Building a better working world

EY Tax Alert

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Malaysian developments

Tax incentive for Structured Internship Programmes

In Budget 2022, it was proposed that the scope of double deductions for companies conducting Structured Internship Programmes approved by Talent Corporation Malaysia Berhad be expanded to students pursuing Master's degrees, professional certificates and Malaysian Skills Certificate Levels 1 and 2, and extended to the year of assessment (YA) 2025 (see *Take 5: Malaysia Budget 2022*).

To legislate the above proposals, the Income Tax (Deduction for Expenditure Incurred for Provision of Approved Internship Programme) (Amendment) Rules 2023 [P.U.(A) 188] were gazetted on 23 June 2023 to amend the Income Tax (Deduction for Expenditure Incurred for Provision of Approved Internship Programme) Rules 2019 [P.U.(A) 398].

The Income Tax (Deduction for Expenditure Incurred for Provision of Approved Internship Programme) Rules 2019 provide that in ascertaining the adjusted income of a qualified person from his business for a basis period for a YA, a double deduction shall be given for expenses incurred by the qualified person to conduct an approved internship programme (see *Tax Alert No. 1/2020*).

The Amendment Rules provide that:

(a) A double deduction will be given for the following expenses:
   - (i) Monthly allowances paid to students pursuing:
     - Malaysian Skills Certificates Levels 1 to 4, diploma level or its equivalent, of not less than RM500 per student
     - Malaysian Skills Certificate Level 5, Bachelors degree, Masters degree or its equivalent, or professional certificate, of not less than RM600 per student
   - (ii) Expenditure incurred for the provision of training
   - (iii) Meals, travelling expenses and accommodation for the students during the internship programme, and
   - (iv) Expenditure incurred for digital and communication costs

   For items (ii), (iii) and (iv), the total deductions allowable for each student shall not exceed RM5,000.

(b) The double deduction will apply to a qualified person who conducts or has conducted an approved internship programme for a student from YA 2017 until YA 2025 (previously YA 2021).

The following terms have also been redefined in the Amendment Rules:

(a) Higher educational institution
(b) Qualified course
(c) Student
(d) Approved internship programme

The Amendment Rules are effective from YA 2022.

Revocation of previous stamp duty remission for the transfer of property on grounds of love and affection

As highlighted in an earlier alert (see *Tax Alert No. 10/2023*), the Stamp Duty (Exemption) (No. 3) Order 2023 [P.U.(A) 178] was gazetted to provide a stamp duty exemption on all instruments of transfer for any immovable property operating as a voluntary disposition *inter vivos* executed between the following:

Donor	Recipient
(a) Mother or father; or (b) Mother and father	Child
Child	(a) Mother or father; or (b) Mother and father
(a) Grandfather or grandmother; or (b) Grandfather and grandmother	Grandchild
Grandchild	(a) Grandfather or grandmother; or (b) Grandfather and grandmother

A 100% exemption will be given on the stamp duty imposed on the first RM1 million or less of the immovable property's market value. A 50% exemption will be given on the stamp duty imposed on the remaining balance (i.e., amount exceeding the first RM1 million) of the immovable property's market value.

Following the above, the Stamp Duty (Remission) (Revocation) Order 2023 [P.U.(A) 189] was gazetted on 26 June 2023 to revoke the stamp duty remission of 50% given on the instrument of real property transferred between parents and children by way of love and affection. Any unstamped instrument of transfer executed before 1 April 2023 (i.e., the date P.U.(A) 178 is deemed to have come into operation) will still be entitled to the remission under the revoked Order.

The Revocation Order is deemed to have come into operation on 1 April 2023.

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2023 [P.U.(A) 185] was gazetted on 15 June 2023. The Order provides that any tax payable under the Income Tax Act 1967 (ITA) and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

(a) Master facility agreement in relation to the Syndicated Term Financing-i Facility amounting to RM3.5 billion made between Perbadanan Tabung Pendidikan Tinggi Nasional and CIMB Investment Bank Berhad, CIMB Islamic Bank Berhad and AmBank Islamic Berhad (Master Facility Agreement)
(b) Guarantee given by the Government of Malaysia in relation to the Master Facility Agreement, and
(c) Transfer certificate or other document in relation to the assignment, transfer or novation of rights, benefits or obligations under the Master Facility Agreement

Overseas developments

Japan promulgates a 2023 tax reform enforcement order to implement the income inclusion rule (IIR) in alignment with Pillar Two of the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) 2.0 Project

On 16 June 2023, the enforcement order associated with the IIR was promulgated as part of Japan's 2023 tax reform. The enforcement order provides supplemental details of the law that was enacted on 28 March 2023 to implement the IIR in alignment with Pillar Two of the OECD's BEPS 2.0 initiative. Generally reflecting the model rules (the Model Rules) established by the OECD, the enforcement order has been incorporated into the existing Japanese Corporate Income Tax Law Enforcement Order. Further details should be provided in the enforcement regulations at a later date. The IIR will apply to fiscal years beginning on or after 1 April 2024.

