Building a better working world

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Malaysian developments

Updated Frequently Asked Questions (FAQs) pertaining to withholding tax (WHT) on payments made to agents, dealers and distributors

The Inland Revenue Board (IRB) has published on its website the updated version of its FAQs document in relation to Section 107D of the Income Tax Act 1967 (ITA), which provides that companies making payments in monetary form to agents, dealers or distributors arising from sales, transactions or schemes will be required to withhold tax at a rate of 2% on the gross amount. The FAQs document is in Bahasa Malaysia, titled "Soalan Lazim Berkaitan Potongan Cukai 2% Terhadap Pembayaran Oleh Syarikat Pembayar Kepada Ejen, Pengedar Atau Pengagih Di Bawah Bajet 2022", and is dated 17 March 2022.

The FAQs document was updated mainly to reflect that the WHT would apply on payments to agents, dealers or distributors who have received <u>more than</u> (previously, <u>equal to or more than</u>) RM100,000 (in monetary and/or non-monetary form) from the payer company in the immediate-preceding year of assessment (YA) (see Items C.1 and C.5 of the FAQs).

Updated FAQs on the special deduction on rental discounts given to tenants

The following Amendment Rules were gazetted on 27 December 2021, to legislate the Budget 2022 proposal that the special deduction given to property owners who provide rental reductions of at least 30% to their tenants be extended for another six months, until June 2022 (see *Tax Alert No. 1/2022*):

- Income Tax (Special Deduction for Reduction of Rental to a Small and Medium Enterprise) (Amendment) Rules 2021
- Income Tax (Special Deduction for Reduction of Rental to a Tenant other than a Small and Medium Enterprise) (Amendment) Rules 2021

Following the above, the IRB has published an updated version of the FAQs document in Bahasa Malaysia, titled "Soalan Lazim Potongan Khas Kepada Pembayar Cukai Yang Memberi Pengurangan Sewa Premis Perniagaan Kepada Perusahaan Kecil Dan Sederhana (PKS) Dan Bukan PKS Di Bawah P.U.(A) 353/2021, 354/2021, 479/2021 & 480/2021", dated 22 March 2022, to reflect the above-mentioned legislative changes.

Updated guidelines on relief from stamp duty pursuant to Sections 15 and 15A of the Stamp Act 1949 (SA)

The IRB has published on its website updated Guidelines, in Bahasa Malaysia, on the application for relief from stamp duty under Sections 15 and 15A of the SA, as follows:

- Garis Panduan Permohonan Pelepasan Duti Setem Di Bawah Seksyen 15, Akta Setem 1949
- Garis Panduan Permohonan Pelepasan Duti Setem Di Bawah Seksyen 15A, Akta Setem 1949

The Guidelines are dated 1 March 2022 and replace the earlier Guidelines which were published on 26 February 2019 (see *Tax Alert No. 5/2019*).

Garis Panduan Permohonan Pelepasan Duti Setem Di Bawah Seksyen 15, Akta Setem 1949

Section 15 of the SA provides relief from stamp duty in cases of reconstructions or amalgamations of companies.

Some of the key changes to the Guidelines are:

- The new Guidelines specify more clearly the documents to be furnished by the "transferee company" and "existing company" respectively, in support of the application. In addition, certain supporting documents (e.g., Constitution of the Company, Board resolution on the increase in share capital etc.) are to be certified by a Company Secretary (the previous Guidelines stated that the documents were to be certified by the Deputy Collector of Stamp Duty).

- The new Guidelines clarify that applicants will be notified of the result of their applications via the Stamp Duty Assessment and Payment System (STAMPS). For approved applications, the applicant will need to collect the approval letter and certificate of exemption from the relevant State Director's Office.

- The new Guidelines stipulate that in the event the exemption is revoked, a late payment penalty under Section 47A of the SA may be imposed.

- The new Guidelines explain the responsibilities of the parties involved where approval for the stamp duty exemption has been granted.

Garis Panduan Permohonan Pelepasan Duti Setem Di Bawah Seksyen 15A, Akta Setem 1949

Section 15A of the SA provides relief from stamp duty in cases of transfer of property between associated companies, as defined.

