INLAND REVENUE BOARD OF MALAYSIA

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TAX INCENTIVE FOR APPROVED FOOD PRODUCTION PROJECT

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 (ITA) provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

Director General of Inland Revenue,
Inland Revenue Board of Malaysia.

1. Objective

The objective of this Public Ruling (PR) is to provide an explanation on the tax treatment in relation to the tax incentive for an approved food production project in Malaysia that is available to persons participating or intending to participate.

2. Relevant Provisions of the Law

2.1 This PR takes into account laws which are in force as at the date this PR is published.

2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are sections 2, 8 and Schedule 3.

2.3 The relevant subsidiary legislation referred to in this PR are as follows:

(a) Income Tax (Deduction For Investment In An Approved Food Production Project) Rules 2001 [*P.U.(A*) 81/2001] effective from YA 2001;

(b) Income Tax (Approved Food Production Projects) Order 2002 [*P.U.(A*) 289/2002] effective YA 2001;

(c) Income Tax (Approved Food Production Projects) Ammendment Order 2003 [*P.U.(A*) 72/2003] effective from 21 September 2002;

(d) Income Tax (Exemption) (No. 9) Order 2006 [*P.U.(A*) 50/2006] effective YA 2001;

(e) Income Tax (Exemption) (No. 10) Order 2006 [*P.U.(A*) 51/2006] effective from YA 2001 in respect of a new project and from YA 2002 in respect of an expansion project;

(f) Income Tax (Deduction for Investment In An Approved Food Production Project) Rules 2006 [*P.U.(A*) 55/2006] effective from YA 2001;

(g) Income Tax (Exemption) (No. 3) Order 2011 [*P.U.(A*) 166/2011] effective from 1 October 2005;

(h) Income Tax (Deduction For Investment In An Approved Food Production Project) Rules 2011 [*P.U.(A*) 167/2011] effective from 1 October 2005;

(i) Income Tax (Exemption) (No. 6) Order 2020 [*P.U.(A*) 373/2020] effective from 1 January 2016;

(j) Income Tax (Deduction of Investment In New Food Production Project) Rules 2020 [*P.U.(A*) 374/2020] effective from 1 January 2016;

(k) Income Tax (Exemption) (No. 6) 2020 (Amendment) Order 2022 [*P.U.(A*) 352/2022] is deemed to have come into operation on 1 January 2016 except for paragraph 4 in relation to the new subsubparagraphs 5A(1)(f) and (g) of the Income Tax (Exemption) (No. 6) Order 2020 [P.U.(A) 373/2020] which are deemed to have come into operation on 1 January 2021; and

(l) Income Tax (Deduction For Investment In Approved New Food Production Project) Rules 2022 [*P.U.(A*) 351/2022] effective from 1 January 2021.

3. Interpretation

The words used in this PR have the following meaning:

3.1 "Minister", except where there is a specific reference to the Minister of Agriculture and Food Security (MAFS), means the Minister of Finance.

3.2 "Investment" means an investment in the form of cash or holding of paid-up share capital in respect of ordinary shares in related company.

3.3 "Statutory income" in relation to a person, a source of his and a YA, means statutory income ascertained in accordance with the ITA.

3.4 "Adjusted income" in relation to a source and a basis period, means the adjusted income ascertained in accordance with the ITA.

3.5 "Basis year" means the calendar year which coincides with a YA.

3.6 "Year of assessment" means calendar year.

3.7 "Basis period" in relation to a person, a source of his and a YA, means such basis period, if any, as is ascertained in accordance with section 21 or section 21A of the ITA.

4. Introduction

Tax incentives for approved food production projects are given to encourage more investment in the agricultural sector. A person involved in the agricultural sector that undertakes food production projects needs a longer period of time to achieve returns because it involves long term investments compared to other sectors such as manufacturing and services. This is due to the risk of uncertainty of weather, market prices, long maturity periods, the complexity of the agricultural land acquisition process and difficulty in obtaining financing.

