



TaXavvy

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Updated public rulings

The Inland Revenue Board (IRB) has issued the following public rulings:

- Public Ruling 7/2020 - Appeal Against an Assessment and Application for Relief (“PR 7/2020”)
- Public Ruling 8/2020 - Taxation of a Resident Individual (Part 1): Gifts or Contributions and Allowable Deductions (“PR 8/2020”)

Both public rulings are updated versions of public rulings issued previously to reflect current legislation.

Public Ruling 7/2020 - Appeal Against an Assessment and Application for Relief

PR 7/2020 replaces PR 12/2017 - Appeal Against an Assessment and Application for Relief. The following are the salient updates:

Appeals against best judgement assessments under section 90(3)

A new paragraph 4.8 is inserted to set out the new procedural requirement when submitting an appeal against best judgement assessments (i.e. assessment raised for failure to submit tax returns) issued to companies, limited liability partnerships, trust bodies and co-operative societies. With effect from year of assessment (YA) 2019, the submission of the appeal (i.e. Form Q) must be accompanied by a copy of the tax return.

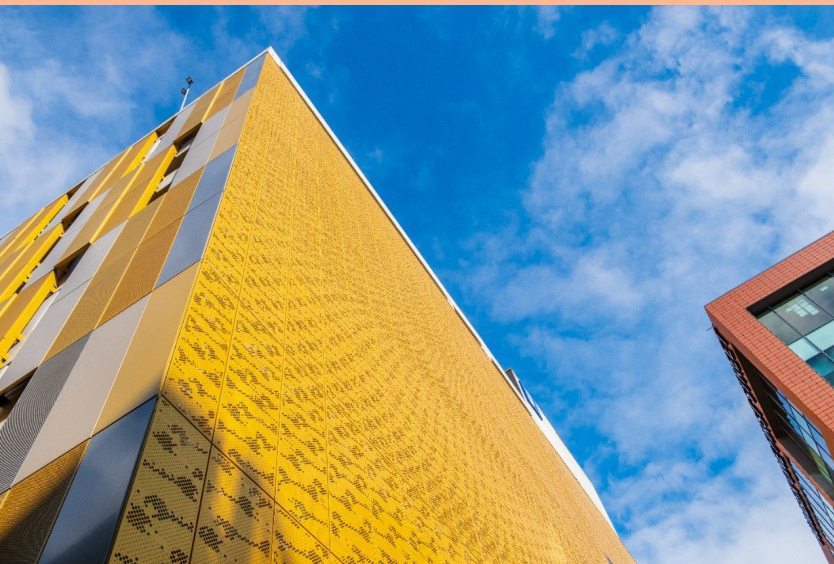
Appeals involving an application under Mutual Agreement Procedure (MAP) under tax treaties

A new paragraph 6 has been inserted to state that the IRB will postpone the forwarding of appeals to the Special Commissioners of Income Tax (SCIT) until the MAP is concluded. Taxpayers shall within 30 days of being notified of the MAP outcome:

- Submit an application letter to the IRB to request for its appeal to be forwarded to the SCIT, if it disagrees with the MAP decision; or
- Submit an application letter to the IRB to request for its appeal to the SCIT to be cancelled, if it agrees with the MAP decision.

Extension of time (EOT) to submit appeal (Form N)

Taxpayers who have missed the due date to submit an appeal (which is within 30 days after the service of the notice of assessment by the IRB) can apply for an EOT. With effect from YA 2020, the EOT application must be submitted within 7 years after the due date. A new paragraph 9.3, examples 11 and 12 are inserted to explain and illustrate the 7-year limit for submission of EOT applications.



Public Ruling 8/2020

Taxation of a Resident Individual (Part 1): Gifts or Contributions and Allowable Deductions

PR 8/2020 replaces PR 4/2018 of the same title. The following are the salient updates:

Restriction on amount of deductible donations

The deduction of gifts of money or cost of contribution in kind made by a person is restricted to a percentage of aggregate income. The amount restricted is increased from 7% to 10% of the aggregate income with effect from YA 2020. This applies to donations made to:

- Approved institutions or organisations or funds,
- Approved sports activities,
- Approved projects of national interest, and
- Wakaf to any appropriate religious authority or endowment to a public university approved by the DGIR.

