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Malaysian developments

Update to prescribed employee and annual operating expenditure requirements for Labuan companies

Section 2B of the Labuan Business Activity Tax Act 1990 (LBATA) provides that a Labuan entity carrying on a Labuan business activity must comply with certain substance requirements, i.e., the Labuan entity must have an:

- (a) Adequate number of full-time employees in Labuan, and
- (b) Adequate amount of annual operating expenditure in Labuan

in order to qualify for the preferential tax rates under the LBATA. A Labuan entity carrying on a Labuan business activity which does not comply with the substance requirements would be subject to tax at 24% on net audited profits.

The following were previously gazetted in relation to the above requirements, and were deemed to have come into operation on 1 January 2019:

- ▶ Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 [P.U.(A) 392/2018]
- ▶ Labuan Business Activity Tax (Requirements for Labuan Business Activity) 2018 (Amendment) Regulations 2020 [P.U.(A) 375/2020]

The Labuan Financial Services Authority (LFSA) had also issued multiple circulars setting out revisions, clarifications or positions in relation to the substance requirements.

Following the above, the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 [P.U.(A) 423] (new Regulations) were gazetted on 22 November 2021. The substance requirements set out in these new Regulations are outlined in Appendix I and Appendix II to this Alert.

The key updates are as outlined below:

- (a) The new Regulations include the substantial activity requirements for Labuan entities that carry out the following types of services:
- i) administrative
 - ii) accounting
 - iii) legal
 - iv) backroom processing
 - v) payroll
 - vi) talent management
 - vii) agency
 - viii) insolvency-related
 - ix) management

Please refer to Item 20 of Appendix I to this Alert.

- (b) The new Regulations stipulate that a Labuan entity that undertakes pure equity holding activities will be required to adhere to the following, in order to comply with the management and control requirements which are part of the Labuan substance requirements:

- ▶ Its board of directors meeting is convened in Labuan at least once a year
- ▶ Its registered office is situated in Labuan
- ▶ Its secretary appointed under the Labuan Companies Act 1990 is a Labuan resident, and
- ▶ Its accounting and business records (including minutes of meeting) are kept in Labuan

This is in line with the Directive on Management and Control Requirements for Labuan Entities that Undertake Pure Equity Holding Activities (Directive) and Clarification on the Directive issued by the LFSA on 10 August 2020 and 10 September 2020 respectively (see *Tax Alert No. 14/2020* and *Tax Alert No. 16/2020*).

With this, P.U.(A) 392/2018 is revoked. The new Regulations are deemed to have come into operation on 1 January 2019, except for Point (b) above which is deemed to have come into operation on 1 January 2021.

Exemption from non-deductibility rules on payments to certain types of Labuan entities

Following Budget 2019, Section 39(1)(r) was introduced into the Income Tax Act 1967 (ITA) to provide that a tax deduction will not be allowed on payments by Malaysian residents to any Labuan company, subject to any rules that may be prescribed by the Minister of Finance (MoF). Thereafter, the following were gazetted to set out the relevant rules relating to Section 39(1)(r):

- ▶ Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 [P.U.(A) 375/2018]

- ▶ Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 (Amendment) 2020 [P.U.(A) 376/2020]

As highlighted in an earlier alert, the LFSA had issued a circular dated 23 December 2019, stating that the above-mentioned non-deductibility Rules will not apply to certain transactions (see *Tax Alert No. 24/2019*). The Income Tax (Exemption) (No. 22) Order 2021 [P.U.(A) 425] was gazetted on 23 November 2021 to legislate certain exemptions from the non-deductibility rules.

