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Tax Espresso

IRBM's latest Guidelines, Public Ruling, FAQs and more

July 2020

Greetings from Deloitte Malaysia Tax Services

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Upcoming events

[The Tax Guidelines on the place of business - Understanding the rule and its practical application](#)

Important deadlines:

Task	2020 Due Date	
	31 July	1 August
1. 2021 tax estimates for companies with August year-end		√
2. 6 th month revision of tax estimates for companies with January year-end	√	
3. 9 th month revision of tax estimates for companies with October year-end	√	
4. Statutory filing of 2019 tax returns for companies with December year-end	√	
5. Maintenance of transfer pricing documentation for companies with December year-end	√	
6. Deadline for 2020 CbCR notification for companies with July year-end	√	

1. Public Ruling No. 4/2020: Tax treatment of any sum received and a debt owing that arises in respect of services to be rendered

The Inland Revenue Board of Malaysia (IRBM) has issued Public Ruling No. 4/2020 'Tax treatment of any sum received and a debt owing that arises in respect of services to be rendered' ([PR 4/2020](#)) on 16 June 2020. The objective of the PR is to explain where in the relevant period: -

- any sum received by a person, notwithstanding that no debt is owing to the person; and
- a debt is owing to a person

that arises in respect of services to be rendered is to be treated as gross income of the person from a business for the relevant period.

The salient points include:

A. Tax treatment effective YA 2016 onwards [i.e. upon the introduction of Section 24(1A) of the ITA]

The application of Section 24(1)(b) of the ITA would have to be considered first before applying Section 24(1A) of the ITA. [Paragraph 5 of the PR refers]

Advance payment made?	Liability to pay / A debt has arisen?	Applicable section
Yes	Yes	Section 24(1)(b) of the ITA
Yes	No	Section 24(1A) of the ITA

[Example 5 refers]

B. Services that are not subject to Section 24(1)(b) and Section 24(1A) of the ITA [Paragraph 8 refers]

- Section 24(1)(b) and Section 24(1A) of the ITA are not applicable to services that are governed by separate Income Tax Rules (e.g. business activities connected to services provided under a construction contract or property development).
- Section 24(8) of the ITA provides that Section 24 of the ITA shall not apply to income of a non-resident falling under section 4A of the ITA.
- Deposits for any service received by a service provider upon the signing of an agreement where the deposits are refundable upon completion of the service, do not form part of the gross income of the service provider's business under Section 24 of the ITA (e.g. payments in connection with a security deposit and refundable deposit). It should be noted that forfeited deposits would form part of the gross income of the service provider's business under Section 4(a) of the ITA. [Paragraph 8.4 refers]

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2. Application guidelines for approval of the DGIR under Section 44(6) of ITA for the acquisition or building fund for a house of worship

The following guidelines have been released by the IRBM on 8 June 2020:

- Application guidelines for the approval of the DGIR under Section 44(6) of ITA for a house of worship [acquisition fund \(HWAF\)](#)*; and
- Application guidelines for the approval of the DGIR under Section 44(6) of ITA for a house of worship [building fund \(HWBF\)](#)*.

*These guidelines are available in Bahasa Malaysia only

The purpose of the guidelines is to explain the application procedure for the approval of the Director General of Inland Revenue (DGIR) under Section 44(6) of the ITA for the acquisition or building fund for a house of worship, which covers the following topics:

- Eligibility criteria and requirements for HWAF / HWBF to apply for approval under Section 44(6) of the ITA;
- Application procedure for HWAF / HWBF Committee to obtain approval under Section 44(6) of the ITA;
- Responsibility of HWAF / HWBF Committee after obtaining approval under Section 44(6) of the ITA;
- Consequences of breaching the terms and conditions of the approval by the HWAF / HWBF;
- Approval period and application for an extension of approval period under Section 44(6) of ITA;

- (vi) Power of the DGIR on the approval and on the imposition of the terms and conditions of the approval under Section 44(6) of the ITA;
- (vii) Tax treatment for the donors of HWAF / HWBF approved under Section 44(6) of the ITA; and
- (viii) Checklist and appendices.

