



# MOORE Advent

## TAX FLASH

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## Special Deductions in Respect of a Qualifying R&D Activity

The Inland Revenue Board ["IRB"] has recently published the following to provide updates and guidance on the claim for special deductions in respect of a qualifying R&D activity:-

- *Public Ruling ["PR"] No. 10/2021 - Tax Treatment of Research & Development ["R&D"] Expenditure Part II - Special Deductions dated 29<sup>th</sup> December 2021; and*
- *Guidelines on the Application Procedure for a Special Deduction in Respect of a Qualifying R&D Activity dated 29<sup>th</sup> December 2021.*

The above new PR and Guidelines replace the previous PR No. 6/2020 and Guidelines on the Application Procedure for a Special Deduction in Respect of a Qualifying R&D Activity, both dated 13<sup>th</sup> August 2020 respectively.

Salient amendments included in the new PR and Guidelines are:-

- i. The following application forms have been updated:-
  - *Borang 1* for the application for an approved R&D activity under Section 34A of the Income Tax Act 1967 ["ITA 1967"];
  - *Borang 2* for the claim for double deduction on R&D expenditure under Section 34A of the ITA 1967; and
  - *Borang 4* for the claim for a single deduction under Section 34(7) of the ITA 1967.
- ii. Effective 1<sup>st</sup> January 2021, if the payment for R&D expenditure undertaken outside Malaysia (outsourced) is more than 30% of the total allowable R&D expenditure, the total expenses incurred will not qualify for a double deduction. However, the whole amount of the R&D expenses incurred shall be allowed as a single deduction under Section 34A(4) of the ITA 1967.
- iii. If the project is outsourced to any service provider approved by the relevant Minister, the company needs to find out how the product / process is developed i.e. the company and the service provider will have to identify and determine any novelty or technical risk involved and the systematic, investigative and experimental studies, in line with the definition of "R&D" for the purpose of claiming single / double deduction for auditing on projects by the IRB.
- iv. Where technical services that form part of the qualifying R&D expenditure are provided, the following information should be kept:-
  - agreement between the client and service provider company, if any;
  - the name and address of the researcher / consultant / organisation whose technical services are obtained;
  - explanation of the novelty or technical risk involved during the period the researcher / consultant / organisation carried out the R&D activities, if any;
  - purpose or relevance of the technical services in the said R&D activity; and
  - the amount paid.

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

## PR No. 11/2021 - Bilateral Credit and Unilateral Credit

The IRB has recently issued the *PR No.11/2021 - Bilateral Credit and Unilateral Credit* to provide guidance on the claim for bilateral credit and unilateral credit by a person who has been charged to tax on the same income in Malaysia and in another country.

This new PR replaces the PR No. 11/2011 issued on 20<sup>th</sup> December 2011 with no significant changes made except for updating to the prevailing law as follows:-

- i. The definitions of “foreign tax”, “body of persons” and “person” have been updated [Paragraph 2];
- ii. The elimination of double taxation is subject to the terms and provisions as stipulated in the Double Taxation Agreement [Paragraph 4.4];
- iii. Update of the corporate fee tax rate from 25% to 24% (in example 5);
- iv. Update on time-bar period to raise additional assessment to 5 years (previously 6 years) after the end of the year of assessment [Paragraph 5 (h)]; and
- v. Updated tax treatment on dividend income as single-tier dividend (previously, franked dividend) [in example 6].

**Note :** For further details relating to the previous PR 11/2022 - Bilateral and Unilateral Credit, kindly refer to our [Tax Flash - January 2012](#) issue.

### **Tax Exemption for Export of Private Healthcare Services**

Pursuant to the Income Tax (No. 9) 2002 (Amendment) Order 2020, a person resident in Malaysia is eligible for tax exemption equivalent to 100% of the value of increased exports of services derived from the export of healthcare services to foreign clients, subject to the following conditions:-

- at least 10% of the total patients consist of foreign clients who have obtained private health care services in each year of assessment; and
- at least 10% of the gross income is derived from foreign clients who have obtained private health care services in each year of assessment.

A maximum exemption will only be given up to 70% of the statutory income of the business of the person exporting such private health care services for a year of assessment, from year of assessment [“YA”] 2018 to YA 2020.

