



MALAYSIAN INSTITUTE OF ACCOUNTANTS



JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

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A. Executive Summary

Repeal of exemption of foreign source income under Paragraph 28 of Schedule 6 of the Income Tax Act 1967

The Chartered Tax Institute of Malaysia (“CTIM”), Malaysian Institute of Accountants (“MIA”), The Malaysian Institute of Certified Public Accountants (“MICPA”) and The Malaysian Institute of Chartered Secretaries and Administrators (“MAICSA”) [“Institutes”] are of the view that the proposal to repeal the exemption under Paragraph 28, Schedule 6 of the Income Tax Act (“ITA”) 1967 to be in line with Malaysia’s commitment towards compliance with international best practices, would have a huge impact on the investment landscape and tax system in Malaysia. The repeal may be viewed by investors as suggesting a trend of uncertainty and frequent changes in the Malaysian tax system. Perceived lack of stability alone can sway investment decisions. As such, the Institutes’ views are as follows:

1. Maintain territorial based taxation system with substance requirements to meet international best practices

Paragraph 28, Schedule 6 exemption should be maintained for the time being for reasons already mentioned in our concerns above. We understand that Hong Kong which was also added to the European Union’s (“EU”) Grey List is preserving its territorial based taxation system. Malaysia needs to remain competitive from a tax perspective compared to other jurisdictions which practise some form of territorial based taxation but meet the EU’s requirements where foreign source business income and dividends (especially from subsidiaries) are exempted from tax, e.g. Singapore. Other ways should be explored in order for Malaysia to be removed from the EU’s Grey List such as looking at it from a substance requirement point of view for some of the types of income and the necessary qualifying conditions which should be put in place.

2. Scope of income which should be affected by this proposal

Even if Paragraph 28, Schedule 6 exemption is to be removed, we reiterate that any removal (if implemented) should be deferred to allow for further public consultation, and **it should be limited only to passive interest and royalty income. It should not include dividend income, business / service income, rental income or other foreign source income (“FSI”) such as income earned from exercising an employment outside Malaysia.** Many countries these days do not tax inbound dividends pursuant to widely applied exemptions such as participation exemption and exemptions on the ground of reinvestment.

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3. No retrospective application

We strongly recommend that even if Paragraph 28 of Schedule 6 is to be amended pursuant to the Finance Bill 2021, the amendment should not be applied retrospectively to FSI derived before 1 January 2022 notwithstanding that such FSI may be remitted to Malaysia on or after 1 January 2022. Malaysia should continue to uphold the principle of not introducing retrospective tax law changes, which is in line with global good governance and best practices. In addition, statutes are prima facie prospective and should not be read retrospectively. Accordingly, a vested right acquired under a statute (an exemption from tax) cannot be taken away and therefore the FSI derived prior to 1 January 2022 that is remitted back to Malaysia from 1 January 2022 onwards should not be taxed after the exemption has been removed. Moreover, there will be challenges for taxpayers to search for supporting documents to prove that the business income / employment income remitted had been subject to foreign tax especially so if the income were earned more than 20 years ago (record keeping for most countries is 7 years).

We wish to reiterate that given the current situation where economies are impacted by the pandemic, our tax changes should be in line with the overall financial and economic aspirations of the country. In order to remain competitive and maintain its attractiveness for foreign investments and ensure confidence, our Malaysian tax system should continue to remain easy to comply with simplicity.

4. Dividend exemption

If Malaysia imposes tax on dividend from a foreign subsidiary, the following consequences may be inevitable:

- a. Malaysia becomes an unattractive intermediate holding company jurisdiction, and this may potentially affect the attractiveness of Malaysia as a regional headquarters;
- b. For Malaysian headquartered / listed companies, the tax applicable on repatriation to Malaysia is likely to negatively impact the dividend payout policy due to either the absence of bilateral credit on corporate tax paid on the underlying income in the foreign jurisdiction giving rise to the dividends paid [in the case of some Double Tax Agreements (“DTAs”)] or, in cases where the DTA provides for such credit, administrative difficulties to claim the credit given the timing and quantum differences between corporate tax on the underlying income and dividend payouts. If and when the dividend payout policy of Malaysian listed corporations are adjusted, the Malaysian public who have invested in companies listed on the Malaysian stock exchange would be adversely affected; and
- c. In the long run, the absence of relief on dividend from foreign subsidiaries may encourage more Malaysian businesses to seek listing on the foreign stock exchange rather than on the Malaysian stock exchange.

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5. Interaction with the previous Special Voluntary Disclosure Programme

For those funds that were already taxed under the Special Voluntary Disclosure Programme (“SVDP”) and now remitted into Malaysia, this may create a double taxation on the income as it will be taxed again when remitted into Malaysia. We seek confirmation that those funds that were already taxed under the SVDP would not need to be taxed again upon remittance into Malaysia.

6. Timing of implementation

As the EU has granted Malaysia until 31 December 2022 to make the necessary amendments to or abolish the law on exemption of FSI, Malaysia should not rush into implementing this proposal on 1 January 2022. It is too soon given that time is needed for proper consultation with all stakeholders and for taxpayers to make preparations.

7. Technical details must be agreed upon before implementation date

Interpretation and application in common practical situations should be agreed upon in consultation with stakeholders and taking into account the rules in other comparable jurisdictions. Some of these areas are very technical and require time for careful consideration.

For more details on our comments, please refer to item 1.1 (Section B) and the Appendix (Section C) of this joint memorandum.

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B. Finance Bill 2021 & 2022 Budget Speech and Appendices

1. Proposed Amendments to the Income Tax Act 1967

1.1 Repeal of exemption of foreign source income received in Malaysia by a person who is resident in Malaysia – Amendment of Paragraph 28 of Schedule 6 (w.e.f. 1 January 2022)

~~28. (1) Income of any person, other than a resident company carrying on the business of banking, insurance or sea or air transport, for the basis year for a year of assessment derived from sources outside Malaysia and received in Malaysia.~~

~~(2) Paragraphs 5 and 6 of Schedule 7A shall apply mutatis mutandis to the amount of income derived and received by a resident company exempted under subparagraph (1).~~

28. The income arising from sources outside Malaysia and received in Malaysia by any person who is not resident in Malaysia.

Transitional Provisions - New S.6(1)(p) and Part XX of Schedule 1 (w.e.f. 1 January 2022 to 30 June 2022)

(p) income tax shall be charged upon the income of a person who is a resident which is received in Malaysia from outside Malaysia from 1 January 2022 until 30 June 2022 at the appropriate rate as specified under Part XX of Schedule 1.

Part XX

Notwithstanding Parts I and IV, income tax shall be charged on the income of a person who is a resident which is received in Malaysia from outside Malaysia at the rate of 3 per cent of gross.

Comments:

1.1.1 Our concerns

Malaysian taxpayers will be discouraged from repatriating their foreign income back to Malaysia. Moreover, Malaysian funds investing abroad will also be disadvantaged as investors may decide to invest through foreign funds instead of Malaysian funds.

On the issue of "harmful tax practice", if the exemption under Paragraph 28 of Schedule 6 does lead to "double non-taxation of income", it may be viewed as a "harmful tax practice" by the Council of the EU. In reality, however, the foreign income derived by Malaysian enterprises and funds are already taxed at the foreign jurisdictions before repatriation back to Malaysia. Thus the exemption does not give rise to "double non-taxation of income". Furthermore it does not impair the tax base of other tax jurisdictions. Hence Paragraph 28 should not be viewed as granting "harmful" FSI exemption. We suggest that the country's inclusion in the "grey list" of the Council of EU should be dealt with separately from Budget changes

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and not by way of abruptly amending Paragraph 28, in order to achieve a mutually satisfactory solution. We understand that Malaysia has until 31 December 2022 to amicably resolve this matter.

As Malaysia requires inflow of funds from both Malaysian and foreign investors to strengthen the country's foreign exchange reserve and spur the post-pandemic recovery of the national economy, it is hoped that the Government will reconsider the proposed amendment and decide not to remove the exemption under Paragraph 28 of Schedule 6.

Besides the above, it will be noted that pursuant to the proposed amendment, even foreign pensions or retirement savings (e.g. in the Central Provident Fund of Singapore) belonging to Malaysians who have worked overseas can also be liable to tax when brought back to Malaysia. These may not be viewed as equitable or desirable from the social angle. In addition, participants of MM2H and Returning Expert Programmes may also be impacted if they were to bring in their funds / income when they become tax residents in Malaysia.

Instead of a broad-brush repeal of the exemption, we urge the Government to consider a more targeted approach e.g. where if the income received has suffered tax or withholding tax at source, the income remitted to Malaysia is tax exempt.

1.1.2 Our views

A. Maintain territorial based taxation system with substance requirements to meet international best practices

This proposal indicates that it is in line with Malaysia's commitment towards compliance with the international tax best practices. We also understand that this proposal is in response to the EU's announcement on 5 October 2021 to add Malaysia to its "Grey List" of jurisdictions which are committed to amend or abolish their harmful FSI regimes. If this is indeed the case, this represents a major shift to Malaysia's territorial based taxation system.

The inclusion of Malaysia into the EU's Grey List pertains only to the FSI exemption aspects of the Malaysian tax regime. The EU does not consider FSI exemption regimes or regimes which that have a territorial based taxation system to be by themselves, problematic. Exempting foreign profits is acceptable and even recommendable, especially to prevent double taxation. Problems arise when such regimes not only prevent double taxation, but also create situations of double non-taxation.

The EU's review focuses on FSI exemption regimes which have foreign source passive income which are excluded from taxation without any conditions or safeguards and/or a nexus definition (business income) that is non-compliant with

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the definition of a permanent establishment in the OECD Model Tax Convention. It is unlikely that the tax treatment of business income would be the reason for the EU's concern as Malaysia's Double Taxation Agreements are generally modelled after the OECD Model Tax Convention. Passive income is exempted from Malaysian income tax as long as it can be proven that it is foreign sourced. It is more likely that the tax treatment of passive income would be the reason for Malaysia to be included in the EU's Grey List.

The EU requires a jurisdiction which has harmful FSI exemption regime to either amend its legislation so that FSI is no longer exempted, or put in place necessary safeguards such as adequate substance requirements, robust anti-abuse rules, removal of any administrative discretion in determining the income to be excluded from taxation. We understand that Malaysia has been granted until 31 December 2022 to make the necessary amendments to or abolish the law on exemption of FSI.

Imposition of such substance based requirements should be sufficient to address the Inland Revenue Board's ("IRB") concerns as well as the EU's concerns while maintaining Malaysia's attractiveness as an investment and business centre.

This whole Paragraph 28, Schedule 6 exemption should be maintained for the time being for reasons already mentioned in our concerns above. We understand that Hong Kong which was also added to the EU's Grey List is preserving its territorial based taxation system. Malaysia needs to remain competitive from a tax perspective compared to other jurisdictions which practise some form of territorial based taxation but meet the EU's requirements where foreign source business income and dividends (especially from subsidiaries) are exempted from tax, e.g. Singapore. Other ways should be explored in order for Malaysia to be removed from the EU's Grey List such as looking at it from a substance requirement point of view for some of the types of income and the necessary qualifying conditions which should be put in place.

In responding to inclusion of Hong Kong in EU's watchlist on tax co-operation, the Hong Kong Government has announced that it will introduce legislative amendments which will merely target corporations, particularly those with no substantial activity in Hong Kong, that make use of passive income to evade tax across a border and that individual taxpayers will NOT be affected.

Malaysia should also seriously consider such an approach, so that there would not be undue challenges for taxpayers and tax administrators alike, as had been the case when Malaysia last had the "Derived and Remittance" tax system. That system did create more administrative work in terms of assessing and verifying foreign income which was also a consideration when Malaysia decided to switch to the territorial system like that of Hong Kong. In fact, the current territorial tax system is a very efficient one, which is also attractive to investors.

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Maklum Balas LHDNM & MOF:

Berdasarkan siaran media Kementerian Kewangan bertarikh 30 Disember 2021, Kerajaan telah bersetuju untuk memberikan pengecualian cukai ke atas pendapatan yang diterima dari luar negara kepada pembayar cukai pemastautin berdasarkan kategori dan syarat berikut:

Kategori Pembayar Cukai	Jenis Pendapatan yang Dikecualikan Cukai	Syarat Kelayakan
Syarikat atau PLT	Pendapatan dividen	Tertakluk kepada syarat kelayakan yang akan diperincikan dalam garis panduan.
Individu (kecuali individu yang menjalankan perkongsian di Malaysia)	Semua jenis pendapatan	

Pengecualian ini akan berkuat kuasa mulai 1 Januari 2022 hingga 31 Disember 2026. Perundangan subsidiari akan diwartakan dan garis panduan akan dikeluarkan.

Melalui penarikan semula pengecualian kepada pembayar cukai pemastautin, *tax bases* Malaysia adalah berasaskan *territorial* dan *remittance* iaitu sama seperti Singapura. Pendekatan yang diambil Malaysia ialah individu diberi pengecualian sepenuhnya dan bagi syarikat/ PLT, pengecualian diberi kepada pendapatan dividen. Syarat yang akan dikenakan adalah syarat substantif bagi tujuan mengelakkan *tax abuse*, *double taxation* dan *double non-taxation*.

B. Scope of income which should be affected by this proposal

Even if this Paragraph 28, Schedule 6 exemption is to be removed (and we reiterate that any removal, if implemented, should be deferred to allow for further public consultation), it should be limited only to passive interest and royalty income. It should not include dividend income, business / service income, rental income or other FSI such as income earned from exercising an employment outside Malaysia. Many countries these days do not tax inbound dividends under their participation exemption rules.

Income earned from exercising an employment outside Malaysia should also continue to be exempt. It is a well-known fact that there are many Malaysians who are exercising an employment in Singapore and are subject to tax in Singapore on income from that employment. If the Paragraph 28, Schedule 6 exemption is removed, Malaysians who are resident in Malaysia for income tax

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purposes will also be taxed in Malaysia on that employment income when they bring it back to Malaysia to spend it in Malaysia. This will be a significant burden to those Malaysians and may encourage them to keep, reinvest and spend the money abroad instead.

Maklum Balas LHDNM:

Isu ini telah ditangani dengan keputusan polisi untuk memberikan pengecualian cukai mulai 1 Januari 2022 hingga 31 Disember 2026.

C. No retrospective application

We understand that the tax authorities interpret the law such that foreign income derived from the past years would be subject to tax if remitted in 2022 or later.

It is hoped that the Ministry of Finance (“MOF”) / IRB will consider to effect these FSI rules only to income derived from outside Malaysia and received in Malaysia with effect from 1 January 2022. There will be challenges for taxpayer to search for supporting documents to prove that the business income / employment income remitted had been subject to foreign tax especially so if the income were earned more than 20 years ago (record keeping for most countries is 7 years).

The law should be applied prospectively (i.e. only on income derived in future) so that taxpayers can ensure that the necessary documents are available to support the tax treatment of the FSI remitted to Malaysia and the claim on the attributable foreign tax credit.

Maklum Balas LHDNM & MOF:

Pindaan peruntukan untuk mengenakan cukai bagi pendapatan FSI yang diremitkan adalah teratur dan seragam di mana semasa peruntukan perenggan 28 Jadual 6 dipinda untuk mengecualikan pendapatan FSI yang diremitkan ianya adalah turut terpakai kepada pendapatan-pendapatan sebelumnya.

Pindaan ini dilihat tidak bersifat *retrospective* kerana cukai hanya dikenakan ke atas pendapatan yang diremitkan mulai 1 Januari 2022. Selain itu, keputusan polisi bagi pengecualian cukai ke atas beberapa kategori yang berkaitan telah diberikan bagi tempoh 5 tahun.

D. Dividend exemption

Many jurisdictions do not impose tax on dividends received from a foreign subsidiary by mechanisms such as participation exemption, as a recognition that source profits (giving rise to dividends) are already subject to source taxation.

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If Malaysia imposes tax on dividend from a foreign subsidiary, the following consequences may be inevitable:

- a. Malaysia becomes an unattractive intermediate holding company jurisdiction, and this may potentially affect the attractiveness of Malaysia as a regional headquarters;
- b. For Malaysian headquartered / listed companies, the tax applicable on repatriation to Malaysia is likely to impact the dividend payout policy due to either the absence of bilateral credit on corporate tax paid on the underlying income in the foreign jurisdiction giving rise to the dividends paid (in the case of some DTAs) or, in cases where the DTA provides for such credit, administrative difficulties to claim the credit given the timing and quantum differences between corporate tax on the underlying income and dividend payouts. If and when the dividend payout policy of Malaysian listed corporations are adjusted, the Malaysian public who have invested in companies listed on the Malaysian stock exchange would be affected; and
- c. In the long run, the absence of relief on dividend from foreign subsidiaries may encourage more Malaysian businesses to seek listing on the foreign stock exchange rather than on the Malaysian stock exchange.

It is important to distinguish and recognize that dividend is just a mode / means of receiving the FSI from an investment by the Malaysian company and it is not the underlying source of foreign investment profit in itself. The foreign source dividend has already suffered (i) foreign corporate tax on the source profits; and (ii) dividend withholding tax imposed by the foreign country on payment; therefore by subjecting this dividend (again) to Malaysian tax, notwithstanding foreign tax credit, there are multiple layers of tax resulting in a very high effective tax rate and significantly reducing the return on investment to the Malaysian corporations as well as the ultimate shareholders.

Apart from the salient points highlighted, it is also pertinent to note that from a Companies Act 2016 standpoint, where the remittances of the FSI is brought to tax, a company would have lesser retained earnings to pay dividend distributions to its shareholders.

Maklum Balas LHDNM:

Isu ini telah ditangani dengan keputusan polisi untuk memberikan pengecualian cukai mulai 1 Januari 2022 hingga 31 Disember 2026 di mana termasuk pendapatan dividen berdasarkan syarat-syarat tertentu.

E. Interaction with the previous Special Voluntary Disclosure Programme

- We understand from the IRB's Media Statement dated 16 November 2021 that under the *Program Khas Peremitan Pendapatan* ("PKPP"), the amount remitted between January 2022 to June 2022 will be accepted with '*suci hati*' without any audit, investigation or penalty. The Media Statement also states that after the PKPP period, funds of Malaysian residents that remain overseas will be checked and additional assessments may be raised where applicable.
 - a. We hereby seek confirmation that such actions will not infringe the terms of the previous Special Voluntary Disclosure Programme ("SVDP") during which some taxpayers may have paid tax under the programme without remitting the funds into Malaysia.

Maklum Balas LHDNM:

Peremitan dalam tempoh PKPP tidak tertakluk kepada semakan audit/siasatan dan pengenaan penalti. Semua pendapatan yang dibawa masuk dalam tempoh PKPP ini akan diterima secara suci hati oleh pihak LHDNM.

Bagi kes di mana pembayar cukai telah menyertai SVDP, tindakan audit/siasatan tidak akan diambil ke atas tahun taksiran yang mana pengakuan sukarela telah dibuat.

Bagi pendapatan yang telah dilaporkan semasa SVDP dan hendak diremitkan, pembayar cukai perlu menyimpan bukti cukai yang telah dilaporkan.

[Nota : Berdasarkan Kenyataan Media pada 11 Mac 2022, HASiL telah membuat keputusan untuk menamatkan PKPP yang telah ditawarkan.]

- The SVDP was introduced on 2 November 2018 to encourage taxpayers to come forward and declare any income that they did not bring to tax. Many taxpayers had joined the SVDP and brought to tax their income that was placed overseas. As such, the announcement of this PKPP has brought about certain issues for those taxpayers such as:
 - a. For those funds that were already taxed under the SVDP and now remitted into Malaysia, this may create a double taxation on the income as it will be taxed again when remitted into Malaysia. We seek confirmation that those funds that were already taxed under the SVDP would not need to be taxed again upon remittance into Malaysia.

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Maklum Balas LHDNM:

Pemahaman pihak persatuan adalah teratur.

