQ for the Special Voluntary Disclosure Programme](#) (SVDP) has been updated to incorporate the recent developments in the SVDP which have been covered in [TaXavvy 6-2019](#) and [TaXavvy 7-2019](#) (i.e. the extension of the SVDP period to 30 September 2019 and issuance of the new Operational Guideline 1/2019). In addition, the IRB has also revised certain questions and answers to the FAQ.

### Broad overview of the revised questions and answers of the updated FAQ

No.	Question	Answer
5	<p>The answer to Q5 has been amended:</p> <p>Under SVDP, am I allowed to claim expenses that I have not previously claimed?</p>	<p>No. The SVDP does not involve claims for expenses which would result in a <i>non-taxable assessment</i>, a reduced assessment or a repayment. However, appeal on the expenses that was not previously claimed can be made in accordance with the existing appeal procedures currently in force.</p>
11	<p>The question and answer to Q11 has been re-written:</p> <p>I have failed to pay withholding tax within the stipulated period. If I make a payment now, am I eligible for the SVDP?</p> <p><i>Previous question - Is the SVDP open to cases related to withholding tax</i></p>	<p>The taxpayer who makes payment of the overdue withholding tax shall make a voluntary disclosure at the branch which handles the taxpayer's file, to benefit from the penalty rate of the SVDP.</p> <p><i>Previous answer - Yes, the SVDP is also open to withholding tax cases</i></p>
23	<p>New Q23 has been inserted:</p> <p>I am a partner of ABC Partnership. Can I make voluntary disclosure on the partnership?</p>	<p>Voluntary disclosure on partnership income can be made on the partnership file with consent from all the partners. Audit will not be carried on the partnership where voluntary disclosure has been made. The special penalty rates under the SVDP will apply to all partners.</p>

No.	Question	Answer
41 & 42	<p>The answers to Q41 &amp; Q42 have been amended:</p> <p>I would like to make voluntary disclosure on my under declared income. Can I claim for relief and expenses relating to that income?</p> <p>Can <i>unclaimed</i> zakat be deducted against the voluntary disclosure income?</p>	<p>Expenses / relief / rebate can be claimed in the YA in which the income is reported <i>if the voluntary disclosure made results in assessment / additional assessment being raised.</i></p>
44	<p>The question and answer to Q44 have been amended:</p> <p>If I have filed an appeal through Form Q, can I still make voluntary disclosure?</p> <p><i>Previous question - If I have appealed to the Special Commissioners of Income Tax (SCIT), can I still make SVDP?</i></p>	<p>Taxpayers can make voluntary disclosure provided that there is no reduced assessment.</p> <p><i>Previous answer - Taxpayers are allowed to make voluntary disclosure on issues not related to the case appealed to the SCIT.</i></p>
45	<p>The answer to Q45 has been amended:</p> <p>If I have made voluntary disclosure within the SVDP period, can I appeal for a reduction/waiver of the penalty?</p>	<p>Yes. The appeal shall be filed in accordance with the appeal procedures currently in force.</p> <p><i>Previous answer - Penalty rates are final. However taxpayers can still file in their appeals to SCIT according to the appeal procedure currently in force.</i></p>





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