



## TAX FLASH

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### Updated Operational Guideline on Procedure for Submission of Amended Return Form

The Inland Revenue Board [“IRB”] has, on 6<sup>th</sup> March 2020, issued the updated *Operational Guideline No. 1/2020 - Procedure on Submission of Amended Return Form* to replace the previous Operational Guideline No. 4/2019 dated 30<sup>th</sup> August 2019 with some amendments.

The amendments included in the above updated Operational Guideline are as follows:-

- The updated Operational Guideline clarifies that where a taxpayer has submitted the original tax return form within the stipulated period with no error in tax computation, the Director General of Inland Revenue may raise an amended assessment under Section 91 of the Income Tax Act 1967 [“the Act”]. Under such circumstance, the taxpayer is not allowed to furnish an amended tax return form for the relevant year of assessment pursuant to Section 77B(6)(b) of the Act [Paragraph 2.2.1].

- [Moore Malaysia](#)
- [Moore Global](#)
- [Inland Revenue Board](#)

- Amended Return Form submitted in compliance with the stipulated conditions under Section 77B of the Act will be accepted in accordance with the provision under Section 91A of the Act i.e. as a deemed assessment on the amended return [Paragraph 2.2.4].
- The additional tax payable arising from the amendment of tax return form submitted within 6 months from the statutory deadline for submission of tax return is subject to increase in tax of 10%. The increase in tax of additional 5% has been removed [Paragraph 2.4].

**Note:** For more information on the previous Operational Guideline No. 4/2019 – Procedure on Submission of Amended Return Form issued on 30<sup>th</sup> August 2019, kindly refer to our [Tax Flash – September 2019 issue](#).

### **PN No. 1/2020 – Guidelines on Treatment of Adjusted Losses under the Income Tax (Exemption) (No. 3) Order 2018 for International Currency Business Unit**

The IRB has recently issued the [Practice Note \[“PN”\] 1/2020 – Penjelasan Berhubung Peruntukan Kerugian Dalam Perintah Cukai Pendapatan \(Pengecualian\) \(No. 3\) 2018 \(in Bahasa Malaysia\)](#) dated 17<sup>th</sup> February 2020. This is to provide clarification on the treatment of adjusted losses in respect of the International Currency Business Unit [“ICBU”] of *Islamic* banking and *takaful* businesses. The tax treatments of adjusted losses of a qualifying person for the aforesaid business activity are provided under the Income Tax (Exemption) (No. 12) Order 2007 [effective year of assessment [“YA”] 2006 until YA 2016] and Income Tax (Exemption) (No. 3) Order 2018 (effective YA 2017 until YA 2020).

Salient points of the abovementioned PN are as follows:-

- The unabsorbed losses prior to YA 2017 can be carried forward up to a maximum of seven (7) consecutive years of assessment from YA 2018 i.e. until YA 2025.
- The unabsorbed losses from YA 2017 up to YA 2020 incurred by a qualifying person in the exempt years of assessment shall be carried forward and deducted from the statutory income from the business in the post-exempt years of assessment up to a maximum of seven (7) consecutive years of assessment from YA 2021 i.e. until YA 2028.
- In the event that there is no statutory income from ICBU during the post-exempt years of assessment, the unabsorbed losses carry forward are not allowed to be set off against statutory income other than from ICBU.

**Note:** For further information on the Income Tax (Exemption) (No. 3) Order 2018 issued on 26<sup>th</sup> September 2018, please refer to our [Tax Flash – November 2018 issue](#).

### **New DTA between Malaysia and Cambodia**

The new [Double Taxation Agreement \[“DTA”\] signed between Malaysia and Cambodia](#) has recently been gazetted.

Salient points of the DTA include:-

- i. A building site, a construction, installation, or assembly project or supervisory activities in connection therewith constitutes a permanent establishment [“PE”] only if such site, project or activities exists more than 9 months.

- ii. The following shall also constitute a PE if the activities are carried on for a period or periods aggregating more than 183 days within any 12-month period:-
- Furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if the activities of that nature continue (for the same or connected project);
  - Carrying on of activities (including operation of substantial equipment) for the exploration or exploitation of natural resources;
  - Operation of substantial equipment, other than for the exploration or exploitation of natural resources.
- iii. The withholding tax rates applicable on certain payments made to non-residents are as follows:-
- Dividend – 10% (*Note*)
  - Interest – 10%. Penalty charges for late payment are not considered as interest.
  - Royalties – 10%. Definition of Royalties in DTA does not include software.
  - Technical fees – 10%
  - Section 4(f) income – 10%

The above DTA will enter into force upon ratification.

