



TAX FLASH

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PR No. 4/2021 – Taxation of Income Arising from Settlements

The Inland Revenue Board [“IRB”] has recently published the *Public Ruling [“PR”] No. 4/2021 – Taxation of Income Arising from Settlements* to provide guidance on the taxation of income arising from a settlement created by a person (settlor) for the benefit of another person (beneficiary).

The salient points of the abovementioned PR include:-

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

- i. Settlement covers every transaction with ordinary meaning of settlement as well as any disposition, trust, covenant, arrangement or agreement or any transfer of assets or income but does not include:-
 - a settlement which in the opinion of the Director General of Inland Revenue is made for valuable and adequate consideration;
 - a settlement which results from a court order; and
 - an agreement made by an employer to pay an employee or his dependant after the employee's death, a reasonable and fair remuneration, pension, etc.

- ii. Various examples are provided to illustrate the circumstances where the income arising from the settlement is deemed to be the income of the settlor and assessable on him in accordance with Section 65 of the Income Tax Act 1967 ["ITA 1967"] as below:-
 - settlement for an unmarried relative under 21 years of age;
 - revocable settlement; and
 - income arising from a settlement made use of by a settlor who controls the settlement

- iii. The determination of the amount of income from the settlement which is deemed as the income of the settlor is provided in settlement cases where trust is created or not created or where the settlement involves two (2) or more settlors, etc.

Amendment to PR No. 10/2020 – RA Part I – Manufacturing Activity

The IRB has recently updated Example 47 of the [PR No. 10/2020 – Reinvestment Allowance \["RA"\] Part I – Manufacturing Activity](#) which is reproduced as below:-

“Company MM which closes its accounts on 31 December has been granted pioneer status for product A for a period of 5 years and the pioneer period ended on 30.3.2017. The company has unabsorbed losses of RM150,000 during the pioneer period. In the year 2018, the company incurred capital expenditure of RM500,000 for a qualifying project for RA and achieved the level of productivity prescribed by the Minister. The company is eligible to deduct RA of up to 100% of the statutory income for the year of assessment ["YA"] 2018.

YA 2018	RM	RM
Statutory income from business	430,000	
Less:		
RA		
(60% X 500,000 = 300,000)	<u>300,000</u>	
	130,000	
Less:		
Pioneer period losses		
(RM150,000 restricted to)	<u>130,000</u>	
Chargeable income		NIL
Pioneer period losses c/f (RM150,000 – RM130,000)	20,000	“

The above amendment provides an illustration that a company is eligible to claim RA in a year of assessment subsequent to the year of assessment in which the pioneer period has ended. This is in line with the provision under Paragraph 7(a) of Schedule 7A of the ITA 1967.

Note: For further information on the [PR No. 10/2020 – Reinvestment Allowance Part I – Manufacturing Activity](#), please refer to our [Tax Flash – December 2020](#) issue.

Guideline on Incentive for IP Development

In the 2020 Budget announcement, it was proposed that a 100% tax exemption be given on qualifying intellectual property ["IP"] income for a period up to 10 years. Only income derived from IP developed in Malaysia which is in accordance with the guidelines on Modified Nexus Approach qualifies for the incentive. Following that, the Malaysian Investment Development Authority ["MIDA"] has recently uploaded in its website the [Guideline on Incentive for Intellectual Property Development dated 1st January 2020](#).

Salient points of the abovementioned Guideline include:-

i. Eligible Applicants

- New / Existing companies that own the rights of the qualifying IP and receiving income from the qualifying IP activities related to the promoted activities / list prescribed under the Promotion of Investments Act 1986 and ITA 1967 can apply for the incentive
- Companies that are enjoying the following incentives are not eligible for this IP incentive:-
 - special deduction for research development expenditure under Section 34A of the ITA 1967; or
 - special deduction for contribution to an approved research institute or payment for use of services of an approved research institute or company under Section 34 B of the ITA 1967

ii. Qualifying IP Asset

- Types of qualifying assets under this incentive are as follows:-
 - patent or utility innovation under the Patents Act 1983 or the equivalent law of any country or territory;
 - copyrighted software under the Copyright Act 1987; and
 - family qualifying IP.

