



**MOORE Advent**

# TAX FLASH

DECEMBER 2022

## In this Issue

- [Guidelines on Tax Treatment for Labuan Entities with Dormant Status](#)
- [Updated FAQ in Relation to Deduction of 2% Withholding Tax on Payments Made by a Company to Agents, Dealers or Distributors](#)
- [Revised FAQ on Tax Deduction on Costs of Renovation and Refurbishment of Business Premises](#)
- [Tax Deduction for Investment in Approved New Food Production Project](#)
- [Tax Exemption for Approved Food Production Project](#)
- [Deferment on Implementation of Imposition of Sales Tax on Low Value Goods](#)
- [Sales Tax \(Amendment\) Act 2022 and Service Tax \(Amendment\) Act 2022](#)

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

## Guidelines on Tax Treatment for Labuan Entities with Dormant Status

The Inland Revenue Board ["IRB"] has recently issued the *Guidelines on Tax Treatment for Labuan Entities with Dormant Status* which is effective from the year of assessment ["YA"] 2020. The objective of the Guidelines is to provide clarification on the tax treatment of Labuan entities with dormant status under the Labuan Business Activity Tax Act 1990 as prescribed through the Labuan Investment Committee Pronouncement 1-2019 and 2-2019 dated 19<sup>th</sup> June 2019 and 11<sup>th</sup> December 2019 respectively.

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

- i. Labuan entities which are considered dormant, struck off, winding up or under liquidation which are not deriving any source of income are not required to comply with the substantial activity requirements.
- ii. When a dormant Labuan entity resume operations, it must comply with the substantial activity requirements in respect of adequate number of full-time employees from the date when the operations re-commence and the minimum amount of annual operating expenditure in Labuan by the end of the financial period.
- iii. A Labuan entity is considered dormant if it:-
  - has never commenced operations since the date of its incorporation;
  - has previously been in operation or carried on business but has now ceased operations or business; or
  - it does not have any significant accounting transaction for one financial year before the occurrence of substantial change in its equity shareholding (i.e. 50% or more). This means that there is no recording entry in the company accounts other than the minimum expenses for compliance with stipulated statutory requirement. The minimum expenses referred to are filing of annual returns, secretarial, tax filing and audit fees.
- iv. A Labuan entity is not considered as dormant if it owns shares, real properties, fixed deposits and other similar investments including income such as rents, interest, etc. (if any) received by virtue of the mentioned ownership.
- v. The responsibilities of Labuan entities which are dormant or under liquidation process are submission of audited accounts with tax return (Form LE1). Management accounts may be submitted if audited accounts are not available.

**Note:** For further information relating to the clarification on substantial activity requirement for Labuan entities under the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018, kindly refer to our *Tax Flash – March 2020* issue.

## Updated FAQ in Relation to Deduction of 2% Withholding Tax on Payments Made by a Company to Agents, Dealers or Distributors

The IRB has issued the revised *Frequently Asked Questions ["FAQ"] in Relation to Deduction of 2% Withholding Tax ["WT"] on Payments Made by a Company to Agents, Dealers or Distributors ["ADD"] (Updated on 21<sup>st</sup> October 2022)* (in Bahasa Malaysia) i.e. with regards to Item A6 of the FAQ i.e. whether credit note is subject to 2% WT under Section 107D of the ITA 1967.

The IRB has clarified that the determination of whether a payment is subject to WT depends on the substance of the payment. If the credit note represents payment of commission to ADD arising from sales, transactions or schemes carried out by the ADD, the provision under Section 107D of the ITA 1967 shall apply.

**Note:** For earlier updates on the above matter, kindly refer to our *Tax Flash - October 2022* issue.

## Updated FAQ on Tax Deduction on Costs of Renovation and Refurbishment of Business Premises

Following the gazette of the Income Tax (Costs of Renovation and Refurbishment of Business Premises) (Amendment) Rules 2021, the IRB has recently issued the updated [FAQ on Tax Deduction on Costs of Renovation and Refurbishment of Business Premises](#) (as at 31<sup>st</sup> October 2022) to incorporate the eligibility period for tax deduction of the costs of renovation and refurbishment of business premises incurred from 1<sup>st</sup> March 2020 until 31<sup>st</sup> December 2022 (previously until 31<sup>st</sup> December 2021).

Besides, the updated FAQ provides clarification and new examples on tax deduction/treatment of the costs of renovation and refurbishment of business premises as follows:-

- i. The costs of renovation and refurbishment incurred on roofing, curtains and electrical power station located outside the business premises do not qualify for deduction.
- ii. Claim for tax deduction incurred during the eligibility period from 1<sup>st</sup> March 2020 until 31<sup>st</sup> December 2022 can be made even though the renovation or refurbishment may not have been completed and used for the business.
- iii. The respective costs of renovation and refurbishment incurred by the landlord and tenant(s) in a multi-storey building (whether within the same or different level) can be claimed provided that:-
  - the level / floor area has to be identified/segregated for the landlord and each tenant;
  - the claim for costs of renovation and refurbishment made by the landlord and tenant(s) must be certified by the external auditor and substantiated with invoices or the relevant documentation; and
  - the maximum deduction for the costs of renovation and refurbishment for landlord and tenant(s) does not exceed RM300,000 each during the eligibility period from 1<sup>st</sup> March 2020 to 31<sup>st</sup> December 2022.

