



**INLAND REVENUE BOARD OF MALAYSIA**

**PRE-OPERATIONAL BUSINESS  
EXPENDITURE**

**PUBLIC RULING NO. XX/2026**

*Translation from the original Bahasa Malaysia text*

**DATE OF PUBLICATION: XX XXX 2026**



Published by  
Inland Revenue Board of Malaysia

Second Edition

First Edition on 18 November 2013

(Issue B of Public Ruling No. 2/2010 dated 3 June 2010 is replaced with the publication of this First Edition)

© 2026 by Inland Revenue Board of Malaysia

All rights reserved on this Public Ruling are owned by the Inland Revenue Board of Malaysia. One print or electronic copy may be made for personal use. Professional firms and associations are permitted to use the Public Ruling for training purposes only. Systemic or multiple reproduction, distribution to multiple location via electronic or other means, duplication of any material in this Public Ruling for a fee or commercial purposes, or modification of the content of the Public Ruling is prohibited.

<b>CONTENTS</b>	<b>Page</b>
1. Objective	1
2. Related Provisions	1
3. Interpretation	2
4. Pre-Operation And Pre-Commencement Of Business	2
5. Application Of Tax Law	3
6. Qualifying Pre-Operational Business Expenditure Incurred For Approved Business Venture Outside Malaysia	3
7. Incorporation Expenses	6
8. Expenditure On Approved Training	8
9. Pre-Commencement Business Training Expenses	10
10. Establishment Expenditure Of A Real Estate Investment Trust (REIT) Or Property Trust Fund (PTF)	11
11. Pre-Commencement Business Expenses Relating To Employee Recruitment	12
12. Expenditure on Franchise Fee	14
13. Pre-Operational Business Expenses In Relation to Refinery and Petrochemical Integrated Development	17
14. Updates and Amendments	20
15. Disclaimers	21

## **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.

Ketua Pengarah boleh menarik balik, sama ada keseluruhan atau sebahagian daripada Ketetapan Umum ini melalui notis penarikan balik atau dengan penerbitan Ketetapan Umum yang baharu.

**Ketua Pengarah Hasil Dalam Negeri,  
Lembaga Hasil Dalam Negeri Malaysia.**

## 1. Objective

This Public This Public Ruling (PR) explains the deductions allowed for certain expenditure incurred prior to the commencement of a business.

## 2. Related Provisions

The provisions related to this Public Ruling PR are -

- 2.1 Schedule 4B of the Income Tax Act 1967 (ITA) and
- 2.2 the Rules issued by the Minister of Finance:
  - (a) Income Tax (Deductions For Approved Training) Rules 1992 [*P.U.(A) 61/1992*],
  - (b) Income Tax (Deductions For Approved Training) (Amendment) Rules 1995 [*P.U.(A) 111/1995*],
  - (c) Income Tax (Deduction Of Pre-Commencement Of Business Training Expenses) Rules 1996 [*P.U.(A) 160/1996*],
  - (d) Income Tax (Deduction For Incorporation Expenses) Rules 2003 [*P.U.(A) 475/2003*],
  - (e) Income Tax (Deduction For Incorporation Expenses) Rules 2003 [*P.U.(A) 472/2005*],
  - (f) Income Tax (Deduction for Establishment Expenditure of Real Estate Investment Trust or Property Trust Fund) Rules 2006 [*P.U.(A) 135/2006*],
  - (g) Income Tax (Deduction Of Pre-Commencement Of Business Expenses Relating To Employee Recruitment) Rules 2008 [*P.U.(A) 361/2008*],
  - (h) Income Tax (Deduction For Expenditure On Franchise Fee) Rules 2012 [*P.U.(A) 76/2012*],
  - (i) Income Tax (Deduction For Pre Commencement Expenses In Relation To Refinery And Petrochemical Integrated Development) Rules 2013 [*P.U.(A) 43/2013*], and
  - (j) Income Tax (Deduction For Pre Commencement Expenses In Relation To Refinery And Petrochemical Integrated Development) (Amendment) Rules 2015 [*P.U.(A) 183/2015*].

## 3. Interpretation

The words used in this PR have the following meaning:

---

- a. "Resident" means resident in Malaysia for the basis year for a year of assessment (YA) by virtue of section 7 or section 8 of the ITA.
- b. "Person" includes a company, a body of persons, a limited liability partnership and a corporation sole.
- c. "Adjusted income", "statutory income", "aggregate income" and "total income" refer to income as determined under Chapters 4, 5 and 6 in Part III of the ITA.

