



TaXavvy

19 January 2023 | Issue 1-2023

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Tax Reference Number for Tax Payments

The Inland Revenue Board (IRB) has issued media statements dated 31 December 2022 and 13 January 2023 in respect of the reference numbers to be used for tax payment purposes.

The following are the salient points:

- The Bill Number was introduced as the reference number for all payment of direct taxes except for Monthly Tax Deduction (MTD) and stamp duty, starting from 1 January 2023. The Bill Number can be obtained from:
 - The MyTax Portal <https://mytax.hasil.gov.my/>, or
 - Notice of assessment / instalment and letters from IRB on taxes due.
- However, the IRB has now allowed the option of using either the Tax Identification Number (TIN) or the Bill Number and given an extension of time to 20 January 2023 for payment of all taxes except for MTD and stamp duty without any increase of taxes.

The Media Statements are available on IRB's website www.hasil.gov.my (Media Release).

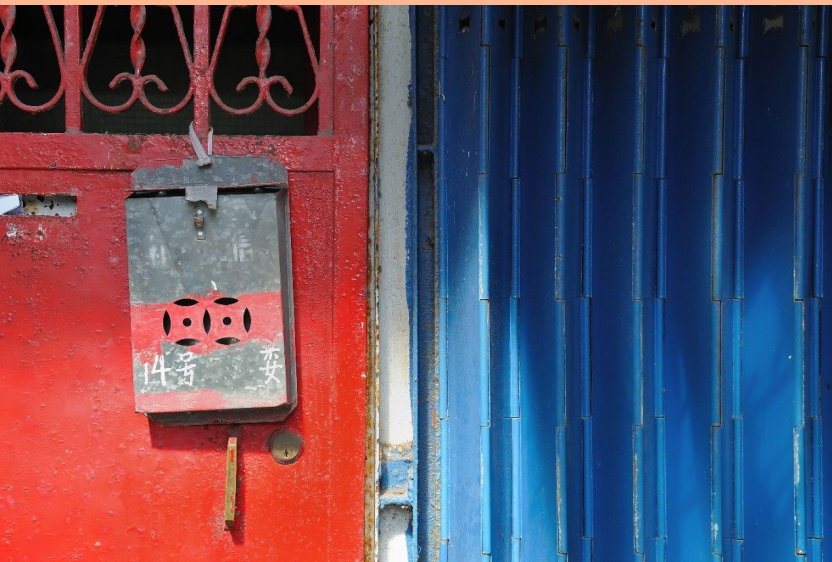


Mailing of Correspondences to the IRB

The IRB has issued a media statement dated 20 December 2022 on mailing of correspondences to each IRB State Office.

Effective from 1 January 2023, all correspondences to all IRB branches across each state are to be mailed to the respective state office's locked bag / P. O. Box address (*beg berkunci / karung berkunci*), i.e. a single address will be used for all IRB branches within each state. The list of locked bag / P. O. Box address (*beg berkunci / karung berkunci*) for each of the IRB state offices is set out in the media statement.

The media statement is available on IRB's website www.hasil.gov.my (Media Release).



Return Form Filing Programme for the Year 2023

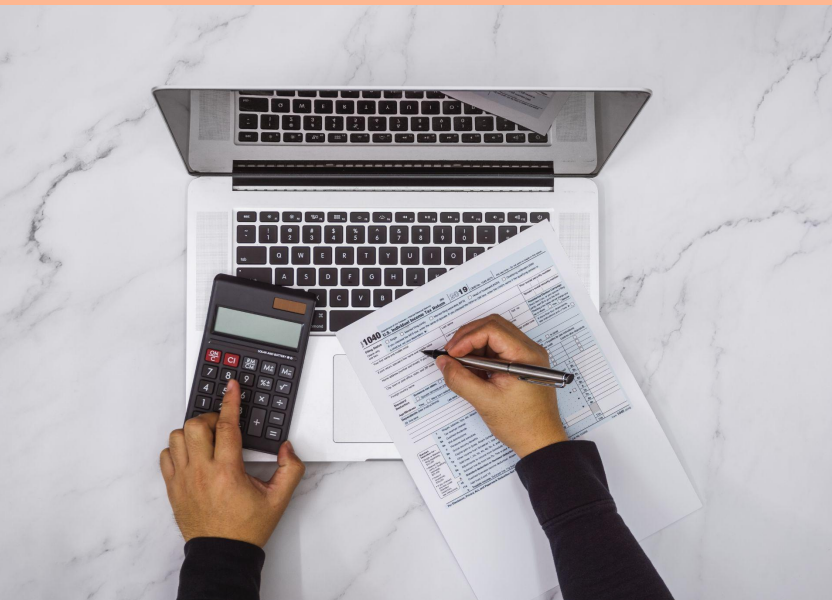
The IRB has issued the Return Form Filing Programme for the Year 2023. The filing programme outlines the statutory filing and tax payment due dates, grace period and method of submission for the various return forms.

