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Malaysian developments

Ratification of Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

On 24 January 2018, in line with Malaysia's commitment to adopt internationally agreed tax standards and implement certain Base Erosion Profit Shifting (BEPS) Action Plans, Malaysia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). The signing ceremony took place at the Organisation for Economic Co-operation and Development (OECD)'s Headquarters in Paris (see *Tax Alert No. 4/2018*). Briefly, the MLI would allow the Government to effectively implement the anti-BEPS tax treaty measures by modifying existing tax treaties in a synchronized and efficient manner, without the need to renegotiate each treaty separately.

To ratify the MLI under the Income Tax Act 1967 and Petroleum (Income Tax) Act 1967, the Double Taxation Relief (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order 2020 [P.U.(A) 224] was gazetted on

4 August 2020. Further details will be provided in a special tax alert which will be issued in due course.

Stamp duty exemption on the purchase of residential property under the National Home Ownership Campaign 2020 / 2021

Under the Short-term Economic Recovery Plan (PENJANA) announced on 5 June 2020, the Government proposed to waive the stamp duty on the instruments of transfer and loan agreements for the purchase of residential property priced from RM300,001 to RM2.5 million as part of the Home Ownership Campaign (HOC), under which developers would also offer a discount of at least 10% (see *EY Take 5: COVID-19: Short-term Economic Recovery Plan*).

To legislate this proposal, the following Exemption Orders were gazetted on 28 July 2020:

- Stamp Duty (Exemption) (No. 3) Order 2020 [P.U.(A) 216]
- Stamp Duty (Exemption) (No. 4) Order 2020 [P.U.(A) 217]

The Exemption Orders will only apply if:

(a) The sale and purchase agreement (SPA) for the purchase of the residential property is between an individual and a property developer;

(b) The purchase price in the SPA is a price after a discount of at least 10% from the original price offered by the property developer, except for a residential property which is subject to controlled pricing; and

(c) The SPA is executed between 1 June 2020 and 31 May 2021 and is stamped at any branch of the Inland Revenue Board (IRB)

A HOC 2020 / 2021 Certification issued by the Real Estate and Housing Developers' Association (REHDA) Malaysia, Sabah Housing and Real Estate Developers Association (SHAREDA) or Sarawak Housing and Real Estate Developers' Associate (SHEDA) will need to be submitted by the individuals to the IRB in order to obtain the exemptions.

The following definitions have also been provided in the exemption orders:

a. **Residential property**
A house, a condominium unit, an apartment or a flat, purchased or obtained solely to be used as a dwelling house, and includes a service apartment and small office home office (SOHO) for which the property developer has obtained approval for a Developer's License and Advertising and Sales Permit under the Housing Development (Control and Licensing) Act 1966, Housing Development (Control and Licensing) Enactment 1978, Sabah or Housing Development (Control and Licensing) Ordinance 2013, Sarawak

b. **Individual**
Purchaser of a residential property who is a Malaysian citizen or co-purchasers of a residential property who are Malaysian citizens

c. **Property developer**
Property developer registered with REHDA Malaysia, SHAREDA or SHEDA

The Exemption Orders are effective 1 June 2020.

Stamp Duty (Exemption) (No. 3) Order 2020

The Order provides that any loan agreement to finance the purchase of a residential property valued from RM300,001 to RM2.5 million under the HOC 2020 / 2021, will be exempted from stamp duty.

Stamp Duty (Exemption) (No. 4) Order 2020

The Order provides that all instruments of transfer for the purchase of a residential property valued from RM300,001 to RM2.5 million (based on market value) under the HOC 2020 / 2021, will be exempted from stamp duty in respect of up to RM1 million of the market value of the residential property. Stamp duty of 3% is to be charged on the remaining value of the residential property which is in excess of RM1 million.

Real property gains tax exemption on the disposal of residential property

Under PENJANA, the Government proposed that real property gains tax (RPGT) exemption be given to Malaysian citizens on disposals of up to three (3) units of residential property between 1 June 2020 and 31 December 2021 (see *EY Take 5: COVID-19: Short-term Economic Recovery Plan*).

