



INLAND REVENUE BOARD OF MALAYSIA

**TAX INCENTIVE FOR
ANGEL INVESTOR**

PUBLIC RULING NO. 11/2015

Translation from the original Bahasa Malaysia text.

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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 explain the tax incentive offered to an angel investor who has invested in an investee company.

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, 7, 8, 20 and 21.
- 2.3 Relevant subsidiary laws referred to in this PR are Income Tax (Exemption) (No.3) Order 2014 [P.U.(A)167/2014] and Income Tax (Exemption) (Amendment) Order 2015 [P.U.(A) 42/2015].

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 "Individual" means a natural person;
- 3.2 "Investment" means holding of shares, which is paid in cash, in respect of ordinary shares in an investee company;
- 3.3 "Angel investor" is as specified under paragraph 5;
- 3.4 "Resident" means resident in Malaysia for the basis year for a year of assessment by virtue of sections 7 and 8 of the ITA;
- 3.5 "Investee company" is as specified under paragraph 6;
- 3.6 "Basis year" has the meaning assigned by section 20 of the ITA;
- 3.7 "Year of assessment" means calendar year; and
- 3.8 "Basis period" has the meaning assigned by section 21 of the ITA.

4. Introduction

The Government had granted a tax incentive for investment made by an angel investor in a qualified investee company in the early stage of a technology based start-up effective from 1.1.2013. Both the angel investor and the investee company would have to comply with the relevant rules relating to the tax incentive. In order to qualify for the tax incentive, all prospective angel investors are required to submit an application to the Malaysian Business Angel Network (MBAN) to ensure

that the eligibility criteria are met and to accredit them as angel investors. For more information, please refer to the MBAN's website at www.mban.com.my.

Similarly, an investee company has to be certified by the Angel Tax Incentive Office (ATIO) (a unit under Cradle Fund Sdn Bhd which is an agency under the Ministry of Finance) as eligible to be invested in before an accredited angel investor can invest in the investee company. For more information, please refer to Cradle Fund Sdn Bhd's website at www.cradle.com.my.

5. Criteria for Angel Investor

Generally, an angel investor is a high net-worth individual who provides funding needed to start a business in exchange for a share ownership in an investee company. To qualify for the tax exemption, an angel investor would have to fulfill the following criteria:

- (i) must be resident in Malaysia;
- (ii) sources of income is not derived solely from business;
- (iii) investment is solely to finance activities of investee company and the amount shall not be more than 30% of the total paid-up share capital of the investee company;
- (iv) an application to make an investment in an investee company is made on or after 1.1.2013 but not later than 31.12.2017 for the approval of the Minister of Finance; and
- (v) must not have family relationship with investee company i.e. none of the paid-up capital of the investee company is owned by a parent, including a parent-in-law, a child including a step child, or child adopted in accordance with any law, a brother or sister, or grandparent or grandchild, or a spouse of the investor.

Example 1

Ali, an accredited angel investor is a parent to one of the shareholders in Tech Maju Sdn Bhd, a qualified investee company certified by the ATIO. Ali makes an investment in Tech Maju Sdn Bhd.

For the purpose of the angel tax incentive, the investment made by Ali in Tech Maju Sdn Bhd is not eligible for the incentive as it is an investment in an investee company of which one of the shareholders is Ali's child.

6. Criteria for Investee Company

An investee company is a start-up company certified by the ATIO as eligible to be invested in by a qualified angel investor for the purposes of the angel tax incentive. Generally, a start-up company is a company in its earliest stage of development concentrating on product development, securing financing, laying down the basic structure of the business and initiating operations or trading.

A company has to fulfill the following criteria in order to qualify as an investee company:

- (a) it must be incorporated under the Companies Act 1965 and resident in Malaysia;
- (b) at least 51% of the company's issued share capital is directly owned by a shareholder (other than the prospective angel investor who intends to invest in the investee company) who is a Malaysian citizen; and
- (c) must carry on activities as approved by the Minister of Finance.

Currently among the approved activities in relation to high growth or high technology industries are—

- (i) advanced electronics and information technology;
- (ii) telecommunications;
- (iii) equipment/instrumentation, automation and flexible manufacturing systems;
- (iv) healthcare;
- (v) electro-optics, non-linear optics and optoelectronics;
- (vi) advanced materials;
- (vii) transportation;
- (viii) value-added services; and
- (ix) emerging technologies.

Further details and Form ATI-1 in respect of an Application for Investee Company Certification can be obtained from Cradle Fund Sdn Bhd's website.