The Return Form Filing Programme for the Year 2023 is available on the IRB's website at www.hasil.gov.my (Forms > Return Form Filing Programme for the Year 2023).

Grace period for submission of return forms and payment of balance of taxes

The following is the grace period for submission of the relevant tax return forms from the stipulated filing due date, and payment of balance of tax under section 103(1) of the Income Tax Act 1967 (ITA 1967) or section 48(1) of the Petroleum Income Tax Act 1967 (PITA 1967):

Category of forms	Method of submission	Grace period
Income tax return forms for year of assessment (YA) 2023		
Companies	e-Filing	1 month
Limited Liability Partnerships		
Co-operatives Societies	• e-Filing	• 1 month
Trust Bodies	• Postal	• 3 working days
Unit Trusts / Property Trusts	• Hand delivery	• None
Business Trusts		
Real Estate Investment Trusts / Property Trust Funds	• Postal	• 3 working days
	• Hand delivery	• None
Income tax return forms for YA 2022		
Individuals		
Partnerships	• e-Filing	• 15 days
Associations	• Postal	• 3 working days
	• Hand delivery	• None
Deceased Persons' Estate		
Hindu Joint Families	• Postal	• 3 working days
	• Hand delivery	• None



Category of forms	Method of submission	Grace period
Petroleum income tax return form		
Petroleum - Exploration	• e-Filing	• 1 month
Petroleum - Production	• Postal	• 3 working days
	• Hand delivery	• None
Returns by employers for year of remuneration 2022		
Company / Labuan company employers	e-Filing	1 month
Non-company / Non-Labuan company employers	• e-Filing	• 1 month
	• Postal	• 3 working days
	• Hand delivery	• None

If submission is not made within the grace period, the submission will be deemed to be late and the relevant penalties under section 112 of ITA 1967 / section 51 of PITA 1967 will be computed from the statutory filing due date and not from the extended due date.

Grace period for payment of tax / balance of tax

For assessments raised by the IRB under sections 91, 92, 96A, 90(3) and 101(2) of ITA 1967, the tax / balance of tax must be paid within 30 days from the date of assessment. However, there is a grace period of 7 days.

Repayment cases

For repayment cases, the following appendices / working sheets have to be submitted together the income tax return form:

- Appendix B2 / HK-6 [tax deduction under section 110 of ITA 1967]
- Appendix B3 / HK-8 [claim for tax relief under section 132 of ITA 1967]
- Appendix B4 / HK-9 [claim for tax relief under section 133 of ITA 1967]

Entities which are dormant or have not commenced operations

Similar to prior years, companies, co-operative societies, limited liability partnerships and trust bodies are required to submit tax returns even if they are dormant. However, they need not submit the estimated tax payable (Form CP204) if they have not commenced operations.

“Dormant” is explained as follows:

- Never commenced operations since the date it was incorporated / established, or
- Had previously been in operation or carried on business but has now ceased operations or business.

A person which owns shares, real properties, fixed deposits and other similar investments, is not considered as “dormant”.

For dormant companies, the following are the mandatory fields to be completed in the return form:

- Accounting period
- Basis period
- Business / partnership statutory income
- Business code

Tax Investigation Framework

The IRB has issued an updated Tax Investigation Framework, which replaces the earlier Tax Investigation Framework dated 1 January 2020, with effect from 1 January 2023.

The following are the salient points to note:

The criteria for selection of cases will include persons who knowingly fail to report their income and those who make fictitious claims.

The following contents have been removed from the new Tax Investigation Framework:

- Procedures for settlement of tax investigation via negotiations and the *surat aku janji* agreement.
- Procedures for payment of taxes and penalties following the above agreement.
- Process and avenues for appeals against an assessment.
- Imposition of penalties by the IRB in cases where there is no prosecution on the taxpayer.

The Tax Investigation Framework is available on IRB's website www.hasil.gov.my (Legislation > Tax Audit > Tax Investigation Framework).



Real Property Gains Tax Guidelines

The IRB has issued a revised Real Property Gains Tax Guidelines dated 6 January 2023 (“2023 Guideline”).



The 2023 Guideline is issued mainly to take into account changes made to the Real Property Gains Tax Act 1976 up until Finance Act 2021.

