



MOORE Advent

# TAX FLASH

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## Updated FAQ on Special Deduction for Taxpayers Who Offer Rental Reduction of Business Premises to SME and Non-SME Tenants

Landlords who offer rental reduction of business premises of at least 30% from the monthly rental to Small and Medium Enterprise ["SME"] and Non-SME tenants are eligible for special deduction of the rental reduction for the period extended up to June 2022 in accordance with:-

- Income Tax (Special Deduction for Reduction of Rental to a SME) (Amendment) Rules 2021; and
- Income Tax (Special Deduction for Reduction of Rental to a Tenant Other Than a SME) (Amendment) Rules 2021

Following the above, the *Frequently Asked Question ["FAQ"] on Special Deduction for Taxpayers Who Offer Rental Reduction for Business Premises to SME and Non-SME Tenants (Amended 22<sup>nd</sup> March 2022)* has been updated to take into account the above special deduction for landlords on reduction of rental of business premises offered to SME and Non-SME tenants for the period of extension up to June 2022.

**Note:** For further information, kindly refer to our *Tax Flash – April 2021* and *Tax Flash – January 2022* issues.

### Exclusion of Foreign Source Income from *Cukai Makmur*

In Budget 2022, it was announced that the tax exemption on foreign-sourced income ["FSI"] received by a person (other than a resident company carrying on the business of banking, insurance or sea or air transport) who is a resident in Malaysia be withdrawn from 1<sup>st</sup> January 2022 onwards. A flat income tax rate of 3% will be imposed on the gross amount of FSI received in Malaysia during the period from 1<sup>st</sup> January 2022 to 30<sup>th</sup> June 2022 whereas from 1<sup>st</sup> July 2022 onwards, the prevailing tax rate of the taxpayer would apply.

The Ministry of Finance ["MoF"] has thereafter through a media release on 30<sup>th</sup> December 2021, announced that:-

- All types of income received by individuals and dividend income received by companies / limited liability partnership from sources outside Malaysia will continue to be exempted from tax for the period from 1<sup>st</sup> January 2022 until 31<sup>st</sup> December 2026;
- FSI received in Malaysia shall be excluded from the computation of a one-off special tax i.e. *Cukai Makmur* of 33% for companies (other than SME) levied on chargeable income exceeding RM100 million for the year of assessment ["YA"] 2022.

Following the announcement, the *Income Tax (Exemption) Order 2022* has been gazetted to provide a prescribed formula in excluding the chargeable income in relation to the FSI from *Cukai Makmur* computation, as follows:-

$$\frac{A}{B} \times C$$

where A is the statutory income in relation to the income received in Malaysia from outside Malaysia in the basis period for the YA 2022;

B is the aggregate income in the basis period for the YA 2022;

C is the chargeable income of the company in the basis period for the YA 2022.

After taking into account the above exemption, the remaining chargeable income of the company up to RM100 million will be taxed at the prevailing corporate income tax rate of 24% and chargeable income exceeding RM100 million will be subject to *Cukai Makmur* at the rate of 33%.

Chargeable income in relation to income received in Malaysia from outside Malaysia from 1<sup>st</sup> July 2022 and in YA 2022, which is exempted from *Cukai Makmur*, will be subject to corporate income tax at the prevailing rate of 24%.

## Extension of Tax Incentives for Venture Capital

Currently, tax incentives are given to the following:-

- A venture capital company ["VCC"] pursuant to Income Tax (Exemption) (No.11) Order 2005;
- A venture capital management company ["VCMC"] pursuant to the Income Tax (Exemption) (No. 12) Order 2005; and
- Tax deduction for a company or an individual with business income investing in a venture capital or VCC pursuant to the Income Tax (Deduction for Investment in a Venture Company) Rules 2005.