Medical expenses on serious diseases and fertility treatment

The scope of personal relief of RM6,000 for medical expenses on serious diseases has been extended to cover the cost of fertility treatment for the taxpayer or his/her spouse effective from YA 2020. The claim for fertility treatment is only available to married individuals. “Fertility treatment” means intrauterine insemination or in vitro fertilisation treatment or any other fertility treatment. Consultation fee and medicine are also considered as part of the fertility treatment for the purpose of claiming this deduction.

Deduction for child care fees

Effective from YA 2020, the existing relief for fees paid to child care centres and kindergartens is increased from RM1,000 to RM2,000.

Deduction for net contribution into the SSPN account

The maximum amount of deduction for net contribution into the SSPN account is increased from RM6,000 to RM8,000 for YAs 2019 and YA 2020.



Deduction for payment of life insurance premium and contribution to approved schemes

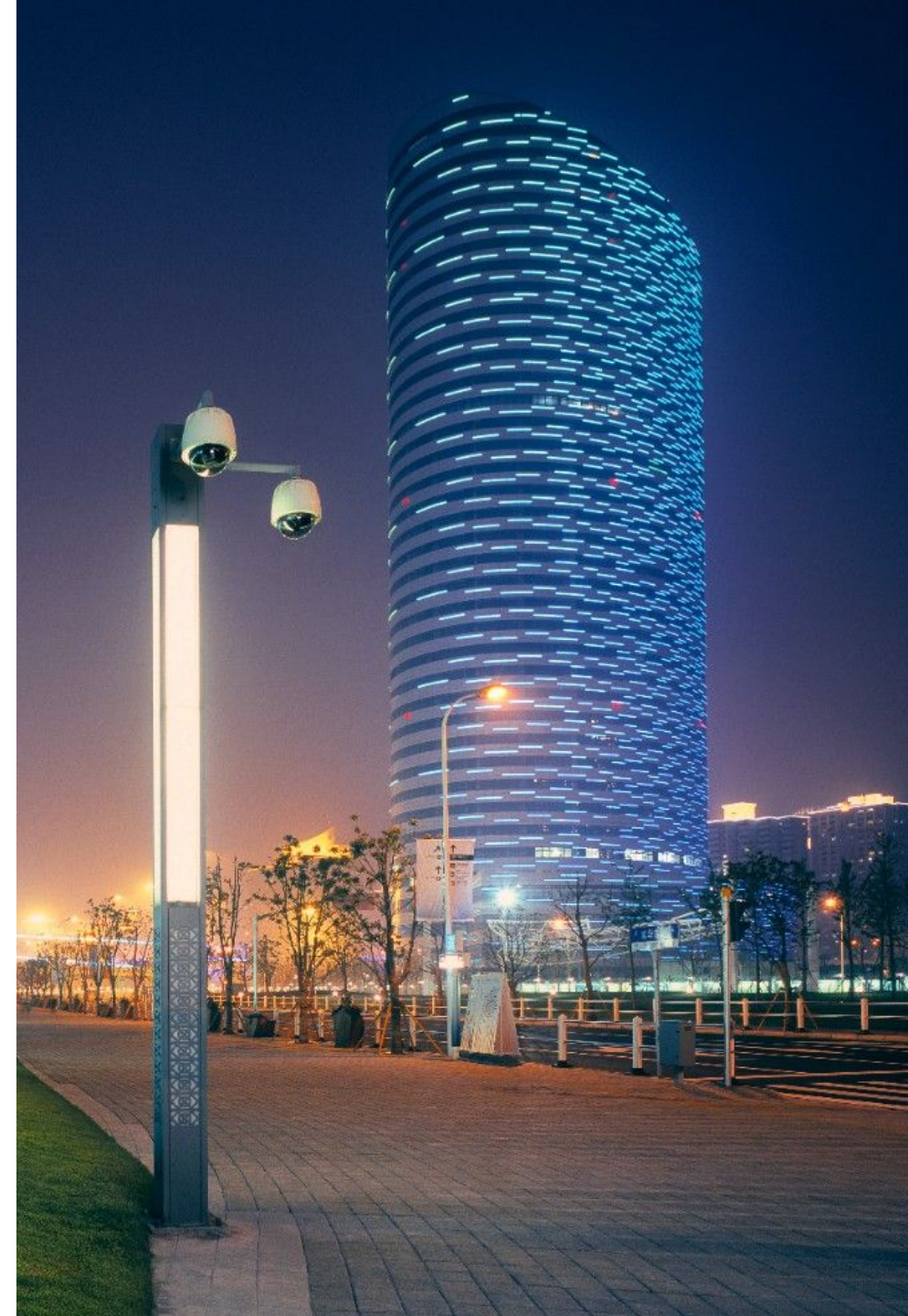
From YA 2019, the maximum amount of deduction has been increased from RM6,000 to RM7,000. The new increased limit of RM7,000 is split into individual limits as follows (the previous maximum amount of RM6,000 was not split into individual limits):

