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# EY Tax Alert

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**Malaysian developments**

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- Swiss Parliament approves domestic BEPS 2.0 Pillar Two implementation | Constitutional amendment now subject to public vote

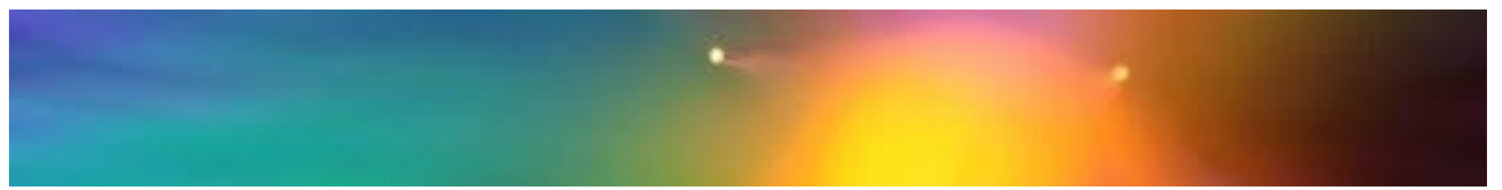
## Malaysian developments

### Six Public Rulings (PRs) updated, and two new PRs issued by the Inland Revenue Board (IRB)

The IRB has published the following PRs:

- PR No. 6/2022: Accelerated Capital Allowance
- PR No. 7/2022: Venture Capital Tax Incentives
- PR No. 8/2022: Taxation of Limited Liability Partnership
- PR No. 9/2022: Property Development
- PR No. 10/2022: Reinvestment Allowance Part I – Manufacturing Activity
- PR No. 11/2022: Reinvestment Allowance Part II – Agricultural and Integrated Activities
- PR No. 12/2022: Commercialization of Public Resource-Based Research and Development (R&D) Findings, Part I – Tax Incentive for Investor Company
- PR No. 13/2022: Commercialization of Public Resource-Based R&D Findings, Part II – Tax Incentive for Eligible Company

PRs No. 12/2022 and No. 13/2022 are new PRs, while the remaining PRs are to replace previous PRs.



The details are discussed below.

## PR No. 6/2022: Accelerated Capital Allowance

The IRB has published PR No. 6/2022: Accelerated Capital Allowance, dated 22 December 2022. This new 35-page PR replaces PR No. 7/2018, which was issued on 8 October 2018 (see *Tax Alert No. 22/2018*). The new PR comprises the following paragraphs and sets out 17 examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Application of the law
5.0 Introduction
6.0 Qualifying expenditure
7.0 Income Tax Rules
8.0 Steps to claim accelerated capital allowance (ACA)
9.0 Qualifying period
10.0 Disposal of assets within two years
11.0 Non-application
12.0 Claim procedure
13.0 Summary of Income Tax Rules and rates of allowances
14.0 Updates and amendments
15.0 Disclaimer

The new PR is broadly similar to the earlier PR and provides clarification in relation to the definition of qualifying expenditure, the conditions that must be fulfilled by a person to qualify for ACA, the qualifying period to claim ACA, the tax treatment where assets are disposed of within two years, and the non-application provisos. It has, however, been updated to reflect and provide clarifications as well as examples on the following ACA P.U. Orders:

**(a) Income Tax (Accelerated Capital Allowance) (Mould for the Production of Industrialised Building System Component) Rules 2006 [P.U.(A) 249/2006]**

ACA, made up of 40% initial allowance (IA) and 20% annual allowance (AA), is available on qualifying plant expenditure (QPE) incurred on the purchase of moulds used by a manufacturing or construction company in the production of industrialized building system components.

**(b) Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2018 [P.U.(A) 156/2018]**

ACA, made up of 20% IA and 20% AA, is available on qualifying capital expenditure (QCE) incurred on the purchase of information and communication technology (ICT) equipment.

**(c) (i) Income Tax (Exemption) (No. 8) 2017 (Amendment) Order 2020 [P.U.(A) 172/2020]**

**(ii) Income Tax (Accelerated Capital Allowance) (Automation Equipment) 2017 (Amendment) Rules 2020 [P.U.(A) 173/2020]**

| | Category 1 | Category 2 |
|---|---|---|
| **Type of industry** | Qualifying project relating to rubber, plastic, wood, furniture and textiles | Other than Category 1 |
| **Incentive period** | Years of assessment (YAs) 2015 to 2023 | |
| **Application to the Malaysian Investment Development** | 1 January 2015 to 31 December 2023 | |

| Authority (MIDA) | | |
|---|---|---|
| **Income Tax (Accelerated Capital Allowance) (Automation Equipment) Rules 2017 [P.U.(A) 252/2017] and P.U.(A) 173/2020** | | |
| ACA | **IA:**<br>20% of the first RM4 million QCE incurred<br><br>**AA:**<br>80% of the first RM4 million QCE incurred | **IA:**<br>20% of the first RM2 million QCE incurred<br><br>**AA:**<br>80% of the first RM2 million QCE incurred |
| **Income Tax (Exemption) (No. 8) Order 2017 [P.U.(A) 253/2017] and P.U.(A) 172/2020** | | |
| Income tax exemption | A qualifying company will be exempted from payment of income tax in respect of the statutory income derived from a qualifying project for the respective effective YAs. The amount exempted will be equivalent to 100% of the ACA given under P.U.(A) 252/2017, to be set off against 70% of the statutory income for each YA. | |

**(d) Income Tax (Accelerated Capital Allowance) (Machinery and Equipment Including Information and Communication Technology Equipment) Rules 2021 [P.U.(A) 268/2021]**

ACA, made up of 20% IA and 40% AA, is available on QPE incurred for the provision of machinery and equipment (including ICT equipment) between 1 March 2020 and 31 December 2021.

