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Malaysian developments

Updates on Labuan entities providing certain services

Frequently Asked Questions (FAQs) on Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021

As highlighted in earlier tax alerts, the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 [P.U.(A) 423] (Regulations) were gazetted on 22 November 2021 (see *Tax Alerts No. 23/2021* and *24/2021*). The new Regulations include the substantial activity requirements for Labuan entities that carry out the following types of services (previously referred to as “other trading” activities):

- i) administrative
- ii) accounting
- iii) legal
- iv) backroom processing
- v) payroll
- vi) talent management

- vii) agency
- viii) insolvency-related
- ix) management

Following the above, the Labuan Financial Services Authority (LFSA) has issued an FAQs document dated 14 December 2021, in relation to the Regulations. The FAQs document lists the types of activities that fall within the above-mentioned types of services. The details set out in the FAQs are outlined in the Appendix to this Alert.

Further extension of time (EOT) for the submission of tax returns

As highlighted in an earlier tax alert, following the gazettment of the Regulations, the Inland Revenue Board (IRB)'s Labuan Branch issued a letter dated 29 November 2021 to the Association of Labuan Trust Companies (ALTC) (see *Tax Alert No. 24/2021*). The IRB provided the relevant Labuan companies deadlines (i.e., by 15 December 2021 or 15 January 2022, depending on the filing position and technical position adopted by the relevant Labuan entity previously) to decide on their tax filing positions and submit the relevant income tax return forms (ITRF) (or, where relevant, election forms to be taxed under the Income Tax Act 1967 (ITA)), for the years of assessment (YAs) 2020 and 2021.

Following the above, the IRB's Labuan Branch has issued another letter, dated 15 December 2021, to the ALTC. Via this letter, the IRB has granted a further EOT up to 21 January 2022 for the submission of ITRF, as the IRB has received numerous EOT requests.

Stamp duty exemptions

In Budget 2022, to enhance the accessibility to insurance and *takaful* products by the B40 group and Micro, Small and Medium Enterprises (MSMEs), the Government proposed the following:

- (i) Stamp duty exemption for any insurance policies or *takaful* certificates for Perlindungan Tenang products, with an annual premium or *takaful* contribution not exceeding RM150 (previously RM100).
- (ii) Stamp duty exemptions for the purchase of insurance policies or *takaful* certificates by individuals or MSMEs, where the annual premium or contribution does not exceed:
 - For individuals: RM150
 - For MSMEs: RM250

To legislate the above proposals, the following Orders have been gazetted:

- ▶ Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2021
- ▶ Stamp Duty (Exemption) (No. 15) Order 2021
- ▶ Stamp Duty (Exemption) (No. 16) Order 2021

The Orders / Amendment Order all come into operation on 1 January 2022.

Stamp duty exemption on Tenang Insurance products

The Stamp Duty (Exemption) (No. 5) Order 2018 was gazetted on 31 December 2018 to provide a stamp duty exemption on any insurance policies or *takaful* certificates for Perlindungan Tenang products, issued by a licensed insurer or a licensed *takaful* operator (from 1 January 2019 to 31 December 2020), with

an annual premium or *takaful* contribution not exceeding RM100 (see *Tax Alert No. 1/2019*).

Thereafter, the Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2020 was gazetted on 31 December 2020 to extend the stamp duty waiver for another five years, until 31 December 2025 (see *Tax Alert No. 1/2021*).

Following the above, the Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2021 [P.U.(A) 462/2021] was gazetted on 21 December 2021. The Amendment Order provides that the exemption will now apply to any insurance policies or *takaful* certificates for Perlindungan Tenang products, with an annual premium or *takaful* contribution not exceeding RM150 (previously RM100).

Stamp duty exemption for the purchase of insurance policies or *takaful* certificates by MSMEs

The Stamp Duty (Exemption) (No. 15) Order 2021 [P.U.(A) 464/2021] was gazetted on 22 December 2021. The Order provides a stamp duty exemption for any insurance policies or *takaful* certificates for products issued by a licensed insurer or licensed *takaful* operator to micro enterprises or small and medium enterprises (SMEs), with an annual premium or *takaful* contribution not exceeding RM250.

The exemption will apply to insurance policies or *takaful* certificates issued between 1 January 2022 and 31 December 2025.

