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HASiL Media Release, Gazette Order, Public Rulings, Tax Cases and more

November 2023

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Greetings from Deloitte Malaysia Tax Services

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Important deadlines:

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

1. HASiL Media Release – Encouraging the use of e-WHT for WHT payment

The Inland Revenue Board of Malaysia (HASiL) has issued a media release dated 30 August 2023, to encourage taxpayers to use electronic withholding tax (e-WHT) for withholding tax (WHT) payment.

To facilitate the payment of WHT, HASiL has introduced e-WHT form as of January 2023. The e-WHT is one of the e-taxation services that is mandatory to be used online by taxpayers in stages with effect from 1 September 2023.

Taxpayers shall use Bill Number as payment reference when making WHT payments through e-WHT, which can be made through the FPX method at the HASiL Payment Portal (i.e. ByrHASiL) or can be accessed via the MyTax Portal. The e-WHT enables proof of receipt of payment to be issued directly and data to be received directly by HASiL as soon as payment is made.

Taxpayers who wish to make WHT payments through e-WHT would need to access the system by first logging in using their MyTax identification number and subsequently clicking ezHasil Services > e-WHT. A Bill Number will be generated automatically after the form is successfully submitted online with the complete information.

Please refer to the Media Release for more information.

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2. Income Tax (Exemption) (No. 20) 2007 (Amendment) Order 2023 [P.U.(A) 304/2023]

P.U.(A) 304/2023 (the Amendment Order) was gazetted on 9 October 2023. The Amendment Order, which amends the Income Tax (Exemption) (No. 20) Order 2007 [P.U.(A) 418/2007], is deemed to have come into operation from the year of assessment (YA) 2021, except for paragraphs 2, 3, and 5(a), which are deemed to have come into operation from the YA 2007, and paragraphs 5(b) and 5(c), which are deemed to have come into operation on 1 January 2021.

P.U.(A) 418/2007 was previously amended by the Income Tax (Exemption) (No. 20) 2007 (Amendment) Order 2018 [P.U.(A) 382/2018].

Salient points

1) The Amendment Order amends P.U.(A) 418/2007 in the Schedule to expand the scope of tax exemption for Iskandar Development Region (IDR) status companies by covering the following qualifying activities under the respective sectors:

Sector	Qualifying activities
Healthcare and related services	Wellness and assisted living
Digital business and services	Emerging digital technologies

The above amendment is effective retrospectively from 1 January 2021.

2) The Amendment Order also stipulates a new timeline for the non-application rule under paragraph 7 of P.U.(A) 418/2007. With retrospective effect from the YA 2021, P.U.(A) 418/2007 shall not apply to an IDR-status company that commences its qualifying activity in an approved node after 31 December 2024 [previously 31 December 2020 extended by P.U.(A) 382/2018].

Please refer to the Amendment Order, P.U.(A) 382/2018, and P.U.(A) 418/2007 for full details.

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3. Public Ruling No. 1/2023: Taxation of Income from Employment on Board a Ship

HASiL has issued Public Ruling (PR) No. 1/2023 (dated 3 October 2023) to replace PR No. 12/2016 (dated 9 December 2016). The objective of this PR is to explain the tax treatment of income of an individual derived from an employment exercised on board a ship.

The updates and amendments to PR No. 12/2016 are listed in Paragraph 10 of PR No. 1/2023. The significant changes are briefly summarised below:

1) **Paragraph 3.8** in PR No. 12/2016 which is in relation to the interpretation of the term "*international voyage*" has been removed.

2) Addition of **Paragraph 4.1.1** as reproduced below:

   Seagoing ship is not defined in the Income Tax Act 1967 (ITA). For the purpose of this PR, ***a seagoing ship refers to any vessel which sails beyond the port limit. This is in line with the definition of "seagoing ship" under the Merchant Shipping Ordinance (MSO) 1952. Port limit varies depending on each port's bylaws and is controlled by the respective port authority. A seagoing ship is engaged in voyages for the transportation of passengers and cargo.*** *The ship could take many months to reach its destination and may make port calls during its voyage to replenish supplies, fuel, and others.*

3) Addition of **Paragraph 4.1.2** as reproduced below:

   Therefore, a ship sailing in Malaysian waters that does not sail beyond the port limit is not considered as a seagoing ship.

