TaXavvy

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Filing Programme for Year 2021

The Inland Revenue Board (IRB) has issued the Filing Programme for Year 2021. The filing programme outlines the statutory filing and tax payment due dates, grace period and method of submission for the various return forms.

The Filing Programme for Year 2021 is available on the IRB's website at www.hasil.gov.my (Forms > Filing Programme for Year 2021).

Grace period for submission of return forms and payment of balance of taxes

The following is the grace period for submission of the relevant tax return forms from the stipulated filing due date, and payment of balance of tax under section 103(1) of the Income Tax Act 1967 ("ITA 1967"), or section 48(1) of the Petroleum Income Tax Act 1967 ("PITA 1967"):

Category of forms	Method of submission	Grace period
Income tax return forms for year of assessment (YA) 2021		
Companies Limited Liability Partnership	e-Filing	1 month
Co-operatives Societies Trust Bodies Unit Trusts / Property Trusts	• e-Filing • Postal • Hand delivery	• 1 month • 3 working days • None
Business Trusts Real estate investment trusts / property trust funds	• Postal • Hand delivery	• 3 working days • None
Income tax return forms for YA 2020		
Individuals Partnerships Associations Deceased Persons' Estate	• e-Filing • Postal • Hand delivery	• 15 days • 3 working days • None
Hindu Joint Families	• Postal • Hand delivery	• 3 working days • None

Category of forms	Method of submission	Grace period
Petroleum income tax return form		
Petroleum - exploration Petroleum - production	• e-Filing • Postal • Hand delivery	• 1 month • 3 working days • None
Returns by employers for year of remuneration 2020		
Company / Labuan company employers	e-Filing	1 month
Non-company / Non-Labuan company employers	• e-Filing • Postal • Hand delivery	• 1 month • 3 working days • None

If submission is not made within the grace period, the submission will be deemed to be late and penalties under Section 112 of ITA 1967 / section 51 of PITA 1967 will be computed from the statutory filing due date and not from the extended due date.

Grace period for payment of tax / balance of tax

For assessments raised by the IRB under sections 91, 92, 96A, 90(3) and 101(2) of ITA 1967, the tax / balance of tax must be paid within 30 days from the date of assessment. However, there is a grace period of 7 days.

Repayment cases

For repayment cases, the following appendices / working sheets have to be submitted together the income tax return form.

- Appendix B2 / HK-6 [tax deduction under section 110 of ITA 1967]
- Appendix B3 / HK-8 [claim for tax relief under section 132 of ITA 1967]
- Appendix B4 / HK-9 [claim for tax relief under section 133 of ITA 1967]

Entities which are dormant or have not commenced operations

Similar to prior years, companies, co-operative societies, limited liability partnerships and trust bodies are required to submit tax returns even if they are dormant. However, they need not submit the estimated tax payable (Form CP204) if they have not commenced operations.

“Dormant” is explained as follows:

- Never commenced operations since the date it was incorporated / established, or
- Had previously been in operation or carried on business but has now ceased operations or business.

A person which only owns shares, real properties, fixed deposits and other similar investments, is not considered as “dormant”.

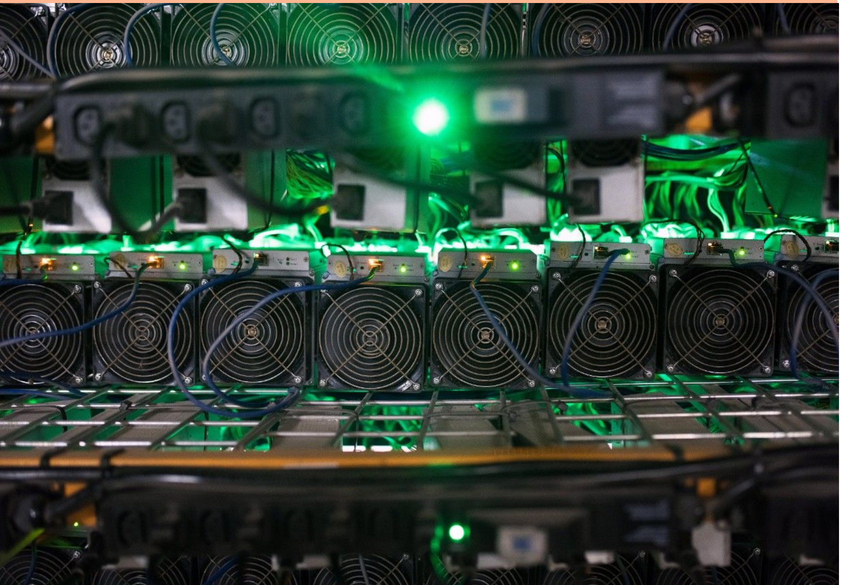
For dormant companies, the following are mandatory fields to be completed in the return form:

- Accounting period
- Basis period
- Business / partnership statutory income
- Business code

Practice Note 4/2020 - Clarification on Determining the Gross Income from Business Sources

The IRB has issued Practice Note 4/2020 dated 21 December 2020 - Clarification on Determining the Gross Income from Business Sources of Not More Than RM50 Million of a Company or Limited Liability Partnership ("PN 4/2020").

PN 4/2020 replaces Practice Note 3/2020 dated 18 May 2020 of the same title ("PN 3/2020") (TaXavvy 39/2020).



PN 4/2020 covers the IRB's treatment with respect to the additional requirement effective from YA 2020 to have gross business income not exceeding RM50 million in order for companies / Limited Liability Partnerships (LLP) to be eligible to enjoy the following preferential tax treatments:

- 17% tax rate for the first RM600,000 chargeable income.
- Accelerated capital allowance for small value assets in excess of RM20,000.

Key changes are as follows:

Scenario	Whether taxpayer is considered to have met the additional requirement to have gross business income and hence eligible for the preferential tax treatments	
	PN 3/2020	PN 4/2020
Does not have gross income from business due to temporary cessation of business	**Not** eligible.	**Eligible** where the taxpayer still incurs tax deductible expenses relating to business during the year. The newly inserted issue no. 4 specifies that the company / LLP is deemed to have a business income equivalent to Nil.
Carries on business but does not have any gross business income for the year (loss situation)	**Not** covered in PN 3/2020.	**Eligible** where the taxpayer incurs tax deductible expenses relating to the business. The newly inserted issue no. 3 specifies that the company / LLP is deemed to have a business income equivalent to Nil.

PN 4/2020 is available on IRB's website www.hasil.gov.my (Legislation > Practice Note).

Deductions not allowed for payment made to a Labuan company - Amendment Rules

The Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 (Amendment) 2020 ("2020 Amendment Rules") has been issued, legislating the revised deductibility rates for payments made to a Labuan company by a resident.

Salient points of the 2020 Amendment Rules are:

Revision to the rates of non-deductibility pursuant to the Labuan FSA's Circular on Revisions to Non-Deductibility Rules dated 23 December 2019 ("Labuan FSA Circular")

The non-deductibility rates for payments to a Labuan company prescribed under the Income Tax (Deductions Not Allowed for Payments Made to Labuan Company by Resident) Rules 2018 ("2018 Rules") is amended following the Labuan FSA Circular informing on the revision of the non-deductibility rates for payments to a Labuan company (TaXavvy 3/2020). The amendment which takes effect from 1 January 2019 is consistent with the Labuan FSA Circular as follows:

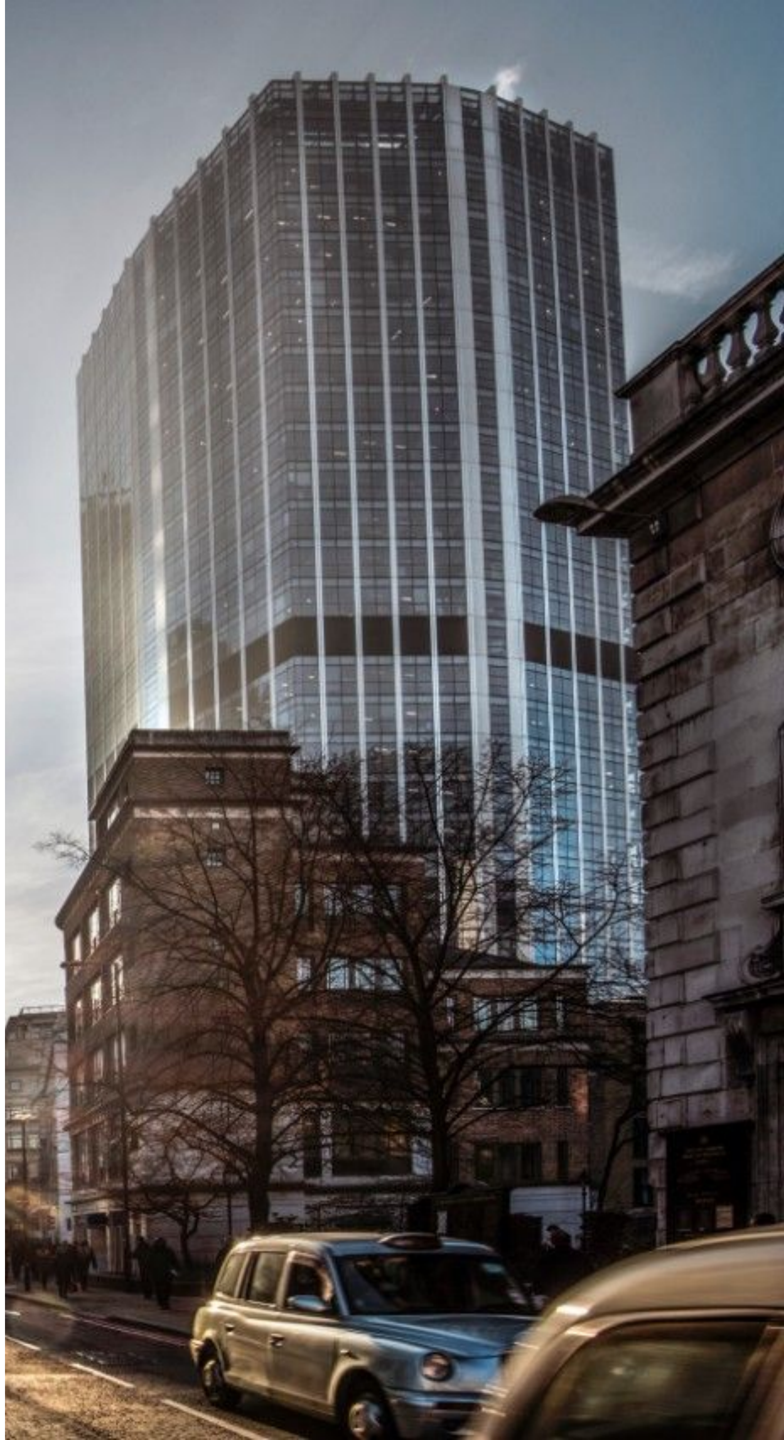
Type of payment	Non-Deductible Rates	
	Previous	***Revised***
Interest payment	33%	***25%*** *(including payment in connection with financing in respect of commission, facility fee and advance fee)*
Lease rental	33%	***25%***
Other payments	No change, the rate remains at 97%	

Payments made to a Labuan company which does not meet the prescribed substantial activity requirements (SAR) from 1 January 2021

Budget 2021 proposed extending the restriction of tax deduction on payments made to Labuan companies which do not meet the prescribed SAR with effect from 1 January 2021. A new definition of Labuan company has now been inserted to the 2018 Rules to bring into effect the proposal. Under the new definition, an entity listed under the Schedule of the Labuan Business Activity Tax Act 1990 (LBATA) will be considered as a Labuan company for the purpose of the restriction of tax deduction whether or not it meets the SAR.

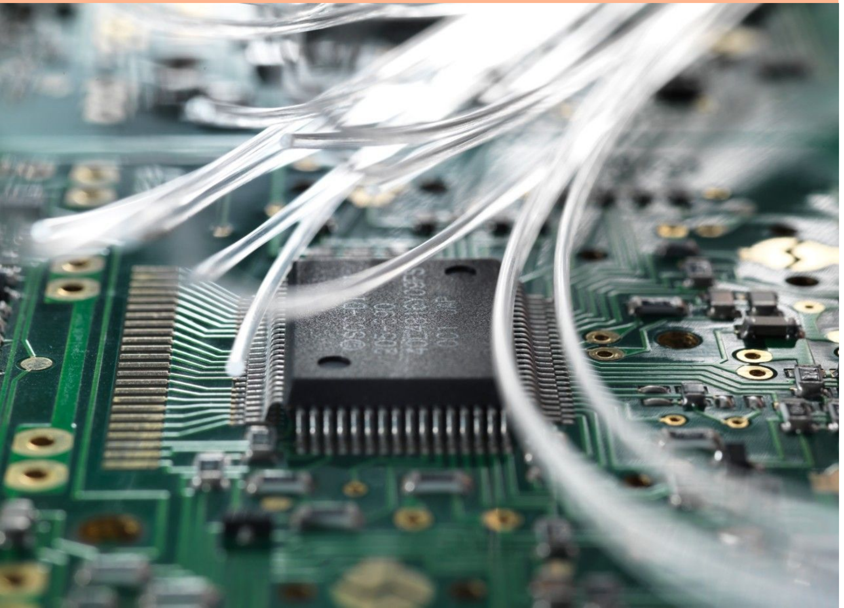
Entities in the Schedule of the LBATA consist of the following:

1. A Labuan company
2. A Labuan foundation established and registered under the Labuan Foundations Act 2010
3. A Labuan Islamic foundation established and registered under the Labuan Islamic Financial Services and Securities Act 2010
4. A Labuan Islamic partnership as defined in the Labuan Islamic Financial Services and Securities Act 2010
5. A Labuan limited partnership established and registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010
6. A Labuan limited liability partnership established and registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010
7. A Labuan Islamic trust as defined in the Labuan Islamic Financial Services and Securities Act 2010
8. A Labuan trust as defined in Labuan Trusts Act 1996
9. A Malaysian Islamic bank licensee as defined in the Labuan Islamic Financial Services and Securities Act 2010
10. Any Malaysian bank licensee as defined in the Labuan Financial Services and Securities Act 2010
11. Any Labuan financial institutions as defined in the Labuan Financial Services Authority Act 1996
12. Any person declared by the Minister to be a Labuan entity



Labuan substantial activity requirements - Amendment Regulations

Pursuant to LIC Pronouncement 2-2019 and its clarification (TaXavvy 3/2020), and LIC Pronouncement 3-2020 (TaXavvy 39/2020), the Labuan Business Activity Tax (Requirements for Labuan Business Activity) 2018 (Amendment) Regulations 2020 ("2020 Amendment Regulations") has been issued and is effective from 1 January 2019.



The 2020 Amendment Regulations amends the substantial activities requirements (SAR), i.e. number of full-time employees ("FTE") and annual operating expenditure ("OPEX") in respect of the following Labuan business activity with effect from 1 January 2019:

Labuan entity carrying on a Labuan business activity	Existing SAR		***Revised SAR***	
	FTE	OPEX (RM)	***FTE***	***OPEX (RM)***
Labuan insurers, reinsurer, takaful operator or retakaful operator	4	150,000	*3*	*200,000*
Labuan insurance brokers or takaful broker	4	100,000	*2*	100,000
Labuan captive insurer or captive takaful	4	100,000		
*a) Labuan first party captive insurer or captive takaful**			*2*	*100,000*
*b) Labuan third party captive insurer or captive takaful**			*3*	*100,000*
** New subcategories (previously not sub categorised)*				

Labuan entity carrying on a Labuan business activity	Existing SAR		***Revised SAR***	
	FTE	OPEX (RM)	***FTE***	***OPEX (RM)***
Labuan International Commodity Trading Company (LITC) *Note: The Labuan FSA's circular dated 29 April 2020 specified a revised SAR is to be made instead of a deletion of the requirement (TaXavvy 37-2020). Further developments will have to be monitored.*	3	3,000,000	*Deleted (Note)*	*Deleted (Note)*
Labuan bank, investment bank including Islamic bank or Islamic investment banks	3	180,000	3	*200,000*
Labuan leasing company or Labuan Islamic leasing company *which has -* *a) Not more than 10 related Labuan leasing or Islamic leasing companies* *b) 11 to 20 related Labuan leasing or Islamic leasing companies* *c) 21 to 30 related Labuan leasing or Islamic leasing companies* *d) More than 30 related Labuan leasing or Islamic leasing companies*	2	100,000	*a) 2 for each group of companies* *b) 3 for each group of companies* *c) 4 for each group of companies* *d) 1 additional employee for each group of companies for each increase of 10 related Labuan leasing or Islamic leasing companies*	*100,000 for each Labuan leasing or Islamic leasing company*

Labuan entity carrying on a Labuan business activity	Existing SAR		***Revised SAR***	
	FTE	OPEX (RM)	***FTE***	***OPEX (RM)***
Holding company -	2	50,000		
*a) Labuan entity that undertakes pure equity holding activities**			*Exempted under Labuan Business Activity Tax (Exemption) Order 2020*	*20,000*
*b) Labuan entity that undertakes investment holding activities other than pure equity holding activities**			*1*	*20,000*
** New subcategories (previously not sub categorised)*				

