



Taxavvy

5 February 2021 | Issue 4-2021

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Updates to Transfer Pricing Guidelines

The Inland Revenue Board (IRB) has updated Chapter XI (Documentation) of the Transfer Pricing (TP) Guidelines to specify a shorter timeframe for taxpayers to submit TP documentation upon request by the IRB.

Timeframe to submit TP documentation

The IRB has updated Chapter XI (Documentation) of the TP Guidelines to specify that TP documentation is to be made available to IRB within **14 days** (*previously 30 days*) upon IRB's request.

The new deadline applies to TP audit cases which commences on or after 1 January 2021.

The revised deadline is introduced pursuant to the introduction of a specific penalty provision for failure to furnish TP documentation under the new Section 113B of the Income Tax Act 1967 which took effect from 1 January 2021 as follows:

Scenario	Penalty
Prosecuted in Court	<ul style="list-style-type: none">Fine between RM20,000 to RM100,000 or imprisonment of up to 6 months, or both; andCourt may order for the TP documentation to be submitted within 30 days or any other period deemed fit by the Court.
In lieu of prosecution	Penalty between RM20,000 to RM100,000.

The TP Guidelines is available on IRB's website www.hasil.gov.my (International > Transfer Pricing).



Green Investment Tax Allowance - Asset incentive

In line with the Budget 2020 proposal, the Malaysian Green Technology and Climate Change Centre (MGTC) has extended the Green Investment Tax Allowance (GITA - Asset) incentive for the acquisition of qualifying assets listed under the *MyHijau* Directory to cover applications received by MGTC by 31 December 2023 (previously 31 December 2020).



Salient points from the Guideline in respect of GITA - Asset incentive for assets listed under the *MyHijau* Directory are as follows:

Qualifying person	A company incorporated under the Companies Act 2016 and resident in Malaysia.
Incentive	GITA of 100% of qualifying capital expenditure incurred from 25 October 2013 and 31 December 2023, to be set off against 70% of statutory income.
Qualifying asset	<p>The green technology assets must be:</p> <ul style="list-style-type: none"> Registered and listed under the <i>MyHIJAU</i> directory, Owned by the company and used for its own consumption (not for income generation) in its business in Malaysia. <p>Qualifying assets are those in the following areas:</p> <ul style="list-style-type: none"> Energy efficiency Building Transport Renewable energy Waste Water <p>Details on the type of products in above areas are set out in the Guideline.</p>
Key eligibility criteria	<ul style="list-style-type: none"> Minimise the degradation of the environment or reduce greenhouse emission Promotes health and improvement of environment Conserves the use of energy, water and / or other forms of natural resources or promote the use of renewable energy or is able to recycle waste material resources.
Submission of application	Applications to be made to MGTC by 31 December 2023 and within 2 years from the date of asset purchase.

The Guideline is available at www.myhijau.my/green-incentives

Tax deduction for expenditure on issuance of Sukuk

The following Gazette Orders have been issued pursuant to the Budget 2020 proposals in relation to tax deduction on expenditure on issuance of Sukuk:

- Income Tax (Deduction for expenditure on issuance of Sukuk and retail Sukuk structured pursuant to the principle of Wakalah) Rules 2021.
- Income Tax (Deduction for expenditure on issuance or offering of Sustainable and Responsible Investment Sukuk) (Amendment) Rules 2020.

Income Tax (Deduction for expenditure on issuance of Sukuk and retail Sukuk structured pursuant to the principle of Wakalah) Rules 2021

The above Gazette Order provides tax deduction to a resident company incorporated under the Companies Act 2016 for expenditure or additional expenses incurred from the years of assessment (YA) 2021 to 2025 on the issuance of Sukuk under the principle of Wakalah as follows:

Approved Sukuk Wakalah comprising a mixed component of asset and debt	Approved retail Sukuk Wakalah comprising a mixed component of asset and debt, offered to a retail investor
<ul style="list-style-type: none"> • single deduction of expenditure incurred 	<ul style="list-style-type: none"> • single deduction of expenditure incurred; and • double deduction of additional expenses incurred

Additional expenses are:

- Professional fee relating to due diligence, drafting and preparation of prospectus
- Printing cost of prospectus
- Advertisement cost of prospectus
- Securities Commission Malaysia prospectus registration fee
- Bursa Malaysia processing fee and initial listing fee
- Bursa Malaysia new issue crediting fee
- Primary distribution fee

Extension of special deduction on issuance expenditure of Sustainable and Responsible Investment (SRI) Sukuk

Subject to conditions, companies resident in Malaysia were eligible to claim a special tax deduction for expenditure incurred on the issuance or offering of a SRI Sukuk under the Income Tax (Deduction for expenditure on issuance or offering of Sustainable and Responsible Investment Sukuk) Rules 2017 (“the 2017 Rules”). The special tax deduction was applicable from YAs 2006 until YA 2020.

Pursuant to the Budget 2020 proposal, the Income Tax (Deduction for expenditure on issuance or offering of Sustainable and Responsible Investment Sukuk) (Amendment) Rules 2020 has been gazetted to extend the special tax deduction until YA 2023.