#### **4. Pre-Operation And Pre-Commencement Of Business**

- a. "Pre-operational" has the meaning as defined in Schedule 4B of the ITA and any reference to "pre-operational" or "prior to the commencement of operations" should be interpreted subject to the conditions imposed under the provision.
- b. "Pre-commencement of business" has the meaning as defined in the Rules. The determination of the date of commencement of a business requires consideration of all the circumstances and facts of each case. Generally, commencement of business means the commencement of activities undertaken in the course of business or activities that are part of the income producing process as distinguished from activities that are preparatory to the carrying on of a business. Subject to the specific circumstances and facts of the case, the following examples may be indicative of the commencement of a business if the act or activity constitutes part of a series of acts or activities that are actively carried out or undertaken in the course of the business:

- (a) the purchase of raw materials in the case of manufacturing,

The commencement of a business occurs when the activities undertaken form part of the actual commercial operations of the business and are directed towards the generation of income, rather than being merely preparatory in nature.

The acquisition of raw materials prior to the machinery being ready for operation does not constitute the commencement of a business as no actual production activity has commenced. Likewise, a trial run does not constitute the commencement of a business where it is undertaken solely to test the efficiency of the machinery or production process and does not involve the production of goods for sale.

Accordingly, such activities are regarded as pre-commencement activities as they do not form part of the income-generating operations of the business.

- (b) the purchase of goods for resale in the case of retailing, or
- (c) the first planting of seedlings or buying of animal stocks in the

case of agriculture.

However, any reference to “pre-commencement” or “prior to the commencement” of business may only be so interpreted if it is consistent with the relevant conditions imposed under the specific Rules.

## **5. Application Of Tax Law**

- 5.1 Generally, expenses incurred by a person prior to the commencement of his operations or business would not be allowable as a deduction against the gross income of his business as they are not wholly and exclusively incurred in the production of the income
- 5.2 However, Schedule 4B of the ITA and the Rules as mentioned in paragraph 2.2 above allow for the deduction of certain expenses that are incurred prior to the commencement of operations or business
- 5.3 This Public Ruling PR gives general guidelines on the pre-operational and pre-commencement business expenses that are allowable to a person as a deduction against -
  - (a) the gross income in arriving at the adjusted income of the business, or
  - (b) the aggregate income in arriving at the total income of the business.

## **6. Qualifying Pre-Operational Business Expenditure Incurred For Approved Business Venture Outside Malaysia**

- 6.1 4B of the ITA provides that, with effect from the YA 1992, certain pre-operational business expenditure in relation to a proposal to undertake investment in a business expansion venture in a country outside Malaysia can be claimed if -
  - (a) the company is resident in Malaysia, and
  - (b) the business venture has been approved by the Minister of Finance.
- 6.2 The pre-operational business expenses in connection with an approved business venture which qualify for deduction are –
  - (a) expenses which are directly attributable to the conduct of feasibility studies,
  - (b) expenses which are directly attributable to the carrying out of market research or survey or the obtaining of market information,

- (c) expenses incurred on fares for travel to a country outside Malaysia by a representative of the company for purposes of conducting feasibility study or market survey, and
- (d) actual expenses not exceeding RM400 per day for accommodation and sustenance for the whole period commencing with the representative's departure from Malaysia and ending with his return to Malaysia.

Expenses as mentioned in paragraphs 6.2 (a) and 6.2 (b) above include consultation cost for conducting feasibility studies, market research or market survey.

### Example 1

Ansel Sdn Bhd, a company resident in Malaysia, produces household electrical equipment. It proposes to build a factory in China. Before embarking on this venture, the company sends its marketing director to China to conduct a survey. The following expenses are incurred:

Details Of Expenses		Amount (RM)	
Market research by a Chinese consultant			5,000
Travel and other expenses:			
Air fare		3,000	
Hotel                      RM200 x 10 days		2,000	
Food allowance         RM100 x 10 days		1,000	6,000
Total			11,000

While the expenses incurred appeared to be within the prescribed limits, deduction cannot be allowed under Schedule 4B of the ITA unless the venture has been approved by the Minister of Finance.

- 6.3 Qualifying pre-operational business expenses shall be allowed as a deduction against the defined aggregate in arriving at the total income. The defined aggregate means the aggregate income after deducting
- (a) the amount of any adjusted loss from business for the basis period for the relevant YA under subsection 44(2) of the ITA, and
  - (b) the amount of any adjusted loss from business for the basis period for the relevant YA under subsection 44(2) of the ITA, and

Any unabsorbed qualifying pre-operational business expenses can be carried forward to the following years of assessment until the whole amount of the deduction has been made.

