

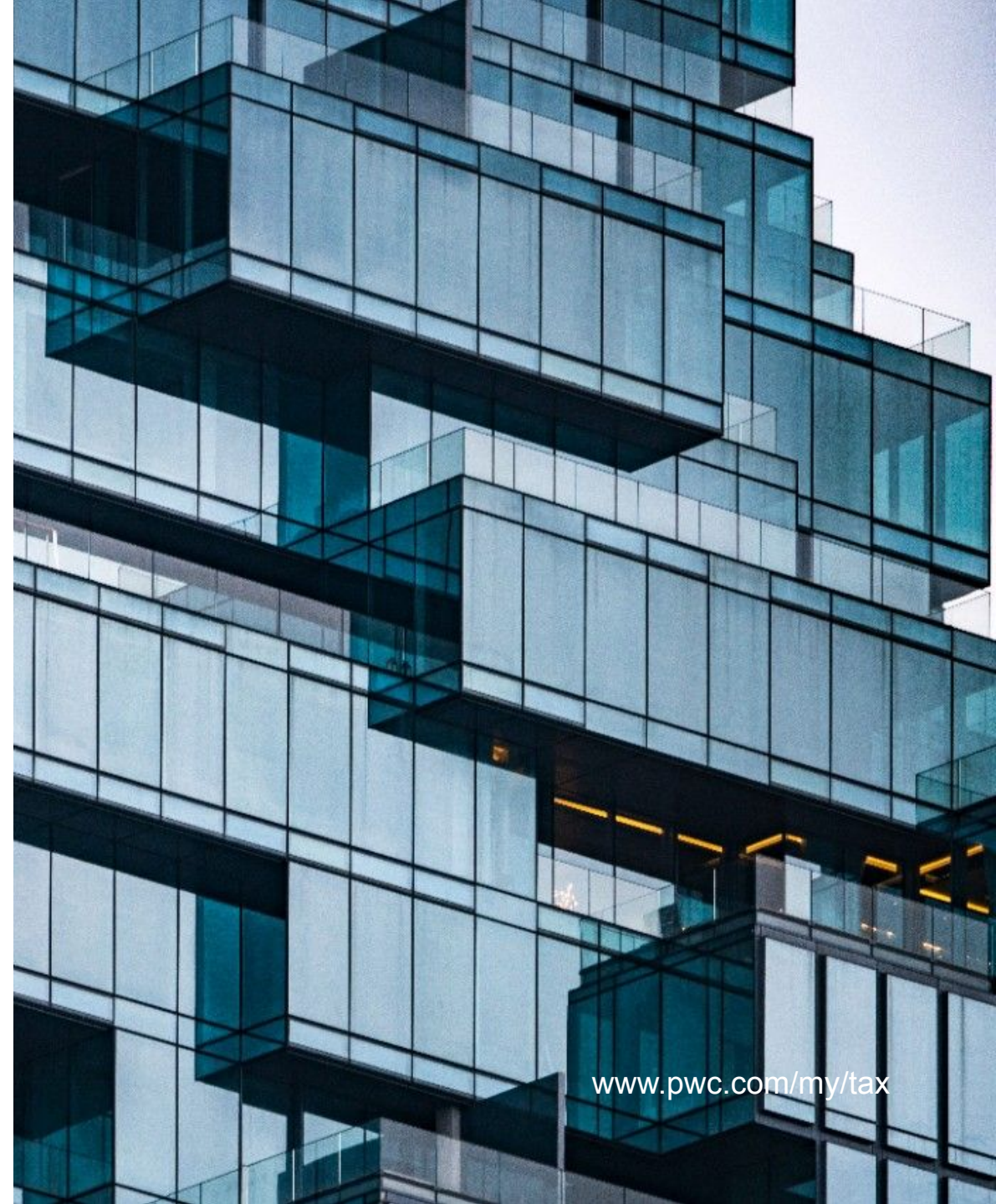


TaXavvy

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FAQ on the Special Tax Treatment to Financial Institutions in relation to the Moratorium Granted to Customers

Bank Negara Malaysia (BNM) had on 25 March 2020, announced that financial institutions will offer a deferment of all loan / financing repayments for a period of 6 months (“the moratorium”), with effect from 1 April 2020, to individuals and Small & Medium Enterprises (SME). It is also stated in BNM’s press release that financial institutions will also facilitate requests by corporations to defer or restructure their loans / financing repayments.

