



## Tax Espresso

HASiL Media Releases, Gazette Orders, Tax Cases, and more  
July 2023



# Greetings from Deloitte Malaysia Tax Services

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## Important deadlines:

| Task   | Deadline     |               |
|--|--------------|---------------|
|  | 31 July 2023 | 1 August 2023 |
| 1. 2024 tax estimates for companies with August year-end                               |              | √             |
| 2. 6 <sup>th</sup> month revision of tax estimates for companies with January year-end | √            |               |
| 3. 9 <sup>th</sup> month revision of tax estimates for companies with October year-end | √            |               |
| 4. Statutory filing of 2022 tax returns for companies with December year-end           | √            |               |
| 5. Maintenance of transfer pricing documentation for companies with December year-end  | √            |               |
| 6. 2023 CbCR notification for applicable entities with July year-end                   | √            |               |

## 1. HASiL Announcement - Adoption of new tax rates to calculate the Monthly Tax Deduction effective from 1 June 2023

The Inland Revenue Board of Malaysia (HASiL) [announced](#) the adoption of new tax rates to calculate the Monthly Tax Deduction (MTD) effective from 1 June 2023 on its website. The announcement made by HASiL is in line with the changes to the income tax rate for resident individuals via Section 16(a) of the [Finance Act 2023](#), which was gazetted on 31 May 2023, and is accompanied by the release of the following documents:

- [Amendment to: Specification for MTD Calculations Using Computerised Calculation for 2023 \(updated 1 June 2023\)](#);
- [Questions for MTD Calculation Using Computerised Calculation Method 2023](#);
- [Form PCB/TP1 \(1/2023\)](#) – Individual Deduction and Rebate Claim Form for the Purpose of MTD and [Explanatory Notes on Form TP1](#) [Bahasa Malaysia (BM) version only]; and
- [Form PCB/TP3 \(1/2023\)](#) – Information Form Related to Employment with Previous Employers in the Current Year for the Purpose of MTD and [Explanatory Notes on Form TP3](#) [Bahasa Malaysia (BM) version only].

Please refer to the [HASiL announcement](#) and the corresponding documents for full details.

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## 2. HASiL Media Release - Cessation of accepting cheques and money orders/postal orders as instruments of payment to HASiL

HASiL issued a [media release](#) dated 12 June 2023 (in BM) on its website to inform that it will cease to accept cheques and money orders/postal orders (MOPO) as instruments of payment for direct tax payments at all HASiL Revenue Management Centres, Stamp Duty Payment Counters, banks, and post offices, which are HASiL payment collection agents.

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

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## 3. HASiL Media Release - Termination of fax machines from 1 July 2023

HASiL announced via a [media release](#) on 20 June 2023 that the use of fax machines will be terminated from 1 July 2023 at all HASiL premises nationwide. Moving forward, email will be the preferred medium of communication and dissemination of information.

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

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## 4. HASiL updated the Minimum Transfer Pricing Documentation Template

HASiL has updated the [minimum transfer pricing documentation \(TPD\) template](#) and released the corresponding [explanatory notes](#).

The template is only for taxpayers who fall outside the scope of Paragraph 1.3.1 of the Malaysian Transfer Pricing Guidelines. This template serves as a guide for taxpayers who are required to prepare a minimum contemporaneous TPD. Taxpayers may opt to prepare their own minimum TPD, provided that it meets the guidelines' requirements.

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## 5. Stamp Duty (Exemption) (No. 11) 2021 (Amendment) Order 2023 [P.U.(A) 141/2023]

[P.U.\(A\) 141/2023](#) (the Amendment Order) was gazetted on 2 May 2023, it is deemed to have come into effect on 1 January 2023, with retroactive effect from that date. The Amendment Order legislates the extension of the stamp duty exemption provided under the Stamp Duty (Exemption) (No. 11) Order 2021 [[P.U. \(A\) 367/2021](#)] by another 2 years, as announced in the National Budget 2023.

Paragraph 2(1) of P.U.(A) 367/2021 initially granted 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 that was executed between 1 July 2021 and 31 December 2021 (both dates inclusive), provided that the terms and conditions under Paragraph 2(2) of P.U.(A) 367/2021 were fulfilled. Subsequently, through the gazette of the Stamp Duty (Exemption) (No. 11) 2021 (Amendment) Order 2021 [[P.U.\(A\) 439/2021](#)], the stamp duty exemption as mentioned was extended until 31 December 2022.