To legislate this, the Real Property Gains Tax (Exemption) Order 2020 [P.U.(A) 218] was gazetted on 28 July 2020. The Exemption Order provides that an individual who is a citizen, is exempted from RPGT on the chargeable gain derived from the disposal of a residential property between 1 June 2020 and 31 December 2021.

The exemption will only apply if:

(a) The number of residential properties disposed of has not exceeded three (3) units;

(b) The residential property disposed of was not acquired between 1 June 2020 to 31 December 2021 by way of a:
   (i) Transfer between spouses; or
   (ii) Gift between spouses, parent and child, or grandparent and grandchild where the donor is a citizen; and

(c) The SPA or instrument of transfer (in cases where there is no SPA) for the disposal of the residential property is executed between 1 June 2020 and 31 December 2021 and is stamped by 31 January 2022.

In cases where the disposer has disposed of more than three (3) residential properties, the disposer may elect for the exemption to apply to any three (3) properties. The elections are irrevocable.

Notwithstanding the above, the Exemption Order also provides that where a contract for the disposal of a residential property is a conditional contract which requires the approval of the Federal Government or State Government, the exemption will only apply if:

(a) The contract for the disposal of the residential property is executed between 1 June 2020 and 31 December 2021 and is stamped by 31 January 2022; and
(b) The approval of the Federal Government or State Government for the disposal is obtained from 1 June 2020.

The Exemption Order stipulates that the exemption granted does not absolve the individual from any requirement to submit any return or any other information as required under the RPGT Act 1976.

The Exemption Order is effective 1 June 2020.

Updates for Labuan entities

Extension of time for submission of tax returns under the Labuan Business Activity Tax Act 1990 (LBATA) for the year of assessment 2020

As highlighted in earlier tax alerts, it was previously clarified that Labuan entities would get an automatic extension until 29 July 2020 to submit their tax returns for the year of assessment (YA) 2020 (i.e. based on the financial year ended 2019). A further extension until 28 October 2020 was also possible upon application and subject to conditions. These extensions are only applicable to Labuan entities which are up-to-date with their tax filings and payments (see *Special Tax Alert No. 11/2020*).

Following the above, the IRB has recently confirmed that all Labuan entities would now get an automatic extension until 28 October 2020 to submit their tax returns for YA 2020. The conditions to qualify for the extension, as highlighted above, still apply.

Note:
Labuan entities which did not meet the above-mentioned conditions for the extension were given an extension until 31 May 2020 only, under the COVID-19 related tax measures.

Management and control requirement for pure equity holding Labuan entities

As highlighted in earlier tax alerts, the Labuan Investment Committee (LIC) has released several documents containing clarifications on the substance requirements for Labuan entities, including the updated list of substantial activity requirements as approved by the Minister of Finance (MoF). LIC Pronouncement 2-2019 stipulated that pure equity holding Labuan entities are required to comply with management and control in Labuan, and minimum operating expenditure requirements (see *Tax Alert No. 23/2019*).

The IRB's feedback together with the extension of time confirmation suggests that for YA 2020 (financial year 2019), a pure equity holding Labuan entity is only required to adhere to the minimum operating expenditure requirement in Labuan (i.e. RM20,000 per annum).

Overseas developments

Philippines requires transfer pricing information return

The Philippine Bureau of Internal Revenue (BIR) issued Revenue Regulations No. 19-2020 requiring taxpayers to file an Information Return on Related Party Transactions (International and/or Domestic) (BIR Form No. 1709) and relevant supporting documents, together with their Annual Income Tax Returns (AITRs). The Regulations aim to implement the disclosure of related party transactions (RPTs) under International Accounting Standard No. 24 and the application of the arm's-length principle.

The Regulations were effective on 25 July 2020 and will apply to the current and subsequent taxable years.

The key requirements of BIR Form No. 1709 are summarized below.

