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Malaysian developments

Updated guidelines and procedures for the application of automation capital allowance for the manufacturing sector

The Malaysian Investment Development Authority (MIDA) has recently published on its website the "Guidelines and procedures for the application of automation capital allowance (Automation CA)" dated 14 January 2021. The four-page guidelines replace the earlier "Guidelines and procedures for the application of automation capital allowance (Automation CA)" dated 23 May 2019 (see *Tax Alert No. 12/2019*), and comprise the following paragraphs:

1.0 Background
2.0 Type of incentive
3.0 Eligibility criteria
4.0 Mechanism (Gazette Orders)
5.0 Required documents
6.0 Application process
7.0 Effective date of application
8.0 Procedure for application

The guidelines have been updated mainly to reflect the extension of the incentive for another three years, until the year of assessment (YA) 2023. The extension was legislated via the following Amendment Orders (see *Tax Alert No. 9/2020*):

- Income Tax (Exemption) (No. 8) 2017 (Amendment) Order 2020 [P.U.(A) 172]
- Income Tax (Accelerated Capital Allowance) (Automation Equipment) 2017 (Amendment) Rules 2020 [P.U.(A) 173]

The incentive will apply to applications received by MIDA from 1 January 2015 to 31 December 2023.

In addition to the guidelines, further details are available on the MIDA website [[Forms & Guidelines - MIDA | Malaysian Investment Development Authority]() → Manufacturing sector → I) Automation Capital Allowance]

(a) Application form for Automation CA
(b) Checklist for application of Automation CA
(c) Process workflow for the Automation CA application process
(d) Process workflow for SIRIM verification
(e) Verification of machine or equipment for Automation CA

Extension of stamp duty exemption on the instrument of loan or financing agreement relating to the restructuring or rescheduling of a business loan or financing executed between a borrower or customer and a financial institution (FI)

The Stamp Duty (Exemption) (No. 2) Order 2020 [P.U.(A) 165], gazetted on 21 May 2020, provides a stamp duty exemption on the instrument of loan or financing agreement relating to the restructuring or rescheduling of a business loan or financing between a borrower or customer and a financial institution (FI), which is executed between 1 March 2020 and 31 December 2020 (see *Special Tax Alert No. 15/2020*). The exemption is not automatic and must be applied for.

Following the above, the Stamp Duty (Exemption) (No. 2) 2020 (Amendment) Order 2021 [P.U.(A) 27] was gazetted on 25 January 2021. The Amendment Order provides that:

(a) The exemption will be extended to instruments of loan or financing agreements executed by 30 June 2021 (previously 31 December 2020).

(b) The exemption will apply to instruments of loan or financing agreements of loan or financing between a borrower or customer and an FI (previously restricted to <u>business</u> loan or financing).

(c) The exemption is subject to the following conditions:
   - The existing instrument of loan or financing agreement has been duly stamped under Item 22 or 27 of the First Schedule of the Stamp Act 1949 (per P.U.(A) 165/2020), and
   - The instrument of loan or financing agreement relating to the restructuring or rescheduling of a loan or financing does not contain the element of additional value to the original amount of loan or financing under the existing instrument of loan or financing agreement* (additional condition outlined in the Amendment Order).

   *Excludes any interest or profit accrued from the restructured or rescheduled payments

(d) The application for the exemption will have to be accompanied by the relevant documents relating to the restructuring or rescheduling of that loan or financing (previously, the application had to be accompanied by a letter of offer from the FI).

The Amendment Order is deemed to have come into operation on 1 March 2020.

Flexible Work Arrangement incentives

Under the Short-term Economic Recovery Plan (PENJANA) announced on 5 June 2020, to encourage work-from-home arrangements, the Government proposed certain flexible work arrangement incentives. One of the incentives proposed was a tax exemption of up to RM5,000 for individual taxpayers who receive handphones, notebooks or tablets from their employers (see *Take 5: COVID-19: Short-term Economic Recovery Plan*).

To legislate the above, the following Order and Rules were gazetted on 26 January 2021, and are effective for YA 2020.

Income Tax (Exemption) Order 2021 [P.U.(A) 30]

The Order provides that in ascertaining the gross income from his employment for a YA, an employee is exempted from the payment of income tax on the value of benefit (in the form of a smartphone, tablet or personal computer) received from his employer. The value of benefit is capped at RM5,000.