Item	Type of payment or contribution	Individual limits (RM)
1.	Premium for life insurance or contribution to family takaful	3,000 (Note)
2.	Approved scheme (i.e. Employees Provident Fund or any pension or provident fund, scheme or society approved by the Director General)	4,000
3.	Contribution under any written law relating to widow, widower and orphan's pension or under any approved scheme within the meaning of any such law.	4,000
	Combined limit	7,000

Note: In the case of a pensionable officer within the meaning of section 2 of the Pensions Act 1980 who does not claim a deduction for either items 1 or 2* above, the income tax relief for item 1 is up to RM7,000.

**Indicated as items 1 or 2 in paragraph 6.18.3 of the public ruling. Based on Section 49(1A)(c) of the Income Tax Act 1967, these should be items 2 or 3.*

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



New technical guidelines

Pursuant to Budget 2020 measures in relation to endowment funds and wakaf, the IRB has issued the following technical guidelines and related application forms:

- Application for Approval for an Endowment Fund under section 44(11D) (“Endowment guidelines”)
- Application for Approval for a Wakaf Fund under subsection 44(11D) (“Wakaf guidelines”)

Both guidelines outline the conditions, criteria and procedure for approval for the endowment and wakaf funds.



The following are the salient points of the guidelines:

	Endowment guidelines	Wakaf guidelines
Eligible bodies	Public universities established under the Universities and University Colleges Act 1971 and University Technology MARA. A list of universities is included with the guideline.	Majlis Agama Islam Negeri (MAIN), bodies established by MAIN, and public universities established under the Universities and University Colleges Act 1971 and MARA University of Technology.
Objective of qualifying funds	<ul style="list-style-type: none"> • Welfare of public university students • Education, research and development of public university education system • Any other objectives which benefits the advancement and learning of public university 	<ul style="list-style-type: none"> • Welfare of public and public university students • Education, research and advancement of learning amongst students of public universities • Related to religion covering houses of worship, education and activities for development of religion
Approval	<ul style="list-style-type: none"> • The approval is for a period of 5 years and any application for extension must be made in writing to the IRB within 6 months prior to the expiration of the approved period. • The approval may be revoked at any time if any of the conditions of approval or conditions stated in the guideline is violated, including any conditions that IRB may issue from time to time after the approval is given. 	
Tax exemption	Public universities / Institutions or organisations with approval under section 44(11D) are exempted from tax on the cash endowment / cash wakaf received respectively, including income generated from it.	
Tax deduction	Cash endowment / cash wakaf made by donors are eligible for tax deduction under section 44(11D). The amount of deduction claimed by the donor is subject to the combined limit of 10% aggregate income allowed for deductions for donations under section 44(6) to approved institutions / organisations, section 44(11B) for an approved sports activity, section 44(11C) for a project of national interest and section 44(11D).	

The guidelines set out details of conditions and administrative requirements of the endowment fund / wakaf fund such as the objectives, composition of directors and committee, conditions of approval, prohibited activities, responsibilities of the fund and application procedure.

