MOORE Advent

TAX FLASH

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In this Issue

- Moore Malaysia
- Moore Global
- Inland Revenue Board

PR No. 7/2019 – Taxation of Foreign Fund Management Company

The Inland Revenue Board ["IRB"] has recently issued the *Public Ruling ["PR"] No. 7/2019 – Taxation of Foreign Fund Management Company* to provide guidance on tax treatment of income received by a foreign fund management company that provides fund management services to foreign and local investors. This new PR replaces the PR No. 6/2014 issued on 4th September 2014 with inclusion of additional examples, renumbering and rephrasing of paragraphs / examples and latest amendments.

Pertinent amendments included in the new PR are as follows:-

i. Funds of Foreign Investors Managed According to *Syariah* Principles

- Statutory income derived from the provision of fund management services of *Syariah* compliant funds to foreign investors is exempted from payment of tax. This tax exemption is extended until the year of assessment ["YA"] 2020 pursuant to Income Tax (Exemption) (Amendment) Order 2016.

ii. Tax Rate

- The tax rates applicable to a foreign fund management company are as follows:-

Shareholding of a Foreign Fund Management Company	**Type of Investors**	**Tax Rate (%)** **Year of Assessment**	
		2020 and prior	**2021 onwards**
100% foreign equity	Foreign	10	24
At least 30% local equity	Foreign	10	24
At least 30% local equity	Local	Prevailing domestic tax rates applicable to residents	

Note: *For further information relating to the previous PR No. 6/2014, kindly refer to our Tax Flash – November 2014 issue.*

PR No. 8/2019 – Notification of Change of Accounting Period by a Company / LLP / Trust Body / Co-operative Society

The IRB has recently issued the *PR No. 8/2019 – Notification of Change of Accounting Period by a Company / Limited Liability Partnership ["LLP"] / Trust Body / Co-operative Society* to provide guidance on the requirement to notify the Director General of Inland Revenue ["DGIR"] on any change of accounting period by a company, LLP, trust body or co-operative society, which has to make payment by instalments on an estimate of tax payable for a year of assessment. This new PR replaces the PR No. 7/2011 issued on 23rd August 2011.

Significant changes included in the new PR are as follows:-

i. Notifications of Change of Accounting Period

- Effective YA 2019, the provision under Section 21A(3A) of the Income Tax Act 1967 ["the Act"] requires a company, LLP, trust body or co-operative society to notify the DGIR of any changes in the accounting period through a Notification of Change in Accounting Period (Form CP204B). The due date for the submission of the Form CP204B is as follows:-
  - Accounting Period Shortened
    - 30 days before the end of the new accounting period if the new accounts are less than 12 months and is closed before the end of the original accounting period.
  - Accounting Period Extended
    - 30 days before the end of the original accounting period if the new accounts are more than 12 months and is closed after the end of the original accounting period.
- Change of accounting period following the liquidation of the company
  - For a company under liquidation, liquidator's account (Liquidator's Account of Receipts & Payments & a Statement of the Position in the Winding-up) must be prepared for a period of 6 months from the date of appointment of the liquidator and thereafter, for every subsequent period of 6 months.

- Therefore, a company under liquidation must furnish Form CP204B upon the appointment of a liquidator together with a letter of appeal to the DGIR to avoid a compound or penalty or increase in tax payment being imposed due to failure to notify the change of accounting period within the prescribed period.

ii. Failure to Notify Change of Accounting Period

- Effective YA 2019, if a company, LLP, trust body or co-operative society fails to furnish the Form CP204B in the prescribed period, the following actions will be taken by the DGIR:-
  - 10% increase under Section 107C(9) of the Act in relation to the taxpayer's failure to make the instalment payments;
  - 10% increase under Section 107C(10) of the Act in respect of the 30% difference between the actual tax payable and the revised or deemed revised tax estimate (whichever is the later) or the original tax estimate (if there is no revised or deemed revised tax estimate furnished);
  - penalty under Section 112(3) of the Act in respect of estimated assessment raised under Section 90(3) of the Act [Section 112(3A) of the Act]; or
  - prosecution under Section 120(1)(i) of the Act in respect of failure to notify the DGIR a change of accounting period within the prescribed period.

