



TAX FLASH

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Updated Tax Audit Framework, Petroleum Tax Audit Framework and Finance and Insurance Tax Audit Framework

The Inland Revenue Board has on 1st May 2022 issued the following frameworks (all available in *Bahasa Malaysia*):-

- [Tax Audit Framework](#)
- [Petroleum Tax Audit Framework](#)
- [Finance and Insurance Tax Audit Framework](#)

[hereinafter collectively referred to as “new Frameworks”]

The above new Frameworks which have effect from 1st May 2022 replace the previous frameworks as below:-

- Tax Audit Framework issued on 15th December 2019
- Petroleum Tax Audit Framework issued on 15th December 2019
- Finance and Insurance Tax Audit Framework issued on 18th November 2020

- Moore Malaysia
- Moore Global
- Inland Revenue Board

The salient changes included in the new Frameworks are as follows:-

i. Types of Audit

- The term “general review” (*semakan umum*) has now been used to replace “desk audit” (*audit meja*).
- The term “comprehensive review” (*semakan menyeluruh*) has now been used to replace “field audit” (*audit luar*).

ii. Offences and Penalty Rates

- Offences and penalty rates for understatement or omission of income are summarised below:-

Disclosure / Discovery	Period from the due date of submitting tax return	Rate
<ul style="list-style-type: none"> • Voluntary disclosure before case is selected for tax audit 	<ul style="list-style-type: none"> • Within 6 months • > 6 months 	10% 15%
<ul style="list-style-type: none"> • Non-disclosure (discovery of omission during tax audit) <ul style="list-style-type: none"> ○ First offence ○ Second offence ○ Third and subsequent offences ○ Fraud 		15% 30% 45% 100%
<ul style="list-style-type: none"> • Non-disclosure (discovery of omission during tax audit due to technical adjustments) 		0%

iii. The determination of the “first offence” or the “second offence” is based on the records of any imposition of penalty under Section 113(2) of the Income Tax Act 1967 [“ITA 1967”] or Section 52(2) of the Petroleum (Income Tax) Act 1967 [“PITA 1967”] during the period from 1st January 2020 to 30th April 2022 as follows:-

- Where no penalty has been imposed during the aforesaid period, any audit finding from 1st May 2022 which involves imposition of penalty under the relevant section of the ITA 1967 or the PITA 1967 will be considered as the “first offence”.
- Where a penalty has been imposed during the aforesaid period, any audit finding from 1st May 2022 which involves imposition of penalty under the relevant section of the ITA 1967 or the PITA 1967 will be considered as the “second offence”.

iv. For audit findings involving technical adjustments due to different interpretations of tax legislations that shall be determined based on the facts and issues of each case, no penalty under Section 113(2) of the ITA 1967 / Section 52(2) of the PITA 1967 will be imposed. This will not be applicable in cases where Public Rulings / Guidelines / Practice Notes / Regulations / Income Tax (Exemption) Orders / Income Tax Rules have been issued.

v. In cases where taxpayers intentionally make an incorrect return (i.e. fraud), the penalty under Section 113(2) of the ITA 1967 / Section 52(2) of the PITA 1967 will be at the rate of 100%.

Note: For further information on the previous Frameworks, kindly refer to our [Tax Flash – January 2020](#) and [Tax Flash – June 2020](#) issues.

Tax Exemption for Individuals Investing Through Equity Crowdfunding

Following the Budget 2021 announcement, the [Income Tax \(Exemption\) \(No. 4\) Order 2022](#) has been gazetted to provide for exemption on the aggregate income of a qualifying individual for investment made in an investee company through an equity crowdfunding platform or a nominee company.

The abovementioned exemption is granted to a qualifying individual in the second year of assessment following the initial year of assessment in which an investment is made. The qualifying person is given a tax exemption on his aggregate income:-

- equivalent to 50% of the investment amount made (restricted to RM50,000) for each year of assessment; and
- limited to 10% of the aggregate income of the qualifying individual for the year of assessment in which the exemption is granted.

To qualify for the exemption, the qualifying individual must make the investment in an investee company:-

- between 1st January 2021 and 31st December 2023; and
- in the form of holding shares which are paid in cash to the investee company through an equity crowdfunding platform or through a nominee company.

Other conditions that have to be met to qualify for the exemption are:-

- the qualifying individual must obtain an annual certification (as verified by the Securities Commission Malaysia ["SC"]) from the equity crowdfunding operator in relation to the investment and the amount of investment made;
- the investment must not be disposed of either partially, or in full, within 2 years from the date the investment is made; and
- the qualifying individual does not have parent (including parent-in-law), child (including stepchild or adopted child in accordance with any law), brother or sister, grandparent or grandchild, or spouse who makes any investment in the investee company.

For the above purposes:-

"Qualifying individual" means an individual who is resident in Malaysia and makes an investment in the investee company.

