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EY Tax Alert

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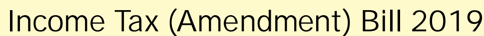
Malaysian developments

Three Amendment Bills tabled in the Parliament

Three Bills were released and tabled in the Dewan Rakyat on 28 November 2019 for their first reading:

- Income Tax (Amendment) Bill 2019 (Income Tax Bill)
- Labuan Business Activity Tax (Amendment) Bill 2019 (LBATA Bill)
- Petroleum Income Tax (Amendment) Bill 2019 (PITA Bill)

This Tax Alert focuses on some key highlights of the Income Tax Bill and LBATA Bill.



Income Tax (Amendment) Bill 2019

<u>Effective: Upon coming into operation of the Act</u>

The Income Tax Bill proposes to amend Schedule 5 of the Income Tax Act 1967 (ITA) – Hearing of Appeals. The key proposed amendments are as follows:

Number of Special Commissioners (SCs)

Currently, every appeal shall be heard by three SCs.

In order to achieve efficiency and expedite the appeal process, it is proposed that the Chairman may decide that only one person (i.e. the Chairman, the Deputy Chairman or any other SCs as determined by the Chairman) may sit alone at the Special Commissioners of Income Tax (SCIT) level.

(Reference: Paragraph 1A of Schedule 5)

Incomplete hearing of an appeal at SCIT level

Currently, if any one of the SCs who has commenced hearing any of the appeals is unable to complete the hearing due to expiration of the term of his appointment or other reason, the hearing may, with the consent of both parties:

a) Be heard afresh; or
b) Continue with the remaining SCs and the replaced/new SC

It is proposed that where the hearing is before a SC sitting alone, the hearing may, with the consent of both parties:

a) Be heard afresh; or
b) Continue with the new/replaced SC

(Reference: Paragraph 1B of Schedule 5)

Procedures to appeal to the High Court (HC) against the SCIT's decision

Changes have been proposed to the procedures to appeal against the SCIT's decision. Some of the key changes are as follows:

- Similar to the current procedure, the appellant is required to file a notice of appeal within 21 days from the date of the decision of the SC. It has been proposed that the SC is no longer required to state a case for the opinion of the HC. Instead, the appellant would request in writing for the <u>notes of the proceedings and the grounds of the decision</u> within 21 days from the date of the decision of the SC.

  (Reference: Paragraph 34 of Schedule 5)

- The appellant, however, is now required to file a record of appeal to the High Court <u>within 60 days</u> from the date of the filing of the notice of appeal.

  (Reference: Paragraph 34A of Schedule 5)

Savings and transitional rules

The procedures as stipulated before the amendment proposed by this Income Tax Bill will continue to be applicable to:

- Any appeal pending before the three SCs before the date of the Act coming into operation
- Any appeal to the HC under paragraph 34 of Schedule 5 made before the date of the Act coming into operation and which is pending on such date

Labuan Business Activity Tax (Amendment) Bill 2019

Generally, the amendments proposed in the LBATA Bill are to allow the Inland Revenue Board (IRB) greater powers to audit Labuan entities, to ensure that the Labuan entities transact under arm's length terms, and to align certain provisions in the Labuan Business Activity Tax Act 1990 (LBATA) with the ITA. However, there is a significant proposal which would impact Labuan entities which are not able to comply with the relevant Labuan substance requirements. Some of the key proposals of the LBATA Bill are highlighted below.

Chargeability of Labuan entities that do not meet the substance requirements

Effective: YA 2020

Currently, Labuan entities that fail to meet the substance requirements will be subject to income tax under the ITA.

It has been proposed that a Labuan entity carrying on a Labuan business activity that fails to meet the substance requirements would be subject to income tax under the LBATA. Such Labuan entity would be taxed at 24% of its chargeable profits, i.e. 24% of the net profits reflected in the audited accounts in respect of such Labuan trading activity of the Labuan entity. This proposal also means that any capital gains and foreign-sourced income derived by such Labuan entity would be taxed at 24% as compared to being exempted under the ITA. Having said that, the way the proposal is currently drafted, its applicability to Labuan entities carrying on Labuan non-trading activities[1] is unclear. Further guidance is expected to be released on the Labuan tax regime.

