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Malaysian developments

Stamp duty on contract notes for the trading of listed shares or stocks

In Budget 2022, the Government proposed to remove the previous RM200 stamp duty cap on contract notes for the trading of listed shares or stocks (see *Take 5: Malaysia Budget 2022*).

Thereafter, in response to feedback from various parties and to ensure that the local stock market remains dynamic, the Ministry of Finance issued a press release on 30 December 2021 stating that a stamp duty cap for each contract note will be reinstated, albeit at a higher amount of RM1,000. Any amount of stamp duty above RM1,000 will be remitted for the trading of shares or stocks listed on Bursa Malaysia, from 1 January 2022 to 31 December 2026 (see *Special Tax Alert No. 1/2022*).

To legislate the above, the following Orders were gazetted on 15 April 2022.

- **Stamp Duty (Remission) 2003 (Amendment) Order 2022 [P.U.(A) 111]**

  The Stamp Duty (Remission) 2003 Order provides that stamp duty payable on all instruments of contract notes relating to the sale of any shares, stock or marketable securities which are listed on the stock market of a stock exchange approved under Section 8(2) of the Securities Industry Act 1983 is remitted. The remission applies to stamp duty that is in excess of RM200 calculated at the prescribed rate in Item 31 of the First Schedule of the Stamp Act 1949 (SA).

  The Amendment Order, which is deemed to have come into operation on 1 January 2022, provides that the above-mentioned stamp duty remission will no longer apply to the sale of shares or stocks.

- **Stamp Duty (Remission) Order 2022 [P.U.(A) 112]**

  The Order provides that stamp duty payable on all instruments of contract notes relating to the sale of any shares or stocks listed on the stock market of a stock exchange approved under Section 8(2) of the Capital Markets and Services Act 2007, which is in excess of RM1,000, calculated at the prescribed rate in Item 31 of the First Schedule of the SA, is remitted.

  The Order is deemed to have come into operation on 1 January 2022 and will continue to be in operation until 31 December 2026.

Tax Corporate Governance (TCG) Framework and Guidelines

The Inland Revenue Board (IRB) has published on its website the new TCG Framework dated 11 April 2022, and the Guidelines to TCG Framework (Guidelines). The Guidelines are to be read together with the TCG Framework.

The TCG Framework provides an overview of the IRB's expectations on the application of TCG principles within an organizational setting. Broadly, the TCG encompasses the rules, relationships, systems and processes under which authority is exercised and controlled within an organization in relation to tax matters. It comprises the mechanisms by which businesses, office holders, and those in control are held to account.

TCG Framework

The 19-page TCG Framework comprises the following paragraphs:

1.0	Introduction
2.0	Objective of TCG Framework
3.0	The scope of TCG Framework
4.0	Benefits of having a framework
5.0	Key focus areas
6.0	Implementation
7.0	Conclusion
Appendix 1:	The six principles of a TCG Framework
Appendix 2:	Example of an organization's corporate income tax preparation and submission flowchart

Some of the salient points are outlined below.

- The components outlined in the TCG Framework should be regarded as the IRB's view of best practices and is not intended to be a rigid set of rules.

- The objective of the TCG Framework is to help organizations understand the IRB's focus areas in terms of TCG and to enable organizations to:
  - Develop and/or improve their tax governance and internal controls framework
  - Promote tax compliance and reduce tax risks
  - Test the robustness of the organization's framework
  - Understand how to demonstrate the operational effectiveness of the organization's key internal controls to stakeholders, including the IRB
  - Ensure that the financial, regulatory and reputational risks associated with taxation are identified and evaluated

- The TCG Framework outlines the scope and benefits of having a TCG Framework in place

- The TCG Framework explains the IRB's key focus areas and examples of evidence required, including the following:
  - Roles and responsibilities of stakeholders
  - Systems and control framework
  - Controls testing
  - Management of tax risks
  - Identification and documentation of significant and/or new transactions
  - Review of tax and accounting results

- A TCG Framework Programme (Programme) is established for the implementation of the TCG Framework. The Programme is an arrangement that allows the IRB and taxpayer to work together to improve the organization's corporate tax compliance affairs in an open and honest manner. It is also a platform to encourage ongoing discussions on tax risk management matters between the IRB and the taxpayer.

