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Malaysian developments

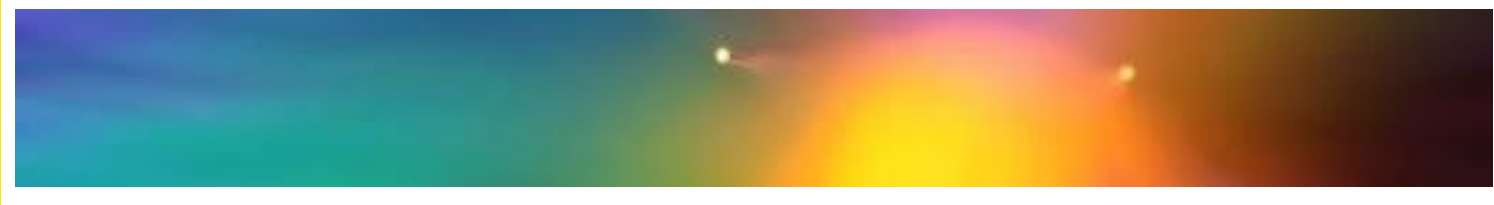
Finance Act 2023 gazetted

The Finance Act 2023, incorporating the changes proposed in Budget 2023 (see *Take 5: Malaysia Budget 2023* and *Tax Alert No. 6/2023*), was gazetted on 31 May 2023.

The Act adopts all the changes proposed in the Finance Bill, including the additional amendments made when the Finance Bill 2023 was passed by the Dewan Rakyat (see *Tax Alert No. 6/2023*).

Special Voluntary Disclosure Programme (SVDP) 2.0

In Budget 2023, it was announced that the Inland Revenue Board (IRB) and Royal Malaysian Customs Department (RMCD) would be launching new SVDPs. The SVDPs will grant taxpayers full penalty relief for voluntary disclosures (VDs) made within a stipulated time period.



On 2 June 2023, the IRB published on its website the relevant documents to outline the details for SVDP 2.0, including the following:

- ▶ Operational Guidelines No. 2/2023 - SVDP 2.0
- ▶ Frequently Asked Questions (FAQs)

The Programme is effective from 6 June 2023 to 31 May 2024.

Broadly, SVDP 2.0 provides an opportunity for taxpayers to report their correct tax position and rectify errors made in the past. The IRB will accept the VDs in good faith and no supporting documents are required for the VDs made. No audit or investigation will be undertaken for the years of assessment (YAs) for which the VDs are made.

SVDP 2.0 is offered to all categories of taxpayers (including non-resident taxpayers), except the employer file category. It applies to:

- ▶ New taxpayers who have not declared their income, for YAs up to YA 2022
- ▶ Existing taxpayers who have not declared their income or reported the correct taxable income, for YAs up to YA 2021
- ▶ New and existing taxpayers who have not submitted their real property gains tax return form (RPGTRF) for the disposal of assets, for YAs up to YA 2022
- ▶ Late submitters of instrument(s) for stamping, for instrument(s) executed (signed) on or before 1 May 2023
- ▶ VDs resulting in an assessment or additional assessment raised on the taxpayer, except for transfer pricing (TP) cases
- ▶ VDs for TP issues, which are subject to the VD criteria and procedures for TP cases as set out in the TP Audit Framework. TP surcharges may apply.

However, SVDP 2.0 does not apply to:

- ▶ YAs where the IRB has commenced a tax audit or investigation
- ▶ Non-taxable, reduced assessment or tax repayment cases, except for TP cases
- ▶ Taxpayers who are under criminal investigation or prosecution proceedings initiated by the IRB

Further details will be provided in a special tax alert which will be issued in due course.

For reference, the SVDP 2.0 documents are accessible via the following link: [Special Voluntary Disclosure Programme \(SVDP\) 2.0 | Lembaga Hasil Dalam Negeri Malaysia](#)

Updated Rules on TP and advance pricing arrangements (APAs)

The TP rules aim to prevent the artificial pricing of transactions between related parties in order to minimize or avoid tax. The fundamental ideology overlaying the rules is the arm's length principle (ALP), which mandates that all related party transactions must be made at prices at which unrelated parties would have agreed to transact with each other. TP rules also usually provide an avenue for companies to enter into APAs with the tax authorities to confirm that the TP methodology adopted is acceptable.

