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PR No. 5/2021 – Taxation of a Resident Individual Part 1 – Gifts or Contributions and Allowable Deductions

The Inland Revenue Board [“IRB”] has recently issued the *Public Ruling [“PR”] No. 5/2021 – Taxation of a Resident Individual Part 1 – Gifts or Contributions and Allowable Deductions* to replace the previous PR No. 8/2020 issued on 9th October 2020. This new PR has been updated and amended with incorporation of the relevant amendments in the Finance Act 2020 to provide clarification on gifts or contributions as well as deductions that are allowable to a resident individual in computing his total / chargeable income for a year of assessment.

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

- i. **Medical Treatment, Special Needs and Carer Expenses for Parents [Section 46(1)(c) of the Income Tax Act 1967 [“ITA 1967”]]**
 - Increased from RM5,000 to RM8,000 [effective year of assessment [“YA”] 2021]
- ii. **Further Education Fees [Section 46(1)(f) of the ITA 1967]**
 - The course for tertiary level (up to graduate level), degree at Masters or Doctorate level must be undertaken in any institution or professional body in Malaysia recognized by the Government or approved by the Minister.
 - The course of study is extended to any course undertaken for the purpose of upskilling or self-enhancement and that course is conducted by a body recognized by the Director General of Skills Development under the National Skills Development Act 2006.
 - The tax relief claimable is limited to RM1,000 for each year of assessment (which forms part of the relief for the education fees of RM7,000).
 - The above are effective YA 2021 and YA 2022.
- iii. **Medical Expenses on Serious Diseases and Fertility Treatment [Sections 46(1)(g) and 46(1)(h) of the ITA 1967]**
 - The medical expenses are extended to include the expenses expended or deemed expended by the individual for the following vaccinations on self, spouse and child, limited to RM1,000 [effective YA 2021]:-
 - pneumococcal;
 - human papillomavirus (HPV);
 - influenza;
 - rotavirus;
 - varicella;
 - meningococcal;
 - TDAP combination (tetanus-diphtheria-acellular-pertussis); and
 - Coronavirus Disease 2019 [“COVID-19”].
 - Relief on the expenses incurred on medical expenses for serious disease treatment, fertility treatment and medical expenses for vaccination for self, spouse and child is increased from RM6,000 to RM8,000.
 - Relief on the expenses incurred on complete medical examination (which forms part of the relief of RM8,000 mentioned above) is increased from RM500 to RM1,000.
 - The above are effective YA 2021.
- iv. **Deposits in *Skim Simpanan Pendidikan Nasional* [“SSPN”] Account [Section 46(1)(g) of the ITA 1967]**
 - Maximum relief of RM8,000 for net contribution into the SSPN account established under the *Perbadanan Tabung Pendidikan Tinggi Nasional* Act 1997 is extended for another 2 years [extended up to YA 2022]

- v. **Lifestyle Relief [Section 46(1)(p) of the ITA 1967]**
 - The scope of relief is expanded to include newspaper subscription electronically and buying books online [Section 46(1)(p) of the ITA 1967] [effective YA 2021]
- vi. **Child Care Centre and Kindergarten Fees [Section 46(1)(r) of the ITA 1967]**
 - Maximum relief 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 to RM3,000 [effective YA 2020 and YA 2021]
- vii. **Deduction for Wife/Husband and Payment of Alimony or Maintenance to Former Wife/Husband**
 - Increased from RM3,500 to RM5,000 is given to the taxpayer if the spouse is a disabled person [effective YA 2021]
- viii. **Premium for Deferred Annuity and Contribution to Private Retirement Scheme [Section 49(1D) of the ITA 1967]**
 - Tax relief of up to RM3,000 given on contribution made to a Private Retirement Scheme is extended up to YA 2025

