



MOORE Advent

TAX FLASH

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Income Tax (Amendment) Act 2024

The *Income Tax (Amendment) Act 2024* has been gazetted on 20th May 2024. The salient amendments include:-

i. Capital Gains Tax [“CGT”]

- Redefinition of "Capital Assets"
 - The definition of “capital assets” under Section 2(1) of the Income Tax Act 1067 [“ITA 1967”] has been substituted to directly specify the types of capital assets which are subject to CGT as below:-
 - “Capital assets” means:-
 - movable or immovable property situated outside Malaysia including any rights or interests thereof; or
 - movable property situated in Malaysia which is a share of a company incorporated in Malaysia not listed on the stock exchange (including any rights or interests thereof) owned by a company, limited liability partnership [“LLP”], trust body or co-operative society.
 - A sequential amendment to Part XXI, Schedule 1 of the ITA 1967 is made to specify the tax rates applicable to the types of capital assets subject to CGT.
 - With the new definition of “capital assets”, the scope of capital assets subject to income tax provision as stipulated under the proviso to Paragraph 38, Schedule 6 of the ITA 1967 has now been removed.
 - Effective 21st May 2024.
- Chargeable Person who is Subject to CGT for Section 15C Shares
 - Pursuant to Section 15C(1) of the ITA 1967, gains or profits accruing to a person in a year of assessment on the disposal of capital asset which is a share of a controlled company [“relevant company”] incorporated outside Malaysia shall be deemed to be derived from Malaysia where the relevant company owns real property situated in Malaysia or shares of another controlled company or both.
 - Section 15C(1) of the ITA 1967 has been amended to clearly specify that only disposal of Section 15C Shares by a company, LLP, trust body or co-operative society (instead of “a person” previously) is subject to CGT.
 - Effective 21st May 2024.
- “Defined Value” for the Purpose of Section 15C Shares
 - The “defined value” for the purpose of Section 15C Shares as referred to under Section 15C(5) of the ITA 1967 has been amended to rectify that the “defined value” means the market value of real property or the acquisition price of shares of another controlled company as determined under Section 15C(4) of the ITA 1967 (instead of Section 15(2) of the ITA 1967 previously).
 - Effective 21st May 2024.
- Definition of “Shares”
 - The definition of “shares” under Section 65C of the ITA 1967 has been removed. With this deletion, the definition of “shares” under Section 2(1) of the ITA 1967 is applicable for the purpose of CGT.
 - Effective 21st May 2024.

ii. e-Invoicing

- Issuance of Receipt to Buyers
 - Pursuant to Section 82(2B) of the ITA 1967, a person is required to submit to the Director General of Inland Revenue [“DGIR”] a consolidated transaction invoice where the person shall issue a printed receipt for every sum received in that year of assessment in respect of goods sold or services performed.

- The aforesaid Section 82(2B) of the ITA 1967 has been amended to specify that the issuance of receipt to buyers may be made in any manner and not limited to printed receipt.
- Effective 1st January 2024.
- **Electronic Commerce Platform Provider to Issue Self-Billed Invoice**
 - Pursuant to Section 82C(6) of the ITA 1967, subject to the conditions as may be determined by the DGIR, where for any year of assessment a person acquires any goods sold or enjoys any services performed, the person shall for that year of assessment issue a self-billed invoice in accordance with the conditions as may be imposed by the DGIR and the invoice shall be treated as an electronic invoice.
 - The aforesaid Section 82C(6) of the ITA 1967 has been amended/substituted to specify that the above requirement to issue a self-billed invoice in accordance with the conditions and specifications as determined by the DGIR is extended to an electronic commerce platform provider.
 - Effective 1st January 2024.

iii. Revision of Estimate of Tax Payable

- **Redefinition of "Revised Estimate"**
 - Effective year of assessment ["YA"] 2024, Section 107C(7) of the ITA 1967 allows a company, LLP, trust body or co-operative society to furnish to the DGIR a revised estimate of its tax payable for a year of assessment in the 6th month, 9th month or 11th month, or in all three months of the basis period for that year of assessment.
 - In line with the above, the definition of "revised estimate" under Section 107C(12) of the ITA 1967 has been amended to include a revised estimate made in the 11th month of the basis period.
 - Effective YA 2024.

Labuan Business Activity Tax (Amendment) Act 2024

The *Labuan Business Activity Tax (Amendment) Act 2024* has been gazetted on 20th May 2024.

In line with the amendment made under the ITA 1967, Section 22DA of the Labuan Business Activity Tax Act 1990 has also been amended to specify that an electronic commerce platform provider is required to issue self-billed e-invoice in accordance with the conditions imposed by the DGIR in respect of any goods sold or services performed by any other person.

The above amendment is deemed to have effect from 1st January 2024.

Update on Qualifying Conditions for Tax Exemption on Foreign-Sourced Dividend Received by Resident Companies, LLP and Individuals (in Respect of Dividend Income Received Through a Partnership Business in Malaysia)

Pursuant to the Guidelines of Tax Treatment in Relation to Income Received from Abroad dated 29th December 2022 ["the Guideline"], foreign dividend income received in Malaysia by a resident company, LLP and individual (through a partnership business in Malaysia) [hereinafter referred to as "the qualifying person"] from 1st January 2022 until 31st December 2026 is exempted from tax on the conditions that:-

- a. the dividend income has been subjected to tax in the country of origin which the income arises;
- b. the headline tax rate in the country of origin is not less than 15%; and
- c. the economic substance requirement is complied with.

