



TaXavvy

7 February 2020 | Issue 4-2020

In this issue

- Filing programme for year 2020
- Revised Tax Investigation Framework
- Guidelines for the new MSC incentive regime
- Extension of tax exemption for women returning to work from a career break
- Additional Labuan business activity to be subjected to substantial activities requirements

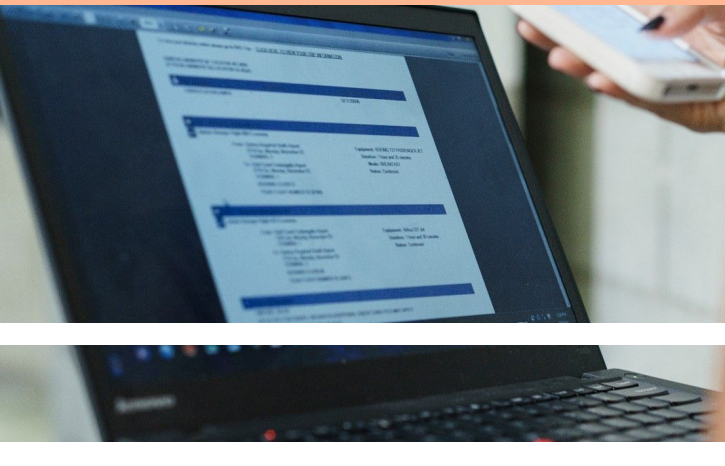


www.pwc.com/my/tax

Filing programme for year 2020

The Inland Revenue Board (IRB) has issued the Filing Programme for Year 2020. The Filing Programme outlines the statutory filing and tax payment due dates, grace period and method of submission for the various return forms.

The Filing Programme for Year 2020 is available from the IRB's website at www.hasil.gov.my (Forms > Filing Programme for Year 2020).



Grace period for submission of return forms and payment of balance of taxes

The following is the grace period for submission of the relevant tax return forms from the stipulated filing due date, and payment of balance of tax under section 103(1) of the Income Tax Act 1967 (ITA 1967), or section 48(1) of the Petroleum Income Tax Act 1967 (PITA 1967):

Category of forms	Forms	Method of submission	Grace period
Income tax return forms for year of assessment (YA) 2020			
Companies	e-C	e-Filing	1 month
Co-operatives Societies	C1/e-C1		
Limited Liability Partnership	PT/e-PT	<ul style="list-style-type: none"> e-Filing Postal Hand delivery 	<ul style="list-style-type: none"> 1 month 3 working days None
Trust Bodies	TA/e-TA		
Unit Trusts / Property Trusts	TC/e-TC		
Business Trusts	TN		
Real estate investment trusts / property trust funds	TR	<ul style="list-style-type: none"> Postal Hand delivery 	<ul style="list-style-type: none"> 3 working days None
Income tax return forms for YA 2019			
Individuals	BE/e-BE/m-BE, B/e-B, BT/e-BT, M/e-M, MT/e-MT		
Partnerships	P/e-P	<ul style="list-style-type: none"> e-Filing Postal Hand delivery 	<ul style="list-style-type: none"> 15 days 3 working days None
Associations	TF/e-TF		
Deceased Persons' Estate	TP/e-TP		
Hindu Joint Families	TJ	<ul style="list-style-type: none"> Postal Hand delivery 	<ul style="list-style-type: none"> 3 working days None

Category of forms	Forms	Method of submission	Grace period
Income tax return forms for YA 2019			
Petroleum - exploration	CPE/e-CPE	• e-Filing	• 1 month
Petroleum - production	CPP/e-CPP 2019	• Postal • Hand delivery	• 3 working days • None
Returns by employers for year of remuneration 2019			
Company / Labuan company employers	e-E	e-Filing	1 month
Non-company / Non-Labuan company employers	e-E/E	• e-Filing • Postal • Hand delivery	• 1 month • 3 working days • None

If submission is not made within the grace period, the submission will be deemed to be late and penalties for return forms other than Form E and Form P under Section 112(3) of ITA 1967 / section 51(3) of PITA 1967 will be computed from the statutory filing due date and not from the extended due date.

Grace period for payment of tax / balance of tax

For assessments raised by the IRB under sections 91, 92, 96A, 90(3) and 101(2) of ITA 1967, the tax / balance of tax must be paid within 30 days from the date of assessment. However, there is a grace period of 7 days.

Repayment cases

For repayment cases, the following appendices / working sheets have to be submitted together the income tax return form.

