

# EY Tax Alert

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## Malaysian developments

- Income tax exemption on gains or profits derived, in lieu of interest, from *Sukuk Wakala*
- Income tax exemption for organizing conferences in Malaysia
- Case law on the application of Paragraph 34A, Schedule 2 of the Real Property Gains Tax Act 1976 (RPGTA) on the disposal of shares in property development companies

## Overseas developments

- Hong Kong proposes to allow tax deduction for foreign taxes charged on gross income basis
- Japan's 2021 Tax Reform introduces tax incentives for carbon neutrality and digital transformation

## Malaysian developments

### Income tax exemption on gains or profits derived, in lieu of interest, from *Sukuk Wakala*

The Income Tax (Exemption) (No. 3) Order 2021 [P.U.(A) 190] was gazetted on 23 April 2021 to provide that any person is exempted from the payment of income tax on gains or profits derived, in lieu of interest, from *Sukuk Wakala*.

The exemption shall apply to *Sukuk Wakala* with a nominal value of up to USD1.3 billion, other than convertible stock, issued in accordance with the principle of *Wakala* by Malaysia Wakala Sukuk Berhad.

The Order stipulates that withholding tax under Section 109 of the Income Tax Act 1967 (ITA) shall not apply to the income exempted under the Order. The Order also stipulates that the exemption granted does not absolve the relevant person from any requirement to submit any return, statement of accounts or any other information as required under the ITA.

The Order is effective from the year of assessment (YA) 2021.



## Income tax exemption for organizing conferences in Malaysia

Currently, pursuant to the Income Tax (Exemption) (No. 53) Order 2000 [P.U.(A) 500], a resident company, association or organization whose main activities are promoting and organizing conferences is exempted from tax on statutory income derived from organizing conferences. This exemption, which took effect from YA 1997, is granted on condition that the conference operator brings in at least 500 foreign participants in the YA.

In Budget 2020, it was proposed that the above income tax exemption be expanded to any entity whose main activities are other than promoting and organizing conferences (see *Special Tax Alert: Highlights of Budget 2020*).

To legislate this, the Income Tax (Exemption) (No. 4) Order 2021 [P.U.(A) 195] was gazetted on 26 April 2021. The Order provides that a qualifying person (i.e. company incorporated under the Companies Act 2016, or an association or organization registered under the Societies Act 1966, which carries on a business or activity other than the business or activity of promoting and organizing conferences) that is a Malaysian-resident is exempted from the payment of income tax in respect of statutory income derived from organizing conferences held in Malaysia. The income tax exemption will apply only if the qualifying person brings in at least 500 foreign participants in the YA.

The following terms have been defined in the Order:

- (a) Statutory income  
Means fees and other payments derived by a qualifying person from promoting and organizing conferences held in Malaysia, including the

arrangement of accommodation, tours and sightseeing for foreign participants, less any allowable expenses and capital allowances

(b) Foreign participants

Individuals who are non-Malaysian citizens participating in conferences held in Malaysia, excluding individuals who are non-Malaysian citizens residing in Malaysia

The Order stipulates that the exemption granted does not absolve the qualifying person from any requirement to submit any return, statement of accounts or any other information as required under the ITA. The qualifying person is also required to maintain a separate account for the income exempted under the Order.

This exemption shall not apply to a person who has been granted an exemption under Income Tax (Exemption) (No. 53) Order 2000, which remains in force.

The Order is effective from YA 2020 to YA 2025.

## Case law on the application of Paragraph 34A, Schedule 2 of the Real Property Gains Tax Act 1976 (RPGTA) on the disposal of shares in property development companies

The Inland Revenue Board (IRB) recently published on its website a summary of an update to a tax case that addresses whether a property development company constitutes a “real property company” (RPC) pursuant to Paragraph 34A of Schedule 2 of the Real Property Gains Tax Act 1976 (RPGTA) (the legislation). The full case decision is not yet available.

On 1 March 2021, in *Continental Choice Sdn Bhd & CB Ventures Sdn Bhd v. Director General of Inland Revenue (DGIR)*, the Court of Appeal (CoA) delivered a judgment in favour of the IRB and affirmed the decision by the High Court (HC) (see *Tax Alert No. 19/2018*). In this case, the HC had overturned the decision of the Special Commissioners of Income Tax (SCIT) (see *Tax Alert No. 23/2017*) and disagreed with the SCIT's position in adopting a purposive interpretation of the legislation.

The CoA held that when looking at the definition of "real property", the legislation does not make any distinction between land held as stock-in-trade or as a capital asset. The CoA concurred with the HC that the words in the legislation are clear and unambiguous and would apply as long as shares are disposed in a company that falls within the definition of an RPC, regardless of whether the real property held by the company is capital asset or stock-in-trade. This decision is consistent with the CoA decision in the case of *Binastra Holdings Sdn Bhd* (Mahkamah Rayuan Rayuan Sivil No. W-01-80-05). Note that there is no written judgment available for the *Binastra* CoA decision.

In conclusion, the CoA held that the taxpayers had disposed of shares of a company that is an RPC within the ambit of the legislation, even though the company was a property developer which held its real property as stock-in-trade. As such, the gains from the disposal of the shares are subject to real property gains tax.

