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Malaysian developments

Guidelines on the application for a tax clearance letter for a company, limited liability partnership and Labuan entities

The Inland Revenue Board (IRB) has issued on its website Operational Guidelines No. 2/2019 in Bahasa Malaysia, titled "Permohonan Surat Penyelesaian Cukai Bagi Syarikat, Perkongsian Liabiliti Terhad Dan Entiti Labuan". The Guidelines are dated 12 November 2019 and replace GPHDN 3/2016, which was published on 31 July 2016 (see Tax Alert No. 17/2016).

Similar to the earlier Guidelines, the new Guidelines explain the procedures for the application of tax clearance letters and provide guidance on the documents which need to be submitted together with the application, for companies, limited liability partnerships (LLPs) and Labuan entities.

The key changes are as outlined below:

- The new Guidelines provide an updated list of documents which needs to be submitted together with the application for tax clearance letters. The documents required would depend on how the entity is being dissolved, and are outlined in Appendices A, B and C of the new Guidelines.
- The statements for the application of a tax clearance letter for a company, LLP, Labuan entity and defunct company are provided in Appendices 1A, 1B, 1C and 1D respectively of the new Guidelines (the earlier Guidelines only provided the statements to strike off a defunct company and to wind up an LLP).
- The new Guidelines also outline the documents which are to be submitted for the purpose of closure of a tax file number after receipt of the tax clearance letter, as outlined below (this was not stipulated in the earlier Guidelines).

Type of entity	Category of dissolution	Documents
Company	Members' voluntary winding-up	(a) Section 459(3): Return by liquidator relating to final meeting (b) Final accounts
	Creditors' voluntary winding-up	
	Winding-up by court order	Dissolution order
	Cessation of business (foreign company)	Corporation information
Limited liability partnership	Voluntary winding-up	(a) Statutory declaration for the voluntary winding-up of an LLP (b) Form 17: Notice of Completion of Distribution
	Winding-up by court order	Dissolution order
	Striking-off of the name of the LLP under Section 51 of the LLP Act 2012	Notice of striking-off of the LLP's name under Section 51 of the LLP Act 2012
Labuan entity	Members' voluntary winding-up	(a) Section 459(3): Return by liquidator relating to final meeting (b) Final accounts
	Creditors' voluntary winding-up	
	Winding-up by court order	
	Striking-off of the name of the Labuan entity	Notice under Section 151(4) of the Labuan Companies Act 1990 from the Labuan Financial Services Authority (LFSA)
	Dissolution through a declaration	Form 43: Declaration of dissolution of a Labuan company
	Dissolution of an LLP Labuan	Notice from LFSA

Type of entity	Category of dissolution	Documents
Labuan entity	Transfer from Labuan	Notice under Section 133 of the Labuan Companies Act 1990 from the LFSA
	Cessation of business in Labuan (foreign company)	Notice of cessation of business under Section 126 of the Labuan Companies Act 1990 from the LFSA

Overseas developments

EU's VAT system to tackle fraud in e-commerce

Following the meeting of the European Union (EU)'s Council of Finance Ministers (ECOFIN) on 8 November 2019, it was reported that the EU's value-added tax (VAT) system will be amended to help tackle fraud in the e-commerce sector, which is estimated at around €5 billion a year in the EU. New rules provisionally agreed by the EU Member States will make relevant data regarding online purchases available to anti-fraud authorities, to fight VAT fraud in the sector.

The new rules will allow anti-fraud experts in EU Member States to have access to VAT-relevant data held by payment intermediaries (such as credit card and direct debit providers), who currently facilitate over 90% of online purchases in the EU. Amendments to the VAT Directive will require payment service providers to provide VAT authorities of the Member States with certain payment data from cross-border sales. Strict conditions will apply to data collection (including rules related to data protection). Anti-fraud specialists (the Eurofisc network) can then access and analyze the collected data.

It is expected that these measures will allow the EU authorities to identify online sellers, including businesses that are not located in the EU, who do not comply with VAT obligations. Similar provisions that are already in place in some Member States and in other countries are reported to have had a tangible effect in tackling fraud in the e-commerce sector.

The new rules will now need to be confirmed by the European Parliament before entering into force in January 2024.

Italy's unilateral Digital Services Tax advances

On 2 November 2019, the Italian Government presented the draft Finance Bill for 2020 (the Draft Finance Bill) to Parliament. The Draft Finance Bill includes some amendments to the previously proposed unilateral Digital Services Tax (DST), along with a series of other tax measures. The incorporation of the new DST in the Draft Finance Bill effectively removes the need for a special implementing decree to be utilized (as was previously the case). It also means that the DST is more likely to become effective as of 1 January 2020.

