Deloitte.

Tax Espresso

Gazette Order, Guidelines, Media Releases, Tax Cases and more

February 2023

MAKING AN IMPACT THAT MATTERS since 1845

Greetings from Deloitte Malaysia Tax Services

Quick links:

Deloitte Malaysia
Inland Revenue Board of Malaysia

Takeaways:

1. Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022 [P.U.(A)398/2022]
2. Technical Guidelines on Tax Treatment of Interest Expenses or Profit payable to Bank / Financial Institutions during the moratorium period
3. Guidelines on Real Property Gains Tax
4. The IRBM's media release: Tax Identification Number (TIN) allowed as reference for the purpose of tax payments
5. The IRBM's media release: Implementation of the Use of Locked Bag/P.O. Box Address for Correspondences and Tax Notices to the IRBM Office in each state effective 1 January 2023
6. Ketua Pengarah Hasil Dalam Negeri v Tower Real Estate Investment Trust (HC)
7. Sime Darby Ara Damansara Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (HC)
8. Berjaya Golf & Resort Berhad v Ketua Pengarah Hasil Dalam Negeri (HC)
9. Havi Logistics (M) Sdn Bhd v Pemungut Duti Setem (HC)
10. Implementation of Malaysian Income Tax Reporting Systems (MITRS)
11. Tax Investigation Framework 2023
12. FAQ on Mutual Agreement Procedures (MAP)
13. Notification of changes in the TIN format for all categories of taxpayers except the Individual and Employer categories

Upcoming events:

1. Deloitte TaxMax – The 48th Series

Important deadlines:

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

1. Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022 [P.U.(A)398/2022]

P.U.(A) 398/2022 (the Rules) was gazetted on 28 December 2022 to legislate the proposed tax incentive for companies in the selected service sectors to relocate their operations to Malaysia and undertake new investments as announced in the National Budget 2021. The Rules are effective from the year of assessment (YA) 2021.

[Note: The Malaysian Investment Development Authority (MIDA) has earlier issued Guidelines and Procedures for the Application of Special Tax Incentive for Selected Services Activities under the National Economic Recovery Plan (PENJANA) (the Guidelines) stipulating the criteria and conditions to qualify for the incentive.]

The Rules shall apply to a qualifying company that undertakes a qualifying activity which applies in writing for the Relocation of Provision of Services Business Incentive Scheme (herein after referred to as the Scheme) to the Minister of Finance (the Minister) through the MIDA. Such application must be received on or after 7 November 2020, but not later than 31 December 2022.

Salient points

1) A qualifying company that undertakes a qualifying activity under the Scheme shall be subject to tax at the rate of up to 10% in the case of a new company, and a fixed rate of 10% in the case of an existing company, on its chargeable income, for a period of up to 10 consecutive YAs (i.e., specified YAs) commencing from the YA as determined by the Minister.

2) The qualifying activity as mentioned above refers to any of the following service activities undertaken by a qualifying company which adopts Industrial Revolution 4.0 and digitalisation technology:
   (a) provision of technology solution or technology company which develops technology and provides technology solution based on substantial scientific or engineering challenges;
   (b) provision of infrastructure and technology for cloud computing;
   (c) research and development or design and development activities;
   (d) medical devices testing laboratory and clinical trials; or
   (e) any service activity or manufacturing related service activity as determined by the Minister.

3) To qualify for the tax incentive as mentioned above, a qualifying company which applies for the Scheme shall comply with the conditions imposed by the Minister as specified in the approval letter and the Guidelines issued or as revised by the MIDA and approved by the Minister, which shall include the following conditions:
   (a) employ at least eighty per cent full-time Malaysian employees on or before the third year from the date of the first invoice in relation to the qualifying activity issued by the qualifying company, until the end of the specified YAs; and
   (b) incur an approved adequate amount of annual operating expenditure to carry on the qualifying activity, or an approved adequate investment in fixed assets to carry on the qualifying activity.

4) The Minister may, at any time, except where the qualifying company fails to comply with any conditions imposed in relation to the Scheme, allow the qualifying company to surrender the Scheme granted under the Rules by notice in writing to the Minister through the MIDA. Such surrendering of the Scheme shall come into effect on the first day of the basis period for the YA in which the application for surrender of the Scheme is received by the Minister through the MIDA.

5) The Rules shall not apply to a qualifying company which in the specified YAs:
   (a) has made a claim for reinvestment allowance under Schedule 7A to the Income Tax Act 1967 (ITA) or investment allowance for the service sector under Schedule 7B to the ITA;
   (b) has been granted any incentive under the Promotion of Investments Act 1986;
   (c) has been granted an exemption under Section 127(3)(b) or Section 127(3A) of the ITA;
   (d) has been approved by the Minister an incentive scheme under any rules made under Section 154 of the ITA; or
   (e) has made a claim for deduction under any rules made under Section 154 of the ITA except:
      i. the rules in relation to allowance under Schedule 3 to the ITA;
      ii. the Income Tax (Deduction for Audit Expenditure) Rules 2006 [P.U.(A) 129/2006]; or
      iii. the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [P.U.(A) 162/2020].