In the Budget 2021 announcement, it was proposed that the above income derived from the export of private health care services by a person resident in Malaysia be extended for another 2 years i.e. from YA 2021 until YA 2022. Following this, a new gazette order, the [Income Tax \(Exemption\) \(No. 13\) Order 2021](#) has been legislated to replace the Income Tax (No. 9) 2002 (Amendment) Order 2020 and provide for the above exemption of income derived from the export of private health care services in respect of the YA 2021 to YA 2022.

The new Order shall not apply to a person if the person, in the basis period for a year of assessment, has been granted:-

- any incentives under the Promotion of Investments Act 1986 (except for deductions for promotion of exports);
- investment allowance under Schedule 7B of the ITA 1967;
- an exemption under Paragraph 127(3)(b) or Subsection 127(3A) of the ITA 1967; or
- an exemption under Income Tax (Exemption) (No. 9) Order 2002.

For the above purposes:-

**“Value of increased exports”** means the difference of the value of the private health care services exported in the basis period and that of the immediately preceding basis period.

**“Foreign client”** means a company, a partnership, an organisation or a cooperative society which is incorporated or registered outside Malaysia or a non-Malaysian citizen individual or a non-resident Malaysian citizen living abroad and his dependents.

**“Private health care services”** means private health care services provided in Malaysia or from Malaysia to foreign clients.

With the issuance of the Income Tax (Exemption) (No.13) Order 2021, the *Income Tax (Exemption) (No. 9) 2002 (Amendment) Order 2021* has been gazetted to remove “private health care” services previously prescribed under the list of qualifying services eligible for tax exemption granted under the Income Tax (Exemption) (No. 9) 2002 (Amendment) Order 2020.

The above Orders shall have effect as follows:-

- Income Tax (Exemption) (No. 13) Order 2021 - from YA 2021 until YA 2022
- Income Tax (Exemption) (No. 9) 2002 (Amendment) Order 2021 - from YA 2021

**Note :** For further information on the Income Tax (Exemption) (No. 9) 2002 (Amendment) Order 2020, kindly refer to our *Tax Flash - December 2020* issue.

### **Tax Exemption for Promotor of Arts, Cultural, Sports or Recreational Activities in Malaysia**

In the Budget 2020, it was proposed that tax exemption of 50% be given to a promotor on statutory income derived from organising any arts or cultural activities or sports or recreational competition of international standard from YA 2020 to YA 2022. This tax exemption is extended for another 3 years i.e. until YA 2025 as announced in the Budget 2022.

Following the above, the *Income Tax (Exemption) (No. 12) Order 2021* has been gazetted to legislate the above proposals.

The exemption shall apply on the condition that:-

- the arts or cultural activities is held in Malaysia at the *Istana Budaya*, National Visual Arts Gallery or Petronas Philharmonic Hall; or
- the sport or recreational competition of international standard is held in Malaysia.

The promoter shall need to maintain a separate account for the income derived from the organisation of any arts or cultural activities or sports or recreational competition of international standard in Malaysia.

For the purpose of the above Rules:-

**“Arts or cultural activities”** means a stage performance approved by the Ministry of Tourism, Arts and Culture and organized with participation of foreign nationals who have performed at least three performances in any countries other than their own.

**“Promoter”** means a company incorporated under the Companies Act 2016, or a society or organization registered under the Societies Act 1966.

**“Sports or recreational competition of international standard”** means any sporting event or recreational activity approved by the Ministry of Youth and Sports and organized in any form with the participation of foreign nationals from a number of countries.

The above Order shall have effect from YA 2020 until YA 2025.

## Further Deduction on Rental Expense on Premises Used as Employees' Accommodation

Following the Budget 2022 announcement, the *Income Tax (Deduction for Expenditure on Provision of Employees' Accommodation) Rules 2021* has been gazetted to allow further deduction on expense incurred by a company on rental of premises for the purpose of employees' accommodation within the period from 1<sup>st</sup> January 2021 until 31<sup>st</sup> December 2022, restricted to RM50,000 for each company. The employees' accommodation shall be certified with a Certificate for Accommodation as provided under Section 24D of the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990, but excludes accommodation for director.

For the purpose of the above Rules:-

**"Accommodation"** has the meaning assigned to it in the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990.

**"Company"** means a company resident in Malaysia which:-

- is incorporated under the Companies Act 2016;
- is carrying on the business of manufacturing or manufacturing related services; and
- has obtained an approval of compliance under the Safe@Work programme from the Ministry of International Trade and Industry.

