



**INLAND REVENUE BOARD OF MALAYSIA**

**INDUSTRIAL BUILDINGS  
PART II**

**PUBLIC RULING NO. 10/2016**

*Translation from the original Bahasa Malaysia text.*

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**INLAND REVENUE BOARD OF MALAYSIA**

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**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.**

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**1. Objective**

The objective of this Public Ruling (PR) is to explain the types of buildings that qualify as industrial buildings under the provisions of paragraph 80, Schedule 3 of the Income Tax Act 1967 (ITA) through the Income Tax Rules (ITR) made by the Minister of Finance.

**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 sections 2, 7 and 8 and Schedule 3.

2.3 Relevant subsidiary laws referred to in this PR are the following ITR:

(a) Income Tax (Industrial Building Allowance) (Old Folks Care Centre) Rules 2003 [P.U.(A) 143/2003];

(b) Income Tax (Industrial Building Allowance) (Approved Multimedia Super Corridor (MSC) Status Company) Rules 2006 [P.U.(A) 202/2006];

(c) Income Tax (Industrial Building Allowance) (Bionexus Status Company) Rules 2007 [P.U.(A) 374/2007];

(d) Income Tax (Industrial Building Allowance) (Building Under Privatisation Project And Private Financing Initiatives) Rules 2010 [P.U.(A) 119/2010];

(e) Income Tax (Industrial Building Allowance) (Kindergarten) Rules 2013 [P.U.(A) 1/2013];

(f) Income Tax (Industrial Building Allowance) (Child Care Centre) Rules 2013 [P.U.(A) 2/2013]; and

(g) Income Tax (Industrial Building Allowance) (Tun Razak Exchange Marquee Status Company) Rules 2013 [P.U.(A) 27/2013];

**3. Interpretation**

The words used in this PR have the following meanings:

3.1 "Statutory body" means a body, by whatever name called, incorporated by federal law for the purposes of the Federal Government, but does not include a local authority.

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- 3.2 “Building” includes any structure erected on land not being plant or machinery.
- 3.3 “The Government of Malaysia” refers to the Federal Government only and excludes state government and local authority.
- 3.4 “Director General” means the Director General of Inland Revenue referred to in section 134 of the ITA.
- 3.5 “Resident” means resident in Malaysia for the basis year for a year of assessment by virtue of section 7 or 8 of the ITA.
- 3.6 “Person” includes a company, a body of persons, a limited liability partnership and a corporation sole.
- 3.7 “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.
- 3.8 “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**

Paragraph 80, Schedule 3 of the ITA empowers the Minister of Finance to prescribe the types of buildings that qualify as industrial buildings and determine the rates through the ITR made under subsection 154(1) of the ITA.

**4.1 Old folks care centre**

The construction or purchase of a building used by a person as an old folks care centre approved by the Department of Social Welfare (DSW).

**Example 1**

An old folks care centre known as Mesra Bahagia is opened in the Sepang District to cater the needs of the community and the wishes of the government for a healthy, active and productive aging population. The centre had obtained approval from the DSW.

The building of Mesra Bahagia qualifies as an industrial building.

**4.2 Approved Multimedia Super Corridor (MSC) status company**

- 4.2.1 The construction or purchase of a building in the Cyberjaya Flagship Zone by the owner of the building which must be first occupied by an approved MSC status company. The building must be –
- (a) used by the owner of the building for the purpose of his business as an approved MSC status company; or
  - (b) rent out to an approved MSC status company.
- 4.2.2 The renting of the building to an approved MSC status company shall be regarded as carrying on a business and the income from the renting activity shall be charged to tax pursuant to paragraph 4(a) of the ITA.
- 4.2.3 Under the P.U.(A) 202/2006, the provisions related to an investment holding company under section 60F of the ITA and investment holding company listed on the Bursa Malaysia under section 60FA of the ITA do not apply to the income derived from the renting of the building.