Relevant definitions

A "qualifying company" refers to a new company or an existing company which fulfills the eligibility condition imposed by the Minister under the ITA and the Rules.

A "new company" refers to a company:

- which is incorporated under the Companies Act 2016 and is a tax resident in Malaysia;
- which is established for the purpose of carrying on a qualifying activity under the Rules:
  - which does not have an existing entity or related entity in Malaysia prior to the above-mentioned application being made; or
  - which has an existing entity or related entity in Malaysia which has not carried on a qualifying activity in Malaysia prior to the above-mentioned application being made;
- which:
  - relocates its facility for the qualifying activity from outside Malaysia into Malaysia;
  - relocates a new qualifying activity into Malaysia which is different from the existing qualifying activity outside Malaysia; or
  - establish a new operation in Malaysia.

An "existing company" refers to a company which:

- is incorporated or registered under the Companies Act 2016 and is a tax resident in Malaysia; and
- is already operating in Malaysia and is carrying on a qualifying activity for a new business segment separated from the operation of the existing qualifying activity.

Please refer to the Rules for more details.

Back to top

2. Technical Guidelines on Tax Treatment of Interest Expenses or Profit payable to Bank / Financial Institutions during the moratorium period

On 28 December 2022, the Inland Revenue Board of Malaysia (IRBM) issued the Technical Guidelines (hereinafter referred to as the Guidelines) on Tax Treatment of Interest Expenses/Profit payable (collectively known as interest expenses) to banks or financial institutions (FIs) during the moratorium period on its website (*available in Bahasa Malaysia only*).

Background

The moratorium was one of the Government's assistance measures introduced under the PRIHATIN Economic Stimulus Package (PRIHATIN), in which a deferment or temporary suspension of loan/financing repayment obligations (i.e., principal and interest) were granted to individuals, small and medium enterprises (SMEs), and companies other than SMEs between 1 April 2020 to 30 September 2020 (the moratorium period), by banks or FIs, without the imposition of penalty charges for late payment (subject to meeting the specified eligibility criteria). The aim of the moratorium was to assist borrowers who were facing financial constraints and challenges during the height of the COVID-19 pandemic. Loan/financing repayment obligations were expected to be payable after the moratorium period was over (i.e., 1 October 2020 onwards). The moratorium was implemented automatically for individuals and SMEs, while companies other than SMEs were required to apply for the moratorium from the relevant banks or FIs.

With that, the IRBM issued the Guidelines to provide a detailed explanation (with illustrations) on the tax treatment of interest expenses that were deferred during the moratorium period, to individuals, SMEs, and companies other than SMEs, which have a source of business income or non-business income (e.g. rental income) where the loan is utilised.

Prior to the Guidelines, the IRBM provided clarification to taxpayers on the tax treatment of interest expenses during the moratorium period via the Frequently Asked Questions (FAQ) on Special Tax Treatment to Financial Institutions in relation to Moratorium Granted to Customer.

Salient points

1. Borrowers who were eligible for the deferment or the temporary suspension of loan/financing repayment obligations during the moratorium period to banks or FIs without the imposition of penalty charges for late payment were as follows:
   (a) individuals;
   (b) SMEs (as defined by SME Corporation Malaysia); and
   (c) companies other than SMEs.

2. The deferment or the temporary suspension of loan repayment obligations under the moratorium period was granted to all types of loan/financing, including credit card facilities (for companies other than SMEs only), provided the following conditions were met:
   (a) the loan/financing must be denominated in Ringgit Malaysia;
   (b) the loan/financing were not in arrears for more than 90 days as of 1 April 2020;
   (c) there were outstanding balances as of 1 April 2020; and
   (d) the loans were given moratorium by the banks or FIs from 1 April 2020 to 30 September 2020.

3. According to Section 33(4) of the ITA and Paragraph 4.3 of Public Ruling (PR) No. 9/2015, a deduction can be claimed for interest expenses under Section 33(1)(a) of the ITA at the time the amount of interest expense is due to be paid or when the liability to pay exists on the date it is due, and not at the time the amount of interest expense is accrued and payable. This means that if the interest expenses were not paid by the borrower on the date the interest expenses were supposed to be paid, the expenses can still be claimed as a deduction in arriving at the adjusted income in the YA the interest expenses were accrued.

4. Paragraph 3.1 of PR No. 4/2020 describes a "debt" as a debt in a liquidated sum, whether it is due or due and payable. The date, or the payment period for the interest expenses under the moratorium period becomes due or due to be paid was based on the loan/financing agreement still in force then. Therefore, the interest expenses that were deferred during the moratorium period shall be allowed as a deduction in arriving at the taxpayer's adjusted income in the basis period for that YA in which the amount of interest expenses was due to be paid.

