



Tax Espresso

IRBM's Operational Guidelines No. 1/2020, IRBM's Practice Note No. 1/2020, and Labuan Investment Committee Pronouncement 3-2020

April 2020

Greetings from Deloitte Malaysia

Tax Services

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[Inland Revenue Board of Malaysia](#)

Takeaways:

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2. [IRBM's Practice Note No. 1/2020 – Clarification on the treatment of adjusted loss in the Income Tax \(Exemption\) \(No. 3\) Order 2018 \[P.U.\(A\) 251/2018\] for the International Currency Business Unit](#)
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Upcoming events:

1. [Key fiscal measures under the Economic Stimulus Package – your questions answered!](#)
2. [Malaysia service tax on digital services - post implementation and compliance](#)
3. [The Malaysia Perspective: How your mobile employees impact your organisation during COVID-19 pandemic](#)

Important deadlines:

Task	2020 Due Date	
	30 April	1 May
1. 2021 tax estimates for companies with May year-end		√
2. 6 th month revision of tax estimates for companies with October year-end	√	
3. 9 th month revision of tax estimates for companies with July year-end	√	
4. Statutory filing of 2019 tax returns for companies with September year-end	√	
5. Maintenance of transfer pricing documentation for companies with September year-end	√	
6. Due date for 2020 CbCR notification for companies with April year-end	√	

1. IRBM's Operational Guidelines No. 1/2020 – Procedure on Submission of Amended Return Form

The Inland Revenue Board of Malaysia (IRBM) has released the [Operational Guidelines No. 1/2020 – Procedure on Submission of Amended Return Form](#), dated 6 March 2020. It supersedes the Operational Guidelines No. 4/2019. The Operational Guidelines No. 1/2020 provides an explanation on the procedure for the submission of an amended return form.

Differences between the new and the old guidelines:

- Paragraph 2.2.4 in the old Operational Guidelines No. 4/2019 i.e. “An amended return form which does not comply with the rules and terms shall be deemed as voluntary disclosure” has been entirely replaced. Paragraph 2.2.4 in the new Operational Guidelines states “Amended return form submitted and in compliance with stipulated conditions under Section 77B of Income Tax Act 1967 (ITA) / Section 30B of Petroleum Income Tax Act 1967 (PITA) will be accepted in accordance with the provision under Section 91A of ITA / Section 39A of PITA”.
- Paragraph 2.4 on ‘Method on computation of tax / additional tax and increase in tax’ has been updated in the new guidelines so that the penalty rate for an amended return submitted after the 60-day period will be at 10%. The further 5% penalty under Subsection 77B(4) of the ITA has been removed by the Finance Act 2019 (Act 823) with effect from 1 January 2020.
- Paragraph 2.5 on ‘Tax payable’ has been updated in the new guidelines so that where any tax due and payable has not been paid by its due date, the unpaid amount will be increased by a single rate of 10%. The further 5% penalty for settlement of tax payable after the 60-day period under Subsection 103(1A) of the ITA has been removed by the Finance Act 2019 (Act 823) with effect from 1 January 2020.

Please refer to the [Operational Guidelines No. 1/2020](#) for the full details.

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2. IRBM's Practice Note No. 1/2020 – Clarification on the treatment of adjusted loss in the Income Tax (Exemption) (No. 3) Order 2018 [P.U.(A) 251/2018] for the International Currency Business Unit

The IRBM has recently issued [Practice Note No. 1/2020](#) - Clarification on the treatment of adjusted loss in the Income Tax (Exemption) (No. 3) Order 2018 [P.U.(A) 251/2018] for the International Currency Business Unit. The Practice Note* was issued on 17 February 2020 to provide guidance on the application of the Income Tax (Exemption) (No. 3) Order 2018 [\[P.U.\(A\) 251/2018\]](#), especially with respect to adjusted loss for the International Currency Business Unit (qualifying person) before and after the coming into operation of P.U.(A) 251/2018.

**Published in Bahasa Malaysia only.*

Treatment of adjusted losses incurred by the International Currency Business Unit after YA 2017

P.U.(A) 251/2018 is effective from the year of assessment (YA) 2017 to YA 2020. Pursuant to P.U.(A) 251/2018, any amount of adjusted loss incurred by a qualifying person in a YA in the basis period referred to in Subparagraph 3(1), shall be carried forward and deducted from the statutory income from the business of the qualifying person and the qualifying ringgit account in the post-exempt year or years of assessment, until the entire amount of the adjusted loss is absorbed.

Adjusted loss arising from the International Currency Business Unit for the exemption period from YAs 2017 to 2020 should be carried forward and allowed a deduction against the statutory income from the business of the qualifying person after the exemption period, i.e. from YA 2021 onwards. Sections 44(2) and 43(2) of the ITA do not apply to the adjusted loss, see further comment in the following paragraph on special provisions relating to Section 43 of the ITA.

Treatment of adjusted losses incurred by the International Currency Business Unit before YA 2017

Sections 44(2) and 43(2) of the ITA will apply to the adjusted loss arising from the International Currency Business Unit for the exemption period from YAs 2007 to 2016.

Special provisions relating to Section 43 of the ITA

Carried forward losses from YA 2018 may only be carried forward and absorbed for the purposes of Section 43(2) of the ITA in YA 2019 to YA 2025. Such treatment also applies to the losses under P.U.(A) 251/2018 but the time limit of seven (7) years begins from YA 2021, which is the period after which the losses are quarantined or segregated, until YA 2027. The carried forward losses of the International Currency Business Unit which cannot be fully absorbed after the YA 2027 shall be disregarded.

Paragraph 127(3)(b) of the ITA

In this connection, a qualifying person who is granted exemption through statutory order published under Section 127(3)(b) of the ITA may choose to claim such exemption or otherwise in the event of absence of mutually exclusive provisions in the statutory order.

Given that P.U.(A) 251/2018 has a special treatment relating to the adjusted loss, the qualifying person may only choose to apply P.U.(A) 251/2018 or otherwise, as long as there is no claim of income tax exemption relating to the International Currency Business Unit under this P.U.(A) 251/2018, in the YA or YAs from 2017 to 2020. Relevant illustrations have been provided in Examples 1, 2 and 3 of the Practice Note.

Please refer to the [Practice Note No. 1/2020](#) for the full clarification given by the IRBM.

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3. LIC Pronouncement 3-2020

Following various implementation issues arising from recent changes to the new Labuan tax regime, the Labuan Financial Services Authority (LFSA) has issued a circular on [Labuan Investment Committee \(LIC\) Pronouncement 3-2020](#) dated 11 March 2020 to clarify on the following matters:

- (i) Substance requirement for pure equity holding entities receiving interest income arising from placement of dividend monies or proceeds from disposal of shares; and
- (ii) Definition of “full time employee” for non-pure equity holding entities.

Please refer to the above-mentioned circular for full details.

Note: All the proposed revisions to the substance requirements in Labuan by LFSA/LIC are subject to the release of the gazetted regulations on amendments to the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 [[P.U.\(A\) 392/2018](#)].

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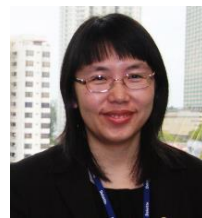
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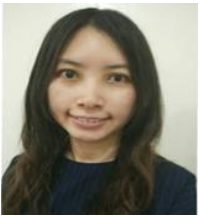
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