The above Rules shall have effect from YA 2021.

## Income Tax Rebate for Company or LLP

In the Budget 2021, a new Section 6D of the ITA 1967 was introduced to grant a tax rebate for 3 consecutive years from the year of assessment in which a company or limited liability partnership ["LLP"] commences operation, in an amount equivalent to its operating or capital expenditure which it incurs (restricted to RM20,000 each year), subject to certain conditions as prescribed by the Minister.

Following the above, the *Income Tax (Conditions for the Grant of Rebate under Subsection 6D(4)) Order 2021* has been gazetted to specify the conditions which must be complied as follows:-

- The company or LLP shall not own or be owned directly or indirectly by a related company or related LLP which has a paid-up capital in respect of ordinary shares or contribution of capital (whether in cash or in kind) of more than RM2.5 million at the beginning of the basis period for a year of assessment;
- The operations of the company or LLP shall be carried out in a different premises from its related company or its related LLP;
- The company or LLP shall not use the plant, equipment and facility owned by its related company or its related LLP or which has been disposed of to the company or LLP by its related company or its related LLP;
- The employees of the company or LLP (except for Chief Executive Officer and director), shall be different from its related company or its related LLP;
- The business activity carried out by the company or LLP shall be:-
  - different from its related company or its related LLP; or
  - different from a sole proprietorship where the sole proprietorship is converted to a company or LLP;
- The company or LLP shall not be a result of a merger or acquisition of two or more companies or LLP which have a paid-up capital in respect of ordinary shares or contribution of capital (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 source or sources consisting of its business not exceeding RM50 million in the basis period for that year of assessment; and



- The company or LLP is not a partnership or company which has been converted into a LLP in accordance with Sections 29 or 30 of the Limited Liability Partnership Act 2012.

The Order stipulates that in cases where the company or LLP first commences operation on or after 1<sup>st</sup> July 2020 and its basis period ends on or before 31<sup>st</sup> December 2020, a rebate may be granted in accordance with this Order for the YA 2021 and YA 2022 only.

The above Order shall have effect from YA 2021.

### **Double Deduction for Sponsorship of Scholarship to Student Pursuing Studies at the Technical and Vocational Certificate Levels**

Following the Budget 2015 announcement, the *Income Tax (Deduction for the Sponsorship of Scholarship to Malaysian Student Pursuing Studies at the Technical and Vocational Certificate Levels) Rules 2021* has been gazetted to allow a double deduction on expenses incurred and paid by a company in the basis period for a year of assessment for sponsoring scholarship to a student at the technical and vocational certificate levels, in accordance with the period of the relevant sponsorship agreement.

The expenses allowed for double deduction in respect of sponsorship of a scholarship are as follows:-

- payment required by the relevant institution relating to the course of study; and
- educational aid and reasonable cost of living expenses throughout the student's period of study at the relevant institution.

These Rules shall apply to a company which:-

- is incorporated under the Companies Act 2016 and resident in Malaysia;
- sponsors scholarship to student pursuing full-time course of study at technical and vocational certificate levels in an institution; and
- executes scholarship agreement with a student on or after 11<sup>th</sup> October 2014 but not later than 31<sup>st</sup> December 2016.

For the purpose of the above Rules:-

**"Institution"** means any institutions recognized by the Malaysian Qualifications Agency or the Skills Development Department.

**"Student"** means an individual:-

- who is a Malaysian citizen and resident in Malaysia;
- who receives full-time course of study at technical or vocational certificate levels in an institution;
- who has no means of his own; and
- whose parents or guardians have total monthly income not exceeding RM5,000.

The above Rules shall have effect from YA 2015.

## Double Deduction for Sponsorship of Scholarship to Student Pursuing Studies in the Field of Engineering and Technology at the Technical and Vocational Certificate, Diploma or Bachelor's Degree Levels

Following the Budget 2019 announcement, the *Income Tax (Deduction for the Sponsorship of Scholarship to Malaysian Student Pursuing Studies in the Field of Engineering and Technology at the Technical and Vocational Certificate, Diploma or Bachelor's Degree Levels) Rules 2021* has been gazetted to provide for a claim for double deduction on expenses incurred and paid by a company in the basis period for a year of assessment for sponsoring scholarship to a student in the field of engineering and technology at the technical and vocational certificate, diploma or bachelor's degree levels, in accordance with the period of the relevant sponsorship agreement.