Generally, donors who donate to an approved HWAF / HWBF under Section 44(6) of ITA are eligible for a tax deduction of the amount of donation made, restricted to 10% of aggregate income of the donor in the relevant year. The cash donation must be supported by an official receipt (which would have been approved by the IRBM as part of its approval process under Section 44(6) of the ITA) to be eligible for such tax deduction.

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3. Compliance Audit Framework 2020

The IRBM has recently issued the [Compliance Audit Framework 2020](#) which applies to those approved under Sections 44(6), 44(6B), 44(11D) and [P. U. \(A\) 139/2020](#) of the ITA. The Framework explains the compliance audit procedures on an institution, organisation, fund, religious authority or body, public university or a company limited by guarantee which is operating a place of worship (hereafter referred to as “the approved bodies”). It aims to ensure the enforcement of a compliance audit is fair, transparent and uniform. The Framework is effective from 15 June 2020, and is available in Bahasa Malaysia only.

The approved bodies must operate consistently in line with the objective of their establishment. Hence, the terms and conditions imposed on the approval granted under the above-mentioned sections and order should always be complied with by the approved bodies throughout the approval period.

The Framework also outlines the rights and responsibilities of the audit officer, representatives of the approved bodies, and tax agents. In general, this framework is intended to:

- assist the compliance audit staff in performing their duties more efficiently and effectively; and
- assist the approved bodies in fulfilling their responsibilities.

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4. Guidelines on the stamping of share transfer instruments for shares that are not listed in Bursa Malaysia Berhad

The IRBM has released guidelines on the stamping of share transfer instruments for shares that are not listed in Bursa Malaysia Berhad ([Guidelines 2020*](#)) on 23 June 2020. [Note: [Guidelines 2019*](#) dated 6 November 2019 was also released by IRBM on the same day but it was superseded by Guidelines 2020.]

**The guidelines are available in Bahasa Malaysia only.*

The purpose of Guidelines 2020 (which supersedes Guidelines 2019) is to amend and replace the original [Guidelines 2001](#) by revisiting the basis of valuation of shares to be relevant to existing legislations, including court decisions and current administrative changes.

Category	The value of shares subject to stamp duty	
	Original basis of valuation (per Guidelines 2001)	Recommended basis of valuation to be applied beginning 1 March 2020
Sale of shares requiring Securities Commission (SC) approval	Price or value approved by SC	Price or value approved by SC
Loss-making companies	Whichever is higher: <ol style="list-style-type: none"> i. Par value / nominal value; or ii. Net tangible asset; or iii. Consideration 	Whichever is higher: <ol style="list-style-type: none"> i. Net tangible asset; or ii. Consideration

Category	The value of shares subject to stamp duty	
	Original basis of valuation (per Guidelines 2001)	Recommended basis of valuation to be applied beginning 1 March 2020
Profit-making companies	Whichever is higher: i. Par value / nominal value; or ii. Price Earning Ratio; or iii. Consideration	Whichever is higher: i. Net tangible asset; or ii. Consideration
Newly incorporated companies	Par value	Consideration
Inactive companies: – Dormant – Zero-revenue – Threshold-qualified	Par value	Consideration

The Audited Financial Report must be submitted together with the Form of Transfer of Securities under Section 105 of the Companies Act 2016 upon application of adjudication.

Pursuant to the [Practice Directive No. 3/2017](#) (Qualifying Criteria for Audit Exemption for Certain Categories of Private Companies) issued by the Companies Commission of Malaysia, the exemption of submission of the Audited Financial Report is applicable to dormant companies, zero-revenue companies and threshold-qualified companies.

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5. IRBM issued FAQs on Advance Pricing Arrangement treatment due to the COVID-19 pandemic

On 16 June 2020, the IRBM issued [Frequently Asked Questions](#) (FAQs) pertaining to the Advance Pricing Arrangement (APA) treatment due to the COVID-19 pandemic.

