



# MOORE Advent

## TAX FLASH

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## **Finance Act 2024, Measures for the Collection, Administration and Enforcement of Tax Act 2024 and Labuan Business Activity Tax (Amendment) (No. 2) Act 2024**

The following Act has been gazetted and published on 31<sup>st</sup> December 2024 with no material difference from the respective Bills 2024:

- [Finance Act 2024](#)
- [Measures for the Collection, Administration and Enforcement of Tax Act 2024](#)
- [Labuan Business Activity Tax \(Amendment\) \(No. 2\) Act 2024](#)

### **PR No. 3/2024 - Tax Borne by Employers**

The Inland Revenue Board ["IRB"] has recently issued the [Public Ruling \["PR"\] No. 3/2024 - Tax Borne by Employers](#) to provide guidance on the computation of tax payable by an employee who is entitled to perquisite relating to the income tax of the employee borne by the employer.

This new PR replaces PR No. 11/2016 issued on 8<sup>th</sup> December 2016 with no significant changes made except for the following pertinent updates:-

- The responsibilities of employers have been updated as follows:-
  - In the case where the salary of the employee is not sufficient to absorb the monthly income tax deduction on the perquisite, the employer (instead of the employee) is required to obtain the approval of the IRB for the payment of the monthly tax deduction on the perquisite by instalments.
  - Submission of notification via Form CP22B (Tax Clearance Form for Cessation of Employment of Public Sector Employees) to the Director General of Inland Revenue ["DGIR"] not later than 30 days before the cessation of employment or not more than 30 days after being informed of the death of an employee pursuant to Section 83(3) of the Income Tax Act 1967 ["ITA 1967"].
- Effective year of assessment ["YA"] 2024, all notifications and submissions of the following forms to the DGIR must be done electronically:-
  - Form E (Return Form of Employer);
  - Form CP22 (Notification Form by Employer for Employees);
  - Form CP22A (Tax Clearance Form for Cessation of Employment of Private Sector Employees); and
  - Form CP21 (Notification by Employer of Employee's Departure from Malaysia).

**Note:** For further details on the previous PR No. 11/2016, kindly refer to our [Tax Flash - January 2017](#) issue.

### **Guidelines on the Implementation of Global Minimum Tax in Malaysia**

In Malaysia, the Global Minimum Tax ["GMT"] is implemented through 2 mechanisms, namely the Domestic Top-up Tax ["DTT"] and Multinational Top-up Tax ["MTT"]. With the gazette of the Finance (No. 2) Act 2023, the legislation and operational framework for the implementation of the DTT and MTT are contained in the new Part XI of the ITA 1967. This legislation and framework shall be referred to as the "GMT legislation". The implementation of the GMT legislation will come into effect for the financial years beginning on or after 1<sup>st</sup> January 2025.

Following this, the IRB has published on its website the Guidelines on [The Implementation of GMT in Malaysia](#) ["Guidelines"] (dated 2<sup>nd</sup> December 2024) which aim to explain the implementation of the GMT legislation. The Guidelines outlined the DGIR's interpretation and administration of the GMT legislation, including the relevant policies and procedures. In the event of any inconsistencies, the Global Anti-Base Erosion ["GloBE"] Rules should take precedence.

Salient points of the Guidelines include:-

**i. Multinational Enterprise Group**

- A Multinational Enterprise Group ["MNE Group"] subject to GMT legislation must have at least one entity, such as subsidiary, branch or permanent establishment ["PE"] located outside Malaysia (even one that does not earn income).
- A MNE Group includes:-
  - Entities under the common control of an Ultimate Parent Entity ["UPE"] which are required to be included in the Consolidated Financial Statement of the UPE; or
  - Entities that would have been consolidated had the UPE been required to prepare financial statements under the authorised Financial Accounting Standards (for example, Malaysian Financial Reporting Standards ["MFRS"] and Malaysian Private Entities Reporting Standards ["MPERs"]); or
  - A standalone Entity with one or more PEs located in another jurisdiction.