The following terms are defined in the Order:

(i) Licensed insurer

Same meaning assigned to it in Section 2(1) of the Financial Services Act 2013 (FSA)

(ii) Licensed *takaful* operator

Same meaning assigned to it in Section 2(1) of the Islamic FSA

(iii) Micro enterprises or SMEs

As determined by the National Entrepreneur and Small and Medium Enterprises Development Council established under Section 2A of the Small and Medium Industries Development Corporation Act 1995

(iv) Products

Insurance or *takaful* products which have been approved by the Central Bank of Malaysia to be offered by a licensed insurer or *takaful* operator as follows:

- (a) Fire insurance or *takaful*
- (b) Fire business interruption insurance or *takaful*
- (c) Personal accident insurance or *takaful*
- (d) Travel insurance or *takaful*
- (e) Liability insurance or *takaful*
- (f) Engineering insurance or *takaful*

Stamp duty exemption for the purchase of insurance policies or *takaful* certificates by individuals

The Stamp Duty (Exemption) (No. 16) Order 2021 [P.U.(A) 465/2021] was gazetted on 22 December 2021. The Order provides a stamp duty exemption on any insurance policies or *takaful* certificates for products issued by a licensed insurer or licensed *takaful* operator to an individual, with an annual premium or *takaful* contribution not exceeding RM150.

The exemption will apply to insurance policies or *takaful* certificates issued between 1 January 2022 and 31 December 2025.

The definition of "licensed insurer", "licensed *takaful* operator" and "products" are the same as defined under P.U.(A) 464/2021 (refer above).

FAQs on the Special Income Remittance Programme for Malaysian tax residents with income kept overseas

In Budget 2022, it was proposed that from 1 January 2022, foreign-sourced income earned by Malaysian tax residents (other than a resident company carrying on the business of banking, insurance or sea or air transport) and received in Malaysia will no longer be tax exempt. To ease the transition, a flat income tax rate of 3% will be imposed on the gross amount of foreign-sourced income received in Malaysia from 1 January 2022 to 30 June 2022. From 1 July 2022 onwards, the prevailing tax rate of the taxpayer would apply.

Thereafter, on 16 November 2021, the IRB issued a media release on the introduction of a Special Income Remittance Programme (PKPP) for Malaysian residents with income kept overseas to remit their money into Malaysia between 1 January 2022 and 30 June 2022.

Following the above, the IRB had published on its website an FAQ document in Bahasa Malaysia, titled "Soalan Lazim Berkaitan Program Khas Peremitan Pendapatan (PKPP) Kepada Pemastautin Di Malaysia Yang Mempunyai Pendapatan Yang Disimpan Di Luar Negara", dated 17 December 2021. The FAQs were subsequently removed from the website, which now states that the FAQs are being reviewed and refined. We will cover the FAQs in our tax alert once they are reinstated on the IRB's website.

Update on pure equity holding Labuan entities

The Labuan Business Activity Tax (Exemption) Order 2020 was gazetted on 2 June 2020 to provide that a pure equity holding Labuan entity is exempted from

the application of Section 2B(1)(b)(i) of the Labuan Business Activity Tax Act 1990 (LBATA), i.e., such an entity would not require full-time employees in Labuan (see *Tax Alert No. 9/2020*).

Pursuant to the Finance Act 2020, Section 2B(1)(b) was amended to update the substance requirements for Labuan entities carrying on "Labuan trading activities" and "Labuan non-trading activities", effective 1 January 2021. For Labuan entities carrying on a Labuan non-trading activity, the Minister may also prescribe by regulations any condition in relation to control and management in Labuan.

Following the above, the Labuan Business Activity Tax (Exemption) 2020 (Amendment) Order 2021 [P.U.(A) 466] was gazetted on 23 December 2021 to update the reference to the relevant section in the LBATA (i.e., to Section 2B(1)(b)(ii)(A)) exempting a pure equity holding Labuan company from the requirement of having full-time employees in Labuan.

The Amendment Order is deemed to have come into operation on 1 January 2021, i.e., the effective date of the relevant change to the LBATA.

Double deduction for scholarships provided by companies

In Budget 2019, to encourage talent development in line with Industry 4.0 aspirations, the Government proposed that a double deduction be given on scholarships provided by companies to Malaysian citizen and resident students pursuing studies at technical and vocational levels, diplomas and degrees in the fields of engineering and technology (see *Special Tax Alert: Highlights of Budget 2019 - Part I*).

To legislate the proposal, the Income Tax (Deduction for the Sponsorship of Scholarship to Malaysian Student Pursuing Studies in the Field of Engineering and Technology at the Technical and Vocational

Certificate, Diploma or Bachelor's Degree Levels) Rules 2021 [P.U.(A) 468] were gazetted on 23 December 2021. The Rules provide that in ascertaining a company's adjusted income from its business for a YA, a double deduction shall be allowed for the expenses incurred and paid by the company in that basis period, for sponsoring a scholarship for a student according to the period of the relevant sponsorship agreement.