4) Addition of Examples 1 and 2 in **Paragraph 4.1.3**.

Please refer to the PR No. 1/2023 for full details.

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4. Public Ruling No. 2/2023: Tax Incentive for Investment in BioNexus Status Company

HASiL recently issued the PR No. 2/2023 (dated 4 October 2023), which replaces PR No. 10/2018 (dated 4 December 2018) and should be read together with PR No. 1/2020 on Tax Incentives for BioNexus Status Companies. The objective of this PR is to explain the tax incentives offered to an investor who has invested in a BioNexus status company in Malaysia.

The contents of the new PR are broadly the same as the earlier PR No. 10/2018, The main updates and amendments to PR No. 10/2018 are made in **Paragraph 5(c)** and **Paragaraph 6.2(a)** to reflect the extension of the tax incentive under the Income Tax (Deduction for Investment in a Bionexus Status Company) Rules 2016 [P.U.(A) 306/2016] for another 2 years, from 1 January 2021 to 31 December 2022. The extension was legislated through the gazette of the Income Tax (Deduction for Investment in a BioNexus Status Company) (Amendment) Rules 2022 [P.U.(A) 212/2022].

Both the updated paragraphs clarify that an investor (a company or an individual) may qualify for a deduction in the basis period for a YA on the amount of investment made in a BioNexus status company as approved by the Minister of Finance (the Minister) from 1 January 2021 to 31 December 2022. However, the investor will only be qualified for the deduction if the investor submits the application to make an investment in a BioNexus status company to the Minister through the Malaysia Bioeconomy Corporation Sdn Bhd for approval on or after 1 January 2021, but not later than 31 December 2022.

Please refer to PR No. 2/2023, PR No. 10/2018, P.U.(A) 212/2022 and P.U.(A) 306/2016 respectively for full details.

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5. Impressive Edge Sdn Bhd v Director General of Inland Revenue (HC)

HASiL has recently uploaded a case report, "Impressive Edge Sdn Bhd v DGIR (HC)" on its website.

Facts:

The taxpayer is involved in the manufacturing of engineering spare parts, mold parts, dye parts, and precision tools.

Previously, the taxpayer operated at the factory premise located at Kawasan Perindustrian Ringan Batu Berendam, Melaka (Old Factory) and had claimed reinvestment allowance (RA) on the said factory under Schedule 7A of the ITA since 1996.

In the YA 2006, the taxpayer moved to a new factory building located at No. 12A, Jalan TTC 29, Taman Teknologi Cheng, 75250 Melaka (New Factory). The taxpayer claimed RA in the said YA on the New Factory. Between the YAs 2006 to 2008, the taxpayer incurred capital expenditures on computers, iron frame cabinets and tooling equipment (Disputed Items) and had claimed RA thereon under Schedule 7A of the ITA.

Upon audit, the taxpayer was informed by the Director General of Inland Revenue (DGIR) via letters dated 11 November 2015 and 7 December 2015, that the taxpayer is only entitled to claim RA on the difference between the size area of the taxpayer's New Factory and Old Factory. The claim of RA on the Disputed Items was disallowed by the DGIR on the basis that the Disputed Items were not used directly in the taxpayer's production activity.

It is the taxpayer's contention that:

- The Notices of Non-Chargeability and the assessments for YAs 2006 to 2010 are time-barred pursuant to Section 91(1) of the ITA.
- The taxpayer has fulfilled all the requirements and is entitled to RA under Schedule 7A of the ITA.
- There are no reasons to justify the imposition of penalty under Section 113(2) of the ITA.