- The TCG Framework explains broadly the types of organizations encouraged to participate in the Programme, including large companies (including public listed companies), companies with structures and business models with medium to high complexity and companies with voluminous transactions. The TCG Framework also outlines the processes and timeframe for the Programme (refer to the Appendix to this Alert). It is relevant to note that there must be an independent reviewer for the TCG Framework, such as an in-house internal audit team or a professional firm. The TCG Framework suggests that the independent reviewer must be accredited tax practitioners.

- The TCG Framework stipulates that taxpayers will enjoy certain benefits by participating in the Programme, including the following:
  - Reduced scrutiny (e.g., no or lesser tax audits will be conducted)
  - Expedited tax refunds
  - Appointment of a dedicated tax officer to expedite discussions on technical matters

Guidelines to TCG Framework

The 22-page Guidelines comprise the following paragraphs:

1.0 Introduction
2.0 Objective
3.0 TCG principles
4.0 Terms for application of TCG Framework
5.0 Return form submission
6.0 Requirements for the implementation of TCG Framework
7.0 Tax control framework
8.0 TCG evaluation
9.0 TCG review
10.0 Submission of estimate of tax payable
11.0 Tax payment
12.0 TCG process

13.0 Significant and material transaction approval process
14.0 Supplementary documents
15.0 Scope or application
16.0 Disclosure guide
17.0 Conclusion
18.0 Enquiries
Appendix 1
Appendix 2

Some of the salient points are outlined below.

- The Guidelines were issued to support the TCG Framework through more in-depth explanations.

- The Guidelines explains more thoroughly the types of organizations encouraged to participate in the Programme, the processes, as well as the timeframe for the Programme. Participation in the Programme is on a voluntary basis.

- A tax control framework (TCF) is required for the implementation of the TCG Framework. A TCF forms an integral part of an organization's business or internal control framework, as it is a system to identify, overcome, control and report tax risks. While there is no specific format to follow, the Guidelines provide guidance on the necessary elements and key components for an effective TCF.

- The Guidelines stipulate that the IRB will conduct a TCG review for organizations that have participated in the Programme. Taxpayers who fulfil the necessary requirements and criteria will qualify for the benefits of the Programme and shall not be subject to audit and investigations.

  The taxpayer's internal TCG review report on tax matters should be made available to the IRB upon request. The IRB may use the documents for the review of the taxpayer's tax position and consideration of a penalty waiver in the event of any tax issues.

Corrigendum on the Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2022

As highlighted in an earlier alert, the Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2022 [P.U.(A) 93] was gazetted on 1 April 2022 (see *Tax Alert No. 7/2022*).

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2022 Corrigendum [P.U.(A) 102] was gazetted on 8 April 2022 to replace references to the "Loans Guarantee (Bodies Corporate) (Remittance of Tax and Stamp Duty) Order 2022" with those of the "Loans Guarantee (Bodies Corporate) (Remittance of Tax and Stamp Duty) (No. 2) Order 2022".

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2022 [P.U.(A) 105] was gazetted on 11 April 2022. The Order provides that any tax payable under the Income Tax Act 1967 (ITA) and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

(a) Term Financing-i Facility (TF-i Facility) obtained by the Public Sector Home Financing Board from CIMB Islamic Bank Berhad with the aggregate principal amount not exceeding RM1 billion, and
(b) Guarantee given or to be given by the Government of Malaysia in relation to the TF-i Facility

Overseas developments

Japan enacts 2022 tax reform bill

On 22 March 2022, Japan's 2022 tax reform bill (the Bill) was enacted following the passage of the Bill by the Japanese Diet. The Bill was promulgated on 31 March 2022 along with the relevant tax law enforcement order and mostly follows the 2022 tax reform outline announced by Japan's coalition leading parties in December 2021. The amendments generally apply to taxable years beginning on or after 1 April 2022 unless otherwise specified.

The key provisions relevant to multinational corporate taxpayers are summarized below.