The expenses allowed for double deduction in respect of sponsorship of a scholarship are as follows:-

- payment required by the relevant institution or higher educational institution relating to the course of study; and
- educational aid and reasonable cost of living expenses throughout the student's period of study at the relevant institution or higher educational institution.

These Rules shall apply to a company which:-

- is incorporated under the Companies Act 2016 and resident in Malaysia;
- sponsors scholarship to student pursuing full-time course of study in the field of engineering and technology:-
  - at technical and vocational certificate levels in an institution; or
  - at diploma or bachelor's degree level in a higher educational institution; and
- executes scholarship agreement with a student on or after 1<sup>st</sup> January 2019 but not later than 31<sup>st</sup> December 2021.

For the purpose of the above Rules:-

**"Institution"** means any institutions recognized by the Malaysian Qualifications Agency or the Skills Development Department and **"higher educational institution"** means any institution established under the Universities and University Colleges Act 1971, Universiti Teknologi MARA Act 1976 or the Private Higher Educational Institutions Act 1996.

**"Student"** means an individual:-

- who is a Malaysian citizen and resident in Malaysia;
- who receives full-time course of study in the field of engineering and technology:-
  - at technical and vocational certificate levels in an institution; or
  - at diploma or bachelor's degree level in a higher educational institution;
- who has no means of his own; and
- whose parents or guardians have total monthly income not exceeding RM10,000.

The above Rules shall have effect from YA 2019.

## Tax Incentives Relating to Tun Razak Exchange

In Budget 2012, the Government announced various incentives for companies involved in the Tun Razak Exchange ["TRX"] project. Thereafter, the relevant legislations have been gazetted on 31<sup>st</sup> January 2013 to legislate the proposals as announced in the budget.

Following the above, some changes have been made in respect of the following incentives for TRX:-

**i. Industrial Building Allowance [“IBA”] for TRX Marquee Status Company**

- Pursuant to the Income Tax (IBA) (TRX Marquee Status Company) Rules 2013, a commercial building located in the TRX which is constructed or purchased by a TRX Marquee status company and used for the purpose of its business shall be treated as an industrial building and qualifies for IBA of 10% annually on the qualifying expenditure.
- The *Income Tax (IBA) (Tun Razak Exchange Marquee Status Company) (Amendment) Rules 2021* has been gazetted to clarify on the following:-
  - The principal Rules shall apply in respect of qualifying building expenditure [“QBE”] incurred by a TRX Marquee status company on industrial building referred to therein under Rule 5 (instead of previously, Rule 3).
  - In the definition of “disposed of”, the reference made to the commercial building used for the purpose should be read as prescribed in Rule 5 (instead of previously, Rule 3).
  - In the situation where part of the building is used as an industrial building and the other part of the building is not so used, reference is made to the capital expenditure incurred on the construction or purchase (previously, construction only) thereof for the respective part of the building for the purpose of computing / determining IBA.
  - The incentive for claim of IBA has been extended for QBE incurred up to 31<sup>st</sup> December 2025 (previously, 31<sup>st</sup> December 2020).
- The amendment Rules are deemed to have effect from YA 2014.

**ii. Accelerated Capital Allowance [“ACA”] for TRX Marquee Status Company**

- Pursuant to the Income Tax (ACA) (TRX Marquee Status Company) Rules 2013, ACA is granted to a TRX Marquee status company in respect of the prescribed renovation costs incurred on a building or part of a building located in the TRX used for the purpose of the company's business.
- The *Income Tax (ACA) (TRX Marquee Status Company) Amendment Rules 2021* has been gazetted to extend the period for renovation costs incurred on a building or part of a building located in the TRX used for the purpose of the company's business until 31<sup>st</sup> December 2025.
- The amendment Rules shall have effect from 1<sup>st</sup> January 2014.

**iii. Deduction for Relocation Costs for TRX Marquee Status Company**

- Pursuant to the Income Tax (Deduction for Relocation Costs for TRX Marquee Status Company) Rules 2013, a TRX Marquee status company is allowed a deduction for prescribed relocation costs incurred to relocate the whole or part of its business to the TRX, provided such relocation takes place not later than 31<sup>st</sup> December 2020.
- The *Income Tax (Deduction for Relocation Costs for Tun Razak Exchange Marquee Status Company) (Amendment) Rules 2021* has been gazetted to extend the period for deduction for relocation costs for relocation that takes place not later than 31<sup>st</sup> December 2025.
- The above Rule shall have effect from YA 2014.

