

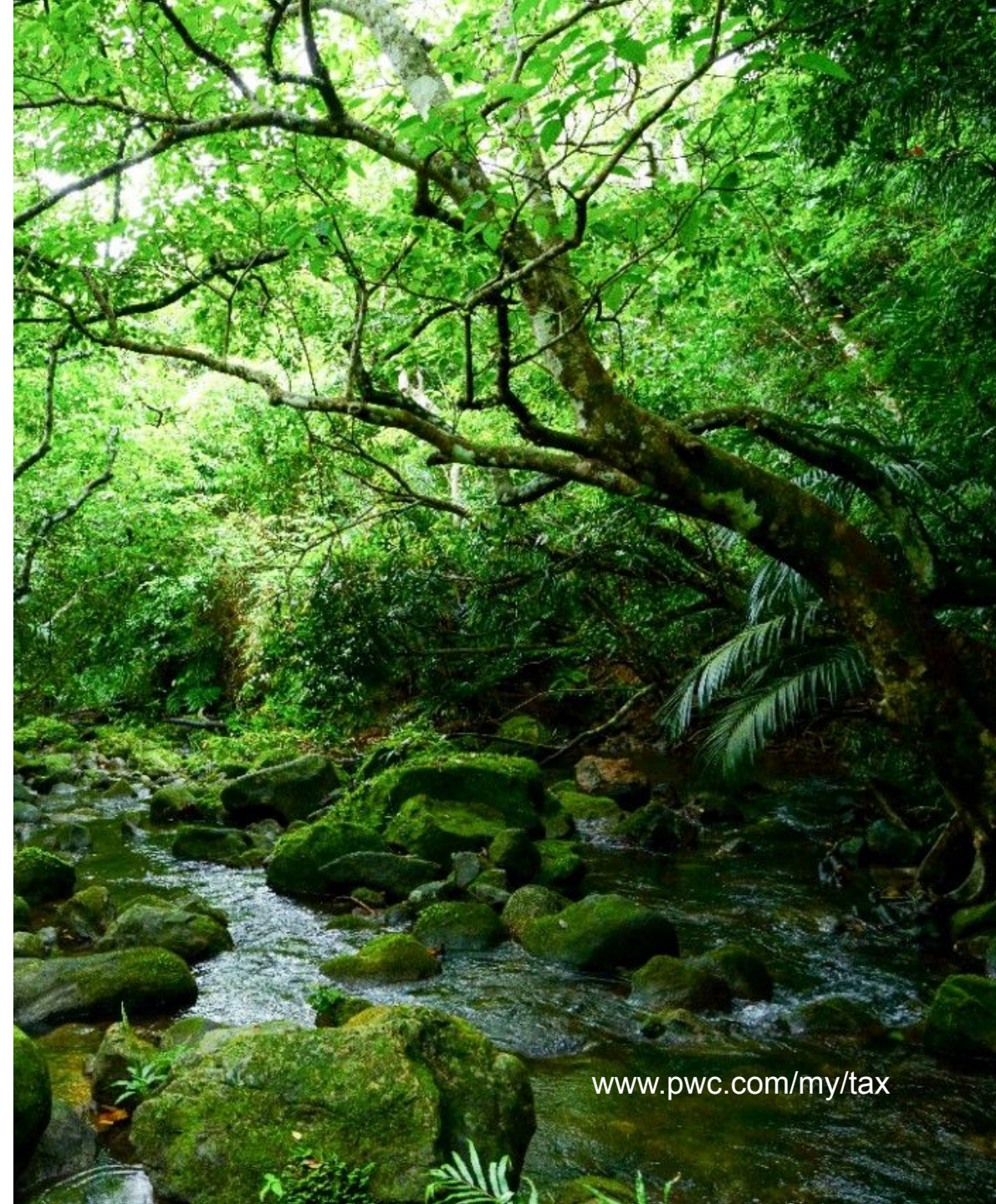


# TaXavvy

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## Tax Corporate Governance Framework (TCGF) - Updated Guideline & Frequently Asked Questions

The Inland Revenue Board (IRB) recently published the following:

- Guidelines for Tax Corporate Governance Framework (“TCGF Guideline”), updated as at 23 February 2024; and
- Frequently Asked Questions on Tax Corporate Governance Framework and Guidelines (“FAQ”), updated as at 23 February 2024.



