



## TAX FLASH

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### **Operational Guidelines 4/2024 - Pilot Implementation of Tax Compliance Certificate for Government Procurement Applications for Consultancy Work and Services (Physical)**

Following the positive impact of the Tax Compliance Certificate [“TCC”] requirement for the procurement of supplies and services that came into effect on 1<sup>st</sup> February 2024, the Inland Revenue Board [“IRB”] has recently issued the [\*Operational Guidelines 4/2024 - Pilot Implementation of Tax Compliance Certificate for Government Procurement Applications for Consultancy Work and Services \(Physical\)\*](#) dated 30<sup>th</sup> September 2024 to provide guidance on the implementation procedure of TCC for the procurement of physical works and consulting services from 1<sup>st</sup> October 2024 to 31<sup>st</sup> March 2025.

Salient points of the Guidelines include:-

- i. TCC issued by the IRB forms part of a pre-requisite document for a bidder/taxpayer who intends to tender for government procurement.
- ii. The pilot agencies involved are as follows:-
  - Public Works Department / *Jabatan Kerja Raya*; and
  - Department of Irrigation and Drainage / *Jabatan Pengairan dan Saliran*.
- iii. Bidder/taxpayer is not required to apply for the TCC as it will be issued automatically by the IRB.
- iv. TCC can be accessed by the bidder/taxpayer's authorised person and checked from the MyTax portal. Tax agents do not have the authority to check the status of the TCC.
- v. Tax compliance criteria for the purposes of TCC are:-
  - Submission of the annual income tax return form within the stipulated deadline; and
  - No outstanding taxes and/or in compliance with the on-going scheduled tax instalments.
- vi. TCC is also mandatory for bidders from member countries of free trade agreement participating in the government procurement. There will be no exemption from submission of TCC for bidders located in free trade zone or free industrial zone as defined under Section 2 of the Free Zone Act 1990.

### **Capital Gains Tax Exemption for Disposal of Shares Related to Restructuring of Companies Scheme and Initial Public Offering**

Following the 2024 Budget announcement, the following Orders have been gazetted:-

- *Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024*; and
- *Income Tax (Initial Public Offering) (Exemption) Order 2024*,

to allow for tax exemption on the gains or profits from the disposal of shares related to restructuring of companies within the same group and initial public offering ["IPO"] exercise approved by Bursa Malaysia Securities Berhad ["Bursa Malaysia"].

Salient points of the above Orders are as below:-

#### **i. Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024**

- The Exemption Order provides exemption to a company, limited liability partnership ["LLP"], trust body or co-operative society from the payment of Capital Gains Tax ["CGT"] in respect of chargeable income from gains or profits received from the disposal of shares of a company incorporated in Malaysia which is not listed on the stock exchange to a tax resident company.
- The conditions for exemption are as follows:-
  - the disposal of shares shall be made within the period from 1<sup>st</sup> March 2024 to 31<sup>st</sup> December 2028;
  - the shares disposed of must be under a scheme for restructuring of companies within the same group to increase efficiency in the operation of the disposer, or the acquirer company, or both; and
  - the consideration for the disposal of shares shall consist of shares in the acquirer company or at least 75% of shares in the acquirer company, with the balance of a money payment and the shares shall be issued to the disposer.
- A written application is required to be made to the Director General of Inland Revenue ["DGIR"] after three years from the date of disposal of shares.
- The disposer company shall comply with the conditions as specified in the guidelines issued by the DGIR under Section 134A of the Income Tax Act 1967 ["ITA 1967"].
- The exemption does not change the requirement to file CGT returns.

- Any losses from the disposal of shares will not be carried forward and shall be disregarded.
- If the acquirer company subsequently disposes of the shares, the acquisition amount or value of consideration determined shall be deemed to be equal to the amount or value of consideration determined under Section 65E(2)(b) of the ITA 1967 paid plus the allowable expenses under Section 65E(2)(a)(i) and (ii) of the ITA 1967 incurred by the disposer company.
- The Exemption Order does not apply if:-
  - the gains from disposal of shares are subject to tax as business income under Section 4(a) of the ITA 1967;
  - the disposal of shares is in respect of restructuring of any companies for an IPO where the application for the IPO has been made to the Securities Commission ["SC"] or Bursa Malaysia; or
  - exemptions have been granted under Section 127(3)(b) or Section 127(3A) of the ITA 1967 in respect of the same shares.
- This exemption has effect from 1<sup>st</sup> March 2024 to 31<sup>st</sup> December 2028.

