

eNewsletter 06/2022



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and Tax Filing
Fees on 17
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September 2022

Deferment of
Payment of
Small-Value
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2022

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Tax Updates

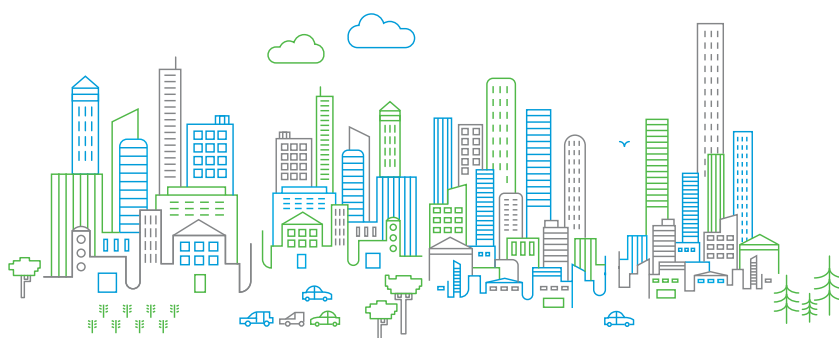
Revised Guidelines on Deduction for Secretarial and Tax Filing Fees on 17 August 2022

Background

The Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) (Amendment) Rules 2021 (“the Amendment Rules”) were gazetted by the Government on 24 December 2021.

To recap, the Amendment Rules being effective from year of assessment (“YA”) 2022 amended the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 (“the Principal Rules”) with the **removal** of the words “**and paid**” thus, allowing deduction for secretarial and tax filing fees be given to a person resident in Malaysia who has incurred the expenses in the basis period for that YA.

Previously, the Principal Rules have effect from YA 2020 and the total deduction is capped at a maximum amount of RM 15,000 per YA in respect of the secretarial and tax filing fees combined.



Updates

On 17 August 2022, the Inland Revenue Board (“IRB”) has issued a revised guidelines on deduction for secretarial and tax filing fees which explain the tax treatment from YA 2022 onwards.

The revised guidelines contained examples that illustrate the claims on deduction for secretarial and tax filing fees from YA 2022.

Below are the salient points of the revised guidelines:

- (a) With effect from YA 2022, deduction can be claimed on secretarial and tax filing fees so long as the expenses were incurred in the basis period for a YA. *[Note: Prior to YA 2022, such expenses can only be claimed as deduction provided they were incurred **and paid** in the basis period of a YA.]*
- (b) A person resident in Malaysia who has not claimed a deduction on the secretarial and tax filing fees in the basis periods for YAs 2020 and 2021 is allowed to claim such expenses in the basis period for YA 2022 or subsequent YAs, provided the expenses incurred have been paid before a deduction is allowed. *[Note: The total deduction is still capped at a maximum amount of RM 15,000 for a YA.]*
- (c) Any secretarial and tax filing fees which were incurred prior to YA 2020 but have yet to claim deduction (i.e. yet to pay) shall not be allowed as a deduction with effect from 1 January 2022.



Guidelines on Tax Treatment of Digital Currency Transactions on 26 August 2022

On 26 August 2022, the IRB has issued guidelines on tax treatment of digital currency transactions (“DCT”).

The Guidelines provide further guidance on the income tax treatment in respect of e-commerce transactions which include the general tax treatment of digital currencies or digital tokens.

The Guidelines apply to any person that acquires or disposes of digital currencies as well as is involved in the business of digital currencies such as trading, mining and exchanges of digital currencies.

We tabulate below the salient points of the guidelines:

Category	Interpretation
Meaning of “digital currency” and “digital token”	<p><u>Digital currency</u> a representation of value which is recorded on a distributed ledger whether cryptographically-secured or otherwise, that functions as a medium of exchange and is interchangeable with any money, including the crediting or debiting of an account.</p> <p><u>Digital token</u> a representation which is recorded on a distributed ledger whether cryptographically-secured or otherwise.</p> <p>The above also include digital currencies such as Bitcoin, Ethereum (Ether) or any other digital currencies that have similar characteristics as the above.</p> <p>The term digital currencies and digital tokens are used interchangeably in the Guidelines.</p>
General tax treatment of acquisition and disposal of digital currency	<p>Pursuant to Section 3 of the Income Tax Act 1967 (“ITA”), income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia is taxable.</p> <p>Only revenue gains arising from the disposal of digital currencies by a person is taxable e.g. a person who actively trade digital currencies.</p> <p>In short, any gains / losses from the disposal of digital currencies or digital tokens that are revenue in nature would be taxable / deductible. On the other hand, any gains / losses from the disposal of digital currencies or digital tokens that are capital in nature are not taxable / not deductible.</p>

Guidelines on Tax Treatment of Digital Currency Transactions on 26 August 2022 (Cont.)

