TaXavvy

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The IRB has recently issued the following public rulings:

- Public Ruling 7/2018 – Accelerated Capital Allowance ("PR 7/2018")
- Public Ruling 8/2018 – Tax Incentives for BioNexus Status Companies ("PR 8/2018")
- Public Ruling 9/2018 – Taxation of Unit Holders of REITs / PTFs ("PR 9/2018")

Public Ruling 7/2018 - Accelerated Capital Allowance

PR 7/2018 is an updated (second) edition of Public Ruling 4/2013 - Accelerated Capital Allowance ("PR 4/2013"). It explains the tax treatment of accelerated capital allowances (ACA) for plant and machinery under various gazette orders which are in force and gazetted up to 2017.

The IRB has updated and reorganised the contents of this public ruling to explain the ACA claim on qualifying plant and machinery. The gazette orders prescribing ACA in relation to industrial building allowance and agriculture allowance have been removed from PR 7/2018 as they are dealt with under the following public rulings:

- Public Ruling 8/2016 - Industrial Buildings Part,
- Public Ruling 10/2016 - Industrial Buildings - Part II, and
- Public Ruling 1/2016 - Agricultural Allowances.

The key points to note from PR 7/2018 are as follows:

ACA rates vs normal capital allowance rate

A taxpayer has the option to claim a higher allowance on plant & machinery based on the ACA rates or at the normal capital allowance rates. However, the option to claim ACA is subject to the conditions specified in the relevant gazette order that determines the eligibility of the plant & machinery and / or of the taxpayer for the related ACA.

Where a taxpayer has chosen to claim the higher ACA rate or the normal capital allowance rate, the same rate is to be applied for that asset until the allowance is fully claimed. Nevertheless, different rates of allowance can be applied for different assets as long as they are consistently applied until fully claimed.

It is not mandatory for a taxpayer to claim capital allowance on plant and machinery at accelerated rates as normal capital allowance rates may be opted for.

Non-application or mutual exclusion provision

ACA vs Reinvestment Allowance (RA)

The following gazette orders provide that ACA would not apply "for the period during which the company has been given / granted RA under Schedule 7A of the Income Tax Act 1967 (ITA)":

- Income Tax (Accelerated Capital Allowances) (Recycling of Wastes) Rules [P.U. (A) 505/2000]
- Income Tax (Accelerated Capital Allowances) (Reinvestment in a Qualifying Project) Rules [P.U. (A) 506/2000]
- Income Tax (Accelerated Capital Allowances) (Power Quality Equipment) Rules [P.U. (A) 87/2005]

PR 7/2018 clarifies that a taxpayer who does not choose to claim RA even if it is eligible to do so, shall be eligible to claim ACA.

Meaning of "exemptions under Section 127"

"Exemptions under Section 127" referred to in the non-application provisions are the exemptions under Sections 127(3)(b) and 127(3A) of the ITA.

Public Ruling 8/2018 – Tax Incentives for BioNexus Status Companies

PR 8/2018 seeks to explain the 3 main types of incentives available to a BioNexus Status Companies (BSC) approved by the Minister of Finance: i) Tax exemption on statutory income, ii) Further exemption on statutory income, and iii) Industrial building allowance.

A BSC is a company granted BioNexus status and is engaged in a business of value-added biotechnology or life sciences activities such as biology, medicine, anthropology or ecology, that deal with living organisms and their organisation, life processes, and relationships to each other and their environment. A BSC is eligible for following key tax incentives:

i) Tax exemption on statutory income

Tax exemption on statutory income is available to a BSC in the following forms:

Tax exemption type	Income exempted	Exemption period
Tax exemption on statutory income	Statutory income of new business	10 consecutive years of assessment (YA) from the first YA of deriving statutory income from the new business
	Statutory income from existing approved business and expansion project	5 consecutive YAs from the first YA of deriving statutory income from the existing approved business and expansion project, but not earlier than the YA in which the date of approval falls.
Tax exemption on statutory income equivalent to an allowance of 100% of qualifying capital expenditure (QCE) incurred	Statutory income from new business equivalent to 100% of QCE incurred in a YA within a period of 5 years	5 years from the date the first QCE has been incurred provided that the date is not earlier than 1 May 2005 or three years from the date of approval as a BSC, whichever is later;
	Statutory income from expansion project equivalent to 100% of QCE incurred in a YA within a period of 5 years	5 years from the date the first QCE has been incurred provided that date is not earlier than the date of the application being received by the Malaysian Bioeconomy Development Corporation Sdn Bhd