Following that, it was announced in the second Economic Stimulus Package on 27 March 2020, that the income of financial institutions from interest or profit on loan / financing facilities under the moratorium would only be taxable when the interest or profit is received after the moratorium period.

Further to that, the Inland Revenue Board (IRB) has now issued a FAQ on the Special Tax Treatment to Financial Institutions in relation to the Moratorium Granted to Customers.

Who qualifies for the special tax treatment?

- Licensed banks
- Licensed investment banks
- Licensed Islamic banks
- Prescribed development financial institutions regulated by BNM

What is the special tax treatment?

Interest / profit income from loans / financing which are granted the moratorium package (from 1 April 2020 until 30 September 2020), which is accrued during the moratorium period “shall not constitute the gross income of that financial institution for the basis period for that year of assessment (YA)”.

Our comment

No gazette order has been issued to give effect to this special tax treatment. The above FAQ raises a question on the timing of taxability of the interest accrued during the moratorium period as it does not state that the interest is taxable when received by the financial institution as per the announcement made on 27 March 2020. If the accrued interest during the moratorium period is received in the same YA that the moratorium period falls into (e.g. a bank with a basis period for YA 2020 of 1 January 2020 to 31 December 2020), when is the accrued interest taxable as the FAQ states the accrued interest “shall not constitute the gross income of that financial institution for the basis period for that YA”? Clarification is required from the IRB.

Type of loan / financing that qualifies for the special tax treatment.

All types of loan / financing (except credit card facilities) granted to individuals, SMEs and corporate borrowers / customers which are:

- Denominated in Ringgit Malaysia,
- Not in arrears exceeding 90 days as at 1 April 2020, and
- Granted moratorium from 1 April 2020 until 30 September 2020.

How does a financial institution report its income to IRB with regards to the special tax treatment?

Accrued interest / profit income from the moratorium portfolio must be reported separately from non-moratorium portfolio according to the customer’s records. This is to ensure that the income is reported and recorded accordingly in the event a tax audit is carried out.

Our comment
Financial institutions will have to track the accrued interest / profit income for each loan / financing facility that has been granted the moratorium and the timing of subsequent receipt of the interest accrued.

What is the tax treatment for impairment provision in relation to loan / financing involved in the moratorium program?

The impairment provision for loan / financing involved under the moratorium programme is **not allowed as a tax deduction during the moratorium period**. The tax treatment on impairment provision for the pre and post moratorium period is based on the current tax treatment.

Our comment
Further clarification has to be sought from the IRB on the non-deductibility of the impairment provision during the moratorium period as stated in the FAQ.

Definition of SME for purposes of this special tax treatment

The meaning of SME is that as defined by SME Corporation Malaysia which, is currently stated in the SME Corp website as follows:

SME size	Manufacturing sector	Services and other sectors
Medium	Sales turnover of RM15 million ≤ RM50 million <u>OR</u> No. of employees from 75 to ≤ 200	Sales turnover of RM3 million ≤ RM20 million <u>OR</u> No. of employees from 30 to ≤ 75
Small	Sales turnover of RM300,000 < RM15 million <u>OR</u> No. of employees from 5 to < 75	Sales turnover of RM300,000 < RM3 million <u>OR</u> No. of employees from 5 to < 30
Micro	Sales turnover of < RM300,000 <u>OR</u> No. of employees < 5	Sales turnover of < RM300,000 <u>OR</u> No. of employees < 5

It however, excludes:

- Entities that are publicly-listed on the main board; and
- Subsidiaries of:
 - Publicly-listed companies on the main board;
 - Multinational corporations (MNCs);
 - Government-linked companies (GLCs);
 - Syarikat Menteri Kewangan Diperbadankan (MKDs); and
 - State-owned enterprises.