New paragraphs included in the new PR are as follows:-

- i. **Expenditure Related to Domestic Tourism [effective YA 2020 and YA 2021] [Section 46(1)(s) of the ITA 1967]**
 - Relief of up to RM1,000 incurred by an individual in respect of the payment for the allowable domestic travel expenses are as follows:-
 - Accommodation at premises registered with the Commissioner of Tourism under the Tourism Industry Act 1992;
 - Entrance fee to a tourist attraction in that basis year as evidenced by receipts on the amount expended; and
 - Payment must be made between 1st March 2020 to 31st December 2021.
- ii. **Additional Tax Relief for Lifestyle [effective YA 2020] [Section 46(1)(t) of the ITA 1967]**
 - Tax relief of up to RM2,500 (which is in addition to the current lifestyle relief of up to RM2,500) is given for the purchase of personal computer, smartphone or tablet (not being used for the purposes of his own business) on self, spouse and child during the period from 1st June 2020 to 31st December 2020.
- iii. **Additional Tax Relief for Lifestyle Related to Sport Activity [effective YA 2021] [Section 46(1)(u) of the ITA 1967]**
 - The relief of lifestyle is increased from RM2,500 to RM3,000 where the additional relief of up to RM500 is allocated for the expenses incurred on self, spouse and child for:-
 - the purchase of sports equipment for any sport activity as defined under the Sports Development Act 1997 (excluding motorised two-wheel bicycles);
 - the payment of rental or entrance fee to any sports facility; and
 - the payment of registration fee for any sports competition where the organizer is approved and licensed by the Commissioner of Sports under the Sports Development Act 1997.

Note: For further information on the previous PR No. 8/2020, kindly refer to our [Tax Flash – November 2020](#) issue.

Special Treatment for Bank or Development Financial Institution Which Adopts MFRS 9 : Financial Instruments

The *Income Tax (Special Treatment for Bank or Development Financial Institution Which Adopt Malaysian Financial Reporting Standard ["MFRS"] 9 : Financial Instruments) Regulations 2021* has been gazetted to provide clarification on special tax treatment in respect of a financial instrument for a licensed bank, a licensed Islamic bank or a development financial institution which adopts MFRS 9 : Financial Instruments.

The above Regulations are deemed to have effect from:-

- the YA 2018 for a bank or development financial institution with accounting period ending on 31st December; and
- the YA 2019 for a bank or development financial institution with accounting period ending other than 31st December.

Further Deduction for Expenses in Relation to the Cost of Detection Test of COVID-19 for Employees

Following the PEMERKASA Stimulus Package announcement, the *Income Tax (Deduction for Expenses in Relation to the Cost of Detection Test of COVID-19 for Employees) Rules 2021* has been gazetted to allow further deduction on expenses incurred by an employer who is resident in Malaysia in respect of the cost of detection test of COVID-19 for its employees within the period from 1st January 2021 until 31st December 2021.

The claim for further deduction by the employer must be supported by a receipt and certification issued by a medical practitioner registered with the Malaysia Medical Council or a medical practitioner register outside Malaysia that the detection test of COVID-19 has been provided to its employees.

The above Rules shall have effect from YA 2021.

Double Deduction of Expenses Incurred by Companies Participating in NDTs

In the 2019 Budget announcement, it was proposed that a double deduction be given for expenses incurred by companies participating in the National Dual Training Scheme ["NDTS"] approved by the Ministry of Human Resource for the period from 1st January 2019 to 31st December 2019. This incentive was extended further for another 2 years (i.e. until 31st December 2021) as announced in the Budget 2020.

Following the above, the *Income Tax (Deduction for Training Costs under the National Dual Training System Rules 2021)* has been gazetted to provide for double deduction of the amount of expenses incurred and paid by a qualifying company in the basis period for a year assessment in participating in the qualifying programme. The expenses that qualify for the double deduction are:-

- a. monthly training allowance of not less than RM300 paid to the apprentice;
- b. expenses incurred for the provision of the qualifying programme;
- c. expenses incurred for food, travelling and accommodation allowances; and
- d. expenses incurred for insurance provided to the apprentice

The total amount of deductions allowable under (b) and (c) above for each apprentice shall not exceed RM5,000 for each year of assessment.

For the purpose of the above Rules:-

“Apprentice” means a Malaysian citizen and resident in Malaysia that has registered with the Department of Skills Development to undergo the qualifying programme, who is an employee of the qualifying company or a school leavers.

“Qualifying programme” means a programme which complies with the National Occupational Skills Standard [“NOSS”], accredited by the Department of Skills Development, certified as NDTs-Industry4WRD Programme, and implements two modules of the training which are practical training at the company which covers 70% to 80% of the training (performance) and theoretical training at the training centre which covers 20% to 30% of the training (knowledge).

“Qualifying company” means a company incorporated in Malaysia under the Companies Act 2016, accredited as Accreditation Center by the Department of Skills Development to implement the NDTs Programme, implementing NDTs Programme based on NOSS, and participates in NDTs Programme.