- b. The taxpayers' funds that are in overseas may consist of many elements such as:
 - i. Capital sum - funds that have suffered Malaysian tax and transferred overseas for investment, savings or any other purposes;
 - ii. Forex gains – some taxpayers had stored the funds overseas for 10 – 30 years. Over the years, the foreign currency had strengthened significantly against the Ringgit Malaysia and therefore reflecting a huge forex gain;
 - iii. Investment gains (capital gains) – as the funds were used for investments, taxpayers upon liquidating of their investments would have earned gains on the appreciation of the value of the investment (i.e. buying and selling of properties, shares, unit trusts, etc.);
 - iv. Gifts from parents, siblings and other relatives – taxpayers who have family members overseas and receive gifts directly into their overseas bank accounts;
 - v. Interest income – As the funds are placed in bank accounts overseas, taxpayers would have received interest income from the placement of funds with the banks; or
 - vi. Dividend income – Taxpayers who had invested in shares would have received dividend income from those share counters.

We seek confirmation that items (i) – (iv) should not be taxable upon remittance into Malaysia as they are not taxable income under the ITA 1967. However, items (v) and (vi) may be taxable upon remittance into Malaysia under the PKPP.

Maklum Balas LHDNM:

Bagi isu (i) – (iii), secara umumnya tidak tertakluk kepada cukai dengan andaian ianya merupakan pendapatan modal.

Bagi isu (iv), penerimaan hadiah secara umumnya tidak tertakluk kepada cukai.

Bagi isu (v) dan (vi), pemahaman pihak persatuan adalah teratur namun untuk pendapatan dividen adalah tertakluk kepada keputusan Kerajaan yang memberikan pengecualian cukai berdasarkan syarat-syarat tertentu mulai 1 Januari 2022 hingga 31 Disember 2026.

F. Timing of implementation

As the EU has granted Malaysia until 31 December 2022 to make the necessary amendments to or abolish the law on exemption of FSI, Malaysia should not rush into implementing this proposal on 1 January 2022. It is too soon given that time is needed for proper consultation with all stakeholders and for taxpayers to make preparations.

It is envisaged that the introduction of this proposal would discourage foreign direct investments which generate non-tax benefits (e.g. employment, economic activities) to the country. The impact of the COVID-19 pandemic and unstable oil prices (which, coupled with the move to renewable energy is not positive for an oil-producing nation such as Malaysia) will also be felt for many years to come.

In light of the COVID-19 pandemic and significant changes in Malaysia's tax system in the recent 2 to 3 years, the introduction of this proposal will likely serve to exacerbate the uncertainty to doing businesses in Malaysia. We should also note that Malaysia may already be viewed as having gone through significant tax changes in recent years, for example due to:

- Significant changes to the Labuan tax regime
- The introduction of GST followed by its relatively swift removal and frequent updated to the SST regime

Whilst these changes may have been necessary, taking into account the above considerations, removing the Paragraph 28, Schedule 6 exemption at the present time may be viewed by investors as suggesting a trend of uncertainty and frequent change in the Malaysian tax system.

Maklum Balas LHDNM:

Pindaan peruntukan ini bukan merupakan pengenalan peruntukan baharu di mana prinsip percukaian di Malaysia yang mengamalkan prinsip territorial dan Perenggan 28 Jadual 6 yang mengecualikan pendapatan yang diremit dari luar negara selama hampir 20 tahun menyebabkan Malaysia dikategorikan di dalam *grey list (harmful)* oleh EU.

LHDNM telah mengkaji percukaian negara-negara lain melalui perbandingan negara yang turut mengenakan cukai ke atas FSI. Antaranya India, Mexico, UAE dan Korea Selatan.

Negara lain turut mencukai FSI dan sekiranya terdapat pengecualian diberikan, ianya adalah berdasarkan syarat-syarat tertentu yang membebaskan pembayar cukai seperti birokrasi permohonan dan keperluan pembuktian bagi melayakkan pengecualian tersebut. Di bawah regim Sistem Taksir Sendiri, pendekatan Malaysia untuk mencukai dan turut memberi kredit cukai adalah lebih mudah dari segi pentadbiran dan tidak membebaskan pembayar cukai.

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Selain itu, sesi libat urus berhubung pindaan ini telah dibuat bersama dengan pihak-pihak berkepentingan iaitu CTIM, MICPA, MIA, MATA, SC, REHDA dan ACCCIM melalui kertas konsultasi seperti yang telah diarahkan oleh MOF pada Mac 2021. Maklum balas pihak berkepentingan telah turut diteliti dan dipanjangkan kepada MOF namun kebanyakan maklum balas yang diberikan adalah FSI akan menyebabkan *foreign direct investment* (FDI) terjejas tanpa menyertakan data lengkap sebagai sokongan.

LHDNM berpandangan implikasi kepada FDI/pelaburan oleh pembayar cukai tidak hanya merujuk kepada faktor percukaian semata-mata namun turut melibatkan faktor-faktor lain seperti kestabilan politik, sosioekonomi, *ease of doing business*, guna tenaga kerja, infrastruktur dan pelbagai lagi faktor¹. Tambahan pula, 'economic outlook' mempengaruhi pelaburan di sesebuah negara termasuklah faktor seperti pandemik COVID-19 dan virus Omicron yang melanda negara.

Selain itu, isu *timing* ini telah ditangani dengan keputusan penangguhan mulai 1 Januari 2022 sehingga 31 Disember 2026.

G. Technical details must be agreed upon before implementation date

Interpretation and application in common practical situations should be agreed upon in consultation with stakeholders and taking into account the rules in other comparable jurisdictions. Some of these areas are very technical and require time for careful consideration.

Please refer to the **Appendix** (Section C) for our comments on technical issues arising from the proposed amendment to Paragraph 28 of Schedule 6 and the proposed transitional provisions in S.6(1)(p) and Part XX of Schedule 1 for the MOF / IRB's consideration and response.

Maklum Balas MOF:

MOF dan LHDNM telah mengadakan beberapa sesi *engagement* dengan pihak persatuan/ Big 6 berkenaan perkara ini. Pandangan dan hujah oleh industri telah diambilkira di dalam menyediakan draf perundangan berkaitan, termasuk isu teknikal.

¹ Kajian oleh badan antarabangsa pada 2020 menyatakan factor cukai merupakan factor ke-5 pelaburan MNE di Malaysia - World Bank Global Investment Competitiveness 2019/2020 Survey on MNEs in 10 middle-income countries: Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam

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1.2 Cukai Makmur (Prosperity Tax) – New Paragraph 2(2) of Part I of Schedule 1 (with effect for YA 2022)

“(2) Notwithstanding subparagraph (1), income tax shall be charged for a year of assessment on the chargeable income of a company other than a company to which paragraph 2A applies which has chargeable income exceeding one hundred million ringgit in the basis period for the year of assessment 2022 at the following rates:

<i>Chargeable income</i>	<i>RM</i>	<i>Rate of income tax</i>
For every ringgit of the first	100,000,000	24 per cent
For every ringgit exceeding	100,000,000	33 per cent”;

Comments:

- a. This is obviously not a form of windfall tax but an imposition of a higher tax rate based on the size of income (a form of progressive tax rate). The only objective is to collect more taxes from large companies.

No doubt that this is a simple way of getting more taxes on a one-off basis. But it lacks a sound basis and does not directly deal with the expectation of windfall tax.

The flaws include:

For individuals, being rich or wealthy may mean the person is earning more than RM100 million. In fact, earning more than RM10 million per year is definitely already very rich (high income earner).

The same cannot be said for companies especially public companies which may be owned by thousands of shareholders (institution and / or individuals) who may not be rich or so rich. The higher tax will affect dividends to these shareholders.

Also, the amount of income earned by a company depends on the amount of capital employed. RM200 million income is considered not good if capital employed is high which may translate to ROCC or ROE of say less than 5%. The higher tax rate will further lower the return.

Secondly, without considering if these large companies have achieved higher or lower income due to COVID-19 means they are treated the same. Hence, a large company whose income reduced from RM500 million to RM200 million is also subject to higher tax rate like those whose income increase from RM100 million to RM300 million (because of windfall). Where is the fairness for those whose companies are or were

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affected significantly during COVID-19 critical period (for instance A Bhd group assuming it recovers to make a good profit in 2022 which may not be enough to even cover the loss or reduction in profit in 2021 / 2020)?

What about those companies which really enjoyed huge windfall gain (medical and pharmacy, glove, delivery services, big grocery shops, food delivery platform, some chemical companies etc.) which may have its income increased by one time or five time from RM1 million to RM5 million or from RM10 million to RM80 million but who are not required to pay additional tax because the chargeable income is still lower than RM100 million? Are these supposed to be the target as they enjoyed the benefits while other businesses were suffering?

Also, applying this to 2022 income is a bit late as the impact of windfall gain may not continue in this year any more or to a lesser extent. For example, the glove manufacturers' profit are now reducing gradually to the period before COVID-19.

Overall, this measure is too simplified and results in unfairness or injustice in some specific situations and it is not in line with the rationale of windfall gain.

It is proposed to revisit the criteria. It may be more acceptable for companies that make super profit due to COVID-19 to pay more tax in order to help other business sectors which have suffered. This must be the starting point. Otherwise, this oversimplified Prosperity Tax which is not correctly placed should just be dropped.

- b. This proposal to impose Cukai Makmur should be revisited as there is a need to regain the competitiveness of the KLSE and Malaysia's reputation among investors. Its implementation at such short notice may send the wrong signals to potential investors on the policy stability and predictability of policies, which may translate into Malaysia being regarded as an uncertain investment destination which dampens decisions to invest in Malaysia. The attractiveness of a country as an investment destination is not solely based on its tax incentives but is also based on the stability and predictability of its tax policies.

Maklum Balas LHDNM & MOF:

Hasrat pengenaan Cukai Makmur lebih kepada menanamkan semangat membangunkan "Keluarga Malaysia" daripada sumbangan terus pihak industri yang menjana keuntungan tinggi melebihi pendapatan bercukai RM100 juta dalam tempoh pandemik COVID-19 dan tidak melibatkan syarikat Perusahaan Mikro, Kecil dan Sederhana (PMKS). Ia bersifat *one-off* dan kadar *marginal* sebanyak 9% dilihat lebih sederhana/ *moderate* untuk dikenakan berbanding pendekatan pengenalan kadar cukai baharu atau pengenalan jenis cukai baharu seperti *windfall tax* yang terpakai kepada semua syarikat/ industri.

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Pelaksanaan Cukai Makmur ini bukan sesuatu yang luar biasa yang diamalkan di peringkat antarabangsa malah turut diamalkan oleh negara-negara lain dalam tempoh pandemik COVID-19 yang melanda dunia.

Selain itu, pengenaan Cukai Makmur juga adalah sejajar dengan *trend* antarabangsa yang mengenakan cukai lebih tinggi kepada syarikat yang memperoleh keuntungan yang lebih tinggi.

- c. [On the understanding that the intention of the proposal is to impose a once-off tax on companies which were able to generate significant business profits during the COVID-19 pandemic period, we propose that the Cukai Makmur be imposed on chargeable income from business sources only.](#)

Maklum Balas LHDNM & MOF:

Cukai Makmur adalah dikenakan secara *one-off* bagi TT 2022 kepada syarikat mempunyai pendapatan bercukai melebihi RM100 juta. Sistem taksiran cukai adalah berasaskan kepada keuntungan/*performance* sesuatu syarikat dalam tempoh perakaunan mereka. Maka, sekiranya Cukai Makmur dikenakan ke atas pendapatan sumber perniagaan sahaja, ia dilihat bertentangan dengan asas pengenaan cukai ke atas sesebuah syarikat di mana seharusnya dikenakan ke atas semua jenis pendapatan (perniagaan dan pelaburan/ pendapatan aktif dan pasif).

Selain itu, memandangkan Cukai Makmur hanya dikenakan sekali sahaja iaitu untuk TT 2022, maka isu pentadbiran dalam pengenaan cukai makmur yang mana memerlukan kerja-kerja pentadbiran melibatkan semakan-semakan sebelum tempoh pandemik dan meningkatkan *cost of doing business* kepada syarikat wajar dielakkan.

- d. [Income from business which is subject to tax at a rate lower than 24%](#)

[Based on the Finance Bill 2021, the amended ITA 1967 would be as follows:](#)

[Paragraph 2\(1\) states that “Subject to paragraph 3, income tax shall be charged.....at the rate of 25 per cent for the year of assessment 2015 and 24 per cent for the subsequent years of assessment on every ringgit of the chargeable income”.](#)

[Paragraph 2\(2\) is as shown above.](#)

[Paragraph 3 provides an income tax rate of 8% for chargeable income of an insurer from a re-insurance business.](#)

- i. [Kindly confirm that Cukai Makmur will not be applicable to income from re-insurance business which is subject to tax at 8%. As such, the threshold for Cukai Makmur of RM100 million for non re-insurance business will exclude the chargeable income from a re-insurance business. For example, the insurance company has the following chargeable income:](#)

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Re-insurance business: RM150 million

Insurance business: RM120 million

When computing the tax payable: -

- RM150 million will be subject to tax at 8%
- RM100 million will be subject to tax at 24%
- The excess of RM20 million will be subject to tax at 33%

Maklum Balas LHDNM:

Pemahaman pihak persatuan adalah teratur. Dalam contoh yang diberikan, Cukai Makmur terpakai bagi pendapatan *insurance business* di mana kadar cukai semasa adalah 24%.

Bagi peniagaan insurans semula yang tidak memenuhi syarat di bawah P.U(A) 383/2018, kadar 24% adalah terpakai dan kadar Cukai Makmur juga boleh terpakai sekiranya pendapatan bercukai melebihi RM100 juta.

- ii. Kindly confirm that Cukai Makmur will not be applicable to companies with lower income tax rate incentive such as:
- Takaful operator from a re-takaful business (Paragraph 4 of Part I of Schedule 1);
 - Companies under S.65B incentive scheme such as Global Trading Company; or
 - Principal hub taxed at lower effective rate under P.U. orders.

Maklum Balas LHDNM:

Cukai Makmur tidak terpakai bagi pendapatan yang dicukai pada kadar yang lebih rendah daripada kadar semasa iaitu 24%.

- iii. Kindly confirm that FSI remitted into Malaysia (during 1 January 2022 to 30 June 2022) is not considered as part of the chargeable income in determining the RM100 million threshold for the purpose of the Cukai Makmur computation, given it is subject to tax rate of 3% on the gross amount.

Example

MY Co with FYE 31 December 2022 has chargeable income from Malaysian sources of RM80 million for YA 2022. It received FSI of RM200 million into Malaysia during the period 1 January 2022 to 30 June 2022. Please confirm that the FSI of RM200 million will not be included in the chargeable income in determining the RM100 million threshold for the purpose of the Cukai Makmur computation.

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Maklum Balas LHDNM:

Pemahaman pihak persatuan adalah teratur.

- e. If the company suffers a transfer pricing (“TP”) adjustment that results in incremental chargeable income (but no actual revenue / income was received by the Company) is this incremental chargeable income due to a TP adjustment subject to the Cukai Makmur as well?

Maklum Balas LHDNM:

Pengenaan Cukai Makmur adalah berasaskan amaun pendapatan bercukai (*chargeable income*). Oleh itu, Cukai Makmur boleh dikenakan sekiranya terdapat pelarasan pendapatan syarikat disebabkan pindahan harga menyebabkan pendapatan bercukai syarikat melebihi RM100 juta.

- f. Revised estimate of tax payable for YA 2022 for companies with financial year ending in January 2022, February 2022 and March 2022

In view that this proposal is not law, companies are unlikely to revise the estimate of their tax payable to take it into account until it is put into law. Based on S.107C(7) of the ITA 1967, companies are allowed to revise the estimate of their tax payable not later than in the 9th month. However, companies with financial year ending in January 2022, February 2022 and March 2022 would have been / are unlikely to revise the estimate of their tax payable in the 9th month which would be in the month of October 2021, November 2021 and December 2021 respectively to take this proposal into account as it has not been put into law yet. In fact, companies with financial year ending in January 2022 would not have had any opportunity to make a 9th month revision even if they had wanted to do so, as the 9th month revision could only be made by 31 October 2022.

Consequently, there could be an underestimation of the estimate of their tax payable which would result in a 10% penalty being imposed on them accordingly.

If the Government decides to proceed with this proposal even after reconsideration, there should be an option for companies with financial year ending on a date other than 31 December to pay the Cukai Makmur for either the year of assessment (“YA”) 2022 or YA 2023.

If this proposal is maintained as announced, we would suggest that the underestimation penalty not be imposed for YA 2022 on companies which are subject to the Cukai Makmur. Such companies will be contributing heavily to the nation’s tax collections in YA 2022, and it would be extremely burdensome for them to also be subject to an underestimation penalty.

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If this is not possible, where a company with financial year ending in the month of January 2022, February 2022 or March 2022 has an underestimation of the estimate of its tax payable as a consequence of this proposal being put into law at the end of December 2021, we understand that such companies will be able to apply for the revision of the estimate of tax payable in the 11th month of the basis period ("11th month revision"). Companies with financial year ending in January 2022 should be allowed a 12th month revision in the month of January 2022 so that they can make an informed decision on whether a revision is required once the law has been passed and not before.

Maklum Balas LHDNM:

Isu ini telah selesai dengan merujuk kepada Soalan Lazim Pindaan Anggaran Cukai Kena Dibayar (CP204) pada bulan ke-11 tempoh asas bagi tahun taksiran 2021 dan 2022. Bagi isu syarikat yang menutup akaun pada tahun berakhir Januari 2022, Februari 2022 dan Mac 2022 dan membuat anggaran cukai yang rendah, syarikat berkenaan boleh mengambil peluang untuk meminda anggaran cukai pada bulan ke-11.

g. Estimate of tax payable under S.107C(3) for YA 2023

As the latest YA 2022 tax estimate for companies subject to Cukai Makmur are likely to be inflated due to the higher tax rate at 33% which is applicable for YA 2022 only, we request that these companies be allowed to adopt an adjusted estimated/revised tax payable for YA 2022 which reflects a 24% tax rate (i.e. excludes the Cukai Makmur payable for YA 2022) to base their minimum 85% estimate of tax payable under S107C(3) for YA 2023. We would be pleased to have the IRB's confirmation on this or even to have the S.107C(3) amended accordingly to reflect this.

Maklum Balas LHDNM:

Anggaran bagi TT 2023 akan berdasarkan cukai yang dikenakan dalam TT 2022 termasuk Cukai Makmur. Peruntukan sedia ada adalah jelas di mana anggaran cukai perlu dibuat berdasarkan 85% daripada cukai tahun sebelum.

Syarikat boleh meminda anggaran dalam bulan ke-6 sekiranya didapati anggaran yang dibuat adalah terlalu tinggi.

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1.3 Deduction of tax from payment made to agent, etc – New S.107D (w.e.f. 1 January 2022)

107D. (1) Where a company, in this section referred to as the payer, is liable to make payments in monetary form to an agent, a dealer or a distributor at any time in a basis year for a year of assessment arising from sales, transactions or schemes carried out by that agent, dealer or distributor, the payer shall upon paying or crediting such payments deduct therefrom tax at the rate of two per cent of the payments on account of tax which is or may be payable by that agent, dealer or distributor for any year of assessment and, whether or not that tax is so deducted, shall within thirty days after paying or crediting such payments render an account and pay the amount of that tax to the Director General:

Provided that the Director General may—

- (a) give notice in writing to the payer requiring the payer to deduct and pay tax at some other rates or to pay or credit the payments without deduction of tax; or
- (b) under special circumstances, allow extension of time for tax deducted to be paid over.

(2) Subsection (1) shall apply if the total sum of payments, whether in monetary form or otherwise, received by that agent, dealer or distributor from the payer in the immediately preceding basis year for a year of assessment arising from sales, transactions or schemes carried out by that agent, dealer or distributor is more than one hundred thousand ringgit.