It is stated that the information from the following versions of the Real Property Gains Tax (RPGT) guidelines remain applicable for past disposals:

- RPGT Guidelines dated 13 June 2018 (“2018 Guideline”)*
- RPGT Guidelines dated 18 June 2013 (“2013 Guideline”)*

**The 2013 Guideline is currently not available for download from the IRB’s website whilst the 2018 Guideline is still available for download from the IRB’s website (Service > RPGT > RPGT Guidelines).*

Highlights from the 2023 Guideline are as follows:

Reference in 2023 Guideline	Salient points
Paragraph 14.3	<p>Grant of power of attorney (PA) [Paragraph 14.3] - New</p> <p>The grant of an irrevocable PA for a valuable consideration constitutes an “assignment” of the real property and is therefore a disposal event for RPGT purposes. The donor’s/principal’s disposal date is the date of the grant of the PA and the disposal price is the market value or consideration given for the grant of the PA [paragraph 14.4(a) refers].</p> <p>Whether interest or right in or over the real property has been granted under the PA has to be determined from the terms of the PA.</p>

Reference in 2023 Guideline

Salient points

Paragraph 14.4 and
Example 15

Grant of PA - Subsequent disposal via the donee/agent to a third party - New
RPGT assessment will be made as follows:

- Raised on the donee/agent (who is treated as the disposer):

Where the PA that is granted to the donee/agent is irrevocable and with a valuable consideration (situation 2 of Example 15 refers), the donee's/agent's acquisition date is the date of the grant of the PA and the acquisition price is the market value or consideration given for the grant of the PA [paragraph 14.4(b)].

- Raised on the donor/principal (who is treated as the disposer):

Where the PA that is granted to the donee/agent is for a finite period and without a valuable consideration (situation 1 of Example 15 refers).

Paragraphs 6.1 and
6.2

Permitted expenses and incidental costs

The IRB has provided additional examples in relation to the costs which are deductible against the disposal price such as:

Costs to enhance/preserve value of real property

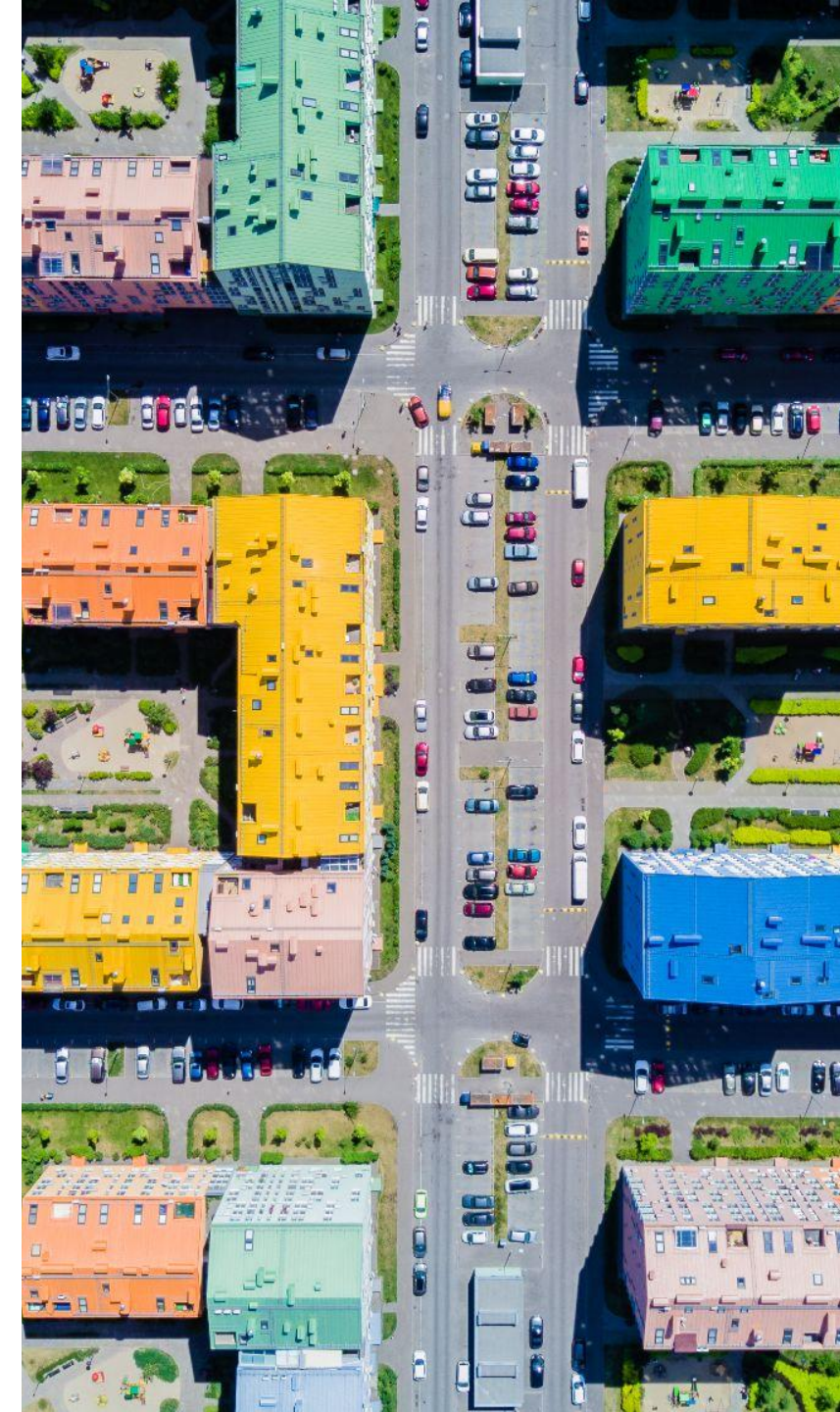
- Permanently affixed fittings such as built-in cabinets, air-conditioners, fans, etc
- Landscape works in respect of permanent structures