- Appendix B2 / HK-6 [tax deduction under section 110 of ITA 1967]
- Appendix B3 / HK-8 [claim for tax relief under section 132 of ITA 1967]
- Appendix B4 / HK-9 [claim for tax relief under section 133 of ITA 1967]

Entities which are dormant or have not commenced operations

Similar with prior years, companies, co-operative societies, limited liability partnerships and trust bodies are not required to submit Form CP204 if they have not commenced operations. “Dormant” is explained as follows:

- Never commenced operations since the date it was incorporated / established, or
- Had previously been in operation or carried on business but has now ceased operations or business.

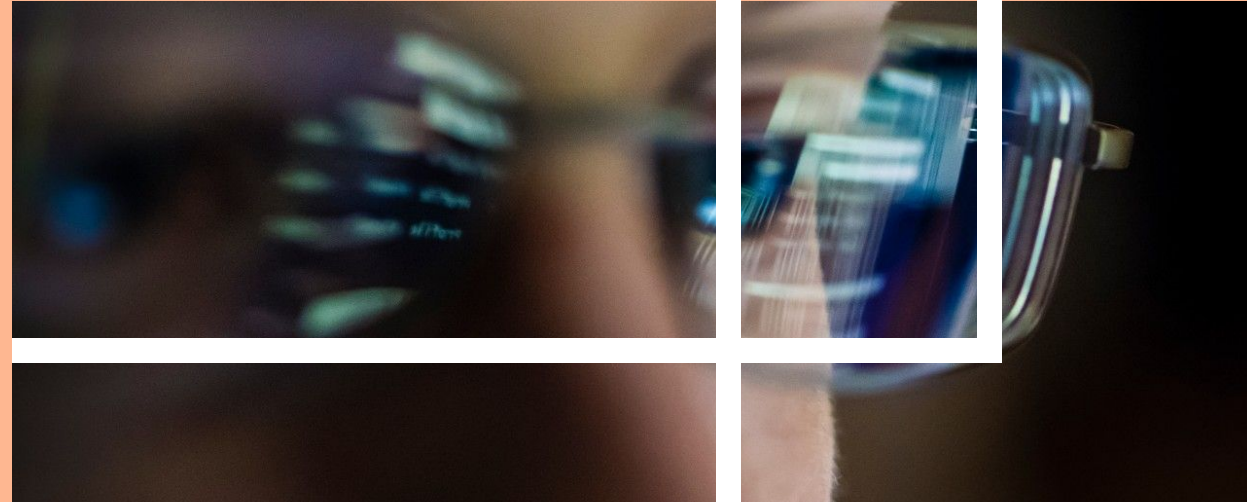
A company which only owns shares, real properties, fixed deposits and other similar investments, is not considered as “dormant”.

For dormant companies, the following are mandatory fields to be completed in the return form:

- Accounting period
- Basis period
- Business / partnership statutory income
- Business code

Revised Tax Investigation Framework

The IRB has issued a revised Tax Investigation Framework (“the Revised Framework”) dated 1 January 2020, which is effective from 1 January 2020. It supersedes the previous Tax Investigation Framework dated 15 May 2018 (“the 2018 Framework”). The Revised Framework is available from the IRB’s website at www.hasil.gov.my (Legislation > Tax Investigation Framework).



The contents of the Revised Framework are essentially the same as the 2018 Framework. The salient changes are as follows:

Investigation via request for documents and information from the taxpayer

The 2018 Framework only covered tax investigation conducted via inspection visit without prior notification to the taxpayer.

The Revised Framework includes an alternative form of tax investigation i.e. tax investigation via the issuance of letters requesting for information / documents from tax agents or third parties. Under this alternative method of carrying out a tax investigation, the taxpayer may be required to give oral information at IRB’s offices and may be visited by the IRB officers with prior written notification.

Penalties for failure to furnish tax return or give notice of chargeability

Part 10.1 of the Revised Framework sets out the current practice adopted by the IRB on the imposition of penalties under section 112(3) of ITA 1967 in respect of failure to furnish return or give notice of chargeability.

Although the law provides that the penalty imposed may be treble (3 times) the amount of tax charged, the Revised Framework states that the penalty is imposed on the amount of tax *undercharged* [previously “tax charged” for section 112(1A) (penalty upon conviction) and “tax payable” for section 112(3) (penalty without prosecution)].

Settlement of tax and penalties by instalments

In the 2018 Framework, the IRB had stated that higher penalty rates will be imposed on longer instalment period for settlement of tax and penalty compared to full or shorter instalment period. This statement has been removed in the Revised Framework.