(Reference: Section 2B of LBATA)

Introduction of anti-avoidance and transfer pricing provisions

Effective: YA 2020

- Anti-avoidance provisions

Similar to Section 140 of the ITA, it has been proposed that the Director General be given the power to disregard and make adjustments to certain transactions that have the direct or indirect effect of:

a) Altering the incidence of tax which is payable or suffered by or which would otherwise have been payable or suffered by any person
b) Relieving any person from any liability which has arisen or which would otherwise have arisen to pay tax or to make a return
c) Evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on any person by the LBATA;
d) Hindering or preventing the operation of the LBATA in any respect

The "person who has control over the other" would have the same meaning as provided under Section 139 of the ITA.

The word "transaction" means any trust, grant, covenant, agreement, arrangement or other disposition or transaction made or entered into orally or in writing, whether before or after the commencement of the LBATA, and includes a transaction entered into by two or more persons with another person or persons.

(Reference: Section 17C of LBATA)

[1] "Labuan non-trading activity" means an activity relating to the holding of investments in securities, stock, shares, loans, deposits or any other properties situated in Labuan by a Labuan entity on its own behalf

- Transfer pricing provisions

Similar to Section 140A of the ITA, a special provision specific to transfer pricing is proposed to deal with the acquisition or supply of property or services between associated persons.

The provision empowers the Director General to make adjustments on transactions of goods or services carried out between related companies, based on the arm's length principle.

The word "control" also includes the expanded definition of "control" introduced in the ITA during Budget 2019 where "control" may exist with just 20% shareholding, where other factors are met.

(Reference: Section 17D of LBATA)

Income derived from intellectual property right

Effective: 1 January 2019

It has been proposed that the profit of a Labuan entity carrying on a Labuan business activity which is a Labuan non-trading activity exclude income derived from intellectual property rights. Such income will be subject to tax under the ITA.

(Reference: Section 9 of LBATA)

Other proposed amendments

- Determination of "residence status" of Labuan entities for the purpose of a double taxation agreement under Section 132 of the ITA
- Provisions in relation to assessments, appeals, payments and offences
- Power of the Director General to conduct an audit and investigation and to make an additional assessment
- Power of the Director General to call for records and have access to search all lands, buildings and places

Public Ruling No. 5/2019 – Perquisites from Employment

The IRB has published Public Ruling (PR) No. 5/2019: Perquisites from Employment, dated 19 November 2019. This new 32-page PR replaces PR No. 2/2013, which was published on 28 February 2013 (see Tax Alert No. 7/2013). The new PR comprises the following paragraphs and sets out 27 examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 The distinction between perquisites and benefits in kind
5.0 Perquisites
6.0 Types of perquisites and the tax treatment
7.0 Tax exemption on perquisites received by an employee
8.0 Employer's responsibilities
9.0 Employee's responsibilities
10.0 Monthly tax deduction (MTD)
11.0 Deduction claim by employers
12.0 Updates and amendments
13.0 Disclaimer

Similar to the earlier PR, the new PR explains the tax treatment of perquisites received from having or exercising an employment in Malaysia.

The new PR is broadly similar to the earlier PR. Some of the key changes are outlined below:

a. Example 4(a)
   The example has been updated to stipulate the applicability of the tax exemption under Paragraph 25C, Schedule 6 of the Income Tax Act 1967 (ITA) on the watch received as a long-service award by the employee (i.e. a non-cash perquisite).

b. Paragraph 6.14 – Gift of personal computers
   Where an employee receives a gift of a personal computer from his employer, the market value of the personal computer is a perquisite to the employee. The new PR clarifies that the "gift of personal computers" will include a tablet.

c. Paragraph 6.17 – Payment in lieu of notice or buy-out payment
   The new PR stipulates that payment in lieu of notice or buy-out payments made by an employer on behalf of a new employee is considered a perquisite to the employee. This is to be treated as gross income from employment under Section 13(1)(a) of the ITA regardless of whether payment is made through reimbursement or directly to the previous employer by the new employer.

d. Paragraph 7.4 – Gifts and monthly bills for fixed line telephone, mobile phone, tablet, pager, personal digital assistant (PDA) and subscription of broadband
   In line with Point (b) above, the tax exemption on gifts of telecommunication devices and monthly bills is expanded to include the gift of a tablet and monthly bills paid by an employer for a tablet which is registered in the name of the employee.

