Building a better working world

EY Tax Alert

Vol. 23 – Issue no. 2
28 January 2020

Malaysian developments

Guidelines and procedures for application to the Industry4WRD Readiness Assessment Intervention Programme (Industry4WRD Intervention Fund)

The Industry4WRD policy, launched on 31 October 2018, was developed to propel Small and Medium Enterprises (SMEs) forward to meet the challenges posed by the Fourth Industrial Revolution. The policy was formulated based on three key principles:

a) To encourage stakeholders to apply Industry 4.0 (I4.0) technology
b) To create a comprehensive ecosystem for I4.0 application by industry
c) To transform the manufacturing sector holistically

To achieve the aspirations above, various measures as well as tax incentives were proposed in Budget 2019 (see Special Tax Alert: Highlights of 2019 Budget – Part I).

Following the above, the Malaysian Investment Development Authority (MIDA) has recently issued guidelines and procedures for application to the Industry4WRD Readiness Assessment Intervention Programme (Industry4WRD Intervention Fund). The Fund is a financial support facility for Malaysian SMEs in the manufacturing and related services sectors that have completed the Government-funded Industry4WRD Readiness Assessment (RA) programme, to implement intervention projects based on the recommendation of the Industry4WRD RA Report.

The guidelines explain the application procedure, the documents which are to be furnished in support of the application, criteria for evaluation by MIDA, project duration, scope and quantum of funding, notification of the results, the effective date of the application, as well as the right of the Government to withdraw the grant if the applicant fails to execute the intervention project as approved.

In addition, a process workflow for applications is provided in Appendix B of the guidelines.

Further details are available via the following link: https://www.mida.gov.my/home/industry4wrd-incentives/posts/

Additional clarification to the Labuan Investment Committee (LIC) Pronouncement 2-2019

As highlighted in an earlier tax alert, on 20 December 2019, the Labuan Investment Committee (LIC) released a document containing clarification to the LIC Pronouncement 2-2019 on the substance requirements for Labuan entities. The clarification includes an updated list of substantial activity requirements as approved by the Minister of Finance (MoF) (see Tax Alert No. 24/2019).

On 21 January 2020, the LIC released another document, to update the minimum requirements for full-time employees (FTE) and annual operating expenditure (OPEX) for Labuan entities that carry out administrative, accounting and legal services, including backroom processing, payroll services, talent management, agency services, insolvency-related services and management services. The requirements are as follows:

Existing substance regulations		Revised substance regulations	
FTE	OPEX (RM)	FTE	OPEX (RM)
Nil*	Nil*	2	50,000

*Such activities are in fact not listed in the Substance Regulations.

The updated requirements are effective 1 January 2019 and the contents will be gazetted in due course.

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2020 [P.U.(A) 24] was gazetted on 21 January 2020. 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) Islamic Medium Term Notes issued by Prasarana Malaysia Berhad (formerly known as Syarikat Prasarana Negara Berhad) pursuant to the Islamic Medium Term Notes Programme in nominal values of up to RM3.5 billion; and

(b) Guarantee provided or to be provided by the Government of Malaysia in relation to the Islamic Medium Term Notes referred to in (a) above

The Order comes into operation on 23 January 2020.

Overseas developments

Indonesia issues Tax Allowance Incentive regulation

The Government of Indonesia has issued Government Regulation No. 78 Year 2019 (GR-78) which offers tax incentives for capital investments in certain business sectors (Tax Allowance Incentive) to encourage increased foreign direct investments in Indonesia. GR-78 is effective from 12 December 2019.

This Alert summarizes the key aspects of GR-78.

Key changes under GR-78

GR-78 increases the eligible geographic areas for a significant number of subsectors. GR-78 provides incentives for 166 subsectors (previously 66) in any geographic area. Incentives for 17 subsectors (previously 76) are restricted to specific geographic areas.

In addition, GR-78 improves the Tax Allowance Incentive application process through the Online Single Submission (OSS) system.