Some of the key changes to the Guidelines are as outlined below:

- The new Guidelines state that generally, transactions such as the transfer of shares, real property and company assets (previously, only shares and real property) would qualify for relief. The new Guidelines reiterate that the Section 15A stamp duty relief would not apply on the transfer of business.
- The new Guidelines provide an updated list of documents to be furnished in the application for the exemption. In addition, certain supporting documents (e.g., Board resolution for the transfer between the associated companies) are to be certified by a Company Secretary (previously, the Deputy Collector of Stamp Duty).
- The new Guidelines stipulate that the property transferred must be transferred directly from the transferor to the transferee.
- The new Guidelines explain the process for approved or rejected applications.
- The new Guidelines stipulate that in the event the exemption is revoked, a late payment penalty under Section 47A of the SA may be imposed.
- The new Guidelines explain the responsibilities of the parties involved where approval for the stamp duty exemption has been granted.

Sabah Development Corridor (SDC) incentives extended

The SDC was launched on 29 January 2008 to accelerate the growth of Sabah's economy. At the end of the year 2012, the Minister of Finance (MoF) approved a tax incentives package under the SDC to enable the Sabah Economic Development and Investments Authority (SEDIA) to promote Sabah as an ideal location for doing business and to attract local and foreign investors to Sabah.

The following Exemption Orders were gazetted in respect of these incentives, on 31 December 2018 (see *Tax Alert No. 1/2019*):

(a) Income Tax (Exemption) (No. 11) Order 2018
The Order provides an exemption on statutory income derived from a qualifying activity (as defined) for a YA, equivalent to 100% of qualifying capital expenditure incurred by a qualifying company. The exemption applies to applications made to SEDIA between 20 November 2012 and 31 December 2020.

(b) Income Tax (Exemption) (No. 12) Order 2018
The Order provides a full tax exemption on statutory income derived from a qualifying activity (as defined) for each YA. The exemption applies to applications made to SEDIA between 20 November 2012 and 31 December 2020.

(c) Stamp Duty (Exemption) (No. 8) Order 2018
The Order provides a stamp duty exemption for any instrument chargeable with *ad valorem* duty for the transfer of real property used for the purpose of carrying on a qualifying tourism project (as defined). The exemption applies to instruments executed between 20 November 2012 and 31 December 2020.

The exemptions are subject to other conditions.

In Budget 2021, the Government proposed to extend the existing SDC tax incentives until 2022. To legislate the proposal, the following Amendment Orders were gazetted on 29 March 2022:

(a) **Stamp Duty (Exemption) (No. 8) 2018 (Amendment) Order 2022 [P.U.(A) 74]**

The exemption will now apply to instruments executed until 31 December 2022.

(b) **Income Tax (Exemption) (No. 11) 2018 (Amendment) Order 2022 [P.U.(A) 75]**
(c) **Income Tax (Exemption) (No. 12) 2018 (Amendment) Order 2022 [P.U.(A) 76]**

Both exemptions will now apply to applications made to SEDIA until 31 December 2022.

East Coast Economic Region (ECER) incentives extended

The ECER Master Plan, approved by the Government in 2008, was created to develop the socio-economic status of ECER by identifying projects and programmes to reduce regional socio-economic disparities, eradicate poverty and improve income and wealth distribution in a sustainable manner. To encourage investment in this region, various tax incentives were announced.

In this regard, the following Exemption Orders were gazetted on 13 June 2016, and came into operation on 13 June 2008 (see *Tax Alert No. 13/2016*):

(a) **Income Tax (Exemption) (No. 4) Order 2016**
The Order provides an income tax exemption on the statutory income derived from qualifying activities (as specified in the Schedule of the Order) carried out in the ECER. The amount of tax exempted is equal to the amount of qualifying capital expenditure incurred by the qualifying person.

(b) **Income Tax (Exemption) (No. 5) Order 2016**
The Order provides an income tax exemption on the statutory income derived from special qualifying activities (as specified in the Schedule of the Order) carried out in the ECER. The amount of tax exempted is equal to 60% to 100% of the qualifying capital expenditure incurred by the qualifying person.

