



Tax Espresso

Media Releases, DTA, Tax Cases and more
March 2023



Greetings from Deloitte Malaysia Tax Services

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Important deadlines:

Task	Deadline
	31 March 2023
1. 2024 tax estimates for companies with April year-end	√
2. 6 th month revision of tax estimates for companies with September year-end	√
3. 9 th month revision of tax estimates for companies with June year-end	√
4. Statutory filing of 2022 tax returns for companies with August year-end	√
5. Maintenance of transfer pricing documentation for companies with August year-end	√
6. 2023 CbCR notification for applicable entities with March year-end	√

1. HASiL media release - e-Filing services for Individual & Other than Individual Taxpayers for the YA 2022 starting from 1 March 2023

The Inland Revenue Board of Malaysia (HASiL) has announced via a [media release](#) (available in Bahasa Malaysia language only) dated 23 February 2023 that the Return Forms (RFs) BE, B, M, BT, MT, P, TF, TP, and E (i.e., individual & other than individual taxpayers) for the year of assessment (YA) 2022 can be submitted via e-Filing from 1 March 2023.

The e-Filing system can be accessed through HASiL's official portal at www.hasil.gov.my > [MyTax](#) > ezHasil Services > e-Filing or directly at [MyTax Portal](#). Tax agents, however, are encouraged to use [TAeF](#) for submission of the above-mentioned RFs.

Registered taxpayers who log in for the first time to the e-Filing facility need to first obtain a PIN through MyTax > Select Identification Type > Identification No. > submit and select e-KYC (mobile) or e-CP55D (portal).

Taxpayers are advised to refer to the [RF Filing Programme](#) for the year 2023 for more information on the deadline for the submission of the above-mentioned RFs and adhere to the stipulated deadline. Taxpayers can check their status of submission, refund process (if any), e-Ledger, and MTD via [MyTax](#).

Taxpayers are also advised to ensure that all relevant documents, such as financial statements, receipts, invoices, and other income tax related documents, are arranged and stored for a period of seven years, as required under Sections 82 and 82A of the Income Tax Act 1967 (ITA), to simplify the process of e-Filing and compliance review by HASiL in the future.

Please refer to the [media release](#) for more information.

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2. HASiL media release - The use of Form CKHT 502 via e-CKHT is mandatory for payments under Section 21B of the RPGT Act

HASiL has announced via a [media release](#) dated 16 February 2023 that it is mandatory to use Form CKHT 502 via e-CKHT on MyTax portal for payments under Section 21B of the Real Property Gains Tax Act 1976 (RPGT Act), following the implementation of Bill Number as a mandatory reference for the payment of all types of direct taxes (except monthly tax deductions and stamp duty) effective 1 January 2023.

[Note: The provision under Section 21B of the RPGT Act relates to the duty of an acquirer to retain and pay part of the consideration to HASiL within the 60-day timeframe.]

The Bill Number for payments under Section 21B of the RPGT Act can be generated through the following steps:

- 1) Log in to [MyTax](#) using the acquirer's Tax Identification Number (TIN) and password. An application can be submitted through the [e-Registration service](#) on MyTax if the acquirer does not have a TIN.
- 2) Select e-CKHT from the ezHASiL service menu.
- 3) Enter the TIN of the acquirer and select Form CKHT 502.
- 4) Fill in the required information and print the payment slip. The Bill Number will be displayed on the payment slip.

Payments can be made online or at the counters of HASiL payment centres. For payment at the counter, the acquirer needs to print the payment slip or download the required Bill Number by scanning the QR code displayed on the payment slip.

Please access this [link](#) for detailed information on the procedures for filling out Form CKHT 502 and making the payments under Section 21B of the RPGT Act via e-CKHT by acquirers or representatives of the acquirers.

Any questions and related feedback can be forwarded to HASiL via:

- a) HASiL Care Line at 03-8911 1000 / 603-8911 1100 (Overseas);
- b) HASiL Live Chat; and
- c) Feedback Form on the HASiL official portal at <https://maklumbalaspelanggan.hasil.gov.my/MaklumBalas/ms-my/>.