Costs to establish, preserve or defend title to or right over real property

- Legal fees

Incidental costs in making the disposal

- Commission paid to real estate agents



**Reference in 2023
Guideline**

Salient points

Paragraph 11.2(b)

Acquisition price of asset acquired by way of gift

In situations where the donor and recipient are husband and wife, parent and child, or grandparent and grandchild, the recipient's acquisition price is as follows:

- (a) If donor makes the gift within 5 years from his acquisition - an amount that is equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor
- (b) If donor makes the gift after 5 years from his acquisition - market value of gift received
- (c) If donor makes the gift within the period from 1 January 2019 to 31 December 2021 - an amount that is equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor

Comment:

Currently, the law [Paragraph 12(2) of Schedule 2 of the Real Property Gains Tax Act 1976] which was amended effective from 1 January 2019, provides that the acquisition price of the recipient is equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor irrespective of the donor's ownership period prior to making the gift. Clarity is therefore required from the authorities on the relevance of market value as set out in the 2023 Guidelines.

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



Guidelines on Interest Expense Payable During the Moratorium

The IRB has issued the Guidelines on Tax Treatment for Interest Expense / Profits Payable to a Bank or Financial Institution during the Moratorium Period (“the Guidelines”) dated 28 December 2022.



The following are the salient points of the Guidelines:

- Section 33(4) of the ITA 1967 provides that tax deduction for interest accrued for a YA is only claimable when the interest is due to be paid. Therefore, interest that is due to be paid but not paid due to deferment under the moratorium remains deductible for that YA.
- The date when the interest is due / due to be paid is based on the terms of the loan / financing agreement. Where there are changes to the date when the interest is due / due to be paid or the amount of interest, the taxpayer is required to make the necessary adjustments to ensure the right amount of interest deduction is claimed in the tax computation.
- In the event that the interest related to the moratorium period is set out as an accumulated sum in the bank statement (e.g. set out as an accumulated sum at the end of September 2020 in the example in paragraph 4.3), the taxpayer is required to obtain a confirmation from the bank on the amount that is due to be paid for each month during the moratorium period.
- Miscellaneous charges imposed by the bank during the moratorium period (example under paragraph 4.3 refers) is allowed a tax deduction under section 33(1)(a) of ITA 1967.
- Penalty charges imposed by the bank / financial institution for the moratorium are not tax deductible under section 39(1) of the ITA 1967.

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

Gazette Order for Tax Incentive for Relocation of Services to Malaysia

The Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022 (“the 2022 Rules”) has been gazetted and is effective from the YA 2021.

The incentive for companies relocating their manufacturing operations to Malaysia and undertaking new investments was first announced under the National Economic Recovery Plan (PENJANA). The incentive was then expanded to companies operating in selected services sectors, including those adopting Industrial Revolution 4.0 and digitalisation technology following the Budget 2021 announcement, for applications received on or after 7 November 2020 but not later than 31 December 2022.

A qualifying company will be entitled to the following preferential tax rates for a period of up to 10 consecutive YAs:

- New company (as defined): 0% - 10%
- Existing company (as defined): 10%

MIDA has previously issued the guidelines covering the above incentive (please refer to [TaXavvy 26-2021](#))

The 2022 Rules are generally consistent with the guidelines issued by MIDA. Key matters to note from the 2022 Rules are in relation to the qualifying conditions of the incentive which include:

- employment of at least 80% full-time Malaysian employees on or before the 3rd year from the date of the first invoice in relation to the qualifying activity issued by the qualifying company until the end of the tax incentive period; and
- incurrence of an approved adequate amount of annual operating expenditure to carry on the qualifying activity or an approved adequate investment in fixed assets to carry on the qualifying activity.



Public Ruling 6/2022 - Accelerated Capital Allowance

The IRB has issued Public Ruling 6/2022 - Accelerated Capital Allowance ("PR 6/2022"). PR 6/2022 is an update to Public Ruling 7/2018 of the same title.

