TaXavvy

5 August 2022 | Issue 15-2022

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Guideline on Tax Treatment on Developers or Management Bodies for Maintenance and Management of Building and Common Property

The Inland Revenue Board (IRB) recently issued the Guideline on Tax Treatment on Developers or Management Bodies for Maintenance and Management of Building and Common Property dated 18 July 2022 ("New Guideline") to replace the Guideline on Tax Treatment of Common Property Maintenance and Management Charges Received by Developers, Joint Management Bodies and Management Corporations dated 21 May 2012 ("Old Guideline").

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

The salient points of the New Guideline are as below:

- Previously, the Old Guideline was not applicable to joint management bodies (JMB) in Sabah and Sarawak. The New Guideline no longer states the exclusion of its application to JMB in Sabah and Sarawak.
- For the purpose of the New Guideline, the meaning of "management body" includes joint management body, management corporation and sub management corporation.
- The "mutuality principle" is applicable between the owners of the property ("parcel owner") and the developer or management body during the period the building and common property are maintained and managed by the developer or management body. As such, charges and contributions to the sinking fund and other income arising from the joint management between the parcel owner and management body are not subject to income tax pursuant to Section 53A of Income Tax Act 1967 ("ITA 1967").
- Examples of income which are taxable and not subject to the mutuality principle are provided and they include rental income received from parcel owner on cafeteria operated in common areas and income received from non-parcel owners.
- Common expenses attributable to income from parcel owners and non-parcel owners can be apportioned using the following formula which is taken from the Income Tax (Deduction Relating to Transaction with Non-Members for Club, Association or Similar Institution) Rules 2011 [P.U.(A) 360/2011]:

$$A \times \frac{B}{C}$$

where A is the amount of outgoings or expenses incurred by the person in the basis period for a year of assessment;
B is the gross income from transaction with non-members of the person in the basis period for a year of assessment; and
C is the gross income from transaction with both members and non-members of the person in the basis period for a year of assessment.

An example to illustrate the apportionment of the common expenses is in the Appendix 1 to the New Guideline.

Tax Corporate Governance Framework - Frequently Asked Questions & Updated Guidelines

The IRB has uploaded the following to the IRB's website recently:

- Frequently Asked Questions of Tax Corporate Governance Framework and Guidelines ("FAQ")
- Guidelines to Tax Corporate Governance Framework, updated on 27 July 2022 ["Guidelines (as at 27 July 2022)"]

The IRB has launched the Tax Corporate Governance Framework (TCGF) on 1 March 2022 and subsequently, published the following documents on its website:

- Tax Corporate Governance Framework dated 11 April 2022 ("TCG Framework"); and
- Guidelines to Tax Corporate Governance Framework ("Guidelines").

Please refer to TaXavvy 7/2022 for further information on TCGF.

Following the publication of the TCG Framework and Guidelines, the IRB has recently uploaded the FAQ and the Guidelines (as at 27 July 2022) in response to general inquiries regarding the TCGF and with the objective of providing clarity to the implementation of the Tax Corporate Governance (TCG) Programme. Please refer to the media release which is available on the IRB's website www.hasil.gov.my (Home > Media Release 30 July 2022).

Salient points of the FAQ and the Guidelines (as at 27 July 2022) are as follows:

