

Angel Tax Incentive



The Angel Tax Incentive is designed to help technology based start-ups in Malaysia to raise funding by offering tax incentive to angel investors who have invested in these companies.

The Angel Tax Incentive is administered by the Angel Tax Incentive Office (ATIO), a unit under Cradle Fund Sdn Bhd (Cradle). ATIO's role is to ensure that start-ups in the technology space seeking investments from accredited angel investors are eligible and that investments made into these companies are genuine.

This section provides an overview and more information for start-ups and angel investors in relation to the tax incentive and how it works. This section is divided into three parts:

- Part one focuses on **the investor**;
- Part two focuses on **the investee company**;
- Part three focuses on **the investment**

It is strongly advised that you read all parts, irrespective of whether you are a potential investor or a start-up.

It is important that investors are aware of the rules the company has to observe, not just at the time of the investment but for at least two years afterwards. **If it fails to meet those rules, tax deductions will not be given.** Similarly, it is important that companies appreciate the conditions to be met by investors, so that shares are not issued on which the investor expects to be able to be deducted, only to find that the tax cannot be deducted.

PART ONE

1.1 What is Angel Investment

An angel investor or angel (also known as a business angel or informal investor) is an affluent high net worth individual who provides capital for a business start-up, usually in exchange for equity or other equity-like instruments. A business angel uses their personal disposable finance and business or professional experience to invest in the growth of a small business, generally in start-up or early stage businesses. Angel investors can make investments on their own or as part of a group (syndicate), usually led by a lead angel investor. An angel investor normally does not only make an investment into a company but they also share their knowledge, experience and networks to guide and value-add to their investee companies.

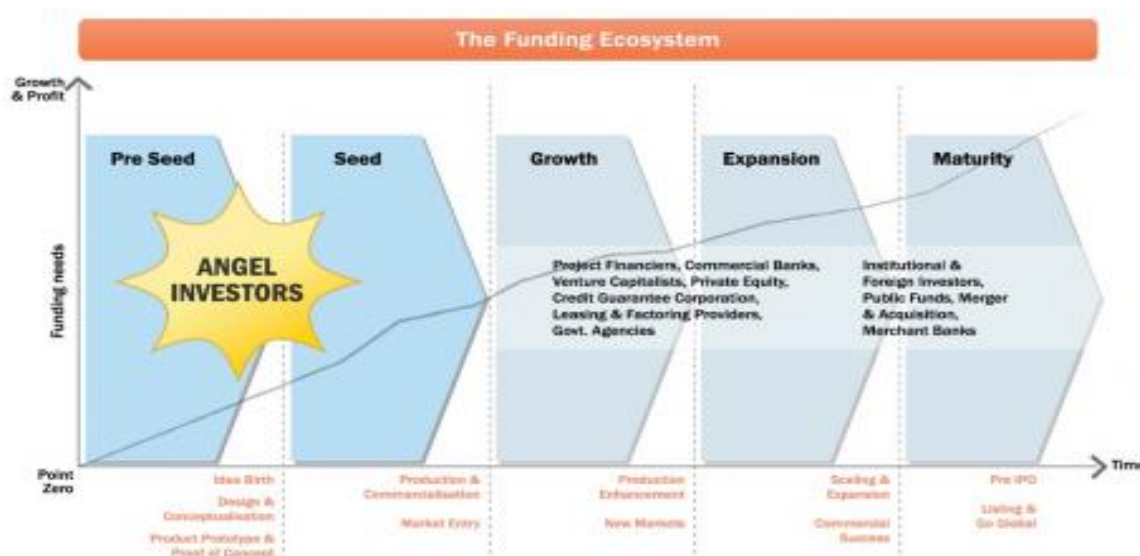
Angel investors typically network amongst themselves through angel clubs to raise awareness and to promote angel investment in the growth of early stage businesses. Angels typically invest their own personal funds, unlike venture capitalists who manage the pooled money of others in professionally-managed funds.