Eligibility criteria

Tax Allowance Incentives may be granted to taxpayers who meet both of the following criteria:

- Local corporate taxpayers initiating new investments or expanding existing businesses in eligible subsectors
- The investments by the taxpayers meet any of the following criteria:
  - Have a high investment value or are export-oriented
  - Employ a large workforce
  - Have a high local content in their production

Tax Allowance Incentive benefits

Benefits of a Tax Allowance Incentive include:

- Additional cost recovery of 30% for tangible fixed asset investments used for primary business activities. The income tax incentive is a deduction from gross income of 30% of the investment, resulting in an additional cost recovery deduction over six years (at a rate of 5% per year).
- Accelerated depreciation of 200% for tangible fixed assets and amortization for intangible fixed assets
- Dividend distributions to non-resident shareholders are subject to a reduced withholding rate of 10% or the applicable treaty rate, whichever is lower.
- Tax losses can be carried forward for up to 10 years.

Other considerations

Other considerations for taxpayers include:

- Incentivized tangible and intangible fixed assets are not permitted to be used for other purposes or transferred within a certain period.
- Any taxpayers who have been granted Tax Allowance Incentives but who no longer meet the criteria and conditions may be subject to the revocation of the incentives, be required to pay additional taxes and/or penalties and be included in a blacklist for future incentive applications.
- Any taxpayers granted Tax Allowance Incentives are not entitled to other tax incentive programs.

Korea enacts 2020 tax reform bill

On 31 December 2019, Korea enacted the 2020 tax reform bill (the 2020 Tax Reform) after it was passed by Korea's National Assembly on 10 December 2019. Unless otherwise specified, the 2020 Tax Reform will generally become effective for fiscal years beginning on or after 1 January 2020. The Enforcement Decrees, which provide more specific guidance on the laws, are expected to be enacted in February 2020.

This Alert summarizes the key features of the new and amended tax laws.

Detailed discussion

Taxation of royalties for patents registered outside of Korea

The 2020 Tax Reform provides that any payments for manufacturing know-how, technologies or information contained in patents rights registered outside of Korea that are used in domestic manufacturing or production activities in Korea, will be deemed to be Korean-sourced royalty income, by recasting such payments as royalties for the use of "other similar properties or rights" under the Korean Corporate Income Tax Law. The rule applies to payments made on or after 1 January 2020.

In addition, the 2020 Tax Reform introduces a new rule that if a Korean entity pays compensation to any patent holder for the infringement of a patent registered outside of Korea, the payment is classified as "other income" subject to the 16.5% Korean statutory withholding tax rate, including the 10% surtax. The rule applies to payments made on or after 1 January 2020.

Korean-sourced gain on disposal of real property company securities

To secure the taxing right of Korean-sourced income on the disposal of real property company securities, the 2020 Tax Reform includes Korean-sourced real property company security gains in the scope of a mutual agreement with certain countries that have a tax treaty with Korea. Accordingly, gains on the disposal of Korean real property holding company shares are Korean-sourced and subject to Korean tax.

This treatment applies to non-resident individuals and corporations.

New requirements for "abusive transactions"

The Korean Law for the Coordination of International Tax Affairs (LCITA) includes a "substance over form" principle with regard to taxpayers who undertake an abusive transaction with the intent to obtain a tax benefit under a tax treaty.

Under the 2020 Tax Reform, when a transaction reduces the tax liability by an amount specified in the Presidential Decree of the LCITA (e.g., 50%), the burden of proof is placed on the taxpayer to prove that the transaction has a valid business purpose and is without the intent of tax avoidance. Failure to meet the requirement will result in the transaction being treated as an abusive transaction which is subject to tax in accordance with the "substance over form" principle under the LCITA.

Installment tax payments on capital gains on in-kind contributions

Under the 2020 Tax Reform, when a qualified in-kind contribution is made to form a new Korean holding company or convert an existing Korean company to a Korean holding company, any capital gains tax on the contribution will be paid in installments over three years, beginning in the fifth year of the in-kind contribution. This rule applies to in-kind contributions

/ share transfers occurring on or after 1 January 2022.

Reduction of securities transaction tax

The 2020 Tax Reform reduces the 0.5% securities transaction tax rate to 0.45% for over-the-counter and unlisted security transactions. The reduced rate applies to transactions occurring on or after 1 April 2020.

Document submission requirement for international transactions

The 2020 Tax Reform provides taxpayers who are required to file master / local files, an exemption from the requirement to submit the Korean statement of international transactions.

In addition, if taxpayers fail to file documents that substantiate the arm's-length pricing method by the statutory due date without reasonable cause, the Korean tax authority may apply an arm's-length price based on information from taxpayers undertaking a comparable business.

