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Guidelines on Tax Treatment of Income of Medical Practitioners (Specialist Doctors) in Private Hospitals Whether to be Assessed under Individual or Company

The Inland Revenue Board ["IRB"] has recently issued the *Guidelines on Tax Treatment of Income of Medical Practitioners (Specialist Doctors) in Private Hospitals Whether to be Assessed under Individual or Company* dated 16th March 2022 (in *Bahasa Malaysia*) to explain the tax treatment of income of medical practitioners (hereinafter referred to as "specialist doctors") in private hospitals derived from providing medical consultation, treatment, surgical, etc. i.e. whether should be assessed as business income [Section 4(a) of the Income Tax Act 1967 ["ITA 1967"]] or employment income [Section 4(b) of the ITA 1967] of an individual or as business income [Section 4(a) of the ITA 1967] of a company.

Salient points of the abovementioned Guidelines include:-

- i. Tax Treatment on Income Received by Specialist Doctors in Private Hospitals
 - In a situation where a specialist doctor sets up a company and enters into an agreement with a private hospital (regardless whether the agreement entered into with a private hospital is made under the name of specialist doctor or the company) to provide specialist services to patients, the consultation fee and other payments paid by the private hospital will be treated as income from carrying on a profession as a doctor and assessed as the doctors' personal business income under Section 4(a) of the ITA 1967 instead of the company's business income.
 - The above stance has been clarified in the IRB's letter to the Malaysian Medical Association dated 28th June 2018.
- ii. Income of Specialist Doctors Assessed as Individual Business Income under Section 4(a) of the ITA 1967
 - In situations where a specialist doctor owns a clinic (i.e. under *Sdn Bhd*) [hereinafter referred to as "Specialist Clinic"] located within a private hospital's premises, the consultancy fees and any other forms of payment received in the following scenarios are treated as business income of the doctor:-
 - patients go to private hospitals for treatment who were then referred to a specialist doctor who owns a Specialist Clinic at the hospital to receive appropriate treatment. After the treatment, the patient obtains the medicine from the hospital pharmacy and makes the payment at the hospital payment counter.
 - patients go directly to the Specialist Clinic to seek treatment from specialist doctor and require surgery or further treatment using hospital facilities such as operating theatres or others.
 - Where doctors also conduct business in medical related fields such as selling medical products, pharmacies and health aids other than carrying out the profession as specialist doctor in private hospitals, the doctors will be treated as having a separate source of business income.
 - There are situations where the shareholders and company directors of the Specialist Clinic consist of individual specialist doctors and other individuals who are not a specialist doctors providing services in private hospitals:-
 - consultation fees and other fees received by individual specialist doctors from the private hospitals are considered as the individual business income under Section 4(a) of the ITA 1967
 - however, the director's fee income received by individual specialist doctors and other individuals from the Specialist Clinic is an employment income under Section 4(b) of the ITA 1967
 - In a situation where the individual specialist doctor sets up a Specialist Clinic not located within a private hospital's premises, the consultancy fees and any other forms of payment received for services provided (e.g. x-ray diagnostic imaging services) are treated as business income of the individual under Section 4(a) of the ITA 1967.

- iii. Income Assessed as Employment Income under Section 4(b) of the ITA 1967
 - Where specialist doctors enter into contract of service as an employee of the private hospital to provide consulting services, perform surgery or provide other treatment, the income received by the individual as a specialist doctor from the private hospital will be assessed as the individual's employment income under Section 4(b) of the ITA 1967.
- iv. Income Assessed under Company as Business Income under Section 4(a) of the ITA 1967
 - In certain situation, a doctor owns a Specialist Clinic in a private hospital's premises and patients come directly to receive specialist treatment from the clinic without being referred by the private hospital. The specialist doctor does not use any facilities of the private hospital in carrying out treatment given to the patients. The income received by the doctor constitutes a business income of the company under Section 4(a) of the ITA 1967.
 - If the Specialist Clinic is not located in the premises of a private hospital and the services provided to patients also do not involve any private hospital, then the consultation fees and other fees received by the Specialist Clinic from patients or clients is taxable as business income of the Company under Section 4(a) of the ITA 1967.
- v. Tax Treatment on Expenses
 - Examples of the types of expenses allowed for deduction in arriving at the adjusted income are:-
 - professional indemnity insurance;
 - expenses incurred for seminars, workshops or conference for the purpose of Continuing Professional Development;
 - employer's contribution to Employees Provident Fund ["EPF"] (in the case of sole proprietorship business, contribution to the EPF account of the specialist doctor is not allowable under Section 39 of the ITA 1967);
 - rental paid for doctor's room, equipment, operating room in the private hospital; and
 - expenses incurred for medical practitioner license, administrative charges charged by private hospital, employee salaries, stationery, telephone, internet and facsimile charges.
- vi. Capital Allowances
 - A specialist doctor who incurred qualifying assets and used for the business purpose is eligible to claim capital allowance under Schedule 3 of the ITA 1967.