Stamp Duty Exemption Orders - Budget 2021 proposals and others

Following the Budget 2021 proposals, the following gazette orders have been issued:

- Stamp Duty (Exemption) (No. 5) 2013 (Amendment) Order 2020
- Stamp Duty (Exemption) (No. 6) 2013 (Amendment) Order 2020
- Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2020
- Stamp Duty (Exemption) (No. 2) 2017 (Amendment) Order 2020

Other stamp duty exemptions:

- Stamp Duty (Exemption) (No. 7) Order 2020
- Stamp Duty (Exemption) (No. 8) Order 2020

Gazette order	Salient points
Stamp Duty (Exemption) (No.5.) 2013 (Amendment) Order 2020	Stamp duty exemption for a purchaser in relation to an abandoned housing project applicable to instruments of transfer and loan agreement executed by an original purchaser on or after 1 January 2013 but not later than 31 December 2020 - extended to 31 December 2025.
Stamp Duty (Exemption) (No. 6) 2013 (Amendment) Order 2020	Stamp duty exemption for a contractor / developer in relation to rehabilitation of an abandoned housing project applicable to instruments of transfer and loan agreement executed by the rescuing contractor or developer on or after 1 January 2013 but not later than 31 December 2020 - extended to 31 December 2025.
Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2020	Stamp duty exemption for Perlindungan Tenang products applicable to insurance policies and takaful certificates issued on or after 1 January 2019 but not later than 31 December 2020 - extended to 31 December 2025.
Stamp Duty (Exemption) (No.2) 2017 (Amendment) Order 2020	Stamp duty exemption for exchange-traded funds applicable to contract notes executed on or after 1 January 2018 but not later than 31 December 2020 - extended to 31 December 2025.
Stamp Duty (Exemption) (No. 7) Order 2020	Stamp duty exemption on any financing agreement executed during the period from 24 July 2019 to 31 December 2021, between an individual and Bank Pertanian Malaysia Berhad (Agrobank), under the following programmes: ● Tanam Semula Pekebun Kecil Sawit ● Input Pertanian Pekebun Kecil Sawit
Stamp Duty (Exemption) (No. 8) Order 2020	Stamp duty exemption on specified instruments for the purchase of a flat under the Program Perumahan Rakyat Majlis Tindakan Ekonomi Negara and Perumahan Awam Dewan Bandaraya Kuala Lumpur executed during the period 1 January 2020 to 31 December 2024.

Deduction of renovation and refurbishment costs

Pursuant to the Short-term Economic Recovery Plan (PENJANA), the Income Tax (Costs of Renovation and Refurbishment of Business Premise) Rules 2020 has been issued and is effective from YA 2020. The following are the salient points.

- A special tax deduction is provided for the cost of renovation and refurbishment of business premises incurred from 1 March 2020 to 31 December 2021 (qualifying period), subject to a maximum amount of RM300,000 for the entire qualifying period.

- Qualifying costs are as follows and are to be certified by an external auditor:
  - General electrical installation
  - Lighting
  - Gas system
  - Water system
  - Kitchen fittings
  - Sanitary fittings
  - Door, gate, window, grill and roller shutter
  - Fixed partitions
  - Flooring (including carpets)
  - Wall covering (including paint work)
  - False ceiling and cornices
  - Ornamental features or decorations excluding fine art
  - Canopy or awning
  - Fitting room or changing room
  - Recreational room for employee
  - Air-conditioning system
  - Children play area
  - Reception area
  - Surau

- Non-qualifying costs include designer fees, professional fees and purchase of antique (purchase of an object or work of art which, represents a previous era in human society, is a collectable item due to its age, rarity, craftsmanship or other unique features and appreciates in value over time).

- The special tax deduction does not apply where capital allowance or allowable expense under Section 33(1) of the Income Tax Act 1967 has been claimed in relation to the cost of renovation and refurbishment.

Gazettes in relation to approved food production incentives

Pursuant to the Budget 2016 proposals, the following gazettes in relation to approved food production projects have been issued:

- Income Tax (Exemption) (No. 6) Order 2020
- Income Tax (Deduction of Investment in New Food Production Project or Expansion Project) Rules 2020

Gazette order	Effective date	Salient points
Income Tax (Exemption) (No. 6) Order 2020	1 January 2016	• The tax exemption is on 100% of statutory income in relation to the following qualifying projects: a) New food production project for 10 consecutive YAs. Application is to be made to the Ministry of Agriculture and Food Industries (MoA) between 1 January 2016 until 31 December 2020. The project must not have commenced on the date of making the application. b) Expansion project that is approved by the Minister in relation to the new food production project in (a) above, for 5 consecutive YAs. • Pursuant to the Budget 2016 proposal, the scope of new food production project has been expanded. Additional projects covered include planting of industrial crop and cash crop, rearing of deer, rearing of honey and urena lobata bees, and planting of feed mill. • Mutual exclusion with other tax incentives applies.