The guidelines are available on IRB’s website www.hasil.gov.my (Legislation > Technical guidelines).

Income tax exemption in relation to the Employee Retention Programme

The following gazette orders have been issued:

- Income Tax (Exemption) (No.4) Order 2020
- Income Tax (Exemption) (No.5) Order 2020

providing income tax exemption to both employers and employees in relation to the Employee Retention Programme (ERP).



The ERP was implemented to provide financial assistance to employees who have been given notice to take no-pay leave. The financial assistance is RM600 per month per employee for employees with monthly salary of RM4,000 and below (refer to [TaXavvy 30/2020](#)).

The following income tax exemption orders have been gazetted to provide tax exemption to both employers and employees in respect of the financial assistance received under the ERP programme, effective from YA 2020. Salient points of the tax exemptions are as follows:

Income Tax (Exemption) (No.4) Order 2020	Income Tax (Exemption) (No.5) Order 2020
<ul style="list-style-type: none">• Income tax exemption for the employer on the financial assistance received under the ERP to retain employees who have been given a notice of unpaid leave for a period from 1 March 2020 until 30 June 2020.• Application by the employer for the financial assistance must have been received by SOCSO on or after 20 March 2020 but not later than 15 June 2020.• The employer shall maintain a separate account for the income which has been exempted.	<ul style="list-style-type: none">• Income tax exemption on the financial assistance received by an employee under the ERP who has been given notice of unpaid leave by his/her employer for a period between 1 March 2020 until 30 June 2020

Updated Green Technology Incentives Guideline

MIDA has issued an updated Guideline on Application for Incentives and/or Expatriate Posts for Green Technology. The guideline has incorporated the Budget 2020 announcement on the extension of incentives for green technologies and the expansion of the scope of the incentives to cover companies which undertake solar leasing activities.

The guideline is available on MIDA’s website www.mida.gov.my (Resources > Forms and Guidelines > Services Sector)



The guideline covers the following:

- 1. Applications for Green Investment Tax Allowance (GITA - Project) submitted to MIDA from 1 January 2020
- 2. Applications for Green Investment Tax Exemption (GITE - Services) submitted to MIDA from 1 January 2020
- 3. Application for Green Investment Tax Exemption (GITE - Solar Leasing) submitted to MIDA from 1 January 2020
- 4. Extension of incentive period for existing GITA - Project which has been approved prior to 1 January 2020

Salient points of the guideline are as follows:

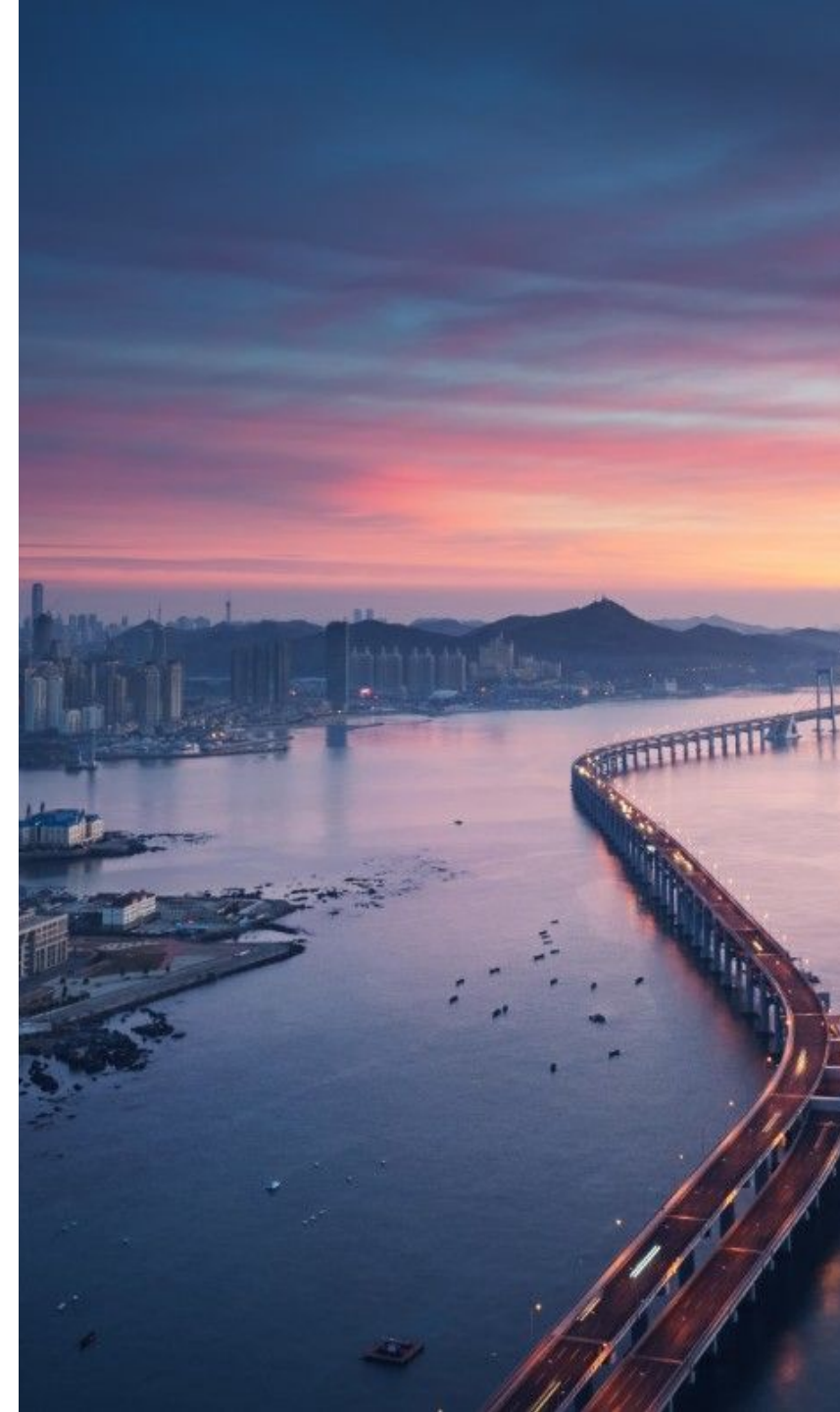
	GITA - Project	GITE - Services	GITE - Solar Leasing
Qualifying person	<ul style="list-style-type: none">• Newly incorporated company which proposes to undertake qualifying activities and has yet to generate any income• Existing company which undertakes qualifying activities for own consumption or project, or undertakes new business in qualifying activities and generates new income which is separate from its existing operations	<ul style="list-style-type: none">• Newly incorporated company which proposes to undertake qualifying activities and has yet to generate any income• Company which has been established after 25 October 2013 and proposes to undertake qualifying activities	<ul style="list-style-type: none">• A company that:<ul style="list-style-type: none">○ has been verified by Sustainable Energy Development Authority (SEDA) and listed under the Registered Solar PV Investor (RPVI) Directory.○ has at least 60% of its equity held by Malaysians.○ possess a minimum installed capacity of 3MW solar PV projects aggregated under the Net Energy Metering or Self-Consumption Programme which have achieved Commercial Operation Date.

	GITA - Project	GITE - Services	GITE - Solar Leasing	
Qualifying person (cont'd)	Companies which incurred their first qualifying capital expenditure (QCE) prior to submission of application to MIDA are <u>not</u> eligible for the incentive	Companies which have issued their first invoice prior to submission of application to MIDA are <u>not</u> eligible for the incentive		
Incentive	GITA of 100% of qualifying capital expenditure (QCE) incurred for 3 years, to be set off against 70% of statutory income (SI).	GITE of 70% on SI for qualifying green services for 3 years.	GITE of 70% on SI from solar leasing activity as follows:	
			Capacity (MW)	Incentive period
			>3MW - ≤10MW	5 years
			>10MV - ≤30MW	10 years
Qualifying projects / sectors	Projects in relation to: <ul style="list-style-type: none">Renewable energyEnergy efficiencyGreen buildingGreen data centreIntegrated waste management	Green technology services for the following sectors: <ul style="list-style-type: none">Renewable energyEnergy efficiencyElectric vehicleGreen buildingGreen data centreGreen certification and verificationGreen township	Solar leasing	
	Details on qualifying activities under each of the above projects are set out in Appendix I of the guideline.	Details on qualifying green services activities under each of the above sectors are set out in Appendix II of the guideline. Applicants must undertake at least 3 of the qualifying green services activities from the respective sector.		