IRB's Media Release on Termination of Special Programme for Remittance of Foreign Income

In the Budget 2022, it was proposed that the income of a person resident in Malaysia arising from sources outside Malaysia and received in Malaysia would no longer be exempted from tax, effective 1st January 2022.

A Special Programme for Remittance of Foreign Income Kept Overseas ["the Special Programme"] was then announced by the IRB on 16th November 2021 to encourage residents in Malaysia to declare such income remitted to Malaysia during the period from 1st January 2022 to 30th June 2022 that will be taxed at a special tax rate of 3% on the gross amount without being subject to tax audit.

In a subsequent media announcement made on 30th December 2021, the Ministry of Finance has agreed to extend the tax exemption on the foreign-sourced income received in Malaysia from 1st January 2022 to 31st December 2026 as below:-

<u>Category of Taxpayer</u>	<u>Types of Income Exempted from Tax</u>
Company / Limited Liability Partnership	Dividend income
Individual *	All types of income

* excluding foreign income received through partnership business

Following the above, the IRB has announced, through a [media release on 11th March 2022](#), that the Special Programme has been terminated considering the tax exemption granted on the foreign-sourced income received in Malaysia by tax residents in Malaysia. The aforesaid exemption will be subject to the conditions specified in the Income Tax Exemption Orders to be issued in accordance with Section 127 of the ITA 1967.

However, other foreign-sourced income that is not granted the exemption will still be subject to tax at a rate of 3% for the period from 1st January 2022 until 30th June 2022. From 1st July 2022 onwards, the foreign-sourced income would be subject to tax at the prevailing tax rates of the taxpayer.

Note: For further information on the above, kindly refer to our email on the highlights on Budget 2022 Proposals (Part 3) dated 3rd January 2022.

MIDA's Media Release on Amendments to the Definition of Contract R&D Company and R&D Company in the PIA 1986 Including Application for Approval as a R&D Company

The Finance Act 2021 provides that effective 1st January 2022, a Research and Development ["R&D"] company and contract R&D company under Section 2 of the Promotion of Investments Act 1986 ["PIA 1986"] are required to apply for approval as a R&D status company from the Ministry of International Trade and Industry ["MITI"].

The Malaysian Investment Development Authority ["MIDA"] has on 3rd February 2022 announced via a [media release](#) with regard to the requirements for the R&D and contract R&D companies to be approved as a R&D status company by the MITI in line with the amendments to the definition of R&D company and contract R&D company as mentioned above.

Companies in the business of providing R&D services i.e. contract R&D company and R&D company that wish to apply for R&D tax incentive will be granted R&D status (subject to MITI's approval) for a period of 5 years. Companies granted with this status may apply for extension to the MIDA where the approval is subject to consideration by MITI and the Ministry of Finance.

Besides, the Finance Act 2021 also provides that existing R&D and contract R&D companies which have been granted approval as a R&D company prior to 1st January 2022 will be given grace period until 30th June 2022 to notify MIDA to be considered as R&D status companies in accordance with the new definition. For this purpose, companies are required to provide documents to prove that they are undertaking activities relating to R&D as defined under the new Section 4H of the PIA 1986 and complies with conditions imposed previously in their approval letters, failing which the companies shall immediately cease to be a "R&D company" and "contract R&D company".

Global Trading Centre Incentive Scheme

In the Budget 2021 announcement, the Global Trading Centre ["GTC"] incentive scheme was introduced to promote the establishment of companies undertaking global trading businesses in Malaysia. Following this, the [Income Tax \(GTC Incentive Scheme\) Rules 2022](#) has been gazetted to provide that a qualifying company carrying on business in respect of strategic sourcing, procurement and distribution of raw materials, components and finished products to other company within or outside Malaysia will be charged to tax at concessionary rate of 10% for a period of 5 years, which may be extended for another 5 years.

To be eligible for the above GTC incentive scheme, a qualifying company must comply with the conditions specified in the approval letter and the Guidelines on Incentive for Setting Up a GTC issued or as revised by MIDA.