5. The IRBM may conduct an audit review to ensure that the interest expenses deducted shall be the same as the amount of interest expenses accrued during the moratorium period. With that, taxpayers should ensure that proper records of all transactions involving income and expenses are retained for at least seven years from the date the return forms have been submitted to the IRBM, so that they are able to provide such records to the IRBM in the event of a tax audit or upon request (the record retention period as required by the ITA is seven years, while the time bar for assessment of tax is five years for general cases, and seven years for cases involving related-party transactions).

Please refer to the Guidelines for full details and illustrative examples for guidance.

Back to top

3. Guidelines on Real Property Gains Tax

The IRBM issued the Guidelines on Real Property Gains Tax (RPGT) dated 6 January 2023 (herein after referred to as the Guidelines) on its website (*available in Bahasa Malaysia only*).

The objective of the Guidelines is to provide clarification to taxpayers on the scope of imposition, calculation of RPGT, exemption, and the responsibilities of the disposer and the acquirer when disposing chargeable assets in Malaysia, incorporating all amendments made to the RPGT Act 1976 up to the Finance Act 2021.

The information in the Guidelines on RPGT dated 13 June 2018 or the Guidelines on RPGT dated 18 June 2013 (whichever applicable) still applies based on the provisions of the RPGT Act 1976 that are in force on the date of disposal of a chargeable asset.

Please refer to the Guidelines for full details and illustrative examples for guidance.

Back to top

4. The IRBM's media release: Tax Identification Number (TIN) allowed as reference for the purpose of tax payments

The IRBM has issued a media release on 13 January 2023 (*available in Bahasa Malaysia only*) to inform on the decision to allow taxpayers to have the option to choose either TIN, or Bill Number as a reference for the purpose of paying tax to the IRBM. The decision was made to resolve the issues faced by taxpayers in paying taxes following the introduction of the Bill Number, which was supposed to be used as a mandatory reference for the payment of all types of direct taxes, except for payment of monthly tax deductions and stamp duty, effective 1 January 2023.

In addition to the above, the IRBM has also agreed to allow for an extension of time until 20 January 2023 for the payment of all types of taxes except for the payment of monthly tax deductions and stamp duty. There will be no increase on tax imposed on taxpayers for the delay in tax payments during the extension period.

Any questions and feedback can be forwarded to the IRBM via:
(a) HASiL Care Line at 03-8911 1000 / 603-8911 1100 (Overseas);
(b) E-mail to byrhasil@hasil.gov.my;
(c) HASiL Live Chat; and
(d) Feedback Form on the HASiL official portal at: https://maklumbalaspelanggan.hasil.gov.my/MaklumBalas/ms-my/.

Back to top

5. The IRBM's media release: Implementation of the Use of Locked Bag/P.O. Box Address for Correspondences and Tax Notices to the IRBM Office in each state effective 1 January 2023

The IRBM has issued a media release on 20 December 2022 (*available in Bahasa Malaysia only*) to inform taxpayers that, effective 1 January 2023, all correspondences and tax notices to the IRBM office in each state shall be delivered to the respective Locked Bag/P.O. Box address (Beg Berkunci/Karung Berkunci).

This new approach was implemented to facilitate taxpayers' affairs and promote a systematic management of the tax administration. There will only be one address to be used for all the IRBM branch offices in each state.

Please refer to the media release for details of the IRBM's Locked Bag/P.O. Box address of each state.

Back to top

6. Ketua Pengarah Hasil Dalam Negeri v Tower Real Estate Investment Trust (HC)

This was an appeal by the Director General of Inland Revenue (DGIR) against the decision of the Special Commissioners of Income Tax (SCIT) in allowing the taxpayer's appeal against the notices of assessment and additional assessment issued by the DGIR for the YA 2014 which arose from the disposal of assets by the taxpayer.

Issues:

- Whether the applicable RPGT rate on the disposal of assets by the taxpayer should be based on Part I or Part II of Schedule 5 of the RPGT Act 1976 for the YA 2014.

- Whether the notices of assessment and additional assessment for YA 2014 were wrongly issued against the taxpayer when they ought to have been issued to AmTrustee Berhad under the RPGT Act 1976.

Decision:

The High Court (HC) dismissed the DGIR's appeal based on the following grounds of judgement:

- The taxpayer was a real estate investment trust (REIT) and was formed and regulated under the provisions of the *Capital Markets and Services Act 2007* (CMSA) and the guidelines on REIT issued by the Securities Commission (SC). It was a trust of which the trustee was AmTrustee Berhad and GLM REIT Management Sdn Bhd (GLM REIT Management) acted as the management company of the taxpayer. Therefore, it was clear that the taxpayer was not a

company within the meaning of the Companies Act 1965 and was not registered with the Companies Commission of Malaysia.

- Under Sections 288(1) and 289(1) of the CMSA, the taxpayer must be constituted with a trustee and a management company approved by the SC. Thus, a REIT was a unit trust scheme which could not stand on its own. As a REIT, the taxpayer could not exist independently without a trustee, a management company and beneficiaries (unitholders). The DGIR had recognised that a REIT was not a "company" in Paragraph 4 of PR 2/2015.