The Amendment Order now extends the stamp duty exemption to include 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 that is executed between 1 January 2023 and 31 December 2024 (both dates inclusive), provided that the terms and conditions under Paragraph 2(2) of P.U.(A) 367/2021 are fulfilled.

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

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## 6. Stamp Duty (Exemption) Order 2023 [P.U.(A) 176/2023] and Stamp Duty (Exemption) (No. 2) Order 2023 [P.U.(A) 177/2023]

Following the proposal in the National Budget 2023, [P.U.\(A\) 176/2023](#) and [P.U.\(A\) 177/2023](#) (the Exemption Orders) were gazetted on 9 June 2023 to legislate the stamp duty exemption for first-time home buyers and were deemed to have come into effect on 1 June 2022.

P.U.(A) 176/2023 exempts stamp duty on any loan agreement to finance the purchase of a residential property through the Malaysian Home Ownership Initiative (i-Miliki) under the Home Ownership Programme 2022/2023, the value of which is not more than RM500,000, executed between an individual named in a sale and purchase agreement (SPA) and persons listed in Paragraph 2(1)(a)-(i) of the Order.

P.U.(A) 177/2023 exempts stamp duty on all instruments of transfer for the purchase of a residential property through i-Miliki under the Home Ownership Programme 2022/2023, the value of which is not more than RM500,000, executed by an individual.

The stamp duty exemption under P.U.(A) 176/2023 and P.U.(A) 177/2023 shall only apply to SPA between an individual and a property developer, is executed on or after 1 June 2022, not later than 31 December 2023, and is duly stamped not later than 31 January 2024.

Please refer to the respective Exemption Orders for full details.

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## 7. Stamp Duty (Exemption) (No. 3) Order 2023 [P.U.(A) 178/2023]

Following the proposal in the National Budget 2023, [P.U.\(A\) 178/2023](#) (the Order) was gazetted on 9 June 2023 to legislate the stamp duty exemption for the transfer of property between family members by way of love and affection and was deemed to have come into effect on 1 April 2023.

The Minister exempts the stamp duty on all instruments of transfer of any immovable property operating as a voluntary disposition *inter vivos* from the specified donor to the specified recipient as listed in the Schedule of the Order i.e., between parents and children or grandparents and grandchildren.

The stamp duty exemption shall be limited to the stamp duty that should be imposed for the first RM1 million or less of the value of the immovable property and 50% of the stamp duty that is chargeable on the portion of the value of the immovable property in excess of RM1 million.

The stamp duty exemption shall only apply if the instrument of transfer of immovable property is executed on or after 1 April 2023 and the recipient is a Malaysian citizen.

The value of the immovable property shall be based on market value.

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

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## 8. Stamp Duty (Remission) Order 2023 [P.U.(A) 179/2023] and Stamp Duty (Remission) (No. 2) Order 2023 [P.U.(A) 180/2023]

Following the proposal in the National Budget 2023, [P.U.\(A\) 179/2023](#) and [P.U.\(A\) 180/2023](#) (the Remission Orders) were gazetted on 9 June 2023 to legislate the stamp duty remission for first-time home buyers. The Remission Orders were deemed to have come into operation on 1 June 2022.

