



Tax Espresso

IRBM's latest Guidelines, Public Rulings, Gazette Orders and more

September 2020

Greetings from Deloitte Malaysia Tax Services

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Important deadlines:

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

1. MDEC: Guidelines on MSC Malaysia Financial Incentives

The Malaysia Digital Economy Corporation Sdn Bhd (MDEC) has uploaded two Guidelines on Multimedia Super Corridor (MSC) Malaysia Financial Incentives (effective date: 1 January 2019):

- [Grandfathering and transition under Services Incentive](#)

The Guidelines set out guidance on the:

- (a) Grandfathering timeline (as provided under [P.U.\(A\) 332/2018](#)¹ and [P.U.\(A\) 396/2018](#)²) which is applicable to existing MSC Malaysia Status companies with income tax exemption on non-intellectual property (non-IP) and service income; and
- (b) Transition of these companies from the Existing Regime to the Revised Regime in order to enjoy the income tax exemption in respect of non-IP or services income for the remaining exemption period.

¹ *Promotion of Investments (Exclusion of Income for MSC Status Companies) Regulations 2018*

² *Income Tax (Exemption) (No. 2) 2015 (Amendment) Order 2018*

- [Services Incentive - income tax exemption](#)

The Guidelines provide detailed guidance on the eligibility criteria, qualifying promoted activities and conditions for application for MSC Malaysia Status Services Incentive (Non-IP).

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2. Public Rulings on tax treatment of R&D expenditure and Guidelines on application procedure for the special deductions

The Inland Revenue Board of Malaysia (IRBM) issued the following on 13 August 2020:

- Public Ruling No. 5/2020 'Tax Treatment of Research & Development Expenditure Part I – Qualifying Research & Development Activity' ([PR No. 5/2020](#)), which clarifies the definition of research and development (R&D) and its qualifying criteria, to assist in determining if an activity undertaken for R&D in the ordinary course of a business, qualifies as an R&D activity;
- Public Ruling No. 6/2020 'Tax Treatment of Research & Development Expenditure Part II – Special Deductions' ([PR No. 6/2020](#)), which explains the expenditure that qualifies for special deductions (incentive) in respect of a qualifying R&D activity; and
- Guidelines on the application procedure for a special deduction in respect of a qualifying R&D activity ([Guidelines](#)).

The PR No. 5/2020 and PR No. 6/2020 are issued to replace [PR No. 5/2004](#) 'Double Deduction Incentive On Research Expenditure' and the '[Addendum](#) to PR No. 5/2004'. The PR No. 5/2020 and PR No. 6/2020 should be read together with the Guidelines.

The salient points include:

A. Eligibility criteria to claim an incentive [*Paragraph 5 of the PR No. 5/2020 refers*]

A person would be eligible to claim an incentive in the form of a single or double deduction for the allowable expenditure incurred for R&D, if all of the following conditions are satisfied, i.e. the person must:

- (a) be a resident for tax purposes in Malaysia;
- (b) be carrying on a business in Malaysia;
- (c) undertake an R&D activity in **relation to his business** in Malaysia whether –
 - (i) in-house within his business; or
 - (ii) outsourcing the activity to an approved research institute or company, or an R&D company or a contract R&D company in Malaysia;
- (d) undertake an R&D activity which fulfils the definition of R&D, and its qualifying criteria to qualify as a qualifying R&D activity; and
- (e) obtain an approval for the R&D activity from the Director General of Inland Revenue of Malaysia (DGIR) for which the Minister of Finance has delegated such powers to the DGIR, if the double deduction claimed is under Section 34A of the Income Tax Act 1967 (ITA); or
- (f) engage the services of an institute or company that is approved by the relevant Minister, if the double deduction claimed is under Section 34B of the ITA.

B. Qualifying R&D activity and project [Paragraphs 6.1.2 and 6.3 of the PR No. 5/2020 refers]

An activity undertaken for the purposes of R&D must fulfil the definition of R&D and its qualifying criteria under Section 2 of the ITA to qualify as a qualifying R&D activity. Where an R&D project consists of a set of R&D activities, the eligibility for a double deduction / single deduction incentive under the ITA is ascertained at the qualifying R&D activity level and not R&D project level.

