MOORE Advent

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PR No. 1/2022 – Time Limit for Unabsorbed Adjusted Business Loss Carried Forward

The Inland Revenue Board ["IRB"] has recently published the *Public Ruling No. 1/2022 – Time Limit for Unabsorbed Adjusted Business Loss ["UBL"] Carried Forward* to provide clarification on the time limit for UBL arising from a business of a person to be carried forward.

The salient points of the abovementioned PR include:-

i. Treatment of UBL
- Pursuant to Section 44(5A) of the Income Tax Act 1967 ["ITA 1967"], UBL or the aggregate of UBL from each of the businesses carried forward are allowed to be utilised in the current year of assessment and subsequent years of assessment if there are no substantial change in the company's shareholding.
- In the event of a substantial change in the company's shareholding:-
  - UBL or the aggregate of UBL from each business will not be allowed to be utilised in that year of assessment;
  - UBL or the aggregate of UBL from each business will be disregarded; and
  - the amount disregarded is not allowed as deduction in subsequent years of assessment.
- If the UBL carried forward arose from two or more years of assessment, UBL arising from the earlier year of assessment shall be absorbed first before utilising the UBL arising from the subsequent year of assessment.

ii. Shareholding in a Company
- The shareholders of a company are substantially the same if the shareholders of the company on the last day of the basis period of the relevant year of assessment in which adjusted business loss is ascertained is substantially the same as the first day of the basis period for the year of assessment in which the adjusted business loss is allowable as a deduction.
- The shareholders of a company are substantially the same if:-
  - more than 50% of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same persons; and
  - more than 50% of the nominal value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same persons.
- Shares held by or on behalf of another company would be deemed to be held by the shareholders of the last-mentioned company.

iii. Exemption from the Application of the Shareholding Test
- The Minister of Finance ["MOF"] has stipulated that a company with substantial change in shareholding is allowed to carry forward accumulated UBL and utilise in that year of assessment and subsequent years of assessment provided that the company is not a dormant company.
- The company is considered dormant if there is no significant accounting transaction in one financial year prior to the substantial change in its shareholding i.e. company incurring minimum expenditure as follows:-
  - filing of the company's annual return to the Companies Commission of Malaysia;
  - secretarial fee for filing of the company's annual return;
  - tax filing fee;
  - audit fee; and
  - accounting fee.
- The above exemption is effective from the year of assessment ["YA"] 2006.

iv. Time Limit for UBL
- Effective YA 2019, the period for current year UBL to be carried forward is limited to 10 consecutive years of assessment immediately after the year of assessment the adjusted business loss arises.
- Any unabsorbed UBL after the period of 10 consecutive years of assessment will be disregarded.
- UBL brought forward from YA 2018 and preceding years of assessment are allowed to be carried forward and utilise against statutory income of the business from YA 2019 to YA 2028. Any UBL not utilised after the aforementioned period of 10 years will be disregarded in YA 2029.

Updated Technical Guidelines on Tax Treatment of Developer or Management Body for Maintenance and Management of Building and Common Property

The IRB has recently issued the updated *Technical Guidelines on Tax Treatment of Developer or Management Body for Maintenance and Management of Building and Common Property* dated 18th July 2022 (in *Bahasa Malaysia*) to replace the previous Guidelines on Tax Treatment of Charges for Maintenance and Joint Property Management Received by a Developer, Joint Management Body and Management Corporation dated 21st May 2012.