The above Rules shall not apply where a claim for the expenses has been made by the qualifying company under:-

- any fund or Government grant relating to the training; or
- any exemption or deduction under any other provision of the ITA 1967.

The above Rules are deemed to have come into operation from YA 2019.

Double Deduction for the Costs of Implementation of FWA

Following the *PENJANA* Stimulus Package announced by the Government on 5th June 2020, the *Income Tax (Deduction for the Cost of Implementation of Flexible Work Arrangements) Rules 2021* has been gazetted to provide that in ascertaining the adjusted income of a qualifying person from his business in the basis period for a year of assessment, a double deduction shall be allowed for the following expenses incurred by that qualifying person for the implementation of flexible work arrangement [“FWA”]:-

- Consultation fee;
- Cost of capacity development;
- Cost of software; and
- Software subscription.

The expenses referred to above shall be verified by Talent Corporation Malaysia Berhad [“TalentCorp”] and the total amount of expenses shall not exceed RM500,000 for each year of assessment.

The deduction is given for 3 consecutive years of assessment, commencing from the year of assessment in which the certification of the implementation of FWA is given by TalentCorp.

To be eligible for the double deduction, the following conditions must be fulfilled:-

- The implementation of FWA or enhancement of existing FWA by the qualifying person must be certified by TalentCorp; and
- Applications must be received by TalentCorp from 1st July 2020 to 31st December 2022

For the purpose of the above Rules:-

“**qualifying person**” means:-

- company incorporated under the Companies Act 2016;
- a limited liability partnership registered under the Limited Liability Partnerships Act 2012; or
- a partnership registered under the Partnership Act 1961; and resident in Malaysia.

“**FWA**” means flexible arrangements for:-

- place of work;
- scheduling of working hours; or
- number of hours worked.

“**cost of capacity development**” for implementation of FWA refers to training course or programme fee, internal trainer fee, training material cost, rental of training space cost, examination fee and training related travelling (with restrictions) expenses incurred by the employees and trainers.

Tax Exemption on Income Derived from Domestic Tour Package

Following the *PEMERKASA* Stimulus Package announced by the Government on 17th March 2021, the *Income Tax (Exemption) (No. 9) Order 2021* has been gazetted to extend the tax exemption granted to a company resident in Malaysia in respect of its statutory income derived from tour operating business which provides a domestic tour package for travel within Malaysia for another 2 years (i.e. until YA 2022). To qualify for the exemption, the company must be licensed under the Tourism Industry Act 1992 to carry out a tour operating business and the total number of local tourists is not less than 200 persons in the basis period for a year of assessment as verified by the Ministry of Tourism, Arts and Culture Malaysia

The above Order shall have effect from YA 2021 until YA 2022.

Tax Investment Incentive for Electrical and Electronic Sector

In the Budget 2020 announcement, it was proposed that for companies in the electrical and electronic sector involving in manufacturing activity which have exhausted the eligibility period to claim reinvestment allowance [“RA”] and Special RA, they are allowed to apply for a special investment tax allowance incentive.

Following the above, the *Income Tax (Exemption) (No. 10) Order 2021* has been gazetted to provide tax exemption to a qualifying company in respect of statutory income derived from an approved qualifying project in expanding, modernizing, automating or diversifying its business of carrying on manufacturing activity in electrical and electronic sector. The amount of income exempted is equivalent to the amount of allowance of 50% of the qualifying capital expenditure [“QCE”] incurred, to be set-off against 50% of the statutory income derived from a qualifying project for each year of assessment. Any allowance that cannot be set-off due to insufficiency of statutory income shall be carried forward until it is fully utilised, up to a maximum period of 7 consecutive years of assessment upon expiry of the exemption period. The exemption period shall be for a period of 5 consecutive years commencing from the date of the first QCE incurred by the qualifying company, as determined by Minister or Minister of International Trade and Industry which shall not be earlier than 1st January 2020.

The qualifying company shall need to comply with the following conditions to be eligible for the tax exemption:-

- Invest not less than RM1.5 million in the qualifying project within the exemption period;
- Incur an approved adequate amount of annual operating expenditure in Malaysia;
- Employ an approved adequate number of full-time employees in Malaysia; and
- Participate in the vendor development programme or human capital development programme.

Application for the above tax exemption must be received by Malaysian Investment Development Authority ["MIDA"] from 1st January 2020 until 31st December 2021.

