

**TECHNICAL**

**Direct Taxation**

**PUBLIC RULING NO.2/2016 – VENTURE CAPITAL TAX INCENTIVES – SUMMARY OF CONTENTS**

The above Public Ruling (PR) was issued on 9 May 2016 and was reported in the [e-CTIM TECH-DT 36/2016](#) dated 13 May 2016. Its objective is to explain the tax incentives available for the venture capital industry in Malaysia.

**Definitions**

The meanings of terms used in this [PR](#) which are listed in paragraph 3 (“Interpretation”) are as defined in the Income Tax Act 1967 (ITA).

**Incentives for Venture Capital Industry**

The contents of the [PR](#) are summarized below:

Para No. in Ruling	Subject Matter & Summary
4 & 5	<p><b>Venture capital industry in Malaysia and regulatory framework</b></p> <ul style="list-style-type: none"> <li>Venture capital is financial capital provided by individuals, companies or venture capital companies (venture capitalists) to high potential and high risk growth startup companies at early stage.</li> <li>A venture capital company (VCC) is a company incorporated under the Companies Act 1965 (CA) to obtain funds from investors (equity capital) or loan capital, which are invested in the venture company (VC) in the form of <i>seed capital, start-up or early stage financing</i>. (The last 3 terms denoting the 3 forms of financing are defined. Please refer to para. <a href="#">4.4</a> for the definitions.)</li> <li>A venture capital management corporation (VCMC) manages on behalf of a VCC the investments in securities of a VC in different business stages, i.e. seed capital, start-up or early stage financing.</li> <li>A VC must be incorporated under the CA and – <ul style="list-style-type: none"> <li>a) is resident in Malaysia for the basis year for a year of assessment (YA); and</li> <li>b) is involved in utilising the seed capital financing, start-up financing or early stage financing for specified products or activities (please refer to para. <a href="#">4.3(b)</a> of the PR for the list of qualifying products or activities.)</li> </ul> </li> <li>The Securities Commission (SC) has the responsibility to assess and certify applications for tax incentives for the venture capital industry made under the relevant tax legislations. <i>Guidelines for the Registration of VCC and VCMC, and Venture Capital Tax Incentives Guidelines (revised on 18.4.2014)</i> are available on the SC’s website at <a href="http://www.sc.com.my">www.sc.com.my</a></li> </ul>

6	<p><b>Tax exemption for VCC investing in a VC</b></p> <ul style="list-style-type: none"> <li>The incentive is in the form of income tax exemption on the statutory income of the VCC from all sources of income (excluding interest income from savings or fixed deposits and profits from syariah-based deposits) for a period of 10 YA or for the life of the fund established for the purpose of investing in a VC, whichever is the lesser.</li> <li>In order to qualify for the exemption for each YA, the VCC must obtain a certificate from the SC, confirming that the VCC -             <ol style="list-style-type: none"> <li>has invested at least 70% of its invested funds in a VC (50% if investment is in the form of seed capital financing);</li> <li>has not invested in a VC which is a related company (defined in para <a href="#">6.2(c)</a> of the PR) at the point of first investment; and</li> <li>has provided an early stage financing to a VC which is involved in activities which are not listed as technology-based business activities, from seed capital or start up stage (*), where such early stage financing is provided in the form of:                 <ol style="list-style-type: none"> <li>additional capital expenditure or additional working capital to increase production capacity, marketing or product development; or</li> <li>interim financing for the purpose of being listed on the official list of a stock exchange</li> </ol> </li> </ol> <p>(*) <i>The VCC would qualify for a tax exemption if it had also provided financing to the VC from the seed capital or start-up stage.</i></p> <p>(Please refer to para. <a href="#">6.2(c)</a> of the PR for a detailed explanation of the above condition as well as the list of “technology-based business activities”.)</p> <p>Examples 1 and 2 in the <a href="#">PR</a> are examples where a VCC qualifies for the above incentive.</p> </li></ul>
7	<p><b>Tax deduction for an individual or a company investing in a VCC</b></p> <ul style="list-style-type: none"> <li>The incentive takes the form of a deduction in ascertaining the adjusted income for the basis period for a YA, of an investor <u>who is an individual or a company (including a VCC)</u>. The amount deductible is equal to the value of the investment in shares (cost of investment) in a VC.</li> <li>To be eligible for the incentive, an investor must –             <ol style="list-style-type: none"> <li>be resident in Malaysia;</li> <li>have a business source of income; and</li> <li>have invested in a VC at start-up, seed capital and early stage financing for specified products or activities (as listed in para. <a href="#">4.3(b)</a> of the PR).</li> </ol> </li> <li>To qualify for the deduction, the investor (company or individual) must obtain certification from the SC confirming that the investment in a VC:             <ol style="list-style-type: none"> <li>was in the form of shares which were not listed for quotation in the official list of a stock exchange at the time of acquisition;</li> <li>in relation to a company, was not in the shares of a VC which is its related</li> </ol> </li> </ul>

	<p>company at the point of first investment;</p> <p>c) was made for seed capital, start-up or early stage financing;</p> <p>d) was provided as early stage financing in a VC which is involved in activities which are not listed as technology-based activities, from the seed capital or start-up stage (*), where such early stage financing was provided as –</p> <p>(i) additional capital expenditure or working capital to increase production capacity, marketing or product development; or</p> <p>(ii) interim financing for the purpose of being listed on the official list of a stock exchange.</p> <p><i>* The company or individual would qualify for a tax deduction if financing to the VC from the seed capital financing or start-up financing was also provided by them.</i></p> <p>(Please refer to para. <a href="#">7.2(d)</a> of the PR for a detailed explanation of the above condition.)</p> <p>e) was made at least 2 years prior to the date of disposal.</p> <p>Example 3 is an example of an individual investor who qualifies for this incentive.</p>
8	<p><b>Mutual exclusiveness</b></p> <ul style="list-style-type: none"> <li>A VCC which has received certification from the SC for exemption under para. 6 of the <a href="#">PR</a> is not entitled to apply for the tax deduction under para. 7 of the <a href="#">PR</a> for the whole of the tax exempt period because both incentives are mutually exclusive. (Refer Example 4.)</li> </ul>
9	<p><b>Incentive for a VCMC</b></p> <ul style="list-style-type: none"> <li>A VCMC which is registered with the SC is exempted from income tax on its statutory income from the share of profits received by it from a VCC on any investment made by the VCC as stipulated in the agreement made between the VCMC and the VCC. Certification must be obtained by the said VCC from the SC for tax exemption under the Income Tax (Exemption) (No.11) Order 2005 or deduction under the income Tax (Deduction for Investment in a Venture Company) Rules 2005.</li> </ul>
10	<p><b>Application for certification</b></p> <ul style="list-style-type: none"> <li>Applications for annual certification for the above incentives must be made to the SC by submitting the relevant forms and documents as explained in the SC's Venture Capital Tax Incentives Guidelines which are available on the SC's website at <a href="http://www.sc.com.my">www.sc.com.my</a>.</li> </ul>

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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