The Order provides that a Malaysian-resident is exempted from the provisions of Section 39(1)(r) in respect of payments made to a:

- (a) Labuan company which undertakes a qualifying activity under the Global Incentives for Trading (GIFT) programme
- (b) Labuan company which has made an election under Section 3A of the LBATA (i.e., an irrevocable election to be taxed under the ITA)
- (c) Labuan company which carries on a Labuan business activity under Section 2B of the LBATA

Note:

For the purpose of Point (c) above, the “resident” (making the relevant payment) refers to a Labuan company which carries on:

- ▶ A Labuan business activity which is not specified in the Schedule to the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 (refer to the article above), or
- ▶ An activity other than a Labuan business activity under the LBATA

The following terms have been defined in the Order:

(a) GIFT

Programme of incentives for a Labuan International Commodity Trading Company (LICT) to use Malaysia as its international trading base to undertake qualifying activities

(b) LICT

A Labuan company which:

- Is incorporated or registered under the Labuan Companies Act 1990
- Is licensed under Section 92 of the Labuan Financial Services and Securities Act 2010
- Maintains a registered office in Labuan but is allowed to establish its operational office anywhere in Malaysia, and
- Undertakes a qualifying activity under the GIFT programme

(c) Qualifying activity

Trading of physical products and related derivative instruments in relation to:

- Petroleum and petroleum-related products, including liquefied natural gas
- Minerals
- Agriculture products
- Refined raw materials
- Chemicals
- Base minerals

The Order stipulates that the exemption granted does not absolve the Malaysian resident from any requirement to submit returns, statements of accounts or any other information as required under the ITA.

The Order is deemed to have come into operation on 1 January 2019. The exemptions for Points (a) and (c) above are effective from the year of assessment (YA) 2019 to YA 2025.

Frequently Asked Questions (FAQs) on the revision of estimate of tax payable in the 11th month of the basis period and the deferment of payment of estimated tax payable (CP204) and instalment scheme (CP500), as announced in Budget 2022

In Budget 2022, it was announced that:

- ▶ All businesses are allowed to revise their income tax estimates in the 11th month of the basis period, before 31 October 2022, and
- ▶ Microenterprises and small and medium enterprises (MSMEs) are allowed to defer their monthly income tax instalment payments for six months, until 30 June 2022

Following the above, the Inland Revenue Board (IRB) has published on its website an FAQ document in Bahasa Malaysia, titled “Pindaan Anggaran Cukai Kena Dibayar (CP204) Pada Bulan Ke-11 Tempoh Asas Bagi Tahun Taksiran 2021 Dan 2022 Dan Penangguhan Bayaran CP204 Dan Skim Bayaran Ansuran (CP500) Bagi Perusahaan Mikro Kecil Dan Sederhana (PMKS) Mulai 1 Januari 2022 Hingga 30 Jun 2022 Di Bawah Bajet 2022”, dated 25 November 2021. For ease of reference, the full version of the FAQs, translated from the Bahasa Malaysia version, is set out in Appendix III and Appendix IV to this alert.

Some key points to note below:

- ▶ Based on Q8 of Appendix III, it appears that for the purpose of assessing the underestimation penalty under Section 107C(10) of the ITA, the 11th month revision is not taken into consideration. The FAQs states that if the company’s final tax liability per the tax return exceeds the revised estimate of tax payable in the sixth or ninth month of the basis period by more than 30% of the final tax, the amount in excess of 30% will be subject to a 10% penalty. It is hoped that this is an error in the FAQs and this point is

being clarified with the IRB. If the IRB does indeed use the 6th or 9th month estimate to calculate the underestimation penalties, there may be no benefit for taxpayers to make an upward revision in the 11th month.

- ▶ Based on Q10 of Appendix III, it is noted that:
 - Companies with a financial year ending on 31 December 2021 are given some leeway to apply for the 11th month revision until 10 December 2021
 - Where a company’s 11th month of the basis period falls in October, November or December 2022, the “11th month” revision must be submitted to the IRB before 31 October 2022
- ▶ Based on Q12 of Appendix III, to apply for the 11th month revision, taxpayers are required to complete a specific [application form](#) and submit the application via e-mail to pindaanCP204bajet2022@hasil.gov.my.