The incentives are applicable to:

(a) a qualified person participating or intending to participate in an approved food production project; and

(b) a company that has made an investment in its related company undertaking an approved new food production project.

5. Approved Project

The project in relation to an approved food production projects are as follows:

No.	Project	Effective Dates
(i)	Planting of kenaf, industrial crop, vegetables, fruits, herbs, spices, or cash crop;	From YA 2001 except planting of industrial crop and cash crop (from 1.1.2016) and the application for the planting of kenaf has ended on 31.12.2015.
(ii)	Aquaculture;	From YA 2001
(iii)	Rearing of cows, buffaloes, goats, sheep, or deer;	From YA 2001 except buffaloes (from 1.10.2005) and deer (from 1.1.2016)
(iv)	Deep sea fishing;	From 21.9.2002
(v)	Apiculture (rearing of honey or urena lobata bees);	From 1.1.2016
(vi)	Planting of feed mill cultivated in a project which has been identified by the MAFS and approved by the Minister;	From 1.1.2016

(vii)	High seas fishing; or	From 1.1.2021
(viii)	Planting of seeds for agrofood.	From 1.1.2021

6. Person Undertaking An Approved Food Production Project

6.1 Qualifying person

Person who undertakes an approved food production project as follows:

(a) A company incorporated under the Companies Act 2016 [*Act 777*];

(b) An-agro based co-operative society;

(c) An Area Farmers' Association;

(d) A Federal Farmers' Association;

(e) A State Farmers' Association;

(f) An Area Fishermen's Association;

(g) A Federal Fishermen's Association;

(h) A State Fishermen's Association; and

(i) Sole proprietorship, partnership or association solely engaged in agriculture or fishery for the approved project.

6.2 Application and Approval for Tax Exemption

Application for tax incentive for an approved food production project shall be made and submitted to MAFS. For further information on the eligibility criteria and the procedure for an approved food production project application, kindly refer to MAFS's website at https://www.kpkm.gov.my/insentif-cukai.

6.3 A person participating or intending to participate in an approved food production project shall apply for the incentive of a new project or an expansion project of food production in which;

(a) an application is submitted to MAFS for that qualifying project within a specified period;

(b) the project has not commenced on the date the application is received by the MAFS; and

(c) the project commences within one (1) year from the date of approval given by the MAFS.

6.4 Application for this incentive must fulfil the criteria set by MAFS. The criteria include type, species, area of crops / farming, minimum production output, or other criteria set by MAFS. An application that does not meet the minimum criteria can be considered if it fulfils other criteria, such as the use of technology, have commercial value, high production volume, and high-value production. Further information regarding these criteria is available in the Guideline for Application of Approved Food Production Project under ITA 1967 published by the Minister of Agriculture and Agro-based Industry.

Other than the set criteria, the qualifying person also needs to comply with all the conditions set by MAFS in the letter of approval before the tax exemption can be claimed.

6.5 There are two (2) categories of an approved food production project that can be given under this incentive:

(a) New project

A new food production project is the first project carried out by a qualified person for the purpose of undertaking an approved food production project, and the new project is approved by the Minister.

If the person that has a newly approved project and wishes to make an expansion (increase in area, or additional/change of species among the same project category) within the approved exemption period, the person has to submit an application to the MAFS. The approval is subject to the remaining of the approved exemption period.

(b) Expansion project

An expansion project is a project which is carried out by a qualified person for the purpose of expanding his/her existing approved food production project, where the expansion project:

(i) has not been granted a tax exemption;

(ii) involves a new area of land; and

(iii) is approved by the Minister.

The new area of land for this expansion project refers to land other than those involved in the planting activity, poultry rearing, and aquaculture (pond).

Example 1

Durian King Sdn. Bhd. (DKSB) is a company involved in the planting of durian trees. DKSB has applied for a tax incentive for a new project of food production on 1.1.2023. Based on the assessment report made by the MAFS, it was discovered that the durian trees were already three (3) years old.

Therefore, DKSB is not eligible for the incentive under the food production project because the planting activity has already started before the application is received by the Minister.

