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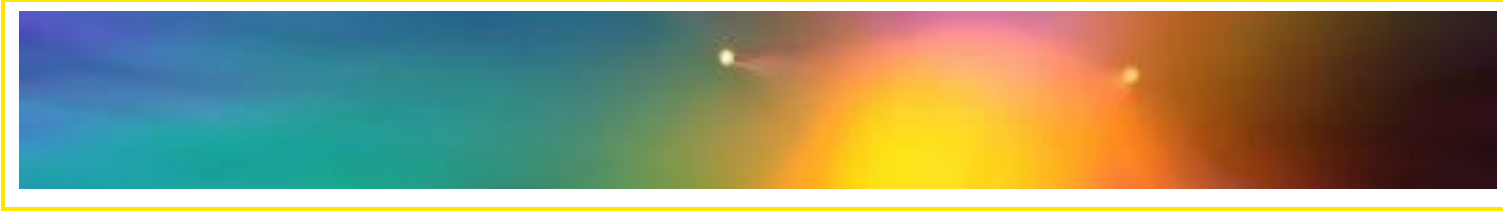
Malaysian developments

Accelerated capital allowance (ACA) for the purchase of new locally assembled excursion buses

In Budget 2022, it was proposed that the ACA, made up of 20% initial allowance and 40% annual allowance, on the purchases of locally assembled excursion buses be extended to the year of assessment (YA) 2024 (previously YA 2021).

To legislate the proposal, the Income Tax (Accelerated Capital Allowance) (Excursion Bus) (Amendment) Rules 2022 [P.U.(A) 9] were gazetted on 11 January 2022 to stipulate that the ACA will apply to excursion buses that are acquired between YA 2020 and YA 2024.

The Amendment Rules are effective from YA 2022.



Withholding tax (WHT) on payments made to agents, dealers and distributors

Pursuant to the Finance Act 2021, effective from 1 January 2022, Section 107D was introduced into the Income Tax Act 1967 to provide that companies making payments in monetary form to agents, dealers or distributors arising from sales, transactions or schemes carried out, will be required to withhold tax at a rate of 2% on the gross amount. This applies to agents, dealers or distributors who are individual residents and who have received more than RM100,000 (in monetary and/or non-monetary form) from the said company in the immediate-preceding YA.

The tax withheld is to be remitted to the Inland Revenue Board (IRB) within 30 days from the date the amount was paid or credited to the agent, dealer or distributor, failing which a tax increase of 10% may be imposed. A tax deduction will not be allowed on the expense in cases where the WHT has not yet been remitted to the IRB.

Following the above, on 12 January 2022, the IRB issued a media release stating that to ensure that impacted taxpayers are able to make the necessary preparations and notify their agents, dealers or distributors accordingly, the remittances of the above-mentioned WHT can be deferred until 31 March 2022. Taxpayers will be allowed to remit the WHT in relation to payments for the months of January until March 2022 from 1 April 2022, without being subject to any tax increase.

The IRB has also stated that a Frequently Asked Documents (FAQs) document in relation to the above-mentioned matter will be issued in due course. It is hoped that further clarity on when specifically the

WHT in relation to payments for the months of January until March 2022 needs to be remitted to the IRB (e.g. whether this must be done by 30 April 2022 or some other date on or after 1 April 2022), will be clarified in the FAQs.

FAQs on the processing fee for the indorsement of instruments exempted from stamp duty

Pursuant to the Finance Act 2021, effective from 1 January 2022 Section 37(2A) was introduced into the Stamp Act 1949 to provide that a processing fee of RM10 will be imposed for a Collector to certify by indorsement that an instrument is exempted from stamp duty. The fee will apply if the instrument would have been chargeable with duty exceeding RM10, had it not been exempted from stamp duty.

Following the above, the IRB has published on its website an FAQs document dated 2 January 2022, in Bahasa Malaysia, titled "Soalan Lazim Berkaitan Pelaksanaan Fi Pemprosesan RM10.00 Ke Atas Semua Surat Cara Yang Tidak Dikenakan Duti Setem (Fi Pemprosesan)".

