



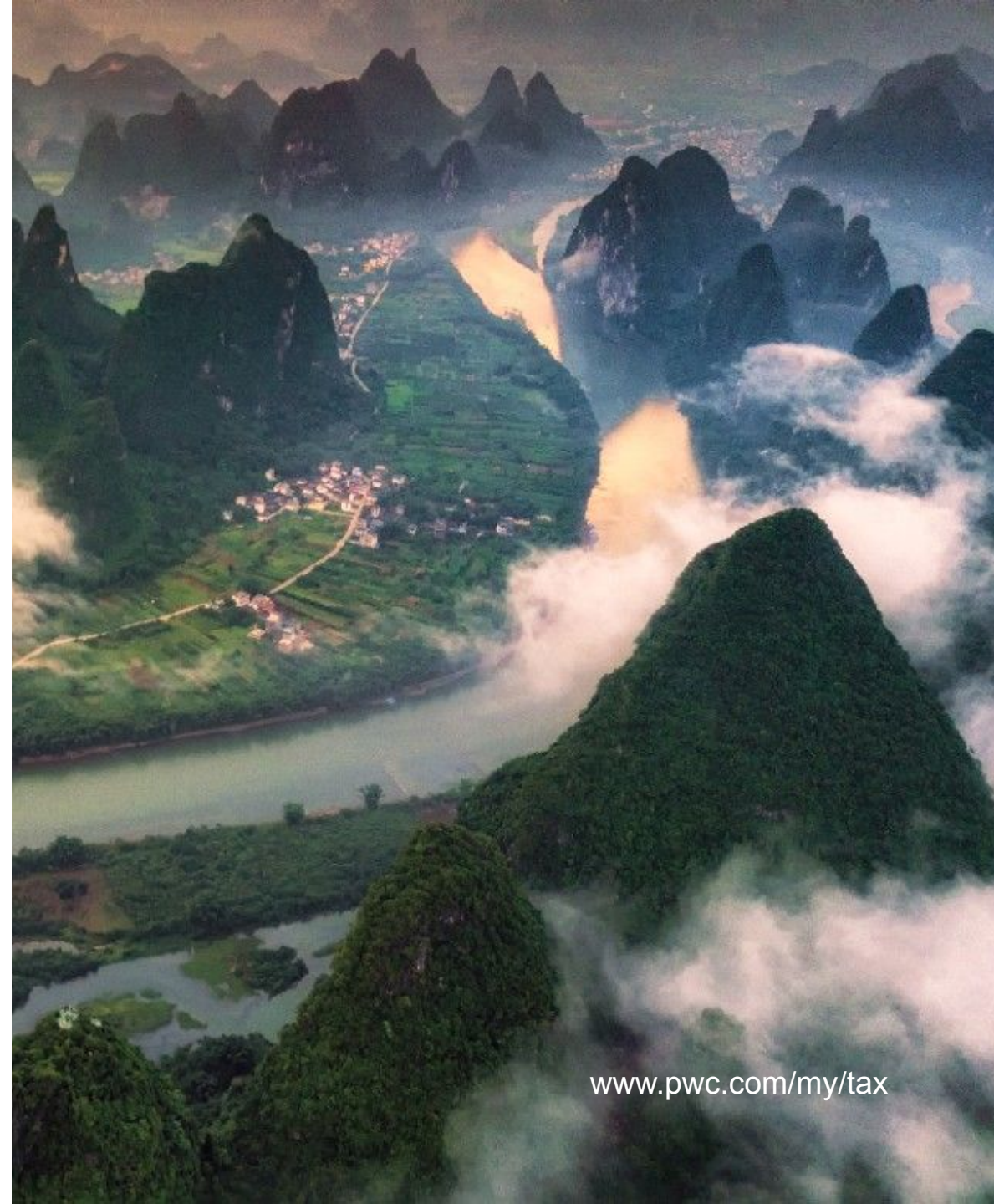
# TaXavvy

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## Revised Tax Audit Frameworks

The Inland Revenue Board (IRB) has published the following updated tax audit frameworks on its website on 29 April 2022:

- Tax Audit Framework
- Tax Audit Framework for Petroleum
- Tax Audit Framework on Finance and Insurance

(collectively, “the 2022 Frameworks”)



The 2022 Frameworks are effective from 1 May 2022 and revoke the following:

- Tax Audit Framework dated 15 December 2019;
- Tax Audit Framework for Petroleum dated 15 December 2019; and
- Tax Audit Framework on Finance and Insurance dated 18 November 2020; (collectively, “Previous Frameworks”).

The following are the salient updates from the 2022 Frameworks:

- For the purposes of the 2022 Frameworks, the penalty for incorrect tax returns under Section 113(2) of the Income Tax Act 1967 (ITA 1967) or Section 52(2) of the Petroleum (Income Tax) Act 1967 (PITA), (hereinafter collectively referred to as “penalty”), will be imposed on tax undercharged at the following rates:

Offence	Penalty rate
First offence	15%
Second offence	30%
Third and subsequent offence	45%

