

BDO Tax Buzz

Issue (3) 2024

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This issue covers tax developments in
Malaysia from May to June 2024

Income Tax

Income Tax (Amendment) Act 2024

The above-mentioned amendment act was gazetted on 20 May 2024. It remains largely unchanged from the Income Tax (Amendment) Bill 2024 that was first tabled in Parliament on 25 March 2024. Please refer to our publication [Proposed Amendments to the Income Tax Act 1967 and Labuan Business Activity Tax Act 1990](#) issued in March 2024 for further details of the key amendments.

Income Tax (Exemption) (No. 6) Order 2022 (Amendment) Order 2024 [P.U. (A) 157/2024] Guideline on Tax Treatment in relation to Income Received from Abroad (Amendment)

The above-mentioned amendment order was gazetted on 12 June 2024, and the guideline mentioned above was issued by Inland Revenue Board Malaysia (“IRBM”) on 20 June 2024. The amendment order modifies the principal order that relates to the tax exemption on foreign dividend income received in Malaysia by a qualifying person.

Meanwhile, the guideline updates the previous guideline that was published on 29 December 2022 arising from the changes made by the amendment order.

The changes made by the amendment order are as follows:

- Effective retroactively from the year of assessment (“YA”) 2022, the list of qualifying persons (who must be tax residents in Malaysia, excluding those involved in the banking, insurance, sea transport, or air transport business) for the tax exemption has been expanded to include companies incorporated under the Labuan Companies Act 1990 that have elected to be taxed under the Income Tax Act 1967. Previously, the list of qualifying persons included the following:
 - a. an individual who has foreign dividend income in relation to a partnership business in Malaysia
 - b. a limited liability partnership registered under the Limited Liability Partnerships Act 2012
 - c. a company which is incorporated or registered under the Companies Act 2016

- From 1 January 2024 the qualifying person has a choice to meet either the participation exemption or the economic substance requirements to be eligible for the tax exemption. Previously, the qualifying person was required to meet both the participation exemption and the economic substance requirements. The updated guideline further clarifies that this change shall be effective from 1 January 2022 instead of 1 January 2024 under the amendment order.

The participation exemption requirements for foreign dividend income are as follows:

- a. it must have been subjected to tax of a similar nature to income tax in the territory which the income arises
- b. the highest rate of tax of a similar nature to income tax in the territory which the income arises at that time is not less than 15%. The updated guideline further explains that this refers to the highest corporate tax rate in that territory in the year that dividend is subject to withholding tax or in the year that dividend is received in Malaysia

Income Tax

The economic substance requirements are that the qualifying person must:

- a. employ an adequate number of employees with the necessary qualifications; and
- b. incur an adequate amount of operating expenditure, to carry out the specified economic activities in Malaysia.

The updated guideline provides additional explanations to the meaning of “specified economic activities” as follows:

For investment holding entities

- Holding and managing its equity participation in other entities; or
- Making necessary strategic decisions in respect of any assets the entity acquires, holds or disposes of; and managing and bearing principal risks in respect of such assets.

For other qualifying persons

- The business operations carried out.

The updated guideline further clarifies the economic substance requirements as follows:

- A director who is employed under a contract of service can be counted as an employee of the qualifying person.
- Outsourcing of specified economic activities by a qualifying person to another entity is allowed, subject to the following conditions:
 - a. the specified economic activities are carried out by the other entity in Malaysia
 - b. the qualifying person exercises adequate monitoring and control of the other entity’s carrying out of the specified economic activities
 - c. the other entity is generally expected to charge the qualifying person a fee for the specified economic activities performed, subject to the application of transfer pricing rules
 - d. the number of qualified employees employed, and the amount of operating expenditure incurred by the other entity in Malaysia are in line with the level of specified economic activities carried out by that entity
 - e. if the other entity provides services to more than one qualifying person, the expenditure is apportioned accordingly

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The previous guideline had also included the explanation of the qualifying condition for the tax exemption on foreign income received in Malaysia by a resident individual, which was given under the Income Tax (Exemption) (No. 5) Order 2022 [P.U. (A) 234/2022]. The qualifying condition is that the foreign income has been subjected to tax of a similar character to income tax in the territory which the income arises. No distinction was made in the qualifying condition for foreign dividend income and other foreign income in the previous guideline.

