



TaXavvy

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IRB to stop accepting tax payments by cheques delivered via mail or courier starting from 1 January 2021

In order to encourage the use of online payments, the Inland Revenue Board (IRB) has in its media statement dated 26 November 2020 announced that effective from 1 January 2021, it will no longer be accepting tax payments using cheques which are sent via mail or courier. However, this is not applicable to the following tax payments:

- Retention sum by acquirer of real property under Section 21B of the Real Property Gains Tax Act 1976 (Form CKHT 502)
- Income tax of a public entertainer
- Withholding tax
- Compounds

From 1 January 2021, tax payments are to be made electronically or over-the-counter at the following channels:

- ByrHasil via the IRB's ezHasil website
- Internet banking of banks appointed as collection agents
- Payment counters at IRB's *Pusat Bayaran*
- Payment counters at banks appointed as collection agents
- Cash/cheque deposit machines
- Automated teller machines (ATM)

The IRB's media release is available on IRB's website www.hasil.gov.my (Media > Kenyataan Media > 26 November 2020).



New Public Rulings

The IRB has issued the following public rulings:

- Public Ruling 9/2020 - Taxation of Trusts
- Public Ruling 10/2020 - Reinvestment Allowance Part I (Manufacturing Activity)
- Public Ruling 11/2020 - Reinvestment Allowance Part II (Agriculture and Integrated Activities)
- Public Ruling 12/2020 - Tax Incentive for Angel Investor

Public Ruling 9/2020 - Taxation of Trusts

The new Public Ruling 9/2020 - Taxation of Trusts (“PR 9/2020”) covers the taxation of a trust body and its beneficiaries.

PR 9/2020 explains the tax treatments for a trust body and its beneficiaries. It also provides a brief explanation on the basics of a trust arrangement, i.e. an arrangement created when there is a legal transfer of ownership by the owner of properties (settlor) to an appointed person (trustee) for the benefit of specified persons (beneficiaries). Various computational examples are set out in PR 9/2020 covering tax treatments for non-discretionary trusts, discretionary trusts, trusts for accumulation and trust annuities.

Generally, a trust body is subject to tax on all income accrued in or derived from Malaysia at the prevailing corporate tax rate of 24%. A beneficiary is in turn subject to tax on his/her share of total income of the trust body. A resident trust body may deduct from its total income, its beneficiaries’ share of its total income. Essentially, income arising from the trust is taxed only once, either at the trust body level or in the hands of the beneficiaries. This is illustrated in Examples 1 and 2 of PR 9/2020, reproduced below:

Examples 1 & 2

AA Trust is a resident trust in Malaysia for the basis year 2018. B, a resident in Malaysia is the sole beneficiary of the trust and is entitled to the whole of the distributable income from the trust. The statutory income of the trust body for the year ended 31.12.2018 comprises:

- Rental income - RM60,000
- Interest income - RM10,000

The tax computation of AA Trust for YA 2018 is as follows:



Examples 1 and 2 (cont'd)

Year of assessment (YA) 2018 Computation of total income and chargeable income	
Statutory income	RM
Rental	60,000
Interest	10,000
Aggregate income / total income	70,000
Less:	
Beneficiary's share of total income (Note)	70,000
Chargeable income	Nil

Note:

- The deduction of the beneficiary's share of total income of RM70,000 is allowed if IRB is satisfied that AA Trust and beneficiary B are resident in Malaysia for YA 2018. If no deduction is allowed, then the chargeable income of AA Trust is RM70,000 and AA Trust's tax payable for the YA 2018 would be RM16,800 (RM70,000 X 24%).
- Where the RM70,000 has been deducted in arriving at the trust body's chargeable income, that amount shall be taxable in the hands of the beneficiary.



The following are some of the tax treatments explained in PR 9/2020:

Expenses not deductible by the trust body

Remuneration paid to a trustee for the management and administration of the trust is not deductible as it is not considered to be ‘wholly and exclusively incurred in the production of income’. However, if it can be proven that the trustee is directly involved in carrying on the business of the trust, the remuneration may be deductible if it is wholly and exclusively incurred in the production of income.

Distributable income and total income

The total income of a trust body is computed according to the provisions of the Income Tax Act 1967 (“ITA 1967”). The beneficiary’s share of the total income is determined by reference to his/her share of the distributable income of the trust body.

The total income of a trust body is not the same as its distributable income. The term “distributable income” is not defined in the ITA 1967. PR 9/2020 explains “distributable income” as income received by the trust less the expenses incurred by the trust, i.e. the actual money available for distribution and is ascertained according to the generally accepted accounting principles.