Category	Interpretation
Tax treatment for specific business transactions	<u>Trading (buying and selling) of digital currencies</u> Any person that buy and sell digital currencies in the ordinary course of their business will be taxed on the profit derived from trading in the digital currencies similar to the trading of stock. Meanwhile, expenses relating to the business will be tax deductible and losses incurred will be allowed.
	<u>Mining of digital currencies</u> Any person that carrying out a business of mining or carrying out mining activities with a profit-seeking motive is subjected to tax according to the existing income tax provisions. Expenses relating to the business will be tax deductible and losses incurred will be allowed.
	<u>Business transactions carried out using digital currencies</u> Businesses that accept digital currencies as payment for goods or services / payment of expenses / purchases of assets should record the sale based on the open market value of the goods or services in Ringgit Malaysia (RM). In situations where the transactions are agreed based on number of digital currencies, the value of the goods sold or purchased, or the contract of services are determined based on the value of the digital currencies at the point of transactions.
	<u>Paying of salaries and wages to employees in digital currencies</u> Employers that paid salaries and wages to employees using digital currencies are allowed to claim such payments as business expenses. In the hands of the employees, the salaries and wages received are taxable based on the value stated in the employment contract and value of the employment services performed.
Tax treatment for investment and other transactions in digital currencies	<u>Investment of digital currencies</u> Gains from realisation of digital currencies are taxable if they are revenue in nature. On the other hand, they are not taxable if the gains are considered as capital investment.
	<u>Mere acquisition and disposal of digital currencies</u> Buying of digital currencies merely for the purpose of part or full payment of any goods and services should not give rise to taxation. However, gains from disposal of these currencies may be taxable if the person's intention is related to trading or any other revenue making purpose.

You may refer to [HERE](#) for detailed information.

Amendment to Income Tax (Deduction for Expenses in relation to the Cost of Detection Test of Coronavirus Disease 2019 (COVID-19) for Employees) Rules 2021 [P.U. (A) 404/2021] on 9 September 2022

Background and recent Updates

The Income Tax (Deduction for Expenses in relation to the Cost of Detection Test of Coronavirus Disease 2019 (COVID-19) for Employees) Rules 2021 [P.U. (A) 404/2021] (“the Principal Rules”) were gazetted on 20 October 2021.

To recap, the Principal Rules being effective from YA 2021, are applicable to an employer who is resident in Malaysia who has incurred expenses in respect of cost of detection test of COVID-19 for its employees within the period from 1 January 2021 until 31 December 2021 and used for the purpose of his business.

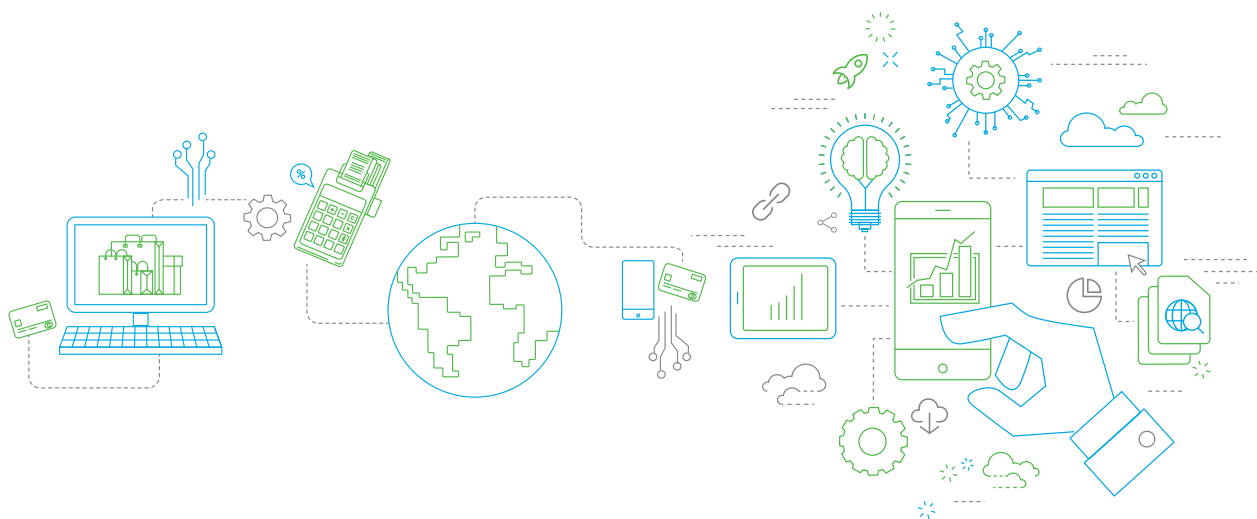
The amount of deduction is in addition to any deduction allowable under Section 33 of the ITA.

