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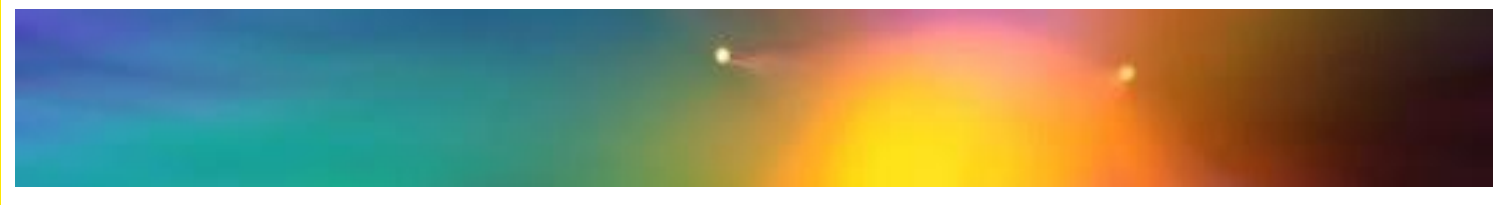
Malaysian developments

Double deduction for scholarships provided by companies

In Budget 2022 (see *Take 5: Malaysia Budget 2022*), it was proposed that the scope of double deductions for companies sponsoring scholarships for Malaysian students be extended to the year of assessment (YA) 2025, and expanded to all fields of study at the following levels:

- ▶ Technical and vocational
- ▶ Diploma, bachelor's degree, master's degree or Doctor of Philosophy

To legislate the above proposals, the Income Tax (Deduction for the Sponsorship of Scholarship to Malaysian Student Pursuing Studies at Technical and Vocational Certificate, Diploma, Bachelor's Degree, Master's Degree or Doctor of Philosophy Levels) Rules 2022 [P.U.(A) 49] were gazetted on 7 March 2022. The Rules provide that in ascertaining a company's adjusted income from its business for a YA, a double deduction shall be allowed for the expenses incurred and paid



by the company in that basis period, for sponsoring a scholarship for a student according to the period of the relevant sponsorship agreement.

The double deduction is given for the following expenses incurred for sponsoring the scholarship:

- (a) Payment required by the relevant institution or higher educational institution in relation to the course of study, and
- (b) Educational aid and reasonable cost of living expenses throughout the student's period of study at the relevant institution or higher educational institution

Any amount refunded by the student to the company shall, when received, be treated as gross business income of the company derived from Malaysia in the basis period for that YA.

The Rules shall apply to a company which:

- (a) Is a Malaysian resident company incorporated under the Companies Act 2016
- (b) Sponsors a scholarship for a student pursuing a full-time course of study at a:
 - (i) Technical and vocational certificate level in an institution, or
 - (ii) Diploma, bachelor's degree, master's degree or Doctor of Philosophy level in a higher educational institution, and
- (c) Executes a scholarship agreement with a student between 1 January 2022 and 31 December 2025.

The following terms have been defined in the Rules:

(a) Institution

Any institution recognized by the Malaysian Qualifications Agency or the Skills Development Department

(b) Higher educational institution

Any institution established under the Universities and University Colleges Act 1971, Universiti Teknologi MARA Act 1976 or the Private Higher Educational Institutions Act 1996

(c) Student

Means an individual:

- (i) Who is a Malaysian citizen and a Malaysian resident,
- (ii) Who is pursuing a full-time course of study at a:
 - Technical and vocational certificate level in an institution, or
 - Diploma, bachelor's degree, master's degree or Doctor of Philosophy level in a higher educational institution,
- (iii) Who has no means of his own, and
- (iv) Whose parents' or guardians' total monthly income do not exceed RM10,000

The Rules are effective from YA 2022.