- The SCIT had correctly held that the taxpayer was not a company, and therefore, the applicable rate should be based on Part I of Schedule 5 of the RPGT Act 1976.

- The SCIT was also correct in finding that the DGIR did not regard a REIT as a company because the DGIR had assigned a different tax file number to a REIT and to a company. Therefore, the DGIR did not have any basis to subject the taxpayer to the RPGT rate under Part II of Schedule 5 of the RPGT Act 1976.

- Section 6, Paragraph 8 of Schedule 1 and Paragraph 35(1) of Schedule 2 of the RPGT Act 1976 stipulated that when trust assets were sold, the person rightfully chargeable to tax was the trustee. Therefore, the SCIT was right when it quashed both the assessments issued to the taxpayer holding that the assessments should have been issued in the name of the trustee, i.e. AmTrustee Berhad.

***Note**: Section 26 of the Finance Act 2019 amended Part II of Schedule 5 of the RPGT Act 1976 to include the expression "a trustee of a trust" with effect from 1 January 2020. Prior to 1 January 2020, Part II of Schedule 5 of the RPGT Act 1976 had no applicability to the trustee of a trust.*

Back to top

7. Sime Darby Ara Damansara Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (HC)

This was an appeal by the taxpayer by way of a case stated against the deciding order of the SCIT. The SCIT by majority had ruled that the taxpayer did not qualify for the relief under Section 131 of the ITA of error or mistake for the YA 2010 regarding the gains arising from the compensation paid by the Government for the compulsory acquisitions of the taxpayer's lands.

Issue:

Whether the taxpayer was qualified for the relief under Section 131(1) of the ITA for the YA 2010 regarding the gains arising from the compensation paid for the compulsory acquisitions of the lands.

Decision:

The HC allowed the taxpayer's appeal based on the following grounds of judgement:

- The DGIR failed to prove that in the YA 2010 there was a general prevailing practice to subject gains arising from compulsory acquisition of land to income tax, and the taxpayer's tax return for the YA 2010 was in fact made in accordance with that generally prevailing practice, and not in reliance of anything else.

- The SCIT did not make any finding of fact relating to the existence of any "practice of the Director General generally prevailing" relating to compulsory acquisitions at the time when the taxpayer's tax return for the YA 2010 was filed.

- The Decision Impact Statement (DIS) merely contained the DGIR's view based on the case of *Ketua Pengarah Hasil Dalam Negeri v Penang Realty Sdn Bhd and another appeal*, and not the practice of the DGIR. The DGIR did not have the power to issue the DIS under the ITA. The ITA only empowered the DGIR to issue Public Rulings under Section 138A of the ITA. The DIS was therefore illegal and invalid in law.

- Section 4C that was introduced into the ITA which took effect for YA 2014 onwards clearly illustrated that the position taken by the DGIR in the DIS was a mistake. The amendment was fatal to the DGIR's case. It was clear from the language of Section 4C of the ITA, that the DGIR had codified its own failed view as the position for future YAs.

- The majority SCIT had erred in finding that the taxpayer should have filed the appeal forms when they had earlier made a finding of fact that the appeal forms were not in question because the taxpayer believed that its decision to follow the DIS was correct and that the DGIR's view in the DIS was a mistake.

Back to top

8. Berjaya Golf & Resort Berhad v Ketua Pengarah Hasil Dalam Negeri (HC)

This was an appeal filed by the taxpayer against the decision of the SCIT by way of case stated. The SCIT had unanimously disallowed the taxpayer's appeal against the DGIR's decision to disallow the taxpayer's claim for relief under Section 131(1) of the ITA.

Issue:

Whether the taxpayer could claim the excess of the surrendered loss of Berjaya Air Sdn Bhd (BASB) under Sections 44A and 131(1) of the ITA.

Decision:

The HC allowed the taxpayer's appeal based on the following grounds of judgement:

- The findings made by the SCIT were erroneous whereby the SCIT had misinterpreted and misapplied Section 44A of the ITA without considering the operation of the other provisions in the ITA.

- The taxpayer had demonstrated that there was a mistake on its part arising from the audit by the DGIR on Berjaya Land Berhad (BLB) and had to seek for relief from an error or mistake under Section 131(1) of the ITA to revise the adjusted loss claimed from RM1,684,688.00 to RM12,360,338.00.

- The purpose of Section 44A of the ITA was to enable a company with excess losses which it had no use for itself to pass such losses to its sister companies. Thus, the elections made by BASB, BLB, and the taxpayer were consistent with the wordings of Section 44A(5)(a) of the ITA which stipulated that the amount of adjusted loss surrendered by BASB must be fully deducted to BLB as the first claimant company before any excess of the adjusted loss was surrendered and deducted to the taxpayer as the second claimant company.

- Although the irrevocable part under Section 44A(2)(a)(iv) of the ITA related to surrender of losses which could not be revoked, the taxpayer was not revoking its surrender of losses but was only revising the amount. BASB, BLB and the taxpayer could not have made an irrevocable election as to the specific amount to be surrendered to the claimant companies on the premise that the amount surrendered was solely governed by Section 44A(5) of the ITA, where BLB as the first claimant company should fully utilise the allocated losses and the taxpayer as the second claimant company was only entitled to the excess.