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

i. Tax Treatment for Developer and Management Body
   - For the purpose of the above updated Guidelines, "**management body**" refers to a Joint Management Body, Management Corporation and Subsidiary Management Corporation.
   - The mutuality principle among unit owners applies to the developer / management body who maintains and manages the building and common property in the relevant period.
   - The maintenance charges and contributions to the sinking fund collected and maintained by the developer / management body and other income arising from activities managed together with the unit owners will not be subject to tax. Therefore, any related expenses incurred and capital allowance computed shall be disregarded for tax purposes.
   - Income other than those mentioned above shall be subject to tax, which includes:-
     - Income received from the investment of funds from the collection of charges and contributions to sinking fund such as interest, dividend and other income which are not exempted from tax under any provisions of the ITA 1967;
     - Income received from the usage of any common properties by unit owners for business purpose which are profit-oriented; or
     - Income or receipts from non-unit owners which include:-
       - rental income from usage of common property;
       - donations and funds which are not exempted from tax by any provisions under the ITA 1967; and
       - other income or receipt (if any).
   - For the purpose of ascertaining the adjusted income of the developer / management body in respect of the abovementioned gross income subject to tax in the basis year of a year of assessment, a deduction under Section 33 of the ITA 1967 shall be allowed on expenses incurred in the production of such gross income.
   - Allowable expenses under Section 33 of the ITA 1967 which are incurred in the production of gross income derived from non-unit owners shall be determined based on the following formula as prescribed under the Income Tax (Deduction Relating to Transaction with Non-Members for Club, Association or Similar Institution) Rules 2011:-

$$A \times \frac{B}{C}$$

Where A = Common expenses incurred by developer or management body in the basis period for a year of assessment

B = Gross income from the usage of common property derived from non-unit owners in the basis period for a year of assessment; and

C = Gross income from the usage of common property derived from unit owners and non-unit owners (including charges and contributions to sinking fund)

- The basis period for a year of assessment for a management body shall be the calendar year coinciding with that year of assessment.
- The tax rates applicable are as follows:-
  - developer – taxed based on corporate tax rate under Paragraph 2, 2A or 2B, Part I of Schedule 1 of the ITA 1967.
  - management body – taxed based on scaled tax rates under Paragraph 1, Part I of Schedule 1 of the ITA 1967. A management body is not allowed to claim personal reliefs applicable to individuals in the computation of income chargeable to tax.
- Management bodies are required to submit the tax return form for organisation i.e. Form TF under Section 77(1) of the ITA 1967.
- Developers are required to prepare an account for the maintenance and management of building and common property separately from its business accounts.
- Developers and management bodies are required to retain in safe custody records and other documents in respect of income from maintenance and management of building and common property deriving from unit owners and non-unit owners separately for the purpose of tax audit by the IRB.

ii. Tax Treatment for Agent or Managing Agent

- Fees, remuneration or service fee received by a company, professional body or businesses who is appointed as the agent or managing agent to maintain and manage the building and common property is subject to tax under the ITA 1967.

Note: *For further information on the previous Guidelines on Tax Treatment of Charges for Maintenance and Joint Property Management Received by a Developer, Joint Management Body and Management Corporation, kindly refer to our Tax Flash – August 2012 issue.*

Updated Operational Guidelines on Tax Clearance Letter Application for Companies, LLP and Labuan Entities

The IRB has recently issued the updated *Operational Guidelines No. 1/2022 - Tax Clearance Letter Application for Companies, Limited Liability Partnerships ["LLP"] and Labuan Entities* dated 24th May 2022 (in *Bahasa Malaysia*) to replace the previous Operational Guidelines No. 3/2021 dated 30th June 2021.

The salient amendments included in the above updated Guidelines are as follows:-

- Companies under winding-up by court are no longer required to submit the Orders of Release or Dissolution under Section 491 of the Companies Act 2016 ["CA 2016"] for the tax clearance application. It is to be submitted for the purpose of tax file closure subsequent to the issuance of tax clearance letter.
- LLPs which are under winding-up by court are required to submit a copy of the receiving order or winding up order for the tax clearance application.
- Companies under strike-off are required to submit the Notice under Section 550 of the CA 2016 (instead of the Notice under Section 551 of the CA 2016) for the purpose of tax file closure.