7. Tax Incentive

- 7.1 The incentive granted to an angel investor is a tax exemption in respect of his aggregate income for the basis period for a year of assessment, in the second year of assessment following the year of assessment (YA) in which an investment is made. The amount of aggregate income exempted is an

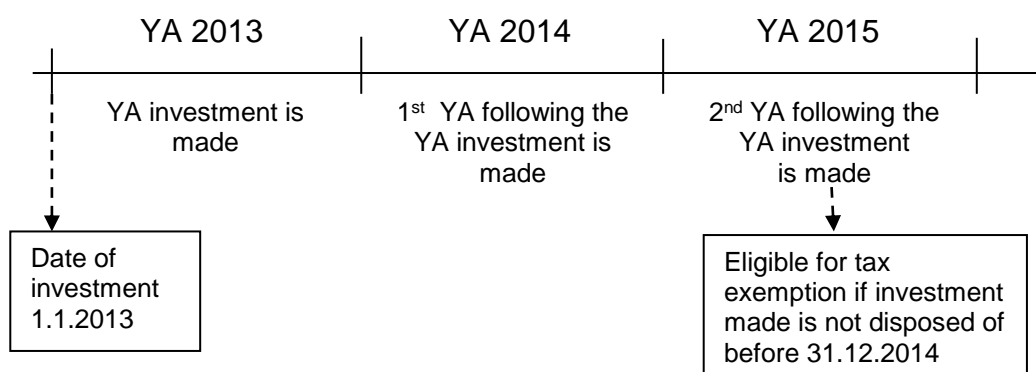
amount equal to the amount of investment made by the angel investor in the investee company. The amount of tax exemption allowed per annum is the amount of investment made or RM500,000, whichever is the lower.

- 7.2 Where the amount of investment exceeds the aggregate income of an angel investor for the basis period for a YA, the excess amount of investment is disregarded. In other words, the excess amount of investment will not be refunded or be available as a credit to set off his tax liability for subsequent years of assessment.
- 7.3 The exemption is granted subject to the following conditions:
- (a) the investment must not be disposed of (fully or in part) within two (2) years from the date the investment is made; and
 - (b) the conditions specified by the Minister of Finance in the approval letter for the investment have been complied with.
- 7.4 The tax exemption may be withdrawn by the Minister of Finance if the angel investor fails to comply with conditions specified by the Minister in the approval letter for the investment.
- 7.5 The following are illustrations to show the shareholding period and eligibility for a tax exemption:

Example 2

Iqbal has been accredited as an angel investor by the MBAN. He had invested RM500,000 from his own private funds in a new start-up, ABC Ventures Sdn Bhd on 1.1.2013. ABC Ventures Sdn Bhd has been certified as an investee company by the ATIO and the investment application was forwarded to the Minister of Finance for approval. The investee company closes its accounts on 31 December each year.

Iqbal's shareholding period and eligibility for a tax exemption is summarised as follows:



If Iqbal does not dispose of his investment within 2 years from the date the investment was made i.e. before 31.12.2014, he would be eligible for a tax exemption in respect of his aggregate income in YA 2015, being the second year of assessment following YA 2013 in which the investment was made.

Example 3

The facts are the same as in Example 2 and Iqbal's income for YA 2015 is as follows:

	RM
Statutory income from business	150,000
Statutory income from employment	<u>300,000</u>
Aggregate income	<u>450,000</u>

Computation of Total Income

Aggregate income		RM
Less:		450,000
Approved investment	500,000	
under angel tax incentive		
Restricted to	<u>450,000</u>	
Disregarded	<u>50,000</u>	450,000
		<hr/>
Total income		<u>Nil</u>

For YA 2015, Iqbal is not taxable as the amount of investment (RM500,000) made in the investee company in YA 2013 exceeds his aggregate income (RM450,000). The excess amount of investment (RM50,000) made in YA 2013 is to be disregarded and cannot be carried forward to YA 2016 and subsequent years of assessment for the purpose of tax exemption.

Example 4

Chua has been accredited as an angel investor by the MBAN. His sources of income are as follows:

- (a) employment;
- (b) two (2) sole proprietor businesses; and
- (c) two (2) partnerships.

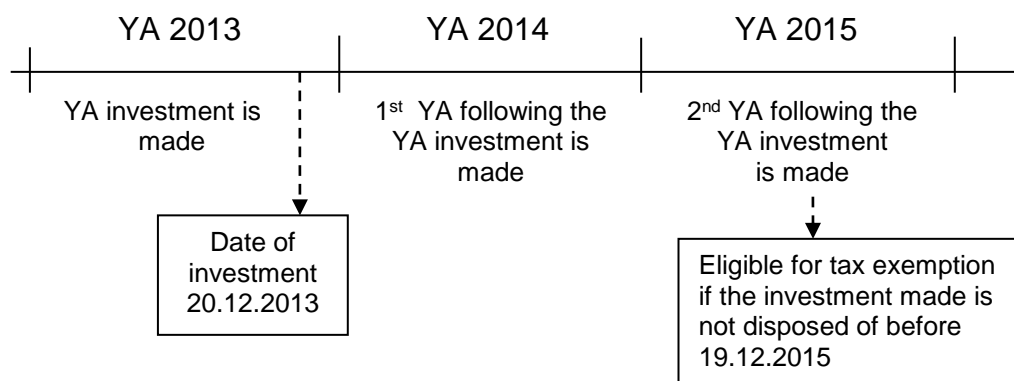
Chua had invested RM200,000 from his own private funds in a new start-up, XYZ Ventures Sdn Bhd on 20.12.2013. XYZ Ventures Sdn Bhd has been

