



## TAX FLASH

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### Tax Treatment on Deduction of Tax as Final Tax

The Inland Revenue Board ["IRB"] has recently issued the *Practice Note No.1/2021 – Tax Treatment on Final Tax* dated 3<sup>rd</sup> May 2021 ["PN 1/2021"] to provide guidance on the tax treatment of monthly tax deductions ["MTD"] as final tax for employment income received by employees. Pursuant to Section 77C(1) of the Income Tax Act 1967 ["the Act"], effective from year of assessment ["YA"] 2014, taxpayers with only employment income and subjected to MTD can opt not to file Income Tax Return Form ["ITRF"]. In such cases, the total amount of MTD will be deemed as the final tax paid.

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

Salient points included in the above PN 1/2021 are as follows:-

- i. All income derived from employment including benefits-in-kind, value of living accommodation must have been subjected to MTD under the Income Tax (Deduction from Remuneration) Rules 1994.
- ii. An eligible taxpayer who chooses not to file his or her an income tax return is deemed to have opted for MTD as final tax. If the MTD is in excess of the actual tax liability, the taxpayer is not eligible for any tax refund.
- iii. Where the taxpayer has opted for MTD as final tax and:-
  - The IRB subsequently obtains new or additional information on the taxpayer's income, the IRB may raise an assessment or additional assessment under Section 90(3) of the Act and the MTD deducted will not be deemed as final tax.
  - The taxpayer wishes to claim additional relief or a refund, he or she is required to submit the ITRF. Penalty for late submission may be imposed where the ITRF is filed after the stipulated deadline.
- iv. Where the taxpayer has opted for MTD as final tax and it was subsequently discovered through a tax audit carried out on the employer that there was a shortfall in MTD:-
  - A compound under Section 124 of the Act will be imposed on the employer and the employer will be required to remit the shortfall in MTD to the IRB.
  - The employee will be required to submit the ITRF to the IRB. Penalties may be imposed where the ITRF is not filed within the stipulated period.

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

The IRB has recently issued the *Revised Guidelines on Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee Commencing from YA 2020* dated 11<sup>th</sup> May 2021 to replace the previous Guidelines issued on 18<sup>th</sup> September 2020. The Revised Guidelines provide new examples (i.e. Examples 3 and 4) to illustrate the claim for deduction of secretarial fee and tax filing fee based on the application of both the following rules:-

- i. Income Tax (Deduction for Expenses in Relation to Secretarial and Tax Filing Fee) Rules 2014 i.e. deduction of secretarial fee and tax filing fee of up to RM5,000 and RM10,000 respectively per year; and
- ii. Income Tax (Deduction for Expenses in Relation to Secretarial and Tax Filing Fee) Rules 2020 i.e. deduction of both secretarial fee and tax filing fees of up to RM15,000 on a combined basis per year.

**Note :** For further details relating to the Guidelines on Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee Commencing from YA 2020 dated 18<sup>th</sup> September 2020, kindly refer to our *Tax Flash - October 2020 issue*.

### **Tax Exemption on Gains or Profits Derived from Sukuk Wakala**

Pursuant to the *Income Tax (Exemption) (No. 3) Order 2021*, a person is exempted from the payment of income tax in relation to gains or profits received, in lieu of interest, derived from *sukuk wakala* of nominal value up to USD\$ 1,300,000,000.00, other than convertible loan stock, issued in accordance with the principle of *Wakala* by Malaysia Wakala Sukuk Berhad.

The Order also stipulates that the withholding tax under Section 109 of the Act shall not apply to the gains or profits derived from the above *sukuk wakala* which is exempted from tax.

The above Order shall have effect from YA 2021 onwards.

## Expansion of Tax Exemption for Organising Conferences in Malaysia

Presently, tax exemption on statutory income derived from organising conferences held in Malaysia is given to a company, association and organisation resident in Malaysia whose main activities are promoting and organising conferences i.e. as a conference promotor, subject to the conference promoter bringing in at least 500 foreign participants in the basis period for a year of assessment pursuant to the Income Tax (Exemption) (No.53) Order 2000.

Following the Budget 2020 announcement, the *Income Tax (Exemption) (No. 4) Order 2021* [“the 2021 Order”] has been gazetted to extend the tax exemption to any entity whose main activities are other than promoting and organising conferences provided that the entity brings in at least 500 foreign participants in the basis period for a year of assessment.

