

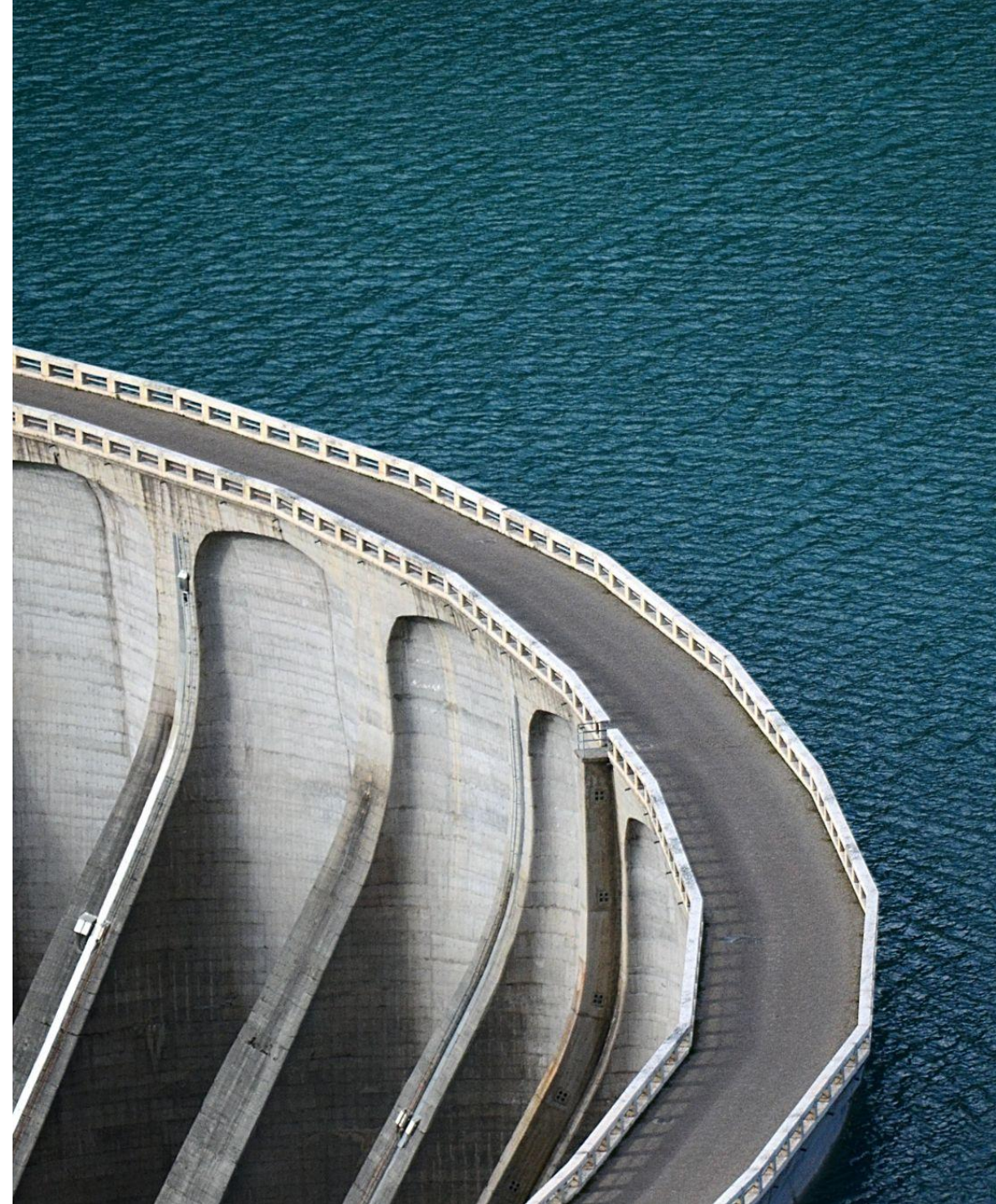


# Taxavvy

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## FAQ in relation to Withholding Tax (WHT) on Payments Made to Agents, Dealers and Distributors

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

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



The new Section 107D of the Income Tax Act 1967 (ITA 1967) provides that with effect from 1 January 2022, WHT at the rate of 2% is applicable on payments in monetary form made to agents, dealers or distributors, arising from sales, transactions or schemes (“in-scope payments”).

The WHT is applicable on in-scope payments made to resident agents, dealers or distributors who are individual residents and who have received more than RM100,000 of such payments in monetary form and/or non-monetary form from the same company in the immediately preceding year of assessment (YA).

The tax withheld is to be remitted to the IRB within 30 days from date of payment or crediting the payment to the agent, dealer or distributor. Companies which fail to comply with this requirement will be subject to an increase in tax equivalent to 10% of the outstanding WHT and the underlying gross expenses which are subject to the WHT would be denied a tax deduction.

