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PR No. 3/2019 – Business Expenses in Respect of Disabled Persons

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 3/2019 – Business Expenses in Respect of Disabled Persons to provide guidance on the tax treatment of business expenses incurred by a person for:-

- employing disabled persons as employees; and
- providing training to disabled persons who are not employees to enable them to seek employment.

Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)

- [PR No. 3/2019](#)

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“Disabled persons” means any individual who has:-

- certified in writing by the Department of Social Welfare [“DSW”] to be a disabled person; or
- certified by the Social Security Organization [“SOCSO”] as a disabled person that is capable to work within his or her capabilities.

Salient points of the above PR include:-

- i. Additional Deduction for the Employment of Disabled Persons
 - Effective year of assessment [“YA”] 1982, an additional deduction is allowable for remuneration of a kind allowable under Section 33(1) of the Income Tax Act, 1967 [“the Act”] payable by a person to each employee who is physically or mentally disabled (disabled persons) pursuant to the Income Tax (Deductions for the Employment of Disabled Persons) Rules 1982.
 - From YA 2019 onwards, the deduction is extended to an employee who is physically or mentally disabled due to an accident or critical illness pursuant to the Income Tax (Deductions for the Employment of Disabled Persons) (Amendment) Rules 2019.
 - The person claiming the deduction must ensure that the disabled persons are:-
 - registered with DSW and the Disabled Persons’s Card (“Kad OKU”) are acquired.
 - able to provide a certification from SOCSO which is based on the decision of the *Jemaah Doktor* which consists of Government doctors.
- ii. Double Deduction for Training a Disabled Person Who is not an Employee
 - The double deduction for training a disabled person who is not an employee is given to a company under the Income Tax (Deductions for Approved Training) Rules 1992 and Income Tax (Deductions for Approved Training) (Amendment) Rules 1995.
 - Effective YA 1992, a double deduction is allowed on the amount of any expenditure incurred in training a disabled person who is not an employee of the company in a training programme which is:-
 - approved by the Minister of Finance and conducted in Malaysia; or
 - conducted by a training institution which is approved by the Minister of Finance.

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- Persons with disabilities who are not employees of the company must be registered with DSW.
- A company has to satisfy the following conditions in order to qualify for a double deduction:-
 - obtained a letter of approval from the relevant authority approving an approved training program; and
 - obtained a letter from a training institution approved by the Ministry of Finance certifying that the disabled person has participated in the training programme.
- With effect from 1st July 1993, companies that contribute to the Human Resources Development Fund do not qualify for deduction under the above Rules.

iii. Single Deduction

- Effective YA 1992, employers are allowed to claim a deduction for capital expenditure incurred by him for the purchase of any equipment necessary to assist disabled persons employed by him.
- Effective YA 2008, the claim for deduction of capital expenditure is extended to the expenses for alteration and renovation of a business premises which is incurred by an employer to enhance the convenience and comfort of disabled persons.
- Both types of capital expenditure mentioned above are eligible for single deduction pursuant to Section 34(6)(e) of the Act.
- The following evidence must be kept by the claimant employer to qualify for the single deduction:-
 - the disabled persons are registered with DSW and the "Kad OKU" are acquired;
 - original receipt of the equipment purchased; and
 - supporting documents for expenses on the alteration and renovation of the business premises.

Updated Guidelines on Procedure for Submission of Amended Return Form

The IRB has, on 30th August 2019, issued the Operational Guideline No. 4/2019 - Procedure on Submission of Amended Return Form to replace the previous Operational Guideline No. 3/2019 dated 22nd April 2019 with some minor changes.

The updated Guidelines include the following additional information:-

- i. Procedure for submission of amended return form under the Petroleum (Income Tax) Act 1967; and
- ii. Examples of method on computation of tax/additional tax and increase in tax.

Note: For further information on the previous Operational Guideline No. 4/2019 - Procedure on Submission of Amended Return Form issued on 22nd April 2019, please refer to our Tax Flash - May 2019 issue.

➤ [Operational Guideline No. 4/2019 – Procedure on Submission of Amended Return Form](#)

➤ [Tax Flash - May 2019](#)

Hyperlinks

- [Income Tax \(Exemption\) \(No. 9\) Order 2019](#)

Tax Exemption on Income Derived from Employment for Women Returning to Work After Career Break

Following the Budget 2018 announcement, the Income Tax (Exemption) (No. 9) Order 2019 has been gazetted to provide tax exemption on employment income up to 12 consecutive months derived by a female Malaysian citizen returning to work after being on a career break for at least 2 years.