(c) **Income Tax (Exemption) (No. 6) Order 2016**
The Order provides 100% income tax exemption on the statutory income derived from qualifying activities (as specified in the Schedule of the Order) carried out in the ECER.

(d) **Income Tax (Exemption) (No. 7) Order 2016**
The Order provides a 70% to 100% income tax exemption on the statutory income derived from special qualifying activities (as specified in the Schedule of the Order) carried out in the ECER.

(e) **Income Tax (Exemption) (No. 8) Order 2016**
The Order provides 100% income tax exemption on the statutory income derived from the following qualifying activities by an approved developer:
- The disposal of any right over any land or the disposal of a building or rights over a building or part of a building located in an industrial park or a free zone
- The rental of a building or part of a building located in an industrial park or a free zone

The exemptions are subject to conditions.

To qualify for the above incentives, applications must be made to the ECER Development Council (ECERDC) between 13 June 2008 and 31 December 2020.

In Budget 2021, the Government proposed to extend the existing ECER tax incentives until 2022. To legislate the proposal, the following Amendment Orders were gazetted on 1 April 2022:

(a) Income Tax (Exemption) (No. 4) 2016 (Amendment) Order 2022 [P.U.(A) 88]
(b) Income Tax (Exemption) (No. 5) 2016 (Amendment) Order 2022 [P.U.(A) 89]
(c) Income Tax (Exemption) (No. 6) 2016 (Amendment) Order 2022 [P.U.(A) 90]
(d) Income Tax (Exemption) (No. 7) 2016 (Amendment) Order 2022 [P.U.(A) 91]
(e) Income Tax (Exemption) (No. 8) 2016 (Amendment) Order 2022 [P.U.(A) 92]

With the above, the incentives will now apply to applications made to ECERDC until 31 December 2022.

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2022 [P.U.(A) 93] was gazetted on 1 April 2022. The Order provides that any tax payable under the 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 (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

The Order came into operation on 2 April 2022.

Overseas developments

OECD releases an IT-format to support the exchange of tax information on digital platforms

On 29 March 2022, the Organisation for Economic Co-operation and Development (OECD) released a standardized IT-format (a User Guide and an XML Schema) to support the electronic reporting and automatic exchange of information collected under the OECD's Model Reporting Rules for digital platforms released in 2020 and the optional module that extends the scope of the Model Reporting Rules released in 2021.

These Model Reporting Rules require digital platforms to report on the income realized by those offering accommodation, transport and personal services, as well as those selling goods through platforms and to report the information to tax authorities. The Digital Platform Information (DPI) XML Schema is intended to minimize burdens on digital platform operators, which might otherwise arise were jurisdictions to apply multiple different requirements.

Moreover, the DPI XML Schema was developed in close coordination with the European Union (EU), in order to ensure that the schema can also be relied upon for the reporting and exchange of information pursuant to the Council Directive (EU) 2021/514 (DAC7).

Detailed discussion

Background

At the 11th Plenary meeting of the Forum on Tax Administration (FTA) in 2017, FTA members agreed to work on a project to help ensure the effective taxation of the sale of goods or services in the sharing and gig economy. This project was referenced in the March 2018 OECD interim report to the G20 on *Tax Challenges Arising from Digitalisation*. The project group held several meetings and engaged with selected sharing and gig economy platform operators. At the 12th Plenary meeting of the FTA in 2019, the FTA members welcomed the publication of a report on the effective taxation of platform sellers in the sharing and gig economy, which summarizes the findings of the project group.

On 19 February 2020, the OECD released a consultation document on the draft model rules for the reporting of data by platform operators with respect to sellers in the sharing and gig economy. The consultation document set out 17 questions regarding key aspects of the draft model rules.

Following the consultation document, in July 2020, the OECD released its Model Reporting Rules for the reporting of data by platform operators with respect to sellers in the sharing and gig economy. Inspired by the OECD Model Reporting Rules, in March 2021, the Council of the EU (the Council) adopted an amendment to the Directive on Administrative Cooperation in the field of taxation (Council Directive 2011/16/EU or DAC) (the so-called "DAC7") to extend the EU tax transparency reporting rules to digital platforms. Under the EU rules, which are wider in terms of the scope and businesses affected, the reporting obligation for digital platforms will be applicable as of 1 January 2023.