Detailed discussion

Increased employee compensation credit

To achieve an appropriate distribution of wealth to society and stimulate Japan's economy, the existing increased employee compensation credit was refined to encourage businesses to provide company-wide pay raises. Currently, if the compensation paid to newly hired employees in the current year increases by 2% or more, as compared to the compensation paid to newly hired employees in the previous year, the compensation paid to newly hired employees in the current year is eligible for a 15% to 20% tax credit subject to certain conditions.

The 2022 tax reform amends this provision whereby if the total compensation paid to specified employees in the current year beginning between 1 April 2022 and 31 March 2024 increases by 3% or more as compared to the total compensation paid to specified employees in the previous year, the excess of the current year's compensation over the previous year's compensation is eligible for a 15% to 30% tax credit (capped at 20% of the corporate income tax payable).

In this regard, the 2022 tax reform also provides that:

- Companies with a common capital of JPY1 billion (approximately US$9 million) or more, and full-time employees of 1,000 or more, must notify the Ministry of Economy, Trade and Industry that the company has disclosed online their pay raise policy, customer relationship policy, etc. to be eligible for this regime.
- This regime is not available in the year of incorporation of a company.
- Certain small and medium-sized enterprises (SMEs) are eligible for lower thresholds and more beneficial credits.
- A similar regime is applicable for local enterprise tax.

Conditions for certain tax incentives

In order to claim certain tax incentives such as the research and development (R&D) tax credit, companies (except for certain SMEs) must satisfy either of the following conditions (unless the current year's taxable income is less than the previous year's taxable income):

- Total compensation paid to specified employees in the current year is more than that in the previous year.
- Domestic investment in depreciable assets is more than 30% of depreciation expense.

Post the 2022 tax reform, for companies with a common capital of JPY1 billion or more, and full-time employees of 1,000 or more, which reported taxable income in the previous year, the first condition is further restricted such that the total compensation paid to specified employees in the current year must be increased by 0.5% or more for the fiscal years beginning between 1 April 2022 and 31 March 2023, and by 1% or more thereafter, respectively, as compared to the previous year.

Domestic dividend withholding tax

Under the existing law, dividends paid by a Japanese company to another Japanese company are subject to withholding tax at a rate of 20.42%. Such withholding taxes are typically fully creditable or refundable for the dividend recipient. Such domestic dividend withholding tax is eliminated for dividends to be paid on or after 1 October 2023 if the dividends are paid to a Japanese company by the following Japanese companies:

- A 100% group company
- A company where the dividend recipient directly owns greater than one-third of such company on the dividend record date

Distributions out of capital surplus

Distributions out of capital surplus are bifurcated into: (i) deemed dividends; and (ii) return of capital in accordance with the formula stipulated under the Japanese tax law. The 2022 tax reform amends the formula such that the amount of such return of capital is capped at the amount of the capital surplus that is debited for accounting/legal purposes with respect to the distributions. This change is to reflect the recent Supreme Court decision on such distributions.

For companies that issue different classes of shares, the amount of such return of capital is calculated based on the particular class of shares associated with the distributions.

Low-value depreciable assets

Under the existing law, depreciable assets with an acquisition cost below JPY100,000 (approximately US$909) can be deductible upon acquisition, and depreciable assets with an acquisition cost below JPY200,000 (approximately US$1,818) can be deductible over three years. The 2022 tax reform excludes assets that are used for rental purposes (unless such rental activity is part of the company's primary business) from accessing this provision, and hence such assets need to be depreciated over their useful life.

Open innovation tax incentive

The existing open innovation tax incentive, which provides a deduction equivalent to 25% of the eligible investment in qualified venture companies, continues to be available with the following amendments:

- The venture company must have been in existence for less than 15 years (currently, 10 years) if it is loss making and its R&D expenditures comprise 10% or more of its gross revenue.
- The expected investment period condition (which, if not satisfied, might cause a tax recapture, for example, if the investment in the venture company is disposed of) is revised to three years (currently, five years).