### Deferment of remittance of WHT

To ensure that all companies which are liable to make payment (“payer companies”) are able to make appropriate preparations and notifications to their agents, dealers and distributors, the IRB has issued a media release on 12 January 2022 announcing that payer companies are allowed to defer the “remittance” of the WHT until 31 March 2022 where payer companies are allowed to remit the WHT related to payments for the months of January until March 2022 from 1 April 2022 without being subject to any increase in tax. Based on the media release, the payer companies are allowed to remit the 2% WHT on payments which are subject to Section 107D WHT for the months of January until March 2022 from 1 April 2022.

The FAQ has now provided details on the deferment as follows [refer to item E(3) of the FAQ]:

Date of payment to the agent, dealer or distributor	Date of WHT remittance
From 1 January 2022 to 2 March 2022	Allowed to remit WHT to the IRB on 1 April 2022
On or after 3 March 2022	30 days from the date of payment to the agent, dealer or distributor

## Deferment of remittance of WHT (cont'd)

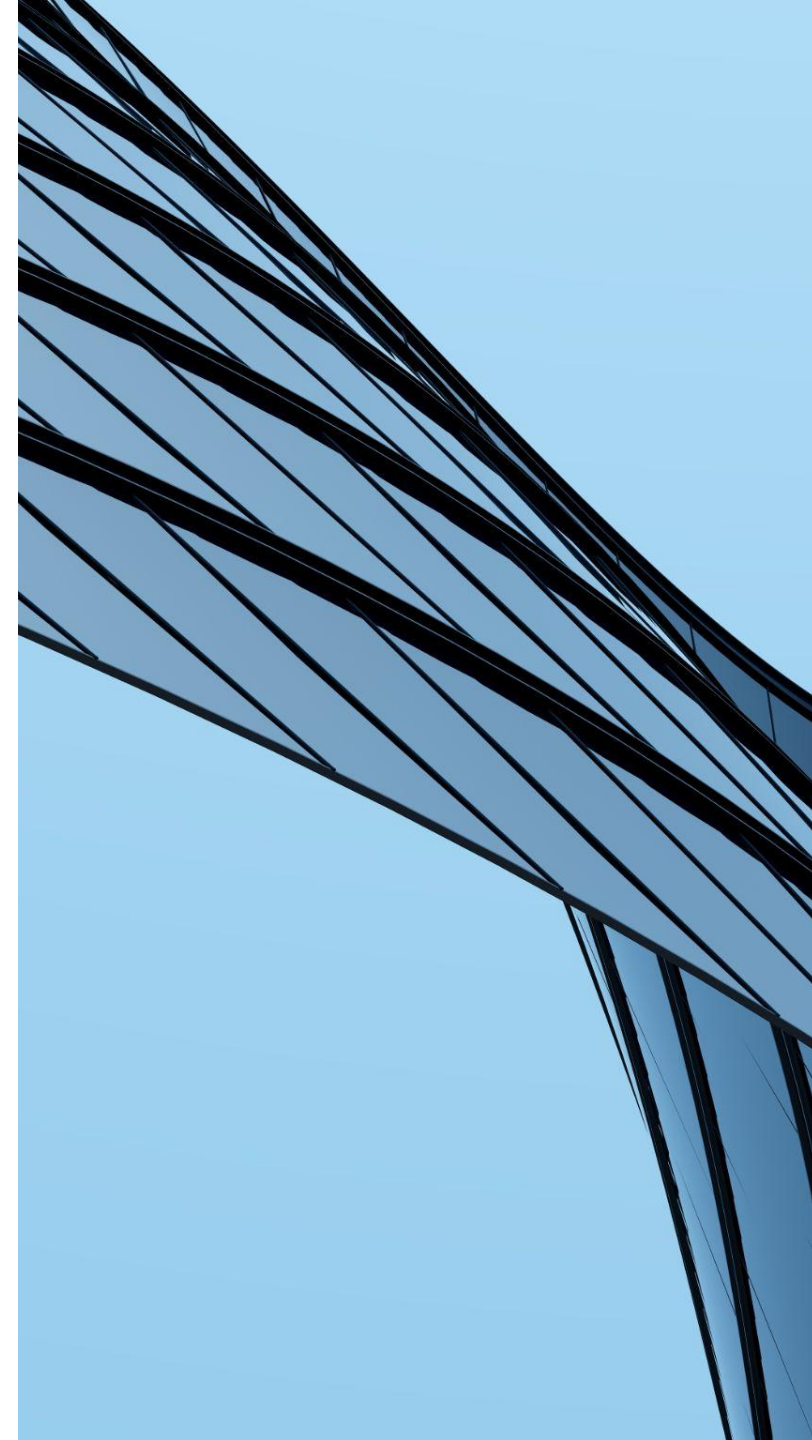
The above is illustrated in the following examples under item E(3) of the FAQ:

Date of payment	WHT remittance period (30 days)	Last date for WHT remittance
6 January 2022	7 January 2022 - 5 February 2022	1 April 2022
14 February 2022	15 February 2022 - 16 March 2022	1 April 2022
23 March 2022	24 March 2022 - 22 April 2022	22 April 2022

Payment of the WHT can be made by post or at the IRB's payment centres in Kuala Lumpur, Kota Kinabalu or Kuching. Remittance is to be made together with the declaration form (Form CP107D). (*Note: The Form CP107D will be made available at the IRB's Official Portal*)

Other salient points from the FAQ are as follows:

FAQ	Reference
<p><b>Scope of agents, dealers or distributors</b> Includes a sole proprietor and an individual partner of a partnership (in respect of payments to the individual partner but excludes payments made to the partnership).</p>	Items B(2), B(3)
<p><b>Income tax reference number</b> Agents, dealers or distributors must have an income tax reference number.</p>	Item D(4)
<p><b>Applicability of Section 107D WHT</b></p> <ul style="list-style-type: none"> <li>• Payments by way of credit notes, contra and discount are not subject to the WHT</li> <li>• The payer company is required to apply the WHT even though the agent, dealer or distributor is subject CP500 tax instalment payment.</li> </ul>	Items A(6), D(9)



## FAQ

## Reference

**Determination of threshold amount**

- Where the in-scope payments (monetary and/or non-monetary) made to an agent, dealer or distributor in a particular YA is **more than RM100,000 (the “threshold amount”)**, the payer company is required to subject the in-scope monetary payments made to that person during the immediate subsequent YA to Section 107D WHT. The meeting of the threshold amount is to be **determined on a YA-by-YA basis**. In other words, whether payments made during a particular YA is subject to the WHT will depend on whether the threshold amount in the **YA immediately preceding that particular YA** has been met. The example below which is based on Item C(4) of the FAQ illustrates this test:

Items C(4),  
C(5)

YA	Payments received by Agent A from a Company	Company required to subject monetary payments made during the YA to WHT?
2021	RM90,000	n/a (Section 107D not yet in force)
2022	More than RM100,000	No (threshold amount in YA 2021 not met)
2023	More/less than RM100,000	Yes (threshold amount in YA 2022 met)

- The determination of the threshold amount does not take into account whether the resident individual is a resident or a non-resident in the preceding YA.

**Tax treatment for agents, dealers or distributors**

The Section 107D WHT deducted is treated as payment of the tax payable of the agent, dealer or distributor.

Item D(8)

**Other reporting by payer companies**

The Section 107D WHT is also to be reported in the Statement of Monetary and Non-Monetary Incentive Payment to an Agent, Dealer or Distributor Pursuant to Section 83A of ITA 1967 (Form CP58).

Item D(7)



## Incentive for Manufacturers of Pharmaceutical Products

The Income Tax (The Incentive for Manufacturers of Pharmaceutical Products Scheme) Rules 2022 (the “Rules”) has been gazetted. The Rules is effective from the year of assessment (YA) 2021.



It was announced under the Budget 2021 that a concessionary tax rate of 0% to 10% (for the first 10 years) and 10% for the next 10 years will be given to manufacturers of pharmaceutical products including vaccines (excluding fill and finish activity).

The Malaysian Investment Development Authority (MIDA) has subsequently issued the Guidelines on Incentive for Manufacturers of Pharmaceutical Products Including Vaccines under the 2021 Budget (“MIDA Guidelines”) setting out the eligibility criteria and procedures for the application of the incentive (previously covered in [TaXavvy 26/2021](#)).

Applications for the incentive are to be made to MIDA by 31 December 2022.

Following the issuance of the MIDA Guidelines, the enabling law (i.e. the Rules) for the incentive has now been gazetted. Additional key matters to note under the Rules are as follows:

- The first capital expenditure (which is to be incurred by the qualifying company within 1 year from the date of the approval letter) shall exclude expenditure on land.
- The qualifying company must incur a minimum amount of annual operating expenditure (specified in the approval letter) in Malaysia.
- Qualifying companies which fail to comply with any conditions imposed may surrender the incentive granted by a notice in writing to the Ministry of Finance (MoF) through MIDA. The surrender of the incentive shall have effect on the first day in the basis period of the YA in which the application for surrender is received by the MoF through MIDA.

### Recap on key conditions of the incentive

The key conditions of the incentive are summarised in the following page.