However, in the updated guideline, the situations where the foreign income of the resident individual is not subjected to tax in the country of origin but nevertheless is deemed to have been subjected to foreign tax are now segregated as follows:

For foreign income other than dividend income	For foreign dividend income
<ul style="list-style-type: none"> • The country of origin’s tax system does not subject the income to tax • The individual’s income does not reach the taxability threshold in the country of origin • The income is exempted through a tax incentive in the country of origin 	<ul style="list-style-type: none"> • The dividend income has been subjected to underlying tax • The dividend income has been paid out of operating profits that has not been subjected to tax due to: <ul style="list-style-type: none"> a. unabsorbed losses or capital allowances; b. the profits arose from capital gains; c. tax incentives in compliance with substantive requirements in the country of origin; or d. the tax consolidation regime in the country of origin.

The guideline can be accessed on IRBM’s website [here](#)

Income Tax

Public Ruling No. 2/2024: Investment Holding Company

Public Ruling No. 2/2024 was issued by IRBM on 28 May 2024 to supersede Public Ruling No. 10/2015 on the same topic.

The updates in Public Ruling No. 2/2024 relates to the changes in the law made after the issuance of the previous public ruling, are as follows:

- the amendment to paragraph 12B, Schedule 6 of the Income Tax Act 1967 to disregard any deductions in relation to single-tier dividends for purposes of ascertaining the chargeable income of a person, with effect from YA 2017
- the introduction of section 44(5F) of the Income Tax Act 1967 effective from YA 2019 that limits the carry forward of unabsorbed business losses in a relevant YA to 10 consecutive YAs



Guideline on Tax Treatment of Hybrid Instrument

The above guideline was issued by IRBM on 19 June 2024. A hybrid instrument is a financial instrument that has both equity and debt features, such as preference shares, bonds, perpetual loans and profit participating loan notes. The guideline provides an explanation of:

- the key features of a hybrid instrument and factors that are taken into consideration in determining whether a hybrid instrument is classified as equity or debt for tax purposes
- the tax treatment of distribution or profit on a hybrid instrument for both the holder and issuer of the instrument

According to IRBM, the general distinguishing features of equity and debt are as follows:

Equity	Debt
Entitled to a share of distributions or profits of the entity	The right to distributions or profits is fixed
Entitled to the residual assets of the entity after repayment to debt holders upon liquidation	Entitled to reimbursement of the principal amount of debt during liquidation
No maturity dates	Has a maturity date
Right to vote in a general meeting	No voting rights in a general meeting
Management of the entity has discretion to pay out distributions or profits	Instrument holder has a legal right to demand payment of distributions or profits

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Determining whether a hybrid instrument is debt or equity should be based on the substance of the instrument and not solely on its legal form. The factors that are considered in the guideline are as follows (arranged according to IRBM’s order of priority):

1. The source from which the principal will be repaid and the source of the distributions or profits, as well as the order in which they will be repaid in case of liquidation or dissolution.
2. The right to enforce payment of distributions or profits and repayment of principal by the instrument holder.
3. The rights in the event of default.
4. The maturity date of the instrument.
5. The ability of the issuer to obtain a loan and make payment on an arm’s length basis.
6. The voting rights in a general meeting.
7. The benefit to the instrument holder.

All relevant factors must be considered as the presence of any single factor is insufficient to determine the classification of a hybrid instrument. The classification for accounting purposes, which is based on accounting standards, may differ from the classification for tax purposes that is based on the above factors. The above factors are also applicable, with modifications, to determine whether an Islamic hybrid instrument is equity or debt.

