



INLAND REVENUE BOARD OF MALAYSIA

**INDUSTRIAL BUILDINGS
PART I**

PUBLIC RULING NO. 8/2016

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INLAND REVENUE BOARD OF MALAYSIA

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INLAND REVENUE BOARD OF MALAYSIA

CONTENTS	Page
1. Objective	1
2. Relevant Provisions of the Law	1
3. Interpretation	1
4. Types of Buildings Qualify as Industrial Buildings	1
5. Summary of Types of Industrial Building and Rates of Allowances	13

DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 (ITA) provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

INLAND REVENUE BOARD OF MALAYSIA

1. **Objective**

The objective of this Public Ruling (PR) is to explain the types of buildings that qualify as industrial buildings under Schedule 3 of the Income Tax Act 1967 (ITA).

2. **Relevant Provisions of the Law**

2.1 This PR takes into account laws which are in force as at the date this PR is published.

2.2 The provisions of the ITA related to this PR are section 2 and Schedule 3.

3. **Interpretation**

The words used in this PR have the following meanings:

3.1 “Building” includes any structure erected on land which is not a plant or machinery.

3.2 “Director General” means the Director General of Inland Revenue referred to in section 134 of the ITA.

3.3 “Person” includes a company, a body of persons, a limited liability partnership and a corporation sole.

3.4 “Qualifying building expenditure” means capital expenditure incurred on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be, as an industrial building.

3.5 “Approved service project” means a project in the service sector in relation to transportation, communications, utilities or any other sub-sector as approved by the Minister of Finance.

3.6 “Company” means a body corporate and includes any body of persons established with a separate legal entity by or under the laws of territory outside Malaysia and a business trust.

4. **Types of Buildings that Qualify as Industrial Buildings**

4.1 **A building that qualifies as an industrial building as stated in paragraphs 63 to 66 of Schedule 3 of the ITA.**

(a) Used as a factory:

(i) A building that is equipped with plant and machinery to carry out the manufacturing or processing of materials to produce a product.

Example 1

Eco Sdn Bhd has a factory which is fitted with machinery and equipment for the processing of palm oil. It begins with the pressing of fresh fruit bunches in a machine to squeeze out the oil which is then filtered to produce purified oil.

The factory qualifies as an industrial building.

- (ii) Other building that houses the machinery or plant for the –
- manufacturing or processing of materials or products; or
 - generating of power used for the purposes of that manufacturing or processing.

Example 2

Same facts as in Example 1 except that the company has expanded its business and purchased a machine to process palm oil into margarine. The machine is placed in another building which is adjacent to the palm oil processing factory owned by the company.

The building that houses the machine qualifies as an industrial building.

Example 3

Butterscotch Sdn Bhd constructed a building near its factory to place a machine for the generation of power that is used to process cheese products.

The building qualifies as an industrial building.

Example 4

Lily Sdn Bhd purchased a building for storing second-hand clothes purchased from abroad. Before the clothes are sold, they are separated according to customers' requirements.

Separation of clothes prior to sale is not a manufacturing or processing activity. Thus, the building is not used as a factory and does not qualify as an industrial building.

INLAND REVENUE BOARD OF MALAYSIA

- (iii) A workshop used for the repair or servicing of goods, provided that the repair or servicing is not carried out in conjunction with or incidental to the business of selling those goods.

Example 5

LaserJet Sdn Bhd has a building that houses a workshop which is used for the repairs and servicing of computers to its customers. The company derives income only from the repair works and servicing of computers.

The workshop is not operated in conjunction with the business of selling computers. Therefore, the workshop qualifies as an industrial building.

Example 6

The main activity of Perfect Motor Sdn Bhd is sales and distribution of cars. The company also has a workshop in which car repairs and servicing are carried out.

Car repairs and servicing are activities incidental to the principal activity of the company, that is the selling and distribution of cars. Thus, the workshop does not qualify as an industrial building.

- (iv) A building within the same compound which is used –
- for the storage of raw material, fuel or stores necessary for the manufacture of product or processing of goods or materials; or
 - for the storage of that product or those goods or materials when processed prior to the sale.

“A building within the same compound” is also referred to as a “building within the same curtilage” which generally means a building adjoining or adjacent to or in the land immediately surrounding a building which is used as a factory.