Example 2

Red Dragon Sdn. Bhd. (RDSB) is a company that is involved in the planting of dragon fruits. RDSB has applied for a tax incentive for food production project under expansion project for planting of watermelon beside the existing red dragon plantation. Both are different plantations.

RDSB is not eligible for the incentive for an expansion project of food production because the type of plant for the expansion project differs from the existing plantation.

6.6 Exemption of income tax

Exemption of income tax for approved projects are as follows:

(a) New project

Tax exemption of 100% for a period of ten (10) consecutive YAs in respect of the statutory income, commencing from the first YA in which the qualified person derived the statutory income in relation to the approved project.

(b) Expansion of an existing project

Tax exemption of 100% for a period of five (5) consecutive YAs in respect of the statutory income commencing from the first YA in which the qualified person derived the statutory income from the existing projects and the expansion projects. That first YA shall not be earlier than the YA in respect of the basis period in which the date of approval by the Minister falls.

The person who has been granted approval must ensure that all the conditions specified in the approval letter have been met before the tax exemption can be enjoyed or put into effect.

Example 3

Amazing Mango Sdn. Bhd. (AMSB) (financial year ending on 31 December) has been approved for tax exemption for new projects to carry out mango planting. AMSB applied for the incentive and received an approval for approved food production project on 22.2.2016. Mango planting activities started in 2017. AMSB has met all the conditions specified in the approval letter. AMSB earns its first statutory income in YA 2022.

Therefore, AMSB is eligible for tax exemption of 100% on statutory income in relation to mango planting project for 10 consecutive YAs from YA 2022 to YA 2031.

Example 4

Nanas Jambul Sdn. Bhd. (NJSB) (financial year ending on 30 April) is a company which started planting pineapples since 2014. The location of the plantation is at Lot 368. NJSB has never been granted an approval for an approved food production project. On 1.1.2018, NJSB applied for the approval of its pineapple plant expansion project and was approved on 6.5.2020. The location of the expansion project is at a nearby location at Lot 389 with an area of 6 hectares.

NJSB earned its statutory income for the existing project starting YA 2017. NJSB has met all the conditions specified in the approval letter for its expansion project. The first statutory income for the expansion project only started in YA 2022.

Therefore, NJSB is eligible for tax exemption for a period of five (5) consecutive YAs for the whole existing projects and expansion projects in relation to pineapple planting project from YA 2022 until YA 2026.

6.7 Capital Allowances under Schedule 3

The statutory income of a new or an expansion project in the basis period for each of the exempted YA is to be determined after deducting capital allowances under Schedule 3 notwithstanding that no claim for such allowances has been made.

Where an asset used for the purpose of the new or expansion project is also used for the purpose of other businesses and within the period of exemption, the capital allowances shall be apportioned and deducted as is reasonable having regard to the extent to which the asset is used for the purpose of that project.

6.8 Losses

Any amount of adjusted loss incurred in the YA immediately prior to the commencement of the exemption period and within the period of exemption, may be carried forward and be deducted from the statutory income of the project after the exemption period has ended until it is fully absorbed.

The adjusted loss that is carried forward and has been utilised will not be taken into account for deduction under subsection 43(2) and current year losses under subsection 44(2) of the ITA.

Example 5

Facts are the same as in Example 3. AMSB has a loss carried forward from the YAs before the exemption period which is from YA 2017 to YA 2021 amounting to RM150,000. AMSB also has a loss amounting to RM48,000 in YA 2027 which is within the exemption period. The loss in YA 2027 will also be carried forward to YA 2032.

Therefore, losses amounting to RM198,000 (RM150,000 for YA 2017 to YA 2021) and RM48,000 (for YA 2027) will be carried forward to YA 2032. Losses must be fully absorbed from statutory income in respect of the same business activities.