(3) Where the payer fails to pay any amount due from him under subsection (1), the amount which the payer fails to pay shall be increased by a sum equal to ten per cent of the amount which the payer fails to pay, and that amount and the increased sum shall be a debt due from the payer to the Government and shall be payable forthwith to the Director General.

(4) Pursuant to this section, where any amount is paid to the Director General by the payer or recovered by the Director General from the payer—

- (a) the Director General shall apply the amount paid or recovered under subsection (1) towards payment of the tax payable for any year of assessment by that agent, dealer or distributor to whom the payer was liable to make payments in monetary form to which that amount relates; and
- (b) if the payer has not deducted any amount upon making the payments with respect to which the amount relates, the payer may recover the amount from that agent, dealer or distributor as a debt due to the payer.

(5) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (3), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.

(6) In this section, “agent”, “dealer” or “distributor” means any individual resident who is authorized by a company to act as its agent, dealer or distributor, and who receives payments, whether in monetary form or otherwise, from the company arising from sales, transactions or schemes carried out by him as its agent, dealer or distributor.

Comments:

- a. S.107D(1) shall apply if the payee (agent, dealer or distributor) received more than RM100,000 payment whether in monetary form or otherwise in the immediately preceding basis year for a YA arising from sales, transactions or schemes carried out by the payee. Please confirm that the valuation of payment in non-monetary form will be consistent with that adopted in the guidance for preparing the Form CP58.

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Maklum Balas LHDNM:

Penentuan adalah selari dengan Borang CP58.

- b. Kindly confirm that our understanding below is correct:
- i. The 2% withholding tax (“WHT”) under this new section would be applicable to the payment made / credited to agent, dealer or distributor from 1 January 2022 onwards, even though such payment could be relating to sales, transactions or schemes carried out by that person prior to 1 January 2022.
 - ii. The 2% WHT is not required to be deducted from a payment if the liability for that payment arises prior to 1 January 2022 and such payment is made / credited prior to 1 January 2022.
 - iii. Based on S.20 of the ITA 1967, the terms “basis year for a year of assessment” and “year of assessment” wherever found in S.107D(1) and S.107D(2) refer to a calendar year period i.e. 1 January to 31 December.

Maklum Balas LHDNM:

Pemahaman pihak persatuan adalah teratur.

- c. A company, such as an insurance company, may have a considerably high number of agents. As such, kindly advise on the withholding tax (“WHT”) remittance mechanism. Rather than remit WHT within 30 days upon payment, could a concession be given where the tax withheld will be kept in a special account and remitted to the IRB quarterly or twice a year? In the event that such a concession is not given, we suggest that the 30 days be revised / changed to 1 month to be consistent with other WHT provisions in the ITA 1967.

Maklum Balas LHDNM:

Merujuk kepada Kenyataan Media bertarikh 12 Januari 2022, pelaksanaan peremitan ini telah ditangguhkan sehingga 1 April 2022.

LHDNM berpandangan tiada keperluan untuk meminda tempoh daripada 30 hari kepada 1 bulan.

LHDNM mengambil maklum permohonan pihak persatuan untuk LHDNM mempertimbangkan tempoh peremitan dan LHDNM bersetuju ianya dibuat secara *case-by-case basis*.

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- d. Would the IRB issue any prescribed form (which is similar practice to the other WHT payments such as Form CP37D, etc.) to the payer to complete and submit together with the WHT payment to the IRB? In addition, upon remittance of the WHT payment and the prescribed form (if any), would the IRB issue the official receipt in the name of the agent/dealer/distributor as the evidence of payment of WHT withheld and remitted to the IRB?

Maklum Balas LHDNM:

Ya. Borang khusus akan disediakan dan akan dimuatnaik ke Portal Rasmi LHDNM bersama-sama FAQ dalam masa terdekat. Resit rasmi diberi atas nama syarikat yang meremitkan potongan cukai 2% kepada LHDNM.

[Nota : Soalan Lazim berkaitan Potongan Cukai 2% Terhadap Pembayaran oleh Syarikat Pembayar kepada Ejen, Pengekar atau Pengagih di bawah Bajet 2022 telah dimuatnaik di dalam Portal Rasmi LHDNM pada 28 Februari 2022 manakala Borang CP107D dan CP107D(1) juga telah dimuatnaik pada 9 Mac 2022.]

e. The scope of “individual resident”

- i. The meaning of the word “agent” which is not clearly defined may cause tax agents practicing as a sole proprietor to be caught in this new provision.

We request the IRB to clarify the scope of this provision with regard to “agent” in this new provision.

- ii. The WHT is applicable to an agent, dealer or distributor who is an “individual” resident. Please confirm that it is not applicable to individuals who carry on business via registered business such as sole proprietorships and partnerships which act as an authorised agent, a dealer or a distributor of a company.
- iii. Please confirm whether the following would fall within the scope of the WHT: -
- Money remitted into sole proprietor business bank account
 - Partnership bank account
 - Bank account of a partner of a partnership

Maklum Balas LHDNM:

Bagi tujuan skop potongan cukai di bawah seksyen 107D, individu adalah termasuk perniagaan tunggal dan ahli kongsi dalam perkongsian. Oleh itu, bayaran kepada perkongsian adalah tidak tertakluk di bawah peruntukan ini manakala bayaran kepada ahli kongsi individu adalah tertakluk kepada peruntukan ini.

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f. The meaning of “crediting”

Please confirm that this does not include accounting ‘credit’ or issuance of ‘credit note’ but only contra of transaction as stated in paragraph 13.1 of the Public Ruling (“PR”) No. 10/2019 – Withholding Tax on Special Classes of Income, as set-out below:

(a) “Crediting” in relation to an amount means more than a mere journal entry or an accrual of the liability in the accounts of the payer and an amount is considered as having been credited if the amount is available to or for the benefit of the non-resident payee;

(b) “Crediting in a contra situation” means a situation in which the amount is made available to offset any amount owing by the non-resident payee in the company’s records; and

(c) “Date of crediting” refers to the date the amount is paid or the date the amount is credited in the bank account of the recipient or the date of a contra entry.

Maklum Balas LHDNM:

Bagi tujuan skop potongan cukai di bawah seksyen 107D, ia adalah tidak termasuk pemberian dalam bentuk nota kredit.

g. Settlement through credit note (without payment)

For some rebates, credit notes may be issued to an agent for which no payment is made to the agent but the agent is allowed to offset the amount in the credit note against future payment dues. Kindly confirm that whether the 2% WHT is applicable and, if so, the timing (i.e. not upon issuance of credit note but upon contra).

Maklum Balas LHDNM:

Peruntukan seksyen 107D tidak terpakai bagi mana-mana transaksi yang tidak melibatkan bayaran daripada syarikat kepada ejen, pengedar atau pengagih.

h. Set-off against final tax payable

We would like to put forward to the IRB that the operation of S.107D(4) should be in the manner of an automatic offset against tax payable in the personal tax return without the taxpayer having to make a separate application as such requirement would be redundant given that the necessary information would be readily available in the IRB’s system.

Maklum Balas LHDNM:

LHDNM mengambil maklum.

i. Revision of Form CP500

We would request that the revision of the Form CP500 be allowed to take into account the 2% WHT deducted under S.107D, and that the increase in tax under S.107B(4) would not be imposed in respect of any differences covered by the 2% withheld.

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Maklum Balas LHDNM:

LHDNM mengambil maklum dan mencadangkan perkara ini dipanjangkan dalam Mesyuarat DESIRE.

j. [Clarity on non-application to foreign companies:](#)

For avoidance of doubt, we suggest that the opening wording of S.107D(1) be amended from “*Where a company*” to the wording “*Where a resident company*” to make it clear that the scope of S.107D is limited to cases where the payers are Malaysian companies.

Maklum Balas LHDNM:

Bagi maksud seksyen ini, syarikat pembayar adalah meliputi syarikat pemastautin dan bukan pemastautin dan penerima bayaran melibatkan ejen, pengedar dan pengagih bermastautin sahaja.

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1.4 Deduction of tax on distribution of income of unit trust to unit holder other than individual – New S.109DA (w.e.f. 1 January 2022)

109DA. (1) This section shall only apply to income of a unit trust that is a retail money market fund exempt under paragraph 35A of Schedule 6 in respect of income distributed to a unit holder other than an individual.

(2) Where a unit trust, in this section referred to as the payer, distributes income which is derived from Malaysia to a unit holder, the payer shall upon distributing the income, deduct therefrom tax at the rate applicable to such income and shall within one month after distributing such income, render an account and pay the amount of that tax to the Director General:

Provided that the Director General may under special circumstances allow extension of time for tax deducted to be paid over.

(3) Where the payer fails to pay any amount due from him under subsection (2), that amount which the payer fails to pay shall be increased by a sum equal to ten per cent of that amount, and the amount which the payer fails to pay and the increased sum shall be a debt due from the payer to the Government and shall be payable forthwith to the Director General.

(4) Pursuant to this section, where any amount is paid to the Director General by the payer or recovered by the Director General from the payer—

(a) in relation to a resident unit holder, the Director General shall, in the manner provided by section 110, apply that amount towards payment of the tax charged on the unit holder to whom the payer distributes income to which that amount relates; and

(b) if the payer has not deducted that amount in distributing the income under subsection (2) with respect to which that amount relates, the payer may recover that amount from that unit holder as a debt due to the payer.

(5) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (2) is increased by a sum under subsection (3), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.

(6) Section 110 shall apply *mutatis mutandis* to tax deducted under this section other than to tax deducted in respect of a non-resident unit holder.

Comments:

- a. With the change, a unit holder other than an individual (e.g. company) is subject to tax on distributions received from a Retail Money Market Fund ("RMMF") where such distributions are made out of exempt interest income under Paragraph 35A of Schedule 6. Since the wordings only give exceptions to "individuals", it would appear that if the distribution is made by a RMMF to another unit trust fund, the withholding will also apply. This would make it disadvantageous for a unit trust fund to invest in a RMMF. If this an unintended consequence of the proposal, the proposed law should be amended accordingly.

Maklum Balas LHDNM:

Cadangan pindaan adalah bertujuan untuk memberi pengecualian cukai kepada pelabur individu sahaja. Oleh yang demikian, potongan cukai pegangan adalah

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terpakai kepada unit amanah yang melabur di dalam unit amanah RMMF. Unit amanah boleh menuntut kredit cukai di bawah peruntukan subseksyen 110(9A) sekiranya berkelayakan.

- b. Kindly advise if WHT is applicable on the distribution of interest income from a RMMF to a trustee or nominee, where such income belongs to a beneficiary who is an individual.

Maklum Balas LHDNM:

Ya, potongan cukai pegangan terpakai kepada semua pemegang unit amanah RMMF kecuali pemegang unit individu. Kredit cukai boleh diberikan kepada benefisiari individu yang bermastautin apabila melaporkan pendapatan daripada unit amanah RMMF di dalam BNCP sekiranya layak.

- c. Kindly confirm that WHT will not apply to distributions made to organizations, foundations or Yayasan which are exempted from tax. The law should be worded to make this clear.

Maklum Balas LHDNM:

Pemegang unit amanah RMMF yang menikmati pengecualian cukai layak memohon bayaran balik cukai yang telah dipotong pada peringkat unit amanah RMMF.

- d. A RMMF may have a considerably high number of unit holders. As such, kindly advise on the WHT remittance mechanism. Rather than remit WHT within 1 month upon payment, could a concession be given where the tax withheld will be kept in a special account and remitted to the IRB quarterly or twice a year?

Maklum Balas LHDNM & MOF:

Cadangan pindaan pelaksanaan ini telah dilaksanakan berdasarkan sesi libat urus bersama pihak FIMM dan SC, sebelum dimuktamadkan. MOF berpandangan berdasarkan pindaan yang dibuat di bawah Seksyen 109DA, potongan cukai pegangan ke atas pendapatan faedah berkaitan RMMF hendaklah diremitkan kepada KPHDN dalam masa sebulan daripada bayaran yang dibuat.

Pertimbangan tempoh peremitan perlu dikemukakan kepada LHDNM dan dibuat secara *case-by-case basis*.

- e. Kindly confirm that the distribution declared for financial period ending December 2021 for RMMF payable to non-individual investors in January 2022 is subject to WHT.

Maklum Balas LHDNM:

Pemahaman pihak persatuan adalah teratur. Bayaran cukai pegangan hendaklah dibuat ke atas agihan pendapatan yang dibuat dan dibayar kepada pemegang unit

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selain daripada individu mulai 1 Januari 2022 tanpa melihat kepada tempoh pendapatan yang diagihkan serta tempoh pemegangan pelaburan.

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1.5 Amendment of S.77A(4) (w.e.f. YA 2022)

~~(4) The return furnished by a company under this section shall be based on financial statements made in accordance with the requirements of the Companies Act 2016.~~

(4) Where a company, limited liability partnership, trust body or co-operative society is required to prepare financial statements in accordance with any written law, the return furnished under this section shall be made based on such financial statements.

Comments:

S.69 of the Limited Liability Partnership Act 2012 (“LLP Act 2012”) states that the LLP shall not be required to have audited accounts unless the partnership agreement states otherwise. It mentions that a LLP partnership needs to keep accounting records that will sufficiently explain the transactions and financial position of the LLP partnership and enable profit and loss accounts and balance sheet to be prepared which give a true and fair view of the affairs of the LLP partnership.

Please confirm that where the partnership agreement of an LLP does not require accounts to be audited, the income tax returns submitted based on those accounts will meet the requirements of the proposed S.77A(4) as the accounts are prepared in accordance with the relevant written law, i.e. S.69 of the LLP Act 2012 read together with the partnership agreement.

Maklum Balas LHDNM:

Menurut seksyen 77A(4) ACP, perkongsian liabiliti terhad (PLT) dikehendaki untuk menyediakan penyata kewangan mengikut undang-undang bertulis, untuk PLT adalah seperti yang diperuntukkan di bawah Akta PLT 2012 yang tidak memerlukan penyata kewangan beraudit. Oleh itu, PLT boleh mengemukakan BNCP berdasarkan penyata kewangan tersebut.

Walau bagaimanapun, bagi kes-kes tertentu yang mana PLT diperlukan untuk menyediakan penyata kewangan beraudit, PLT wajib mengemukakan BNCP berdasarkan penyata kewangan beraudit tersebut.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

1.6 Review of Tax Treatment on Unabsorbed Losses – Amendment of S.44(5F) (deemed to have effect from YA 2019)

*(5F) Notwithstanding subsection (4) or (5), the amount ascertained under either of those subsections for any relevant year shall only be deductible in accordance with subsection 43(2) for a period of ~~seven~~ **ten** consecutive years of assessment and that period commences immediately following the relevant year of assessment and any amount or balance of the amount which is not deductible at the end of that period shall be disregarded for the purposes of this Act.*

Comments:

- a. It is hoped that the Government will consider streamlining the tax treatment for unabsorbed pioneer loss, reinvestment allowance and investment allowance for approved services carried forward prior to YA 2018 and from YA 2019 onward.
- b. Currently, a company that qualifies for group relief may only surrender its current-year losses for a period of 3 consecutive YAs to one or more related companies. To support the recovery of businesses impacted by the COVID-19 pandemic, we propose that the surrendering period be extended to 6 consecutive YAs (i.e. similar to the additional 3 YAs proposed for the carry-forward of losses).
- c. The Institutes applaud the proposal to amend S.44(5F) of the ITA 1967 to extend the period from 7 years to 10 consecutive years for any amount of losses ascertained under S.44(4) or (5) of the ITA 1967 for a YA as a deduction for the purposes of S.43 of the ITA 1967 which is deemed to have effect for YA 2019 and subsequent YAs.

In view that the proposal aims to support the recovery of businesses that suffered losses due to the COVID-19 pandemic, the Institutes would also like to propose the suspension of the requirement under S.44(5A) for companies involved in corporate rescue exercises in 2020 and beyond such that certainty is given to the acquirer for unutilised losses carried forward of the businesses it acquired to be allowed notwithstanding the change in substantial shareholding.

Maklum Balas LHDNM:

LHDNM mengambil maklum cadangan-cadangan pihak persatuan berkaitan pindaan ke atas subseksyen 44(5F) namun ianya tertakluk kepada keputusan polisi.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

1.7 Extension of Additional Reinvestment Allowance – Amendment to Paragraph 2B of Schedule 7A (w.e.f. YA 2022)

2B. Subject to this Schedule and notwithstanding paragraph 2, where a company has first made a claim for an allowance under this Schedule in the return of its income and the period for fifteen consecutive years of assessment referred to in paragraph 2—

(a) ended in the year of assessment 2019 or in any other preceding year of assessment, an allowance under paragraph 1 or 1A shall be given in respect of capital expenditure incurred by the company in the basis period for the years of assessment 2020, 2021 ~~and 2022~~ , **2022, 2023 and 2024**;

(b) ends in the year of assessment 2020, an allowance under paragraph 1 or 1A shall be given in respect of capital expenditure incurred by the company in the basis period for years of assessment 2021 ~~and 2022~~ , **2022, 2023 and 2024**; ~~or~~

(c) ends in the year of assessment 2021, an allowance under paragraph 1 or 1A shall be given in respect of capital expenditure incurred by the company in the basis period for the year of assessment 2022 , **2023 and 2024** ; ~~or~~

(d) ends in the year of assessment 2022, an allowance under paragraph 1 or 1a shall be given in respect of capital expenditure incurred by the company in the basis period for the years of assessment 2023 and 2024; ~~or~~

(e) ends in the year of assessment 2023, an allowance under paragraph 1 or 1a shall be given in respect of capital expenditure incurred by the company in the basis period for the year of assessment 2024.

Comments:

The Institutes note that the extension of the reinvestment allowance (“RA”) for a further 2 years from YA 2023 and YA 2024 is part of the initiatives under the nation’s economic recovery agenda.

The Institutes applaud this initiative. However, the Institutes highlight the following issues for the Government’s consideration:

- To stay competitive, a business must undertake, on an ongoing basis, investment in new plant, machinery and technology that enhances automation of its production process and increases productivity. Such capital expenditure should continue to qualify for RA. To encourage private sector and foreign direct investments (“FDI”) to maintain or reinvest in their businesses in Malaysia, it is proposed that the 15-year time limit for the RA incentive be removed.
- Currently, a RA claw-back is imposed when the asset is disposed of within 5 years. In view of the fast pace of technological developments, 5 years is too long a time frame as companies innovate and modernise more rapidly to stay competitive. A company that chooses to maintain a 5 year old existing technology and machines may lose out to competitors. Hence, the Institutes propose that RA claw-back should only be imposed when the asset is disposed of within 3 years.

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Further efforts are necessary to target and attract industries in which Malaysia has strong foundations for new growth areas such as healthcare travel (health tourism), high value tourism activities such as eco-tourism, etc.

The services sector assumes an increasing share of GDP as the economy matures, as is evident in the case of developed countries. As Malaysia moves towards becoming a developed nation, greater emphasis should be placed on the development of the services sector to serve as the engine of growth to propel and sustain the economy.

The Institutes propose to extend RA to all service sectors for capital expenditure incurred in a project of expansion or modernisation of the company's services. This would encourage companies in the logistics or tourism industry to expand their services.