**ii. Consolidated Revenue Threshold**

- The GMT legislation shall apply to Constituent Entities of a MNE Group with annual revenue of EUR750 million or more in the consolidated financial statements of the MNE Group in at least 2 of the 4 immediately preceding financial years (not including the tested financial year).
- The MNE Group will be required to translate the relevant amount from its presentation currency to the currency in EURO based on the average foreign exchange rate for the month of the December prior to the commencement of the relevant financial year.
- Where one or more of those financial years is of a period other than 12 months, the EUR750 million annual revenue threshold is adjusted proportionally to correspond with the length of the relevant financial year.
- The threshold amount is the same as the one used for Country-by-Country Reporting ["CbCR"], except that the revenue threshold for the GMT legislation is based on a 4-year test.
- The GMT legislation shall also apply to any Labuan entity under the Labuan Business Activity Tax Act 1990 and to a chargeable person under the Petroleum (Income Tax) Act 1967 if it is a Constituent Entity that is a member of a MNE Group.

**iii. Excluded Entity**

- An Excluded Entity is not subject to the GMT legislation, however, for the purposes of determining the revenue threshold, the excluded entity's revenue must be considered.
- The definition of "Excluded Entity" is provided under Section 157(1) of the ITA 1967 and when an entity meets the definition, the entirety of its activities (including those undertaken by its PEs) are excluded from the GMT legislation.
- An entity that is a member of a Group that held by an Investment Fund or a Real Estate Investment Vehicle can still meet the requirements under Paragraph (g) of the definition of "Excluded Entity" under Section 157(1) of the ITA 1967 even though the Investment Fund or Real Estate Investment Vehicle is not the UPE of that Group.
- The activities of the subsidiaries of the Non-profit Organisation may qualify as "ancillary activities" for the purposes of determining an Excluded Entity under Paragraph (g) of the definition "Excluded Entity" under Section 157(1) of the ITA 1967 if:-
  - 100% of value of the Entity is owned (directly or indirectly) by one or more Non-profit Organisations; and
  - The revenue of all Group Entities (excluding the Non-profit Organisation, or by an Entity that is under Paragraph (g) of the definition of Excluded Entity) for that financial year is less than the GloBE annual threshold of EUR750 million or 25% of the total revenue of the MNE Group.
- A Filing Constituent Entity may elect not to treat an Entity as an Excluded Entity and this is a 5-year election.

#### **iv. Filing Obligations of the Information Return and Top-up Tax Return**

- The MNEs are required to furnish the GloBE Information Return ["GIR"] annually to disclose their financial and tax information, which includes detailed information on the MNE Group's income, taxes and the effective tax rate calculation across all jurisdictions where the MNE Group operates or has a business presence.
- All UPE of Malaysian MNE Groups residing in Malaysia are required to furnish to the IRB an Information Return in a prescribed form (i.e. the same as the GIR) not later than 15 months from the last day of the Reporting Financial Year.
- The Constituent Entity of a foreign MNE Group,
  - where its UPE or Designated Filing Entity ["DFE"] resides in a jurisdiction with a Qualifying Competent Authority Agreement ["QCAA"] to exchange the GIR with Malaysia:-
    - does not have to furnish the Information Return to the IRB; and
    - the election to appoint a DFE must be made by a notice in writing in the prescribed form and furnished to the DGIR not later than 15 months from the last day of reporting financial year.
  - where its UPE or DFE resides in a jurisdiction that does not have a QCAA with Malaysia:-
    - must furnish the Information Return to the IRB;
    - if the foreign MNE Group has more than one Constituent Entity in Malaysia, it can nominate a Designated Local Entity ["DLE"] to furnish the Information Return to the IRB; and
    - the election to appoint a DLE must be made by a notice in writing in the prescribed form and furnished to the DGIR not later than 15 months from the last day of reporting financial year.
- The GloBE Rules provide transitional relief for filing obligations where the GIR and notifications can be furnished with the tax administrator not later than 18 months after the last day of the reporting financial year for the first filing transition year. This transitional relief for filing is also applicable to Top-up Tax returns.
- The tax payable for the first filing transition year is due on the last day of the 18<sup>th</sup> month after the end of that filing transition year.

