

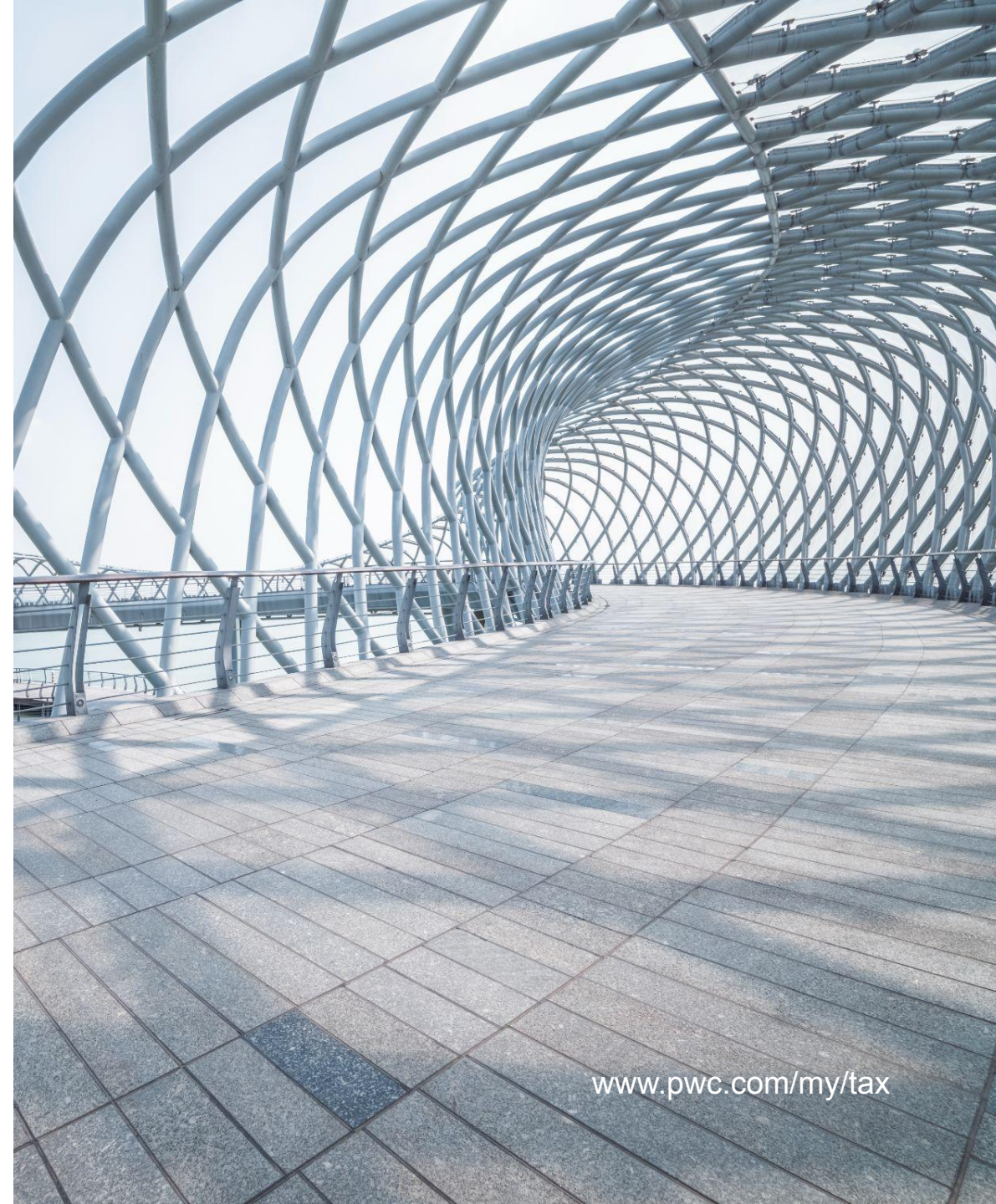


# TaXavvy

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# Restriction on Deductibility of Interest Guidelines 2022

The Restriction on Deductibility of Interest Guidelines 2022 (“2022 Guidelines”) was uploaded by the Inland Revenue Board (IRB) to its website recently to provide explanation in relation to the Earnings Stripping Rules (ESR).



The Income Tax (Restriction on Deductibility of Interest) Rules 2019 (“ESR Rules”) which came into effect on 1 July 2019 limits the interest deduction for financial assistance between related persons to 20% of Tax-EBITDA. To recap, Tax-EBITDA is computed as [A] + [B] + [C]

- where
- A is the amount of adjusted income from business;
  - B is the total amount of qualifying deductions; and
  - C is the total interest expense incurred for the business which is in connection with or on financial assistance from a controlled transaction.