Note: *For further information on the previous Operational Guidelines on Tax Clearance Letter Application for Companies, LLP and Labuan Entities, kindly refer to our Tax Flash – August 2021 issue.*

Tax Exemption on Foreign-Sourced Income for Individuals, Companies and LLP

In the Budget 2022 announcement, it was proposed that effective 1st January 2022, income of a person who is a resident in Malaysia arising from sources outside Malaysia and received in Malaysia will no longer be exempted from tax. The MOF has subsequently issued a media release on 30th December 2021 stating that certain categories of foreign-sourced income ["FSI"] received by tax residents during the period from 1st January 2022 to 31st December 2026 shall continue to be exempted from tax.

Following the above, the following legislations have been gazetted on 19th July 2022:-

- *Income Tax (Exemption) (No.5) Order 2022* to provide tax exemption of all types of FSI received by resident individuals; and
- *Income Tax (Exemption) (No.6) Order 2022* to provide tax exemption of dividend income received by resident companies / LLPs.

The salient points of the exemption Orders are as below:-

i. Income Tax (Exemption) (No.5) Order 2022
   - All sources of income (excluding a source of income from a partnership business in Malaysia) under Section 4 of the ITA 1967 which are received in Malaysia from outside Malaysia by a qualifying individual shall be exempted from the payment of income tax.
   - "**Qualifying individual**" means an individual resident in Malaysia and has income received in Malaysia from outside Malaysia.
   - The income exempted from tax under the above Order shall have been subjected to tax of a similar character to income tax under the laws of the foreign jurisdiction where the income arises. The eligibility conditions to be complied with will be specified in the guidelines to be issued by the IRB.
   - Any expenses incurred in relation to the FSI exempted under the above Order shall be disregarded for the purpose of ascertaining the chargeable income of the qualifying individual.

ii. Income Tax (Exemption) (No.6) Order 2022
   - Dividend income which is received in Malaysia from outside Malaysia by a qualifying person shall be exempted from the payment of income tax.
   - "**Qualifying person**" means a person resident in Malaysia who is:-
     - an individual who has dividend income received in Malaysia from outside Malaysia in relation to a partnership business in Malaysia;
     - a LLP registered under the Limited Liability Partnership Act 2012; or
     - a company incorporated or registered under the CA 2016.
   - The dividend income exempted from tax under the above Order is subject to the following conditions:-
     - The dividend income has been subjected to tax of a similar character to income tax under the laws of the foreign jurisdiction where the income arises; and
     - The highest rate of tax of a similar character to income tax charged under the laws of jurisdiction where the income arose at that time was not less than 15%.

     The eligibility conditions to be complied with will be specified in the guidelines to be issued by the IRB.
   - Any expenses incurred in relation to the FSI exempted under the above Order shall be disregarded for the purpose of ascertaining the chargeable income of the qualifying person.
   - The above Order does not apply to a resident company carrying on the business of banking, insurance or sea or air transport whose income will be subject to tax on world scope.

Both the above Orders are deemed to have effect from 1st January 2022 until 31st December 2026.

Note: *For further details, kindly refer to our Tax Flash – November 2021 (Special Edition) issue and Highlights on Budget 2022 Proposal (Part 3) - MOF's Media Release on Foreign-Sourced Income and Remission of Stamp Duty on Contract Notes for Trading of Shares Listed on Bursa Malaysia.*

Extension of the Application Period for Investment Deduction in a Bionexus Status Company

Pursuant to the Income Tax (Deduction for Investment in a Bionexus Status Company) Rules 2016, a qualifying person is granted a deduction in the basis period for a year of assessment of an amount equivalent to the actual value of investment made in a BioNexus status company approved by the Minister.

Following the 2021 Budget announcement, the *Income Tax (Deduction for Investment in a Bionexus Status Company) (Amendment) Rules 2022* has been gazetted to provide extension up to 31st December 2022 for a qualifying person to make the application to the Minister through Malaysia Bioeconomy Development Corporation Sdn. Bhd. for an approval to make investment in a Bionexus status company. This is applicable to the investment made in a Bionexus status company from 1st January 2021 to 31st December 2022.

The above amendment Rules shall be deemed to have come into operation on 1st January 2021.

