



## Tax Espresso

Latest Guidelines, Gazette Orders, Revised Foreign Exchange Notices and more

May 2021



# Greetings from Deloitte Malaysia Tax Services

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[Inland Revenue Board of Malaysia](#)

## Takeaways:

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3. [Income Tax \(Exemption\) \(No. 3\) Order 2021 \[P.U.\(A\) 190/2021\]](#)
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## Important deadlines:

Task	2021 Due Date
	31 May
1. 2022 tax estimates for companies with June year-end	√
2. 6 <sup>th</sup> month revision of tax estimates for companies with November year-end	√
3. 9 <sup>th</sup> month revision of tax estimates for companies with August year-end	√
4. Statutory filing of 2020 tax returns for companies with October year-end	√
5. Maintenance of transfer pricing documentation for companies with October year-end	√
6. Deadline for 2021 CbCR notification for companies with May year-end	√

## 1. Guidelines on Application for Income Tax Exemption by Eligible Religious Institutions or Organisations under P.U.(A) 139/2020

The Inland Revenue Board of Malaysia (IRBM) has recently uploaded the '[Guidelines](#) on Application for Income Tax Exemption by Eligible Religious Institutions or Organisations Under the Income Tax (Exemption) Order 2020 [[P.U.\(A\) 139/2020](#)]' onto its website. The Guidelines dated 25 March 2021 is available in Bahasa Malaysia only.

The purpose of the Guidelines is to explain the meaning of eligible religious institutions or organisations and the procedures for application to the IRBM for a tax exemption on all sources of income received by a religious institution or organisation incorporated under the Companies Act 2016 [*Act 777*] as "a company limited by guarantee" only.

The Guidelines cover the following topics:

- (i) Eligible religious institution or organisation;
- (ii) Criteria and requirements for the eligible religious institution or organisation;
- (iii) Application procedures for tax exemption by the eligible religious institution or organisation;
- (iv) Consequences of breaching the approval conditions by the eligible religious institution or organisation;
- (v) Approval period, extension of period and appeal on the application;
- (vi) Terms and conditions during the approval period;
- (vii) Non-applicability; and
- (viii) Checklist for application by a house of worship registered with the Companies Commission of Malaysia (CCM).

The Guidelines also explain that:

- The Guidelines apply only to applications relating to a place or house of worship by the eligible institution or organisation. The objective of the place or house of worship must be exclusively for the purpose of religious worship or advancement of religion.
- The operation of a place or house of worship shall be through a committee member appointed and composed of not more than 70% of the members from the board of directors of the company limited by guarantee (CLBG) and the rest must be outsiders which are unassociated with the CLBG for the purpose of religious worship or advancement of religion.
- Operating expenses for the management or administration of the place or house of worship such as the salary payment of management staff must be reasonable and not paid at excessively high rates.
- Any purchase and disposal of asset or property by a place or house of worship must be informed in advance and must obtain the approval of the IRBM.
- Members of the board of directors/committee of the place or house of worship are required to furnish an income tax return form under Section 77A of the Income Tax Act 1967 (ITA) to the IRBM branch handling the income tax file of the place or house of worship annually.
- The audited annual financial statements of the place or house of worship must be submitted to the IRBM (Tax Policy Department) on an annual basis during the period of approval by 30<sup>th</sup> April of the following year.
- If an initial review during the application procedure reveals that for a period of 3 years, the place or house of worship is not subject to any income tax due to its source of income arising from donations only, then the tax exemption application is not applicable because there is no other income which is subject to tax to enjoy the relevant tax exemption.
- A place or house of worship is also subject to other provisions of the ITA such as the submission of Form E (Employer) by the due date, if such place or house of worship pays salaries to the management and employees involved.
- Members of the board of directors/committee of the place or house of worship are required to submit an application to the IRBM for the purpose of tax exemption on all income received from 1 January 2020.
- The approval period for a place or house of worship is 5 years. An application for an extension for the period of exemption must be made 6 months before the approval period expires, along with the reasons and supporting documents.

Please refer to the [Guidelines](#) for the full details.