Subsequently, the Income Tax (Restriction on Deductibility of Interest) (Amendment) Rules 2022 (“Amendment Rules”) has been gazetted to amend the definition of “qualifying deduction” under the ESR Rules for the computation of Tax-EBITDA, effective from 1 February 2022.

Following the above, the 2022 Guidelines have been issued by the IRB to update the Restriction on Deductibility of Interest Guidelines 2019 (“2019 Guidelines”). The following are the salient updates:

## 1. Qualifying deduction

The 2022 Guidelines has been updated to incorporate the new definition of “qualifying deduction” introduced under the Amendment Rules for the purposes of calculating the Tax-EBITDA. The definition of “qualifying deduction” under Rule 5(2)(a) and Rule 5(2)(b) of the ESR Rules has been amended as follows:

Prior to amendment	After amendment
<p>(a) an amount <b>equal to</b> the <b>amount of expenditure incurred</b> by the person computed in any deduction falling to be made under the Income Tax Act 1967 (ITA 1967) where the amount of deduction is twice the amount of the expenditure incurred by a person;</p> <p>(b) any claim for <b>deduction under any rules made under paragraph 154(1)(b) of the ITA 1967</b> where the deduction is allowed for purposes of ascertaining the adjusted income of the person.</p>	<p>(a) <b>where there is business expenditure incurred in the profit and loss account</b> is allowed as deduction under the ITA 1967 and the amount of the deduction allowed exceeds the amount of the business expenditure incurred, an amount equal to <b>the difference between the amount of the deduction allowed and the amount of the business expenditure incurred</b> in the profit and loss (P&amp;L) account; or</p> <p>(b) <b>where there is no business expenditure incurred in the P&amp;L account, the amount of deduction allowable under the ITA 1967.</b></p>

The 2022 Guidelines has clarified that the above amended definition takes effect for the basis periods beginning on or after 1 February 2022. Based on Example 7 of the 2022 Guidelines, a company which closes its financial accounts on 31 December 2022 would only apply the above definition from YA 2023 onwards.

The determination of when an item of expense falls under the new definition of qualifying deduction for Tax-EBITDA calculation is illustrated on page 22 of the 2022 Guidelines (reproduced in following page for ease of reference).

## 2. Application of ESR in a situation where interest is not due to be paid

Section 33(4) of the ITA 1967 provides that interest expense incurred and payable on monies borrowed for a particular YA is deductible in arriving at the adjusted income of that YA when the said interest is due to be paid. However, in order to qualify for the interest deduction, written notice for such claim has to be submitted to the IRB not later than 12 months after the interest expense is due to be paid pursuant to Section 33(5) of the ITA 1967.

Where the ESR Rules applies, interest deduction against business income for a YA is capped at 20% of Tax-EBITDA. Tax-EBITDA is computed as **[A] + [B] + [C]**

where

- A is the amount of adjusted income from business;
- B is the total amount of qualifying deductions; and
- C is the total interest expense incurred for the business which is in connection with or on financial assistance from a controlled transaction.

The IRB has stated under paragraph 6.7 of the 2022 Guidelines that in a YA where Section 33(4) of the ITA 1967 applies, i.e. interest is payable for that YA (which is only due to be paid in a later YA) would have to be excluded (i.e. deducted) from Component C since it would have been excluded in arriving at the adjusted income (which represents Component A). When the taxpayer submits a revision under Section 33(5) of the ITA 1967 when the interest is due to be paid, the Tax-EBITDA should simultaneously be revised to account for the interest expense which was previously excluded from components A and C.

The 2022 Guidelines is available on IRB's website [www.hasil.gov.my](http://www.hasil.gov.my) (International > Restriction on Deductibility of Interest [Section 140C, Income Tax Act 1967]).