   The new PR reiterates that the exemptions given on the gift and monthly bills for the above are limited to one unit for each asset category.

Public Ruling No. 6/2019 – Tax Treatment on Expenditure for Repairs and Renewals of Assets

The IRB has published PR No. 6/2019: Tax Treatment on Expenditure for Repairs and Renewals of Assets, dated 26 November 2019, to explain the tax treatment of expenditure for the repair and renewal of an asset. The new 10-page PR comprises the following paragraphs and sets out 12 examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Introduction
5.0 Expenses and repairs and renewals
6.0 Categories of repair expenses
7.0 Summary
8.0 Disclaimer

Generally, repair and renewal expenses are claimed as tax deductions pursuant to Section 33(1)(c) of the ITA. A deduction will be allowed for expenses wholly and exclusively incurred for:

a) The repair of premises, plant, machinery or fixtures employed in the production of gross income; or
b) The renewal, repair or alteration of any implement or utensil of article so employed in the production of gross income (other than those which qualify for capital allowances under Schedule 3 of the ITA)

The cost of reconstructing or rebuilding any premises, buildings, structures or works of a permanent nature and the cost of any plant or machinery or any fixtures will not be allowed as a tax deduction.

The word "repair" is not defined in the ITA. The PR provides that in general, repair is a situation where an asset is restored to its original state by renewing or replacing the parts which cannot be used or are damaged, without any element of improvement, addition or alteration. It is expenditure incurred solely to put back the asset to its original condition which will enable it to function properly at its previous efficiency.

The PR has categorized repair expenses as follows:

- Repair to restore assets to their original condition
- Initial repairs
- The replacement of the entirety or part of the entirety

- Replacement or improvement
- Implements, utensils or articles with a life span of less than two years

A summary of tax treatment is also provided at the end of the PR:

Repairs	
Revenue expenditure (allowed as a deduction)	Capital expenditure (not allowed as a deduction)
Repair which restores an asset to its original condition	Repairs or replacements with an element of improvement or renewal to the assets/altering the original condition of the assets
Repairs which allow businesses to continue	Initial expenditure or repairs on an asset immediately after the asset is acquired
Replacement of part of the entire asset	Replacement of the entire asset (entirety)
Replacements and renewals of implements, utensils or articles that have an expected life span of not more than two years	

Overseas developments

Thailand repeals regional and international headquarters tax incentive regimes

Royal Decrees were published on 1 November 2019, repealing the tax incentives under the Regional Operating Headquarters (ROH) I and II, International Headquarters (IHQ), and International Trading Center (ITC) regimes. This repeal follows the Cabinet's original approval in March 2019.

The effective dates for the repeal are outlined below.

ROH I regime

- 1 January 2021 for reduced corporate income tax (CIT) rates and exemptions for qualifying income, and reduced personal income tax (PIT) rates for qualifying expatriates

ROH II, IHQ and ITC regimes

- 1 June 2019 for reduced CIT rates and exemptions
- 1 January 2020 for reduced PIT rates for qualifying expatriates
- 1 January 2021 for withholding tax exemptions for dividends distributed to non-resident shareholders, provided that the dividends are paid out of profits from qualifying income earned by 31 May 2019

Implications

Entities that have already converted from a previous incentive regime to an International Business Center (IBC) should ensure that dividends are distributed to non-resident shareholders within one year of the approval of the IBC conversion. If entities have not converted or do not qualify to convert from a previous regime to an IBC, dividends should be paid to non-resident shareholders prior to 31 December 2020 to be fully exempt from Thai withholding tax.

Mexico's tax reform: Implications for foreign digital service providers

With the imminent enactment of Mexico's tax reform, foreign digital service providers should be aware of the new requirement to collect value-added tax (VAT) on the sale of certain goods and services in Mexico. The tax reform would also require income tax withholding on certain transactions with Mexican individuals.

This Alert summarizes the new requirements under Mexico's tax reform that would impact foreign digital service providers.

