



## TAX FLASH

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### **PR No. 5/2022 – Taxation of a Resident Individual Part II – Computation of Total Income and Chargeable Income**

The Inland Revenue Board [“IRB”] has recently issued the *Public Ruling [“PR”] No. 5/2022 – Taxation of a Resident Individual Part II – Computation of Total Income and Chargeable Income* to provide guidance on computation of total income and chargeable income of a resident individual who derives income from business, employment and other sources. This new PR replaces the PR No. 5/2018 issued on 13<sup>th</sup> September 2018 mainly to incorporate the legislative changes from 2018 onwards.

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

The pertinent amendments included in the new PR are as follows:-

- i. Time Limit for Business Loss Claims Carried Forward
  - Effective year of assessment ["YA"] 2019, the unabsorbed adjusted losses in a year of assessment that can be carried forward and deductible are limited to a maximum period of ten (10) consecutive years of assessment immediately after the year of assessment in which loss occurs. The balance of accumulated business losses up to YA 2018 can be carried forward until YA 2028.
- ii. Increase in Tax Relief for Contribution to an Approved Provident Fund or *Takaful* or Payment for Life Insurance Premiums
  - Effective YA 2019, the tax relief for contribution to an approved provident fund or *takaful* or payment for life insurance premiums has been increased from RM6,000 to RM7,000 (subject to conditions). The same combined limit applies to taxpayers electing for joint assessment.
- iii. Expansion of Scope of Tax Deduction on Contribution to Charity and Community Projects
  - Effective YA 2020, the scope of deduction under Section 34(6)(h) of the Income Tax Act 1967 ["ITA 1967"] was expanded to include contribution for maintenance of a building project designated as a national heritage site by the Commissioner of Heritage under the National Heritage Act 2005.
- iv. Tax Deduction Limit for Sponsorship of Arts, Cultural or Heritage Activities
  - Effective YA 2020, the tax deduction under Section 34(6)(k) of the ITA 1967 for sponsoring arts, cultural or heritage activities, approved by the Ministry was increased from RM700,000 to RM1,000,000 per year of assessment. Out of the RM1,000,000, the maximum deduction allowed for sponsoring foreign arts, cultural and heritage activities shall remain up to RM300,000 per year of assessment.
- v. Increase in Tax Relief for Medical Expenses for Parents
  - Effective YA 2021, the tax relief for the expenses incurred for parents in respect of medical treatment, special needs and parental care was increased from RM5,000 to RM8,000.
- vi. Increase in Additional Tax Relief for Disabled Spouse
  - Effective YA 2021, the additional tax relief for disabled spouse was increased from RM3,500 to RM5,000.
- vii. Expansion of Scope of Tax Relief for Medical Expenses
  - Effective YA 2021, the scope of tax deduction for medical expenses of RM1,000 allowed under Section 46(1)(h) of the ITA 1967 has been expanded to cover fee for COVID-19 detection test.
- viii. Extension of Special Tax Relief in Relation to the Purchase of Personal Computer, Smartphone or Tablet
  - For YA 2020 to YA 2022, a special tax relief of RM2,500 per year of assessment (in addition to the existing lifestyle relief of RM2,500) is given for purchase of personal computer, smartphone or tablet from 1<sup>st</sup> June 2020 to 31<sup>st</sup> December 2022 under Section 46(1)(t) of the ITA 1967.
- ix. Increase and Expansion of Relief for Lifestyle
  - Effective YA 2021, an additional relief of up to RM500 is given to the purchase of sports equipment for any sports activity as listed under the Sports Development Act 1997 (excluding motorized two-wheel bicycles), rental or entrance fees to any sports facilities and registration fee for any sports competition where the organiser is approved and licensed by the Commissioner of Sports under the Sport Development Act 1997.

**Note:** For further information relating to the previous PR No. 5/2018, kindly refer to our [Tax Flash – September 2018](#) issue.

## PR No. 6/2022 – Accelerated Capital Allowance

The IRB has recently issued the [PR No. 6/2022 – Accelerated Capital Allowance \[“ACA”\]](#) to explain the tax treatment on qualifying plant and machinery for the purpose of claiming ACA or the prescribed rates in determining the statutory income from a business. This PR takes into account the prevailing laws which are in force and replaces the previous PR No. 7/2018 – ACA dated 8<sup>th</sup> October 2018.