Detailed discussion

The law and enforcement order as they relate to the IIR provide:

- The application of the IIR is principally the same as the Model Rules, such that a Constituent Entity that is the Ultimate Parent Entity of an MNE Group located in Japan that owns (directly or indirectly) an Ownership Interest in a Low-Taxed Constituent Entity at any time during the Fiscal Year shall pay a tax in an amount equal to its Allocable Share of the Top-Up Tax of that Low-Taxed Constituent Entity for the Fiscal Year.
- Computation of the Global Anti-Base Erosion (GloBE) Income or Loss, Adjusted Covered Taxes,

Effective Tax Rate and Top-up Tax are also intended to be in line with the Model Rules.
- The IIR will apply to fiscal years beginning on or after 1 April 2024.

Next steps

Legislation is being considered in Japan, to be included in the tax reform for 2024 at the earliest, involving items that the OECD is expected to discuss in detail this year, such as the undertaxed profits rule (UTPR) and the qualified domestic minimum top-up tax (QDMTT).

OECD releases a 2023 update on the peer review of preferential tax regimes

On 21 June 2023, the OECD released an update on the results of the peer reviews of the domestic laws of jurisdictions under Action 5 (Harmful Tax Practices) of the OECD/G20 BEPS Project. The Inclusive Framework on BEPS approved the results on 9 June 2023.

The updated results cover new decisions on five preferential tax regimes. According to the press release, a total of 319 tax regimes have been reviewed, or are under review by the Forum on Harmful Tax Practices (FHTP). This latest review reflects that three regimes have been abolished (one for Aruba and two for San Marino). Additionally, a regime for Jordan has been amended to align with the standard and is now considered nonharmful, and a regime for Albania is currently in the process of being amended. No regimes are identified as currently under review.

Detailed discussion

Background

On 5 October 2015, the OECD released its final report on Action 5, Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance (the Action 5 Report) under its BEPS Action Plan. The Action 5 Report covers two main areas: (i) applying the "substantial activity" criterion when determining whether tax regimes are harmful; and (ii) improving transparency. The Action 5 Report also includes a strategy to expand the review of preferential regimes to third countries beyond the OECD/G20 countries.

This expansion has been executed through the Inclusive Framework on BEPS, which currently has 143 member jurisdictions. Each member jurisdiction has committed to the 2015 BEPS package and its effective implementation, including fulfilment of the minimum standard under Action 5. This means that the existing preferential tax regimes of the Inclusive Framework member jurisdictions have been reviewed based on the Action 5 criteria.

Since the OECD's publication of the 2017 Progress Report on Action 5, the FHTP has continued its work reviewing preferential regimes within the scope of BEPS Action 5. Prior to this 2023 update, the OECD released nine earlier updates to the reviews of preferential tax regimes. The OECD has also released four updates to the reviews of the standard on substantial activities factor for "no- or only-nominal tax" jurisdictions.

Updated conclusions of the preferential tax regimes review

On 21 June 2023, the OECD released an update on the results of the peer reviews for five preferential tax regimes, which had been approved by the Inclusive Framework on 9 June 2023. According to the updated results for the regimes reviewed, the "investment promotion" regime of Aruba was abolished and the intellectual property (IP) regime and the new companies regime of San Marino were also abolished. In addition, the "Aqaba special economic zone" of Jordan was amended and regarded as not harmful. Lastly, the "industries incentive (software production/development)" of Albania is in the process of being amended.

Taking into account this update, the FHTP has reviewed a total of 319 tax regimes. The conclusions are as follows:

- One regime is currently harmful ("free trade zone" regime of Trinidad and Tobago)
- Seven regimes are potentially harmful but not actually harmful
- 131 regimes are not harmful
- 16 regimes are in the process of being eliminated or amended
- Three regimes are not operational
- 119 regimes have been abolished
- 39 regimes have been found to be out of scope
- The remaining three regimes relate to disadvantaged areas (i.e., regimes designed to encourage development in disadvantaged areas)

Next steps

The FHTP will soon initiate its annual monitoring of the substantial activities requirements for jurisdictions with no or only nominal tax and will review any new or outstanding regimes of Inclusive Framework members. The FHTP is also currently conducting the seventh annual peer review of the BEPS Action 5 transparency framework.

Implications

The updated results of the review of preferential tax regimes reflect the continuing focus of the Inclusive Framework on jurisdictions' implementation of the BEPS Action 5 minimum standard. These results will also shape the assessments conducted by the EU Code of Conduct Group, potentially impacting taxpayers through updates to the EU list of non-cooperative jurisdictions. The next update of the EU assessment is scheduled for October 2023.

With implementation activity with respect to the Pillar Two global minimum tax rules ongoing in jurisdictions around the world and the potential for changes to incentives regimes, it is important for businesses to monitor tax policy developments in relevant jurisdictions. Businesses may also want to engage with policy makers to provide their perspectives on new rules and modifications to existing rules that are under consideration.

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Important dates

15 July 2023	Due date for monthly instalments
31 July 2023	6th month revision of tax estimates for companies with January year-end
31 July 2023	9th month revision of tax estimates for companies with October year-end
31 July 2023	Statutory deadline for filing of 2022 tax returns for companies with December year-end. A blanket extension of time has been provided until 31 August 2023.
31 July 2023	Extended 2022 tax return filing deadline for companies with November year-end.
15 August 2023	Due date for monthly instalments
31 August 2023	6th month revision of tax estimates for companies with February year-end
31 August 2023	9th month revision of tax estimates for companies with November year-end
31 August 2023	Statutory deadline for filing of 2023 tax returns for companies with January year-end. A blanket extension of time has been provided until 30 September 2023.
31 August 2023	Extended 2022 tax return filing deadline for companies with December year-end.

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