- Certain business operations are situated in remote areas such as plantations in Sabah, where accommodation needs to be provided to employees as there is no public transportation available. The construction of housing units for employees is part and parcel of an expansion programme. In addition, buildings used for providing accommodation to management staff do not qualify for capital allowance. This is a disadvantage to the company as there is no other avenue for claiming this business-related cost. To encourage reinvestment, it is proposed that qualifying expenditure be extended to include accommodation provided to staff as the expenditure is part and parcel of an expansion or diversification programme. More incentives should be given to widen the scope of RA in the agriculture sector

Maklum Balas MOF:

MOF perlu mengkaji lebih lanjut cadangan yang dikemukakan oleh pihak persatuan memandangkan kajian penstrukturan semula insentif sedang dalam proses untuk dimuktamadkan.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

1.8 Time limit on the carry forward of unabsorbed reinvestment allowance – New Paragraph 4C of Schedule 7A (w.e.f. YA 2022)

“4c. Notwithstanding paragraph 4, so much of the allowance or allowances as cannot be given to a person as ascertained under that paragraph which relates to capital expenditure incurred after the end of the period of fifteen consecutive years of assessment referred to in paragraph 2b until the year of assessment 2024—

- (a) shall only be given to that person in accordance with paragraph 4 for a period of seven consecutive years of assessment and that period commences immediately following the year of assessment 2024; and
- (b) any amount of the allowance or aggregate amount of the allowance at the end of that period which has not been given to that person, by reason of insufficiency or absence of statutory income from his business for that period shall be disregarded for the purposes of this Schedule.”.

Comments:

What is the order of utilisation between the 2 pools of unabsorbed reinvestment allowance (“RA”) which comprises of unabsorbed RA from:

- Pool 1 (15-year period + special RA from YAs 2016 to 2018)?
- Pool 2 (PENJANA RA from YA 2020 to 2024)?

Please confirm that the RA from Pool 1 is to be absorbed first before Pool 2 is to be absorbed (i.e. first in first out (“FIFO”) basis).

The same should be reflected in the tax return worksheets so that there could be clarity and consistency among the taxpayers and the tax practitioners.

Maklum Balas LHDNM:

Pemahaman pihak persatuan adalah teratur. Pindaan kepada Ketetapan Umum Elaun Pelaburan Semula akan dibuat untuk menjelaskan layanan cukai ini.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

1.9 Income Tax Relief on Medical Treatment Expenditure – Amendment of S.46(1)(h)

~~(h) an amount limited to a maximum of one thousand ringgit in respect of complete medical examination expenses expended or deemed expended under subsection (3) in that basis year by that individual on himself or on his wife or on his child, or in the case of a wife, on herself or on her husband or on her child, as evidenced by receipts issued by a hospital or a medical practitioner;~~

~~Provided that the deduction under this paragraph shall be part of the amount limited to a maximum of eight thousand ringgit in paragraph (g);~~

(h) an amount limited to a maximum of one thousand ringgit expended or deemed expended under subsection (3) in that basis year by that individual on himself or on his wife or on his child, or in the case of a wife, on herself or on her husband or on her child, in respect of—

(i) complete medical examination expenses as evidenced by receipts issued by a hospital or a medical practitioner registered with the Malaysian Medical Council; **(w.e.f. YA 2021)**

(ii) Coronavirus Disease 2019 (COVID-19) detection test, as evidenced by receipts issued by a hospital or a medical practitioner registered with the Malaysian Medical Council or receipts of the purchase of Coronavirus Disease 2019 (COVID-19) self-detection test kit; or **(w.e.f. YA 2021)**

(iii) mental health examination or consultation as evidenced by receipts issued by a hospital, a psychiatrist within the meaning of section 2 of the Mental Health Act 2001 [Act 615], a clinical psychologist registered with the Malaysian Allied Health Professions Council under the Allied Health Professions Act 2016 [Act 774] or a counsellor registered with the Board of Counsellors under the Counsellors Act 1998 [Act 580]: **(w.e.f. YA 2022)**

Provided that the deduction under this paragraph shall be part of the amount limited to a maximum of eight thousand ringgit in paragraph (g);

Comments:

- a. Does the COVID-19 detection test in S.46(1)(h)(ii) also include the COVID-19 detection test done by a laboratory which provides medical testing services such as Pathlab Laboratory Malaysia without going through a registered medical practitioner?

Maklum Balas LHDNM:

Tuntutan pelepasan cukai di bawah subperenggan 46(1)(h)(ii) ACP atas amaun yang dibelanjakan bagi fi bayaran ujian pengesanan COVID-19 hanya boleh dibenarkan sekiranya perbelanjaan dapat dibuktikan dengan resit yang dikeluarkan oleh pihak hospital atau klinik atau pengamal perubatan yang berdaftar dengan Majlis Perubatan Malaysia manakala pembelian kit ujian sendiri perlu disokong dengan resit. Oleh itu, merujuk kepada fakta yang diberikan, perbelanjaan ini adalah tidak dibenarkan.

- b. [Tax relief for all COVID-19 related expenses including test kits, vaccination and medical treatment](#)

To have a simple specific treatment that covers a bigger scope (no limit).

Individual:

JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

All COVID-19 related expenses (to give a list) incurred for self and family (to define) can be deducted as special deduction in arriving at chargeable income provided no double deduction is claimed in his/her business income, if any)

Maklum Balas LHDNM:

Peruntukan sedia ada membenarkan perbelanjaan berkaitan wabak COVID-19 iaitu:

- Perbelanjaan bagi fi bayaran ujian pengesanan COVID-19 dan pembelian kit ujian sendiri yang dibelanjakan ke atas dirinya, pasangannya dan anaknya diberi pelepasan di bawah perenggan 46(1)(h).
- Perbelanjaan suntikan vaksin bagi COVID-19 juga dibenarkan sebagai pelepasan di bawah perenggan 46(1)(g).

Companies / businesses:

Double deduction against business income.

Maklum Balas LHDNM:

Peruntukan sedia ada membenarkan perbelanjaan berkaitan wabak COVID-19 iaitu:

- Perbelanjaan perubatan yang dilakukan oleh majikan ke atas pekerja termasuk rawatan berhubung COVID-19 adalah dibenarkan sebagai potongan di bawah subseksyen 33(1).
- Perbelanjaan yang dilakukan oleh majikan berkenaan dengan kos ujian pengesanan COVID-19 bagi pekerja dibenarkan sebagai potongan tambahan di bawah P.U.(A) 404/2021.

Rationale: These are additional expenses incurred by taxpayers to protect themselves from COVID-19 and to comply with the Government's SOPs / laws. It makes disposable income lower and hence tax relief is necessary to provide some relief. Also, the cost of doing business has increased because of these additional expenses.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

2. Proposed Amendments to the Real Property Gains Tax Act 1976

2.1 Amendment of Paragraph 2 of Schedule 4 (w.e.f. 1 January 2022)

(a) relating to the disposal of real property—

$$\frac{A \times C}{B}$$

where

A	is part of the area of the chargeable asset disposed;
B	is the total area of the chargeable asset;
C	is ten thousand;

or ten per cent of the chargeable gain, whichever is greater;

(b) relating to the disposal of shares—

$$\frac{A \times C}{B}$$

where

A	is the number of shares deemed to be a chargeable asset under paragraph 34 or 34A of Schedule 2 disposed;
B	is the total number of issued shares deemed to be a chargeable asset in relation to shares deemed to be chargeable asset under paragraph 34 or 34A of Schedule 2;
C	is ten thousand;

or ten per cent of the chargeable gain, whichever is greater.”.

Comments:

In the new formula to compute the tax exemption applicable to part disposal of shares in a real property company, it is not clear whether the total number of issued shares refers to the total number of shares owned by the disposer or the total number of shares issued by the company.

The Institutes suggest that the formula be re-stated as follows:

(b) relating to the disposal of shares in a real property company—

$$\frac{A \times C}{B}$$

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where	A	is the number of shares <u>in the real property company</u> deemed to be a chargeable asset under paragraph 34 or 34A of Schedule 2 disposed;
	B	is the total number of issued shares <u>in the real property company owned by the disposer and</u> deemed to be a chargeable asset in relation to shares deemed to be chargeable asset under paragraph 34 or 34A of Schedule 2;
	C	is ten thousand;

or ten per cent of the chargeable gain, whichever is greater.”

Maklum Balas LHDNM:

Cadangan untuk menambah frasa “*in the real property company*” adalah tidak tepat kerana *chargeable asset* merujuk kepada kedua-kedua saham perenggan 34 dan saham syarikat harta tanah (SHT) di bawah perenggan 34A.

Pengecualian perenggan 2 Jadual 4 ACKHT 1976 hanya dinikmati oleh individu dan diberi seperti berikut:

- (a) Pelupusan keseluruhan bahagian milik individu

Pengecualian adalah sebanyak RM10,000 atau 10% daripada keuntungan yang boleh dikenakan cukai, yang mana lebih tinggi.

- (b) Pelupusan sebahagian daripada keseluruhan bahagian yang dimiliki [mulai 31.12.2015]

Jika individu menjual sebahagian daripada keseluruhan bahagian yang dimilikinya, maka pengiraan pengecualian adalah seperti berikut:

$$\frac{A}{B} \times C$$

- A - Bahagian keluasan aset yang boleh dikenakan cukai yang lupuskan
B - Jumlah keluasan aset yang boleh dikenakan cukai
C - 10,000

atau

10% x keuntungan yang boleh dikenakan cukai, yang mana lebih tinggi.

Secara amalannya, formula pengecualian bagi pelupusan bilangan syer di bawah perenggan 34 atau 34A Jadual 2 ACKHT telahpun digunakan dengan

JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

menggunakan formula pengecualian sedia ada bagi pelupusan sebahagian aset seperti yang dinyatakan di perenggan (b) di atas.

Maka, konsep adalah sama seperti pelupusan sebahagian harta tanah yang mana 'B' merujuk kepada jumlah keluasan keseluruhan aset milik individu (pelupus) yang hanya menjual sebahagian daripada keseluruhan bahagian yang dimilikinya.

Oleh itu, dalam formula pengecualian bagi pelupusan bilangan syer, jelas yang 'B' juga merujuk kepada jumlah bilangan syer terbitan yang dimiliki oleh individu (pelupus) dalam syarikat tersebut yang mana hanya sebahagian syer telah dilupuskan.

Oleh itu, LHDNM berpendapat tiada keperluan meminda formula pengecualian tersebut untuk dinyatakan semula kerana maksud formula pengecualian berkaitan dengan pelupusan bilangan syer dengan sendirinya telah jelas difahami.

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2.2 Review Of Real Property Gains Tax Rate For Citizen And Permanent Resident And Other Than Company - Amendment of Part I of Schedule 5 (w.e.f. 1 January 2022)

PART I

Except where Part II or Part III is applicable, the following rates of tax shall apply:

<i>Category of disposal</i>	<i>Rate of tax</i>
<i>Disposal within three years after the date of acquisition of the chargeable asset</i>	<i>30 per cent</i>
<i>Disposal in the fourth year after the date of acquisition of the chargeable asset</i>	<i>20 per cent</i>
<i>Disposal in the fifth year after the date of acquisition of the chargeable asset</i>	<i>15 per cent</i>
<i>Disposal in the sixth year after the date of acquisition of the chargeable asset or thereafter</i>	<i>5 per cent Nil</i>

Comments:

We would ask that a deceased person's estate be treated as part of Part I of Schedule 5 of the Real Property Gains Tax ("RPGT") Act 1976 and given a nil RPGT rate for disposals after 5 years.

Maklum Balas LHDNM:

Penentuan kadar CKHT bagi pelupusan harta si mati, sama ada Bahagian I atau Bahagian III adalah bergantung kepada status kewarganegaraan atau taraf pemastautin si mati. Secara tidak langsung, kadar cukai yang sama dikenakan atas pelupusan aset individu sama ada sewaktu hidup atau selepas kematiannya.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

3. Proposed Amendments to the Stamp Act 1949

3.1 Increase in stamp duty on contract note to trading of listed shares – Amendment of Item 31 of First Schedule (w.e.f. 1 January 2022)

31 CONTRACT NOTE:

~~Relating to the sale of any shares, stock or marketable securities in companies incorporated in Malaysia or elsewhere –~~

~~For every RM1,000 or fractional part of RM1,000 of the value of any shares, stock or marketable securities~~ RM1.00

Relating to the sale of any shares, stock or marketable securities in companies incorporated in Malaysia or elsewhere –

(a) For every RM1,000 or fractional part of RM1,000 of the value of any shares or stock RM1.50

(b) For every RM1,000 or fractional part of RM1,000 of the value of any marketable securities RM1.00”

Note: Pursuant to P.U. (A) 81/2003, the maximum amount of stamp duty that can be charged on a contract for the sale of listed shares or stock is RM200. Any excess will be remitted. The 2022 Budget proposed that the remission given under P.U. (A) 81/2003 is to be revoked w.e.f. 1 January 2022.

Comments:

This proposal will be detrimental to the capital market. Therefore, the Government should reconsider whether or not to increase the stamp duty.

Maklum Balas LHDNM:

Kenaikan kadar duti setem daripada RM1.00 kepada RM1.50 ke atas nota kontrak jual beli saham tersenarai di Bursa Saham adalah dikekalkan selaras dengan Akta Kewangan 2021.

Walau bagaimanapun, Kerajaan telah bersetuju supaya remisi duti setem bagi had duti setem melebihi RM1,000 diremitkan selama 5 tahun berkuatkuasa mulai 1 Januari 2022 hingga 31 Disember 2026. Pelaksanaan peremitan ini akan dibuat melalui perundangan subsidiari yang akan dikeluarkan kelak.

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3.2 Allowance of spoiled stamps – Amendment of S.57 (w.e.f. 1 January 2022)

57. Subject to any rules which may be made under this Act and to the production of such evidence by statutory declaration or otherwise as the Collector may require, allowance shall be made by the Collector for stamps spoiled in the following cases:

(a) ;

(b) ;

(c) (*Deleted by Act 661*);

(d) ;

(e) ;

(f) :

(i) ;

(ii) ;

(iii) ;

(iv) ;

(v) ;

(vi) :

Provided as follows:

(a) that the application for relief is made within ~~twelve~~ **twenty-four** months after the stamp has been spoiled or become useless or in the case of an executed instrument after the date of the instrument, or, if it is not dated, within ~~twelve~~ **twenty-four** months after the execution thereof by the person whom it was first or alone executed or within such further time as the Collector may prescribe in the case of any instrument sent abroad for execution or when from unavoidable circumstances any instrument for which another has been substituted cannot be produced within the said period;

(aa) ; or

(b)

Comments:

The proposed extension of application period from 12 months to 24 months is effective from 1 January 2022. Please confirm that the new 24 months period is applicable to all existing instruments from 1 January 2022.

Maklum Balas LHDNM:

Tempoh permohonan tuntutan bayaran balik duti oleh pembayar duti setem di bawah seksyen 57 Akta Setem 1949 dilanjutkan daripada 12 bulan kepada 24 bulan daripada tarikh surat cara disempurnakan mulai 1 Januari 2022.

4. Proposed Amendments to the Labuan Business Activity Tax Act 1990

4.1 Chargeability of Intellectual Property Income under Income Tax Act 1967 - New S.2B(1C), (1D) & (1E) (deemed to have come into operation on 1 January 2019)

“(1C) The net profits referred to in paragraph (1B)(a) shall not include any income derived from royalty and other income derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right.

(1D) Any income derived from intellectual property right referred to in subsection (1C) is subject to tax under the Income Tax Act 1967.

(1E) In this section, “intellectual property right” has the same meaning assigned to it under subsection 4(5).”.

Comments:

Since the effective date is 1 January 2019, Labuan entities impacted by this will be required to file income tax returns retrospectively. Please provide clear direction on filing timelines. Clarity and facilitation by the authorities is important to preserve Labuan as an attractive jurisdiction for investors.

Maklum Balas LHDNM:

Pindaan yang dimasukkan adalah bagi menjelaskan layanan percukaian ke atas entiti Labuan yang mempunyai pendapatan harta intelek yang menjalankan aktiviti perdagangan dan bukan perdagangan yang tertakluk di bawah subseksyen 2B(1A), ACAPL. Entiti Labuan yang terkesan (sekiranya ada) perlulah melaporkan pendapatan ini di bawah ACP. Sekiranya pendapatan ini telah dilaporkan dalam Penyata Keuntungan (LE1) bagi tahun taksiran TT2020 dan TT2021 (tempoh perakaunan 2019 dan 2020), pelarasan pengiraan keuntungan bercukai perlulah dibuat bagi memastikan pendapatan tersebut dicukai di bawah ACP. Pendaftaran fail di bawah ACP juga perlu dibuat supaya pendapatan harta intelek tersebut boleh dilaporkan mengikut tempoh asas dan tahun taksiran di bawah ACP.

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4.2 Director's liability – New S.16A (w.e.f. 1 January 2022)

16A. (1) Notwithstanding anything contrary to this Act or any other written law, where any tax is due and payable under this Act by a company, any person who is a resident director of that company during the period in which that tax is liable to be paid by that company, shall be jointly and severally liable for such tax that is due and payable and shall be recoverable under section 14 from that person.

(2) In this section, “director” means any person who—

- (a) is occupying the position of director, by whatever name called, including any person who is concerned in the management of the company's business; and
- (b) is, either on his own or with one or more associates, the owner of, or able directly or through the medium of other companies or by any other indirect means to control, not less than twenty per cent of the ordinary share capital of the company.

(3) For the purposes of paragraph (2)(b), “associate” means, in relation to a person—

- (a) in any of the following relationships to that person, that is to say, husband or wife, parent or remoter forebear, child or remoter issue, brother, sister and partner;
- (b) the trustee or trustees of a settlement in relation to that person is, or any such relative of his, living or dead, as is mentioned in paragraph (a) of this definition is or was, a settlor;
- (c) where that person is interested in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person, any other person interested therein.”.

Comments:

In view that the definition of resident under the Labuan Business Activity Tax Act (“LBATA”) 1990 has been deleted w.e.f. 11 February 2020, what does “resident director” mean? Does it mean:

- The previous definition of resident under S.2 of LBATA 1990 will be adopted, and if this is the case, the definition needs to be reinstated into LBATA 1990;
- A person who is allowed to act as a resident director under S.87(2) of the Labuan Companies Act (“LCA”) 1990, and the resident director is as defined under S.2 of the LCA 1990. It is noted that the definition “resident” under S.2 of the LCA 1990 is similar to the former definition of resident under S.2 of the LBATA 1990;

JOINT MEMORANDUM ON ISSUES ARISING FROM 2022 BUDGET SPEECH & FINANCE BILL 2021

- A director who is living in Labuan; or
- A director who is a tax resident based on S.7 of the ITA 1967.

Maklum Balas LHDNM:

Takrifan “resident director” yang diperkenalkan dalam seksyen 16A adalah merujuk kepada takrifan “resident director” yang sama dengan peruntukan di perenggan 16(b), LBATA di mana ia membawa maksud “resident director” sebagaimana diperuntukkan di bawah Akta Syarikat Labuan 1990.