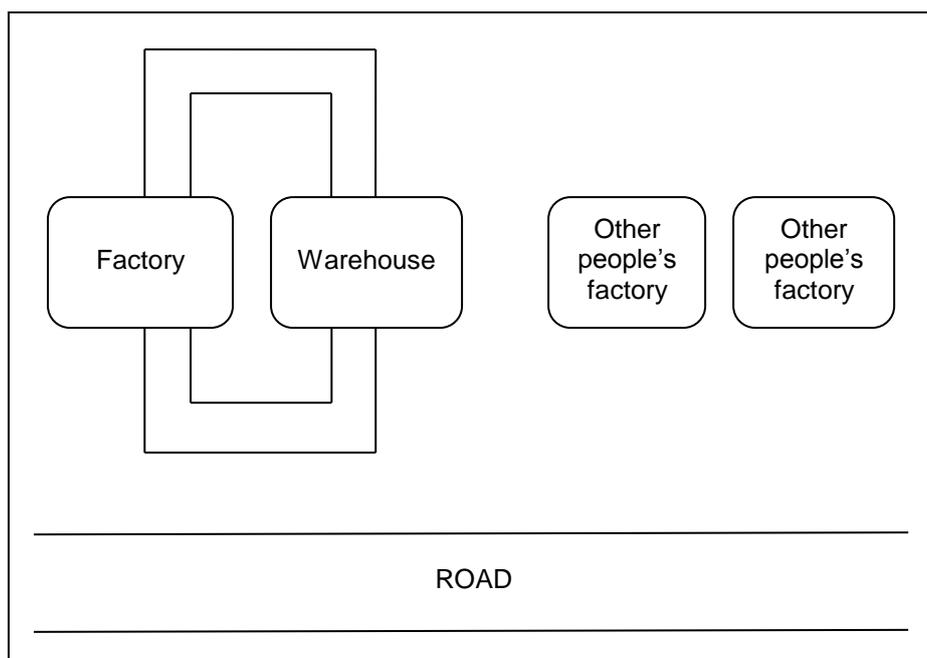
Example 7

Mario Sdn Bhd has a factory that is used to manufacture tissue papers. The company purchased a new building which is used as a warehouse for the storage of raw materials and finished tissue products prior to sale.

Scenario 1

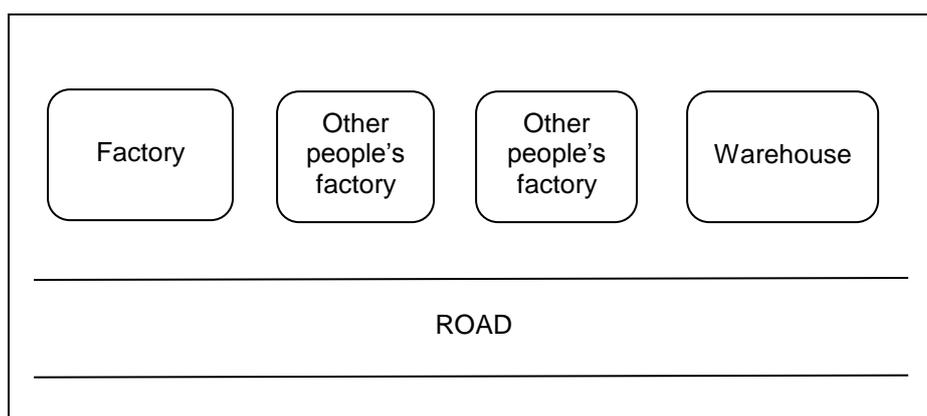
The warehouse is located next to the factory and there is an access road that connects the warehouse and the factory.

The construction of the road connecting the factory with the warehouse results in an industrial complex. Therefore, the warehouse which is within the same compound with the building used as a factory qualifies as an industrial building.



Scenario 2

The warehouse is located along two other peoples' factories from the company's factory on the same road.



INLAND REVENUE BOARD OF MALAYSIA

The warehouse is not within the same compound as the company's factory as it is separated by factories owned by other people. The road is used not only by the workers of the company but also by workers of the other factories. Therefore, it does not qualify as an industrial building.

(b) Used as a dock, wharf, depot or jetty or other similar building.

(i) A dock is a place for repairing ships.

(ii) A wharf is a place where cargo ships can load and unload goods.

(iii) A depot or jetty is a place where boats and ships are anchored.