iii. Qualifying Income

- Royalty and licensing fees derived from the qualifying IP are exempted from tax

iv. Eligibility Criteria

- Must be resident in Malaysia and incorporated under the Companies Act 2016
- Must be conducting research and development ["R&D"] activities in Malaysia, where such R&D activities lead to the development, improvement, modification or creation of the qualifying IP asset
- The IP must be registered / filed with Intellectual Property Corporation of Malaysia ["MyIPO"] or any equivalent body outside Malaysia
- Must have at least 30% science and technical staff having degree or diploma with a minimum 5 years experience from related fields
- Must incur adequate amount of operating expenditure annually to support the company in conducting its business operation in Malaysia

v. Qualifying R&D Expenditure

- Eligible R&D expenditure for the calculation of Modified Nexus Approach will be in line with types of eligible expenditure under Section 34A of the ITA 1967
- Expenditure under a Cost Sharing Agreement is allowed as part of eligible R&D expenditure
- Qualifying R&D expenditure can be backdated up to 3 years from the date of the IP filed with MyIPO or any equivalent body outside Malaysia

vi. Effective Date of Incentive / Exemption Period

- The exemption period will commence from the date of the first IP filed at MyIPO or any equivalent body outside Malaysia

- The exemption period for subsequent filing of IP will be given within the period approved for the first IP

Application for the incentive must be received by MIDA from 1st January 2020 until 31st December 2022.

Extension of Deduction for Expenditure on Industry4WRD Readiness Assessment

Pursuant to the Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) Rules 2020, a qualifying company is granted a deduction for expenses in respect of fee expenditure (restricted to RM27,000) incurred on the Industry4WRD Readiness Assessment Programme.

The *Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) (Amendment) Rules 2021* has been gazetted with changes made to the following conditions:-

- the fee expenditure on the Industry4WRD Readiness Assessment Programme shall be incurred within the period from 2nd January 2019 to 31st December 2025 (previously 31st December 2020); and
- the application for deduction shall be made to the Minister through the Malaysia Productivity Corporation on or after 2nd January 2019 but not later than 31st December 2026 (previously 31st December 2021).

With the above amendments, the deduction granted to the qualifying company is extended until YA 2026.

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

Stamp Duty Exemptions for PENJANA Tourism Financing Facility

Following the announcement of *PENJANA* stimulus package on 5th June 2020, the *Stamp Duty (Exemption) (No. 6) Order 2021* and *Stamp Duty (Exemption) (No. 7) Order 2021* have been gazetted to provide exemption from stamp duty on the instrument of loan or financing agreement for the *PENJANA* Tourism Financing Facility approved under Bank Negara Malaysia's Fund executed between participating financial institution with the small and medium enterprises ["SME"] and between Bank Negara Malaysia ["BNM"] with the participating financial institution respectively. This *PENJANA* Tourism Financing Facility was introduced as part of the Government efforts to support SME in the tourism sector.

To be eligible for the above exemptions, the following must be adhered to:-

- Stamp Duty (Exemption) (No. 6) Order 2021
 - The instrument of loan or financing agreement must be executed pursuant to a letter of offer issued by the participating financial institution from 30th July 2020 until 31st December 2021; and
 - The instrument of loan and financing agreement is accompanied by a letter of offer from the participating financial institution to the SME which states the approval of the loan or financing facility.
- Stamp Duty (Exemption) (No. 7) Order 2021
 - The instrument of loan or financing agreement is executed from 1st September 2020 until 31st December 2021.

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

The Stamp Duty (Exemption) (No. 6) Order 2021 and Stamp Duty (Exemption) (No. 7) Order 2021 are deemed to have come into operation on 30th July 2020 and 1st September 2020 respectively.