**Table: Determination of qualifying deduction from Page 22 of the 2022 Guidelines**

Item	Depreciation Expenses	Audit <i>(Note 1)</i> & Secretarial Fee [P.U.(A) 162/2020]	Laboratory Accreditation Expense [Para. 34(6)(m)]	Halal Certification Expenses [Para. 34(6)(ma)]	Export Credit Takaful Expenses [P.U.(A) 428/2010]	Salary Expenses (Senior Citizen) [P.U.(A) 164/2019]	Investment in Qualifying Activity <i>(Note 2)</i> [P.U.(A) 166/2016]
Expenditure in P&L	2,498,000	35,000	5,000	17,000	14,000	20,000	0
Allowable deduction in ascertaining adjusted income under the ITA 1967	No	Yes	Yes	Yes	Yes	Yes	Yes
Amount of allowable deduction	N/A	10,000	5,000	34,000	28,000	40,000	49,000
Is the allowable deduction exceed the expenditure in P&L?	-	No	No	Yes	Yes	Yes	Yes
Is the item is a “qualifying deduction”?	-	No	No	Yes	Yes	Yes	Yes
The amount of the “qualifying deduction”	-	N/A	N/A	17,000	14,000	20,000	49,000
<b>Qualifying deduction under Rule 5(2)(a) or Rule 5(2)(b)</b>	<b>Not a qualifying deduction</b>	<b>Not a qualifying deduction</b>	<b>Not a qualifying deduction</b>	<b>Rule 5(2)(a)</b>	<b>Rule 5(2)(a)</b>	<b>Rule 5(2)(a)</b>	<b>Rule 5(2)(b)</b>

**Notes:**

1. This is likely to refer to tax fees instead of audit fees. Under P.U.(A) 162/2020 which was effective up to YA 2019, the total claim for tax fees for each YA was capped at RM10,000.
2. Tax incentive for a company investing in a related company which carries out a qualifying activity in the East Coast Economic Region.

## Revised Guidelines on Tax Deduction of Secretarial and Tax Filing Fees

The IRB has issued the Revised Guidelines on Tax Deduction of Secretarial Fees and Tax Filing Fees from the Year of Assessment (YA) 2022, dated 17 August 2022 (the “Revised Guideline”).

### Background

From YA 2020, the total tax deduction for secretarial fees and tax filing fees (collectively, “fees”) incurred for a YA are given at a combined limit of RM15,000 under the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020. The tax deduction is to be claimed on and “incurred and paid” basis, i.e. to be claimed in the YA when the fees are paid.

The timing of claim was subsequently amended from an “*incurred and paid*” basis to an “*incurred*” basis through the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) (Amendment) Rules 2021 (“Amendment Rules”). The change is effective from YA 2022.

### Revised Guideline

The IRB has issued the Revised Guideline to incorporate additional guidance based on the Amendment Rules.

### Treatment for fees incurred from YA 2022

For fees incurred from YA 2022, the amounts are to be claimed in the YA when the fees are incurred.

### Treatment for fees incurred before YA 2022

The Revised Guideline also provide the treatment for fees incurred in YA 2020 and YA 2021 where the tax deduction for these amounts remain to be claimable only in the YA when the fees are paid. It is illustrated in Example 2 of the Revised Guideline that tax filing fee (CP204 submission) which was incurred in YA 2020 is allowed a deduction in YA 2023 when the fees are paid. The example also reiterates that the amount of deduction to be claimed for each YA remains limited to RM15,000 even though the total fees paid consist of amounts incurred for YAs 2020, 2021 and 2022.

As for fees incurred before YA 2020 which have yet to paid (which tax deduction has not been claimed), the Revised Guideline states that these fees are no longer deductible from YA 2022 onwards.

The above are summarised in the following page for easy reference:





## When to claim tax deduction

### Fees incurred from YA 2022

In the YA when the fees are incurred.

