



# MOORE Advent

## TAX FLASH

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## Guidelines on the Submission of Estimate of Tax Payable under Section 107C of the Act

The Inland Revenue Board ["IRB"] has recently issued the revised *Operational Guidelines No.1/2021 - Submission of Estimate of Tax Payable under Section 107C of the Income Tax Act 1967* ["the Act"] dated 22<sup>nd</sup> December 2020 to provide clarification on the procedures for submission of estimate of tax payable.

The salient updates included in the above revised Guidelines are as follows:-

- i. Estimate of Tax Payable under Section 107C
  - A company, limited liability partnership ["LLP"], trust body or co-operative society is not allowed to submit the Form e-CP204 later than the stipulated due date if the Form CP205 has been issued by the IRB. However, revised estimates may be made in the sixth month and/or ninth month of the basis period by way of Form e-CP204A.
- ii. Notification of Change in Accounting Period
  - Effective year of assessment ["YA"] 2019, a company, LLP, trust body or co-operative society is required to notify the IRB of any changes in accounting period via submission of Form CP204B as follows:-
    - 30 days before the end of the new accounting period if the accounting period is shortened; or
    - 30 days before the end of the original accounting period if the accounting period is lengthen.
  - If a company, LLP, trust body or co-operative society has intention to change its accounting period and to revise its tax estimate at the same time, it is required to notify the IRB of the change in accounting period via submission of Form CP204B before submitting the Form e-CP204A.
  - In the case of a company under liquidation, it is required to submit the Form CP205B to the IRB immediately upon the appointment of a liquidator.

**Note :** For further information on the previous Guidelines, kindly refer to our *Tax Flash – April 2017 issue*.

## Guidelines and Procedure for the Application of Automation CA for Existing Company in Services Sector

In the Budget 2020, it was proposed that the existing automation capital allowance ["Automation CA"] incentive granted to the manufacturing sector be expanded to the services sector. Following this announcement, the Malaysian Investment Development Authority ["MIDA"] has recently issued *the Guidelines and Procedures for the Application of Automation CA for Services Sector – For Existing Company* dated 1<sup>st</sup> January 2020 to provide guidance on eligibility and application requirement in respect of Automation CA on plant and machinery incurred by a qualifying services company.

Application for the above incentive must be received by MIDA from 1<sup>st</sup> January 2020 until 31<sup>st</sup> December 2023.

**Note:** For further information on the above incentive, please refer to our *Tax Flash – October 2019 (Special Edition No. 2)*.

## Guidelines and Procedures for the Application of Automation CA for Manufacturing Sector

The MIDA has recently issued the updated *Guidelines and Procedures for the Application of Automation CA* dated 14<sup>th</sup> January 2021 providing information on the eligibility criteria, application procedure, application process, documents required to apply for the tax incentives in relation to qualifying expenditure incurred on automation equipment in manufacturing sector as follows:-

- i. Rubber products, plastics, wood, furniture and textiles (labour intensive industries); and
- ii. Other industries (as determined by the Minister).

Following the Budget 2020 announcement, the Guidelines have been updated mainly to reflect the extension of tax incentives for another 3 years, i.e. until YA 2023 which were legislated via the following amendment Orders:-

- Income Tax (Accelerated Capital Allowance) (Automation Equipment) 2017 (Amendment) Rules 2020; and
- Income Tax (Exemption) (No. 8) 2017 (Amendment) Order 2020.

Application for the incentives must be received by MIDA from 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2023.

**Note:** For further information on the above incentives granted under the Income Tax (Accelerated Capital Allowance) (Automation Equipment) 2017 (Amendment) Rules 2020 and Income Tax (Exemption) (No. 8) 2017 (Amendment) Order 2020 issued previously, please refer to our *Tax Flash July 2020 issue*.

## Tax Collection Framework 2021

The IRB has on 3<sup>rd</sup> February 2021, issued an updated *Tax Collection Framework* (in *Bahasa Malaysia*) to provide guidance with regards to the payment procedures and methods of remitting payments based on the types of income. It replaces the previous framework issued on 20<sup>th</sup> April 2016 and updated with current legislations and practices.