Guidelines for approval under section 44(11C) for COVID-19 Relief Fund

The Ministry of Finance (MOF) has updated the Guidelines for approval under section 44(11C) for COVID-19 Relief Fund (“the Guideline”), details of which were previously covered under [TaXavvy 34/2020](#).

The following are the key updates to the Guideline:

- Previously, persons which qualify to seek approval under section 44(11C) in relation to the setting of COVID-19 relief fund consist of:
 - A company limited by guarantee incorporated under the Companies Act 2016
 - A society registered under the Societies Act 1966
 - A trustee incorporated under the Trustees (Incorporation) Act 1952 (Legal Affairs Division of the Prime Minister’s Department)
 - A section 44(6) approved institution / organisation

Under the updated Guideline, a company registered with the Companies Commission of Malaysia (e.g. companies limited by shares) will also be eligible to seek approval under section 44(11C).

- The period for the application to be made to the MOF is now extended to the earlier of 30 June 2021 (previously 31 August 2020) or when the COVID-19 pandemic is declared to be over.

The Guideline is available on MOF’s website www.treasury.gov.my/index.php/ (Cukai > Procedure Pengecualian).

Tax treatment of employee benefits in relation to smartphone, tablet or computer

Following the announcement under PENJANA (refer to [TaXavvy 40/2020](#) and [TaXavvy 41/2020](#)) to provide tax exemption of up to RM5,000 for smartphone, tablet or computer, the following Gazette Orders have been issued:

- Income Tax (Exemption) Order 2021
- Income Tax (Deduction for Value of Benefit given to Employees) Rules 2021



Salient points of the Gazette Orders are as follows:

	Income Tax (Exemption) Order 2021	Income Tax (Deduction for value of benefit given to employees) Rules 2021
<i>Incentive</i>	Income tax exemption for an employee on the value of benefit received from his/her employer not exceeding RM5,000 for the purpose of acquiring smartphone, tablet or computer.	Tax deduction for a business for the value of benefit given to an employee in relation to the purchase of smartphone, tablet or computer.
<i>Effective period</i>	YA 2020 only*	YA 2020 only
<i>*The initial proposal was for the incentive to be provided from YA 2020 onwards.</i>		
<i>Non-application</i>	The exemption does not apply to: <ul style="list-style-type: none"> • An employee who is a sole proprietor • A partner in a partnership • An employee who has power or control to secure the affairs of the employer company directly or indirectly 	N/A

Stamp duty exemption for restructuring or rescheduling of a loan or financing

The Stamp Duty (Exemption) (No. 2) Order 2020 was gazetted in May 2020, providing stamp duty exemption of an instrument for the restructuring or rescheduling of a business loan or financing (refer to [TaXavvy 39/2020](#)).

The Stamp Duty (Exemption) (No. 2) 2020 (Amendment) Order 2021 has now been issued to amend the Stamp Duty (Exemption) (No. 2) Order 2020.



The Stamp Duty (Exemption) (No. 2) 2020 (Amendment) Order 2021 amends the Stamp Duty (Exemption) (No. 2) Order 2020 as follows:

- Stamp duty exemption is now given, upon application being made, on an instrument of loan or a financing agreement which relates to the restructuring or rescheduling of a loan or financing (*previously a “business” loan or financing*) between a borrower / customer and a financial institution, executed on or after 1 March 2020 but not later than 30 June 2021 (*previously 31 December 2020*) (“the new instrument”).
- A new condition for the exemption is included, which is, the new instrument should not contain an element of additional value to the original amount of loan or financing under the existing instrument of loan or financing agreement. For this purpose, interest or profit accrued from the restructured or rescheduled payments is not treated as an element of additional value.
- The application for exemption can now be accompanied by a relevant document relating to the restructuring or rescheduling of the loan / financing and not necessarily a letter of offer from the financial institution.
- The amendment which is effective from 1 March 2020, is in light of the Budget 2021 announcement of the transition of the loan moratorium to Targeted Repayment Assistance which is available to eligible borrowers (individuals and SMEs, including B40 and micro enterprises) until 30 June 2021.

Other incentive developments

- Extension of tax exemption on director fees received by non-citizens from a Labuan entity
- MIDA Guidelines and Procedures for the Application of Automation Capital Allowance



Extension of tax exemption on director fees received by non-citizens from a Labuan entity

The Income Tax (Exemption) (No. 7) 2011 (Amendment) Order 2021 has been issued to extend the income tax exemption on director's fee received by non-citizens acting in the capacity as Director of a Labuan entity until YA 2025 (previously until YA 2020).

MIDA Guidelines and Procedures for the Application of Automation Capital Allowance

MIDA has updated their Guidelines and Procedures for the Application of Automation Capital Allowance ("Automation CA"). The key updates in the latest guideline dated 14 January 2021 are in relation to the conditions of the incentive:

- The company must have been *engaged in manufacturing activities* (previously 'in operation') for at least 36 months.
- If a company decides to claim the Automation CA first before claiming Reinvestment Allowance (RA), the incentive period for both *Categories 1 and 2** (year of assessment 2015 to 2023) *will not* form (previously 'will form') part of the 15 years period of RA.