The application form is available on the IRB’s website as follows:
www.hasil.gov.my → Forms → Download Forms → Other Forms → Borang Permohonan Pindaan Anggaran Cukai Bulan Ke-11 Tempoh Asas Bagi Tahun Taksiran 2021/2022

The FAQs are available at the following link:
[Pindaan Anggaran Cukai Kena Dibayar \(CP204\) Pada Bulan Ke-11 Tempoh Asas Bagi Tahun Taksiran 2021 Dan 2022 Dan Penangguhan Bayaran CP204 Dan Skim Bayaran Ansuran \(CP500\) Bagi Perusahaan Mikro Kecil Dan Sederhana \(PMKS\) Mulai 1 Januari 2022 Hingga 30 Jun 2022 Di Bawah Bajet 2022](#)

Guidelines on the income tax treatment for banks or development financial institutions (FIs) which adopt the Malaysian Financial Reporting Standard (MFRS) 9 - Financial Instruments

As highlighted in an earlier alert, the “Malaysian Financial Reporting Standard 9 Financial Instruments” (MFRS 9) was issued to provide updated guidance for the recognition and measurement of financial instruments, effective 1 January 2018. Thereafter, the Income Tax (Special Treatment for Bank or Development Financial Institution which Adopt Malaysian Financial Reporting Standard 9: Financial Instruments) Regulations 2021 [P.U.(A) 400/2021] were gazetted on 14 October 2021 (see *Tax Alert No. 21/2021*). These Regulations apply to the following financial institutions which adopt MFRS 9:

- ▶ A licensed bank under the Financial Services Act 2013 (FSA),
- ▶ A licensed Islamic bank under the Islamic FSA, or
- ▶ A development FI prescribed under the Development Financial Institutions Act 2002

Following the above, the IRB has recently published on its website technical guidelines titled “Guidelines on the Income Tax Treatment for Bank or Development Financial Institution which Adopt Malaysian Financial Reporting Standard 9 - Financial Instruments”, dated 11 November 2021. The Guidelines are issued to explain the changes and provide guidance on the tax treatment for banks or development FIs that adopt MFRS 9. These new Guidelines replace the earlier Guidelines on the Income Tax Treatment from Adopting FRS 139 - Financial Instruments: Recognition and Measurement.

The new Guidelines broadly outline the classification, measurement and recognition of financial assets, financial liabilities and impairments (refer also to

Appendix 1 of the Guidelines). The Guidelines explain the tax treatment for the following:

- ▶ Financial assets and/or liabilities on revenue account
- ▶ Financial assets and/or liabilities on capital account
- ▶ Impairment losses of financial assets
- ▶ Other movements in the expected credit loss (ECL) account per the Statement of Financial Position
- ▶ Transaction costs
- ▶ Gain or loss in respect of hedging instruments
- ▶ Gain or loss arising from foreign exchange transactions

The Guidelines also explain the transitional provisions applicable to certain situations, which are illustrated in Appendix 2 of the Guidelines.

In line with the Regulations, the new Guidelines are effective from:

- ▶ YA 2018: Bank or development FI with an accounting period ending on 31 December
- ▶ YA 2019: Bank or development FI with an accounting period ending on a day other than 31 December

Stamp duty remission on service agreements

Following the Budget 2019 announcement, Item 22(1) of the First Schedule of the Stamp Act 1949 (SA) was amended via the Finance Act 2018, to clarify the stamp duty treatment for securities for a definite period and securities for a term of life or indefinite period, as follows:

Description of instrument	Stamp duty rate
<p>BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:</p> <p>Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any sum secured by a duly stamped instrument, nor rent reserved by a lease or tack -</p> <p>(a) For a definite and certain period so that the total amount to be ultimately payable can be ascertained</p> <p>(b) For the term of life or any other indefinite period - For every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable</p>	<p>The same <i>ad valorem</i> duty as a charge or mortgage for such total amount</p> <p>RM1.00</p>

The stamp duty treatment also applies to securities in relation to instruments of service agreements.

Following the above, the Stamp Duty (Remission) Order 2021 [P.U.(A) 428] was gazetted on 25 November 2021 and is deemed to have come into operation on 28 December 2018.

The Order provides that instruments of service agreements^{Note} that are chargeable under Item 22(1)(a), First Schedule of the SA will be subject to

stamp duty at a rate of 0.1% (i.e., the stamp duty chargeable in excess of 0.1% is remitted).

