



## TAX FLASH

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### In this Issue

- [Finance Act 2020](#)
- [Revised Guidelines on Incentive Claims for Upstream Petroleum Industry under the Petroleum \(Income Tax\) Act 1967](#)
- [PN No. 4/2020 – Clarification on Determining the Gross Income from Business Sources of Not More Than RM50 Million of a Company or LLP](#)
- [Operational Guidelines 4/2020 – MTD under the Income Tax \(Deduction from Remuneration\) Rules 1994](#)
- [Automatic Exchange of Financial Account Information](#)
- [Review of Restriction of Tax Deduction on Payments Made to Labuan Company by Resident](#)
- [Tax Deduction on Costs of Renovation and Refurbishment of Business Premises](#)
- [Updated FAQ on International Tax Issues Due to COVID-19 Travel Restrictions](#)
- [Stamp Duty Exemption for Purchasers of a Revived Residential Property](#)
- [Stamp Duty Exemption for a Rescuing Contractor/Developer](#)
- [Stamp Duty Exemption for \*Perlindungan Tenang\* Products](#)
- [Sales Tax](#)
- [Service Tax](#)
- [Extension of Tax Exemption on Director Fees Received from a Labuan Entity](#)
- [Requirements for Labuan Entity Carrying on Labuan Business Activity](#)
- [Labuan - Automatic Exchange of Financial Account Information](#)

### Finance Act 2020

The *Finance Act 2020* has been gazetted on 31<sup>st</sup> December 2020 to take effect the proposed amendments made in the Finance Bill 2020 with no changes.

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

## **Revised Guidelines on Incentive Claims for Upstream Petroleum Industry under the Petroleum (Income Tax) Act 1967**

The Inland Revenue Board ["IRB"] has issued the revised *Guidelines on Incentive Claims for Upstream Petroleum Industry under the Petroleum (Income Tax) Act 1967 dated 30<sup>th</sup> December 2020* to provide guidance on the application and claim of the following incentives available to eligible persons who have incurred capital expenditure for the purpose of carrying out petroleum operations in a marginal field:-

- Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) Rules 2013 to be read together with the Petroleum (Income Tax) (Marginal Field) (Amendment) Rules 2014;
- Petroleum (Income Tax) (Exemption) Order 2013 to be read together with the Petroleum (Income Tax) (Exemption) (Amendment) Order 2014;
- Petroleum (Income Tax) (Marginal Field) Regulations 2013; and
- Petroleum (Income Tax) (Investment Allowances) Regulations 2013 to be read together with the Petroleum (Income Tax) (Investment Allowances) (Amendments) Regulations 2014

**Note:** For further information relating to the above, please refer to our *Tax Flash – June 2014 issue*.

## **PN No. 4/2020 – Clarification on Determining the Gross Income from Business Sources of Not More Than RM50 Million of a Company or LLP**

The IRB has recently issued the *Practice Note ["PN"] No. 4/2020 – Clarification on Determining the Gross Income from Business Sources of not More Than RM50 Million of a Company or Limited Liability Partnership ["LLP"]* dated 21<sup>st</sup> December 2020 to provide further clarification on the additional criteria for the determination of gross income from all business sources not more than RM50 million. This PN No. 4/2020 replaces the PN No. 3/2020 dated 18<sup>th</sup> May 2020.

Salient amendments of the abovementioned PN are as follows:-

- i. Company or LLP carrying on a business but does not have gross income from business sources
  - Company or LLP carrying out business activities and having business losses during the year (i.e. must have incurred operating expenses related to business during the year) is deemed to have gross income from a business source equivalent to NIL
  - Eligible for the preferential tax treatment
- ii. Company or LLP which does not have gross income from business due to temporary closure of business operation
  - Company or LLP that temporarily closes its business operations but still incurs operating expenses related to business during the year is deemed to have gross income from a business source equivalent to NIL
  - Eligible for the preferential tax treatment

**Note:** For further information relating to additional criteria for determination of gross income, please refer to our *Tax Flash – July 2020 issue*.

## **Operational Guidelines 4/2020 – MTD under the Income Tax (Deduction from Remuneration) Rules 1994**

The IRB has, on 17<sup>th</sup> November 2020, issued the *Operational Guidelines 4/2020 - Monthly Tax Deduction ["MTD"] under the Income Tax (Deduction from Remuneration) Rules 1994* to provide guidance on:-

- the employer's responsibility in relation to implementation of MTD on the monthly remuneration of an employee; and
- method of determining the amount of MTD.