The exemption shall not apply to a person who has been granted an exemption under the Income Tax (Exemption) (No.53) Order 2000.

The 2021 Order shall have effect from the YA 2020 until YA 2025.

## Tax Exemption on Income Derived from the Business of Providing Fund Management Services

Following the Budget 2020 announcement, the *Income Tax (Exemption) (No. 5) Order 2021* has been gazetted to extend the period of tax exemption granted to a company in respect of statutory income derived from the business of providing fund management services for Sustainable and Responsible Investment [“SRI”] Fund in Malaysia for another 3 years.

Where a company carries on a business other than the business of providing fund management services, each business shall be treated as a separate and distinct source of the business and separate account for the income derived from the business of providing fund management services for SRI Fund shall be maintained.

This Order shall not apply to a company if in the basis period for a year of assessment, it has been granted:-

- any incentive under Section 60G of the Act; or
- any exemption under Section 127(3)(b) or Section 127(3A) of the Act.

“Company” means a fund management company which is:-

- resident in Malaysia;
- incorporated under Companies Act 2016; and
- licensed under the Capital Markets and Services Act 2007 or registered with the Securities Commission Malaysia as a venture capital management corporation or a private equity management corporation.

The above Order shall have effect from YA 2021 until YA 2023.

## Double Deduction for Training Costs under the Professional Training and Education for Growing Entrepreneurs (PROTÉGÉ-RTW) Programme for Trainees

The *Income Tax (Deduction for Training Costs under the Professional Training and Education for Growing Entrepreneurs (PROTÉGÉ-Ready to Work [“RTW”]) Programme) Rules 2021* provides a double deduction on the following expenditure incurred by a qualifying company for conducting the PROTÉGÉ-RTW Programme approved by the Ministry of Entrepreneur Development and Cooperatives [“the Ministry”] for trainees:-

- a. monthly training allowance of not less than RM1,000 paid to the trainees for a maximum period of 12 months;
- b. expenditure incurred for the training provided to the trainees;
- c. expenditure incurred for food, travelling and accommodation allowances of the trainees during the training programme; and
- d. fees paid to a person who has been appointed to conduct soft-skills training under the training programme.

The total amount of deduction under (b), (c) and (d) above for each trainee is restricted to RM5,000 for each training programme.

For the purposes of qualifying for the double deduction, the qualifying company is required to produce a confirmation from the Ministry specifying that:-

- i. the training programme must be approved by the Ministry during the period from 11<sup>th</sup> September 2019 to 31<sup>st</sup> December 2025; and
- ii. the implementation of the training programme shall commence within 12 months from the date of approval of training programme.

The above Rules are deemed to have come into operation on 11<sup>th</sup> September 2019. The above Rules replaces the previous Income Tax (Deduction for Training Costs under *Skim Latihan 1Malaysia* for Unemployed Graduates) Rules 2013 [“the revoked Rules”] issued on 29<sup>th</sup> July 2013.

It is noteworthy that under the savings and transitional provisions, any approval which has been granted under the revoked Rules before 11<sup>th</sup> September 2019 will remain in place and shall be deemed to be granted under the current Rules. In addition, any application for deduction made before 11<sup>th</sup> September 2019 which is pending approval shall be dealt with as if the revoked Rules has not been revoked.

**Note :** For further information on the previous Income Tax (Deduction for Training Costs under *Skim Latihan 1Malaysia* for Unemployed Graduates) Rules 2013, kindly refer to our [Tax Flash - September 2013 issue](#).

#### **Remission of Penalty Imposed under the Goods and Services Tax Act 2014**

Royal Malaysian Customs Department [“RMCD”] has on 31<sup>st</sup> May 2021 published an announcement in relation to [Remission of Penalty Imposed under the Goods and Services Tax \[“GST”\] Act 2014](#) (currently only made available in *Bahasa Malaysia*). The salient points are as follows:-

- Pursuant to Section 49 of the GST Act 2014, a stoppage order may be issued to a business owner to prevent the person from leaving Malaysia unless the outstanding GST and/or GST penalty is paid. Legal actions may be initiated against the business owner within 90 days from the date of issuance of demand notice for payment.
- RMCD has informed that the remission of GST penalty may be considered for any company that settles the outstanding GST and penalty payments during the period from 1<sup>st</sup> May 2021 to 31<sup>st</sup> August 2021, subject to the following conditions:-

