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Crowe Chat

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Tax

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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>Form 1 (Application for Approved R&D activity) and Form 1 (Appendix)</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> <table border="1" data-bbox="966 660 1870 860"> <thead> <tr> <th data-bbox="966 660 1400 748">R&D activity starts in the 1st half of the financial year</th> <th data-bbox="1400 660 1870 748">R&D activity starts in the 2nd half of the financial year</th> </tr> </thead> <tbody> <tr> <td data-bbox="966 748 1400 860">Form 1 is to be submitted within six (6) months before the end of the financial year.</td> <td data-bbox="1400 748 1870 860">Form 1 is to be submitted within six (6) months after the end of the financial year.</td> </tr> </tbody> </table> <p><u>Extension Project</u> Form 1 is to be submitted within six (6) months before the end of the financial year.</p>		R&D activity starts in the 1 st half of the financial year	R&D activity starts in the 2 nd half of the financial year	Form 1 is to be submitted within six (6) months before the end of the financial year.	Form 1 is to be submitted within six (6) months after the end of the financial year.
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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> - 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 before 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 after 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**,
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