**Note:**

- (a) “Building” means a new building that provides a world-class physical and information infrastructure as determined by the Multimedia Development Corporation Sdn. Bhd. which has not been occupied by any company before the commencement of the P.U.(A) 202/2006 and located in the Cyberjaya Flagship Zone but does not include building for the purpose of living accommodation.
- (b) “Cyberjaya Flagship Zone” means the zone which is located in Cyberjaya as determined by the Multimedia Development Corporation Sdn. Bhd.
- (c) “Approved MSC status company” means a company which has been awarded MSC status by the Government of Malaysia and carries on approved MSC activities.
- (d) “Approved MSC activities” means activities which are approved by the Multimedia Development Corporation Sdn. Bhd.

### Example 2

Animacion Production Sdn Bhd (APSB) is an animation company which has been awarded MSC status. APSB purchased two buildings, type A and type B in the Cyberjaya Flagship Zone. The type A building is used by APSB to carry on its business while the type B building is rented to another company which is also a MSC status company.

Both buildings qualify as industrial buildings.

### 4.3 Approved BioNexus status company

- 4.3.1 The construction or purchase of a building used by a BioNexus status company for the purposes of research and development and for the sole purpose of a new business or for an expansion project. The company must be a company resident in Malaysia that has been approved by the Minister of Finance as a BioNexus status company.
- 4.3.2 “New business” means the first approved business undertaken by a BioNexus status company.
- 4.3.3 “Expansion project” means a project undertaken by a BioNexus status company in expanding its existing approved business. That business must—
- (a) has been granted exemption under the Income Tax (Exemption) (No. 17) Order 2007 [P.U. (A) 371/2007] or the Income Tax (Exemption) (No. 18) Order 2007 [P.U. (A) 372/2007]; and
  - (b) involves new investment.
- 4.3.4 “BioNexus status company” means a company incorporated under the Companies Act 1965 [Act 125] which is engaged in a business of life sciences. Life sciences refers to any of several branches of science, such as biology, medicine, anthropology or ecology, which deal with living organisms and their organization, life processes and relationship to each other and their environment.
- 4.3.5 The first qualifying building expenditure incurred shall be on a date determined by the Malaysian Bioeconomy Development Corporation Sdn. Bhd. (formerly known as Malaysian Biotechnology Corporation Sdn. Bhd.) and the date shall not be earlier than 2 September 2006.
- 4.3.6 Malaysian Bioeconomy Development Corporation Sdn. Bhd. is a company incorporated under the Companies Act 1965 whose

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function is for the purpose of developing the biotechnology industry in Malaysia.

- 4.3.7 As such, Malaysian Bioeconomy Development Corporation Sdn. Bhd. has been given the responsibility to evaluate the companies that are qualified for consideration by the BioNexus Approval Evaluation Committee to certify the BioNexus status for the approval by the Minister of Finance.

**Example 3**

Stem Cells Sdn Bhd (SCSB) had obtained approval from the Minister of Finance as a BioNexus status company to carry out research and development activities related to stem cells. SCSB purchased a building to carry out its business activities such as collecting, processing and storing of frozen stem cells as well as the provision of stem cell medical therapy services.

The building qualifies as an industrial building.

**4.4 Building under privatisation project and private financing initiatives**

A building shall be treated as an industrial building if the building is constructed—

- (a) under a privatisation project and private financing initiatives (PFI) approved by the Privatisation/PFI Committee, Public Private Partnership Unit, Prime Minister's Department; and
- (b) pursuant to an agreement entered into between a person and the Government of Malaysia or a statutory body on a build-lease-maintain-transfer basis and for which no consideration has been paid by the Government of Malaysia or statutory body to that person.

**Example 4**

Pillmark Sdn Bhd (PSB) received an approval from the Government of Malaysia to carry out a proposed project to upgrade Hospital Bahagia in Perak on the concept of Public Private Partnership by the PFI on a build-lease-maintain-transfer basis. The project was approved by the Privatisation Committee of the Public Private Partnership Unit, Prime Minister's Department. Subsequently, a concession agreement was signed between PSB and the Government of Malaysia for a period of 25 years.