certified as an investee company by the ATIO and the investment application was forwarded to the Minister of Finance for approval. The investee company closes its accounts on 31 December each year. The business loss b/f is RM70,000 and Chua's aggregate income for YA 2015 is as follows:

Source of Income	RM	RM
Statutory income from Business 1 (Loss – RM50,000)		Nil
Statutory income from Business 2		<u>45,000</u>
		45,000
Statutory income from Partnership 1 (Loss – RM40,000)	Nil	
Statutory income from Partnership 2	<u>55,000</u>	<u>55,000</u>
		100,000
Less:		
Business loss b/f		<u>70,000</u>
		30,000
Statutory income from Employment		<u>35,000</u>
Aggregate income		65,000
Less:		
Approved investment under angel tax incentive	200,000	
Restricted	<u>65,000</u>	<u>65,000</u>
Disregarded	<u>135,000</u>	
Total income		<u>Nil</u>

Current year business loss	RM50,000
Current year partnership loss	<u>RM40,000</u>
Unabsorbed business loss c/f	<u>RM90,000</u>

Chua's shareholding period and eligibility for a tax exemption is summarised as follows:



For YA 2015, Chua is not taxable as the amount of investment (RM200,000) made in the investee company in YA 2013 exceeds his aggregate income (RM65,000). The excess amount of investment (RM135,000) made in YA 2013 is to be disregarded and cannot be carried forward to YA 2016 and subsequent years of assessment.

Example 5

Same facts as in Example 4. Chua made further investments of RM200,000 and RM100,000 on 20.12.2014 and 1.6.2015 respectively. His aggregate income for YA 2016 and 2017 are as follows:

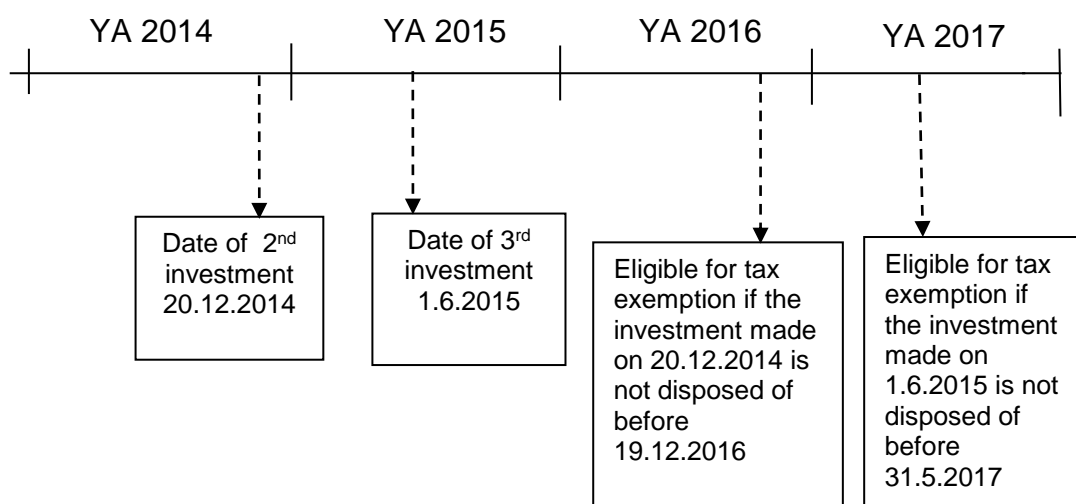
Year of Assessment 2016

Source of Income	RM	RM
Statutory income from Business 1		100,000
Statutory income from Business 2		<u>90,000</u>
		190,000
Statutory income from Partnership 1	80,000	
Statutory income from Partnership 2	<u>120,000</u>	<u>200,000</u>
		390,000
Less:		
Business loss b/f		<u>90,000</u>
		300,000
Statutory income from employment		<u>80,000</u>
Aggregate income		380,000
Less:		
Approved investment under angel tax incentive		<u>200,000</u>
Total income		<u>180,000</u>

