



TAX FLASH

NOVEMBER 2020

In this Issue

- [PR No. 7/2020 – Appeal Against an Assessment and Application for Relief](#)
- [PR No. 8/2020 – Taxation of a Resident Individual Part 1 - Gifts or Contributions and Allowable Deductions](#)
- [Tax Exemption for Employer and Employee on Financial Assistance Provided under Employment Retention Programme](#)
- [FAQ on APA Treatment Due to COVID-19 Pandemic](#)
- [Exemption from Substantial Activity Requirement for Labuan Entities Carrying on Pure Equity Holding Activities](#)
- [Specific Guides](#)

PR No. 7/2020 – Appeal Against an Assessment and Application for Relief

The Inland Revenue Board [“IRB”] has recently issued the *Public Ruling [“PR”] No. 7 /2020 - Appeal Against an Assessment and Application for Relief* to provide guidance on the procedures with regard to appeal and application for relief. This new PR replaces the previous PR No. 12/2017 issued on 29th December 2017 with updates and explanation on the appeal and relief application.

Among others, it is noteworthy of the following updates/additional explanation included in the abovementioned PR:-

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

- i. Appeal Against Best Judgement Assessment under Section 90(3) of the Income Tax Act 1967 [“the Act”] [Paragraph 4.8 of the new PR]
 - Effective YA 2019, the provision under Section 99(1A) of the Act requires that if the best judgement assessment has been made under Section 90(3) of the Act against a company, limited liability partnership [“LLP”], trust body or co-operative who fails to submit the Income Tax Return Form [“ITRF”] in accordance with the provision under Section 77A(1) of the Act, the appeal against the best judgement assessment shall be made by submitting a notice of appeal (Form Q) together with the ITRF for the year of assessment involved not later than thirty (30) days after the notice of assessment has been served
 - Pursuant to Section 99(1) of the Act, if the best adjustment has been made against person other than a company, LLP, trust body or co-operative society, the appeal of the best judgement assessment shall be made by submitting Form Q not later than thirty (30) days after the notice of assessment has been served

- ii. Appeal Involved an Application for Negotiation under Mutual Agreement Procedure [“MAP”] [Paragraph 6 of the new PR]
 - Effective 24th January 2014, the provision under Section 102(1A) of the Act allows a postponement of Form Q submission to the Special Commissioners of Income Tax [“SCIT”] if the appellant has applied for resolution under MAP with a Competent Authority where the submission of Form Q will not be extended to SCIT until the MAP is finalised
 - If the appellant does not agree with the decision of the MAP, he shall submit an application letter to request the IRB to forward the Form Q to the SCIT within thirty (30) days from the date of the notification letter of the decision from the negotiation on MAP received from the Competent Authority
 - The IRB shall then forward the application to the SCIT within three (3) months from the date of receipt of the request from the appellant
 - On the other hand, if the appellant agrees with the decision of the MAP, he must submit an application letter to cancel the Form Q within thirty (30) days from the date the MAP decision is received

- iii. Limitation of Period for Application of Extension of Time for Appeal (Form N) [Paragraph 9.3 of the new PR]
 - From YA 2020 onwards, Section 100 of the Act provides that the appellant must furnish Form N to the IRB within seven (7) years from thirty (30) days after the notice of assessment was served

Note: For more information on the previous PR No. 12/2017 - Appeal Against an Assessment and Application for Relief issued on 29th December 2017, kindly refer to our [Tax Flash – February 2018 issue](#).

PR No. 8/2020 – Taxation of a Resident Individual Part 1 - Gifts or Contributions and Allowable Deductions

The IRB has recently issued the [PR No. 8/2020 – Taxation of a Resident Individual Part 1 - Gifts or Contributions and Allowable Deductions](#) to replace the previous PR No. 4/2018 issued on 13th September 2018. This new PR provides updates on in relation to gifts or contribution made by a resident individual that are allowable in determining the total income for a year of assessment as well as the allowable deductions given to a resident individual in determining the chargeable income for a year of assessment with incorporation of amendments made in the Finance Act 2018 and Finance Act 2019.

Significant changes included in the new PR are as follows:-

- Restriction on deduction of gifts and/or contributions made by an individual to the approved institutions or organisations or a fund approved by the IRB, approved sports activity as well as the approved national interest project is increased from 7% to 10% of the aggregate income [effective year of assessment (“YA”) 2020] [Sections 44(6), 44(11B) and 44(11C)]
- Gift of money in the form of *wakaf* or endowment [effective YA 2020] [Sections 44(11D) and 44(11E)]
- Medical expenses for serious disease treatment is extended to include fertility treatment [effective YA 2020] [Section 46(1)(g)]
- Maximum amount of deduction for child care fees to a child care centre registered with the Director General of Social Welfare under the Child Care Centre Act 1984 is increased from RM1,000 to RM2,000 [effective YA 2020] [Section 46(1)(r)]
- Maximum amount of deduction for net contribution into the *Skim Simpanan Pendidikan Nasional* account established under the *Perbadanan Tabung Pendidikan Tinggi Nasional* Act 1997 is increased from RM6,000 to RM8,000 [effective for YA 2019 and YA 2020] [Section 46(1)(k)]
- Maximum amount of deduction for payment of insurance premium and contribution to an approved scheme is increased from RM6,000 to RM7,000 [effective YA 2019] [Sections 49(1) and 49(1A)]

Note: For further information on the previous PR No. 4/2018, kindly refer to our [Tax Flash – September 2018 issue](#).

