



Smart decisions. Lasting value.

Crowe Chat

Vol.12/October 2020

Tax



Table of Contents

- 01 | **Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions**
- 02 | **Income Tax Rules for Deduction of Listing Expenses**
- 03 | **An article on 'Withdrawal of Stock – Tax Risk'**



1. Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions

Introduction

Companies often incur R&D expenses to develop new products or to create new technology or information that can improve the effectiveness of products or make the production of products more efficient. In order to encourage taxpayers to undertake R&D activities, the Malaysian Government has put in place various incentives in the form of –

- (a) a special provision under Subsection 34(7) of the Income Tax Act, 1967 (ITA), where a single deduction is given for R&D expenditure that is non-capital in nature; or
- (b) a special deduction under Section 34A of the ITA, where a double deduction is given for in-house R&D expenditure that is non-capital in nature; or
- (c) a special deduction under Section 34B of the ITA, where a double deduction is given for –
 - (i) contribution in cash to an approved research institute;
 - (ii) payment for the use of the services of an approved research institute or approved research company; or
 - (iii) payment for the use of the services of a R&D company or a contract R&D company.

Previous PR

The previous PR [PR5/2004 - Double Deduction Incentive on Research Expenditure](#) was issued on 30 December 2004 and its [Addendum](#) was issued on 3 April 2008.

1. Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions

New PR and Guidelines

The Inland Revenue Board of Malaysia (IRBM) issued the following PR and Guidelines on 13 August 2020 to update the previous PR based on the current legislation:

- [PR5/2020 - Tax Treatment Of Research And Development Expenditure Part I - Qualifying Research And Development Activity](#)
- [PR6/2020 - Tax Treatment Of Research And Development Expenditure Part II - Special Deductions](#)
- [Guidelines On The Application Procedure For A Special Deduction In Respect Of A Qualifying Research And Development](#)



1. Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions

Section 2 of the ITA:

“research and development” means any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science and technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devised, products, produce or processes, but does not include—

- (a) quality control or routine testing of materials, devices or products;
- (b) research in the social sciences of the humanities;
- (c) routine data collection;
- (d) efficiency surveys or management studies;
- (e) market research or sales promotion;
- (f) routine modifications or changes to materials, devices, products, processes or production methods; or
- (g) cosmetic modifications, stylistic changes to materials, devices, products, processes or production methods”.

Details of new PR

PR5/2020 - Tax Treatment Of Research And Development Expenditure Part I - Qualifying Research And Development Activity

- Research and Development Activity and Project

Businesses continuously undertake specific activities to create new products or technologies and refer to these activities as R&D activities. However, such activities do not automatically qualify as R&D activities for income tax purposes. An activity undertaken for the purposes of R&D must fulfill the definition of R&D under Section 2 of the ITA to qualify as a qualifying R&D activity.



Where an R&D project consists of a set of R&D activities, the eligibility for a double deduction or single deduction incentive under the ITA is ascertained at the qualifying R&D activity level and not at the R&D project level.

1. Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions

Details of new PR (cont'd)

- Determination of a Qualifying R&D Activity

Following the introduction of the new definition of R&D under Section 2 of the ITA with effect from 28 December 2018, this PR further explains that a qualifying R&D activity has to jointly fulfill the following three (3) criteria:

(a) have an objective to –

- (i) acquire new knowledge;
- (ii) create new products or processes; or
- (iii) improve existing products or processes.

(b) involved in something new (novelty) or technical risk; and

(c) is a systematic, investigative and experimental (SIE) study in a field of science or technology.



1. Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions



Details of new PR (cont'd)

PR6/2020 - Tax Treatment Of Research And Development Expenditure Part II – Special Deductions

- Double Deduction or Single Deduction

An eligible person may claim an incentive in the form of a double deduction or a single deduction for qualifying R&D expenditure incurred on a qualifying R&D activity. The double deductions under Section 34A and Section 34B of the ITA have been previously dealt with in PR5/2004. This PR explains the single deduction under Subsection 34(7) of the ITA for revenue expenditure incurred on a qualifying R&D activity.

1. Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions

Details of new PR (cont'd)

PR6/2020 - Tax Treatment Of Research And Development Expenditure Part II – Special Deductions

- Qualifying R&D Expenditure
 - ✓ To qualify for a double deduction under Section 34A and Section 34B of the ITA, revenue expenditure must be incurred for a **qualifying R&D activity which has been approved by the Minister** in the basis period.
 - ✓ Whereas, for a single deduction under Subsection 34(7) of the ITA, revenue expenditure must be incurred for a **qualifying R&D activity** in the basis period.



The accounts for the expenditure incurred for each R&D activity must be kept separately regardless of whether the said activity has been approved by the Minister or not.

1. Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions

Details of New Guidelines

The Guidelines were issued to explain the application procedures, the relevant forms to be completed and the submission deadline of the relevant forms.

Relevant Provisions of the ITA	Form	Submission Deadline	
Section 34A (double deduction)	<p><u>Form 1 (Application for Approved R&D activity)</u> and <u>Form 1 (Appendix)</u></p> <ul style="list-style-type: none">- each completed Form 1 is to be submitted together with the relevant supporting documents.- Form 1 is also applicable to a pioneer company which chooses to make a claim under Subsection 34A(4A) of the ITA.	<p><u>New Project</u></p> <p>R&D activity starts in the 1st half of the financial year</p> <p>Form 1 is to be submitted within six (6) months before the end of the financial year.</p>	<p>R&D activity starts in the 2nd half of the financial year</p> <p>Form 1 is to be submitted within six (6) months after the end of the financial year.</p>

1. Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions

Details of New Guidelines (cont'd)

Relevant Provisions of the ITA	Form	Submission Deadline	
Section 34A (double deduction)	<u>Form 2 (Claim for Double Deduction on R&D Expenditure)</u> <ul style="list-style-type: none"> <li data-bbox="385 573 885 703">This form is to be completed after the certificate of approval has been issued by the Director General of Inland Revenue (DGIR). 	Certificate of approval issued <u>before</u> the due date of submission of the return form Form 2 is to be submitted on the same date of submission of the relevant return form.	Certificate of approval issued <u>after</u> the due date of submission of the return form Form 2 is to be submitted within three (3) months from the date the certificate of approval is issued by the DGIR.
Section 34B (double deduction) <i>*Form 3 has replaced Borang DD2/1995 (Pin.2)</i>	<u>Form 3 (Claim for Double Deduction)</u>	The original copy of Form 3 (together with supporting documents) must be kept by the company and should be furnished upon request during an audit by the IRBM.	

1. Public Rulings (PR) on Tax Treatment of Research and Development (R&D) Expenditure and Guidelines on the Application Procedure for the Special Deductions

Details of New Guidelines (cont'd)

Relevant Provisions of the ITA	Form	Submission Deadline
Section 34(7) (single deduction)	Form 4 (Claim for Single Deduction)	The submission of the completed form is within 30 days after the due date for submission of the relevant return form.

The application form (Form 1) and the forms to claim a special deduction (Form 2 and Form 4) are to be submitted to the:

Ketua Pengarah Hasil Dalam Negeri
Lembaga Hasil Dalam Negeri Malaysia
Jabatan Dasar Percukaian
Aras 17, Menara Hasil
Persiaran Rimba Permai, Cyber 8
63000 Cyberjaya Selangor.

[For the attention of: Pengarah Jabatan Dasar Percukaian]

2. Income Tax Rules for Deduction of Listing Expenses

Introduction

It was proposed in the 2020 Budget that tax deductions be given for listing expenses incurred by technology-based companies and Small and Medium Enterprises.

New Income Tax Rules

The Income Tax (Deduction for Expenses in Relation to Listing on Access, Certainty, Efficiency (ACE) Market or Leading Entrepreneur Accelerator Platform (LEAP) Market of Bursa Malaysia Securities Berhad) Rules 2020 was gazetted on 3 September 2020.

Details of New Income Tax Rules

Effective date

From Year of Assessment (YA) 2020 to YA 2022.

2. Income Tax Rules for Deduction of Listing Expenses

Details of New Income Tax Rules (cont'd)

What is the tax deduction?

A deduction of an equivalent amount is given for the following expenditure incurred for listing on the ACE or LEAP Market:

- ❖ Payment of fees to Bursa Malaysia Securities Berhad and Securities Commission of Malaysia; and
- ❖ Professional fees for –
 - advisory fees to the sponsor (main adviser for listing on ACE Market and approved adviser (main adviser for listing on LEAP Market); and
 - listing exercise – fees to solicitor, company secretary, tax adviser, reporting accountant, auditor, valuer, independent market researcher, issuing house and share registrar; and
- ❖ Payment of fees for underwriting, placement and brokerage services.