The IRB has provided more guidance on the reporting requirements for TCGF in the TCGF Guideline with reference to various global reporting standards and frameworks.

Salient points from the updated TCGF Guideline and FAQ are:

- TCG programme is **expected to be implemented in full in July 2024** (Phase 2) where participation to the programme will be open to organisations that fulfil the qualifying criteria.
- Companies which meet the following criteria may make an application:
  - Large companies / public listed / Government Linked Companies / State Owned Enterprise (with turnover RM100 million and above at the entity level). Previously, the turnover threshold only applied to large companies and public listed companies;
  - Compliant taxpayers (return form submission and tax payment); and
  - Companies with established Tax Control Framework (TCF). “Established” TCF typically encompasses comprehensive policies and procedures designed to ensure effective tax management within an organisation which includes clear documentation of tax processes, segregation of duties, regular risk assessments, and adherence to relevant regulatory guidelines.
- Expenditures incurred for preparation of reports related to TCGF by companies participating in TCG programme are eligible for deduction up to RM50,000 for each year of assessment (YA) (from YA 2024 to 2027) per Budget 2024 announcement (*Note: The legislation for the incentive is pending*).

- The TCGF Guideline has been updated to incorporate the principles of continuous monitoring in assessing the adequacy and effectiveness of internal control summarised by the Institute of Internal Auditors, as follows:

Principle	Explanation
Purpose	Consider the business objective and critical success factors.
Risk	Determine the likely obstacles that would inhibit the organisation's success.
Response	Align diverse sources of data to discover and corroborate emerging risks such as configurable conditions, changes, event logging, financial transactions, and unstructured data.
Timing	Detect control issues in real time.
Action	Track deficiencies for corrective action.

- The TCGF Guideline also covers the reporting format and contents of control testing as suggested by Committee of Sponsoring Organisation (2013), which includes:
  - Description of the process and controls to be tested, including a description of the risks to be mitigated by the identified controls.
  - Listing of personnel involved in the testing, including control performers, process owners, and testers.
  - Description of tests performed, results, and determination of control deficiencies.
  - Rating of control deficiencies in order to assist in prioritising remediation actions and plans.
  - Summary of management remediation plans, personnel responsible for remediation, and deadlines.

Both the TCGF Guideline and FAQ are available on the IRB’s website [www.hasil.gov.my](http://www.hasil.gov.my) (Legislation > Framework > Tax Corporate Governance Framework).



## e-Invoice - Updated Frequently Asked Questions

The IRB recently published the Frequently Asked Questions for Implementation of e-Invoice in Malaysia (“e-Invoice FAQs”), updated as at 26 February 2024 on their website

[www.hasil.gov.my](http://www.hasil.gov.my) (Service > e-Invoice > Frequently Asked Questions).

Salient points from the updated e-Invoice FAQs are:

- Expenditures incurred by Micro, Small and Medium Enterprises in implementing e-Invoice (i.e. consultation fee) is deductible as part of the environmental, social and governance related expenditure, subject to a cap of RM50,000 for each YA, commencing from YA 2024 to 2027 (*Note: The legislation for the incentive is pending*).
- Failure to issue e-Invoice will result in a fine of RM200 to RM20,000 or a imprisonment of not more than 6 months, or both for each non-compliance.
- The IRB has also updated the e-Invoice FAQs to incorporate the following guidance:
  - Tax Identification Number with the prefix of “IG” should be provided by individual taxpayers for e-Invoice purposes.
  - Businesses need not necessarily submit e-Invoice within the same day of the transaction, except in specific cases such as consolidated e-Invoice, self-billed e-Invoice for importation of goods / services, e-Invoice for foreign income, or where specific legislation is applicable.
  - e-Invoice treatment for director fees:
    - Director is required to issue e-Invoice to the company if a contract for service is entered into.
    - Director is exempted (subject to periodic review) from issuance of e-Invoice if a contract of service is entered into. The fees are considered part of employment income.
  - Invoices received from the same foreign supplier: A separate self-billed e-Invoice must be issued for each individual transaction.
  - e-Invoice is required to be issued for intercompany charges. e-Invoice is not mandatory for inter-department / inter-division transactions with the same company.
  - For rental of property, businesses are required to issue a self-billed e-Invoice for rental from an individual landlord who is not conducting a business.
  - Customs clearance: The current process for customs clearance is applicable upon the implementation of e-Invoice. Any changes will be communicated by Royal Malaysian Customs Department.
  - Technology providers are not required to register to participate in the implementation of e-Invoice and do not need to apply for certification to provide the Continuous Transaction Control e-Invoice solution (subject to change).