To be eligible for the exemption, she must:-

- i. have ceased employment and has not derived any employment income for a continuous period of at least 24 months prior to or as at 27th October 2017;
- ii. have at least 3 years full time employment experience prior to the date of cessation of employment;
- iii. not exceed the age of 58 years on the date of the application for exemption which has to be made through Talent Corporation Malaysia Berhad ["Talent Corp"] during the period from 1st January 2018 to 31st December 2019 and approved by Talent Corp;
- iv. sign a full time employment contract in Malaysia with a qualifying employer for a period of at least 24 months with a minimum gross income of RM5,000 per month; and
- v. have worked for at least 12 consecutive months from the employment contract period with the same qualifying employer and the period of that employment is between 27th October 2017 until 31st December 2020.

For the purposes of the above Order:-

"qualifying employer" means any person excluding:-

- a company which is controlled, either directly or indirectly, by the approved individual;
- a sole proprietorship; or
- a relative of the approved individual who is a parent, including a parent in law, a child, including a step child or child adopted in accordance with any law, a brother or sister, or a grandparent or grandchild, or a spouse.

The tax exemption referred to above shall be for a period not exceeding 12 consecutive months which commences from the basis period of a year of assessment an option is made by the individual and the option shall be made in the year of assessment or the following year of assessment in which she commences her employment as referred to in (v) above.

The above Order shall have effect from the YA 2018 until YA 2020.

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Withdrawal of Withholding Tax Exemption on Certain Types of Income Received from MSC Malaysia Status Companies

The Income Tax (Exemption) (No. 13) Order 2005 provides exemption from withholding tax ["WT"] on certain types of income received by a non-resident company from the approved Multimedia Super Corridor ["MSC"] status company as follows :

- payment from technical advice or technical services;
- licensing fees in relation to technology development; and
- interest on loans for technology development.

Malaysia Digital Economy Corporation Sdn Bhd ["MDEC"] has recently announced that the aforesaid exemption from WT will only be effective until 31st December 2019. Necessary steps are being taken to revoke the Order with effect from 1st January 2020.

MDEC has also issued frequently asked questions ["FAQs"] in relation to the above.

➤ [FAQs on Withdrawal of WT Exemption for MSC Status Companies](#)

Service Tax (Imposition of Tax for Taxable Service in Respect of Designated Areas and Special Areas) (Amendment) Order 2019

With effect from 1st September 2019, a person who provides foods and beverages at the following premises in special areas is regarded as providing taxable service:-

- i. any night-club;
- ii. any dance hall;
- iii. any cabaret; or
- iv. any place licensed under paragraph 35(1)(a) or (b) of the Excise Act 1976 [Act 176] and which is stated in the licence in Regulation 9(1) of the Excise (Sales of Intoxicating Liquors) Regulations 1977 [P.U. (A) 156/1977] as First, Second or Third Class Public House or First or Second Class Beer House.

➤ [Service Tax \(Imposition of Tax for Taxable Service in Respect of Designated Areas and Special Areas\) \(Amendment\) Order 2019](#)

Service Tax (Amendment) Regulations 2019

The Service Tax (Amendment) Regulations 2019 ["the Regulations"] was gazetted and in force effective 1st September 2019. The salient points extracted from the Regulations are as follows:-

- i. Provisions Relating to Taxable Service Where Payment is Made to Machine or Device Operated by Coins, etc
 - Where any taxable service is provided by a taxable person and the payment for such service is made to any machine or device operated by coins, tokens or the like, the value of such taxable service shall be determined in accordance with the following formula:-

$$\frac{100}{100 + B} \times A$$

➤ [Service Tax \(Amendment\) Regulations 2019](#)

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- where A is the total coins, tokens or the like collected from the machine or device;
B is the rate of service tax fixed under Section 10 of the Service Tax Act 2018.
- ii. **Furnishing of Service Tax Return and Payment of Service Tax via Courier Services**
 - Submission of service tax return and/or payment of service tax can now be made via courier.
 - The service tax return submitted via courier is deemed to be received by the Director General of Customs and Excise on the date the tracking number is recorded in the courier services company's system.
 - iii. **Registration for Service Tax Purposes in Respect of Any Taxable Person Who Provides Two or More Taxable Services in Different Groups Under the First Schedule of the Service Tax Regulations 2018**
 - Any taxable person who provides two or more taxable services in different Groups and the value of the taxable services for a period of 12 months in each Group exceeds the prescribed threshold is only required to submit one application for registration for service tax purposes.
 - iv. **Provision of Imported Taxable Services by a Company Within the Group of Companies Outside Malaysia**
 - Any taxable service specified in items (a), (b), (c), (d), (e), (f), (g), (h), or (i) in column (2) of Group G : Professional Services acquired from any company within the same group of companies outside Malaysia will not be regarded as an imported taxable service.
 - v. **Amendment to "Taxable Person" under Group A – Accommodation**
 - The amendment provides that the Federal Government or any State Government, any statutory body or local authority, or any private higher educational institutions registered under the Private Higher Educational Institutions Act 1996 [Act 555] (regardless of whether such services are provided as a facility to any person for educational, training or welfare purposes or not) which provides accommodation services will be excluded from being a taxable person under Group A – Accommodation.
 - vi. **Redefinition of "Taxable Service" under Item (i), Group G – Provision of Management Services**
 - The amendment excludes the provision of tourism and logistics management services to be falling under taxable services.