**iv. Deduction of Rental Payments for TRX Marquee Status Company**

- Pursuant to the Income Tax (Deduction for Rental Payments) (TRX Marquee Status Company) Rules 2013, a TRX Marquee status company is allowed an additional deduction of an amount equal to 50% of the rental payments incurred in respect of a rented commercial building used for the purpose of its business in the TRX.



- The above additional deduction is given for a period of 10 years from the commencement of the whole or part of the business in the TRX, provided that the commencement of the business is not later than 31<sup>st</sup> December 2020.
- The *Income Tax (Deduction for Rental Payments) (Tun Razak Exchange Marque Status Company (Amendment) Rules 2021* has been gazetted to provide that the additional deduction shall apply to a TRX Marquee status company that commences its business by 31<sup>st</sup> December 2025.
- The amendment Rules shall have effect from YA 2021.

#### v. **Tax Exemption for Approved Developer**

- Pursuant to the Income Tax (Exemption) (No. 4) Order 2013, a resident company which is approved by the Minister of Finance and undertakes development within the TRX in accordance with the TRX approved master plan is exempted from payment of income tax in respect of 70% of the statutory income derived from:-
  - disposal of any building or rights over any building or part of a building, up to YA 2022; and
  - rental of a building or part of a building, up to YA 2027.
- The *Income Tax (Exemption) (No. 4) 2013 (Amendment) Order 2021* has been gazetted with changes made as follows, among others:-
  - The definition of “building” has been updated to mean “any building”.
  - The exemption of income from the disposal of any building or part of a building is extended until YA 2025.
  - In Paragraph 4(2) of the principal Rules, the reference to subparagraph 3(1)(a) or (b) previously has now been amended correctly as subparagraph 4(1)(a) or (b).
- The amendment Order is deemed to have effect from YA 2013.

**Note :** For further information relating to tax incentive relating to Tun Razak Exchange, kindly refer to our *Tax Flash - March 2013* issue.

#### **IRB’s Media Release on the Implementation of Deduction of Tax at 2% on Payments Made by a Company to an Agent, Dealer or Distributor**

Following the proposals announced in the Budget 2022, a new Section 107D (effective 1<sup>st</sup> January 2022) has been introduced to the ITA 1967 which provides for the requirement for a payer company to deduct tax at the rate of 2% on the gross amount from the payments made to an agent, dealer or distributor who is a resident individual arising from sales, transactions or schemes carried out by that agent, dealer or distributor. The 2% withholding tax [“WT”] will apply if the total sum of payments (whether in monetary form or otherwise) received by the agent, dealer or distributor from the payer in the immediately preceding basis year arising from sales, transactions or schemes carried out by that agent, dealer or distributor exceeds RM100,000.

The tax withheld has to be remitted to the Director General of Inland Revenue within 30 days from the date of payment or crediting such payments to the agent, dealer or distributor, failing which a penalty of 10% will be imposed on the outstanding WT. In addition, the payment will not be allowed for tax deduction.

In the media release, the IRB has announced on the deferment of remittance of WT under Section 107D of the ITA 1967 until 31<sup>st</sup> March 2022 to ensure that companies making the above payments to the agents, dealers or distributors have sufficient time for the necessary preparations and notifying their agent, dealer or distributor of such requirements, the IRB has agreed to defer the remittance of WT under Section 107D of the ITA 1967 until 31<sup>st</sup> March 2022 as announced by the IRB through a [media release on 12<sup>th</sup> January 2022](#). In this respect, the remittance for the 2% WT applicable to the payments made in monetary form to agent, dealer or distributor for the period from January 2022 to March 2022 can be made from 1<sup>st</sup> April 2022, without being subject to any penalty.

The IRB will issue a Frequently Asked Questions [“FAQ”] to provide further details on the above.

## **Tax Identification Number**

Following the Budget 2022 announcement, the IRB has issued the [FAQ on the Implementation of Tax Identification Number \[“TIN”\]](#) to provide clarification on the implementation of the TIN which takes effect from 1<sup>st</sup> January 2022.