Various examples have been included in the public ruling to illustrate the calculation of consecutive YAs for tax exemption purposes and the determination of the 5-year period for the incurrence of QCE.

ii) Further exemption on statutory income

A BSC that has enjoyed the incentive under (i) above may continue to enjoy a further exemption by being subjected to an income tax rate of 20% in respect of statutory income derived from an approved business (new business or expansion project) for 10 consecutive YAs after the end of the first exemption period under (i) above.

iii) Industrial building allowance

A BSC may claim industrial building allowance (IBA) at the rate of 10% on qualifying building expenditure (QBE). QBE incurred before the commencement of a new business or a new expansion project shall be deemed to have been incurred on the date of commencement of the business or project.

Public Ruling 9/2018 - Taxation of Unit Holders of REITs / PTFs

PR 9/2018 replaces Public Ruling 7/2012 - Taxation of Unit Holders of REITs / PTFs. The contents of the public ruling has been updated to reflect the amendments made to restrict the REITs / PTFs which are entitled to tax exemption to only those which are listed on Bursa Malaysia. This amendment came into effect from YA 2017.

REITs / PTFs that distribute 90% or more of their total income are granted tax exemption on their total income. With effect from YA 2017, this exemption is restricted to REITs / PTFs which are listed on Bursa Malaysia. PR 9/2018 has been updated to reflect this position, as well as to clarify the tax treatment of income distributed and received by the unit holders, that is:

1. Where the income has been taxed at the REIT / PTF level, the unit holder is entitled to a tax credit to be offset against the tax payable of the unit holder.

2. In terms of tax exempt unit holders, where the income distributed has been subjected to withholding tax, the tax exempt unit holders would be entitled to refund of the tax withheld.

Guideline on income tax exemption for religious institution or organisation

The IRB has issued a guideline on income tax exemption for religious institutions or organisations under the Income Tax (Exemption) Order 2017 ("the order").

The salient points of the guideline are as follows:

- The exemption is given automatically as long as the religious institution / organisation meets the requirements set out in the order. No separate application for approval is required to enjoy the income tax exemption.

    a) The religious institutions / organisations are those established in Malaysia for religious worship / advancement and not operated primarily for profit.

    b) They must be registered with the Registrar of Societies in Malaysia or any written law governing the head of religious organisation as specified in the guideline.

- The exemption does not apply to religious institutions / organisations registered under the Companies Act 2016.

- All existing and new religious organisations / institutions eligible for the exemption are exempted from submitting an income tax return under section 77 but are still subject to the other provisions in the ITA, including keeping of records, list of activities carried out and preparation of audited accounts. The organisations/institutions may still be requested to submit audited accounts or other necessary information from time to time.

The Income Tax (Exemption) Order 2017 provides clearly that religious institutions or organisations will be exempted from the payment of tax in respect of gross income derived from all sources. This puts to rest the uncertainty caused by the amendment made to paragraph 13(1)(b), Schedule 6 of the ITA effective YA 2017 which appeared to restrict the tax exemption to income in respect of contributions received for charitable purposes only.