## Automatic Exchange of Financial Account Information

Pursuant to the Income Tax (Automatic Exchange of Financial Account Information) Rules 2016, a reporting financial institution has the obligation to furnish an information return to the Director General of Inland Revenue [“DGIR”] on or before 30<sup>th</sup> June of the following year to which the return relates to facilitate the exchange of financial account information. The *Income Tax (Automatic Exchange of Financial Account Information) (Amendment) Rules 2020* has recently been gazetted with some amendments to the definition of “Excluded Account” of the financial account for the Common Reporting Standard.

**Note:** For further information relating to automatic exchange of financial account information, please refer to our *Tax Flash – January 2017* and *Tax Flash – February 2018* issues.

## Review of Restriction of Tax Deduction on Payments Made to Labuan Company by Resident

Following the Budget 2021 announcement, the *Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 (Amendment) 2020* has been gazetted to provide that the restriction of tax deduction on payments to Labuan companies be applied to all Labuan entities regardless whether they comply with the substance requirements (i.e. having adequate number of full time employees and amount of annual operating expenditure in Labuan).

Additionally, the amount not allowed for tax deduction in respect of payments made by a resident to a Labuan company has been revised as follows:-

No.	Type of Payment	Amount not allowed for deduction
1	Interest payment	25% of the amount of payment (including payment in connection with financing in respect of commission, facility fee and advance fee)
2	Lease rental	25% of the amount of payment
3	Other payments	97% of the amount of payment

The above amendments have effect from 1<sup>st</sup> January 2021.

## Tax Deduction on Costs of Renovation and Refurbishment of Business Premises

Following the 2020 Economic Stimulus Package announcement, the *Income Tax (Costs of Renovation and Refurbishment of Business Premises) Rules 2020* has been gazetted to allow a deduction for the costs of renovation and refurbishment of business premises incurred by a person from 1<sup>st</sup> March 2020 to 31<sup>st</sup> December 2021 and used for the purposes of its business, limited to maximum amount of RM300,000.

For the purposes for the above Rules, “costs of renovation and refurbishment of business premises” means the costs of renovation and refurbishment of business premises incurred for the purposes specified in the First Schedule but shall not include the cost for the purposes specified in the Second Schedule, which is certified by an external auditor.

The Rules shall not apply to a person who has made a claim in relation to the costs of renovation and refurbishment of business premises under :-

- a allowable expenses under subsection 33(1) of the Income Tax Act 1967 [“the Act”];
- a capital allowance under Schedule 2 of the Act; or
- a capital allowance under Schedule 3 of the Act.

The Rules have effect from the year of assessment [“YA”] 2020.

## Updated FAQ on International Tax Issues Due to COVID-19 Travel Restrictions

The IRB has issued the updated *Frequently Asked Questions [“FAQ”] on International Tax Issues Due to Covid-19 Travel Restrictions* (as of 9<sup>th</sup> October 2020). This updated FAQ is broadly similar to the earlier FAQ on the same subject matter issued on 12<sup>th</sup> August 2020 except for the following:-

- i. Movement Control Order [“MCO”] Period
  - The MCO period as referred to in the FAQ is from 18<sup>th</sup> March 2020 until 31<sup>st</sup> December 2020. This period is as prescribed by the Ministerial order under Section 11 of the Prevention and Control of Infectious Diseases Act 1988 as gazetted from time to time
- ii. Foreign company (having no double taxation agreement with Malaysia) with employees’ temporary presence in Malaysia due to COVID-19 travel restriction (Item B.5 of updated FAQ - Permanent Establishment)
  - The IRB has classified that in a situation where a foreign company which is a resident of a country which does not have a double taxation agreement with Malaysia, the temporary presence of such foreign company’s employees personnel in Malaysia will not result in the creation of a place of business in Malaysia, provided that the criteria as spelt out in the FAQ are met
- iii. Cross-Border Employment Income (Item C.10 of updated FAQ)
  - For a non-resident individual who:-
    - has been offered to work in Malaysia during the MCO period;
    - unable to travel in Malaysia to commence employment due to COVID-19 travel restrictions; and
    - currently working from overseas,the IRB clarifies that period of exercising employment outside Malaysia is not considered as “temporary absence period due to COVID-19 travel restrictions”. Therefore, the employment income can be taxed under domestic tax law in the country where the employment is exercised.
- iv. Cross-Border Employment Income (Item C.11 of updated FAQ)
  - For a non-resident individual who:-
    - arrived in Malaysia for a vacation before travel restriction was imposed due to COVID-19;
    - had to work from Malaysia due to COVID-19 travel restrictions; and
    - ceased employment with foreign employer before MCO period ended and accepted an offer to work with a Malaysian company;the IRB considers the employment to be exercised in Malaysia as there is no “temporary absence period due to COVID-19 travel restrictions” issue. Hence, the employment income with the foreign employer will be taxed in accordance with the Malaysian tax law under the Act.