Note: *For further information relating to the previous PR No. 7/2011, kindly refer to our Tax Flash – September 2011 issue.*

PR No. 9/2019 – Residence Status of Companies and Bodies of Persons

The IRB has recently issued the *PR No. 9/2019 – Residence Status of Companies and Bodies of Persons* to provide guidance on the determination of the residence status of companies and bodies of persons. This new PR No. 9/2019 replaces the PR No. 5/2011 issued on 16th May 2011.

Significant changes included in the new PR are:-

i. Resident Status of an LLP

- An LLP may be set up to carry on business or investment activities. The resident status of an LLP carrying on these activities are determined as follows:-
  - An LLP carrying on a business is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its business or of any one of its businesses, as the case may be, are exercised in Malaysia; and
  - Any other LLP is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its affairs are exercised in Malaysia by its partners.

ii. Residence Status of a Business Trust

- A business trust is resident in Malaysia for the basis year for a year of assessment if the trustee manager of that business trust is resident in Malaysia i.e.:-
  - the trustee manager in his capacity as such carries on the business of such business trust in Malaysia; and
  - the management and control of the business is exercised in Malaysia.

Note: *For further information relating to the PR No. 5/2011, kindly refer to our Tax Flash – June 2011 issue.*

PR No. 10/2019 – WT on Special Classes of Income

The IRB has recently issued the *PR No. 10/2019 – Withholding Tax ["WT"] on Special Classes of Income* to provide guidance on the tax treatment for special classes of income and consequences of not deducting and remitting the tax from special classes of income. This PR replaces the PR No. 11/2018 issued on 5th December 2018 with some clarifications and amendments.

Among others, the pertinent amendments made included in the new PR are as follows :-

i. No Requirement for Regrossing where WT is Borne by the Payer
- Effective 5th December 2018, where WT under Section 109B of the Act is borne by a payer, the WT is to be computed on the gross amount paid to a non-resident, i.e. payment made to the non-resident need not be regrossed to determine the amount of WT if the date of payment to the non-resident falls on or after 5th December 2018.
- The effective date, 5th December 2018, refers to the date the payment has to be made by a payer to a non-resident as agreed between the parties to the agreement.

ii. Late Payment Penalty Charged by a Payer to a Non-resident
- In cases where late payment penalty is paid to a non-resident by a payer, it should be ascertained whether that late payment penalty is considered as an interest income.
- In the absence of Double Tax Agreement or there is no mention whether late payment penalty is regarded as interest income or not, the domestic laws of Malaysia shall prevail.
- The late payment penalty payable to non-resident would be considered as other income pursuant to Section 4(f) of the Act and subject to WT under Section 109F of the Act.

iii. Consequences of Not Deducting and Remitting Tax
- The new PR indicated that in the circumstances where the WT is not due for payment and no payment or crediting is made to the non-resident on or before the due date of submission of tax return, a deduction is not allowable under Section 39(1)(j) of the Act, even though the WT has been paid or remitted to the DGIR.

Note: *For further information relating to the previous PR No. 11/2018, kindly refer to our Tax Flash – January 2019 issue.*

PR No. 11/2019 – BIK

The IRB has recently issued the *PR No. 11/2019 – Benefits in Kind ["BIK"]* to provide clarification on the tax treatment in relation to BIK received by an employee from his employer for exercising an employment and the method of ascertaining the value of BIK. This PR replaces the previous PR No. 3/2013 issued on 15th March 2013.