For the purpose of this Order, a "qualifying company" refers to a company which:-

- is incorporated under the Companies Act 2016 and resident in Malaysia;
- is involved in a manufacturing activity in electrical and electronic sector in compliance with the Industrial Co-ordination Act 1975 for the purpose of reinvestment in the qualifying project;
- holds a business licence issued by the relevant local authority;
- holds a manufacturing licence issued by the licensing officer pursuant to Industrial Co-ordination Act 1975 or a confirmation letter of exemption from manufacturing licence issued by MIDA; and
- has a claim for the following incentives for which the period of that incentive has ended in the YA 2019 in respect of the same qualifying project:-
 - RA under Schedule 7A of the ITA 1967; and
 - any incentive under the Promotion of Investments Act 1986 ["PIA 1986"].

The Order shall not be applicable to a qualifying company which:-

- made a claim of RA under Schedule 7A of the ITA 1967 or Investment Allowance for service sector under Schedule 7B of the ITA 1967;
- has been granted any incentives under the PIA 1986 in respect of the same qualifying project;
- has been granted an exemption under Section 127(3)(b) or 127(3A) of the ITA 1967 for the same qualifying project; or
- has made a claim for deduction under any rules made under Section 154 of the ITA 1967 except:-
 - the rules in relation to the allowance under Schedule 3 of the ITA 1967;
 - the Income Tax (Deduction for Audit Expenditure) Rules 2006; or
 - the Income Tax (Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee) Rules 2020.

The above Order shall be deemed to have come into operation on 1st January 2020.

Stamp Duty Exemption on Instrument of Loan or Financing Agreement for the Targeted Relief and Recovery Facility under BNM's Fund for SME

Following the announcement of the establishment of the Targeted Relief and Recovery Facility 2021 ["TRRF"] by Bank Negara Malaysia ["BNM"], the *Stamp Duty (Exemption) (No. 12) Order 2021* and *Stamp Duty (Exemption) (No. 13) Order 2021* have been gazetted to provide exemption from stamp duty, for an instrument of loan or a financing agreement for the TRRF approved under BNM's fund for small and medium enterprises ["SME"] as follows:-

- Instrument of loan or financing agreement executed between a participating financial institution with a SME; and
- Instrument of loan or financing agreement executed between BNM with a participating financial institution.

The above stamp duty exemption for Stamp Duty (Exemption) (No. 12) Order 2021 shall only apply if:-

- the instrument of loan or financing agreement is executed pursuant to a letter of offer issued from 1st December 2020 until 31st December 2021; and
- the instrument of loan or financing agreement is accompanied with a letter of offer from the participating financial institution to the SME which states the approval of the loan or financing facility.

The above stamp duty exemption for Stamp Duty (Exemption) (No. 13) Order 2021 shall only apply if the instrument of loan or financing agreement is executed from 1st December 2020 until 31st December 2021.

The above Orders are deemed to have come into operation on 1st December 2020.

Stamp Duty Exemption for Loan or Financing for High Tech Facility – National Investment Aspirations

The *Stamp Duty (Exemption) (No. 14) Order 2021* has been gazetted to provide exemption from stamp duty for an instrument of loan or financing agreement for the High Tech Facility – National Investment Aspirations approved under BNM's Fund for SME executed between participating financial institution with SME.

The above stamp duty exemption shall only apply if:-

- the letter of offer in relation to the loan or financing agreement is issued from 15th December 2020 but not later than 31st December 2021; and
- the application for the stamp duty exemption is accompanied by the letter of offer from the participating financial institution to the SME which states the approval of the loan or financing facility.

The list of participating financial institution is as provided in the Order.

For the purpose of the above Order, “**SME**” has the same meaning assigned to it under Section 2 of the Small and Medium Industries Development Corporation Act 1995.

The above Order is deemed to have come into operation on 15th December 2020.

Guidelines for PH Incentive 3.0

The MIDA has issued the *Guidelines for Principal Hub [“PH”] Incentive 3.0 [“PH 3.0”]* to replace the previous Guidelines for PH Incentive [“PH 2.0”].

Under the new PH 3.0, PH has been redefined as a locally incorporated company that uses Malaysia as a base for conducting its regional or global businesses and operations to manage, control, and support its key functions including management of risks, decision making, strategic business activities, finance, management and human resource. It is noteworthy that “trading activities” which were part of the activities under PH 2.0 has been removed and covered under the Global Trading Centre [“GTC”] incentive.