Note:

The instrument of service agreement is to be executed by:

- (a) A main service provider with a person other than a Ruler of a State or the Government of Malaysia or of any State or local authority awarding the undertaking
- (b) A sub-provider of service with the main service provider, where the main service provider has entered into an undertaking with a Ruler of a State or the Government of Malaysia or of any State or local authority awarding the undertaking

Notwithstanding the above, where the parties mentioned in Points (a) and (b) above subsequently execute an instrument of service agreement with another sub-provider of service and so on, the amount of stamp duty that is chargeable on that subsequent instrument under Item 22(1)(a), First Schedule of the SA is capped at RM50 (i.e., the stamp duty chargeable in excess of RM50 is remitted). In this case, the agreement should state:

- (i) The names of the parties
- (ii) The execution date of the agreement referred to in Points (a) and/or (b) above
- (iii) The subject matter of the agreement
- (iv) That the agreement referred to in Points (a) and/or (b) above has been duly stamped at the rate specified under Paragraph (2)(1) of the Stamp Duty (Remission) Order 2021

With this, the Stamp Duty (Remission) (No. 4) Order 2010 [P.U. (A) 476] is revoked.

Overseas developments

Indonesia passes wide-ranging tax law amendments

The Harmonization of Tax Regulations (HPP) Law was signed by the Indonesian President and officially enacted on 29 October 2021. The new HPP Law will impact Income Tax, Value-Added Tax (VAT), and the General Tax Provisions Law. It will be important to review the implementing regulations, when released, in order to understand potential impacts.

The key changes introduced by the HPP Law are summarized below.

Detailed discussion

The decrease in the Corporate Income Tax (CIT) rate to 20%, that was previously legislated to be effective starting from tax year 2022, has now been cancelled. Consequently, the current CIT rate of 22% will continue to prevail. Similar to the previous tax law, Indonesian-listed companies will still receive an additional three percentage points reduction subject to certain conditions.

The VAT rate will gradually increase from 10% to 11% (effective from 1 April 2022) and from 11% to 12% (at a point in the future no later than 1 January 2025). Certain taxable goods or services may be subject to a specific VAT rate.

In addition, there is a broadening of the VAT base to remove the exemptions for a number of previously exempt services (e.g., medical, financial services). Certain previously exempt essential goods and mined minerals will now also be subject to VAT. However, there is a possibility for the implementing regulations to provide VAT concessions for certain of the aforementioned goods and services.

The HPP Law introduces Carbon Tax on the purchase of carbon-containing goods or any activities that

produce a certain amount of carbon emissions. The Carbon Tax will commence on 1 April 2022 and will first apply to coal-fired power producers (CFPP) based on a cap and tax system. A CFPP will be given a maximum cap on its carbon emissions and any carbon emissions above the cap will be subject to tax at the rate of IDR30/Kg of carbon dioxide equivalent emission. The Carbon Tax will be fully implemented and expanded to other sectors from tax year 2025 onwards, subject to conditions.

With respect to individual taxpayers, a new tax bracket of 35% for the highest income earners has been introduced for taxable income above IDR5 billion (US\$350,000) per year. Previously, the highest tax bracket was 30% for taxable income above IDR500 million (US\$35,000) per year.

The explanation of the HPP Law includes the following statements on tax avoidance:

- ▶ The Government of Indonesia (GoI) is mandated to prevent tax avoidance practices which include such practices that are contrary to the “substance over form” principle.
- ▶ Tax avoidance practices are, among other things, understating income, overstating expenses, reporting smaller operating profits compared to similar businesses, or reporting unreasonable losses for a period of more than five years since commencing commercial sales.

It remains to be seen whether this entails real changes or simply formalizes existing approaches.

A Tax Amnesty or Voluntary Disclosure programme is offered to taxpayers (both companies and individuals) that participated in the 2016 tax amnesty programme and also individual taxpayers that did not participate in the 2016 tax amnesty programme. Disclosures must be made between 1 January 2022 and 30 June 2022. The programme provides an opportunity for taxpayers to disclose assets that have not been (or have not fully been) reported in their annual tax returns, in exchange for a final tax

payment ranging from 6% to 18% subject to conditions. Additional rates from 3% to 8.5% could be imposed if the agreed conditions are not met.

The HPP Law potentially extends withholding tax obligations to parties who are directly involved in or facilitated transactions (e.g., web platforms etc.), noting that at present this obligation only falls on customers or payers.