Digital service providers subject to the new requirements

The tax reform does not distinguish between business-to-business (B2B) and business-to-consumer (B2C) transactions. Therefore, the rule would apply to all suppliers. However, the provisions appear to focus on B2C transactions. The following providers are subject to the rules and are responsible for the collection, reporting and payment of VAT:

- Category 1: Those that provide for the download/access to images, movies, music, text, information, video, gaming, ring tones, news online, traffic, weather, online clubs, dating sites and other multimedia content, on-line learning, tests and exercises
- Category 2: Those that perform intermediation services between potential sellers and buyers of products and services

Providers of financial services, payment services, data storage, and the use or sale of software would not be subject to the new requirements.

Services considered rendered in Mexico

Services would be considered rendered in Mexico when: (i) the recipient provides a Mexican domicile or telephone number to the digital platform; (ii) a Mexican IP-assigned address is used; or (iii) a Mexican intermediary is used by the recipient (for instance a financial institution) for payment.

Compliance and disclosure obligations for foreign digital providers

The tax reform would require foreign digital service providers to register with the Mexican tax authorities and obtain a tax identification number for VAT purposes. They would also have to: (i) appoint a tax representative in Mexico; (ii) provide a Mexican tax address; and (iii) collect the VAT on the price of the digital service. The VAT rate would be 16%. The tax representative would be responsible for the provider's filing and reporting obligations.

The tax representative would have to disclose information related to the provider's transactions with Mexican users/recipients of the digital services, including information related to the number of transactions and transaction amounts by type of service.

Tax representatives would not need to issue official invoices during 2020. Rather, they would only have to issue a simple payment receipt to service recipients. Beginning 2021, providers of Category 2 intermediation services would have to issue formal electronic invoices related to the VAT withholding on the sales of goods and services.

Category 2 providers would have additional reporting and registration obligations.

Entry into force

The rules would enter into force on 1 June 2020.

Next steps

Businesses should evaluate their systems to identify taxable transactions and reporting obligations. Registration with the authorities will begin 1 June 2020, and should be completed by 30 June 2020 for businesses with operations subject to the rules on 1 June 2020.

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Important dates

15 December 2019	Due date for monthly instalments
31 December 2019	6th month revision of tax estimates for companies with June year-end
31 December 2019	9th month revision of tax estimates for companies with March year-end
31 December 2019	Statutory deadline for filing of 2019 tax returns for companies with May year-end
15 January 2020	Due date for monthly instalments
31 January 2020	6th month revision of tax estimates for companies with July year-end
31 January 2020	9th month revision of tax estimates for companies with April year-end
31 January 2020	Statutory deadline for filing of 2019 tax returns for companies with June year-end

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Are you ready for the Malaysian Business Reporting System (MBRS)?

Last year, Suruhanjaya Syarikat Malaysia (SSM) launched the Malaysian Business Reporting System (MBRS), a digital submission platform based on the eXtensible Business Reporting Language (XBRL) format. The launch was officiated by YB Tuan Chong Chieng Jen, Deputy Minister of Domestic Trade and Consumer Affairs (KPHDNHEP). With the launch of the MBRS, all Malaysian incorporated companies and foreign companies registered under the Companies Act 2016, will need to get themselves prepared to file a full set of financial statements in XBRL format, unless otherwise exempted.

Currently, all submissions are voluntary, and registered companies have been encouraged by SSM to use MBRS before the mandatory enforcement. SSM has set out various schedules with implementation dates for the various Zones and states pertaining to mandatory implementation for Annual Returns, Certificates for Exempt Private Companies and Unaudited Financial Statements. However, mandatory implementation for Financial Statements will be advised at a later date.

Arising from the above and in the event you wish to understand more or do not have adequate resources to prepare your financial statements in accordance with MBRS requirements, the EY professionals are able to assist you in terms of:

- MBRS training
- MBRS outsourcing services

EY team members are experienced professionals who are SSM-certified trainers for MBRS, and are ready to help you get ready for the above. The workshops are as follows:-

MBRS for Preparers – Financial Statements

Dates (2-day course)	Venue	Time	Contact
11 & 12 December 2019 17 & 18 December 2019	Menara Milenium, Kuala Lumpur	9:00 a.m. – 5:00 p.m.	Billy Teo: +603 7495 8359 Shalene Gan: +603 2388 7334 acr.seminar@my.ey.com / seminar@my.ey.com