#### **v. Transitional Penalty Relief**

- During a transition period, no fines or penalties will be imposed if the DGIR considers that the Constituent Entity has taken "reasonable measure" to ensure the correct application of the GMT legislation.
- For Malaysia, the transition period will apply to financial years starting on or after 1<sup>st</sup> January 2025 but not exceeding 31<sup>st</sup> December 2026 and the financial year must not end after 30<sup>th</sup> June 2028.

#### **vi. The Qualified Domestic Minimum Top-up Tax Safe Harbour**

- Qualified Domestic Minimum Top-up Tax ["QDMTT"] Safe Harbour provision enables MNE Group to take advantage of simplified compliance measures under specific circumstances and intended to alleviate administrative burdens and compliance costs by offering a more straightforward approach to fulfilling tax obligations.
- Where a MNE Group qualifies for a QDMTT Safe Harbour, the Top-Up Tax payable in other jurisdictions for the financial year will be deemed to be zero.
- A MNE Group will be eligible for the QDMTT Safe Harbour in respect of a jurisdiction for a financial year where:-
  - the jurisdiction has a QDMTT for the financial year; and
  - the jurisdiction's DTT has fulfilled the QDMTT Safe Harbour status for the financial year.
- A MNE Group cannot elect to apply the safe harbour if its liability under a QDMTT is subject to a challenge or deemed not assessable.
- The Switch-off Rule under the QDMTT Safe Harbour prevents a MNE Group from applying the safe harbour in certain scenarios and is designed to maintain the integrity of the GloBE Rules and ensure that they achieve their objective of ensuring a minimum level of taxation.

#### vii. The Transitional CbCR Safe Harbour

- Transitional CbCR Safe Harbour temporarily relieves MNEs from performing the complex and detailed computations required by the GloBE Rules during the initial years of implementation.
- A Qualified CbC report is the main document a MNE Group must use under the Transitional CbCR Safe Harbour. A Qualified CbC report refers to a CbC report prepared using Qualified Financial Statements.
- The transitional period for this safe harbour will only apply to financial years beginning on or before 31<sup>st</sup> December 2026, not including any financial years ending after 30<sup>th</sup> June 2028.
- To qualify, the top-up tax in the Tested Jurisdiction (i.e. a jurisdiction where Constituent Entities of a MNE are located) for a financial year shall be deemed to be zero by fulfilling either one of the following:-
  - De minimis test;
  - Simplified Effective Tax Rate test; or
  - Routine profits test.

#### viii. The Permanent Safe Harbour

- A MNE that does not meet the requirements of a transitional safe harbour could still be eligible for the permanent safe harbour. A permanent safe harbour allows MNE groups to avoid certain complex computations to estimate whether they will likely pay a top-up tax under the GloBE Rules.
- The Permanent Safe Harbour under the GloBE Rules serves several key purposes:-
  - Simplifying compliance;
  - Reducing administrative burden;
  - Ensuring tax certainty; and
  - Fostering consistency.

#### Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Linked *Sukuk*

Following the Budget 2023 announcement, the *Income Tax (Sustainable and Responsible Investment Linked Sukuk) Rules 2024* has been gazetted to provide a deduction for expenditure incurred by a company resident in Malaysia on the issuance or offering of Sustainable and Responsible Investment ["SRI"] Linked *Sukuk* that is:-

- approved or authorised by, or lodged with, the Securities Commission ["SC"] under the Capital Markets and Services Act 2007 ["CMSA 2007"]; and
- issued or offered to an investor in compliance with the guidelines relating to *sukuk* issued by the SC under the CMSA 2007.