### Salient points

- Pursuant to P.U.(A) 179/2023, the Minister remits 75% of the stamp duty chargeable on any loan agreement to finance the purchase of a residential property valued between RM500,001 and RM1,000,000 through i-Miliki under the Home Ownership Programme 2022/2023, which is executed between an individual named in an SPA and:
  - (a) a licenced bank under the Financial Services Act 2013;
  - (b) a licenced Islamic bank under the Islamic Financial Services Act 2013;
  - (c) a development financial institution prescribed under the Development Financial Institutions Act 2002;
  - (d) a co-operative society registered under the Co-operative Societies Act 1993;
  - (e) any employer who provides an employee housing loan scheme;
  - (f) Borneo Housing Mortgage Finance Berhad incorporated under the Companies Act 2016;
  - (g) Mutiara Mortgage and Credit Sdn Bhd incorporated under the Companies Act 2016;
  - (h) a licenced insurer authorised to provide a housing loan under the Financial Services Act 2013; or
  - (i) a licenced takaful operator authorised to provide an Islamic housing loan under the Islamic Financial Services Act 2013.
- Pursuant to P.U.(A) 180/2023, the Minister remits 75% of the stamp duty chargeable on any instrument of transfer executed by an individual for the purchase of a residential property valued between RM500,001 and RM1,000,000 (i.e. based on market value) through i-Miliki under the Home Ownership Programme 2022/2023.
- The above-mentioned remission under P.U.(A) 179/2023 and P.U.(A) 180/2023 shall only apply if:
  - (a) the SPA for the purchase of the residential property is entered between an individual and a property developer;
  - (b) the purchase price reflected in the SPA is upon discounting at least 10% of the original price offered by the property developer as approved in the Advertising and Sales Permit under the Housing Development (Control and Licensing) Act 1966, Housing Development (Control and Licensing) Enactment 1978 [Sabah] or Housing Development (Control and Licensing) Ordinance 2013 Sarawak, except for a residential property that is subject to controlled pricing;
  - (c) the SPA for the purchase of the residential property is executed between 1 June 2022 and 31 December 2023 (both dates inclusive) and is duly stamped not later than 31 January 2024; and
  - (d) the individual has never owned any residential property, including residential property obtained by way of inheritance or gift (held either individually or jointly).
- The application for the 75% stamp duty remission under P.U.(A) 179/2023 and P.U.(A) 180/2023 mentioned above shall be accompanied by the following statutory declaration in accordance with the Statutory Declarations Act 1960:
  - (a) the property developer confirming that the discount of at least 10% has been granted on the original price offered by the property developer as approved in the Advertising and Sales Permit under the Housing Development (Control and Licensing) Act 1966, Housing Development (Control and Licensing) Enactment 1978 [Sabah] or Housing Development (Control and Licensing) Ordinance 2013 Sarawak, except for a residential property that is subject to controlled pricing; and

- (b) the individual confirming that the individual has never owned any residential property, including a residential property that is obtained by way of inheritance or gift (held either individually or jointly).

### **Relevant definitions**

The term "residential property" refers to a house, a condominium unit, an apartment, or a flat, purchased or obtained solely to be used as a dwelling house, and includes a service apartment and small office home office (SOHO) for which the property developer has obtained approval for a Housing Developers' License and Advertising and Sales Permit under the Housing Development (Control and Licensing) Act 1966, Housing Development (Control and Licensing) Enactment 1978 [Sabah], or Housing Development (Control and Licensing) Ordinance 2013 Sarawak.

An "individual" refers to a purchaser of a residential property who is a Malaysian citizen or co-purchasers of a residential property who are Malaysian citizens.

Please refer to the respective Remission Orders for full details.

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## **9. Astro Malaysia Holdings Bhd v Menteri Kewangan Malaysia (HC) [(2023) MSTC 30-603]**

This was an application for leave for judicial review under Order 53 of the Rules of Court 2012 (ROC). The taxpayer had sought for an order for the Minister of Finance (the Minister) to exercise his power under Sections 135 or 127(3A) of the Income Tax Act 1967 (ITA) to set aside or exempt the taxes raised against the taxpayer by the Inland Revenue Board of Malaysia under a notice of additional assessment for the year of assessment (YA) 2016 and notices of assessment for the YA 2017 and YA 2018.

### **Issue:**

Whether the taxpayer's application for leave for judicial review was frivolous.

### **Decision:**

The High Court (HC) allowed the taxpayer's application based on the following grounds:

- In *Council of Civil Service Unions v Minister for Civil Service [1984] 3 All ER 935 HL*, it was held that for a decision to be susceptible to the court's reviewing powers, there must first be a decision by a decision-maker or a refusal by him to make a decision.
- The Minister was at liberty to refuse to agree to the taxpayer's urgent request to exercise his/her power under the ITA in the taxpayer's favour within a specific time frame. The Minister might refuse to give directions to the Director General of Inland Revenue (DGIR) and to exempt the taxpayer from any ITA provisions. If the Minister refused, there had to be reasonable grounds for doing so. However, failure to decide in the urgent time frame would amount to an omission within the meaning of Order 53 Rule 2(4) of the ROC.
- Faced with a possible civil action in the event of non-payment of the notices of assessment and additional assessment under Sections 103 and 106 of the ITA, the taxpayer was adversely affected by the non-decision or omission of the Minister.
- The right of appeal to the Special Commissioners of Income Tax (SCIT) under Section 99 of the ITA was limited to decisions made by the DGIR in the issuance of the notices of assessment and additional assessment. The taxpayer's judicial review application was not about the DGIR's decision per se, it was about challenging the Minister's non-decision. Therefore, the exercise of power under Sections 127(3A) or 135 of the ITA did not fall under the jurisdiction of the SCIT.
- The statutory power given to the Minister to give directions to the DGIR, as long as they're consistent with the ITA, should not be construed as a policy consideration. The Minister's power, as provided in the ITA, was a statutory power and is not based on government policies. It might be discretionary, but a mandamus order could be issued to private or municipal corporations or its officers to enforce a specific duty or act required by law. Therefore, the Minister's exercise of power was amenable to judicial review.

