



TAX FLASH

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Amendments to Finance Bill 2023

Subsequent to the release of the Finance Bill 2023, the *Finance Bill 2023 with Amendment in Committee* was passed in the Parliament with the following amendments:-

- i. Extension of Personal Tax Relief for Contribution to the National Education Savings Scheme ["SSPN"] Account
 - The tax relief of up to RM8,000 for net contributions made to the SSPN account available to tax resident individuals will be extended until the year of assessment ["YA"] 2024.

- ii. Review of Tax Treatment of Micro, Small and Medium Enterprise ["MSME"]
- Effective Date of Consequential Amendments
 - To qualify for the preferential tax rates for MSME, an additional condition on shareholding was introduced, i.e. effective YA 2024, not more than 20% of the paid-up capital in respect of ordinary share of a company or the capital contribution of a limited liability partnership at the beginning of the basis period for a year of assessment is directly or indirectly owned by one or more companies incorporated outside Malaysia or by one or more individuals who are not Malaysian citizens.
 - In line with the above, the effective date for commencement of the consequential amendments under Paragraph 2F of Part I of Schedule 1 of the Income Tax Act 1967 ["ITA 1967"] has now been amended/rectified from YA 2023 to YA 2024.

Guidelines on Submission of Form CP107D and Appendix CP107D(2) for Remittance of 2% Withholding Tax on Payments Made to Agents, Dealers or Distributors

Following the media release and updated Frequently Asked Questions on Remittance of 2% Withholding Tax ["WT"] on Payments Made by a Company to Agents, Dealers and Distributors ["ADD"] on 9th July 2022 and 19th August 2022 respectively, the Inland Revenue Board ["IRB"] has recently issued the following to provide guidance and updates on the latest administrative changes in relation to the remittance of WT on payments made by a payer company to ADD:-

- [Guidelines on Submission of Form CP107D – Pin 2/2022 and Appendix CP107D\(2\) – Pin 1/2023 for Remittance of 2% WT on Payments Made to ADD under Section 107D of the ITA 1967](#) (in *Bahasa Malaysia*); and
- [Flowchart for Submission of Form and Appendix and Remittance of 2% WT on Payments Made to ADD under Section 107D of the ITA 1967](#) (in *Bahasa Malaysia*).

The salient points included in the above Guidelines/Flowchart are as follows:-

- Prior to making the 2% WT payment at the respective payment counters / via post, the following documents must be completed and emailed to the respective payment centres:-
 - Form CP107D – Pin 2/2022; and
 - Appendix CP107D(2) – Pin 1/2023.
- The payment centre will issue an acknowledgement slip for the submission of Appendix 107D(2) ["the Acknowledgement Slip"] via email to the payer company if the Appendix 107D(2) is complete. The aforementioned Appendix will be returned to the payer company if it is incomplete.
- The payer company can proceed with the 2% WT payment when the Acknowledgement Slip is received.
- The documents to be presented when making payment at the payment counter / via post are as follows:-
 - the Acknowledgement Slip;
 - Form CP107D – Pin 2/2022;
 - Appendix CP107D(2) – Pin 1/2023; and
 - cheque / bank draft.
- The payment amount must be the same as the amount stated on the Acknowledgement Slip. Otherwise, it will be rejected by the payment centre.

Note: For further information, kindly refer to our [Tax Flash – August 2022](#) and [Tax Flash – October 2022](#) issues.

Implementation of Excise Duty on Nicotine-Based Products for Electronic Cigarettes and Vape

During the presentation of the 2023 Budget (Retabled) on 24th February 2023, the Government has proposed to impose an excise duty on nicotine-based products (liquid or gel) used in electronic cigarettes and vape.

In line with the above, the Ministry of Finance ["MOF"] has on 2nd April 2023 issued a media release to inform that the *implementation of excise duty on nicotine-based products (liquid or gel) used in electronic cigarettes and vape* would take effect from 1st April 2023 upon the gazette of the *Excise Duties (Amendment) Order 2023*. An excise duty at the rate of RM0.40 will be charged for every milliliter of nicotine-based products (liquid or gel) under the HS code of 2402.12.1000 used in electronic cigarettes and vape.

Vape industry players, especially local manufacturers who produce liquid or gel products containing nicotine, are given the period from 1st April 2023 to 30th April 2023 to register their manufacturing activities with the Royal Malaysian Customs Department.