The above structures qualify as industrial buildings.

(c) Used as a warehouse and the business consists or mainly consists of the hire of storage space to the public.

The word "public" means people or the general public. For the purposes of this paragraph, it means hiring out the warehouse to hirer having its own entity other than the warehouse owner.

Example 8

Star Sdn Bhd (SSB) has a public warehouse license to carry on the warehouse hire service. SSB owns a building and hires it to Crsytal Warehouse Sdn Bhd (CWSB) which uses the building as a warehouse.

As the hired building is used as a warehouse and CWSB is the general public, the building qualifies as an industrial building.

(d) The business is that of supplying water or electricity for consumption by the public or providing telecommunication services to the public.

Example 9

Sri Langkawi Sdn Bhd which is the supplier of electric power in Pulau Langkawi owns a few buildings that are used to house electric power production machinery.

The company's business is to supply electricity for public consumption. Thus, the buildings qualify as industrial buildings.

INLAND REVENUE BOARD OF MALAYSIA

- (e) Used in connection with the working of a farm and the business consists or mainly consists of the working of the farm, with or without other farms provided no claims are made for qualifying agriculture expenditure.

Example 10

The following are examples of buildings that qualify as industrial buildings:

Stores in the farm for the storage of materials or tools used for farming, such as fertilizers, seeds, farm equipment etc.

Collection centers to facilitate the collection of produce, grading, clearing, packaging and so on.

If a building is provided for the welfare of employees or as living accommodation for employees, please refer to the subparagraphs 4.2 (b) and (c) of this PR.

- (f) Used in connection with the working of a mine and the business consists or mainly consists of the working of a mine, with or without other mines provided no claims are made for qualifying mining expenditure.

Example 11

A store for the storage of ores after the working of a mine is a building that qualifies as an industrial building.

4.2 Buildings provided for the facility of employees

- (a) Where a building is an industrial building, any building provided as a canteen, restroom, recreation room, lavatory, bathhouse, bathroom, or washroom for employees is treated as an industrial building [subparagraph 65(1) of Schedule 3 of the ITA].
- (b) A building provided for the welfare of employees working in a farm provided that the building is likely to be of little or no value to any person except in connection with the working of that farm or of another farm is treated as an industrial building [subparagraph 65(2) of Schedule 3 of the ITA].
- (c) A building provided as living accommodation for employees qualifies as an industrial building if it is –

INLAND REVENUE BOARD OF MALAYSIA

- (i) for persons employed in connection with the working of a farm, provided that the building is likely to be of little or no value to any person except in connection with the working of that farm or of another farm [subparagraph 65(2) of Schedule 3 of the ITA].
- (ii) constructed by a person who has an industrial building in use in his business [subparagraph 42(1) of Schedule 3 of the ITA].
- (iii) constructed or purchased by a person carrying on manufacturing, hotel or tourism business or an approved service project under Schedule 7B of the ITA [subparagraph 42A(1) of Schedule 3 of the ITA].

Example 12

Hp-Smile Sdn Bhd is a communications company approved by the Minister of Finance to undertake a service project under Schedule 7B of the ITA. The company purchased an apartment block for use as hostel for its employee.

The apartment block qualifies as an industrial building.

Note:

If living accommodation is provided to an employee who is a director, an individual having control of the business, an individual who is a member of management, administration or clerical staff of that business, that building is not eligible as an industrial building [subparagraph 42(2) of Schedule 3 of the ITA].

4.3 Certain buildings treated as industrial buildings

- (a) Licensed private hospital, maternity home and nursing home (Paragraph 37A, Schedule 3 of the ITA)

The construction or purchase of a building used as a private hospital, maternity home and nursing home qualifies as an industrial building provided that the business shall be—

- (i) registered and licensed by any written law for the time in force relating to the registration of private hospital, maternity home and nursing home; or

INLAND REVENUE BOARD OF MALAYSIA

- (ii) approved by the Director General after consultation with the Director General of Health if there is no such law in force as per paragraph (i) above.

Construction expenditure incurred for the above purposes shall include capital expenditure on the alteration or renovation of rented premises.

Example 13

Ixora Specialist Centre Sdn Bhd provides the services of gynaecology and midwifery. The company rented four lots of shophouses and renovated the shophouses into a hospital. The company is registered with and has a licence granted from the Ministry of Health.