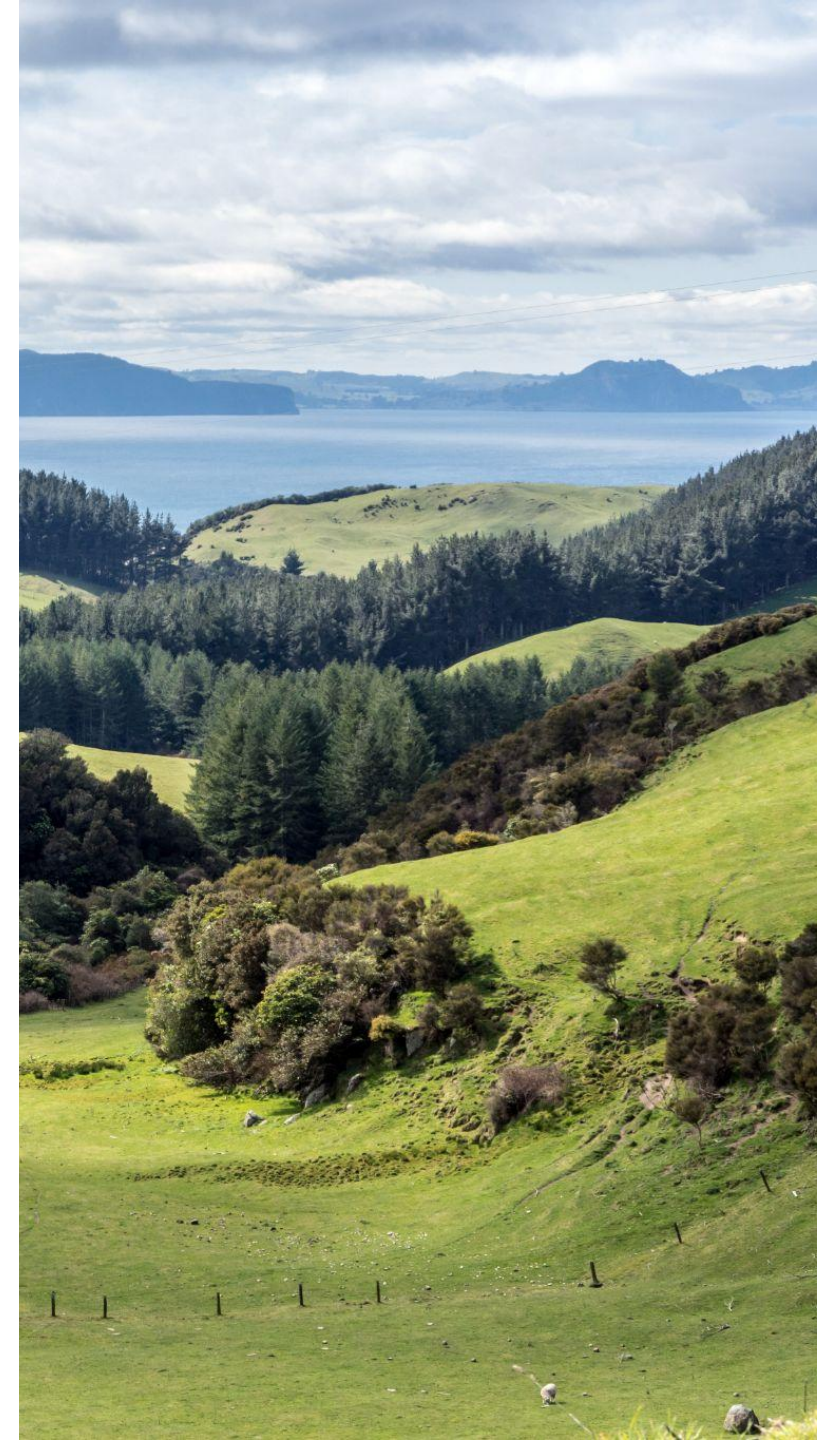
The penalty rate under the Previous Frameworks was set at 45%. For repeated offences, the Tax Audit Framework dated 15 December 2019 and Tax Audit Framework on Finance and Insurance dated 18 November 2020 provided a penalty rate of 55%.

- The determination of the first offence under the 2022 Frameworks will be based on the record of penalty imposition during the period from 1 January 2020 to 30 April 2022 as follows:
  - Where no penalty was imposed during the period from 1 January 2020 to 30 April 2022 - Audit findings from 1 May 2022 which involve a penalty imposition will be treated as the first offence.
  - Where a penalty was imposed during the period from 1 January 2020 to 30 April 2022 - Audit findings from 1 May 2022 which involve a penalty imposition will be treated as the second offence.



- Penalty will not be imposed on audit findings in respect of a technical adjustment. Technical adjustment refers to different interpretations of the tax legislation based on the facts and issues of each case. It excludes situations where Public Rulings, Guidelines, Practice Notes, Income Tax Regulations, Income Tax (Exemption) Order, or Income Tax Rules have been issued.
- The penalty rate for voluntary disclosures is stated at 15%. However, if the taxpayer has made a voluntary disclosure through the Amended Return Form and subsequently makes additional voluntary disclosure within the period of 6 months from the due date of the submission of the tax return, the penalty rate for the additional voluntary disclosure is 10%. The penalty rates stated under the Previous Frameworks ranges from 10% to 35% depending on when the disclosure is made after the date of submission of tax returns.
- A penalty rate of 100% will be imposed on cases involving fraud.
- “*Audit Meja*” (Desk Audit) and “*Audit Luar*” (Field Audit) are now referred to as “*Semakan Umum*” and “*Semakan Menyeluruh*”, respectively.