## Overseas developments

Hong Kong proposes to allow tax deduction for foreign taxes charged on gross income basis

The Hong Kong Government introduced the Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021 (the Bill) on 19 March 2021. The Bill proposes

to allow a tax deduction for foreign taxes charged on a gross income basis. Subject to the passage of the Bill by the Legislative Council, the provisions of the Bill will apply to tax years beginning on or after 1 April 2021.

The proposed Bill seeks to:

- (a) Allow a tax deduction for foreign taxes on non-interest income (e.g., royalties) that were charged on a gross income basis and were either paid: (i) by a Hong Kong resident person in a non-Hong Kong tax treaty partner jurisdiction; or (ii) by a non-Hong Kong resident person in both a Hong Kong tax treaty and a non-Hong Kong tax treaty partner jurisdiction
- (b) Allow a non-Hong Kong resident to claim a deduction for foreign taxes paid in respect of certain interest income from a Hong Kong tax treaty partner jurisdiction
- (c) Impose new restrictions that limit a non-Hong Kong resident person from claiming a tax deduction in Hong Kong for foreign taxes paid, as referred to in (a) and (b) above, only to the extent that such foreign taxes are not relieved from double taxation (by deduction or other method) in the jurisdiction of residence of the non-Hong Kong resident person

Japan's 2021 Tax Reform introduces tax incentives for carbon neutrality and digital transformation

The Japanese Government has set goals to reach zero greenhouse emissions by 2050 and to promote the digital transformation of the Japanese economy. To achieve these goals, certain tax incentives have been introduced. These incentives have been introduced as part of the wider *Industrial Competitiveness Enhancement Act*.

On 26 March 2021, Japan's 2021 tax reform bill (the Bill) was enacted following passage by the Japanese Diet. Under the provisions of this Bill, certain carbon

neutral and digital transformation investments qualify for tax incentives amounting up to a maximum of JPY1.5b for digital transformation and up to JPY5b for carbon neutrality. The amount of the respective tax credits depends on the investment amount as well as the satisfying of specific conditions.

The key provisions relevant to these incentives and action points for taxpayers are summarized below.

## Detailed discussion

### Background

The Japanese Government will incorporate carbon neutrality and digital transformation related measures into the *Increased Competitiveness Enhancement Act* (the Act). The amendments to the Act are expected to take legal effect in July 2021.

Taxpayers will have access to these tax incentives if the following conditions are met:

- A taxpayer prepares a business plan in line with the specific conditions under the Act.
- Such business plan is certified by either the Ministry of Economy, Trade and Industry or by another Ministry. Note: Business plan applications are expected to be accepted from August 2021.
- The business plan is properly executed.

### Digital transformation investment tax incentive

The use of digital technology should contribute to the business transformation of the taxpayer, resulting in substantial changes to business processes, strategies leading to improvement in productivity and the development of new products, production and sales methods. Projects that could qualify for tax incentives are, for example, plant automatization and e-commerce automated warehouse solutions. Digital transformation-related investments include software, machinery and equipment.

Digital transformation-related investments of up to JPY30b (US\$300m) as certified under a business

adaptation plan made by 31 March 2023 will either be eligible for a 3% to 5% tax credit or for a 30% special depreciation.

### Carbon neutral investment incentive

Carbon neutral-related investments reduce greenhouse gas emissions in the production process and contribute to making products that accelerate decarbonization. There are specific decarbonation benchmarks that need to be achieved for the tax incentives to become available.

Carbon neutral-related investments of up to JPY50b (US\$500m) as certified under an environment adaptation plan made by 31 March 2024 will either be eligible for a 5% to 10% tax credit or for a 50% special depreciation.

### Next steps

Whereas the exact details of the Act will only become known later and the amended Act is expected to take legal effect in July 2021, taxpayers should consider the following actions at this time:

- Review digital transformation and carbon neutrality investment plans and determine if such investments could qualify for the tax incentives
- Review the timeline for making these investments. The relevant time to make the investments is between the date when the revised Act takes legal effect (somewhere in July 2021) and 31 March 2023 for digital transformation and 31 March 2024 for carbon neutrality. To qualify for these tax incentives, taxpayers may have to plan to speed up or delay certain investments to be within the specific timeframes.
- Continuous monitoring of the latest developments regarding the Act including what information to include in the business plan and the precise application procedure for the business plan certification by the relevant Ministry

It is important to note that these incentives may be subject to various limitations. For example, the sum

of the carbon neutrality tax credit and the digital transformation tax credit cannot exceed 20% of the corporate income tax payable.

#### Profile of a potential qualifying taxpayer

Taxpayers with a substantial corporate tax liability in Japan and investment plans for carbon neutrality and digital transformation may potentially find these incentives attractive. The timeframe for the qualifying investments is relatively tight and there is a certification process; therefore, taxpayers should start the initial assessment promptly.

## 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 (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

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 May 2021	Due date for monthly instalments
31 May 2021	6 <sup>th</sup> month revision of tax estimates for companies with November year-end
31 May 2021	9 <sup>th</sup> month revision of tax estimates for companies with August year-end
31 May 2021	Statutory deadline for filing of 2020 tax returns for companies with October year-end
15 June 2021	Due date for monthly instalments
30 June 2021	6 <sup>th</sup> month revision of tax estimates for companies with December year-end
30 June 2021	9 <sup>th</sup> month revision of tax estimates for companies with September year-end
30 June 2021	Statutory deadline for filing of 2020 tax returns for companies with November 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