The salient points of the abovementioned PR include:-

### i. Special Rates of Allowances

- Summary of rates of ACA for plant and machinery (based on recent Income Tax Rules) are as shown below:-

No.	Type of Plant and Machinery	Authority	Effective Period/ From	%	
				IA	AA
1.	Buses using natural gas and natural gas refuelling equipment	P.U.(A) 265/1997	01.01.1997	40	20
2.	Machinery or plant used in industries– (i) Building and construction; (ii) Timber; and (iii) Tin mining.	P.U.(A) 294/1998	YA 1998	30 60 60	20/14 20/14 20/14
3.	Control Equipment	P.U.(A) 295/1998	YA 1996 (deemed)	40	20
4.	Plant and machinery for recycling of wastes or further processing of the wastes into a finished product.	P.U.(A) 505/2000	YA 2001	40	20
5.	Plant and machinery for a qualifying project in respect of a promoted activity or a promoted product or an agricultural project.	P.U.(A) 506/2000	YA 2001	40	20
6.	Equipment certified by the Ministry of Energy, Water and Communications, Malaysia as an equipment used for its own business to control the quality of electrical power.	P.U.(A) 87/2005	YA 2005	20	40
7.	Mould for the Production of Industrialised Buildings System Component.	P.U.(A) 249/2006	YA 2006	40	20
8.	Information And Communication Technology Equipment.	P.U.(A) 156/2018	YA 2017	20	20
9.	Automation Equipment (Amendment)	P.U.(A) 173/2020 and P.U.(A) 252/2017	YA 2015 to YA 2023	20	80
10.	Machinery and equipment including information and communication technology equipment. Note: Applies to QE incurred from 1 <sup>st</sup> March 2020 until 31 <sup>st</sup> December 2021.	P.U.(A) 268/2021	YA 2020	20	40
11.	Excursion Bus (Amendment)	P.U.(A) 9/2022	YA 2022	20	40

- ii. Steps to Claim for ACA or Capital Allowance
  - The new PR provides steps to be followed to facilitate the understanding of claiming ACA.
  - The capital allowance for each fixed asset of the business can be claimed at the appropriate rate in the year of assessment. The rate chosen should be applied to the asset until the Qualifying Expenditure ["QE"] is fully absorbed. This means that each asset only qualifies for one type of rate.
- iii. Qualifying Period
  - A person is eligible to claim ACA at the rates prescribed according to the effective period and QE must comply with the 'application' rules as stipulated in the relevant Income Tax Rules. Therefore, capital allowances are not claimable before or after the effective period.
  - Asset purchased before a person commences business qualifies for ACA when the business commences.
  - A person is eligible to claim ACA when the asset is capable of being used for the purposes of the business.
- iv. Disposal of Assets Within Two Years
  - Where a person has incurred QE in respect of an asset and the asset is owned by that person for a period of less than two years. The Director General of Inland Revenue ["DGIR"] may direct that:-
    - any capital allowance would fall to be made to that person should not be made; and
    - any capital allowance that has been made should be withdrawn and a balancing charge should be made for the year of assessment in the basis period in which the asset was disposed of."Two years" refers to two calendar years based on the exact number of days.
  - Capital allowances will not be withdrawn if the disposal of an asset is made with a valid (bona fide) commercial reason. For example, the disposal is due to damage to an asset, non-suitability for use or it is no longer needed in the business.

**Note:** For further information on the claim for ACA under the previous PR No. 4/2013 and PR No. 7/2018, kindly refer to our [Tax Flash – May 2013](#) and [Tax Flash – October 2018](#) issues respectively.

## **PR No. 7/2022 – Venture Capital Tax Incentives**

The IRB has recently published the [PR No. 7/2022 – Venture Capital Tax Incentives](#) to provide explanation on the tax incentives available in relation to the venture capital industry in Malaysia. This new PR replaces the PR No. 2/2016 issued on 9<sup>th</sup> May 2016.

Salient points of the abovementioned new PR include:-

- i. Relevant Provisions of the Law
  - The new PR takes into account laws which are in force as at the date of this PR is published and the relevant subsidiary legislations as follows:-
    - Income Tax (Exemption) (No. 2) Order 2022;
    - Income Tax (Exemption) (No. 3) Order 2022; and
    - Income Tax (Deduction for Investment in a Venture Company ["VC"] or Venture Capital Company ["VCC"]) Rules 2022.
- ii. Tax Exemption Incentive for a VCC Investing in a VC
  - A VCC may apply for a tax exemption under the relevant Income Tax (Exemption) Orders stated in (i) above.