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3. HASiL's Guide and Flowchart for Submission of Form and Appendix for Payment of Withholding Tax under Section 107D

HASiL has uploaded the following Guide and Flowchart (*the Guide and Flowchart are published in Bahasa Malaysia language only*) on its website:

- **Guide for Submission of Form CP107D [Amendment 2/2022] and Appendix CP107D(2) [Amendment 1/2023] for the payment of 2% tax deduction on agents, dealers and distributors (ADD) under Section 107D of the ITA dated 13 January 2023 (Guide)**

This [Guide](#) explains the procedure for submission of [Form CP107D \[Amendment 2/2022\]](#) and [Appendix CP107D\(2\) \[Amendment 1/2023\]](#) that must be followed by the paying company.

- **Flowchart for Submission of Form, Appendix, and Payments under Section 107D of the ITA dated 13 January 2023 (Flowchart)**

This is a summary [flowchart](#) for the submission of Form [CP107D \[Amendment 2/2022\]](#), [Appendix CP107D\(2\) \[Amendment 1/2023\]](#), and payment for the 2% tax deduction on ADD under Section 107D.

The [Appendix CP107D\(2\) \[PIN.1/2023\]](#) in Excel version can be downloaded at HASiL's website:

HASiL website > Form > Download Forms > Other Forms > Select [Category: 3. Form CP107D] & [Year: Semua / All] > Appendix CP107D(2)[PIN.1/2023] (Format Excel)

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4. Double Taxation Relief (The Government of the Republic of Poland) Order 2014 [P.U.(A) 168/2014] – Entry into Force

Recently, HASiL made an announcement on its [website](#) that the Double Taxation Relief (The Government of the Republic of Poland) Order 2014 [\[P.U.\(A\) 168/2014\]](#) (new DTA), entered into force. The new DTA will supersede the double tax agreement (DTA) between Malaysia and Poland that was signed on 16 September 1977 with effect from 1 January 2024.

The dates of entry into force of the articles in the new DTA are set-out in the table below.

Article	Date of entry into force
Article 25 – Mutual Agreement Procedure	12 January 2023
Article 26 – Exchange of Information	12 January 2023
All other Articles	1 January 2024

Please refer to Poland in the HASiL's webpage on [DTA](#).

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5. KLSB v DGIR (SCIT)

HASiL has recently uploaded a case report, "[KLSB v DGIR \(SCIT\)](#)" on its website.

Facts:

The taxpayer appealed against the Notification of Non-Chargeability for the YA 2018 on the Director General of Inland Revenue's (DGIR) decision to disallow the taxpayer's claim for deduction in respect of the payment made to the Johor State Government amounting to RM70,200 under Section 33(1) of the ITA.

Issue:

Whether the payment made to the Johor State Government by the taxpayer for the release of bumiputera quota is deductible under Section 33(1) of the ITA.

Decision:

The Special Commissioners of Income Tax (SCIT) dismissed the taxpayer's appeal. The SCIT held that the expenses incurred by the taxpayer (i.e. payment made to the Johor State Government for the release of bumiputera quota) is not deductible under Section 33(1) of the ITA.

[Details of the above tax case at SCIT level is not available as of this date of publication.]

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6. WHSB v DGIR (SCIT)

Facts:

WHSB (the taxpayer) claimed tax exemption for its business of farming tiger prawns ("udang harimau") based on a letter issued by the Ministry of Agriculture Malaysia (MOA), in which the taxpayer was informed that the application for the incentives under Section 127 of the ITA to undertake an approved food production project was approved by the Ministry of Finance (MOF).

The taxpayer agreed that the farming incentive as stated in the MOA's letter was specifically for the "udang harimau" species. However, the taxpayer contended that the Department of Fisheries Sabah has approved the inclusion of white prawns ("udang putih") into the scope of the incentive due to the invasion of the white spot virus, which infected the "udang harimau" species. Further, the taxpayer claimed that both "udang putih" and "udang harimau" are from the same family known as "Penaeidae".

Besides, the taxpayer took the position that there was no provision under the ITA that required them to inform the DGIR on the change of prawn species. The taxpayer contended that they were only required to inform the DGIR when they obtained profit from the approved food production project. Furthermore, there was no legal requirement under the ITA that required the taxpayer to maintain two separate accounts to ascertain the chain of income from "udang harimau" and "udang putih" farming, respectively.

In response, the DGIR asserted that the farming incentive approval that was stated in the MOA's letter was limited and exclusive to "udang harimau" farming activities only. The DGIR further argued that the farming of "udang putih" does not fall under the approved food production project based on the MOA's letter. Therefore, the taxpayer was not entitled to the tax exemption pursuant to Section 127 of the ITA.