A qualifying company which fails to comply with any conditions imposed may surrender the incentive granted by notice in writing to the Minister through MIDA and this shall take effect on the first day in the basis period for the year of assessment in which the application for the surrender of the incentive is received by MIDA.

The GTC incentive scheme under these Rules shall not apply to a qualifying company which in the relevant years of assessment:-

- has made a claim for reinvestment allowance under Schedule 7A to ITA 1967 or investment allowance for service sector under Schedule 7B to ITA 1967;
- has been granted any incentive under the PIA 1986 in respect of the similar qualifying activity;
- has been granted an exemption under Section 127(3)(b) or Section 127(3A) of ITA 1967 in respect of the similar qualifying activity; or
- has made a claim for deduction under any rules made under Section 154 of ITA 1967 except:-
 - the rules in relation to allowance under Schedule 3 to ITA 1967;
 - the Income Tax (Deduction for Audit Expenditure) Rules 2006; or
 - the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020.

For the purpose of the above Rules:-

“Qualifying company” means a company which:-

- is incorporated under the Companies Act 2016;
- is resident in Malaysia;
- has not carried on any activity in Malaysia;
- fulfills the eligibility condition imposed by the Minister under the MIDA (Incorporation) Act and these Rules; and
- uses Malaysia as its international trading base.

Application for the above incentive scheme must be received by MIDA from 1st January 2021 to 31st December 2022.

Note: For further information on the GTC Incentive Scheme and the Guidelines on Incentive for Setting Up a GTC, kindly refer to our *Tax Flash – November 2021* issue.

Double Deduction for Sponsorship of Scholarship to Student Pursuing Studies at the Technical and Vocational Certificate, Diploma, Bachelor’s Degree, Master’s Degree or Doctor of Philosophy Levels

Following the Budget 2022 announcement, *the Income Tax (Deduction for the Sponsorship of Scholarship to Malaysian Student Pursuing Studies at the Technical and Vocational Certificate, Diploma, Bachelor’s Degree, Master’s Degree or Doctor of Philosophy Levels) Rules 2022* has been gazetted to provide for a claim for double deduction on expenses incurred and paid by a company in the basis period for a year of assessment for sponsoring scholarship to a student at the technical and vocational certificate, diploma, bachelor’s degree, master’s degree or doctor of philosophy levels, in accordance with the period of the relevant sponsorship agreement.

The expenses allowed for double deduction in respect of sponsorship of a scholarship are as follows:-

- payment required by the relevant institution or higher educational institution relating to the course of study; and
- educational aid and reasonable cost of living expenses throughout the student's period of study at the relevant institution or higher educational institution.

These Rules shall apply to a company which:-

- is incorporated under the Companies Act 2016 and resident in Malaysia;
- sponsors scholarship to student pursuing full-time course of study:-
 - at technical and vocational certificate levels in an institution; or
 - at diploma, bachelor's degree, master's degree or doctor philosophy levels in a higher educational institution; and
- executes scholarship agreement with a student on or after 1st January 2022 but not later than 31st December 2025.

For the purpose of the above Rules:-

"Institution" means any institution recognized by the Malaysian Qualifications Agency or the Skills Development Department.

"Higher educational institution" means any institution established under the Universities and University Colleges Act 1971, Universiti Teknologi MARA Act 1976 or the Private Higher Educational Institutions Act 1996.

"Student" means an individual:-

- who is a Malaysian citizen and resident in Malaysia;
- who is pursuing full-time course of study:-
 - at technical and vocational certificate levels in an institution; or
 - at diploma, bachelor's degree, master's degree or doctor of philosophy levels in a higher education institution;
- who has no means of his own; and
- whose parents or guardians have total monthly income not exceeding RM10,000.

The above Rules shall have effect from year of assessment 2022.

Extension of Incentive Period for Sabah Development Corridor

Currently, tax incentives are given to the companies undertaking qualifying activities for Sabah Development Corridor as follows:-

- Tax exemption on statutory income derived from qualifying activity equivalent to 100% of the qualifying capital expenditure incurred by a qualifying company for a period of 5 or 10 years pursuant to the Income Tax (Exemption) (No. 11) Order 2018
- Tax exemption in respect of the statutory income derived from a qualifying activity for a period of 5 or 10 years pursuant to the Income Tax (Exemption) (No. 12) Order 2018

In the Budget 2021, it was proposed that the application for the above incentives that should be made to the Sabah Economic Development and Investment Authority by 31st December 2020 be extended for another 2 years i.e. until 31st December 2022.