**(e) Income Tax (Accelerated Capital Allowance) (Excursion Bus) (Amendment) Rules 2022 [P.U.(A) 9/2022]**

ACA, made up of 20% IA and 40% AA, is available on the capital expenditure incurred on the purchase of new locally assembled excursion buses, until YA 2024.

The new PR also stipulates that a person is given the option to either claim ACA on plant and machinery under the P.U. Order or claim capital allowances (CA) at the normal rates as provided under paragraphs 10 and 15, Schedule 3 of the Income Tax Act 1967 (ITA). However, the choice should be applied consistently until the CA is fully absorbed.

## PR No. 7/2022: Venture Capital Tax Incentives

The IRB has published PR No. 7/2022: Venture Capital Tax Incentives, dated 23 December 2022. This new 17-page PR replaces PR No. 2/2016, which was issued on 9 May 2016 (see *Tax Alert No. 11/2016*). The new PR comprises the following paragraphs and sets out six examples:

1.0 Objective
2.0 Related provisions of the law
3.0 Interpretation
4.0 Venture capital industry in Malaysia
5.0 Regulatory framework for venture capital industry
6.0 Tax exemption incentive for a venture capital company (VCC) investing in a venture company (VC)
7.0 Tax deduction incentive for an individual or a company investing a VC or VCC
8.0 Mutually exclusive
9.0 Tax incentive for a venture capital management company (VCMC)
10.0 Application for certification of investment for tax exemption and tax deduction in a VC and VCC
11.0 Updates and amendments

12.0 Disclaimer

The new PR is broadly similar to the earlier PR and explains the tax incentives for the venture capital industry in Malaysia. Venture capital is early-stage financial capital provided by individuals, companies or VCCs to high-potential and potentially higher-risk start-up VCs. A VCC is a company incorporated to obtain funds in the form of equity capital or loan capital, which are then invested in the VC in the form of seed capital, start-up or early-stage financing. A VCMC manages, on behalf of a VCC, the investments of a VC at different stages of the life-cycle, i.e., seed capital, start-up or early-stage financing.

The new PR was updated to reflect, explain and provide examples on the new P.U. Orders gazetted in 2022 (see *Tax Alert No. 9/2022*), as follows:

**(a) Income Tax (Exemption) (No. 2) Order 2022**
*This replaced Income Tax (Exemption) (No. 11) Order 2005, Income Tax (Exemption) (Amendment) (No. 2) Order 2006 and Income Tax (Exemption) (Amendment) Order 2009*

The Order provides that a VCC is exempted from the payment of income tax in respect of statutory income on all sources of income, other than interest income arising from savings or fixed deposits and profits from *syariah*-based deposits, commencing from the YA the VCC obtains its first certification from the Securities Commission Malaysia (SC).

**(b) Income Tax (Exemption) (No. 3) Order 2022**
*This replaced Income Tax (Exemption) (No. 12) Order 2005*

The Order provides that a VCMC is exempted from the payment of income tax in respect of the following statutory income derived from the management of VCC funds:
(a) Share of profits,
(b) Management fees, and
(c) Performance fees (including performance bonus and carried interest)

**(c) Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company) Rules 2022**
*This replaced Income Tax (Deduction for Investment in a Venture Company) Rules 2005*

The Rules provide that in ascertaining the adjusted income of a company or an individual from its business for a YA, there shall be allowed a deduction equivalent to the:
(a) Value of investment made in a VC, or
(b) Value of investment or RM20 million, whichever is less, made in a VCC

The new PR also stipulates that the following updated guidelines have been issued by the SC, which is the body entrusted to assess and certify applications for the tax incentives for the venture capital industry:
- Guidelines on the Registration of VC and Private Equity Corporations and Management Corporations
- Venture Capital Tax Incentives Guidelines

The Guidelines are available on the SC's website via the following link: Venture Capital/Private Equity - Guidelines | Securities Commission Malaysia

## PR No. 8/2022: Taxation of Limited Liability Partnership

The IRB has published PR No. 8/2022: Taxation of Limited Liability Partnership, dated 23 December 2022. This new 25-page PR replaces PR No. 5/2015, which was issued on 14 August 2015 (see *Tax Alert No. 18/2015*). The new PR comprises the following paragraphs and sets out 11 examples:
1.0 Objective
2.0 Related provisions of the law
3.0 Interpretation
4.0 Limited liability partnership (LLP)
5.0 Partners' contribution of capital

6.0 Distinction between an LLP, a partnership and a company
7.0 Compliance officer of an LLP
8.0 Conversion of a conventional partnership or a company to an LLP
9.0 Change of partners in an LLP
10.0 Tax treatment of an LLP
11.0 Tax treatment of partners of an LLP
12.0 Bilateral credit and unilateral credit
13.0 Updates and amendments
14.0 Disclaimer

The new PR is broadly similar to the earlier PR and explains the tax treatment of an LLP. Some of the key changes are outlined below.

- The new PR was updated to reflect the legislative changes since the earlier PR was issued, including the following:

  (a) Effective 28 December 2018, Section 75B(1)(a)(i) of the ITA was amended to extend the responsibility for doing all acts and things required to be done by or on behalf of an LLP to a person qualified to act as a secretary under the Companies Act 2016, who is a citizen or permanent resident of Malaysia and ordinarily resides in Malaysia.

  (b) Effective YA 2019, the carry-forward period for unabsorbed business losses is limited to ten, instead of seven, consecutive YAs.