Gazette order	Effective date	Salient points
Income Tax (Deduction of Investment in New Food Production Project or Expansion Project) Rules 2020	1 January 2016	• Provides tax deduction equivalent to the value of investment (in cash or ordinary share capital) made in a related company that undertakes a new food production or expansion project approved under the Income Tax (Exemption) (No. 6) Order 2020 ("qualifying project"). • Application is to be made to the MoA between 1 January 2016 until 31 December 2020. • The deduction for a YA shall be equivalent to the expenditure incurred by the related company for the qualifying project in the basis period for the same YA, and for a period approved by the Minister. • The deduction shall cease in the YA the related company commences its tax exemption period upon having its first statutory income from the qualifying project. • For investments in ordinary shares, the deduction claimed will be clawed back if the investment is disposed of within 5 years from the date of investment. The disposal consideration shall be added to the adjusted income of the company in the YA it is received but shall not exceed the total deduction claimed in relation to the investment. • Mutual exclusion with other tax incentives applies.

Automation capital allowance for services sector - MIDA guideline

Following the Budget 2020 proposal to expand the automation capital allowance (ACA) incentive to the services sector, MIDA has issued its guideline dated 1 January 2020 in relation to the ACA for services sector. The guideline outlines the incentive, the application procedures, processes, documents and eligibility conditions.

The guideline is available on MIDA's website www.mida.gov.my (Forms & Guidelines > Services Sector > Automation Capital Allowance)

Salient points from the guideline:

The incentive

- ACA of 200% on the first RM2 million expenditure (i.e. machinery or equipment purchased and used directly for the purpose of the business) incurred for YA 2020 YA 2023.
- It is mutually exclusive with other incentives i.e. companies can only enjoy either this incentive or one of the incentives that include Pioneer Status or Investment Tax Allowance under the Promotion of Investments Act 1986, and income tax exemption under the Income Tax Act 1967.

Eligibility criteria for the company

- Incorporated under the Companies Act 2016 and resident in Malaysia.
- Engaged in services activities.
- Has been in operation for at least 36 months.
- Possesses a valid business license from the local authority.
- Possesses a permit / licence / registration / accreditation / certificate / approval letter / supporting letter from the relevant regulatory Ministry / Agency / Regulator (whichever applicable).

Eligible expenditure

Eligible expenditure is expenditure incurred on machinery / equipment / software that fulfils certain criteria including:

- Used directly in the process of carrying out the services,
- Adopts technology that is more advanced in improving services delivery,
- Used at least for 1 month after installation for purpose of verification by SIRIM and should not be disposed of within 5 years.
- Contributes to productivity enhancement.

Application period

Applications are to be submitted to MIDA from 1 January 2020 until 31 December 2023.

Guideline for claiming incentives for upstream petroleum industry

The IRB has amended its Guideline for claiming incentives for upstream petroleum industry under the Petroleum (Income Tax) Act 1967 (Amendment) ("the Guideline") dated 30 December 2020. The Guideline replaces the earlier guideline of the same title dated 22 May 2014.

The amendment is made to item 1.3 in the Guidelines to specify that the application for verification of the eligibility for the following incentives is to be submitted to PETRONAS within 5 years from the date of approval of the Field Development Plan (FDP).

- **Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) Rules 2013**
  Provides accelerated capital allowance on qualifying plant expenditure incurred from YA 2010 to YA 2024 for petroleum operations in marginal fields.

- **Petroleum (Income Tax) (Investment Allowance) Regulations 2013**
  Provides investment allowance of 60% of qualifying capital expenditure to be set off against 70% of statutory income, for a period of 10 years.

- **Petroleum (Income Tax) (Marginal Field) Regulations 2013**
  Specifies the tax treatment for petroleum operations in marginal fields.

- **Petroleum (Income Tax) (Exemption) Order 2013**
  Provides exemption for a portion of chargeable income from marginal fields.

The guideline is available on IRB's website www.hasil.gov.my (Legislation > Technical Guidelines).

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