The quantum of distributable income and total income may differ where there are expenses which are not deductible for tax purposes.

Residence status

A trust body is a resident in Malaysia for the basis year for a YA if any trustee member of the trust body is resident in Malaysia for that basis year. If none of the trustee members of that trust body is resident in Malaysia for the basis year for a YA, then the trust body is not a resident. The trust body is also not a resident if all the following are met:

- The trust was created outside Malaysia by a person or persons who were not citizens.
- The income of that trust body for the basis year is wholly derived from outside Malaysia.
- The trust is administered for the whole of that basis year outside Malaysia.
- At least 50% of the number of the member trustees are not resident in Malaysia for that basis year.

New public rulings for reinvestment allowance

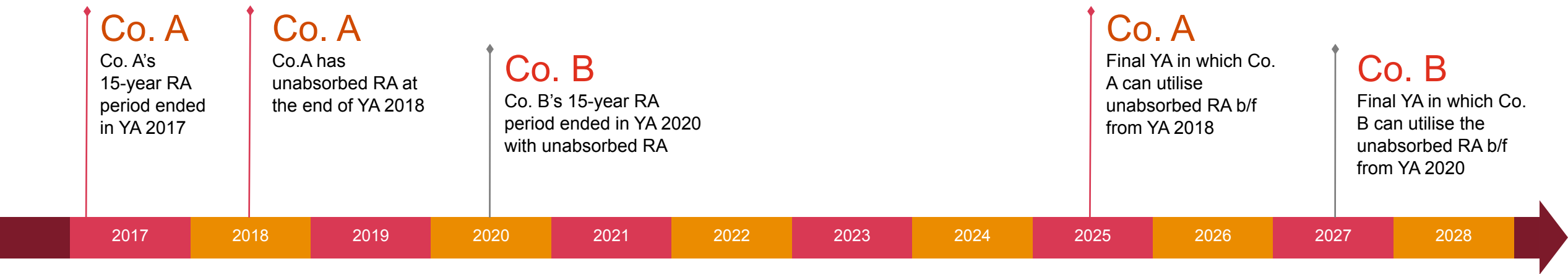
The following two public rulings in relation to reinvestment allowance (RA) have been issued:

- Public Ruling 10/2020 - Reinvestment Allowance Part I (Manufacturing Activity) (“PR 10/2020”) replacing Public Ruling 9/2017 of the same title, and
- Public Ruling 11/2020 - Reinvestment Allowance Part II (Agriculture and Integrated Activities) (“PR 11/2020”) replacing Public Ruling 10/2017 of the same title.

Both PR 10/2020 and PR 11/2020 have been updated to incorporate the 7-year time limit to carry forward unabsorbed RA which was introduced in Budget 2019 as follows:

- With effect from YA 2019, unabsorbed RA can only be carried forward to be absorbed for a maximum period of 7 consecutive YAs after the expiry of the RA qualifying period of 15 YAs. The balance of unabsorbed RA at the end of the 7 consecutive YAs shall be disregarded.
- In cases where the RA qualifying period of 15 YAs has already ended on or before YA 2018, the accumulated unabsorbed RA at the end of YA 2018 can still be carried forward to be absorbed for 7 consecutive YAs from YA 2019 until YA 2025. Any unabsorbed balances thereafter shall be disregarded.

These are illustrated as follows:



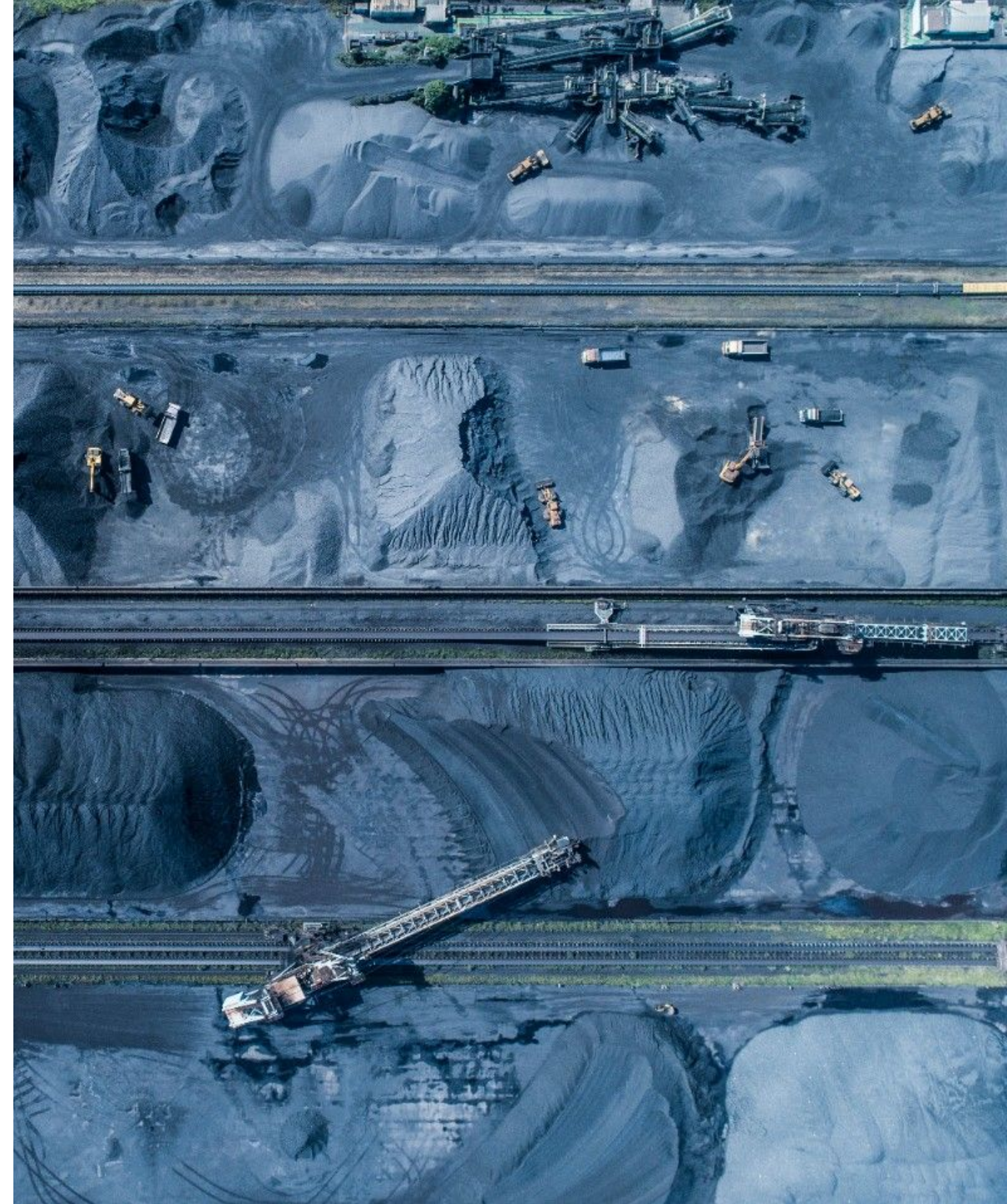
Public Ruling 12/2020 - Tax Incentive for Angel Investor

Public Ruling 12/2020 - Tax Incentive for Angel Investor (“PR 12/2020”) replaces Public Ruling 11/2015 of the same title. PR 12/2020 explains the tax exemption given to an individual who invests in an approved start-up company.

PR 12/2020 incorporates the following updates:

- Extension of the application period for approval of the investment by the Minister of Finance to 31 December 2023 pursuant to Budget 2020 proposal.
- A claim for the incentive is subject to a minimum investment of RM5,000 per annum.

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



Revised Tax Audit Framework for Finance and Insurance

The IRB has issued an updated Tax Audit Framework – Finance and Insurance dated 18 November 2020 (“2020 Framework”). The 2020 Framework is effective from 18 November 2020 and revokes the Tax Audit Framework – Finance and Insurance dated 1 June 2015 (“2015 Framework”).

The audit framework is available on IRB’s website www.hasil.gov.my (Legislation > IRBM Tax Audit Framework)

The following are the salient updates in the 2020 Framework:

Description of finance and insurance industry

Description of the following industries / sectors which the 2020 Framework applies to, have been updated:

Financial / Islamic Finance industry

Previously, the 2015 Framework explained the industry by the type of banks & institutions and includes non-financial institutions. The 2020 framework now states that this industry consists of financial institutions / Islamic finance Institutions regulated by Bank Negara Malaysia licensed under the Financial Services Act 2013, Islamic Financial Services Act 2013 or the Development Financial Institutions Act 2002.

