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EY Tax Alert

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Malaysian developments

Updated tax collection framework

The Inland Revenue Board (IRB) has published on its website the updated tax collection framework (new Framework) dated 3 February 2021. The Framework is in Bahasa Malaysia and is titled "Rangka Kerja Pungutan Cukai". This new 54-page Framework replaces the earlier 2016 framework that was effective from April 2016 (see *Tax Alert No. 17/2016*).

The new Framework is broadly similar to the earlier framework and provides guidance to IRB officers, taxpayers, employers and appointed tax agents on tax collection procedures, so that the process can be undertaken efficiently and effectively under the various tax legislations. The new Framework also explains the withholding tax and general tax refund procedures.

Some of the key changes are outlined below.

Income Tax Act 1967 (ITA)

1. To encourage the use of online payments, the new Framework stipulates that the IRB will no longer be accepting tax payments made via cheques which are sent by mail or courier. The stoppage will be implemented in phases and halted completely by 1 April 2021.

   The new Framework also stipulates that the IRB will no longer be accepting tax payments made by way of cash or cheque at its payment counters.

   Limited exceptions apply.

2. The new Framework stipulates that the CP500 income tax estimates will be based on the tax payable for the immediate-preceding year of assessment (YA) (previously, it was based on the tax payable of two or three YAs prior to the current YA).

3. The new Framework clarifies the process of applying for a revision to the CP500 tax estimate.

4. In line with Operational Guidelines No. 1/2021 on the submission of estimated tax payable (see *Tax Alert No. 3/2021*), the new Framework has been updated to stipulate:

   (i) That the following are also required to submit an estimate of tax payable (Form CP204):
   - Non-resident companies which are wholly subject to withholding tax (WHT) under Section 107A of the ITA
   - Companies, co-operative societies, trust bodies and limited liability partnerships (LLPs) that have ceased operations or are dormant

   (ii) Circumstances where the IRB can issue the Notice of Instalment Payments (Form CP205)

   (iii) The requirement for companies, co-operative societies, trust bodies and LLPs to notify the Director General (DG) of any changes in the accounting period through the prescribed form (Form CP204B) and the penalties that would apply for non-compliance

5. The new Framework clarifies that in the case where a tax instalment (per CP204 or CP204A) is not remitted by the stipulated due date, pursuant to Section 107C(9) of the ITA, a 10% penalty will be imposed on the unpaid amount without any further notice being served.

6. The new Framework has been updated to take into account the legislative change where Section 103 of the ITA had been amended to remove the imposition of the further penalty of 5% on the balance of unpaid taxes, where any balance remains unpaid after 60 days from the stipulated due date.

Real Property Gains Tax Act 1976 (RPGTA)

1. The new Framework stipulates that pursuant to Section 21B(1A) of the RPGTA, the acquirer must retain the whole monetary amount or a sum of 7% of the total value of the consideration, whichever is lower, and pay this to the DG within 60 days after the date of disposal. This will apply where the disposer is an individual who is neither a citizen nor permanent resident (PR) of Malaysia.

   Note:
   It appears that the new Framework has not taken

into account the legislative changes where the withholding rate of 7% would also apply to disposals by foreign-incorporated companies and the executor of a deceased person who is not a citizen nor PR of Malaysia.

2. The earlier framework outlined the situations where the requirement to retain the whole monetary amount or a sum of 3% of the total value of the consideration, whichever is lower, under Section 21B(1) of the RPGTA, would not apply. The explanation on these types of situations have been removed from the new Framework.

Labuan Business Activity Tax Act 1990 (LBATA)

The new Framework elaborates on the requirements for the payment of and/or increase in taxes pursuant to Sections 11, 12, 13 and 13A of the LBATA.

Others

1. The new Framework provides an updated list of payment services provided by the IRB and the respective collection agents (i.e. financial institutions).

2. The new Framework stipulates that where overseas payments are remitted by way of bank drafts, the foreign exchange rate used for the issuance of the bank drafts must be the same as that on the date the bank draft is cashed in by the IRB.

3. The new Framework reiterates that for refunds to be processed by way of electronic fund transfers, the taxpayer must ensure that the bank account number as well as the taxpayer's identification number or company's registration number in both the IRB and bank's records are the same.

4. The new Framework clarifies that taxpayers with a Malaysian address who do not provide their bank account details to the IRB will be given their tax refunds by way of a tax refund voucher. This voucher can only be cashed at CIMB Bank branches in the country.

5. The new Framework clarifies that where tax refunds exceeding RM10,000 are remitted to non-Malaysian residents via a Malaysian bank, the IRB branch will be required to issue a tax refund letter so that the transaction would be allowed by the recipient's bank.

Malaysia deposits instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

On 24 January 2018, Malaysia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (MLI) (see *Tax Alert No. 4/2018*). Briefly, the MLI allows the Government to effectively implement the anti-BEPS tax treaty measures by modifying existing tax treaties in a synchronized, simultaneous and efficient manner, without the need to renegotiate each treaty separately.