**Note:** Currently, there is no withholding tax on outbound dividends under the Act.

#### **Import Duty and Sales Tax Exemption on Importation and Local Sale of Face Masks**

- i. The Finance Minister *exempts any person from payment of import duty and sales tax in respect of importation of the following face masks:-*

<b>Type of Face Mask</b>	<b>HS Tariff Code</b>
Face mask (surgical / medical) 1 ply (ear loop)	6307.90.40 00
Face mask (surgical / medical) 2 ply (ear loop)	6307.90.40 00
Face mask (surgical / medical) 3 ply (ear loop / head loop / head tie-on)	6307.90.40 00
Face mask (surgical / medical) N95	6307.90.90 00

- ii. In addition, registered manufacturers are also exempted from charging sales tax on sales of the abovementioned face masks.
- iii. The above exemption takes effect from 23<sup>rd</sup> March 2020 until a date to be announced by the Ministry of Finance [“MOF”], likely to be the date when the COVID-19 pandemic is declared over by the Government.

#### **Import Duty and Sales Tax Exemption on Importation / Local Purchase of Medical and Laboratory Equipment, Personal Protective Equipment [“PPE”] and Consumables for the Purpose of Donating the Same to the Ministry of Health [“MOH”] In Order to Combat the COVID-19 Outbreak**

- i. The Finance Minister *exempts any person from payment of import duty and sales tax in respect of any importation or local purchase of medical and laboratory equipment, PPE and consumables* for the purpose of donating the same to the MOH in order to combat the COVID-19 outbreak.

- ii. The equipment and consumables exempted from payment of import duty and sales tax are listed in the [Appendix A](#) published by Royal Malaysian Customs Department [“RMCD”] on 25<sup>th</sup> March 2020.
- iii. The exemption is subject to the following conditions:-
  - Importers are exempted from payments of import duty and sales tax under Section 14(2) of the Customs Act 1967 and Section 35(3)(a) of the Sales Tax Act 2018;
  - Registered manufacturers are exempted from charging sales tax under Section 35(3)(a) of the Sales Tax Act 2018. The exemption is granted under Section 35(4) of the Sales Tax Act 2018;
  - The above exemption takes effect from 25<sup>th</sup> March 2020 until a date to be announced by the MOF, likely to be the date when the COVID-19 pandemic is declared over by the Government;
  - The import duty and sales tax exemptions are applicable to any donor with a permit to import or purchase dutiable / taxable goods issued by the MOH to RMCD;
  - Any application for the above permit must be made to the MOH, SIRIM Berhad or Atomic Energy Licensing Board [“AELB”] as detailed in the [Appendix B](#) published by RMCD on 25<sup>th</sup> March 2020.
- iv. For importation of dutiable goods without sales tax, the importer or donor may rely on the import duty exemption facility under Item 77 of the Customs Duties (Exemption) Order 2017 so that such goods can be imported free from import duty for the purpose of donating them to the Federal Government, State Government or any statutory body. Such exemption is subject to the pre-requisite conditions as stated in the [Appendix C](#) published by RMCD on 25<sup>th</sup> March 2020.

#### **RMCD’s Response to COVID-19 and Extended Movement Control Order**

- In response to the announcement made by our Prime Minister on 25<sup>th</sup> March 2020 to extend the Movement Control Order [“MCO”] to 14<sup>th</sup> April 2020, RMCD has on the same day announced that the *due dates for submission of returns (i.e. sales tax returns or service tax returns) and making payments which are due on 31<sup>st</sup> March 2020 be further extended to 30<sup>th</sup> April 2020.*
- Further to the subsequent extension of MCO period to 28<sup>th</sup> April 2020, RMCD has extended the deadline for payment of sales tax or service tax which are due on 31<sup>st</sup> March 2020 and 30<sup>th</sup> April 2020 to 12<sup>th</sup> May 2020.
- Any penalty imposed on the payment made during the permissible extended period will be remitted in full by RMCD.
- Payments of sales tax or service tax via online or postal service are encouraged.

#### **Announcement on Service Tax on Digital Services System [“MySToDS”] for Foreign Registered Persons**

RMCD has on 30<sup>th</sup> March 2020 informed that the *official system for service tax on digital services [“MySToDS”]* will be accessible by foreign registered persons effective 1<sup>st</sup> April 2020 for the purpose of submission of returns, making payments, etc.

#### **Guide on Digital Services by Foreign Service Provider**

The *Guide on Digital Services by Foreign Service Provider* as at 30<sup>th</sup> March 2020 was published by RMCD on the even date. Detailed steps on the process for applying for a digital service tax [“DST”] identification number, the completion of DST returns as well as the modes of payment of tax are stated in the aforesaid guide.

## Exemptions on Import Duty, Excise Duty and Sales Tax on Raw Materials used for the Purpose of Manufacturing Hand Sanitiser

- i. RMCD has on 30<sup>th</sup> March 2020 granted *manufacturers who produce hand sanitiser (HS code: 3808.94.90 00) an exemption on import duty, excise duty and sales tax on the purchase of raw materials (i.e. undenatured ethyl alcohol and denatured ethyl alcohol) used for such manufacturing.*
- ii. The manufacturers are required to submit the following documents to the Tax Division of the MOF for the purpose of applying for the abovementioned exemptions:-
  - Manufacturing licence issued by Malaysian Investment Development Authority [“MIDA”];
  - Information on finished goods;
  - The company’s annual maximum production capacity;
  - Input / output ratio;
  - Manufacturing process flow chart; and
  - Manufacturing licence issued by the MOH.

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