## Operational Guideline No. 2/2024 - Tax Clearance Letter (SPC) Application Procedure for Individuals

The IRB has, on 1 April 2024, issued Operational Guideline No. 2/2024 - Tax Clearance Letter (SPC) Application Procedure for Individuals (“GPHDN 2/2024”) dated 1 January 2024. GPHDN 2/2024 replaces GPHDN 2/2016 of the same title.

GPHDN 2/2024 is available on IRB’s website [www.hasil.gov.my](http://www.hasil.gov.my) (Legislation > Guidelines > Operational Guidelines).



GPHDN 2/2024 outlines the procedures and requirements for application of a tax clearance letter upon cessation of employment / retirement / departure from Malaysia / death of an employee. Employers are required to make the application in these instances.

Salient points from GPHDN 2/2024 are:

1. Employers are to make the applications by way of online notifications of the following through the e-SPC in the MyTax portal:
  - a. Form CP22A or CP22B (cessation of employment)
  - b. Form CP21 (leaving Malaysia)
2. To provide ease of administration, GPHDN 2/2024 has specified the following situations in which employers are not required to make the notification:
  - a. The employee’s income is not subject to tax.
  - b. The employee is a Malaysian citizen whose monthly salary is below the Monthly Tax Deduction (MTD) threshold or is subject to MTD, and does not receive any gratuities / compensation from the cessation of employment.
  - c. The employee receives retirement gratuities but does not retire and continues to be employed with the same employer.
3. Applications for revision / additions or cancellations in relation to a previous tax clearance application cannot be submitted via e-SPC and have to be submitted to the IRB branch handling the employee’s tax file or the nearest IRB branch.
4. Employees who ceased employment, are retired, or are leaving Malaysia for more than 3 months are required to ensure that their tax returns and assessments are complete and up to date to the current YA or the YA of cessation of employment.

# Tax Treatment on the Recognition of Actual Gross Profit or Loss from a Construction Contract

The IRB has issued Practice Note 1/2024 - Tax Treatment on the Recognition of Actual Gross Profit or Loss from a Construction Contract (“PN 1/2024”), dated 29 March 2024, to provide the tax treatment on recognition of actual gross profit from a construction contract.

PN 1/2024 is available on IRB’s website [www.hasil.gov.my](http://www.hasil.gov.my) (Legislation > Practice Note).



With effect from YA 2023, where the final account of a construction contract is finalised in the basis period after the basis period of the date of completion of the construction contract (“completion date”), the construction contractor can ascertain and recognise the actual gross profit or loss in the basis period which falls within:

- 12 months after the date of completion; or
- on the date of the final account of the construction contract is agreed between the construction contractor and its client,

whichever earlier.