Angel investments bear extremely high risk and are usually subject to equity dilution from future investment rounds. The amount they usually invest in early stage companies would typically be not more than RM2 million. However, angel investing can be highly rewarding where the returns of an investment can be quite high.

Studies done in the US in 2007 by the Angel Capital Association (ACA) has shown that overall returns to angel investment were 2.6 times in 3.5 years. This was mirrored in a study done in the UK, that the overall return was 2.2 times with a holding period of approximately 4 years. About 9% of these companies invested in by angels generated a return of more than 10 times.

In the US, it is estimated that companies backed by angel investments have created approximately 250,000 new jobs in 2009, representing 5% of all new jobs created in the US. Research in the US also shows start-up companies which receive angel funding have an increased probability of survival and improved growth by 30-50%.

1.2 At which stage does an angel investor invest at?



Malaysia has an abundant supply of promising start-up companies that have the potential to grow globally but their growth is often constrained due to financial limitations. In recognition of this and to encourage the proliferation of business angels, the Malaysian Government has announced under the Budget 2013, a tax incentive for individual angel investors known as the "Angel Tax Incentive"

The Angel Tax Incentive is designed to bridge the early stage investment gap by encouraging qualified individual investors to invest in early stage technology start-ups in Malaysia, to boost the growth of start-ups.

1.3 Eligibility Criteria for Angel Investor

Angel investors who are keen to invest would have to go through the Malaysian Business Angel Network, or better known as MBAN, in order to get accredited.

MBAN is responsible for the accreditation of individual angel investors and angel investor clubs, creating awareness and training for angel investors, as well as monitoring angel investment statistics in Malaysia. MBAN is a body that functions like a trade organisation, driving regional and international linkages between angel investors, from different countries.

For more information on how to become an accredited angel investor, please visit www.mban.com.my

For an angel investor to be eligible for the Angel Tax Incentive, you need to be registered with and accredited by MBAN. The eligibility criteria consist of the following:

- You must be a tax resident in Malaysia;

Note: For further reference on the definition of a tax resident, please refer to Section 7 of the Income Tax Act 1967.

You are either considered a High Net Worth Individual or High Income Earner, according to the following criteria:

- **High Net Worth Individual**– Total wealth or net personal assets of RM3 million and above or its equivalent in foreign currencies; or
- **High Income Earner**– A gross total annual income of not less than RM180,000 in the preceding twelve (12) months; or jointly with one's spouse, a gross combined total annual income of RM250,000 in the preceding twelve (12) months.

Apart from the above, there are additional criteria that angel investors must meet to enable them to contribute more to the start-ups apart from the financial resources alone. The criteria are as follows:

- Domain expertise or management experience of at least five (5) years; and
- Ideally a member of an angel club or network, either inside or outside of Malaysia

MBAN will issue an accreditation letter to the qualified angel investor as proof of the accreditation.

Please take note that the accreditation period for angel investors is only for two (2) years and is stated in the accreditation letter. However, the accreditation period for an angel investor is renewable. MBAN has the right to review the qualifying criteria for the angel investor as and when required during that period.

The angel investor is required to notify MBAN of any changes in its status which relates to the above eligibility criteria. In the event the angel investor fails to notify MBAN, MBAN through Cradle has the right to revoke the accreditation status of the angel investor and tax deduction will not be applicable for any investment made during that period.

1.4 Additional Information

Where can I get the application form?

The application form is downloadable at www.cradle.com.my/about/resources/. Please submit the hardcopy of the application form together with all the relevant supporting documents as listed in the form.

What are the supporting documents required?

It depends on which category you fall under.

If you are a **High Income Earner**, the documents that you are required to submit are:

1. The latest 3 (three) months salary slips, and
2. The latest EA form, and/or
3. The latest bank statement (to help us to ascertain your claim to be of such earning status)

If you are a **High Net Worth Individual**, the documents that you are required to submit are:

1. Bank's credit report or any other relevant documents – the date of the report should be within 3 (three) months prior to the application submission.