- The Minister’s contention that Sections 127(3A) and 135 of the ITA were not designed to empower the Minister to set aside the notices of assessment and additional assessment raised by the DGIR, and the question of whether the maxim of *generalia specialibus non derogant* applied, were issues that should be ventilated at the substantive stage. The court should not go into the merits of the case at the leave stage and its role was only to see if the application for leave was frivolous.

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## 10. Ophir Quarry Sdn Bhd v Director General of Inland Revenue (HC)

HASiL has recently uploaded a case report, “[Ophir Quarry Sdn Bhd v Director General of Inland Revenue \(HC\)](#)” on its website.

### Facts:

The taxpayer appealed against the decision of the SCIT on 30 November 2017 by way of Case Stated dated 29 April 2020. At the SCIT’s stage, the taxpayer filed an appeal vide PKCP(R) No. 122/2013 (hereinafter referred to as the First Appeal) against the Notice of Additional Assessment (Form JA) issued by the DGIR for the YA 2009 on the issue of capital allowance. The taxpayer and the DGIR had then entered into a settlement agreement dated 13 January 2015 (the said agreement) before the SCIT, and the Deciding Order was issued consequently.

Pursuant to the said agreement, the DGIR issued the Notice of Reduced Assessment (Form JR) for the YA 2009. Dissatisfied with the Form JR, the taxpayer filed another appeal, which was registered as PKCP (R) No 277/2016 (hereinafter referred to as the Second Appeal), claiming that the said agreement, in which both parties had entered into, was incorrect. The DGIR raised a preliminary objection on the validity of the Second Appeal and contended that the Form JR was issued based on the said agreement, which was in accordance with Section 102(5)(a) of the ITA. Due to that, the Form JR was not appealable. The SCIT then upheld the DGIR’s preliminary objection and consequently dismissed the Second Appeal. Dissatisfied with the SCIT’s decision on the Second Appeal, the taxpayer appealed to the HC.

The taxpayer contended that the dismissal of the Second Appeal by the SCIT was merely based on the preliminary objection raised by the DGIR without considering the merits of the appeal. The Form JR raised was a mistake by both parties as it included an item that was not supposed to be included. The DGIR’s argument that a dispute is resolved when parties sign an agreement pursuant to Section 102(5)(a) of the ITA was erroneous, ultra vires, and a breach of jurisdiction. The taxpayer further asserted that it was not prohibited from filing another appeal against the Form JR, as Section 99 of the ITA indicates that the taxpayer was at liberty to file an appeal. The DGIR cannot deny the taxpayer’s legal rights to appeal as it is on the issuance of the Form JR. Additionally, the taxpayer claimed that nothing in the ITA prohibits the taxpayer from appealing against the Form JR issued by the DGIR, and the taxpayer is only prohibited from appealing against the previous additional assessment or the Deciding Order.

The DGIR responded by asserting that the said agreement was made in accordance with Section 102(5)(a) of the ITA, which rules that the said agreement shall have effect as if it was an agreement under Section 101(2) of the ITA. The DGIR also stated that the appeal to which the said agreement relates to before the SCIT shall be abated according to Section 102(7) of the ITA. Additionally, the Deciding Order issued by the SCIT on 13 January 2015 was final, conclusive, and therefore not appealable. With that, the Form JR issued by the DGIR pursuant to the said agreement was valid, final, and conclusive by virtue of Section 97(1)(b) of the ITA.

### Issue:

Whether the DGIR was right in issuing the Form JR against the taxpayer for the YA 2009.

### Decision:

The HC dismissed the taxpayer’s appeal with costs 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 the date of publication.]*

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## 11. CMSB v Director General of Inland Revenue (SCIT)

HASiL has recently uploaded a case report, "[CMSB v Director General of Inland Revenue \(SCIT\)](#)" on its website.

### Facts:

The taxpayer is principally engaged in the business of constructing dams and other related ancillary works and is a wholly owned subsidiary of CIWE, a corporation incorporated in the People's Republic of China. The DGIR conducted a tax investigation on the taxpayer for the YAs 2012 to 2018. After a series of correspondence, the DGIR issued the Notice of Assessment for the YA 2018 against the taxpayer and disallowed the taxpayer's claim under Section 33(1) of the ITA in relation to the total accumulated management fee paid to CIWE between the YAs 2012 to 2018 for the construction of the "Mengkuang" Dam Project and the "Mak Sulong" Pump House Project (collectively referred to as the Projects). The DGIR also imposed a penalty on the taxpayer under Section 113(2) of the ITA.