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Terms of the agreement are as follows:

- (a) PSB is responsible for all financial funding of the project. The Government of Malaysia will not make any payment to PSB.
- (b) The Government of Malaysia will only pay for asset maintenance charges to PSB after facilities and infrastructure have been completed, that is, the commencement of the lease term to the Government of Malaysia and maintenance by PSB.
- (c) At the end of the 25<sup>th</sup> year, PSB will transfer all the facilities and infrastructure to the Government of Malaysia without any cost and expense to the Government of Malaysia. That facilities and infrastructure will then be owned by the Government of Malaysia.

The hospital upgrading project includes the construction of facilities and infrastructure as follows:

- (a) two blocks of new buildings to be used as day care centres;
- (b) a pathology laboratory;
- (c) a blood bank;
- (d) covered walkway;
- (e) a multi-storey car park complex; and
- (f) an open car park.

All the buildings constructed by PSB qualify as industrial buildings except the open car park.

The open car park does not fall within the meaning of a building as defined in paragraph 3.2 of this PR.

#### **4.5 Kindergarten**

A building which is constructed or purchased by an individual or a company for use as a kindergarten must be subject to the following conditions—

- (a) that person is the owner of that building; and
- (b) that building is used by that person for the purpose of a business relating to the provision and maintenance of a kindergarten which is approved by the Ministry of Education (MOE) under the Education Act 1996 [Act 550].

If the building is also used for other business purpose or for an activity other than that business, then only the part of the building which is used for the provision and maintenance of the kindergarten qualifies as an industrial building.

The part of a building that is not used as an industrial building shall be treated as an industrial building if the capital expenditure incurred on the construction of that part is not more than 10% of the construction cost of the whole building. If the capital expenditure incurred is not identifiable, the relevant expenditure shall be computed by reference to the respective floor areas of those respective parts or in such other manner as the Director General may direct.

#### **Example 5**

Maria is the sole-proprietor of Tadika Ceria Harmoni. The kindergarten operates in a building which is purchased by her for the purpose of the business. The kindergarten is approved by the MOE.

Since both the conditions are fulfilled, the kindergarten building qualifies as an industrial building.

#### **4.6 Child care centre**

A building which is constructed or purchased by an individual or a company for use as a child care centre must be subject to the following conditions—

- (a) that person is the owner of that building; and
- (b) that building is used by that person for the purpose of a business of child care centre registered with the DSW under the Child Care Centre Act 1984 [Act 308].

If the building is also used for other business purpose or for an activity other than that business, then only the part of the building which is used for the purpose of the child care centre qualifies as an industrial building.

The part of a building that is not used as an industrial building shall be treated as an industrial building if the capital expenditure incurred on the construction of that part is not more than 10% of the construction cost of the whole building. If the capital expenditure incurred is not identifiable, the relevant expenditure shall be computed by reference to the respective floor areas of those respective parts or in such other manner as the Director General may direct.

### Example 6

DEF Sdn Bhd constructed a two storey building. The ground floor is used for carrying on a business of child care centre, i.e. Taska Si Comel while the upper floor is used for the business of Pusat Tuisyen Bistari. The child care centre is registered with the DSW.

The ground floor of the building qualifies as an industrial building.

#### Note:

Please refer to PR No. 4/2016 for the tax treatment on the incentives for child care centre and kindergarten operators.

## 4.7 Tun Razak Exchange Marquee status company

4.7.1 A commercial building in the Tun Razak Exchange which is constructed or purchased by a Tun Razak Exchange Marquee status company qualifies as an industrial building provided that—

- (a) the company is the owner of that commercial building; and
- (b) that commercial building is used by that company for the purpose of a business as specified below—
  - (i) Banking business or merchant banking business licensed under the Banking and Financial Institutions Act 1989 [Act 372]<sup>1</sup>;
  - (ii) Insurance business licensed under the Insurance Act 1996 [Act 553]<sup>1</sup>;
  - (iii) Islamic banking business licensed under the Islamic Banking Act 1983 [Act 276]<sup>2</sup>;
  - (iv) Takaful business registered under the Takaful Act 1984 [Act 312]<sup>2</sup>;

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<sup>1</sup>With effect from June 30, 2013, this Act is replaced by the Financial Services Act 2013 [Act 758].