Significant changes made are as follows:-

i. The Output Tax Imposed on the BIK is Borne by the Employer
- Generally, a GST-registered employer has to account for output tax on the provision of goods and services given or provide as employee benefits.
- Such output tax borne by the employer is considered as a BIK to the employee and treated as gross income from employment under Section 13(1A) of the Act.
- This is effective YA 2015. However, GST has been repealed as of 1st June 2018.

ii. Benefits or Gifts and Monthly Bills for Fixed Line Telephone, Mobile Phone, Pager and PDA

- The following benefits received by an employee are considered as a BIK to the employee and treated as gross income from employment under Section 13(1)(b) of the Act:-
  - fixed line telephone, mobile phone, pager or PDA registered under the employer's name for personal use; and
  - monthly bills paid by the employer for fixed line telephone, mobile phone, pager, PDA or subscription of broadband
- However, the abovementioned BIK is fully exempted from tax limited to one unit for each asset category.
- The amount to be exempted includes registration and installation costs.

iii. Employer's Responsibilities

- The employer is required to keep the records and receipts pertaining to all claims on expenses incurred on employees for a period of 7 years from the end of the year to which any income from that business relates for verification by the IRB during a tax audit under Section 82A(1) of the Act.
- Where the income tax return form for a year of assessment is not furnished by the employer by the stipulated deadline as required under the Act, the aforesaid records that relate to that year of assessment have to be kept and retained for a period of 7 years after the end of the year in which the return is furnished.

iv. Employee's Responsibilities

- The employee is required to keep the records and receipts for a period of 7 years from the end of the year of assessment the income tax return form is furnished for verification by the IRB during a tax audit under Section 82A(1) of the Act.
- Where the income tax return form is not furnished by the employee by the stipulated deadline as required under the Act, the aforesaid documents have to be kept and retained for a period of 7 years after the end of the year in which the return is furnished.

v. Monthly Tax Deduction ["MTD"]

- The employer is responsible to deduct the MTD on the BIK received by the employee from the remuneration of employee in the month in which the BIK is paid.
- The employer is required to obtain the approval of the IRB for payment of BIK on instalments basis if the MTD on the BIK is higher than the monthly salary.

Note: *For further information on the PR No. 3/2013, please refer to our Tax Flash – April 2013 issue.*

PR No. 12/2019 – Tax Treatment of Foreign Exchange Gains and Losses

The IRB has recently issued the *PR No. 12/2019 – Tax Treatment of Foreign Exchange Gains and Losses* to provide guidance on the tax treatment in respect of foreign exchange gains and losses arising from cross border transactions denominated in foreign currency.

Salient points of the abovementioned PR include:-

i. Conversion of Foreign Currency into the Functional Currency of a Business

- The value of foreign currency when converted to the functional currency of a business will vary depending on the prevailing exchange rate.
- Conversion of foreign currency to the functional currency of a business normally occurs when an invoice is recorded, when a payment is made or at the end of a reporting period.

ii. Foreign Exchange Gains and Losses

- A foreign exchange gain or loss is recognised when payment of a transaction amount is settled.
- An exchange gain or loss arises when the value of an asset or liability valued in a foreign currency is compared to the value in Ringgit Malaysia ["RM"] at 2 different dates (i.e. on the date of transaction and date of settlement of payment).