The expenditure incurred on the renovation of the rented shophouses qualifies as an industrial building.

Note:

“Licence” means licence to operate or provide a private healthcare facility or service as defined under section 2 of the Private Healthcare Facilities and Services Act 1998 [Act 586].

- (b) Building used for research
(Paragraph 37B, Schedule 3 of the ITA)

A building constructed or purchased is used for research purpose as follows –

- (i) approved research by the Minister of Finance as provided under subsections 34A(1) and 34B(4) of the ITA; or
- (ii) research undertaken by a research and development company or a contract research and development company as defined in section 2 of the Promotion of Investments Act 1986 [Act 327].

The expenditure incurred on the construction of a building or part thereof for the above purposes, shall include capital expenditure on the alteration or renovation of rented premises.

Although the research as provided under section 34A of the ITA may not be related to that business, the construction of a building or part thereof is deemed to be used for business purposes and qualifies as an industrial building.

INLAND REVENUE BOARD OF MALAYSIA

- (c) Building used for warehouse
(Paragraph 37C, Schedule 3 of the ITA)

A building or part thereof used by a person solely for the purpose of storage of goods for export or for the storage of imported goods which are to be processed for distribution or re-exported.

Example 14

Frozen Industry (M) Sdn Bhd carries on a business of import and distribution of frozen seafood such as fish, shrimp and crabs that are imported from China and Thailand. The company purchased a warehouse with cold room facilities which is used for grading processes and repacking for distribution to the local markets.

The warehouse is owned by a company carrying on processing activity for distribution. Therefore, the warehouse qualifies as an industrial building.

- (d) Building used for approved service project
(Paragraph 37E, Schedule 3 of the ITA)

A building or part thereof used by a person solely for the provision of services and modernization of operations in relation to an “approved service project” as defined under Schedule 7B of the ITA.

Example 15

Global Max Sdn Bhd is a company approved by the Minister of Finance as a company carrying on an ‘approved service project’ in the communications subsector, namely Fixed Network Telephone International Project.

The building used for the purpose of the project qualifies as an industrial building.

- (e) Building used for hotel
(Paragraph 37F, Schedule 3 of the ITA)

A building or part thereof used by a person solely for the purpose of a hotel business and the hotel is registered with the Ministry of Tourism and Culture (MOTAC).

For the purposes of this PR, it means that the hotel must fulfill the conditions required by MOTAC in its registration as a hotel.

Note:

An apartment or a condotel owned by a person carrying on the business concept of time-sharing and lease-back is not classified as a hotel building for the purpose of this paragraph since the person is not in the business of hotel operations.

Example 16

Irish Garden Sdn Bhd (IGSB) constructed a hotel building and carries on a hotel business in January 2016 after the building was completed at the end of the year 2015. The hotel is registered with the MOTAC under the name of IGSB.

The building qualifies as an industrial building.

- (f) Airport
(Paragraph 37G, Schedule 3 of the ITA)

Capital expenditure incurred in relation to an airport, including any construction, reconstruction, extension, improvement or purchase of any building, runaway or ancillary structures qualify as industrial buildings.

- (g) Motor racing circuit
(Paragraph 37H, Schedule 3 of the ITA)

Capital expenditure incurred in relation to a motor racing circuit approved by the Minister of Finance, including any construction, reconstruction, extension, or improvement of that motor racing circuit or ancillary structures, shall be treated as industrial buildings.

- (h) A child care centre
(Subparagraph 42A(2), Schedule 3 of the ITA)

A building constructed or purchased by an employer for the purpose of providing child care facilities to his employees qualifies as an industrial building.

Example 17

Original Classic Sdn Bhd (OC) carries on a business of selling sports shoes. A building was purchased by OC for use in the provision of child care facilities for his employees.

The building qualifies as an industrial building.

INLAND REVENUE BOARD OF MALAYSIA

- (i) A school building or an educational institution
(Paragraph 42B, Schedule 3 of the ITA)
- (i) Buildings for a school or an educational institution refer to buildings used directly in the provision of education.
 - (ii) A school or an educational institution is a place where formal education is delivered and knowledge is imparted to students in primary schools, secondary schools, colleges and universities.
 - (iii) An educational institution includes a higher education institution providing higher education leading to the award of a diploma, degree or its equivalent.
 - (iv) A school or an educational institution which is constructed or purchased must be approved by the Minister of Education, Minister of Higher Education or the relevant authorities.
 - (v) A tuition center is not classified as an educational institution for the purpose of this paragraph.