The Order will not apply to an employee where:

(a) The employee is a sole proprietor,

(b) The employee is the employer's partner in a partnership, or

(c) His employer is a company, and the employee has the control or power to manage the affairs of the company or any other company that has control over his employer, to be conducted in accordance to the wishes of the employee in the following manner:

- (i) By means of shareholding in the company or such other company,
- (ii) By possession of voting power in relation to the company or such other company, or
- (iii) By exercising any power conferred in the constitution of the company or other documents regulating the company or such other company

Income Tax (Deduction for Value of Benefit given to Employees) Rules 2021 [P.U.(A) 31]

The Rules provide that in ascertaining the adjusted income of a Malaysian resident from his business for a YA, a deduction shall be allowed for the value of the benefit (for the purchase of a smartphone, tablet or personal computer) given to his employee.

Updated guidelines for submission of estimated tax payable

The Inland Revenue Board (IRB) has recently published on its website, Operational Guidelines No. 1/2021 (Guidelines) dated 22 December 2020. The Guidelines are in Bahasa Malaysia and are titled "Pengemukaan Anggaran Cukai Yang Kena Dibayar Di Bawah Seksyen 107C Akta Cukai Pendapatan 1967 (ACP)". The new 45-page Guidelines replace the earlier Operational Guidelines No. 1/2017 dated 23 February 2017 (see *Tax Alert No. 7/2017*).

The new Guidelines are broadly similar to the earlier guidelines and provide clarification on the procedures for the submission of tax estimation forms. The key changes are outlined below.

1. The new Guidelines clarify that companies, co-operative societies, trust bodies and limited liability partnerships (LLP) (collectively referred to as “relevant entities”) that have ceased operations or are dormant are still required to submit an estimate of tax payable (Form CP204).

2. The earlier Guidelines stipulate that whilst non-resident companies which are subject to withholding tax (WHT) under Section 107A of the ITA are required to submit an estimate of tax payable, such companies would not need to remit any tax instalment payments to the IRB, as WHT had been suffered. In the new Guidelines, the statement that such companies do not need to remit tax instalment payments has been removed.

3. The new Guidelines provide examples to demonstrate the following:

   (a) Due date for the submission of Form CP204 for a company (non-SME), co-operative society, trust body or LLP that first commenced its operations in a YA, and the basis period for that YA is not less than six months
   (b) Due date for the submission of Form CP204 for an SME (as defined) that first commenced its operations, pursuant to Section 107C(4A)
   (c) The cessation of tax instalment payments in cases where the revised tax estimate (Form CP204A) is lower than the original tax estimate (Form CP204)

4. The new Guidelines re-iterate that the relevant entities will not be allowed to submit the Form CP204 later than the stipulated due date if the Notice of Instalment Payments (Form CP205) has been issued by the IRB. The amount of estimated tax payable issued via the Form CP205 is determined by the IRB. However, a revision of tax estimate can be submitted in the sixth and/or ninth month of the basis period for the YA.

   The earlier Guidelines stipulated that the amount of estimated tax payable issued via the Form CP205 is based on the Form CP204 or Form CP204A (where applicable) for the immediate preceding YA. This statement has been removed from the new Guidelines.

5. The new Guidelines explain and provide examples to demonstrate the introduction of Section 21A(3A) of the ITA which requires the relevant entities to notify the Director General (DG) of any changes in the accounting period through the prescribed form, i.e. the Form CP204B. The Form CP204B has to be submitted to the IRB no later than:
   - <u>30 days before the end of the new accounting period</u> if the new accounts are less than 12 months and are closed before the end of the original accounting period
   - <u>30 days before the end of the original accounting period</u> if the new accounts are more than 12 months and are closed after the end of the original accounting period

   The new Guidelines also explain the penalties that would apply for non-compliance.

6. The new Guidelines stipulate that entities intending to change their accounting periods and revise their tax estimates at the same time will need to do so in the sixth or ninth month of the basis period for the YA. The Form CP204B will need to be submitted before the Form CP204A.

   Based on the earlier Guidelines, the revision of the tax estimate due to the change in accounting period was possible outside of the stipulated time frames under certain circumstances and needed to be submitted together with the Form CP204B, an appeal letter and relevant supporting documents.

7. Following on from Point 6 above, the new Guidelines also provide an updated methodology for ascertaining the tax instalment payments after a change in the relevant entities’ accounting period, which would appear to be in line with the

updated Form CP204B, where the columns to complete a "revised tax estimate" have been removed. We believe the IRB will adopt this methodology in ascertaining the tax instalment payments for each YA by way of the Form CP205.