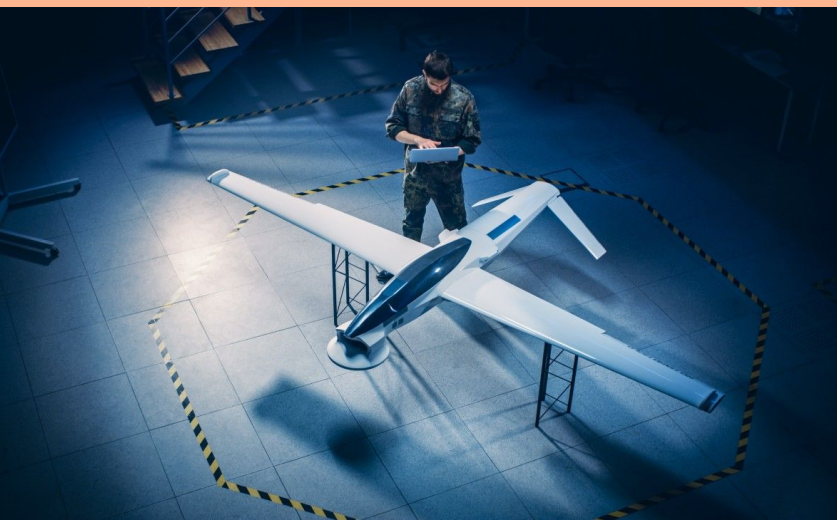
Below are a few illustrations involving scenarios where the accounts are finalised after the basis period of the date of completion (31 December year end case)

<b>Scenario (a) - Final account received within 12 months from the date of completion</b>	<b>Completion date:</b> 1/8/2022 (YA 2022) <b>Date of final account:</b> 20/7/2023 (YA 2023)  The excess actual gross profit based on the final account is taken as gross income for YA 2023 instead of YA 2022.
<b>Scenario (b) - Final account received after 12 months from the completion date and within the first basis period of the completion date</b>	<b>Completion date:</b> 1/8/2022 (YA 2022) <b>12 months after the completion date:</b> 31/7/2023 (YA 2023) <b>Date of final account:</b> 1/10/2023 (YA 2023)  The excess actual gross profit based on the final account is taken as gross income for YA 2023.
<b>Scenario (c) - Final account received after 12 months from the completion date and beyond the first basis period of the completion date</b>	<b>Completion date:</b> 1/8/2022 (YA 2022) <b>12 months after the completion date:</b> 31/7/2023 (YA 2023) <b>Date of final account:</b> 1/4/2024 (YA 2024)  The excess actual gross profit based on the final account is taken as gross income for YA 2023 (see Example 5). Amended tax computation for YA 2023 is to be submitted to the IRB, where applicable.

# Tax Incentive for Aerospace Industry

The Malaysian Investment Development Authority (MIDA) has issued the Guideline and Procedures for Incentive for Aerospace Industry (“the Guideline”) following the Budget 2023 (Retabled) announcement to extend the application deadline for the tax incentive until 31 December 2025.

The Guideline is available on MIDA’s website [www.mida.gov.my](http://www.mida.gov.my) (Forms and Guidelines > Manufacturing Sector > Aerospace Industry).



Salient points from the Guideline are:

Type of incentive	1. <u>New Company</u> <ul style="list-style-type: none"><li>Income tax exemption of 70% or 100% on statutory income for a period of 5 or 10 years. Unabsorbed losses can be carried forward for 7 consecutive YAs; or</li><li>Investment Tax Allowance (ITA) of 60% or 100% of qualifying capital expenditure incurred within 5 years to be set-off against 70% or 100% of statutory income for each YA. Unutilised allowances can be carried forward until fully absorbed.</li></ul>
	2. <u>Existing company undertaking expansion and diversification project</u> <ul style="list-style-type: none"><li>ITA of 60% of qualifying capital expenditure incurred within 5 years to be set-off against 70% of statutory income for each YA. Unutilised allowances can be carried forward until fully absorbed.</li></ul>
Application	Submission via MIDA’s online portal from 1 January 2023 until 31 December 2025.
Key eligibility criteria	<ul style="list-style-type: none"><li>High-value added activities that is to be undertaken by the applicant include:<ul style="list-style-type: none"><li>manufacturing or assembly of systems, devices, parts or components;</li><li>maintenance, repair and overhaul for aircraft, devices, parts or components; or</li><li>related engineering &amp; design.</li></ul></li><li>Activities undertaken benefits Malaysia in the development of supporting engineering manufacturing companies, localisation of supply chain, research and development, training of Malaysians, etc.</li><li>Incur an adequate investment and operating business expenditure for the proposed project.</li><li>At least 80% of the company's full-time employees are Malaysians.</li><li>Requirement to meet managerial, technical and supervisory staff index, or science and technical staff index.</li></ul>