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5. 2022 Budget Speech and Appendices

5.1 Revised tax estimate in the 11th month before 31 October 2022 - Paragraph 165 of the 2022 Budget Speech

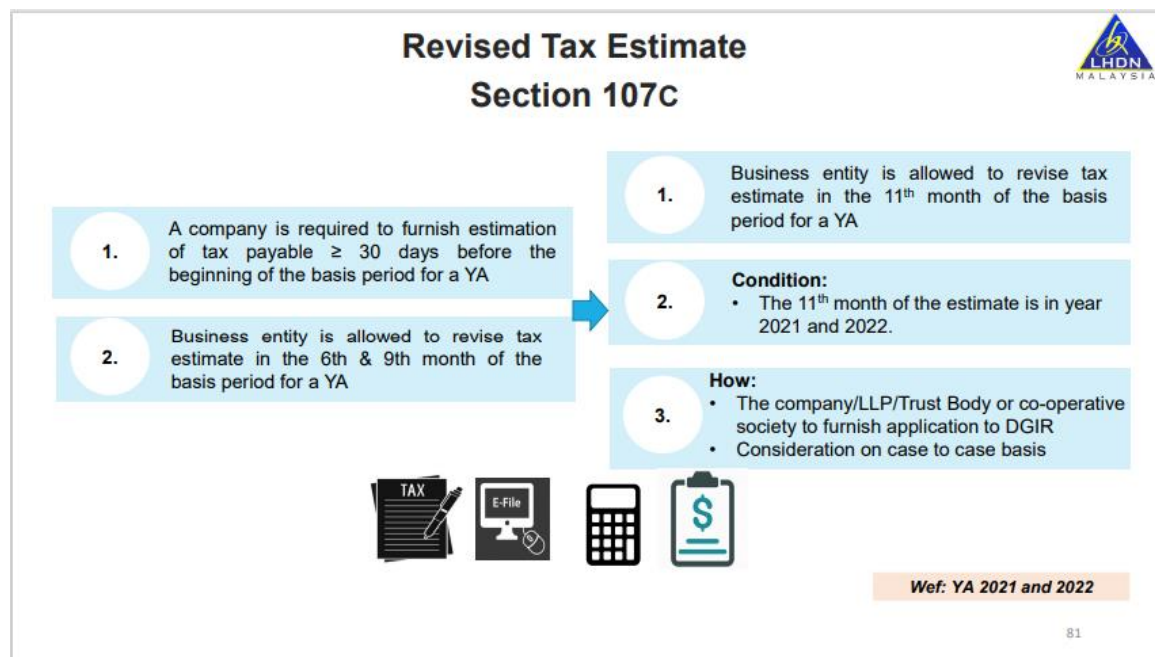
165. Whenever I met MSME entrepreneurs, they expressed hope and confidence that 2022 will be the year to invigorate their businesses. Nevertheless, after two years of being shrouded by the COVID-19 pandemic, they still require assistance to recover and fully bounce back. To help entrepreneurs get in motion, the Government proposes the following:

First: ;

Second: that all businesses are allowed to amend the estimated income tax payable on the 11th month before 31 October 2022;

Third: ; and

Fourth:



Source: IRB National Tax Seminar 2021

Comments:

- a. We understand that the 11th month revision is given to assist companies impacted by Cukai Makmur. The proposal currently provides that the companies will qualify for the 11th month revision as follows:
- YA 2021 - Companies with financial year ending 31 December 2021
 - YA 2022 - Companies with financial year ending January 2022 to November 2022

Please consider extending the special revision to also apply to companies with financial year ending 31 December 2022.

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Maklum Balas LHDNM:

Syarikat, PLT, badan amanah dan koperasi adalah dibenarkan untuk meminda anggaran cukai pendapatan (CP204) pada bulan ke-11 tempoh asas bagi TT 2021 dan 2022 sebelum 31 Oktober 2022. Bagi pembayar cukai yang tidak dapat menikmati inisiatif ini, pembayar cukai dibenarkan untuk meminda anggaran cukai pada bulan ke-6 atau bulan ke-9 tempoh asas berdasarkan peruntukan sedia ada.

- b. We request the tax authorities to consider making this proposal a permanent feature and allow for the revision of tax estimate to be made in the 12th month instead of the 11th month.

Maklum Balas MOF:

MOF telah memberikan konsesi ini kepada perniagaan dengan mengambil kira kesan COVID-19 dan ini adalah secara *one-off*. MOF tidak bercadang untuk menjadikan langkah ini sebagai *permanent feature* kerana ianya akan memberi kesan kepada aliran tunai Kerajaan di mana perniagaan boleh membuat perancangan cukai secara tidak langsung untuk tidak membayar dari bulan ke-6 sehingga bulan ke-11/12. Selain itu, pembayar cukai telahpun disediakan kemudahan untuk meminda pada bulan ke-6 dan ke-9 dan ianya memadai.

- c. As of now, the IRB e-CP204A system has yet to allow companies with FYE 31 December 2021 to revise its YA 2021 submitted tax estimate in November 2021 i.e. the 11th month.

We propose that the Government extend 1 more month i.e. until 31 December 2021 for companies with FYE 31 December 2021 to revise its submitted YA 2021 tax estimate, if the IRB e-CP204A system is not ready in time.

Maklum Balas LHDNM:

Bagi syarikat yang mempunyai tahun kewangan berakhir pada 31 Disember 2021, lanjutan masa adalah dibenarkan sehingga 10 Disember 2021 untuk meminda anggaran cukai bagi TT2021 (Rujuk Soalan Lazim Pindaan Anggaran Cukai Kena Dibayar (CP204) pada bulan ke-11 Tempoh Asas bagi TT 2021 dan 2022 di Portal Rasmi LHDNM).

- d. Since the revision in the 11th month is not included in the Finance Bill, what are the interim measures that the taxpayers could apply?

Maklum Balas LHDNM:

Pembayar cukai boleh merujuk kepada Soalan Lazim Pindaan Anggaran Cukai Kena Dibayar (CP204) pada bulan ke-11 Tempoh Asas bagi TT 2021 dan 2022 di Portal Rasmi LHDNM.

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5.2 Appendix 34 – Extension of Tax Incentive for Renovation and Refurbishment of Business Premises

Current Position

The cost of renovation and refurbishment of business premises is given tax deduction on allowable expenses up to RM300,000 incurred from 1 March 2020 until 31 December 2021.

Proposal

To further assist the company's cash flow as well as to encourage to improve their business premises facilities, it is proposed the existing tax incentives be extended until 31 December 2022.

Effective Date

For renovation and refurbishment cost of business premises incurred from 1 January 2022 to 31 December 2022.

Comments:

- a. The Budget Speech indicates that the extension of incentive is on renovation cost for SOP compliance measures such as improving air ventilation. In this respect, kindly confirm that the Income Tax (Costs of Renovation and Refurbishment of Business Premise) Rules 2020 [P.U. (A) 381/2020] will be amended by extending it to YA 2022 and expanding its scope to cover air ventilation.

Maklum Balas LHDNM:

Kos pengubahsuaian seperti menambah baik pengudaraan (*air ventilation*) boleh dibenarkan sekiranya kos pengudaraan dilakukan mengikut item-item yang disenaraikan dalam Jadual Pertama dalam P.U.(A) 381/2020.

- b. Based on the IRB's clarification during the National Tax Seminar 2021 held on 9 November 2021, the allowable tax deduction of up to RM300,000 is based on the accumulated amount from 1 March 2020 until 31 December 2021. The 2022 Budget proposal is to extend the period of the incentive to 31 December 2022. However, the allowable tax deduction will remain the same (i.e., RM300,000 for costs incurred from 1 March 2020 until 31 December 2022).

We propose for the Budget 2022 proposal to include an additional tax deduction of RM300,000 for costs incurred between 1 January 2022 to 31 December 2022 (i.e., another RM300,000 in addition to the existing RM300,000 permitted for costs incurred between 1 March 2020 until 31 December 2021).

Maklum Balas LHDNM & MOF:

Perundangan subsidiari berkaitan lanjutan tempoh bagi kos Pengubahsuaian dan Pembaharuan Premis Perniagaan yang dilakukan sehingga 31.12.2022 telah

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diwartakan melalui P.U.(A) 481/2021 yang merujuk kepada perbelanjaan yang layak terhad sehingga RM300,000 yang dibuat mulai 1 Mac 2020 hingga 31 Disember 2022.

Lanjutan tempoh sehingga 31 Disember 2022 bertujuan untuk membantu dan menggalakkan syarikat menambah baik fasiliti premis perniagaan dalam fasa pemulihan pasca COVID-19 terutama yang tidak berkesempatan melakukannya bagi tempoh 1 Mac 2020 hingga 31 Disember 2021.

- c. Can the certification of the renovation and refurbishment by external auditor cost be dispensed with since any wrongful claims will be subject to tax adjustment and penalties during tax audit? The certification by an auditor incurs additional cost and time by the company which is not efficient and not in line with the principle of allowing companies to claim an additional cost.

Maklum Balas LHDNM:

Memandangkan kos pengubahsuaian ini merupakan potongan khas yang terdiri daripada perbelanjaan yang tidak dibenarkan di bawah peruntukan subseksyen 33(1) ACP, potongan elaun modal di bawah Jadual 2 atau di bawah Jadual 3 ACP, maka adalah wajar potongan khas ini mestilah diperakui oleh juruaudit luar seperti yang disebut dalam Kaedah 2, P.U.(A) 381/2020.

- d. The Institutes applaud the extension for renovation and refurbishment cost of business premises incurred from 1 January 2022 to 31 December 2022.

However, the Institutes are of the view that the cost of alteration or renovation of business premises, which are incurred solely and exclusively for the purpose of a business, should be allowed as qualifying expenditure eligible for capital allowances instead of a deduction and that it should be given as and when incurred. This will assist in the active promotion of the services and retail sectors in driving the country towards becoming a high-income economy. Costs incurred for renovation should be allowed for capital allowance and not just for a limited period to encourage companies to improve their premises to deliver better services to their customers.

Maklum Balas LHDNM:

Kos pengubahsuaian atau perubahan yang dilakukan terhadap kos pembinaan bangunan bagi sesebuah premis perniagaan adalah perbelanjaan modal yang tidak layak dituntut sebagai elaun modal di bawah Jadual 3 ACP.

Namun begitu, jika kos tersebut dilakukan bagi maksud perbelanjaan yang layak terhadap sesebuah bangunan yang layak disebut sebagai bangunan industri, maka kos ini boleh dituntut sebagai elaun bangunan industri.

Penerangan lanjut berhubung perbelanjaan yang layak ini boleh dirujuk kepada Ketetapan Umum No. 3/2018.

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5.3 Appendix 22 – Tax Incentives for Digital Ecosystem Acceleration Scheme

Current Position

Companies carrying out approved activities under the Multimedia Super Corridor (MSC) Malaysia are given tax incentives from 1 January 2019 as follows:

i. Premises within the MSC location

- a. Income tax exemption of 100% for 10 years; or
- b. Investment Tax Allowance of 100% of the qualifying capital expenditure to be set-off against 70% of the statutory income for each year of assessment for 5 years.

ii. Premises outside the MSC location

Income tax exemption of 70% for 5 years.

In addition, the Government also provides tax incentives for companies relocating their operation to Malaysia and undertaking new investment in selected services sectors including companies adapting Industrial Revolution 4.0 technology and digitalisation as follows:

i. New company

Income tax rate of 0% to 10% for up to 10 years.

ii. Existing company with new services segment

Income tax rate of 10% for up to 10 years.

For applications received by Malaysian Investment Development Authority (MIDA) from 7 November 2020 to 31 December 2022.

Proposal

To support the comprehensive development of national digital ecosystem, it is proposed tax incentives for activities under Digital Ecosystem Acceleration Scheme (DESAC) be given as follows:

i. Digital Technology Provider

a. New company

Income tax rate of 0% to 10% for up to 10 years.

b. Existing company that diversifies in new service activities or new service segments

Income tax rate of 10% for up to 10 years.


ii. Digital Infrastructure Provider

Investment Tax Allowance (ITA) of 100% on capital expenditure for qualifying activities for up to 10 years. This allowance can be set-off against up to 100% of statutory income.


Effective Date

For application received by Malaysian Investment Development Authority (MIDA) from 30 October 2021 to 31 December 2025.

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Policy	Tax Incentives	Qualifying Activities	Application Period	Period
Current	100% income tax exemption	1. MSC	Up to 31/12//2022	10 years
	ITA of 100% deductible 70% of SI	Premise - in MSC		5 years
	70% income tax exemption	Premise - outside MSC		10 years
	Tax rate – 0% - 10%	2. Company relocating operation to Malaysia • New company	Up to 31/12//2022	10 years
	Tax rate – 10%	• Existing company		10 years
[NEW] Proposal	Tax rate – 0% - 10% [S.65B, Par. 6(1)(m) & Par.2, Part XVII, Sch.1, ITA 1967]	1. Digital technology provider • New company	Up to 31/12//2022	10 years
	Tax rate – 10% [S.65B, Par. 6(1)(m) & Par.2, Part XVII, Sch.1, ITA 1967]	• Existing company		10 years
	ITA of 100% deductible 70% of SI [P.U(A) 113/2006] is applicable	2. Digital infrastructure provider		10 years



Source: IRB National Tax Seminar 2021

Comments:

- a. Digital Infrastructure Provider – Investment Tax Allowance incentive announced during the Budget is 100% qualifying capital expenditure against 100% statutory income. The IRB’s slides state utilisation of 70% statutory income instead. Please confirm the applicable rate is 100%.

Maklum Balas LHDNM:

Galakan bagi Penyedia Infrastruktur Digital (Digital Infrastructure Provider) adalah pengecualian cukai 100% dalam bentuk Elaun Cukai Pelaburan (ECP) ke atas perbelanjaan modal layak dan ditolak sehingga 100% daripada pendapatan statutori aktiviti yang layak. Penjelasan lanjut pelaksanaan insentif ini diterangkan dalam Garis panduan berhubung galakan ini yang akan dikeluarkan oleh MIDA.

- b. Please confirm that the incentive application period is up to 31 December 2025 as per the Budget Speech.

Maklum Balas LHDNM:

Ya, tempoh permohonan bagi galakan ini adalah sehingga 31 Disember 2025.

- c. What is the definition of digital technology provider and digital infrastructure provider, types of qualifying service activities, what are the qualifying criteria, any exclusions, etc?

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Maklum Balas LHDNM:

Polisi bagi galakan ini sedang dimuktamadkan oleh Kementerian Kewangan dan garis panduan bagi menjelaskan definisi Penyedia Teknologi Digital (Digital Technology Provider) dan Penyedia Infrastruktur Digital (Digital Infrastructure Provider), jenis aktiviti yang layak, kriteria atau sebarang ketidakpakaian bagi galakan ini akan dikeluarkan oleh MIDA.

- d. [Please confirm that these applicants do not have to be located within the designated MSC cyber centres / cities.](#)

Maklum Balas LHDNM:

Ya, galakan ini tidak mensyaratkan pemohon perlu bertempat di kawasan bandar siber/pusat siber Koridor Raya Multimedia (*MSC cyber centres/cities*). Syarat-syarat lain akan diperjelaskan dalam garis panduan yang akan dikeluarkan oleh MIDA.

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5.4 Tax Incentive for Self-Funded Booster Vaccines - Paragraph 40 of the 2022 Budget Speech

38. Most importantly, the **National COVID-19 Immunisation Programme will be further enhanced** to provide the third dose of the COVID-19 vaccine as a booster shot to all adults alongside continuing the vaccination of children aged 12 to 17 years old. The Government has signed agreements to procure 88 million doses, which is equivalent to 140% of our population and this is sufficient to provide a third dose to all residents aged 12 years old and above.

39. At this juncture, I would like to express my appreciation to all Yang Berhormat, who have unanimously approved the amendment to the Act, to allow the usage of **Kumpulan Wang Amanah Negara** funds to finance the procurement of COVID-19 vaccines. With the amendment, the Government will optimise its resources to fulfil the vaccination needs of the nation in ensuring our recovery and build resilience of the *rakyat* and businesses.

40. For next year, the Government proposes to provide individual tax relief and tax deduction to employers on costs associated with the adoption of self-funded booster vaccines.

Comments:

- a. Based on the MOF's response to CTIM on 8 October 2021, the deduction of COVID-19 vaccination cost is covered under the Income Tax (Deduction for Expenses in relation to the Cost of Personal Protective Equipment) [P.U. (A) 269/2021]. Kindly clarify if the proposed deduction to be given to employers on costs associated with the self-funded booster vaccines will also be covered under the same P.U. order.

Maklum Balas LHDNM:

Perbelanjaan bagi kos berkaitan dengan pengambilan vaksin penggalak oleh pekerja adalah perbelanjaan yang dibenarkan potongan di bawah subseksyen 33(1) ACP dalam mengira pendapatan larasan perniagaan majikan.

- b. The costs incurred by employers for providing booster vaccines to their employees should already qualify as a deduction under S.33(1) of the ITA 1967. Therefore, the proposal in paragraph 40 of the 2022 Budget Speech should be for a further deduction. Please confirm.

Maklum Balas LHDNM:

Perbelanjaan bagi kos pengambilan vaksin penggalak oleh pekerja dibenarkan di bawah subseksyen 33(1) ACP. Tiada potongan tambahan dibenarkan.

- c. With regard to the proposal in paragraph 40 of the 2022 Budget Speech which says "For next year", please confirm if the deduction allowed is referring to expenses incurred in the calendar year 2022 or YA 2022?

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Maklum Balas LHDNM:

Perbelanjaan adalah dibenarkan sebagai potongan di bawah subseksyen 33(1) ACP dalam tahun taksiran di mana perbelanjaan dilakukan (*incurred*).

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5.5 Appendix 29 – Extension of Tax Incentive for the Purchase of Tourism Vehicles

Current Position

Capital expenditure incurred on the purchase of new locally assembled excursion bus is eligible to claim Accelerated Capital Allowance (ACA) with an initial allowance of 20% and an annual allowance of 40%. The ACA can be claimed from the year of assessment 2020 until the year of assessment 2021.

Proposal

To assist and support the tourism industry in Malaysia affected by the COVID-19 pandemic, it is proposed the existing tax incentive be extended for 3 years.

Effective Date

From the year of assessment 2022 until year of assessment 2024.

Comments:

For tourism vehicles purchased through hire purchase financing arrangement, kindly confirm that even though the hire purchase financing agreement was entered before YA 2020, the qualifying tour operator is still eligible to claim accelerated capital allowance on the capital portion of instalment payments made during the qualifying period.

Maklum Balas LHDNM:

Bagi bas persiaran yang diperolehi dengan kaedah perjanjian sewa beli, galakan ini terpakai bagi bayaran prinsipal yang dibuat dalam tempoh asas suatu tahun taksiran 2020 sehingga 2024 ke atas bas persiaran yang diperolehi dalam tempoh galakan tersebut.

Perundangan subsidiari berkaitan adalah Kaedah-kaedah Cukai Pendapatan (Elaun Modal Dipercepat) (Bas Persiaran) 2021 [P.U.(A) 291/2021] dan Kaedah-kaedah Cukai Pendapatan (Elaun Modal Dipercepat) (Bas Persiaran) (Pindaan) 2022 [P.U.(A) 9/2022].

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5.6 Appendix 32 – Extension of Tax Rebate for Establishment of New Entities for Micro, Small and Medium Enterprises

Current Position

Micro, Small and Medium Enterprises (MSMEs) with a paid-up capital of RM2.5 million and below with annual sales turnover not exceeding RM50 million are subjected to income tax rate of 17% for the first RM600,000 of chargeable income and the remaining is subjected to income tax rate of 24%.

To stimulate the business activities of MSMEs, newly established MSMEs are given income tax rebate of up to RM20,000 for each year of assessment, for the first 3 years of assessment subject to the following conditions:

- i. MSMEs registered under the Companies Act 2016;
- ii. paid-up capital of RM2.5 million and below with annual sales turnover not exceeding RM50 million;
- iii. the amount of rebate that MSMEs eligible to claim is equivalent to capital expenditure or operating expenditure incurred in each year of assessment subject to a maximum amount of RM20,000 per year of assessment;
- iv. unutilised tax rebate in the current year of assessment are not allowed to be carried forward;
- v. the new entity must use separate plant, equipment and facilities and not to be transferred from the existing company or its related companies; and
- vi. other pre-determined conditions.

For new MSMEs established and operate from 1 July 2020 to 31 December 2021.

Proposal

To further implement the national economic recovery agenda and to ensure the sustainability of the MSMEs business ecosystem, it is proposed the establishment and operational period for new MSMEs including MSMEs that perform business activities through online platform be extended to 31 December 2022.

Effective Date

New Micro, Small and Medium Enterprises established and operate not later than 31 December 2022.

Comments:

In the 2021 Budget Dialogue, the IRB has provided some additional conditions in order to enjoy the said rebate. However, the relevant statutory order has not yet been gazetted to-date. Kindly advise if the relevant statutory order will be gazetted soon, in order for the qualifying MSMEs to claim the rebate in the upcoming YA 2021 tax return.

Maklum Balas LHDNM:

P.U.(A) 504/2021 telah diwartakan pada 31 Disember 2021.

