

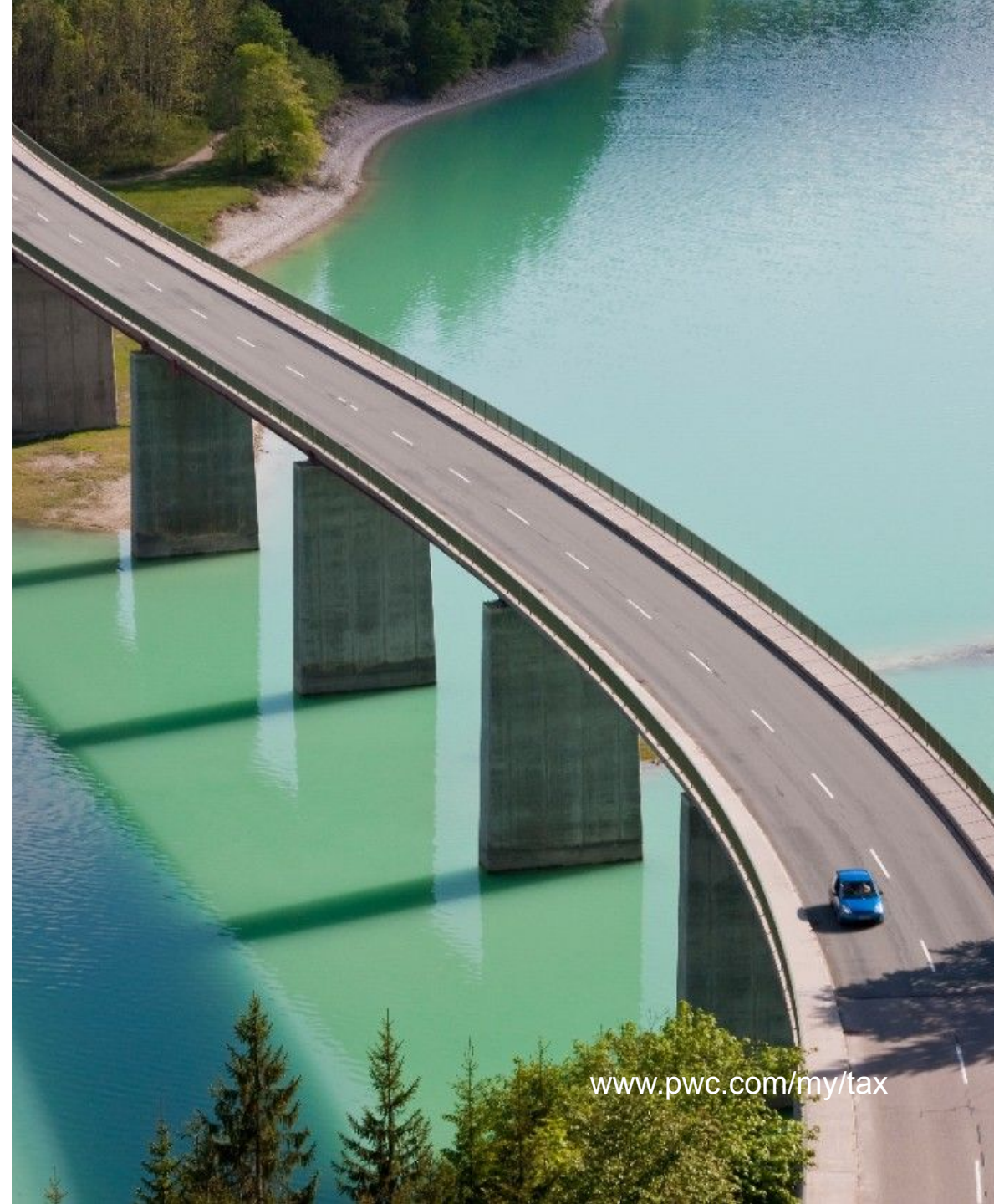


TaXavvy

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Revision of estimate of tax payable in the 11th month and deferment of tax instalments

Following the announcement under Budget 2022, the Inland Revenue Board (IRB) has issued:

- FAQ on the revision of estimate of tax payable in the 11th month for the years of assessment (YAs) 2021 and 2022 and the deferment of tax instalment payments for micro, small and medium enterprises (MSMEs) (“FAQ”). The FAQ was first issued on 25 November 2021. The latest version was updated on 3 December 2021.
- Application form for the revision of the estimate of tax payable in the 11th month.