Sections 138C, 140A and 154 of the Income Tax Act 1967 (ITA) provide the legal basis for companies to enter into APAs with the IRB, introduce TP dedicated provisions and empower the Minister of Finance (MoF) to facilitate implementation of the provisions by way of detailed rules.

On 29 May 2023, the following Rules were gazetted:

- ▶ **Income Tax (Transfer Pricing) Rules 2023 [P.U.(A) 165]**
This revokes the Income Tax (Transfer Pricing) Rules 2012 [P.U.(A) 132/2012]
- ▶ **Income Tax (Advance Pricing Arrangement) Rules 2023 [P.U.(A) 166]**
This revokes the Income Tax (Advance Pricing Arrangement) Rules 2012 [P.U.(A) 133/2012]

Broadly, the TP rules stipulate the requirement for taxpayers to prepare contemporaneous documentation and prescribe how related companies should determine and apply the ALP. The APA rules prescribe the application process and the relevant timelines. The covered period under the APA rules is between three to five YAs.

For further details on the above, please refer to *Special Tax Alert No. 2/2023 - Malaysia introduces new Transfer Pricing Rules 2023* and *Special Tax Alert No. 3/2023 - Malaysia introduces new Advance Pricing Arrangement Rules 2023*.

The Rules are available at the following links:

- ▶ [Income Tax \(Transfer Pricing\) Rules 2023](#)
- ▶ [Income Tax \(Advance Pricing Arrangement\) Rules 2023](#)

Malaysia's new avoidance of double taxation agreement (DTA) with the Republic of Maldives

On 24 May 2023, Malaysia signed a new DTA with the Republic of Maldives for the elimination of double taxation on income tax and the prevention of tax evasion and avoidance.

The DTA aims to avoid double taxation on the same income in Malaysia and the Maldives, which in turn provides tax certainty to taxpayers in both countries.

The DTA also covers the right to determine taxation and the reduction of withholding tax rates on certain types of income, such as dividends, interest, royalties and fees for technical services.

The DTA will enter into force after the ratification procedures by both parties are completed.

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2023 [P.U.(A) 153] was gazetted on 16 May 2023. The Order provides that any tax payable under the ITA and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

- Islamic Commercial Papers (ICP) and Islamic Medium-Term Notes (IMTN) issued by Danalnfra Nasional Berhad pursuant to the ICP and IMTN Programme, in nominal values of up to RM2.8 billion, provided that the combined aggregate of the outstanding nominal value of the ICP and IMTN and the outstanding principal amount under the Syndicated Revolving Credit-i Facility (RC-i Facility, see (b) below) shall not exceed RM2.8 billion
- RC-i Facility with the aggregate principal amount not exceeding RM2 billion, subject to the combined aggregate referred to in (c) below
- ICP and IMTN programme which has been upsized with a nominal value from RM13 billion to a maximum aggregate value of up to RM15.8 billion, and
- Guarantee provided by the Government of Malaysia in relation to the ICP and IMTN Programme and the RC-i Facility

The Order came into operation on 17 May 2023.

Overseas developments

The Netherlands issues proposed Pillar Two legislation

On 31 May 2023, the Dutch Government sent to Parliament draft legislation to implement the Base Erosion and Profit Shifting (BEPS) 2.0 - Pillar Two global agreement in its domestic legislation. The draft legislation follows the draft legislative proposal released on 24 October 2022 as part of a public consultation process. The legislative proposal is structured as a separate tax law that is not intended to be embedded into the existing Dutch Corporate Income Tax Code.

The Dutch proposal is based on the EU Directive dated 14 December 2022 to implement the OECD Pillar Two agreement within the EU. EU Member States have until 31 December 2023 to transpose the Directive into national legislation.