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5.7 Appendix 35 – Extension of further tax deductions on employees' accommodation expenses (Safe@Work)

Current Position

Under PEMERKASA, further tax deduction is given under Safe@Work programme to manufacturing and manufacturing-related service companies on rental expenses of premises used for employees' accommodation in accordance to the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 (Act 446). The eligible rental expenditure is limited up to RM50,000 per company be given from 1 January 2021 to 31 December 2021.

Proposal

To encourage manufacturing and manufacturing-related services companies to comply with the Standard Operating Procedures (SOPs) under the National Recovery Plan and Safe@Work programme led by the Ministry of International Trade and Industry, it is proposed the existing tax incentive be extended for 1 year.

Effective Date

For rental expenses of premises incurred from 1 January 2022 to 31 December 2022.

Comments:

Please confirm that the further deduction of up to RM50,000 is in respect of costs incurred from 1 January 2022 to 31 December 2022, in addition to the further deduction allowed for costs incurred from 1 January 2021 to 31 December 2021 (i.e., the RM50,000 cap is not based on the accumulated amount from 1 January 2021 to 31 December 2022).

For example, ABC Sdn Bhd (with financial year ended 31 December) has claimed the further deduction of RM50,000 for YA 2021. ABC Sdn Bhd would still be eligible to claim the further deduction of up to RM50,000 for YA 2022.

Maklum Balas LHDNM:

Perbelanjaan yang dilakukan oleh majikan bagi penyediaan penginapan pekerja dibenarkan sebagai potongan tambahan dalam mengira pendapatan larasan suatu perniagaan. Amaun perbelanjaan yang dibenarkan adalah dihadkan kepada RM50,000 bagi perbelanjaan yang dilakukan dalam tempoh 1.1.2021 sehingga 31.12.2022.

Merujuk kepada contoh yang dikemukakan, ABC Sdn. Bhd. tidak layak menuntut perbelanjaan tambahan dalam TT 2022 (sekiranya perbelanjaan dilakukan dalam tahun tersebut) kerana ABC Sdn. Bhd. telah menuntut had maksimum RM50,000 dalam TT 2021.

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5.8 Initiative 2: Revenue Sustainability Measures - Paragraph 245 of the 2022 Budget Speech

Initiative 2: Revenue Sustainability Measures

245. The second initiative is a **revenue sustainability measure** and in line with international regulations, the Government proposes to provide equitable tax treatment as below:

First :

Second :

Third:

Fourth:

Fifth : ;

Sixth: where the Tax Compliance Certificate issued by the Inland Revenue Board Malaysia be made as part of pre-requisite for companies to participate in government procurement beginning 1 January 2023; and

Seventh:

Comments:

- a. A set of guidelines and frequently asked questions (“FAQ”) should be issued to set out the following: -
 - i. The scope of Tax Compliance Certificate (“TCC”) and statutory provision;
 - ii. Eligibility/ criteria/ conditions in obtaining TCC;
 - iii. Objectives and benefits of obtaining the TCC;
 - iv. Process and procedures for the application and issuance of TCC (including processing time, etc.);
 - v. Code of conduct: Rights and responsibilities of the IRB, taxpayers and tax agents in respect of the application and process of TCC;
 - vi. Complaint’s channel; and
 - vii. Appeals if the application is rejected.

The draft guidelines should be circulated to the relevant stakeholders, professional bodies and industry players for consultation before it is published.

Maklum Balas LHDNM:

LHDNM mengambil maklum berhubung cadangan pihak persatuan.

- b. The TCC should be issued to taxpayers notwithstanding tax technical differences on assessments raised by the IRB. The certificate should be in respect of compliance on operational matters such as CP204 payments and balance of tax payments. It should not be in respect of compliance on payments arising from additional assessments for example as those are subject to appeal otherwise it will have very wide implications and consequences on the tax landscape.

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Maklum Balas LHDNM:

LHDNM mengambil maklum berhubung cadangan pihak persatuan.

Dalam hal pematuhan bayaran cukai pendapatan, mana-mana pembekal atau syarikat yang telah diberi kelulusan untuk pembayaran cukai secara ansuran turut akan dikategorikan sebagai pembayar cukai yang patuh dengan syarat mereka mestilah mematuhi jadual pembayaran ansuran yang telah ditetapkan oleh LHDNM.

- c. There should be additional merits given for companies that are on co-operative compliance programmes and voluntary audit review with the IRB and such additional merits should be taken into account in the tender evaluation.

Maklum Balas LHDNM:

LHDNM mengambil maklum berhubung cadangan pihak persatuan.

- d. The tender process for government procurement can be a short one whereby all the tender documents need to be submitted within 30 days or 60 days. Where the TCC is made part of the tender document requirement, it may disrupt the tender process if the timing to get the TCC completed and done is too long. It may not be healthy for the industry.

Maklum Balas LHDNM:

LHDNM mengambil maklum berhubung cadangan pihak persatuan.

C. Appendix – Implementation Issues in relation to Foreign Source Income

As outlined in Part A, we are of the view the territorial regime should be maintained with substance requirements imposed. However, in the event the changes proposed in the Finance Bill 2021 are implemented, we bring the following issues for consideration prior to implementation. Kindly note these issues are not exhaustive as these are gathered only within weeks. We could provide a more complete list at a future time if required.

1. Issues arising from repeal of exemption of foreign source income received in Malaysia by a person who is resident in Malaysia [Amendment of Paragraph 28 of Schedule 6 (w.e.f. 1 January 2022)]

Comments:

1.1 Computational aspects of reporting FSI received in Malaysia

Guidance should be provided to taxpayers on how to report their FSI received in Malaysia, in particular what is to be brought into the tax computation i.e.:

- Whether the amount remitted is taken as 'gross income', from which the expenses incurred out of Malaysia is deducted to arrive at 'adjusted income' and so on, OR is the computation expected to be reconstructed taking into account foreign expenses.

Maklum Balas LHDNM:

LHDNM sedang menyediakan garis panduan berhubung pendapatan yang diterima dari luar negara. Garis panduan tersebut akan merangkumi contoh pengiraan yang bersesuaian untuk kefahaman pembayar cukai.

- Would foreign exchange differences need to be excluded?

Maklum Balas LHDNM:

Perbezaan terhadap tukaran matawang asing adalah bersifat modal sekiranya terealisasi daripada aset / modal (i.e wang). Manakala perbezaan tukaran matawang asing bersifat hasil sekiranya terealisasi daripada stok atau item perdagangan lain (i.e stok barangan). Sehubungan itu, *fact and circumstances* perlu diteliti berhubung perkara ini. Rujukan juga boleh dibuat kepada Ketetapan Umum No.12/2019.

It would be much appreciated if the tax return form and guidebook for YA 2022 can be updated with the above-mentioned computational aspects of reporting FSI at the soonest. Also, we request the same to be published at earlier than the usual schedule

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as we may need to make significant changes to our reporting systems to accommodate the new regime.

1.2 “Received” for the purpose of foreign source income received in Malaysia

The IRB verbally clarified at the National Tax Seminar 2021 that the word “received” for the purpose of FSI received in Malaysia means remitted, transmitted or brought into Malaysia. We understand this includes physically received or received into bank account only. Please confirm.

Maklum Balas LHDNM & MOF:

Pendapatan FSI yang diterima di Malaysia adalah merujuk kepada pendapatan yang dibawa masuk ke Malaysia dalam bentuk tunai atau/dan pindahan dana.

1.3 Foreign tax credit

a. Foreign tax credit in respect of foreign dividend income

As some Double Taxation Agreements provide credit for foreign taxes suffered that also includes underlying tax paid on the profits out of which the dividends are paid, this can be an issue where dividends are received from overseas companies. Could the IRB please provide a computation for determining underlying taxes and update its existing PR.

In particular it would be useful if the PR could be updated with a computation of the underlying tax where the foreign company paying the dividend has itself received dividends from other overseas companies. It would also be important for the IRB to provide illustrations to allocate out of which year’s profits dividends are deemed to be paid by the foreign company.

Maklum Balas LHDNM:

Pendapatan dividen luar negara yang diremitkan ke Malaysia dalam tempoh 1 Januari 2022 hingga 31 Disember 2026 yang memenuhi syarat-syarat tertentu akan mendapat pengecualian cukai. Oleh itu, kredit cukai tidak layak dituntut. Manakala bagi yang tidak memenuhi syarat, yang mana pendapatan dividen luar negara yang diremitkan ke Malaysia tertakluk kepada cukai, kredit cukai termasuk *underlying taxes* mengikut syarat-syarat dalam Perjanjian Pengelakan Percukaian Dua kali (PPPDK) layak dituntut.

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b. Extending time bar from claiming foreign tax credit

- i. The current 2-year time bar from claiming foreign tax credit should be extended. This is to allow more time to gather proof of foreign tax payment, especially for income which arose many years ago.

Any time frame should be in line with the 7-year record keeping time bar imposed in Malaysia as well as what is commonly practised in other jurisdictions.

Maklum Balas LHDNM:

Menurut perenggan 9 Jadual 7 ACP, kredit cukai untuk suatu tahun taksiran mesti dituntut dalam tempoh dua (2) tahun selepas akhir tahun taksiran itu (tahun taksiran di mana pendapatan tersebut diremitkan). Penjelasan had masa tuntutan kredit cukai boleh dirujuk dalam Ketetapan Umum No 11/2021.

- ii. Paragraph 9 of Schedule 7 provides a 2 years' time period to claim bilateral credit. It is our understanding that the 2 years is from the year in which the income is assessable to Malaysia rather than 2 years from the time the foreign tax is assessed or paid. For example consider the following:

Example

Income is derived outside Malaysia in 2017. Foreign tax is charged on it and paid in 2017. The income is remitted into Malaysia in 2023. Please confirm that the bilateral credit in respect of the income remitted can be claimed in the YA 2023 tax return or within 2 years after the end of YA 2023 based on the provisions of paragraph 9 of Schedule 7 of the ITA 1967.

Maklum Balas LHDNM:

Pemahaman pihak persatuan adalah teratur.

c. Computation of bilateral tax credit

According to Schedule 7 of the ITA 1967 and the PR No. 11/2011, the computation of bilateral credit is based on the formula below:

Steps to determine bilateral credit

- (i) *Computation of the proportion of statutory income in respect of foreign income*

The formula is as follows:

$$\frac{\text{Foreign income (gross)}}{\text{Foreign (gross) and Malaysian income (gross) in respect of the same source}^1} \times \text{Statutory income in respect of the same source}$$

Foreign (gross) and Malaysian income (gross) in respect of the same source¹

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(ii) *Computation of bilateral credit*

$$\frac{\text{Foreign income (statutory income)}}{\text{Total income}} \times \text{Malaysian tax payable before bilateral / unilateral credit}$$

Please consider the following scenario:

X Sdn Bhd derived the following income from outside Malaysia in prior years:

- Profits from a branch overseas
- Interest income
- Capital gain from the sale of shares in a foreign subsidiary

X Sdn Bhd intends to remit some of the above funds from its overseas bank a/c to Malaysia in October 2022.

X Sdn Bhd has the following issues:

- i. The source of the funds cannot be identified.
- ii. It is not known if the funds suffered any foreign tax. The foreign tax rate applied if any is also unknown.
- iii. Assuming that the funds remitted to Malaysia are net of foreign tax suffered, X Sdn Bhd is not able to re-gross the amounts remitted due to (i) and (ii) above.

Questions:

In view of the above issues, how should the X Sdn Bhd compute tax payable / foreign tax credit on the funds remitted?

Maklum Balas LHDNM:

Adalah menjadi tanggungjawab pembayar cukai menentukan sama ada pendapatan yang diremitkan dari luar negara adalah pendapatan hasil atau modal. Bagi tujuan tuntutan kredit cukai, pembayar cukai perlu membuktikan bahawa pendapatan yang diremitkan telah dikenakan cukai luar negara.

Can the MOF / IRB consider allowing taxpayers to assess the above funds remitted to Malaysia to Malaysian tax based on the actual (net) amount remitted if the bilateral / unilateral credit is not claimed?

Maklum Balas LHDNM:

Dipersetujui bahawa isu pendapatan luar negara yang diterima di Malaysia ini akan dibincangkan dalam satu perbincangan berasingan yang akan ditetapkan kelak.

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d. Remittance of foreign branch profits (with foreign bank account)

In this example, MY Co and MY Co (SG branch) have December financial year-end. The profile of MY Co and MY Co (SG Branch) respectively is set out below:

MY Co

Financial year-end ("FYE"): 31 December 2022

YA: 2022

Filing due date: 31 July 2023

MY Co (SG branch)

FYE: 31 December 2022

YA: 2023 (Singapore adopts a preceding year basis of taxation)

Filing due date: 30 November 2023

My Co (SG Branch) maintains a bank account in Singapore to which its customers make payments, and from which all operational expenses of the branch is paid for.

A portion of the profits derived by MY Co (SG Branch) during YA 2023 is to be remitted to Malaysia in December 2022.

- i. Clarification is sought on whether remittance from a foreign branch bank a/c to a Malaysian bank a/c of entity would fall within scope of tax per the IRB's interpretation.

Maklum Balas LHDNM:

Dipersetujui bahawa isu pendapatan luar negara yang diterima di Malaysia ini akan dibincangkan dalam satu perbincangan berasingan yang akan ditetapkan kelak.

- ii. If yes to (i) above, we would appreciate if guidance can be given on the manner in which the amount remitted is required to be reflected in the tax computation.

Maklum Balas LHDNM :

Dipersetujui bahawa isu pendapatan luar negara yang diterima di Malaysia ini akan dibincangkan dalam satu perbincangan berasingan yang akan ditetapkan kelak.

- iii. Furthermore when MY Co files its tax return for YA 2022, MY Co cannot claim a foreign tax credit in its tax return for YA 2022 in respect of the foreign branch profits remitted to Malaysia as such profits would not have been subject to tax in Singapore at that time.

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It appears that MY Co will need to revise its tax return for YA 2022 to claim any foreign tax credit after MY Co (SG Branch) files its tax return (assuming November 2023). This will undoubtedly create additional administrative burden to taxpayers. Hence, we would urge the MOF / IRB to address this issue, e.g. to allow taxpayers to claim any foreign tax credit in the tax return for YA 2023 (computed based on the figures for YA 2022).

Maklum balas LHDNM :

Tuntutan bagi kredit cukai hendaklah mengikut peruntukan undang-undang sedia ada. Tempoh masa bagi tuntutan kredit cukai di bawah perenggan 9 Jadual 7 ACP adalah dalam tempoh dua tahun iaitu mulai tahun taksiran pendapatan tersebut diremitkan.

Dalam keadaan ini, MY Co perlu meminda taksiran 2022 sekiranya ingin menuntut kredit cukai tersebut.

1.4 Ministerial exemption on dividend income

Dividend income is often paid out of after-tax profits. Hence, taxpayers will be subject to double taxation if foreign dividend income remitted to Malaysia is subject to tax again in Malaysia. This is not an equitable treatment for taxpayers.

Even if the FSI exemption provision is repealed, the following foreign source dividend should be exempted:

- a. Foreign source dividend income received by a resident individual in Malaysia from Malaysian tax;
- b. Foreign source dividend income received by Malaysian residents (other than individuals) in Malaysia from Malaysian tax, provided that the headline tax rate of the foreign jurisdiction from which the dividend income is received is at least 15%; and
- c. Participation exemption where the recipient of dividend possesses significant shareholding in the foreign company that pays the dividend.

Several countries exempt foreign source dividend income under their participation exemption rules e.g. the Netherlands, Spain, the United Kingdom, Japan, Thailand, etc.

We hope that tax exemption could be considered in order for Malaysia to be competitive with our neighboring countries.

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Maklum Balas LHDNM:

Isu ini telah ditangani berdasarkan keputusan polisi memberikan pengecualian cukai bagi pendapatan dividen luar negara yang diterima oleh syarikat pemastautin dan PLT pemastautin.

1.5 Other issues

We seek clarification on the following scenarios:

- a. Mr W had been working overseas since 1990 and invested his employment income derived overseas into investment in foreign countries such as real property, fixed deposit, share, unit trust etc. The passive income derived from these investments were ploughed back into overseas investment annually. He retired in 2020 and has been a tax resident in Malaysia since then. He intends to realise all his overseas investments and remit the proceed from realization of investment into Malaysia on 1 January 2022.

Under this scenario, such remittance should not be subject to tax given the remittance is capital in nature. Kindly confirm.

Maklum Balas LHDNM:

Sekiranya individu (Mr. W) dapat membuktikan pendapatan hasil ini telah dikenakan cukai di luar negara, remitan tersebut adalah dikecualikan mulai 1 Januari 2022 hingga 31 Disember 2026.

- b. Mr X works overseas (he resides overseas for most of the year) but transfers funds from his overseas employment income on a monthly basis to his wife in Malaysia for household expenses etc.

Please confirm that the funds transferred are not subject to Malaysian tax.

Maklum Balas LHDNM:

Secara umumnya, pemberian kepada pasangan yang merujuk *household expenses* adalah tidak dikenakan cukai.

- c. Mr Y has been working overseas since 2010 and decided to return Malaysia for good in 2022. He intends to uplift the fixed deposit placement with bank located overseas (source from his employment income derived overseas all these years) and remit the fund into Malaysia in 2024.

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Such remittance (principal portion) should not be subject to tax given the remittance is proceed arising from uplifting of fixed deposit placement which is capital in nature.

Maklum Balas LHDNM:

Secara umumnya, penerimaan bersifat modal tidak dikenakan cukai.

- d. Mr Z, a Malaysian tax resident, invested in foreign unit trust fund and remitted the income distributed to him into Malaysia.

Please clarify whether the distributed amount received in Malaysia is subject to tax.

Maklum Balas LHDNM:

Sekiranya Mr. Z melabur di dalam unit amanah dana asing melalui unit amanah yang bermastautin, maka agihan keuntungan unit amanah yang diterima oleh pemastautin Malaysia adalah dianggap sebagai terbit dari Malaysia.

Sebaliknya, sekiranya Mr. Z melabur secara langsung kepada unit amanah dana asing di luar negara, maka agihan keuntungan yang dibawa masuk adalah merupakan remitan ke Malaysia dan tertakluk kepada cukai pendapatan. Mr. Z hendaklah membuktikan pendapatan hasil ini telah dikenakan cukai di luar negara bagi mendapatkan pengecualian cukai mulai 1 Januari 2022 hingga 31 Disember 2026.

- e. Are monthly support and periodical gifts from children (from employment and other income) in year 2022 onwards to parents (tax resident in Malaysia) deemed as income remitted (transferred to Malaysian bank account of parent) and taxable on the recipient or the remitter? The children who are remitting the money may be resident in certain years and non-resident in certain years.

Maklum Balas LHDNM:

Secara umumnya, pemberian daripada anak kepada ibu bapa adalah tidak tertakluk kepada cukai.

- f. Will those foreigners who come and stay in Malaysia next year under MM2H or Malaysian professionals working abroad who return to Malaysia under the Returning Expert Programme (“REP”) be taxable because they need to bring in money to either buy some property or place in the bank, assuming their physical presence in Malaysia is more than 182 days in 2022? If so, this will not be in line with the spirit of encouraging high net worth foreign individuals to make Malaysia as their 2nd home or Malaysian professionals working abroad to return to Malaysia under the REP.

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Maklum Balas LHDNM:

Isu ini telah ditangani berdasarkan keputusan polisi memberikan pengecualian cukai bagi semua pendapatan luar negara yang diremit oleh individu pemastautin mulai 1 Januari 2022 hingga 31 Disember 2026. Penelitan berhubung perkara ini akan dibuat sebelum pengecualian tamat dalam tahun 2027.

- g. For resident individual, all income derived from outside Malaysia during the period when he or she was not resident but remitted to Malaysia upon becoming tax resident should not be taxable. This is important in order not to tax past income as any change of tax policy should only apply prospectively.

