



Taxavvy

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Tax Deduction for Investment in a BioNexus Status Company

The Income Tax (Deduction for Investment in a BioNexus Status Company) (Amendment) Rules 2022 (“the Rules”) has been gazetted and is effective from 1 January 2021.

Under Budget 2021, it was announced that the tax incentive for investments into BioNexus status companies will be extended to 31 December 2022 to provide space for the review of the incentive framework to be completed.

Pursuant to the announcement, the Rules has been gazetted to extend the tax incentive, namely, a tax deduction for a qualifying investor who has submitted an application to the Ministry of Finance (MOF) through the Malaysia Bioeconomy Development Corporation Sdn Bhd for an approval to make an investment in a BioNexus status company by 31 December 2022 (previously until 31 December 2020).

The extension is applicable for qualifying investments made during the period from 1 January 2021 to 31 December 2022.

The salient points of the incentive include:

BioNexus status company	<p>A company incorporated under the Companies Act 1965 which is engaged in a business of life sciences such as:</p> <ul style="list-style-type: none">• biology;• medicine;• anthropology;• ecology; or• any other branches of science <p>which deal with living organisms and their organisation, life processes and relationships to each other and their environment.</p>
Qualifying person (investor)	<ul style="list-style-type: none">• A company incorporated under the Companies Act 1965 (which is not related to another company which has been given a similar tax deduction for investment into a BioNexus status company)• An individual who is a Malaysian citizen, resident and has business income (who is not a family member / relative of a person who owns any of the paid-up capital of the BioNexus status company)



<p>Qualifying investment</p>	<ul style="list-style-type: none"> Investment made for the sole purpose of financing activities at the initiation of commercialisation stage (<i>defined below</i>) of the first biotechnology business undertaken by a BioNexus status company. <p><i>Initiation of commercialisation stage means the stage of research, assessment and development of an initial concept or prototype before the technology or product is commercialised, but excludes the increase of product capacity, product development or product marketing.</i></p> <ul style="list-style-type: none"> Investment is in the form of: <ul style="list-style-type: none"> cash with no obligation to be repaid; or holding of paid-up capital, i.e. investment which is paid in cash in respect of ordinary shares.
<p>Tax incentive</p>	<p>Qualifying investor is eligible to claim a tax deduction against its business income equivalent to actual value of qualifying investment.</p>
<p>Cessation of tax deduction</p>	<p>Deduction shall cease when the BioNexus status company commences the commercialisation of the activities in respect of which the investment is made.</p> <p>The commencement is determined based on the date of first sales invoice.</p>
<p>Disposal of investment in the form of holding of paid-up capital in respect of ordinary shares</p>	<p>Where the ordinary shares are disposed of within 5 years from the date of the last investment for a sale consideration, the amount received by the investor shall be taxable to the investor upon receipt.</p> <p>The taxable amount shall not exceed the total tax deduction claimed in relation to the investment.</p>



Non-application

The tax deduction under the Rules shall not apply to a qualifying investor if the person -

- (a) has made an investment in BioNexus status company which has been granted an exemption under the Income Tax (Exemption) (No. 18) Order 2007;
- (b) has made a claim for reinvestment allowance under Schedule 7A to the Income Tax Act 1967 (“ITA 1967”) or investment allowance for service sector under Schedule 7B to the ITA 1967;
- (c) has been granted any incentive under the Promotion of Investments Act 1986;
- (d) has been granted an exemption under section 127 of the ITA 1967;
- (e) has made a claim for deduction under any rules made under section 154 of the ITA 1967 except -
 - the rules in relation to allowance under Schedule 3 to the ITA 1967 (i.e. rules in relation to capital allowance, etc.);
 - the Income Tax (Deduction for Audit Expenditure) Rules 2006;
 - the Income Tax (Deduction for Cost relating to Training for Employees for the Implementation of Goods and Services Tax) Rules 2014; or
 - the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014.