2. Income Tax Rules for Deduction of Listing Expenses

Details of New Income Tax Rules (cont'd)

When is the tax deduction claimable?

The tax deduction is only claimable for the basis period in a YA the technology-based company is listed on the ACE or LEAP Market.

How much is claimable?

The total amount of tax deduction is limited to RM1.5 million and the amount of deduction must not exceed the adjusted income (prior to deduction of the above expenses). Any excess of expenditure which cannot be claimed or cannot be claimed in full will not be allowed to be carried forward to future YAs.



2. Income Tax Rules for Deduction of Listing Expenses

Details of New Income Tax Rules (cont'd)

Who can claim this deduction?

A technology-based company involved in the design, development and manufacture, production or application in any of the following fields and activities:

- ✓ advanced electronics and information technology;
- ✓ telecommunications;
- ✓ equipment/ instrumentation, automation and flexible manufacturing systems;
- ✓ life sciences and biotechnology;
- ✓ healthcare;
- ✓ electro-optics, non-linear optics and optoelectronics;
- ✓ advanced materials;
- ✓ energy;
- ✓ aerospace;
- ✓ transportation; or
- ✓ value-added services.

Withdrawal of Stock – Tax Risks

By **Dr. Voon Yuen Hoong**,
Executive Director, Corporate Tax Compliance

[Read more](#)



Start the Conversation with Us

Corporate Tax Compliance

Foo Meng Huei
Executive Director
menghuei.foo@crowe.my
+603 2788 9898 Ext 2501

Voon Yuen Hoong
Executive Director
yuenhoong.voon@crowe.my
+603 2788 9898 Ext 2522

Wong Man Yee
Executive Director
manyee.wong@crowe.my
+603 2788 9898 Ext 2519

Liza Ooi Yap Lin
Director
liza.ooi@crowe.my
+603 2788 9898 Ext 2557

Tax Advisory

Chong Mun Yew
Executive Director
munyew.chong@crowe.my
+603 2788 9898 Ext 2523

Mervyn Ong Hean Chong
Executive Director
mervyn.ong@crowe.my
+603 2788 9898 Ext 2587

Indirect Tax

Fam Fui Chien
Manager
fuichien.fam@crowe.my
+603 2788 9898 Ext 2504

Business Outsourcing

Esther Chan
Manager
esther.chan@crowe.my
+603 2788 9898 Ext 2546

Transfer Pricing

Song Sylvia
Director
sylvia.song@crowe.my
+603 2788 9898 Ext 2514

Global Mobility Services

Shalina Binti Jaafar
Director
shalina.jaafar@crowe.my
+603 2788 9898 Ext 2505

Our Offices (West Malaysia)

Kuala Lumpur

Level 16, Tower C,
Megan Avenue 2,
12 Jalan Yap Kwan Seng,
50450 Kuala Lumpur,
Malaysia

+603 2788 9999 Main
+603 2788 9899 Fax

Contact: Poon Yew Hoe
Email: yewhoe.poon@crowe.my

Klang

Suite 50-3, Setia Avenue,
No. 2, Jalan Setia Prima SU13/S,
Setia Alam, Seksyen U13,
40170 Shah Alam,
Selangor, Malaysia

+603 3343 0730 Main
+603 3344 3036 Fax

Contact: Michael Ong
Email: michael.ong@crowe.my

Penang

Level 6, Wisma Penang Garden,
42 Jalan Sultan Ahmad Shah,
10050 Penang, Malaysia

+604 227 7061 Main
+604 227 8011 Fax

Contact: Eddy Chan
Email: eddywaihun.chan@crowe.my

Johor Bahru

E-2-3 Pusat Komersial Bayu Tasek,
Persiaran Southkey 1,
Kota Southkey,
80150 Johor Bahru,
Johor, Malaysia

+607 288 6627 Main
+607 338 4627 Fax

Contact: Patrick Wong
Email: patrick.wong@crowe.my

Melaka

52 Jalan Kota Laksamana 2/15,
Taman Kota Laksamana, Seksyen
2,
75200 Melaka, Malaysia

+606 282 5995 Main
+606 283 6449 Fax

Contact: Patrick Wong
Email: patrick.wong@crowe.my

Muar

8, Jalan Pesta 1/1,
Taman Tun Dr. Ismail 1,
Jalan Bakri, 84000 Muar,
Johor, Malaysia