More specifically, exemption should be given to Malaysians working in Singapore in respect of his / her employment income for all cases or only for those whose income is below certain amount (say, below RM100,000). Alternatively, these group of taxpayers are given an option to elect to pay a fixed gross tax rate of his / her Singapore employment income on accrued basis / derived basis effective 1 January 2022 instead of on remittance basis. This is to simplify records keeping and administrative works and for easier implementation.

Maklum Balas LHDNM:

Isu ini telah ditangani berdasarkan keputusan polisi memberikan pengecualian cukai bagi semua pendapatan luar negara yang diremit oleh individu pemastautin mulai 1 Januari 2022 hingga 31 Disember 2026. Penelitan berhubung perkara ini akan dibuat sebelum pengecualian tamat dalam tahun 2027.

- h. Where the foreign income is remitted after the transitional period (i.e. after July 2022), kindly advise whether any current year expenses incurred are allowable to be set off against such foreign income remitted if it relates to income derived from prior periods.

Example

A Sdn Bhd has a 31 December financial year end. It derived income from rental income of RM100,000 (net of expenses disbursed overseas) from its property located overseas from 2020 onwards. In 2023, A Sdn Bhd repatriated 3 years income (i.e. RM300,000).

The acquisition of the property was funded with a Malaysian loan for which the interest expense is RM150,000 per year.

Kindly confirm whether the amount of expenses deductible in 2023 is RM150,000 or RM450,000, subject to a limit of RM300,000.

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Maklum Balas LHDNM:

Dipersetujui bahawa isu pendapatan luar negara yang diterima di Malaysia ini akan dibincangkan dalam satu perbincangan berasingan yang akan ditetapkan kelak.

i. Attribution of expenses to income received in Malaysia from outside Malaysia

From 1 July 2022 onwards (taking into account the transitional provisions under the new S.6(1)(p) which is applicable until 30 June 2022), expenses wholly and exclusively incurred by that person in the production of such income should be deductible (pursuant to S.33(1) of the ITA 1967).

- i. Please confirm that income received in Malaysia from outside Malaysia is taxable when received, and in the YA in which it is received.

Maklum Balas LHDNM:

Ya, pemahaman pihak persatuan adalah teratur.

- ii. If item (i) is correct, please confirm whether expenses attributable to the income received in Malaysia from outside Malaysia can be claimed in the YA the said income is assessed to tax. This is notwithstanding that such expenses could have been incurred in prior YAs, during which the corresponding income was not received in Malaysia from outside Malaysia yet.

Maklum Balas LHDNM:

Dipersetujui bahawa isu pendapatan luar negara yang diterima di Malaysia ini akan dibincangkan dalam satu perbincangan berasingan yang akan ditetapkan kelak.

Please consider the following scenario:

- In YA 2018, A Berhad lent some funds to a subsidiary overseas (A Co) and earned interest income (i.e. income derived from outside Malaysia) amounting to RM1,000,000 equivalent. In the same YA, A Berhad also incurred interest expense amounting to RM800,000, which was attributable to the interest income. A deduction for such interest expense was not claimed in YA 2018. A Berhad intends to remit the said interest income to Malaysia in July 2022. Assuming that A Berhad is a December year end company, please confirm if the interest expense incurred in YA2018 of RM800,000 can be claimed against the interest income of RM100,000 (assuming no foreign tax suffered) in YA 2022.

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Maklum Balas LHDNM:

Dipersetujui bahawa isu pendapatan luar negara yang diterima di Malaysia ini akan dibincangkan dalam satu perbincangan berasingan yang akan ditetapkan kelak.

- Assuming A Berhad intends to remit half of the interest income (i.e. RM500,000), please confirm if A Berhad is to use a reasonable apportionment basis on the interest expense of RM800,000 (which in this example, would be RM400,000).

Maklum Balas LHDNM:

Dipersetujui bahawa isu pendapatan luar negara yang diterima di Malaysia ini akan dibincangkan dalam satu perbincangan berasingan yang akan ditetapkan kelak.

- j. What is the tax treatment on redemption of investments in overseas hedge funds in offshore financial centres (tax havens) when remitted to Malaysia in year 2022 onwards? The hedge fund undertakes the business of trading/investing in currency, commodity, etc. It could either make profits or losses.

Examples of investments products are as below:

Example (i): Investment in Growth Fund AA

A taxpayer invests USD20,000 in 2010 by subscribing to 200 units/shares @ NAV USD100. He incurs a subscription fee of 1%, i.e. USD200. The value of this investment is USD45,000 in July 2022. If the taxpayer redeems this investment in July 2022 and incurs a redemption fee of 0.5%, i.e. USD225, is the gain remitted to Malaysia considered a capital sum and not subject to tax as illustrated below?

Illustration

Investment on 1 January 2020 of 200 shares @ NAV USD100, less subscription fee amounts to USD19,800. Redeemed in July 2022 when unit/share price is at @ NAV USD225 amounting to USD45,000. After deducting a redemption fee of USD 225, the taxpayer receives USD44,775 in his Malaysian bank account. He thus makes a profit/gain of (USD44,775 - USD19,800) of USD24,975.

Question: Is the gain/profit remitted in July 2022 subject to tax? In the event, the taxpayer incurs a loss instead of a profit (when the share/unit price is lower than the original investment price), is the remittance subject to tax or deductible against other income remitted?

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Maklum Balas LHDNM:

Secara prinsipnya, sekiranya *hedge fund* menjalankan perniagaan perdagangan/pelaburan dalam matawang, komoditi dan seumpamanya keuntungan / kerugian daripada *hedging* adalah bersifat hasil. Jika pendapatan tersebut diremitkan ke dalam Malaysia maka pendapatan adalah tertakluk kepada cukai pendapatan dan perbelanjaan berkaitan boleh dibenarkan potongan.

Maklum balas terhadap contoh tidak dapat diberikan memandangkan fakta adalah tidak lengkap dan di mana punca perniagaan terbit (*derivation*) adalah tidak jelas.

Berhubung dengan kerugian, pencukaaian pendapatan luar negara adalah berhubung dengan pendapatan yang dibawa masuk ke dalam Malaysia. Namun, jika pendapatan tersebut dianggap terbit dari Malaysia, maka pendapatan atau kerugian perniagaan hendaklah dilaporkan dalam tahun taksiran diperoleh/berlaku tanpa mengambilkira sama ada pendapatan tersebut diremitkan atau tidak ke Malaysia.

[Example \(ii\): Investment in Fixed Fund BB](#)

[A taxpayer invests in the same hedge fund as above in a product that gives a fixed dividend/return of 10% per annum. He invested USD10,000 in 2010 and is entitled to a dividend / return of USD1,000 per year.](#)

[Every year, the taxpayer re-invests the dividend entitlement. In July 2022 the taxpayer redeems his investment \(capital + dividend\) and the total amount is USD34,500.](#)

[Question: Is the dividend/return of USD24,500 \(USD34,500 - USD10,000\) received in a Malaysian bank account taxable?](#)

Maklum Balas LHDNM:

Secara prinsipnya, penerimaan daripada realisasi pelaburan adalah merupakan penerimaan bersifat modal. Namun elemen pendapatan hasil iaitu dividen pelaburan masih boleh dikenakan cukai pendapatan.

Maklum balas terhadap contoh tidak dapat diberikan memandangkan fakta adalah tidak lengkap berhubung dengan kategori pembayar cukai, sama ada menjalankan perniagaan/berdagang dan di mana punca perniagaan terbit (*derivation*) adalah tidak jelas.

Sila rujukan kepada siaran media Kementerian Kewangan boleh dibuat bagi melihat sama ada senario yang diberikan ini memenuhi syarat untuk mendapat

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pengecualian cukai ke atas pendapatan yang diterima dari luar negara mulai 1 Januari 2022 hingga 31 Disember 2026.

- k. If the foreign income is remitted into Malaysia but maintained in a foreign currency account with a Malaysian bank, what will be the exchange rate used in calculation of income tax? Will it be the exchange rate on the day such income is remitted into Malaysia? Will corporate taxpayers be allowed the flexibility to use exchange rates as per their internal system, in cases where such rates are as per policies that are applied consistently?

Maklum Balas LHDNM:

Kadar pertukaran wang asing adalah berdasarkan pada kadar yang ditetapkan oleh Bank Negara Malaysia pada masa pendapatan diremitkan ke dalam Malaysia.

- l. Where income from outside Malaysia is remitted to Malaysia and credited into a RM denominated account, the income will be converted from foreign currency to RM based on the relevant bank rates. Please confirm that the computation of tax payable in this case is based on the RM equivalent amount disclosed in the bank account.

Maklum Balas LHDNM:

Ya, pemahaman pihak persatuan adalah teratur.

- m. As the record keeping requirement is up to 7 years, taxpayers may not have the records on investments made beyond 7 years. As such, they may have difficulties in identifying the income portion from the amount remitted.

Maklum Balas LHDNM:

Isu ini tidak berbangkit buat masa ini memandangkan polisi memberikan pengecualian cukai bagi semua pendapatan luar negara yang diremit berdasarkan syarat tertentu mulai 1 Januari 2022 hingga 31 Disember 2026. Penelitan berhubung perkara ini akan dibuat sebelum pengecualian tamat dalam tahun 2027.

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2. Issues arising from Transitional Provisions [New S.6(1)(p) and Part XX of Schedule 1 (w.e.f. 1 January 2022 to 30 June 2022)]

Comments:

2.1 What is meant by “gross” for the purposes of Part XX of Schedule 1? Please provide examples.

Maklum Balas LHDNM:

Terma ‘Kasar’ di dalam Bahagian XX Jadual 1 adalah merujuk kepada amaun pendapatan luar negara yang diremitkan ke Malaysia sama ada telah dikenakan cukai luar negara atau tidak.

Sebagai contoh, pendapatan faedah yang diremitkan adalah RM90,000 selepas mengambilkira cukai pegangan yang telah dikenakan RM10,000 (10%). Bagi tujuan pengenaan cukai di bawah Bahagian XX, Jadual 1, pendapatan faedah kasar adalah RM100,000.

2.2 Clause 26(b) of the Finance Bill 2021, i.e. *“Part XX – Notwithstanding Parts I and IV, income tax shall be charged on the income of a person who is a resident which is received in Malaysia from outside Malaysia at the rate of 3% of gross”*.

i. In view of the above, we seek clarification whether the term “gross” refers to the net foreign-sourced income remitted to Malaysia (i.e. would the gross overseas income be given deduction of all the direct expenses incurred in the production of the overseas income)?

Maklum Balas LHDNM:

Dengan merujuk kepada maklum balas di dalam perenggan 2.1, terma ‘kasar’ adalah merujuk kepada amaun pendapatan luar negara yang diremit ke dalam Malaysia sama ada telah dikenakan cukai luar negara atau tidak.

Pendapatan luar negara yang diremit dalam tempoh 1 Januari 2022 – 30 Jun 2022 dikenakan pada kadar insentif 3%, polisi menetapkan amaun yang diremit sebagai amaun kasar dan tiada potongan belanja dibenarkan dan pengiraannya adalah terasing daripada pengiraan pendapatan remitan yang lazim.

ii. Would it exclude portions / adjustments that arose due to exchange differences?

Maklum Balas LHDNM:

Isu perbezaan kadar pertukaran mata wang asing tidak berbangkit dalam menentukan amaun kasar pendapatan luar negara yang diremit ke dalam Malaysia.

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- iii. Clarifications are also required on the impact to group financing i.e. Group Treasury / Cash pooling companies and Labuan companies (those taxed under the ITA 1967).

Maklum Balas LHDNM:

Pendapatan (faedah) punca luar Malaysia yang diremitkan mulai 1 Januari 2022 akan tertakluk kepada cukai.

- 2.3 Please confirm our understanding that, although FSI received between 1 January 2022 and 30 June 2022 is taxed at 3% of gross, foreign tax credit can be claimed.

Maklum Balas LHDNM:

Ya, pemahaman pihak persatuan adalah teratur.

- 2.4 Please confirm whether gross income in respect of FSI received between 1 January 2022 and 30 June 2022 can be reduced by unabsorbed business losses and/or adjusted business losses of the taxpayer (depending on whether the gross income is business or passive income). Given that the COVID-19 pandemic has adversely affected many businesses, we request for the MOF / IRB to consider allowing taxpayers to utilise their unabsorbed business losses and/or adjusted business losses against the said income.

Maklum Balas LHDNM:

Pendapatan FSI yang diremit ke Malaysia bagi tempoh 1 Januari 2022 hingga 30 Jun 2022 tertakluk kepada cukai pada kadar 3%. Tiada potongan dibenarkan dalam menentukan pendapatan FSI ini.

- 2.5 Scenario concerning remittance of net employment income

In this example, Adam (a Malaysian citizen) worked in the United Kingdom (“UK”) during the year 2018 and derived employment income of £20,000. His employment income was subject to tax in UK at the rate of 20% (i.e. £4,000). The net employment income of £16,000 was placed with a UK bank.

Assuming as at 31 December 2021, the balance of funds in the UK bank account is £10,000. Adam decides to remit the funds of £10,000 back to Malaysia in 2022.

If the funds of £10,000 are remitted back to Malaysia on or before 30 June 2022, please advise how should the taxpayer assess this amount to tax. For this purpose, we have set out two possibilities and please advise which of the following should apply:

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- a. Assess the gross employment income to tax in Malaysia at the rate of 3% (in this case, Adam needs to re-gross the £10,000)
 - i. In such a case, how does Adam prove the gross amount corresponding to the funds remitted to Malaysia?
 - ii. Please advise if Adam is allowed to claim a foreign tax credit in this case.

Maklum Balas LHDNM:

Berdasarkan senario yang dikemukakan, pengecualian cukai mulai 1 Januari 2022 hingga 31 Disember 2026 adalah terpakai bagi pendapatan FSI yang diremit ke Malaysia kerana pendapatan FSI telah tertakluk kepada cukai luar negara.

Bagi tujuan rujukan, sekiranya remitan ini tertakluk kepada cukai, pengiraan kredit cukai adalah seperti berikut:

Pengiraan pendapatan berkanun:

Dengan andaian kadar pertukaran MYR = 3.5, £10,000 x 3.5 = 35,000, pendapatan yang tertakluk kepada cukai Malaysia adalah RM35,000 x 3% = RM1,050.

Pengiraan kredit cukai:

$\frac{35,000}{35,000} \times 1,050 = 1,050$ berbanding cukai asing RM8,750 [$(\frac{10,000}{16,000}) \times 4,000 \times 3.5$]

Kredit cukai yang dibenarkan = RM1,050

- b. Assess £10,000 (i.e. amount remitted back to Malaysia) to tax at the rate of 3%
 - i. Please advise whether Adam is allowed to claim a foreign tax credit in this case.

Maklum Balas LHDNM:

Tiada isu berbangkit. Mohon rujuk maklum balas LHDNM di perenggan 2.5(a).

- c. What if Adam is unable to identify the source of the £10,000?

Maklum Balas LHDNM:

Tiada isu berbangkit. Mohon rujuk maklum balas LHDNM di perenggan 2.5(a).

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- 2.6 Suppose a company receives FSI during the first half of 2022 and is taxed at 3%, a further FSI in the second half of 2022 and is taxed at 24%. Will the former FSI be included in the total income for Cukai Makmur? Under this circumstance, how would the double tax relief be computed for the first FSI if based on the current S.132, which is calculated based on the proportion to the taxable income?

Will the IRB issue a public ruling providing guidance on the mechanism?

Maklum Balas LHDNM:

Pendapatan FSI yang diremitkan ke Malaysia tidak diambilkira dalam pengiraan pendapatan bercukai bagi Cukai Makmur.

2.7 Operational guidelines

To facilitate taxpayers who are keen to repatriate funds during the 3% tax regime, there needs to be clear guidelines outlining the documentation requirements to claim bilateral credit in respect of foreign taxes suffered years or decades ago in respect of funds repatriated to Malaysia now. Malaysia's position in respect of various implementation aspects should be comprehensively addressed in a published guidelines prior to implementation.

Maklum Balas LHDNM:

LHDNM mengambil maklum.

- 2.8 We propose that a grace period be allowed instead as follows: zero tax for remittance between 1 January 2022 to 30 June 2022 and 3% tax at gross for remittance between 1 July 2022 to 31 December 2022. This is to allow more time to arrange the remittance and to encourage Malaysian residents to remit money back to Malaysia.

Maklum Balas LHDNM:

Isu ini tidak berbangkit buat masa ini memandangkan polisi memberikan pengecualian cukai bagi semua pendapatan luar negara yang diremit berdasarkan syarat tertentu mulai 1 Januari 2022 hingga 31 Disember 2026.

D. Prior Year Post-Budget Issues – Definition of ‘Plant’

The Institutes wish to re-iterate again the points made in the CTIM-MIA-MICPA-MAISCA Joint Memorandum to the Inland Revenue Board on Issues Arising from the 2021 Budget and Finance Bill 2020 pertaining to the definition of ‘plant’. The responses given do not fully address the issues raised. We have not seen any development with regard to this matter and would suggest that this be reviewed accordingly in line with what had been stated in the memorandum issued in 2020 which is outlined briefly as follows:

Definition of “Plant” – Paragraph 70A of Schedule 3 (w.e.f. YA 2021)

“70A. In this Schedule, “plant” means an apparatus used by a person for carrying on his business but does not include a building, an intangible asset, or any asset used and that functions as a place within which a business is carried on.”; and

Issues for further discussion:

1. Issues arising from having a definition of ‘plant’ in the ITA 1967.

Maklum Balas LHDNM:

Sebagaimana dinyatakan dalam maklum balas LHDNM kepada Memorandum yang dikeluarkan pada 2020, definisi ‘plant’ yang diperuntukkan dalam perenggan 70A Jadual 3 kepada ACP 1967 adalah bertujuan untuk memberikan kepastian kepada pembayar cukai dan pencerahan undang-undang bahawa suatu bangunan, aset tak ketara atau mana-mana aset yang digunakan dan berfungsi sebagai tempat perniagaan bukan merupakan ‘plant’ dalam konteks Jadual 3 ACP 1967. Takrifan ini adalah konsisten dengan prinsip penentuan kelayakan elaun modal iaitu *apparatus test* dan *premise test* sepertimana diputuskan dalam kes undang-undang. Pengecualian bangunan, aset tak ketara dan aset yang digunakan dan berfungsi sebagai tempat perniagaan daripada definisi ‘plant’ juga adalah konsisten dengan amalan sedia ada LHDNM.

2. Proposal for the exclusions in the definition of ‘plant’ to deal with specific items rather than broad items. The wordings ‘*intangible asset*’ and ‘*place within which business is carried on*’ are rather broad and have sweeping effects. For specific items, initial and annual allowances should be considered at rates which are in line with their expected life span / depreciation instead of an outright denial of capital allowance as these are legitimate business costs.

Maklum Balas LHDNM:

Merujuk kepada Memorandum yang dikeluarkan pada 2020, LHDNM telah memberikan maklumbalas seperti berikut kepada pertanyaan yang sama:

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“The object and purpose of the amendment is to give certainty to taxpayers and clarity in the law that an intangible asset is not a plant within the context of Schedule 3. We take note of the suggestion to exclude certain intangible assets from this provision and will look further into this issue.”

3. Proposal to grant allowance on the cost of all buildings, not just industrial buildings as requested in the 2019, 2020 and 2021 Budget proposal submissions by the Institutes.

Maklum Balas LHDNM:

Merujuk kepada Memorandum yang dikeluarkan pada 2020, MOF telah memberikan maklum balas berikut kepada pertanyaan yang sama:

“The tax treatment regarding capital allowance which can be claimed on qualifying capital expenditure that has been incurred is provided for under Schedule 3, ITA 1967. This includes the special provision on qualifying industrial building which may enjoy the industrial building allowance (IBA). The IBA is only granted to specific industrial building as stipulated under Schedule 3, ITA 1967. At the moment, the Government does not plan to expand the scope of the existing provision on IBA.”