<sup>2</sup>With effect from June 30, 2013, this Act is replaced by the Islamic Financial Services Act 2013 [Act 759].

- (v) Regulated activities under Schedule 2 of the Capital Markets and Services Act 2007 [Act 671];
  - (vi) Regulated activities under Schedule 4 of the Capital Markets and Services Act 2007 or as may be specified by the Securities Commission; or
  - (vii) Leasing of the commercial building to persons (other than individuals) who carry on business activities as stated in paragraph 4.7.1(b)(i) to (vi) above.
- 4.7.2 If the commercial building is also used for other business purpose or for an activity other than business activities as stated in paragraph 4.7.1(b) above, then only the part of the building which is used for the purpose of the business activities as stated in paragraph 4.7.1(b) above qualifies as an industrial building.
- 4.7.3 The part of a building that is not used as an industrial building shall be treated as an industrial building if the capital expenditure incurred on the construction of that part is not more than 10% of the construction cost of the whole building. If the capital expenditure incurred is not identifiable, the relevant expenditure shall be computed by reference to the respective floor areas of those respective parts or in such other manner as the Director General may direct.
- 4.7.4 The leasing of an industrial building to persons carry on business as specified in paragraph 4.7.1(b) above shall be regarded as carrying on a leasing activity. The income from that leasing activity shall be treated as a separate and distinct source of business of the company under paragraph 4(a) of the ITA.
- 4.7.5 The P.U. (A) 27/2013 shall not apply in respect of–
- (a) qualifying building expenditure incurred by the Tun Razak Exchange Marquee status company after 31 December 2020; and
  - (b) a company who is an approved developer which has been granted exemption under the Income Tax (Exemption) (No. 4) Order 2013 [P.U. (A) 28/2013].

**Note:**

Commercial building means a commercial building or part of a commercial building located in the Tun Razak Exchange used for the purpose of business as specified in paragraph 4.7.1(b) above.

**Example 7**

Latish Berhad (LB) is a Tun Razak Exchange Marquee status company. The company purchased an office building in the Tun Razak Exchange in January 2015. In June 2015, the company leased the office building to a company carrying on Islamic banking business licensed under the Islamic Financial Services Act 2013. The lease period is for 15 years and LB claims industrial building allowances on capital expenditure incurred for the purchase of the building.

The office building qualifies as an industrial building as it is a commercial building and is leased to a company which carries on a business as specified in paragraph 4.7.1(b) above.

**5. Summary of Types of Industrial Building and Rates of Allowances**

No.	Buildings which qualify as industrial buildings	Relevant ITR	%	
			Initial Allowances	Annual Allowances
1.	Constructed or purchased building which is used as an old folks care centre [Effective from the year of assessment (YA) 2003].	P.U. (A) 143/2003	-	10
2.	Constructed or purchased building which is used by a MSC status company [Effective from the YA 2006].	P.U. (A) 202/2006	-	10
3.	Constructed or purchased building which is used by a BioNexus status company [Effective on 2 September 2006].	P.U. (A) 374/2007	-	10

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4.	Building constructed under a privatisation project and private financing initiatives [Effective from the YA 2009].	P.U. (A) 119/2010	10	6
5.	Constructed or purchased building which is used as a kindergarten [Effective from the YA 2013].	P.U. (A) 1/2013	-	10
6.	Constructed or purchased building which is used as a child care centre [Effective from the YA 2013].	P.U. (A) 2/2013	-	10
7.	Constructed or purchased commercial building in the Tun Razak Exchange used by a Tun Razak Exchange Marquee status company [Effective from the YA 2014 for qualifying building expenditure incurred on or before 31/12/2020].	P.U. (A) 27/2013	-	10

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