The 2022 Frameworks are available on the IRB’s website [www.hasil.gov.my](http://www.hasil.gov.my) (Home > Legislation > Tax Audit).



## Stamp Duty in relation to Sale of Listed Shares/Stock

The following gazette orders in relation to the stamping of contract notes for the sale of listed shares / stock have been issued:

- Stamp Duty (Remission) Order 2022
- Stamp Duty (Remission) 2003 (Amendment) Order 2022

Under Budget 2022 measure, the stamp duty rate on contract notes relating to sale of listed shares/stock has been increased to 0.15% (calculated as RM1.50 for every RM1,000 or fractional part of RM1,000) with effect from 1 January 2022.

It was also announced that the stamp duty cap of RM200 is to be removed with effect from 1 January 2022. The Ministry of Finance has subsequently announced on 30 December 2021 that the stamp duty cap for the transfer of listed shares / stock will be reinstated with a higher cap of RM1,000 for transfer of shares / stock listed in Bursa Malaysia from 1 January 2022 to 31 December 2026. Pursuant to the announcement, the Stamp Duty (Remission) Order 2022 and Stamp Duty (Remission) 2003 (Amendment) Order 2022 have been gazetted.

Salient points of the gazette orders are as follows:

- **Stamp Duty (Remission) Order 2022**

Stamp duty payable on contract notes relating to the sale of listed shares / stock is capped at RM1,000 (stamp duty that is in excess of RM1,000 is remitted).

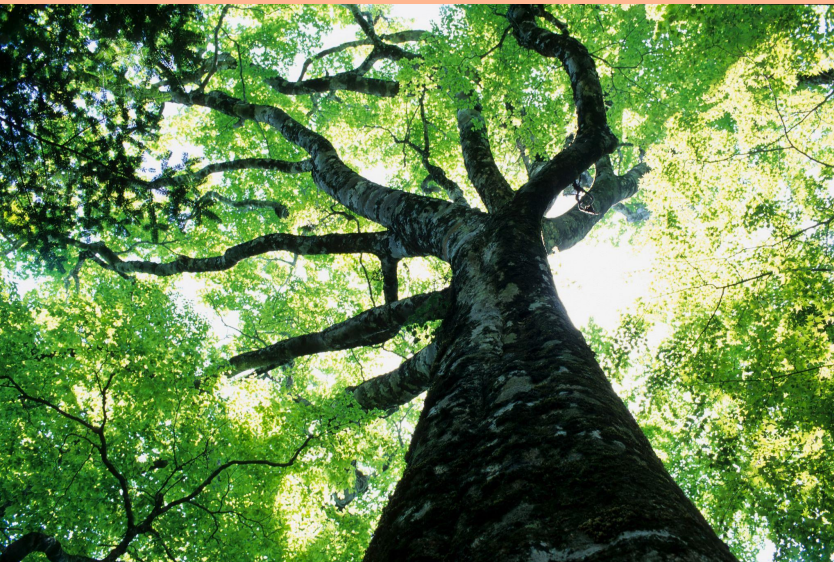
Effective: From 1 January 2022 to 31 December 2026.

- **Stamp Duty (Remission) 2003 (Amendment) Order 2022**

The Stamp Duty (Remission) Order 2003 (“2003 Order”) provided the stamp duty cap of RM200 (remission of stamp duty in excess of RM200). It covered contract notes in relation to sale of listed shares/stock, and listed marketable securities.

The amendment order removes sale of listed shares/stock from the scope of the 2003 Order. The stamp duty cap of RM200 on contract notes relating to the sale of listed marketable securities remains to be covered under the scope of the 2003 Order.

Effective: From 1 January 2022 onwards.

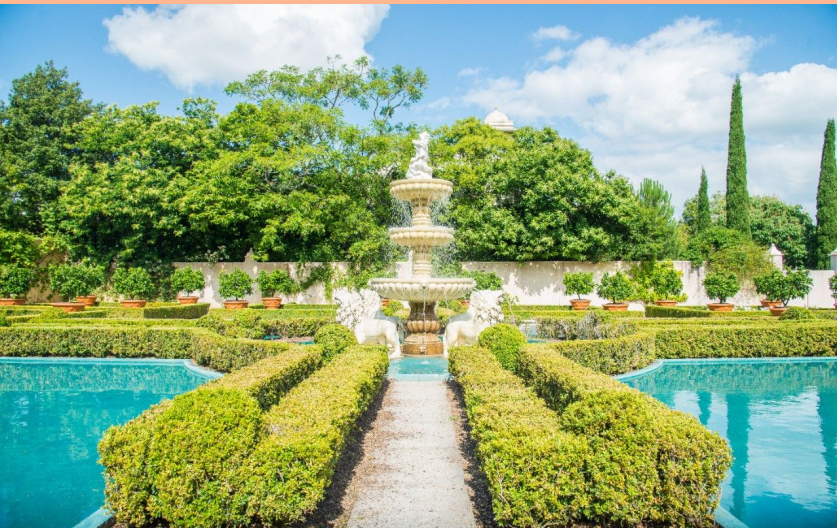




# Tax Incentives for Venture Capital

The following gazette orders have been issued:

- 1. Income Tax (Exemption) (No. 2) Order 2022
- 2. Income Tax (Exemption) (No. 3) Order 2022
- 3. Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company) Rules 2022



The gazette orders have been issued pursuant to the following proposals under Budget 2018 and Budget 2020:

- Tax exemption for venture capital company (VCC)
- Tax exemption for venture capital management company (VCMC)
- Tax deduction for investment in a Venture Company (VC) or VCC

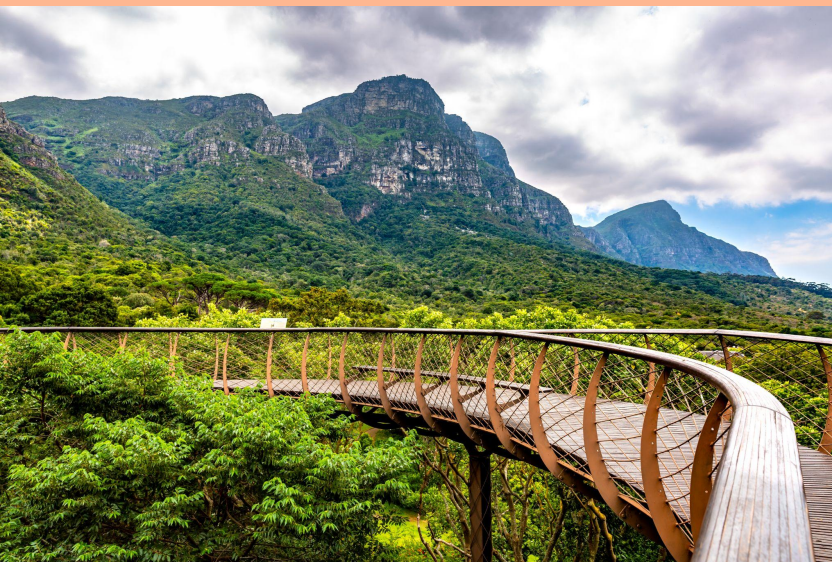
The tax incentives apply in relation to venture capital investments made until 31 December 2026. Salient points are as follows:

	Income Tax (Exemption) (No. 2) Order 2022 ("VCC Exemption Order")	Income Tax (Exemption) (No. 3) Order 2022 ("VCMC Exemption Order")	Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company) Rules 2022 ("2022 Deduction Rules")
Effective period	From year of assessment (YA) 2018	From YA 2018	From YA 2018
Qualifying person	<ul style="list-style-type: none"><li>• A VCC incorporated under the Companies Act 2016 (CA 2016), registered with the Securities Commission Malaysia (SC) and invests in 1 or more VC in the form of seed capital financing, start-up financing or early stage financing.</li></ul>	<ul style="list-style-type: none"><li>• A VCMC registered with the SC.</li></ul>	<ul style="list-style-type: none"><li>• A resident company incorporated under the CA 2016 which carries on a business, or</li><li>• A resident individual with source of income from a business, investing in a VC or VCC.</li></ul>

	Income Tax (Exemption) (No. 2) Order 2022 ("VCC Exemption Order")	Income Tax (Exemption) (No. 3) Order 2022 ("VCMC Exemption Order")	Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company) Rules 2022 ("2022 Deduction Rules")
<b>Tax incentive</b>	<p>Tax exemption on all sources of statutory income (excluding interest income from savings, fixed deposits and profits from syariah-based deposits).</p> <p>Tax exemption is for YAs equivalent to the remaining life of the fund established for investment in a VC, up to a maximum period of 5 YAs.</p> <p>The tax exemption period commences from the YA in the basis period the VCC obtains its first certification from SC and the first certification received shall not be later than 31 December 2026.</p>	<p>Tax exemption on statutory income in relation to share of profits, management fee and performance fee derived from the management of VCC funds received from a VCC.</p> <p>The exemption is from YA 2018 to YA 2026.</p>	<p>Tax deduction against business income of an amount equal to:</p> <ul style="list-style-type: none"> <li>• The value of investment made in a VC, or</li> <li>• The lesser of the value of investment or RM20 million made in a VCC.</li> </ul> <p>The deduction is to be claimed in the YA where the investment was held for 3 years from the date of investment (to be certified by the SC).</p> <p>This incentive does not apply to a VCC during the exemption period under the VCC Exemption Order.</p>
<b>Key conditions</b>	<p>For each YA, the VCC is to obtain a certification from the SC confirming that:</p> <ul style="list-style-type: none"> <li>• It has invested at least 50% of its invested funds in the form of seed capital financing, start-up financing or early stage financing in VCs.</li> <li>• It is registered with the SC during the period from 27 October 2017 to 31 December 2023.</li> <li>• It has not invested in a VC, which is a related company of the VCC at the point the first investment is made.</li> </ul>	<p>For each YA, the VCMC is verified by the SC to have:</p> <ul style="list-style-type: none"> <li>• Adequate number of full-time employees in Malaysia.</li> <li>• Incurred an adequate amount of annual operating expenditure in Malaysia.</li> </ul>	<ul style="list-style-type: none"> <li>• The investment is to be made during the period from 27 October 2017 to 31 December 2026.</li> <li>• The investment is to be certified by the SC of having complied with stipulated conditions which include: <ul style="list-style-type: none"> <li>○ The holding period of the investment</li> <li>○ The investment being in the form of shares that are not listed at the time of acquisition.</li> <li>○ The investment was not made in a related company at the point of first investment.</li> </ul> </li> </ul>
<b>Revocation</b>	<p>The Income Tax (Exemption) (No. 11) Order 2005 is revoked from YA 2018. However, where a VCC has been granted an exemption under the revoked Order, the exemption shall continue to remain in effect for the remainder YAs in the exemption period of that VCC as if the revoked Order was not revoked.</p>	<p>The Income Tax (Exemption) (No. 12) Order 2005 is revoked from YA 2018. However, where a VCMC has been granted an exemption under the revoked Order, the exemption shall continue to remain in effect for the remainder YA in the exemption period of that VCMC as if the revoked Order was not revoked.</p>	<p>The Income Tax (Deduction for Investment in a Venture Company) Rules 2005 is revoked from YA 2018. A company or individual who has made an investment before YA 2018 and complied with the provisions of the 2022 Rules but has not applied for a deduction under the revoked Rules shall be entitled to apply for a deduction under the 2022 Deduction Rules.</p>