Tax Exemption for Employer and Employee on Financial Assistance Provided under Employment Retention Programme

Under the Economic Stimulus Package 2020 announced by the Government recently, the Employment Retention Programme [“ERP”] was introduced to provide financial assistance for employers to retain their employees who have been given a notice of unpaid leave due to the COVID-19 pandemic.

The ERP is a program managed by Social Security Organisation [“SOCSO”] that provides financial assistance of RM600 a month to an employee:-

- who is given notice of unpaid leave by his employer for a period between 1st March 2020 until 30th June 2020;
- whose monthly salary is not more than RM4,000; and
- who is registered and contributed to Employment Insurance System

Under the ERP, payment for the financial assistance will be made through the employer who is then required to debit the amount into the employee’s account.

Application for the financial assistance fund by the employer must be received by SOCSO between 20th March 2020 and 15th June 2020.

Following the above, the exemption Orders have been gazetted as below:-

- [Income Tax \(Exemption\) \(No.4\) Order 2020](#) which exempts the payment of income tax in respect of any financial assistance fund received by the employer under the ERP.
- [Income Tax \(Exemption\) \(No.5\) Order 2020](#) which exempts any financial assistance received by an employee from his employer under the ERP in ascertaining the gross income from his employment in the basis period for a year of assessment.

The above exemption Orders shall have effect for the YA 2020.

FAQ on APA Treatment Due to COVID-19 Pandemic

The IRB has, on 7th October 2020, updated the *Frequently Asked Questions [“FAQ”] on Advance Pricing Arrangement [“APA”] Treatment Due to COVID-19 Pandemic*.

The significant changes included in the updated FAQ are as summarised below:-

- i. Application for New APA
 - For businesses which are not significantly impacted by the COVID-19 pandemic, taxpayers can proceed to apply for new APA
- ii. Treatment of On-going APA Application
 - A term test may be applied in order to take into account the impact of COVID-19 on the proposed covered transaction depending on the facts and circumstances of the case and any compensating adjustment shall be made at the end of the APA covered period
 - For bilateral APA application, the term test is subject to negotiation/agreement with the Competent Authorities of the corresponding jurisdictions

Note: For further information on the above, kindly refer to our *Tax Flash – July 2020 issue*.

Exemption from Substantial Activity Requirement for Labuan Entities Carrying on Pure Equity Holding Activities

Subsequent to the issuance of the Clarifications to LIC Pronouncement 2-2019 dated 11th December 2019 and 20th December 2019 by the Labuan Financial Services Authority [“LFSA”] which provide clarification and additional list of Labuan entities subject to substantial activity requirements, the Labuan Business Activity Tax (Exemption) Order P.U.(A)177 has been gazetted to exempt a Labuan entity that undertakes pure equity holding activities from the application of the substantial activity requirement in relation to the number of full time employee in Labuan.

Pursuant to the above exemption Order, a Labuan entity undertaking pure equity holding activities is exempted from the requirement to have full time employee in Labuan specified under Section 2B(1)(b)(i) of the Labuan Business Activity Act 1990. However, the Labuan entity that undertakes pure equity holding activities shall need to comply with the prerequisites of the “management and control” requirement as stated in *LFSA’s letter dated 5th June 2020*.

For the purpose of complying with the management and control requirements by Labuan entities that undertake pure equity holding activities, the following must be observed as stated in the *Directive on Management and Control Requirements for Labuan Entities that Undertakes Pure Equity Holding Activities dated 10th August 2020* issued by LFSA:-

- To comply with Paragraph 5.5 of Public Ruling No. 5/2011 – Residence Status of Companies and Bodies of Person, i.e. which would require that a Board Meeting to be conducted in Labuan at least once a year;
- Having a registered office in Labuan;
- Appointment of Labuan trust company as resident secretary in Labuan;
- Accounting and business records including minutes of meeting must be maintained in Labuan.

Following the issuance of the above Directive, LFSA has made clarification via a circular on [Clarification on Board Meeting Requirement dated 10th September 2020](#) to allow Labuan entities that undertake pure equity holding activities to conduct board meeting virtually (subject to hosting of such meeting be arranged by the resident secretary of the Labuan entity) due to the restriction of cross-border travelling under Recovery Movement Control Order.

Both the above Exemption Order and Directive take effect from YA 2021.

Note: For further information relating to Clarifications to LIC Pronouncement 2-2019 mentioned above, kindly refer to our [Tax Flash – March 2020 issue](#).

Specific Guides

The Royal Malaysian Customs Department has published the following guides, all dated 13th October 2020:-

- [Guide on Return and Payment](#);
- [Guidelines on SST-02 Return \(Manual Submission\)](#); and
- [Guidelines on SST-02A Return \(Manual Submission\)](#).

For other issues of our Tax Flash, please go to:
www.moore.com.my/publications



www.moore.com.my

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for advice. Accordingly, Moore Advent Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team at tax@moore.com.my.