The tax treatment of distribution or profit on a hybrid instrument as explained in the guideline can be summarised as follows:

Classification	Equity instrument	Debt instrument
Instrument holder	Income is subject to tax as a profit distribution/dividend/income distribution, unless specifically tax exempt	Income is subject to tax as interest (including profit in lieu of interest from an Islamic instrument), unless specifically tax exempt
Instrument issuer	Expenses incurred are not tax deductible	Expenses incurred are tax deductible as interest, subject to restrictions under the relevant tax laws

While IRBM has made clear its views regarding hybrid instruments in the guidelines, its application to taxpayers would require amendments to the Malaysian Income Tax Act 1967 to include provisions that permits the application of the substance over form principle to the classification hybrid instruments for tax purposes.

The guideline can be accessed on IRBM’s website [here](#)

Labuan Business Activity Tax

Labuan Business Activity Tax (Amendment) Act 2024

The above-mentioned amendment act was gazetted on 20 May 2024. It is substantially the same as the Labuan Business Activity Tax (Amendment) Bill 2024 that was first tabled in Parliament on 25 March 2024. Please refer to our publication [Proposed Amendments to the Income Tax Act 1967 and Labuan Business Activity Tax Act 1990](#) issued in March 2024 for further details of the key amendments.

Labuan Business Activity Tax (Exemption) Order 2024 [P.U. (A) 127/2024]

The above exemption order, which was gazetted on 17 May 2024, gives full tax exemption to the income of Labuan entities from carrying on Islamic financial-related trading activities from YA 2024 until YA 2028. It should be noted that as the assessment of tax under the Labuan Business Activity Tax Act 1990 is on a preceding year basis, the basis years for the tax exemption would be the years 2023 to 2027. This tax exemption was previously announced in Budget 2024.

The Labuan entities and activities qualifying for the tax exemption are as follows:

Labuan entity	Qualifying activity
Labuan bank, Labuan investment bank, Labuan Islamic bank or Labuan Islamic investment bank	Islamic banking business that leverages digital solutions and adheres to Syariah principles for: <ol style="list-style-type: none"> raising funds managing risks including credit, currency and interest risks taking hedging positions providing financing or other financial services to customers managing regulatory capital preparing regulatory reports and returns deposit taking for Labuan Islamic bank and Labuan bank approved to carry on Labuan Islamic banking providing consultancy and advisory services relating to investment matters including dealing in securities or making and managing Islamic investment
Labuan credit token company or Labuan Islamic credit token company	Islamic Digital Token Issuer which: <ol style="list-style-type: none"> issues Islamic credit token or Islamic securities token via built-in technology or outsourced technology provides in-house wallet (hot and cold wallet) for storing of Islamic digital token and approved as a payment system operator
Labuan fund manager	Providing fund management services based on Syariah principles and utilisation of digital solutions in respect of Islamic securities including Islamic securities token for: <ol style="list-style-type: none"> management services investment advice administrative services dealing in securities
Labuan International Financial Exchange	Undertaking the business of Islamic Exchange which is: <ol style="list-style-type: none"> based on Syariah principles and utilisation of digital solutions in: <ol style="list-style-type: none"> listing; licensing; or trading; or based on the rules and by-laws of the Exchange, other matters related to the securities market and financial instruments.

Incentives

Income Tax (Exemption) (No. 19) 2007 (Amendment) Order 2024 [P.U. (A) 148/2024]

The above order was gazetted on 5 June 2024 to make amendments to the Income Tax (Exemption) (No. 19) Order 2007 [P.U. (A) 417/2007] as follows:

- The tax exemption period on the statutory income of a development manager from the provision of management, supervisory or marketing services to a developer in the Iskandar Development Region, which was previously set to expire at the end of YA 2020, is extended until YA 2024
- Effective from YA 2021, the non-application provision is expanded exclude a development manager that has been granted tax exemption under section 127(3)(b) or section 127(3A) of the Income Tax Act 1967 from enjoying the tax exemption under this order