Following the above, the following amendment Orders have been gazetted to provide for the abovementioned extension of application for the incentives:-

- [Income Tax \(Exemption\) \(No. 11\) 2018 \(Amendment\) Order 2022](#)
- [Income Tax \(Exemption\) \(No. 12\) 2018 \(Amendment\) Order 2022](#)

Note: For further information relating to the above incentives for Sabah Development Corridor granted under the Income Tax (Exemption) (No. 11) Order 2018 and Income Tax (Exemption) (No. 12) Order 2018 issued previously, kindly refer to our [Tax Flash – February 2019](#) issue.

Extension of Stamp Duty Exemption on Instrument of Transfer of Real Property Used for a Qualifying Tourism Project in Sabah Development Corridor

The Stamp Duty (Exemption) (No. 8) Order 2018 provides for stamp duty exemption on instrument of transfer of real property used for a qualifying tourism project i.e. in relation to hotel or resort carried on in the Sabah Development Corridor which is executed between 20th November 2012 to 31st December 2020.

Following the Budget 2021 announcement, the [Stamp Duty \(Exemption\) \(No. 8\) 2018 \(Amendment\) Order 2022](#) has been gazetted to extend the exemption period for instrument of transfer executed not later than 31st December 2022.

Updated Guidelines on Application of Relief from Stamp Duty under Section 15 and Section 15A of the SA 1949

The IRB has recently issued the updated [Guidelines on Application for Relief from Stamp Duty under Section 15 of the Stamp Act 1949 \[“SA 1949”\]](#) (in Bahasa Malaysia) and [Guidelines on Application for Relief from Stamp Duty under Section 15A of the SA 1949](#) (in Bahasa Malaysia), both dated 1st March 2022. These updated Guidelines replace the previous guidelines issued in 2019 and have effect from 1st March 2022.

The updated Guidelines provide guidance on the application procedures in respect of relief from stamp duty on instruments of transfer for the transactions involved in the case of reconstruction or amalgamation of companies under Section 15 of the SA 1949 and in the case of transfer of property between associated companies under Section 15A of the SA 1949.

The updated Guidelines also set out the following:-

- Conditions for approval for the stamp duty relief;
- Application procedures for the stamp duty relief;
- Circumstances where withdrawal of approval granted for the relief will apply; and
- Responsibilities of the transferor and transferee companies.

Note: For further information on the previous [Guidelines on Application for Relief from Stamp Duty under Section 15 of the SA 1949 \(in Bahasa Malaysia\)](#) and [Guidelines on Application for Relief from Stamp Duty under Section 15A of the SA 1949 \(in Bahasa Malaysia\)](#) issued in 2019, kindly refer to our [Tax Flash – April 2019](#) issue.

Deferment of Implementation of Imposition of Excise Duty on Pre-Mixed Preparation Products for Beverages

Based on the 2022 Budget proposals, it was proposed that the excise duty would be imposed on pre-mixed preparation products for beverages with effect from 1st April 2022.

However, the Royal Malaysian Customs Department [“RMCD”] has on 31st March 2022 announced that the *implementation of the imposition of excise duty on pre-mixed preparations* would be postponed to a date to be announced in a near future.

Note: For further details, kindly refer to item G9 in our *Tax Flash – November 2021 (Special Edition)* issue.

Sales Tax Policy No. 1/2022 – Treatment of Sales Tax Exemption on Pallets

RMCD has on 11th April 2022 published the [Sales Tax Policy No. 1/2022 – Treatment of Sales Tax Exemption on Pallets dated 5th April 2022](#) (in Bahasa Malaysia). The salient points extracted from the Policy are as follows:-

- A registered manufacturer / an agent appointed by a registered manufacturer that imports / purchases pallets and uses them as packaging materials in the manufacturing is eligible for sales tax exemption under Item 1 or 3 of Schedule C to the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [“the Exemption Order”].
- The pallets imported / purchased with sales tax exemption under Item 1 or 3 of Schedule C to the Exemption Order must:-
 - be used as packaging materials for finished goods to be exported or sold;
 - not be returned to the registered manufacturer; and
 - become the property of the buyer.
- Pallets that are used for the purpose of transporting goods, reusable or to be returned to the registered manufacturer are not categorised as packaging materials for the purpose of the sales tax exemption under Item 1 or 3 of Schedule C to the Exemption Order. Therefore, the sales tax must be paid when the pallets are imported / purchased.
- Pallets that are used for the purpose of transporting exported goods and subsequently re-imported are eligible for the sales tax exemption under Item 39 of Schedule A to the Exemption Order when the pallets are re-imported.

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