Tax basis adjustment under the group profit and loss sharing regime

For fiscal years beginning on or after 1 April 2022, Japan's existing tax consolidation regime automatically transitions to the group profit and loss sharing regime, as introduced under the 2020 tax reform. The 2022 tax reform revises, among others, the tax basis adjustment rule under the group profit and loss sharing regime as provided below:

- Under the current rule, when a group company ceases to be part of the group (e.g., the stock of the group company is sold to a third party), the tax basis in the group company is adjusted to the tax book value of the net assets of the group company. Accordingly, the shareholder of the group company may lose the opportunity to claim a deduction for part of the original acquisition cost of the group company.[8]
- Under the new rule, in addition to the current rule, an amount equivalent to the goodwill[9] of the group company can be added to its tax basis, subject to certain documentation requirements.[10]

The new rule also applies to group companies that commenced or joined the existing tax consolidation regime and transitioned to the group profit and loss sharing regime.

Tax deferral for government subsidy

The existing law provides a tax deferral regime for certain income such as government subsidies in connection with qualified asset acquisitions. The 2022 tax reform clarifies the implications of the deferral when the subsidy is granted after the acquisition of the assets.

Earnings-stripping rule

Under the existing law, a deduction for certain net interest expenses is restricted to 20% of the adjusted taxable income. For foreign companies, this rule is currently applicable only in relation to domestic source income attributed to the foreign company's permanent establishment (PE). The 2022 tax reform expands the scope of domestic source income subject to the earnings-stripping rule to: (1) domestic source income of foreign companies with a PE, but not attributable to the PE; and (2) domestic source income of foreign companies without a PE.

Japanese consumption tax (JCT) qualified invoice system

The new JCT qualified invoice system will come into effect from 1 October 2023, and JCT taxpayers will be required to register as a qualified invoice issuer to be able to provide a qualified invoice, enabling buyers to claim a credit for input JCT.

The 2022 tax reform amends, among others, the registration process as provided below:

- Currently, an exception allows an exempt taxpayer to register as a qualified invoice issuer in the middle of a taxable period and become a qualified invoice issuer from the registration date, but only for the taxable period that includes 1 October 2023. The 2022 tax reform expands the applicability of this exception to taxable periods that include any day between 1 October 2023 and 30 September 2029.
- If the expanded exception applies, the qualified invoice issuer cannot revert to an exempt taxpayer for the following taxable periods until the taxable period that includes the day two years after the registration date.
- The tax authority is entitled to reject the registration application by foreign businesses, or revoke the registration of foreign businesses, which are required to assign a tax representative in Japan in accordance with General Law of National Taxes, but are not compliant with such requirement.

Base Erosion and Profit Shifting (BEPS) 2.0

The 2022 tax reform outline clarifies that Japan strongly supports the OECD/G20 Inclusive Framework on the BEPS Two-Pillar solution agreed internationally in October 2021 to address the tax challenges arising from the digitalization of the economy. The 2022 tax reform outline also indicates that the Japanese Government will continue to contribute to the discussion and ensure that the new rules come into effect in accordance with the agreement, while balancing the potential incremental burden for taxpayers and any existing relevant rules.

Indian Fiscal Budget 2022 – Key tax proposals for individuals

The Finance Minister of India presented the Finance Bill for the tax year 2022/23 in the Indian Parliament on 1 February 2022. The bill (now Finance Act) has been passed by Parliament with a number of amendments and received the assent of the President of India. These amendments are intended to address certain ambiguities arising from proposals contained in the bill. These changes apply to the Indian tax year 2022/23 (1 April 2022 – 31 March 2023), unless specifically provided otherwise.

Key amendments impacting individual taxpayers include:

- Set-off of losses from one Virtual Digital Asset (VDA) against income/gains from the transfer of another VDA
- Additional clarification provided in connection with withholding tax provisions on the benefits and perks arising in the course of business or profession
- Timeline for the completion of the income tax audit for tax year 2019-20 is extended

Set-off of losses from one VDA against income/gains from the transfer of another VDA may not be allowed

Income from the transfer of VDAs is taxable at 30% along with applicable surcharge, and losses cannot be set-off against any other income. Previously there was some ambiguity as to whether such losses could be set-off.

Amendments have been made in the Finance Bill which may mean that the set-off of losses from one VDA against the income/gains from the transfer of another VDA would not be permitted. Also, such losses shall not be allowed to be carried forward to succeeding years.