Income Tax (Exemption) (No.3) Order 2018

The Income Tax (Exemption) (No.3) Order 2018 ("the exemption order") has been gazetted on 5 October 2018 and is effective for YA 2017 to YA 2020. The exemption order provides exemption on income of:

1. *A International Currency Business Unit in an Islamic licensed bank or a licensed institution which carries on Islamic banking, or a licensed takaful operator,*
2. *A licensed international Islamic bank,*
3. *A licensed international takaful operator*

which carries on a business in any currencies other than Ringgit Malaysia, and the account of investment made in Ringgit Malaysia relating to the business in any currencies other than Ringgit Malaysia (collectively "the exempt business")

The Order is essentially an extension of the Income Tax (Exemption) (No.12) Order 2007 and is similar in its contents except for the following changes:

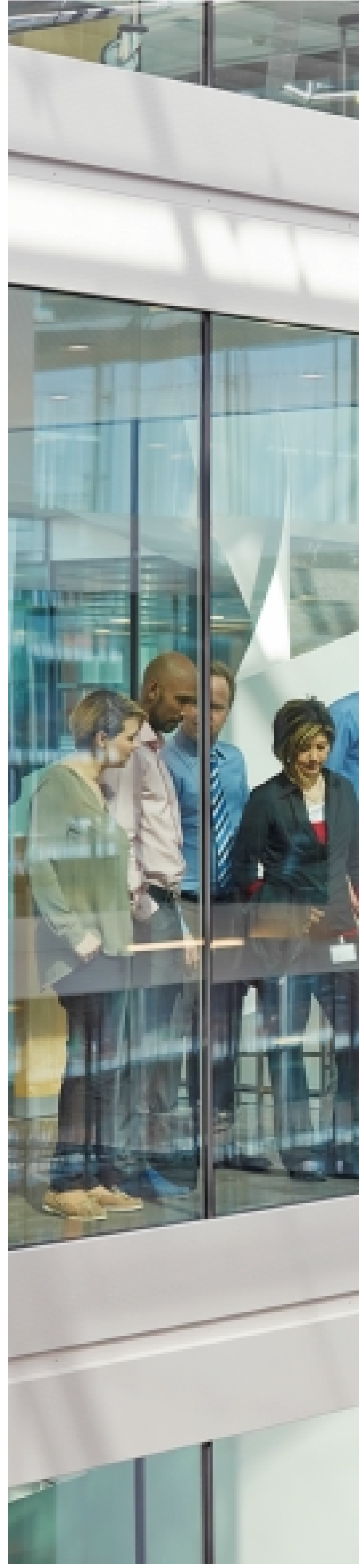
- Losses - The adjusted losses incurred in the exempted YA shall be carried forward and deducted in the post-exempt YAs until the adjusted loss has been fully utilized against the statutory income from the exempt business.
- Separate source and separate account - Any other business activity undertaken is to be treated as a separate and distinct source of activity from the exempt business.
- Application of paragraphs 5 and 6 of Schedule 7A of the ITA in relation to maintaining an exempt account from which exempt dividend is to be declared, has been removed from the Order.

Revised 2018 Filing Programme

The 2018 Filing Programme has been updated to specify that e-filing is available for Limited Liability Partnership, Trust Body and Unit Trust / Property Trust.

The effective dates of e-filing facility are stated in the table below:

Return forms for YA 2018	e-filing available from
Form PT – Limited Liability Partnership	1 July 2018
Form TA – Trust Body	1 August 2018
Form TC – Unit Trust / Property Trust	1 July 2018



Stamp duty exemption orders

Two stamp duty exemption orders were recently issued to provide stamp duty exemption on instruments executed in relation to i) home financing facility granted under a state housing loan fund, and ii) restructuring or rescheduling of loans or financing executed under a debt management programme.

Details of the stamp duty exemption orders are as follows:

Order	Effective date	Exemption provided
Stamp Duty (Exemption) (No.2) Order 2018	1 January 2019	Stamp duty exemption on all instruments executed in relation to any home financing facility (conventional or syariah) granted under a state housing loan fund specified in the Financial Procedure Act 1957.
Stamp Duty (Exemption) (No.3) Order 2018	1 January 2018 to 31 December 2020	Stamp duty exemption on all instruments, executed on or after 1 January 2018 but not later than 31 December 2020, relating to the restructuring or rescheduling of loans or financing executed between a participant of the debt management programme approved by the Credit Counselling and Debt Management Agency and a credit provider.

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13 November 2018
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@ The Vertical, Bangsar South
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http://bit.ly/PwCBudget2019Seminar

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