Revision of estimate of tax payable in the 11th month of the basis period (“11th month”) for YAs 2021 and 2022

Key points with respect to the revision of estimate of tax payable in the 11th month are as follows:

Application process	<ul style="list-style-type: none">• Application for 11th month revision is to be submitted online via email (pindaancp204bajet2022@hasil.gov.my) by completing the application form (available in IRB’s website www.hasil.gov.my (Forms > Download Forms > Other Forms)).• No supporting documents are required for the application.• The application is deemed approved upon submission (i.e. automatically approved).• The IRB will not issue any confirmation of revision or instalment schedule following the revision in the 11th month.
Timeline for submission	<ul style="list-style-type: none">• For cases where the 11th month falls in November 2021 (i.e. financial year ending in December 2021), the last day to submit the application is extended to 10 December 2021 and the effective date of the revised instalment will commence on 15 December 2021.• For YA 2022, the last day for submission of the application for 11th month revision is on the last day of the 11th month of the basis period. Where the 11th month falls in November 2022 (i.e. financial year ending in December 2022), the last day to submit the application is brought forward to 31 October 2022.

Upward and downward revisions	<ul style="list-style-type: none"> The estimate of tax payable can be revised to an amount which is higher or lower than the initial estimate of tax payable, or revised estimate of tax payable submitted in the 6th month or 9th month, whichever is the case.
Underestimation of tax	<ul style="list-style-type: none"> The revision in the 11th month will be taken into account in computing the 10% increase in tax under Section 107C(10) (commonly referred to as underestimation penalty).
Tax estimate for YAs 2022 and 2023	<ul style="list-style-type: none"> The initial estimate of tax payable for YAs 2022 and 2023 should not be less than 85% of the “latest” estimate of tax payable. [Note: In the previous versions of the FAQ (dated 25 November 2021 and 30 November 2021), the IRB had stated that the minimum estimate will <u>not</u> be based on 85% of the revised tax estimate made in the 11th month but will be based on the latest of the initial, or revised estimate made in the 6th or 9th month.] <div data-bbox="453 739 1607 932" style="background-color: #f8d7da; padding: 10px; margin-top: 10px;"> <p>Comment: Taxpayers which have already submitted their YA 2022 initial estimate of tax payable based on the previous understanding that the 11th month revision will not be taken into account in computing the minimum 85% threshold should contact the IRB for guidance.</p> </div>
Eligibility of companies deferring tax instalments	<ul style="list-style-type: none"> Taxpayers who enjoy the deferment of tax instalment from January 2022 to June 2022 are also eligible for the revision of the estimate of tax payable in the 11th month.



Deferment of tax instalments for micro, small and medium enterprises (MSMEs)

Key points with respect to the deferment of tax instalments for MSMEs from the FAQ are as follows:

Period of deferment

CP204 and CP500 instalments falling due in the months of January 2022 to June 2022.

Criteria of MSMEs and Limited Liability Partnerships (LLPs)

The criteria of a MSME are:

- Paid-up capital of RM2.5 million or less at the beginning of a basis period for a YA, and
- Gross income from business source not exceeding RM50 million for the basis period for that YA.

For LLPs, the criteria are based on the following conditions of paragraph 2D, Schedule 1 of the ITA 1967:

- Total contribution of capital (cash or in kind) of RM2.5 million or less at the beginning of the basis period; and
- Gross income from business source not exceeding RM50 million for the basis period of that YA.

Application and notification of deferment for instalments

1. CP 204 cases

- Qualifying taxpayers will receive an email notification from IRB on the deferment based on the MSME status as stated in the latest income tax return submitted to the IRB.
- The email notification serves as the IRB's record for purposes of non-imposition of section 107(9) late payment penalty during the deferment period.
- Where a taxpayer does not have an email address registered with the IRB, the taxpayer may appeal to the IRB to be put under the deferment of instalment. The appeal is to be submitted via email to penangguhancp204@hasil.gov.my

Comment:

In the previous versions of the FAQ (dated 25 and 30 November 2021), it was stated that where a taxpayer was not a MSME based on its latest income tax return submitted but now qualifies as a MSME, appeal can be made to the above-mentioned email address for the taxpayer to be put on under the deferment of instalment. However, this is currently not explicitly stated in the current version of the FAQ dated 3 December 2021. Impacted taxpayers should attempt to appeal to the IRB to be put under the deferment scheme.

