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## Tax Audit Framework

The Inland Revenue Board ["IRB"] has recently issued the Tax Audit Framework (Amendment 1/2018) on 1<sup>st</sup> April 2018. This amended tax audit framework replaces the tax audit framework issued in May 2017 with some updates as follows:-

- Initial Action of Tax Audit
  - Letter requesting for documents and information will be sent to taxpayer via email, facsimile or post.
  - Letter requesting for documents and information will not be sent out for selected desk audit cases but taxpayer will be notified of the adjustments of income and tax imposed together with the Notice of Assessment.
  - Taxpayer is required to respond within 14 days (previously 21 days) from the date of the letter requesting for documents and information. If taxpayer fails to respond within the prescribed time, tax audit will proceed with appropriate method.
  - Tax audit can be extended to related company / business which the company has control without any notification.

## Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)
  
- [Tax Audit Framework \(Amendment 1/2018\) \(in Bahasa Malaysia\)](#)

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## ii. Settlement of Tax Audit

- Taxpayer can appeal within 18 days (previously 21 days) from the date of notification of adjustments by furnishing additional information and supporting documents if disagrees with the proposed audit adjustments.
- Tax audit has to be completed within 3 months or 90 calendar days (previously 4 months or 120 days) from the date of commencement of audit visit. Taxpayer will be informed by the IRB if the tax audit cannot be completed within the stipulated period.

## iii. Voluntary Disclosure

- Voluntary disclosure means taxpayer makes voluntary disclosure after the due date of submission of tax return through writing or media electronic before commencement of tax audit.
- Tax audit is deemed to have commenced from the date of the letter requesting for documents and information issued to the taxpayer via email, facsimile or post.
- Taxpayer is encouraged to make voluntary disclosure at any time for any failure to comply with tax laws.

**Note:** For further information on the previous Tax Audit Framework, kindly refer to our Tax Flash – June 2017 issue.

## PN No. 1/2018 - Tax Treatment on Digital Advertising Provided by a Non-Resident

The IRB has recently issued the Practice Note ["PN"] 1/2018 – Tax Treatment on Digital Advertising Provided by a Non-Resident to provide guidance on withholding tax ["WT"] on income from digital advertising provided by a non-resident as follows:-

- Where a non-resident does not have a permanent establishment ["PE"] (i.e. Double Taxation Agreement applies) or there is no business presence in Malaysia:-
  - Payment is subject to WT under Section 109 of the Income Tax Act 1967 ["the Act"] if it is a royalty income; or
  - Payment is subject to WT under Section 109B of the Act if it is an income within the scope of Section 4A(ii) of the Act.
- Where the non-resident has a PE or a business presence in Malaysia, the payment received shall constitute a business income derived from Malaysia and taxed under Section 4(a) of the Act.
- If it is payment for the purchase or use of an application by the payers to create their own advertising campaign, it is subject to WT under Section 109 of the Act.
- If it is merely a provision of service by the non-resident (i.e. the payer solely relies on the service provider to deal with all aspect of digital advertising), the payment is subject to WT under Section 109B of the Act.

## Hyperlinks

➤ [Tax Flash – June 2017](#)

➤ [PN No. 1/2018](#)

## Hyperlinks

### Taxation of Digital Economy

The IRB has recently created a webpage in its official website to provide guidance on taxation of digital economy.

The pertinent points relating to the above are as follows:-

- Digital economy refers to the economy based on the use of digital technologies which includes the provision of information, promotion and advertising, marketing, supply / delivery of goods and services through digital technologies (even if the payment / delivery of the relevant transaction is performed offline).
- The following activities would be regarded as business transactions categorised under digital economy:-

No.	Sector	Remarks	Activities
1	Retailing	Drop-shipment, agent, stocking	Receiving / taking order, product packaging, receiving payment and delivery
2	Transportation and logistics	Hire of vehicle, online ticketing, postage services	Reservation of service, payment, insurance, delivery
3	Financial services	Bank, payment gateway, digital money, credit card, debit card, membership card, loyalty card	Confirmation of financial status, issuance of confirmation
4	Manufacturing and agriculture	3D printing	Receiving order, packaging, receiving payment and delivery
5	Education	ebook, online tutoring / tutorial	Receiving order, packaging, receiving payment and delivery
6	Healthcare	Online doctor / pharmacist	Receiving order, packaging, receiving payment and delivery

## Hyperlinks

No.	Sector	Remarks	Activities
7	Broadcast and media	Uploading video (Youtube), photography (services as a photographer and sale of photo)	Content creation, uploading video, receiving payment
8	Sharing Economy	Preparing platform, application and imposing charges (Airbnb, Uber, Grab)	Reservation of service, payment
9	Subscription	Online comic, online newspaper, video/audio streaming	Registration, payment
10	Services	Infrastructure services, software solution, management of event/program, wedding planner	Reservation of service, payment
11	Advertising	Blogger, Instafamous, Insta review	Content creation, uploading, payment
12	Crowd Sourcing	Gathering fund through launching of a project (e.g. application development project)	Content creation, making of prototype, uploading, receiving fund/payment
13	Sale of digital products	Data, ebook, application	Content creation, uploading, payment
14	Digital currency	Trading and creating digital money (Bitcoin, Ripper, Ethereum etc)	Seller, buyer and miner

## Hyperlinks

- The tax treatment applicable to a business operated in digital economy is similar to other businesses where income derived from business carried out in Malaysia is governed and taxed under the Act. Hence, the individual or company involved in the business of digital economy is required to comply with the requirements under the Act which includes filing of tax return and keeping of records.
- Accordingly, a business operating in digital economy is also entitled to the claim for deduction of expenses incurred for the business such as expenses for updating of website, website consultation, renewal of domain, internet access, telecommunication equipment, modem, rental of server, advertising and utilities. Domestic and private expenditure such as electricity and water for residence as well as the purchase of private assets (e.g. car, house and furniture) are not allowable.
- Capital allowances will be given on qualifying assets used for business purpose.
- Certain qualifying activities are also eligible for tax incentives (e.g. MSC status or pioneer status / investment tax allowance).
- The IRB has provided a summary of the scope of tax in relation to digital economy under various scenarios i.e. based on location of business operation / website hosted for a resident / non-resident. A similar summary can also be found in the Guidelines on Taxation of Electronic Commerce issued by the IRB on 1<sup>st</sup> January 2013.

### **Stamp Duty Exemption on Contract Note for Sale and Purchase of Medium and Small Capital Company**

The Stamp Duty (Exemption) Order 2018 has been gazetted to provide exemption of stamp duty on contract note for sale and purchase transaction of shares of medium and small capital company.

For the purposes of the above Order, “medium and small capital company” means a company listed on Bursa Malaysia Securities Berhad which:-

- has a market capitalization between RM200 million to RM2 billion on 31<sup>st</sup> December of the calendar year immediately preceding the year where the sale and purchase transaction is executed; and
- is specified in the list issued by Bursa Malaysia Securities Berhad in relation to medium and small capital companies eligible for stamp duty exemption.

The above exemption applies to contract note executed from 1<sup>st</sup> March 2018 to 28<sup>th</sup> February 2021.

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- [Stamp Duty \(Exemption\) Order 2018](#)