While the previous law provides for thin capitalization rules based on a debt-to-equity ratio (this is currently 4:1), the law now provides for regulations to be issued using different methods to limit borrowing deductions. For example, there are indications this may be based on a certain ratio of loans to EBITDA (earnings before interest, taxes, depreciation and amortization).

The ability for taxpayers to split tax audit assessments and pursue different assessment items separately through the Mutual Agreement Procedure process and tax appeal process has been formalized.

Philippines proposes law imposing VAT on non-resident digital service providers

The Philippine House of Representatives on 21 September 2021 approved a bill imposing a 12% value added tax (VAT) on non-resident digital service providers engaged in the sale, barter, exchange and lease of goods or properties and services using digital or electronic platforms.

Non-resident digital service providers with annual gross sales or receipts exceeding PHP3 million (approximately US\$60,000) will be required to register for VAT purposes. The bill was transmitted to the Philippine Senate on 22 September 2021 for further legislative review.

The key amendments and new provisions proposed under the bill are summarized below.

Detailed discussion

The key amendments and new provisions include the following:

- ▶ Non-resident digital service providers will be liable for assessing, collecting and remitting VAT on the transactions that are processed via their platforms.
- ▶ A “digital service provider” is defined as a service provider of a digital service or good to a buyer, through operating an online platform for the purposes of the buying and selling of goods or services or by making transactions for the provision of digital services on behalf of any person.
- ▶ The sale or exchange of services subject to VAT would include the following:
 - The supply of digital services such as online advertisement services, provision of digital advertising space, and any other facility or service for the purpose of online advertisement.
 - The supply of digital services in exchange for a regular subscription fee over the usage of the said product or service.
 - The supply of electronic and online services that can be delivered through an information technology infrastructure, such as the internet.
- ▶ Educational services including online courses and webinars, and books and other printed materials which are sold electronically or online which are not devoted principally to the publication of paid advertisements are exempt from VAT.
- ▶ Non-resident digital service providers subject to the 12% VAT on digital transactions cannot claim creditable input taxes.
- ▶ Subject to the establishment of a simplified automated registration system, non-resident digital service providers will be required to register for VAT purposes if their gross sales or gross

receipts for digital services for the past 12 months before the date of filing of the VAT return exceed PHP3 million or if there are reasonable grounds to believe that their gross sales or gross receipts for digital services for the next 12 months from the date of filing of the VAT return will exceed PHP3 million.

- ▶ VAT-registered non-resident digital service providers may issue an electronic invoice or receipt, subject to domestic rules and regulations.
- ▶ Payments to non-residents who are not registered for VAT purposes, for services rendered in the Philippines, shall be subject to the 12% withholding VAT at the time of payment.

Implications

Non-residents engaged in electronic or digital transactions should monitor these VAT developments in the Philippines and consider if their transactions with Philippine customers would be subject to the 12% VAT and require VAT registration.

Substantial activity requirements for a Labuan entity carrying on Labuan trading activities

No.	Labuan entity carrying on a Labuan trading activity	Minimum number of full-time employees in Labuan	Minimum amount of annual operating expenditure in Labuan (RM)
1.	Labuan insurer, Labuan reinsurer, Labuan <i>takaful</i> operator or Labuan <i>retakaful</i> operator	3	200,000
2.	Labuan underwriting manager or Labuan underwriting <i>takaful</i> manager	4	100,000
3.	Labuan insurance manager or Labuan <i>takaful</i> manager	4	100,000
4.	Labuan insurance broker or Labuan <i>takaful</i> broker	2	100,000
5.	Labuan captive insurer or Labuan captive <i>takaful</i> - (a) Labuan first party captive insurer or Labuan first party captive <i>takaful</i> , or (b) Labuan third party captive insurer or Labuan third party captive <i>takaful</i>	2 3	100,000 100,000
6.	Labuan bank, Labuan investment bank, Labuan Islamic bank or Labuan Islamic investment bank	3	200,000
7.	Labuan trust company	3	120,000
8.	Labuan leasing company or Labuan Islamic leasing company which has - (a) Not more than 10 related Labuan leasing companies or Labuan Islamic leasing companies (b) 11 to 20 related Labuan leasing companies or Labuan Islamic leasing companies (c) 21 to 30 related Labuan leasing companies or Labuan Islamic leasing companies, or (d) More than 30 related Labuan leasing companies or Labuan Islamic leasing companies	2 for each group of companies 3 for each group of companies 4 for each group of companies 1 additional employee for each group of companies for each increase of 10 related Labuan leasing companies or Labuan Islamic leasing companies	100,000 for each Labuan leasing company or Labuan Islamic leasing company