Please take note that during the process, there might be additional documents required. Failing to provide us with the supporting documents as above, will result in a longer period of processing.

How to submit the application form?

The application form and the documents must be submitted either by hand or by courier to Cradle's office at Suite 4.8.1, Level 4, PNB Darby Park, 10 Jalan Binjai, 50450 Kuala Lumpur, attention to the Angel Tax Incentive office.

You should read the instructions at the beginning of the form before proceeding to filling it up. Please get the Commissioner of Oath's stamp on the declaration part of the application form.

Is there any processing fee?

Yes. The processing fee is **RM800 (Ringgit Malaysia Eight Hundred Only)** which is to be made payable to **Cradle Fund Sdn Bhd.**

When does the process commence?

The validation process will commence once the documentation is submitted completely and the processing fee payment has been made.

How long will it take for the whole process to complete?

It will take 21 calendar days, upon full and complete submission of the relevant documents.

Please take note that the processing period will be affected if public holiday(s) falls within the 21-day processing time frame.

In what format will the accreditation be issued?

Once you have fulfilled the criteria, Cradle-MBAN will issue you an accreditation letter. Once the letter is ready, Cradle-MBAN will inform you to collect it.

Is the accreditation renewable?

Yes, the accreditation is renewable and will be up to two (2) years as well. The processing fee to renew is **RM500 (Ringgit Malaysia Five Hundred Only)**.

PART TWO

2.1 Are you eligible and ready to be an angel investee company?

If you own a business and are looking to grow via angel investment opportunities, your company must fulfill the following eligibility criteria:

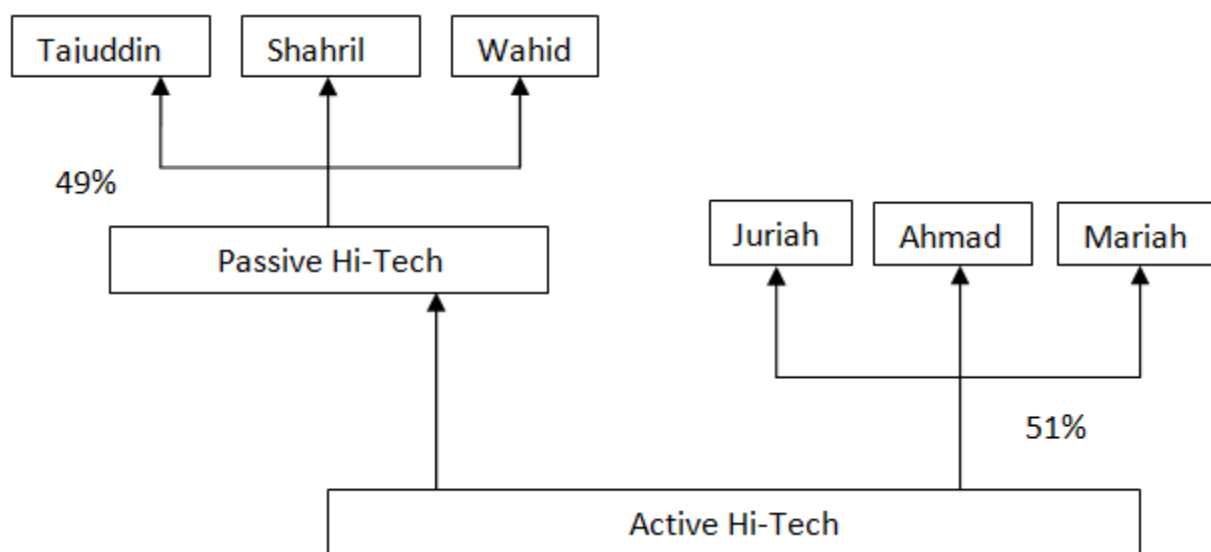
1. It has to be owned by at least 51% Malaysian individuals;

Take note that all the shareholders of the company must be individuals acting in his personal capacity.

