



# EY

Building a better  
working world

# EY Tax Alert

Vol. 25 - Issue no. 19  
25 October 2022

## Malaysian developments

- ▶ 100% statutory income exemption on shipping profits for the years of assessment (YAs) 2021 to 2023: Gazette Order released
- ▶ Public Ruling (PR) No. 4/2022 - Recovery from Persons Leaving Malaysia
- ▶ Remission of tax and stamp duty - Amendment
- ▶ Remission of tax and stamp duty

## Overseas developments

- ▶ Australian Treasury releases a consultation paper on the Base Erosion and Profit Shifting (BEPS) 2.0 two-pillar global agreement
- ▶ Spain approves legislation on mandatory electronic invoicing

## Malaysian developments

### 100% statutory income exemption on shipping profits for the years of assessment (YAs) 2021 to 2023: Gazette Order released

The Finance Act 2012, gazetted on 9 February 2012, amended Section 54A of the Income Tax Act 1967 (ITA) to reduce the 100% income tax exemption on statutory income derived from the operation of Malaysian ships, to 70%. Other rules were also introduced with respect to the taxation of Malaysian ships, such as the requirement to treat each ship as a separate business source. Following discussions with various stakeholders, the Ministry of Finance (MoF) agreed to defer the reduction in tax exemption and the introduction of the new rules.

Accordingly, the following Orders were gazetted to exempt any person resident in Malaysia from the provisions of Sections 54A(1) and (2) of the ITA and from the payment of income tax in respect of statutory income derived from the business of transporting passengers or cargo by sea on a Malaysian ship; or letting out on charter a Malaysian ship owned by him on a voyage or time charter basis:

- ▶ Income Tax (Exemption) (No. 2) Order 2012, for YAs 2012 and 2013 (see *Tax Alert No. 13/2012*)
- ▶ Income Tax (Exemption) Order 2018, for YAs 2014 and 2015 (see *Tax Alert No. 5/2018*)
- ▶ Income Tax (Exemption) (No. 2) Order 2018, for YAs 2016 to 2020 (see *Tax Alert No. 5/2018*)

Following the above, the Income Tax (Exemption) (No. 7) Order 2022 [P.U.(A) 312] was gazetted on 6 October 2022 to maintain the 100% exemption on statutory income derived from the operation of Malaysian ships, for YAs 2021 to 2023. However, to qualify for the exemption, the taxpayer must now obtain an annual verification from the Ministry of Transport Malaysia (MOT) confirming that the person has:

- ▶ Incurred annual operating expenditure of at least RM250,000 for each Malaysian ship, and
  - ▶ Has full-time employees in Malaysia for each Malaysian ship, as follows:
    - In respect of shore employees, at least four of the following employees and the majority of the employees shall be Malaysian citizens<sup>Note</sup>:
      - (i) A chief executive officer,
      - (ii) An administrative and finance officer,
      - (iii) An operating officer, and
      - (iv) An officer in charge of the health, protection, safety and environmental affairs
- and
- In respect of employees who are ship personnel as provided under Part III of the Merchant Shipping Ordinance 1952, the taxpayer is subject to the minimum requirement as specified in the Safe-Manning Certificate issued by the Marine Department Malaysia

#### Note

It is not clear how the authorities would approach a position where a ship is owned by a company which does not, for example, have an administrative or finance officer, operating officer or health, protection, safety and environmental affairs officer, because these functions are outsourced to other companies.

Taxpayers operating Malaysian ships and enjoying the Section 54A tax exemption should immediately assess whether they have met and will continue to meet the above conditions, and should ensure that they obtain the relevant verifications from the MOT.

### Public Ruling (PR) No. 4/2022 - Recovery from Persons Leaving Malaysia

The Inland Revenue Board (IRB) has published PR No. 4/2022: Recovery from Persons Leaving Malaysia, dated 20 October 2022. This new eight-page PR replaces PR No. 12/2015, which was issued on 17 December 2015 (see *Tax Alert No. 1/2016*). The new PR comprises the following paragraphs and sets out four examples:

- 1.0 Objective
- 2.0 Relevant provisions of the law
- 3.0 Interpretation
- 4.0 Introduction
- 5.0 Preventing a taxpayer from leaving the country
- 6.0 Allowing a taxpayer to leave the country
- 7.0 Payment method
- 8.0 Consequences of leaving or intending to leave the country without payment of tax and debts
- 9.0 Responsibility of a taxpayer
- 10.0 Updates and amendments
- 11.0 Disclaimer