Income Tax (Exemption) (No. 11) Order 2018 (Amendment) Order 2024 [P.U. (A) 154/2024] Income Tax (Exemption) (No. 12) Order 2018 (Amendment) Order 2024 [P.U. (A) 155/2024] Stamp Duty (Exemption) (No. 8) Order 2018 (Amendment) Order 2024 [P.U. (A) 153/2024]

The above orders, which were gazetted on 11 June 2024, amends the respective principal orders relating to tax incentives for the Sabah Development Corridor (“SDC”). The principal orders are as follows:

- a) Income Tax (Exemption) (No. 11) Order 2018 [P.U. (A) 390/2018] in relation to tax exemption on statutory income from a qualifying activity which is equivalent to a 100% allowance on the qualifying expenditure incurred for the SDC
- b) Income Tax (Exemption) (No. 12) Order 2018 [P.U. (A) 391/2018] in relation to tax exemption of statutory income from a qualifying activity
- c) Stamp Duty (Exemption) (No. 8) Order 2018 [P.U. (A) 397/2018] in relation to stamp duty exemption on any instruments chargeable with ad valorem duty for the transfer of real property, used for the purposes of carrying on a qualifying tourism project

P.U. (A) 154/2024 and P.U. (A) 155/2024 extends the deadline for an application for tax exemption under the respective principal orders from 31 December 2022 to 31 December 2024.

Meanwhile, P.U. (A) 153/2024 extends the expiry date of the stamp duty exemption under the principal order from 31 December 2022 to 31 December 2024.

Incentives

Guidelines on Malaysia Digital (“MD”) Tax Incentive (New Investment Incentive)

Guidelines on MD Tax Incentive (Expansion Incentive)

On 31 May 2024, the Malaysia Digital Economy Corporation (“MDEC”) had announced the introduction of a new tax incentive scheme for MD companies. The scheme offers tax incentives to eligible companies in two categories, namely New Investment and Expansion. In this connection, the abovesaid guidelines dated 26 April 2024 were issued by MDEC to provide information on the tax incentives offered.

The key points of the guidelines are summarised as below:

Incentive Category	New Investment	Expansion
Tax incentive available	<p>0% tax rate on intellectual property (“IP”) income, and 5% or 10% tax rate on non-IP income for 10 consecutive YAs.</p> <p>OR</p> <p>Investment tax allowance (“ITA”) on 60% or 100% of qualifying capital expenditure which can be set-off against 100% of statutory income for five consecutive years.</p>	<p>15% tax rate for five consecutive YAs.</p> <p>OR</p> <p>ITA on 30% or 60% of qualifying capital expenditure which can be set-off against 100% of statutory income for five consecutive years.</p>
Application period	Application must be received by MDEC no later than 31 December 2027.	Application must be received by MDEC during the period from 1 January 2024 until 31 December 2027.
Eligibility criteria	<ul style="list-style-type: none"> Incorporated/registered under the Companies Act 2016 and resident in Malaysia Minimum paid up capital of RM50,000 Has MD status awarded on or after 1 July 2022 Proposing to undertake qualifying activity in Malaysia Has not issued any sales invoice for the qualifying activity in Malaysia before applying for tax incentive, or has 60% direct/indirect Malaysian equity ownership and has not issued any sales invoice for the qualifying activity in Malaysia more than 12 months before applying for tax incentive Qualifying activity has not been granted any tax incentive by the Malaysian Government 	<ul style="list-style-type: none"> Incorporated/registered under the Companies Act 2016 and resident in Malaysia Minimum paid up capital of RM250,000 Has been in operation for at least 36 months Has MD/MSC Malaysia status If tax incentive granted for existing activity, either all conditions have been met or the tax incentive has been surrendered Proposing to undertake qualifying activity in Malaysia Has not issued any sales invoice for the qualifying activity in Malaysia before applying for tax incentive Qualifying activity has not been granted any tax incentive by the Malaysian Government

