



Tax Espresso

Latest guidelines, income tax exemption orders and deduction rules, stamp duty exemption orders and more

February 2021

Greetings from Deloitte Malaysia Tax Services

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[Inland Revenue Board of Malaysia](#)

Takeaways:

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Important deadlines:

Task	2021 Due Date	
	28 February	1 March
1. 2022 tax estimates for companies with March year-end		√
2. 6 th month revision of tax estimates for companies with August year-end	√	
3. 9 th month revision of tax estimates for companies with May year-end	√	
4. Statutory filing of 2020 tax returns for companies with July year-end	√	
5. Maintenance of transfer pricing documentation for companies with July year-end	√	
6. Deadline for 2021 CbCR notification for companies with February year-end	√	

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1. SME Corp – Guidelines and Procedures on Incentive of Stamp Duty Exemptions on M&A by SMEs

The SME Corp has recently released the [Guidelines](#) and Procedures on Incentive of Stamp Duty Exemptions on Merger and Acquisitions (M&A) by Small and Medium Enterprises (SMEs). The stamp duty exemption was announced by the Government through the announcement of PENJANA on 5 June 2020. These Guidelines draw a process flow on the steps taken to vet through the applications and to verify the authenticity of the M&A exercise. *[Note: The relevant exemption order has yet to be gazetted as of this date of publication.]*

Please refer to the [Guidelines](#) for the full details.

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2. Amended Guidelines for Claiming of Incentive for Upstream Petroleum Industry under the Petroleum (Income Tax) Act 1967

The Inland Revenue Board of Malaysia (IRBM) has recently uploaded the [Amended Guidelines](#) (dated 30 December 2020) for claiming of incentive for upstream petroleum industry under the Petroleum (Income Tax) Act 1967 which replaced the [Old Guidelines](#) (dated 22 May 2014). The Amended Guidelines (*) provide an explanation in relation to the incentives which are available to an eligible chargeable person and the method of calculating the relevant incentives. (**Available in Bahasa Malaysia only.*)

Please refer to the [Amended Guidelines](#) for the full details.

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3. Income Tax (Exemption) (No. 6) Order 2020

[P.U.\(A\) 373/2020](#) was gazetted on 24 December 2020 and is deemed to have come into operation on 1 January 2016.

The Order exempts a qualified person resident in Malaysia from payment of income tax in relation to:

- a. Statutory income (“SI”) of a new food production project for 10 consecutive years of assessment (“YAs”), commencing from the first YA in which the qualified person derived SI in relation to that project; or
- b. SI from expansion projects for 5 consecutive YAs, commencing from the first YA in which the qualified person derived SI in relation to the expansion projects, and the first YA shall not be earlier than the YA in the basis period in which the date of approval from the Minister falls.

Please refer to [P.U.\(A\) 373/2020](#) for the full details.

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4. Income Tax (Deduction of Investment in New Food Production Project or Expansion Project) Rules 2020

[P.U.\(A\) 374/2020](#) was gazetted on 24 December 2020 and is deemed to have come into operation on 1 January 2016. Pursuant to the Rules, an amount equivalent to the value of investment for the sole purpose of financing a new food production project or an expansion project under the [Income Tax \(Exemption\) \(No. 6\) Order 2020 \[P.U.\(A\) 373/2020\]](#) undertaken by the related company is deductible in arriving at the company’s adjusted business income.

Please refer to the respective Rules and Order for the full details.

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5. Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) (Amendment) Rules 2021

[P.U.\(A\) 2/2021](#) (the Amendment Rules) was gazetted on 6 January 2021 to legislate the extension of tax incentive on issuance of Sustainable and Responsible Investments Sukuk by another 3 YAs as proposed in Budget 2020 [reported in Tax Espresso ([Special Edition](#)) – Highlights of Budget 2020*: Part I].

The Amendment Rules amend the Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017 [[P.U.\(A\) 221/2017](#)] in Subrule 1(2). Apart from extending the period of deduction, the Amendment Rules have deleted the words “and the company has made an election under Section 3A of the Labuan Business Activity Tax Act 1990 [Act 445] to be charged to tax in accordance with the Labuan Business Activity Tax Act 1990” in Subrule 2(b). Amendments are highlighted in green fonts, words replaced / deleted are marked with a strikethrough.

1(2) These Rules shall be deemed to have effect from the year of assessment 2016 until the ~~year of assessment 2020~~ year of assessment 2023.