## Example 2

The facts are the same as in Example 1 and the venture has been approved by the Minister of Finance. The company has the following position for the YA 2024:

Details	Amount (RM)
Adjusted loss of Business 1 (Retail)	(5,000)
Statutory income of Business 2 (Electrical Equipment)	20,000
Business loss brought forward (b/f)	(6,000)
Qualifying pre-operational business expenses	11,000

### Tax Computation

Statutory income of Business 1	Nil
Statutory income of Business 2	<u>20,000</u>
Aggregate of statutory income from businesses	20,000
Less: Business loss b/f	<u>(6,000)</u>
Aggregate income	14,000
Less: Adjusted business loss for current year	<u>(5,000)</u>
Defined aggregate	9,000
Less: Qualifying pre-operational business expenses (restricted)	<u>9,000</u>
Total income / Chargeable income	<u>Nil</u>
Unabsorbed pre-operational business expenses carried forward =	(2,000)

## 7.0 Incorporation Expenses

- 7.1 The Rules related to the deduction of incorporation expenses are –
- (a) Income Tax (Deduction For Incorporation Expenses) Rules 2003 [P.U.(A) 475/2003], and
  - (b) Income Tax (Deduction For Incorporation Expenses) (Amendment) Rules 2005 [P.U.(A) 472/2005].
- 7.2 With effect from the YA 2004, for the purpose of ascertaining the adjusted income from a business for the basis period for a YA of a company which is incorporated in Malaysia on or after 13.9.2003 and having an authorized capital of not more than RM2,500,000, the following expenses of incorporation are allowed as a deduction against

the gross income from its business:

- (a) the cost of preparing and printing the memorandum of association, the articles of association and the prospectus, and of circulating and advertising the prospectus,
- (b) the cost of preparing and printing the memorandum of association, the articles of association and the prospectus, and of circulating and advertising the prospectus, the cost of registering the company and the statutory documents, together with fees and stamp duties payable thereon,
- (c) the cost of drawing up the preliminary contracts and stamp duties payable thereon,
- (d) the cost of printing debentures and stamp duty (if any) payable thereon and of share certificates and letters of allotment,
- (e) the cost of the seal of the company, and
- (f) underwriting commission.

7.3 The said incorporation expenses incurred by the company shall be deemed to have been incurred in the basis period for a YA in which the company commences its business.

7.4 The deduction is to be made in the tax computation for the YA indicated in paragraph 7.3 above if the expenses have been capitalised in the company's balance sheet. For incorporation expenses which have been charged out in the company's profit & loss account, adjustments would be made to the tax computation if there are expenses other than those specified in paragraph 7.2 above.

### Example 3

Biz Sdn Bhd was incorporated in Malaysia on 11.2.2024 with an authorized capital of RM2,000,000. It commenced a retail business dealing in hardware on 1.5.2024 and closed its accounts on 30.4.2025. The following incorporation expenses had been capitalized in its first balance sheet as at 30.4.2025:

Details Of Expenses	Amount (RM)
Preparation and printing memorandum and article of association	1,000
Registration of company (including stamp duty)	3,500
Company seal	200

Total	4,700
-------	-------

The incorporation expenses amounting to RM 4,700 can be deducted against the gross income of the company for the basis period 1.5.2024 to 30.4.2025.

#### **Example 4**

Camin Sdn Bhd was incorporated in Malaysia on 1.3.2024 with an authorized capital of RM3,000,000 and a paid up capital of RM2,000,000. Incorporation expenses (similar to those in Example 3 above) amounted to RM 4,700.

The incorporation expenses cannot be allowed as a deduction against the gross income of the company as its authorized capital exceeds RM2,500,000.

#### **Example 5**

Manikam commenced his catering business as a sole-proprietorship on 10.3.2024. He decided to incorporate a private limited company to take over the catering business as the business was doing well and he planned to further expand the business. Thus Moneycome Sdn Bhd was incorporated on 1.8.2024 with an authorized capital of RM1,000,000 and a paid up capital of RM500,000.

Manikam transacted all his business and kept the records under Moneycome Sdn Bhd from 1.8.2024. As such, the date of commencement for the company would be 1.8.2024. The incorporation expenses claimed by the company for the basis period 1.8.2024 to 31.7.2025 are as follows:

Details Of Expenses	Amount (RM)
Preparation and printing of memorandum and articles of association	1,000
Cost of registering the company	2,500
Company secretarial fees	400
Service tax (RM400 @ 5%)	20
Travelling (reimbursement)	100
Miscellaneous (photostating, etc)	50
Total	4,070

Only the expenses on preparation and printing of memorandum and articles of association and cost of registering the company amounting to RM3,500 are eligible for deduction.

Note: The same tax treatment would apply if a partnership were to be converted to a private limited company.