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## 2. Income Tax (Determination of Approved Individual and Specified Year of Assessment under the Returning Expert Programme) (Amendment) Rules 2021 [P.U.(A) 147/2021]

[P.U.\(A\) 147/2021](#) was gazetted on 30 March 2021 to legislate the proposed extension of application period for the Returning Expert Programme (REP) incentive by another 3 years by amending Paragraph 4(b) of the Income Tax (Determination of Approved Individual and Specified Year of Assessment under the Returning Expert Programme) Rules 2012 [[P.U.\(A\) 151/2012](#)]. The amendment in Paragraph 4(b) of [P.U.\(A\) 151/2012](#) extends the application period to **31 December 2023**.

Other terms and conditions of the REP incentive stipulated in [P.U.\(A\) 151/2012](#) remain unchanged. Please refer to the respective Rules for the full details.

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## 3. Income Tax (Exemption) (No. 3) Order 2021 [P.U.(A) 190/2021]

[P.U.\(A\) 190/2021](#) (the Order) was gazetted on 23 April 2021 and has effect from the year of assessment (YA) 2021.

The Order exempts any person from the payment of income tax in the basis period for a YA in relation to gains or profits derived, in lieu of interest, from the sukuk wakala.

Note: The sukuk wakala is of a nominal value up to USD1.3 billion, other than convertible loan stock, issued in accordance with the principle of *Wakala* by Malaysia Wakala Sukuk Berhad.

Section 109 of the ITA shall not apply to the income exempted under the Order.

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## 4. Income Tax (Exemption) (No. 4) Order 2021 [P.U.(A) 195/2021]

[P.U.\(A\) 195/2021](#) (the Order) was gazetted on 26 April 2021 and has effect from the YA 2020 until YA 2025.

The Order exempts a qualifying person resident in Malaysia from the payment of income tax in respect of the statutory income derived from organising conferences held in Malaysia. The exemption shall not apply if the total number of foreign participants brought in by that qualifying person for conferences held in Malaysia is less than 500 in the basis period for a YA. The qualifying person exempted under the Order shall maintain a separate account for the income derived from organising conferences held in Malaysia.

For the purposes of the Order:

“Qualifying person” means a company incorporated under the Companies Act 2016 [*Act 777*], or an association or organisation registered under the Societies Act 1966 [*Act 335*], which carries on business or activity other than business or activity of promoting and organising conferences;

"Statutory income" means fees and other payments received by a qualifying person from promoting and organising conferences which includes the arranging of accommodation, tours, and sightseeing for foreign participants derived from organising conferences held in Malaysia, less allowable expenses for tax purposes and capital allowance, if any; and

“Foreign participants” means individuals who are non-Malaysian citizens participating in conferences held in Malaysia, but does not include individuals who are non-Malaysian citizens who reside in Malaysia.

The Order shall not apply to a person who has been granted an exemption under the Income Tax (Exemption) (No. 53) Order 2000 [*P.U. (A) 500/2000\**].

\* *P.U. (A) 500/2000 exempts a conference promoter resident in Malaysia from the payment of income tax in respect of the statutory income derived from organising conferences held in Malaysia.*

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## 5. Continental Choice Sdn Bhd & CB Ventures Sdn Bhd v DGIR (COA)

The IRBM has recently uploaded a case report i.e., [Continental Choice Sdn Bhd & CB Ventures Sdn Bhd v Director General of Inland Revenue \(Court of Appeal\)](#) on its website.

### Issue:

Whether the disposal of shares in a developer company will attract tax under Paragraph 34A, Schedule 2 of the Real Property Gains Tax Act 1976 (RPGTA) when the property had been held by that company as stock in trade.

### Decision:

The Court of Appeal (COA) affirmed the decision of the High Court (HC) and dismissed the taxpayer's appeal. Paragraph 34A, Schedule 2 of the RPGTA does not make any distinction between land held as a stock in trade or capital asset. Consistent with the purpose of the legislation, the intention of the Parliament is to impose real property gains tax (RPGT) on the disposal of shares in real property company (RPC) as defined, regardless of whether the real property held by the company is a capital asset or stock in trade.

