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Tax Espresso

A snappy delight

October 2018

Greetings from Deloitte Malaysia Tax Services

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Takeaways:

1. [Public Ruling \(PR\) No. 3/2018 'Qualifying Expenditure and computation of Industrial Building Allowance'](#)
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Upcoming events:

1. [MFRS 15 Seminar - Revenue from contracts with customers \(KSG\)](#)
2. [Deloitte TaxMax 2018 – The 44th Series](#)

Important deadlines:

Task	Due Date
	31 October 2018
1. 2019 tax estimates for companies with November year-end	√
2. 6 th month revision of tax estimates for companies with April year-end	√
3. 9 th month revision of tax estimates for companies with January year-end	√
4. Statutory filing of 2018 tax returns for companies with March year-end	√
5. Due date for 2018 CbCR notification for companies with October year-end	√

Public Ruling (PR) No. 3/2018 'Qualifying Expenditure and Computation of Industrial Building Allowance'

The Inland Revenue Board of Malaysia (IRBM) has issued [PR No. 3/2018](#) on 12 September 2018 to explain the tax treatment in relation to qualifying building expenditure (QBE) and the computation of industrial building allowances (IBA).

Below are the salient points of PR No. 3/2018:

Qualifying Building Expenditure

1. The capital expenditure incurred on the construction of a building which will qualify as QBE includes the cost of clearing the old site including the demolition of any old structure provided the new building is situated precisely on the same site occupied by the old building. However, the cost of clearing the site of any previous works or demolishing the previous structure which was an industrial building is not included as QBE. Aside from that, any compensation payment to obtain the right to occupy / own a property is also excluded from QBE [*Paragraph 4.1.1 of the PR refers*].
2. The meaning of *cost of constructing additions, renovations and alteration* is elaborated in the PR:
 - (i) The *cost of constructing additions* is a cost involved in constructing additions to a building due to insufficient space in the building or other reasons in order to fulfill any requirement or usage related to a business.
 - (ii) *Renovations* include the reconstruction of structures inside a building without constructing an additional new building, or reconstruction which involves structural changes to a building and improvements. Example 2 of the PR also provides examples of renovations done by a hotel owner, where renovations involving additional structures in a hotel building and not replacement of worn out items would qualify for IBA claims.
 - (iii) *Alteration* is construction work which results in an overall change of the original structure as the improvement to the old structure is significant. Alteration is done to a building which is used as an industrial building for the purposes of improving the quality of service and increasing the productivity of a business.

A taxpayer is required to keep documents stating the reason for the cost of constructing additions, renovations and alterations. Only reasons which are reasonable and acceptable will be considered by the Director General for the purpose of claiming IBA [*Paragraph 4.1 of the PR refers*].

3. In the case of purchase of a building, if the cost of the building and land cannot be identified separately (e.g., where the costs are not specified separately in the sale and purchase agreement), a person needs to obtain a valuation from the Valuation and Property Services Department (VPSD) or a professional valuer to distinguish the cost of the building and the cost of the land [*Paragraph 4.2.3 of the PR refers*].
4. Effective year of assessment (YA) 2005, Paragraph 3 of Schedule 3 was amended so that the QBE for a purchased building is the purchase price of the building. Consequently, Paragraphs

3A, 4, 5 and the proviso to Paragraph 35 of Schedule 3 of the Income Tax Act 1967 (ITA) were repealed.

Hence for an industrial building that was purchased prior to YA 2005, two special provisions, i.e. (i) Special provisions to paragraph 3, and (ii) Special provisions to Paragraph 35, Schedule 3 of the ITA, are maintained for purposes of computing IBA [*Paragraph 4.2.5 of the PR refers*].

Business Operator is the Owner of the Building

5. Effective YA 2016 onwards, Subparagraph 16B(1) of Schedule 3 of the ITA clarifies that a building owner must also be the business operator [for the types of building under Paragraphs 37A, 37B, 37C, 37E, 37F, 37G, 37H, 42A(1), 42A(2), 42B and 42C of Schedule 3] to be eligible to claim IBA on that building. Hence, a building owner who rents out his building to another person to carry on business of the abovementioned Paragraphs of Schedule 3 is not eligible to claim IBA on that building although the tenant uses it as an industrial building [*Paragraphs 8.1 of the PR refers*].

However, if a person owns a building apart from the buildings listed in the abovementioned Paragraphs of Schedule 3, and leases or rents out the building to another person (tenant) who uses the building as an industrial building, IBA shall be allowed to the owner of the building as provided under Paragraph 60, Schedule 3 of the ITA [*Paragraph 10.1 of the PR refers*].

Subparagraph 16B(1) of Schedule 3 applies to expenditure incurred on new buildings which are constructed or purchased commencing from YA 2016.

Part of a Building Not Used as an Industrial Building

6. Subparagraph 16B(2) of Schedule 3 provides that where the owner of the building is also the business operator (for the types of building under Paragraphs 37A, 37B, 37C, 37E, 37F, 37G, 37H, 42A, 42B and 42C of Schedule 3) and rents out part of the industrial building, if the space rented out does not exceed 10% of the floor area of the whole building, the whole building qualifies as an industrial building. Otherwise, the part of the building rented out will not qualify as an industrial building.