Labuan - Amendment Acts

The following Amendment Acts (collectively, the “Labuan Acts”) have been gazetted on 9 June 2022:

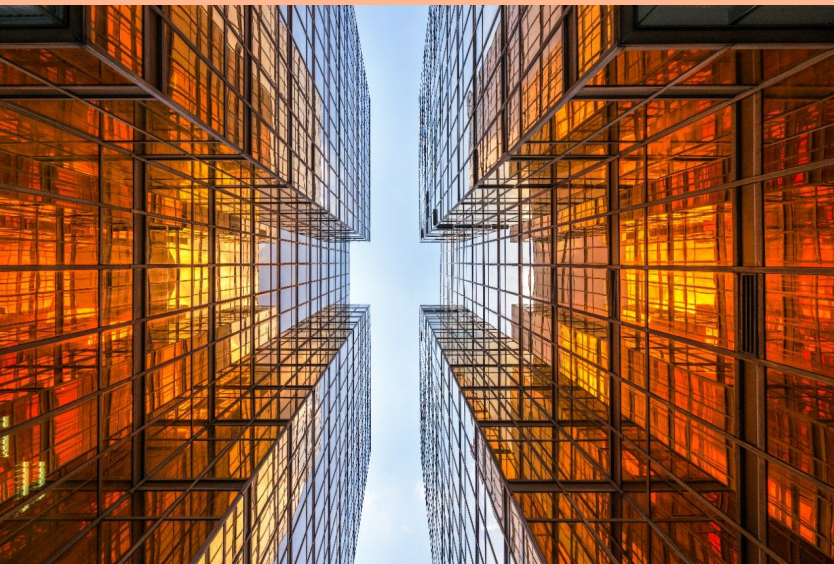
1. Labuan Companies (Amendment) Act 2022;
2. Labuan Financial Services and Securities (Amendment) Act 2022; and
3. Labuan Islamic Financial Services and Securities (Amendment) Act 2022

There is no material difference between the gazetted Labuan Acts as compared to their respective Bills.

To recap, among the main purposes of the Labuan Acts is to remove provisions related to the ring-fencing features (restriction from dealing with residents and Ringgit) to be in line with requirements under BEPS Action 5. The amendments, which take effect retrospectively from 1 January 2019 include:

Act being amended	Amendments
<i>Labuan Companies Act 1990</i>	Removal of restrictions on a Labuan company from transacting in Ringgit or with Malaysian residents.
<i>Labuan Financial Services and Securities Act 2010</i>	Replacement of the definition of "Labuan insurance business" with a new definition which does not exclude domestic insurance business and insurance business transacted in Ringgit. Removal of restrictions on licensed Labuan insurance brokers to deal in domestic insurance business and transacting in Ringgit.
<i>Labuan Islamic Financial Services and Securities Act 2010</i>	Replacement of the definition of “Labuan takaful business” with a new definition which removes the exclusion of domestic insurance business and dealing in Ringgit.

More details on the above amendments can be found in [TaXavvy 8/2022](#).



Public Ruling 1/2022 - Time Limit for Unabsorbed Adjusted Business Losses Carried Forward

The Inland Revenue Board (IRB) has issued PR 1/2022 - Time Limit for Unabsorbed Adjusted Business Losses Carried Forward (“PR 1/2022”) dated 30 June 2022. PR 1/2022 explains the treatment of carry forward of unabsorbed business losses.

PR 1/2022 is available on IRB’s website www.hasil.gov.my (Legislation > Public Rulings).

Where a person has incurred business losses in a YA and there is insufficient income from other sources in the same YA to absorb the business losses, the unabsorbed business losses can be carried forward to be deducted against business income from future YAs. Key conditions to utilise the unabsorbed business losses covered under PR 1/2022 include the following:

10-year limit on carry forward of business losses

The unabsorbed business losses arising in a YA may be carried forward up to 10 consecutive YAs. Any balance of unabsorbed business losses after the end of the 10 consecutive YAs is to be disregarded.

