



TAX FLASH

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Guidelines on Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee Commencing from YA 2020

The Inland Revenue Board ["IRB"] has recently issued the *Guidelines on Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee Commencing from Year of Assessment ["YA"] 2020*. The Guidelines provide clarification on the tax treatment for claiming of deductions for secretarial fee and tax filing fee granted under the Income Tax (Deduction for Expenses in relation to Secretarial and Tax Filing Fee) Rules 2020.

Salient points of the abovementioned Guidelines are as follows:-

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

i. Secretarial Fee

- The expenses allowed for tax deduction are secretarial fee charged in respect of secretarial services provided by a company secretary registered under the Companies Act 2016 in compliance with the statutory requirements under that Act which:-
 - include advisory provided relating to company's meeting, preparation of directors' resolution, issuance of shares, submission of forms prescribed under the Companies Act 2016 and others relating to the company's matter; and
 - exclude incidental expenses such as reimbursement of expenses / out-of-pocket expenses ["OPE"], telephone and facsimile, printing and stationery, postage, travelling and accommodation and expenses incurred for general meeting.
- To be eligible to claim for deduction of secretarial fee in the basis period for a year of assessment:-
 - services must have been rendered;
 - liability has arisen (incurred) and charged to the income statement; and
 - fee must have been paid.

ii. Tax Filing Fee

- The expenses allowed for tax deduction are tax filing fee charged in respect of the preparation and submission of return in the prescribed form for the purposes of:-
 - a. Sections 77, 77A, 77B, 83 and 86 of the Income Tax Act 1967 ["the Act"];
 - b. Section 107C of the Act;
 - c. Section 26 of the Sales Tax Act 2018;
 - d. Section 26 of the Service Tax Act 2018;
 - e. Section 19 of the Departure Levy Act 2019; and
 - f. Section 19 of the Tourism Tax Act 2017.
- As in the case of secretarial fee, the expenses allowed for tax deduction exclude incidental expenses such as reimbursement of expenses / OPE, telephone and facsimile, printing and stationery, postage, travelling and accommodation.
- The Guidelines provide the following clarification on deduction of tax filing fee in the basis period for a year of assessment:-
 - For item (a), the fee for filing of tax return can be claimed for a basis period for a year of assessment immediately following that year of assessment, e.g. tax filing fee incurred and paid for YA 2019 in the basis period for YA 2020 is eligible for deduction in YA 2020;
 - For item (b), the fee for tax estimates / instalment payments under Section 107C of the Act for YA 2021 is eligible for deduction for YA 2020 if it is incurred and paid during the basis period for YA 2020;
 - For items (c) to (f), the fees for filing of Sales Tax / Service Tax / Departure Levy / Tourism Tax are eligible for deduction for YA 2020 if such fees are incurred and paid during the basis period for YA 2020.

iii. The total amount of deduction allowed for the above is subject to a maximum of RM15,000 per year.

Note: For further information on the Income Tax (Deduction for Expenses in Relation to Secretarial and Tax Filing Fee) Rules 2020, please refer to our [Tax Flash – June 2020](#).

Deduction for Expenses in Relation to Listing on ACE Market or LEAP Market of Bursa Malaysia

Following the 2020 Budget announcement, the [Income Tax \(Deduction for Expenses in Relation to Listing on Access, Certainty, Efficiency \(ACE\) Market or Leading Entrepreneur Accelerator Platform \(LEAP\) Market of Bursa Malaysia Securities Berhad\) Rules 2020](#) has been gazetted to allow a deduction equivalent to the amount of the following expenditures incurred by a technology-based company in relation to listing on the ACE Market or LEAP Market:-

- payment of fees to Bursa Malaysia Securities Berhad and Securities Commission Malaysia as the authorities;
- payment of the following professional fees:-
 - advisory fee to the sponsor, being the main adviser for listing on the ACE Market, and approved adviser, being the main adviser for listing on the LEAP Market; and
 - in relation to the listing exercise, fees to the solicitor, company secretary, tax adviser, reporting accountant, auditor, valuer, independent market researcher, issuing house and share registrar; and
- payment of fees for underwriting, placement and brokerage services.

The total amount of the deduction allowed for the above expenditure is limited to RM1.5 million which shall only be claimed by the technology-based company for the basis period in a year of assessment when it is listed on the ACE market or LEAP market. The amount of deduction must not exceed the adjusted income of the technology-based company for the basis period in that year of assessment and such adjusted income shall be ascertained before the deduction. In the event that an absence or insufficiency of adjusted income in that year of assessment, the deduction in respect of the above expenditure is deemed permanent loss and shall not be carried forward to the subsequent year of assessment.