Incentives

Incentive Category	New Investment	Expansion
Eligibility criteria	<ul style="list-style-type: none"> No related company has been granted tax incentive or issued any sales invoice before the company applied for tax incentive for the same qualifying activity 	<ul style="list-style-type: none"> No related company has been granted tax incentive or issued any sales invoice before the company applied for tax incentive for the same qualifying activity
Conditions for reduced tax rate	<ul style="list-style-type: none"> Employ an adequate number of full-time employees in Malaysia to carry out the qualifying activity throughout the YA Ensure the full-time employees comprises of an adequate number of knowledge workers with a minimum average basic salary of RM5,000 throughout the YA Incur an adequate amount of annual operating expenditure in Malaysia to carry out the qualifying activity by the end of each YA Undertake the qualifying activity in Malaysia throughout the YA Remain an MD status company and always comply with all MD status conditions Submit annual self-declaration form on compliance conditions, verified by an independent external auditor, to MDEC within seven months from the end of each YA Any other conditions stated in the approval letter Comply with the modified nexus approach (for IP income) Meet a minimum of three conditions related to sustainable economic development at the end of each YA and any other additional conditions as stated in the approval letter (for 5% tax rate on non-IP income) 	<ul style="list-style-type: none"> Maintain the number of existing full-time employees throughout the YA Employ an adequate number of new full-time employees in Malaysia to carry out the qualifying activity Ensure the new full-time employees comprises of an adequate number of knowledge workers with a minimum average basic salary of RM5,000 to carry out the qualifying activity in Malaysia throughout the YA Incur an adequate amount of annual operating expenditure in Malaysia to carry out the qualifying activity by the end of each YA Meet a minimum of two conditions related to sustainable economic development at the end of each YA as stated in the approval letter Undertake the qualifying activity in Malaysia throughout the YA Remain an MD status company and always comply with all MD status conditions Submit annual self- declaration form on compliance conditions, verified by an independent external auditor, to MDEC within seven months from the end of each YA Any other conditions stated in the approval letter Comply with the modified nexus approach (for IP income)