Stamp Duty Exemption on Instrument of Loan or Financing Agreement Between a SME and a Financial Institution

Following the announcement of the establishment of the Disaster Relief Facility 2021 by the BNM, the *Stamp Duty (Exemption) (No. 8) Order 2021* has been gazetted to provide an exemption from stamp duty, on application, for an instrument of loan or a financing agreement entered into by a SME with a financial institution.

The above stamp duty exemption shall only apply if:-

- the letter of offer in relation to the loan or financing facility is issued by the financial institution from 2nd February 2021 until 31st December 2021; and
- the application for the stamp duty exemption is accompanied with the letter of offer issued by the financial institution to the SME which states the approval of the loan or financing facility.

For the purpose of the above Order:-

“Financial institution” has the same meaning as that assigned to “banker” in Section 2 of the Stamp Act 1949, and any person prescribed as a financial institution by the Minister under Section 2(1) of the Central Bank of Malaysia Act 2009 [“CBMA”] for the purposes of Section 49 of CBMA.

“Loan or financing facility” means a Disaster Relief Facility 2021 approved under BNM’s Fund for SME.

“Small and medium enterprises” means enterprises as may be determined by the National Small and Medium Enterprises Development Council established under Section 2A of the Small and Medium Industries Development Corporation Act 1995.

The above Order is deemed to have come into operation on 2nd February 2021.

Stamp Duty Exemption for Instrument of Agency Agreements for Special Relief Facility, Targeted Relief and Recovery Facility and Disaster Relief Facility 2021

Pursuant to the *Stamp Duty (Exemption) (No. 9) Order 2021*, an instrument of agency agreements for the Special Relief Facility, Targeted Relief and Recovery Facility and Disaster Relief Facility 2021 approved under the Bank Negara Malaysia’s Fund for SME executed between BNM and Credit Guarantee Corporation Malaysia Berhad is exempted from stamp duty.

The above exemption applies to the instruments of agency agreement executed not later than 31st December 2021.

Service Tax Policy No. 2/2021 (Amendment No. 1)

Royal Malaysian Customs Department [“RMCD”] has published the *Service Tax Policy No. 2/2021 (Amendment No. 1)* dated 23rd August 2021 (currently only made available in *Bahasa Malaysia*). The amendments were made to include examples for clarity purpose.

Note : For further details, kindly refer to our *Tax Flash – July 2021* issue.

Sales Tax (Imposition of Sales Tax in respect of Special Areas) (Amendment) Order 2021

The *Sales Tax (Imposition of Sales Tax in respect of Special Areas) (Amendment) Order 2021* was gazetted and took effect from 3rd September 2021. The salient points extracted from the Order are as follows:-

- Sales tax shall be charged and levied at the rate fixed under Section 10(2) of the Sales Tax Act 2018:-
 - on the goods specified in Schedule A which is imported or transported into a free zone, licensed warehouse, or licensed manufacturing warehouse to be used or consumed in a free zone, licensed warehouse or licensed manufacturing warehouse;
 - on wine, spirit, beer, malt liquor, tobacco and tobacco products imported or transported into Tasik Kenyir Duty Free Area;
 - on the following goods:-
 - cigarettes;
 - tobacco products;
 - smoking pipes (including pipe bowls);
 - electronic cigarettes and similar personal electric vaporising devices;
 - preparation of a kind used for smoking through electronic cigarettes and electric vaporising device, in form of liquid or gel, not containing nicotine,which are imported or transported into a free zone:-
 - authorised by the Finance Minister under Section 6A of the Free Zone Act 1990; or
 - other than free zone authorised by the Finance Minister under Section 6A of the Free Zone Act 1990 [Act 438] for the purposes of re-exportation.

Sales Tax and Tourism Tax Guides

RMCD has published the following guides:-

- *Guide on Sales Tax Exemption under Item 58A of Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018* dated 17th August 2021 (currently only made available in *Bahasa Malaysia*);
- *General Guide on Tourism Tax* dated 4th August 2021 (currently only made available in *Bahasa Malaysia*); and
- *Guide on Tourism Tax (Digital Platform Service Provider)* dated 13th August 2021.

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