The DGIR also argued that the taxpayer failed to report the statutory income of "udang putih" farming, which was not tax exempt, and to prepare a separate account for the different prawn species, which resulted in the taxpayer making an incorrect return and giving incorrect information in its tax return. Thus, the DGIR had correctly and reasonably imposed a penalty pursuant to Section 113(2) of the ITA on the taxpayer.

Issue:

Whether the DGIR had correctly and reasonably imposed a penalty pursuant to Section 113(2) of the ITA on the taxpayer.

Decision:

In dismissing the taxpayer's appeal, the SCIT decided that the Notice of Additional Assessment raised on the taxpayer was reasonable and just. The SCIT ruled that the farming incentive exemption was exclusive to the farming of the "udang harimau" species only, and the DGIR was right in law and order to impose the penalty under Section 113(2) of the ITA.

[Details of the above tax case at SCIT level is not available as of date of publication.]

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7. MHHSB, SLSB, MTSB v DGIR (SCIT)

HASiL has recently uploaded a case report, "[MHHSB, SLSB, MTSB v DGIR \(SCIT\)](#)" on its website.

Facts:

MHHSB, SLSB, and MTSB (collectively known as the taxpayers) disposed of their shares in a real property company (RPC), known as MHSB, to F Berhad and submitted Form CKHT 1B to the DGIR. The DGIR raised the Notices of Assessment (the Assessments) via Form K for real property gains tax (RPGT) on the taxpayers. Subsequently, the taxpayers informed the DGIR that the Assessments raised were erroneous as certain costs such as the payments made for the non-tax allowable development expenditure and the cost of resting TNB high tension cables [collectively known as the said expenditures, in the Share Sale Agreement (SSA)] were not considered for deduction in determining the disposal price of the RPC shares, pursuant to Paragraph 34A(4) to Schedule 2 of the RPGT Act. The taxpayers argued that the amount or value of the consideration in money or money's worth for the disposal of the RPC shares by the taxpayers to F Berhad by virtue of Paragraph 34A(4) to Schedule 2 of the RPGT Act was wrongly computed by the DGIR.

In response, the DGIR asserted that MHSB is an RPC as its defined value of shares owned at the date of acquisition was 97% of the value of its total tangible assets, as provided under Paragraph 34A(6) to Schedule 2 of the RPGT Act. The DGIR further argued that pursuant to Paragraph 34A(4) to Schedule 2 of the RPGT Act, the disposal price of the chargeable asset is the amount or value of the consideration in money or money's worth for the disposal of the chargeable asset, and both the SSA and the Form CKHT 1B, as submitted by the taxpayers, had specified the total disposal price of shares. With that, the DGIR held that the taxpayers were not entitled to claim a deduction for the said expenditures. Additionally, there were also no columns provided in Form CKHT 1B that permit the taxpayers to claim for deduction for any payments or incidental costs incurred during the disposal of the RPC shares.

Issue:

Whether the Assessments raised by the DGIR on the taxpayers for the RPGT were reasonable and justified.

Decision:

The SCIT dismissed the taxpayer's appeal and held that the Assessments raised by the DGIR on the taxpayers for the RPGT were reasonable and justified. The SCIT ruled that the taxpayers were not entitled to claim a deduction for the said expenditures in determining the disposal price of the RPC shares pursuant to Paragraph 34A(4) to Schedule 2 of the RPGT Act.

[Details of the above tax case at SCIT level is not available as of date of publication.]

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8. SSB v DGIR (SCIT)

HASiL has recently uploaded a case report, "[SSB v DGIR \(SCIT\)](#)" on its website.

Issue:

Whether the expenses for feasibility studies (FS) incurred by the taxpayer (its principal activity involves generation, transmission, distribution and sale of electricity) for the purpose of exploring and developing hydroelectric sites and dams are deductible under Section 33(1) of the ITA.

Decision:

The SCIT dismissed the taxpayer's appeal. The SCIT agreed with the DGIR and ruled that the taxpayer's claim on the FS expenses for the purpose of exploring and developing hydroelectric sites and dams are capital in nature and therefore, not deductible under Section 33(1) of the ITA.

Note: The taxpayer has filed an appeal against the decision by the SCIT.

[Details of the above tax case at SCIT level is not available as of this date of publication.]

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9. COSB v DGIR (SCIT)

HASiL has recently uploaded a case report, "[COSB v DGIR \(SCIT\)](#)" on its website.