The total amount for deduction allowed shall be determined in accordance with the formula as follows:-

$$A - B = C$$

Where

A - the amount of expenditure incurred by the company on the issuance or offering of the SRI Linked *Sukuk*

B - the amount exempted in respect of a grant to finance an external review expenditure for the issuance or offering of the SRI Linked *Sukuk*

C - the total amount of deduction allowed

**“External review expenditure”** means an expenditure incurred by a company on the issuance or offering of the SRI Linked *Sukuk* to appoint an external reviewer for the purpose of assessing and providing a report on the company’s compliance with the requirement under the guidelines relating to *sukuk* issued by the SC under CMSA 2007 before the issuance of the SRI Linked *Sukuk* is made and expenditure incurred to appoint an independent verifier to provide a verification report for the purpose of monitoring performance targets for each key performance indicator after the issuance of SRI Linked *Sukuk* is made.

The above Rules shall have effect from the YA 2023 to YA 2027.

### **Extension of Tax Exemption on Foreign-Sourced Income for Individuals**

The Income Tax (Exemption) (No. 5) Order 2022 provides tax exemption of all types of foreign-source income received by resident individuals during the period from 1<sup>st</sup> January 2022 to 31<sup>st</sup> December 2026.

Following the Budget 2025 announcement, the *Income Tax (Exemption) (No. 5) Order 2022 (Amendment) Order 2024* has been gazetted to extend the income tax exemption for an additional 10 years, i.e. until 31<sup>st</sup> December 2036.

The above Order will come into operation on 1<sup>st</sup> January 2027.

**Note:** For further information relating to the Tax Exemption on Foreign-Sourced Income for Individuals, kindly refer to our *Tax Flash - August 2022* issue.

### **Income Tax Exemption on Prize Money Received from the Government for Sports Event**

Following the Budget 2025 announcement, the *Income Tax (Sports Victory Prize Scheme) (Exemption) Order 2024* has been gazetted to provide exemption to an athlete from the payment of income tax on the prize money received from the Federal Government through the National Sports Council of Malaysia under the Sports Victory Prize Scheme.

For the purpose of the above Order, “**athlete**” refers to a person who is under the patronage of the National Sports Council of Malaysia and competes individually or in a team in the sports events as specified in Schedule 1 to the Sports Development Act 1997.

The Exemption Order shall have effect from the YA 2024.

**Note:** For further information, kindly refer to our *Tax Flash - October 2024 (Special Edition)* and *Tax Flash - November 2024 (Special Edition)* issues.

### **Extension of Income Tax Exemption on Solar Photovoltaic System Leasing**

Pursuant to the Income Tax (Green Technology Incentive) (Solar Photovoltaic System Leasing) (Exemption) Order 2024, a qualifying company who undertakes the activity of photovoltaic system leasing services shall be eligible for an income tax exemption up to 70% of the statutory income derived from the qualifying activity. The application for approval shall be received by Malaysian Investment Development Authority on or after 1<sup>st</sup> January 2020 but not later than 31<sup>st</sup> December 2023.

The *Income Tax (Green Technology Incentive) (Solar Photovoltaic System Leasing) (Exemption) (Amendment) Order 2024* has been gazetted to extend the abovementioned application period to 31<sup>st</sup> December 2026.

The abovementioned amendment Order shall have effect from 1<sup>st</sup> January 2024.

**Note:** For further information on the green technology incentive on solar photovoltaic system leasing, kindly refer to our [Tax Flash - October 2024](#) issue.

### Income Tax Exemption on Income Derived from Islamic Securities Selling and Buying

Following the 2024 Budget announcement, the *Income Tax (Islamic Securities) (Exemption) Order 2024* has been gazetted to provide exemption from the payment of income tax in respect of the statutory income derived from an Islamic Securities Selling and Buying ["ISSB"] negotiated transactions performed by any approved supplier and approved user.

The exemption shall apply to statutory income derived from an ISSB negotiated transaction other than structured payments, monthly instalment and profit earned on collateral and rebate arising from:-

- the selling and buying of Islamic securities listed on Bursa Malaysia Securities Berhad;
- the return of the same or equivalent Islamic securities;
- the corresponding exchange of collateral; and
- the exercise of any remedial option due to reclassification of the status of the Islamic securities to *Shariah* non-compliant securities,

in respect of an ISSB negotiated transactions under an ISSB negotiated transaction agreement.