The double deduction is given for the following expenses incurred for sponsoring the scholarship:

- (a) Payment required by the relevant institution or higher educational institution in relation to the course of study, and
- (b) Educational aid and reasonable cost of living expenses throughout the student's period of study at the relevant institution or higher educational institution.

Any amount refunded by the student to the company shall, when received, be treated as gross business income of the company derived from Malaysia in the basis period for that YA.

The Rules shall apply to a company which:

- (a) Is a Malaysian resident company incorporated under the Companies Act 2016
- (b) Sponsors a scholarship for a student pursuing a full-time course of study in the field of engineering and technology at a:
 - (i) Technical and vocational certificate level in an institution, or
 - (ii) Diploma or bachelor's degree level in a higher educational institutionand
- (c) Executes a scholarship agreement with a student between 1 January 2019 and 31 December 2021

The following terms have also been defined in the Rules:

(a) Institution

Institution recognized by the Malaysian Qualifications Agency or the Skills Development Department

(b) Higher educational institution

Institution established under the Universities and University Colleges Act 1971, Universiti Teknologi MARA Act 1976 or the Private Higher Educational Institutions Act 1996

(c) Student

Means an individual:

- (i) Who is a Malaysian citizen and Malaysian resident
- (ii) Who receives a full-time course of study in the field of engineering and technology at a:
 - Technical and vocational certificate level, in an institution, or
 - Diploma or bachelor's degree level, in a higher educational institution
- (iii) Who has no means of his own, and
- (iv) Whose parents' or guardians' total monthly income do not exceed RM10,000

The Rules are deemed to be effective from YA 2019.

Additional deduction for expenditure incurred on the rental of premises and workers' dormitories

Under the Strategic Programme to Empower the People and Economy (PEMERKASA), to incentivize companies to participate in the Safe@Work initiative and provide their employees with conducive work and living environments, the Government proposed that a further deduction be given to manufacturing companies and manufacturing-related services companies for expenditure incurred on the rental of premises and workers' dormitories (see *Special Tax Alert No. 2/2021*). The qualifying expenditure eligible for the additional deduction is capped at RM50,000

for each company, for expenses incurred between 1 January 2021 and 31 December 2021.

Thereafter, in Budget 2022, the Government proposed that the incentive be extended for an additional year, i.e., until 31 December 2022.

To legislate the proposals, the Income Tax (Deduction for Expenditure on Provision of Employees' Accommodation) Rules 2021 [P.U.(A) 470] were gazetted on 24 December 2021. The Rules provide that in ascertaining a company's adjusted income from its business for a YA, a further deduction (i.e., deduction in addition to any deduction allowable under Section 33 of the ITA) shall be allowed for the expenses incurred by the company for the rental of premises for its employees' accommodation* between 1 January 2021 and 31 December 2022. The total amount of expenditure is capped at RM50,000 for each company.

*The employees' accommodation must be certified with a Certificate for Accommodation as provided under Section 24D of the Employees' Minimum Standards of Housing Accommodations and Amenities Act 1990. Accommodation for directors is excluded.

The Rules shall apply to a Malaysian resident company which:

- (a) Is incorporated under the Companies Act 2016
- (b) Is carrying on the business of manufacturing or manufacturing-related services, and
- (c) Has obtained an approval of compliance under the Safe@Work programme from the Ministry of International Trade and Industry.

The Rules are effective from YA 2021.

Update on tax deduction for secretarial and tax filing fees

The Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [P.U.(A) 162/2020] were gazetted on 19 May 2020 and were effective from YA 2020 (see *Tax Alert No. 8/2020*). The Rules provide a deduction, capped at RM15,000 per YA, to a resident person who has incurred and paid certain secretarial and tax filing fees (as outlined in the Rules) in the basis period for that YA.

Following the above, the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) (Amendment) Rules 2021 [P.U.(A) 471] were gazetted on 24 December 2021. The Amendment Rules stipulate that a deduction, capped at RM15,000 per YA, shall now be given to a resident person who has incurred the secretarial and tax filing fees in the basis period for that YA (i.e., the requirement for the fees to have also been paid has been removed). The Amendment Rules are effective from YA 2022.

Notwithstanding the above, the requirements per P.U.(A) 162/2020 would remain in force for YAs 2020 and 2021.

Overseas developments

Japan releases a 2022 tax reform outline

Japan's coalition leading parties released the 2022 tax reform outline (the Outline) on 10 December 2021. Based on the Outline, a tax reform bill (the Bill) will be prepared and submitted to the Diet, and is expected to be enacted by the end of March 2022.

The key provisions in the Outline that are 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 will be 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 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 Outline proposes that 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 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 corporate income tax payable).