The taxpayer contended that the management fee was wholly and exclusively incurred for the completion of the Projects, which produced income for the taxpayer. Pursuant to the two Management and Consultancy Service Agreements entered with CIWE on 17 June 2011 and 16 April 2015 respectively, the taxpayer was required to pay 5% of the Projects' contract value to CIWE as a management fee to complete the Projects.

The DGIR asserted that the taxpayer had appointed two subcontractors to complete the Projects. For the "Mengkuang" Dam project, the subcontractor received 90% of the contract value, and the taxpayer received the remaining 10%. For the "Mak Sulong" project, the subcontractor received 95% of the contract value, and CIWE received the remaining 5%. Additionally, the taxpayer's role was limited to supervising and providing on-site management and supervisory services (i.e. management service provider). The DGIR contended that an expenditure can only be allowed as a deduction under Section 33(1) of the ITA if the expense can be matched with the function of the taxpayer in line with Paragraph 11.5 of Public Ruling No. 2/2009.

The DGIR also argued that the taxpayer should not make a claim based on the overall value of the contract but on the taxpayer's function as a management service provider, in which the income was generated through the contract. Therefore, the expenditure claimed by the taxpayer in relation to the management fee is not wholly and exclusively incurred in producing the taxpayer's income.

### Issues:

- Whether the DGIR was right in issuing the Notice of Assessment against the taxpayer for the YA 2018; and
- Whether the DGIR was right in law and facts in imposing a penalty under Section 113(2) of the ITA on the taxpayer.

### Decision:

In dismissing the taxpayer's appeal, the Special Commissioners of Income Tax (SCIT) held that the taxpayer had failed to prove its case under Paragraph 13 of Schedule 5 to the ITA, and the DGIR was right in law to issue the Notice of Assessment for the YA 2018 on the taxpayer. On the issue of penalty, the SCIT ruled that the DGIR was right in law and facts in imposing a penalty under Section 113(2) of the ITA on the taxpayer as the taxpayer had submitted incorrect returns and given incorrect information, affecting its own chargeability to tax.

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

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## 12. KPSB v Director General of Inland Revenue (SCIT)

HASiL has recently uploaded a case report, "[KPSB v Director General of Inland Revenue \(SCIT\)](#)" on its website.

### Facts:

The taxpayer is an investment holding company. In 1994, the taxpayer acquired a piece of land in Kuala Lumpur (the Land) from an individual owner. Prior to the disposal of the Land to the taxpayer, the individual owner of the Land had made an application to the Federal Territories Director of Lands and Mines Office to change the category of land use from general cultivation to residential buildings as well as to split the lot. The application process was only completed in year 2001.

In 2013, the taxpayer disposed of the Land to a related company, i.e. ABC Sdn Bhd, which encompass 12 lots of land with individual land grants. The DGIR raised an additional assessment for the YA 2014 in which the gain on the said disposal was subjected to income tax under Section 4(a) of the ITA.

The taxpayer argued that the gain on the disposal of the Land should be subject to tax under the Real Property Gains Tax Act 1976 (RPGT Act) on the basis that the acquisition of the Land was for investment purposes in line with the company's resolution. Additionally, the Land had always been classified as a non-current asset in the taxpayer's audited accounts. During the period of holding the Land for more than 19 years, the taxpayer had never done any modifications to the Land, other than changing the category of land use and splitting the lot, which were made by the previous individual owner of the Land.

The DGIR also argued that the taxpayer had the intention to trade the Land at the time of acquisition in 1994, considering that at that point in time, the taxpayer had knowledge of the individual owner's application to change the category of land use as well as to split the lot. The location of the Land (i.e., in the middle of Kuala Lumpur city) had also increased its commercial value even though the disposal of the Land was between two related companies.

### Issue:

Whether the gain on the disposal of the Land should be subjected to income tax under Section 4(a) of the ITA or real property gains tax (RPGT) under the RPGT Act.

### Decision:

The SCIT allowed the taxpayer's appeal and decided that the gain on the disposal of the Land should be subjected to RPGT under the RPGT Act.

*[Details of the above tax case at the SCIT level is 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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### Mergers & Acquisitions

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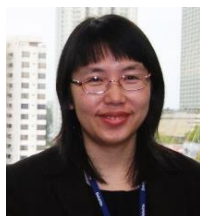
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