## **8.0 Expenditure On Approved Training**

- 8.1 The Rules related to the deduction of expenditure on approved training are as follows:
- (a) Income Tax (Deductions For Approved Training) Rules 1992 [P.U.(A) 61/1992], and
  - (b) Income Tax (Deductions For Approved Training) (Amendment) Rules 1995 [P.U.(A) 111/1995].
- 8.2 With effect from the YA1992, a manufacturing company is allowed a deduction double the amount of expenditure incurred on approved training in computing its adjusted income for the YA in which the gross income first arises.
- 8.3 This double deduction incentive is given if the manufacturing company satisfies the following conditions:
- (a) it has incurred the said expenditure during the period prior to the commencement of its business,
  - (b) the expenditure is in respect of training its employees for the acquisition of crafts, supervisory or technical skills which will contribute directly to the future production of its products,
  - (c) the training is provided under a training programme approved by the Malaysian Industrial Development Authority (MIDA) or a training programme conducted by a training institution approved by the Minister of Finance, and
  - (d) the said employees are Malaysian citizens.
- 8.4 The expenditure which qualifies for deduction is double the amount paid by the company to the training institution in respect of the said training programme. The claim must be supported by a letter of approval from MIDA or a letter from the approved training institution certifying details of the training programme (including the amount paid) and that the employees of the company have attended the training programme.
- 8.5 A double deduction under the Income Tax (Deduction for Approved Training) Rules 1992 [P.U.(A) 61/1992] and the Income Tax (Deduction for Approved Training) (Amendment) Rules 1995 [P.U.(A) 111/1995] is available only in respect of training expenditure that

satisfies the conditions prescribed under those Rules. In contrast, training expenditure incurred by a manufacturing company after the commencement of its business constitutes revenue expenditure and is deductible as a single deduction in ascertaining the adjusted income, subject to the relevant provisions of the ITA.

### Example 6

Densers Sdn Bhd was incorporated on 1.8.2023 with the intention of producing condensers for automobile air conditioners. Before commencement of production, the company recruited 30 employees, all of whom were Malaysians. 20 of them were sent for training on machining at Institut Kemahiran MARA (IKM), a training institution approved by the Minister of Finance. The other 10 were sent to study machining and assembly of condensers at the factory of its associate company in Japan. The following expenses were incurred:

Details Of Expenses	In Malaysia (RM)	In Japan (RM)
Travelling allowance (paid to the recruits)	4,000	-
Course fees (including food and lodging)	40,000	-
Food and accommodation		50,000
Air fare		25,000
Total	44,000	75,000

A letter from IKM was submitted to confirm that the amount paid by the company for the training programme was RM 40,000 and that the employees of the company had attended it. The company commenced production on 1.1.2024 and the first accounts were prepared for the period 1.8.2023 to 31.12.2024.

The company can be allowed a deduction of RM 80,000, that is double the amount on the expenditure of RM40,000 incurred on the training programme in Malaysia in ascertaining its adjusted income for the basis period 1.1.2024 to 31.12.2024. The travelling allowance of period RM 4,000 cannot be allowed as only the amount paid to the training institution approved by the Minister of Finance qualifies for the

deduction

The expenditure on training in Japan cannot be allowed under these Rules as the associate company is not a training institution approved by the Minister of Finance.

- 8.6 With effect from 1.7.1993, companies that contribute to the Human Resources Development Fund (HRDF) do not qualify for deduction under these Rules. HRDF is a fund established with the aim of encouraging direct participation of the private sector in skills development. Companies in certain sectors are required to pay the levy to HRDF at the rate that has been determined. Companies that have made levy contributions qualify for a training grant from HRDF to fund the training expenses to enhance the skills of their employees.

## **9.0 Pre-Commencement Business Training Expenses**

- 9.1 The Rules related to the deduction of the above expenses are the Income tax (Deduction Of Pre-Commencement Of Business Training Expenses) Rules 1996 [P.U. (A) 160/1996].
- 9.2 With effect from the YA 1996, a company which provides training to its employees prior to the commencement of its business can be allowed a single deduction on such training expenses in ascertaining its adjusted income from the business if –
- (a) the training is to impart basic skills to enable the company to commence its business,
  - (b) the training expenses are incurred within one year prior to the commencement of the business, and
  - (c) the training expenses are of the kind that is allowable under section 33 of the ITA.

### **Example 7**

The facts are the same as in Example 6. The expenses incurred in training the employees in Japan prior to commencement of business amounting to RM75,000 can be allowed as a deduction under these Rules in ascertaining the company's adjusted income for the basis period 1.1.2024 to 31.12.2024.