- A VCC is exempted from the payment of tax in respect of the statutory income:-
  - from all sources of income (excluding interest income arising from savings or fixed deposits and profits from *syariah*-based deposits) commencing from the year of assessment in the basis period which the VCC obtains its first certification (not later than 31<sup>st</sup> December 2026) from the Securities Commission [“SC”]; and
  - for a period of 5 years of assessment or the remaining life of the fund established for the purpose of investing in a VC whichever is the lesser [“the period of exemption”].
- Applications for this tax exemption shall be made to the Minister through the SC within the period from 27<sup>th</sup> October 2017 and 31<sup>st</sup> December 2023.
- To qualify for the exemption above, the VCC shall for each year of assessment for the period of exemption, obtain a certification from the SC confirming that:-
  - the VCC has invested at least 50% of its invested funds in the form of seed capital financing, start-up financing, early stage financing or any combination of such financing in a VC;
  - the VCC is registered with the SC within the period from 27<sup>th</sup> October 2017 and 31<sup>st</sup> December 2023; and
  - the VCC has not invested in a VC which is its related company at the point of the first investment.
- Where a VCC incurs a loss from the disposal of shares in a VC in the basis period for any year of assessment within the exempt period, such loss shall be carried forward to the post-exempt period and deducted from the statutory income on all sources of income.

iii. Tax Deduction Incentive for an Individual or Company Investing in a VC or VCC

- The Income Tax (Deduction for Investment in a VC or VCC) Rules 2022 provides tax deduction for investors who invest in a VC and VCC starting from the YA 2018.
- An individual or a company, including a VCC would be entitled to claim a deduction in ascertaining the adjusted income for a basis period for a year of assessment of an amount equivalent to:-
  - the value of investment made in a VC; or
  - the lesser of the value of investment made in a VCC or RM20 million.
- The individual or company, including a VCC:-
  - must be a resident in Malaysia;
  - for a company, is incorporated under the Companies Act 2016 [“CA 2016”];
  - has a business source;
  - has invested in a VC in the form of start-up financing, seed capital financing or early stage financing; or
  - invested in a VCC, where the VCC has invested in one or more VC in the form of seed capital financing, start-up financing or early stage financing.
- The investment made shall be deemed to be incurred after the third year from the date the investment is made and the investment holding period is certified by the SC. Subsequently, the tax deduction will only be given after the third year from the date of investment rather than on the date of investment regardless of whether the investment has been disposed after the third year.
- To qualify for the deduction, the individual or company shall make an investment within the period from 27<sup>th</sup> October 2017 to 31<sup>st</sup> December 2026 and obtain a certification from the SC confirming that:-
  - the investment was in the form of the holding of shares which at the time of acquisition are not listed for quotation in the official list of a stock exchange;
  - in relation to an investment in a VC:-
    - the investment, in relation to a company, was not made in a VC which is its related company at the point of first investment;
    - the investment was made for seed capital financing, start-up financing or early stage financing;
  - in relation to an investment in a VCC:-
    - at least 50% of the investment of the VCC is in a VC, on average over a 3-year period on the VCC’s annual audited financial statements;

- the investment, in relation to a company, is made by a company in a VCC which is not its related company and for investment made by a VCC, the investment is made in a VC which is not a company related to the company investing in the VCC.
- The investment is held for at least 3 years from the date of investment.

iv. Mutually Exclusive

- A VCC that has applied for tax exemption under item (ii) above and received certification from the SC is not entitled to apply for a tax deduction under item (iii) above for the whole period of exemption.

v. Tax Incentive for a Venture Capital Management Company ["VCMC"]

- A VCMC must be registered with the SC pursuant to the Guidelines on the Registration of VCC and Private Equity Corporations and Management Corporations issued by the SC.
- A VCMC that is registered with the SC will be exempted from the payment of income tax in respect of the statutory income derived from the management of VCC funds in relation to:-
  - share of profits;
  - management fee; and
  - performance fee including performance bonus and carried interest
 on any investment made by the VCC as stipulated in the agreement entered into between the VCMC and the VCC.
- Any losses incurred from the management of a VCC fund in the basis period for any year of assessment within the tax exemption period shall be carried forward to the post-exempt period and deducted from the statutory income derived from the management of a VCC fund.
- The VCMC shall maintain a separate account for the income derived from the management of VCC fund in the basis period for each year of assessment and that income shall be treated as a separate and distinct business source for the VCMC.

vi. Application for Certification

- Applications for annual certifications for the purposes of tax exemption and tax deduction shall be made to the SC by completing the relevant forms and submitting the relevant documentation as explained in the Venture Capital Tax Incentives Guidelines which can be obtained from the SC's website.