## Tax Incentive for Investments in Equity Crowdfunding

The Income Tax (Exemption) (No. 4) Order 2022 (“the Order”) has been gazetted pursuant to the Budget 2021 proposal in relation to tax incentive for investments in equity crowdfunding. It is effective from YA 2021.



The following are the salient points of the Order:

<b>Qualifying person</b>	Individual who is resident in Malaysia and makes an investment in an investee company.
<b>Investee company</b>	A company which is incorporated under the Companies Act 2016 (excludes an exempt private company), resident in Malaysia and hosted on an equity crowdfunding platform to offer its shares.
<b>Equity crowdfunding platform</b>	An online equity fundraising platform operated by a company incorporated under the Companies Act 2016 and registered with the Securities Commission (SC) as a recognised market operator.
<b>Tax incentive</b>	<p>Tax exemption on aggregate income for qualifying investments in equity crowdfunding as follows:</p> <ul style="list-style-type: none"> <li>• The amount to be exempted is equivalent to 50% of the amount of investment and shall not exceed RM50,000 for each YA.</li> <li>• The exemption is for the second YA following the YA in which the investment is made.</li> <li>• The exemption is restricted to 10% of the aggregate income for each YA.</li> </ul>
<b>Key qualifying conditions</b>	<ul style="list-style-type: none"> <li>• Investment in an investee company is made from <b>1 January 2021 to December 2023</b>.</li> <li>• The investment made must be in the form of holding of shares which are paid in cash to the investee company through an equity crowdfunding platform or through a nominee company*.</li> </ul> <p><i>*Nominee company is a company established by an equity crowdfunding operator in Malaysia to receive investments from a qualifying individual for investment purposes through an equity crowdfunding platform into an investee company.</i></p>



**Key qualifying conditions (cont'd)**

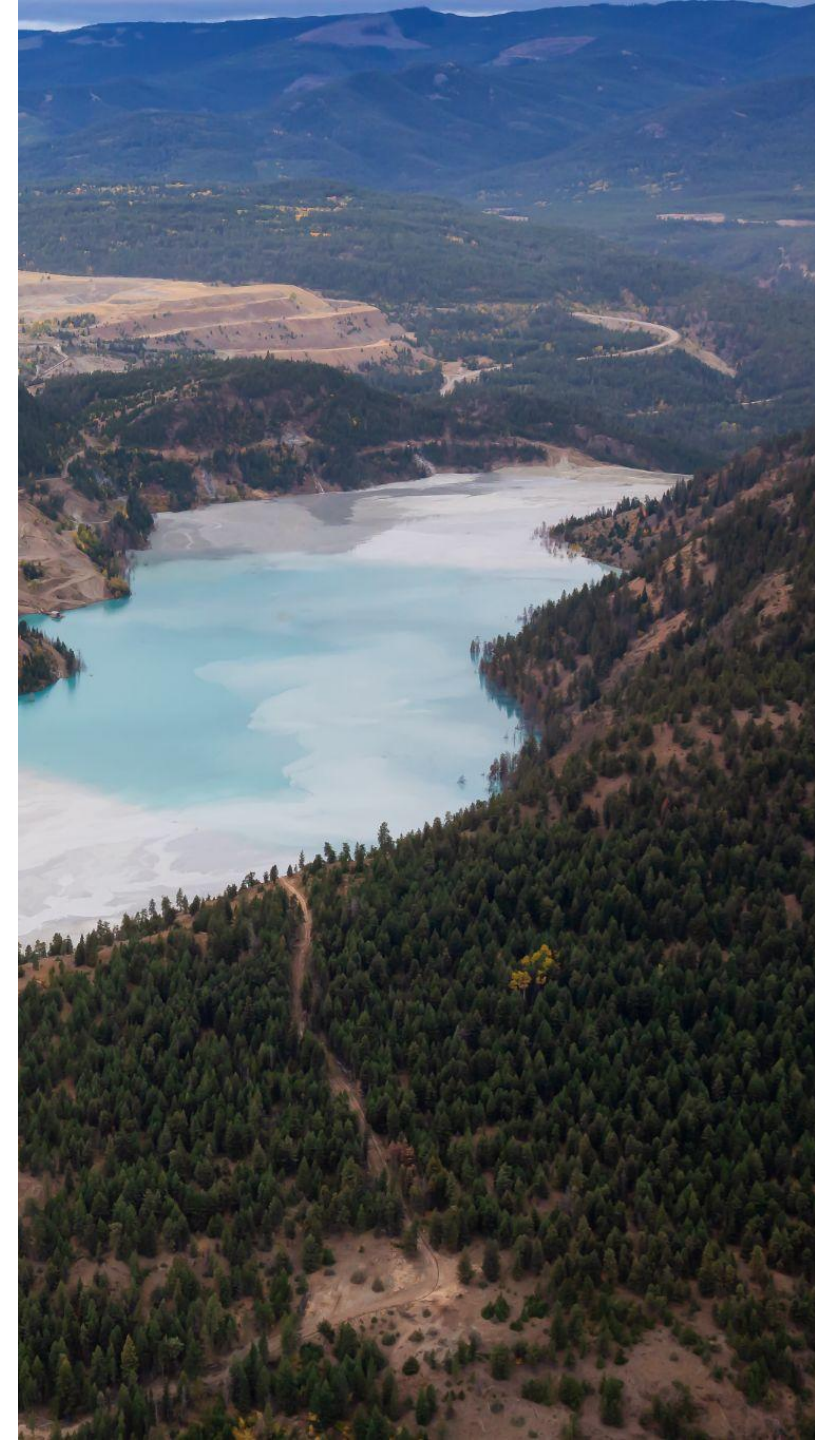
- Investor is to obtain an annual certification from the equity crowdfunding operator. The annual certification is to be verified by the SC.
- The investment must not be disposed of (in full or in part) within 2 years from the date of investment.
- The investor does not have a family member\* who makes any investment in the investee company.