Some of the key points are outlined below:

- ▶ The fee applies to all instruments exempted from stamp duty (i.e., it is not restricted to specific types of instruments or applications)
- ▶ The fee is not imposed on subsidiary instruments
- ▶ The fee can be remitted by way of cash, bank draft, client's check or online payment. Revenue stamps cannot be used for the fee payment.
- ▶ The fee applies to stamping applications submitted from 3 January 2022

Overseas developments

Korea enacts 2022 tax reform bill

On 8 December 2021, 21 December 2021 and 28 December 2021, Korea enacted various measures in the 2022 Tax Reform Bill (the 2022 Tax Reform) after it was passed by Korea's National Assembly on 2 December 2021. Unless otherwise specified, the 2022 Tax Reform will generally become effective for the fiscal years beginning on or after 1 January 2022. The Enforcement Decrees, which provide more specific guidance on the laws, are expected to be enacted in February 2022.

The key features of the new and amended tax laws are summarized below.

Detailed discussion

Clarification of the deemed beneficial owner rules for overseas investment vehicles (OIV)

The current Korean tax law views an OIV as a deemed beneficial owner of Korean-source income, if any of the following conditions are met:

- (i) The OIV is liable to tax in the jurisdiction in which it resides and there is no intention to wrongfully evade Korean tax on the Korean-source income by establishing the OIV in such jurisdiction.
- (ii) The OIV meets the qualifications for being regarded as the beneficial owner under the applicable tax treaty.
- (iii) The OIV is unable to substantiate its investors.

The 2022 Tax Reform has clarified the conditions of (i) and (ii) as follows:

- (i) The OIV is liable to tax in the jurisdiction where it is established and meets qualifications for being eligible for tax treaty benefits for the

Korea-sourced income in accordance with the tax treaty.

- (ii) The OIV (in the case where it does not meet the requirements provided in the clarified condition (i) above) meets the qualifications for being regarded as the beneficial owner under a tax treaty and meets other qualifications for being eligible for tax treaty benefits for the Korea-sourced income under the tax treaty.

This rule will be effective for Korean-sourced income paid on or after 1 January 2022.

Deferral of taxation on virtual assets

Under the current Korean tax law, gains derived from the disposal of virtual assets by a foreign individual or a foreign corporation are categorized as "other income" subject to withholding tax at the lower of 11% of the transfer price or 22% of the net capital gains.

The 2022 Tax Reform deferred by one year the effective date of the previously enacted legislation requiring the taxation of gains from the sale of virtual assets. Those gains will now be taxed beginning 1 January 2023.

Option to conduct a partial investigation on tax treaty-based exemptions

The 2022 Tax Reform added a provision in which Korean tax authorities would be allowed to conduct a partial investigation on taxpayers. The new provision applies to cases where they find it necessary to assess or confirm the appropriateness of a tax exemption which is claimed/availed based on the application of a tax treaty, in respect of income attributable to non-residents.

The above rule would apply to cases of tax treaty-based exemption applications filed with the tax offices on or after the date of enactment of the Enforcement Decree.

Revision of the 30% EBITDA interest limitation rule

The current 30% EBITDA interest limitation rule provides an ordering rule for the calculation of non-deductible interest. If interest is calculated with different interest rates, the interest deduction denial is applied starting with the highest interest rate.

The 2022 Tax Reform introduced additional ordering rules for the non-deductible portion of interest:

- ▶ For interest where the same interest rate is applied, the most recent borrowing date takes precedence.
- ▶ If the interest rate and borrowing date are the same, the non-deductible portion is bifurcated based on the ratio of the borrowed amounts.

In addition, the 2022 Tax Reform introduced a new rule whereby if the amount of EBITDA is negative, the deductible amount of interest is deemed to be nil.

The above rules will be effective for the fiscal years beginning on or after 1 January 2022.

Introduction of new rules for international transactions

The 2022 Tax Reform introduced new rules to mitigate potential tax evasion through international transactions, which are outlined in Appendix I to this Alert.