+606 952 4328 Main
+606 952 7328 Fax

Contact: Ng Kim Kiat
Email: kimkiat.ng@crowe.my

Our Offices (East Malaysia)

Kuching- iCom Square

2nd Floor, C378, Block C,
iCom Square,
Jalan Pending,
93450 Kuching, Sarawak, Malaysia

+6082 552 688 Main
+6082 266 987 Fax

Contact: Kenny Chong
Email: kenny.chong@crowe.my

Kuching- Brighton Square

2nd Floor, Lots 11994 - 11996,
Brighton Square,
Jalan Song,
93350 Kuching, Sarawak, Malaysia

+6082 285 566 Main
+6082 285 533 Fax

Contact: Eddie Wee
Email: eddie.wee@crowe.my

Miri

Lot 2395, Block 4,
Bulatan Business Park,
Jalan Bulatan Park,
98000 Miri, Sarawak, Malaysia

+6085 658 835 Main
+6085 655 001 Fax

Contact: Matthew Wong
Email: matthew.wong@crowe.my

Bintulu

1st floor, Lot 4542-4543,
Jalan Abang Galau Shophouse,
Kampung Masjid, 97000
Bintulu, Sarawak, Malaysia

+6086 333 328 Main
+6086 334 802 Fax

Contact: Lau Hin Siang
Email: hinsiang.lau@crowe.my

Sibu

1st & 2nd Floor, No. 1 Lorong
Pahlawan 7A2, Jalan Pahlawan,
96000 Sibu, Sarawak, Malaysia

+6084 211 777 Main
+6084 216 622 Fax

Contact: Morris Hii
Email: morris.hii@crowe.my

Labuan

Lot 36, Block D, Lazenda Centre,
Jalan OKK Abdullah, P.O. Box
81599, 87025, Labuan, Malaysia

+6087 417 128 Main
+6087 417 129 Fax

Contact: Christabel Chieng
Email: christabel.chieng@crowe.my

Sabah

Damai Plaza 3, 3rd Floor, C11, Jalan
Damai 88300, P.O. Box 11003,
88811 Kota Kinabalu, Sabah, Malaysia

+6088 233 733 Main
+6088 238 955 Fax

Contact: Michael Tong
Email: michael.tong@crowe.my

Contact us

Crowe Malaysia PLT
Level 16, Tower C
Megan Avenue 2
12, Jalan Yap Kwan Seng
50450 Kuala Lumpur
Malaysia

Tel. +603 2788 9999

About Crowe Malaysia PLT

Crowe Malaysia PLT is the 5th largest accounting firm in Malaysia and an independent member of Crowe Global. The firm in Malaysia has 13 offices, employs over 1,300 staff, serves mid-to-large companies that are privately-owned, publicly-listed and multinational entities, and is registered with the Audit Oversight Board in Malaysia and the Public Company Accounting Oversight Board in the US.

About Crowe Global

Ranked the 8th largest accounting network in the world, Crowe Global has over 250 independent accounting and advisory firms in 146 countries. For almost 100 years, Crowe has made smart decisions for multinational clients working across borders. Our leaders work with governments, regulatory bodies and industry groups to shape the future of the profession worldwide. Their exceptional knowledge of business, local laws and customs provide lasting value to clients undertaking international projects.

www.crowe.my

This communication is prepared and issued by Crowe Malaysia PLT, it is meant for general information purposes only and it is not intended to be professional advice. Recipients should not act upon this communication and please consult qualified advisors for professional advice and services. Crowe Malaysia PLT or any of Crowe's entities will not be responsible for any loss or consequences of anyone acting in reliance on this communication or for decisions made based on this communication.

Crowe Malaysia PLT is a member of Crowe Global, a Swiss verein. Each member firm of Crowe is a separate and independent legal entity. Crowe Malaysia PLT and its affiliates are not responsible or liable for any acts or omissions of Crowe or any other member of Crowe and specifically disclaim any and all responsibility or liability for acts or omissions of Crowe or any other Crowe member.
© 2020 Crowe Malaysia PLT