Among others, it is noteworthy that:-

- i. Revision of Notice of Instalment Payments ["Form CP500"] (Paragraph 2.2.3)
  - Taxpayers are allowed to apply for revision of instalment payments by 30<sup>th</sup> June for the relevant year of assessment via Application for Amendment to Instalment Payments ["Form CP502"].
  - The IRB will issue a Revised Notice of Instalment Payments ["Form CP503"] setting out the revised instalment payments if the application is successful.
- ii. Directive on Payment of Estimate Tax Payable issued by Director General of Inland Revenue ["DGIR"] (Paragraph 2.3.7)
  - DGIR will issue a Notice of Instalment Payments ["Form CP205"] to company, LLP, trust body and cooperative society who:-
    - fails to submit their Form CP204 within the stipulated deadline i.e. 30 days before the beginning of the basis period for a year of assessment; and
    - fails to inform on the change of accounting period via Notification of Change in Accounting Period ["Form CP204B"].

- iii. Notification of Change in Accounting Period (Paragraph 2.3.8)
  - Commencing from YA 2019, the company, LLP, trust body and cooperative society are required to inform DGIR on the change of accounting period via Form CP204B as below:-
    - 30 days before the end of the new accounting period, if the accounting period is shorten; or
    - 30 days before the end of the original accounting period, if the accounting period is lengthen.
  - Penalties will be imposed for failure to submit Form CP204B within the stipulated deadline.
- iv. Increase in Tax for Late Payment of Tax (Paragraph 2.5)
  - A 10% penalty for late payment will be imposed on the amount unpaid after the due date without further notice.
- v. Real Property Gains Tax (Paragraph 4.1.2)
  - For disposal of assets by non-Malaysian and non-permanent resident, the acquirer is required to retain all the money or 7% of the total value of consideration (whichever is lower) and pay that amount to the DGIR within 60 days after the disposal date.
- vi. Increase in Tax for Labuan Business Activity (Paragraph 5.1.5)
  - Late payment penalty
    - For tax assessed or additional tax assessed under Section 6(2) of the Labuan Business Activity Tax Act 1990 ["LBATA"], any outstanding tax that fail to be paid within 30 days from the date of notice of assessment will be liable to 10% penalty for late payment under Section 13A(2) of LBATA without issuance of any notification.
- vii. Methods of Tax Refund (Paragraph 9.5.5)
  - Refund Voucher
    - Taxpayers who have not provided their bank account number and address can only encashed their refund vouchers at any CIMB Bank branches.
    - The IRB branch is required to issue a notification letter of tax refund to non-Malaysian citizens if the amount of refund is more than RM10,000 which will be made through a bank account in Malaysia.
    - The recipient bank of the taxpayer is to be notified in order to authorise the receipt of the tax refund.

**Note :** For more information on the previous Tax Collection Framework, kindly refer to our [Tax Flash – September 2016 issue](#).

### **Update on Transfer Pricing Guidelines 2012 - Submission of TP Doc and Penalty**

Section 113B of the Act was introduced to provide that any person who makes default in furnishing a contemporaneous transfer pricing documentation ["TP Doc"] upon request by the IRB shall, on conviction, be liable to a fine of RM20,000 to RM100,000 or imprisonment for a term not exceeding 6 months or both. Where there is no prosecution, a penalty of RM20,000 to RM100,000 may be imposed.

Following this provision of tax laws which comes into operation on 1<sup>st</sup> January 2021, the IRB has updated [Chapter XI of the Transfer Pricing Guidelines 2012](#) in regard to the requirement for submission of TP Doc.

Salient points of the abovementioned updates are as follows:-

- i. Submission of the TP Doc
  - Prior to 1<sup>st</sup> January 2021, the TP Doc should be made available to the IRB within 30 days upon request
  - From 1<sup>st</sup> January 2021 onwards, the TP Doc should be made available to the IRB within 14 days upon request by the IRB. This requirement is applicable to transfer pricing ["TP"] audit cases which have commenced on or after 1<sup>st</sup> January 2021
- ii. Penalty
  - In line with the above, the penalty under Section 113B will not be imposed if the TP Doc is submitted:-
    - within 30 days upon request by the IRB for TP audit cases which have been commenced before 1<sup>st</sup> January 2021; or
    - within 14 days upon request by the IRB for TP audit cases which have been commenced on or after 1<sup>st</sup> January 2021.