	GITA - Project	GITE - Services	GITE - Solar Leasing
Key eligibility criteria	<ul style="list-style-type: none"> Minimise the degradation of the environment or reduce greenhouse emission Promote health and improvement of environment Conserve the use of energy, water and/or other forms of natural resources or promote the use of renewable energy or able to recycle waste material resources 	<ul style="list-style-type: none"> Employs at least 5 full-time employees working in Malaysia including at least 2 competent personnel in green technology Must have a green policy related to the environmental or sustainability Must have documented Standard Operating Procedure to ensure quality of services 100% income must be derived from the respective green technology services. 	<ul style="list-style-type: none"> Employs at least 5 full-time employees working in Malaysia including at least 2 competent personnel in green technology Assets must be incorporated in the RPVI balance sheet.
	<ul style="list-style-type: none"> Incurs adequate amount of operating expenditure annually in Malaysia. Operating expenditure includes local services for insurance, legal, banking, ICT and transportation. 		
Submission of application	<ul style="list-style-type: none"> To be submitted to MIDA from 1 January 2020 to 31 December 2023 		

Extension of incentive period for existing GITA - Project

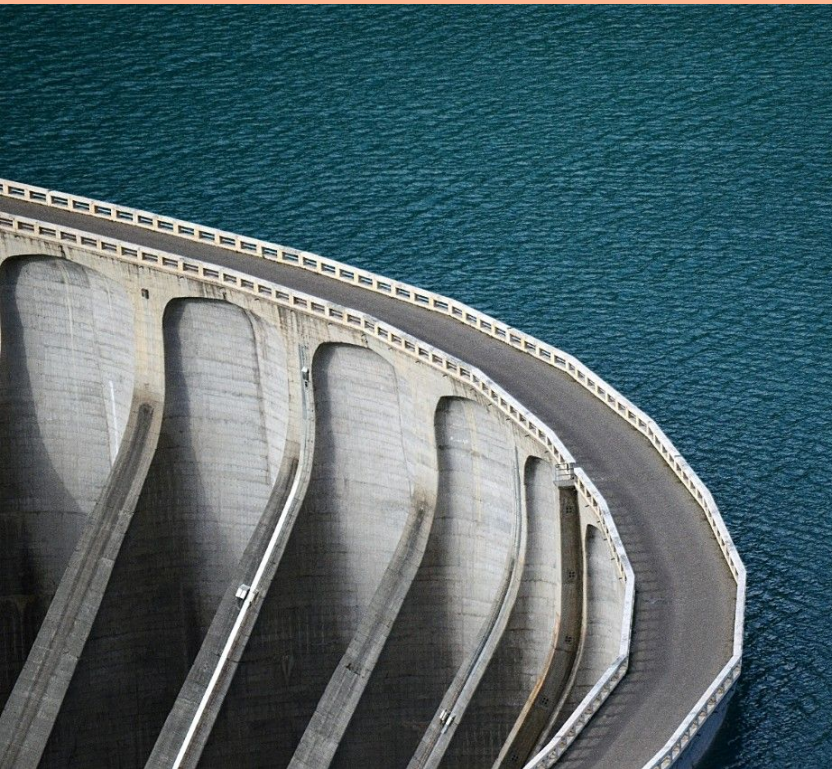
- Companies which have made an application prior to 1 January 2020 and have been approved an incentive period of less than 3 years will be eligible for an extension.
- Companies that undertake investments for their own consumption / project which have fully incurred QCE (i.e. the approved project is already in operation and/or generating renewable energy) before 1 January 2020, are not eligible for the extension.
- Companies which exceed the commencement date must obtain supporting documents (i.e. FiAH Certificate for Feed-in Tariff or Award Letter for Large Scale Solar Project) from the relevant authorities upon submission to MIDA.
- Application for extension must be submitted to MIDA latest **by 31 December 2020**.