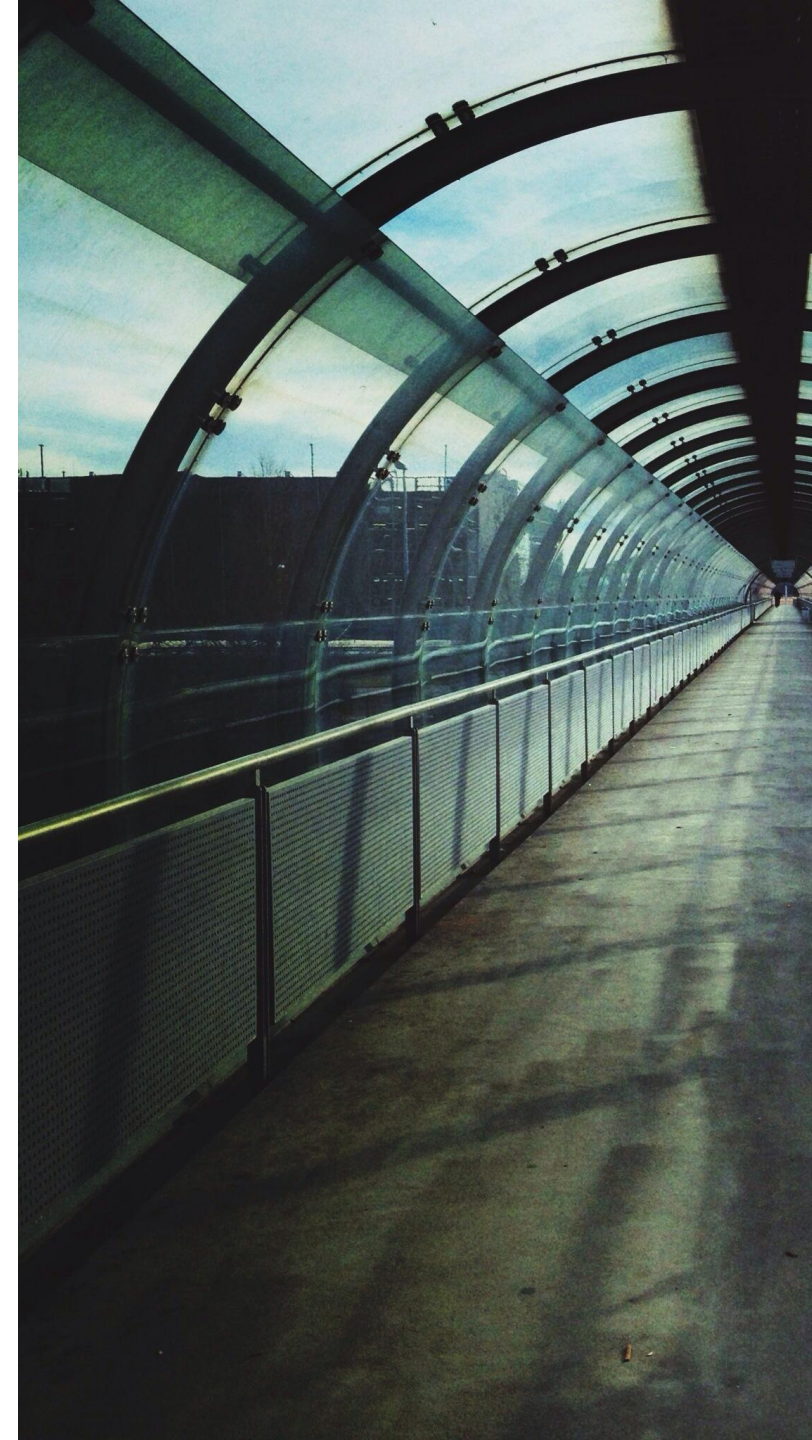
### Expenses incurred during YAs 2020 and 2021

Fees which have yet to be claimed will be allowed for deduction from YA 2022 onwards when the said expense has been paid.

### Expenses incurred before YA 2020

Fees incurred before YA 2020 which tax deduction have yet to be claimed, are not deductible from YA 2022 onwards.

The Revised Guideline is available on IRB's website [www.hasil.gov.my](http://www.hasil.gov.my) (Legislation > Guidelines > Technical Guidelines).



## Updated FAQ in relation to Withholding Tax on Payments Made to Agents, Dealers and Distributors

The IRB has issued the FAQ on the deduction of tax at 2% on payments made to agents, dealers or distributors (ADD) by a company under Budget 2022, updated on 19 August 2022 (“FAQ”).

The IRB has issued a media release on 9 July 2022 to announce the administrative changes to the submission of withholding tax (WHT) on payments by companies to resident individual ADDs under Section 107D of the ITA 1967 ([TaXavvy 12/2022](#) refers).

Following the media release, the FAQ has been updated by the IRB on 19 August 2022. The updates to the FAQ are consistent with the administrative changes as announced in the 9 July 2022 media release.

Salient points of the updated FAQ are summarised below:

FAQ	Reference
<b>When to remit the 2% WHT to IRB</b> Effective from July 2022, companies that make payments to a resident individual ADD are required to accumulate the 2% WHT on a monthly basis and remit the accumulated amount to the IRB latest by the end of the following month. Please refer to the following illustration provided by the IRB:	Items D1 and E3