Extension of time (EOT) for the submission of tax returns under the Labuan Business Activity Tax Act 1990 (LBATA) for YA 2022

The Inland Revenue Board (IRB)'s Labuan Branch has issued a letter dated 7 March 2022 to the Association of Labuan Trust Companies (ALTC) to confirm that Labuan entities will be granted an automatic EOT until 30 August 2022 to submit their tax returns (under Sections 5 and 10 of the LBATA) for YA 2022 (based on the financial year ended in 2021).

Cessation of the Special Income Remittance Programme (PKPP)

On 16 November 2021, the IRB issued a media release on the introduction of a Special Income Remittance Programme (PKPP) between 1 January 2022 and 30 June 2022, for Malaysian residents with income kept overseas to remit their money into Malaysia (see *Tax Alert No. 25/2021*). The PKPP was introduced following the Budget 2022 proposal that foreign-sourced income (FSI) earned by Malaysian tax residents and received in Malaysia would no longer be tax exempt from 1 January 2022. The proposal has since been enacted via the Finance Act 2021. Under the PKPP:

- i) Gross income remitted into Malaysia would be subject to 3% income tax
- ii) The taxpayer would need to indicate their intention to participate in the PKPP no later than 30 days from 30 June 2022
- iii) The IRB would accept the taxpayer's declaration in good faith and would not undertake any tax audits or investigations in respect of the declaration made under the PKPP

Other conditions also applied.

On 11 March 2022, the IRB issued another media release to announce the cessation of the PKPP on that date (i.e., on 11 March 2022). The IRB clarified that the PKPP was ceased following the Ministry of Finance's announcement on 30 December 2021 that foreign-sourced dividend income of companies and limited liability partnerships, and all FSI of individuals (except individuals carrying out business in Malaysia through a partnership) will continue to be exempt from tax from 1 January 2022 to 31 December 2026, subject to conditions (see *Special Tax Alert No. 1/2022*). The conditions will be outlined in gazette orders to be issued in due course.

The IRB also stated in their 11 March media release that FSI that is not exempted from tax and received in Malaysia from 1 January 2022, will need to be reported in the income tax return form. Based on prevailing tax law, a flat income tax rate of 3% will be imposed on the gross amount of such FSI received in Malaysia from 1 January 2022 to 30 June 2022. With the cessation of the PKPP, such declarations would be subject to the usual scrutiny and audit by the IRB. From 1 July 2022 onwards, the prevailing tax rate of the taxpayer would apply.

Technical guidelines on the tax treatment of income of medical specialists in private hospitals

The IRB has recently published on its website technical guidelines on the tax treatment of income of medical specialists (specialists) in private hospitals, dated 16 March 2022. The Guidelines are in Bahasa Malaysia and are titled "Garis Panduan Layanan Cukai Ke Atas Pendapatan Pengamal Perubatan (Doktor Pakar) Di Hospital Swasta Sama Ada Ditaksir Di Bawah Individu Atau Syarikat".

The Guidelines were published to clarify the income tax treatment for specialists providing medical services (e.g., treatment, consultancy, surgical, etc.) in private hospitals. The Guidelines explain and provide various scenarios to demonstrate the circumstances under which income derived by the specialists would be assessed as individual business income under Section 4(a) of the Income Tax Act 1967 (ITA), individual employment income under Section 4(b) of the ITA, or a company's business income under Section 4(a) of the ITA.

The Guidelines also explain and provide examples to clarify certain types of expenses which may be deductible for tax purposes, including the following:

- Professional indemnity insurance
- Fees incurred to attend Continuing Professional Development (CPD) seminars

- ▶ Employer's contribution to the Employees Provident Fund. The Guidelines also set out the circumstances under which such contribution would not be tax-deductible.
- ▶ Rental of consultation rooms, surgical instruments or operating rooms in a private hospital

Overseas developments

New Zealand delays the introduction of proposed changes to GST invoicing requirements

New Zealand's 2021 omnibus tax bill introducing comprehensive changes to the existing Goods and Services Tax (GST) invoicing rules was reported back to Parliament on 3 March 2022, following a review of submissions. The most significant change is the delayed introduction of the rules, from 1 April 2022 to 1 April 2023.