Subsequent to the above and in response to the Chartered Tax Institute of Malaysia's request for reconsideration to relax the economic substance requirement condition, the Ministry of Finance ["MOF"] has agreed in principal that with effect from YA 2023, either of the following must be fulfilled to be eligible for the tax exemption:-

- "subject to tax" condition [per (a) above] and "headline tax rate" condition [per (b) above]; or
- the economic substance requirement.

Note: For further details, kindly refer to our [Tax Flash - August 2022](#) and [Tax Flash - November 2022 \(Special Edition\) issues](#) and our [News Update dated 17th January 2023](#).

Guidelines on Application for Tax Deduction for Cash Contribution or Financing for Environmental Preservation and Conservation Projects

In the 2024 Budget, it was proposed that tax deduction be given to entities contributing or sponsoring activities related to tree planting or environmental, preservation and conservation awareness projects verified by the Forest Research Institute Malaysia ["FRIM"]. Following this, the MOF has recently issued the [Guidelines on Application for Tax Deduction under Section 34\(6\) of the ITA 1967 for Cash Contribution or Financing for Environmental Preservation and Conservation Projects](#) dated 15th April 2024 (in *Bahasa Malaysia*) to provide clarification regarding the criteria and application procedure for the deduction claim to support the corporate social responsibilities programme ["CSR"] implemented by FRIM.

Salient points of the abovementioned Guidelines include:-

i. Eligibility Criteria

- CSR programmes or activities related to tree planting that involve public and are carried out together with FRIM either at FRIM Kepong main campus, Taman Botani Kepong or *Stesen Penyelidikan* FRIM ["SPF"] below:-
 - SPF Pasoh, Negeri Sembilan;
 - SPF Mata Ayeh, Perlis;
 - SPF Bidor, Perak;
 - SPF Gua Tempurung, Perak;
 - SPF Segamat, Johor;
 - SPF Jengka, Pahang;
 - SPF Setiu, Terengganu;
 - SPF Maran, Pahang;
 - SPF Jeli, Kelantan; and
 - SPF Selandar, Melaka.
- Short-term projects (maximum 12 months) such as activities / projects / campaigns / workshops / seminars / conferences that aim to increase public awareness of the preservation and conservation of the environment, forests and biodiversity that held in collaboration with FRIM.

ii. Form of Contribution

- Cash contribution; or
- Financing of activities / projects / campaigns / workshops / seminars / conferences.

iii. Eligible Applicants

- Companies registered under the Companies Act 2016.

iv. Confirmation of Contributions by FRIM

- Contributions should be channelled to FRIM only.
- Contributors must obtain an official receipt or letter of acceptance with the amount of contribution from the verifying agency (FRIM) with an official stamp.

v. General Application Procedures

- Contributors must apply for approval of deductions in writing providing the information based on the format as per Lampiran III of the Guidelines.
- The flowchart of the application process is as per Lampiran IV of the Guidelines.
- Application must be submitted to *Setiausaha Bahagian Cukai* for processing.

vi. Application Period

- Application for the above tax deduction must be received by MOF from 1st January 2024 to 31st December 2026.

Tax Exemption on Income Deriving from Islamic Finance Related Trading Activity by Labuan Entities

Following the 2024 Budget announcement, the *Labuan Business Activity Tax (Exemption) Order 2024* ["Exemption Order"] has been gazetted to provide exemption of income tax to Labuan entities that undertake qualifying Islamic Finance-related trading activities.

The salient points included in the abovementioned Exemption Order are as follows:-

- A Labuan entity specified under column (2) of the Schedule to the Exemption Order is exempted from income tax in respect of any income derived from a qualifying activity in the basis period for a year of assessment.
- "**Qualifying activity**" means a Labuan trading activity in relation to Islamic Finance for promoted sections specified in column (3) of the Schedule to the Exemption Order.
- Where a Labuan entity which is granted exemption under the Exemption Order carries on a qualifying activity and activity/business other than the qualifying activity, each of the activity/business shall be treated as a separate and distinct source of activity/business and a separate account for income derived from each activity/business shall be maintained.

The Exemption Order shall have effect from the YA 2024 to YA 2028.

Service Tax Guides

The Royal Malaysian Customs Department ["RMCD"] has published the following service tax guides recently:-

- *Guide on Employment Services* dated 14th May 2024 (currently only made available in *Bahasa Malaysia*);
- *Guide on Domestic Flights* dated 30th May 2024 (currently only made available in *Bahasa Malaysia*); and
- *Guide on Customs Agent Services* dated 30th May 2024 (currently only made available in *Bahasa Malaysia*).

Public Ruling No. 3/2024 – Explanation of the Meaning of Words “Used Directly” or “Directly Used” in the Sales Tax (Persons Exempted from Payment of Tax) Order 2018

RMCD has published the *Public Ruling No. 3/2024 – Explanation of the Meaning of Words “Used Directly” or “Directly Used” in the Sales Tax (Persons Exempted from Payment of Tax) Order 2018* dated 1st June 2024 (currently only made available in *Bahasa Malaysia*) which takes effect from the date of publication.

The terms “**Used Directly**” or “**Directly Used**” in:-

- Column (3) of Items 47 and 48 to Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [“the Order”];
- Column (4) of Items 33A, 33B, 46, 55, 63 and 65 to Schedule A of the Order; or
- Column (4) of Item 3 to Schedule B of the Order;

in respect of the goods used in manufacturing processes including packaging, maintenance, repair and overhaul activity, production related to upstream petroleum activities, construction and maintenance of plants, hotel business operations or haulage operations conducted by qualified persons listed in the Order shall be:-

- located within the premises of the persons listed in Column (2) to Schedule A or B of the Order when the process or activity is carried out;
- changed or transformed from raw materials or components to finished goods up to the wrapping and packaging process; or
- used for the purpose of handling or transportation when the process or activity is carried out.

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