Note:
The IRB has also stipulated on its website that Paragraph 6 of Public Ruling (PR) No. 8/2019: Notification of change of accounting period by a company / LLP / trust body / co-operative society, with regard to the computation of revised tax instalment payments after a change in accounting period, will no longer apply with effect from 3 February 2021. The PR will be updated accordingly to be in line with the new Guidelines.

8. The new Guidelines reiterate the requirement for a company under liquidation to furnish a Form CP204B upon the appointment of a liquidator

9. The new Guidelines provide an updated example to demonstrate the tabulation of the underestimation penalty pursuant to Section 107C(10) of the ITA, taking into account the WHT that has been remitted to the IRB. The WHT is to be deducted from the "actual tax payable" amount, in computing the difference between the actual tax payable and estimate or revised estimate tax payable (where applicable)).

   We believe that this example is intended to reflect the calculation of the underestimation penalty for a permanent establishment in instances where tax has been withheld under Section 107A of the ITA. However, this will need to be confirmed with the IRB.

10. The earlier Guidelines outlined the following:
    (a) Procedure to submit an appeal for an estimate of tax payable which is lower than 85% of the estimate or revised estimate tax payable for the immediate preceding YA
    (b) Situations where a Form CP204 would be rejected
    (c) Procedure for the relevant entities to submit an appeal against a Form CP205

    These points have been removed from the new Guidelines.

Tax compliance requirements for Labuan entities carrying on "other trading" activities

Following the gazettement of the Labuan Business Activity Tax Act (Requirements for Labuan Business Activity) 2018 (Amendment) Regulations 2020 [P.U.(A) 375] on 24 December 2020, the IRB's Labuan International Unit has issued a letter dated 5 February 2021 to the Association of Labuan Trust Companies. The letter states that Labuan entities carrying on "other trading" activities, which were classified under Code 23 for Labuan Business Activity Tax Act 1990 (LBATA) filing purposes, will be required to submit their income tax return forms (ITRF) under the ITA instead of under the LBATA.

The due dates for the submission of the ITRF under the ITA are as follows:

YA	Due date
2019	31 March 2021
2020 (accounting period up to 30 June 2020)	
2020 (accounting period up to 31 July 2020 – 31 December 2020)	In accordance to the ITA

No penalties will be imposed under Section 112(3) of the ITA if the ITRF are submitted within the stipulated timelines above. Further, no penalties will be imposed for the non-submission of Form CP204 for YA 2019 and YA 2020. However, the Form CP204 for YA 2021 must be submitted as soon as possible.

The letter also stated that in cases where a Labuan entity has remitted any tax payments under the LBATA for the respective YAs, the amount will be transferred to the accounts under the ITA.

This communication is consistent with the IRB's position that Labuan entities carrying on activities which are not listed in the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 (as amended by the Labuan Business Activity Tax (Requirements for Labuan Business Activity) 2018 (Amendment) Regulations 2020) are to be taxed under the ITA instead of the LBATA. Labuan entities that had previously filed a tax return under the LBATA for such "other trading activities" should seek professional advice on how to proceed.

Overseas developments

Indian Fiscal Budget 2021 – Key tax proposals impacting individuals and employers

The Finance Bill (Bill) for the fiscal year 2021-22 was presented on 1 February 2021. The Bill proposes changes to the tax laws, which would be effective from 1 April 2021.

A clear theme of the Bill is simplification and reduction of compliance burden and levels of tax litigation.

Some of the initiatives include altering the taxation of foreign retirement provision, allowing tax appeals to take place without in-person court appearances, eliminating the need for specified senior citizens to file returns and changes to the tax treatment of certain investment schemes.

No specific rules were introduced governing the taxation of workers whose tax residence has been impacted for the fiscal year 2020-21 due to pandemic-related travel restrictions.

Details

Relaxation of taxability of income from retirement benefit accounts

Indian tax residents who have invested in a foreign retirement benefit account can face issues that generate financial hardship due to a mismatch in the taxation rules. The Budget announced a plan to reform these taxation rules.

Taxability of interest on various retirement savings funds, where income is exempt

Investment returns accruing in retirement savings funds are typically tax-free (subject to the satisfaction of certain conditions); but the Finance Bill 2021 proposes that interest accruing on employees' contributions to specified funds in excess of INR 250,000 (USD 3,571) per annum, will be taxable.