Exemption for private healthcare facilities or services

In the 2018 Budget, it was announced that the application period for medical tourism tax incentive is to be extended for another 3 years. This has now been gazetted in the Income Tax (Exemption) (No. 2) Order 2020 (“Exemption Order”) which is effective from YA 2018.

The Exemption Order covers applications made to MIDA on or after 1 January 2018 but not later than 31 December 2020.

Salient points of this Exemption Order:

The incentive

Tax exemption on statutory income derived from a qualifying project equivalent to the amount of qualifying capital expenditure (QCE) incurred in the basis period for a YA, for a period of 5 consecutive years commencing from the date the first QCE is incurred, as determined by MIDA.

The conditions

Qualifying company (QC)

- A resident company incorporated or deemed registered under the Companies Act 2016.
- Has not been granted any exemption under previous tax exemption orders for private healthcare facilities.

Qualifying project (QP)

1. A business of providing private healthcare services at a new private healthcare facility. The QC must not have undertaken such business at the date of application to MIDA, or
2. A project of expansion, modernisation or refurbishment of existing business of providing private healthcare services. The QC must not have incurred any QCE on the project at the date of application to MIDA.

The QP must be approved by the Minister of Health (MOH) and registered with the Malaysia Healthcare Travel Council.

Qualifying conditions

- At least 10% of the total number of patients from the QP receiving private healthcare services for each YA comprises health travellers; and
- At least 10% of the company's gross income from the QP is derived from health travellers for each YA.



A health traveller is an individual who receives private healthcare services in Malaysia who is:

- a non-Malaysian citizen who participates in the Malaysia My Second Home programme and his dependents,
- an expatriate (non-Malaysian citizen) holding a Malaysian work permit and his dependents; or
- a non-Malaysian citizen who visits Malaysia.

Qualifying capital expenditure (QCE)

Capital expenditure incurred in relation to a building or medical device used in Malaysia solely for the purpose of a QP:

For a building

- Cost of purchasing or constructing a new building, or
- Costs of modification or refurbishment of the existing building (in accordance with the standards required under the Private Healthcare Facilities and Services Act 1998);

and the establishment, maintenance and operation of the building as a private healthcare facility has been approved and licensed by the Director General of Health, Malaysia under the Private Healthcare Facilities and Services Act 1998.

For a medical device

Cost of medical device which is more than RM50,000 each, and the device has been verified by the MOH as related to the QP.



Exemption for religious institution or organisation registered as a company limited by guarantee

In the 2020 Budget, it was announced that the tax exemption is extended to religious institutions / organisations which are registered as companies limited by guarantee. This proposal has now been gazetted in the Income Tax (Exemption) Order 2020 ("2020 Exemption Order") and is effective from the YA 2020.



Religious institutions or organisations established for the purpose of religious worship and advancement of religion, which are registered under the Registrar of Societies Malaysia or any written law governing the institution or organisation, have been granted income tax exemption on gross income from all sources under the Income Tax (Exemption) Order 2017 ("2017 Exemption Order"). However, the 2017 Exemption Order does not cover religious institutions / organisations registered as companies limited by guarantee (CLBGs) under the Companies Act 2016. The 2020 Exemption Order has been gazetted to provide tax exemption for these CLBGs.

Salient points from the 2020 Exemption Order are as follows:

Meaning of "religious institution or organisation"

A "religious institution or organisation" means one which operates a place of worship and:

- is a CLBG incorporated under the Companies Act 2016,
- is resident in Malaysia,
- whose objects are exclusively for the purpose of religious worship and advancement of religion, and
- is not operated or conducted primarily for profit.

