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## Tax Espresso

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

November 2020



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MATTERS**

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# Greetings from Deloitte Malaysia Tax Services

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## Upcoming events:

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## Important deadlines:

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

## 1. Practice Note No. 3/2020 – Clarification on determining the gross income from business sources of not more than RM50million of a company or limited liability partnership

According to the Practice Note No. 3/2020 issued by the Inland Revenue Board of Malaysia (IRBM) on 18 May 2020, investment holding companies **not listed** on BURSA Malaysia with profit from rent income subject to section 60F of the Income Tax Act, 1967 (ITA) shall no longer be eligible for tax treatment under Paragraph 2A, Part 1 of Schedule 1 of the ITA, regardless of whether the investment holding company is having a paid-up share capital of RM2.5million or below.

**In brief, companies with investment properties and having only rental income will now no longer enjoy the privilege of a lower tax rate of 17% on the first RM600,000 income chargeable to tax. Instead the chargeable income shall be subject to a tax rate of 24%.**

Following the above, investment holding companies are advised to estimate the tax payable for the year of assessment (YA) 2021 based on the prevailing tax rate of 24%.

If the initial tax estimation for YA 2021 has been submitted based on 17% tax rate on the first RM600,000 chargeable income, the company is advised to revise the tax estimation accordingly to 24% to avoid the 10% penalty for any underestimation of tax payable under Section 107C(10) of ITA.

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## 2. Public Ruling No. 7/2020 – Appeal against an assessment and application for relief

The IRBM has recently uploaded [PR No. 7/2020](#) (dated 7 October 2020) onto its website to replace [PR No. 12/2017](#) (dated 29 December 2017 and amended on 25 September 2018). The IRBM has clarified on the following matters in its updates in PR No. 7/2020:

### I. Appeal against best judgement assessment under Section 99(1A) of the ITA which came into effect in YA 2019 *[Paragraph 4.8 of the PR refers]*

Effective YA 2019, Section 99(1A) of the ITA requires that if the best judgement assessment has been made by the Director General of Inland Revenue (DGIR) under Section 90(3) of the ITA against a company, limited liability partnership, trust body or co-operative who fails to submit ITRF in accordance with the provision of Section 77A(1) of the ITA, the appeal against the best judgement assessment shall be made by submitting a Form Q *together with an Income Tax Return Form (ITRF)* for the YA involved, no later than thirty (30) days after the notice of assessment has been served.

For a person other than a company, limited liability partnership, trust body or co-operative society, the appeal against the best judgement assessment shall be made by submitting a Form Q no later than thirty (30) days after the notice of assessment has been served as provided under Section 99(1) of the ITA.

*[Our remark: Section 77A(4) of the ITA requires that the ITRF furnished by a company under Section 77A of the ITA shall be based on financial statements made in accordance with the requirements of the Companies Act 2016.]*

### II. Limitation period for application of extension of time (Form N) effective YA 2020 onwards *[Paragraph 9.3 of the PR refers]*

Effective YA 2020, Section 100 of the ITA provides that an application of extension of time to submit Form Q via Form N must be furnished to the DGIR within 7 years from 30 days after the notice of assessment has been served.

*[Note: The 7-year limitation period does not apply to the submission of Form N for an application for extension of time to appeal against an assessment for YA 2019 and earlier YAs.]*

**III. Appeal filed is similar to an application for negotiation under a mutual agreement procedure as provided under Section 102(1A) of the ITA [Paragraph 6 of the PR refers]**

With effect from 24 January 2014, Section 102(1A) of the ITA allows a postponement of Form Q submission to SCIT by the DGIR if the person who appeals (appellant) has applied for resolution under the Mutual Agreement Procedure with a Competent Authority. The Form Q will not be submitted to the SCIT until the Mutual Agreement Procedure is finalised.

The IRBM clarified in the PR that if the appellant agrees with the decision of the Mutual Agreement Procedure, the appellant must submit an application letter to cancel the Form Q within 30 days from the date the Mutual Agreement Procedure decision is received.

Please refer to [PR No. 7/2020](#) for the various examples and full details.