* Automation CA in brief:

- *Category 1* (High labour intensive industries, i.e. rubber products, plastics, wood, furniture and textiles) - Automation CA of 200% on first RM4 million qualifying capital expenditure (QCE) incurred on automation equipment from YA 2015 to YA 2023.
- *Category 2* (Other industries) - Automation CA of 200% on first RM2 million QCE incurred on automation equipment from YA 2015 to YA 2023.

The guidelines is available on MIDA's website www.mida.gov.my (Forms and Guidelines > Manufacturing Sector > Automation Capital Allowance).

Double Taxation Agreement between Malaysia and Cambodia

The Double Taxation Agreement (DTA) between Malaysia and Cambodia has entered into force on 28 December 2020.

The following are the salient points of the DTA:

Withholding tax rates	Withholding tax will generally be capped at 10% for the following payments: <ul style="list-style-type: none">• Interest• Royalty• Technical fees
Permanent establishment (PE)	PE includes: <ul style="list-style-type: none">• A building site, a construction, installation or assembly project or supervisory activities which lasts more than 9 months• Furnishing of services for a period or periods aggregating more than 183 days within any 12 month period• Activities (including operation of substantial equipment) for exploitation of natural resources for a period or periods aggregating more than 183 days within any 12 month period.• Operation of substantial equipment (excluding those used for exploitation of natural resources) for a period or periods aggregating more than 183 days within any 12 month period.
Tax sparing relief	In respect of both Malaysian and Cambodian taxes
Entry into effect	Malaysia: Malaysian taxes - tax chargeable for any YA beginning on or after the first day of January in the calendar year following the year in which the DTA enters into force. Cambodia: <ul style="list-style-type: none">• Withholding taxes - taxable amount as derived on or after the first day of January following the calendar year in which the DTA enters into force.• Other taxes - income arising on or after the first day of January following the calendar year in which the DTA enters into force.

Wage Subsidy Programme 3.0

SOCSCO has issued the FAQ for Wage Subsidy Programme 3.0. The FAQ covers the targeted Wage Subsidy Programme (WSP) for the tourism and retail sectors under Budget 2021 and the WSP announced under PERMAI for all sectors operating in states under MCO 2.0.



The following are the key points of the FAQ.

	Targeted WSP under Budget 2021	WSP under PERMAI												
Application period	1 January - 30 June 2021	19 January - 30 June 2021												
Eligible sectors	Tourism and retail	All sectors in states under MCO 2.0												
Payment of subsidy of RM600 per month per employee	<ul style="list-style-type: none"> For 3 months for existing recipients of WSP 1.0 or 2.0 For 6 months for new applicants 	For 1 month for those under existing WSP and new applicants												
Limit on number of employees to be subsidised	<table border="1"> <thead> <tr> <th>Number of employees</th> <th>75 or less</th> <th>76 to 200</th> <th colspan="2">Above 200</th> </tr> </thead> <tbody> <tr> <td>Limit</td> <td>75 employees</td> <td>200 employees</td> <td colspan="2">500 employees</td> </tr> </tbody> </table>				Number of employees	75 or less	76 to 200	Above 200		Limit	75 employees	200 employees	500 employees	
Number of employees	75 or less	76 to 200	Above 200											
Limit	75 employees	200 employees	500 employees											

Key conditions:

- The applicant must have suffered at least 30% reduction in monthly sales or income compared to the same month in the previous year.
- The employee's salary is RM4,000 or less per month. The composition of salary is as set out in the Employees' Social Security Act 1969 and includes overtime, commission, leave pay, allowances, etc.
- Employers are required to retain all employees earning RM4,000 or less per month but may reduce the working hours or salary with the employee's agreement.
- The employer and employees must be registered and contributing to SOCSCO before 1 January 2021.

The FAQ is available at SOCSCO's website www.perkeso.gov.my (PERMAI > FAQ).

Reallocation of taxpayers' files

The IRB has issued a media release dated 13 January 2021 to inform on the reallocation of income tax files for certain taxpayers, effective from 1 January 2021. Affected taxpayers will be notified in stages via email or letter. Taxpayers can also look out for the notification via the MyTax application.

Below is a summary of the reallocation:

IRB branch	Criteria
Large taxpayer branch	<ul style="list-style-type: none"> Companies* in Peninsula Malaysia with at least RM50 million in annual income including exempt income. Companies* listed on Bursa Malaysia Federal Government linked companies* at all IRB branches in Peninsula Malaysia. <p><i>* including subsidiaries of such companies</i></p>
Multinational tax branch	Companies with transactions with overseas related parties of a certain threshold.
Special industries branch	Companies in the following industries: <ul style="list-style-type: none"> Petroleum Financial institutions (excluding those headquartered in Sabah and Sarawak) Insurance / Takaful
IRB main branches (according to business/correspondence address of taxpayer)	<ul style="list-style-type: none"> Individuals (OG and SG files) High profile individuals from Large taxpayer branch
IRB Bangi branch	Income tax file of taxpayers with postcodes of 47100 to 47190 (Kinrara and Puchong) which are currently managed by IRB Petaling Jaya branch.

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