An employer claiming for deduction under the Rules shall retain the receipt and certification issued by a medical practitioner registered with the Malaysian Medical Council or a medical practitioner registered outside Malaysia that the detection test of Covid-19 has been provided to its employees.

On 18 May 2022, IRB has further clarified that for the purpose of Rule 2(3) of the Principal Rules, the “certification issued” generally refers to the signature of a medical practitioner (who is registered with the Malaysian Medical Council) where such registered medical practitioner has certified (in the COVID-19 test results / report) that the COVID-19 test has been conducted on the employer’s employee.

Updates

The Income Tax (Deduction for Expenses in relation to the Cost of Detection Test of Coronavirus Disease 2019 (COVID-19) for Employees) (Amendment) Rules 2022 [P.U. (A) 291/2022] (“the Amendment Rules”) were gazetted on 9 September 2022.



Amendment to Income Tax (Deduction for Expenses in relation to the Cost of Detection Test of Coronavirus Disease 2019 (COVID-19) for Employees) Rules 2021 [P.U. (A) 404/2021] on 9 September 2022 (Cont.)

Updates (Cont.)

Rule 2(3) of the Principal Rules which explains on the supporting documentation required in order for an employer to claim the above deduction has been amended as follows:

The Principal Rules	The Amendment Rules
<p><i>An employer claiming for deduction under these Rules shall produce receipt and certification issued by a medical practitioner registered with the Malaysian Medical Council or a medical practitioner registered outside Malaysia that the detection test of Coronavirus Disease 2019 (COVID-19) has been provided to its employees</i></p>	<p><i>An employer claiming for deduction under these Rules shall produce:-</i></p> <ul style="list-style-type: none"><i>(a) a receipt and certification issued by a medical practitioner registered with the Malaysian Medical Council, or a medical practitioner registered outside Malaysia if the expenses are incurred outside Malaysia, that the detection test of Coronavirus Disease 2019 (COVID-19) has been provided to its employees; or</i><i>(b) a receipt and result of the detection test of Coronavirus Disease 2019 (COVID-19) of its employees issued by a health facility listed in the List of Laboratories Conducting RT-PCR Test for Covid-19 to the COVID-19 Management Guidelines in Malaysia No. 5/2020 issued by the Ministry of Health Malaysia which remains in force in relation to the costs of RT-PCR detection test incurred for its employee.</i>

RSM comment



Taxpayers who formerly do not fulfil the conditions of “certification issued” as further clarified by IRB on 18 May 2022 and have filed their Tax Return for YAs 2021 and 2022 may consider to revise their income tax computation and submit a revised Tax Return in order to claim double tax deduction on the above costs if the requirement as stated in Rule 2(3)(b) of the Amendment Rules can be fulfilled

For the Management Guidelines in Malaysia No. 5/2020 issued by the Ministry of Health Malaysia, you may refer to [Garis Panduan KKM | COVID-19 MALAYSIA](#) for further details.

The revision should be made within five years after the end of the year in which the Rules were gazetted, i.e. by 31 December 2026.

Deferment of Payment of Small-Value Withholding Tax

Current enforcement rule on payment of withholding tax (WHT)

Where WHT is applicable, a payer is required to deduct and remit the relevant WHT to the Director General of Inland Revenue (“DGIR”) within one month after the payment to non-resident has been paid or credited.