Facts:

COSB (the taxpayer) was involved in the contract manufacturing of camera lenses and was an assembler of digital cameras (Digital Division). The taxpayer acquired several assets as part of Digital Division and disposed of the assets within two years from the date of acquisition. The DGIR had raised Notices of Additional Assessment (the Assessments) for the YAs 2012 and 2013, in which the DGIR clawed back the capital allowance (CA) claimed by the taxpayer for the assets that were acquired and disposed of within two years without the DGIR's permission pursuant to Paragraph 71 of Schedule 3 to the ITA.

The taxpayer contended that the DGIR was wrong to disallow the taxpayer's claim for CA for the disposal of assets within two years. Although the DGIR has the discretion to withdraw any allowance and impose a balancing charge on an asset that was owned by the taxpayer for a period of less than two years (subject to certain exceptions) pursuant to Paragraph 71 of Schedule 3 to the ITA, the taxpayer opined that the disposal of assets was commercially justified. This was because the disposed assets were redundant due to the cessation of the taxpayer's Digital Division operation, and due to the specialised and bespoke nature of the said assets, the taxpayer was unable to utilise the said assets for another division within the company. The taxpayer had also relied on Public Ruling (PR) No. 4/2013 and PR No. 7/2017. It was further contended that there was no legal or factual basis for the DGIR to impose a penalty under Section 113(2) of the ITA and that the DGIR had failed to exercise his discretion on the imposition of a penalty.

In response, the DGIR asserted that Paragraph 71 of Schedule 3 to the ITA made it clear that the taxpayer must first seek permission from the DGIR before disposing of any assets acquired within two years for the CA not to be clawed back. Ordinary meaning must be given to Paragraph 71 of Schedule 3 to the ITA. The decision to cease operation of the Digital Division was made by the Head Office and not by the taxpayer. Despite the decision by the Head Office in 2012 to close the Digital Division, the taxpayer continued to purchase assets in 2012 and 2013. Therefore, the commercial justifications given by the taxpayer do not fall under the scope of appropriate reasons under Paragraph 71 of Schedule 3 to the ITA.

Issue:

Whether the Assessments for the YAs 2012 and 2013 raised by the DGIR on the taxpayer were reasonable and justified.

Decision:

The SCIT dismissed the taxpayer's appeal and held that the Assessments raised by the DGIR on the taxpayer were reasonable and justified. The SCIT ruled that the DGIR had properly exercised his discretion under Paragraph 71 of Schedule 3 to the ITA in disallowing the taxpayer's claim for CA on assets that were acquired as part of Digital Division and disposed of within two years. The taxpayer failed to dispute any facts put forward by the DGIR's witness in his testimony regarding commercial justification. Neither PRs referred to by the taxpayer were applicable in this case. The DGIR exercised its discretion on the penalty, and the taxpayer had not disputed it during the hearing.

[Details of the above tax case at SCIT level is not available as of date of publication.]

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10. Merimen Online Sdn Bhd v DGIR (HC)

HASiL has recently uploaded a case report, "[Merimen Online Sdn Bhd v DGIR \(HC\)](#)" on its website.

Facts:

The taxpayer has been granted Multimedia Super Corridor Malaysia (MSC) status with pioneer status for five years under Section 6(1AB) of the Promotion of Investment Act 1986 (PIA) effective from 31 July 2008 until 30 July 2013. The taxpayer has been in operation prior to the grant of the pioneer status. The pioneer status of the taxpayer has been extended for another 5 years until 30 July 2018. The taxpayer requested a ruling from the DGIR to confirm that the taxpayer's statutory income during the pioneer period is exempted from income tax pursuant to Section 21C of the PIA.

In reply, the DGIR clearly mentioned that Section 21C(2A) of the PIA is to be read together with the proviso of Section 21C(2) of the PIA as the difference between statutory income and value added income is subject to income tax. The SCIT dismissed the taxpayer's appeal. The taxpayer filed an appeal to the High Court (HC) against the SCIT's decision.

[Details of the tax case at SCIT level is not available as of date of publication.]

Issue:

Whether the taxpayer's exempted income shall be calculated in accordance with the formula defined under Section 21C(2A) of the PIA.