**Note:** For further information relating to the Income Tax (Exemption) (No. 2) Order 2022, Income Tax (Exemption) (No. 3) Order 2022 and Income Tax (Deduction for Investment in a VC or VCC) Rules 2022, kindly refer to our [Tax Flash – May 2022](#) issue. For further information relating to the previous PR No. 2/2016, kindly refer to our [Tax Flash – June 2016](#) issue.

## **PR No. 8/2022 – Taxation of Limited Liability Partnership**

The IRB has recently issued the [PR No. 8/2022 – Taxation of Limited Liability Partnership \["LLP"\]](#) to explain the tax treatment of a LLP. This new PR replaces the PR No. 5/2015 issued on 14<sup>th</sup> August 2015 with some updates taking into account the prevailing laws which are in force.

Among others, it is noteworthy that the following new paragraphs are added in the abovementioned new PR:-

i. Preparation of Information and Financial Statement

- For income tax purposes, a LLP is required to prepare complete accounting records containing the profit and loss account, balance sheet and explanatory notes to the accounts whether in physical or electronic manner. If the accounting records are not prepared according to normal accounting format, the LLP shall be required to keep the following documents (in addition to those mentioned in the previous PR) for 7 years:-

- information on partners and trustees;
- information on rental, leasing and staffing; and
- bank statement, interest and other related banking.

ii. Determining the Residence Status of LLP / Management and Control

- Pursuant to Sections 27(1) and 46(1) of the Limited Liability Partnerships Act 2012, a LLP must appoint at least one compliance officer from its partners. A compliance officer of a LLP must be a citizen of Malaysia or permanent resident and staying in Malaysia who is qualified to act as company secretaries under the CA 2016. Nevertheless, the appointment of local compliance officer in Malaysia does not determine the residence status of a LLP. If no compliance officer is appointed, then any one of the partners or all of the partners are deemed to be appointed as compliance officers to the LLP.

iii. Compliance Officer of LLP

- The application of Section 75B of the ITA 1967 on the responsibility to carry out all actions and things that should be done or on behalf of LLP for income tax purposes shall also lie jointly or severally with persons qualified to act as secretaries under the CA 2016 (besides the appointed compliance officer / any one or all of the partners).
- From 28<sup>th</sup> December 2018, a person who qualifies as a compliance officer must be a citizen or permanent resident of Malaysia in accordance with the provisions of Section 75B(1)(a)(i) of the ITA 1967.
- From YA 2021, a LLP is required to submit the income tax return form by e-filing in accordance with Section 77A(1A) of the ITA 1967.

iv. Taxation of LLP

- Besides the application of the ITA 1967, LLPs are eligible for the same treatment as companies under the Investment Promotion Act 1986.
- From YA 2020, the tax rate imposed on LLP with total capital contribution (whether in cash or in kind) of RM2.5 million and less at the beginning of the basis period for a year of assessment and gross income from a business source does not exceed RM50 million in the basis period for a year of assessment is as follows:-

<b>Chargeable Income</b>	<b>Tax Rate</b>
For the first of RM600,000	17%
Exceeding RM600,000	24%

v. Losses and Capital Allowances

- Effective 2019, the unabsorbed balance of accumulated business losses from LLP for a year of assessment may be carried forward but limited to a period of 10 years of assessment after the year of assessment in which it arose.
- The current year loss of the LLP business for YA 2019 can be carried forward until YA 2029 whereas the losses of the LLP accumulated up to YA 2018 can be carried forward until YA 2028.

vi. Special Allowances for Small Value Assets ["SVA"]

- Paragraph 19A(1) Schedule 3 of the ITA 1967 provides that the rate of special capital allowance for SVA may be allowed to the LLP to replace the rate of ordinary capital allowance provided under paragraphs 10 and 15, Schedule 3, ITA 1967.

vii. Change of LLP Accounting Period

- A LLP must inform the DGIR if there is a change in its accounting period by submitting Form CP204B within the prescribed period as follows:-