Similar to the earlier PR, the new PR explains the circumstances and procedures for recovering tax and debts due from taxpayers who will be leaving Malaysia. Under Section 104 of the ITA, the Director General (DG) may issue a certificate (i.e., a stoppage order) to the Commissioner of Police or Director of Immigration, requesting that a person be prevented from leaving Malaysia unless the person has settled all the outstanding taxes for which he is liable (including taxes owed by companies, which the person is jointly and severally liable for as the Director of the company - note that this applies only in very specific situations), or furnishes security for the payment to the satisfaction of the DG. The new PR was updated mainly to reflect the legislative changes outlined below:

- ▶ Pursuant to the Finance Act 2019, effective from 1 January 2020, the scope of the stoppage order was expanded to include the increase of taxes in cases where the company has failed to submit an estimate of tax payable under Section 107C(10A) of the ITA.
- ▶ Pursuant to the Finance Act 2020, effective from 1 January 2021, the stoppage order may be issued through an electronic medium or by way of electronic transmission.

The updated PR also stipulates that payment for outstanding taxes and debts are now to be made through the following methods:

- (a) MyTax Portal at <https://mytax.hasil.gov.my> via 'ezHasil Services' > 'ByrHASiL'
- (b) For those appointed as HASiL's collection agent:
  - Internet banking portal of commercial banks
  - Pos Malaysia or commercial bank counters
  - Bank cash deposit or automatic teller machines

## Remission of tax and stamp duty - Amendment

As highlighted in earlier tax alerts (see *Tax Alerts No. 7/2022* and *8/2022*), the Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2022 was gazetted to provide that any tax payable under the ITA and any stamp duty payable under the Stamp Act 1949 (SA) in relation to the following shall be remitted in full:

- (a) Islamic Medium-Term Notes (IMTN) issued or to be issued by TRX City Sdn Bhd pursuant to the *Sukuk* Programme, in nominal values of up to RM2.9 billion, provided that the combined aggregate of the outstanding nominal value of the *Sukuk* Programme and the outstanding principal amount under the Syndicated Revolving Credit Islamic Facility (RC-i Facility, see (b) below) shall not exceed RM2.9 billion
- (b) RC-i Facility obtained or to be obtained by TRX City Sdn Bhd with the aggregate principal amount not exceeding RM1 billion, and
- (c) Guarantee given or to be given by the Government of Malaysia in relation to the *Sukuk* Programme and the RC-i Facility

Following the above, the Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) 2022 (Amendment) Order 2022 [P.U.(A) 321] was gazetted on 11 October 2022 to stipulate that the aggregate principal amount referred to in Point (b) above shall not exceed RM1.9 billion (instead of RM1 billion).

The Amendment Order came into operation on 12 October 2022.

## Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 4) Order 2022 [P.U.(A) 322] was gazetted on 11 October 2022. The Order provides that any tax payable under the ITA and any stamp duty payable under the SA in relation to the following shall be remitted in full:

- (a) Islamic Commercial Papers and Islamic Medium-Term Notes issued or to be issued by Prasarana Malaysia Berhad (formerly known as Syarikat Prasarana Negara Berhad) pursuant to the *Sukuk Murabahah* Programme (*Sukuk Murabahah*) with a nominal value of RM2 billion, and
- (b) Guarantee given or to be given by the Government of Malaysia in relation to the *Sukuk Murabahah*

The Order came into operation on 12 October 2022.

## Overseas developments

### Australian Treasury releases a consultation paper on the Base Erosion and Profit Shifting (BEPS) 2.0 two-pillar global agreement

The Australian Treasury has released a consultation paper seeking submissions to help inform the Australian Government on how to design and implement the proposed Organisation for Economic Co-operation and Development (OECD)/G20 BEPS 2.0 two-pillar global agreement domestically - [Global agreement on corporate taxation: addressing the tax challenges arising from the digitalisation of the economy](#).

The paper poses 40 consultation questions on how the two-pillar global corporate tax agreement would

operate in Australia, and how Australian stakeholders view the benefits, challenges and impacts, including:

### Design of the two-pillar global agreement

This section comprises 16 overview questions on both Pillar One and Pillar Two, focusing on the overarching design of the two-pillar multilateral agreement. These questions seek input on issues such as why there should be a global agreement on corporate taxation, the economic outcomes, estimated revenue impacts, and potential compliance costs/impacts for large multinationals.

### Australian implementation of the Global Anti-Base Erosion (GloBE) Model Rules

This section comprises 24 questions on the GloBE Model Rules (Pillar Two) implementation in Australia, which address issues such as the potential mode of implementation, implementation timing, administrative provisions and safe harbors.