Amendment to transfer pricing (TP) under special economic conditions

To rationalize TP taxation under special circumstances such as COVID-19, the 2022 Tax Reform revised the TP rules under the current Law for the Coordination of International Tax Affairs (LCITA), which are outlined in Appendix II to this Alert.

Extension of the deadline for submitting documents related to international transactions

The current Enforcement Decree of the Korean Corporate Income Tax Law (CITL) requires the permanent establishment (PE) of a foreign corporation to submit documents such as a statement of internal transactions, expense allocation, among others for the transactions between a PE of a foreign corporation and its overseas headquarters and other branches within the statutory deadline for the corporate income tax (CIT) return.

The 2022 Tax Reform extended the above submission deadline from the statutory deadline of the CIT return to within six months from the last day of the month containing the fiscal year-end date.

This rule applies to submissions made on or after 1 January 2022.

Extension of the application period for the special taxation for foreign workers

Under the current *Restriction of Special Taxation Act*, a foreign executive or employee (excluding workers hired daily) initially working in Korea before 31 December 2021 may elect to apply for a flat tax rate of 19% (excluding local income tax) on wage income without deductions, for five years from the first day of work in Korea.

The 2022 Tax Reform extended the application period from 31 December 2021 to 31 December 2023.

Switzerland plans to implement the OECD minimum tax rate for large multinational companies from 2024

In its 12 January 2022 session, the Swiss Federal Council decided on the basic procedural and material elements of the national implementation of the global

minimum tax rate as agreed by 137 of the 141 member jurisdictions in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), including all OECD, G20 and European Union Member States. Due to the urgency of the implementation resulting from the extremely ambitious timeline set forth by the OECD, Switzerland plans to introduce these rules by a constitutional amendment, which will require a popular vote expected to take place in June 2023. Based on that, the Federal Council will then issue a temporary ordinance to implement the minimum tax rate as of 1 January 2024. Thereafter, the respective legal basis will be prepared through the regular legislative process without time pressure. This unusual approach is intended to ensure timely implementation and provide legal certainty to the respective corporations. The cantons will make sovereign decisions on location measures to ensure that Switzerland remains an attractive business location.

Detailed discussion

The approach proposed by the OECD to address the tax challenges arising from the digitalization of the economy consists of two pillars (the Two-Pillar Solution): a reallocation of taxing rights with a new profit allocation and nexus rule for market jurisdictions (Pillar One) and global minimum tax rules (Pillar Two). Pillar Two stipulates that multinational enterprises with a turnover of more than €750m must be subject to a minimum tax rate of at least 15% in each jurisdiction (the minimum tax rate is calculated based on the rules provided by the OECD and may significantly differ from the statutory tax rates). If a country does not tax the respective domestic group companies at that rate, other countries can tax the undertaxed income. The Federal Council decided that Switzerland will introduce the minimum tax rate for in-scope companies, as to not forgo any tax income to which it is entitled to and to ensure that Swiss companies are not exposed to adjustments made by foreign tax authorities.

Material aspects

Switzerland will only implement the 15% minimum tax for multinational companies that are in-scope of the Pillar Two system. Most Swiss companies are therefore not expected to be impacted by these changes. The top-up tax will be collected by the cantons and the additional tax income will remain with the cantons. However, the additional tax revenue shall be subject to the existing principles of the national fiscal equalization scheme. The Federation will be the competent authority on the international level.

Impact on Switzerland as a business location

Affected companies will likely face a higher tax burden as most Swiss cantons provide tax rates of less than 15%, including the federal income tax. However, the Federal Council emphasized its willingness to ensure the attractiveness of Switzerland as a business location. The additional tax revenues will provide the cantons with the fiscal policy leeway to respond adequately in favor of the business location. Apart from the already proposed fiscal measures, such as the abolition of the share issuance tax and the forthcoming withholding tax reform, such non-fiscal locational measures will for the most part be handled at the discretion of the cantons.

Future outlook

Due to the recent publication of the Pillar Two model rules and the ongoing process at the level of the OECD, no detailed impact assessment can be made yet according to the Federal Council. However, the Federal Council is working closely with the cantons, communes and other interested parties, to ensure the timely implementation of the new global minimum tax rules in Switzerland while maintaining the attractiveness of Switzerland as a business location. Multiple working groups and consultative bodies have been set up for this purpose.