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- vii. Deletion of Item 11, Group I – Provision of Amusement Park and Any Related Services
 - The amendment excludes the provision of amusement park and any related services to be falling under taxable services.
- viii. Redefinition of “Taxable Service” under Item 12, Group I – Provision of Brokerage and Underwriting Services
 - The amendment provides that the provision of services relating to financial services for the use or provision of brokering and underwriting to be a taxable service irrespective of whether there is any fee or commission charged or not.
- ix. Redefinition of “Taxable Service” under Item 13, Group I – Provision of Cleaning Services
 - The amendment is to further exclude any laundry service provided using any machine or device operated by coins, tokens or the like to be a taxable service.

Service Tax (Compounding of Offences) (Amendment) Regulations 2019

The Service Tax (Compounding of Offences) (Amendment) Regulations 2019 was gazetted and in force effective 1st September 2019.

➤ [Service Tax \(Compounding of Offences\) \(Amendment\) Regulations 2019](#)

Service Tax Policy No. 1/2019

The Royal Malaysian Customs Department [“RMCD”] had on 6th September 2019 published the Service Tax Policy No. 1/2019 titled Service Tax Policy on the Four Services which Implementation was Previously Postponed. The salient points pertaining to this policy are summarised below:-

➤ [Service Tax Policy No. 1/2019 – Service Tax Policy on the Four Services which Implementation was Previously Postponed](#)

- As a result of the deletion of the following taxable services via the Service Tax (Amendment) Regulations 2019, they are no longer be regarded as taxable services effective 1st September 2019. Having said that, concessionary service tax treatment is given to the belowmentioned four (4) services rendered during the period from 1st January 2019 to 31st August 2019:-
 - a. Logistics management services;
 - b. Tourism management services;
 - c. Amusement park services; and
 - d. Cleaning services operated via Coin Operated Laundry Machine.

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Scenarios	Actions to be Taken by the Service Provider
1. Services provided but invoice has not been issued.	Issue the invoice without service tax.
2. Invoice has been issued but payment has not been received from the service recipient.	Issue credit note.
3. Service tax has been collected from the service recipient.	Remit the service tax to RMCD.

Note: No refund of service tax is allowed if the payment for service tax has been made.

Service Tax Policy No. 2/2019

The RMCD had on 18th September 2019 published the Service Tax Policy No. 2/2019 titled Service Tax Policy on Services Imported into Designated Area - Pulau Labuan. The salient points pertaining to this policy are summarised below:-

- Companies in Labuan are given exemptions from accounting and payment of service tax on services imported into Labuan during the period from 1st September 2019 to 31st August 2020.
- The exemption is subject to the following conditions:-
 - a. Exemption from accounting and payment of service tax is only applicable to those imported taxable services that are acquired within the period from 1st September 2019 to 31st August 2020;
 - b. Eligible companies are Labuan entities that carrying out the activities listed in the Labuan Business Activity (Requirements for Labuan Business Activity) Regulations 2018, whether or not the company is registered under the Service Tax Act 2018; and
 - c. Exemptions granted are limited to the taxable services listed under Group G, First Schedule of the Service Tax Regulations 2018.
- Any company mentioned in (b) above which has accounted for and paid the service tax on the exempted imported taxable services may apply for a refund of the service tax paid in the manner as prescribed under the Regulation 18 of the Service Tax Regulations 2018.

New Module for Application of Sales Tax Exemption under Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018

- The new module for the application for sales tax exemption under Schedule A has been effected in the MySST system since 19th August 2019. Any certificate generated using the existing

➤ [Service Tax Policy No. 2/2019 – Service Tax Policy on Services Imported into Designated Area Pulau Labuan](#)

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- Under the new module, applicants are required to sign up and seek for an approval from RMCD (for the first time only) in order to log in and generate the certificate of the sales tax exemption. The existing users that have been granted for the sales tax exemption under Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 are also required to adhere to this new procedure.
- Under the new module, there are three (3) categories of application for the certificate of exemption under Schedule A.

No.	Categories	Processes
1.	Self-application (For items 1 to 3, 6, 9 to 11, 14, 18 to 42, 44 to 49 and 51 to 66 of Schedule A)	The system will automatically generate the certificate once the application has been submitted.
2.	Representative (For items 4, 5, 7, 8, 12 and 13 of Schedule A) Two processes will be involved:- (i) Appointment of a representative (ii) The appointed representative	 The Government, local authority and IPTA have to appoint a person who will purchase or import taxable goods on their behalf. The system will automatically generate the appointment approval number. The appointed representative will use the appointment approval number provided by the Government, local authority and IPTA to generate the certificate. The system will automatically generate the certificate once the application has been submitted.

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3.	Export (For item 57 of Schedule A)	The system will automatically generate the certificate once the application has been submitted.
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