Early registration within the stipulated period can prevent the manufacturers from being charged a compound for late registration. This early registration will also ensure comprehensive industry compliance and smooth tax collection approaching May 2023.

The registration for licensing under the Excise Act 1976 can be done online through the MyExcise Portal (<https://myexcise.customs.gov.my/myexcise/>).

Sales Tax Regulations and Orders

The following Regulations and Orders have been gazetted on 31st March 2023 and took effect from 1st April 2023:-

- *Sales Tax (Imposition of Sales Tax in Respect of Designated Areas) (Amendment) Order 2023*;
- *Sales Tax (Amendment) Regulations 2023*;
- *Sales Tax (Imposition of Sales Tax in Respect of Special Areas) (Amendment) Order 2023*;
- *Sales Tax (Rate of Tax) (Amendment) Order 2023*; and
- *Sales Tax (Person Exempted from Payment of Tax) (Amendment) Order 2023*.

In addition to the above, the *Sales Tax (Goods Exempted from Tax) (Amendment) Order 2023* ["the Order"] has been gazetted on 4th April 2023 but no effective date was specified in the Order. The Royal Malaysian Customs Department has earlier confirmed that based on the Interpretation Acts 1948 and 1967, if the Order is silent on the effective date, the Order will take effect on 5th April 2023, i.e. the date immediately following the date of publication of the Order.

Recent Tax Case

SSB v DGIR

[Whether expenses for feasibility studies are tax deductible under Section 33(1) of the ITA 1967]

In the case of *SSB v Director General of Inland Revenue ["DGIR"]* [Appeal No. PKCP(R) 1035/2017 and PKCP(R) 1036/2017] (decided by the Special Commissioners of Income Tax ["SCIT"]), the principal activity of the taxpayer involves generation, transmission, distribution and sale of electricity. Pursuant to a license vested on the taxpayer, it has rights to use, work or operate any installations which among others grid power stations and system supply voltages.

The taxpayer claimed for tax deduction on the expenses for feasibility studies ["FS"] for the YA 2011 and YA 2012. The FS expenses relate to a hydropower project and according to the Director Circular Resolution No.15/2011, the expenditure for the FS is for exploring, identifying and developing new hydroelectric sites and dams. The DGIR disallowed the above FS expenses claimed by the taxpayer. Dissatisfied with the DGIR's decision, the taxpayer appealed to the SCIT.

The taxpayer avers that FS are not limited to hydro, but also includes gas or coal generation potential project to increase business as well as revenue opportunity. It is meant to also increase business opportunities through international investors and local investors. The FS conducted by the taxpayer in its usual business practice or operations were to fulfil the continuing demand.

The DGIR asserts that the hydroelectric sites or dams are not the stock-in-trade but the physical assets of the taxpayer. The FS expenses incurred by the taxpayer are for the purpose of exploring and developing hydroelectric sites and dams which is capital in nature, therefore falling within the ambit of the exception in Section 39(1)(c) of the ITA 1967. The deductibility of the expenditure on the FS must not only fulfil the requirement of wholly and exclusively incurred in the production of gross income under Section 33(1) of the ITA 1967 but must also not be prohibited under Section 39 of the ITA 1967. As such, the FS expenses is not deductible by virtue of Section 39(1)(c) of the ITA 1967. Further, the DGIR submits that based on the documentation evidence furnished by the taxpayer including various agreements entered into between SE Berhad and relevant consultants, the FS expenses claimed by the taxpayer were incurred by SE Berhad and not by the taxpayer.

The SCIT dismissed the taxpayer's appeal and ruled that the FS expenses incurred for the purpose of exploring and developing hydroelectric sites and dams are capital in nature and hence, not deductible under Section 33(1) of the ITA 1967. The Notification of Non-Chargeability to Tax dated 9th December 2016 for YA 2011 and the Notice of Additional Assessment dated 7th December 2016 for YA 2012 are conclusive and upheld. This decision shall bind the taxpayer's appeals for YA 2013 to YA 2020 [Appeal No. PKCP(R) 12/2018, PKCP(R) 50/2019, PKCP(R) 693/2017, PKCP(R) 223/2018, PKCP(R) 90/2019 and MOF.PKCP.700-7/1/536] on the issue of FS expenditure.

Dissatisfied with the SCIT's decision, the taxpayer has subsequently filed an appeal to the High Court.

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