

TECHNICAL

Direct Taxation

RULES ON DEDUCTION FOR COST OF ACQUISITION OF FOREIGN OWNED COMPANIES

1. *Background* – Budget 2013 proposed to reintroduce the incentive of allowing a deduction for the cost of acquisition of foreign owned companies. Previously, the incentive was available to companies which had submitted their applications to Malaysian Investment Development Authority (MIDA) between 21 September 2002 and 31 December 2008. Following the proposal, the [Income Tax \(Deduction For Cost Of Acquisition Of Foreign Owned Company\) Rules 2013 \[P.U.\(A\) 218 of 2013\]](#) were gazetted on 4 July 2013:
2. The main features of the above Rules are summarized below:

Subject	Ref. /Notes
Effective date (Rule 1) <ul style="list-style-type: none"> The Rules are deemed to have come into operation on 3 July 2012 	Rule 1(2)
Deduction (Rule 6) <ul style="list-style-type: none"> In ascertaining adjusted income from the business of a <i>locally owned company</i> which has paid cost of acquisition of a <i>foreign owned company</i> for the basis period for a year of assessment (YA), a deduction is allowed of an amount equal to 20% of the cost for that YA and each of the 4 following YA. The acquisition must be completed within 3 years from the date of application to MIDA. The deduction will be withdrawn if the shares acquired are disposed of within 5 years from the date of completion of the acquisition. 	Rule 6(1) Rule 6(3) Rule 6(5)
Locally owned company (Rule 3) <ul style="list-style-type: none"> A <i>locally owned company</i> refers to a company which is: <ol style="list-style-type: none"> a) incorporated under the Companies Act 1965 and resident in Malaysia: and b) carries on the business of manufacturing of products or the provision of selected services approved by the Minister, and <ol style="list-style-type: none"> i. if it is not listed on the stock exchange established under S15(2) of the Capital Markets and Services Act 2007 (CMSA), at least 60% of its paid-up capital in respect of ordinary shares is directly owned by Malaysian citizen, or ii. if it is listed on stock exchange established under S 15(2) of CMSA, at least 60% of its paid-up capital in respect of ordinary shares is directly owned by Malaysian citizen on the first day of the listing and at least 50 % of its ordinary shares are directly owned by Malaysian citizen. 	

<p>Foreign owned company (Rule 4)</p> <ul style="list-style-type: none"> A foreign owned company is one which is located outside Malaysia, and: <ul style="list-style-type: none"> a) which is established under any written law relating to the establishment of a company outside Malaysia b) which is wholly owned, directly or indirectly by non-Malaysian citizens; and c) which owns and uses high technology in manufacturing activity or provision of selected services outside Malaysia. 	
<p>Application (Rule 5)</p> <ul style="list-style-type: none"> These Rules apply to a <i>locally owned company</i> which: <ul style="list-style-type: none"> a) submits an application for the deduction to MIDA between 3 July 2012 and 31 December 2016, and the application has been approved by the Minister; b) acquires at least 51% of the ordinary shares of the foreign owned company by way of a cash transaction; c) uses high technology acquired in the business of the company for the purpose of creating or increasing the demand on the product manufactured in Malaysia or services provided in Malaysia with the objectives of using the said technology for <ul style="list-style-type: none"> i) the production or improvement of material, devices, products, produce or processes; or ii) the improvement of processing or quality of the selected services; and d) has not been granted any incentives under the Promotion of Investments Act 1986 (PIA) except pioneer status and investment tax allowance as a high technology company. 	
<p>Ineligibility (Rule 7)</p> <p>The deduction is not available for a locally owned company: -</p> <ul style="list-style-type: none"> which has: <ul style="list-style-type: none"> a) made a claim for reinvestment allowance under Sch 7A, or investment allowance for service sector under Sch 7B of the ITA; b) been granted an exemption under s127 of the ITA; or c) claimed deduction under any Rules made under s154 of the ITA (except for Sch. 3 allowances); or which is a related company of a locally owned company which has obtained approval for deduction under these Rules. <p>A related Company, as defined under S.2 of PIA, means a company-</p> <ul style="list-style-type: none"> (a) the operations of which are or can be controlled, either directly or indirectly, by the first mentioned company; (b) which controls or can control, either directly or indirectly, the operations of the first-mentioned company; or (c) the operations of which are or can be controlled, either directly or 	<p>Rule 7(1)(a), (b) and (c)</p> <p>Rule 7(1)(d)</p> <p>Rule 7(2)</p>

indirectly, by a person or persons who control or can control, either directly or indirectly, the operations of the first mentioned company: Provided that a company shall be deemed to be a related company of another company if- (aa) at least twenty percent of its issued share capital is beneficially owned, either directly or indirectly, by that other company; or (bb) at least twenty percent of its issued share capital of that other company is beneficially owned, either directly or indirectly, by the first mentioned company;	
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You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any concern or comments you may have on the Rules.

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