Following the adoption of the DAC7, in June 2021, the OECD published the international exchange framework for Model Reporting Rules for the sharing economy in the form of a Multilateral Competent Authority Agreement (MCAA) and an optional module for the sale of goods. The framework supports the annual automatic exchange of information by the residence jurisdiction of the platform operator with the jurisdictions of residence of the sellers. The optional module extends the scope of the Model Reporting Rules to the sale of goods and the rental of means of transportation.

DPI XML Schema

On 29 March 2022, the OECD released a User Guide and a DPI XML Schema which reflects the extended scope of the Model Reporting Rules and is designed to facilitate exchanges under the OECD's Model Reporting Rules for digital platforms and the DAC7. The User Guide also includes two appendices: i) Appendix A to the DPI User Guide shows a diagrammatic representation of the DPI XML Schema with all its elements; and ii) Appendix B to the DPI User Guide contains a Glossary of namespaces for the DPI XML Schema.

The structure of the DPI XML Schema consists of logical sections and provides information on specific data elements and any attributes that describe each data element. The main sections include: i) Message Header; ii) Organization Party type; iii) Person Party type; and iv) DPI Body (which includes three sub-sections).

The DPI XML Schema is intended for use for the exchange of information reported under the OECD Model Reporting Rules between competent authorities that have activated exchange relationships under the MCAA on the Automatic Exchange of Information on Income Derived through Digital Platforms (DPI MCAA), or a similar exchange instrument. The DPI XML Schema includes information to be exchanged with respect to activities such as the rental of immovable property; personal services; sale of goods; and the rental of a means of transportation.

Additionally, the User Guide provides that, where appropriate, jurisdictions may consider using the DPI XML Schema domestically for the purpose of gathering the required information from their respective Reporting Platform Operators. The requirement field for each data element and its attribute indicates whether the element is validation or optional in the DPI XML schema. Every element is one or the other in the DPI XML schema. Validation elements must be present for all data records in a file and an automated validation check can be undertaken. Optional elements may be provided, but are not required to be filled in.

Implications

The Model Reporting Rules for digital platforms underline the continued intention of the OECD and EU to expand on tax transparency as a means of ensuring tax compliance. The obligation to report income earned through digital platforms and the exchange of such information is aimed at helping countries to receive a full set of information on sellers on the digital platforms. A harmonized framework across the globe for reporting is aimed at increasing legal certainty and providing more clarity to the digital platform operators, who currently may face different reporting obligations in individual jurisdictions.

Digital platforms should timely establish due diligence and information collection processes. In-scope companies should assess what changes to their processes and technology are necessary to enable reporting under the Model Reporting Rules. A positive fact is that EU Value Added Tax (VAT) Law already obliges digital platforms to collect part of the data under DAC7 and the OECD’s Model Reporting Rules. This requirement in the EU limits the amount of work to be done by digital platforms already complying with EU VAT rules.

US President Biden releases FY2023 Budget

United States (US) President Joe Biden's FY2023 Budget, released on 28 March 2022, folds most of the House-passed *Build Back Better Act* (BBBA) into the baseline and assumes it has been enacted, a move likely intended to avoid upsetting any blossoming negotiations later this spring or summer on a post-BBBA reconciliation bill after the House measure stalled in the Senate. This means most tax-related spending and other BBBA provisions are omitted; and other major tax increase proposals are included, even though Congress has little appetite for passing some of them or they face firm opposition from one or more key senators in the 50-50 Senate. Examples of these proposed tax increases include increases in the corporate and individual tax rates that were previously proposed by the Administration or congressional Democrats but were rejected as the BBBA was put together in the House.

The Budget includes some new starters, such as: (i) replacing the Base Erosion and Anti-avoidance Tax (BEAT) with part of the Organisation for Economic Co-operation and Development (OECD) Pillar Two rules, called the Undertaxed Payment Rule (UTPR), and (ii) imposing a new minimum tax on wealthy individuals, called the "billionaire's tax."