Example 18

Baiduri Sdn Bhd (BSB) carries on a business activity related to education. A building purchased in 2016 is used by BSB to establish a college that offers diploma courses. The college is an educational institution approved by the Minister of Education.

The college building qualifies as an industrial building.

- (j) Building for the industrial, technical or vocational training
(Paragraph 42C, Schedule 3 of the ITA)

A building constructed or purchased by a person for the purposes of industrial, technical or vocational training approved by the Minister of Finance qualifies as an industrial building.

Example 19

Panda Malaysia Sdn Bhd (PM) purchases a building from Singa Sdn Bhd (S) for use as a venue for vocational training in its business. The vocational training carried out by PM is a training approved by the Minister of Finance.

The building qualifies as an industrial building.

INLAND REVENUE BOARD OF MALAYSIA

- (k) Public roads under privatisation
(Paragraph 67A, Schedule 3 of the ITA)

Capital expenditure incurs on the construction, reconstruction, extension or improvement of a public road and ancillary structures where the expenditure is recoverable through toll collection pursuant to an agreement made by a person with the Government, qualify as industrial buildings.

Note:

Ancillary structures include retaining walls, toll plazas, rest and service areas but do not include landscaping.

Extension include widening or connecting of a public road.

Example 20

A PLUS Berhad entered into an agreement with the Government to upgrade a particular stretch of the highway. The costs can be recovered through toll collection over a period of 25 years. The company incurred expenditure on road construction and ancillary structures such as rest and service areas, and toll plazas.

The public roads and ancillary structures qualify as industrial buildings.

- (l) Building on a build-lease-transfer basis
(Paragraph 67B, Schedule 3 of the ITA)

A building constructed on a build-lease-transfer basis pursuant to an agreement by a person with the Government and subject to the approval of the Minister of Finance shall be treated as an industrial building.

Example 21

Express V Sdn Bhd (EVSB) entered into an agreement with the Government to build low and medium-cost houses and a 10-storey office tower. Once completed, both projects would be handed over to the Government for the implementation of the Public Housing Project and used as government offices respectively. The agreement was on a build-lease-transfer basis and was approved by the Minister of Finance. Under the agreement, the Government would pay to EVSB an annual lease payment for 15 years and the Government would bear all the assessment, quit rent and maintenance expenses.

INLAND REVENUE BOARD OF MALAYSIA

The houses and the office tower qualify as industrial buildings.

5. Summary of Types of Industrial Buildings and Rates of Allowances

No.	Types of industrial building (IB)	Relevant paragraph in Schedule 3 of the ITA	%	
			Initial Allowances	Annual Allowances
1.	Factory, dock, wharf, jetty, warehouse, buildings for the supply of water, electricity, and telecommunication, buildings in a farm or mine.	63		
2.	Buildings included in the definition of 'factory'.	64(a)		
3.	Building used for storage which is within the same curtilage as a factory.	64(b)		
4.	Building for the facility of employees such as canteen, restroom, recreation room, lavatory, bathhouse, bathroom and washroom (provided there is an IB in use in the business).	65(1)	10	3
5.	Building for the welfare of workers and living accomodation for employees working in a farm.	65(2)		
6.	Licensed private hospital, maternity home and nursing home.	37A		
7.	Building used for research.	37B		
8.	Warehouse.	37C	-	10
9.	Building used for an approved service project.	37E	10	3
10.	Hotel.	37F		

INLAND REVENUE BOARD OF MALAYSIA

11.	Airport.	37G		
12.	Motor racing circuit.	37H		
13.	Building used as living accommodation for employees (provided there is an IB in use in the business).	42(1)	40	3
14.	Building used as living accommodation for employees, provided by a person carrying on a business of manufacturing, hotel or tourism or an approved services project under Schedule 7B of the ITA.	42A(1)	-	
15.	Child care centre provided by an employer.	42A(2)		10
16.	Buildings for schools or educational institutions.	42B		
17.	Buildings for industrial, technical or vocational training.	42C		
18.	Public Roads.	67A		
19.	Buildings on a build-lease-transfer basis.	67B	10	6

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**