

INCOME TAX (DEDUCTION FOR INVESTMENT IN A VENTURE COMPANY OR VENTURE CAPITAL COMPANY) RULES 2022

PU (A) 117
13 April 2022

IN exercise of the powers conferred by paragraphs 33(1)(d) and 154(1)(b) of the makes the following Income Tax Act 1967 [Act 53], the Minister makes the following rules:

CITATION AND COMMENCEMENT

- 1(1)** These rules may be cited as the **Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company) Rules 2022**.
- 1(2)** These Rules are deemed to have effect from the year of assessment 2018.

INTERPRETATION

2 In this Rules –

“individual” means an individual resident in Malaysia and has a source of income from a business;

“seed capital financing” means a financing provided by a company or an individual to a venture company for the research, assessment and development of an initial concept or prototype purposes;

“early stage financing” means a financing provided by a company or an individual to a venture company as –

- (a) capital expenditure or working capital to initiate commercialisation of a technology or product;
- (b) additional capital expenditure or additional working capital to increase production capacity, marketing or product development; or
- (c) an interim financing for a venture company that is expected to be listed on the official list of a stock exchange;

“start-up financing” means a financing provided by a company or an individual to a venture company for product development and initial marketing;

“Securities Commission Malaysia” means the Securities Commission Malaysia established under Section 3 of the Securities Commission Malaysia Act 1993;

“company” means a company which –

- (a) is incorporated under the Companies Act 2016;
- (b) carries on business; and
- (c) is resident in Malaysia;

“related company” has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986;

“venture capital company” means a company which –

- (a) is incorporated under the Companies Act 2016;
- (b) is registered with the Securities Commission Malaysia; and
- (c) invests in one or more than one venture company by providing seed capital financing, start-up financing or early stage financing;

“venture company” means a company which is –

- (a) incorporated under the Companies Act 2016;
- (b) resident in Malaysia in the basis period for a year of assessment; and
- (c) involved in utilising the seed capital financing, start-up financing or early stage financing for –
 - i. activities or products promoted under the Promotion of Investment Act 1986;
 - ii. technology-based business activities as specified in the guideline in relation to venture capital tax incentive issued by the Securities Commission Malaysia;
 - iii. products or activities that have been developed under the research and development scheme approved by the Ministry of Science, Technology and Innovation; or
 - iv. products, services or activities that have been developed under the research, development and commercialisation grant scheme approved by the Malaysia Digital Economy Corporation Sdn. Bhd.

DEDUCTION

3(1) In ascertaining the adjusted income of a company or an individual from his business in a basis period for a year of assessment, there shall be allowed a deduction for an amount in that basis period which is equivalent to -

- (a) the value of investment made in a venture company; or
- (b) the value of investment or twenty million ringgit, whichever is the less, made in a venture capital company.

3(2) For the purpose of subrule (1)

- (a) the investment made shall be deemed to be incurred in the year of assessment where the investment is held for a period of three years from the date the investment is made; and
- (b) the investment holding period is certified by the Securities Commission Malaysia.

3(3) The deduction allowed under subrule (1) may be claimed in the year of assessment where the investment was held for a period of three years from the date the investment is made.

CONDITIONS TO QUALIFY FOR DEDUCTION

4(1) For the purpose of qualifying for the deduction under rule 3, the company or individual shall make an investment on or after 27 October 2017 but not later than 31 December 2026.

4(2) For the purpose of subrule (1) -

- (a) in relation to an investment in a venture company, the company or individual shall obtain certification from the Securities Commission Malaysia confirming that –
 - i. the investment is in the form of the holding of shares which at the time of acquisition are not listed for quotation in the official list of a stock exchange;
 - ii. the investment, in relation to a company, was not made in a venture company which is its related company at the point the first investment is made;
 - iii. the investment was made by providing seed capital financing, start-up financing or early stage financing; and
 - iv. the investment was held for at least three years from the date the investment is made;
- (b) in relation to an investment in a venture capital company, the company or individual shall obtain certification from the Securities Commission Malaysia confirming that –
 - i. the investment is in the form of the holding of shares which at the time of acquisition are not listed for quotation in the official list of a stock exchange;
 - ii.
 - A. the investment, at the point of the first investment in relation to a company, is made by the company in a venture capital company which is not its related company; and
 - B. the investment by the venture capital company referred to in subparagraph (A) is made in a venture company which is not a related company of the first-mentioned company;
 - iii. the investment was made by the venture capital company in a venture company by providing seed capital financing, start-up financing or early stage financing;
 - iv. the venture capital company had maintained, on average over a three year period based on the venture capital company's annual audited financial statement, at least fifty percent of the venture capital company's investment, is in one or more venture companies; and
 - v. the investment was held for at least three years from the date the investment is made.

NON-APPLICATION

- 5** These Rules shall not apply to a venture capital company to which the Income Tax (Exemption) (No. 2) Order 2022 [P.U. (A) 115/2022] applies for the whole of the exemption period provided under the said Order.

REVOCATION AND SAVINGS

- 6(1)** The Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [P.U. (A) 76/2005], which are referred to as the "repealed Rules" in this rule are revoked with effect from the year of assessment 2018.
- 6(2)** A company or an individual who has made an investment in the basis period for the year of assessment before the year of assessment 2018 and complied with the provisions of these Rules but has not applied for a deduction under the repealed Rules shall be entitled to apply for a deduction under these Rules.