Note: *For further information relating to the above, kindly refer to our Tax Flash – January 2017 issue.*

IRB's Media Release on Administrative Changes on Remittance of 2% Withholding Tax on Payments Made by a Company to Agents, Dealers or Distributors

Section 107D of the ITA 1967 was introduced to provide that effective 1st January 2022, a payer company is required to withhold tax at 2% on gross payments made to agents, dealers or distributors ["ADDs"] who is a resident individual arising from sales, transactions or schemes carried out by that agent, dealer or distributor. Following this, the IRB has earlier issued a media release dated 12th January 2022 and Frequently Asked Questions in Relation to the Deduction of Tax at 2% on Payments Made by a Company to ADDs (updated on 28th February 2022) to provide deferment / timelines for remittance of the withholding tax ["WT"] applicable to the period from January 2022 to March 2022 and thereafter.

On 9th July 2022, the IRB has issued another media release to announce the administrative changes on the remittance of WT on payments made by a company to ADDs. The salient points included in the media release dated 9th July 2022 are as follows:-

i. Companies are required to accumulate and remit the 2% WT on payments to ADDs on a monthly basis.
ii. WT on payments to ADDs should be remitted to the Director General of Inland Revenue by the last day of the following month e.g. WT applicable for payments made to ADDs in July 2022 i.e. for the period of 1st July 2022 to 31st July 2022 should be remitted to the IRB latest by 31st August 2022.
iii. Companies are required to submit the following documents via email to the relevant payment centres before making the payment for WT:-
    - Form CP107D – Pin 2/2022 in PDF format; and
    - Appendix CP107D(2) in Excel format.
iv. The email addresses of the respective payment centres are as follows:-

Payment Centres	Email Address
Kuala Lumpur Payment Centre	pbkl-cp107d@hasil.gov.my
Kuching Branch	pbkc-cp107d@hasil.gov.my
Kota Kinabalu Branch	pbkk-cp107d@hasil.gov.my

v. A copy of the email must be presented to the payment counter for checking and verification purposes when making the WT payment.
vi. The respective ADDs must have an income tax number in order for the company to complete Appendix CP107D(2).

Note: *For further details, kindly refer to our Tax Flash – February 2022 issue* and *FAQ in relation to the Deduction of Tax at 2% on Payments Made by a Company to an Agent, Dealer or Distributor*.

Service Tax Policy No. 10/2020 (Amendment No. 2)

Royal Malaysian Customs Department ["RMCD"] has published the *Service Tax Policy No. 10/2020 (Amendment No. 2)* dated 1st August 2022 (currently only made available in *Bahasa Malaysia*) which provides for service tax exemption on provision of digital services related to banking / financial services by local service providers.

The amended Service Tax Policy No. 10/2020 was issued to limit the service tax exemption period on the acquisition of digital services related to banking / financial services provided by local service providers (e.g. banks, investment banks, licensed financial institutions and other approved providers) and the exemption is now only applicable up to 31st July 2025, rather than perpetually.

Note: *For further details, kindly refer to our Tax Flash – May 2020 and Tax Flash – August 2021 issues.*

Service Tax Policy No. 1/2022

RMCD has published the *Service Tax Policy No. 1/2022* dated 1st August 2022 (currently only made available in *Bahasa Malaysia*) which provides for the service tax exemption on digital payment services provided by local non-bank service providers.

The salient points pertaining to the abovementioned service tax policy are as summarised below:-

i. The MOF, in exercising his power under Section 34(3)(a) of the Service Tax Act 2018 ["the SET Act"], exempts recipients of digital payment services provided by the following local non-bank service providers from payment of service tax:-
   - local non-bank payment instrument issuers;
   - local non-bank merchant acquirers; and
   - local non-bank payment system operators.
ii. The abovementioned service tax exemption is effective from 1st August 2022 until 31st July 2025.
iii. The local non-bank service providers mentioned in item (i) above must be:-
   - a registered person under the SET Act;
   - regulated and licensed by Bank Negara Malaysia under the Financial Services Act 2013 [*Act 758*] or Islamic Financial Services Act 2013 [*Act 759*]; and
   - providing digital payment services in Malaysia.
iv. The abovementioned service tax exemption is not applicable to:-
   - digital payment services rendered by foreign service providers to users in Malaysia; and
   - digital services other than the digital services listed in item (i) above provided by local non-bank service providers.