The following are the salient updates in PR 6/2022:

Hire Purchase (HP) assets

Only the capital portion of the instalment payments for assets acquired through HP are qualifying expenditure (QE) for accelerated capital allowance (ACA). If the HP instalment period only partially falls within the qualifying period to claim the ACA (i.e. some of the instalments fall outside of the qualifying period), the total QE in respect of that HP asset is not eligible for ACA (refer to paragraph 6.3).

Income Tax (Accelerated Capital Allowance) (Machinery and Equipment including Information and Communication Technology Equipment) Rules 2021 ("2021 Rules")

The 2021 Rules are now covered under PR 6/2022 in paragraph 7.10, and new examples 10, 12 and 13. PR 6/2022 explains the meaning of the terms "machinery and equipment" from the definition of "qualifying plant expenditure" under the 2021 Rules:

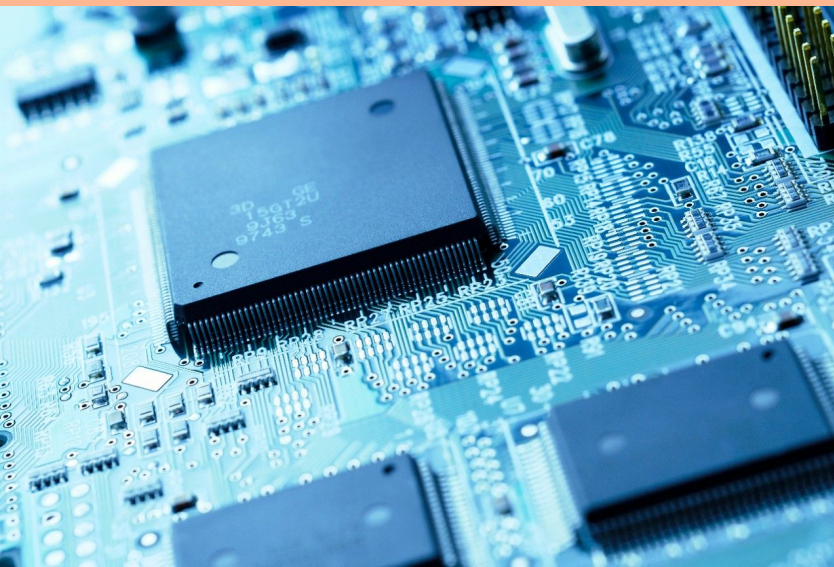
"capital expenditure incurred under paragraph 2 of Schedule 3 to the Act in relation to provision of machinery and equipment including information and communication technology equipment except motor vehicle"

The following is explained in PR 6/2022:

- *Machinery* - machinery that can be categorised as machine and this includes heavy machinery
- *Equipment* - includes: (i) office equipment such as telephones, calculators, fax machines, printers, photostat machines, scanners; and (ii) ICT equipment listed under paragraph 7.10.4 such as computers and components, screens, and printers
- *Non-qualifying expenditure* - motor vehicles, customised computer software, and software systems and software packages

Automation Equipment Allowance

PR 6/2022 incorporates the extension of the Automation Equipment Allowance (AEA) incentive period to YA 2023 (refer paragraph 7.9). New examples 8 and 9 have also been inserted to illustrate the computation of the AEA claims.