- 9.3 A company does not qualify for a deduction under the above Rules if -
- (a) it is receiving training grants from the Government, or
  - (b) it is claiming double deduction of training expenses under the Income Tax (Deductions for Approved Training) Rules 1992 and the Income Tax (Deductions for Approved Training) (Amendment) Rules 1995.

## **10. Establishment Expenditure Of A Real Estate Investment Trust (REIT) Or**

---

## **Property Trust Fund (PTF)**

- 10.1 The Rules related to the deduction of the above expenditure are the Income Tax (Deduction For Establishment Expenditure Of Real Estate Investment Trust Or Property Trust Fund) Rules 2006 [P.U. (A) 135/2006].
- 10.2 A REIT or PTF is a unit trust that is approved by the Securities Commission (SC).
- 10.3 With effect from the YA 2006, a REIT or PTF which has incurred establishment expenditure can claim a deduction of such expenditure against its gross income in ascertaining the adjusted income of its business for the basis period for a YA.
- 10.4 Establishment expenditure that can be allowed as a deduction are legal, valuation and consultancy fees for the purpose of establishing the unit trust prior to approval by the SC. The expenditure incurred by the unit trust shall be deemed to have been incurred in the basis period for a YA in which the business of that unit trust commenced.

### **Example 8**

Excel Real Estate Investment Trust (Excel REIT) was established on 1.12.2022 and approved by the Securities Commission on 15.12.2022. The total establishment expenditure on legal, valuation and consultancy fees incurred prior to approval by the Securities Commission was RM800,000. Excel REIT acquired from Excel Berhad's group of companies a few commercial properties together with all the tenancies, leases and licences via an agreement dated 1.1.2023. Excel REIT invited subscriptions from the public on 1.2.2023 and was listed in Bursa Malaysia on 1.3.2023. Its first set of accounts was closed on 31.12.2023.

The establishment expenditure of RM800,000 on legal, valuation and consultancy fees is deductible against the gross income of Excel REIT for the YA 2023. It is deemed to be incurred in the basis period for the YA 2023 in which the business commenced.

Note:

The date of commencement of the business of a REIT is the date on which a real property of the REIT is made available for letting. In this case, as Excel REIT acquired the properties together with the tenancies on 1.1.2023, the properties were made available for letting on 1.1.2023 and let out on the same date by Excel REIT. The business of Excel REIT therefore commenced on 1.1.2023.

## **11. Pre-Commencement Business Expenses Relating To Employee Recruitment**

- 11.1 The Rules related to the deduction of the above expenses are the Income Tax (Deduction Of Pre-Commencement Of Business Expenses Relating

To Employee Recruitment) Rules 2008 [P.U. (A) 361/2008].

11.2 With effect from the YA 2009, a person resident in Malaysia who has incurred expenses in respect of recruitment of employees prior to the commencement of his business can be allowed a deduction of such expenses against his gross income in ascertaining his adjusted income from the business.

11.3 The allowable expenses are—

- (a) expenses on the recruitment of employees to enable the person to commence his business,
- (b) expenses of the kind allowable under section 33 of the ITA relating to the recruitment of employees, and
- (c) expenses incurred within the period of one (1) year prior to the commencement of his business.

The recruitment expenses which qualify for deduction include expenses incurred in participation of job fairs, payment to employment agencies and head-hunters.

11.4 The expenses incurred shall be deemed to have been incurred on the day the business commences.

### **Example 9**

Farid is an expert in information technology (IT) and marketing of consumer products. After working many years in a multinational company, he decided to set up his own business by selling healthcare products through the internet. Farid registered a sole-proprietorship on 3.6.2024. He paid agency fees of RM5,000 to an employment agency to recruit two IT graduates and an accounts clerk before he commenced his business on 1.1. 2025.

The agency fees of RM5,000 which he paid to the employment agency can be allowed as a deduction against his gross income for the YA 2025.

### **Example 10**

A Swiss company intended to set up a factory manufacturing pharmaceutical products in Malaysia. A subsidiary company, Genpharma Sdn Bhd (Genpharma) was incorporated on 1.6.2023. Genpharma advertised in several local newspapers for various positions available in the company. It engaged an employment agency to recruit a hundred foreign workers for its production department. Genpharma also sought the services of a head-hunting company to recruit a suitable person as its Chief Operating Officer. Genpharma commenced operations on 1.3.2024 and closed its accounts on 31.12.2024.

All the expenses which Genpharma incurred in the recruitment of its employees prior to 1.3.2024 are deemed to be incurred on the day when

it commenced its business and can be allowed as a deduction against its gross income for the YA 2024.