The Exemption Order shall have effect from the YA 2024.

### Implementation of e-PCB Plus System

The e-PCB Plus system is an electronic platform introduced by the IRB to integrates all services related to the monthly tax deduction ["PCB"] process. It will replace the existing PCB system (e-PCB / e-CP39 / e-Data PCB) using single platform through the employer's MyTax portal. The e-PCB Plus Phase 1 has been made accessible to employers as initial preparation before the system becomes fully operational on a date to be announced later.

The salient points of the e-PCB Plus system are as follows:-

- Employers are required to update the employee's data such as name, tax identification number and identification card number or passport number in a complete and accurate manner.
- The user role matrix for e-PCB Plus is as follows:-

Role in MyTax	Role in e-PCB Plus	Registration Process
Employer Employer Representative PCB Administrator	Administrator	MyTax
Individual	Administrator Representative	e-PCB Plus

- The "**Administrator**" has an overall role in managing e-PCB Plus such as to appoint an Administrator Representative, establish task scopes, make calculations and payments, review reports and other matters related to PCB.
- The Administrator can monitor tasks and activities related to the Administrator Representative's role in e-PCB Plus, including reviewing the status of PCB payments.

- The “**Administrator Representative**” is an individual appointed by the Administrator to manage e-PCB Plus with restricted access based on the task scope and employee group specified by the Administrator.
- The existing e-PCB system is still accessible until further notification on its closure once all modules in e-PCB Plus are fully developed.

### **Filing Programme for Specified Documents Through MITRS**

With the gazettelement of the Finance (No. 2) Bill 2023 (Budget 2024), a new Section 82B of the ITA 1967 has been introduced to provide that a person who has furnished a return under Section 77 or Section 77A of the ITA 1967 shall provide information and furnish documents as determined by the DGIR for the purpose of ascertaining his chargeable income and tax payable, with effect from the YA 2025.

Following this, the IRB has issued the filing programme on the implementation of submission of the specified documents. The salient points of the filing programme are as follows:-

- The submission of the specified documents will be through Malaysian Income Tax Reporting System [“MITRS”] and to be carried out in stages starting with taxpayers from the categories of company and limited liability partnership.
- The submission of specified documents shall be made within 30 days after the due date for submission of tax return.
- The MITRS platform can be accessed through the MyTax portal from 1<sup>st</sup> April 2025 using the Director, Director Representative and Tax Agent (TAeF) roles.
- The following represents the specified documents that need to be submitted through MITRS for the relevant year of assessment:-
  - Audited financial statements / management accounts;
  - Calculation of income tax;
  - Complete schedule of capital allowance under Schedule 3 of the ITA 1967; and
  - Complete calculation of incentives claimed (if applicable).
- Amendments to the documents that have been submitted is permitted if the amendments will affect the calculation of chargeable / taxable income.
- Failure to comply with Section 82B of the ITA 1967 is an offence under Section 120(1)(d) of the ITA 1967 and shall on conviction, be liable to a fine not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding six months or both.

### **Remission of Income Tax and Stamp Duty on Islamic Commercial Papers and Islamic Medium Term Notes Including Guarantee**

Pursuant to the *Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Public Sector Home Financing Board) Order 2024*, remission of the following tax and stamp duty are granted for the issuance of Islamic Commercial Papers [“ICP”] and the Islamic Medium Term Notes [“IMTN”] of up to RM25 billion in nominal value by Public Sector Home Financing Board [“PSHFB”] in relation to the guarantee given by the Government of Malaysia:-

#### **i. Remission of Tax**

Any tax payable under the ITA 1967 by:-

- the PSHFB or any holder of ICP and IMTN in respect of any money payable under any agreement, note, instrument and document in relation to the ICP and IMTN Programme and the guarantee; or
- any party to whom the agreement, note, instrument and document in relation to the ICP and IMTN Programme and the guarantee under the Order is transferred or assigned, shall be remitted in full.