C. Determination of qualifying R&D activity [Paragraph 7 of the PR No. 5/2020 refers]

Effective 28 December 2018, an R&D activity must fulfil the qualifying criteria of the new R&D definition under Section 2 of the ITA to be considered a qualifying R&D activity.

A qualifying R&D activity has to jointly fulfil the following three criteria:

- I. Has an objective to:
 - acquire new knowledge;
 - create new products or processes; or
 - improve existing products or processes;
- II. Involved in something new (novelty) or technical risk; and
- III. Is a systematic, investigative and experimental (SIE) study in a field of science or technology.

D. Double deduction or single deduction on qualifying R&D expenditure

If the R&D activity fulfils the definition of R&D and its qualifying criteria under Section 2 of the ITA, an incentive can be claimed as:

- (a) a special deduction under Section 34A of the ITA (double deduction) which has to be approved by the Minister; or
- (b) a special deduction under Section 34B of the ITA (double deduction) which has to be approved by the Minister; or
- (c) a special provision under Subsection 34(7) of the ITA (single deduction). [Paragraph 4 of the PR No. 6/2020 refers]

To qualify for a double deduction under Sections 34A and 34B of the ITA, revenue expenditure must be incurred for an approved qualifying R&D activity in the basis period. Whereas, for a single deduction under Subsection 34(7) of the ITA, revenue expenditure must be incurred for a qualifying R&D activity in the basis period. The accounts for the expenditure incurred for each R&D activity must be kept separately regardless whether the said activity has been approved or not. [Paragraph 6 of the PR No. 6/2020 refers]

Relevant provisions of the ITA	R&D expenditure allowed as a special deduction	Relevant forms for submission when claim is made
Section 34A (double deduction)	<ul style="list-style-type: none"> ✓ An allowable deduction of twice the amount of expenditure incurred on an approved R&D activity (not being capital expenditure) can be made against the gross business income. ✓ This incentive is available to a person who carries out an in-house R&D activity within the person’s business. The approving authority for an approved qualifying R&D activity is the Director General of the Inland Revenue Board of Malaysia (DGIR). Pursuant to Section 5 of the Delegation of Powers Act 1956, the Minister of Finance has delegated powers under Section 34A of the ITA to the DGIR and the Deputy DGIR. [Paragraph 5.1(c) of the PR No. 6/2020 refers] 	<ul style="list-style-type: none"> ✓ Application for an approved R&D activity under Section 34A of the ITA [Form 1* and Form 1 (Appendix)]; and ✓ Claim for double deduction on R&D Expenditure under Section 34A of the ITA [Form 2] <p>* Please refer to Paragraph 13.3 of the PR No. 6/2020 for the due date for submission of Form 1.</p> <p>[Paragraph 7 of the PR No. 6/2020 refers]</p>
Section 34B (double deduction)	<ul style="list-style-type: none"> ✓ An allowable deduction of twice the amount of expenditure incurred on an approved R&D activity (not being capital expenditure) can be made against the gross business income in respect of: <ul style="list-style-type: none"> (i) Contribution in cash to an approved research institute; (ii) Payment for the use of services of an approved research institute or approved research company; or 	<ul style="list-style-type: none"> ✓ Claim for double deduction under Section 34B of the ITA [Form 3] <p>[Paragraph 9 of the PR No. 6/2020 refers]</p>

	(iii) Payment for the use of services of a R&D company or a contract R&D company approved by the Malaysian Investment Development Authority. <i>[Paragraph 5.2 of the PR No. 6/2020 refers]</i>	
Subsection 34(7) (single deduction)	✓ A person who carries out an in-house R&D activity within its business, or uses the services of a service provider but does not claim a special double deduction under Sections 34A or 34B of the ITA may claim a single deduction for the qualifying revenue expenditure incurred for a qualifying R&D activity. <i>[Paragraph 5.3 of the PR No. 6/2020 refers]</i>	✓ Claim for single deduction under Subsection 34(7) of ITA [Form 4] <i>[Paragraph 10 of the PR No. 6/2020 refers]</i>