v. The policy clarifies the following transitional rules:-

Scenario	Actions to be Taken by Local Non-Bank Service Providers
1. Service tax has been collected from service recipient.	To remit the service tax collected to RMCD.
2. Invoice has been issued but payment has not been received from the service recipient in respect of the services rendered on or after 1st August 2022.	To issue credit note.
3. Period of service spanning 1st August 2022.	To only charge, account and pay service tax for services rendered up to 31st July 2022.

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

Service Tax (Amendment) Bill 2022

The *Service Tax (Amendment) Bill 2022* has been passed at the House of Representatives on 4th August 2022. We wish to highlight the following salient points extracted from the Service Tax (Amendment) Bill 2022:-

i. Introduction of Section 38A to the SET Act – Refund of service tax, etc., to a foreign registered person ["FRP"]
   - The amendment introduces a new provision to the SET Act whereby the Director General of Customs and Excise ["DG"] is empowered to withhold the whole or any part of the refundable amount to a FRP, to be credited to any subsequent taxable period and treat such amount as payment or part of the payment received from the FRP.

ii. Introduction of Section 56A(4B) to the SET Act – Due date for payment of service tax on digital services upon cessation of registration
   - The amendment provides that where a FRP ceases to be liable to be registered (either due to the reason of cessation of the provision of digital services or the FRP has been registered as a service tax licensee under Section 13 of the SET Act), the service tax shall be due and payable on the day the return is furnished to the DG under Section 56H(4A) of the SET Act.

iii. Introduction of Section 56D(aa) to the SET Act – Cessation of registration as a FRP
   - The amendment provides that a FRP will be ceased to be a registered person if the DG is satisfied that the total value of all digital services provided by the FRP in that month and the eleven months immediately preceding that month does not exceed the prescribed threshold for registration.

iv. Introduction of Section 56E(aa) to the SET Act – Notification of cessation of liability to be registered by a FRP
   - The amendment seeks to require a FRP to notify the DG in writing within 30 days from the date he ceases to be liable to be registered.

Sales Tax (Amendment) Bill 2022

The *Sales Tax (Amendment) Bill 2022* has been passed at the House of Representatives on 4th August 2022. We wish to highlight the following salient points extracted from the Sales Tax (Amendment) Bill 2022:-

i. Introduction of Sections 11A, 11B, 11C and 11D to the Sales Tax Act 2018 ["the SAT Act"] – Imposition of sales tax on low value goods
   - These new provisions seek to introduce the imposition of sales tax on low value goods ["LVG"].

   Note: *For further details, kindly refer to item G5 in our Tax Flash – November 2021 (Special Edition) issue.*

ii. Transitional provisions on LVG
   - To facilitate the imposition of sales tax on LVG, a seller of LVG shall apply to be registered as a registered seller if the total sale value of the LVG in the month of coming into force of the Sales Tax (Amendment) Act 2022 and the eleven months immediately succeeding that month will exceed the total sale value of the LVG prescribed by the MOF.
   - No sales tax shall be charged or levied on LVG purchased before the effective date for the charging or levying of sales tax on LVG but delivered to Malaysia after the effective date.

iii. Introduction of Section 57A to the SAT Act – Deficiency in the quantity of taxable goods in a special area
   - The amendment provides that where there is a deficiency in the quantity of taxable goods which in normal circumstances ought to be found in a special area, such goods shall, in the absence of any proof to the contrary, be presumed to have been illegally transported to Malaysia and the relevant person shall be liable to pay the sales tax leviable on the date when the quantity of the goods were found to be deficient.
   - In the event that the deficiency was due to unavoidable leakage, breakage or other accident, the DG may remit the whole or part of the sales tax leviable on the goods found deficient.

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