- Section 44A(2)(a)(iv) of the ITA relied on by the SCIT and the DGIR could not be read in isolation. It has to be read together with Section 44A(5)(a) of the ITA on the premise that they formed an integral portion of the operation of the other. Section 44A(5)(a) of the ITA dictated the way losses were to be allocated.

- There was nothing in Section 131 of the ITA that precluded the applicability of the provision and the possibility of relief for errors or mistakes relating to group relief situations. If parliament were to preclude the applicability of Section 131(1) to Section 44A of the ITA, parliament would have done so.

Back to top

9. Havi Logistics (M) Sdn Bhd v Pemungut Duti Setem (HC)

This was an appeal by way of case stated filed by the duty payer under Section 39 of the Stamp Act 1949 (SA) for a declaration that the Notice of Stamp Duty Assessment dated 15 March 2020 (the Assessment) issued by the Collector of Stamp Duty (Collector) was erroneous, null, and void.

Issue:

Whether the Asset Purchase Agreement (the Agreement) was to be assessed under Item 4 or Item 32, First Schedule of the SA.

Decision:

The HC allowed the duty payer's appeal based on the following grounds of judgement:

- Based on the Agreement, the fact that goodwill was not part of the "Acquired Assets" and that there was no landed property involved, the business contract between Martin-Brower Malaysia Co. Sdn Bhd (MB Malaysia) and the duty payer did not involve transfer of properties or interest legally or equitably between the two parties. As such, the Agreement cannot be said to be an instrument which falls within the purview of Section 21 and Item 32, First Schedule of the SA. Ad valorem duty can only be imposed when a property is legally or equitably transferred by an instrument.

- The argument of the Collector that there was an element of business transfer as the Agreement showed not only the transfer of assets, but contain liabilities that will be assumed by the duty payer, as misconceived. A plain reading of Section 21 of the SA does not state about liability. It merely states "sale of any equitable estate or interest in any property". The Collector failed to produce any authorities to support that Section 21 of the SA extend to acquisition of liabilities.

- The burden of proof rests strictly on the Collector to prove that the Agreement should be assessed under Item 32, First Schedule of the SA. There is judicial dicta that failure to provide reasons may lead to the inference that there were no good reasons for the decisions made by the public authorities as decided by the Court of Appeal in *Uniqlo (Malaysia) Sdn Bhd v Ketua Pengarah Kastam dan Eksais (Appeal No. W-01(A)-423-11/2017)*.

- The Agreement was a mere written contract for the purchase of business between the duty payer and MB Malaysia and the consideration paid by the duty payer was for the list of assets stated in the Agreement. The Agreement clearly stipulated that the goodwill of MB Malaysia's business in Malaysia was excluded from the transaction and that MB Malaysia remains in business in Malaysia. The Agreement was not a sham arrangement. Nowhere can it be shown that the valuation of the assets purchased by the duty payer was inflated.

- On a plain reading of Item 4, First Schedule of the SA, the duty payer has fulfilled all the requirements stipulated thereunder. The Agreement clearly fell within the ambit of Item 4, First Schedule of the SA. Therefore, the stamp duty on the Agreement should be assessed under the same Item.

Back to top

10. Implementation of Malaysian Income Tax Reporting Systems (MITRS)

The IRBM informed the professional bodies via its letter dated 28 September 2020 that the MITRS would be implemented in stages from 1 September 2020 onwards beginning with companies that are under tax audit or tax investigation.

The IRBM has subsequently informed the professional bodies via its letter dated 16 January 2023 that the MITRS implementation has been expanded to include categories other than companies such as cooperative societies (CS), individuals with business income (IG), partnerships (D), and associations (F), effective 9 January 2023.

Besides, the IRBM's letter dated 16 January 2023 also provides information on the following:
(a) A list of financial statements and audit supporting documents that can be uploaded into the MITRS:

Bil.	Kategori Fail	Format Fail	Saiz Fail
1.	Akaun Beraudit	• Excel file (* . xls / *.xlsx); • PDF file (* . pdf); • Database file (* . dbf, * . mdb / * . accdb / *.accdr); dan • Text file (* . txt / * .csv / *.prn)	15 Megabyte (MB) bagi setiap tahun taksiran
2.	Pengiraan Cukai Pendapatan		
3.	Elaun Modal		
4.	Data Perakaunan		
5.	Lain-lain		

Nota:

Sekiranya saiz penghantaran fail melebihi 15 MB, dokumen tersebut boleh dimuat naik melalui Hasil Onedrive dengan menghubungi pegawai audit LHDNM yang berkenaan.

