

EY Tax Alert

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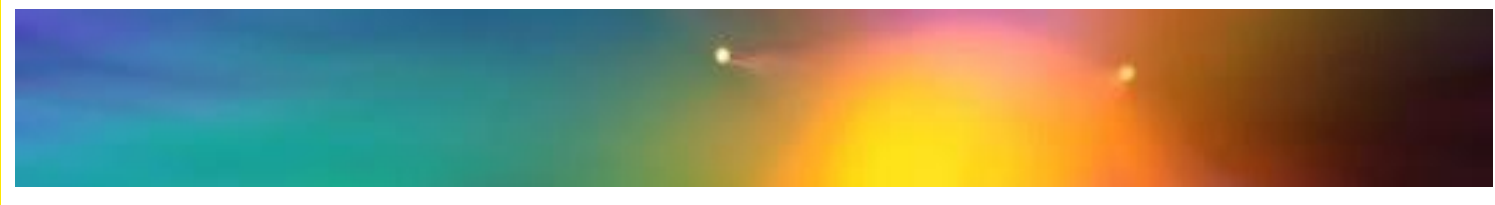
Malaysian developments

Further deduction for Coronavirus Disease 2019 (COVID-19) screening costs borne by employers

As highlighted in earlier tax alerts, the Finance Minister of Malaysia, Tengku Dato' Sri Zafrul Tengku Abdul Aziz had announced that employers who bore the COVID-19 screening costs for their employees from 1 January to 31 December 2021, will be eligible for a further deduction (see *Tax Alert No. 4/2021* and *Special Tax Alert No. 2/2021*).

To legislate the above, the Income Tax (Deduction for Expenses in relation to the Cost of Detection Test of Coronavirus Disease 2019 (COVID-19) for Employees) Rules 2021 [P.U.(A) 404] were gazetted on 20 October 2021.

The Rules provide that in ascertaining a Malaysian-resident employer's adjusted income from his business for a year of assessment (YA), there shall be allowed a further deduction (i.e., deduction in addition to any deduction allowable under Section 33 of the Income Tax Act 1967) for



the cost of COVID-19 detection tests for his employees between 1 January 2021 and 31 December 2021. In order to qualify for the additional deduction, the employer has to produce a receipt and certification issued by a medical practitioner registered with the Malaysian Medical Council or outside Malaysia, indicating that the COVID-19 detection test had been provided to his employees.

The Rules are effective from the YA 2021.

Further extension of time (EOT) for submission of tax returns under the Labuan Business Activity Tax Act 1990 (LBATA) for YA 2021

The Labuan Branch of the Inland Revenue Board (IRB) issued a letter dated 27 October 2021 to the Association of Labuan Trust Companies (ALTC) to confirm that Labuan entities would be granted a further EOT until 30 November 2021 to submit their tax returns (under Sections 5 and 10 of the LBATA) for YA 2021 (based on the financial year ended in 2020). Previously, an EOT was granted until 29 October 2021 (see *Tax Alert No. 18/2021*).

The extension will only apply to Labuan entities which are up to date with their tax filings (i.e., until YA 2020) and payments.

Overseas developments

Thailand publishes mandatory requirements for Thai transfer pricing documentation

The Thai Revenue Department published the Notification of Director-General of Revenue Department No. 407 (the Notice) on 30 September 2021, outlining the information that must be included in transfer pricing (TP) documentation when it is requested by the Revenue Department.

Under Thai tax law, TP documentation is not required to be filed with the transfer pricing disclosure form. However, the TP documentation is generally required to be provided within 120 days of receiving a request from the Revenue Department (or 180 days if it is a first-time request under the new TP Act, which is applicable for the first fiscal year starting on or after 1 January 2019).

The key TP documentation requirements applicable to fiscal years starting on or after 1 January 2021 are summarized below.

Detailed discussion

Mandatory requirements for TP documentation

Information on taxpayers

- Nature of the business, organization chart (with number of staff), value chain, key clients and competitors, business strategy and economic circumstance
- Group shareholding structure
- Description and impact of any business restructuring and transfers of intangible assets

Information on related-party transactions

- ▶ Details including the nature and value of transactions, information about the counter-party, such as the name and country of incorporation, price setting policy and assumptions used in adjusting the price, and a summary of the content of the relevant contract, including key terms and conditions
- ▶ Function, risks and assets analysis (including changes compared to prior year)
- ▶ Financial information used in determining the transfer price
- ▶ How the TP method was implemented, including tested parties
- ▶ Details of the benchmarking study

Other information

- ▶ Additional information may be requested in writing by the Tax Assessment officer with approval from the Director General of the Revenue Department.