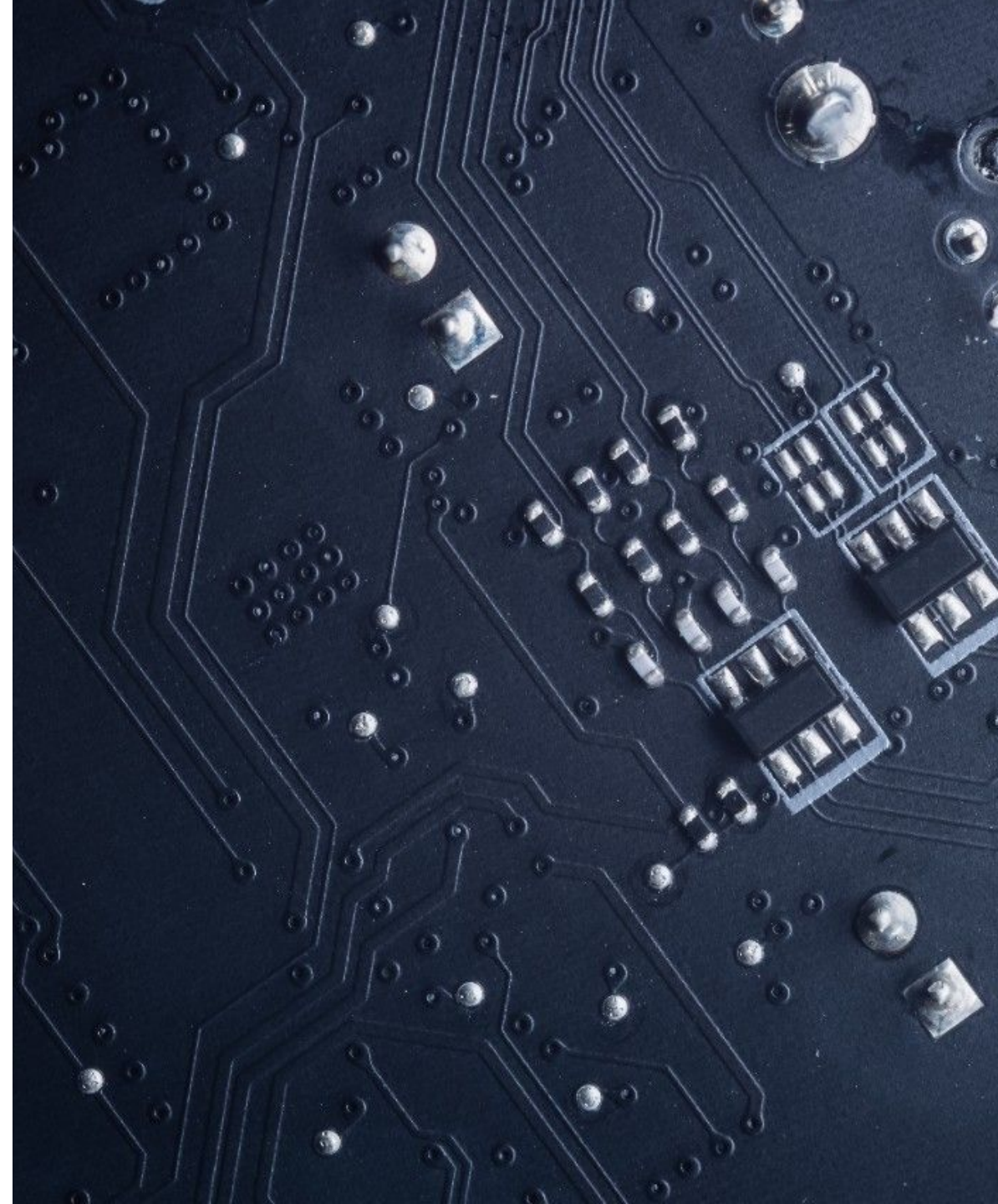


Other ACA Rules included in PR 6/2022

These include:

- Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2018 which provides ACA for the purchase and installation of ICT equipment such as computers and components, screens, printers, software systems and software packages (refer paragraph 7.8)
- Income Tax (Accelerated Capital Allowances) (Mould for the Production of Industrialised Building System Component) Rules 2006 which provides ACA on moulds purchased for use in the production of Industrialised Building Systems for a manufacturing or construction company (refer paragraph 7.7 and Example 7)
- Income Tax (Accelerated Capital Allowance) (Excursion Bus) Rules 2021 which provides ACA to licensed tour operators on the purchase of excursion buses (refer paragraph 7.11 and Example 11)

PR 6/2022 is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).



Public Ruling 7/2022 - Venture Capital Tax Incentives

The IRB has issued Public Ruling 7/2022 - Venture Capital Tax Incentives ("PR 7/2022") which replaces Public Ruling 2/2016 of the same title.

PR 7/2022 incorporates updates to reflect the current legislation following the issuance of the gazette orders for tax incentives for venture capital (previously reported in [TaXavvy 8/2022](#)). The incentives are:

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

PR 7/2022 explains and includes illustrations on the above tax incentives. A new example 4 has been inserted to illustrate the tax deduction for investment in a VC or VCC. The note to the example states that any amount of investment not deducted due to insufficiency of adjustment income, may be carried forward to be deducted in the subsequent YA.

PR 7/2022 is available on the IRB's website www.hasil.gov.my (Legislation > Public Rulings).



Public Ruling 8/2022 - Taxation of Limited Liability Partnership

The IRB has issued Public Ruling 8/2022 - Taxation of Limited Liability Partnership ("PR 8/2022") which supersedes Public Ruling 5/2015 ("PR 5/2015") of the same title.

The PR 8/2022 has been issued to replace PR 5/2015. There is no significant change as compared to PR 5/2015. The changes are mainly to bring the contents up to date to the prevailing law since PR 5/2015 was issued, which include insertion of a new Example 2 on the deductibility of remuneration or similar payments to partners which sets out that remunerations or similar payments to partners of an LLP which are specified or provided for in the LLP agreement are tax deductible under section 33(1) of the ITA 1967 whereas remunerations or similar payments to partners of an LLP which are not spelt out in the LLP agreement are not tax deductible.

PR 8/2022 is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).



Public Ruling 9/2022 - Property Development

The IRB has issued Public Ruling 9/2022 - Property Development ("PR 9/2022") dated 23 December 2022 which supersedes Public Ruling 1/2009 ("PR 1/2009") of the same title.