Detailed discussion

This reporting requirement applies to both domestic and foreign transactions, and to both a reporting entity and a related party.

The following procedures and guidelines apply to BIR Form No. 1709:

- The nature of the transaction and the accounts affected must be described in detail, including name of related party, address, taxpayer identification number, application of tax treaty benefits and applicable treaty rate, amount of income or expense, and amount of taxes withheld.

- RPTs are separately categorized into transactions with the parent, entities with joint control or significant influence over the entity, subsidiaries, associates, joint ventures in which the entity is a partner, key management personnel of the entity or its parent, and other related parties.

- For each RPT category, the following information must be provided:
  - The transaction amount
  - Amount of outstanding balances, including commitments, and their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement, and details of any guarantees given or received
  - Provisions for doubtful debts related to the amount of outstanding balances
  - Expense recognized during the period in respect of bad or doubtful debts due from related parties

- Other details to be provided include:
  - Business overview of the ultimate parent company, which will include the profile of the multinational group to which the taxpayer belongs, along with the name, address, legal status and country of tax residence of each of the related parties with whom intra-group transactions have been entered into by the taxpayer, and ownership relationships between them
  - Functional profile, which will include a broad description of: (i) the business of the taxpayer and the industry in which it operates; and (ii) the business of the related parties with whom the taxpayer has transacted

- The required attachments to BIR Form No. 1709 include:
  - Certified true copies of the relevant contracts or proof of transaction
  - Withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR
  - Proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident
  - Certified true copy of Advance Pricing Agreement, if any
  - Any transfer pricing documentation

- Failure to comply with the requirements of the Regulations may result in penalties (which include fines and/or imprisonment)

Implications

As the information contained in BIR Form No. 1709 may be used to identify companies for transfer pricing tax audits, Philippine companies with RPTs should review their transfer pricing positions and documentation to ensure that the arm's-length principle is supported.

Hong Kong enacts new legislation providing tax incentives for insurance-related businesses

Hong Kong enacted the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Bill 2019 (the New Law) on 24 July 2020.

The New Law provides that the assessable profits in respect of sums received by or accrued to the following specified persons will be taxed at the concessionary tax rate of 8.25% (50% of the usual corporate tax rate of 16.5%):

- Profits derived by a specified insurer from its general insurance business, other than profits derived from certain local demand-driven business
- Profits derived from the general reinsurance business of a specified insurer
- Profits of a licensed insurance broker that relate to a contract of insurance effected by (a) a professional reinsurer; or (b) a specified insurer in the course of the insurer carrying on a business that is eligible for the concessionary tax rate under the New Law

Anti-avoidance provision

The 8.25% concessionary tax rate will not be applicable if the main purpose or one of the main purposes of the specified insurer in entering into the transaction or the series of transactions is to avoid or postpone the liability to pay tax or reduce the amount of liability.

Substantial activities requirement

The activities which generate the profits eligible for the concessionary tax rate must be carried out in Hong Kong, or are arranged to be carried out in Hong Kong, by the taxpayers concerned.

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Important dates

Note: Please see EY Special Tax Alert No. 11/2020 and EY Special Tax Alert No. 12/2020 for information on the grace periods which have been provided to help businesses cope with the Movement Control Order.

15 August 2020	Due date for monthly instalments
31 August 2020	6th month revision of tax estimates for companies with February year-end
31 August 2020	9th month revision of tax estimates for companies with November year-end
31 August 2020	Statutory deadline for filing of 2020 tax returns for companies with January year-end. As a concession, this deadline is extended to 31 October 2020 pursuant to the updated Return Form (RF) Filing Programme.
15 September 2020	Due date for monthly instalments
30 September 2020	6th month revision of tax estimates for companies with March year-end
30 September 2020	9th month revision of tax estimates for companies with December year-end
30 September 2020	Statutory deadline for filing of 2020 tax returns for companies with February year-end. As a concession, this deadline is extended to 30 November 2020 pursuant to the updated RF Filing Programme.

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