Scenario:

Active Hi-Tech Sdn Bhd (Active Hi-Tech) is a certified investee company by Angel Tax Incentive unit under Cradle Fund Sdn Bhd (Cradle). Active Hi-Tech is a 51% Malaysian individual-owned company. There are 3 (three) shareholders in the company namely Juriah, Ahmad and Mariah who hold their respective shares in different proportions (percentages). The remaining 49% of the shares is held by Passive Hi-Tech Sdn Bhd (Passive Hi-Tech). The shareholders of Passive Hi-Tech are Tajuddin, Shahril and Wahid. Active Hi-Tech has increased their authorised share capital that enables them to receive more investments into the company whereby Shahril and Wahid have invested RM 100,000 respectively in their own personal capacity into Active Hi-Tech. Munir, who is also Juriah's father, has also invested RM 150,000 in his own personal capacity.

Shareholding Structure of Active Hi-Tech Sdn Bhd



Explanation:

1. Shahril and Wahid will not qualify under the Angel Tax Incentive even if they have invested in their own personal capacity into Active Hi-Tech. The reason is because they have already invested in Active Hi-Tech via a vehicle, i.e. a company, Passive Hi-Tech.

Shahril and Wahid as the shareholders of Passive Hi-Tech are party to the shareholding contract/agreement therefore they will not be able to benefit under the Angel Tax Incentive even though subsequent investments are made in their personal capacity. They may qualify under the Angel Tax Incentive if they are independent of Passive Hi-Tech and now choose to invest in Active Hi-Tech in their personal capacity.

2. Munir will not qualify for the Angel Tax Incentive as he is related to Juriah. Their father-daughter relationship comes under the expressly prohibited relationship for the purposes of qualifying for the tax deduction under the Angel Tax Incentive.

2. It must be a private limited (Sdn Bhd) company, incorporated in Malaysia and is a resident in Malaysia;

Inland Revenue (LHDN) issued the Public Ruling No. 5/2011 on the Residence Status of Companies and Bodies of Persons (PR No. 5/2011) on 16 May 2011 which explains that a company is deemed to be a resident in Malaysia if the control and management of its business are exercised in Malaysia. The Public Ruling No. 5/2011 defines "control and management" as the controlling authority that determines the policies that is to be adhered to by the company i.e. where directors meet to conduct a company's business regardless of where the company might be incorporated. In conclusion, a company is considered a resident in Malaysia if at least one meeting of the board of directors is held in Malaysia, which concerns the control and management of the business even if all the other meetings are held outside of Malaysia.

3. Your company's core business must be in the qualifying activities as approved by the Ministry of Finance (MoF) under the focus areas of investment;

The investee company's core activity, to be eligible, must be in high growth or high technology industries, such as the following:

- Advanced electronics and information technology;

- Telecommunications;

- Equipment/instrumentation, automation and flexible manufacturing systems;

- Healthcare;

- Electro-optics, non-linear optics and optoelectronics;

- Advanced materials;

- Transportation;

- Value-added services; and

- Emerging technologies

In addition to the above, Cradle shall always have the absolute right to disapprove or reject any activities that we deem inappropriate or against the Malaysian law such as non-syariah compliant activities, gambling, money laundering etc.

4. A cumulative revenue of less than RM5 million and has been in operation for three (3) years or less (based on the latest financial year result upon application); and

Take note that Cradle will take into account the starting date for the investee company's business operation only on the first year upon receiving revenue.

5. The investee company must not be wound-up and/or liquidated.

In addition to the above, the investee company must not be involved in any court proceedings whether inside or outside of Malaysia.

2.2 Certification to Investee Company

Cradle will issue a certification letter to the qualified investee company as proof of the start-ups' eligibility.