"The revenue proposals are estimated relative to a baseline that incorporates all revenue provisions of Title XIII of H.R. 5376 (as passed by the House of Representatives on 19 November 2021), except Sec. 137601" (i.e., relief from the state & local tax deduction cap), said the Treasury in its General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals.

Among the major new proposals in the Budget is a new "billionaire's tax," which would impose a 20% minimum tax on total income, inclusive of unrealized capital gains, for taxpayers with wealth greater than US$100 million. The proposal would allow for spreading the first year of minimum tax liability in equal installments over nine years, and then five years for top-up payments on new income going forward. The proposal would raise about US$360 billion over 10 years. Payments of the minimum tax would be treated as a prepayment that would be credited against subsequent tax on realized capital gains. The proposal also includes new annual reporting requirements that would, among other things, require tradable assets such as publicly traded stock to be valued using end-of-year market prices, with special valuation rules provided for non-tradable assets. Senators have proposed varying forms of wealth taxes and marking assets to market; this is the first such proposal from the Biden administration, and officials had previously expressed concern about implementation difficulties.

The Budget continues to call for tax provisions that fell out of the House-passed BBBA due to opposition in Congress, including:

- Raising the corporate tax rate to 28%
- Increasing the top marginal income tax rate (to 39.6%) for high earners
- Reforming the taxation of capital income to tax capital gains of high earners at ordinary income rates
- Taxing carried interests as ordinary income
- Repealing deferral of gain from like-kind exchanges

As in last year's budget, the proposal to reform the taxation of capital income would tax long-term capital gains and qualified dividends of taxpayers with taxable income of more than US$1 million at ordinary rates, with 37% generally being the highest rate (40.8% including the net investment income tax).

Detailed discussion

Corporate & International Tax

Seven proposals focus on reforming business and international taxation, and are estimated to raise US$1.628 trillion over 10 years.

<u>Corporate rate and GILTI</u>
The Budget proposes to increase the 21% corporate rate to 28%, which would consequently increase the Global Intangible Low-Taxed Income (GILTI) rate in tandem. The proposal is scored under the assumption of a BBBA baseline. Therefore, the new GILTI effective rate would be 20%, applied on a jurisdiction-by-jurisdiction basis.

The 20% GILTI rate seems to be the result of the 28% corporate rate reduced by the BBBA's 28.5% GILTI deduction, which results in a 20.02% rate (28 x 71.5%). The GILTI rate could increase to as high as 21.07%, with the 5% GILTI Foreign Tax Credit haircut (20.02/.95). It's not clear how this rate would conform to the Administration's agreement on Pillar Two for a 15% minimum tax rate.

The proposal would be effective for the tax years beginning after 31 December 2022. For the tax years beginning before 1 January 2023, and ending after 31 December 2022, the corporate income tax rate would equal 21% plus 7% times the portion of the tax year that occurs in 2023.

Revenue: US$1.314 trillion (this a significant increase in the estimated revenue from the President's FY 2022 Budget, which estimated a 28% corporate rate would raise $857 billion.)

<u>BEAT repealed and replaced with UTPR</u>
The proposal would repeal the BEAT as modified by the BBBA and replace it with a UTPR that is consistent with the UTPR described in the OECD Pillar Two Model Rules, including a global annual revenue threshold (US$850 million), *de minimis* exclusions and allocation among jurisdictions. Further, a US domestic minimum top-up tax would be part of the rules to protect US revenues from the imposition of UTPR by other countries. The proposal expressly notes: "Separately, the proposal would provide a mechanism to ensure U.S. taxpayers would continue to benefit from U.S. tax credits and other tax incentives that promote U.S. jobs and investment." It's not clear, however, how those benefits would be preserved.

As explained, the UTPR would primarily apply to foreign-parented multinationals operating in low-tax jurisdictions and would not apply to income subject to the Pillar Two Income Inclusion Rule (IIR), including income subject to GILTI. Both domestic corporations that are part of a foreign-parented multinational group and domestic branches of foreign corporations would be disallowed US tax deductions in an amount determined by reference to the low-taxed income of foreign entities and foreign branches that are members of the same financial reporting group (including the common parent of the financial reporting group).