Incentives

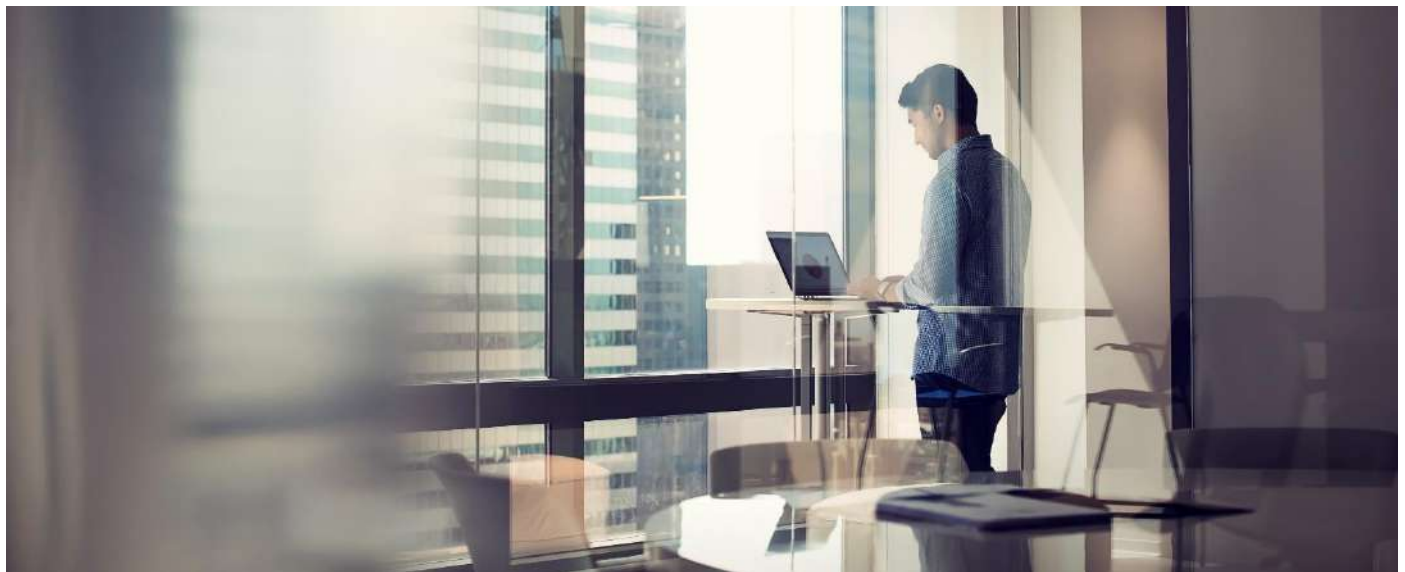
Incentive Category	New Investment	Expansion
Conditions for ITA	<p>To be complied within three years from principal approval date:</p> <ul style="list-style-type: none"> Incur an adequate amount of qualifying capital expenditure Employ an adequate number of full-time employees in Malaysia to carry out the qualifying activity Always undertake the qualifying activity in Malaysia Remain an MD status company and always comply with all MD status conditions Any other conditions stated in the approval letter <p>Additional condition to be complied by expiry of ITA period for ITA on 100% of qualifying capital expenditure:</p> <ul style="list-style-type: none"> Meet a minimum of three conditions related to sustainable economic development in year four and five of the ITA period, as stated in the approval letter 	<p>To be complied within three years from principal approval date:</p> <ul style="list-style-type: none"> Always maintain the number of existing full-time employees Employ an adequate number of new full-time employees in Malaysia to carry out the qualifying activity Incur an adequate amount of qualifying capital expenditure Always undertake the qualifying activity in Malaysia Remain an MD status company and always comply with all MD status conditions Any other conditions stated in the approval letter <p>Additional condition to be complied by expiry of ITA period for ITA on 60% of qualifying capital expenditure:</p> <ul style="list-style-type: none"> Meet a minimum of three conditions related to sustainable economic development in year four and five of the ITA period, as stated in the approval letter
Determination of tax incentive period	<p>For the reduced tax rate, request for the determination of the commencement YA must be submitted to MDEC no later than 24 months from the date of principal approval.</p> <p>For the ITA, the tax incentive period commences on the date the first qualifying capital expenditure is incurred after the date the tax incentive application is received and not earlier than MD/MSA status approval date.</p>	

Incentives

Incentive Category	New Investment	Expansion
Qualifying activities	<p>A qualifying activity is an activity which utilises any of the following:</p> <ol style="list-style-type: none"> 1. Artificial intelligence and/or big data analytics 2. Internet of things 3. Cybersecurity 4. Cloud 5. Blockchain 6. Drone technology 7. Creative media technology including extended reality and/or mixed reality 8. Integrated circuit design with embedded software 9. Robotics and/or automation 10. Advanced network connectivity and/or telecommunication technology <p>Trading, manufacturing and provision of telecommunication services are not treated as qualifying activities.</p>	
Additional qualifying activities	<p>Application for additional qualifying activity can be made not later than 18 months before the expiry of the tax incentive period, provided that no sales invoice has been issued for such activity in Malaysia before the application is received by MDEC.</p> <p>The tax incentive period will commence from the date the application is approved and end on the same date as the tax incentive period for the initial qualifying activity.</p> <p>Additional conditions may be imposed for the additional qualifying activity.</p>	
Modified nexus approach	<p>The reduced tax rate will apply on a percentage of the qualifying IP income determined based on a modified nexus approach formula. The formula will be specified in the subsidiary legislation for the tax incentive.</p> <p>Qualifying IP income are royalty and/or licensing fees from qualifying IP rights in connection with the qualifying activity. It excludes income from the sale of the qualifying IP rights.</p> <p>The qualifying IP rights must be owned by the applicant and must be registered/applied to be registered with the Intellectual Property Corporation of Malaysia or any equivalent body outside Malaysia.</p> <p>The qualifying research and development expenditure to be used in the modified nexus approach formula must be in line with the types of eligible expenditure under Section 34A of the Income Tax Act 1967. Companies currently enjoying incentives under Section 34A/34B of the Income Tax Act 1967 will not be eligible for the reduced tax rate on qualifying IP income.</p> <p>A three-year transitional measure for the requirement to track and trace the qualifying research and development expenditure to the qualifying IP rights will be specified in the subsidiary legislation for the tax incentive.</p>	