**Note:** For further information relating to the previous FAQ on International Tax Issues Due to COVID-19 Travel Restrictions, please refer to our *Tax Flash – September 2020 issue*.

## Stamp Duty Exemption for Purchasers of a Revived Residential Property

The Stamp Duty (Exemption) (No. 5) Order 2013 provides for stamp duty exemption to purchasers of a revived residential property in respect of any instrument of transfer / loan agreement approved by bank or financial institution for the purposes of transferring / financing the revived residential property in relation to an abandoned project

The *Stamp Duty (Exemption) (No. 5) 2013 (Amendment) Order 2020* has been gazetted to extend the exemption period up to 31<sup>st</sup> December 2025.

**Note:** For further information relating to the above, kindly refer to our *Tax Flash – April 2013, Tax Flash – February 2016 and Tax Flash – January 2018 issues*.

## Stamp Duty Exemption for a Rescuing Contractor/Developer

The Stamp Duty (Exemption) (No. 6) Order 2013 provides for stamp duty exemption to a rescuing contractor/developer of an abandoned housing project in respect of any instrument of transfer / loan agreement approved by the bank and financial institution for the purpose of transferring/financing the revived residential property in relation to an abandoned project.

The *Stamp Duty (Exemption) (No. 6) 2013 (Amendment) Order 2020* has been gazetted to extend the exemption period up to 31<sup>st</sup> December 2025.

**Note:** For further information relating to the above, kindly refer to our *Tax Flash – April 2013*, *Tax Flash – February 2016* and *Tax Flash – January 2018 issues*.

## Stamp Duty Exemption for *Perlindungan Tenang* Products

The Stamp Duty (Exemption) (No. 5) Order 2018 provides for stamp duty exemption on any insurance policies and takaful certificates for *Perlindungan Tenang* products issued by a licensed insurer or a licensed takaful operator with an annual premium or takaful contribution not exceeding RM100.00.

The *Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2020* has been gazetted to extend the exemption period up to 31<sup>st</sup> December 2025.

## Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 3) Order 2020

The *Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 3) Order 2020* [“the SAT Order”] was gazetted on 22<sup>nd</sup> December 2020 and comes into operation on 1<sup>st</sup> January 2021. The salient points extracted from the SAT Order are as follows:-

- i. Introduction of Item 5A to Schedule A to the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 whereby a franchise holder, distributor or dealer of motor vehicle (including motorcycle approved by the Minister of Finance) [“the Approved Person”] will be exempted from payment of sales tax for the purchase of locally manufactured motor vehicle including motorcycle [“the Goods”], subject to the following conditions:-
  - a. the Goods are purchased from a registered manufacturer by the Approved Person;
  - b. the Goods are to be supplied to any Federal or State Government Department in Malaysia through his appointed agent;
  - c. the appointed agent notifies in writing to the Senior Officer of Sales Tax that:-
    - the Approved Person purchased the Goods from the registered manufacturer;
    - the Goods are to be supplied to the Federal or State Government Department;
    - the Goods are to be supplied at a price exclusive of sales tax in accordance with the terms of contract;
    - the Goods are used solely for the official use of the Federal or State Government Department; and
    - the cost of the Goods is charged to a departmental vote appearing in the Federal or State Estimates and are not purchased out of any other funds;
  - d. the application for the certificate of exemption by the Approved Person shall be submitted together with the written notification mentioned in (c) above; and
  - e. any other conditions as the Director General of Customs and Excise [“the DG”] may deem fit to impose