2. CP 500 cases

- Granted automatically (i.e. deferment of instalments commences automatically from 1 January 2022 to 30 June 2022). No notification will be issued by the IRB.

Deferment of tax instalments for micro, small and medium enterprises (MSMEs) (con't)

Maintaining existing instalment scheme

- Qualifying taxpayers are allowed to follow the original CP 204 or CP 500 instalment scheme instead. The IRB is not required to be notified.
- Any tax instalments paid during the deferment period will be treated as payments towards the tax instalments for those respective months and will not be allowed to be carried forward for settlement of tax instalments after the deferment period.
- The increase in taxes for late payment of instalments will not be imposed during the deferment period, even if the payments are not made within the original due date.

Revision of tax estimates

No changes to existing eligibility to revise tax estimates in the 6th or the 9th month and the special 11th month revision (subject to existing conditions).

Payment of deferred amount

The deferred tax instalments are to be settled upon submission of the income tax return.

Increase in taxes

The increase in taxes for late payment of instalments will not be imposed for instalments deferred during the deferment period.

The FAQ is available on the IRB's website www.hasil.gov.my (Home > FAQ MCO 3.0).



Special Income Remittance Programme (“PKPP”)

The IRB has issued a media release offering the PKPP to residents in Malaysia following the proposed removal of exemption on foreign-sourced income under Budget 2022.

The salient features of PKPP as set out in the media release are as follows:

- PKPP will be implemented from 1 January 2022 to 30 June 2022.
- Income remitted to Malaysia during the PKPP period will be **taxed at 3% (gross)**, as proposed under the **Finance Bill 2021**.
- Income remitted during the PKPP period will be accepted in good faith by the IRB without tax audit, investigation or penalty.
- Taxpayers need to make a declaration to join the PKPP no later than 30 days after the expiry of the PKPP period.
- Tax payments shall be made in accordance with the ordinary tax payment arrangements.
- PKPP does not apply to income derived from Malaysia from YA 2021 which is remitted during the PKPP period.

After the expiry of the PKPP period, the IRB will review and scrutinise the income information of Malaysian residents that is kept overseas based on information received through tax information exchange agreement with the other countries. Unreported **Malaysian-sourced income** that is discovered from the review is subject to additional assessment and penalties under the provisions of the Income Tax Act 1967.

The IRB will be issuing Guidelines and frequently asked questions (FAQ) on the PKPP.

Please refer to the media release for details (available in IRB’s website www.hasil.gov.my (Home > Media Release)).



Substantial activity requirements for Labuan entities

The Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 (“2021 Regulation”) has been gazetted on 22 November 2021. The 2021 Regulation revokes and replaces the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 (“2018 Regulation”).

The 2021 Regulation is effective from 1 January 2019 except for regulation 3 (which is effective from 1 January 2021). The requirements under the 2021 Regulation remain unchanged as compared to those prescribed under the 2018 Regulation except for the following new items:

Control and management for pure equity holding activities (regulation 3)

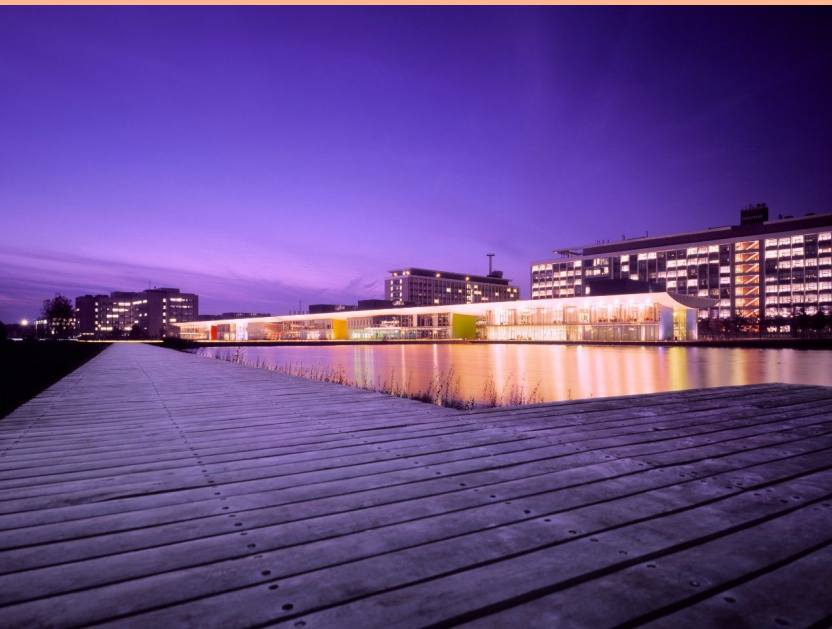
The requirements for a Labuan entity that undertakes pure equity holding activities to comply with the management and control, and board of directors meeting conditions have now been made into law by its inclusion into the 2021 Regulations. The requirement is made pursuant to the following:

- The Labuan FSA’s directive dated 10 August 2020 and subsequent clarification on 10 September 2020 in respect of the prerequisites of the management and control, and board of directors meeting requirements (refer to [TaXavvy 45/2020](#)).
- New Section 2B(1)(b)(ii)(C) of the Labuan Business Activity Tax Act 1990 (LBATA 1990) on the requirements to comply with any condition in relation to control and management for Labuan non-trading activities effective from 1 January 2021.

The prescribed management and control requirements are consistent with those announced by Labuan FSA and are effective from 1 January 2021.

Other trading activities (new category)

This new category (item 20 under the First Schedule of the 2021 Regulation) has now been inserted into the law based on the announcement made by Labuan FSA via its circular dated 21 January 2020 (refer to [TaXavvy 4/2020](#)). The list of activities covered and the prescribed substantial activities requirements (SAR) i.e. 2 full-time employees and RM50,000 annual operating expenditure including the effective date of 1 January 2019 are consistent with the Labuan FSA circular.



The list of other trading activities under the new item 20 of the First Schedule are:

- Administrative services
- Accounting services
- Legal services
- Backroom processing services
- Payroll services
- Talent management services
- Agency services
- Insolvency related services
- Management services (other than Labuan Company Management)

Comment:

The IRB had previously, via its letter to Association of Labuan Trust Companies dated 5 February 2021, informed that Labuan entities carrying on “Other Trading” activities (Code 23) are required to file a tax return under the ITA 1967. This was made on the basis that the then proposed SAR for “other trading activities” was not included in the list of Labuan business activities subject to the SAR when the 2018 Regulation was amended. The IRB treats income arising from activities which are not listed under the 2018 Regulation (now replaced with the 2021 Regulation) as income which is subject to tax under the Income Tax Act 1967.

With the insertion of the new item 20 into the law (i.e. the 2021 Regulation), Labuan entities which have previously filed a return under the ITA 1967 following the above-mentioned IRB letter should revisit their tax position and consider their eligibility to file tax returns under LBATA 1990, as appropriate.



Exemption from restriction on deduction for payments made to a Labuan entity

The Income Tax (Exemption) (No. 11) Order 2021 (“Exemption Order”) has been gazetted on 23 November 2021.

With effect from 1 January 2019, residents are subject to the following restrictions on deductibility of payments made to a Labuan entity (as defined):

Types of payment	% not deductible
Interest expense (including payment in connection with financing in respect of commission, facility fee and advance fee)	25%
Lease rental	25%
Other payments	97%

The Labuan Financial Services Authority (Labuan FSA) has previously issued a Circular on Revisions to Non-Deductibility Rules dated 23 December 2019 (refer to [TaXavvy 3/2020](#)) to announce, amongst others, that the restriction on deductibility of payments made by residents to a Labuan entity will not be applicable to transactions between:

1. Labuan entities that have opted to pay tax under the ITA 1967 and Malaysian residents.
2. Labuan International Commodity Trading Company and Malaysian residents.
3. Labuan entities that are paying taxes under the ITA 1967 and Labuan entities that are paying taxes under LBATA.