Insurance industry / Takaful industry

Previously, the 2015 framework stated this as composite, life and general insurance. The 2020 framework states that the industry/sector comprises life insurance and general insurance operator companies / life takaful and general takaful operator companies licensed under the Financial Services Act 2013 or the Islamic Financial Services Act 2013.

Insurance / Takaful intermediaries

The intermediaries are now specified to consist of insurance / takaful brokerage companies, insurance / takaful (loss adjuster) and licensed insurance / takaful agent companies, registered and licensed by Bank Negara Malaysia.

Audit implementation process

The explanation of the process of audit implementation has been expanded and rearranged to be consistent with the general Tax Audit Framework 2019. Salient points to take note are:

Paragraph	Points to note
7.1 - Initial audit action	<ul style="list-style-type: none"> IRB has specified the type of official letter that it will issue at each stage of the audit and where applicable, the timeframe for the taxpayer to respond (e.g. 14 calendar days from the date of the <i>Surat Memohon Dokumen dan Maklumat</i>). In the absence of an audit visit, a <i>Surat Penentuan Permulaan Tempoh Penyelesaian Kes</i> will be issued to inform the taxpayer on the commencement of the audit case settlement period. An audit examination with due notice may be extended to related companies / businesses or companies / businesses controlled by the taxpayer.
7.4 - Record review / examination	<ul style="list-style-type: none"> The audit officer should be allowed to review important and risky transactions as well as to obtain supporting documents as audit evidence. In certain circumstances, the audit officer may also need to review records other than the taxpayer's business records.
7.5 - Audit settlement	<ul style="list-style-type: none"> The <i>Surat Penemuan Semakan Kes</i> will cover: <ul style="list-style-type: none"> (a) Audit issues raised. (b) Reasons and rationale of the issues raised. Previously, the timeframe for a taxpayer to object to the audit findings was 21 days from date of notification of tax adjustments. This has now been reduced to 18 calendar days from the date of the <i>Surat Penemuan Semakan Kes</i>.

Paragraph	Points to note								
7.5 - Audit settlement (cont'd)	<div><ul style="list-style-type: none">The timeframe to resolve tax audit cases is updated as follows:<table><tr><th>Business activity</th><th>Settlement period</th></tr><tr><td><ul style="list-style-type: none">Commercial banks, investment banks, Islamic banks and other financial institutionsInsurance and Takaful business includes Reinsurance and Retakaful</td><td>240 calendar days (unchanged) from the commencement date of the audit visit <i>or the date of the Surat Penentuan Permulaan Tempoh Penyelesaian Kes is issued, whichever is applicable.</i></td></tr><tr><td><ul style="list-style-type: none">Financial leasing, factoring, credit card services, stock brokers, stocks and bonds, financial market services and operations / other financial intermediaries.Broker, agent and adjuster</td><td>90 (previously 120) calendar days from the commencement date of the audit visit <i>or the date the Surat Penentuan Permulaan Tempoh Penyelesaian Kes is issued, whichever is applicable.</i></td></tr></table></div>	Business activity	Settlement period	<ul style="list-style-type: none">Commercial banks, investment banks, Islamic banks and other financial institutionsInsurance and Takaful business includes Reinsurance and Retakaful	240 calendar days (unchanged) from the commencement date of the audit visit <i>or the date of the Surat Penentuan Permulaan Tempoh Penyelesaian Kes is issued, whichever is applicable.</i>	<ul style="list-style-type: none">Financial leasing, factoring, credit card services, stock brokers, stocks and bonds, financial market services and operations / other financial intermediaries.Broker, agent and adjuster	90 (previously 120) calendar days from the commencement date of the audit visit <i>or the date the Surat Penentuan Permulaan Tempoh Penyelesaian Kes is issued, whichever is applicable.</i>		
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7.6 - Voluntary disclosure	<ul style="list-style-type: none">A new paragraph is inserted to explain what is considered as a voluntary disclosure. It means disclosure made in writing to the IRB's Special Industry Branch Director, after the due date of submitting the tax return but before commencement of audit action. An audit action commences on the date of the Surat Memohon Dokumen dan Maklumat.								
10 - Offences & penalties	<div><ul style="list-style-type: none">A taxpayer who repeats an offence after being audited or investigated will be subject to a penalty at the rate of 55% of the tax undercharged. A repeated offence is where the taxpayer has been audited or investigated and the original / additional / composite assessment with the penalty under subsection 113(2), has been raised. For this purpose, offence in respect of a notice of assessment raised from 1 January 2020 is taken as the first offence.The concessionary penalties for voluntary disclosure is simplified as follows:<table><tr><th>Duration of voluntary disclosure</th><th>Rate</th></tr><tr><td>Within 60 days from the due date for submission of the tax return</td><td>10%</td></tr><tr><td>More than 60 days but not later than 6 months from the due date for submission of the tax return</td><td>15.5%</td></tr><tr><td>More than 6 months from the due date for submission of the tax return (the varying rates of 20%, 25% and 30% provided under the 2015 Framework for different situations not falling within the above 2 categories have been removed).</td><td>35%</td></tr></table></div>	Duration of voluntary disclosure	Rate	Within 60 days from the due date for submission of the tax return	10%	More than 60 days but not later than 6 months from the due date for submission of the tax return	15.5%	More than 6 months from the due date for submission of the tax return (the varying rates of 20%, 25% and 30% provided under the 2015 Framework for different situations not falling within the above 2 categories have been removed).	35%
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Stamp duty exemption in relation to Bank Negara's Special Relief Fund for SMEs