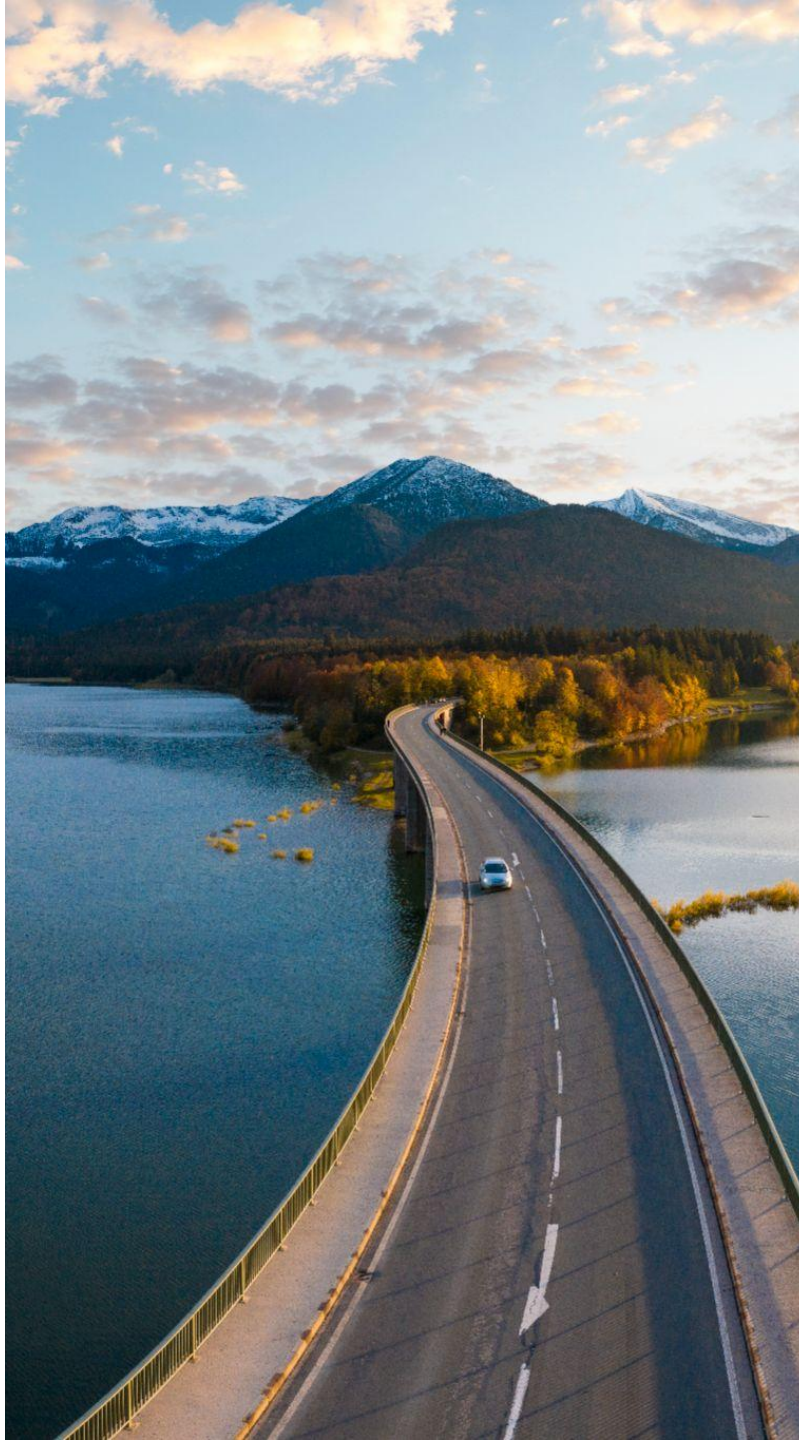
Accumulated 2% WHT for	Last date of remittance
1 July 2022 to 31 July 2022	31 August 2022
1 August 2022 to 31 August 2022	30 September 2022
1 September 2022 to 30 September 2022	31 October 2022





FAQ	Reference
<p><b>Submission of prescribed form for WHT remittance</b></p> <p>Form CP107D - Pin2/2022 and Appendix CP107D(2) [available on IRB’s website <a href="http://www.hasil.gov.my">www.hasil.gov.my</a> (Forms &gt; Download Forms &gt; Withholding Tax)] are to be furnished to the respective IRB’s payment centre via email before making the WHT payments. A copy of the email sent to the respective IRB’s payment centre must be presented for verification and checking by the said payment centre. The payment centres and email addresses are as follows:</p> <ul style="list-style-type: none"><li>• Kuala Lumpur Payment Centre - pbkl-cp107d@hasil.gov.my</li><li>• Kuching Branch - pbkc-cp107d@hasil.gov.my</li><li>• Kota Kinabalu Branch - pbkk-cp107d@hasil.gov.my</li></ul>	<p>Items D2 and D3</p>

The updated FAQ is available on IRB’s website [www.hasil.gov.my](http://www.hasil.gov.my) (Legislation > Budget > 2022).





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