Some businesses will appreciate the extra lead-in time for implementation. Others may be disappointed if they were looking to immediately take advantage of the increased flexibility of the proposed new rules.

The delay is based on the determination that a March 2022 introduction would not have provided businesses with sufficient time to understand and implement the new requirements. While providing time to implement law changes generally makes sense, the proposed changes have been drafted in a way that businesses complying with the current tax invoicing requirements would not need to make any changes to comply with the new rules, thereby removing the need for any lead-time for business.

Importantly, one change is still going ahead this year. The bill proposes to remove the requirement to obtain Inland Revenue approval to issue buyer-created tax invoices. This will be effective from the

date the tax bill receives Royal assent, likely to be on or slightly before 1 April 2022.

The amended bill also seeks to reinstate the simplified tax invoice for supplies not exceeding NZ\$1,000 and, to avoid any unintended consequences, to retain the terms "invoice" and "tax invoice" by making it clear that any references to these terms are treated as references to the new terminology. The key proposed changes remain as follows:

- ▶ Replacement of the current requirement to issue and hold tax invoices and credit/debit notes to recipients with a requirement for suppliers to provide GST-registered recipients with information in relation to the supply (taxable supply information) or an amendment to the supply. The form of the communication of this information is not prescribed (i.e., there will be no requirement to issue a document in a prescribed form, as is the case now).
- ▶ Both suppliers and recipients to be required to hold records of taxable supplies in their systems, including specified information in relation to supplies.
- ▶ Input tax deductions to be supported by business records showing the GST that has been borne on the supplies (no need to hold a "tax invoice").
- ▶ Increasing the low-value threshold from NZ\$50 to NZ\$200, under which taxable supply information is not required to be provided.

Interaction with e-invoicing initiatives

The delay above also does not appear to be consistent with the separate government initiatives concerning the roll out of electronic invoicing (see [Home | eInvoicing](#)). The Government is encouraging businesses and government agencies to adopt e-invoicing and, while there are currently no mandates for businesses to move to e-invoicing, all central government agencies have a target in place to be able to receive e-invoices by 31 March 2022. The GST invoicing changes would assist in bringing the GST rules into alignment with the use of e-invoicing.

Peruvian Tax Court addresses how to determine if payments to foreign entities qualify as payments for digital services

The Tax Court lists requirements that payments to foreign entities must meet to be considered payments for digital services.

In Resolution 07792-3-2020 (published 25 February 2022), the Peruvian Tax Court addressed how to determine whether a payment to a foreign entity qualifies as a payment for digital services, and is therefore subject to a 30% withholding tax in Peru.

Background

A Peruvian entity entered into a contract with a foreign entity for consulting services that included technical support for data processing software, finance, marketing, consulting global facilities (i.e., advisory services), human resources and administration. The services were performed remotely via phone calls or videoconferences, but the foreign entity could conduct the services without using digital technology.

The Peruvian tax authority determined that the services provided by the foreign entity were digital services because there were telephone calls, videoconferences and the use of the internet to perform the services.

Resolution 07792-3-2020

The Peruvian Tax Court concluded that the Peruvian tax authority did not analyze whether the services qualified as digital services by considering the circumstances under which the services were provided or the characteristics of the services. The Tax Court observed that not all services rendered via the internet are digital services for tax purposes.

To determine if a payment to a foreign entity qualifies as a payment for digital services, the Tax Court ruled that the following requirements established by the law must be concurrently met:

- ▶ The service must not be rendered in a specific physical location and delivered to the user via electronic or digital access.
- ▶ The service must be provided through the internet, any technology used by the internet or any other network through which the equivalent services are provided.
- ▶ The service must be available to the user through online access.
- ▶ The service must be automatic (no human intervention).
- ▶ The service must not be feasible in the absence of information technology.

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Important dates

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

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