  (c) Effective YA 2019, if an LLP changes its accounting year-end, the IRB is to be notified via a prescribed form, i.e., Form CP204B, and the Form CP204B has to be submitted to the IRB no later than:
    - 30 days before the date of commencement of the new accounting period, if the accounting period is shortened, or
    - 30 days before the closing date of the original accounting period, if the accounting period is extended.

  (d) Effective YA 2020, an LLP, with a total capital contribution of RM2,500,000 or less at the beginning of the basis period for a YA and gross income from business sources not exceeding RM50 million in the basis period for that YA, will be eligible for the preferential tax rate of 17% on the first RM600,000 of chargeable income, and 24% on the remaining chargeable income.

  (e) Effective YA 2021, an LLP is required to furnish its tax return in the prescribed form in an electronic medium or by way of electronic transmission in accordance with Section 152A, i.e., e-filing. An LLP may thus no longer file a tax return manually.

- The new PR stipulates that for income tax purposes, an LLP is required to prepare complete accounting records comprising the profit and loss account, balance sheet and explanatory notes to the accounts (either physically or electronically). Otherwise, the LLP is required to retain the following records:
  - Information on partners and trustees*
  - Information on income
  - Information on expenditure
  - Information on rental, leasing and staffing*
  - Bank statement, interest and other related banking information*
  - List of debtors and creditors / liabilities
  - List of all assets (current and fixed)
  - Percentage of capital contribution by each partner
  - Explanatory notes to the items above
  - Other supporting documents to prove the business transactions for tax purposes

  *Additional items included in the new PR

- The new PR elaborates on the requirements of an LLP to furnish its estimates of tax payable

## PR No. 9/2022: Property Development

The IRB has published PR No. 9/2022: Property Development, dated 23 December 2022. This new 47-page PR replaces PR No. 1/2009, which was issued on 22 May 2009 (see *Tax Alert No. 12/2009*). The new PR comprises the following paragraphs and sets out 30 examples:

1.0 Objective
2.0 Related provisions of the law
3.0 Interpretation
4.0 Date of commencement of business
5.0 Separate source of income of a property development project
6.0 Recognition of income prior to completion of project
7.0 Estimated loss from uncompleted project
8.0 Revision of estimate and tax computation
9.0 Cancellation of purchase
10.0 Completion of project
11.0 Adjusted income
12.0 Development expenditure
13.0 Tax treatment on stock
14.0 Other issues related to property development
15.0 Joint venture project
16.0 Updates and amendments
17.0 Disclaimer

The new PR is broadly similar to the earlier PR and explains the basis of ascertaining gross income for the purpose of computing adjusted income derived from the business of property development. Some of the key changes are outlined below.

- The new PR states that in a situation where a development unit buyer surrenders or cancels his purchase and forfeits the payment that has been made to the property developer, for income tax purposes, the property developer shall make the adjustment in the basis period the cancellation takes place.

  In the earlier PR, it was stipulated that for income tax purposes, the adjustment is given effect in the YA in which the adjustment to the annual account is made.

  The new PR also reiterates that in a case where a purchaser defaults on his payments, the gross profit is still to be assessed in full as there is no cancellation of the purchase.

- The new PR stipulates that where a loss is ultimately incurred upon completion of the project, a company may opt not to reopen the prior YAs and instead make an adjustment to the gross profit in the year the project is completed, on condition that there are no tax implications for all the relevant YAs.

- The new PR stipulates that for income tax purposes, the provision for land premium is not an allowable expense.

- The new PR clarifies the tax treatment for show house expenditure, including the following:
  - Show house built outside the development project area
  - Show house which is trading stock and subsequently transferred to be used as the property developer's business asset
  - Furniture, fittings and fixtures, interior design and decoration expenses
  - Construction of sales gallery or management office

- The new PR includes guidance on the tax treatment of compensation receivable arising from stock-in-trade parted with by compulsion under Section 4C of the ITA, which will be treated as gross business income.

- For joint venture (JV) projects:
  (a) Where a landowner takes an active role in the property development activities together with the property developer, the landowner is deemed to be undertaking the business of

property development.

(b) Where a landowner does not take an active role in the development activities and the land is not a trading stock of his business, the landowner is deemed to not be undertaking the business of property development.

The new PR clarifies that "active role" refers to the following:

(a) The landowner has significant influence, amongst others:
   - Determining the planning of the property development project such as the concept, type, nature and duration
   - The appointment of contractors involved in the JV project such as consulting companies, contractors and subcontractors.
   - Involvement in marketing activities for the whole development project.
   - Determining the selling price of development units.

   or

(b) The existence of badges of trade in the JV project transaction.

- The following paragraphs in the earlier PR have been removed:
  - Paragraph 12.4 – Tax treatment for the transfer of land as fixed asset to trading account
  - Paragraph 14 – Information and documents to be made available for examination during an audit

## PRs No. 10/2022 and 11/2022: Reinvestment Allowance

The IRB has published the following PRs, both dated 27 December 2022, to provide guidance to Malaysian resident companies engaged in manufacturing and agricultural activities in determining their eligibility to claim reinvestment allowance (RA):

- PR No. 10/2022: Reinvestment Allowance Part I – Manufacturing Activity
- PR No. 11/2022: Reinvestment Allowance Part II – Agricultural and Integrated Activities

The new PRs No. 10/2022 and No. 11/2022 replace PRs No. 10/2020 (dated 6 November 2020) and 11/2020 (dated 10 November 2020) respectively. The IRB has advised that PR No. 11/2022 should be read together with PR No. 10/2022.