"Equity crowdfunding platform" means an online equity fundraising platform operated by an equity crowdfunding operator.

"Equity crowdfunding operator" means:-

- a company incorporated under the Companies Act 2016; and
- registered with the SC as a recognised market operator to operate an equity crowdfunding platform in Malaysia under the Guidelines on Recognised Markets issued by the SC.

"Nominee company" means a company which is:-

- incorporated under the Companies Act 2016;
- resident in Malaysia; and
- established by an equity crowdfunding operator in Malaysia to receive investments from a qualifying individual for investment purposes through an equity crowdfunding platform into an investee company.

"Investee company" means a company which is:-

- incorporated under the Companies Act 2016, not including an exempt private company as specified in Section 2 of the Companies Act 2016;
- resident in Malaysia; and
- hosted on an equity crowdfunding platform to offer its shares.

“Shares” means shares offered on the equity crowdfunding platform.

The above Order shall have effect from year of assessment 2021.

Review of Stamp Duty Payable / Remission on Contract Notes for Trading of Shares Listed on Bursa Malaysia

Pursuant to the Stamp Duty (Remission) Order 2003, stamp duty in excess of RM200.00, calculated at the prescribed rate in Item 31 of the First Schedule to the Stamp Act 1949 [“SA 1949”] payable on all instrument of contract notes relating to the sales of any shares, stocks or marketable securities which are listed in the stock market of a stock exchange approved under Section 8(2) of the Securities Industry Act 1983 is remitted.

In the Budget 2022 announcement, it was proposed that the stamp duty on contract notes to be increased from RM1.00 to RM1.50 for every RM1,000.00 (or fractional part) of the transaction value of shares/stocks listed on Bursa Malaysia and the stamp duty cap of RM200.00 is to be removed. The Ministry of Finance has subsequently issued a media release on 30th December 2021 stating that the stamp duty cap on the contract notes will be reinstated with a higher cap of RM1,000.00.

Following the above, the following legislations have been gazetted:-

i. *Stamp Duty (Remission) 2003 (Amendment) Order 2022*

- The remission of stamp duty in excess of RM200.00 will no longer apply to the trading of shares / stocks.
- The stamp duty cap of RM200.00 on contract notes relating to trading of marketable securities will remain to be covered under the existing Stamp Duty (Remission) Order 2003.
- The amendment order is deemed to have effect from 1st January 2022.

ii. *Stamp Duty (Remission) Order 2022*

- The Order provides that the stamp duty in excess of RM1,000.00, calculated at the prescribed rate in Item 31 of the First Schedule to the SA 1949 payable on all instrument of contract notes relating to the sales of any shares or stocks which are listed on the stock market of a stock exchange approved under Section 8(2) of the Capital Markets and Service Act 2007 shall be remitted.
- The Order is deemed to have come into operation on 1st January 2022 and shall continue to be in operation until 31st December 2026.

Note: For further details, kindly refer to our *Tax Flash – November 2021 (Special Edition) issue and Highlights on Budget 2022 Proposal (Part 3) - MOF’s Media Release on Foreign-Sourced Income and Remission of Stamp Duty on Contract Notes for Trading of Shares Listed on Bursa Malaysia*

Sales Tax (Goods Exempted from Tax) Order 2022

Subsequent to the enforcement of the Customs Duties Order 2022, the *Sales Tax (Goods Exempted from Tax) Order 2022* [“the Exemption Order”] has been gazetted and came into operation on 1st June 2022. Accordingly, the Sales Tax (Goods Exempted from Tax) Order 2018 [P.U. (A) 219/2018] is revoked.

The Exemption Order clarifies that the goods specified in Column 3 of Schedule A to the Exemption Order are exempted from sales tax.

Sales Tax (Rates of Tax) Order 2022

Subsequent to the enforcement of the Customs Duties Order 2022, the [Sales Tax \(Rates of Tax\) Order 2022](#) ["the Order"] has been gazetted and came into operation on 1st June 2022. Accordingly, the Sales Tax (Rates of Tax) Order 2018 [P.U. (A) 221/2018] is revoked.

The salient points extracted from the Order are as follows:-

- i. The sales tax charged and levied shall be fixed at 10% on all goods except for the following:-
 - goods which are included in any exemption order made under Section 35 to the Sales Tax Act 2018; and
 - goods imported on or with any person entering Malaysia (or in baggage) provided that the goods are not for commercial use excluding:-
 - motor vehicles;
 - alcoholic beverages;
 - spirits;
 - tobacco;
 - cigarettes;
 - tyres; and
 - tube.
- ii. Notwithstanding the above, the following sales tax will be charged and levied on the goods specified in the following Schedule of the Order:-
 - at the fixed rate of 5% for those goods appearing in the First Schedule of the Order; and
 - at the rate of tax specified in Column 4 in the Second Schedule of the Order for those goods appearing therein.

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