

TECHNICAL

Direct Taxation

LHDNM'S RESPONSE TO CTIM ON INCOME TAX (DEDUCTION FOR EMPLOYMENT OF SENIOR CITIZEN, EX-CONVICT, PAROLEE, SUPERVISED PERSON AND EX-DRUG DEPENDANT) RULES 2019 [P.U. (A) 164/2019]

Following the Inland Revenue Board of Malaysia's ("LHDNM") responses to the Institute's queries on the [P.U. \(A\) 164/2019](#) (reported in our [e-CTIM TECH-DT 45/2020 dated 16 June 2020](#)), the Institute requested for further clarification on the P.U. (A) 164/2019 from the LHDNM on [4 September 2020](#). The LHDNM responded to the Institute on [5 November 2020 \(in Bahasa Malaysia only\)](#).

The request for further clarification from CTIM and the response given by LHDNM is summarised in the table below for ease of reference: -

P.U. (A) 164/2019 ("the Rules")	Clarification sought by CTIM on 4 September 2020	LHDNM's response on 5 November 2020
1. Rule 2 - Application of the Rules to an employer who has a source of income consisting of business only.	Request for confirmation of CTIM's understanding that the Rules apply to the employer so long as that employer has a business source of income e.g. an employer who has business income and interest income can also qualify for the deduction under the Rules.	CTIM's understanding is in order. The employer must have a business source of income under S.4(a) of the Income Tax Act ("ITA") 1967. An employer with a business source of income and other source of income is also eligible to make the claim under the Rules.
2. Rule 3(1) - The deduction allowed under the Rules is in respect of the remuneration (of the kind allowable under S.33 of the ITA 1967) payable by an employer to his employee (who is a Malaysian citizen and resident) who is from amongst the persons stated in Rule 3(1)(a) –	Request for confirmation of CTIM's understanding that the employee referred to in Rule 3(1) can be more than one employee.	The employer can claim the deduction for more than one employee provided each of the said employees fulfils all the conditions prescribed in this P.U. (A).

P.U. (A) 164/2019 (“the Rules”)	Clarification sought by CTIM on 4 September 2020	LHDNM’s response on 5 November 2020
(e), subject to the conditions stated in the Rules.		
3. Rule 3(2)(d) – The deduction allowed under Rule 3(1) is subject to the condition that the employer is not a relative of the employee as listed under Rule 3(2)(d)(i) – (v).	<p>The LHDNM had earlier clarified (refer to our e-CTIM TECH-DT 45/2020 dated 16 June 2020) that if the employer is a company, any remuneration payments made to employees who are close family members of shareholders or directors of the said company will not qualify for the deduction under Rule 3(1). CTIM commented that if it is the intention that relatives of directors/shareholders of a company are to be excluded, then the P.U. (A) 164/2019 should be amended to include such non-application.</p>	<p>The LHDNM clarified that for an employer that is a company, close relatives refer to close relatives of the shareholders or directors of the said company. This is because a company is an entity that does not have family ties with any person. As such, if the employer is a company, remuneration payments made to employees who are close family members of shareholders or directors (<i>“empunya atau orang yang mengawal selia syarikat”</i>) of the said company will not qualify for the deduction under Rule 3(1).</p> <p>For the purpose of this P.U. (A), close family members refer to relatives as listed under Rule 3(2)(d)(i) – (v). The LHDNM is of the view that there is no need to amend this subsidiary legislation.</p>

Members may read the [Institute’s request for clarification on 4 September 2020](#) and the [LHDNM’s response on 5 November 2020](#) in full at the Institute’s website – Members Only.

Disclaimer

This document is meant for the members of the Chartered Tax Institute of Malaysia (CTIM) only. CTIM has taken all reasonable care in the preparation and compilation of the information contained in this e-CTIM. CTIM herein expressly disclaims all and any liability or responsibility to any person(s) for any errors or omissions in reliance whether wholly or partially, upon the whole or any part of this e-CTIM.