What is exempted from tax?

Gross income derived from all sources by the religious institution / organisation.

Prior approval

Unlike religious institutions / organisations which qualify for exemption under the 2017 Exemption Order, the exemption for CLBGs under the 2020 Exemption Order involves an application process. Application for exemption can be made to the IRB on or after 1 January 2020. The exemption will be given by the Minister of Finance for a period to be determined and is subject to conditions.

Tax compliance requirements

Unlike religious institutions / organisations falling under the 2017 Exemption Order which are exempted from filing income tax returns, CLBGs which are granted an exemption under the 2020 Exemption Order are required to submit tax returns annually to the IRB and comply with other requirements set by IRB.

Labuan developments

1. Labuan Investment Committee Pronouncement 3-2020
2. Updated Guidelines on the establishment of Labuan International Commodity Trading Company under the Global Incentives for Trading Programme
3. Revision of substantial activity requirements for Labuan International Commodity Trading Company under the Global Incentives for Trading Programme



Labuan Investment Committee Pronouncement 3-2020

The Labuan Investment Committee (LIC) has issued LIC Pronouncement 3-2020 (“LIC 3-2020”) dated 11 March 2020 on the following matters:

Pure equity holding entity (“PEH entity”)

A PEH entity is a company that holds equity participation and earns only dividends and capital gains. The LIC 3-2020 clarified that a PEH entity will still be regarded as having a PEH activity where it derives interest income from the placing of dividend monies or proceeds from disposal of shares in financial institutions.

Non-pure equity holding entity (“non-PEH entity”)

- Where a Labuan entity receives only non-dividend income from the holding of investments (bonds, sukuk, debt instruments, properties, securities, etc.) the Labuan entity is deemed to be a non-PEH entity.
- The entity is then required to comply with the following substantial activity requirements:
 - 1 full-time employee (at any level as long as the function / job scope is dedicated to serving the business operations of the said entity), and
 - RM20,000 annual operating expenditure in Labuan.

The pronouncement is available on Labuan IBFC’s website www.labuanibfc.com (Guidelines > General).

Updated Guidelines on the establishment of Labuan International Commodity Trading Company under the Global Incentives for Trading Programme

Labuan FSA has issued an updated Guidelines on the establishment of Labuan International Commodity Trading Company (LITC) under the Global Incentives for Trading (GIFT) Programme dated 17 April 2020 (the “Guidelines”) which comes into effect upon its issuance. It repeals:

- Guidelines on the establishment of LITC under the GIFT Programme (8 March 2018), and
- Directive on LITC trading in non-petroleum and non-petroleum related commodities (8 March 2018).

Key changes from the guidelines are:

- The physical products and related derivatives to be traded are now specified in the guidelines and are the same as the list of items as specified in the Labuan Business Activity Tax (Exemption) (No. 2) Order 2013, which are:
 - Petroleum and petroleum-related products including liquefied natural gas
 - Minerals
 - Agriculture products
 - Refined raw materials
 - Chemicals
 - Base minerals
 - Coal

- The LITC is expected to have the following functions (previously expected to have some or all):
 - Strategic management
 - Banking, finance and treasury management
 - Risk management
 - Market research and product portfolio development
 - Logistic management
 - Global procurement, or
 - Marketing and sales planning.
- New LITC must now provide an organisational structure (indicating existing and proposed staff) prior to commencement of its business.
- The corporate governance and risk management requirement include an adequate set of internal policies and controls for its operation, proper corporate governance, risk management and compliance frameworks, that needs to be regularly reviewed.
- The LITC is expected to obtain the necessary approvals from the authorities in the markets which it intends to operate in, prior to commencement of business in those markets.
- The annual licence fee and processing fee remain the same but are now only denominated in USD.

The guidelines is available on Labuan IBFC's website www.labuanibfc.com (Guidelines > Other Businesses).

