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TO ALL MEMBERS

TECHNICAL

[Income Tax \(Deduction for Expenditure on Franchise Fee\) Rules 2012 \[P.U.\(A\) 76/2012\]](#)

The Rules follow from [paragraph 33 of the 2012 Budget speech](#), and the related [Appendix 15](#).

They prescribe that the franchise fee paid to the franchisor by a qualified person for his franchise business prior to the commencement of business shall be deemed to be incurred in the basis period for a year of assessment in which the franchise business commences and shall be allowed a deduction in arriving at the adjusted income of that business, provided that the franchise fee incurred shall not be refundable.

These rules are effective from the year of assessment 2012.

In the Rules –

“**franchise fee**” means a fee paid by a qualified person to the franchisor for the right to use a mark (as in Section 4, Franchise Act 1998), trade secret, confidential information, intellectual property or system of franchise owned by that franchisor in accordance with the terms of a franchise agreement but shall not include royalty payment or other periodical payments.

“**franchisor**” means a franchisor within the meaning of Section 4 of the Franchise Act 1998 who wholly owns the local franchise brand and in relation to a company incorporated under Companies Act 1965, at least seventy per centum of the issued share capital is owned by Malaysian.

“**qualified person**” means a Malaysian resident person who is a franchisee within the meaning of Section 4 of the Franchise Act 1998.

“**franchise business**” means a business carried out by a qualified person using a local franchise brand.

“**local franchise brand**” means a trade mark or service mark that is registered under the Trade Marks Act 1976 by a franchisor whose franchise business is registered under Section 6 of the Franchise Act 1998.

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