The Stamp Duty (Exemption) (No.6) Order 2020 (Exemption Order) has been gazetted on 18 November 2020 and is effective from 1 June 2020.

The Exemption Order provides stamp duty exemption on an instrument of loan or a financing agreement for Bank Negara Malaysia's (BNM) Special Relief Fund for Small and Medium Enterprises (SME) which is executed between BNM and a participating financial institution from 1 June 2020 to 31 December 2020. Participating financial institution refers to:

- Any person licensed under the Financial Services Act 2013 to carry on a banking business in Malaysia
- Any person licensed under the Islamic Financial Services Act 2013 to carry on an Islamic banking business in Malaysia
- A development financial institution prescribed under the Development Financial Institutions Act 2002
- Any person prescribed as a financial institution under subsection 2(1) of the Central Bank of Malaysia Act 2009

SME refers to businesses covered under SME Corporation's Guidelines for SME definition. Key conditions are:

- Manufacturing sector: Firms with sales turnover not exceeding RM50 million or number of full-time employees not exceeding 200.
- Services and other sectors: Firms with sales turnover not exceeding RM20 million or number of full-time employees not exceeding 75.

However, the following entities do not qualify as an SME:

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

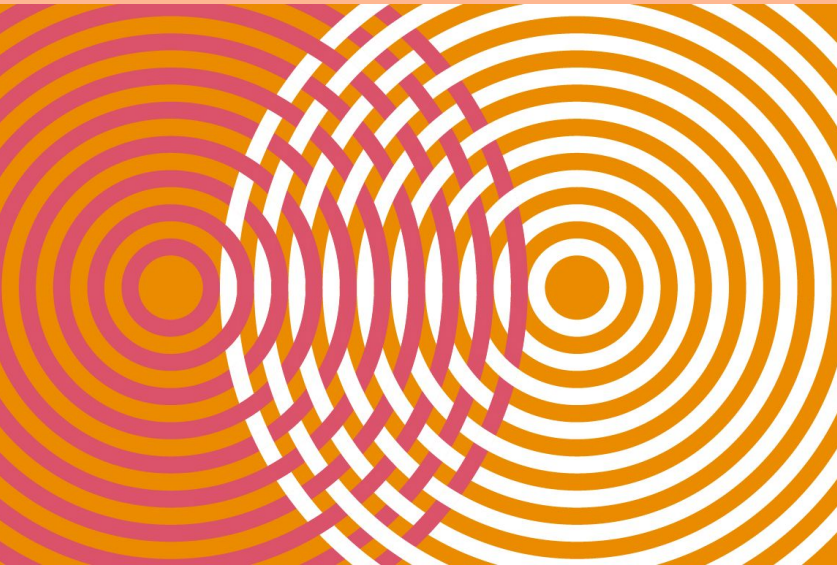


Operational Guideline 4/2020 - Monthly tax deduction under Income Tax (Deduction from Remuneration) Rules 1994

The IRB has issued the above guideline to provide guidance on the following:

- Employers' obligation in relation to monthly tax deduction (MTD) including:
 - Remittance of MTD based on MTD schedule / computerised computation.
 - Additional MTD based on instructions issued by IRB (Form CP38) in relation to an employee's outstanding taxes.
- MTD calculations based on:
 - Electronic MTD schedule issued by the IRB (e-Jadual PCB through e-CP39).
 - Computerised computation using software approved by the IRB, the IRB's Kalkulator PCB, and e-PCB.

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



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