## ii. Remission of Stamp Duty

- Any stamp duty payable under the Stamp Act 1949 ["SA 1949"] in respect of any agreement, note, instrument and document in relation to the ICP and IMTN Programme and the guarantee shall be remitted in full.

The above Order comes into operation on 24<sup>th</sup> December 2024.

## Remission of Income Tax and Stamp Duty on Short Term Revolving Credit-i Facility Obtained by the Digital Nasional Berhad from Maybank Islamic Berhad

Pursuant to the *Loans Guarantee (Bodies Corporate) (Remission of Tax And Stamp Duty) (Digital Nasional Berhad) Order 2024*, remission of the following tax and stamp duty are granted for the Short Term Revolving Credit-i Facility ["GGRC-i Facility"] obtained by the Digital Nasional Berhad ["DNB"] from Maybank Islamic Berhad ["MIB"] with the aggregate principal of up to RM1.5 billion in nominal value in relation to the guarantee given by the Government of Malaysia:-

### i. Remission of Tax

Any tax payable under the ITA 1967 by:-

- the DNB or MIB in respect of any money payable under any agreement, note, instrument and document in relation to the GGRC-i Facility and the guarantee; or
  - any party to whom the agreement, note, instrument and document in relation to the GGRC-i Facility is transferred or assigned,
- shall be remitted in full.

### ii. Remission of Stamp Duty

- Any stamp duty payable under the SA 1949 in respect of any agreement, note, instrument and document in relation to the GGRC-i Facility and the guarantee shall be remitted in full.

The above Order comes into operation on 1<sup>st</sup> January 2025.

## Updates on Stamp Duty Exemption on Micro Financing Scheme

The Stamp Duty (Exemption) (No. 4) Order 2011 provides exemption from stamp duty on the instrument of agreement for loan or financing not exceeding RM50,000 pursuant to a micro financing scheme approved by the National Small and Medium Enterprise Development Council between a borrower and a participating bank or financial institution.

Following the Budget 2025 announcement, the *Stamp Duty (Exemption) (No. 9) Order 2024* has been gazetted to provide for the exemption from stamp duty on the instrument of loan or financing agreement be increased to an amount not exceeding RM100,000 executed between a borrower and a financial institution. The exemption shall only apply to an instrument of loan or financing agreement executed on or after 1<sup>st</sup> January 2025.

The above Order comes into operation on 1<sup>st</sup> January 2025. The Stamp Duty (Exemption) (No. 4) Order 2011 shall be revoked.

## Service Tax Policy No. 8/2024 - Service Tax Exemption on Local Commodity Trading Platform Fees or Commissions

The Royal Malaysian Customs Department ["RMCD"] has published the *Service Tax Policy No. 8/2024 – Service Tax Exemption on Local Commodity Trading Platform Fees or Commissions* ["the Policy"] dated 26<sup>th</sup> December 2024 (in *Bahasa Malaysia*) and it shall have effect from 1<sup>st</sup> October 2024. The salient points extracted from the Policy are as follows:-

- The Minister of Finance has determined that:-
  - service recipients of local commodity trading platforms are exempted from paying service tax on fees or commissions charged by such trading platforms pursuant to Section 34(3)(a) of the Service Tax Act 2018 ["SET Act"]; and
  - service providers of local commodity trading platforms are exempted from charging service tax on fees or commissions in respect of such trading platforms pursuant to Section 34(4) of the SET Act.
- This exemption is only applicable to the use of local commodity trading platforms for Islamic financing transactions.
- Any service tax collected by service providers up to 30<sup>th</sup> September 2024 must be remitted to RMCD in accordance with Section 26 of the SET Act.
- No refund of service tax will be made to any person who has paid such service tax before 1<sup>st</sup> October 2024.
- RMCD reserves its right to collect service tax from any service provider who is liable to be registered under Section 12(2) of the SET Act but has either failed to register or has registered but failed to remit the service tax as required based on the prevailing legislation.
- Local commodity trading service providers are advised to seek for a Customs Ruling from RMCD regarding the classification of taxable services for fees or commissions charged on local commodity trading platforms.

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