### **Example 11**

The facts are the same as in Example 10. The Chief Operating Officer started his employment on 1.2.2024. Genpharma Sdn Bhd had to pay a salary of RM20,000, employer's contribution to the Employees Provident Fund (EPF) of RM2,400 and miscellaneous administrative expenses of RM6,000 for the month of February 2024.

The expenses amounting to RM28,400 are of the kind allowable under section 33 of the ITA and incurred before the commencement of business, but they are not part of the recruitment expenses. Therefore no deduction is allowable against its gross income for the YA 2024 under these Rules.

### **Contoh 12**

Electrotherm Sdn Bhd (Electrotherm) was incorporated on 1.2.2024. It recruited a highly experienced engineer whose contract of service with another company was still in force. The other company agreed to the early termination of the contract but demanded a compensation of RM20,000 from the engineer as stipulated in the contract. The compensation was paid by Electrotherm on 1.4.2024. Electrotherm commenced its business on 1.5.2024 and closed its accounts on 31.12.2024.

The compensation of RM20,000 is not an expense of the kind allowable under section 33 of the ITA. It is therefore not allowable as a deduction against Electrotherm's gross income for the YA 2024 under these Rules.

## **12. Expenditure On Franchise Fee**

12.1 "Franchise" refers to a contract or an agreement between two or more persons by which the franchisor grants to the franchisee the right to operate a business according to the franchise system during a term as determined by the franchisor. In return for the grant of rights, the franchisee may be required to pay a franchise fee or other form of consideration.

The franchise fee is an one-off payment required to be paid by the franchisee to the franchisor before the franchisee commences his business. It is paid for the right to use a mark, trade secret, confidential information, intellectual property or system of franchise owned by the franchisor in accordance with the terms of a franchise agreement. The payment shall not include royalty payment or other periodical payments. It can be paid in one lump sum or instalments.

12.2 The Rules related to the deduction of the expenditure on franchise fee are the Income Tax (Deduction For Expenditure On Franchise Fee) Rules 2012 [P.U. (A) 76/2012].

12.3 The Rules have been introduced with effect from the YA 2012 to further

support the development of the local franchise industry.

Rules stipulate that, for the purpose of ascertaining the adjusted income of a person resident in Malaysia from his franchise business for the basis period for a YA, he is allowed a deduction for an expenditure incurred on the franchise fee paid to the franchisor prior to the commencement of his franchise business. His franchise business should be using a local franchise brand and the franchise fee must not be refundable.

A local franchise brand means a trade mark or service mark that is registered under the Trade Marks Act 1976 by the franchisor whose franchise business is registered with the Registrar of Franchise in the Ministry of Domestic Trade, Co-Operatives and Consumerism (MDTCC). The brand must be developed in and originated from Malaysia (Malaysian brand).

The franchisor must wholly own the local franchise brand. Where the franchisor is a company incorporated under the Companies Act 1965, at least 70% of the issued share capital of the company is owned by Malaysian.

- 12.4 The expenditure incurred on the franchise fee is deemed to be incurred in the basis period for a YA in which the franchise business commences.

### **Example 13**

Jatifah Sdn Bhd, a company resident in Malaysia, is granted the right to undertake a franchise business using a fast food brand called “ENAK”. Enak Sdn Bhd, a company incorporated under the Companies Act 1965 in Malaysia, has registered “ENAK” under the Trade Marks Act 1976 with the Registrar of Trade Marks in MDTCC. It has also registered its fast food business as a franchise with the Registrar of Franchise in MDTCC. The issued share capital of Enak Sdn Bhd is 100% owned by Malaysian.

Under the franchise agreement dated 2023, Enak Sdn Bhd grants the rights to Jatifah Sdn Bhd to carry on the franchise business for a term of 10 years in return for a franchise fee of RM80,000 and royalty calculated based on 3% of monthly gross sales as well as other payments. On 1.2.2023, Jatifah Sdn Bhd paid the franchise fee of RM80,000 which is not refundable. It commenced the operation of its franchise business on 1.7.2023 and closed its first set of business accounts on 30.6.2024.

The franchise fee of RM80,000 incurred and paid by Jatifah Sdn Bhd prior to the commencement of business is allowable as a single deduction against the gross income of its franchise business for the YA 2024. The franchise fee is deemed to have been incurred in the basis period for YA 2024 in which the franchise business commenced.

Note: If the franchise fee was paid by four (4) equal instalments on 1.2. 2023, 1.8. 2023, 1.2.2024 and 1.8.2024, the whole amount of the franchise fee RM80,000 would still be allowable and deemed to be incurred in the basis period for YA 2024.