## ii. Income Tax (Initial Public Offering) (Exemption) Order 2024

- The Exemption Order provides exemption to a company, LLP, trust body or co-operative society from payment of CGT in respect of chargeable income from gains or profits received from the disposal of shares of a company incorporated in Malaysia which is not listed on the stock exchange.
- The conditions for exemption are as follows:-
  - the disposal of shares shall be made within the period from 1<sup>st</sup> March 2024 to 31<sup>st</sup> December 2028;
  - the shares disposed of are in relation to restructuring of any company for an IPO;
  - the application for IPO must be made within one year from the date of disposal of shares to:-
    - the SC for listing on the Main Market; or
    - Bursa Malaysia for listing on the Access, Certainty, Efficiency Market and Leading Entrepreneur Accelerator Platform Market; and
  - the approval for the application of the IPO shall be obtained on or before 31<sup>st</sup> December 2028.
- A written application is required to be made to the DGIR within one year from the date of approval of the SC or Bursa Malaysia.
- The exemption does not change the requirement to file CGT returns.
- Any losses from the disposal of shares will not be carried forward and shall be disregarded.
- The Exemption Order does not apply if:-
  - the gains from disposal of shares are subject to tax as business income under Section 4(a) of the ITA 1967;
  - an application has been made for exemption under the Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024; or
  - exemptions have been granted under Section 127(3)(b) or Section 127(3A) of the ITA 1967 in respect of the same shares.
- This exemption has effect from 1<sup>st</sup> March 2024 to 31<sup>st</sup> December 2028.

## Review of Accelerated Capital Allowance for Development Cost of Customised Computer Software and Information and Communication Technology Equipment

Following the 2024 Budget announcement, the Rules below have been gazetted to revise the initial allowance rate from 20% to 40% on the capital expenditure incurred for the development of customised computer software and purchase of information and communication technology equipment:-

- *Income Tax (Capital Allowance) (Development Cost for Customised Computer Software) Rules 2024;*  
and

- *Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2024.*

With the revised initial allowance rate, the capital allowance on the qualifying expenditure will be fully claimed in 3 years of assessment.

The above Rules shall have effect from the year of assessment ["YA"] 2024. The Income Tax (Capital Allowance) (Development Cost for Customised Computer Software) Rules 2019 and Income Tax (Accelerated Capital Allowance) (Information Communication Technology Equipment) Rules 2018 shall be revoked with effect from YA 2024.

### **Stamp Duty Exemption for Financing Programme Between Independent Smallholder of Oil Palm and Agrobank**

The *Stamp Duty (Exemption) Order 2024* has been gazetted to provide exemption from stamp duty for financing agreement under the Independent Smallholder Oil Palm Replanting incentive programme executed between an individual and Bank Pertanian Malaysia Berhad (Agrobank).

The above exemption applies to the financing agreement executed from 7<sup>th</sup> March 2024 to 31<sup>st</sup> December 2027.

### **Tax Incentive for Forest City Special Financial Zone**

Recently, the Government has announced the financial incentive package for the Forest City Special Financial Zone ["FCSFZ"]. This is in line with the Government's effort to attracts foreign investment, fostering talent development and promoting Forest City (which has been declared a duty-free zone) as an international financial and economic hub in the Association of Southeast Asian Nations region.

**"Single-Family Office ["SFO"] Management Company"** is an entity that provides management services exclusively to its related Single-Family Office Vehicle ["SFOV"], handling tasks such as investment management, administrative services and other related activities for the benefit of the family members.

**"SFOV"** is a corporate vehicle which is wholly owned, directly or indirectly, by one or more individuals from a single family and established solely for the purposes of holding the investments of the family members.

The proposed financial incentive package includes:-

- i. Concessionary corporate tax rates between 0% and 5% for eligible companies.
- ii. A 15% tax rate for individual knowledge workers and Malaysians who are employed in FCSFZ.
- iii. 0% tax rate for Family Offices under the SFO Scheme coordinated by SC (targeted to be operational in the first quarter of 2025).
- iv. 5% tax rate for financial global business services, financial technology or fintech and foreign payment system operators.
- v. Other attractive incentives include special deductions on relocation costs, enhanced industrial building allowances and withholding tax exemptions will be available to banking institutions, insurance, capital market intermediaries and other eligible financial sector.
- vi. Bank Negara Malaysia will offer regulatory flexibilities for locally incorporated foreign banks to open additional branches within the FCSFZ and foreign exchange flexibilities for the purpose of offshore borrowing and investment in foreign currency.

SFO scheme (as part of the incentive package for FCSFZ) are subjected to the following conditions:-

- i. The Family Offices must establish and operate a registered office in Pulau Satu, FCSFZ.
- ii. The tax incentive is for a period of 20 years where the following conditions must be fulfilled:-

Initial 10-year period

- The SFOV must be a new investment holding company incorporated in Malaysia and is required to seek pre-registration with the SC on the eligibility of the tax incentive;
- The management company or SFO which is a related company of SFOV to be set up and operate out of Pulau Satu, FCSFZ with at least one investment professional with minimum monthly salary of RM10,000;
- The SFOV must hold asset under management ["AUM"] of at least RM30 million; meet minimum local investment in eligible and promoted investments of at least 10% of AUM or RM10 million, whichever is lower;
- The SFOV must incur operating expenditure locally for a minimum amount of RM500,000 annually; and
- The SFOV must employ at least two full-time employees (at least one investment professional with the minimum monthly salary of RM10,000).

Additional 10-year period

- The SFOV must hold AUM of at least RM50 million; meet minimum local investment in eligible and promoted investments of at least 10% of AUM or RM10 million, whichever is higher;
- The SFOV must incur operating expenditure locally (30% higher than the first 10-year period) for a minimum amount of RM650,000 annually; and
- The SFOV must employ at least four full-time employees.

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