### **Tax Deduction/Exemption on Value of Benefit in Respect of Smartphone, Tablet or Personal Computer Given by Employers to Employees**

Following the Short-Term Economic Recovery Plan ["PENJANA"] announced by the Government on 5<sup>th</sup> June 2020, the following Rules/Orders have been gazetted to encourage flexible work arrangement:-

- i. *Income Tax (Deduction for Value of Benefit Given to Employees) Rules 2021*
  - For the purpose of ascertaining the adjusted income of a person resident in Malaysia from its business for a basis period for a year of assessment, a deduction shall be allowed for the value for benefit given by that person as an employer to his employee for the purpose of acquiring a smartphone, tablet or personal computer.
- ii. *Income Tax (Exemption) Order 2021*
  - An employee is exempted from tax in relation to the value of benefit of smartphone, tablet or personal computer received by the employee from his employer (limited to RM5,000) in ascertaining the gross income from his employment in the basis year for a year of assessment.
  - This Order shall not apply to an employee where:-
    - the employee is a sole proprietor;
    - the employee is the employer's partner in a partnership; or
    - his employer is a company, the employee has the control or power to secure that the affairs of the company or any other company that has control over his employer are conducted in accordance with the wish of the employee in the following manner:-
      - by means of the holding of shares in the company or such other company;
      - by possession of voting power in relation to the company or such other company; or
      - by exercising any power conferred in the constitution of the company or other documents regulating the company or such other company

The above Rules/Orders shall have effect for YA 2020.

## Extension of Further Deduction for Employment of Senior Citizen, Ex-Convict, Parolee, Supervised Person and Ex-Drug Dependent

The Income Tax (Deduction for Employment of Senior Citizen, Ex-Convict, Parolee, Supervised Person and Ex-Drug Dependent) Rules 2019 provides a further deduction of remuneration incurred by an employer in the basis period for a year of assessment for employment of senior citizen ( $\geq 60$  years of age), ex-convict, parolee, supervised person and ex-drug dependent, who is a citizen and resident in Malaysia for the YA 2019 and YA 2020.

Following the Budget 2021 announcement, the *Income Tax (Deduction for Employment of Senior Citizen, Ex-Convict, Parolee, Supervised Person and Ex-Drug Dependent) (Amendment) Rules 2021* has been gazetted to extend the above further deduction of remuneration for employment of senior citizen, ex-convict, parolee, supervised person and ex-drug dependent for another 5 years, i.e. until YA 2025.

**Note :** For further information on the *Income Tax (Deduction for Employment of Senior Citizen, Ex-Convict, Parolee, Supervised Person and Ex-Drug Dependent) Rules 2019*, kindly refer to our *Tax Flash – July 2019 issue*.

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

The IRB has updated the *Frequently Asked Questions [“FAQ”] on International Tax Issues Due to COVID-19 Travel Restrictions* (as of 9<sup>th</sup> February 2021) to provide guidance on tax issues affecting individual/company in relation to tax residence status, permanent establishment and cross border employment income due to travel restrictions imposed under the COVID-19 pandemic situation.

Salient points of the abovementioned updated FAQ include:-

- i. The movement control order period is from 18<sup>th</sup> March 2020 as prescribed and extended by the Ministerial order made under Section 11 of the Prevention and Control of Infectious Diseases Act 1988 as gazetted from time to time.

In this respect, any reference to “temporary presence due to COVID-19 travel restrictions” refers to the movement control order period in Malaysia as prescribed and extended by the Ministerial order as gazetted from time to time.

- ii. Applications for tax treatment based on the FAQ must be referred to the branch that handles the taxpayer’s income tax file. If an income tax file has not been registered, applications should be made to the Non Resident Branch. Applications for the tax treatment will be reviewed according to the merit of the case. Confirmation of taxability from foreign tax authorities may be requested if needed.

**Note :** For further info relating to the previous FAQ on *International Tax Issues Due to COVID-19 Travel Restrictions* (as of 12<sup>th</sup> August 2020), kindly refer to our *Tax Flash – September 2020 issue*.