## Income Tax (Exemption) (No.10) 2018 (Amendment) Order 2024

On 4 July 2022, the Government launched the Malaysia Digital initiative which is a rebranding of MSC Malaysia (refer to [TaXavvy 14/2022](#)). This was followed by a guideline to provide information on the transition to Malaysia Digital status, including the benefits and incentives thereunder (refer to [TaXavvy 2/2023](#)).

The Income Tax (Exemption) (No. 10) 2018 (Amendment) Order 2024 ("Amendment Order") has now been gazetted on 8 March 2024. It amends the Income Tax (Exemption) (No. 10) Order 2018 ("the Principal Order") in respect of exemption for MSC status companies.

The amendments made to the Principal Order are in line with the:

- Guidelines on MSC Malaysia Financial Incentives (Services Incentive - Income Tax Exemption) ("MSC Guidelines") (refer to [TaXavvy 4/2020](#))
- Guidelines on Transition of MSC Malaysia Status Company to Malaysia Digital Company ("Transitional Guidelines")

Key notable changes to note are:

### 1. Location based conditions

The location based conditions in Schedule 2 and its related definitions have been removed effective from 25 March 2022. This is in line with the announcement of the rebranding of MSC Malaysia to Malaysia Digital, and the subsequent Transitional Guidelines issued.

### 2. Related company

A new paragraph is inserted to specify that where a qualifying company has a related company which has been granted an exemption in respect of the core income generating activities, the qualifying company will not be given exemption for the same core income generating activities. This is in line with the MSC Guidelines.

### 3. Effective date

Except for the effective date specified for item 1 above, the amendments through the Amendment Order are effective retrospectively from 1 January 2019.

MDEC has announced on 8 March 2024 that the details of the new tax incentive for Malaysia Digital and MSC Malaysia status companies will be announced in the second quarter of 2024. The incentives, expected to be in the form of Investment Tax Allowances, are for Intellectual Property (IP) and non-IP digital initiatives.





# Malaysia-Maldives Double Taxation Agreement

The double taxation agreement (DTA) between Malaysia and Maldives was signed on 24 May 2023. The DTA has yet to be ratified by the Malaysian government (by way of gazette). The DTA will enter into force once both contracting parties exchange notes on the completion of their domestic ratification.



The following will apply when the DTA enters into effect:

Withholding tax (WHT) rates	<table><tr><th>Type of payment</th><th>WHT rate</th></tr><tr><td>Interest</td><td>10%</td></tr><tr><td>Royalty</td><td>10%</td></tr><tr><td>Fee for services</td><td>10%</td></tr></table>		Type of payment	WHT rate	Interest	10%	Royalty	10%	Fee for services	10%
	Type of payment	WHT rate								
	Interest	10%								
	Royalty	10%								
	Fee for services	10%								
<p>The definition of royalty in the DTA is similar to the definition found the Income Tax Act 1967 and includes the use of, or the right to use:</p> <ul style="list-style-type: none"><li>• Software</li><li>• Industrial, commercial or scientific equipment (including ships, aircraft and containers).</li></ul>										
Directors' fees and remuneration of top-level managerial officials	Similar to directors' fee, remuneration of an official, who is a resident in the contracting state, holding a top-level managerial position of a company which is a resident of the other contracting state, may be taxed in the other contracting state.									
Tax sparing relief	None									
Labuan	Labuan is not specifically excluded from the treaty benefits									
Entry into force	Malaysia and Maldives shall notify each other upon ratification of the DTA under their domestic law. The DTA enters into force on the date of the later of receipt of the notification.									
Entry into effect	<b>Malaysian taxes</b> Tax chargeable for any YA beginning on or after 1 January in the calendar year following the year in which the DTA enters into force.									
	<b>Maldivian taxes</b> The taxable period beginning on or after 1 January next following the calendar year in which the DTA enters into force.									





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