Year of Assessment 2017

Source of Income	RM	RM
Statutory income from Business 1		150,000
Statutory income from Business 2		<u>90,000</u>
		240,000
Statutory income from Partnership 1 (loss – RM50,000)	Nil	
Statutory income from Partnership 2	<u>60,000</u>	<u>60,000</u>
		300,000
Statutory income from employment		<u>90,000</u>
Aggregate income		390,000
Less:		
Approved investment under angel tax incentive		<u>100,000</u>
		290,000
Less:		
Current year partnership loss		<u>50,000</u>
Total income		<u>240,000</u>

Chua's shareholding period and eligibility for a tax exemption is summarised as follows:



8. Filing of Income Tax Return Form

An angel investor is required to comply with the relevant provisions of the ITA and submit the relevant income tax return form for each YA on or before the due date. The angel investor has to furnish his statement of accounts (where applicable) or any other information when required.

9. Non-Application

An individual investor who has made a claim for a deduction under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [P.U.(A) 76/2005] is not eligible to claim a tax exemption as an angel investor under the Income Tax (Exemption) (No.3) Order 2014 [P.U.(A) 167/2014].

10. Distinction Between a Venture Capitalist and an Angel Investor

The distinct differences between a venture capitalist and an angel investor are as follows:

Particulars	Venture Capitalist	Angel Investor
Type of Investor	<ul style="list-style-type: none"> Resident individual who has a business income – (individual who has employment income / rental / interest / dividend etc or its combination is not eligible) A company incorporated under the Companies Act 1965 	<ul style="list-style-type: none"> Resident individual (company is not eligible) Individual who is approved by the Minister of Finance and has income but not solely from business source (individual who has only business income is not eligible)
Form of Investment	<ul style="list-style-type: none"> Acquisition of ordinary shares At least 70% of its invested funds in venture company at the point of first investment, or where the investment is in the form of seed capital at least 50% of its invested funds at the point of the first investment 	<ul style="list-style-type: none"> Acquisition of ordinary shares paid in full and in cash (not in kind) Not more than 30% of total paid-up share capital (ordinary shares) of the investee company

Particulars	Venture Capitalist	Angel Investor
Date of Application	<ul style="list-style-type: none"> From year of assessment 2003 onwards 	<ul style="list-style-type: none"> 1.1.2013 to 31.12.2017
Regulatory Body	<ul style="list-style-type: none"> Securities Commission 	<ul style="list-style-type: none"> MBAN and Cradle Fund Sdn Bhd
Purpose of investment	<ul style="list-style-type: none"> Invests in venture company in the form of seed capital, start-up or early stage financing 	<ul style="list-style-type: none"> Invests in an investee company in the form of start-up.
Tax Incentive	<ul style="list-style-type: none"> Exemption of statutory income from all sources of income, other than interest income arising from savings or fixed deposits and profits from <i>Syariah</i>-based deposits commencing from the year of assessment the venture capital company commences business or year of assessment 2008; or Deduction of an amount equivalent to the value of investment made in the basis period for a year of assessment in a venture company in arriving at its adjusted income. 	<ul style="list-style-type: none"> Exemption of an amount of aggregate income which is equivalent to the amount of investment made in an investee company for the basis year for a year of assessment. The amount of tax exemption allowed per annum is the amount of investment made or RM500,000, whichever is lower.
Tax Treatment of Losses	<ul style="list-style-type: none"> Loss from disposal of shares in a venture company within exempt period is carried forward to post exempt period 	<ul style="list-style-type: none"> Excess amount of investment over aggregate income will be disregarded

Particulars	Venture Capitalist	Angel Investor
Applicable Period of Tax Incentive	<ul style="list-style-type: none"> Exempt period of 10 years or the years of assessment equivalent to the life of the fund established for the purposes of investing in a venture company, whichever is the lesser 	<ul style="list-style-type: none"> In the second year of assessment following the year of assessment in which an investment is made in an investee company
Income Tax Provision	<ul style="list-style-type: none"> Income Tax (Exemption) (No.11) Order 2005 [P.U.(A) 75/2005] as amended by the Income Tax (Exemption) (Amendment) (No.2) Order 2006 [P.U.(A) 420/2006] and Income Tax (Exemption) (Amendment) Order 2009 [P.U.(A) 159/2009] 	<ul style="list-style-type: none"> Income Tax (Exemption) (No. 3) Order 2014 [P.U.(A)167/2014] Income Tax (Exemption) (Amendment) Order 2015 [P.U.(A) 42/2015]
Mutually Exclusive	<ul style="list-style-type: none"> Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [P.U.(A) 76/2005] is not applicable if a claim has been made under the Income Tax (Exemption)(No.11) Order 2005 [P.U.(A) 75/2005] 	<ul style="list-style-type: none"> Income Tax (Exemption) (No.3) Order 2014 [P.U.(A)167/2014] is not applicable if a claim has been made under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [P.U.(A) 76/2005]

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