Salient amendments included in PH 3.0 are as follows:-

- i. Re-categorisation of Company and Income
 - Existing companies with approved Operational Headquarters, International Procurement Centre and Regional Distribution Centre with or without incentive are no longer eligible for PH incentives.
 - With the removal of “trading activities” from PH 3.0, trading income is no longer an income exempted from tax under the PH incentives.

- ii. Changes to Eligibility Criteria
 - The requirement of minimum annual sales of RM500 million has been removed.
 - Network companies has been redefined as follows:-
 - Related companies or entities within the same group including subsidiaries, branches and joint ventures.
 - Non-related companies which have a contractual agreement of at least 2 (previously, 3) years with the applicant or applicant's ultimate holding company with regards to the applicant's business or supply chain.
 - It is clarified that the annual operating expenditure will be based on the operating expenditure which is reflected in the company's audited financial statement (excluding interest, depreciation and other expenses which are not incurred for the production of services income).
- iii. Changes to Facilities Accorded to PH
 - Bringing in raw materials, components or finished products with customs duty exemption into free industrial zones, Licensed Manufacturing Warehouse ["LMW"], free commercial zones and bonded warehouses for production or re-packaging, cargo consolidation and integration before distribution to its final consumers for goods-based companies are no longer part of the facilities accorded to a PH.
 - In addition, there are also changes to the requirement of the number of high value jobs, minimum serving/business control of number of network companies as provided in Appendice A and B to PH 3.0.

The PH 3.0 applies to applications received by MIDA from 1st January 2021 to 31st December 2022. Applications can be made online through MIDA e-TRANS portal.

Note: For further information on PH incentives under the previous guidelines (PH 2.0), kindly refer to our [Tax Flash – November 2019 issue](#).

Guidelines on Incentive for Setting Up a GTC

In the Budget 2021 announcement, the GTC incentive was introduced to promote the establishment of companies undertaking global trading businesses in Malaysia. The 'trading activities' were previously part of the approved activities under PH Incentives 2.0 which have now been removed from PH Incentives 3.0. Following this, the MIDA has recently published on its website the "[Guidelines on Incentive for Setting Up a GTC](#)" which takes effect from 1st January 2021.

A GTC is defined as a locally incorporated company that uses Malaysia as its international trading base for undertaking strategic sourcing, procurement and distribution of raw materials, components and finished products to its related and unrelated companies in Malaysia and abroad.

Salient points of abovementioned Guidelines are as follows:-

- i. Incentive
 - As an approved GTC, the company may enjoy a concessionary corporate tax rate of 10% for 5 years, which may be extended for a period of 5 years.
- ii. Eligibility Criteria
 - To qualify for the GTC incentive, a company must fulfil the following conditions:-
 - newly incorporated under the Companies Act 2016 and resident in Malaysia.

- undertakes qualifying GTC activities i.e. uses Malaysia as its international trading base for undertaking strategic sourcing, procurement and distribution of raw materials, components and finished products to its related and unrelated companies in Malaysia and abroad
- has paid-up capital of RM1 million
- has annual sales turnover from qualifying GTC activity of RM300 million
- incurs annual operating expenditure* from qualifying GTC activity of RM1.5 million
- must provide minimum basic monthly salary of at least RM5,000 for 15 high value jobs (at least 50% of jobs must be filled by Malaysians)
- must operate in a LMW, Free Zone and/or Bonded Warehouse
- must have usage of Malaysian ports and airports
- other conditions which may be imposed

* *“Operating expenditure” is defined as expenses incurred in carrying out the GTC’s day-to-day operations which are related to the core income generating activities of the GTC. It will be based on the operating expenditure which is reflected in the company’s audited financial statement (excluding interest, depreciation and other expenses which are not incurred for the production of income from qualifying activity).*

Applications must be received by MIDA from 1st January 2021 to 31st December 2022.

Service Tax Guides

Royal Malaysian Customs Department has published the following guides:-

- [Guide on Credit Card and Charge Card](#) dated 26th October 2021; and
- [Guide on Professional Services](#) dated 31st October 2021 (currently only made available in *Bahasa Malaysia*).

Sales Tax (Imposition of Sales Tax in Respect of Designated Area) (Amendment) Order 2021

The [Sales Tax \(Imposition of Sales Tax in respect of Designated Area\) \(Amendment\) Order 2021](#) was recently gazetted and took effect from 25th October 2021.

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