Revision on substantial activity requirements for Labuan International Commodity Trading Company (LITC) under the Global Incentives for Trading Programme

Labuan FSA has issued a Circular dated 29 April 2020 to notify on changes to be made to the substance requirements for LITC. Substance requirements were previously imposed on a per company basis. LITCs will be able to meet the substance requirements on a group basis by nominating 1 entity in the group to meet the substance requirements as follows:

Labuan International Commodity Trading Company	Existing Substance Regulations		Revised Substance Regulations	
	Min. full time employees	Min. annual opex (RM)	Min. full time employees	Min. opex (RM)
With 5 or less related LITC			2 per group	3 million per entity in Malaysia including minimum of RM100,000 in Labuan
With every increment of 5 related LITC	3 (on each licensed LITC)	3 million (on each licensed LITC)	Increase of 1 employee for every additional 5 LITC	

The revision is effective from 1 January 2019 and is subject to regulations to be gazetted.

The circular is available on Labuan IBFC’s website www.labuanibfc.com (Guidelines > Other Businesses).



Other Gazette Orders

The following Gazette Orders have been issued recently:

1. Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020
2. Income Tax (Exemption) (No.3) Order 2020
3. Stamp Duty (Exemption) Order 2020
4. Stamp Duty (Exemption) (No 4.) Order 2004 (Amendment) Order 2020

Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 (“2020 Order”)

The 2020 Order is effective from YA 2020 and revokes the the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 (“2014 Order”) which provided deduction on the secretarial and tax filing fees. Similar to the 2014 Order, secretarial fees and tax filing fees which are incurred and paid in a YA are deductible in that YA. The key differences between the 2020 Order as compared to the 2014 Order are:

- The deduction is given for a cumulative total of up to RM15,000 for tax filing and secretarial fees in a YA. Previously the deductible amount was segregated between secretarial fees (RM5,000) and tax filing fees (RM10,000).
- References to the Goods and Services Tax Act 2014 have been removed.
- The tax filing fees cover the fees for the preparation and submission of returns under the following Acts:
 - Income Tax Act 1967 (includes the fees for preparation and submission of tax estimates).
 - Sales Tax Act 2018
 - Service Tax Act 2018
 - Departure Levy Act 2019
 - Tourism Tax Act 2017

Income Tax (Exemption) (No.3) Order 2020

This Order is gazetted pursuant to the Prihatin Rakyat Economic Stimulus Package announcement. The Order is effective for YA 2020 and provides withholding tax (WHT) exemption for withdrawal from a Private Retirement Scheme (PRS) contracted with a PRS provider approved under the Capital Markets and Services Act 2007.

The WHT exemption applies to withdrawals made by an individual before reaching the age of 55, for the period from 30 April 2020 until 31 December 2020.

The total WHT exempted is subject to a maximum withdrawal of RM1,500 from each PRS provider.

Stamp Duty (Exemption) Order 2020

This Order is effective from 27 February 2020 and is issued following the Economic Stimulus Package (ESP) announcement made on 27 February 2020 in relation to the provision of financing facilities to assist SMEs affected by COVID-19.

Stamp duty exemption is provided, on application, on an instrument of loan or financing agreement relating to a loan or financing facility which is executed from 27 February 2020 to 31 December 2020, between an SME and a financial institution. A letter of offer from the financial institution approving the loan or financing facility has to be submitted with the application.

Definitions

“Loan or financing facility” means a loan or financing facility approved under Bank Negara Malaysia’s Fund for SMEs:

- (i) Special Relief Facility;
- (ii) All Economic Sectors Facility including SMEs Automation and Digitalisation Facility;
- (iii) Agrofood Facility; or
- (iv) Micro Enterprises Facility.