Please take note that the certification period for the investee company is only for one (1) year and is stated in the certification letter. However, the certification for the investee company is renewable, only if the abovementioned criteria are fulfilled. Cradle has the right to review the qualifying criteria for the investee company as and when required during the said period.

The investee company is required to notify Cradle of any changes in its status which relates to the abovementioned criteria. In the event the investee company fails to notify Cradle, Cradle has the right to disqualify its status as a certified investee company and any investment made by the angel investor into the investee company during that time period that may result in a disqualification for the tax deduction.

2.3 Additional Information

Where can I get the application form?

The application form is downloadable at www.cradle.com.my/about/resources/. Please submit the hardcopy of the application form together with all the relevant supporting documents as listed in Form ATI-1.

What are the supporting documents required?

i. Executive Summary:

Background and History of Company, Business Overview, Key Management Personnel, Product and/or Services and Business Model.

ii. M&A:

Memorandum and Articles of Association

iii. Form 9:

Certificate of Incorporation of Private Company

iv. Form 24 (All Forms):

Return of Allotment of Shares

v. Form 13:

Certification of Incorporation on Change Of Name Of Company, Managers And Secretaries And Changes Of Particulars (if necessary)

vi. Form 49:

Return Giving in Particulars In Register Of Directors

vii. Contract/Agreement:

Any relevant agreements with your customer to help us ascertain the nature of your company's core business.

viii. Financial Statements:

All audited and draft financial statement

Please note that Cradle has the right to request for additional supporting documents should we feel the need to do so. Failing to provide us with the supporting documents as requested, will result in a longer period of processing.

How to submit the application form?

The application form and the documents must be submitted either by hand or by courier to Cradle's office at Suite 4.8.1, Level 4, PNB Darby Park, 10 Jalan Binjai, 50450 Kuala Lumpur, attention to Angel Tax Incentive office. You should read the instructions at the beginning of the form before proceeding to filling it up. Please get the Commissioner of Oath's stamp on the declaration part of the application form.

CRADLE-ATIO will send you an email as an acknowledgement of the receipt of documents.

Is there any processing fee?

Yes. The processing fee for Investee Company is **RM400 (Ringgit Malaysia Four Hundred Only)**, which is to be made payable to **Cradle Fund Sdn Bhd**. The processing fee is not refundable.

When does the process commence?

The process will only commence once the documentation is submitted completely and the processing fee payment has been made. Please take note that during the process, there might be additional documents required.

What is the due diligence process conducted by CRADLE?

Cradle-ATIO will conduct the basic due diligence process based on the criteria as stated. It is mandatory for the investee company to provide genuine documentation to Cradle for the purposes of the due diligence process. However, Cradle has the right to expand its due diligence scope should we feel the need to do so.

How long will it take for the whole process?

The process will take 21 calendar days, upon full and complete submission of the relevant documents.

Please take note that the processing period will be affected if public holiday(s) falls within the 21-day processing time frame.

In what format will the certification be issued?

Certification will be issued to the investee company in the form of a letter as proof of qualification. Cradle will notify you to collect the letter once it is ready.

Can an Investee Company re-apply for the certification after the validity period has ended?

Yes, provided that all the criteria has been met. The processing fee is still **RM200 (Ringgit Malaysia Two Hundred Only)**.

PART THREE

3.1 Eligibility Criteria for Investment made by Angel Investor

1. Your investment must be made into a qualified investee company/start-up;

Qualified investee company means a start-up which has been certified by Cradle as eligible to be invested by the qualified angel investor for the purpose of this tax incentive. The certification letter shall serve as proof of the start-ups' eligibility within the specified time frame, as stipulated in the certification letter.