Exemption for Leave Travel Concession (LTC) cash scheme

The Finance Bill proposes some legislative amendments to the Leave Travel Concession available to salaried employees. In October 2020, the Indian Government announced a relaxation to the rules of this exemption to allow different types of expenditure to qualify for exemption, subject to certain conditions. The Bill proposes changes to help with the implementation of this scheme and clarifies some of the points such as the amount of exemption and how excess amounts are taxed. These changes are applicable only for the tax year ending 31 March 2021.

Focus on concluding the process of implementing new labour codes

While the Indian Government is working on introducing new labour codes (likely 1 April 2021), specific mention was made in the Budget speech to announce that social security benefits will be extended to workers in the gig economy. This will be accompanied by a compliance burden reduction on employers through the availability of a single registration and online tax filings.

Relaxation of advance tax liability on dividend income

The Finance Bill 2021 will relax the rules governing advance taxation of dividend income. This will mean that no interest is payable on previous advance tax instalments if they are in respect of ordinary dividends that have not yet been declared or received.

Tax deduction at higher rates

Currently, a higher tax rate is applied on income, where the person fails to provide the details of the Permanent Account Number (tax identification number). Aimed at reducing noncompliance, the Government now proposes to apply the higher tax rate to persons who default in filing the income tax return in India.

Under the proposed provision, a higher tax rate will be applied on specified income (not including salary) for non-return filers, i.e. any person who has not filed the income-tax return in India within the due date in the preceding two fiscal years.

Taxation of proceeds received on maturity of high premium ULIPs

Currently, proceeds received on maturity of all Unit Linked Insurance Plans (ULIPs) are exempt from tax. The Finance Bill 2021 proposes to consider the ULIPs issued on or after 1 February 2021, where the aggregate premium exceeds INR 250,000 (USD 3,571) per annum, as capital assets. Accordingly, the redemption proceeds from such ULIPs would be chargeable to tax in India as capital gains income, subject to the conditions prescribed to calculate the gains.

Reduction in time limit for completion of assessment

The Bill proposes to reduce the time limit for the completion of an assessment by three months.

Introduction of “faceless” income tax appellate proceedings

In order to drive greater efficiency, transparency and accountability in the interaction between the Indian revenue authorities and ordinary taxpayers, faceless assessments, appeals and penalty schemes have been introduced. In order to reduce the human interface for appellate proceedings as well, the Bill proposes to introduce faceless Income Tax Appellate Tribunal (ITAT) proceedings.

Reduction in time limit for income escaping assessment

Currently, the Indian revenue authorities can issue a notice of assessment for income that has not been declared or taxed for up to seven (7) years from the end of the relevant fiscal year. The Indian Government recognizes the importance of information exchanged digitally and therefore, in the proposed Bill, the time limit for issuance of this notice will be reduced to four (4) years.

Extension in the time limit provided for investment in affordable housing schemes

The Indian Government has extended the availability of tax benefits directed towards loans borrowed to purchase a main residence. The benefit was provided to incentivize affordable housing and is applied to any loan taken out before 31 March 2021. To continue providing affordable housing, the time limit for loans sanctioned by a financial institution has been extended to 31 March 2022.

Reduction in time limit specified for filing belated and revised India tax returns

The Finance Bill 2021 proposes to reduce the time limit for the filing of late or revised India tax returns by three months. These can now be filed three months before the end of the following fiscal year or before the completion of the assessment, whichever is earlier.

Relaxation for certain categories of senior citizens in filing income tax returns

Currently, senior citizens (aged 60 years or above) and super senior citizens (aged 80 years or above) are liable to file India tax returns only if their total income exceeds the basic exemption limit i.e., INR 300,000 (USD 4,286) and INR 500,000 (USD 7,143) respectively. The Bill proposes to provide a similar exemption to senior citizens who are 75 or older and are in receipt of pension and specified interest income only, provided they meet certain specified conditions.

Introduction of a faceless Dispute Resolution Committee for small and medium taxpayers

A new scheme is proposed to reduce tax office disputes and aid settlement at the initial stage. Under the new scheme, the Indian Government will establish a Dispute Redressal Committee which will resolve disputes of certain categories of taxpayers to be defined.

Next steps

The provisions of the Bill will not become law until they are approved by both Houses of the Indian Parliament and receive the assent of the President of India. Once approved, the provisions will apply for the 2021/22 Indian fiscal year (1 April 2021 – 31 March 2022).