Documentation language

- ▶ The TP documentation must be prepared in Thai.

Prior year TP documentation requirements

The Notice only applies to TP documentation prepared for fiscal years starting on or after 1 January 2021. Therefore, TP documentation for fiscal years ending before 31 December 2021, which is prepared in English or Thai, and is based on the TP guidelines (Paw 113/2545), should be acceptable to the Revenue Department.

Benchmarking study exemptions

A benchmarking study is not required if either:

- a. The taxpayer's total revenue for the fiscal year is less than THB500 million (US\$15 million), the taxpayer has only domestic related-party transactions, neither the taxpayer nor any of the relevant counterparties have loss carryforwards for corporate income tax computation purposes

and all are subject to the same corporate income tax rate.

- b. The transactions are covered transactions under a bilateral Advanced Pricing Agreement (APA) concluded with the Thai Revenue Department, and the relevant fiscal year is covered by the APA.

Implications

Thai companies should review their Thai TP documentation processes and procedures to ensure compliance with the requirements of the Notice.

Italy issues draft legislation for new patent box regime

On 15 October 2021, the Italian Government shared a draft Law Decree (Draft Decree) with a series of urgent economic and tax measures, including one repealing the old patent box regime. While it will be immediately effective from the day after its publication in the *Official Gazette*, the Law Decree will have to be converted into Law (with potential changes) within 60 days from its publication, to remain in force. Some implementing measures will follow.

Article 7 of the Draft Decree repeals the old patent box regime by shifting from a profit-based incentive (50% exemption) to a cost-based incentive by introducing a super deduction for research & development (R&D) expenses (190% deduction of qualifying expenditures).

The patent box changes should be effective for 2021 but the current language of the Draft Decree leaves room for interpretation about retroactive effects, putting at risk patent box elections for 2020.

The business community is pushing for an amendment to the Draft Decree language that would establish that the new rules do not affect 2020 patent

box elections. There are on-going discussions at the institutional level with expectations that the Draft Decree will be amended.

the aforementioned documentation in the tax return related to the fiscal year for which the deduction is claimed.

Because of the uncertainty concerning the application of the new rules to the 2020 patent box elections, some companies have decided to file an early 2020 tax return (i.e., before the enactment of the new rule, which may occur in the upcoming days) for the sole purpose of electing the patent box regime, although it is unclear whether early filing may be a clear solution for all cases.

Detailed discussion

New patent box regime

R&D costs incurred with third parties in relation to copyrighted software, patents, trademarks, designs, models and qualifying know-how; may be recognized for tax purposes for an amount equal to 190% of the relevant expenditure for both corporate income tax (IRES) and regional tax (IRAP). R&D costs incurred with related parties should not be eligible.

Companies electing the new patent box regime will not be allowed to claim the R&D tax credit provided by Law n.160/2019.

The election for the new patent box regime will be irrevocable and will last for five fiscal years, with the possibility of subsequent renewals.

A separate decree will provide additional details on the specifics for implementing the new regulations.

Penalty protection

Taxpayers may seek protection against penalties (ranging from 90% and 180%) imposed by the tax authorities if a deduction taken under the new regime is challenged. Taxpayers will have protection if they (i) draft a defensive file based on specifics detailed under separate guidelines to be issued by the tax authorities and (ii) notify the tax authorities of the possession of

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

Chan Vai Fong

vai-fong.chan@my.ey.com

+603 7495 8317

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 (Malaysia Tax Markets Leader and Malaysia Global Compliance and Reporting Leader)

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

Asaithamby Perumal

asaithamby.perumal@my.ey.com

+603 7495 8248

Julie Thong

julie.thong@my.ey.com

+603 7495 8415

Liew Ai Leng

ai-leng.liew@my.ey.com

+603 7495 8308

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

Chua Meng Hui

meng-hui.chua@my.ey.com
+603 7495 8261

Sharon Yong

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

Derek Chan

derek.chan@my.ey.com
+603 7495 8336

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 November 2021	Due date for monthly instalments
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).
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	Statutory deadline for filing of 2021 tax returns for companies with May year-end.

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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