Noteworthy issues include:

- ▶ Whether Australia should implement a Domestic Minimum Tax (DMT), and if so, should a DMT only apply to multinational enterprises in scope of Pillar Two or include purely domestic businesses?
- ▶ Whether franking credits should arise on top-up tax or DMT paid in Australia?
- ▶ When should Australia implement the new rules? Are there advantages or disadvantages of Australia being an early or late adopter, noting that a critical mass of countries is likely to implement Pillar Two from 2024

The Treasury is accepting submissions by 1 November 2022.

## Spain approves legislation on mandatory electronic invoicing

On 29 September 2022, the Law for the Creation and Growth of Companies (Law 18/2022, dated 28 September 2022) was published in the *State Official Gazette* and includes, among other measures, the mandatory use of electronic invoicing for transactions between companies and sole contractors.

### Detailed discussion

The Law for the Creation and Growth of Companies (the Law) implements the mandatory use of electronic invoicing in transactions between companies and sole contractors. Likewise, recipients may request copies of the invoice for a four-year period from their issuance, at no additional cost.

Although the obligation of electronic invoicing is only envisaged for business-to-business relations, the Law extends this requirement to certain relationships with individuals, for those companies that provide services of special economic significance, such as electronic and financial services or supplies of water, gas or electricity. This obligation applies when the individuals have agreed to receive electronic invoices or have expressly requested them. Travel agencies, transport services and retail activities are exempt from this obligation.

Accordingly, and by way of pending regulatory development, the Government is empowered to extend this obligation to relationships between companies and individuals in certain circumstances.

### Entry into force

The entry into force of the Law is delayed until its regulations are published. Thereafter, the Law will enter into force one year after the date of publication for companies with annual turnover of over €8

million, and two years from publication for the remaining companies.

### Implications

The extension of compulsory electronic invoicing to all relationships between companies and professionals, and even in certain relationships with individuals, will have a clear impact on the digitalization and modernization of Spanish companies and, in turn, will require adequate coordination with the current invoicing tax compliance obligations.

Companies that do not offer users the possibility of receiving electronic invoices or do not allow access to their invoices to individuals who have ceased being customers, will be sanctioned with a warning or a penalty of up to €10,000.

## 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)**

amarjeet.singh@my.ey.com

+603 7495 8383

**Farah Rosley (Malaysia Tax Leader and Malaysia Global Compliance and Reporting Leader)**

farah.rosley@my.ey.com

+603 7495 8254

### People Advisory Services

**Tan Lay Keng (EY Asia-Pacific People Advisory Services Leader)**

lay-keng.tan@my.ey.com

+603 7495 8283

**Christopher Lim (EY Asean Immigration Leader and Malaysia People Advisory Services 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)**

*(based in Johor)*

robert.yoon@my.ey.com

+603 7495 8332

**Bernard Yap**

bernard.yap@my.ey.com

+603 7495 8291

**Wong Chow Yang**

chow-yang.wong@my.ey.com

+603 7495 8349

**Chan Vai Fong**

vai-fong.chan@my.ey.com

+603 7495 8317

**Chua Siong Chee**

siong-chee.chua@my.ey.com

+603 7495 8410

### 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 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

**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

**Andrew Loh**

andrew.loh@my.ey.com  
+603 7495 8313

**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

**Florence Tan**

florence.tan@my.ey.com  
+603 7495 8585

**Shalini R Chandrarajah**

shalini.chandrarajah@my.ey.com  
+603 7495 8281

### International Tax and Transaction Services (cont'd)

**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

31 October 2022	6 <sup>th</sup> month revision of tax estimates for companies with April year-end
31 October 2022	9 <sup>th</sup> month revision of tax estimates for companies with January year-end
31 October 2022	Special 11 <sup>th</sup> month revision of tax estimates for YA 2022, for companies with November 2022 year-end
31 October 2022	Statutory deadline for filing of 2022 tax returns for companies with March year-end. A blanket extension of time has been provided until 30 November 2022.
31 October 2022	Extended 2022 tax return filing deadline for companies with February year-end.
15 November 2022	Due date for monthly instalments
30 November 2022	6 <sup>th</sup> month revision of tax estimates for companies with May year-end
30 November 2022	9 <sup>th</sup> month revision of tax estimates for companies with February year-end
30 November 2022	Statutory deadline for filing of 2022 tax returns for companies with April year-end. A blanket extension of time has been provided until 31 December 2022.
30 November 2022	Extended 2022 tax return filing deadline for companies with March year-end.

### EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](http://ey.com/privacy). EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit [ey.com](http://ey.com).

© 2022 Ernst & Young Tax Consultants Sdn. Bhd.  
All Rights Reserved.

APAC no. 07009322  
ED None.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

[ey.com/en\\_my](http://ey.com/en_my)

### 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