Incentives

Incentive Category	New Investment	Expansion
Separate source and separate account	The qualifying activity is treated as a separate and distinct business and source for tax purposes. Therefore, separate accounts must be maintained for the income from the qualifying activity, as well as for qualifying IP income and non-IP income.	
Non-compliance with conditions and surrender of tax incentive	Where the applicable conditions are not complied with in a YA, the reduced tax rate will not apply for that YA. In respect of ITA, it can only be claimed when the applicable conditions are complied with. In the event the MD/MSC status is revoked, the tax incentive will be withdrawn. The tax incentive may be surrendered at any time, except in the event of non-compliance with conditions.	



The guidelines and other information regarding the MD tax incentive can be accessed [here](#).

Global Minimum Tax (“GMT”)

Frequently Asked Questions (“FAQ”) on Implementation of GMT in Malaysia

IRBM has issued the above FAQ on 28 June 2024 which covers questions and answers in relation to the implementation of GMT in Malaysia on the following topics:

- General issues
- Computation of adjusted covered taxes
- Computation of effective tax rate and top-up tax
- Transition rules
- Returns
- Offences and penalties

The FAQ can be accessed on IRBM’s website [here](#)

Sales Tax

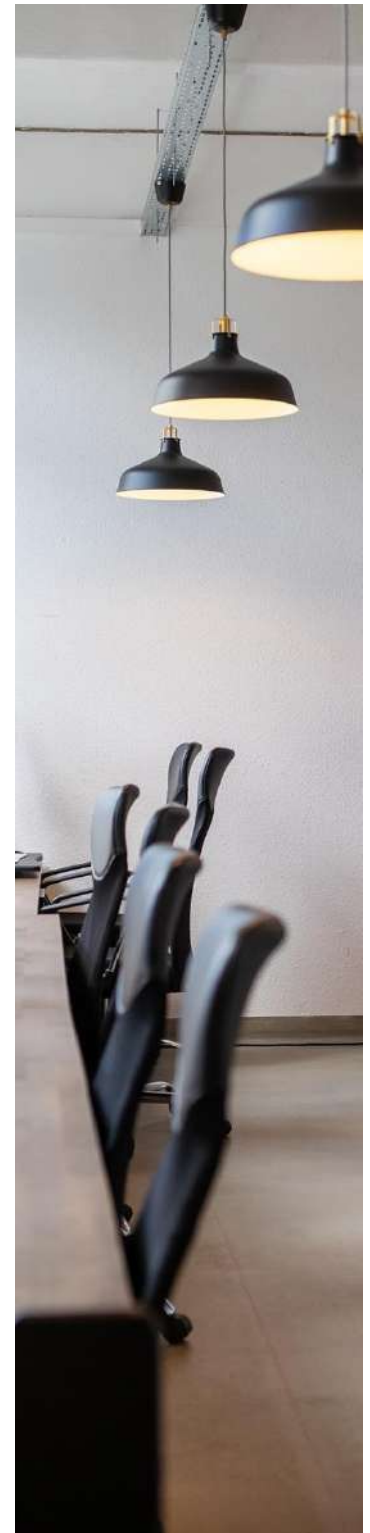
Public Ruling No. 3/2024: Meaning of the Words “Used Directly” or “Directly Used” in the Sales Tax (Persons Exempted from Payment of Tax) Order 2018

The abovesaid public ruling was issued by the Royal Malaysian Customs Department (“RMCD”) on 1 June 2024 and is effective from the same date. It explains the meaning of the term “used directly” or “directly used” in the conditions for the sales tax exemption in the abovesaid order.