Decision:

The HC dismissed the taxpayer's appeal. The proviso to Section 21C(2) of the PIA only exempts the value-added income during the pioneer period as the taxpayer was already operating in Malaysia prior to the date of application for the pioneer status. Therefore, the calculation of the taxpayer's exempted income shall be calculated in accordance with the formula defined under Section 21C(2A) of the PIA and not 100% as alleged by the taxpayer.

[Details of the above tax case at HC level is not available as of date of publication.]

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11. PBL Land Berhad v DGIR (HC)

HASiL has recently uploaded a case report, "[PBL Land Berhad v DGIR \(HC\)](#)" on its website.

The taxpayer entered into a Tawarruq Financing Agreement (Facility Agreement) amounting to RM23,000,000 with Bank Islam Malaysia Berhad (Bank Islam). According to the Facility Agreement, the Taxpayer Guarantee Agreement requires a guarantor to pay Bank Islam on demand all monies due to the bank by the taxpayer.

The taxpayer submitted the Facility Agreement to the *Sistem Taksiran dan Pembayaran Duti Setem System* (STAMPS). Simultaneously, the taxpayer and Bank Islam applied for remission under the Stamp Duty (Remission) (No. 2) Order 2012 [P.U.(A) 258/2012]. The said application was rejected and the DGIR imposed an ad valorem duty instead.

Issue:

Whether the taxpayer has satisfied the two requirements for the claim of remission of stamp duty (i.e. the Loan Agreement is to be without security and the sum to be repayable on demand or in a single bullet payment).

Decision:

The HC dismissed the taxpayer's appeal and decided that the term "security" includes a guarantee. As such, the taxpayer is not entitled to claim for the remission of stamp duty.

[Details of the above tax case at HC level is not available as of date of publication.]

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12. Malaysia LNG Sdn Bhd v DGIR (HC)

HASiL has recently uploaded a case report, "[Malaysia LNG Sdn Bhd v DGIR \(HC\)](#)" on its website.

Facts:

The taxpayer is in the business of purchasing natural gas, liquefied natural gas, and the marketing of the liquefied natural gas all over the world.

The DGIR raised Notices of Assessment under Sections 4A(ii) and 109B(1)(b) of the ITA (*prior to the Finance Act 2018 amendment*) on the taxpayer for its failure to withhold tax for the payment of services rendered by Jamalco, Samsung, Bonny Gas, and Surveyors which were not tax residents.

The taxpayer contended that the payment to the non-residents for the said services should not be subjected to withholding tax (WHT) as the services do not constitute "*technical services*", but rather "*a liaison service*" and "*day-to-day routine services*" by referring to the case of *Esso Production Malaysia Inc v KPHDN (2003) MSTC 4,016* (EPMI case). The application of Sections 4A(ii) and 109B(1)(b) of the ITA (*prior to the Finance Act 2018 amendment*) were limited to "*technical services*" only.

While the DGIR asserted that the Court has laid down the principle in the EPMI case in reading Section 4A(ii) of the ITA (*prior to the Finance Act 2018 amendment*) where it includes "*technical and non-technical*" services. With the exclusion of the word "*technical*" from Section 4A(ii) of the ITA in year 2018, any services rendered, whether technical or non-technical, is inconsequential. The intention of Parliament in introducing Section 4A(ii) of the ITA is to cover both technical and non-technical service payments. Further, the DGIR argued that the payments made for the services rendered by the non-residents falls within the scope of Section 4A(ii) of the ITA and therefore, subject to WHT under Section 109B of the ITA.

Issue:

Whether the payment made for the services rendered by the non-residents falls within the scope of Section 4A(ii) of the ITA and therefore, subject to WHT under Section 109B of the ITA.

Decision:

The HC dismissed the taxpayer's appeal and upheld the decision of the SCIT.

[Details of the above tax case at both the SCIT and HC levels are not available as of date of publication.]

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We invite you to explore other tax-related information at:

<http://www2.deloitte.com/my/en/services/tax.html>

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Johor Bahru

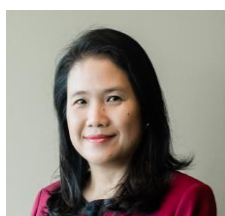
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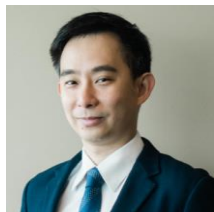
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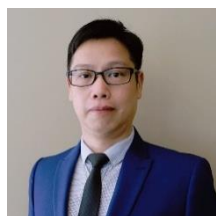
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