YA 2017 – YA 2021	YA 2022 – YA 2031	YA 2032 and the following YAs
Losses from YA 2017 – YA 2021 can be c/f to YA 2032 (RM150,000)	Exempted YA (10 consecutive YAs) YA 2022 to YA 2031 Loss in YA 2027 can be c/f to YA 2032 (RM48,000)	Loss b/f from YA 2017 – YA 2021 & loss b/f from YA 2027 totalling RM198,000 (RM150,000 + RM48,000) can be utilised to be absorbed in YA 2032 and the following YAs until it is fully absorbed. Loss must be fully absorbed from statutory income in respect of the same business activitiy.

YA – Year of Assessment
c/f – carried forward
b/f – brought forward

6.9 Withdrawal of Tax Exemption

If the qualified person fails to comply with the stipulated conditions imposed by the Minister in relation to the tax exemption, the Minister may withdraw the tax exemption on the statutory income of the project.

6.10 Separate Accounts

The qualified person which is exempted from payment of the income tax for a new food production project shall maintain a separate account for the approved project from the income derived from the other projects.

6.11 Non-application

The tax incentive shall not apply to a qualified person for a YA in the basis period if the qualified person –

(a) has been granted any incentive under the Promotion of Incentives Act 1986;

(b) has made a claim for allowance under Schedule 7A or Schedule 7B of the ITA;

(c) has been granted an exemption under exemption under paragraph 127(3)(b) or subsection 127(3A) of the ITA;

(d) has made a claim for deduction under any rules made under section 154 of the ITA except –

i. the rules in relation to the allowance in Schedule 3 of the ITA;

ii. Income Tax (Deduction for Audit Expenditure) Rules 2006 [*P.U.(A)* 129/2006];

iii. Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [P.U.(A) 162/2020].

7. Investor Company

7.1 Application and approval for tax deduction

Application for tax incentive of an approved food production project shall be submitted to the MAFS within a specified period. For further information on the eligibility criteria and the procedure for an approved food production project application, kindly refer to MAFS's website at https://www.kpkm.gov.my/insentif-cukai.

7.2 Company eligible to claim for deduction:

(a) a company incorporated under the Companies Act 2016 [*Act 777*];

(b) resident in Malaysia and at least sixty percent (60%) of its paid-up share capital in respect of ordinary shares are directly owned by Malaysian citizens;

(c) made an investment in a related company that undertakes an approved new food production project;

(d) holds at least seventy percent (70%) of its paid-up share capital in respect of ordinary shares in a related company;

(e) made an application for an approved food production project to the MAFS within a specified period;

(f) made an investment in the form of cash or holding of paid-up share capital in respect of ordinary shares in a related company and must be of reasonable amount compared to the size of the project; and

(g) investing in an approved food production project involving capital expenditure and working capital.

7.3 Related company (company undertaking an approved food production project)

Related company for the purposes of investment in an approved food production project refers to:

(a) a company incorporated under the Companies Act 2016 [*Act 777*];

(b) resident in Malaysia and at least seventy percent (70%) of its paid-up share capital in respect of ordinary shares are directly owned by an investor company; and

(c) made an application for an approved new food production project to the MAFS within a specified period.

7.4 Tax treatment

7.4.1 Investor company that made investment in related companies shall be allowed a deduction in the basis period for a YA an amount equivalent to the value of investment for the sole purpose of financing the new approved food production project.

7.4.2 The value of investment claimed as a deduction in ascertaining the adjusted income for the investor company:

(a) shall be equivalent to the expenditure incurred by the related company in the basis period for the same YA;

(b) shall be made for a period and up to an amount as approved by the Minister through the MAFS;

(c) shall not be disposed of within five (5) years from the date of the last investment made if such investment is in the form of holding of paid-up share capital in respect of ordinary shares; and

(d) the applications to make additional investments shall be submitted to the MAFS with justification and only eligible to apply before the tax exemption period regarding the approved food production projects begins.

7.4.3 The tax deduction can only be claimed by a company for a period of three (3) consecutive YAs commencing from the YA the application is approved by the Minister.

7.4.4 Where the investment in the form of paid-up share capital is disposed of within a period of five (5) years from the date the last investment was made, this tax treatment shall not apply.