For the purpose of the above Rules, a technology-based company is a company:-

- which is involved in the design, development and manufacture, production or application in any of the field and activities:-
 - as specified in the Schedule; and
 - which has been certified by the Bursa Malaysia Securities Berhad as the principal business activity of the technology-based company; and
- which has applied for listing on the ACE Market or LEAP Market.

The above Rules shall have effect from YA 2020.

Deduction for Expenditure on Industry4WRD Readiness Assessment

Following the 2019 Budget announcement, the *Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) Rules 2020* has been gazetted to allow a deduction for expenses in respect of fee expenditure on the Industry4WRD Readiness Assessment Programme incurred by a qualifying company subject to the following conditions:-

- the fee expenditure on the Industry4WRD Readiness Assessment programme shall be incurred within the period from 2nd January 2019 to 31st December 2020;
- an application for deduction shall be made to the Minister through the Malaysia Productivity Corporation on or after 2nd January 2019 but not later than 31st December 2021; and
- the total amount of the deduction allowed is limit to RM27,000.

For the purpose of this Rules:-

- **“Qualifying company”** means a company which:-
 - is incorporated under the Companies Act 2016 and resident in Malaysia;
 - is engaged in a manufacturing activity in compliance with the Industrial Co-ordination Act 1975 or manufacturing related service activity;
 - holds a business licence issued by the relevant local authority;
 - has been in operation for a period of at least 36 months; and
 - has not been approved an incentive by the Government in relation to the Industry4WRD Readiness Assessment programme, of which such incentive is subject to the Income Tax (Exemption) Order (No. 22) 2006;

- **“Industry4WRD Readiness Assessment”** means a programme implemented by the Malaysia Productivity Corporation for the purpose of assessing the gap and level of readiness of the companies to adopt Industry 4.0; and
- **“Malaysia Productivity Corporation”** means the Malaysia Productivity Corporation established under Section 3(1) of the Malaysia Productivity Corporation (Incorporation) Act 1966.

The above Rules shall deem to come into operation from YA 2019 to YA 2021.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

In line with Malaysia’s commitment in meeting the internationally agreed tax standards and the implementation of Base Erosion and Profit Shifting [“BEPS”] Action Plans, Malaysia has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS [“MLI”] at the Organisation for Economic Co-operation and Development’s headquarters in Paris. The MLI would allow Malaysia to effectively implement the anti-BEPS tax treaty measures by modifying existing tax treaties in a synchronised and efficient manner, without the need to renegotiate with each of the tax treaty partners separately.

In line with the above, the Double Taxation Relief (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS) Order 2020 was gazetted to provide guidance on the minimum and optional provisions adopted by Malaysia.

FAQ on Wage Subsidy Programme 2.0

The Government has implemented the Wage Subsidy Programme [“WSP”] under the *Prihatin* Economic Stimulus Package announced on 27th March 2020, to provide financial assistance to employers for local employees earning RM4,000 or less for a period of 3 months.

Under the PENJANA National Economic Plan announced on 5th June 2020, the WSP was extended for another 3 months, bringing the total number of months to 6. The application for the WSP commenced from 1st April 2020 to 30th September 2020.

On 23rd September 2020, the Government has announced that the WSP be extended for an additional 3 months for existing employers who are currently receiving the wage subsidy, while business that have yet to apply for the WSP may receive 6 months of the financial aid in total under this WSP 2.0. Application for the WSP 2.0 must be submitted during the period from 1st October 2020 to 31st December 2020.

The eligibility and benefits under the WSP 2.0 are as follows:-

No.	Eligibility and Benefits			
a.	Company Size	75 or fewer employees	76-200 employees	201 or more employees
b.	No. of Eligible Employees	75	200	200
c.	Subsidy Rate			
	• Current WSP Recipients	RM600 per employee per month for 3 months		
	• New Applicants	RM600 per employee per month for 6 months		

No.	Eligibility and Benefits	
d.	Eligibility	
	<ul style="list-style-type: none"> Decreased in sales or revenue 	Business sales or revenue have decreased by at least 30% year-on-year (from 2019 to 2020) after the implementation of the Recovery Movement Control Order
	<ul style="list-style-type: none"> Registered with Social Security Organisation ["SOCSO"] 	<ol style="list-style-type: none"> Employers and employees registered with and contributed to SOCSO prior to 1st September 2020; Employers should have registered with the Companies Commission of Malaysia or the relevant local authority prior to 1st September 2020
	<ul style="list-style-type: none"> Employee wages 	Employees earning RM4,000 or less
	<ul style="list-style-type: none"> Other conditions 	Employers are forbidden from retrenching all employees earning RM4,000 or less. However, they are allowed to reduce working hours or wages if their workers agree after negotiation
	<ul style="list-style-type: none"> How to apply 	Employers may apply on prihatin.perkeso.gov.my .