Salient points of the abovementioned FAQ include:-

### **i. General**

- TIN is an income tax number as per existing records with the IRB.
- Any taxpayer who fulfils any of the conditions below is required to have a TIN:-
  - assessable and chargeable to tax; or
  - required to furnish a return.
- Any taxpayer who already has an income tax number before or on 1<sup>st</sup> January 2022 need not to obtain a TIN and that income tax number shall be deemed to be the TIN for that relevant taxpayer.

### **ii. Implementation of TIN under the ITA 1967**

- Taxpayers who have an income tax number as specified under Section 77 and Section 77A of the ITA 1967 are required to submit income tax return forms.
- Individuals who have retired from employment must have an income tax number if he:-
  - is required to submit an income tax return form as specified under Section 77 of the ITA 1967;
  - perform transactions on disposal and acquisition of property or shares in real property companies under the software under the Real Property Gains Tax Act 1976 [“RPGT Act 1976”]; and
  - stamping of documents and instruments involving the transfer of property, transfer of shares and transfer of business under the Stamp Act 1949 [“SA 1949”].

### **iii. Implementation of TIN under the RPGT Act 1976**

- TIN is applicable to transactions under the RPGT Act 1976 and the use of TIN in the return forms required under the RPGT Act 1976 is mandatory.
- All parties who wish to perform transactions of disposal and acquisition of real estates or shares in real property companies must have an income tax number.
- Documents that require a TIN under the RPGT Act 1976 include:-
  - Form CKHT 1A;
  - Form CKHT 1B;
  - Form CKHT 2A;
  - Form CKHT 3;
  - Payment under Section 21B of the RPGT Act 1976 through Form CKHT 502 by the acquirer; and
  - Correspondence and appeal.

iv. Implementation of TIN under the SA 1949

- TIN is applicable to transactions under the SA 1949 and the use of TIN in the stamping application involving transactions under the SA 1949 is mandatory.
- In the initial phase of implementation, documents and instruments for stamping related to the transfer of property, transfer of shares and transfer of business for categories of companies and individuals will need to use an income tax number.

### **Update on Labuan International Commodity Trading Companies - Requirement for Trading Activity**

Pursuant to Labuan Business Activity Tax (Exemption) Order 2013, Labuan International Commodity Trading Company ["LICTC"] is exempted from tax in respect of income derived from qualifying activity, i.e. trading of physical and related derivative instruments of LNG in any currency other than Ringgit for a period of 3 consecutive years commencing from the first year of its operation.

Following the 2019 Budget announcement, the [\*Labuan Business Activity Tax \(Exemption\) 2013 \(Amendment\) Order 2021\*](#) has been gazetted to provide that the requirement for the trading activity to be conducted with "non-resident companies in currency other than Malaysian currency" has been removed.

The Order is deemed to have come into operation on 1<sup>st</sup> January 2019.

### **Update on Labuan International Commodity Trading Company - No Election to be Charged to Tax at RM20,000**

Pursuant to the Labuan Business Activity Tax (Exemption) (No. 2) Order 2013, the LICTC is exempted from the provision of Section 7(1) of the Labuan Business Activity Tax Act 1990 ["LBATA 1990"], i.e. no election to be made by the LICTC to be charged to tax at RM20,000 for a year of assessment and tax shall be charged at 3% of the chargeable profits per the audited accounts for the basis period for a year of assessment.

The aforesaid provision under Section 7(1) of the LBATA 1990 has subsequently been deleted pursuant to the Finance Act 2018.

Following the above, the [\*Labuan Business Activity Tax Act \(Exemption\) \(No. 2\) 2013 \(Revocation\) Order 2021\*](#) has been gazetted to revoke the Labuan Business Activity Tax (Exemption) (No. 2) Order 2013 as it is no longer relevant.

The above Order shall have effect from YA 2020.

### **Exemption from Application of Minimum Number of Full-time Employees Requirement for a Pure Equity Holding Entity Carrying on Labuan Business Activity**

Pursuant to the Labuan Business Activity Tax (Exemption) Order 2020 ["principal Order"], a pure equity holding Labuan entity carrying on a Labuan business activity is exempted from application of minimum number of full-time employees in Labuan.