2. In these Rules, “company” means a company resident in Malaysia which is—
- (a) incorporated, or deemed to be registered, under the Companies Act 2016 [Act 777]; or
 - (b) incorporated under the Labuan Companies Act 1990 [Act 441] ~~and the company has made an election under section 3A of the Labuan Business Activity Tax Act 1990 [Act 445] to be charged to tax in accordance with the Labuan Business Activity Tax Act 1990.~~

Please refer to the respective Rules for the full details.

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6. Income Tax (Exemption) (No. 7) 2011 (Amendment) Order 2021

[P.U.\(A\) 6/2021](#) (the Amendment Order) was gazetted on 12 January 2021 and has effect from the YA 2021.

The Amendment Order extends the exemption under the Income Tax (Exemption) (No. 7) Order 2011 [[P.U.\(A\) 419/2011](#)] by another 5 YAs, i.e. from YA 2021 to YA 2025 through the amendment of the P.U. (A) 419/2011 in subparagraph 2(1) by substituting “2020” with “2025”.

Following the amendment to Paragraph 2 of [P.U. \(A\) 419/2011](#), any individual who is a non-Malaysian citizen is exempted from the payment of income tax in respect of fees received by that individual in his capacity as a director of a Labuan entity from the YA 2011 until the YA 2025.

For the purpose of the above exemption, “Labuan entity” means the entity specified in the schedule to the Labuan Business Activity tax Act 1990 [Act 445].

Please refer to the respective Orders for the full details.

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7. Income Tax (Deduction for Expenditure on Issuance of Sukuk and Retail Sukuk Structured pursuant to the Principle of Wakalah) Rules 2021

The [P.U.\(A\) 5/2021](#) (the Rules) was gazetted on 12 January 2021 and is effective from the YA 2021 until YA 2025.

The Rules provide that for the purpose of ascertaining the adjusted income of a Malaysian resident company incorporated under the Companies Act 2016 or the Labuan Companies Act 1990 from its business in the basis period for a YA, there shall be allowed as a deduction an amount equivalent to the total amount specified below, in respect of the expenditure or additional expenses incurred by the company on the issuance of:

- (a) a sukuk structured pursuant to the principle of Wakalah comprising a mixed component of asset and debt; and
- (b) a retail sukuk structured pursuant to the principle of Wakalah comprising a mixed component of asset and debt.

The total amount of deduction allowed under **Paragraph (a)** shall be equivalent to the amount of expenditure allowed under these Rules. The total amount of deduction allowed under **Paragraph (b)** shall be equivalent to the amount of expenditure and twice the amount of *additional expenses* allowed under these Rules.

The *additional expenses* shall be—

- (a) the professional fee relating to due diligence, drafting and preparation of prospectus;
- (b) the printing cost of prospectus;
- (c) the advertisement cost of prospectus;
- (d) the Securities Commission Malaysia prospectus registration fee;
- (e) the Bursa Malaysia processing fee and initial listing fee;
- (f) the Bursa Malaysia new issue crediting fee; and
- (g) the primary distribution fee.

Please refer to [P.U.\(A\) 5/2021](#) for the full details.

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8. Income Tax (Exemption) Order 2021

[P.U.\(A\) 30/2021](#) (the Order) was gazetted on 26 January 2021 to legislate the individual income tax exemption for employees who receive smartphone, tablet, or personal computer from their employers as proposed in PENJANA [reported in [Tax Espresso \(Special Alert\) PENJANA: Appendices on Tax-Related Measures](#)]. The Order is effective for the YA 2020.

The Order exempts an employee from the payment of income tax in relation to the value of benefit* which is received by the employee from his employer, limited to an amount not exceeding RM5,000 in ascertaining the gross income from his employment in the basis period for a YA.

*The value of the benefit shall be for the purpose of acquiring a smartphone, tablet or personal computer.

Please refer to the [Order](#) for the full details, including the non-application provisions under Paragraph 3 of the Order.

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9. Income Tax (Deduction for Value of Benefit given to Employees) Rules 2021

[P.U.\(A\) 31/2021](#) (the Rules) was gazetted on 26 January 2021 and has effect for the YA 2020.

For the purpose of ascertaining the adjusted income of a person resident in Malaysia from its business for the basis period for YA 2020, a deduction shall be allowed for the value of benefit given by that person as an employer to his employee for the purpose of acquiring a smartphone, tablet or personal computer.

Please refer to the [Rules](#) for the full details.