“SMEs” means the following enterprises as determined by the National Small and Medium Enterprises Development Council (commonly referred to as the SME Corp’s definition):

- For the manufacturing sector - companies with sales turnover not exceeding RM50 million or number of full-time employees not exceeding 200.
- For the services and other sectors - companies with sales turnover not exceeding RM20 million or number of full-time employees not exceeding 75.

Stamp Duty (Exemption) (No 4.) Order 2004 (Amendment) Order 2020 (“2020 Amendment Order”)

Instruments of transfer of real property to a Real Estate Investment Trust (REIT) or Property Trust Fund (PTF) have been granted exemption from Stamp Duty under the Stamp Duty (Exemption) (No. 4) Order 2004 (“2004 Exemption Order”).

The 2004 Exemption Order is effective since 13 September 2003.

The 2020 Amendment Order inserts the underlined words into the description of instruments covered under the 2004 Exemption Order as follows:

All instruments of transfer of real property to a trustee of a Real Estate Investment Trust or a Property Trust Fund approved by the Securities Commission, are exempted from stamp duty.

The amendment takes effective retrospectively from 13 September 2003.

Operational Guideline (GPHDN) 1/2020 - Procedure on Submission of Amended Return Form

The IRB has issued Operational Guideline (GPHDN) 1/2020 - Procedure on Submission of Amended Return Form on 6 March 2020 which replaces GPHDN 4/2019.

GPHDN 1/2020 ("Guideline") reflects the change to the rate for increase in tax under Section 77B(4) of the Income Tax Act 1967 (ITA 1967) for amended tax returns as announced in the 2020 Budget. Effective from 1 January 2020, the tax payable or additional tax payable will be increased by a sum equal to 10% of the tax payable or additional tax payable. Prior to 1 January 2020, the rate of increase in tax was a 10% + 5% as follows:

- Where amended tax return is submitted within 60 days after the due date of the original tax return - 10% of the understated tax ("10% sum")
- Where amended tax return is submitted after 60 days but not later than 6 months from the due date of the original tax return - An additional 5% on the aggregate of the understated tax and the 10% Sum.

GPHDN 1/2020 also emphasizes that if the Director General has made an assessment for a particular YA, the taxpayer will be disqualified from furnishing an amended return form for that relevant YA under both Section 77B(6)(b) of the ITA 1967 and Section 30B(6)(b) of the Petroleum (Income Tax) Act 1967 (PITA 1967).

The amended return form must be submitted within 6 months from the statutory filing date of the original tax return and must be in compliance with the stipulated conditions under Section 77B of the ITA / Section 30B of the PITA 1967.

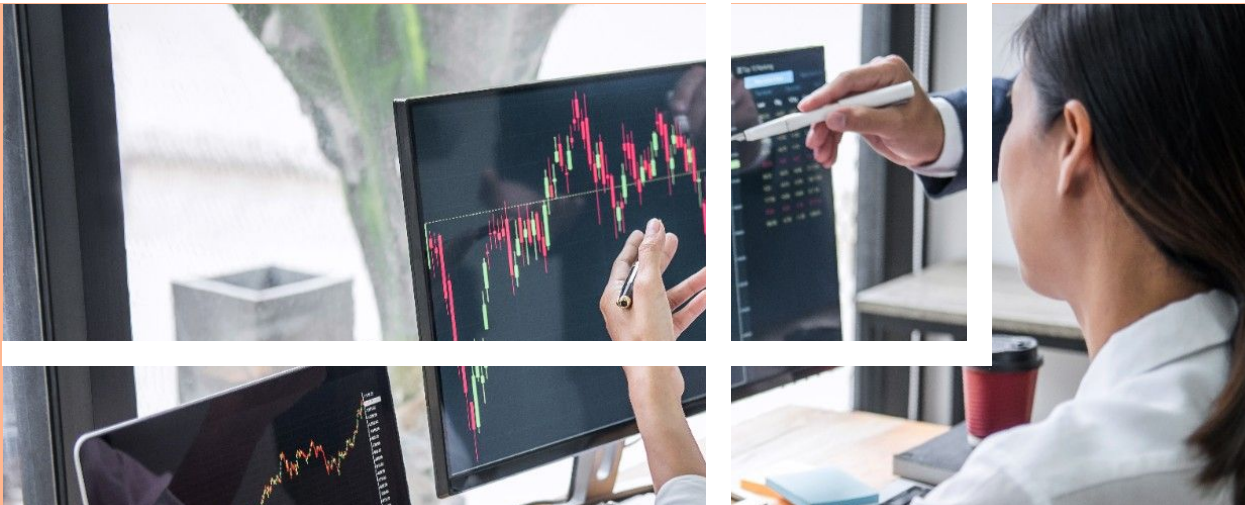
Our comment:

In view of the extended grace period for tax filing during the Movement Control Order period, corporate taxpayers should be cognisant that they would have between 3 to 4 months to amend their tax returns if the tax returns are filed at the end of the extended grace period.

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

Practice Note 1/2020 - Clarification in relation to losses under the Income Tax (Exemption) (No. 3) Order 2018 (“PN 1/2020”)

The IRB has issued PN 1/2020 to outline the treatment of losses from the International Currency Business Unit (ICBU) before and after the Income Tax (Exemption) (No. 3) Order 2018 (“ICBU Order”) came into effect.



Salient points of PN 1/2020 are:

- 1. Tax treatment before and after YA 2017 (i.e. effective YA of the said exemption order).

	Before YA 2017	YA 2017 and after
<i>Applicable exemption order</i>	Income Tax (Exemption) (No. 12) Order 2007	Income Tax (Exemption) (No. 3) Order 2018
<i>Treatment of losses</i>	The general treatment of losses under the Income Tax Act 1967 (i.e. Section 44(2) and 43(2)) is applicable to losses from the ICBU for YAs 2007 to 2016.	<p>Tax losses from the ICBU for the exemption period from YA 2017 to YA 2020 are to be carried forward and deducted from the statutory income in the post-exempt period from YA 2021.</p> <p>The general treatment [under Sections 44(2) and 43(2)] is not applicable.</p>

2. The ICBU tax losses carried forward are only allowed to be deducted against statutory income from the ICBU in the post-exempt period.
3. The 7-year limit on carry forward of tax losses also applies to the ICBU losses. However, the 7 year limit will commence from YA 2021 instead of YA 2019. ICBU losses not utilised by YA 2027 will be disregarded.
4. It is noted that the ICBU Order does not have specific mutual exclusion provision. However, the exemption under the ICBU Order may be excluded by the mutual exclusion provision in other gazette orders which specifically excludes a person who has been granted exemption under Section 127(3)(b) [The ICBU Order is made under Section 127(3)(b)]. As the ICBU Order has prescribed specific tax treatment of losses and the ICBU Order is effective for YA 2017 to YA 2020, the application of mutual exclusion provision in gazette orders with the specific exclusion of exemption under Section 127(3)(b); e.g. the exemption on incremental chargeable income ("ICI exemption"), is explained in the examples below.

Example 1	Example 2	Example 3
YA 2017 - Claimed exemption under ICBU Order	YA 2017 & 2018 - Claimed ICI exemption	YA 2017 - Claimed ICI exemption and intends to make a claim exemption under the ICBU Order.
YA 2018 - Intends to claim ICI exemption	YA 2019 - intends to claim exemption under ICBU Order	
ICI exemption is not allowed.	Claim under ICBU Order in YA 2019 is allowed.	Claim under the ICBU Order is not allowed.
<u>Reason:</u> Taxpayer is bound under the ICBU Order for YAs 2017 to 2020 since a claim has already been made in YA 2017.	<u>Reason:</u> The claim under ICBU Order only commences in YA 2019. The taxpayer will be bound under the ICBU Order from YA 2019 to 2020.	<u>Reason:</u> A claim has already been made for the ICI exemption.

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