1. TCG programme will be implemented in the following 2 phases -

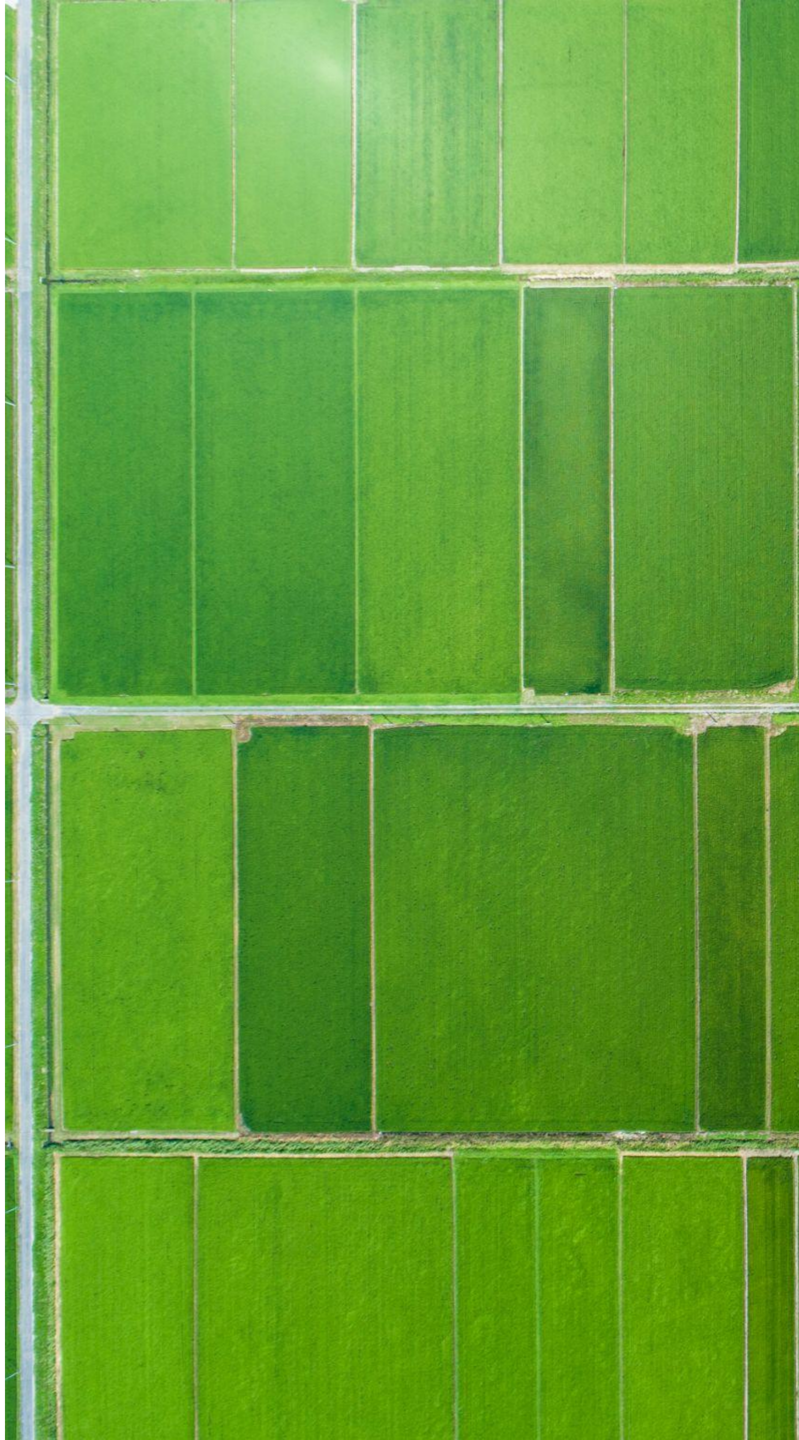
First phase (pilot project)	• Only selected organisations will receive an invitation from the IRB to join the programme. • Pilot period: June 2022 - June 2024 • Other interested organisations may contact IRB to communicate their interest or to obtain further information on the programme. A qualified organisation will be notified.
Second phase (post-pilot)	• Open to all

2. An organisation which is awarded with participation status of the TCG programme must inform the IRB of its intention to renew the participation at any time within 12 months before the status expires.