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**3. Public Ruling No. 8/2020 – Taxation of a resident individual Part I - gifts or contributions and allowable deductions**

The IRBM has recently uploaded [PR No. 8/2020](#) (dated 9 October 2020) to replace [PR No. 4/2018](#) (dated 13 September 2018). PR No. 8/2020 incorporates the changes made to the allowable deductions for a resident individual under Sections 44 to 49 of the ITA which are effective from YA 2019 and YA 2020, as summarised below.

**Allowable deductions effective YA 2020**

- A. The maximum amount of gift of money or cost of contribution in kind allowed as deduction under the proviso to Sections 44(6), 44(11B), 44(11C) and 44(11D) of the ITA is increased to 10% (from 7%) of the aggregate income i.e.:
- i. gift of money made to any institution, organisation or a fund approved by the Director General of Inland Revenue (DGIR);
  - ii. gift of money to approved sports activity;
  - iii. gift of money or cost of contribution in kind to approved national interest project; and
  - iv. gift of money in the form of wakaf or endowment.

The list of approved institutions or organisations can be obtained from the official IRBM portal at [www.hasil.gov.my](http://www.hasil.gov.my).

- B. Medical expenses for serious disease treatment of up to RM6,000 under Section 46(1)(g) is extended to include fertility treatment. Examples 8 and 9 of the PR clarified that for a married couple who elects for a separate assessment and where both individuals have made a claim for deduction, the claim must be evidenced by a receipt issued separately in the name of the individuals (e.g. two receipts issued separately in the name of the husband and wife for the amount each individual has expended for the medical treatment).
- C. The maximum amount of deduction for child care fees (child must be aged 6 and below) under Section 46(1)(r) is increased from RM1,000 to RM2,000 regardless of the number of children sent to the child care or kindergarten.

**Allowable deductions effective YA 2019**

- D. Effective for YAs 2019 and 2020 only, the maximum amount of deduction for the net contribution made by an individual for his/her child into the Skim Simpanan Pendidikan Nasional (SSPN) account is increased from RM6,000 to RM8,000 as provided under Section 46(1)(k).
- E. Effective YA 2019, the maximum amount of deduction for payment of insurance premiums and contribution to an approved scheme under Section 49(1) and Section 49(1A) is increased from RM6,000 to RM7,000 and be rearranged as follows:
- i. not exceeding RM3,000 for insurance premiums paid;
  - ii. not exceeding RM4,000 for contribution to approved scheme (other than a private retirement scheme) made by the employee or by a self-employed person within the meaning of the Employees Provident Fund Act 1991; or
  - iii. not exceeding RM4,000 for contribution made under any written law relating to widow, widower and orphan's pension or under any approved scheme within the meaning of any such law.

In the case of a pensionable officer within the meaning of Section 2 of the Pensions Act 1980 who made no deduction under Paragraph (b) or (c) as mentioned above, the maximum amount of deduction under Paragraph (a) is RM7,000.

Please see [PR No. 8/2020](#) for the various examples and full details provided.

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#### 4. Guidelines and Application Form to apply for DGIR's approval for the purposes of Section 44(11D) of the ITA in respect of endowment

The IRBM has recently uploaded the [Guidelines](#) to apply for the approval of the Director General of Inland Revenue (DGIR) by a public university for the purposes of Section 44(11D) of the ITA in respect of endowment (dated 6 October 2020) together with the [Application form](#) for endowment approval under Section 44(11D) of the ITA by a public university. A list of eligible public universities is provided in the last page of the Guidelines.

The purpose of the Guidelines is to explain the procedures to apply for an approval under Section 44(11D) of the ITA by a public university in respect of endowment. The Guidelines cover:

- i. Institutions which are eligible for approval under Section 44(11D)
- ii. Establishment of an Endowment Fund by a public university
- iii. Objectives which may be considered for approval under Section 44(11D)
- iv. Application procedures for approval under Section 44(11D)
- v. Conditions of approval under Section 44(11D)
- vi. Responsibilities of a public university after obtaining an approval under Section 44(11D)
- vii. Consequences of breach of conditions
- viii. Period of approval, extension and appeal on the application made under Section 44(11D)
- ix. The DGIR's power to approve and to impose conditions
- x. Tax treatment of a public university which has been approved under Section 44(11D)
- xi. Tax treatment of an endowment donor

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

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#### 5. Guidelines and Application Form to apply for DGIR's approval for the purposes of Section 44(11D) of the ITA in respect of wakaf

The IRBM has recently uploaded the [Guidelines](#) (dated 8 October 2020) and [Application Form](#) relating to the application procedure for the approval of the DGIR by a *wakaf* institution or organisation for the purposes of Subsection 44(11D) of the ITA.