Summary

Pillar Two will introduce a 15% global minimum effective tax rate for in-scope businesses and primarily consists of two interlocking domestic rules, the Income Inclusion Rule (IIR) and Undertaxed Payment Rule (UTPR), which together are referred to as the Global Anti-Base Erosion (GloBE) rules.

In line with the EU Directive, the Dutch Government proposes that the IIR and the UTPR become effective for financial reporting years starting on or after 31 December 2023 and 31 December 2024 (respectively).

Notably, and in line with the draft published during the consultation process, the Dutch Government also makes use of an option provided by the EU Directive to propose the introduction of a Qualified Domestic Minimum Top-up Tax (QDMT) such that - essentially - the Dutch Government will collect top-up tax allocable

to the excess profit of Dutch constituent entities that are part of in-scope multinational groups. The draft legislation also introduces a domestic IIR.

The legislative proposal contains Safe Harbor rules in line with the guidance released by the OECD/G20 Inclusive Framework on 15 December 2022. Besides this, the legislation acknowledges that the OECD may issue further guidance to the OECD model rules in later stages, and that this may be reflected in later Dutch legislation or regulations.

Timing and next steps

The EU Directive must be transposed into national legislation by 31 December 2023. The submission of the bill to Parliament is the first step to effectuate this result. The legislation is still subject to parliamentary discussions.

EU customs reform proposal embraces modern approach to e-commerce

The European Commission (Commission) has released a proposal to reform the European Union's (EU's) customs regime, which will see the introduction of a new EU customs authority and a single online data system. Changes will also be imposed for online marketplaces and the duty exemption for goods valued under €150 will be abolished.

The legislative proposals will now be sent to the European Parliament and the Council of the European Union for agreement, and to the European Economic and Social Committee for consultation.

Further information

The Commission has [reported](#) that a new EU Customs Authority will oversee an EU Customs Data Hub, which will act as the "engine" of the new system. Over time, the Data Hub will replace the existing customs information technology infrastructure in EU

Member States. This aims to save on operating costs and deliver an improved EU approach to risk management and customs checks.

Under the new regime, it is envisaged that businesses that want to bring goods into the EU will be able to log all the information on their products and supply chains into a single online environment: the new EU Customs Data Hub. This technology will compile the data provided by business and – via machine learning, artificial intelligence and human intervention – provide authorities with a "360-degree overview" of supply chains and the movement of goods.

Businesses will only need to interact with a single portal when submitting their customs information – and submit data once for multiple consignments. In some cases where business processes and supply chains are completely transparent, the most trusted traders ("Trust & Check" traders) will be able to release their goods into circulation in the EU without any active customs intervention. The Trust & Check category aims to strengthen the current Authorised Economic Operators (AEO) program for trusted traders.

Under the proposals, the Data Hub will open for e-commerce consignments in 2028, followed (on a voluntary basis) by other importers in 2032, which the Commission predicts will lead to immediate benefits and simplifications. It is envisaged that Trust & Check traders will also be able to clear all of their imports with the customs authorities of the Member State in which they are based, no matter where the goods enter the EU. A review in 2035 will assess whether this option can be extended to all traders when the Hub becomes mandatory as from 2038.

The proposed system aims to give customs authorities a "bird's-eye view" of the supply chain and production processes of goods entering the EU. All Member States will have access to real-time data and will be able to pool information to respond more quickly, consistently and effectively to risks. Artificial intelligence will be used to analyze and monitor the

data and to predict problems before the goods have even started their journey to the EU. The goal is to allow EU customs authorities to focus their efforts and resources where they are needed most: stopping unsafe or illegal goods from entering the EU.

One of the key pillars of the reforms is taking a more modern approach to e-commerce. The proposals include plans to:

- ▶ Make online marketplaces responsible for ensuring compliance with EU customs obligations
- ▶ Deem online marketplaces as importers to ensure customs duty and VAT is paid at the time of purchase
- ▶ Abolish duty exemption on goods valued under €150

The reform will also simplify customs duty calculations for the most common low-value goods brought into the EU, reducing the thousands of possible customs duty categories down to only four.

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Important dates

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

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