- Shortened accounting period (new accounts less than 12 months)
    - Form CP204B must be submitted within 30 days before the end of the new accounting period.
  - Extended accounting period (new accounts exceeding 12 months)
    - Form CP204B must be submitted within 30 days prior to the deadline of the original accounting period.
- viii. Submission of Tax Estimates /Tax Amendments Payable
- The estimated tax payable for a year of assessment by a LLP shall be made using the prescribed form which is the Form CP204 and submitted not later than 30 days before the beginning of the basis period for the year of assessment.
  - Amendment of the estimated tax payable by the LLP can be made in the 6<sup>th</sup> or 9<sup>th</sup> month or both within a basis period for a year of assessment by using the Form CP204A.
  - Section 107C(4A) of the ITA 1967 provides flexibility to start-up companies with a paid-up capital of less than RM2.5 million to be exempted from submitting tax estimation.
  - However, Section 107C(4A) of the ITA 1967 does not apply to new companies with a paid-up capital of less than RM2.5 million converting to new LLPs with a capital contribution of RM2.5 million (even if the business is considered continuing) and also to LLPs who have just started a business, which has a paid-up capital of less than RM2.5 million.

**Note:** For further details relating to the previous PR 5/2015 – Taxation of LLP, kindly refer to our [Tax Flash – September 2015](#) and [Tax Flash – June 2014](#) issue.

## **PR No. 9/2022 – Property Development**

The IRB has recently issued the [PR No. 9/2022 – Property Development](#) to explain the basis of ascertaining gross income for the purpose of computing adjusted income derived from the business of property development. This new PR replaces the previous PR No.1/2009 dated 22<sup>nd</sup> May 2009 with some updates and amendments based on the prevailing laws which are in force.

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

- i. Cancellation of Purchases
  - In the case where a development unit buyer surrenders or cancels his purchase and loses the payment that has been made to the property developer, the property developer shall make the adjustment on the purchase cancellation in the basis period the cancellation takes place.
- ii. Tax Treatment upon Completion of Project
  - For project with actual loss, a company may opt not to reopen the prior years of assessment to apportion the loss to each relevant years of assessment. The company may choose to make the adjustment to the gross profit in the year the project is completed on condition that there are no tax implications for all the relevant years of assessment.
- iii. Land Premium and Strata Title Expenses
  - For income tax purposes, the provision for land premium and strata title expenses (previously only strata title expenses) are not allowable expenses. The expense may be allowed as a deduction against the gross income of the property development project once the amount has been ascertained by the land office and paid by the developer.
- iv. Show House Expenditure
  - For show house expenditure, the tax treatments are as below:-



- The show house expenditure shall be capitalised in the development expenditure account. If the show house is built outside the development project area, the allowable expenditure does not include the land cost.
  - The show house which is a trading stock and subsequently transferred and used as a business asset of the property developer, the tax treatment under Section 24(2) of the ITA 1967 is applicable.
  - Any furniture, fitting and fixture, interior design and decoration expenses related to the show house of the development project shall be capitalised in the development expenditure account. Where furniture, fitting and fixture are resold as scrap, the proceeds shall be recognised as other business income under Section 4(a) of the ITA 1967.
  - Expenditure on the construction of a sales gallery or management office which is built in the same area or which is connected to the show house is not an allowable expenditure under Section 39 of the ITA 1967.
- v. Stock Parted with by compulsion under Section 4C of the ITA 1967
- With effect from YA 2014, any amount or compensation receivable arising from stock-in-trade parted with by compulsion including on requisition or compulsory acquisition of the land or in a similar manner will be treated as gross business income for the purpose of Section 4(a) of the ITA 1967 in the year.
- vi. Joint Venture Project
- The IRB provides further clarification on the following:-
    - A joint venture is a property developer project undertaken jointly between a landowner and a property developer under an agreement to develop a property development project, whereby:-
      - (a) the landowner surrenders his land to the property developer for development and in return receives:-
        - an amount in cash;
        - a certain number of development units upon the completion of the project;
        - a percentage of sales value of the project;
        - a percentage of profit sharing from the sale of development units; or
        - unit shares of the company
      - or
      - (b) the landowner and the property developer agree to other arrangement under the joint venture project.
  - For joint venture projects, the tax treatments are as follows:-
    - Where the landowner takes an active role in the property development activities together with the property developer, the landowner is deemed to be undertaking the business of property development; and
    - Where the landowner does not take an active role in the development activities and the land is not a trading stock of his business, the landowner is deemed to not be undertaking the business of property development.
  - **“Active role”** means:-
 

The landowner has significant influence, amongst others:-

    - Determining the planning of the property development project such as the concept, type, nature and duration of the development project
    - The appointment of contractors involved in the Joint Venture project such as consulting companies, contractors and subcontractors.
    - Involvement in marketing activities for the whole development project.
    - Determining the selling price of development units.