The salient points include:

A. New APA application

IRBM is currently not accepting any new APA application from businesses affected by the COVID-19 pandemic until further notice, since the outlook is still highly uncertain. For businesses not impacted by COVID-19, taxpayers can still proceed with the APA application.

B. Treatment of on-going APA

The review process of an ongoing APA application request is based on the information previously submitted to the IRBM. The proposed arm's length range will be based on the benchmarking analysis of normal economic and market conditions i.e. pre-COVID-19 period. Newly proposed margins for ongoing APA due to the pandemic are deemed unsuitable as they are based on highly uncertain projections/forecasts.

IRBM does not allow any amendments or substantial updates on material changes to the ongoing application as the full impact of COVID-19 is highly uncertain at this point of time.

Depending on the facts and circumstances of the case, the term test may be applied, to take into account the impact of COVID-19 on the proposed covered transaction. The Annual Compliance Report (ACR) will still need to be submitted annually, notwithstanding the application of term test. Any compensating adjustments shall be made at the end of the APA covered period.

C. Treatment of concluded APA

The taxpayer is required to comply with all critical assumptions stated in the APA agreement with no exceptions. If a taxpayer is unable to fulfil the critical assumptions due to COVID-19, the taxpayer can either revise or apply for the cancellation of the APA.

For the revision of an APA, the taxpayer must notify the IRBM within 30 days of becoming aware of the need for a revision to the APA, which could be due to the economic and business impacts from COVID-19 that may have triggered a failure to

meet the critical assumptions stipulated. The application for an APA revision or cancellation must be supported with relevant documents.

Please see the [FAQs \(published on 16 June 2020\)](#) for further details.

Note: IRBM will update the [FAQs](#) from time to time based on current development and circumstances relating to COVID-19 impacts and issues.

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6. IRBM updated FAQs pertaining to special deduction on rental reduction offered to SME tenants

Further to our [Special Alert @ 28 April 2020](#), the IRBM has amended the [Frequently Asked Questions](#) (FAQs) pertaining to the special deduction on rental reduction offered to Small and Medium-sized Enterprise (SME) tenants on 15 June 2020.

The following are the key changes:

A. Extended period for special deduction - April 2020 to September 2020

As reported in our [Special Alert @ 6 June 2020](#) on the announcement of the “Short-Term Economic Recovery Plan”, tax deduction given to landlords who reduce / waive at least 30% of gross rental from April 2020 to June 2020 on premises rented to SME tenants used for the purpose of their business, is extended for another three months to 30 September 2020.

B. Definition of SME (updated)

For the landlord to be eligible for the special tax deduction, the tenant must be **registered as an SME** and obtain an **SME Status Certificate** from the SME Corporation Malaysia.

Please refer to the [updated Guideline for New SME Definition](#) issued by SME Corporation Malaysia for more details.

C. Supporting documents (updated)

Taxpayers (landlords) who claim the special deduction are required to provide and keep the following supporting information and documents:

- (i) Stamped tenancy agreement;
- (ii) Rental income statement;
- (iii) SME Status Certificate issued by SME Corporation Malaysia*; and
- (iv) Tenant’s information, rental information and rental reduction methods.

*Information regarding registration of SME can be accessed at <https://smereg.smecorp.gov.my> or on the official website of SME Corporation Malaysia.

The requisite information in item (iv) above have to be provided in the Working Sheet (Helaian Kerja) of the taxpayer’s Income Tax Return Form. Please refer to the example attached in Page 5 of the [FAQs](#).

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

Further to our [Special Alert @ 13 May 2020](#), the IRBM has amended the [Frequently Asked Questions](#) (FAQs) on international tax issues due to COVID-19 travel restrictions.

The salient points in the amended FAQs include:

- “Temporary presence in Malaysia due to COVID-19 travel restrictions” refers to the Movement Control Order (MCO) period in Malaysia.