The COA affirmed that Paragraph 34A, Schedule 2 of the RPGTA is clear and unambiguous and would be applicable as long as the disposal is a disposal of shares in a company that falls within the definition of RPC. This decision is consistent with the COA judgement in the case of *Ketua Pengarah Hasil Dalam Negeri v Binastra Holdings Sdn Bhd* (Mahkamah Rayuan Rayuan Sivil No. W-01-80-05).

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## 6. MIDA - Guidelines and Procedures for the Application of Special Investment Tax Allowance for E&E Sector

The Malaysian Investment Development Authority (MIDA) has issued [Guidelines and Procedures for the Application of Special Investment Tax Allowance for the E&E Sector](#).

### Purpose of the Special Investment Tax Allowance

The special investment tax allowance which was announced by the Government in the 2020 Budget on 11 October 2019 is to further promote high-value added activities in the Electrical and Electronic (E&E) industry to transition into 5G digital economy and Industry 4.0, and encourage companies in the E&E sector that have exhausted the Reinvestment Allowance to further reinvest in Malaysia.

### Special Investment Tax Allowance

- Investment tax allowance of 50% on qualifying capital expenditure to be offset against 50% of statutory income.
- The investment tax allowance claim is for a period of 5 years starting from the date of the approval letter from MIDA.

### Eligibility Criteria

- The applicant company is engaged in manufacturing activities in the E&E sector and intends to reinvest for the purpose of expansion, automation, diversification, and modernisation.
- The applicant company has fully exhausted the eligibility period of 15 years to claim Reinvestment Allowance under Schedule 7A of the ITA by 31 December 2019 and is currently not enjoying any other tax incentives approved by the Government.
- Please refer to Paragraphs 3.1, 3.2 and 3.3 of the [Guidelines](#) for details of other eligibility criteria.

### Conditions

The applicant company will be subject to the following conditions:

- Minimum investment of RM1.5 million in capital expenditure in related proposed projects within a period of 5 years;
- Incur minimum annual operational expenses as proposed by the company;
- Hire a minimum number of Malaysian full-time workers as proposed by the company; and
- Satisfy at least one of the conditions under either the Vendor Development Program or the Human Capital Development Program [Paragraphs 3.6(d) and 3.6(e) of the [Guidelines](#)].

#### Other points to note

- The incentive is to be implemented via an income tax exemption order under the ITA which is to be gazetted.
- Applications received by MIDA from 1 January 2020 until 31 December 2021 are eligible for this incentive.

Please refer to the [Guidelines](#) for the full details.

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## 7. MIDA - Updated Guidelines and Procedures for the Application of Automation Capital Allowance

The MIDA has issued [updated Guidelines and Procedures for the Application of Automation Capital Allowance](#) (ACA) dated 14 January 2021. The updated Guidelines which take into account the 2020 Budget proposals (please refer to the notes below) and the relevant gazette orders explain the application process, the documents which are to be furnished in support of the application, and the procedures for the application.

The updated Guidelines also included amendments to the following eligibility criteria:

- Companies have been **engaged in manufacturing activities** (instead of “in operation” as provided in the [2015 guidelines](#)) for at least 36 months.
- If a company decides to claim the ACA first before claiming reinvestment allowance (RA), the incentive period for both Category 1 and 2 (YA 2015 to YA 2023) will **not** form part of the 15 years period of RA.

Notes:

- The 2020 Budget proposed extending the deadline for the application for ACA to be received by MIDA to 31 December 2023 and the ACA incentive period to YA 2023. [Note: these have been legislated via [P.U.\(A\) 172/2020](#) and [P.U.\(A\) 173/2020](#)]
- The 2020 Budget also proposed to expand the ACA incentive for Category 2 of the manufacturing sector to the services sector. This proposal is effective for applications received by MIDA from 1 January 2020 to 31 December 2023. MIDA has issued [Guidelines and Procedures for the Application of ACA for Services Sector – For Existing Company Only](#) dated 1 January 2020. [As of this date of publication, the relevant gazette order for ACA for services sector has yet to be issued.]

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## 8. Relaxation of incentive conditions for manufacturing and services projects approved under the purview of MIDA

The MIDA recently announced via a [media release](#) that the Government will provide certain relaxation of conditions to manufacturing and services companies that have been approved with incentives under their purview.