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10. Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2020

[P.U.\(A\) 397/2020](#) (the Amendment Order) was gazetted on 31 December 2020 to legislate the extension of Stamp Duty exemption for Perlindungan Tenang products proposed in Budget 2021 [reported in Tax Espresso Special Edition – Highlights of Budget 2021 ([Part I](#))].

The Amendment Order extends the exemption under the Stamp Duty (Exemption) (No. 5) Order 2018 [[P.U.\(A\) 359/2018](#)] by another 5 years, i.e. from 1 January 2021 to 31 December 2025 through the amendment of the P.U.(A) 359/2018 in subparagraph 2(2) by substituting "2020" with "2025".

Subparagraph 2(1) of the P.U.(A) 359/2018 provides that any insurance policies and takaful certificates for Perlindungan Tenang products issued by a licensed insurer or a licensed takaful operator with an annual premium or takaful contribution not exceeding one hundred ringgit (RM100.00) are exempted from stamp duty.

Please refer to the respective Orders for the full details.

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11. Stamp Duty (Exemption) (No. 2) 2017 (Amendment) Order 2020

[P. U. \(A\) 421/2020](#) (the Amendment Order) was gazetted on 31 December 2020 to legislate the extension of stamp duty exemption for exchange-traded fund by another 5 years, i.e. from 1 January 2021 to 31 December 2025 proposed in Budget 2021 [reported in Tax Espresso Special Edition – Highlights of Budget 2021 ([Part I](#))].

The Amendment Order, which amended the Stamp Duty (Exemption) (No. 2) Order 2017 [[P.U.\(A\) 408/2017](#)], came into operation on 1 January 2021. Apart from extending the period of exemption, the Amendment Order has deleted any references to structured warrant in [P.U.\(A\) 408/2017](#). Amendments are highlighted in green fonts, words replaced / deleted are marked with a strikethrough.

Amendment to Paragraph 2 of [P.U.\(A\) 408/2017](#)

"2. (1) A contract note executed for the sale and purchase transaction of ~~structured warrant or~~ exchange-traded fund approved by the Securities Commission Malaysia under the Capital Markets and Services Act 2007 [Act 671] in Bursa Malaysia Securities Berhad is exempted from stamp duty.

(2) The exemption referred to in subparagraph (1) shall apply to the contract note executed on or after 1 January 2018 but not later than 31 December ~~2020~~ 2025.

(3) For the purpose of this paragraph,—

"exchange-traded fund" has the meaning assigned to it in the guidelines relating to exchange-traded fund issued by the Securities Commission Malaysia under the Capital Markets and Services Act 2007.;

~~"structured warrant" has the meaning assigned to it in the guidelines relating to structured warrant issued by the Securities Commission Malaysia under the Capital Markets and Services Act 2007."~~

Please refer to the respective Orders for the full details.

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12. Stamp Duty (Exemption) (No. 8) Order 2020

[P.U.\(A\) 423/2020](#) (the Order) was gazetted on 31 December 2020 and is deemed to have come into operation from 1 January 2020 until 31 December 2024.

According to the Order, the instruments specified in the Schedule for the purchase of a flat under the Program Perumahan Rakyat Majlis Tindakan Ekonomi Negara and Perumahan Awam Dewan Bandaraya Kuala Lumpur executed on or after 1 January 2020, but not later than 31 December 2024 are exempted from stamp duty.

For the purposes of the Order:

"Financial institution" has the same meaning as that assigned to "banker" in Section 2 of the Stamp Act 1949; and

"Special Financing Scheme" means loan facilities provided by Syarikat Perumahan Wilayah Persekutuan which is fully owned by Yayasan Wilayah Persekutuan.

Please refer to [P.U.\(A\) 423/2020](#) for the full details.

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13. Stamp Duty (Exemption) (No. 2) 2020 (Amendment) Order 2021

The [P.U.\(A\) 27/2021](#) was gazetted on 25 January 2021 and is deemed to have come into operation on 1 March 2020 to extend the stamp duty exemption on an instrument of loan or a financing agreement relating to the restructuring or rescheduling of a loan or financing between a borrower or customer and a financial institution executed during the period from 1 March 2020 to 30 June 2021 (initially ended on 31 December 2020). Apart from extending the stamp duty exemption period, [P.U.\(A\) 27/2021](#) also amends Paragraph 2 of Stamp Duty (Exemption) (No. 2) Order 2020 [[P.U.\(A\) 165/2020](#)]. Amendments are highlighted in green fonts, words replaced / deleted are marked with a strikethrough.