(b) Access to the MITRS by individuals and tax agents:

Bil.	Kategori	Pautan	Tahun Taksiran
1	Individu	*https://mytax.hasil.gov.my* > Perkhidmatan ezHasil > MITRS	Tahun Taksiran 2015 dan tahun taksiran yang seterusnya
2	Ejen Cukai	*https://mytax.hasil.gov.my* > Perkhidmatan ezHasil > TAeF > MITRS	

(c) Please refer to the links here for further information, enquiries, and issues on the implementation of the MITRS and for technical ICT MITRS issues.

The benefits of the MITRS to taxpayers are as follows:

- It facilitates the submission of documents to IRBM electronically
- It avoids computation errors and delays in submitting documents to the IRBM
- Save costs
- Provides effective management of documents

Back to top

11. Tax Investigation Framework 2023

The IRBM issued the Tax Investigation Framework dated 1 January 2023 (2023 Framework) on its website (*available in Bahasa Malaysia only*). The 2023 Framework is effective from 1 January 2023 and replaces the Tax Investigation Framework dated 1 January 2020 (2020 Framework).

The 2023 Framework amends the 2020 Framework in the following paragraphs:

(a) Paragraph 2 – Legal Provisions

- **Paragraph 2.1.20** of the 2020 Framework has been renumbered as paragraph 2.1.21 in the 2023 Framework.
- **Paragraph 2.1.20** was added to the 2023 Framework to include Section 112(1A) of the ITA under the legal provisions that are applicable to tax investigations.

(b) Paragraph 6 – Selection of Cases

- **Paragraph 6.1 to 6.5** of the 2020 Framework has been renumbered as paragraph 6.1.1 to 6.1.5 in the 2023 Framework.
- **Paragraph 6.2** was added to the 2023 Framework to clarify that the IRBM's focus in selecting the cases for tax investigation may involve cases that fail to report income on purpose, and cases with fraudulent claims.

(c) Paragraph 7 – Investigation Procedures

- **Paragraph 7.1** of the 2020 Framework, which previously stated that the IRBM may visit taxpayers' business premises with a written notification given prior to the visit and investigation can be carried out by issuing letters requesting for documents and information from the taxpayer, tax agent, and third party, as well as taxpayers may be required to only give information and oral explanations at the IRBM offices, was removed in the 2023 Framework.

- **Paragraph 7.2** of the 2020 Framework has been updated and renumbered as paragraph 7.1 in the 2023 Framework. New paragraph 7.1.11 has been added to clarify that taxpayers and persons concerned may be summoned by the IRBM officers to record statements. The statements can be recorded in taxpayers' business premises, taxpayers' residential house, tax agents' premises, and in the IRBM's office.

- **Paragraph 7.4** of the 2020 Framework has been renumbered as paragraph 7.3 in the 2023 Framework. New paragraph 7.3.2 has been added to clarify that tax agents can be present when recording statements from persons related to the case being investigated.

- **Paragraph 7.4** has been added to the 2023 Framework to explain that taxpayer may be prosecuted if there is evidence that an offence has been committed in accordance with the provisions of the relevant act. Taxpayers that fail to appear in court proceedings after summons have been handed over, may result in an arrest warrant being issued.

(d) Paragraph 8 – Rights and Responsibilities

- **Paragraph 8.1.3** has been added to the 2023 Framework to disallow taxpayers from making payments directly to the IRBM officers. All payments arising from tax evasion shall be made in the name of the DGIR.

- **Paragraph 8.2.7** has been added to the 2023 Framework to allow taxpayers, tax agents, or witnesses to take their own notes during interviews or when recording statements.

- **Paragraph 8.2.8.4** of the 2020 Framework has been updated in the 2023 Framework to include a list of offences under Section 116 of the ITA "obstruction of officers" that are liable to a fine of not less than RM1,000 and not more than RM10,000, or to imprisonment for a term not exceeding one year, or to both.

- **Paragraph 8.3.2** of the 2020 Framework has been renumbered as paragraph 8.3.3 in the 2023 Framework.

- **Paragraph 8.3.2** was added to the 2023 Framework to clarify that the term "tax agent" refers to anyone appointed by the taxpayer throughout the investigation process.

(e) Paragraph 9 – Confidentiality of Information

- **Paragraph 9** of the 2020 Framework has been updated to clarify that the IRBM will ensure that all information obtained from the taxpayer during the search, interview, witness testimony, discussion, correspondence, or review of records is confidential and used for taxation purposes only.

(f) Paragraph 11 – Case Settlement

- **Paragraph 11** of the 2020 Framework, which previously provided clarification on "payment procedures," has been updated to provide clarification on "case settlement" in the 2023 Framework.

Please refer to the 2023 Framework for full details.

Back to top

12. FAQ on Mutual Agreement Procedures (MAP)

Further to the issuance of Guidelines on MAP on 19 December 2017, which provide guidance to taxpayers on obtaining assistance from the Malaysian Competent Authority (CA) to interact with CAs of Treaty Partners to resolve taxation not in accordance with the provisions of the Double Tax Agreement (Tax Treaty), the IRBM has since issued the FAQ on MAP to provide further clarification to taxpayers with regards to the request for a MAP.