## Sales Tax (Imposition of Sales Tax in Respect of Designated Areas) (Amendment) Order 2020

The *Sales Tax (Imposition of Sales Tax in Respect of Designated Areas) (Amendment) Order 2020* [“the SAT DA Order 2020”] was gazetted on 31<sup>st</sup> December 2020 and comes into operation on 1<sup>st</sup> January 2021. The salient points extracted from the SAT DA Order 2020 are as follows:-

- i. Imposition of Sales Tax for the Importation of Tobacco Products into the Designated Area
  - In tandem with the 2021 Budget for the purpose of tightening the trading of cigarettes, amendments have been made whereby sales tax to be charged and levied shall be at the rate fixed under Section 10(2) of the Sales Tax Act 2018 on the importation of the following goods into the designated area:-
    - cigarettes;
    - tobacco products;
    - smoking pipes (including pipe bowls);
    - electronic cigarettes and other similar personal electric vaporising devices;
    - preparation of a kind used for smoking through electronic cigarette and electric vaporising device, in forms of liquid or gel, not containing nicotine
- ii. Imposition of Sales Tax for the Importation of Petroleum into the Designated Area
  - Effective 1<sup>st</sup> January 2021, sales tax will be imposed on the importation of petroleum into the designated area
- iii. Imposition of Sales Tax for the Importation of Motor Vehicles
  - Sales tax will be imposed on the importation of motor vehicles into *Pangkor*. In the past, sales tax will only be imposed on the importation of motor vehicles into *Tioman*

**Note:** Kindly refer to our *Tax Flash – November 2020 (Special Edition No.1) issue* for further details.

## Sales Tax (Amendment) (No. 2) Regulations 2020

The *Sales Tax (Amendment) (No. 2) Regulations 2020* [“the SAT Regulations 2020”] was gazetted on 31<sup>st</sup> December 2020 and comes into operation on 1<sup>st</sup> January 2021. The salient points extracted from the SAT Regulations 2020 are as follows:-

- i. Conditions for Drawback Facilities
  - Amendments have been made to include an additional condition in respect of the following taxable goods, which are imported into a free zone for the purpose of re-export and the re-exportation has to be made at the same free zone of importation:-
    - cigarettes;
    - tobacco products;
    - smoking pipes (including pipe bowls);
    - electronic cigarettes and other similar personal electric vaporising devices; or
    - preparation of a kind used for smoking through electronic cigarette and electric vaporising device, in forms of liquid or gel, not containing nicotine.
- ii. Amount of Drawback Allowed
  - Amendments have been made to remove the option of computing the amount of drawback based on the rate of sales tax leviable or chargeable at the time of export of the taxable goods.
  - Accordingly, the amount of drawback allowed shall only be calculated based on the rate of the sales tax levied or charged at the time of importation or purchase of the taxable goods. The need to compare the two (2) amounts as practised previously where the lower amount will be taken into account for the purpose of the drawback application will no longer be relevant effective 1<sup>st</sup> January 2021.

## Sales Tax (Amendment) Act 2020

The *Sales Tax (Amendment) Act 2020* has been gazetted on 31<sup>st</sup> December 2020 and the Minister of Finance has appointed 1<sup>st</sup> January 2021 as the date on which the Sales Tax (Amendment) Act 2020 comes into operation.

**Note:** Kindly refer to our *Tax Flash – December 2020 issue* for further details.

## Service Tax (Digital Services) (Amendment) (No. 2) Regulations 2020

The *Service Tax (Digital Services) (Amendment) (No. 2) Regulations 2020* [“the DS Regulations”] was gazetted on 31<sup>st</sup> December 2020 and comes into operation on 1<sup>st</sup> January 2021. The salient points extracted from the DS Regulations are as follows:-