**Note:** For further information relating to the tax deduction on the costs of renovation and refurbishment of business premises, kindly refer to our [Tax Flash – January 2022](#) and [Tax Flash – April 2021](#) issues.

## Tax Deduction for Investment in Approved New Food Production Project

The [Income Tax \(Deduction for Investment in Approved New Food Production Project\) Rules 2022](#) has been gazetted to provide tax deduction equivalent to the value of investment (in the form of cash or holding of paid-up share capital in respect of ordinary shares) made in a related company that undertakes a new food production approved under the Income Tax (Exemption) (No. 6) Order 2020.

Salient points of the abovementioned Rules are as follows:-

- i. The deduction of value of investment for a year of assessment shall be equivalent to the expenditure incurred by the related company for the qualifying project in the basis period for the same year of assessment, up to amount as approved by the Minister and for a period of three (3) consecutive years of assessment commencing from the year of assessment the application is approved by the Minister.
- ii. For investment in the form of holding of paid-up share capital in respect of ordinary shares, the deduction claimed will be clawed back if the investment is disposed of within 5 years from the date of last investment made by a company.
- iii. Any consideration received for disposal of such shares by the company shall be added in ascertaining its adjusted income for the year of assessment in basis period in which that amount was received but shall not exceed the total deductions claimed in relation to the investment. This shall not apply where the disposal of shares takes place after 5 years from the date of last investment.
- iv. The deduction shall cease in the basis period for a year of assessment in which the period of exemption of the related company commences i.e. when it derives the first statutory income from the project.

The Rules shall apply to a company resident in Malaysia and incorporated under the Companies Act 2016 which:-

- a. has made an investment in its related company that undertakes an approved new food production project or an expansion project under the Income Tax (Exemption) (No. 6) Order 2020; and
- b. has made an application within the period from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2022 to the Minister through the Minister charged with the responsibility of a new food production project.

For the above purposes–

**"related company"** means a company incorporated under the Companies Act 2016 where at least 70% of its paid-up share capital in respect of ordinary shares are directly owned by a company that makes an investment for the purpose of an approved new food production project.

**"approved new food production project"** means a project which is deemed to be as a separate and distinct business in relation to–

- planting of industrial crop, vegetables, fruits, herbs, spices or cash crop;
- aquaculture;
- rearing of honey or urena lobata bees;
- rearing of cows, buffaloes, goats, sheep or deer;
- deep sea fishing or high seas fishing;
- planting of seeds for agro food; or
- planting of feed mill cultivated in a project which has been identified by the Minister charged with the responsibility of that project and approved by the Minister.

The above Rules are deemed to have come into effect on 1<sup>st</sup> January 2021.

**Note:** For further information relating to the previous Income Tax (Deduction of Investment in New Food Production Project or Expansion Project) Rules 2020, kindly refer to our [Tax Flash – February 2021](#) issue.

### **Tax Exemption for Approved Food Production Project**

Pursuant to the Income Tax (Exemption) (No. 6) Order 2020, a qualifying person resident in Malaysia is given exemption from the payment of income tax in respect of 100% statutory income derived from:-

- new food production project for a period of 10 consecutive years of assessment; or
- expansion project for a period of 5 consecutive years of assessment.

The [Income Tax \(Exemption\) \(No. 6\) 2020 \(Amendment\) Order 2022](#) has been gazetted with incorporation of the following amendments, among others:-

- i. For expansion project, the scope of tax exemption has been expanded to include statutory income from the existing projects i.e. in addition to exemption on statutory income from the expansion projects.
- ii. Effective 1<sup>st</sup> January 2021, the list of approved food production project has been extended to include the following:-
  - high seas fishing; and
  - planting of seeds for agro food.

- iii. To be eligible for the exemption, an expansion project which is a project approved by the Minister, carried out by a qualified person for the purpose of expanding its existing approved food production project that involves a new area of land must not have been granted an exemption under the Income Tax (Exemption) (No. 6) Order 2020.
- iv. The application period for the incentive has been extended until 31<sup>st</sup> December 2022 (previously until 31<sup>st</sup> December 2020).

The amendment Order comes into operation on 1<sup>st</sup> January 2016 (except for those stated otherwise as above).

**Note:** For further information, kindly refer to our [Tax Flash – February 2021 issue](#).

### Deferment on Implementation of Imposition of Sales Tax on Low Value Goods

Based on the 2022 Budget proposals, it was proposed that the sales tax would be imposed on low value goods with effect from 1<sup>st</sup> January 2023.

However, the Royal Malaysian Customs Department has on 22<sup>nd</sup> November 2022 announced that the [implementation of the imposition of sales tax on low value goods](#) has been postponed to 1<sup>st</sup> April 2023.

**Note:** For further details, kindly refer to item G5 in our [Tax Flash – November 2021 \(Special Edition\) issue](#).

### Sales Tax (Amendment) Act 2022 and Service Tax (Amendment) Act 2022

Both the [Sales Tax \(Amendment\) Act 2022](#) and [Service Tax \(Amendment\) Act 2022](#) have been gazetted on 18<sup>th</sup> October 2022. However, these Acts will only be enforced on a date to be determined by the Minister of Finance later.

**Note:** For further details, kindly refer to our [Tax Flash – August 2022 issue](#).

For other issues of our Tax Flash, please go to:  
[www.moore.com.my/publications](http://www.moore.com.my/publications)



[www.moore.com.my](http://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](mailto:tax@moore.com.my).