Guidelines for the new MSC Malaysia incentive regime

Malaysia had terminated the tax exemptions granted to MSC Malaysia status companies under previous laws (“Existing Regime”) from 1 January 2019 (subject to grandfathering rules) to comply with requirements under Base Erosion and Profit Shifting Action (“BEPS”) No 5.

Following termination of the above, the new BEPS compliant MSC Malaysia incentive (Services incentives) incorporating substantive activities requirements was introduced via the Income Tax (Exemption) (No. 10) Order 2018 (“2018 Order”). This new incentive was operative from 1 January 2019.

MDEC has now issued the following guidelines in relation to this matter:

1. Guidelines on MSC Malaysia Financial Incentives (Grandfathering and Transition under Services Incentive)
2. Guidelines on MSC Malaysia Financial Incentives (Services Incentive - Income Tax Exemption)

Guidelines on MSC Malaysia Financial Incentives (Grandfathering and Transition under Services Incentive) [“Grandfathering Guidelines”]

The Grandfathering Guidelines covers the grandfathering, transitional and substantial activities requirements in respect of non-Intellectual property income granted to MSC Malaysia status companies (including Institutions of Higher Learning and incubators) under the Existing Regime.

Any tax relief period (first or second 5-year period) which falls outside the grandfathering period (“remaining exemption period”) is eligible to be continued under the new MSC incentive (“Revised Regime”), subject to meeting conditions of the Revised Regime.

	MSC Malaysia status companies approved	
	On or before 16 October 2017	After 16 October 2017
Grandfathering of Existing Regime	Continues until 30 June 2021.	Continues until 31 December 2018.
Commencement of remaining exemption period under the Revised Regime	From 1 July 2021, subject to approval and compliance with substantial activities requirements	From 1 January 2019, subject to approval and compliance with substantial activities requirements
Substantial activities requirements under the Revised Regime	<p>Compliance to requirements as specified under Schedule 2 of the 2018 Order (“Schedule 2”). An example of substantial activities requirements for Tiers 1 and 2 is the requirement for:</p> <ul style="list-style-type: none"> • 50 full-time employees with monthly base salary of RM5,000 or 30 full-time employees with monthly base salary of RM3,000; and • Annual operating expenditure of RM3,500,000 <p>to be fulfilled upon commencement of the remaining exemption period under the Revised Regime</p>	<p>Substantial activities requirements on employment for Year 1 and Year 2 have been relaxed for all Tiers as follows:</p> <ul style="list-style-type: none"> • 2 full-time employees with monthly base salary of RM5,000; and • Annual operating expenditure of RM50,000 <p>Requirements for Year 3 onwards are as specified under Schedule 2.</p>

For more details on the MSC Malaysia incentive, please refer to [TaXavvy 6/2019](#).

Guidelines on MSC Malaysia Financial Incentives (Services Incentive - Income Tax Exemption) [“Exemption Guidelines”]

The Exemption Guidelines outlines the eligibility criteria and application procedures for the 2018 Order which came into operation on 1 January 2019. The Exemption Guidelines contains additional conditions or information which were not stated in the 2018 Order and Application Form. The salient additions are as follows:

1. **Excluded from the incentive** - Where the applicant has a related company granted exemption for any MSC promoted activities, the applicant will not be eligible for exemption for the same activity.
2. **Relaxation of substantial activities requirements** - companies are required to comply with the following in year 1 and 2 of the exemption period:
 - 2 full-time employees with monthly base salary of RM5,000; and
 - Annual operating expenditure of RM50,000 compared to higher requirements such as annual operating expenditure of RM3,500,000
3. **“Knowledge worker”** is defined as an individual with:
 - Tertiary qualification in any field, or
 - Diploma in ICT, engineering, technology or specialised certification plus at least 2 years’ relevant experience in a field that is a heavy user of technology, or
 - Professional, executive, management and technical work categories in information technology enabled services.

and also includes:

- Foreign workers with knowledge-based skills that are not prevalent in Malaysia and required by MSC Malaysia status companies.
- Workers who are utilised for their creative talent to produce value-added creative work for MSC Malaysia status companies.

4. A more detailed description of the core income generating activities that qualify for MSC Malaysia status is provided in Appendix 1A of the Exemption Guidelines.