No.	Labuan entity carrying on a Labuan trading activity	Minimum number of full-time employees in Labuan	Minimum amount of annual operating expenditure in Labuan (RM)
9.	Labuan credit token company or Labuan Islamic credit token company	2	100,000
10.	Labuan development finance company or Labuan Islamic development finance company	2	100,000
11.	Labuan building credit company or Labuan Islamic building credit company	2	100,000
12.	Labuan factoring company or Labuan Islamic factoring company	2	100,000
13.	Labuan money broker or Labuan Islamic money broker	2	100,000
14.	Labuan fund manager	2	100,000
15.	Labuan securities licensee or Labuan Islamic securities licensee	2	100,000
16.	Labuan fund administrator	2	100,000
17.	Labuan company management	2	100,000
18.	Labuan International Financial Exchange	2	120,000
19.	Self-regulatory organization or Islamic self-regulation organization	2	120,000
20.	Labuan entity that carries on any one or more of the following business activities: (a) Administrative services (b) Accounting services (c) Legal services (d) Backroom processing services (e) Payroll services (f) Talent management services (g) Agency services (h) Insolvency related services (i) Management services other than Labuan company management under Item 17	2	50,000

Substantial activity requirements for a Labuan entity carrying on Labuan non-trading activities

No.	Labuan entity carrying on a Labuan non-trading activity	Minimum number of full-time employees in Labuan	Minimum amount of annual operating expenditure in Labuan (RM)
1.	Labuan entity that undertakes investment holding activities other than pure equity holding activities	1	20,000
2.	Labuan entity that undertakes pure equity holding activities	Exempted under the Labuan Business Activity Tax (Exemption) Order 2020 [P.U.(A) 177/2020]	20,000

**Revision of estimate of tax payable in the 11th month of the basis period for YA 2021 and YA 2022 -
UNOFFICIAL TRANSLATION ONLY. PLEASE ALSO REFER TO OFFICIAL BAHASA MALAYSIA VERSION**

No.	Question	IRB's response
1.	Which industries are eligible to apply for the revision of estimate of tax payable in the 11 th month of the basis period for YA 2021 and YA 2022?	All industries are eligible
2.	Is this 11 th month revision specifically for YA 2021 and YA 2022 only?	Yes
3.	Is this 11 th month revision only allowed if the revised estimate of tax payable is higher than the initial or revised estimates of tax payable (i.e., in the sixth or ninth month of the basis period)?	No. The 11 th month revision is allowed regardless whether it is higher or lower than the initial or revised estimates of tax payable (i.e., in the sixth or ninth month of the basis period).
4.	If a taxpayer is late in applying for his revised estimate of tax payable in the 11 th month of the basis period for YA 2021 and/or YA 2022, can the taxpayer apply for a revised estimate of tax payable in the 12 th month of the basis period?	No, as the initial estimate of tax payable (CP204) for YA 2022 and/or YA 2023 should have already been submitted by then.
5.	Does this 11 th month revision refer to a revision in "the month of the 11 th monthly tax instalment" or "11 th month of the basis period"?	This 11 th month revision refers to the 11 th month of the basis period for YA 2021 and YA 2022.
6.	Must the revised estimate of tax payable for this 11 th month revision be higher than 85% of the initial or revised estimate of tax payable for the immediate-preceding YA?	No
7.	Must the initial estimate of tax payable for YA 2022 be at least 85% of the revised estimate of tax payable submitted in this 11 th month revision?	No. The initial estimate of tax payable for YA 2022 must not be less than 85% of the initial or revised estimate of tax payable in the sixth or ninth month of the basis period for YA 2021.