The DST, as currently proposed, closely aligns to the features of the proposed European Union (EU) DST Directive, with a 3% tax on certain services, and builds upon measures that were also proposed in Italy's Finance Bill for 2019 (Law 145/2018). That law has not yet entered into force, nor has it been withdrawn.

The Draft Finance Bill effectively amends part of the proposed 2018 law, specifically removing the need for an implementing decree (an instrument used in the Italian legislative process) and adding other clarifying rules, which will become new articles in Law 145/2018 once the Finance Bill for 2020 is enacted.

The Draft Finance Bill must be approved by both Chambers of the Italian Parliament before the end of 2019, and it is therefore possible that the wording of the provisions will change. However, it is also the case that while other measures included in the Draft Finance Bill are causing conflicts between representatives of the various political parties, the DST seems to be attracting the broadest consensus.

Detailed discussion

This proposed measure is not Italy's first foray into digital taxation but it represents a modification of a previous digital tax law proposal. Italy launched its "Web Tax" in 2017, but the relevant provisions never became effective due to the absence of an implementing decree. Hence, at the end of 2018, the Web Tax provisions were repealed and replaced with a different set of rules in the Finance Bill for 2019. These "2018 rules" were based on the proposed EU Directive on the common system of a DST per the European Commission COM (2018) 148 final (Proposed Directive) (See EY Global Tax Alert, European Commission issues proposals for taxation of digitalized activity, dated 22 March 2018, for further background information). However, the 2018 proposal experienced the same fate as the Web Tax, and without the required implementing decree containing the related procedural guidance, it never became effective.

Same rules, new attempt

The 2018 proposal, like the proposed EU Directive, provides for a 3% DST to be applied to revenues resulting from the (non-intragroup) provision of the following services:

- Placement of advertising on a digital interface targeted at users of that interface
- Making a multi-sided digital interface available to users, which allows the users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users
- Transmission of data collected about users and generated from users' activities on digital interfaces

Taxable persons would be entities – either Italian or foreign, and either standalone or at group level – meeting both of the following conditions:

- The total amount of worldwide revenues for the relevant financial year is at least €750m.
- The total amount of taxable revenues (i.e. those derived from the above digital services) obtained within the Italian territory during the relevant financial year is at least €5.5m.

With this relatively low local threshold, more traditional companies (for example, a manufacturing group with a group subsidiary providing digital services in Italy generating revenues exceeding €5.5m) would theoretically be subject to the DST.

The Draft Finance Bill amends and integrates the previous unenacted DST legislation in the following ways:

- The provisions as stated would apply from 1 January 2020 (and no longer from the publication of the Implementing Decree).
- The DST is payable on a calendar year basis (i.e., no longer quarterly) and is due by 16 February of the following year, based on a return to be filed by 31 March.
- A set of specific exclusions are set forth, in accordance with the proposed EU Directive.
- Other clarifications on the taxation mechanism are provided, again in accordance with the proposed EU Directive.
- A "closing" provision is inserted, whereby the entire law would be "repealed at the moment when the provisions deriving from agreements concluded at international level on the taxation of the digital economy become effective".

With respect to specific exclusions, reference in the Draft Finance Bill is mostly made to services connected to making a multisided digital platform available to users, but which are not deemed

"intermediation services." These are defined as being other services that facilitate interaction between users but do not consist of intermediation, or those whereby the interaction remains ancillary to a supply of digital content.

The following activities are not deemed digital services that fall within the scope of the tax:

a. The direct supply of goods and services underlying the intermediation through the digital platform
b. The supply of goods and services ordered via the website of the supplier, where the latter does not provide intermediation services
c. The making available of a digital interface whose exclusive or principal purpose is the supply of digital content, communication or payment services by the supplier that manages the interface
d. The making available of a digital interface to manage:
    - Interbank settlement systems or financial instruments settlement and delivery systems
    - Trading platforms or certain trading systems
    - Consulting activities related to equity investments as well as intermediation services in participative financing when facilitating the provision of loans
    - Wholesale markets of government securities or other securities
    - Central counterparties (CCP) that interpose themselves between counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer
    - Central securities depositories (CSD) that operate certain securities settlement systems and provide at least certain services (art. 2.1(1) of EU Reg 909/2014)
    - Other connecting systems the activity of which is subject to authorization and the performance of services which are subject to the supervision of an authority
e. The sale of data by persons supplying services under d) above
f. Carrying out activities of organizing and managing digital platforms for exchanging electricity, gas, environmental certificates and fuels, as well as the transmission of the related data collected therefrom and any other connected activity