Application

1. The category of incentive is to be determined at the time of application and cannot be changed when approved, although they are interchangeable for categories 1 & 2.
2. Applications for the MSC Malaysia status and tax exemption are to be submitted together in one application to the Malaysia Digital Economy Corporation (MDEC).
3. Addition of new promoted activities:
 - Application to be made 18 months before the expiry of the exemption period (first or second 5-year period) provided no invoice for the new activities has been issued on date of application.
 - Similar conditions for the new activities are to be met by the end of year 1 from approval of the application for the new promoted activity.
 - The exemption period for the new activities will expire together with the initial exemption period.

Monitoring

- The company is required to submit audited information or documentation annually to MDEC for compliance verification.
- Compliance of conditions is subject to IRB’s approval.

Extension of tax exemption for women returning to work from a career break

The Income Tax (Exemption) (No. 9) Order 2019 (Amendment) Order 2020 has been gazetted (“2020 Amendment Order”). The 2020 Amendment Order is made pursuant to the Budget 2020 announcement to extend the qualifying period of tax exemption for women returning to work from a career break which has been provided under the Income Tax (Exemption) (No. 9) Order 2019 (“2019 Order”).



The incentive

Approved women who are Malaysian citizens are exempt from payment of income tax in respect of gross employment income for a period up to 12 consecutive months. The approved individual can opt for the exemption period to commence either:

- in the YA; or
- the following YA

in which she commenced her employment.

Key changes made by the 2020 Amendment Order to the 2019 Order are as follows:

- The effective period of the incentive is now from YA 2018 to **YA 2024** (i.e. the incentive was extended from YA 2020).
- Consistent with the extension of the incentive period, the application to Talent Corporation Malaysia Berhad is to be made between 1 January 2018 until **31 December 2023** (previously up to 31 December 2019).
- Among other conditions, the incentive is given to a woman (Malaysian citizen) who has signed a full-time employment contract in Malaysia with a qualifying employer for a period of at least 24 months and who has worked for at least 12 consecutive months under that contract. The 12 consecutive months is between 27 October 2017 until **31 December 2024** (previously up to 31 December 2020).
- The residency status of the approved individual is now made clearer by using the term **“resident”** [in Malaysia] (previously “is residing”) when defining “Approved individual” in paragraph 2 of the 2019 Order.

Additional Labuan business activity to be subjected to substantial activities requirements

The Labuan FSA has issued a Circular to inform on an additional Labuan business activity that would also need to meet substantial activities requirements

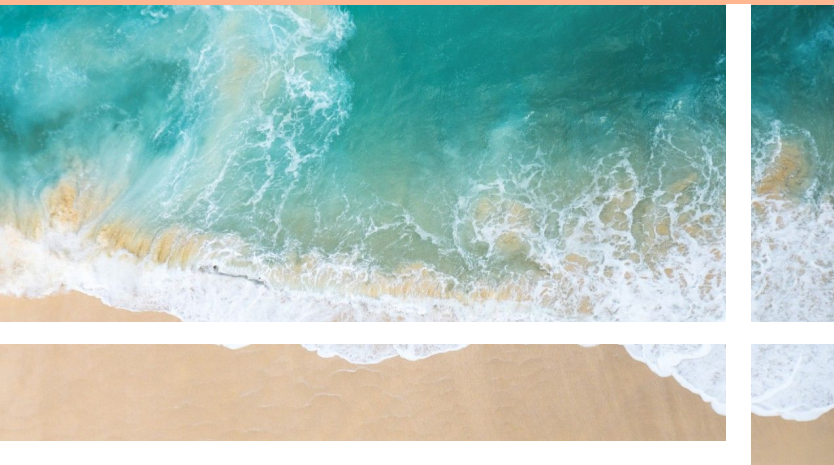
Labuan FSA's Circular dated 21 January 2020

Further to the Labuan FSA's Circular issued on 20 December 2019 which sets down the revised substantial activities requirements for certain Labuan entities as approved by the Ministry of Finance, the Labuan FSA has issued a Circular dated 21 January 2020 to inform that the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 will be revised to include the following additional Labuan business activity that needs to meet the substance requirements.

This is effective from 1 January 2019.

Labuan entity	Minimum number of full time employees in Labuan	Minimum amount of annual operating expenditure in Labuan
<u>Other trading entity</u> Labuan entity that carries out administrative, accounting and legal services including backroom processing, payroll services, talent management, agency services, insolvency related services and management services.	2	RM 50,000

Please refer to [TaXavvy 3-2020](#) which covered Labuan FSA's Circular issued on 20 December 2019 for more details.



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

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

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

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

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

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

Technology, Media, and Telecommunications

Heather Khoo

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

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