4. Comparisons with the definition of ‘plant’ from selected Commonwealth jurisdictions which have similar tax provisions as Malaysia. Whether Malaysia is alone in legislating the definition of ‘plant’. If not, is ‘plant’ also defined narrowly in jurisdictions where it is legislated?

Maklum Balas LHDNM:

LHDNM berpendapat pindaan yang dilakukan dalam Bajet 2021 adalah menepati dengan kehendak polisi percukaian kerajaan di mana maksud *plant* tidak termasuk *building, an intangible asset, or any asset used and that functions as a place within which a business is carried on.*

LHDNM telah melihat praktis negara-negara Commonwealth dan secara spesifiknya India memberikan definisi *restrictive* seperti Malaysia.

5. Proposal to include a proviso to paragraph 70A of Schedule 3 to allow the Minister to prescribe items as being eligible for capital allowance notwithstanding the definition of ‘plant’.

Maklum Balas LHDNM:

LHDNM mengulangi maklum balas yang telah diberikan kepada Memorandum yang dikeluarkan pada 2020 bahawa peruntukan ini tidak akan dipinda untuk memasukkan proviso tersebut. LHDNM berpendapat pada masa ini tiada keperluan untuk membuat pindaan seperti dicadangkan.

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6. Implications of the wording “... or any asset used and that functions as a place within which a business is carried on”. Would assets such as silo, tank, etc. for feed milling business that meet the business test and premise test qualify as plant?

Maklum Balas LHDNM:

LHDNM mengulangi maklum balas yang telah diberikan kepada Memorandum yang dikeluarkan pada 2020 bahawa isu sama ada suatu aset berfungsi sebagai tempat perniagaan dijalankan merupakan persoalan fakta. Ujian premis perniagaan merupakan prinsip yang telah diputuskan dalam kes undang-undang percukaian. Oleh itu, pihak-pihak hendaklah mengemukakan bukti untuk menyokong hujah masing-masing.

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E. Outstanding Gazette Orders – 2014 to 2021 Budgets

The Institutes note with concern that several gazette orders pertaining to proposals announced in the 2014 to 2021 Budgets are still outstanding to date. We would request for your urgent attention and update on the status of the relevant gazette orders.

As professional bodies, the Institutes would urge the tax authorities to ensure that all gazette orders / guidelines in respect of Budget proposals be issued in a timely manner, preferably within the first quarter following the Budget announcement, so that taxpayers are able to apply specific incentives and it creates certainty for investors.

It would be appreciated if future gazette orders could be issued and published on a timely basis. Otherwise, the incentives may not fulfil their objective of incentivising businesses or investment planning decisions.

2014 Budget

1. Investment tax allowance for purchase of green technology equipment and tax exemption on the use of green technology system be granted.

Comments:

Please provide an update on the status of the gazette order for investment tax allowance on green technology assets.

Maklum Balas MOF:

Draf perintah pengecualian sedang dimuktamadkan oleh pihak MOF dan LHDNM.

2. Applications for research and development (“R&D”) projects of bioeconomy which are viewed as viable and received from 1 January 2014 to 31 December 2018 by the Malaysian Biotechnology Corporation Sdn Bhd be granted tax deductions on acquisition of technology platform, exemption on import duty on R&D equipment, as well as special incentive to companies in respect of Centre of Excellence for R&D.

Maklum Balas MOF:

Insentif ini telah tamat tempoh. Pihak Bioeconomy juga memaklumkan bahawa pihaknya tidak bercadang untuk meneruskan insentif ini.

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2015 Budget

1. Double deduction on expenses incurred by companies for scholarships awarded to students pursuing diploma or bachelor's degree at higher education institutions be extended to include scholarships provided to students pursuing studies in the vocational and technical fields for the YA 2014 and YA 2015.

Maklum Balas LHDNM:

Kaedah-Kaedah Cukai Pendapatan (Potongan Bagi Penajaan Biasiswa Kepada Pelajar Malaysia Yang Mengikuti Pengajian Di Peringkat Sijil Teknik Dan Vokasional) 2021 [P.U.(A) 503/2021] telah diwartakan pada 31 Disember 2021.

2018 Budget

1. Accelerated Capital Allowance and Automation Equipment Allowance on the first RM10 million qualifying capital expenditure incurred in the years of assessment 2018 to 2020 by companies in the manufacturing sector and its related services.

Maklum Balas MOF:

Dalam proses untuk digugurkan.

2. Expansion of tax exemption of income for participants of venture capital industry to include the following:
 - Venture Capital Management Corporation
Exemption for a period of 5 years from the years of assessment 2018 to 2022 of income received from management fees and performance fees in managing Venture Capital Company's fund.
 - Venture Capital Company
The minimum threshold in venture capital in the form of start-up capital or early stage financing reduced to 50% and the balance of 50% is allowed for other investments.
 - Investment in Venture Capital Company's fund created by Venture Capital Management Corporation
Tax deduction up to the amount of investment made for companies or individuals with business income investing into Venture Capital Company's fund created by Venture Capital Management Corporation but restricted to a maximum of RM20 million per year for each company or individual.

Maklum Balas MOF:

Sedang dimuktamadkan di peringkat AGC.

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2019 Budget

1. Extension of application period for tax incentives for participants of venture capital industry to 31 December 2019.

Maklum Balas MOF:

Sedang dimuktamadkan di peringkat AGC.

2. Tax incentives for Companies achieving Industry4WRD

- Double deduction on qualifying operating expenditure on costs of product development, upgrading capabilities of vendors and skill training of vendors incurred by an anchor company in implementing the Industry 4WRD Vendor Development Program, as verified by the Ministry of International Trade and Industries (“MITI”).

Maklum Balas MOF:

Dalam semakan Bahagian Undang-undang MOF.

- Incentives for Human Capital Development
 - (a) Double deduction on scholarships provided by companies to Malaysian students pursuing studies at technical and vocational levels, diplomas and degrees in the field of engineering and technology.

Maklum Balas LHDNM:

Telah digazetkan sebagai Kaedah-Kaedah Cukai Pendapatan (Potongan bagi Penajaan Basiswa kepada Pelajar Malaysia yang Mengikuti Pengajian dalam Bidang Kejuruteraan atau Teknologi di Peringkat Sijil Teknik dan Vokasional, Diploma atau Ijazah Sarjana Muda) 2021 [*P.U.(A) 468/2021*] pada 23 Disember 2021.

- (b) Double deduction on expenditure incurred by companies in upgrading and developing employees technical skills in I4.0 technology for training programs approved by the Malaysian Investment Development Authority (“MIDA”).

Maklum Balas MOF:

Dalam proses untuk digugurkan.

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- (c) Tax deduction on equipment and machinery contributed by companies to Skills Development Centres, Polytechnics or Vocational Colleges certified by the Ministry of Human Resources or the Ministry of Education.

Maklum Balas MOF:

Potongan cukai adalah dibenarkan di bawah perenggan 34(6)(h) ACP.

3. Concessionary income tax rate of 10% be accorded to the Principal Hub company on the overall statutory income derived from activities related to the Principal Hub for a period of five years.

Comments:

It is noted that the above is included in the [MIDA Guidelines For Application For Principal Hub Incentive 3.0 \(updated 8 September 2021\)](#). Please provide an update on the status of the gazette order for the above.

Maklum Balas MOF:

Sedang dimuktamadkan di peringkat AGC.

4. Extension of list of qualifying assets from nine assets to forty assets in the MyHIJAU directory for green investment tax allowance ("GITA").

Comments:

It is noted that the [Guidelines on GITA Assets](#) in the MyHIJAU website (www.myhijau.my) has a list of forty qualifying assets. Please indicate when the gazette order for the above-mentioned GITA will be issued.

Maklum Balas MOF:

Draf perintah pengecualian sedang dimuktamadkan oleh pihak MOF dan LHDNM.

2020 Budget

1. Tax deduction on expenses incurred by companies for contributions towards Digital Social Responsibility (DSR) initiatives.

Maklum Balas MOF:

MOF sedang mendapatkan pengesahan MDEC sama ada insentif ini masih diteruskan atau digugurkan.

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2. Tax exemption of 100% up to 10 years on qualifying intellectual property income derived from patent and copyright software of qualifying activities.

Maklum Balas LHDNM:

Draf PCP sedang dalam tindakan LHDNM untuk dikemaskini berdasarkan maklum balas daripada MyIPO pada 28 Januari 2022.

3. Green Investment Tax Allowance (“GITA”)
 - Extension of 100% Investment Tax Allowance to the YA 2023 on qualifying capital expenditure incurred for green technology activities.

Maklum Balas LHDNM:

Draf PCP sedang dalam tindakan LHDNM untuk dikemaskini berdasarkan Garis Panduan MIDA.

4. Green Income Tax Exemption (“GITE”)
 - Extension of income tax exemption of 70% of statutory income for qualifying green technology services to the YA 2023; and

Maklum Balas MOF:

Draf perintah pengecualian sedang dimuktamadkan oleh pihak MOF dan LHDNM.

- Income tax exemption of 70% of statutory income up to 10 years of assessment for solar leasing companies certified by the Sustainable Energy Development Authority (“SEDA”).

Maklum Balas MOF:

Draf perintah pengecualian sedang dimuktamadkan oleh pihak MOF dan LHDNM.

5. Extension of tax exemptions on income from managing Syariah-compliant funds to the YA 2023.

Maklum Balas LHDNM:

Telah digazetkan sebagai Perintah Cukai Pendapatan (Pengecualian) (No.6) 2021 [*P.U.(A) 282/2021*], Perintah Cukai Pendapatan (Pengecualian) (No.7) 2021 [*P.U.(A) 283/2021*] dan Perintah Cukai Pendapatan (Pengecualian) (No.8) 2021 [*P.U.(A) 284/2021*] pada 29 Jun 2021.

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6. Extension of tax incentives for venture capital to 31 December 2026.

Maklum Balas MOF:

Sedang dimuktamadkan di peringkat AGC.

7. Tax incentives for organizing arts, cultural, sports and recreational activities in Malaysia.

Maklum Balas LHDNM:

Perintah Cukai Pendapatan (Pengecualian) (No. 12) 2021 [P.U.(A) 478/2021] telah diwartakan pada 27 Disember 2021.

8. Expansion of tax incentives for tourism projects.

Maklum Balas MOF:

MOF sedang mempertimbangkan untuk mengkaji semula insentif ini.

9. Expansion of the scope of tax incentives for automation equipment for Category 2: Other Industries to the services sector for applications received by MIDA between 1 January 2020 and 31 December 2023.

Maklum Balas MOF:

Dalam semakan Bahagian Undang-undang MOF.

2021 Budget

1. Tax deduction for Amanah Saham Nasional Berhad (“ASNB”) unit trust holders
- ASNB unit holders will be allowed to endow their units into the ASNB wakaf fund and be eligible for a tax deduction.

Maklum Balas LHDNM:

Tiada perundangan subsidiari khusus untuk perkara ini.

2. Special income tax rate treatment for non-resident individuals holding key positions in companies investing in new strategic investments
- In addition to the existing tax incentive offered to companies relocating their operations to Malaysia individual income tax at a flat rate of 15% will be given to non-residents holding key positions/C-Suite positions for a period of 5 consecutive years subject to

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conditions. This tax incentive is limited to 5 non-resident individuals employed in each company that has been granted relocation tax incentive under PENJANA initiative.

- For applications received by the Malaysian Investment and Development Authority from 7 November 2020 until 31 December 2021.

Maklum Balas MOF:

Draf sedang dalam semakan AGC.

3. Tax incentive for investments in equity crowdfunding

- Individual investors will be given income tax exemption on aggregate income equivalent to 50% of the amount of investment made in equity crowdfunding subject to conditions.
- For investment made from 1 January 2021 until December 2023.

Maklum Balas MOF:

Draf perintah pengecualian sedang dimuktamadkan oleh MOF dan LHDNM.

4. Tax incentive for manufacturers of Industrialised Building System components

- The tax incentive will be extended for a further 5 years and will be available for companies which produce at least 3 basic components of IBS or IBS systems that use at least 3 basic IBS components.
- The tax incentive will be investment tax allowance of 60% of qualifying capital expenditure incurred within 5 years to be offset against 70% of statutory income.
- For applications received by MIDA from 1 January 2021 until 31 December 2025.

Maklum Balas LHDNM:

Mekanisme pelaksanaan adalah melalui P.U.(A) 113/2006.

5. Tax incentives for export of private healthcare services

- The tax incentives will be extended for a further 2 years to YA 2021 and YA 2022

Maklum Balas LHDNM:

Perintah Cukai Pendapatan (Pengecualian) (No. 13) 2021 [P.U.(A) 501/2021] telah diwartakan pada 31 Disember 2021.

6. Income tax exemption on the Sustainable and Responsible Investments (“SRI”) Sukuk grant

- The income tax exemption will be expanded to cover all SRI sukus and bonds which meet the ASEAN Green, Social and Sustainability Bond Standards approved by the Securities Commission of Malaysia (“SC”).
- For applications received by SC from 1 January 2021 to 31 December 2025.

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Maklum Balas LHDNM:

Mekanisme pelaksanaan adalah melalui kuasa Menteri di bawah subseksyen 127(3A) ACP.

7. Tax incentive on Principal Hub

- The time-frame for applications will be extended for a further 2 years to 31 December 2022.
- The criteria for new companies will be relaxed in connection with the renewal of the incentive after the initial 5-year period.

Maklum Balas MOF:

Draf sedang dimuktamadkan di peringkat AGC.

8. Review of the existing incentive framework

- The incentives currently available for the following activities will be extended to 31 December 2022:
 - Maintenance, Repair and Overhaul activities for the aerospace industry
 - Building and repair of ships
 - BioNexus status
 - Economic Corridor activities
- For applications received from 1 January 2021 to 31 December 2022.

Maklum Balas LHDNM:

Mekanisme pelaksanaan adalah melalui P.U.(A) 112/2006 dan P.U.(A) 113/2006.

9. Tax incentive for commercialisation of research and development (“R&D”) findings

- Tax incentive for commercialisation of non-resource based R&D will be re-introduced.
- Tax incentive for commercialisation of R&D findings by public research institutions including public higher learning institutions will be expanded to private higher learning institutions.
- For applications received by MIDA from 7 November 2020 until 31 December 2025.

Maklum Balas LHDNM:

Perintah Cukai Pendapatan (Pengecualian) (No.13) 2013 (Pindaan) 2021 [P.U.(A) 448/2021] telah diwartakan pada 9 Disember 2021 dan Kaedah-Kaedah Cukai Pendapatan (Potongan Bagi Pelaburan Dalam Projek Pengkomersialan Dapatan Penyelidikan Dan Kemajuan) 2022 [P.U.(A) 3/2022] telah diwartakan pada 6 Januari 2022.

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10. Tax incentive for Global Trading Centre

- The trading activity incentive previously encompassed under the Principal Hub incentive package will be incorporated into a new incentive scheme which will be introduced for Global Trading Centres.
- The incentive will involve a 10% income tax rate for a period of 5 years with the possibility of an extension for a further 5 years.
- For applications received by Malaysian Investment Development Authority from 1 January 2021 until 31 December 2022.

Maklum Balas MOF:

Dalam proses untuk diwartakan.

11. Tax incentives for companies manufacturing pharmaceutical products including vaccines

- Manufacturers of pharmaceutical products including vaccines will be given the following tax incentives:
 - Income tax rate of 0% – 10% for the first 10 years
 - Income tax rate of 10% for the subsequent period of 10 years
- For applications received by MIDA from 7 November 2020 to 31 December 2022.

Maklum Balas MOF:

Telah diwartakan di bawah P.U.(A) 34/2022.

12. Tax incentives for companies relocating their operations to Malaysia and undertaking new investments

- The tax incentives will be expanded to companies in selected services sectors, including those adapting Industrial Revolution 4.0 and digitalisation technology as follows:
 - New company - 0%–10% - 10 years
 - Existing company with new services segment - 10% - 10 years
- The application period for the tax incentives will be extended for a further year (i.e. until 31 December 2022). For the manufacturing sector, applications for the incentives must be made to MIDA between 1 July 2020 to 31 December 2022. For the services sector, applications must also be made to MIDA from 7 November 2020 to 31 December 2022.

Maklum Balas MOF:

Dalam tindakan LHDNM untuk menjawab maklum balas daripada AGC.

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F. Tax Measures proposed under Economic Stimulus Packages 2020 to 2021 which have not been gazetted

We request for an update on the status of the relevant gazette orders in respect of the following tax measures proposed under the Economic Stimulus Packages 2020 to 2021: -

Economic Stimulus Packages 2020

1. Double deduction for pre-commencement expenditure incurred by international shipping companies to set-up a regional office in Malaysia for applications received by MIDA between 31 December 2021 as announced during the ESP 2020.

Comments:

The MOF's response on the above in the Joint Memorandum on Issues arising from 2021 Budget Speech & Finance Bill 2020 is *"Proposed to be discontinued. No feedback received from the shipping association on the type of qualifying expenditure"*. Please clarify if this proposal has been withdrawn.

Maklum Balas MOF:

Dalam proses untuk digugurkan.

2. Tax Incentives for Manufacturing Sector (as announced during PENJANA)

- Tax incentives for company relocating to Malaysia
 - 0% tax rate for 10 years for new investment in manufacturing sectors with capital investment between RM300 – RM500 million
 - 0% tax rate for 15 years for new investment in manufacturing sectors with capital investment above RM500 million
- Tax incentive for Malaysian companies
 - 100% investment tax allowance for 5 years for existing company in Malaysia relocation overseas facilities into Malaysia with capital investment above RM300 million.

Maklum Balas LHDNM:

Draf Kaedah-Kaedah Cukai Pendapatan dan Perintah Cukai Pendapatan (Pengecualian) di peringkat semakan LHDNM iaitu dalam penyediaan maklumbalas bagi persoalan-persoalan yang dibangkitkan oleh Jabatan Peguam Negara pada 17.1.2022.

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Economic Stimulus Packages 2021

1. Further tax deduction on rental of employees' accommodation expenses restricted to RM50,000 is given to manufacturing and manufacturing-related service companies that are registered under Safe@Work programme. implemented by MITI. and passed the Safe@Work compliance audit. Companies can register for the Safe@Work programme with MITI from 1 April 2021. This incentive was announced under PEMERKASA and is further extended under the 2022 Budget until 31 December 2022.

Maklum Balas LHDNM:

Kaedah-Kaedah Cukai Pendapatan (Potongan Bagi Perbelanjaan Penyediaan Penginapan Pekerja) 2021 [P.U.(A) 470/2021] telah diwartakan pada 24 Disember 2021.

2. Tax deduction for employers under the *Program Imunisasi Industri COVID-19 Kerjasama Awam-Swasta (PIKAS)* for expenses incurred on equipment and services for providing its' premises as vaccination centres as announced under PEMULIH.

Maklum Balas LHDNM:

Tiada perundangan subsidiari berhubung perkara ini.

3. Tax deduction for COVID-19 contributions through community and charitable projects expanded to cover contributions to vaccination centres as announced under PEMULIH.

Maklum Balas LHDNM:

Tiada perundangan subsidiari berhubung perkara ini.

Maklum Balas MOF:

In line with the Government's efforts to increase vaccination rates among Malaysian through the implementation of the *Program Imunisasi COVID-19 Kebangsaan (PICK)*, the scope of tax deduction under Section 34(6)(h) of the Income Tax Act 1967 for the COVID-19 contributions through community and charitable projects is also expanded to include contributions to the vaccination centres or *Pusat Pemberian Vaksin (PPV)* that has been endorsed by *Pasukan Petugas Khas Imunisasi COVID-19 Kebangsaan (CITF)*. MOF has updated the special guidelines on 2 August 2021.