## Updated Guidelines on Restriction on Deductibility of Interest

The IRB has updated the *Restriction on Deductibility of Interest Guidelines* (uploaded on 15<sup>th</sup> November 2022) to replace the previous guidelines uploaded on 22<sup>nd</sup> August 2022.

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

- The item “audit fee” in Annex A and Annex B has been substituted by “secretarial & tax filing fee”.
- Note 1 of Annex A has been amended to provide a clearer reference of the example on determination of “qualifying deduction”.

**Note:** For further details, kindly refer to our *Tax Flash – July 2019*, *Tax Flash – March 2022* and *Tax Flash – October 2022* issues.

## Tax Incentives under the Relocation of Provision of Services Business Incentive Scheme

Following the Budget 2021 announcement, the *Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022* [“the Rules”] has been gazetted to provide tax incentives under the Relocation of Provision of Services Business Incentive Scheme to a qualifying company undertaking a qualifying activity which adopts Industrial Revolution 4.0 and digitalisation technology as below:-

- i. Provision of technology solution or technology company which develops technology and provide technology solutions based on substantial scientific or engineering challenges;
- ii. Provision of infrastructure and technology for cloud computing;
- iii. Research and development or design and development activities;
- iv. Medical devices testing laboratory and clinical trials; or
- v. Service activities or manufacturing related service activities as determined by the Finance Minister

Under the Relocation of Provision of Services Business Incentive Scheme, special rate of income tax shall be charged on the chargeable income of qualifying company carrying on business in respect of a qualifying activity for a period of up to 10 consecutive years of assessment commencing from the year of assessment as determined by the Finance Minister:-

- i. New company – 0% to 10%
- ii. Existing company – 10%

The companies undertaking the qualifying activity have to submit the application for Relocation of Provision of Services Business Incentive Scheme to the Finance Minister through Malaysian Investment Development Authority [“MIDA”] within the period from 7<sup>th</sup> November 2020 and 31<sup>st</sup> December 2022.

The qualifying company shall be required to comply with the conditions as specified in the approval letter as well as those stipulated in the Guidelines and Procedures for the Application of Special Tax Incentive for Selected Services Activities under the National Economy Recovery Plan [“PENJANA”] issued or as revised by MIDA which include the following:-

- i. employs at least 80% full time Malaysian employees on or before the third year from the date of issuance of the first invoice in relation to the qualifying activity issued by the qualifying company until the end of the period of which the aforementioned incentive scheme is granted; and
- ii. incurs an amount of annual operating expenditure or an investment in fixed asset as approved to carry on the qualifying activity.

The qualifying company may relinquish the Relocation of Provision of Services Business Incentive Scheme granted at any time, subject to the approval of the Finance Minister, by notice in writing to the Minister through MIDA. The surrendering shall be deemed to have come into effect on the first day of the basis period for the year of assessment in which the application for surrender is received.

For the above purposes:-

**“qualifying company”** means a new or existing company which fulfils the eligibility condition imposed by the Minister

**“new company”** means a company incorporated under the CA 2016 and resident in Malaysia and established for the purpose of carrying on a qualifying activity under the Rules and –

- i. which does not have an existing or related entity in Malaysia prior to the application for the incentive scheme being made; or
- ii. which has an existing or related entity in Malaysia which has not carried on a qualifying activity in Malaysia prior to the application for the incentive scheme being made; and
- iii. which –
  - a. relocates its facility for the qualifying activity from outside Malaysia into Malaysia;
  - b. relocates a new qualifying activity into Malaysia which is different from the existing qualifying activity outside Malaysia; or
  - c. establish a new operation in Malaysia.

**“existing company”** means a company which is incorporated or registered under the CA 2016 and resident in Malaysia and is already operating in Malaysia while carrying on a qualifying activity for a new business segment separated from the operation of the existing qualifying activity.

The above Rules shall have effect from the YA 2021.

**Note:** For further information on the previous Guidelines and Procedures for the Application of Special Tax Incentive for Selected Service Activities under PENJANA, kindly refer to our [Tax Flash – December 2021](#) issue.