Under the standard procedure, companies with approved incentives must comply with certain conditions and implement their approved projects within a specific period, as specified in the approval letters issued.

With the implementation of relaxation mechanism, such companies may be considered for certain relaxations on achieving the approved thresholds or meeting the implementation timeline of their approved projects, subject to compliance with the government’s identified criteria. The relaxation of compliance with stipulated conditions is for the period between 2020 and 2021.

Companies must submit their requests to MIDA with relevant supporting documentation based on prevailing policy decisions outlined by the Ministry of International Trade and Industry and the Ministry of Finance.

MIDA encourages investors to submit their appeal/ application for relaxation/ amendment of incentive conditions to the relevant divisions for specific industries and services.

Please refer to the [media release](#) for the full details.

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## 9. Revised Foreign Exchange Notices issued by BNM

Pursuant to the [Liberalisation of Foreign Exchange Policy](#) announcement on 31 March 2021, Bank Negara Malaysia (BNM) issued the [revised Foreign Exchange Notices](#) on 15 April 2021, which consist of the following:

- Interpretation;
- Notice 1: Dealings in Currency, Gold and Other Precious Metals;
- Notice 2: Borrowing, Lending and Guarantee;
- Notice 3: Investment in Foreign Currency Asset;
- Notice 4: Payment and Receipt;
- Notice 5: Securities and Financial Instruments;
- Notice 6: Import and Export of Currency; and
- Notice 7: Export of Goods.

The revised Foreign Exchange Notices set out:

- (a) Approvals of BNM for transactions which otherwise are prohibited under Section 214(2) read together with Schedule 14 of the Financial Services Act 2013 (FSA) and Section 225(2) read together with Schedule 14 of the Islamic Financial Services Act 2013 (IFSA);
- (b) Requirements, restrictions, and conditions of the approvals; and
- (c) Directions of BNM.

A person shall obtain a written approval from BNM to undertake or engage in any transactions listed in Schedule 14 of the FSA or IFSA that are not approved by BNM under the Foreign Exchange Notices.

### Summary of key changes

No.	Liberalisation Measures	Reference
1.	Resident exporters can settle domestic trade in goods and services in foreign currency with other residents involved in the global supply chain operations in Malaysia.	Notice 4, Paragraph 4(d)(iii)
2.	Resident entities can pay or receive foreign currency to or from non-residents for settlement of foreign currency-denominated derivatives hedging (excluding exchange rate derivatives).	Notice 4, Paragraph 5
3.	Licensed onshore banks can offer and transact ringgit-denominated interest rate or profit rate Islamic derivative with non-resident banks without any underlying commitment directly or through its Appointed Overseas Offices (AOO).	Notice 5, Paragraph 4
4.	Removal of export conversion requirement.	This requirement is removed from Notice 7
5.	Resident exporters can offset or write-off export proceeds against approved reasons.	Notice 7, Paragraph 1(b)(ii) read with Appendix B
6.	Resident exporters can extend the period for repatriation of export proceeds beyond 6 months (up to 24 months) under exceptional circumstances.	Notice 7, Paragraph 1(c) read with Appendix C

### Commencement date

The revised Foreign Exchange Notices came into operation on 15 April 2021 and supersede the Foreign Exchange Notices [BNM/RH/PD 030-7] issued previously by BNM on 30 April 2020.

Please refer to BNM's [Public Notice](#) and [revised Foreign Exchange Notices](#) for the full details. You may also refer to the Frequently Asked Questions (FAQ) on [Notice 4](#) and [Notice 7](#) which have been updated accordingly by BNM on 15 April 2021.

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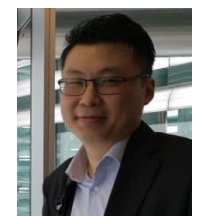
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Rung Hua



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Justine Fan



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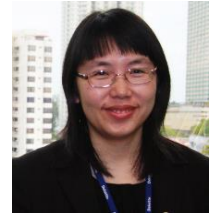
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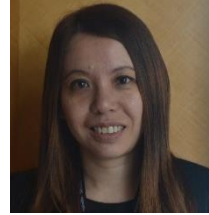
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