No.	Question	IRB's response																				
8.	Will the underestimation penalty under Section 107C(10) of the ITA be imposed if the company's final tax liability per the tax return exceeds the revised estimate of tax payable by more than 30% of the final tax?	Yes. If the company's final tax liability per the tax return exceeds the revised estimate of tax payable in the sixth or ninth month of the basis period by more than 30% of the final tax, the amount in excess of 30% will be subject to a 10% penalty.																				
9.	Does the taxpayer have to wait for IRB's approval for the application of this 11 th month revision?	No. However, the application must be in order and the relevant conditions must be satisfied.																				
10.	When is the due date for the application of this 11 th month revision?	<p>The due date is on the last day of the 11th month of the basis period for YA 2021 and/or YA 2022.</p> <p>Examples:</p> <table border="1" data-bbox="841 800 1528 1209"> <thead> <tr> <th colspan="2" data-bbox="841 800 1528 842">YA 2021</th> </tr> </thead> <tbody> <tr> <td data-bbox="841 842 1214 926">Basis period</td> <td data-bbox="1214 842 1528 926">1 January 2021 - 31 December 2021</td> </tr> <tr> <td data-bbox="841 926 1214 1010">11th month of the basis period</td> <td data-bbox="1214 926 1528 1010">November 2021</td> </tr> <tr> <td data-bbox="841 1010 1214 1125">Due date for the application of the revision</td> <td data-bbox="1214 1010 1528 1125">10 December 2021</td> </tr> <tr> <td data-bbox="841 1125 1214 1209">Effective date of the revision</td> <td data-bbox="1214 1125 1528 1209">15 December 2021</td> </tr> </tbody> </table> <table border="1" data-bbox="841 1251 1528 1940"> <thead> <tr> <th colspan="2" data-bbox="841 1251 1528 1293">YA 2022</th> </tr> </thead> <tbody> <tr> <td data-bbox="841 1293 1214 1377">Basis period</td> <td data-bbox="1214 1293 1528 1377">1 July 2021 - 30 June 2022</td> </tr> <tr> <td data-bbox="841 1377 1214 1461">11th month of the basis period</td> <td data-bbox="1214 1377 1528 1461">May 2022</td> </tr> <tr> <td data-bbox="841 1461 1214 1577">Due date for the application of the revision</td> <td data-bbox="1214 1461 1528 1577">31 May 2021</td> </tr> <tr> <td data-bbox="841 1577 1214 1940">Effective date of the revision</td> <td data-bbox="1214 1577 1528 1940">If the application is received after the 15th of the 11th month of the basis period, the revision is effective for the instalment due on the 15th of the following month</td> </tr> </tbody> </table>	YA 2021		Basis period	1 January 2021 - 31 December 2021	11 th month of the basis period	November 2021	Due date for the application of the revision	10 December 2021	Effective date of the revision	15 December 2021	YA 2022		Basis period	1 July 2021 - 30 June 2022	11 th month of the basis period	May 2022	Due date for the application of the revision	31 May 2021	Effective date of the revision	If the application is received after the 15 th of the 11 th month of the basis period, the revision is effective for the instalment due on the 15 th of the following month
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No.	Question	IRB's response
		Where the 11 th month of the basis period falls in October, November or December 2022, the due date for the 11 th month revision is before 31 October 2022.
11.	Can a taxpayer who is eligible for the CP204 deferment from January 2022 to June 2022 apply for the 11 th month revision for YA 2021 and YA 2022?	Yes
12.	How may one apply for the 11 th month revision?	<p>The application form must be completed and submitted via e-mail to pindaancp204bajet2022@hasil.gov.my</p> <p>The application form is available on the IRB's website as follows: www.hasil.gov.my → Forms → Download Forms → Other Forms → Borang Permohonan Pindaan Anggaran Cukai Bulan Ke-11 Tempoh Asas Bagi Tahun Taksiran 2021/2022</p>
13.	Are any supporting documents required for the application of the 11 th month revision?	No
14.	Does Part B (Akuan) of the application form need to be completed if the taxpayer submits the application form himself?	Yes

Deferment of payment of estimated tax payable (CP204) and instalment scheme (CP500) for MSMEs from 1 January 2022 to 30 June 2022 - UNOFFICIAL TRANSLATION ONLY. PLEASE ALSO REFER TO OFFICIAL BAHASA MALAYSIA VERSION

