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TO ALL MEMBERS

TECHNICAL

[Guideline clarifying the non-application paragraph in Income Tax \(Accelerated Capital Allowances \(ACA\)\) Rules](#)

The IRB issued the above guidelines on 9 August 2012 to clarify the non-application paragraph in the following Rules:

- Income Tax (Accelerated Capital Allowance) (Plant And Machinery) Rules 2008 [P.U.(A) 357/2008]
- Income Tax (Accelerated Capital Allowance) (Information And Communication Technology Equipment) Rules 2008 [P.U.(A) 358/2008]
- Income Tax (Accelerated Capital Allowance) (Plant And Machinery) Rules 2009 [P.U.(A) 111/2009]

Background

1. The non-application paragraph in the above Rules restrict the ACA claim by a taxpayer in any year of assessment if the taxpayer qualifies to make a claim in the same year of assessment for other incentives as stipulated in those relevant Rules. The Rules referred to are:

Rules under P.U.(A) 357/2008

- (a) Paragraph 6 provides that the Rules do not apply to a company:
 - (i) where more than 50 percent of the paid up capital of ordinary shares is directly or indirectly owned by a related company;
 - (ii) where more than 50 percent of the paid up capital of ordinary shares of the related company is directly or indirectly owned by the first-mentioned company; or
 - (iii) where more than 50 percent of the paid up capital of ordinary shares of the first-mentioned company and the related company is directly or indirectly owned by another company; or
- (b) a company which has been granted any incentive under the Promotion of Investment Act 1986 (PIA) or reinvestment allowance (RA) for a year of assessment under [Schedule 7A](#) of the Income Tax Act 1967 (ITA); or
- (c) a company which qualifies for an allowance under paragraph [19A of Schedule 3](#) of the ITA for a year of assessment and has made a claim for such allowance.

Rules under P.U. (A) 358/2008

Under para 7, these Rules are not applicable for a year of assessment if the taxpayer:

- (a) has been granted any incentive under the PIA; or
- (b) has been granted RA under Schedule 7A of the ITA.

Rules under P.U.(A) 111/2009

Paragraph 6 of these Rules provides for non-application of the Rules to a taxpayer who, in the period on or after 10 March 2009 but not later than 31 December 2010,

- (a) has been granted any incentive under the PIA;
- (b) has made a claim for RA under Schedule 7A of the ITA

- (c) has been granted any exemption under paragraph [127\(3\)\(b\)](#) or subsection [127\(3A\)](#) of the ITA; or
- (d) qualifies for an allowance at a higher fraction under the ITA or any rules made under [section 154](#) of the ITA.

Tax treatment

- 2. For the purpose of clarification, incentives granted under the PIA, RA granted under Schedule 7A of the ITA and exemptions under subsections 127(3)(b) or 127(3A) of the ITA are granted on the basis of the person. This means that if a person has elected to claim an incentive provided under the above legislative provisions, that person is no longer eligible to claim ACA under the Income Tax Rules relating to ACA. As such, normal rates of allowance under the Schedule 3 of the ITA will apply.
- 3. The Income Tax Rules relating to ACA are not mutually exclusive with deductions determined by the Minister under any Rules issued under section 154 of the ITA. For example, a person granted a special deduction or double deduction by the Minister under subsection 154(1)(b) of the ITA is still eligible under the Rules relating to ACA.
- 4. A person who has made a claim for allowances under paragraph 19A of Schedule 3 of the ITA is still eligible to claim ACA under the Rules relating to ACA in respect of other assets that do not qualify for rates under the first-mentioned paragraph. This is because allowances under the paragraph first mentioned is applied based on the asset and not granted in respect of that person. However, the chosen option between rates under paragraph 19A of Schedule 3 of the ITA and the respective Rules relating to ACA must be consistent.
- 5. If an asset qualifies for a higher rate of initial or annual allowance under any Income Tax Rules, the claimant is not entitled to opt for a lower rate under the Rules relating to ACA for the same asset.
- 6. [Paragraph 71, Schedule 3](#) of the ITA applies for all assets (assets owned for a period of less than 2 years) including assets for which ACA has been claimed if disposal of the asset takes place during a period of less than 2 years from the date of acquisition. A balancing charge equal to the amount of any capital allowance on that qualifying plant expenditure will be made on the owner, *except on grounds of death of the owner*. From the year of assessment 2009, paragraph 71 is not applicable upon the death of the asset owner or upon grounds acceptable to the Director General of Inland Revenue.
- 7. Where a controlled transfer takes place within 2 years from the date of acquisition of an asset on which ACA has been claimed, paragraph 71 of Schedule 3 of the ITA applies. A balancing charge will be made on the disposer. The acquirer is allowed capital allowances at rates provided under Schedule 3 of the ITA on qualifying expenditure incurred. If the asset is acquired for no consideration, no capital allowances will be granted since no qualifying expenditure has been incurred by the acquirer.

Member may view the Guidelines on the [IRB website](#) or visit the [Institute's website](#).

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