The contents of both the new PRs are broadly similar to the earlier PRs. Both PRs have, however, been updated to explain and provide examples to demonstrate the application of the "Special" RA announced under the Short-term Economic Recovery Plan (PENJANA) stimulus package. A company will be eligible to claim the Special RA from YA 2020 to YA 2024 if the company has:

- Incurred qualifying expenditure for manufacturing projects or agricultural activities as specified in Schedule 7A of the ITA, and
- Exhausted its existing 15-year RA period and the "additional" RA granted from YA 2016 to YA 2018.

| YA (in which the existing 15-year RA period and additional RA ended) | Qualifying period for PENJANA Special RA claim |
|---|---|
| 2019 or before | 2020 to 2024 |
| 2020 | 2021 to 2024 |
| 2021 | 2022 to 2024 |
| 2022 | 2023 to 2024 |
| 2023 | 2024 |

Effective YA 2019, the carry-forward of unutilized RA is restricted to seven consecutive YAs upon expiry of the qualifying period, with any unutilized allowances to be disregarded thereafter. The new PRs also clarify and provide examples to demonstrate that unutilized PENJANA Special RA are to be tracked separately from the normal unabsorbed RA balances. Any PENJANA Special RA that has not been utilized by YA 2024 can be carried forward for a maximum period of seven consecutive YAs, beginning from YA 2025.

PR No. 10/2022 has also been updated to amend Diagram 2 and include two new Diagrams (i.e., Diagrams 3 and 4) (refer to Paragraph 8.2 of the PR). The diagrams (replicated in the Appendix to this Alert) are consistent with the examples outlined in Practice Note (PN) No. 1/2022: Explanation in relation to the definition of factory for the purpose of RA claim under Schedule 7A, ITA (see *Tax Alert No. 3/2022*). The PN was issued to explain the "factory" definition in Paragraph 9 of Schedule 7A of the ITA. The PN also clarified that in a situation where the storage space in an extended area exceeds 10% of the total floor area of the extension, RA claims would still be allowed for the portion of the extension used for the purpose of a qualifying project (excluding the storage space).

### PR No. 12/2022: Commercialization of Public Resource-Based R&D Findings, Part I – Tax Incentive for Investor Company

The IRB has published PR No. 12/2022: Commercialization of Public Resource-Based R&D Findings, Part I – Tax Incentive for Investor Company, dated 29 December 2022, to explain the tax incentive available to a company that invests in its related company for the sole purpose of financing the commercialization of public resource-based R&D findings in Malaysia. This new eight-page PR comprises the following paragraphs and sets out two examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Introduction
5.0 Eligible investor company
6.0 Public resource-based R&D findings and commercialization
7.0 Application and grant of approval for tax deduction
8.0 Deduction allowable to an investor company
9.0 Disclaimer

Some of the key points are outlined below.

- The PR explains that in ascertaining the adjusted business income of an investor company for a YA, a deduction shall be allowed, equivalent to the value of investment made in a related company for the sole purpose of financing a project on commercialization of public resource-based R&D findings in the basis period for that YA
- The PR explains the criteria for an investor company to be eligible for the tax incentive
- The PR elaborates on the definition of "public R&D findings" and "commercialization" for the purpose of the tax incentive
- The PR clarifies the application and approval process for the tax incentive
- The PR explains and provides examples to demonstrate the period of commencement and cessation of the tax incentive

This PR should be read together with PR No. 13/2022: Commercialization of Public Resource-Based R&D Findings, Part II – Tax Incentive for Eligible Company (see below).

### PR No. 13/2022: Commercialization of Public Resource-Based R&D Findings, Part II – Tax Incentive for Eligible Company

The IRB has published PR No. 13/2022: Commercialization of Public Resource-Based R&D Findings, Part II – Tax Incentive for Eligible Company, dated 29 December 2022, to explain the tax incentive available to a company, in which its holding company has made investments for the purpose of financing a project on the commercialization of public resource-based R&D findings in Malaysia. This new 21-page PR comprises the following paragraphs and sets out three examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Introduction

5.0 Qualifying criteria of an eligible company
6.0 Application and grant of approval for tax incentive
7.0 Ascertainment of tax-exempt income
8.0 Disclaimer

Some of the key points are outlined below.

- The PR explains that an eligible company will be granted 100% tax exemption on its statutory income derived from the pioneer business for a period of five years (extendable for a further five years).
- The PR explains the criteria for a company to be eligible for the tax incentive
- The PR clarifies the application and approval process for the tax incentive
- The PR explains and provides examples on the methodology to ascertain the tax-exempt income, including the:
  - Treatment of income from pioneer business and post-pioneer business
  - Capital allowances
  - Treatment of losses incurred during the tax relief period

As highlighted above, this PR should be read together with PR No. 12/2022: Commercialization of Public Resource-Based R&D Findings, Part I – Tax Incentive for Investor Company.

## Guidelines on the tax treatment of accrued interest / profit payable to banks / financial institutions (FIs) during the moratorium period

Under the Prihatin Rakyat Economic Stimulus Package (PRIHATIN) unveiled on 27 March 2020, Bank Negara Malaysia announced various measures to ease the cash flow difficulties of those impacted by the COVID-19 pandemic, including the following:

- Banking institutions granted an automatic six month moratorium (deferment) on loan repayments by individuals and Small and Medium Enterprises (SMEs), effective 1 April 2020.
- Banking institutions also considered requests from non-SME corporations to defer or restructure their loan repayments.

The eligibility was subject to conditions.

Thereafter, the Income Tax (Special Treatment for Interest on Loan) Regulations 2020 were gazetted to provide that where a moratorium is approved by a bank or FI in respect of any amount of interest due and payable from 1 April 2020 until 30 September 2020 (moratorium period) by an individual, SME or any company other than SMEs, such interest shall not constitute the gross income of that bank or FI in the basis period for that YA (see *Tax Alert No. 15/2020*).