## **Sales Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2022**

The [Sales Tax \(Persons Exempted from Payment of Tax\) \(Amendment\) Order 2022](#) and the [Sales Tax \(Persons Exempted from Payment of Tax\) \(Amendment\) \(No. 2\) Order 2022](#) [“the Order”] have been gazetted on 14<sup>th</sup> December 2022 and 30<sup>th</sup> December 2022 respectively and took effect from 1<sup>st</sup> January 2023. The salient points extracted from the Order are as follows:-

- The conditions [i.e. column (4)] to qualify for the exemption of sales tax in respect of Items 1 and 3 of Schedule C to the Order have been expanded to include goods that are transported from a free zone established under the Free Zones Act 1990 by person acting on behalf of a registered manufacturer. The Order has further clarified that the raw materials, components and packaging materials (excluding petroleum) [hereinafter referred to as “the Materials”] shall be used in the manufacturing of taxable goods or both taxable and exempted goods of the registered manufacturer. Prior to the amendments, the words “taxable goods or both taxable and exempted goods” are not included.
  - In respect of the Materials used in the manufacturing of the exempted goods, the finished goods shall be exported by the registered manufacturer, save and except for the following finished goods which may be sold locally by the registered manufacturer:-
    - controlled article under the Control of Supplies Act 1961 and subject to price control;
    - pharmaceutical product falling under chapter 30 of the prevailing Customs Duties Order; or

- milk products falling under headings or subheadings 04.01, 04.02, 0403.10.29 00, 0403.20.19 00, 0403.10.99 00, 0403.90.10 00, 0403.90.90 90, 0403.90.90 00, 04.04, 1901.10.20 00, 1901.90.31 00, 1901.90.32 00, 1901.90.39 00 and 2202.99.10 00 of the prevailing Customs Duties Order.
- If the Materials are not used in the manufacturing of the exempted goods and the finished goods produced thereof are not exported within 12 months from the date of import, transport of purchase or such other period as approved by the Director General of Customs and Excise [“DG”], the sales tax become due and payable and the registered manufacturer shall pay for the sales tax.
- Item 24 of Schedule A to the No. 2 Order has been amended to as follows:-
  - Any person importing goods using air courier service (including postal service) is exempted from payment of sales tax for all types of goods except for:-
    - cigarettes;
    - tobacco products;
    - intoxicating liquors;
    - smoking pipes (including pipe bowls);
    - electronic cigarettes and similar personal electric vaporizing devices; and
    - preparation of a kind used for smoking through electronic cigarette and electric vaporizing device, in forms of liquid of gel, not containing nicotine.
  - The abovementioned exemption is only applicable provided that:-
    - the goods are imported by any person using air courier service (including postal service) through the following airports:-
      - Kuala Lumpur International Airport, Selangor;
      - Sultan Abdul Aziz Shah Airport, Selangor;
      - Penang International Airport, Penang;
      - Senai International Airport, Johor;
      - Kota Kinabalu International Airport, Sabah;
      - Kuching International Airport, Sarawak; or
      - Langkawi International Airport, Kedah;
    - the goods imported are of a total C.I.F value of not exceeding RM500 per consignment.

### **Application for Sales Tax Exemption Certificate under Item 65 to Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018**

The RMCD has on 20<sup>th</sup> December 2022 made an announcement in regards to the application for sales tax exemption certificate under Item 65 to Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [“the 2018 Order”]. The salient points are as follows:-

- Any haulage operator endorsed by the Malaysian Investment Development Authority [“MIDA”] may apply for sales tax exemption under item 65 to Schedule A of the 2018 Order for purchase of prime mover or container trailer subject to satisfying the specified conditions.
- Effective 1<sup>st</sup> January 2023, an application for the sales tax exemption certificate under the Item 65 shall be made through MySST system and the Vehicles Tax Exemption Monitoring System [“eVTEMS”].
- Applicants are required to sign up to get eVTEMS ID access via <https://evtems.customs.gov.my>.
- Please be informed that **each application** is valid for **one (1) unit** of prime mover / container trailer only. The approval certificate will be issued through the MySST system.
- For further information, please refer to the following guides:-
  - *Guide on Application for Sales Tax Exemption Certificate under Item 65 to Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018* dated 1<sup>st</sup> January 2023 (currently only made available in *Bahasa Malaysia*);
  - *User Manual for MySST System in respect of Exemption Module for Schedule A – Item 65*; and
  - *User Manual (Company) for eVTEMS* (currently only made available in *Bahasa Malaysia*).