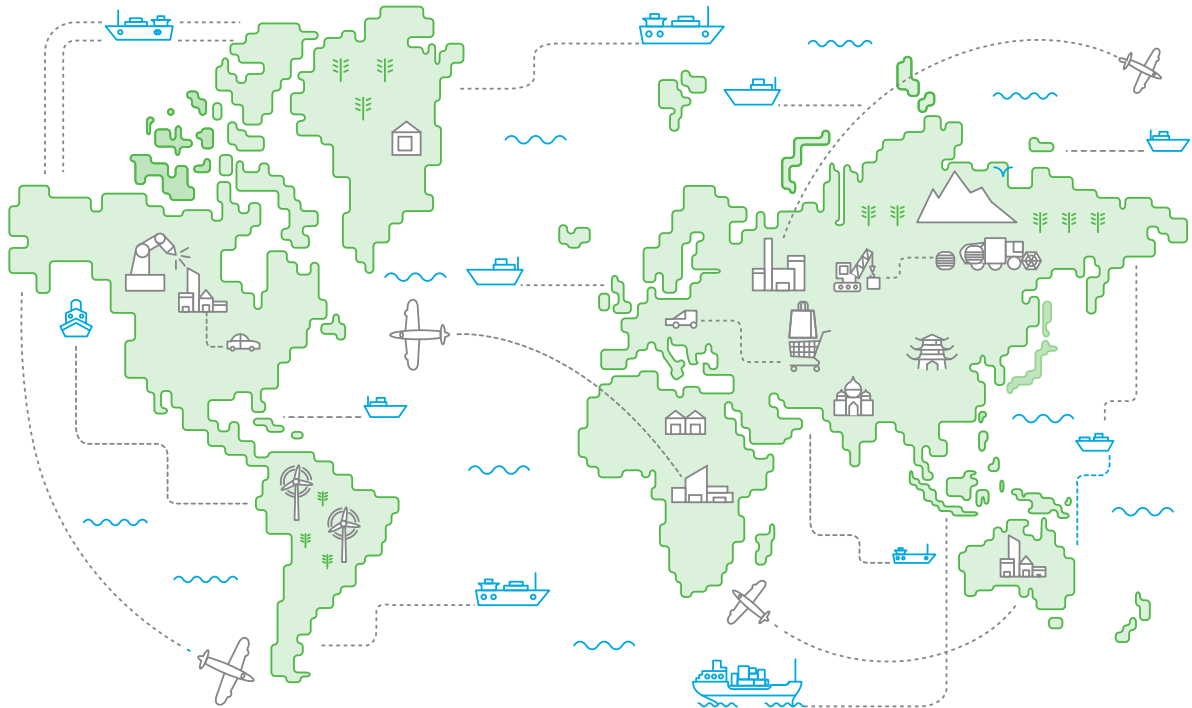
The payer is required to complete Form C.P.37 / C.P.37D and submit the forms together with the WHT to the DGIR.

Updates

On 27 September 2022, the IRB has issued a Media Release to announce on the deferment of payment of small-value WHT on payment made to a non-resident person. The deferment is effective from 1 August 2022.

Below are the salient points of the deferment:

Category	Qualifying conditions						
Type of income earned by a non-resident that would qualify for the deferment	<ul style="list-style-type: none">Royalty and interest pursuant to Section 109 of the ITASpecial classes of income under Section 4A of the ITA (including services and rental of moveable property) pursuant to Section 109B of the ITA						
Period of deferment and due date to remit deferred WHT	<p>The payment of small-value WHT shall be made to the IRB once in every 6-month period as follows:</p> <table><thead><tr><th>Period when payments are made to a non-resident during a year</th><th>Due date for remittance of deferred WHT</th></tr></thead><tbody><tr><td>1 June to 30 November <i>(Note)</i></td><td>By 30 December that year</td></tr><tr><td>1 December (in the previous year) to 31 May (of the current year)</td><td>By 30 June of the current year</td></tr></tbody></table> <p><i>(Note)</i> For year 2022, the deferment will be effective from August 2022</p>	Period when payments are made to a non-resident during a year	Due date for remittance of deferred WHT	1 June to 30 November <i>(Note)</i>	By 30 December that year	1 December (in the previous year) to 31 May (of the current year)	By 30 June of the current year
Period when payments are made to a non-resident during a year	Due date for remittance of deferred WHT						
1 June to 30 November <i>(Note)</i>	By 30 December that year						
1 December (in the previous year) to 31 May (of the current year)	By 30 June of the current year						
Eligibility criteria	<ul style="list-style-type: none">The amount of WHT shall not exceed RM 500 per transaction; andThe payer must be aware that the relevant WHT payment will be made more than once during the 6-month due date extension.						
Column 12 of the WHT Form	<ul style="list-style-type: none">For the column on “Date the payment was paid/credited” in the Form C.P.37 / C.P.37D, the payer is required to insert the date as “30 June or 30 December” accordingly based on the deferment period.						



Deferment of Payment of Small-Value Withholding Tax (Cont.)

Payers are advised to maintain a list of small-value WHT in respect of payments made to non-residents for IRB's inspection, in the event that the IRB requested for it.

Taxpayers may contact IRB via the following methods for further information on the deferment:

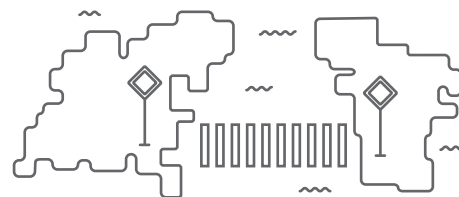
Hasil Care Line

03-8911 1000 /
603-8911 1100
(Overseas)

Feedback Form

<https://maklumbalaspelanggan.hasil.gov.my/-/MaklumBalas/en-US/>

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