Following the above, the IRB has recently published on its website technical guidelines on the tax treatment of accrued interest / profit payable to banks / FIs during the moratorium period, dated 28 December 2022. The Guidelines are in Bahasa Malaysia and are titled "Garis Panduan Layanan Cukai Atas Perbelanjaan Faedah / Keuntungan Kena Dibayar Kepada Bank Atau Institusi Kewangan Dalam Tempoh Moratorium".

The Guidelines stipulate that pursuant to Section 33(4) of the ITA, a taxpayer is eligible to claim a deduction in respect of interest on borrowings when such interest is "due to be paid". This applies even if the interest has not actually been paid on the date the interest is due to be paid. The date the interest is "due to be paid" will be determined based on the loan agreement between the borrower and bank / FI.

Given the above, the Guidelines stipulate that the interest expense accrued during the moratorium period will be deductible in ascertaining the adjusted income of the person in the YA that the said interest is due to be paid (as set out in the loan agreement). However, the Guidelines go on to state that if the loan

agreement is amended to vary the due dates, the tax implications will need to be ascertained accordingly.

The Guidelines provide four examples to demonstrate the above tax treatment under various scenarios. The Guidelines also reiterate the importance of retaining the necessary supporting documents, to be produced in the event of an audit by the IRB.

The Guidelines are available at the following link: [Garis Panduan Layanan Cukai Atas Perbelanjaan Faedah / Keuntungan Kena Dibayar Kepada Bank Atau Institusi Kewangan Dalam Tempoh Moratorium]

## Tax incentives for companies that adopt Industrial Revolution (IR) 4.0 and digitalization technology

In Budget 2021, to spur economic recovery through investment activities, the following incentives were proposed for companies in selected services sectors (see *Take 5: Malaysia Budget 2021*):

- 0% to 10% tax rate for 10 years for new companies
- 10% tax rate for 10 years for existing companies with new services segment

The selected services sectors include companies that adopt IR 4.0 and digitalization technology, with investments that contribute to significant multiplier effects in the following services:

- Provision of technology solutions
- Provision of infrastructure and technology for cloud computing
- R&D or design and development activities
- Medical devices testing laboratory and clinical trials
- Any other services, including manufacturing-related services, as determined by the Minister

To legislate the above proposal, the Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022 [P.U.(A) 398] were gazetted on 28 December 2022. The Rules provide that a qualifying company which carries on a business in respect of a qualifying activity under the Relocation of Provision of Services Business Incentive Scheme, will be eligible for the following concessionary tax rates on the chargeable income for the specified YAs:

- New company: Not more than 10%
- Existing company: 10%

The specified YAs are for a period of up to 10 consecutive YAs, commencing from the YA as determined by the Minister.

Applications for the incentive must be received by the Minister through the MIDA, between 7 November 2020 and 31 December 2022.

The qualifying company which applies for the incentive must comply with the conditions imposed by the Minister as specified in the approval letter, and the Guidelines and Procedures for the Application of Special Tax Incentive for Selected Services Activities under the National Economic Recovery Plan (PENJANA) issued or as revised by MIDA and approved by the Minister. The conditions include that the qualifying company must:

- Hire at least 80% full-time Malaysian employees on or before the third year from the date the first invoice (in relation to the qualifying activity) is issued, until the end of the specified YAs; and
- Incur an approved adequate amount of annual operating expenditure or investment in fixed assets to carry on the qualifying activity

The following terms are defined in the Rules:

(a) **Relocation of Provision of Services Business Incentive Scheme**
Incentive scheme for the qualifying company which undertakes a qualifying activity and which is approved by the Minister

**(b) New company**

A company:

(i) Which is incorporated under the Companies Act 2016 and resident in Malaysia,

(ii) Which is established for the purpose of carrying on a qualifying activity under the Rules and which:

a. Does not have an existing entity or related entity in Malaysia prior to the application of the incentive, or

b. Has an existing entity or related entity in Malaysia which has not carried on a qualifying activity in Malaysia prior to the application for the incentive,

and

(iii) Which:

a. Relocates its facility for the qualifying activity from outside Malaysia into Malaysia,

b. Relocates a new qualifying activity into Malaysia which is different from the existing qualifying activity outside Malaysia, or

c. Establishes a new operation in Malaysia

**(c) Existing company**

A company which is:

(a) Incorporated or registered under the Companies Act 2016 and resident in Malaysia, and

(b) Already operating in Malaysia and carrying on a qualifying activity for a new business segment separate from the operations of the existing qualifying activity

**(d) Qualifying company**

A new company or an existing company which fulfills the eligibility conditions imposed by the Minister under the ITA and the Rules

**(e) Qualifying activity**

Any of the following service activities which adopt IR 4.0 and digitalization technology undertaken by a qualifying company:

(i) Provision of technology solutions or a technology company which develops technology and provides technology solutions based on substantial scientific or engineering challenges,

(ii) Provision of infrastructure and technology for cloud computing,

(iii) R&D or design and development activities,

(iv) Medical devices testing laboratory and clinical trials, or

(v) Any service activity or manufacturing related service activity as determined by the Minister

The Rules provide that the Minister may allow the qualifying company to surrender the incentive granted, by providing notice in writing to the Minister through MIDA, except in situations where the qualifying company fails to comply with any conditions imposed in relation to the incentive. The surrender of the incentive shall take effect from the first day in the basis period for the YA in which the application for the surrender of the incentive is received by the Minister through MIDA.

