



INLAND REVENUE BOARD OF MALAYSIA

**COMMERCIALISATION OF
PUBLIC RESOURCE-BASED
RESEARCH AND DEVELOPMENT
FINDINGS,
PART I –
TAX INCENTIVE FOR
INVESTOR COMPANY**

PUBLIC RULING NO. 12/2022

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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 incentive available to a company that invests in its related company for the sole purpose of financing the commercialisation of public resource-based research and development (R&D) findings in Malaysia.

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 and 8, subsection 33(1) and paragraph 127(3)(b).
- 2.3 The provisions of the Promotion of Investment Act 1986 (PIA) related to this PR are section 2, subsections 5(1DF) and 6(1AI), sections 14 and 14C.
- 2.4 The relevant subsidiary legislation referred to in this PR is the Income Tax (Deduction for Investment in a Project of Commercialisation of Research and Development Findings) Rules 2005 [*P.U.(A) 269/2005*].

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 “Production day” means the day specified as such in the pioneer certificate in accordance with section 7 of the PIA.
- 3.2 “Approved research institute” means an institute, including a company licensed under section 45 of the Companies Act 2016 [*Act 777*], approved by the Minister to mainly carry on research in an industry specified in the approval and to commercially exploit the benefit of such research.
- 3.3 “Investment” means an investment in the form of cash or holding of shares in a related company.
- 3.4 “Resident” means resident in Malaysia for the basis year for a year of assessment by virtue of section 8 of the ITA.
- 3.5 “Statutory income”, in relation to a person, a source and a year of assessment, means statutory income ascertained in accordance with the ITA.

- 3.6 “Research and development findings” means research and development findings in the resource-based industry wholly owned by a public research institute or public institute of higher learning in Malaysia.
- 3.7 “Commercialisation” means a process of transforming research and development findings into a product or process that has an industrial application or that is marketable.
- 3.8 “Research and development” means any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devices, 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 or the humanities;
 - (c) routine data collections;
 - (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 or stylistic changes to materials, devices, products, processes or production methods.
- 3.9 “Related company” means a company in which at least 70 per centum of the issued share capital is directly owned by the company that made the investment for the purpose of a project of commercialisation.
- 3.10 “Pioneer company” means a company certified by a pioneer certificate to be a pioneer company in relation to a promoted activity or promoted product in respect of which the tax relief period has not ended or has not ceased.
- 3.11 “Year of assessment” means calendar year.
- 3.12 “Basis period” in relation to a person, a source of his and a year of assessment, means such basis period, if any, as is ascertained in accordance with section 21 or section 21A of the ITA.

3.13 “Tax relief period”, in relation to a pioneer company, means the period ascertained in accordance with section 14 of the PIA and any extension of that period under section 14C of the PIA.

4. Introduction

The Government has undertaken various initiatives to encourage and accelerate the commercialisation of R&D findings developed by public local universities and public research institutions in Malaysia. The commercialisation of public resource-based R&D findings involves the transformation of public R&D findings into new resource-based products or activities, or new process technology which has an industrial application or is marketable. In a move to spur the commercialisation of resource-based R&D findings, tax incentives have been provided for an investor company that makes investments in its related company to finance a project on the commercialisation of public resource-based R&D findings developed by approved research institutes which consist of public institutes of higher learning or public research institutes. The said related company may also qualify for tax incentives provided that all of the necessary requirements are fulfilled.

For further information on the tax incentives available to an eligible related company, please refer to PR No. 13/2022 titled Commercialisation of Public Resource-Based R&D Findings, Part II – Tax Incentive for Eligible Company, which is available at www.hasil.gov.my, the official portal of the Inland Revenue Board of Malaysia (IRBM).

5. Eligible Investor Company

An investor company is a company (holding company) that invests in its related company (subsidiary company) for the sole purpose of financing a project on the commercialisation of public resource-based R&D findings. Such an investor company would be an eligible investor for the purpose of a tax incentive if it fulfils all of the following criteria –

- (a) incorporated under the Companies Act 2016 [Act 777];
- (b) resident in Malaysia;
- (c) at least 70 per centum of the equity of the investor company must be Malaysian owned; and
- (d) investment made must be in a related company whose equity is at least 70 per centum directly owned by the investor company, for the purpose of financing a project on the commercialisation of public resource-based R&D findings undertaken by the related company.

6. Public Resource-Based Research and Development Findings and Commercialisation

A related company of an investor company has to undertake the commercialisation of public resource-based R&D findings by approved research institute.

6.1 Public R&D findings

Public R&D findings refer to R&D findings developed by approved research institutes which consist of public institutes of higher learning and public research institutes. Public institutes of higher learning are approved research universities such as Universiti Malaya (UM), Universiti Kebangsaan Malaysia (UKM), Universiti Sains Malaysia (USM), Universiti Pertanian Malaysia (UPM) and Universiti Teknologi Malaysia (UTM). Among the approved public research institutes are -

- (a) Malaysian Agricultural Research and Development Institute (MARDI);
- (b) Malaysian Palm Oil Board (MPOB);
- (c) Malaysian Rubber Board (MRB);
- (d) Malaysian Cocoa Board (MCB);
- (e) Forest Research Institute Malaysia (FRIM); and
- (f) Mineral Research Centre (PPM).