Following the Budget 2019 announcement, the following have been gazetted to provide for extension of the tax incentives for venture capital:-

- [Income Tax \(Exemption\) \(No. 2\) Order 2022](#)
- [Income Tax \(Exemption\) \(No. 3\) Order 2022](#)
- [Income Tax \(Deduction for Investment in a Venture Company or VCC\) Rules 2022](#)

Salient points of the abovementioned Orders/Rules are as follows:-

### i. **Income Tax (Exemption) (No. 2) Order 2022**

- A VCC is exempted from tax in respect of statutory income on all sources of income (excluding interest income from savings or fixed deposits and profits from *syariah*-based deposits).
- The exemption is for the years of assessment equivalent to the remaining life of the fund established for the investment in a venture company, restricted to maximum period of 5 years of assessment.
- The exemption commences from the year of assessment in the basis period the VCC obtains its first certification from the Securities Commission ["SC"] Malaysia and the first certification received shall not be later than 31<sup>st</sup> December 2026.
- "**VCC**" means a company which;-
  - is incorporated under the Companies Act 2016;
  - is registered with the SC Malaysia; and
  - invest in or more than one venture company in the form of seed capital financing, start-up financing or early-stage financing.

### ii. **Income Tax (Exemption) (No. 3) Order 2022**

- A VCMC is exempted from tax in respect of statutory income in relation to share of profits, management fee and performance fee (including performance bonus and carried interest) derived from the management of VCC fund received by the VCMC from a VCC.
- The exemption is for a period from the YA 2018 until YA 2026.
- "**VCMC**" means a company which;-
  - is incorporated under the Companies Act 2016 and registered with the SC Malaysia;

- invest in one or more than one venture company in the form of seed capital financing, start-up financing or early-stage financing; and
- has obtain certification from the SC Malaysia that the company has complied with the conditions to qualify for the exemption under the Income Tax (Exemption) (No. 2) Order 2020.

iii. **Income Tax (Deduction for Investment in a Venture Company or VCC) Rules 2022**

- A company or an individual is given tax deduction against its business income equivalent to:-
  - the value of investment made in a venture company; or
  - the value of investment or RM20 million, whichever is the less, made in a VCC.
- The deduction allowed may be claimed in the year of assessment where the investment was held for a period of 3 years from the date the investment is made.
- To qualify for the deduction, the investment must be made during the period from 27<sup>th</sup> October 2017 to 31<sup>st</sup> December 2026.
- **“Company”** means a company which:-
  - is incorporated under the Companies Act 2016;
  - carries on business; and
  - is resident in Malaysia.
- **“Individual”** means an individual resident in Malaysia and has a source of income from a business.

Other conditions to qualify for the exemptions/deduction are provided in the relevant Orders/Rules.

The abovementioned Orders/ Rules are deemed to have effect from the YA 2018.

**Note:** For further information relating to Venture Capital tax incentives provided in the Public Ruling No. 2/2016 and Venture Capital Tax Incentives Guidelines previously, kindly refer to our [Tax Flash – May 2014](#) and [Tax Flash – June 2016](#) issues.

### **Extension of Incentive Period for East Coast Economic Region**

Currently, tax incentives are given to a qualifying person undertaking a qualifying activity [“QA”] or a special qualifying activity [“SQA”] in various sectors for East Coast Economic Region [“ECER”] which covers the states of Kelantan, Terengganu, Pahang and the district of Mersing, Johor as follows:-

a. **Income Tax (Exemption) (No. 4) Order 2016**

Tax exemption on statutory income equivalent to Investment Tax Allowance [“ITA”] of 100% is given on qualifying capital expenditure incurred in respect of a QA for a period of 5 consecutive years commencing from the first qualifying capital expenditure incurred by the qualifying person as determined by the ECER Development Council

b. **Income Tax (Exemption) (No. 5) Order 2016**

Tax exemption on statutory income equivalent to ITA of 60% to 100% is given on qualifying capital expenditure incurred in respect of a SQA for a period of consecutive years as determined by MoF, commencing from the first qualifying capital expenditure incurred by the qualifying person as determined by the ECER Development Council

c. **Income Tax (Exemption) (No. 6) Order 2016**

Tax exemption of 100% of the statutory income is given for a period of 10 consecutive years of assessment commencing from the first year of assessment in which the qualifying person derives statutory income from the QA

