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Malaysian developments

Frequently Asked Questions (FAQs) on tax incentive for equity crowdfunding (ECF)

The Income Tax (Exemption) (No. 4) Order 2022 [P.U.(A) 142], gazetted on 28 April 2022, provides that a qualifying individual is given an income tax exemption in respect of his aggregate income equivalent to 50% of the amount of investment, up to a maximum of RM50,000 for each year of assessment (YA). The amount is limited to 10% of the aggregate income of the qualifying individual for the YA in which the exemption is granted (see *Tax Alert No. 9/2022*).

The Securities of Commission (SC) has published on its website the FAQs on ECF tax exemption, issued on 30 August 2023, to provide further clarification on the incentive above. Some of the important clarifications are as below:

- The exemption is given in the second YA following the YA in which the investment is made by the qualifying individual. The FAQs provide some examples of this, as follows:

	Example 1	Example 2
Year investment is made	2021	2023
YA in which the exemption of aggregate income is to be claimed	2023	2025
Date to file the Income Tax Return Form for qualified individuals	2024	2026

As highlighted in the Exemption Order, to qualify for the exemption, the investment must not be disposed of, either in full or in part, within two years from the date the investment is made.

The FAQs provide that the "date of investment" refers to the closing date of the issuer's fundraising campaign on the ECF platform. The investor will not be entitled to apply for the exemption if he or she exercises their cooling off rights.

- The FAQs provide that a qualifying investor may make multiple investments in different ECF platforms in a year. However, the exemption is limited to the specified amount as stated earlier.
- The FAQs reiterate the procedure to obtain an annual certification from the ECF operator in relation to the investment and amount of investment. The annual certification needs to be verified by the SC.

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2023 [P.U.(A) 263] was gazetted on 29 August 2023. The Order provides that any tax payable under the Income Tax Act 1967 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) and Islamic Commercial Papers (ICP) issued by DanaInfra Nasional Berhad pursuant to the IMTN and ICP Programme, in nominal values of up to RM11.2 billion, provided that the combined aggregate of the outstanding nominal value of the IMTN and ICP and the outstanding principal amount under the Syndicated Islamic Revolving Credit Facility (SFF-i Facility, see (b) below) shall not exceed RM11.2 billion
b) SFF-i Facility with the aggregate principal amount not exceeding RM2 billion, subject to the combined aggregate referred to in (a) above
c) IMTN and ICP programme which has been upsized with a nominal value from RM71 billion to a maximum aggregate value of up to RM82.2 billion, and
d) Guarantee provided by the Government of Malaysia in relation to the IMTN and ICP Programme and the SFF-i Facility

The Order came into operation on 30 August 2023.

Overseas developments

German government issues a revised draft Growth Opportunities Act bill on corporate tax reform

The German government, on 30 August 2023, issued a revised Growth Opportunities Act, a draft bill that the German Ministry of Finance (MoF) had initially issued in mid-July. Issuance of the revised bill begins the formal legislative process, which could be completed by the end of 2023.

The Growth Opportunities Act would constitute the biggest corporate tax reform in Germany since 2008. The government's revision includes several changes to the initial draft bill, including changes to the proposed expansion of tax loss utilization, revised interest deduction limitations and the proposed new interest rate-based deduction limitation.

Detailed discussion

Premium for climate protection investments

- The period for the premium for climate protection is proposed to be extended by two years, now covering qualified investments started after the 31 December 2023 and ending before 1 January 2030.
- The premium is to be available for investments in new and existing depreciable movable fixed assets that are part of an energy-saving or energy-management system. The premium would amount to up to 15% of the investment but would be capped at €30 million.

Tax loss utilization

- The government's revision would make significant changes to the utilization of tax losses. Specifically, the revision would only increase the utilization rate of taxable income exceeding €1 million from 60% to 80% for the year 2024 up to and including 2027 and revert back to 60% as of 2028. Initially, the bill had proposed to allow for an unlimited utilization during these years. Moreover, the government's revision abandons the initially included increase of the €1 million threshold to €10 million.
- The proposed improved tax loss carryback remains unchanged in the revised bill.

Interest deduction limitation

- The initially abolished group and equity escapes for the interest deduction limitation rule will remain available. However, the group escape will be tightened in that it will not apply if the taxpayer has any affiliated party or a foreign permanent establishment. The revision excludes the proposal to transform the €3 million net interest threshold into an allowance. However, in line with the initial proposal, the threshold can only be claimed once per group of similar businesses that are related parties and would have to be allocated proportionally to each entity of a group based on net interest expenses. Effectively, this tightens the rule further.
- The proposed interest-rate limitation rule applicable for all interest expenses arising after 31 December 2023 remains mainly unchanged. The government's revision would delay applicability of the rule by one month if the agreed interest rate exceeds the stipulated maximum interest rate (currently 3.12% plus 200 basis points) only because of the bi-annually updated base interest rate under the German Civil Code. Effectively, this would require taxpayers to adjust existing financing arrangements within one month of an update of the relevant interest rate if the agreed rate would otherwise be above the new updated threshold and none of the other available exceptions is met. Otherwise, interest would become nondeductible to the extent it exceeds the interest expense based on the current maximum interest rate and neither of the two escape clauses can be applied.

Accelerated depreciation

- Accelerated depreciation would be implemented for a building used for residential purposes that the taxpayer constructed or acquired by the end of the year of completion; construction must begin after 30 September 2023 and before 1 October 2029 or the acquisition must be made based on an obligatory contract concluded with legal effect after 30 September 2023 and before 1 October 2029.
- Accelerated depreciation for movable assets purchased or manufactured after 30 September 2023 and before 1 January 2025 would be temporarily reintroduced.