The non-application provisos stipulate that the Rules will not apply to a qualifying company which has in the specified YAs:

(a) Made a claim for allowances under Schedules 7A or 7B of the ITA

(b) Been granted any incentive under the Promotion of Investments Act 1986

(c) Been granted an exemption under Sections 127(3)(b) or 127(3A) of the ITA

(d) Been approved by the Minister for an incentive scheme under any rules made under Section 154 of the ITA

(e) Made a claim for deduction under any rules made under Section 154 of the ITA except:

(i) The rules in relation to allowance in Schedule 3 of the ITA,

(ii) The Income Tax (Deduction for Audit Expenditure) Rules 2006, or

(iii) The Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020

The Rules are effective from YA 2021.

## 2023 income tax return filing programme issued

The IRB has published on its website the 2023 income tax return filing programme (2023 filing programme) titled "Return Form (RF) Filing Programme For The Year 2023", dated 30 December 2022. Where a grace period is given, submissions shall be deemed to have been received by the stipulated due date if received within the grace period. The grace period also applies to the settlement of the balance of tax payable under Section 103(1) of the ITA. Where the income tax return form (ITRF) or balance of tax payable is not furnished within the grace period, the original due date will be used for the purpose of calculating penalties (note that all references to the "due date" in the table below refer to the original due date).

Some of the key updates to the 2023 filing programme are as follows:

- The C.P.8D [i.e., Statement of Remuneration from Employment for the Year ending 31 December 2022 and Particulars of Tax Deduction under the Income Tax Rules (Deduction from Remuneration) 1994] can no longer be submitted by way of compact disc or external hard disk.
- Employers are encouraged to furnish the 2022 employees' remuneration information via e-Data Praisi / e-CP8D. Further guidance is provided in Item 2 of the Guide Notes to the 2023 filing programme.

**Summary of the 2023 Filing Programme**

| ITRF | Due date | Mode of submission | Grace period |
|---|---|---|---|
| Forms BE, BT, M, MT, TF, TP and TJ for YA 2022 for taxpayers not carrying on a business | 30 April 2023 | a) e-Filing<br><br>N.B. e-Filing is not available for Form TJ | Within 15 days after the due date |
| | | b) Via postal delivery | Form to be received by IRB within 3 working days after the due date |
| | | c) Hand-delivery | No grace period |
| Forms B, P, BT, M, MT, TF, TP and TJ for YA 2022 for taxpayers carrying on a business | 30 June 2023 | a) e-Filing<br><br>N.B. e-Filing is not available for Form TJ | Within 15 days after the due date |
| | | b) Via postal delivery | Form to be received by IRB within 3 working days after the due date |
| | | c) Hand-delivery | No grace period |
| Forms e-C and PT for YA 2023 | Last day of the $7^{th}$ month from the financial year-end | e-Filing | Within 1 month after the due date |

| ITRF | Due date | Mode of submission | Grace period |
| --- | --- | --- | --- |
| Form C1 for YA 2023 | Last day of the 7th month from the financial year-end | a) e-Filing | Within 1 month after the due date |
| | | b) Via postal delivery | Form to be received by IRB within 3 working days after the due date |
| | | c) Hand-delivery | No grace period |
| Forms TC, TA, TR and TN for YA 2023 | Last day of the 7th month from the financial year-end | a) e-Filing<br><br>N.B. e-Filing is not available for Forms TR and TN | Within 1 month after the due date |
| | | b) Via postal delivery | Form to be received by IRB within 3 working days after the due date |
| | | c) Hand-delivery | No grace period |
| Form E (Company / Labuan company employers) | 31 March 2023 | e-Filing | Within 1 month after the due date |
| Form E (Non-company / Non-Labuan company employers) | 31 March 2023 | a) e-Filing | Form to be received by IRB within 1 month after the due date |
| | | b) Via postal delivery | Within 3 working days after the due date |
| | | c) Hand-delivery | No grace period |
| Form CPE | Within 7 months from the date following the end of the exploration period | a) e-Filing | Within 1 month after the due date |
| | | b) Via postal delivery | Form to be received by IRB within 3 working days after the due date |
| | | c) Hand-delivery | No grace period |
| Form CPP | Within 7 months from the date following the end of the basis period | a) e-Filing | Within 1 month after the due date |
| | | b) Via postal delivery | Form to be received by IRB within 3 working days after the due date |
| | | c) Hand-delivery | No grace period |

## Frequently Asked Questions (FAQs) pertaining to the "bill number" to be used as mandatory reference for most tax payments

As highlighted in an earlier alert, on 31 December 2022, the IRB issued a media release stating that effective 1 January 2023, a "bill number" will be used as a mandatory reference for direct tax-related payments, except for payments in relation to monthly

tax deductions and stamp duty (see *Special Tax Alert No. 1/2023*). This is implemented via the IRB's e-Billing system.

Following the above, the IRB has published the FAQs document in Bahasa Malaysia, titled "Soalan Lazim Pelaksanaan e-Billing Dan Nombor Bil Sebagai Rujukan Mandatori Bagi Pembayaran Cukai LHDNM". The latest FAQs are dated 3 January 2023. Some of the key points are outlined below.

- **Item 4**
  The e-Billing system allows taxpayers to:
  (i) Obtain the "bill number" for tax payments (i.e., balance of tax payable, estimates or instalments) and make the necessary payments
  (ii) Generate the "bill number" for:
    - Submission of manual ITRF (for taxpayers in a tax payable position)
    - Taxes under the Labuan Business Activity Tax Act 1990 (LBATA)

- **Item 8**
  Taxpayers may continue to use their existing tax reference number for tax payment purposes until 30 June 2023. Thereafter, taxpayers will no longer be able to remit their tax payments without a "bill number".

- **Item 9**
  The amount of tax payment that can be remitted is capped at the amount based on the "bill number". Remittance of a lower amount is permissible.