7.4.5 Where the company has made an investment in the form of holding of paid up ordinary share capital and claimed a deduction in respect of that investment receives an amount as consideration for the disposal of shares, the amount received by that company as consideration for the disposal of such shares shall be added in ascertaining its adjusted income in the basis period for the YA in which that amount was received;

7.4.6 The amount added back as stated in paragraph 7.4.5 or brought to tax shall not exceed the total deductions allowed in relation to that investment.

Example 6:

Ohana Ventures Sdn Bhd (OVSB) has been approved on the investment made in its related company which undertakes the approved food production project. The investment was solely for capital expenditure and working capital. OVSB also plan to invest in the form of an advance payment or loan to the related company.

OVSB is not eligible to claim for deduction in the form of advance payment or loans made to the related company. However, if the advance payment or loan made used of capital expenditure and working capital are changed in the form of equity/ ordinary shares, OVSB is eligible to get a deduction with a condition that the changes must be made while the project is still ongoing and the exemption period of the related company have not started or within the period specified by the Minister in the approval letter after the advance payment/ loan has ben granted, whichever is earlier.

7.5 Cessation of deduction

The deduction by investor company shall not be allowed in the basis period for a YA in which the related company derived its first statutory income from the approved food production project.

7.6 Non-application

The tax incentive shall not apply to a company which –

(a) has been granted an exemption under paragraph 127(3)(b) or subseksyen 127(3A) of the ITA;

(b) has made a claim for deduction under any rules made under section 154 of the ITA except –

   i. the rules in relation to allowance under Schedule 3 to the ITA;

   ii. the Income Tax (Deduction for Audit Expenditure) Rules 2006 [P.U. (A) 129/2006];

   iii. Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [P.U. (A) 162/2020].

Example 7:

Mega City Sdn Bhd (MCSB) is a developer company and hold 100% shareholding in XYZ Sdn Bhd (XYZ) (both financial year ending on 31 December), both companies have been approved to undertake an approved food production project to produce mushrooms. MCSB has made an investment in XYZ and has applied for tax deduction incentive. The application was approved on 24.2.2022. The approved investment amount is RM25,000,000 for purchase of plant and machinery including working capital.

The following information is on investments made by MCSB and expenses incurred by XYZ:

Details	**Information of MCSB Investment**			**Total**
Date of Investment	31.3.2022	30.4.2023	30.12.2024	
Value of Investment by MCSB	RM20,000,000	RM3,000,000	RM3,000,000	RM26,000,000
Type of Investment	share capital	share capital	cash	
Expenses Incurred by XYZ	RM22,000,000	RM2,500,000	RM4,000,000	RM28,500,000

The deductions eligible to be claimed by the MCSB are as follows:

Details	YA 2022 (RM)	YA 2023 (RM)	YA 2024 (RM)
Adjusted income from business	30,000,000	27,000,000	32,000,000
Less: Deduction for investment made in XYZ	20,000,000[1]	2,500,000[2]	limited to 2,500,000[3]
Less: Capital allowance	2,000,000	1,200,000	1,000,000
Statutory income	8,000,000	23,300,000	28,500,000

Notes:

[1] MCSB is eligible to claim an investment deduction amounting to RM20,000,000. The amount that can be claimed is limited to the investment amount made in XYZ.

[2] MCSB is eligible to claim a deduction amounting to RM2,500,000. The amount is limited to the amount incurred by XYZ in the basis year for YA 2023.

[3] The deduction of investment amounting to RM25,000,000 must be claimed within 3 consecutive YAs starting from the YA approved by the Minister (from YA 2022 until YA 2024). Therefore, for YA 2024, the residual amount that can be claimed is limited to RM2,500,000 only.

8. Compliance with the Income Tax Act 1967

The approved company is not absolved from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provisions of the ITA.

9. Disclaimer

The examples in this PR are for illustration purposes only and are not exhaustive.

Director General of Inland Revenue,

Inland Revenue Board of Malaysia.