*\*Refers to a parent, including a parent-in-law, a child, including a stepchild, or a child adopted in accordance with any law, a brother or sister, or a grandparent or grandchild, or a spouse.*

**Non-application**

This Order does not apply to an individual who has -

- made a claim for deduction under the Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company) Rules 2022; or
- who has been granted exemption under the Income Tax (Exemption) Order (No. 3) 2014 (tax exemption for an angel investor).





## Extension of East Coast Economic Region (ECER) Incentives

The following amendment orders in relation to ECER incentives have been gazetted:

- Income Tax (Exemption) (No. 4) 2016 (Amendment) Order 2022
- Income Tax (Exemption) (No. 5) 2016 (Amendment) Order 2022
- Income Tax (Exemption) (No. 6) 2016 (Amendment) Order 2022
- Income Tax (Exemption) (No. 7) 2016 (Amendment) Order 2022
- Income Tax (Exemption) (No. 8) 2016 (Amendment) Order 2022
- Income Tax (Exemption) (No. 9) 2016 (Amendment) Order 2022
- Income Tax (Deduction for the Sponsorship of Hallmark Event) (Amendment) Rules 2022
- Income Tax (Deduction for Investment in Qualifying Activity) (Amendment) Rules 2022
- Stamp Duty (Exemption) (No. 2) 2016 (Amendment) Order 2022

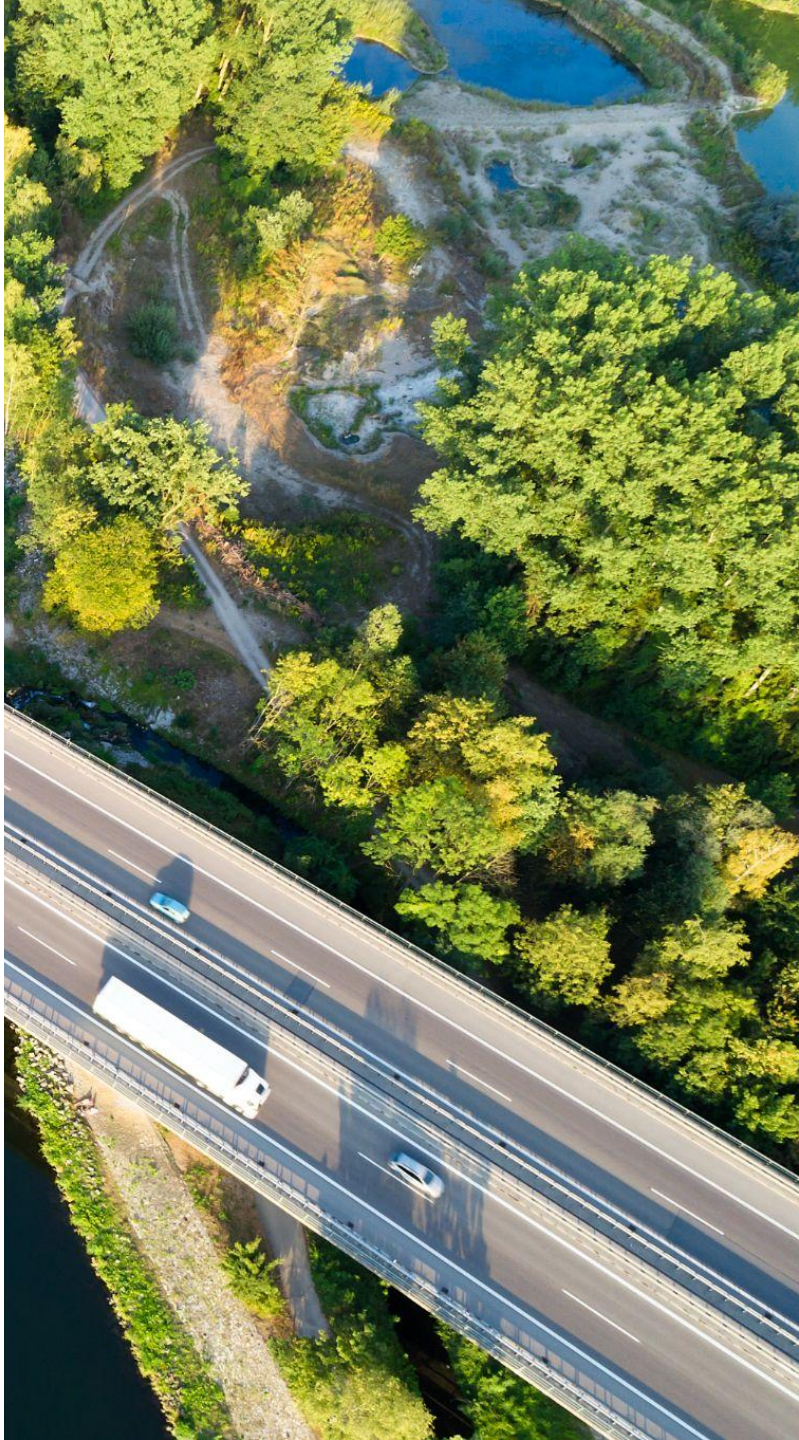
Under the Budget 2021 measures, it was announced that ECER incentives which were to expire in 2020 are to be extended until 2022. Pursuant to the announcement, the amendment orders have been gazetted to:

- Extend the income tax incentives for applications submitted to the ECER Development Council by 31 December 2022; and
- Extend the stamp duty exemption for qualifying instruments executed by 31 December 2022.

The amendment orders are in respect of the following income tax incentives and stamp duty exemption (please refer to [TaXavvy 6-2016](#) for details of the incentives):

ECER Incentives	Gazette Order
<b>Income tax incentive</b>	
Exemption of statutory income from a qualifying activity equivalent to 100% of qualifying capital expenditure (QCE)	Income Tax (Exemption) (No. 4) 2016
Exemption of statutory income from a special qualifying activity equivalent to 60% to 100% of QCE	Income Tax (Exemption) (No. 5) 2016
Exemption of statutory income from a qualifying activity	Income Tax (Exemption) (No. 6) 2016
Exemption of 70% to 100% of statutory income from a special qualifying activity	Income Tax (Exemption) (No. 7) 2016
Exemption of statutory income of an Approved Developer from disposal of land / building or rental of building located in an industrial park or a free zone within ECER	Income Tax (Exemption) (No. 8) 2016
Exemption of statutory income of a Development Manager / Park Manager on qualifying activities in ECER	Income Tax (Exemption) (No. 9) 2016

ECER Incentives	Gazette Order
<b>Income tax incentive (cont'd)</b>	
Tax deduction against business income for a company or individual who sponsors an approved hallmark event carried on in ECER	Income Tax (Deduction for the Sponsorship of Hallmark Event) Rules 2016
Tax deduction for a company investing in a related company which carries out a qualifying activity in ECER	Income Tax (Deduction for Investment in Qualifying Activity) Rules 2016
<b>Stamp duty exemption</b>	
Stamp duty exemption on transfer of the real property / lease of land or building used for the purposes of a qualifying activity in ECER	Stamp Duty (Exemption) (No. 2) Order 2016





# Labuan - Amendment Bills

The following Amendment Bills have been passed by Parliament recently:

- 1. Labuan Companies (Amendment) Bill 2022;
- 2. Labuan Financial Services and Securities (Amendment) Bill 2022; and
- 3. Labuan Islamic Financial Services and Securities (Amendment) Bill 2022 (collectively, the “Labuan Bills”)

The Labuan Business Activity Tax Act 1990 (LBATA) has previously been amended to remove ring-fencing features (restriction from dealing with residents and Ringgit) to be in line with requirements under BEPS Action 5. The amendments under LBATA took effect from 1 January 2019. Please refer to [TaXavvy 5-2019](#) for details on amendments made to LBATA.