Thereafter, to ratify the MLI under the Income Tax Act 1967 (ITA) and Petroleum (Income Tax) Act 1967, the Double Taxation Relief (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order 2020 [P.U.(A) 224] was gazetted on 4 August 2020 (see *Tax Alert No. 13/2020*).

Following the above, on 18 February 2021, Malaysia deposited its instrument of ratification for the MLI. The MLI will come into force on 1 June 2021. However, the effective date of the relevant provisions under the MLI will depend on the dates the treaty partner countries deposit their instruments of ratification. The extent of modification to the tax treaties will also depend on the final positions adopted by the other countries.

Further details on the signatories and parties to the MLI, along with each country's position, are available at the following link:
[Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS - OECD]

Frequently Asked Questions on special deduction on rental discounts given to tenants

As highlighted in earlier tax alerts, it was proposed that a special deduction be given to property owners who provide at least 30% rental discounts to small and medium enterprises (SMEs) from 1 April 2020 to 31 March 2021 (see *Special Tax Alerts No. 6/2020*, *No. 9/2020*, *Take 5: COVID-19: Short-term Economic Recovery Plan* and *Tax Alert No. 22/2020*). Recently, under the Perlindungan Ekonomi & Rakyat Malaysia (PERMAI) Assistance Package announced on 18 January 2021, the special deduction was extended for another three months, until 30 June 2021 and was expanded to include non-SMEs.

Following the above, the IRB has published an updated version of the Frequently Asked Questions (FAQs) document in Bahasa Malaysia, titled "Potongan Khas Kepada Pembayar Cukai Yang Memberi Pengurangan Sewa Premis Perniagaan Kepada Perusahaan Kecil Dan Sederhana (PKS) Dan Bukan PKS", dated 19 February 2021.

Some of the key changes are outlined below.

- The FAQs have been updated to take into account the expansion of scope to include rental of premises to tenants which are non-SMEs.

- The FAQs have been updated to stipulate that the special deduction is applicable for the reduction of rental given for the following periods:
    - SME tenants: April 2020 to June 2021
    - Non-SME tenants: January 2021 to June 2021

Stamp duty exemption for small and medium enterprises on any instrument executed for mergers or acquisitions

Under the Short-term Economic Recovery Plan (PENJANA) announced on 5 June 2020, the Government proposed to waive the stamp duty on any instrument executed by small and medium enterprises (SMEs) for mergers and acquisitions (see *EY Take 5: COVID-19: Short-term Economic Recovery Plan*). Thereafter, SME Corporation Malaysia published on its website the "Guidelines & Procedures on Incentive of Stamp Duty Exemptions on M&A by SMEs" to provide guidance on the said exemption (see *Tax Alert No. 16/2020*).

To legislate the above, the Stamp Duty (Exemption) (No. 3) Order 2021 [P.U.(A) 73] was gazetted on 25 February 2021. The Order provides a stamp duty exemption for the following merger- or acquisition-related instruments executed by SMEs:

- Contract or agreement for the sale or lease of property (land, building, machinery and equipment)
- Instruments of transfer and memorandum of understanding
- Loan or financing agreement
- First leasing agreement

The exemption will apply to instruments executed between 1 July 2020 and 31 December 2021. However, the exemption is also subject to the condition that the merger or acquisition is approved by the Ministry of Entrepreneur Development and Cooperatives between 1 July 2020 and 30 June 2021.

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

Guidelines on establishing a Labuan company management business

The Labuan Financial Services Authority (LFSA) has issued revised guidelines dated 1 March 2021 on the establishment of a Labuan company management business in the Labuan International Business and Financial Centre (IBFC). The six-page guidelines replace the earlier guidelines dated 14 May 2019 and comprise the following paragraphs:

1.0 Introduction
2.0 Applicability
3.0 Permissible activities
4.0 Eligibility
5.0 Effective date
6.0 Application requirements
7.0 Operational requirements
8.0 Annual licence fee
9.0 Submission of application and enquiries
Appendix

The new guidelines are effective from 1 March 2021. Although the new guidelines supersede the earlier 2019 guidelines, the new guidelines specify that all approvals already granted shall remain valid unless otherwise revoked.

Some of the key changes are outlined below.

1. The new guidelines stipulate that the permissible activities of a company management firm are as follows:

   (a) Provision of treasury processing services for its group of related companies regionally or internationally. The said services include:
   - Arranging intra-group financing or factoring
   - Managing cash and liquidity positions or
   - Providing in-house investment or finance advisory services

   (b) Provision of managerial services as follows:
   - Back-room and middle office services
   - Act as authorized representatives for support services or
   - Intermediation functions, excluding financial intermediation services conducted by financial institutions (FIs) such as commercial banks, investment banks, (re)insurers, fund managers and money brokers etc.

   The services may be conducted based on conventional or Islamic requirements.

2. The eligibility criteria, operational requirements and annual licence fee have been updated in the new guidelines.

3. The new guidelines outline the application process for a Labuan company intending to carry out a company management business in Labuan IBFC.