For further details, kindly refer to the [Frequently Asked Questions \["FAQ"\] on Wage Subsidy Programme 2.0](#) issued by SOCSO.

General, Specific and Industry Guides

The Royal Malaysian Customs Department ["RMCD"] has published the following guides:-

- [Guide on Consultancy, Training and Coaching Services](#) dated 15th September 2020 (currently only made available in *Bahasa Malaysia*);
- [Guide on Disbursement and Reimbursement](#) dated 15th September 2020;
- [Guide on Management Services](#) dated 1st October 2020 (currently only made available in *Bahasa Malaysia*);
- [Guide on Professional Services](#) dated 6th October 2020;
- [Guide on Warehousing Management Services](#) dated 6th October 2020 (currently only made available in *Bahasa Malaysia*); and
- [General Guide on Service Tax](#) dated 6th October 2020 (currently only made available in *Bahasa Malaysia*);
- [Guide on Accommodation](#) dated 13th October 2020; and
- [Guide on Clubs](#) (i.e. Groups C, D and E) dated 13th October 2020 (currently only made available in *Bahasa Malaysia*).

The salient points pertaining to the Guide on Disbursement and Reimbursement are as summarised below:-

- The determination of whether a registered person is a principal or an agent:-

Rules	Principal	Agent
Contractual liability and assumption of responsibilities and risks	Contracted for the acquisition of services in his own name / capacity	Merely arranged for the provision of services on behalf of his clients
Legal obligations to make payment	Third party service provider issues an invoice in his name	Third party service provider issues an invoice in his client's name

Rules	Principal	Agent
Alteration to the nature / value of services between the third party service provider and his clients	Able to alter the nature / value of services to be recovered from his clients	Unable to alter the nature / value of services to be recovered from his clients
Identity of parties and transactions involved	The third party service provider does not know the identity of his client and his client does not know the exact amount of cost incurred	The third party service provider knows the identity of his client and his client knows the exact amount of cost incurred

ii. Service Tax Treatment

- The service tax treatment for recovery of the expenses will generally follow that of the primary service. In another words, if the primary service is not a taxable service, the recovery of the expense will not be subject to service tax and thus, the registered person does not need to determine whether it is a disbursement or reimbursement.
- The recovery of cost will be treated as disbursement and hence, not subject to service tax if the registered person fulfils **all** the following criteria:-
 - The client is aware that the service is made by the third party service provider and not by the registered person;
 - The exact amount is claimed from the client and the registered person shall not alter the nature of the services or add on the value of the services; and
 - A copy of the invoice issued by the third party service provider is attached together with the invoice issued by the registered person to the client as a supporting document.

iii. Explanation on Other Cost Recoveries

- Where the contract does not specifically state about the OPE, the OPE will form part of the value of the taxable service provided by the registered person and thus, subject to service tax.
- However, any OPE charged separately will not be subject to service tax if the following conditions are fulfilled:-
 - It is stated in the contract that the client will bear the OPE costs;
 - It is paid on a back to back basis (i.e. without any mark-up); and
 - The registered person provides supporting documents when making the claim from his client.

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2020

The *Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2020* ["the Order"] was gazetted and in force effective 6th October 2020. The salient points extracted from the Order are as follows:-

- i. Amendment to Column 3 (i.e. Goods Exempted), Item 57 of Schedule A to the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 ["the 2018 Order"] whereby any person approved by the Director General ["DG"] will be exempted from sales tax in respect of:-
- all goods locally manufactured or manufactured by any licensed manufacturing warehouse ["LMW"] under Section 65A of the Customs Act 1967 or by any manufacturer in the Free Industrial Zone ["FIZ"] established under the Free Zones Act 1990 for export or transport to any Designated Area ["DA"] or Special Area ["SA"].
 - The amendment is to widen the exemption of sales tax under Item 57 of Schedule A to include goods manufactured by the abovementioned persons for export or transport to any DA or SA effective 6th October 2020.

ii. Amendment to Column 4 (i.e. Conditions), Item 57 of Schedule A to the 2018 Order

- The conditions under Item 57 of Schedule A have been amended as follows:-
 - The goods are purchased or acquired from a registered manufacturer or from any LWM or FIZ;
 - The goods shall be exported or transported to any DA or SA by the approved person within 6 months or such further period as the DG may allow from the date of purchase or acquisition;
 - The goods shall not be used or carry out any further process after the purchase or acquisition;
 - If the goods are not exported or transported to any DA or SA within 6 months or such further period as the DG may allow from the date of purchase or acquisition, the approved person shall be liable to pay the sales tax on such goods; and
 - Any other conditions as the DG may deem fit to impose.

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