The public ruling states that “used directly” or “directly used” means that all goods exempted from sales tax under item 33A, 33B, 46, 47, 48, 55, 63 and 65 of Schedule A, and item 3 of Schedule B in the abovesaid order must be:

- at the premises of the person specified for that item when the specified process or activity for that item is carried out;
- converted from raw materials or components into finished goods up to the process of wrapping and packaging; or
- used for handling or transportation when the specified process or activity for that item is carried out.

The public ruling can be accessed on RMCD’s MySST website [here](#)



Service Tax

Industry Guides

The following service tax industry guides were released by RMCD during the period May to June 2024:

Title	Date Issued	Remarks
Employment Services	14 May 2024	Replaces the previous guide dated 5 August 2019
Domestic Flights	30 May 2024	Replaces the previous guide dated 9 September 2018
Customs Agent Services	30 May 2024	Replaces the previous guide dated 9 August 2022
Passenger Vehicle Hire Services	14 June 2024	Replaces the previous guide dated 21 August 2018

The industry guides can be accessed on RMCD's MySST website [here](#)

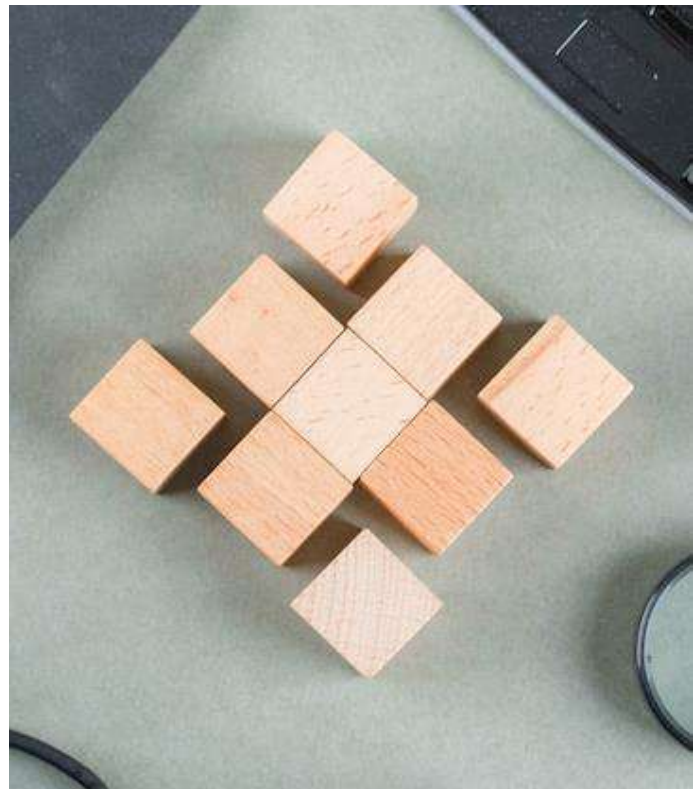
Others

Tax Investigation Framework 2024

IRBM has released the Tax Investigation Framework 2024 on 31 May 2024, and it is effective from the same date. It supersedes the Tax Investigation Framework 2023 dated 1 January 2023.

The changes in the latest framework as compared to the 2023 framework mostly relates to the change in emphasis for tax investigations by IRBM. It is now for the purpose of raising assessments and collection of revenue, instead of solely for the purpose of prosecuting tax evasion by taxpayers as in the earlier framework.

The framework can be accessed on IRBM's [here](#)



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