This first announcement of the Federal Council on this subject is a positive development, as timely

implementation will be key to providing legal certainty to affected multinational companies. The approach expressed at the press conference of the Federal Council on 13 January 2022 to use the fiscal policy leeway to decide on locational measures at cantonal level is another positive sign for Switzerland's continued attractiveness as a business location.

Introduction of new rules for international transactions

The 2022 Tax Reform	Details / submission due date	Effective date
New obligation to submit information regarding the status of a liaison office of a foreign company (e.g., basic information of the liaison office, status of foreign headquarters and other domestic branches, among others)	10 February of the following year	Effective for submission of the status information relevant to taxable years beginning on or after 1 January 2022
New obligation to submit transaction details by foreign companies supplying electronic services	<ul style="list-style-type: none"> ▶ Simplified Value Added Tax (VAT) registrant maintains electronic service transaction details for five years after the due date of the final VAT return ▶ Simplified VAT registrant is required to submit a transaction statement within 60 days of receiving a request from the Commissioner of the National Tax Service (NTS) 	Effective for the supply of electronic services on or after 1 July 2022
Establishment of grounds for ex officio cancellation of simplified VAT registration	The NTS Commissioner may cancel a simplified VAT registration if the registrant closes its business	Effective on or after 1 January 2022
<p>The current Enforcement Decree of Adjustment of International Taxes Act applies a penalty for late or false filing of transfer pricing (TP) documentation (e.g., Master/ Local files, Country-by-Country Report) of up to KRW100 million (US\$87,000)</p> <p>The 2022 Tax Reform introduces new rules reducing the penalties for negligence for submitting revised or late TP documentation</p>	30% to 90% reduction in penalties for the submission of revised or late TP documentation before the penalty is imposed	Effective for submissions of TP documentation on or after the date of enactment of the Enforcement Decree

Amendment to transfer pricing under special economic conditions

LCITA	The 2022 Tax Reform	Effective date
<p>Considerations when applying the arm's-length pricing method</p> <ul style="list-style-type: none"> ▶ Analysis of the taxpayer's business environment and related transactions, selection of arm's-length price calculation method, selection of comparable transactions, among others ▶ Data from multiple business years can be used if the economic conditions or business strategies are affected over multiple years 	<p>Additional considerations when applying the arm's-length price calculation method in which companies that have suffered losses due to economic conditions such as an economic downturn can also be selected for comparable transactions</p>	<p>Effective for decisions and corrections made on or after 1 January 2022</p>
<p>Determination and correction by tax authorities based on normal cost-sharing</p> <ul style="list-style-type: none"> ▶ If a resident and a foreign-related party enter into an agreement on cost/ expense/ risk sharing in advance and jointly develop and secure intangible assets accordingly, and if that share of cost differs from the normal cost-sharing, it can be determined and corrected based on the normal cost-sharing 	<p>Exceptions to the decision and correction are accepted, if the cost is not shared as agreed upon due to force majeure, such as a disaster</p>	

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Important dates

31 January 2022	6 th month revision of tax estimates for companies with July year-end
31 January 2022	9 th month revision of tax estimates for companies with April year-end
31 January 2022	Special 11 th month revision of tax estimates for YA 2022, for companies with February 2022 year-end
31 January 2022	Statutory deadline for filing of 2021 tax returns for companies with June year-end. A blanket extension of time has been provided until 28 February 2022.
31 January 2022	Extended 2021 tax return filing deadline for companies with April and May year-ends.
15 February 2022	Due date for monthly instalments
28 February 2022	6 th month revision of tax estimates for companies with August year-end
28 February 2022	9 th month revision of tax estimates for companies with May year-end
28 February 2022	Special 11 th month revision of tax estimates for YA 2022, for companies with March 2022 year-end
28 February 2022	Statutory deadline for filing of 2021 tax returns for companies with July year-end. A blanket extension of time has been provided until 31 March 2022.
28 February 2022	Extended 2021 tax return filing deadline for companies with June year-end.

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