Sequence of utilisation of carried forward unabsorbed business losses arising from more than 1 YA

Where there are accumulated unabsorbed business losses from 2 or more YAs, the unabsorbed business losses that arise in the earlier YA is to be absorbed first until they are fully utilised, followed by the unabsorbed business losses for the following YA. A consolidated extract from Examples 1 to 3 in PR 1/2022 is produced in Tables A & B in the following pages to illustrate the sequence of utilisation.

Shareholders continuity test

In the case of dormant companies, the eligibility to carry forward of unabsorbed business losses is subject to a shareholders continuity test. PR 1/2022 briefly explains the test which requires that the shareholders of a company on the last day of the basis period for a YA in which the losses arise and the first day of the basis period for the YA in which the losses are to be utilised, to be substantially the same (i.e. more than 50% of the paid-up capital in respect of ordinary shares are held by or on behalf of the same persons). Where there is a substantial change in the shareholders, any unabsorbed business losses may not be utilised or carried forward to subsequent YA, and will be disregarded.

A company is considered dormant if there is no significant accounting transaction in one financial year prior to the substantial change in shareholders, that is, no entry is registered in the company’s accounts other than the following minimum expenditure to fulfill statutory requirements:

1. filing of company’s annual return to the Companies Commission of Malaysia;
2. secretarial fee for filing of company’s annual return;
3. tax filing fee;
4. audit fee; and
5. accounting fee.

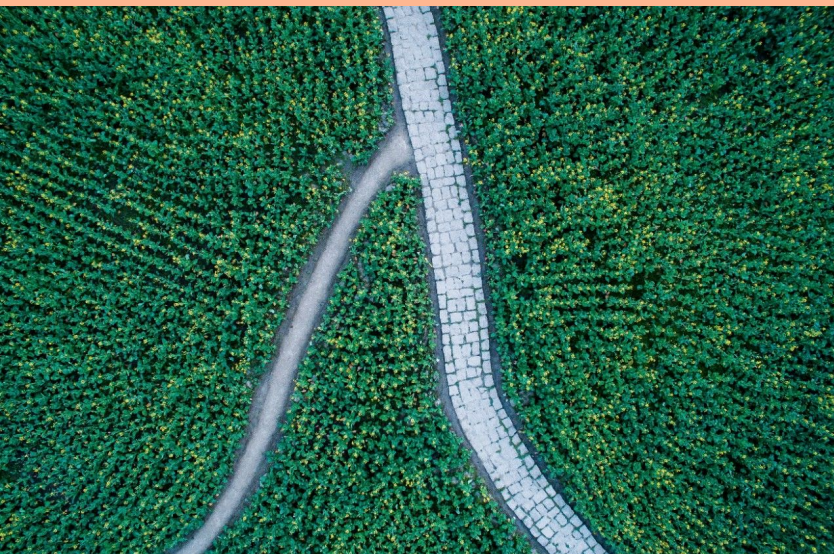


Table A: Extract of Examples 1 to 3 from PR 1/2022

Item	YA 2019 RM	YA 2020 RM	YA 2021 RM
Current year business loss	400,000	600,000	-
Statutory business income	Nil	Nil	45,000
Less: Unabsorbed business losses brought forward from prior year	-	-	(45,000)
	-	-	-
Statutory income from rental	300,000	250,000	325,000
Aggregate income	300,000	250,000	325,000
Less: Current year business loss	(300,000)	(250,000)	-
Total / Chargeable income	Nil	Nil	325,000