E. Pioneer Company undertakes R&D activity and makes an election under Section 34A(4A) of the ITA *[Paragraph 8 of the PR No. 6/2020 refers]*

Pursuant to Subsection 34A(4A) of the ITA, a pioneer company which has incurred qualifying R&D expenditure for an approved qualifying R&D activity in any basis period during its tax relief period, may elect that the amount of that expenditure be deducted in the first basis period in respect of its post-pioneer business for a year of assessment (YA). The election has to be made on a yearly basis for each relevant YA.

By making an election, the amount of qualifying R&D expenditure for each particular YA will be accumulated and carried forward to be deducted in the first basis period of the post-pioneer business instead of being given a double deduction for each relevant YA.

F. Guidelines on the application procedures for special deduction on qualifying R&D activity

The purpose of the [Guidelines](#) is to explain the following:

- I. Application procedure for an approved qualifying R&D activity that qualifies for a special deduction under Section 34A of the ITA; and
- II. Requirement to complete the relevant forms for submission when a claim is made for a double deduction under Section 34A of the ITA, double deduction under Section 34B of the ITA or single deduction under Subsection 34(7) of the ITA, in respect of a qualifying R&D activity undertaken by a company in Malaysia.

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3. Income Tax (Special Treatment for Interest on Loan) Regulations 2020 [P.U. (A) 237/2020]

The [P.U. \(A\) 237/2020](#) was gazetted on 25 August 2020 and has effect for the year of assessment YA 2020 and subsequent YAs.

The Regulations provide that where a moratorium is approved by a bank or financial institution (FI) in respect of any interest on a Malaysian Ringgit loan which is due and payable from 1 April 2020 to 30 September 2020 in the basis period for a YA, such interest shall not constitute the gross income of that bank or FI in the basis period for that YA. Please refer to the Regulations for the definition of “bank” and “financial institution” as the Regulations define these entities specifically and it does include a variety of financial institutions that provide loans such as insurance companies, leasing companies, hire purchase companies and credit provision companies. While these companies may electively grant moratoriums to their borrowers, they do not benefit from these Regulations.

Notwithstanding the above, where any amount of loan interest—

- (a) is received from 1 April 2020 to 30 September 2020; or
- (b) becomes receivable on or after 1 October 2020,

by the bank or FI in the basis period for a YA, such interest shall be treated as the gross income of the bank or FI in the basis period for that YA.

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4. Stamp Duty (Exemption) (No. 5) Order 2020 [P. U. (A) 239/2020]

The [P. U. \(A\) 239/2020](#) was gazetted on 26 August 2020 and deemed to have come into operation on 28 August 2020.

According to the [P. U. \(A\) 239/2020](#), any instrument of the agreement relating to the use of research cess provided in Regulation 7 of the Malaysia-Thailand Joint Authority (Payments of Royalty and Other Proceeds from Petroleum Production to the Governments) Regulations 2004 [P.U. (A) 422/2004] for the purpose of financing any research and development in the fields of science and technology relating to exploration or exploitation of petroleum or natural resources for the Joint Development Area executed between Malaysia-Thailand Joint Authority and institutions of higher education in Malaysia and Thailand shall be exempted from stamp duty.

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5. Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2020 [P.U. (A) 240/2020]

The [P.U. \(A\) 240/2020](#) was gazetted on 26 August 2020 and came into operation on 27 August 2020.

Remission of income tax

The Order provides that any tax payable under the ITA by any of the following individual or entity in respect of any money payable under any agreement, note, instrument and document in relation to the product, facility, programme and guarantee referred to in Paragraph 2 of the Order shall be remitted in full:

- (a) DanaInfra Nasional Berhad to which the Act applies by virtue of the Loans Guarantee (Declaration of Bodies Corporate) (DanaInfra Nasional Berhad) Order 2012 [[P.U. \(A\) 176/2012](#)];
- (b) any holder of the IMTN and ICP Programme;
- (c) any financier of the SFF-i Facility; or
- (d) any other party to any agreement, note, instrument and document relating to the IMTN and ICP Programme or the guarantee given by the Government of Malaysia including any party to whom such agreement, note, instrument or document is transferred or assigned.