In the Budget 2021, the substance activity requirements for the purpose of the Labuan business activity were segregated into Labuan trading activity [under Subsection 2B(1)(b)(i) of LBATA 1990] and Labuan non-trading activity [under Subsection 2B(1)(b)(ii) of LBATA 1990].

As a consequence of the above amendments the [Labuan Business Activity Tax \(Exemption\) 2020 \(Amendment\) Order 2021](#) has been gazetted to amend the reference to “Subsection 2B(1)(b)(i)” previously under the principal Order to “Subsection 2B(1)(b)(ii)(A)”.

The Order is deemed to have come into operation on 1<sup>st</sup> January 2021.

**Note :** For further information on the above Labuan Business Activity (Exemption) Order 2020, kindly refer to our [Tax Flash - August 2020](#) issue.

### Substance Requirements for Labuan International Commodity Trading Company

The [Labuan Business Activity Tax \(Requirements for Labuan International Commodity Trading Company\) Regulations 2021](#) has been gazetted to specify the requirements of full time employees and minimum amount of annual operating expenditure in Labuan for LICTC as follows:-

	Minimum Full-time Employees	Minimum Annual Operating Expenditure (RM)	Effective Date
LICTC	3	3 million	1.1.2019 to 31.12.2020
LICTC with not more than 5 related companies to carry on qualifying activity	3 (including 2 based in Labuan operational office)	3 million in Malaysia (including minimum of RM100,000 incurred in Labuan)	1.1.2021 onwards

Where the LICTC has more than five related companies to carry on the qualifying activity, that LICTC must also have an additional full-time employee in its business operational office in Labuan for every addition of up to five related companies in a group of companies.

For the purpose of the above Regulations:-

“**LICTC**” means a Labuan company which:-

- is incorporated or registered under the Labuan Companies Act 1990;
- is licensed under Section 92 of the Labuan Financial Services and Securities Act 2010;
- maintains a registered office in Labuan but is allowed to establish its business operational office anywhere in Malaysia; and
- undertakes a qualifying activity under the Global Incentives for Trading programme.

“**Global Incentives for Trading**” means a programme of incentives for a Labuan International Commodity Trading Company to use Malaysia as its international trading base to undertake a qualifying activity.

“**Qualifying activity**” means the trading of physical products and related derivative instruments in relation to petroleum and petroleum-related products including liquefied natural gas, minerals, agriculture products, refined raw materials, chemicals, base minerals or coal.

### Update on Labuan Business Activity Tax (Requirements for Labuan Business Activity)

Pursuant to the amendments to Section 2B(1) of the LBATA 1990 (as introduced in the Budget 2019), a Labuan entity carrying on a Labuan business activity must have an adequate number of full time employees in Labuan and adequate amount of annual operating expenditure in Labuan as prescribed by the Minister to be eligible for the preferential tax rate under that Act.

The Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 which came into operation on 1<sup>st</sup> January 2019 was gazetted to prescribe the substance requirements to be complied with by Labuan entities carrying on Labuan business activities. Thereafter, amendments to the aforesaid Regulations as well as several exemptions / revisions / clarifications have been issued by the Labuan Financial Services Authority ["LFSA"] relating to the substance requirements.

Following the above, the [Labuan Business Activity \(Requirements for Labuan Business Activity\) Regulations 2021](#) ["new Regulations 2021"] has recently been gazetted to replace the previous Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018. The substance requirements for Labuan entities carrying on Labuan trading activities and Labuan non-trading activities are provided in the First Schedule and Second Schedule of the new Regulations 2021 respectively.

In addition, the LFSA has issued the [FAQ on Labuan Business Activity Tax \(Requirement for Labuan Business Activity\) Regulations 2021](#) to provide further details on the activities for the following services undertaken by a Labuan entity mentioned in Item 20 of the First Schedule of the new Regulations 2021:-

- Administrative services;
- Accounting services;
- Legal services;
- Backroom processing services;
- Payroll services;
- Talent management services;
- Agency services;
- Insolvency related service; and
- Management services.

Besides, Regulation 3 of the new Regulations 2021 also provides that a Labuan entity carrying on a Labuan non-trading activity must adhere to certain conditions in relation to control and management in Labuan as stated therein.

The new Regulations 2021 are deemed to have come into operation on 1<sup>st</sup> January 2019, except for Regulation 3 which is deemed to have come into operation on 1<sup>st</sup> January 2021.

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