iii. Taxability and Deductibility of Foreign Currency Exchange Gains or Losses

- Underlying nature of a cross border transaction
  - the facts and circumstances of a transaction in which a foreign exchange gain or loss arises has to be examined in substance whether it arises from:-
    - a trade or non-trade transaction;
    - a revenue or capital transaction; and
    - a realised or unrealised transaction.
- Trade Gain/Loss
  - Foreign exchange gains or losses attributed to a trade transaction which is revenue in nature are taxable or deductible in the basis period which the transaction is realised.
  - Trade transactions which are capital in nature is neither taxable nor deductible in the basis period which the transaction is realised.
- Non-trade Gain/Loss
  - Foreign exchange gains or losses arising from non-trade transactions are not taxable or deductible regardless if it is realised or unrealised.
- Revenue or Capital
  - Revenue Transactions
    - Generally, foreign exchange gains or losses arising in the course of carrying on trading operations (i.e. transactions relating to normal income-earning operations) are considered revenue in nature e.g. purchase of trading stock.
    - Where a gain or loss arises in the process of conversion of foreign currency which is part of the trading asset of a business, it must be established whether the gain or loss occurred in the course of carrying on the business or is incidental to it.
    - Gains or losses resulting from an appreciation or depreciation of a foreign currency which is utilised or intended to be utilised in the ordinary course of business operations would be considered trade in nature.
    - Gains or losses arising from receipt of revenue, payment of expenses, settlement of trade debts due to trade creditors or due from trade debtors are revenue in nature.
  - Circulating Capital
    - Foreign exchange gains or losses attributed to circulating capital in the ordinary course of business operations are regarded as trade in nature.
    - Gains or losses arising from foreign currency kept on hand to finance general regular daily operations are revenue in nature and are taxable/deductible.
    - Gains or losses arising from foreign currency kept on hand to ensure availability of funds to purchase capital assets would be capital in nature and therefore not taxable/deductible.
  - Capital Transactions
    - Transactions that involve assets of enduring value (i.e. fixed capital, investments, speculations outside the normal income earning activities of a person, one-off payments that brings into existence an asset or advantage for enduring benefit of the trade, to establish, replace or enlarge the capital structure of a business) are likely to be considered capital in nature.
  - Capital Assets and Capital Allowances
    - Where foreign exchange gains or losses arise in connection to purchase of plant and machinery, tax adjustments would only be necessary when capital allowances are claimed i.e. the actual outlay in RM by a person is taken to be the cost of plant and machinery.
- Realised or Unrealised
  - Realised foreign exchange gains or losses arises when a person has already settled a payment as per an invoice prior to the close of an accounting period.

- Unrealised foreign exchange gains or losses arises when a person issues a sales invoice for a cross border transaction denominated in foreign currency, and the purchaser overseas fails to settle the payment as per the invoice by the end of the accounting period.

iv. Borrowings and Borrowing Cost
- Purpose of Borrowings
  - The purpose of entering into a loan agreement including other factors (such as the nature of a person's trade, length and other terms of borrowing) is fundamental in determining whether a transaction is capital or revenue in nature.
- Revenue or Capital
  - Foreign exchange gains or losses on repayment of borrowings would be considered as revenue in nature if foreign currency borrowings are used in the ordinary course of an entity's business operations (i.e. to meet ordinary day-to-day running expenses of the business).
  - Similarly, any foreign exchange gain or loss on repayment of the borrowings would be considered revenue in nature if foreign currency borrowings are taken by a finance company in the ordinary course of their business to provide funds for on-lending to customers.
  - Foreign exchange gains or losses on foreign currency borrowings used to purchase capital assets are considered capital in nature.
  - Foreign exchange gains or losses on repayment of foreign currency borrowings taken to remedy the undercapitalisation of an entity are not automatically considered capital in nature. In most cases, the nature of the foreign exchange gain or loss is determined by the use made of the money borrowed. Borrowed money that forms part of the permanent working capital would be considered capital in nature.
- Borrowing Cost
  - Foreign exchange gains / losses attributable to an underlying borrowing cost would depend on the nature of the underlying transaction related to the borrowings as mentioned above.

v. Devaluation of Currency
- Generally, foreign exchange loss as a result of the devaluation of foreign currency is generally considered as capital in nature unless the person's business is directly concerned with dealing in currencies.

Tax Audit Framework

The IRB has recently issued the *Tax Audit Framework (in Bahasa Malaysia)* on 15th December 2019. This Tax Audit Framework replaces the Tax Audit Framework issued on 1st April 2018 with some updates as follows:-

i. Initial Action of Tax Audit [Paragraphs 7.1.9 and 7.1.10]
- Tax audit can be extended to related company / business which the company has control with prior notice (previously without any notification).
- If a field audit is not performed after the preliminary actions, a letter will be issued to inform the taxpayer on the start of the settlement of an audit.

ii. Settlement of Tax Audit [Paragraph 7.5.1 and 7.5.2]
- After the tax audit, the IRB will discuss the audit findings with taxpayer who will be given opportunity to provide clarification or further information on the issues involved prior to issuance of a report on the audit findings with the proposed tax adjustements.

iii. Offences and Penalty [Paragraph 10]
- Offences and penalty rates for understatement or omission of income are generally the same as the previous tax audit framework except for the penalty rate imposed on repeated offences. The table below summarised the penalty rates for understatement or omission of inome:-

Disclosure / Discovery	Period from the due date of submitting tax return	Rate of penalty on tax undercharged
Voluntary disclosure before case is selected for tax audit	• Within 60 days • > 60 days but not later than 6 months • > 6 months	10% 15.5% 35%
Non-disclosure (discovery of omission during tax audit)*		45%
Repeated offences		55%

* Based on the IRB's discretion, the penalty rates can be reduced or waived on case to case basis.