No.	Question	IRB's response
1.	What are the criteria for a business to qualify as an MSME?	<p>The company must have:</p> <ul style="list-style-type: none"> ▶ Paid-up ordinary share capital of RM2.5 million or less at the beginning of the basis period, and ▶ Gross income from business sources of not more than RM50 million for the relevant YA
2.	Do taxpayers have to apply for the deferment of CP500 payments?	No. Taxpayers who have to remit CP500 payments are allowed to defer the payments due between 1 January 2022 and 30 June 2022.
3.	Is the deferment of CP204 payments applicable to all basis periods or limited to basis periods ending on 31 December 2022 only?	The deferment of CP204 instalment payments is applicable to all basis periods, as long as the instalment payments are due between 1 January 2022 and 30 June 2022.
4.	How is the eligibility for the deferment of CP204 instalment payments determined?	The eligibility for deferment is based on the response to the MSME criteria (refer Q1) indicated in the latest income tax return form received by the IRB.
5.	Will taxpayers who are eligible for the deferment of CP204 and CP500 payments be required to settle the deferred payments all at once after the deferment period ends?	No. The payment is to be made upon submission of the income tax return form for the relevant YA if there is any balance of taxes to be paid.
6.	Will the increase in taxes under Sections 107B(3) or 107C(9) of the ITA be imposed on taxpayers who have deferred their CP204 or CP500 payments?	No. The increase in taxes under Sections 107B(3) and 107C(9) of the ITA will not be imposed in cases where payments are remitted after the relevant due date, during the deferment period.

No.	Question	IRB's response
7.	Can CP204 or CP500 payments that have been remitted during the deferral period be carried forward to offset instalment payments which are due after the deferment period?	No. The payments will not be allowed to be carried forward to offset instalment payments which are due after the deferment period or the next YA. The increase in taxes under Sections 107B(3) and 107C(9) of the ITA will not be imposed as well for late payments during the deferment period.
8.	Can a taxpayer choose to decline the automatic deferment of CP204 or CP500 payments and continue to remit the payments per the original instalment payment schedule? If yes, does the taxpayer need to inform the IRB?	Yes. Taxpayers can decline and continue remitting the CP204 or CP500 payments per the original payment schedule without having to inform the IRB.
9.	Will IRB issue a notification to taxpayers who are eligible for the deferment of CP204 and CP500 payments?	The IRB will inform eligible taxpayers of the deferment of their CP204 payments via their e-mails registered with the IRB. However, no notification will be sent for the deferment of CP500 payments as all CP500 payments due between 1 January 2022 and 30 June 2022 can be deferred
10.	Can a taxpayer appeal if he is eligible for the deferment of CP204 payments based on his current MSME status?	Yes. Taxpayers can submit an appeal to penangguhancp204@hasil.gov.my
11.	Can a taxpayer who is eligible for the deferment submit an amendment to the CP204 in the sixth, ninth or 11 th month of the basis period that falls within the deferment period, or make amendments to CP500 before 30 June 2022?	Yes
12.	Will taxpayers who are required to remit CP500 instalment payments still receive a Form CP500 for YA 2022?	Yes. However, taxpayers are not required to remit the payments due during the deferment period (i.e., January, March and May 2022).

The FAQs also provide two examples to demonstrate the manner in which the deferment of payment of estimated tax payable (CP204) and under an instalment scheme (CP500) would work.

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Important dates

30 November 2021	6 th month revision of tax estimates for companies with May year-end
30 November 2021	9 th month revision of tax estimates for companies with February year-end
30 November 2021	Statutory deadline for filing of 2021 tax returns for companies with April year-end. As a concession, this deadline is extended to 31 January 2022 pursuant to the RF Filing Programme (Amendment 4/2021).
10 December 2021	Special 11 th month revision of tax estimates for YA 2021, for companies with December 2021 year-end
15 December 2021	Due date for monthly instalments
31 December 2021	6 th month revision of tax estimates for companies with June year-end
31 December 2021	9 th month revision of tax estimates for companies with March year-end
31 December 2021	Special 11 th month revision of tax estimates for YA 2022, for companies with January 2022 year-end
31 December 2021	Statutory deadline for filing of 2021 tax returns for companies with May year-end.

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