Updated IRB FAQs

The IRB has updated the following FAQs:

- FAQs on Advance Pricing Arrangement (APA) Treatment due to COVID-19 Pandemic dated 7 October 2020.
- FAQs on International Tax Issues due to COVID-19 Travel Restrictions dated 9 October 2020.



FAQs on Advance Pricing Arrangement (APA) Treatment Due to COVID-19 Pandemic

The changes in the FAQs are as follows:

Question	Key changes
New APA application	
1. Can taxpayers file a new APA application request during the period of the COVID-19 pandemic?	Businesses which are not significantly impacted by COVID-19 can proceed with a new APA application. Previously only businesses not impacted by COVID-19 were allowed to submit a new APA application.
Treatment of ongoing APA process under finalisation	
2. How is an ongoing APA application reviewed by IRB?	The process remains the same except that the statement on submission of Annual Compliance Report has been removed and IRB has added a statement that application of term test for bilateral APA application is subject to negotiation / agreement with the Competent Authorities of the corresponding jurisdictions.
Treatment of concluded / signed APA	
7. What should taxpayers do if it cannot fulfil the critical assumptions in the APA agreement in force due to COVID-19 impact?	<p>The procedure remains the same. However, the following statements have been removed:</p> <ul style="list-style-type: none"> • The application for an APA revision or cancellation must be supported with relevant documents. • In the case of Bilateral APA/Multilateral APA, any application for a revision or cancellation will be subject to further negotiation with treaty partner(s) taking into account all relevant tax jurisdictions' APA regulations and procedures.

FAQ on International Tax Issues due to COVID-19 Travel Restriction dated 9 October 2020

The changes in the FAQ are as follows:

Question	Key changes
Permanent establishment	
5. My company is not resident in Malaysia. Does the temporary presence of my employees or personnel in Malaysia due to COVID-19 travel restrictions lead to the creation of a permanent establishment in Malaysia?	The IRB's existing criteria in considering whether the temporary presence of employees creates a permanent establishment (i.e. taxable presence for non-resident companies from a country which has a tax treaty with Malaysia) has now been extended to also cover the temporary presence of employees of non-resident companies from countries which do not have a tax treaty with Malaysia.
Cross border employment income (new questions)	
10. I am a non-resident individual and have been offered to work in Malaysia during the movement control period. I am unable to enter Malaysia to start work due to COVID-19 travel restriction. Therefore, I am currently working from overseas. Am I considered to be exercising an employment in Malaysia?	<ul style="list-style-type: none"> • IRB considers that the employment is not exercised in Malaysia as there is no issue of "Temporary absence period due to COVID-19 travel restrictions". • The employment income can be taxed under domestic tax law in the country where the employment is exercised.
11. I am a non-resident individual. I arrived in Malaysia for a vacation before the travel restriction was imposed because of COVID-19. I had to work from Malaysia due to COVID-19 travel restrictions. Before the movement control period ended, I ceased employment with my foreign employer and accepted an offer to work with a company in Malaysia. What is the tax treatment of my employment income from my foreign employer?	<ul style="list-style-type: none"> • As the taxpayer did not return to his/her home country, the taxpayer is considered to be present in Malaysia permanently. • The employment is considered to be exercised in Malaysia as there is no issue of "Temporary absence period due to COVID-19 travel restrictions". • The employment income with the foreign employer is considered to be exercised in Malaysia and will be taxed in accordance with Malaysian tax law.

The period of movement control order (MCO) in the FAQ has been updated to now cover a period from 18 March 2020 to 31 December 2020 (previously up to 31 August 2020).

The FAQs are available on IRB's website www.hasil.gov.my (Quick Links > FAQs Movement Control Order & Economic Stimulus Package).

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