3. The TCG review includes -
   i. Self-review performed by the organisation
   ii. Independent review carried out by -
      - Approved tax agent;
      - Internal auditor with suitable qualifications; or
      - Qualified independent person
   iii. Adequacy review and effectiveness review performed by the IRB

4. **IRB's approach in TGC review**
   The IRB will perform an adequacy review on the organisation's TCGF and an effectiveness review on the organisation's Tax Control Framework (TCF), as summarised below:

Adequacy review	Effectiveness review
The adequacy of the organisation's TCG will be reviewed based on the application of the following tax governance principles: • Tax strategy established • Applied comprehensively • Responsibility assigned • Governance documented • Testing performed • Assurance provided	An evidence-based approach will be applied in assessing the effectiveness of the organisation's TCF. The focus of the control test includes board control and managerial-level responsibilities. The review and evaluation will be classified into 3 important areas, namely: • Review of the existence of the TCF; • Review and evaluate the effectiveness of the TCF design; and • Examine and assess whether TCF is functional and practical.



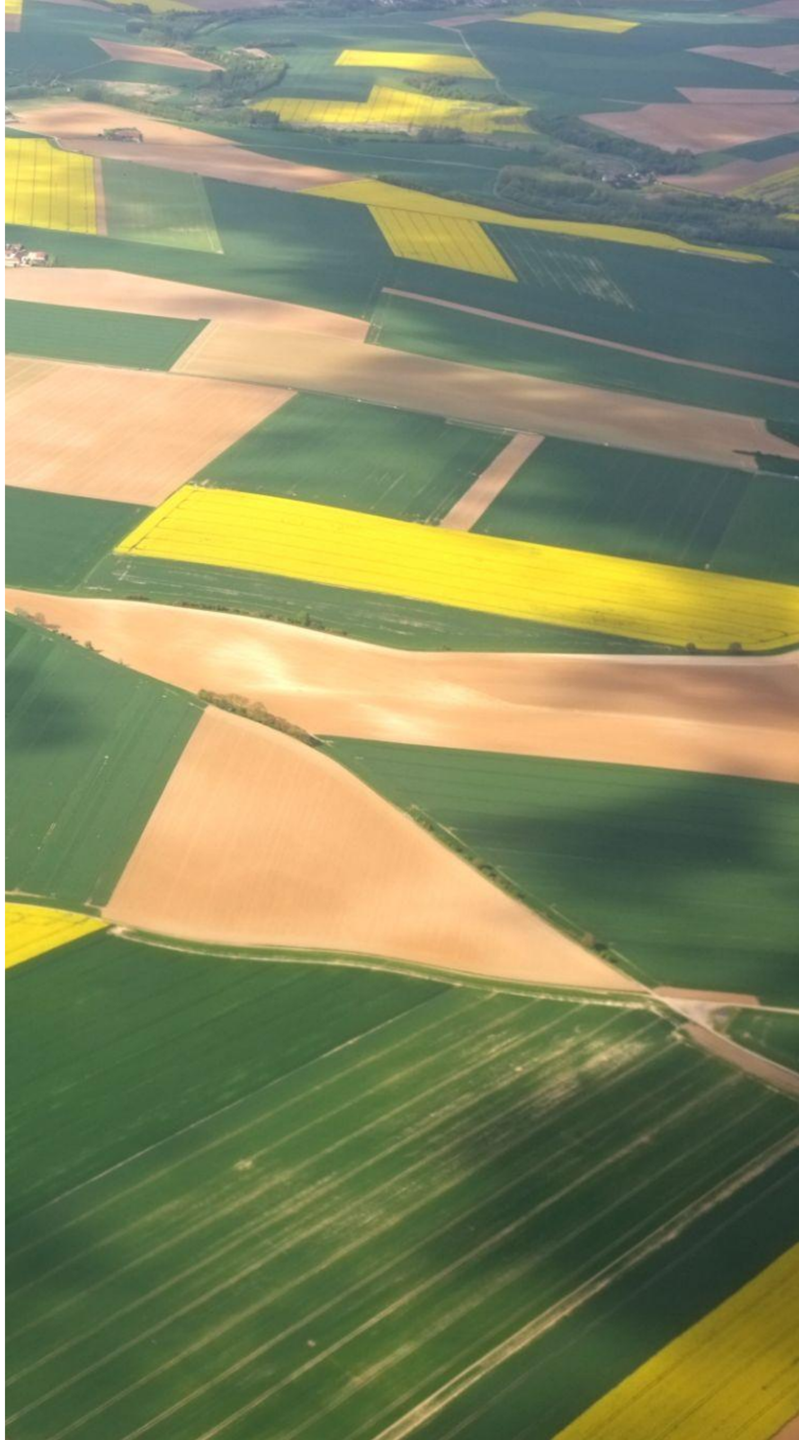
5. Examples of tax strategies to be included in the self-review assessment template (page 11 of TaXavvy 7/2022 refers) are provided as follows -
   (a) Formulated objective
   (b) Allocation of duties and responsibilities
   (c) Tax risk management
   (d) Risk appetite
   (e) Method of communication
   (f) Transparency toward stakeholders
   (g) Monitoring with accountability toward internal and external stakeholders