### **Example 14**

The facts are the same as in Example 14, except that Enak Sdn Bhd is not wholly owned by Malaysian in respect of its issued share capital. As confirmed by the Company Secretary, the share holding position of the company at the date of signing the franchise agreement on 1.1.2023 was as follows -

- (a) 60% of the issued share capital of Enak Sdn Bhd is owned by Bluebells Sdn Bhd and the balance of 40% is owned by Malaysian, and
- (b) 70% of the issued share capital of Bluebells Sdn Bhd is owned by non-Malaysian with the balance of 30% owned by Malaysian

In this case, only 58% [ 40% + ( 60 x 30% ) ] of the issued share capital of Enak Sdn Bhd is owned by Malaysian. Since less than 70% of the issued share capital of Enak Sdn Bhd is owned by Malaysian, the franchise fee of RM80,000 is thus not deductible against the gross income of the franchise business of Jatifah Sdn Bhd.

- 12.5 Where a trade mark or service mark owned by a foreign person is used in a franchise, the Rules shall not apply as the trade mark or service mark is not a local franchise brand.

### **Example 15**

“TORO” pizza is a well known brand owned by Toro Inc, a company incorporated in Italy. Toro Inc expands its business to Malaysia and registers “TORO” with the Registrar of Trade Marks. The Registrar of Franchise approves the application from Toro Inc to sell its franchise rights in Malaysia. Through a registered franchise broker, Toro Inc grants its franchise right to Malanim Sdn Bhd for franchise fee, royalty and other periodical payments.

Malanim Sdn Bhd, a company resident in Malaysia, becomes the master franchisee in respect of “TORO” in Malaysia. It registered the franchise with the Registrar of Franchise and paid the unrefundable franchise fee of RM120,000 on 1.3.2024 before commencing its franchise business on 1.4.2024. Its first set of accounts was made up from the date of incorporation 1.1.2024 to 31.12.2024.

In this case, Toro Inc is the foreign franchisor whereas Malanim Sdn Bhd is the franchisee in Malaysia. “TORO” is not a “local franchise brand” in respect of Malanim Sdn Bhd’s business. Consequently, the franchise fee of RM120,000 paid by Malanim Sdn Bhd is not allowable as a deduction against its gross income for the YA 2024.

### **Example 16**

The facts are the same as in Example 15. Malanim Sdn Bhd subsequently registers itself as a master franchisee with the Registrar of Franchise. It grants its franchise rights to a sub-franchisee by the name of Hamishah in Malaysia to use “TORO” in return for a franchise fee of RM60,000 and other payments in accordance with the terms of the franchise agreement made. Hamishah, an entrepreneur resident in Malaysia, paid the franchise fee prior to the commencement of her business.

In this case, although Malanim Sdn Bhd is the local master franchisee, the brand “TORO” still does not qualify as a “local franchise brand” in respect of Hamishah’s business. Thus, the franchise fee of RM60,000 paid by Hamishah is not an allowable expense in ascertaining the adjusted income of her franchise business.

## **13. Pre-Operational Business Expenses In Relation to Refinery and Petrochemical Integrated Development**

13.1 The Rules related to the deduction of the above expenses are -

- (a) Income Tax (Deduction For Pre Commencement Expenses In Relation To Refinery And Petrochemical Integrated Development) Rules 2013 [P.U.(A) 43/2013].
- (b) Income Tax (Deduction For Pre Commencement Expenses In Relation To Refinery And Petrochemical Integrated Development) (Amendment) Rules 2015 [P.U.(A) 183/2015].

13.2 With effect from the YA 2010, a qualifying person carrying out a qualifying activity in the RAPID Complex shall be allowed a deduction for expenses incurred by that person prior to the commencement of that activity in ascertaining his adjusted income from the business.

13.3 Qualifying person for the purpose of the above Rules is as follows:

- (a) Petroliam Nasional Berhad;
- (b) any other company incorporated under the Companies Act 1965 [Act 125] where Petroliam Nasional Berhad holds at least 51 per cent paid up capital in respect of ordinary shares; or
- (c) any other company incorporated under the Companies Act 1965 which carries out qualifying activity within the RAPID Complex where Petroliam Nasional Berhad holds, either directly or indirectly, ordinary shares in that company.

13.4 Qualifying activity for the purpose of the deduction of expenses under the above Rules means any of the following activities carried out by a qualifying person in the RAPID Complex:

- (a) blending, processing or cracking of crude, condensates, feedstock or intermediate feedstock;
- (b) production, manufacturing or product development of petroleum, petrochemical, chemicals, intermediate, final products or its related by-products;
- (c) storing, formulating, blending, distributing or marketing of petroleum, petrochemical, chemicals, intermediate, final products or its related by-products;
- (d) re-gasification of LNG to gas and relevant distribution; or
- (e) generation, distribution or sales of all forms of utilities including but not limited to electricity, water, steam, gases, hydrogen, air or waste treatment.