No relaxation has been announced in this Bill on residency rules, for individuals who have been stranded in India due to the COVID-19 pandemic, during the period 1 April 2020 to 31 March 2021.

The proposed provisions would require taxpayers to closely monitor their income tax compliance as various changes have been proposed on time-limits for the filing of tax returns as well as for assessment proceedings. Also, as specific mention has been made about new labour codes, employers should gear up for a seamless implementation of the new labour codes in their organization.

Spain delays first reporting of Digital Services Tax and Financial Transaction Tax

The Spanish Digital Services Tax (DST) and Financial Transaction Tax (FTT) became effective on 16 January 2021.

However, the Spanish Tax Authority has published a press release on its website, announcing a deferral of the upcoming DST and FTT payment and submission deadlines. The deadline deferrals are as follows:

- The deadline for the filing of the DST return and the payment of tax for Q1 2021, which would ordinarily be due by 30 April 2021, has been deferred to 31 July 2021. Accordingly, the Q1 2021 DST return must be submitted along with the Q2 2021 DST return.
- The deadlines for the filing of the FTT return and the payment of tax for January and February 2021, which would ordinarily be due by 20 February 2021 (FTT return for January 2021) and 20 March 2021 (FTT return for February 2021) respectively, have been deferred to 10 - 20 April 2021. Accordingly, the FTT returns for January and February must be submitted in the period in which the FTT return for March 2021 must be submitted, that is, by 20 April 2021.

Since the regulations governing both taxes are still in draft, it is expected that these measures will be implemented through the final version of the said regulations.

US investigation on Spanish DST

On a separate note, on 2 June 2020, the United States (US) Trade Representative initiated an investigation into the Spanish DST. The investigation was published on 14 January 2021. The investigation claims that the features of the Spanish DST are unreasonable, discriminatory and burdensome.

The results of this investigation indicate that:

1. Spain’s DST, by its structure and operation, discriminates against US digital companies, due, among others, to the selection of covered services and the revenue thresholds.
2. Spain’s DST is unreasonable because it is inconsistent with the principles of international taxation.
3. Spain’s DST burdens or restricts US commerce.

While the above conclusions reached are aligned with the conclusions by the US on other jurisdictions that have unilaterally created the same digital tax, no retaliatory measures have yet been imposed.

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 Tax Leader and Malaysia Tax Leader)
amarjeet.singh@my.ey.com
+603 7495 8383

People Advisory Services

Tan Lay Keng (EY Asean People Advisory Services Leader and Malaysia People Advisory Services Leader)
lay-keng.tan@my.ey.com
+603 7495 8283

Christopher Lim (EY Asean Immigration Leader)
christopher.lim@my.ey.com
+603 7495 8378

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

Business Tax Services

Robert Yoon (EY Asia-Pacific Fixed Assets Services Leader)
robert.yoon@my.ey.com
+603 7495 8332

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

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

Global Compliance and Reporting

Julian Wong (EY Asean Global Compliance and Reporting Leader and EY Asean Managed Services Leader)
julian.wong@my.ey.com
+603 7495 8347

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

Janice Wong (EY Asean Japan Business Services (JBS) Tax Leader)
janice.wong@my.ey.com
+603 7495 8223

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

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

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
+604 688 1899

Jaclyn Tan (Payroll Operate Services)
jaclyn.tan@my.ey.com
+603 7495 8404

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 Asean Transfer Pricing Leader and Malaysia 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

Sam Barrett (Operating Model Effectiveness)
sam.barrett@my.ey.com
+603 7495 8555

Gary Ling (Transfer Pricing)
gary.ling@my.ey.com
+603 7495 8388

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

Financial Services

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

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

Gary Ling (Transfer Pricing)
gary.ling@my.ey.com
+603 7495 8388

Important dates

15 February 2021	Due date for monthly instalments
28 February 2021	6th month revision of tax estimates for companies with August year-end
28 February 2021	9th month revision of tax estimates for companies with May year-end
28 February 2021	Statutory deadline for filing of 2020 tax returns for companies with July year-end
15 March 2021	Due date for monthly instalments
31 March 2021	6th month revision of tax estimates for companies with September year-end
31 March 2021	9th month revision of tax estimates for companies with June year-end
31 March 2021	Statutory deadline for filing of 2020 tax returns for companies with August 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