- **Item 10**
  The payment for multiple "bill numbers" can be remitted concurrently. A new "bill number" will be generated by combining all the relevant "bill numbers" for ease of payment.

- **Item 11**
  Multiple payments can be made for one "bill number". The "bill number" will no longer appear on the e-Billing system once it is settled.

- **Item 12**
  Taxpayers who make an error in the "bill number" will need to liaise with the IRB's Collection Department for the next course of action.

- **Item 13**
  Taxpayers will require both a virtual account (VA) number and a "bill number" for payments made via the e-TT system.

The IRB has also issued a "User Manual" to provide further guidance to taxpayers. The "User Manual" and "FAQs" are available at the following link: https://mytax.hasil.gov.my/

# Overseas developments

## Hong Kong passes bill on refined foreign-sourced income exemption regime

On 14 December 2022, the Inland Revenue (Amendment) (Taxation on Specified Foreign-Sourced Income) Bill 2022 (the Bill) passed its third reading and is expected to formally become law by 23 December 2022. The Bill introduced amendments to the tax exemption of certain foreign-sourced passive income which will apply to income accrued and received in Hong Kong on or after 1 January 2023.

The Bill has been passed in the current form and the key provisions were outlined in our earlier Global Tax Alert. The key clarifications made by the Hong Kong Government on certain provisions during the legislative scrutiny of the Bill are summarized below.

**Detailed discussion**

Under the refined FSIE regime, specified foreign-sourced income (i.e., dividends, interest, income from the use of IP and disposal gain on equity interest) received in Hong Kong will be deemed as sourced from Hong Kong and chargeable to profits tax unless the additional economic substance, participation, or nexus requirements (as applicable) are met. During the legislative review of the Bill, the Hong Kong Government clarified the following issues raised on certain provisions:

- The refined FSIE regime will apply to an MNE entity carrying on a trade, profession, or business in Hong Kong. For this purpose, "MNE entity" includes a trustee acting for a trust arrangement, however it is not intended to include general independent service providers.

- While "dividend" and "interest" are not specifically defined in the legislation, the income characterization should be determined by all the facts and circumstances relating to the transaction.

- In determining whether a specified foreign-sourced income constitutes as being "received in Hong Kong" and therefore subject to the refined FSIE regime, the Hong Kong Tax Authority indicated that the income will not be regarded as having been "received in Hong Kong" if the unremitted income is used to pay dividends into a shareholder's offshore bank account without being remitted back to Hong Kong.

- A pure equity-holding entity (PEHE) will be subjected to a reduced economic substance test. While a PEHE should only hold equity interests in other entities, it is allowed to borrow money to finance its equity investment and earn incidental income, however it should not lend monies or participate in a group cash pooling arrangement.

- The participation exemption requirement includes a "subject to tax" condition of at least 15%. In determining the applicable rate for the test, the "headline tax rate" approach will be adopted. However, if the income concerned is taxable under a special lower rate tax regime which is not a tax incentive for carrying out substantive activities in the jurisdiction concerned, it will then refer to the highest stipulated tax rate under the special tax regime.

- A bilateral or unilateral tax credit can be claimed on overseas taxes paid in respect of the relevant specified foreign-sourced income now deemed taxable under the refined FSIE regime. Consistent with the current tax credit system, tax credits will be computed on an "income-by-income" basis.

It is expected that a Departmental Interpretation and Practice Note and further administrative guidance will be issued to provide more explanation and examples.

## Swiss Parliament approves domestic BEPS 2.0 Pillar Two implementation | Constitutional amendment now subject to public vote

On 16 December 2022, the Swiss Parliament approved the constitutional amendment to implement the Pillar Two rules of the Organisation for Economic Co-operation and Development (OECD)/G20 Base Erosion and Profit Shifting 2.0 project (BEPS 2.0) into Swiss domestic law (to view and download the amendment, click on this link). The amendment was approved by the National Council with 127 votes in favor and 59 against with 10 abstentions, and by the Council of States with 38 votes in favor and 2 against with 4 abstentions.

Consequently, Switzerland can introduce the Global Anti-Base Erosion Model (GloBE) Rules, including a Qualified Domestic Minimum Top-up Tax (QDMTT), an Income Inclusion Rule (IIR) and an Undertaxed

Payments Rule (UTPR), in line with the GloBE Model Rules as published by the OECD.

Except for minor items, the draft constitutional amendment submitted to the Parliament by the Federal Council remained unchanged. For more information on the content of the constitutional amendment, see EY Global Tax Alert, *Swiss Federal Council releases dispatch on constitutional amendment for BEPS 2.0 implementation in Switzerland*, dated 24 June 2022.

As a result of the legal procedure, this amendment is now subject to a public vote on 18 June 2023, where a majority of the elective citizens as well as a majority of the Cantons (result of the popular vote per Canton) must approve the change to the Constitution. If the constitutional amendment is approved by the public vote, Switzerland would be able to legally implement the Pillar Two rules as of 1 January 2024.

**Detailed discussion**

**Swiss Pillar Two implementation process**

Switzerland decided to introduce Pillar Two in a three-step approach to ensure timely implementation.

In a first step, the legal basis for the implementation of the GloBE Model rules is established in the Constitution. Based on this newly created federal competence for an additional tax, Pillar Two can be implemented into a Federal Act by the Parliament.

Due to the ambitious timeline set forth by the OCED, the constitutional amendment also introduces a special transitional provision, enabling the Federal Council to implement Pillar Two by way of temporary ordinances in a second step. On 17 August 2022, the Federal Council opened a public consultation on the ordinance that will temporarily regulate the material aspects of the implementation. For more information on this first draft ordinance, see EY Global Tax Alert, *Switzerland opens public consultation on material aspects of the OECD's Pillar Two minimum corporate tax*, dated 18 August 2022.