- For the purpose of this Tax Audit Framework, "repeated offence" means:-
  - taxpayer has been audited or investigated and assessment / additional assessment / composite assessment with penalty under Section 113(2) of the Act has been raised; and
  - the first offence is only to be taken into account from issuance of notice of assessment commencing 1st January 2020.

The above Tax Audit Framework takes effect from 15th December 2019.

Note: *For further information on the previous Tax Audit Framework, kindly refer to our Tax Flash – April 2018 issue.*

Petroleum Tax Audit Framework

The IRB has recently issued the *Petroleum Tax Audit Framework (in Bahasa Malaysia)* on 15th December 2019 to replace the Petroleum Tax Audit Framework issued on 1st April 2013. The purpose of the new petroluem tax audit framework is to enhance voluntary compliance with tax laws and regulations as well as to ensure that tax audit is carried out in a fair, transparent and impartial manner. This framework is applicable to taxpayers carrying on petroleum operations in Malayisa which are subject to tax under the provisions of the Petroleum (Income Tax) Act 1967.

The above Petroluem Tax Audit Framework takes effect from 15th December 2019.

Transfer Pricing Audit Framework

The IRB has recently issued the *Transfer Pricing Audit Framework (in Bahasa Malaysia)* on 15th December 2019. This Transfer Pricing Audit Framework replaces the Transfer Pricing Audit Framework issued on 1st April 2013 with some updates as follows:-

i. Covered Period [Paragraph 5]
   - Transfer pricing audit normally covers a period of 3 to 6 years of assessment depending on the issues. The number of years of assessment to be covered is extended to 7 years (previously 5 years) depending on the audit findings.

ii. Initial Action of Audit [Paragraph 7.1]
   - Commencement of a transfer pricing audit:-
     - For field audit, it is deemed to have commenced from the date of the letter informing on audit visit or notification of commencement of audit review issued by the IRB.
     - For desk audit, it is deemed to have commenced from the date of issuance of the letter requesting for documents by the IRB.
     - The abovementioned letters/notification will be issued via email, fax or postal.

- Taxpayer is required to respond within 14 days from the date of the letter requesting for documents and information. If taxpayer fails to respond within the prescribed time, transfer pricing audit will proceed with appropriate method.
- Before an audit visit, taxpayer is requested to submit the relevant documents, including Transfer Pricing Documentation within 30 days from the date of issuance of the letter requesting for documents by the IRB.

iii. Settlement of Transfer Pricing Audit [Paragraph 7.6]

- A taxpayer is allowed 18 days from the date of notification of audit findings to file an objection (together with supporting documents). If no objection is made within the stipulated period, the taxpayer is deemed to have agreed with the audit findings.
- Thereafter, notice of assessment or notification of non-chargeability will be issued by the IRB.

iv. Voluntary Disclosure [Paragraph 7.7]

- Taxpayer is required to complete a prescribed form as per Lampiran 1 of the Transfer Pricing Audit Framework issued on 15th December 2019 for voluntary disclosure purposes.
- Taxpayer is also required to submit the following information/documents together with the prescribed form:-
  - transfer pricing documentation and organisational chart for the relevant years;
  - copy of audited financial statements, income tax computation, incentive claim forms for the relevant years;
  - financial analysis and audited financial statements of the comparable companies for the relevant years; and
  - information regarding the understated or omitted income together with supporting documents.
- Taxpayer who fails to submit the abovementioned information / documents without justification will not be entertained by the IRB and the voluntary disclosure will not be accepted.

v. Offences and Penalties [Paragraph 10]

- Offences and penalty rates for understatement or omission of income due to transfer pricing issues are summarised as follows:-