- The IRBM is prepared to presume a company is a Malaysian resident, if the company is not able to convene its Board of Directors' (BOD) meeting in Malaysia because of the COVID-19 travel restrictions, provided the company meets the following conditions:
 - (a) the company is a resident in the immediately preceding year of assessment; and
 - (b) the directors of the company have to attend the BOD meeting held outside Malaysia (via physical meeting or electronic means) due to COVID-19 travel restrictions.

The company is no longer required to provide evidence that there are no changes to the company's economic circumstances.

- The IRBM is prepared to assume a non-resident company to be a non-resident in Malaysia if the company is required to hold the BOD meeting in Malaysia due to COVID-19 travel restrictions. The company is no longer required to provide evidence that there are no changes to the company's economic circumstances.
- Section B "Permanent Establishment" No. 5 of the FAQs applies to all enterprises, including partnership and limited liability partnership.
- For non-resident individuals who arrived in Malaysia for a company assignment or on vacation before the implementation of travel restrictions due to COVID-19 and are working from Malaysia for their overseas employer, such individuals are considered as not exercising employment in Malaysia for the period of their temporary presence in Malaysia, provided that the following conditions are met: -
 - (a) temporary presence due to COVID-19 travel restrictions*;
 - (b) the work done during the temporary presence in Malaysia is not related to the assignment in Malaysia and would not have been performed in Malaysia if not for COVID-19 travel restrictions;
 - (c) employment with the same overseas employer, prior to the COVID-19 travel restriction^; and
 - (d) leaves Malaysia immediately after the travel restriction on COVID-19 ends in Malaysia^.

*In the superseded FAQs, the period of temporary presence is for a period of not more than 60 days.

^Items (c) and (d) are newly added conditions reflected in the amended FAQs.

Please see the amended [FAQs](#) for details and other matters addressed (including the relevant documentations and records required to be kept by a taxpayer).

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8. Confirmation and clarification obtained from IRBM on P. U. (A) 161 - 164/2019 and P. U. (A) 274/2019

The Chartered Tax Institute of Malaysia (CTIM) has sought confirmation and clarification in its letter dated 28 November 2019 to the IRBM on the following gazetted orders:

- (i) [P. U. \(A\) 161/2019](#), [P. U. \(A\) 162/2019](#) and [P. U. \(A\) 163/2019](#), gazetted on 7 June 2019 regarding income tax exemption for companies achieving increase in export sales;
- (ii) [P. U. \(A\) 164/2019](#), gazetted on 11 June 2019 regarding further deduction for employment of senior citizen, ex-convict, parolee, supervised person and ex-drug dependant; and
- (iii) [P. U. \(A\) 274/2019](#), gazetted on 3 October 2019 regarding capital allowance on development cost for customised computer software.

The IRBM has provided responses in its [letter dated 4 June 2020](#) to CTIM (*). Among others, the IRBM has confirmed that the intention of Paragraph 3(3)(a) of P. U. (A) 161/2019 and Paragraph 3(2)(a) of P. U. (A) 162/2019 is to restrict the export incentives to a company which shareholding is *directly* held by Malaysian citizens (minimum shareholding of 60%). Hence, a company *indirectly* owned by Malaysian citizens (minimum shareholding of 60% held through another company) will not qualify for the export incentive.

Note: The revoked deduction rules and exemption order, i.e. [P. U. \(A\) 128/1999](#) and [P. U. \(A\) 158/2005](#) did not preclude companies with corporate shareholders from enjoying the export incentive. For instance, prior to the revocation of the P. U. (A) 158/2005 by P. U. (A) 161/2019, a company incorporated in Malaysia with at least 60% of its issued share capital

Malaysian owned is eligible for the incentive under the revoked order. P. U. (A) 158/2005 shall continue to apply to any exemption granted under that order up to 7 June 2019.

*Source: CTIM's e-circular to members (e-CTIM TECH-DT 45/2020) dated 16 June 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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