Amendment of paragraph 2 of [P.U.\(A\) 165/2020](#)

"2. (1) An instrument of loan or a financing agreement relating to the restructuring or rescheduling of a ~~business~~ loan or financing between a borrower or customer and a financial institution which is executed on or after 1 March 2020 but not later than ~~31 December 2020~~ 30 June 2021 is, on application, exempted from stamp duty.

~~(2) The exemption under subparagraph (1) shall be subject to the terms and conditions of the existing instrument of loan or financing agreement that had been duly stamped under item 22 or 27 of the First Schedule to the Act.~~

(2) The exemption under subparagraph (1) shall be subject to the following terms and conditions:

- (a) the existing instrument of loan or financing agreement has been duly stamped under item 22 or 27 of the First Schedule to the Act; and
- (b) the instrument of loan or financing agreement relating to the restructuring or rescheduling of a loan or financing does not contain the element of additional value to the original amount of loan or financing under the existing instrument of loan or financing agreement.

(2A) Any interest or profit accrued from the restructured or rescheduled payments does not constitute the element of additional value to the original amount of loan or financing under the existing instrument of loan or financing agreement.

(3) The application for exemption under subparagraph (1) shall be accompanied by a ~~letter of offer from the financial institution to the borrower or customer for~~ relevant document relating to the restructuring or rescheduling of that loan or financing.

Please refer to the respective Orders for the full details.

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14. Extension of stamp duty exemption relating to abandoned housing projects

The following two (2) Amendment Orders have been gazetted on 31 December 2020 to legislate the extension of Stamp Duty exemption relating to abandoned housing projects proposed in Budget 2021 [reported in Tax Espresso Special Edition – Highlights of Budget 2021 ([Part I](#))].

- **Stamp Duty (Exemption) (No. 5) 2013 (Amendment) Order 2020 [[P.U.\(A\) 395/2020](#)]**

The Amendment Order extends the exemption under the Stamp Duty (Exemption) (No. 5) Order 2013 [[P.U.\(A\) 91/2013](#)] by another 5 years, i.e. from 1 January 2021 to 31 December 2025 through the amendment of the [P.U.\(A\) 91/2013](#) in Paragraph 3 by substituting "2020" with "2025".

Paragraph 2 of the [P.U.\(A\) 91/2013](#) provides that the instruments executed by an original purchaser, that is a purchaser whose name is stated in the Sale And Purchase Agreement in relation to an abandoned project, or his beneficiary are exempted from Stamp Duty. The instruments are —

- (a) any loan instrument or loan agreement approved by the bank and financial institution for the purpose of financing the revived residential property in relation to the abandoned project; and
- (b) any instrument of transfer for the purpose of transferring the revived residential property in relation to the abandoned project.

- **Stamp Duty (Exemption) (No. 6) 2013 (Amendment) Order 2020 [P.U.(A) 396/2020]**

The Amendment Order extends the exemption under the Stamp Duty (Exemption) (No. 6) 2013 [P.U.(A) 92/2013] by another 5 years, i.e. from 1 January 2021 to 31 December 2025 through the amendment of the [P.U.\(A\) 92/2013](#) in Paragraph 3 by substituting "2020" with "2025".

Paragraph 2 of the [P.U.\(A\) 92/2013](#) provides that the instruments executed by a rescuing contractor or a developer, that is a contractor or a developer who is appointed or approved by the Minister of Housing and Local Government to carry on rehabilitation works for an abandoned project are exempted from Stamp Duty. The instruments are —

- any loan instrument or loan agreement approved by the bank and financial institution to finance the abandoned project; and
- any instrument of transfer for the purpose of transferring revived residential property in relation to the abandoned project.

Please refer to the respective Orders for the full details.

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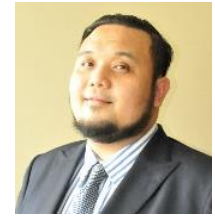
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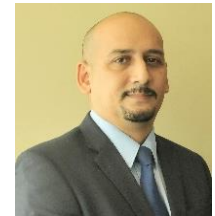
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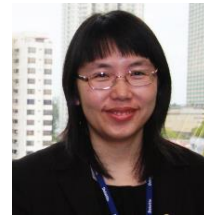
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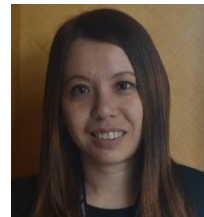
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