Table B: Movement of business losses from examples 1 to 3 from PR 1/2022

Item	YA 2019 RM	YA 2020 RM	YA 2021 RM
<u>Utilisation of current year business loss</u>			
Current year business loss	400,000	600,000	-
Current year business loss utilised in current YA	(300,000)	(250,000)	-
<u>Utilisation of unabsorbed business losses</u>			
Unabsorbed business losses brought forward from prior YA			
- Arising from YA 2019*	-	100,000	100,000*
- Arising from YA 2020	-	-	350,000
Less: Unabsorbed business losses utilised in current YA	-	-	(45,000)*
<u>Unabsorbed losses carried forward to next YA</u>			
- Arising from YA 2019	100,000	100,000	55,000
- Arising from YA 2020	-	350,000	350,000
	100,000	450,000	405,000

*The unabsorbed business losses that is utilised is taken from the balance brought forward from the earlier YA first, i.e. from the balance brought forward of RM100,000 which arose from YA 2019.

Connect with us

Kuala Lumpur

Jagdev Singh

jagdev.singh@pwc.com
+60(3) 2173 1469

Penang & Ipoh

Kang Gaik Hong

gaik.hong.kang@pwc.com
+60(4) 238 9225

Melaka

Benedict Francis

benedict.francis@pwc.com
+60(7) 218 6000

Tan Hwa Yin

hwa.yin.tan@pwc.com
+60(6) 270 7300

Johor Bahru

Benedict Francis

benedict.francis@pwc.com
+60(7) 218 6000

Kuching

Lee Yuien Siang

yuien.siang.lee@pwc.com
+60(8) 252 7202

Cynthia Ng

cynthia.hh.ng@pwc.com
+60(3) 2173 1438

Labuan

Jennifer Chang

jennifer.chang@pwc.com
+60(3) 2173 1828

Corporate Tax Compliance & Advisory

Consumer & Industrial Product Services

Margaret Lee

margaret.lee.seet.cheng@pwc.com
+60(3) 2173 1501

Steve Chia

steve.chia.siang.hai@pwc.com
+60(3) 2173 1572

Specialist services

Corporate Services

Lee Shuk Yee

shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Dispute Resolution

Tai Weng Hoe

weng.hoe.tai@pwc.com
+60(3) 2173 1600

International Tax Services / Mergers and Acquisition

Gan Pei Tze

pei.tze.gan@pwc.com
+60(3) 2173 3297

Individual Tax

Michelle Chuo

michelle.sy.chuo@pwc.com
+60(3) 2173 1289

Emerging Markets

Fung Mei Lin

mei.lin.fung@pwc.com
+60(3) 2173 1505

Energy, Utilities & Mining

Lavindran Sandragasu

lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Indirect Tax

Raja Kumaran

raja.kumaran@pwc.com
+60(3) 2173 1701

Geeta Balakrishnan

geeta.b.balakrishnan@pwc.com
+60 (3) 2173 1652

People & Organisation

Kartina Abdul Latif

kartina.a.latif@pwc.com
+60(3) 2173 0153

Lee Shuk Yee

shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Financial Services

Jennifer Chang

jennifer.chang@pwc.com
+60(3) 2173 1828

Services & Infrastructure

Lim Phaik Hoon

phaik.hoon.lim@pwc.com
+60(3) 2173 1535

Tax Technology

Yap Sau Shiung

sau.shiung.yap@pwc.com
+60(3) 2173 1555

Tax Reporting & Strategy

Lavindran Sandragasu

lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Transfer Pricing

Anushia Soosaipillai

anushia.joan.soosaipillai@pwc.com
+60(3) 2173 1419

Technology, Media, and Telecommunications

Heather Khoo

heather.khoo@pwc.com
+60(3) 2173 1636

China Desk

Lorraine Yeoh

lorraine.yeoh@pwc.com
+60(3) 2173 1499

Japanese Business Consulting

Yuichi Sugiyama

yuichi.sugiyama@pwc.com
+60(3) 2173 1191

Clifford Yap

clifford.eng.hong.yap@pwc.com
+60(3) 2173 1446

Korea Desk

Keegan Ong

keegan.sk.ong@pwc.com
+60(3) 2173 1684



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