## Deferment of Implementation of Imposition of Excise Duty on Pre-Mixed Preparation Products for Beverages

The Royal Malaysian Customs Department [“RMCD”] has on 30<sup>th</sup> December 2022 announced that the *implementation of imposition of excise duty on pre-mixed preparation products for beverages* which was supposed to be effective on 1<sup>st</sup> January 2023 has been postponed to a date to be determined in a near future.

**Note:** For further details, kindly refer to our *Tax Flash – November 2022 issue*.

## Deferment of Implementation of Imposition of Service Tax on Goods Delivery Services

The RMCD has on 30<sup>th</sup> December 2022 announced that the *implementation of imposition of service tax on goods delivery service* which was supposed to be effective on 1<sup>st</sup> January 2023 has been postponed to a date to be determined in a near future.

**Note:** For further details, kindly refer to our *Tax Flash – July 2022 issue*.

## Appointment of Dates of Coming into Operation

The Minister of Finance has determined the following dates as the dates on which the following Acts came into operation and the effective date for charging and levying sales tax on low value goods [“LVG”]:-

No.	Subject	Date Came into Operation / Effective Date
1.	<i>Service Tax (Amendment) Act 2022</i>	1 <sup>st</sup> January 2023
2.	<i>Sales Tax (Amendment) Act 2022</i>	1 <sup>st</sup> January 2023
3.	<i>Effective date for charging and levying of sales tax on low value goods under the Sales Tax (Amendment) Act 2022</i>	1 <sup>st</sup> April 2023

**Note:** For further details, kindly refer to our *Tax Flash – August 2022 and December 2022 issues*.

## Legislations in Relation to Low Value Goods

The following Regulations and Orders have been gazetted on 30<sup>th</sup> December 2022 and took effect from 1<sup>st</sup> January 2023:-

- *Sales Tax (Low Value Goods) Regulations 2022;*
- *Sales Tax (Total Sale Value of Low Value Goods) Order 2022;*
- *Sales Tax (Rate of Tax for Low Value Goods) Order 2022;* and
- *Sales Tax (Determination of Low Value Goods) Order 2022.*

The salient points extracted from the above Regulations and Orders are as follows:-

- Any seller who sells LVG and who is liable to be registered under Section 12 of the Sales Tax Act 2018 [“the SAT”] shall apply to be registered in the manner as the DG may determine. A registration number will be given upon approval.
- Every registered seller who sells LVG shall clearly display the information on the consignment note by patching or affixing such information on the package of LVG.

- Every registered seller who issues an invoice or document in relation to the sales of LVG shall state the following particulars:-
  - the serial number of the invoice or document;
  - the date of the invoice or document issued;
  - the name and address of the registered seller;
  - the registration number of the registered seller;
  - a description sufficient to identify the LVG being sold; and
  - the total amount payable excluding sales tax, the rate of the sales tax and total sales tax chargeable shown as a separate amount.
- Every registered seller shall furnish a return for each taxable period as required under Section 26 of the SAT through electronic service or in the form and manner as the DG may determine.
- The taxable period shall be a period of three (3) months ending on the last day of any month of any calendar year.
- If any registered seller makes an error in any return furnished, the registered seller may correct the error in the manner as the DG may determine.
- Payment of sales tax or penalty payable shall be made to the DG through electronic banking or other modes of payment as the DG may determine.
- Any registered seller may make an application for refund to the DG under Section 39 of the SAT if the registered seller:-
  - has overpaid or erroneously paid the amount of sales tax; or
  - is entitled to the refund under Section 41(3) of the SAT.
- The threshold for registration of sales tax for LVG is RM500,000.
- The rate for sales tax on LVG is 10%.
- LVG refers to all goods sold at a price not exceeding RM500 that are brought into Malaysia by land, sea or air.

### Registration for Low Value Goods

The RMCD has clarified that the legislations in respect of sales tax on LVG have come into operation on 1<sup>st</sup> January 2023. However, the charging of sales tax on LVG will only commence on 1<sup>st</sup> April 2023.

Any person who is a local or foreign seller who sells LVG from abroad and met the threshold for registration is liable to be registered as a Registered Seller for LVG purpose. An application for the sales tax registration can be made effective 1<sup>st</sup> January 2023 via <https://lvg.customs.gov.my>.

For other issues of our Tax Flash, please go to:  
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