The Guidelines cover:

- i. Institutions which are eligible for approval under Subsection 44(11D)
- ii. Eligibility criteria of the *wakaf* institution or organisation or *mutawalli* for the application of approval under Subsection 44(11D)
- iii. Objectives which may be considered for approval under Subsection 44(11D)
- iv. Application procedure for approval in respect of *wakaf* under Subsection 44(11D)
- v. Conditions of approval in respect of *wakaf* under Subsection 44(11D)
- vi. Responsibilities of *wakaf* institutions or organisations or *mutawalli* after obtaining approval under Subsection 44(11D)
- vii. Consequences of breach of conditions
- viii. Period of approval, extension and appeal on the application made under Subsection 44(11D)
- ix. DGIR's power to approve and to impose conditions
- x. Tax treatment of the *wakaf* institution or organisation which has been approved under Subsection 44(11D)
- xi. Tax treatment of *wakaf* contributors

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

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## 6. IRBM updated FAQs on Advance Pricing Arrangement treatment due to the COVID-19 pandemic

The IRBM has on 7 October 2020, updated the Frequently Asked Questions (FAQs) on Advance Pricing Arrangement (APA) treatment due to the COVID-19 pandemic.

The key changes reflected in the [updated FAQs](#) are as follows:

### I. New APA application

IRBM is currently not accepting any new APA application from businesses which have been significantly affected by the COVID-19 situation.

Other businesses can still proceed with a new APA application. The standard APA procedures for APA application still apply i.e. based on current APA Rules and APA Guidelines.

### II. Treatment of ongoing APA process under finalisation

The application of term test for Bilateral Advance Pricing Arrangement (BAPA) application is subject to negotiation / agreement with the Competent Authorities of the corresponding jurisdictions.

Please refer to the [FAQs \(updated and published on 7 October 2020\)](#) 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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## 7. FAQs on international tax issues due to COVID-19 travel restrictions (updated as of 9 October 2020)

The IRBM has on 9 October 2020, updated the '[Frequently Asked Questions](#) (FAQs) on international tax issues due to COVID-19 travel restrictions.

### I. Movement control order period for the purpose of the FAQs

The *movement control order period* is from 18 March 2020 until 31 December 2020. The period is as prescribed by the Ministerial order made under Section 11 of the Prevention and Control of Infectious Diseases Act 1988 [Act 342], as gazetted from time to time.

### II. Foreign resident company uncertain whether its employees' temporary presence in Malaysia due to COVID-19 travel restriction could trigger Malaysian PE / POB issue

The IRBM clarified that 'FAQ No. B5 *Permanent Establishment*' also applies to a foreign resident company who is resident in a country which does not have a double taxation agreement (DTA) with Malaysia. The IRBM will consider that the temporary presence of such foreign resident company's employees or personnel did not result in the creation of a place of business (POB) in Malaysia (i.e. the company is deemed to have no place of business in Malaysia), provided it meets the criteria spelt out in the IRB's feedback on 'FAQ No. B5 *Permanent Establishment*'.

### III. Scenario where a non-resident individual is considered as not exercising employment in Malaysia

[No. C10 in FAQs (new)]

The IRBM considers a non-resident individual who:

- has been offered to work in Malaysia during the movement control period;
- unable to enter Malaysia to start work due to COVID-19 travel restriction; and
- currently working from overseas,

as not exercising its employment in Malaysia as there is no "temporary absence period due to COVID-19 travel restrictions" issue. Therefore, the employment income can be taxed under domestic tax law in the country where the employment is exercised.