The proposal to repeal the BEAT and replace it with the UTPR would be effective for tax years beginning after 31 December 2023.

Revenue: US$239.463 billion

Incentive to bring jobs home

A new general business credit would equal 10% of the eligible expenses paid or incurred in connection with onshoring a US trade or business that is linked to reducing or eliminating a trade or business or line of business currently conducted outside the United States or starting up, expanding, or otherwise moving the same trade or business within the United States, to the extent that this action results in an increase in US jobs. Deductions would be disallowed for expenses paid or incurred in connection with offshoring a US trade or business, including denying deductions against a US shareholder's GILTI or subpart F income inclusions for any expenses paid or incurred in connection with moving a US trade or business outside the United States.

The proposal, which was reprised from the FY2022 Budget but never really part of the public BBBA conversation, would be effective for expenses paid or incurred after the date of enactment.

Although the President's FY22 Budget proposed to repeal the deduction for foreign-derived intangible income on the grounds that it encourages the offshoring of US businesses and jobs, that proposal is not included in the FY23 Budget, even though it is not part of the BBBA.

Revenue: US$0 (the proposed credit and the denial of deductions offset at a cost of US$149 million.)

Other business and international tax proposals

Other proposals to reform business and international taxation include:

- Disallowing stepped-up basis of a partnership's non-distributed property to a related partner until the property is disposed. The proposal would be effective for partnership tax years beginning after 31 December 2022.
- Conforming the definition of control to test the ownership of at least 80% of the total voting power and at least 80% of the total value of a corporation's stock. The proposal would be effective for transactions occurring after 31 December 2022.
- Expanding the retroactive election for those having an interest in a passive foreign investment that is intended to reduce tax costs and increase tax compliance by removing, in certain cases, the need to seek consent. The proposal would be effective on the date of enactment. Forthcoming regulations or other guidance would permit taxpayers to amend previously filed returns for open years.
- Amending reporting obligations of US persons to provide information on foreign operations that would align with the BBA changes, for example, those that would focus on foreign operations conducted by tested units within a country as opposed to the current definition of a foreign business entity that could allow blending across jurisdictions that the BBBA would remove.

Revenue: US$74.715 billion (aggregated)

Insurance

The Budget includes insurance tax provisions, including proposing what are characterized as technical corrections to the Tax Cuts and Jobs Act (TCJA) provisions addressing the capitalization of deferred acquisition costs (DAC) and the discounting of certain unpaid claims and other incurred losses for short-tail and long-tail property and casualty insurance businesses. Regarding DAC, the Budget proposal would change the capitalization rate of net premiums for group life insurance contracts from 2.05% to 2.45%, and the capitalization rate for other non-annuity specified life insurance contracts from 7.70% to 9.20%. The proposal, which is characterized as a technical correction, would be effective as if it were part of the TCJA and be treated as a change of accounting method for the tax year beginning in 2022. Regarding the discounting proposal, the second technical correction would include international and nonproportional reinsurance lines of business in the list of long-tail lines of business that are explicitly identified in the statute. This proposal is effective for the tax years after 31 December 2022. New loss payment patterns for international and nonproportional reinsurance lines of business would be determined as if promulgated for the 2022 determination year.

Changes to the alternative tax regime that may be elected by certain small non-life insurance companies are proposed to address perceived abuses in the use of the alternative regime. Generally, the proposal would require certain insurance companies electing the alternative regime to establish Untaxed Income Accounts (UIA). Certain amounts, referred to as deemed distributions, would be deemed paid from the UIA to the extent the UIA has a positive balance and would be subject to corporate income tax and a penalty. This proposal would be effective for distributions, sales, and other transactions occurring in the tax years of a covered insurance company beginning after 31 December 2022.

A business-owned life insurance proposal would repeal the pro-rata interest-expense-disallowance rule for contracts covering employees, officers, or directors, while the exception for policies covering a 20% owner would be retained. The proposal would apply to contracts issued after 31 December 2021, and certain material changes to an existing contract would be treated as an issuance of a new contract.