2. It must not be from an immediate family member i.e. siblings, spouses, children, parents and grandparents;

Take note that the above exception under the immediate family member connection is limited to the scope of the due diligence process conducted by Cradle. However, Cradle has the right to expand the due diligence process to any other connection apart from the immediate family member i.e. connection by employment, by way of financial interest in the company etc. should Cradle determine that the investment was possibly made in a conflict of situation or bad faith. Due to the above reason, Cradle will not be liable should the angel investor fail to receive the tax deduction.

3. The investment shall be for the sole purpose of financing the activities as approved by the Ministry of Finance (MoF), under the focus areas of investment;

Take note that the company's core activity, to be eligible, must be in high growth or high technology industries, such as the following:

- Advanced electronics and information technology;
- Telecommunications;
- Equipment/instrumentation, automation and flexible manufacturing systems;
- Healthcare;
- Electro-optics, non-linear optics and optoelectronics;
- Advanced materials;
- Transportation;
- Value-add services; and
- Emerging technologies

In addition to the above, Cradle shall always have the absolute right to disapprove or reject any activities that we deem inappropriate or anything against the Malaysian law such as non-syariah compliant activities, gambling, money laundering etc.

4. You must hold the investment for a period of two (2) years prior to claiming the tax exemption;

Take note that the angel investor must hold shares for two (2) years, in which the commencement of the two-year period is calculated from the date the shares were issued and/or a fresh cash injection is made into the investee company, whichever is later. In the event of failure to comply with the 2 (two) years shareholding period, there will be no tax deduction given.

5. The investment made is not disposed of within two (2) years from the date the investment is made;

Take note that the angel investor must not dispose of their shares within two (2) years after the shares were issued. Any disposal of shares by the angel investor will not qualify him for the tax deduction. This condition must be complied with for a continuous period of two (2) years after the investment is made.

6. The angel investor must not hold more than thirty percent (30%) of the share capital of the investee company upon the first investment in that company;

Take note that the above condition applies to either one or a cumulative number of angel investors investing in a start-up, in which the amount invested into the company shall not be more than thirty percent (30%) of the total equity of the company. For easier understanding of this criteria, please refer to the following illustrations:

Illustration 1

Dave has been accredited as an angel investor by MBAN. Dave decided to invest in ABC Sdn Bhd. ABC Sdn Bhd is a certified investee company. Dave has agreed to buy 30% shares in ABC Sdn Bhd. This qualifies Dave's investment for the tax incentive.

However, even after Dave's funding, ABC Sdn Bhd still needs more funds and have approached Mark, another accredited angel investor for more investments. In this case, Mark's investment would not qualify for tax deduction because it has exceeded the 30% shareholding benchmark.

Illustration 2

Edward has been accredited as an angel investor by MBAN. Edward decided to invest in DEF Sdn Bhd. DEF Sdn Bhd is a certified investee company. Edward has agreed to invest only 10% equity in DEF Sdn Bhd.

However, DEF Sdn Bhd feels that they need more investment so they have approached Rob and Matt, another two accredited angel investors. After some discussions, Rob has agreed to invest 15% and Matt 5% in DEF Sdn Bhd's shares. In view that the investments made by these three angel investors are within the allowable percentage of shareholding i.e. not more than 30% (thirty percent) of the total paid up capital, Edward, Rob and Matt would qualify for the tax deduction

If DEF Sdn Bhd is to consider one more angel investor into their company, this investment would not qualify for tax deduction because it has exceeded the 30% (thirty percent) shareholding limit.

Illustration 3

Marie has been accredited as an angel investor by MBAN. Marie has decided to invest in Helium Sdn Bhd. Helium Sdn Bhd is a certified investee company. Marie has agreed to buy 40% shares in Helium Sdn Bhd. Marie will not qualify for the tax incentive because it has exceeded the 30% benchmark.

Illustration 4

Cyber Sdn Bhd is a certified investee company which decides to seek more than one angel investor. They approached John, Kyle, and Tina who are all accredited as angel investors by MBAN for multiple investments. The agreed amount to be taken by the 3 angel investors is cumulatively 40% equity of the company at the same time. This disqualifies all angel investors' investments for the tax deduction because it has exceeded the 30% (thirty percent) shareholding limit.