#### IV. Scenario where a non-resident individual may be considered as exercising employment in Malaysia

[No. C11 in FAQs (new)]

The following scenario was also considered in the FAQs:

- A non-resident individual arrived in Malaysia for a vacation before COVID-19 travel restrictions were imposed;
- he had to work from Malaysia due to COVID-19 travel restrictions; and
- before the movement control period ended, the non-resident individual ceased employment with his foreign employer and accepted an offer to work with a company in Malaysia.

Since the non-resident individual did not return to his home country, he is considered to be present in Malaysia permanently. As such, the IRBM considers his employment with the foreign employer as employment exercised in Malaysia which will be taxed in accordance with Malaysian Income Tax Act 1967 as there is no "temporary absence period due to COVID-19 travel restrictions" issue.

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

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### 8. Income Tax (Exemption) (No. 4) Order 2020 [P. U. (A) 306/2020]

The Income Tax (Exemption) (No.4) Order 2020 [[P. U. \(A\) 306/2020](#)] was gazetted on 22 October 2020 and has effect from the YA 2020. The Order exempts an employer from the payment of income tax in respect of any financial assistance fund received by the employer under the Employment Retention Program.

*\*Employment Retention Program is a financial assistance program managed by the Social Security Organisation for employer to retain his employee that has been given a notice of unpaid leave for a period from 1 March 2020 until 30 June 2020.*

To qualify for an exemption under the Order, the application for the financial assistance fund by the employer shall be received by Social Security Organisation from 20 March 2020 to 15 June 2020.

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

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### 9. Income Tax (Exemption) (No. 5) Order 2020 [P. U. (A) 307/2020]

The Income Tax (Exemption) (No. 5) Order 2020 [[P. U. \(A\) 307/2020](#)] was gazetted on 22 October 2020 and has effect for the YA 2020.

The Order exempts any financial assistance received by an employee from his employer under the Employment Retention Program in ascertaining the gross income from his employment in the basis period for a YA.

Employment Retention Program is a program under the Economic Stimulus Package 2020 managed by the Social Security Organisation that provides financial assistance of RM600 per month to an employee—

- i. who is given notice of unpaid leave by his employer for a period between 1 March 2020 until 30 June 2020;
- ii. whose salary is not more than RM4,000 per month; and
- iii. who is registered and has contributed to the Employment Insurance System.

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

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## 10. Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020

The Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 [known as the “Act”] was recently published in the *Gazette* on 23 October 2020 to ease the impact of COVID-19 in the short-term by covering two main segments, i.e. inability of any party or parties to perform contractual obligation and the modifications to relevant provisions of other legislations.

### Introduction

The Act provides that except where the date of commencement and period of operation have been provided in respect of the respective Parts in the Act, the Act shall come into operation on the date of publication of the Act, and shall continue to remain in operation for a period of two (2) years from such date of publication.

Notwithstanding that, the Prime Minister may, by order published in the *Gazette*, extend the operation of the Act and the order for extension may be made more than once. Such order made shall be laid before the Dewan Rakyat (House of Representatives) as soon as practicable after its publication in the *Gazette*.

In the event of any conflict or inconsistency between the provisions of the Act and any other written law, the provisions of the Act shall prevail and the conflicting or inconsistent provisions of such other written law shall be deemed to be superseded to the extent of the conflict or inconsistency.

### Inability to perform contractual obligation (Part II of the Act)

The inability of any party or parties to perform any contractual obligation arising from any of the categories of contracts specified in the Schedule to this Part to the Act due to the measures prescribed, made or taken under the Prevention and Control of Infectious Diseases Act 1988 [Act 342] to control or prevent the spread of COVID-19 shall not give rise to the other party or parties exercising his or their rights under the contract. This Part of the Act is deemed to have come into operation on 18 March 2020 and shall continue to remain in operation until 31 December 2020. An extension may be made by the Minister by order published in the *Gazette*.