Conditions	**Penalty Rate on Tax Undercharged**	
	Normal Case	**Voluntary Disclosure**
Taxpayer did not prepare transfer pricing documentation	50%	N/A
Taxpayer prepared transfer pricing documentation but did not fully comply with the requirements under the Transfer Pricing Guidelines	30%	20%
Taxpayer prepared a comprehensive and good quality transfer pricing documentation but fail to submit within 30 days from the date of letter requesting documents	30%	20%
Taxpayer prepared a comprehensive and good quality transfer pricing documentation in accordance with the requirements under the Transfer Pricing Guidelines and submitted within 30 days from the date of letter requesting for documents (for voluntary disclosure, the transfer pricing documentation was submitted at the time voluntary disclosure was made)	0%	0%

- Transfer pricing documentation is required to be submitted within 30 days from the date of letter requesting for documents issued by IRB. Where there is any application for extension of time by the taxpayer and the extension of time is approved, the submission of the transfer pricing documentation during the extended period (i.e. beyond the 30 days' period) is deemed to be a late submission.

The above Transfer Pricing Audit Framework takes effect from 15th December 2019.

***Note**: For further information on the previous Transfer Pricing Audit Framework, kindly refer to our Tax Flash – August 2013 issue.*

Sales Tax (Amendment) Act 2019

The Minister of Finance has appointed 1st January 2020 as the date on which the *Sales Tax (Amendment) Act 2019* comes into operation.

Note: *For further information, kindly refer to our Tax Flash – August 2019 issue.*

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2019

The *Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2019* was gazetted and took effect from 1st January 2020. Salient point extracted from the Order is as follows:-

i. Additional Condition to be Fulfilled under Item 38, Schedule A – Manufacturer in the Principal Customs Area
   - The additional condition provides that the manufacturer in the Principal Customs Area who is not registered under the Sales Tax Act 2018 is liable to pay sales tax on the goods subsequently transported back to the manufacturer based on the amount chargeable for the work performed.

Other Sales Tax Regulations and Orders

The following sales tax regulations and orders were gazetted and took effect from 1st January 2020:-

- *Sales Tax (Rates of Tax) (Amendment) Order 2019*;
- *Sales Tax (Amendment) Regulations 2019*;
- *Sales Tax (Imposition of Sales Tax in respect of Designated Areas) (Amendment) (No. 2) Order 2019*;
- *Sales Tax (Compounding of Offences) (Amendment) Regulations 2019*; and
- *Sales Tax (Customs Ruling) (Amendment) Regulations 2019*.

Service Tax (Amendment) Act 2019

The Minister of Finance has appointed 1st January 2020 as the date on which the *Service Tax (Amendment) Act 2019* comes into operation.

Note: *For further information, kindly refer to our Tax Flash – August 2019 issue.*

Service Tax (Amendment) (No. 2) Regulations 2019

The *Service Tax (Amendment) Regulations 2019* was gazetted and took effect from 1st January 2020. Salient points extracted from the Regulations are as follows:-

i. Relaxation on Group Relief Facility
   - Where a company provides any taxable services specified in items (a), (b), (c), (d), (e), (f), (g), (h) or (i) in column (2) of Group G, First Schedule of the Service Tax Regulations 2018 to another person outside the group of companies, the same taxable services provided to any company within the same group of companies shall not be a taxable service, provided that the total value of the taxable services to another person outside the group of companies in that month and the eleven months immediately succeeding that month does not exceed 5% of the total value of taxable services.

ii. Amendment to "Taxable Person" under Item 7, Group G – Person Who Provides Consultancy, Training or Coaching Services
   - The amendment provides for exclusion of the following training centre or coaching centre from being a taxable person under Item 7, Group G:-
     - any training centre or coaching centre registered with the Ministry of Health / the Social Welfare Department or recognised by any national association for persons with disabilities registered with the Registrar of Societies Malaysia which provides consultancy, training or coaching services.

iii. Insertion of "New Taxable Person" under Item 12, Group G – Person Who Operates Online Platform or Market Place
- The amendment provides that any person who operates online platform or market place will be regarded as a taxable person under Item 12, Group G.