Claw-back provisions within tax-neutral demergers

- The initial draft bill proposed changes to the rules on tax-neutral demergers to counteract case law that held a share transfer of 20% or less within five years after a tax-neutral demerger is not harmful. The proposed changes, however, required a five-year holding period prior to the tax effectiveness of the demerger, thereby tightening the rules for recently established or combined corporate groups. The government's revision eases this requirement somewhat in that affiliated parties of the transferor are not required to meet the five-year period.

New Zealand introduces draft Digital Services Tax legislation

The New Zealand Government introduced a Digital Services Tax Bill (DST Bill) on 31 August. The DST Bill allows the Government to implement a 3% digital services tax (DST) on the gross digital services revenue of large multinational groups (MNE groups) where the revenue is attributable to New Zealand users or land.

The proposed commencement date is 1 January 2025. However, this date could be deferred by up to five years, providing legislative flexibility. A deferred commencement date would give the Government time to monitor implementation of Pillar One of the Organisation for Economic Co-operation and Development's Two-Pillar multilateral solution and decide whether the DST Bill is necessary.

Detailed discussion

Background

In 2019, the Government announced its intention to "seriously consider" a DST in the event of insufficient progress on an international multilateral solution and undertook public consultation on the potential design of a DST.

On 31 August 2023, the Government introduced the DST Bill. The DST Bill includes many of the design elements of a 2019 consultation document. The DST Bill is intended to ensure digital businesses pay tax in New Zealand to reflect the value they derive from New Zealand users.

Proposed application date and impact of the OECD process

Although the proposed commencement date of the DST Bill is 1 January 2025, this date could be deferred by up to five years, with the latest possible implementation date being 1 January 2030. This would allow the DST to be deferred if the Government sees sufficient progress toward implementation of Pillar One of the OECD's Two-Pillar multilateral solution.

The Government has indicated that it remains committed to the OECD process. The DST Bill therefore does not represent a definitive commitment to impose a DST. Instead, it is intended to serve as a backstop and provide the Government with legislative flexibility if an acceptable multilateral solution cannot be implemented within a reasonable timeframe.

If sufficient progress is made at an international level, the Government may defer implementation of

the DST or abandon the measure entirely. If the DST is imposed, the intention is that it will be repealed if an acceptable multilateral solution is implemented.

Design of the proposed DST

The proposed DST is conceptually similar to those introduced or proposed in other countries, including Canada and the United Kingdom.

It will be charged at a rate of 3% on an MNE group's gross "taxable digital services" revenue attributable to New Zealand users or New Zealand land. The DST will apply to an MNE group if both of these conditions are met:

- One of the group's business activities or services includes in-scope "taxable digital services" (principally the provision of intermediation platforms, social media and content sharing platforms, and internet search engines).
- The group's global annual gross "taxable digital services" revenue is at least EUR750 million.

The New Zealand DST will then apply if the annual gross taxable digital services revenue attributable to New Zealand users or New Zealand land exceeds NZ$3.5 million.

As the DST is intended to target certain highly digitalized business models that derive significant value from active user participation, some activities are specifically excluded from its scope. For example, loyalty programs accessed via online platforms would be excluded in certain circumstances.

Other in-scope activities

In addition to the above, the following additional activities are also subject to the DST:

- Advertising on, linked to, connected with or facilitated by a platform or search engine detailed above
- Activities in relation to user-generated data, gathered in connection with a platform, search engine or advertising described above
- Incidental activities in relation to a platform, search engine or advertising described above

New Zealand users

The DST Bill has adopted the concept of a "New Zealand user" as opposed to looking at tax residency, as the latter would be difficult to determine in the context of a DST. A "New Zealand user" is defined to include any user of the digital services normally located in New Zealand, which could be determined by indicators such as:

- Billing, delivery, internet protocol (IP) addresses
- Telephone area codes
- Bank details
- Geolocation information

Under this approach, it would be possible for a New Zealand user to use an in-scope taxable digital service while not being physically present in New Zealand. Conversely, a foreign user that uses a digital service while visiting New Zealand would generally not be considered a New Zealand user if they are not normally located in New Zealand.

Filing and payment obligations

The DST will be administered by the New Zealand Inland Revenue Department (Inland Revenue). If the DST Bill is implemented in its current form, the following key filing and payment obligations will apply:

- The ultimate parent entity of an in-scope MNE group must nominate one of its members to act as the "DST representative member."
- The representative member must register with Inland Revenue within 90 days of the end of the first revenue year in which the MNE group meets the global revenue threshold.
- The representative member must file an annual DST return, due six months after the end of the group's revenue year. This obligation generally

exists regardless of whether there is any DST tax liability (i.e., nil returns are also generally required to be filed).
- Any DST tax liability must be paid to Inland Revenue within six months of the end of the MNE group's revenue year.
- Group members will be jointly and severally liable for any DST tax liability.

The DST Bill proposes a new penalty of up to NZ$100,000 where a DST representative member does not comply with the registration requirements. This penalty will apply at the discretion of Inland Revenue. A new penalty of NZ$500 for failing to file a DST return is also proposed. Other existing penalties may also apply in certain circumstances.

If implemented, the DST is expected to raise NZ$222 million over a four-year forecast period.

Next steps

New Zealand's General Election will take place on 14 October 2023. All current draft legislation will lapse upon the dissolution of Parliament ahead of the General Election. Whether the DST Bill survives then becomes a question of whether the new Government reinstates the bill following the election.

If the new Government reinstates the DST Bill, it is likely to proceed through the normal stages of the New Zealand parliamentary process. This process will include the opportunity for public submissions on the draft legislation and may include refinement of the current design.

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Important dates

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

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