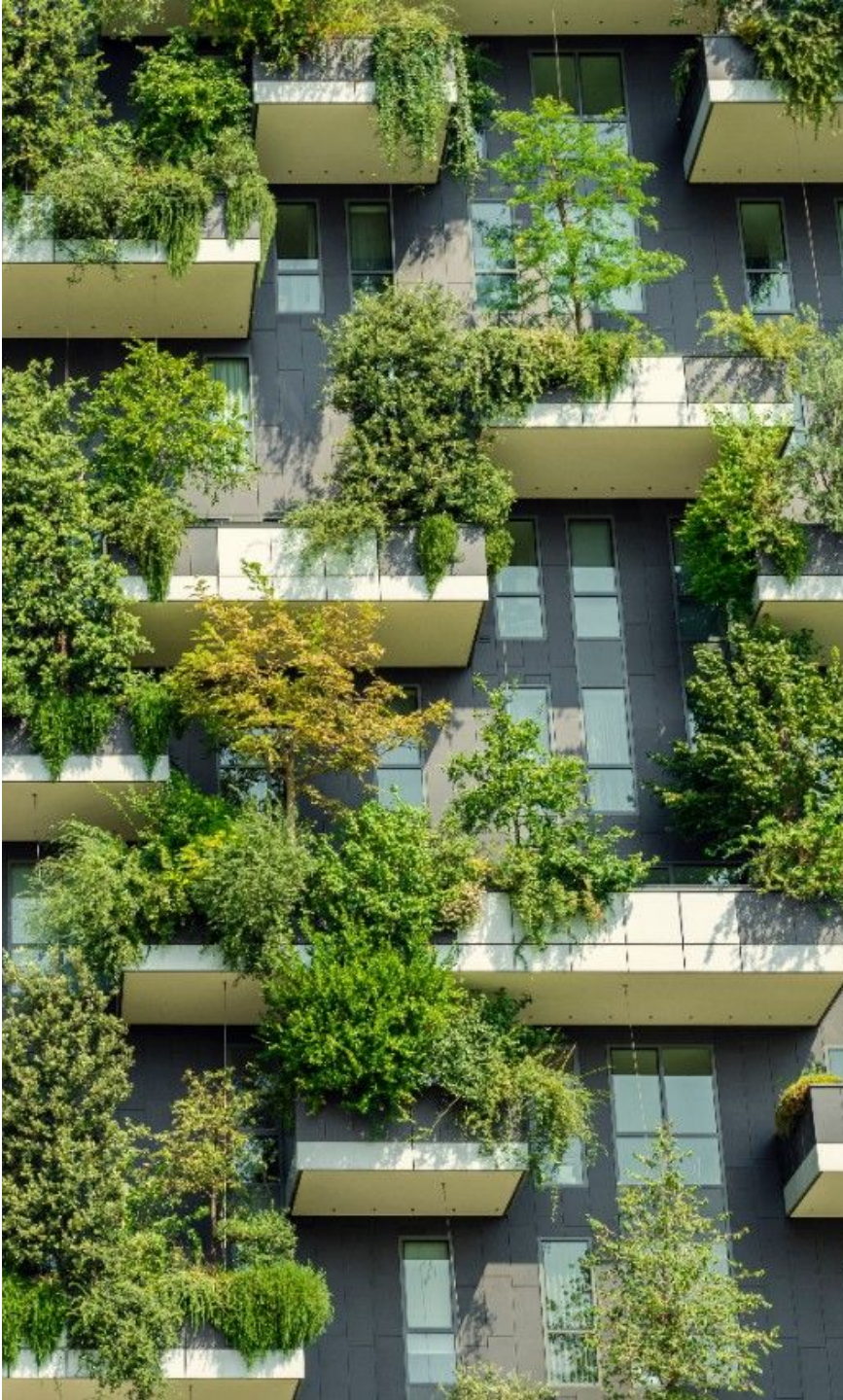
Among the main purposes of the Labuan Bills is to remove provisions related to the ring-fencing features. When gazetted as law, these amendments will take effect retrospectively from 1 January 2019. Notable amendments are as follows:

Act being amended	Proposed amendments
<i>Labuan Companies Act 1990 (“LCA”)</i>	Deletion of Sections 7(4), 7(5) and 7(6) in relation to restrictions on a Labuan company from transacting in Ringgit or with Malaysian residents.
<i>Labuan Financial Services and Securities Act 2010 (“LFSSA”)</i>	<p>The existing definition of "Labuan insurance business" under Section 101 of the LFSSA is to be replaced with a definition which does not exclude domestic insurance business and insurance business transacted in Ringgit. The new definition reads as:</p> <p><i>“insurance and reinsurance business which includes takaful and retakaful business, Labuan captive insurance business and such other insurance business approved by the Authority but does not include any insurance business that is regulated or prohibited under other written law in Malaysia.”</i></p> <p>The provision which restricts licensed Labuan insurance brokers to deal in domestic insurance business and transaction in Ringgit under Section 114(3) of the LFSSA is to be removed. It is proposed that the current Section 114(3) be replaced with the following which reads as:</p> <p><i>“A licensed Labuan insurance broker may handle the insurance or reinsurance of domestic insurance business, transacted in the Malaysian currency provided that such activity does not include any activity that is regulated or prohibited under other written law in Malaysia.”</i></p>



Act being amended	Proposed amendments
<i>Labuan Islamic Financial Services and Securities Act 2010 (“LIFSSA”)</i>	<p>The definition of “Labuan takaful business” under Section 76 of the LIFSSA is to be amended to remove the exclusion of domestic insurance business and dealing in Ringgit. The proposed definition of “Labuan takaful business” reads as:</p> <p><i>“takaful business which includes Labuan captive takaful business, Labuan retakaful business and such other takaful business approved by the Authority but does not include any takaful business that is regulated or prohibited under other written law in Malaysia.”</i></p>

Other notable amendments include amendments to improve procedures relating to the qualification of directors, ascertaining beneficial ownership, striking off Labuan companies and increasing the penalty for offences under the LCA.





## 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

### Dispute Resolution

#### Tai Weng Hoe

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

### International Tax Services / Mergers and Acquisition

#### Gan Pei Tze

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

### Individual Tax

#### Michelle Chuo

michelle.sy.chuo@pwc.com  
+60(3) 2173 1289

### 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

### 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

### 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

### Tax Technology

#### Yap Sau Shiung

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

### Tax Reporting & Strategy

#### Lavindran Sandragasu

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

### Transfer Pricing

#### Anushia Soosaipillai

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

### Technology, Media, and Telecommunications

#### Heather Khoo

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

### China Desk

#### Lorraine Yeoh

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

### 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

### Korea Desk

#### Keegan Ong

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



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