Additional penalty for failure to file transfer pricing (TP) documentation

The current law imposes a penalty of up to KRW100 million (US$85,000) if a taxpayer fails to file TP documentation within the statutory time frame or if a taxpayer files false documents.

From 1 January 2020, an additional penalty of up to KRW200 million (US$170,000) may be imposed every 30 days after the first penalty assessment, until the requested TP documents are filed.

Increased maximum penalty for withholding tax

Currently, a taxpayer who has not paid the full tax amount withheld or has not withheld tax by the statutory due date may be subject to penalties of up to 10% of the unpaid or underpaid withholding tax amount. The 2020 Tax Reform increases the maximum penalty to 50% of the unpaid or underpaid withholding tax amount.

Contact details

Principal Tax

Yeo Eng Ping (EY Asia-Pacific Tax Leader)
eng-ping.yeo@my.ey.com
+603 7495 8288

Amarjeet Singh (EY Asean and Malaysia Tax Leader)
amarjeet.singh@my.ey.com
+603 7495 8383

People Advisory Services

Tan Lay Keng
lay-keng.tan@my.ey.com
+603 7495 8283

Christopher Lim
christopher.lim@my.ey.com
+603 7495 8378

Irene Ang
irene.ang@my.ey.com
+603 7495 8306

Business Tax Services

Robert Yoon
robert.yoon@my.ey.com
+603 7495 8332

Wong Chow Yang
chow-yang.wong@my.ey.com
+603 7495 8349

Global Compliance and Reporting

Farah Rosley
farah.rosley@my.ey.com
+603 7495 8254

Janice Wong
janice.wong@my.ey.com
+603 7495 8223

Julian Wong
julian.wong@my.ey.com
+603 7495 8347

Julie Thong
julie.thong@my.ey.com
+603 7495 8415

Liew Ai Leng
ai-leng.liew@my.ey.com
+603 7495 8308

Simon Yeoh
simon.yeoh@my.ey.com
+603 7495 8247

Datuk Goh Chee San
(based in Sabah)
chee-san.goh@my.ey.com
+6088 532 000

Lee Li Ming
(based in Johor)
li-ming.lee@my.ey.com
+607 288 3299

Linda Kuang
(based in Kuching)
linda.kuang@my.ey.com
+6082 752 660

Mark Liow
(based in Penang)
mark.liow@my.ey.com
+604 263 6260

Contact details

International Tax and Transaction Services

Yeo Eng Ping
eng-ping.yeo@my.ey.com
+603 7495 8288

Amarjeet Singh
amarjeet.singh@my.ey.com
+603 7495 8383

Sockalingam Murugesan (EY Malaysia and ASEAN Transfer Pricing Leader)
sockalingam.murugesan@my.ey.com
+603 7495 8224

Anil Kumar Puri
anil-kumar.puri@my.ey.com
+603 7495 8413

Asaithamby Perumal
asaithamby.perumal@my.ey.com
+603 7495 8248

Sharon Yong
sharon.yong@my.ey.com
+603 7495 8478

Hisham Halim (Transfer Pricing)
hisham.halim@my.ey.com
+603 7495 8536

Vinay Nichani (Transfer Pricing)
vinay.nichani@my.ey.com
+603 7495 8433

Indirect Tax

Yeoh Cheng Guan
cheng-guan.yeoh@my.ey.com
+603 7495 8408

Aaron Bromley
aaron.bromley@my.ey.com
+603 7495 8314

Jalbir Singh Riar
jalbir.singh-riar@my.ey.com
+603 7495 8329

Shanmuganathan Govinda Konal
(based in Penang)
shanmuganathan.govinda-konal@my.ey.com
+604 6881801

Financial Services

Bernard Yap
bernard.yap@my.ey.com
+603 7495 8291

Koh Leh Kien
leh-kien.koh@my.ey.com
+603 7495 8221

Chen Keng Haw
keng-haw.chen@my.ey.com
+603 7495 8385

Important dates

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
15 February 2020	Due date for monthly instalments
29 February 2020	6th month revision of tax estimates for companies with August year-end
29 February 2020	9th month revision of tax estimates for companies with May year-end
29 February 2020	Statutory deadline for filing of 2019 tax returns for companies with July year-end

Publisher:
Ernst & Young Tax Consultants Sdn. Bhd.
Level 23A Menara Milenium
Jalan Damanlela, Pusat Bandar Damansara
50490 Kuala Lumpur
Tel: +603 7495 8000
Fax: +603 2095 7043