iv. Amendment to "Taxable Service" under Item (g), Group G – Provision of Consultancy Services
- The amendment is to exclude the provision of training services or coaching services provided to a person who holds a valid *Kad OKU* issued under the Persons with Disabilities Act 2008 *[Act 685]* to be a taxable service under Item (g), Group G.

v. Amendment to "Taxable Service" under Item (h), Group G – Provision of Information Technology Services
- The amendment expands the scope of taxable service in respect of information technology services whereby the provision of information technology services including distributing or reselling of information technology services on behalf of any person will be regarded as a taxable service under Item (h), Group G.

vi. Insertion of "New Taxable Service" under Item (l), Group G – Provision of Electronic Medium
- The amendment provides that the provision of electronic medium which allows the suppliers to provide supplies to customers will be regarded as a taxable service under Item (l), Group G.

vii. Insertion of "New Taxable Service" under Item (m), Group G – Provision of Digital Services
- The amendment provides that the provision of digital services including transaction for provision of digital services on behalf of any person will be regarded as a taxable service under Item (m), Group G.

viii. Amendment to "Taxable Service" under Item 2, Group I – Provision of Telecommunication Services
- The amendment provides that the provision of digital services will be regarded as a taxable service under Item 2, Group I.

ix. Amendment to "Taxable Service" under Item 8, Group I – Provision of Advertising Services
- The amendment provides that the provision of advertising services including digital advertising services will be regarded as a taxable service under Item 8, Group I.

Service Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2019

The *Service Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2019* was gazetted and took effect from 1st January 2020. Salient points extracted from the Order are as follows:-

i. Additional Condition to be Fulfilled under Item 1 of the Schedule – Exemption in respect of Group G, Professional Services (except for Items j and k)
- For the purpose of enjoying the exemption from payment of service tax in respect of the professional services specified in column 2, Group G (except for Items j and k), the services to be exempted are not for personal consumption by the taxable person.

ii. Insertion of "New Person" under Item 3, Schedule – Exemption in respect of Digital Services Acquired from Foreign Registered Person
- The amendment provides that any person who acquires digital services from a foreign registered person for the purpose of carrying on his business will be exempted from payment of digital service tax subject to the following conditions:-
  - the person (taxable and non-taxable persons) exempted from payment of digital service tax shall account for the service tax due in accordance with the relevant service tax legislations;
  - the person exempted from payment of digital service tax holds an invoice or a document issued in connection with the digital service from the foreign registered person; and

- the taxable service exempted is not for personal consumption by the person who is exempted from payment of the digital service tax.

iii. Insertion of "New Person" under Item 4, Schedule – Exemption in respect of Information Technology Service Acquired from Any Person Who is Outside Malaysia

- The amendment provides that a taxable person who, provides information technology services, acquires information technology service from any person who is outside Malaysia will be exempted from payment of service tax subject to the following conditions:-
  - the taxable person is a registered person;
  - the taxable service exempted is identical to the information technology service distributed or sold by the taxable person; and
  - the taxable service exempted is not for personal consumption by the taxable person.

Other Service Tax Regulations and Orders

The following service tax regulations and orders were gazetted and took effect from 1st January 2020:-

- *Service Tax (Digital Services) (Amendment) Regulations 2019*;
- *Service Tax (Imposition of Tax for Taxable Service In Respect of Designated Areas and Special Areas) (Amendment) (No. 2) Order 2019*; and
- *Service Tax (Customs Ruling) (Amendment) Regulations 2019*.

Guides on Customs Ruling

The *Guides on Customs Ruling* as at 2nd December 2019 was published by Royal Malaysian Customs Department ["RMCD"] on the even date.

Guides on Refund, Drawback and Appeal for Sales Tax

The *Guides on Refund, Drawback and Appeal for Sales Tax* as at 26th December 2019 was published by RMCD on 27th December 2019 (currently only made available in *Bahasa Malaysia*).

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for advice. Accordingly, Moore Advent Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team at tax@moore.com.my.