6. The expenses incurred in relation to the implementation of TCG are capital in nature and are not deductible pursuant to Section 33(1) of the ITA 1967.

7. Withdrawal from the TCG programme should be made in writing by the organisation to the IRB. As the adoption of the TCG demonstrates the organisation's willingness to establish good tax governance standards, the reasons for withdrawal will be assessed, and will be taken into account in the organisation's compliance risk profile.

8. Qualified organisations in the TCG programme that fulfil the requirement and criteria listed by the IRB shall not be subject to audit / investigation.

Both the FAQ and the Guidelines (as at 27 July 2022) are available on the IRB's website www.hasil.gov.my (Home > Legislation > Tax Audit > Tax Corporate Governance Framework).



Public Ruling 2/2022 - Tax Incentive for Organising Conferences in Malaysia

The IRB has issued Public Ruling 2/2022 - Tax Incentive for Organising Conferences in Malaysia ("PR 2/2022") dated 29 July 2022. PR 2/2022 explains the tax incentives available for conference organisers.

In addition to the existing income tax exemption for conference promoters and organisers, the government has also (under Budget 2020 measures) extended the income tax exemption to the organising of conferences by qualifying persons whose main business activities are other than promoting and organising conferences in Malaysia from year of assessment (YA) 2020 to YA 2025.

Salient points of the incentives as set out under PR 2/2022 are as follows:

	Income Tax (Exemption) (No. 53) Order 2000	**Income Tax (Exemption) (No. 4) Order 2021**
Tax incentive	100% tax exemption of statutory income derived from organising conferences held in Malaysia with at least 500 foreign participants in a YA	
Effective period	From YA 1997	From YA 2020 to 2025
Key conditions	• Tax resident company incorporated under the Companies Act 2016, or association or organisation registered under the Societies Act 1966 • Main activities are promoting and organising conferences in Malaysia including the arranging of accomodation, tours and sightseeing for foreign participants	• Tax resident company incorporated under the Companies Act 2016, or association or organisation registered under the Societies Act 1966 • Main activities are other than promoting and organising conferences in Malaysia

Public Ruling 3/2022 - Taxation of Foreign Fund Management Company

The IRB has issued Public Ruling 3/2022 - Taxation of Foreign Fund Management Company ("PR 3/2022") dated 29 July 2022 which replaces Public Ruling 7/2019 of the same title ("PR 7/2019").

Background
In Budget 2020, it was announced that the tax exemption on income from a business of providing *Shariah*-compliant fund management services to foreign investors and local investors in Malaysia, which expired in YA 2020, would be extended for a period of 3 years from YA 2021 to YA 2023. Following this, the gazette orders which provide the extension of the tax exemption have been issued.

Qualifying conditions for the above extended incentive include obtaining an annual certification from the Securities Commission Malaysia, having at least two full-time employees in Malaysia and incurring a minimum annual operating expenditure of RM250,000 in Malaysia. Please refer to TaXavvy 22/2021 for details.

Updates to PR 3/2022
The contents of PR 3/2022 are mainly updated to reflect the extension of the incentive to YA 2023, based on the gazette orders.

PR 3/2022 is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).

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