- i. Expansion of Group Relief for Provision of Digital Service
  - Any acquisition of digital services by a company in Malaysia from a foreign service provider within the same group of companies will be entitled to the group relief. Previously, the group relief is only applicable to a foreign registered person [“FRP”] who provides digital services to any company in Malaysia within the same group of companies.
- ii. Issuance of Credit Note and Debit Note
  - The new regulation provides that:-
    - a. Where after the return for the digital service has been furnished to the DG, a FRP providing any digital service shall issue a credit note [“CN”] or a debit note [“DN”] in the event that there is a reduction of, or addition to, service tax amount which has been charged on the digital service due to:-
      - a change in the rate of service tax in force under Section 10 of the Service Tax Act 2018; or
      - any adjustment in the course of business.
    - b. Where there is a reduction of, or addition to, service tax amount under (a) above, the FRP providing the digital service shall make the deduction or addition of the service tax in the return for:-
      - the taxable period in which the CN or DN is issued or received; or
      - the last taxable period during which he was registered in the case of the FRP who has ceased to be a FRP
    - c. A CN or DN issued shall contain the following particulars:-
      - the words “credit note” or “debit note” in a prominent place;
      - the serial number of the CN or DN;
      - the date of issuance of the CN or DN;
      - the registration number of the FRP;
      - the reason for the issuance of the CN or DN;
      - a description sufficient to identify the digital services provided;
      - the quantity and amount for each digital service provided;
      - the total amount excluding service tax;
      - the rate and amount of service tax; and
      - the number and date of the invoice or document issued for the digital service.
    - d. Any FRP who contravenes this regulation commits an offence.

## Service Tax (Amendment) (No. 2) Regulations 2020

The *Service Tax (Amendment) (No. 2) Regulations 2020* was gazetted on 31<sup>st</sup> December 2020 and comes into operation on 1<sup>st</sup> January 2021.

## Service Tax (Amendment) Act 2020

The *Service Tax (Amendment) Act 2020* has been gazetted on 31<sup>st</sup> December 2020 and the Minister of Finance has appointed 1<sup>st</sup> January 2021 as the date on which the Service Tax (Amendment) Act 2020 comes into operation.

**Note:** Kindly refer to our *Tax Flash – December 2020 issue* for further details.

## Extension of Tax Exemption on Director Fees Received from a Labuan Entity

The Labuan Financial Services Authority ["Labuan FSA"] has issued a *letter dated 4<sup>th</sup> December 2020* with regard to tax exemption on the following income available to individuals which ended on 31<sup>st</sup> December 2020 :-

- 50% tax exemption of gross income for non-Malaysian citizens employed in a managerial capacity with a Labuan entity, co-located office or marketing office of Labuan entity in other parts of Malaysia;
- 100% tax exemption of director's fee received by non-Malaysian citizens in their capacity as Director of a Labuan entity;
- 50% tax exemption of gross housing allowance and gross Labuan territory allowance received by Malaysian citizens for exercising of an employment in Labuan with a Labuan entity;
- 65% tax exemption of statutory income derived from provision of qualifying professional services to a Labuan entity in Labuan

The Labuan FSA has informed that the 100% tax exemption of director's fee received by non-Malaysian citizens in their capacity as Director of a Labuan entity granted under the Income Tax (Exemption) (No. 7) Order 2011 has been extended for another 5 years, i.e. until YA 2025. However, no further exemption has been granted in respect of the other income received by the individuals beyond 31<sup>st</sup> December 2020

The above extension of tax exemption on director fees received from a Labuan entity is subject to the gazette of the statutory order.

**Note:** For further information relating to Tax Exemption on Director Fees Received from a Labuan Entity under the Income Tax (Exemption) (No. 7) Order 2011, kindly refer to our *Tax Flash – January 2012 issue*.

## Requirements for Labuan Entity Carrying on Labuan Business Activity

The Labuan Business Activity Tax (Requirements for Labuan Business Activity) 2018 (Amendment) Regulations 2020 ["the amendment Regulations"] was gazetted to amend the substantial activity requirements for certain Labuan entities and expanding the list of Labuan entities and sub-categories of entity subject to substantial activity requirements as tabulated in the *Appendix*.

It is clarified that the substantial activity requirements as specified in the Appendix are in respect of the basis period for a year of assessment.

The amendment Regulations are deemed to have come into operation on 1<sup>st</sup> January 2019.

**Note:** For further information relating to the substantial activity requirements under the previous Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018, kindly refer to our *Tax Flash – March 2020 issue*.

## Labuan - Automatic Exchange of Financial Account Information

Pursuant to the *Labuan Business Activity Tax (Automatic Exchange of Financial Account Information) Regulations 2018*, a Reporting Financial Institution has the obligation to furnish an information return to the DGIR on or before 30<sup>th</sup> June of the following year to which the return relates to facilitate the exchange of financial account information. The Labuan Business Activity Tax (Automatic Exchange of Financial Account Information) (Amendment) Regulations 2018 has recently been gazetted with amendments to the definition of “Excluded Account” of the financial account for the Common Reporting Standard.

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