Salient points

- The time limit to request for a MAP depends on the specific period mentioned in the MAP article of a particular Tax Treaty under which the MAP is invoked. Generally, under Malaysia's Tax Treaty, the time limit is three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Tax Treaty.

- The request for a MAP must be made formally in writing and addressed to both the CA in the Tax Division of the Ministry of Finance and the Department of International Taxation of the IRBM. (Please refer to these contact details for the addresses of the respective CAs.)

- A MAP request must indicate at least an Article in the relevant Tax Treaty between Malaysia and the Treaty Partner. The taxpayer must establish reasons for eliminating elements of double taxation that arise in relation to MAP issues. The taxpayer needs to show that an element of double taxation is probable, not just possible, to arise related to the MAP issues.

- Examples of taxation not in accordance with a Tax Treaty that may warrant a request for assistance to the Malaysian CA include, but are not limited to:
  - Transfer pricing adjustments
  - Resident status
  - Withholding tax
  - Permanent establishment
  - Characterisation or reclassification of income (e.g. certain business transaction was reclassified as royalty during a tax audit according to the domestic provisions resulting in double taxation).

- If a taxpayer is unsatisfied with the outcome of the MAP arrived at by the respective CAs, the taxpayer has the full authority to reject it. In such a case, the CAs will consider the case closed. The CAs will advise the taxpayer accordingly, and the taxpayer may continue to proceed with the domestic appeal. If the other redress mechanism (appeal or court decision) does not reverse the adjustment in its entirety, double taxation may remain.

- If a taxpayer withdraws the MAP request at any point prior to reaching the MAP outcome, the case will be considered closed. The taxpayer will be barred from submitting another MAP request on the same issue for the same YA.

- If the outcome of the implementation of MAP affects subsequent YAs, the taxpayer needs to submit an amended tax return for the respective YAs to the relevant IRBM branch. The subsequent years' amendments are not automatically updated or revised if no request is received from the taxpayer concerned.

Please refer to the FAQ on MAP for full details and illustrative examples for guidance.

Back to top

13. Notification of changes in the TIN format for all categories of taxpayers except the Individual and Employer categories

The IRBM informed the professional bodies via its letter dated 5 January 2023 that the the TIN format for all categories of taxpayers except for individual and employer categories has been changed as follows:

No.	Category	Example of TIN Format
1.	Individual and Employer	IG 50000000XX0 E 96000000XX **Remark:** The format remains

2.	Company, Non-Company, and Non-Individual	Old Format: C 50000000XX D 20000000XX New Format: C 50000000XX**0** D 20000000XX**0** **Remark:** Addition of the number "0" at the end of the TIN

The TIN format changes are **effective from 1 January 2023**.

Back to top

We invite you to explore other tax-related information at:
http://www2.deloitte.com/my/en/services/tax.html

Tax Team - Contact Us

Service lines / Names	Designation	E-mail	Telephone
Business Tax Compliance & Advisory			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
Tan Hooi Beng	Deputy Managing Director	hooitan@deloitte.com	+603 7610 8843
Choy Mei Won	Executive Director	mwchoy@deloitte.com	+603 7610 8842
Suzanna Kavita	Director	sukavita@deloitte.com	+603 7610 8437
Business Process Solutions			
Julie Tan	Executive Director	jultan@deloitte.com	+603 7610 8847
Eugene Chow Jan Liang	Executive Director	euchow@deloitte.com	+605 254 0288
Shareena Martin	Director	sbmartin@deloitte.com	+603 7610 8925
Capital Allowances Study			
Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Sumaisarah Abdul Sukor	Associate Director	sabdulsukor@deloitte.com	+603 7610 8331
Deloitte Private			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862
Chan Ee Lin	Director	eelchan@deloitte.com	+604 218 9888
Kei Ooi	Director	soooi@deloitte.com	+603 7610 8395
Global Employer Services			
Ang Weina	Executive Director	angweina@deloitte.com	+603 7610 8841
Chee Ying Cheng	Executive Director	yichee@deloitte.com	+603 7610 8827
Michelle Lai	Director	michlai@deloitte.com	+603 7610 8846
Tan Keat Meng	Director	keatmeng@deloitte.com	+603 7610 8767
Global Investment and Innovation Incentives (Gi3)			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878
Indirect Tax			
Tan Eng Yew	Executive Director	etan@deloitte.com	+603 7610 8870
Senthuran Elalingam	Executive Director	selalingam@deloitte.com	+603 7610 8879
Chandran TS Ramasamy	Director	ctsramasamy@deloitte.com	+603 7610 8873