7. The tax incentive given will be on a minimum amount of RM5,000 (Ringgit Malaysia Five Thousand) and up to a maximum amount of RM500,000 (Ringgit Malaysia Five Hundred Thousand) per annum in total;

8. All investments made are to be paid in cash and in full and not in-kind where there is no obligation to pay back by an investee company to an angel investor;

9. Shares issued must be reflected in the Shareholders' Agreement; and

10. Shares issued to the angel investors must be in the form of ordinary shares only.

Post-Investment

Take note that qualified investee companies must have business activity in Malaysia for at least two (2) years after the investment is made.

3.2 Additional Information

How does the investment qualify?

The investment made will only qualify for tax deduction if all the criteria for investment are fulfilled. If any of the criteria as above is not fulfilled, the accredited angel investor will not qualify for tax deduction.

Where can I get the application form for investment?

The application form is downloadable at www.cradle.com.my/about/resources/. Please submit the hardcopy of the application form together with all the relevant supporting documents as listed in Form ATI-2.

What are the supporting documents required?

- Shareholder's Agreement

- Form 24 (latest)

- Accreditation Letter by MBAN

- Form 49

- Form 32A (if necessary)

- Company's Bank Statement

- Financial Statement (all audited and draft)

All the documents mentioned above are compulsory to be submitted together with the application forms. Please note that Cradle has the right to request for additional supporting documents should we feel the need to do so.

How to submit the application form?

The application form and the documents must be submitted either by hand or by courier to Cradle's office at Suite 4.8.1, Level 4, PNB Darby Park, 10 Jalan Binjai, 50450 Kuala Lumpur, attention to Angel Tax Incentive office. You should read the instructions at the beginning of the form before proceeding to filling it up. Please get the Commissioner of Oath's stamp on the declaration part of the application form. We will send you an email as an acknowledgement of the receipt of documents.

Is there any processing fee?

Yes. The fee is **RM800 (Ringgit Malaysia Eight Hundred Only)** and cheque payment is made payable to **CRADLE FUND SDN BHD**. The processing fee is a one-time payment per annum only for each investee company. The processing fee is not refundable.

When does the process commence?

This process will only commence once the documentation is completed and processing fee has been made. Please take note that during the process, there might be additional documents required.

What is the due diligence process conducted by ATIO?

We will conduct the basic due diligence process based on the criteria as stated. It is mandatory for the investee company to provide genuine documentation to ATIO for the purposes of the due diligence process. However, ATIO has the right to expand its due diligence scope should we feel the need to do so.

How long will it take for the due diligence process to complete?

It will take 25 calendar days to complete the due diligence process, upon full and complete submission of relevant documents. After completing the due diligence process, we will submit the investment application to MoF for approval. The approval period will take up to a maximum of 30 days.

Please take note that the processing and the approval time frame will be affected if the public holiday(s) falls within the specified periods.

How do I know that my investment has been approved?

The MoF's approval on the investment will be in a form of a letter. The angel investor however, need to keep the MoF's tax incentive approval as proof on investment in the certified investee company as required by Lembaga Hasil Dalam Negeri (LHDN), Malaysia, for any audit purposes that might be conducted in the future.

After two (2) years from the point of investment, the angel investors may file their personal income tax through LHDN, which then will process their income tax filing for tax deduction.

3.3 Tax Deduction

Upon approval by the Ministry of Finance (MoF) in relation to the investment made, the angel investor will qualify for tax deduction equivalent to the amount of investment made by the angel investor in an investee company. The deduction will be applicable in the third year of the shareholding period.

In the event the value of investment exceeds the aggregate income of the angel investor for that year of assessment, any excess amount will not be refunded nor carried forward to be set-off against the angel investor's future income in other years of assessment.