Energy

Also reproposed from the prior budget is a similar set of provisions to cut benefits for fossil fuel producers. These provisions, which were not included in the BBBA, include repeal of expensing of intangible drilling costs, repeal of percentage depletion with respect to oil and natural gas wells, and increasing the geological and geophysical amortization period for independent producers. These proposals generally would be effective for the tax years beginning after 2022.

Charities

Charity-related provisions would:

- Provide that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) is not treated as a qualified conservation contribution (and thus, the deduction for the contribution would be disallowed) if the contribution exceeds two and a half times the sum of each partner's relevant basis in such partnership
- Clarify that a distribution by a private foundation to a donor advised fund (DAF) is not a qualifying distribution unless the funds are expended as a qualifying distribution by the end of the following tax year and the private foundation maintains adequate records or other evidence showing that the DAF has made a qualifying distribution within the required timeframe

Estate & Gift

Newly added are estate and gift provisions, including those on grantor trusts. These provisions would:

- Require the remainder interest in a Grantor retained annuity trust (GRAT) to have, at the time the interest is created, a minimum value for gift tax purposes equal to the greater of 25% of the value of the assets transferred to the GRAT or US$500,000
- Prohibit any decrease in the annuity during the GRAT term and the grantor from acquiring in an

exchange an asset held in the trust without recognizing gain or loss for income tax purposes
- Require a GRAT to have a minimum term of 10 years and a maximum term of the grantor's life

Another proposal would provide that generation-skipping transfer (GST) tax, which is imposed on gifts and bequests by an individual transferor to transferees who are two or more generations younger than the transferor, would apply only to: (a) direct skips and taxable distributions to beneficiaries no more than two generations below the transferor, and to younger generation beneficiaries who were alive at the creation of the trust; and (b) taxable terminations occurring while any person described in (a) is a beneficiary of the trust.

Information reporting, including cryptocurrency

The Budget would expand existing rules on financial account reporting to include reporting on the account balance (including the cash value or surrender value of cash-value insurance and annuity contracts) for all US office accounts of foreign persons and includes new reporting for other financial accounts held by foreign persons.

In addition, the Budget seeks to modernize rules for reporting on digital assets, including cryptocurrency, primarily by adding these types of assets to the scope of existing reporting requirements. These provisions include amending the nonrecognition rules for securities loans to apply to loans of actively traded digital assets; increasing information reporting by certain financial institutions and digital asset brokers for the purposes of exchanging information with other jurisdictions; requiring reporting by taxpayers of foreign digital asset accounts under Internal Revenue Code Section 6038D; and amending the mark-to-market rules for dealers and traders to include digital assets.

Another tax administration/compliance proposal would require employers to withhold the 20% additional tax and additional interest tax on nonqualified deferred compensation (NQDC) included in an employee's income due to the NQDC arrangement failing to comply with the tax requirements.

Funding for post-retirement medical and life insurance benefits

The Budget would require post-retirement benefits to be funded over the longer of the working lives of the covered employees on a level basis or 10 years, unless the employer commits to maintain those benefits over a period of at least 10 years, effective for the tax years beginning after 31 December 2022.

The Treasury General Explanations of the Administration's Revenue Proposals document is available here.

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Important dates

15 April 2022	Due date for monthly instalments
30 April 2022	6th month revision of tax estimates for companies with October year-end
30 April 2022	9th month revision of tax estimates for companies with July year-end
30 April 2022	Special 11th month revision of tax estimates for YA 2022, for companies with May 2022 year-end
30 April 2022	Statutory deadline for filing of 2021 tax returns for companies with September year-end. A blanket extension of time has been provided until 31 May 2022.
30 April 2022	Extended 2021 tax return filing deadline for companies with August year-end.
15 May 2022	Due date for monthly instalments
31 May 2022	6th month revision of tax estimates for companies with November year-end
31 May 2022	9th month revision of tax estimates for companies with August year-end
31 May 2022	Special 11th month revision of tax estimates for YA 2022, for companies with June 2022 year-end
31 May 2022	Statutory deadline for filing of 2021 tax returns for companies with October year-end. A blanket extension of time has been provided until 30 June 2022.
31 May 2022	Extended 2021 tax return filing deadline for companies with September year-end.

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