Category	<b>Category 1 :</b> <b>Company with outstanding GST and penalty</b>	<b>Category 2 :</b> <b>Company with outstanding penalty only</b>
Condition	The company must make good of the full amount of the outstanding GST during the period from 1 <sup>st</sup> May 2021 to 31 <sup>st</sup> August 2021	The company must make good of 20% of the outstanding GST penalty during the period from 1 <sup>st</sup> May 2021 to 31 <sup>st</sup> August 2021
Eligibility	100% penalty remission	80% penalty remission

- The application can be made through the TaxPayer Access Point ["TAP"] portal under the Request for Remission link. The applicant is required to upload the following documents:-
  - Application letter for remission of the GST penalty;
  - Proof of payment; and
  - Statement of GST Account before the payment is made.
- The company is advisable to settle the outstanding GST as mentioned above in order to qualify for the remission of the GST penalty.

### **Service Tax Policy No. 1/2021**

RMCD has on 31<sup>st</sup> May 2021 published the [Service Tax Policy No. 1/2021](#) which provides for exemption from payment of service tax for the Malaysia-Thailand Joint Authority ["MTJA"] and companies operating in the Joint Development Area ["JDA"].

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

- In accordance with Section 34(3)(a) of the Service Tax Act 2018, the Minister of Finance has prescribed that effective 1<sup>st</sup> May 2021, the MTJA and companies operating in the JDA are exempted from payment of service tax on taxable services provided within the JDA by any company in the Principal Customs Area ["PCA"].
- The exemption is subject to the following:-
  - Any service tax collected from customers from 1<sup>st</sup> September 2018 to 30<sup>th</sup> April 2021 must be remitted to RMCD in accordance with Section 26 of the Service Tax Act 2018;
  - Application from any person for refund of service tax paid before 1<sup>st</sup> May 2021 shall not be approved;
  - Any service tax in relation to services which have been provided but no invoice has been issued or service tax has been charged but payment has not been made by the customer shall be remitted pursuant to Section 40(1) of the Service Tax Act 2018; and
  - No service tax exemption shall be given on the importation of taxable services and digital services into JDA.

### **Guide on Refund, Drawback and Appeal for Sales Tax**

RMCD has on 31<sup>st</sup> May 2021 published the [Guide on Refund, Drawback and Appeal for Sales Tax as at 21<sup>st</sup> April 2021](#) (currently only made available in *Bahasa Malaysia*).

### **New DTA between Malaysia and Ukraine**

The new [Double Taxation Agreement \["DTA"\] signed between Malaysia and Cambodia](#) has recently been gazetted.

Salient points of the DTA include:-

- i. A building site, a construction, assembly or installation project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities exists more than 12 months.
- ii. The withholding tax rates applicable on certain payments made to non-residents are as follows:-
  - Dividend – 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the shareholding or 15% in all other cases (Note)
  - Interest – 10%. Penalty charges for late payment are not considered as interest.
  - Royalties – 8%.
  - Technical fees – 8%
  - Section 4(f) income – 10%

The above DTA will enter into force upon ratification.

**Note:** Currently, there is no withholding tax on outbound dividends under the Act.

### **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS**

Malaysia has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting [“BEPS”], hereinafter referred to as “MLI” at the Organisation for Economic Co-operation and Development’s [“OECD”] headquarters in Paris. The MLI will enter into force after 3 calendar months from the month Malaysia deposits the instrument of ratification with the OECD Secretariat.

On 18<sup>th</sup> February 2021, Malaysia has deposited the MLI with the Organisation for Economic Co-operation and Development Depositary and hence, the MLI shall come into force on 1<sup>st</sup> June 2021. However, the effective date of the relevant provisions under the MLI will also depend on when the treaty partner in the other jurisdictions deposit their instruments of ratification.

Pursuant to Article 35(1) of the MLI, the provisions of the MLI will become applicable with respect to:-

- i. withholding tax - on or after the first day of the next calendar year that begins on or after the latest of the dates on which the MLI enters into force for each of the Contracting Jurisdictions to the covered tax agreement; and
- ii. all other taxes - taxes levied with respect to taxable periods beginning on or after the expiration of a period of 6 calendar months (or a shorter period if all Contracting Jurisdictions notify the Depositary that they intend to apply such shorter period) from the latest of the dates on which the MLI enters into force for each of the Contracting Jurisdictions to the covered tax agreement.

For further information, please refer to the [IRB's website regarding the MLI](#).

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