13.5 "RAPID Complex" means a complex which consists of liquid cracker plants, refinery plants, petrochemical or chemical production plants and all support and auxiliary facilities including but not limited to liquid natural gas (LNG), Receiving and Re-gasification Terminal (RGT), COGEN power plant, storage facilities or waste disposal facilities, and located in Pengerang, Johor;

13.6 Qualifying Expenses for deduction as pre-commencement expenses in relation to the development of an integrated oil refinery and petrochemical plant are as set out in the table below:

Categories of Expenses	Details of Expenses
Manpower costs	i. Employees emoluments and recruitment of employees including fees paid to recruitment agencies

Travelling costs	<ul style="list-style-type: none"> <li>i. Accommodation</li> <li>ii. Air fare</li> <li>iii. Meal allowance</li> <li>iv. Mileage claim</li> </ul>
Lease and rental	<ul style="list-style-type: none"> <li>i. Lease</li> <li>ii. Rental</li> <li>iii. Utilities</li> </ul>
Staff training	<ul style="list-style-type: none"> <li>i. Pre-employment training in relation to the qualifying activity</li> </ul>
Fees for information technology and financial services	<ul style="list-style-type: none"> <li>i. Provision and procurement of services which includes consultancy, in relation to design, engineering, technical, commercial, financial, legal, project management services or information technology</li> </ul>
Detailed Feasibility Studies, Front End Engineering Design and feasibility studies	<ul style="list-style-type: none"> <li>i. Detailed Feasibility Studies</li> <li>ii. Pre-Front End Engineering Design</li> <li>iii. Site Survey</li> <li>iv. Preparation or Environment impact Assessment</li> <li>v. Feasibility studies</li> </ul>
Fees for licensing and engineering	<ul style="list-style-type: none"> <li>i. Fees for licensing</li> <li>ii. Fees for engineering</li> </ul>
Interest during construction	<ul style="list-style-type: none"> <li>i. Interest during construction of building or factory</li> </ul>
Insurance premium for employees, assets and goods	<ul style="list-style-type: none"> <li>i. Insurance premium for employees</li> <li>ii. Insurance premium for assets</li> <li>iii. Insurance premium for goods</li> </ul>

13.7 Pursuant to P.U. (A) 43/2013, the deduction in respect of allowable pre-commencement expenses shall be made for a period of four (4) years prior to the commencement date of the qualifying activity. Subsequently under P.U. (A) 183/2015 amended to P.U.(A) 43/2013, the period for claiming deduction of allowable pre-commencement expenses has been extended to seven (7) years prior to the commencement date of the qualifying activity.

13.8 The commencement date of the qualifying activity, as referred to in paragraph 13.4, shall be deemed to be the date on which such

qualifying activity commences. The date on which the pre-commencement expenses are incurred shall not be earlier than 1 October 2010.

#### 14. Updates and Amendments

<b>This PR replaces PR No. 11/2013 dated 18 November 2013 (First Edition)</b>		
<b>Paragraph in PR No. 11/2013</b>	<b>Paragraph in this PR</b>	<b>Details</b>
2	14	The previous paragraph 2 is rearranged to paragraph 15.
3	2	The previous paragraph 3 is rearranged to paragraph 2.
4	3	The previous paragraph 4 is rearranged to paragraph 3.
5	4	The previous paragraph 5 is rearranged to paragraph 4 with the amended wording.
6	5	The previous paragraph 6 is rearranged to paragraph 5.
7	6	The previous paragraph 7 is rearranged to paragraph 6.
8	7	The previous paragraph 8 is rearranged to paragraph 7.
9	8	The previous paragraph 9 is rearranged to paragraph 8.  Paragraph 8.5 is a newly inserted paragraph. Consequently, the existing Paragraph 8.5 has been renumbered as Paragraph 8.6.
10	9	The previous paragraph 10 is rearranged to paragraph 9.
11	10	The previous paragraph 11 rearranged to paragraph 10.
12	-	The previous paragraph 12 is deleted.
13	11	The previous paragraph 13 is rearranged to paragraph 11.
14	12	The previous paragraph 14 is rearranged to

		paragraph 12.
-	13	New paragraph.
11	10	New paragraph.

## 15. Disclaimer

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

**Ketua Pengarah Hasil Dalam Negeri,  
Lembaga Hasil Dalam Negeri Malaysia**