Larry James Sta Maria	Director	lstamaria@deloitte.com	+603 7610 8636
Wong Poh Geng	Director	powong@deloitte.com	+603 7610 8834
Nicholas Lee Pak Wei	Director	nichlee@deloitte.com	+603 7610 8361
International Tax & Value Chain Alignment			
Tan Hooi Beng	Deputy Managing Director	hooitan@deloitte.com	+603 7610 8843
Kelvin Yee Rung Hua	Director	keyee@deloitte.com	+603 7610 8621
Mergers & Acquisitions			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
Tax Audit & Investigation			
Chow Kuo Seng	Executive Director	kuchow@deloitte.com	+603 7610 8836
Mohd Fariz Mohd Faruk	Executive Director	mmohdfaruk@deloitte.com	+603 7610 8153
Wong Yu Sann	Director	yuwong@deloitte.com	+603 7610 8176
Tax Technology Consulting			
Senthuran Elalingam	Executive Director	selalingam@deloitte.com	+603 7610 8879
Cheong Mun Loong	Director	mucheong@deloitte.com	+603 7610 7652
Transfer Pricing			
Subhabrata Dasgupta	Executive Director	sudasgupta@deloitte.com	+603 7610 8376
Philip Yeoh	Executive Director	phyeoh@deloitte.com	+603 7610 7375
Gagan Deep Nagpal	Executive Director	gnagpal@deloitte.com	+603 7610 8876
Vrushang Sheth	Executive Director	vsheth@deloitte.com	+603 7610 8534
Tan Wei Chuan	Executive Director	wctan@deloitte.com	+604 218 9888
Anil Kumar Gupta	Director	anilkgupta@deloitte.com	+603 7610 8224
Shilpa Srichand	Director	ssrichand@deloitte.com	+603 7664 4358

Sectors / Names	Designation	E-mail	Telephone
Automotive			
Choy Mei Won	Executive Director	mwchoy@deloitte.com	+603 7610 8842
Consumer Products			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849

Financial Services			
Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Mohd Fariz Mohd Faruk	Executive Director	mmohdfaruk@deloitte.com	+603 7610 8153
Oil & Gas			
Toh Hong Peir	Executive Director	htoh@deloitte.com	+603 7610 8808
Real Estate			
Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Gan Sin Reei	Director	sregan@deloitte.com	+603 7610 8166
Telecommunications			
Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878

Other Specialist Groups / Names	Designation	E-mail	Telephone
Chinese Services Group			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Japanese Services Group			
Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Korean Services Group			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862

Branches / Names	Designation	E-mail	Telephone
Penang			
Ng Lan Kheng	Executive Director	lkng@deloitte.com	+604 218 9268
Tan Wei Chuan	Executive Director	wctan@deloitte.com	+604 218 9888
Au Yeong Pui Nee	Director	pnauyeong@deloitte.com	+604 218 9888
Monica Liew	Director	monicaliew@deloitte.com	+604 218 9888
Ipoh			
Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Eugene Chow Jan Liang	Executive Director	euchow@deloitte.com	+605 254 0288
Lam Weng Keat	Director	welam@deloitte.com	+605 253 4828
Patricia Lau	Director	palau@deloitte.com	+605 254 0288

Melaka			
Julie Tan	Executive Director	jultan@deloitte.com	+603 7610 8847

Johor Bahru			
Thean Szu Ping	Executive Director	spthean@deloitte.com	+607 268 0988
Caslin Ng Yuet Foong	Director	caslinng@deloitte.com	+607 268 0850
Catherine Kok Nyet Yean	Director	nykok@deloitte.com	+607 268 0882

Kuching			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Philip Lim Su Sing	Director	suslim@deloitte.com	+608 246 3311
Chai Suk Phin	Director	spchai@deloitte.com	+608 246 3311

Kota Kinabalu			
Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Leong Sing Yee	Assistant Manager	sleong@deloitte.com	+608 823 9601

Sim Kwang Gek

Tan Hooi Beng

Choy Mei Won

Julie Tan

Eugene Chow Jan Liang

Chia Swee How

Chee Pei Pei

Ang Weina

Chee Ying Cheng

Tham Lih Jiun

Thin Siew Chi

Tan Eng Yew

Senthuran Elalingam

Chow Kuo Seng

Mohd Fariz Mohd Faruk

Subhabrata Dasgupta

Philip Yeoh

Gagan Deep Nagpal

Vrushang Sheth

Tan Wei Chuan

Mark Chan

Toh Hong Peir

Ng Lan Kheng

Thean Szu Ping

Suzanna Kavita

Shareena Martin

Michelle Lai

Tan Keat Meng

Chandran TS Ramasamy

Larry James Sta Maria

Wong Poh Geng

Nicholas Lee Pak Wei

Kelvin Yee Rung Hua

Chan Ee Lin

Kei Ooi

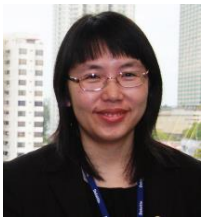
Wong Yu Sann

Cheong Mun Loong

Anil Kumar Gupta

Shilpa Srichand

Gan Sin Reei



Au Yeong Pui Nee

Monica Liew

Lam Weng Keat

Patricia Lau

Caslin Ng Yuet Foong

Catherine Kok Nyet Yean

Philip Lim Su Sing

Chai Suk Phin

Sumaisarah Abdul Sukor

Leong Sing Yee