The main updates and amendments to the superseded PR 1/2009 are highlighted below:

- Example 23 of PR 9/2022 has been updated to allow any method that is accepted by the Director General of Inland Revenue (DGIR) such as floor area to be used in addition to the relative sales value method for the purpose of dividing the land cost amongst the various types of units within a condominium block after the land cost of the condominium block had been allocated.
- Previously, under PR 1/2009, the fee paid for managing and running of a project after securing the project qualified as commission or management fee and was deductible as part of administrative expenses. PR 9/2022 now requires such fee to be capitalised in the development expenditure account (paragraph 12.6.3 refers). The tax deduction will therefore be claimed progressively based on the percentage of completion of the project.
- PR 9/2022 has been inserted with the following new items:
 1. Show house expenditure (paragraph 12.11.3):
Show house expenditure (including any furniture, fitting and fixture, interior design, etc) should be capitalised in the development expenditure account and tax deduction is to be claimed based on the percentage of completion method. Land costs of a show house which is built outside of development project area is not an allowable expenditure. The stock withdrawal / deemed disposal provision under section 24(2) of ITA 1967 is applicable to a show house which was a trading stock but subsequently transferred and used as business asset. Costs to construct sales gallery and management office are not tax deductible.
 2. Compulsory acquisition (paragraph 13.4):
The amount or compensation receivable from stock parted with by compulsion under section 4C of ITA 1967 is subject to tax with effect from YA 2014.

Comment:

The Federal Court has in December 2022 ruled in the case of Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri that section 4C of the ITA 1967 is unconstitutional as it contravenes the Federal Constitution.

3. Landowner's role in joint ventures (paragraph 15.4):

A list of matters to be considered in determining whether a landowner is considered to have taken an active role (and hence deemed to be undertaking a business of property development) in property development activities in a joint venture is provided. It includes the extent of influence that the landowner has on the following matters: planning of project, appointment of contractors, marketing activities, determination of the selling price of development units, or existence of badges of trade.

- Paragraph 12.4 of PR 1/2009 which explained the tax treatment of transfer of land as fixed asset to trading stock based on the case of *DGIR v LCW [1975] 1 MLJ 250* has been removed from PR 9/2022. No rationale is stated nor a different tax treatment is given in place of the contents which was removed.

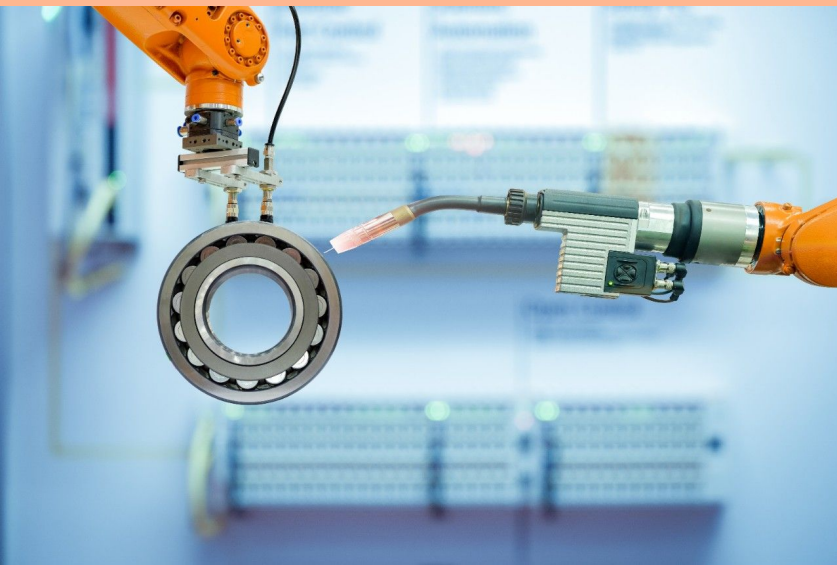
PR 9/2022 is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).



Public Rulings on Reinvestment Allowance

The IRB has issued the following updated public rulings on Reinvestment Allowance (RA):

- Public Ruling 10/2022 - Reinvestment Allowance Part I – Manufacturing Activity (“PR 10/2022”) replacing PR 10/2020 of the same title.
- Public Ruling 11/2022 - Reinvestment Allowance Part II – Agricultural and Integrated Activities (“PR 11/2022”) replacing PR 11/2020 of the same title.