## RPGT Exemption for Disposal of Chargeable Asset at the Price of RM200,000 and Below

The Real Property Gains Tax (Exemption) Order 2018 provides for exemption from payment of real property gains tax [“RPGT”] to Malaysian citizens in respect of the chargeable gain derived from disposal of a chargeable asset (except share) under the following conditions:-

- the disposal is made in the 6<sup>th</sup> year after the date of acquisition of the chargeable asset or any year thereafter; and
- the consideration for the disposal of the chargeable asset is not more than RM200,000.

The *Real Property Gains Tax (Exemption) 2018 (Amendment) Order 2021* has been gazetted to stipulate that an additional criteria has to be fulfilled in order to be eligible for the above RPGT exemption i.e. the consideration or market value, whichever is the higher for the disposal of the chargeable asset must not be more than RM200,000.

The above applies to disposal of chargeable asset from 1<sup>st</sup> January 2019 onwards.

**Note :** For further info relating to the above RPGT exemption, kindly refer to our *Tax Flash – January 2019 issue*.

### **Stamp Duty Exemption for Restructuring or Rescheduling of Loan or Financing**

Pursuant to the Stamp Duty (Exemption) (No.2) (Order) 2020, exemption from stamp duty is granted for restructuring or rescheduling of a business loan or financing between a borrower or customer and a financial institution.

The *Stamp Duty (Exemption) (No.2) 2020 (Amendment) Order 2021* has been gazetted with incorporation of the following amendments, among others :-

- i. To be eligible for the exemption, the following terms and conditions must be fulfilled:-
  - the existing instrument of loan or financing agreement must have been duly stamped under item 22 or 27 of the First Schedule to the Stamp Act 1949; and
  - the instrument of loan or financing agreement does not contain the element of additional value to the original amount of loan or financing (excludes any interest or profits accrued from the restructured or rescheduled payment).
- ii. Application for exemption must be accompanied by the relevant documents relating to the restructuring or rescheduling of the loan or financing.
- iii. The period of exemption has been extended and granted to the instrument of loan or financing agreement relating to the restructuring or rescheduling of loan or financing (previously only applicable to business loan or financing) executed not later than 30<sup>th</sup> June 2021 (previously 31<sup>st</sup> December 2020).

**Note:** For further information on the previous Order, kindly refer to our *Tax Flash – June 2020 issue*.

### **Stamp Duty Exemption for Purchase of Residential Property Valued Not Exceeding RM500,000**

Following the Budget 2021 announcement, the *Stamp Duty (Exemption) Order 2021* and *Stamp Duty (Exemption) (No. 2) Order 2021* have been gazetted to provide exemption of stamp duty on instrument of transfer and loan agreement for the purchase of only one (1) unit of residential property (i.e. a house, a condominium unit, an apartment or a flat purchased or obtained solely to be used as a dwelling house) with value not exceeding RM500,000 by an individual who is a Malaysian citizen.

The exemption is given on the conditions that: -

- the sale and purchase agreement for the purchase of the residential property is executed on or after 1<sup>st</sup> January 2021 but not later than 31<sup>st</sup> December 2025; and
- the individual has never owned any residential property including a residential property which is obtained by way of inheritance or gift, which is held either individually or jointly. Such confirmation has to be made by the individual by way of a statutory declaration under the Statutory Declarations Act 1960.

The above Orders come into operation on 1<sup>st</sup> January 2021.

## Expansion of the Scope of Imposition of Tourism Tax on Accommodation Booked Through Online Platform

Following the Budget 2021 announcement, the Royal Malaysian Customs Department ["RMCD"] has issued the [FAQ on Expansion of the Scope of Imposition of Tourism Tax on Accommodation Booked Through Online Platform](#) to provide guidance on the imposition of tourism tax on accommodation premises booked through online platform.

With effect from 1<sup>st</sup> July 2021, tourism tax at the rate of RM10 per room per night shall be charged and levied on a tourist staying at any accommodation premises through service relating to online booking accommodation premises provided by a digital platform service provider (such as Airbnb, Agoda, Booking.com, Traveloka and etc).

### Service Tax - Industry Guide

The RMCD has published the [Guide on Digital Services by Foreign Service Provider](#) dated 1<sup>st</sup> February 2021.

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