**d. Income Tax (Exemption) (No. 7) Order 2016**

Tax exemption of 70% to 100% of the statutory income is given for a period of consecutive years of assessment as determined by MoF, commencing from the first year of assessment in which the qualifying person derives statutory income from the SQA

**e. Income Tax (Exemption) (No. 8) Order 2016**

Tax exemption of 100% of the statutory income is given for a period of 10 consecutive years of assessment commencing from the first year of assessment in which an approved developer derives statutory income from:-

- the disposal of any right over any land or disposal of a building or rights over a building or part of a building located in an industrial park or a free zone; or
- the rental of a building or part of a building located in an industrial park or a free zone.

**f. Income Tax (Exemption) (No. 9) Order 2016**

Tax exemption of 100% of the statutory income is given for a consecutive period of 10 years from the first year of assessment in which the development/park manager derives statutory income from the following activity:-

- in relation to a development manager, an activity in respect of the provision of management, supervisory or marketing services relating to the development of an industrial park or free zone; or
- in relation to a park manager, an activity in respect of the provision of park management services including maintenance, marketing and rental of common facilities and utilities services in the industrial park or free zone.

**g. Income Tax (Deduction for the Sponsorship of Hallmark Event) Rules 2016**

The above Rules allow a deduction for contribution in cash or in kind made by a resident company or a resident individual having business source in Malaysia in relation to a hallmark event. The deduction allowed shall not exceed RM1 million for each year of assessment. Hallmark event is an event of national, regional or international significance which is carried on in the ECER and approved by MoF.

**h. Income Tax (Deduction for Investment in Qualifying Activity) Rules 2016**

The above Rules allow a deduction for the value of investment made by a resident company in a related company (with at least 70% direct shareholding) in the basis period for a year of assessment which is equivalent to an amount incurred by the related company in that basis period in relation to the QA in respect of which the investment is made.

**i. Stamp Duty (Exemption) (No. 2) Order 2016**

Exemption from stamp duty is granted on any instrument for transfer of real property or lease of land or building used for the purpose of carrying on a QA carried on in ECER and approved by MoF, executed up to 31<sup>st</sup> December 2020.

In Budget 2021, it was announced that the above incentives granted for applications made to ECER Development Council until 31<sup>st</sup> December 2020 be extended for another 2 years i.e. until 31<sup>st</sup> December 2022. As for the stamp duty exemption, it will be available to the instruments of transfer executed for the period up to 31<sup>st</sup> December 2022.

Following the above, the following amendment Orders/Rules have been gazetted to provide for the abovementioned extension of incentives:-

- [\*Income Tax \(Exemption\) \(No. 4\) 2016 \(Amendment\) Order 2022\*](#)
- [\*Income Tax \(Exemption\) \(No. 5\) 2016 \(Amendment\) Order 2022\*](#)
- [\*Income Tax \(Exemption\) \(No. 6\) 2016 \(Amendment\) Order 2022\*](#)
- [\*Income Tax \(Exemption\) \(No. 7\) 2016 \(Amendment\) Order 2022\*](#)

- *Income Tax (Exemption) (No. 8) 2016 (Amendment) Order 2022*
- *Income Tax (Exemption) (No. 9) 2016 (Amendment) Order 2022*
- *Income Tax (Deduction for the Sponsorship of Hallmark Event) (Amendment) Rules 2022*
- *Income Tax (Deduction for Investment in Qualifying Activity) (Amendment) Rules 2022*
- *Stamp Duty (Exemption) (No. 2) (Amendment) Order 2022*

**Note:** For further information relating to the above incentives for ECER, kindly refer to our *Tax Flash – August 2016* issue.

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