The updates are to incorporate the special RA incentives announced under the PENJANA initiative in 2020. The following are the salient points:

PR 10/2022 for manufacturing activity

Qualifying factory extension floor area

PR 10/2022 includes additional new diagrams 3 and 4 to illustrate the determination of floor area for factory extension that qualifies for RA, including determination of whether the area used as storage space exceeds 10% of the total extended area. PR 10/2022 explains that:

- In determining the extended area that can be considered for RA eligibility, only the portion that is used for the qualifying project and storage space should be included. Sales office space is not eligible for RA as it is not used for the qualifying project. This is summarised as:

$$\text{Total extension area} = \text{Qualify project area} + \text{Storage space} + \text{Sales office}$$

$$\text{Extended area that can be considered for RA} = \text{Qualify project area} + \text{Storage space}$$

- In determining whether the storage space exceeds the 10% threshold, the ratio is computed as follows:

$$\frac{\text{Storage space}}{\text{Qualify project area} + \text{Storage space}}$$

$$\text{Qualify project area} + \text{Storage space}$$

- Where the ratio exceeds 10%, only the qualifying project area is eligible for RA. Where the ratio is 10% or less, then both the qualifying project area *and* storage space are eligible for RA.
- The above explanation in PR 10/2022 is consistent with the Practice Note 1/2022 - Explanation in Relation to the Definition of Factory for Reinvestment Allowance Claims (refer to [TaXavvy 2/2022](#)).

Special RA under PENJANA

- Paragraphs 9.6 and 9.7, and examples 35 and 36 have been included to illustrate the qualifying period for claim of special RA under the PENJANA initiative which runs from YA 2020 to YA 2024.
- The special RA is only applicable for taxpayers whose 15-year RA claim period and / or the 3-year additional RA period from YA 2016 to YA 2018 has ended.
- New paragraph 10.5.7, and examples 44 and 45 have been inserted to illustrate the carry forward of unabsorbed special RA under PENJANA, which can only be carried forward up to a maximum period of 7 consecutive YAs beginning from after the end of the qualifying period for the special RA under PENJANA.

PR 11/2022 for agricultural activity

Similar to PR 10/2022, a new paragraph 8 has been inserted to explain the qualifying period for claim of special RA under the PENJANA initiative, and paragraph 10.4 and example 5 have been inserted to illustrate the carry forward of unabsorbed special RA under PENJANA.

PR 10/2022 and PR 11/2022 are available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).



Public Rulings on Commercialisation of Public Resource-Based Research and Development Findings

The IRB has issued the following public rulings in relation to tax incentives for commercialisation of research and development (R&D):

- Public Ruling 12/2022 - Commercialisation of Public Resource-Based Research and Development Findings Part I – Tax Incentive for Investor Company (“PR 12/2022”)
- Public Ruling 13/2022 - Commercialisation of Public Resource-Based Research and Development Findings Part II – Tax Incentive for Eligible Company (“PR 13/2022”)



These public rulings explain the tax incentives for the investor company and its related company which undertakes the commercialisation of resource-based R&D findings that are developed by and wholly owned by an approved public research institute or public institute of higher learning in Malaysia.

The following are the salient points of the tax incentives:

	Investor company (PR 12/2022)	Related company undertaking the commercialisation (PR 13/2022)
Tax incentive	Tax deduction of the amount of investment (as approved by MOF) made in its related company for each YA until the commencement of the related company’s tax relief period.	Full tax exemption of statutory income derived from the pioneer business of commercialisation of public resource-based R&D findings for a period of 5 years (extendable for another 5 years).
Key conditions for the incentive	<ul style="list-style-type: none">• The investment is in the form of cash or equity shareholding or loans / advances that are converted to equity before commencement of the related company’s tax relief period. This condition is referenced to MIDA guidelines (which is currently not on MIDA’s website).• The investment is for the purpose of the commercialisation of the public resource-based R&D findings.• The project of commercialisation of the public resource-based R&D findings by the related company should commence within 1 year from the date of approval granted to the related company.	<ul style="list-style-type: none">• Intends to undertake a project of commercialisation of public resource-based R&D findings.• The project should commence within 1 year from the date of approval from MIDA.

	Investor company (PR 12/2022)	Company undertaking the commercialisation (PR 13/2022)
Key conditions for the incentive (cont'd)	<ul style="list-style-type: none">• Malaysian resident company incorporated under the Companies Act 2016 ("CA 2016")• At least 70% of its equity is Malaysian owned• Invests in a related company in which it has at least 70% direct shareholding	<ul style="list-style-type: none">• Malaysian resident company incorporated under the CA 2016• At least 70% of its equity is owned by the investor company• At least 70% of the investor company's equity is Malaysian owned
Commercialisation of resource-based R&D findings	The activity that is carried out by the related company which involves the transformation of resource-based R&D findings into new resource-based products or activities, or new process technology that have an industrial application or are marketable but may not be limited to the promoted products or activities under the Promotion of Investments Act 1986.	
Resource-based sectors	Agriculture, agriculture and food processing, oil palm products, wood and wood-based products, rubber-based products, non-metallic mineral products, natural products including pharmaceuticals, natural resources such as water, air, lightning and solar.	

The public rulings provide further details on the application and claim for the incentives. PR 12/2022 and PR 13/2022 are available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).



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