Additional clarification provided in connection with withholding tax provisions on the benefits and perks arising in the course of business or through a profession

Under the Finance Bill proposals, any person providing a benefit or perk to a resident individual, whether convertible into money or not, arising from business or the exercise of a profession, must before providing such benefit or perk, deduct tax at 10% on the total value of such benefits or perks. No tax deduction at source is required if the value does not exceed INR 20,000 (USD 267) during the tax year.

The Finance Bill also proposed that where there is insufficient cash from which to deduct the tax due (i.e., where the benefit or perk is received partly in cash and partly in-kind, or wholly in-kind, then the person responsible for withholding must ensure that the applicable taxes are paid before the benefit or perk is provided. The Finance Act has now clarified that such tax should be equal to the withholding tax due irrespective of the employee's marginal tax rate. For example, if the total value is INR 100,000 (USD 1.333), then the payer should ensure the payment of tax by the payee of the INR 10,000 (USD 133) at the 10% rate even if the tax rate applicable to the payee is higher.

Filing of updated tax return possible for a previously filed return

In accordance with the Finance Bill, taxpayers are to be granted additional time to file an updated tax return to make corrections or report any omissions within 36 months from the end of the tax year, subject to various conditions.

Previously, the filing of an updated return was not possible for reporting losses.

The Finance Act has now provided that a taxpayer can file an updated return for a tax year even where the previously filed return for that tax year reported a net loss.

Timeline for the completion of an income tax audit for fiscal year 2019-20 extended

The Finance Act prescribes that the completion of an income tax audit for the tax year 2019-20 has been extended from 31 March 2022 to 30 September 2022.

Key steps

The provisions of the Finance Bill have been enacted and received the assent of the President of India. The Finance Act was published in the Official Gazette on 30 March 2022. Hence, these changes shall be applicable for the Indian Fiscal Year 2022/23 (1 April 2022 – 31 March 2023), unless specifically provided otherwise.

Processes of the TCG Framework

Step 1: Getting ready

(a) Satisfy prerequisites
(b) Preliminary self-assessment*
(c) Submission of the participation form (notice of acceptance within 14 days from the submission of the participation form)

Step 2: Review by independent reviewer

(a) Appointment of an independent reviewer by the participants to perform a review assessment on the TCG Framework
(b) The independent reviewer can be a public accounting entity or independent in-house internal audit team, as long as the respective team members are accredited tax practitioners.

Step 3: Submission to the IRB

(a) Submission of a self-review assessment report and report findings prepared by the independent reviewer to the IRB (within 6 months from the approval of participation)

Step 4: Evaluation by the IRB

(a) Review the documents submitted
(b) Meetings with IRB
(c) IRB to conduct an assessment (within 6 months from the date of submission)

Step 5: Conclusion of assessment by the IRB

(a) Award of participation status of the Programme

Note:

- The proposed timeframe from the date of acceptance of the participant by the IRB (Step 1) to the award of the participation status (Step 5) is between 8 to 12 months. Applications for an extension of time will be subject to the IRB's approval.
- The validity of the awarded status is 3 years.

* Refer to Appendix 1 to the Guidelines for guidance on the self-review assessment checklist

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Important dates

30 April 2022	6^{th} month revision of tax estimates for companies with October year-end
30 April 2022	9^{th} month revision of tax estimates for companies with July year-end
30 April 2022	Special 11^{th} month revision of tax estimates for YA 2022, for companies with May 2022 year-end
30 April 2022	Statutory deadline for filing of 2021 tax returns for companies with September year-end. A blanket extension of time has been provided until 31 May 2022.
30 April 2022	Extended 2021 tax return filing deadline for companies with August year-end.
15 May 2022	Due date for monthly instalments
31 May 2022	6^{th} month revision of tax estimates for companies with November year-end
31 May 2022	9^{th} month revision of tax estimates for companies with August year-end
31 May 2022	Special 11^{th} month revision of tax estimates for YA 2022, for companies with June 2022 year-end
31 May 2022	Statutory deadline for filing of 2021 tax returns for companies with October year-end. A blanket extension of time has been provided until 30 June 2022.
31 May 2022	Extended 2021 tax return filing deadline for companies with September year-end.

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