With reference to the IRBM's views appended in Example 10 of the PR, the words 'whole building' in Subparagraph 16B(2) may refer to 3 blocks of buildings. Furthermore, the footnote to Example 10 provides that, for the purposes of claiming IBA under Paragraph 42B of Schedule 3 of the ITA, a hostel which is situated either within or outside the university compound qualifies as an industrial building if the management of the hostel is undertaken by the university itself [*Paragraph 8.3 of the PR refers*].

Business Operator is a Tenant of the Building

7. Under Paragraphs 37A and 37B of Schedule 3 of the ITA, tenants are eligible (provided the conditions in Paragraphs 37A and 37B are met) to claim industrial building allowances on the cost of alteration and renovation of rented buildings irrespective whether the original building-
 - (i) is an industrial building or not; or

(ii) is an industrial building under different categories of buildings or different paragraphs (i.e., Paragraphs 37A, 37B, 37C, 37E, 37F, 37G, 37H, 42A(1), 42A(2), 42B and 42C of Schedule 3 of the ITA).

[Paragraph 8.2 of the PR refers].

The PR also addresses, amongst others, the concept of *relevant interest* in Paragraph 10 of the PR. Various examples are provided in the PR together with a summary of QBE for claiming of IBA in Appendix 1 of the PR.

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New Public Rulings on Taxation of Resident Individual

On 13 September 2018, the IRBM has published the following PRs to explain the tax treatment in relation to a resident individual:

- [PR No. 4/2018](#) 'Taxation of a Resident Individual Part I - Gifts or Contributions and Allowable Deductions'
- [PR No. 5/2018](#) 'Taxation of a Resident Individual Part II – Computation of Total Income and Chargeable Income'; and
- [PR No. 6/2018](#) 'Taxation of a Resident Individual Part III - Computation of Income Tax and Tax Payable'.

Below are the salient points of PR No. 4/2018, PR No. 5/2018 and PR No. 6/2018:

A) Allowable Deductions

1. PR No. 4/2018 replaces PR No. 2/2005, Addendum to PR No. 2/2005 and Second Addendum to PR No. 2/2005 and incorporates all changes made to allowable deductions for individual under Sections 46 to 50 of the ITA since YA 2007.
2. Medical treatment, special needs and carer expenses for parents
 - Qualifying expenses related to the above claim are provided in paragraph 6.2.4 of PR No. 4/2018.
 - Salary paid to carers to take care of elderly but physically and mentally healthy parents do not qualify for this deduction.
 - As mentioned in paragraph 6.2.6, a list of equipment for medical and special needs that qualify for deductions is shown in Appendix 1 to PR No. 4/2018. However, the list is not exhaustive and may include other equipment as determined by medical practitioners registered with the Malaysian Medical Council (MMC).
3. Disabled person
 - An individual is eligible to claim a further deduction of RM6,000 if he/she is certified in writing by the Department of Social Welfare (DSW) as a disabled person.
 - The purchase of basic supporting equipment for disabled persons not registered with the DSW are not allowed as deductions.

4. Deposits in Skim Simpanan Pendidikan Nasional (SSPN) Account

- SSPN account can be opened by parents for children aged 18 years and below. The account can be maintained until the child reaches the age of 29 years old. Deposits made by parents to this account until the child reaches the age of 29 can be allowed as a deduction.
- For children aged 18 and above, they have the option to either open an account under their own name or under their parents' name. However, if the account is opened under the child's name, any deposits made into the account are not eligible for deduction for both parents and child.

5. Deduction for parents

- Where a wife elects for a combined assessment and the assessment is made in her husband's name, this deduction is only allowed for the legitimate or adopted parents of the husband.
- If a husband elects for a combined assessment and the assessment is made in his wife's name, this deduction is allowed for the legitimate or adopted parents of the wife.

6. Lifestyle relief

- Purchase of books would include school textbooks, periodicals, comics whether purchased locally or overseas but exclude any banned reading materials such as morally offensive magazines.
- The additional charge for the warranty of personal computer, smartphone or tablet is not allowed for deduction.
- Gym membership excludes club membership which provides gym facilities. *[Paragraph 6.11.1 of PR No. 4/2018 refers].*

7. Information on courses and institutions recognized by the Government as well as the list of local institutions recognized by the Government or professional bodies in Malaysia approved by the Minister of Finance can be obtained from the official portal of the Ministry of Higher Education at www.mohe.gov.my (previously available in the website of the Public Service Department).

B) Determination of Total Income and Chargeable Income

1. Employment income under Section 13(1) of the ITA includes any amount of output tax under the Goods and Services Tax Act 2014 which is borne by the employer in respect of perquisites, benefits in kind or value of living accommodation that is given or provided to an employee.
2. The statutory income from a non-business source is the adjusted income of that source for the basis period for that YA. *[Paragraph 9.2 of PR No. 5/2018 refers].*

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We invite you to explore other tax-related information at:

<http://www2.deloitte.com/my/en/services/tax.html>

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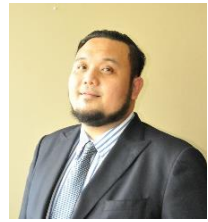
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