In this regard, the Outline also provides that:

- ▶ Companies with 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 their pay raise policy, customer relationship policy, etc. online, to be eligible for this regime.
- ▶ This regime will not be 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 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 will be further tightened such that the total compensation paid to specified employees in the current year must increase by 0.5% or more for 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. This domestic dividend withholding tax will be 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 will amend the formula such that the amount of such return of capital will be 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 will be calculated based on the particular class of shares associated with the distributions.

Low-value depreciable assets

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

Open innovation tax incentive

The existing open innovation tax incentive provides a deduction equivalent to 25% of the eligible investment in qualified venture companies. This tax incentive will continue 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) will be revised to three years (currently, five years).

Tax basis adjustment under the group profit and loss sharing regime

Japan's existing tax consolidation regime will automatically transition to the group profit and loss sharing regime, as introduced under the 2020 tax reform, for fiscal years beginning on or after 1 April 2022. The 2022 tax reform will revise, 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., where shares of the group company are 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.
- ▶ Under the new rule, in addition to the current rule, an amount equivalent to the goodwill of the group company can be added to its tax basis, subject to certain documentation requirements.

The new rule also applies to group companies that commenced or joined the existing tax consolidation regime and will transition 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 will clarify 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 will expand 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 will amend, among others, the registration process. Please see 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 will expand 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 will be entitled to reject the registration application by foreign businesses. The tax authority can also 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 which are not compliant with such requirement.

Base Erosion and Profit Shifting (BEPS) 2.0

The 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 globalized economy. The 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.

Peruvian Tax Authority challenges the deduction of intercompany charges

In recent tax audits, the Peruvian Tax Authority has challenged the deductibility of intercompany charges.

Background

Legislative Decree 1312, in force since 1 January 2017, amended the Peruvian Income Tax Law by incorporating the following requirements for claiming a corporate income tax deduction on intercompany charges paid to related parties:

- i. The intercompany charges must pass the so-called benefit test, meaning the service rendered to the taxpayer by its related parties has an economic or commercial value that is the same as if independent parties rendered the service to the taxpayer and the service enhances or maintains the taxpayer's position in the marketplace.
- ii. The taxpayer has supporting documentation proving the nature of the service, the need for the service, and the costs and expenses incurred by the related party that rendered the service.

New audits carried out by the Peruvian Tax Authority

The Peruvian Tax Authority is challenging the deductibility of intercompany charges if the Peruvian taxpayer (user of the service) does not provide supporting documentation for the costs and expenses incurred by the related party that provided the

service. In some cases, the Tax Authority denied the deduction when the Peruvian entity was unable to provide the documentation.

FAQs on Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021
- Details of the Labuan business activities prescribed under Item 20 of the First Schedule of the Regulations

No.	Business activity	Details
1.	Administrative services	Services pertaining to: <ul style="list-style-type: none"> ▸ Employee management ▸ Payroll management ▸ Property management ▸ Human resource management ▸ Financial planning ▸ Contract or subcontract management ▸ Facilities management ▸ Proposal management
2.	Accounting services	Services pertaining to recording, analyzing, summarizing or classifying financial, commercial and business transactions, and information of a person or business
3.	Legal services	<ul style="list-style-type: none"> ▸ Conveyancing services ▸ Legal advisory services ▸ Litigation or legal representation services in any proceedings before any court tribunal or other authority ▸ Legal dispute resolution services including alternative dispute resolution
4.	Backroom processing services	Services relating to settlements of receivables and payables, clearance, record maintenance, regulatory compliance or information technology related services which are usually performed by administration and support personnel who do not deal directly with clients
5.	Payroll services	Services relating to: <ul style="list-style-type: none"> ▸ Processing, calculation, payment and deduction of remuneration, benefits, tax and statutory payments ▸ Issuance of payslips and tax statements
6.	Talent management services	Provision of human resource services to attract, onboard, develop, motivate and retain employees
7.	Agency services	Provision of specific services on behalf of another group, business or person pursuant to an agency agreement between the agent and its client

8.	Insolvency-related services	Services relating to the administration of company liquidations or winding up or personal bankruptcy
9.	Management services	<p>Organization and coordination of activities of a business in order to provide services to clients. It usually consists organizing, supervising, monitoring, planning, controlling and directing business resources such as human, financial and technology.</p> <p>Management services exclude company management as defined in Section 129 of the Labuan Financial Services and Securities Act 2010.</p>

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Important dates

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.
15 January 2022	Due date for monthly instalments
31 January 2022	6 th month revision of tax estimates for companies with July year-end
31 January 2022	9 th month revision of tax estimates for companies with April year-end
31 January 2022	Special 11 th month revision of tax estimates for YA 2022, for companies with February 2022 year-end
31 January 2022	Statutory deadline for filing of 2021 tax returns for companies with June year-end.

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