Remission of stamp duty

Any stamp duty payable under the Stamp Act 1949 [the SA 1949] in respect of any agreement, note, instrument and document in relation to the product, facility, programme and guarantee referred to in Paragraph 2 of the Order shall be remitted in full.

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6. Directive on management and control requirements for Labuan entities that undertake pure equity holding activities

The Labuan Financial Services Authority has uploaded the '[Directive](#) on management and control requirements for Labuan entities that undertake pure equity holding activities (dated 10 August 2020)' onto its website. The Directive is applicable to a Labuan entity incorporated/ registered/ established under the Labuan legislations that undertakes pure equity holding activities.

The Directive provides that for the purpose of complying with the management and control requirements in Labuan by Labuan entities that undertake pure equity holding activities, the following requirements shall be observed by the Labuan entity:

- (a) To comply with Paragraph 5.5 of Inland Revenue Board of Malaysia's (IRBM) [Public Ruling No. 5/2011](#) 'Residence Status of Companies and Bodies of Person' which is dated 16 May 2011 (*);
- (b) Has its registered office in Labuan;
- (c) Appoints a Labuan trust company as its resident secretary in Labuan; and
- (d) Keeps its accounting and business records including minutes of meeting in Labuan.

**It is to be noted that the Public Ruling No. 5/2011 has been superseded by [Public Ruling No. 9/2019](#) 'Residence Status of Companies and Bodies of Persons' dated 6 December 2019.*

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7. IRBM further updated FAQs on international tax issues due to COVID-19 travel restrictions

The IRBM has on 12 August 2020, updated the [Frequently Asked Questions](#) (FAQs) on international tax issues due to COVID-19 travel restrictions.

The updated FAQs provides further clarity that the movement control order period for the purpose of the FAQs refers to the period from 18 March 2020 to 31 August 2020. The IRBM has also listed “foreign authority travel restrictions” as one of the relevant documents and records in supporting why a company is required to hold its Board of Directors’ meeting in / outside Malaysia due to COVID-19 travel restrictions.

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8. Extension of time for holding of AGM and lodgement of financial statements to the Registrar of Companies

Both public and private companies with financial year ended (FYE) 1 January 2020 until 31 March 2020 can now apply to the Registrar of Companies (ROC) for an extension of time (EOT) of 90 days from the requirements stipulated in the Companies Act 2016 for the holding of Annual General Meeting (AGM) (applicable to public companies only) and lodgement of financial statements. This is an extension of the earlier initiative undertaken by the Companies Commission of Malaysia in view of challenges faced by companies due to the COVID-19 pandemic. An initial EOT relief had covered companies with FYE 1 September 2019 to 31 December 2019.

Unlike the 2 months grace period granted by the IRBM for companies with FYE 31 January 2020, 29 February 2020 and 31 March 2020 to submit their tax returns [as communicated via [Tax Espresso – Special alert \(30 April 2020 edition\): Extended MCO Period to 12 May 2020 – IRBM updated FAQs on tax matters during the MCO Period \(18 March to 12 May 2020\)](#)], companies need to submit an application to ROC in the prescribed format by 30 September 2020 to request for the EOT.

Further details are available on [SSM Practice Directive No. 6/20 \(revised 21 August 2020\)](#) and [SSM FAQs on EOT for circulation, AGM and lodgement of financial statements for FYE 1 January 2020 to 31 March 2020](#).

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Note: Please refer to the respective Public Rulings and Gazette Orders for the full details or conditions.

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<http://www2.deloitte.com/my/en/services/tax.html>

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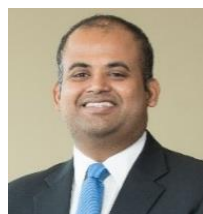
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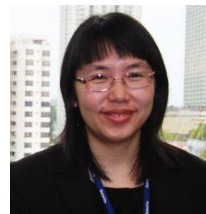
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