Below is the list of categories of contract specified in the Schedule to Part II:

1. Construction work contract or construction consultancy contract and any other contract related to the supply of construction material, equipment or workers in connection with a construction contract
2. Performance bond or equivalent that is granted pursuant to a construction contract or supply contract
3. Professional services contract
4. Lease or tenancy of non-residential immovable property
5. Event contract for the provision of any venue, accommodation, amenity, transport, entertainment, catering or other goods or services including, for any business meeting, incentive travel, conference, exhibition, sales event, concert, show, wedding, party or other social gathering or sporting event, for the participants, attendees, guests, patrons or spectators of such gathering or event
6. Contract by a tourism enterprise as defined under the Tourism Industry Act 1992 [Act 482] and a contract for the promotion of tourism in Malaysia
7. Religious pilgrimage-related contract

*Note: The Minister may, by order published in the Gazette, amend the above Schedule to Part II to the Act.*

### Modifications made to other legislations (Part III to Part XVIII)

The Act also made modifications to relevant provisions of other legislations listed below:

- i. Modifications to the Limitation Act 1953
- ii. Modifications to the Sabah Limitation Ordinance
- iii. Modifications to the Sarawak Limitation Ordinance
- iv. Modifications to the Public Authorities Protection Act 1948
- v. Modifications to the Insolvency Act 1967
- vi. Modifications to the Hire-Purchase Act 1967
- vii. Modifications to the Consumer Protection Act 1999
- viii. Modification to the Distress Act 1951
- ix. Modifications to the Housing Development (Control And Licensing) Act 1966
- x. Modifications to the Industrial Relations Act 1967
- xi. Modification to the Private Employment Agencies Act 1981
- xii. Modifications to the Land Public Transport Act 2010
- xiii. Modifications to the Commercial Vehicles Licensing Board Act 1987
- xiv. Modifications to the Courts Of Judicature Act 1964
- xv. Modification to the Subordinate Courts Act 1948
- xvi. Modification to the Subordinate Courts Rules Act 1955

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## 11. MASB Staff Paper – Sales from residential property upon enactment of COVID-19 Act

The Malaysian Accounting Standards Board (MASB) recently published a [Staff Paper](#) which considered if the [Temporary Measures for Reducing the Impact of Covid-19 Act](#) affects the recognition of revenue over time from the sales of residential property in accordance with MFRS 15.35(c) *Revenue from Contracts with Customers* (MFRS 15). The Act provides temporary measures to reduce the impact of COVID-19 by modifying specified legislations including the Housing Development (Control and Licensing) Act 1966 (HDA).

The MASB Staff Paper concluded that the modifications in the Act **do not alter or vary** the rights or obligations of a developer and customer in a sale and purchase agreement (SPA) prescribed under the HDA that would affect the developer meeting the “over time” revenue recognition criteria. The MASB Staff Paper only addresses the implication of the Act affecting the timing of revenue recognition of SPAs applicable to Peninsular Malaysia and the Federal Territory of Labuan. Its scope is therefore narrow by design. We believe other areas may require further consideration such as:

- i. for contracts not affected by the Act, whether a force majeure clause or similar may exist that provides an alternative to the temporary measures in the Act and the resulting financial reporting implications. This may entail the need for a legal opinion;
- ii. whether the transaction price used to determine revenue will be impacted by liquidated damages that are beyond the ambit of the Act;
- iii. whether there would be expected additional costs arising from potential defects liability from the extended period for these liabilities; and
- iv. whether the nature of any other additional costs incurred in light of COVID-19 represents “progress” in the determination of “over time” revenue recognition (typically using a percentage of completion calculation).

For any clarification, please reach out to our Accounting Technical Team below:

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## 12. SSM Practice Directive No. 06/2020 (revised 22 October 2020) – Extension of time for lodgement of financial statements

Further to the relief mentioned in our September 2020 newsletter on a second revision to the extension of time (EOT) for lodgement of financial statements, the Companies Commission of Malaysia (SSM) has now made a third revision to Practice Directive No. 06/2020 (revised 22 October 2020) (PD) that allows affected companies to lodge their financial statements to the Registrar **either by:**

- i. the timeline stipulated by the EOT (if the expiry date for lodgement based on the EOT falls on a date later than 31 December 2020); or
- ii. latest by 31 December 2020.

This would be applicable to companies with financial year ended **after 31 August 2019 to 31 March 2020**.

Illustrative examples are provided in the SSM's FAQs and further details are available on SSM's website:

- [SSM PD No.06/2020 \(3<sup>rd</sup> revision – 22 October 2020\)](#)
- [SSM FAQs on EOT](#)

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

We invite you to explore other tax-related information at:

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

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