The Draft Finance Bill also provides guidance regarding the mechanism for taxation. It is stated that:

- Revenues subject to the DST and derived from the making available of a multisided digital platform include proceeds paid by the users, with the exception of those proceeds paid as consideration for the supply of goods or services representing, from an economic viewpoint, a transaction independent from the access and utilization of the platform
- Revenues derived from the making available of a multisided digital platform that facilitates the supply of "excise goods" as per art. 1.1 of Directive 2008/118/EC (energy products and electricity, alcohol and alcoholic beverages, manufactured tobacco) are not subject to DST when they are directly and jointly connected to the volume or value of such supplies
- Revenues from a digital service as follows are subject to the DST if the user is located in the Italian territory:
    - For the supply of targeted advertising, if the advertising appears on the user's device when the device is being used in Italy
    - For the making available of a multisided digital interface, if the user uses a device in Italy to access the interface and concludes an underlying transaction (or if the user has an account allowing him to access the interface and the account was opened using a device in Italy)
    - For the sale of data, if the data is transmitted in the tax period when the data is generated by the user using a device in Italy
- The device is deemed as used in Italy by making reference to its Internet Protocol (IP) address, or if more accurate, any other method of geolocation.

- Revenues from digital services to users located in the Italian territory are taxable:
  - For supplies of targeted advertising, in the proportion of advertising placed on a digital interface as per the data related to a user accessing such interface while in Italy
  - For the making available of multisided digital interface, in the proportion of the delivery of goods or performance of services for which one of the users is located in Italy (or in the proportion of the users that have an account opened in Italy and that have used the interface during the year)
  - For the sale of data, in the proportion of the users whose sold data was generated during the period when they were located in Italy
- The persons subject to DST must have proper accounting systems to record, on a monthly basis, the information on revenues from taxable services as well as other informative elements necessary to calculate the proportions determining the tax

While some elements of the guidance may not be clearly specified, the Draft Finance Bill is so close to the proposed EU Directive that, while waiting for more precise and clear Italian guidance, an adequate interpretation may be drawn by making reference to the explanatory memorandum of the proposed EU Directive.

Implications

The relatively low local revenue threshold set out in Italy's Draft Finance Bill means that the DST may impact companies who may not have considered themselves as having significant digital business models. Companies should therefore continue to closely monitor the passage of the Draft Finance Bill, particularly where specific elements of the guidance are not yet fully clarified.

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Important dates

30 November 2019	6th month revision of tax estimates for companies with May year-end
30 November 2019	9th month revision of tax estimates for companies with February year-end
30 November 2019	Statutory deadline for filing of 2019 tax returns for companies with April year-end
15 December 2019	Due date for monthly instalments
31 December 2019	6th month revision of tax estimates for companies with June year-end
31 December 2019	9th month revision of tax estimates for companies with March year-end
31 December 2019	Statutory deadline for filing of 2019 tax returns for companies with May year-end

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Are you ready for the Malaysian Business Reporting System (MBRS)?

Last year, Suruhanjaya Syarikat Malaysia (SSM) launched the Malaysian Business Reporting System (MBRS), a digital submission platform based on the eXtensible Business Reporting Language (XBRL) format. The launch was officiated by YB Tuan Chong Chieng Jen, Deputy Minister of Domestic Trade and Consumer Affairs (KPHDNHEP). With the launch of the MBRS, all Malaysian incorporated companies and foreign companies registered under the Companies Act 2016, will need to get themselves prepared to file a full set of financial statements in XBRL format, unless otherwise exempted.

Currently, all submissions are voluntary, and registered companies have been encouraged by SSM to use MBRS before the mandatory enforcement. SSM has set out various schedules with implementation dates for the various Zones and states pertaining to mandatory implementation for Annual Returns, Certificates for Exempt Private Companies and Unaudited Financial Statements. However, mandatory implementation for Financial Statements will be advised at a later date.

Arising from the above and in the event you wish to understand more or do not have adequate resources to prepare your financial statements in accordance with MBRS requirements, the EY professionals are able to assist you in terms of:

- MBRS training
- MBRS outsourcing services

EY team members are experienced professionals who are SSM-certified trainers for MBRS, and are ready to help you get ready for the above. The workshops are as follows:-

MBRS for Preparers – Financial Statements

Dates (2-day course)	Venue	Time	Contact
19 & 20 November 2019 11 & 12 December 2019 17 & 18 December 2019	Menara Milenium, Kuala Lumpur	9:00 a.m. – 5:00 p.m.	Billy Teo: +603 7495 8359 Shalene Gan: +603 2388 7334 acr.seminar@my.ey.com / seminar@my.ey.com