6.2 Commercialisation

Commercialisation of public R&D findings in relation to resource-based industries includes the process of transforming ideas, knowledge or an invention into a product or process that has an industrial application or that is marketable. The outcome of the R&D commercialisation must be in the form of new resource-based product or activities or new process technology and not limited to the promoted products or activities under the PIA. Resource-based R&D findings covers R&D in the following sectors -

- (a) agriculture;
- (b) agriculture and food processing;
- (c) oil palm products;
- (d) wood and wood-based products;

- (e) rubber-based products;
- (f) non-metallic mineral products;
- (g) natural products including pharmaceuticals; and
- (h) natural resources such as water, air, lightning and solar.

7. Application and Grant of Approval for Tax Deduction

For a tax incentive under the PIA to be claimed under the ITA, an application for the incentive has to be made and an approval has to be obtained.

7.1 Application – subsection 5(1DF) of the PIA

The application of an eligible investor company for tax deduction under the ITA must be submitted together with application of its related company in respect of grant for approval for a tax incentive under subsection 5(1DF) of the PIA by completing the relevant forms, which are to be submitted to the Malaysian Investment Development Authority (MIDA). For further information on the eligibility criteria and the procedure for the tax incentive application, please refer to MIDA's website at www.mida.gov.my.

7.2 Grant of approval – subsection 6(1AI) of the PIA

An approval in respect of an application for the tax incentives may be granted by the Minister of International Trade and Industry (MITI) with the concurrence in writing of the Minister of Finance (MOF) under the PIA.

The incentives related to commercialisation of public resource-based R&D findings are as follows -

- (a) for an investor company, a tax incentive is in the form of a deduction of an amount equivalent to the investment made by the investor company in its related company to undertake the commercialisation of a public resource-based R&D finding is given under the Income Tax (Deduction for Investment in a Project of Commercialisation of Research and Development Findings) Rules 2005 [*P.U.(A) 269/2005*]; and
- (b) for the said related company, a tax exemption of 100% of its statutory income derived from the pioneer business for a period of five (5) years from the date determined by MITI as the production day. The company may apply for an extension of the tax relief period for the next five (5) years in writing to MITI within thirty (30) days or any such extension

period allowed by MITI with the concurrence in writing of MOF after the expiry of the tax relief period of the first five (5) years.

8. Deduction Allowable to an Investor Company

A deduction may be allowable to an investor company for investments made in its related company for the purpose of the commercialisation of resource-based R&D findings of public research institutes.

8.1 Investment

According to the guidelines issued by MIDA, investments made by an investor company in its related company would be in the form of cash which is not repayable by the related company or equity shareholding in the related company, for the purpose of the commercialisation of public R&D findings. Loans or advances made by an investor company to its related companies are not eligible for any tax incentives unless these loans and advances are converted to equity before the commencement of the tax relief period of the related company.

8.2 Approved tax deduction

An investor company that invests in its related company for the commercialisation of the public resource-based R&D findings would be eligible for a deduction for a period and up to an amount of the investment as approved by MOF. The total tax deduction that would be approved is the actual investment that is made by the investor company in each year of assessment in its related company. For an investor company to qualify for the deduction, the project of commercialisation of the public resource-based R&D findings should commence within one (1) year from the date of approval granted to the related company by MIDA.

8.3 Ascertainment of adjusted income from the business

In ascertaining the adjusted business income of the investor company for the basis period for each year of assessment, a deduction of an amount equivalent to the value of the investment made in the basis period for the relevant year of assessment is allowable.

8.4 Cessation of deduction

Where an investment made by an investor company is allowed as a deduction, the eligibility for the deduction would cease in the year of assessment in which the tax relief period of the related company commences

in respect of the project for commercialisation of the public resource-based R&D findings. The tax relief period of the related company commences on the date of production specified in the pioneer certificate for first round incentive for an eligible related company.

Example 1

AA Sdn Bhd is a company incorporated and resident in Malaysia since 2010. On 1.3.2019, an investment of RM10 million was made by AA Sdn Bhd in its wholly owned related company, YY Sdn Bhd to embark on a project to commercialise a resource-based R&D finding by a public research institute. Both the investor company and its related company close their accounts on 31 December annually. Applications for tax incentives were submitted together by AA Sdn Bhd and YY Sdn Bhd. An approval for a deduction was granted to AA Sdn Bhd on 1.4.2019 for the amount of investment that AA Sdn Bhd had incurred of RM10 million in the year of assessment 2019. YY Sdn Bhd was granted pioneer status and the commercial production day was determined as 1.3.2020.

The project of commercialisation by YY Sdn Bhd commenced on 1.3.2020 i.e. within one (1) year from the date of approval (1.4.2019). The tax relief period for YY Sdn Bhd is for the first five (5) years commencing from 1.3.2020 to 28.2.2025. Therefore, AA Sdn Bhd is eligible to claim a deduction for their investment of RM10 million for the year of assessment 2019.

Example 2

Same facts as in Example 1 except that investments by AA Sdn Bhd are as follows –

- (a) RM5 million on 1.3.2019;
- (b) RM3 million on 1.11.2019; and
- (c) RM2 million on 1.4.2020.

For the year of assessment 2019, AA Sdn Bhd would be able to claim a deduction of RM8 million for the investments made in the basis year for the year of assessment 2019 to arrive at its adjusted business income.

For the year of assessment 2020, AA Sdn Bhd would not be able to claim the investment of RM2 million made on 1.4.2020 as a deduction to arrive at its adjusted business income as YY Sdn Bhd commenced its business in respect of the commercialisation project in the year of assessment 2020 (1.3.2020).



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9. Disclaimer

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

This PR should be read together with PR No. 13/2022 titled Commercialisation of Public Resource-Based Research and Development Findings, Part II – Tax Incentive for Eligible Company, which is available at www.hasil.gov.my, the official portal of IRBM.

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