

**TECHNICAL**

**Direct Taxation**

**PUBLIC RULING NO. 10/2016 – INDUSTRIAL BUILDINGS PART II**

This Public Ruling (PR) was issued on 5 December 2016. (Please refer to our [e-CTIM TECH-DT 106/2016](#) dated 9 December 2016). Its objective is to explain the types of buildings that qualify as industrial buildings under paragraph 80 of Sch. 3 of the Income Tax Act 1967 (ITA), supplemented by Income Tax Rules (ITR) (made under S154(1) of the ITA).

**Definitions**

Paragraph 3 provides definitions of terms used in the PR. Among them are the following:

<b>Words</b>	<b>Meanings</b>
Building	Includes any structure erected on land which is not plant or machinery.
The Government of Malaysia	Refers to the Federal Government only and excludes state government and local authority.
Qualifying building expenditure (QBE)	Capital expenditure incurred on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be, as an industrial building (IB).
Company	A body corporate and includes any body of persons established with a separate legal entity by or under the laws of territory outside Malaysia and a business trust.

**Types of Buildings that Qualify as Industrial Buildings (Paragraph 4 of the PR)**

The types of buildings that qualify as IBs which are listed in this PR are prescribed by the Minister of Finance as empowered under paragraph 80 of Sch. 3 of the ITA.

<b>Building (Para #)</b>	<b>Salient points</b>	<b>Example # in PR</b>
Old folks care centre (4.1)	The construction or purchase of a building used by a person as an old folks care centre approved by the Department of Social Welfare (DSW)	1
Approved Multimedia Super Corridor Company (4.2)	<ul style="list-style-type: none"> <li>The construction or purchase of a <u>building</u> in the <u>Cyberjaya Flagship Zone</u> by the owner, which must be first occupied by an <u>approved MSC status company (AMSC)</u>. The building must be –               <ul style="list-style-type: none"> <li>a) used by its owner for the purpose of his business as an AMSC; or</li> <li>b) rented/ let out to an AMSC.</li> </ul> </li> <li>The renting of a building to an AMSC is treated as the carrying on of a business, and the income derived</li> </ul>	2

Building (Para #)	Salient points	Example # in PR
	<p>therefrom is to be taxed under S4(a) of the ITA.</p> <ul style="list-style-type: none"> <li>Under the P.U.(A) 202/2006, the provisions relating to an investment holding company (IHC) under S60F of the ITA and an IHC under S60FA of the ITA do not apply to rental income derived from the building.</li> </ul> <p>(The words underlined above are defined in para. 4.2.3 of the PR.)</p>	
Approved BioNexus status company (BNSC) (4.3)	<ul style="list-style-type: none"> <li>The construction or purchase of a building used by a BNSC for the purposes of research and development and for the sole purpose of a <u>new business</u> or for an <u>expansion project</u>. The company must be resident in Malaysia and approved by the Minister of Finance as a BNSC. (The words underlined are defined in paragraphs 4.3.2, 4.3.3, and 4.3.4.)</li> <li>The date on which the first QBE is incurred is to be determined by the Malaysian Bioeconomy Development Corporation (MBDC) Sdn. Bhd. (formerly known as the Malaysian Biotechnology Corporation Sdn. Bhd.). The date must not be earlier than 2 September 2006.</li> <li>MBDC Sdn Bhd is responsible for evaluating the companies that qualify for consideration by the BioNexus Approval Evaluation Committee to certify the BioNexus status for approval by the Minister of Finance.</li> </ul>	3
Building under privatization project and private financing initiatives (4.4)	<p>A building is treated as an IB if it is constructed –</p> <ol style="list-style-type: none"> <li>under a privatization project and private financing initiatives (PFI) approved by the Privatisation/ PFI Committee, Public Private Partnership Unit, Prime Minister's Department; and</li> <li>pursuant to an agreement entered into between a person and the Government of Malaysia or a statutory body on a build-lease-maintain-transfer basis, and for which no consideration has been paid by the Government of Malaysia or statutory body to that person.</li> </ol>	4
Kindergarten (4.5)	<ul style="list-style-type: none"> <li>A building purchased or constructed by an individual or a company for use as a kindergarten, which meets the following conditions: <ol style="list-style-type: none"> <li>the person is the owner of the building; and</li> <li>the building is used by that person in a business relating to the provision and maintenance of a kindergarten which is approved by the Ministry of Education (MOE) under the Education Act 1996.</li> </ol> </li> <li>If a building is also used for a business other than the kindergarten business, only the part that is used for the provision and maintenance of the kindergarten qualifies as an IB. The part that is not used as an IB may be treated as an IB if capital expenditure incurred on the construction of that part is not more than 10% of the construction cost of the whole building (or may be computed by reference to</li> </ul>	5

Building (Para #)	Salient points	Example # in PR
	the floor area of each part or in such other manner as the Director General may direct, if the capital expenditure relating to the respective part is not identifiable.)	
Child care centre (4.6)	<ul style="list-style-type: none"> <li>Building purchased or constructed by an individual or a company for use as a child care centre, which meets the following conditions:               <ul style="list-style-type: none"> <li>(a) the person is the owner of the building; and</li> <li>(b) the building is used by that person in a business of a child care centre which is approved by the DSW under the Child Care Centre Act 1984.</li> </ul> </li> <li>The rules relating to the tax treatment of a building which is also used for another business other than the child care centre are the same as for a building used for a kindergarten (see para. 4.5 above.)</li> </ul>	6
Tun Razak Exchange Marquee status company (TREMSC) (4.7)	<ul style="list-style-type: none"> <li>A <u>commercial building</u> in the Tun Razak Exchange constructed or purchased by a TREMSC qualifies as an IB if –               <ul style="list-style-type: none"> <li>(a) the company is the owner of the building; and</li> <li>(b) the building is used by that company for the purpose of a business which is specified under subparagraphs 4.7.1(b)(i) to (vii).</li> </ul>               (“Commercial building” is defined in paragraph 4.7.5.)             </li> <li>The rules relating to the tax treatment of a commercial building which is also used for another business other than the business specified in paragraph 4.7.1(b) (see point (b) above) are the same as for a building used for a kindergarten (see para. 4.5 above.)</li> <li>The leasing of a building to persons carrying on a business as specified under paragraph 4.7.1(b) is regarded as the carrying on of a leasing activity, and the income derived therefrom is to be taxed as a separate and distinct business source under S4(a) of the ITA.</li> <li>The ITR under <a href="#">P. U.(A) 27/2013</a> (which governs this class of IBs) shall not apply to –               <ul style="list-style-type: none"> <li>(a) QBE incurred by the TREMSC after 31 Dec 2020; and</li> <li>(b) a company which is an approved developer that is exempted under the Income Tax (Exemption) (No. 4) Order 2013 [<a href="#">P.U.(A) 28/2013</a>].</li> </ul> </li> </ul>	7
5	The table entitled “Summary of Types of Industrial Buildings and Rates of Allowances” under paragraph 5 shows the rates of initial and annual allowances applicable to each type of IB listed above, as well as the relevant ITR governing each type of building.	

Members may read the PR in full at the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at [technical@ctim.org.my](mailto:technical@ctim.org.my) or [secretariat@ctim.org.my](mailto:secretariat@ctim.org.my) in respect of any suggestions, concern or comments you may have on the [PR](#) so that we may raise them to the LHDNM.

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