- Must be engaged in manufacturing of pharmaceutical products including formulation in Malaysia (excluding fill and finish activity)
- Undertake development of drug formulation and the drug formulation to be submitted to the National Pharmaceutical Regulatory Agency (NPRA) in Malaysia within 10 years of the incentive approval
- Incur first capital expenditure (excluding expenditure on land) within 1 year of the approval date
- Commit full capital expenditure as stated in the approval letter within 5 years of its initial expenditure
- Must incur a minimum amount of annual operating expenditure (specified in the approval letter) in Malaysia
- Carry out R&D activities and establish collaborative programmes with higher learning institutions on related R&D programmes
- Value added for the product: at least 40%
- At least 20% of the company's staff holds a degree in Science and Technical fields or Diploma
- At least 80% of the full-time employees are Malaysian and at least 15% of the total full-time employees with monthly basic salary of at least RM5,000
- Undertake internship programmes with local universities and/or polytechnics or industrial training placement at TVET institutions for at least 6 Malaysian interns per year with a minimum training period of 3 months throughout the incentive period
- Carry out annual CSR activities with at least one hospital or health institution in Malaysia



## Connect with us

### Kuala Lumpur

#### Jagdev Singh

jagdev.singh@pwc.com  
+60(3) 2173 1469

### Penang & Ipoh

#### Kang Gaik Hong

gaik.hong.kang@pwc.com  
+60(4) 238 9225

### Melaka

#### Benedict Francis

benedict.francis@pwc.com  
+60(7) 218 6000

### Tan Hwa Yin

hwa.yin.tan@pwc.com  
+60(6) 270 7300

### Johor Bahru

#### Benedict Francis

benedict.francis@pwc.com  
+60(7) 218 6000

### Kuching

#### Lee Yuien Siang

yuien.siang.lee@pwc.com  
+60(8) 252 7202

### Cynthia Ng

cynthia.hh.ng@pwc.com  
+60(3) 2173 1438

### Labuan

#### Jennifer Chang

jennifer.chang@pwc.com  
+60(3) 2173 1828

## Corporate Tax Compliance & Advisory

### Consumer & Industrial Product Services

#### Margaret Lee

margaret.lee.seet.cheng@pwc.com  
+60(3) 2173 1501

#### Steve Chia

steve.chia.siang.hai@pwc.com  
+60(3) 2173 1572

## Specialist services

### Corporate Services

#### Lee Shuk Yee

shuk.yee.x.lee@pwc.com  
+60(3) 2173 1626

### Japanese Business Consulting

#### Yuichi Sugiyama

yuichi.sugiyama@pwc.com  
+60(3) 2173 1191

#### Clifford Yap

clifford.eng.hong.yap@pwc.com  
+60(3) 2173 1446

### Tax Reporting & Strategy

#### Lavindran Sandragasu

lavindran.sandragasu@pwc.com  
+60(3) 2173 1494

### Emerging Markets

#### Fung Mei Lin

mei.lin.fung@pwc.com  
+60(3) 2173 1505

### Energy, Utilities & Mining

#### Lavindran Sandragasu

lavindran.sandragasu@pwc.com  
+60(3) 2173 1494

### China Desk

#### Lorraine Yeoh

lorraine.yeoh@pwc.com  
+60(3) 2173 1499

### Korea Desk

#### Keegan Ong

keegan.sk.ong@pwc.com  
+60(3) 2173 1684

### People & Organisation

#### Kartina Abdul Latif

kartina.a.latif@pwc.com  
+60(3) 2173 0153

#### Lee Shuk Yee

shuk.yee.x.lee@pwc.com  
+60(3) 2173 1626

### Financial Services

#### Jennifer Chang

jennifer.chang@pwc.com  
+60(3) 2173 1828

### Services & Infrastructure

#### Lim Phaik Hoon

phaik.hoon.lim@pwc.com  
+60(3) 2173 1535

### Dispute Resolution

#### Tai Weng Hoe

weng.hoe.tai@pwc.com  
+60(3) 2173 1600

### Indirect Tax

#### Raja Kumaran

raja.kumaran@pwc.com  
+60(3) 2173 1701

#### Chan Wai Choong

wai.choong.chan@pwc.com  
+60(3) 2173 3100

#### Geeta Balakrishnan

geeta.b.balakrishnan@pwc.com  
+60 (3) 2173 1652

### Tax Technology

#### Yap Sau Shiung

sau.shiung.yap@pwc.com  
+60(3) 2173 1555

### Technology, Media, and Telecommunications

#### Heather Khoo

heather.khoo@pwc.com  
+60(3) 2173 1636

### Global Mobility Services

#### Sakaya Johns Rani

sakaya.johns.rani@pwc.com  
+60(3) 2173 1553

#### Hilda Liow

hilda.liow.wun.chee@pwc.com  
+60(3) 2173 1638

### International Tax Services / Mergers and Acquisition

#### Gan Pei Tze

pei.tze.gan@pwc.com  
+60(3) 2173 3297

### Transfer Pricing

#### Anushia Soosaipillai

anushia.joan.soosaipillai@pwc.com  
+60(3) 2173 1419



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