4. The new guidelines should be read together with the requirements of the relevant guidelines and circulars, including the following:
   i. Guidelines on Fit and Proper Person Requirements
   ii. Guidelines on Compliance Function for Labuan Licensed Entities
   iii. Directive on Financial Reporting Standards for Labuan FIs
   iv. Circular on Financial Reporting Standards for Labuan FIs
   v. Directive on Accounts and Record-keeping Requirements for Labuan Entities
   vi. Guidelines on External Auditor of Labuan FIs
   vii. Guidelines on Shariah Governance for Labuan Islamic FIs
   viii. Directive on Islamic Financial Business in Labuan IBFC

The guidelines are available on the LFSA website [Other Businesses - Guidelines | Labuan FSA → Company Management Business in Labuan IBFC → Guidelines for Company Management Business in Labuan IBFC]

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2021 [P.U.(A) 71] was gazetted on 24 February 2021. The Order provides that any tax payable under the Income Tax Act 1967 (ITA) and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

(a) Islamic Medium-Term Notes issued by MKD Kencana Sdn Bhd pursuant to the Islamic Medium-Term Notes Programme (*Sukuk Murabahah* Programme) in nominal values of up to RM1 billion
(b) Guarantee provided by the Government of Malaysia relating to the *Sukuk Murabahah* Programme

The Order came into operation on 25 February 2021.

Overseas developments

Thailand enacts new VAT rules for foreign e-business and digital services

Measures for the taxation of foreign e-business in Thailand were first proposed in 2017, and new value-added tax (VAT) rules have now been enacted and were published in the *Royal Gazette* on 10 February 2021. The new rules are effective from 1 September 2021. Their main objective is to enable the collection of VAT on electronic services rendered by e-business operators in foreign countries to non-VAT operators in Thailand. The regulations applicable to Thai e-business operators remain unchanged.

The key principles of the new VAT rules are as follows:

- Foreign e-business operators that provide electronic services to non-VAT operators in Thailand are required to register with the Thai Revenue Department to pay Thai VAT and file VAT returns.
- In cases where foreign e-business operators provide electronic services via an electronic platform operated by another party delivering a continuous service process, from offering the service to payment and delivery, the platform operator is obliged to pay the VAT on behalf of the foreign e-business operators that use the platform, assuming the duties and responsibilities of the foreign e-business operators.
- Under the new rules, "electronic services" are defined as services, including intangible assets, that are automatically transmitted via the internet or other electronic network, and which could not be rendered without such technology; while "electronic platform" is defined as any channel used by numerous operators to provide electronic services to their service recipients.
- The VAT registration threshold for foreign e-business operators will be the same as for local operators, i.e., THB1.8 million (or approx. US$60,000) per annum.
- For VAT computation purposes, foreign e-business operators are not allowed to claim any input tax.

Based on past public consultations, the purpose of the new VAT rules is to collect VAT on electronic or digital services provided by foreign operators, such as movie and music streaming services, digital content provision and online games.

Further details of related procedures and compliance requirements should be announced in supplementary laws, including additional guidelines that the Thai

Revenue Department is expected to issue in the next several months.

Hong Kong: 2021/22 Budget Proposals

On 24 February 2021, the Financial Secretary of the Hong Kong Special Administrative Region delivered the Budget Proposal for the Hong Kong tax year beginning 1 April 2021 (2021/22).

The proposals in this Budget continue to be aimed at lessening the tax burden on taxpayers, including through the provision of a one-off reduction of salaries tax for 2020/21.

While the proposals have not yet been legislated and will not become law until they are approved by the Hong Kong Legislative Council, once approved, the provisions will apply with respect to the 2021/22 tax year.

One-off tax reduction

A one-off reduction of 100% of the salaries tax and tax under personal assessment has been proposed for 2020/21, subject to a maximum reduction of HK$10,000. This reduction will be deducted directly from the taxpayer's 2020/21 final tax payable.

Salaries tax regime for 2021/22

There are no proposed changes to either the progressive rates or the standard rate. The tax bands will also remain unchanged for 2021/22.

Personal allowances and deductions

There are no proposed changes to either personal allowances or deductions.

Rates on property

It is proposed that property rates for 2021/22 be waived, subject to a cap of HK$1,500 per quarter in the first two quarters and a cap of HK$1,000 per quarter in the remaining two quarters for each ratable property.

What does this mean for employers?

The measures in this Budget are targeted to achieve overall tax reductions for current taxpayers but are on a reduced scale compared to prior years.

Employers should ensure that they are aware of these provisions and assess the impact these could have on their Hong Kong mobility programs and Hong Kong employment costs.

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Important dates

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
15 April 2021	Due date for monthly instalments
30 April 2021	6th month revision of tax estimates for companies with October year-end
30 April 2021	9th month revision of tax estimates for companies with July year-end
30 April 2021	Statutory deadline for filing of 2020 tax returns for companies with September year-end

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