Following the Labuan FSA’s announcement, the Exemption Order has now been gazetted. The Exemption Order exempts a resident (“**Payer**”) from the requirement to restrict tax deduction for payments made to a Labuan entity (“**Recipient**”) under Section 39(1)(r) of the ITA. Key details are summarised in the following page:





	Payer	Recipient	Effective date
1.	Resident	A Labuan Company which has made an irrevocable election to be taxed under the ITA 1967	From 1 January 2019
2.	Resident	A Labuan Company which undertakes a qualifying activity under the Global Incentives for Trading programme (i.e. a programme of incentives for the Labuan International Commodity Trading Company to use Malaysia as their international trading base to undertake qualifying activity)	
3.	A Labuan company which carries on: <ul style="list-style-type: none">a business activity which is not specified in the Schedule to the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 [P.U. (A) 423/2021]; oran activity other than a Labuan business activity under the Labuan Business Activity Tax Act 1990 (LBATA 1990).	Labuan Company which carries on a Labuan business activity under Section 2B of the Labuan business activity under the LBATA 1990	YAs 2019 - 2025

Guidelines on Tax Treatment for Financial Institutions Adopting MFRS 9

Following the issuance of the Income Tax (Special Treatment for Bank or Development Financial Institution which Adopt Malaysian Financial Reporting Standard 9: Financial Instruments) Regulations 2021 (“2021 Regulation”), the IRB has issued Guidelines on the Income Tax Treatment for Bank or Development Financial Institution which adopt MFRS 9 - Financial Instrument (“the Guideline”).



The Guideline provides guidance on the income tax treatment for banks or development financial institutions (“financial institutions”) which adopt MFRS 9, and is applicable to a financial institution regulated by Bank Negara Malaysia and licensed under the:

- Financial Services Act 2013
- Islamic Financial Services Act 2013
- Development Financial Institutions Act 2002

The Guideline is largely in line with the 2021 Regulations (refer to [TaXavvy 29/2021](#)). Additional guidance are with respect to the following:

- Tax adjustment for impairment losses should be made only on items reflected in the profit and loss account, on a net basis on the respective expected credit loss (ECL) account per annual audited financial statements.
- “Other movements in the ECL account” should not be subject to tax adjustment unless the movement is reflected in profit or loss. The items include exchange differences, transfer between related companies, reversal of residual income, debt converted securities, unwinding (time value of money), etc. The tax treatment for these items should follow existing tax principles under the Income Tax Act 1967.
- Tracking of the restated opening balances for purposes of monitoring the reversal of impairment losses is required until the restated opening balances is zeroised.
- The monitoring of the net reversal of impairment losses would be made on a First-in, First-out (FIFO) basis.

Please refer to the Guidelines for details (available on the IRB’s website www.hasil.gov.my (Legislation > Technical Guidelines)).

The Guidelines on the Income Tax Treatment from Adopting FRS 139 - Financial Instruments: Recognition and Measurement dated 1 April 2008 is no longer applicable.

Stamp duty remission in relation to service agreements

The Stamp Duty (Remission) Order 2021 (“2021 Order”) in relation to instrument of service agreement has been gazetted. It is effective from 28 December 2018.

Currently, stamp duty in relation to an instrument of service agreement falling under item 22(1)(a) of the First Schedule of the Stamp Act 1949 (“SA 1949”) is imposed at the rate of 0.5% (calculated as RM5 for each RM1,000 or part thereof).

The 2021 Order is gazetted to provide remission of stamp duty on such instruments which are executed on or after 28 December 2018 as follows:

- (1) Remission of stamp duty in excess of 0.1% where the service agreement is executed between:
 - (a) a main service provider with a person (other than a Ruler of a State or the Government of Malaysia or of any State or local authority awarding the undertaking); or
 - (b) a sub-provider of service with a main service provider (who has entered into an undertaking with a Ruler of a State or the Government of Malaysia or of any State or local authority awarding the undertaking).
- (2) Where the main service provider in 1(a) or sub-provider in 1(b) above further enters into a service agreement with another sub-provider of service and so on, the stamp duty on those service agreement(s) which is in excess of RM50 is to be remitted.

Note: Previously, similar remissions were given to instrument of services agreement (then falling under item 22(1)(b) of the First Schedule of the SA 1949. The remission was given under the Stamp Duty (Remission) (No.4) Order 2010 (“2010 Order”). Under the Finance Act 2018, item 22(1)(b) has since been amended and renumbered as the current item 22(1)(a). The 2021 Order provides continuity to those remissions. With the issuance of the 2021 Order, the 2010 Order is revoked.



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