In a third step, a Federal Act on Pillar Two is to be enacted under the ordinary legislative procedure. The constitutional amendment thereby foresees a mandate to the Federal Council to provide the Parliament with draft legislation for the implementation of Pillar Two by Federal Act within six years after the introduction of the Pillar Two rules by temporary ordinances.

**Parliamentary debate**

The first deviation from the original draft constitutional amendment concerns the non-deductibility of the top-up taxes as expenses for Corporate Income Tax (CIT) purposes, as proposed by the Federal Council. In Switzerland, CIT is generally deductible as expenses for CIT purposes. The Parliament has now provided more flexibility to maintain this deductibility as well as with regard to top-up taxes. The decision of the potential (non-)deductibility should be made specifically for each type of top-up tax, at a later point in time and at the discretion of the Federal Council.

In addition, the Parliament introduced a new paragraph mandating the Federal Council to provide the Parliament with draft legislation for the implementation of Pillar Two by Federal Act, within six years after it chooses to introduce the Pillar Two rules by temporary ordinances.

Two amendments by the National Council were finally dropped after multiple discussions in both parliamentarian Chambers. One item concerned the distribution of the additional top-up tax revenue between the Federation and the Cantons. The two parliamentarian Chambers finally agreed on a 75%-25% split between the Cantons and the Federation, as originally proposed in the draft constitutional amendment, which is deemed to be the most business-friendly option among those debated. The second item – which was dropped from the voted

constitutional amendment – concerned the question of whether the constitution should have mandated the Cantons to distribute the additional top-up tax income within its municipalities in accordance with the current CIT distribution.

To view and download the wording of the Constitutional Amendment subject to public vote, click on this link.

**Outlook**

On 18 June 2023, the constitutional amendment will be subject to a mandatory public vote. If the majority of the Swiss citizens and the cantons approve the amendment, it is currently intended that the Federal Council will implement Pillar Two via temporary ordinances as of 1 January 2024. Whether potential delays with respect to the implementation of the Pillar Two rules in other jurisdictions will impact the implementation date has not been explicitly answered so far. Neither the draft ordinance, nor the commentary to the draft ordinance referred to this issue. However, according to the Federal Council, international developments will be considered at the time of the final decision regarding the date of entry into force of the ordinances in Switzerland.

The ordinance includes a QDMTT as well as an IIR and a UTPR in line with the GloBE Model Rules. The draft wording of the ordinance mainly refers to the GloBE Model Rules for the determination of the respective taxes and includes only very limited additional Swiss regulations. The Swiss Federal Council is expected to publish a second ordinance regulating the procedural aspects. A public consultation for that second ordinance is expected after the OECD releases its Agreed Administrative Guidance.

**Examples of RA claim under Paragraph 9, Schedule 7A of the ITA**

## Diagram 2

<table>
<tr><td rowspan="2">Building used for manufacturing activities (not a qualifying project)</td><td>Storage space 30%</td></tr>
<tr><td>Extension of building used for a qualifying project – diversification (70%)</td></tr>
</table>

RA allowed on the extended floor area is limited to 70% of the extended area (excluding the 30% storage space)

## Diagram 3

<table>
<tr><td rowspan="2">Building used for manufacturing activities (not a qualifying project)</td><td>Storage space 5,000 sq. ft. (5%)</td><td>Sales office space 25,000 sq. ft. (25%)</td></tr>
<tr><td colspan="2">Extension of building used for a qualifying project – diversification 70,000 sq. ft. (70%)</td></tr>
</table>

The sales office space is not eligible for RA as the extended floor area is not used for qualifying project or storage space.

RA is only allowed on the 75,000 sq. ft of the extended floor area (used for qualifying project and storage space). The floor area used for storage space qualifies for RA as it is less than 10% (5,000 sq. ft. / 75,000 sq. ft. x 100%) of the total floor area used for qualifying projects and storage space.

## Diagram 4

<table>
<tr><td rowspan="2">Building used for manufacturing activities (not a qualifying project)</td><td>Storage space 8,000 sq. ft. (8%)</td><td>Sales office space 25,000 sq. ft. (25%)</td></tr>
<tr><td colspan="2">Extension of building used for a qualifying project – diversification 67,000 sq. ft. (67%)</td></tr>
</table>

The sales office space is not eligible for RA because the extended floor area is not used for qualifying project or storage space.

RA is only allowed on 67,000 sq. ft. of the extended floor area. The floor area used for storage space is not eligible for RA as it exceeds 10% (8,000 sq. ft. / 75,000 sq. ft. x 100%) of the total floor area used for eligible projects and storage space.

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# Important dates

| | |
|---|---|
| 15 January 2023 | Due date for monthly instalments |
| 31 January 2023 | 6th month revision of tax estimates for companies with July year-end |
| 31 January 2023 | 9th month revision of tax estimates for companies with April year-end |
| 31 January 2023 | Statutory deadline for filing of 2022 tax returns for companies with June year-end. A blanket extension of time has been provided until 28 February 2023. |
| 31 January 2023 | Extended 2022 tax return filing deadline for companies with May year-end. |
| 15 February 2023 | Due date for monthly instalments |
| 28 February 2023 | 6th month revision of tax estimates for companies with August year-end |
| 28 February 2023 | 9th month revision of tax estimates for companies with May year-end |
| 28 February 2023 | Statutory deadline for filing of 2022 tax returns for companies with July year-end. A blanket extension of time has been provided until 31 March 2023. |
| 28 February 2023 | Extended 2022 tax return filing deadline for companies with June year-end. |

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