In response, the DGIR argued that:

- RA claimed by the taxpayer for an amount of RM5,139,369 for the YA 2006 under Schedule 7A of the ITA is not allowed in full for the New Factory since the taxpayer has been given an allowance under Paragraph 1 of Schedule 7A on the Old Factory which was first claimed by the taxpayer in YA 1998 [*Note: Effective YA 1998, incentive period for RA claim is 15 consecutive YAs from the first YA of claim by a company*] for all consecutive years until YA 2005. Only the difference in factory area not given RA claim yet is allowed pursuant to Paragraph 8(a), Schedule 7A of the ITA. The word 'expanding its business' means addition to an existing one.
- The taxpayer failed to fulfil Paragraph 8(a), Schedule 7A of the ITA as the Disputed Items incurred in YAs 2006 to 2009 (i.e., computers and iron frame cabinets) were not used in the manufacturing process. Similarly, the microscope and block gauge were also not eligible for RA as these were replacement items. Those claims were subject to the proviso of Paragraph 1, Schedule 7A of the ITA.
- The taxpayer is also negligent in preparing and submitting its tax returns and the exception under Section 91(3)(b) of the ITA is applicable.

Issue:

Whether the taxpayer is eligible to claim RA on the entire New Factory and the Disputed Items under Schedule 7A of the ITA.

Decision:

The High Court (HC) allowed the taxpayer's appeal with no order as to costs and overturned the decision of the Special Commissioners of Income Tax (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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6. SCPASB v Director General of Inland Revenue (SCIT)

HASiL has recently uploaded a case report, "SCPASB v DGIR (SCIT)" on its website.

Facts:

The taxpayer is involved in a business as car park operator and owns eight (8) multistory car parks located in Selangor and Kuala Lumpur which were acquired by the taxpayer in 2013 until 2016. Since the date of acquisition in 2013, the taxpayer had rented out seven (7) of the multi-storey car parks to a third party and had reported its rental income under Section 4(d) of the ITA. Effective from 2016 and upon the rental agreements' expiry, the taxpayer began its business as a car park operator.

The taxpayer had, on two (2) occasions, wrote to the DGIR with the objective of obtaining verification of its eligibility to claim capital allowance on all multi-storey car parks owned. The DGIR informed the taxpayer that the said multi-storey car parks are not “plant” for the purpose of capital allowance under Schedule 3 of the ITA but serve as permanent building structure which were used as taxpayer’s business premises and thus, do not qualify for capital allowance.

Disagreeing with the DGIR, the taxpayer submitted its tax returns for the YA 2017 and subsequently filed a notice of appeal pursuant to Section 99(4) of the ITA. The issue to be determined by the SCIT was whether the expenditure incurred by the taxpayer in relation to the multi-storey car parks qualifies for capital allowance under Schedule 3 of the ITA.

The taxpayer submitted that the appeal was filed due to the DGIR’s failure to recognise the legal principle set out by the Court of Appeal (COA) in *Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd (2013) MSTC 30,054 (Tropiland)*. In *Tropiland*, the COA held that the multi-storey car parks fell within the meaning of “plant” and thus, the capital expenditure incurred was eligible for capital allowance. In the present appeal, the taxpayer is engaged in a similar business as *Tropiland*, where the taxpayer’s revenue is derived from the provision of parking bays to the users and occupiers where the multi-storey car parks were situated. All the multi-storey car parks were permanently used for the business and were not the taxpayer’s stock in trade. The taxpayer relied heavily on *Tropiland* and argued that even large structures are capable of being considered a plant, as opposed to a setting or a premise. As emphasised by the taxpayer, the crucial point is the specific functions and characteristics of each asset in question, as well as the taxpayer’s trade or business operation. Without the multi-storey car parks, the taxpayer could not have operated its business and therefore could not have generated any income.

The DGIR argued that the multi-storey car parks function as premises in which the taxpayer’s business is carried on. The multi-storey car parks are not “plant” but merely served as a place of business, where the taxpayer derived its revenue from, which is the parking fees. The DGIR submitted that the fact that each of the multi-storey car parks by its construction well suited to the business, or was specially built for that business, does not make it a plant and it remains as the place in which the taxpayer’s business is carried on. The DGIR further submitted that even the multi-storey car parks pass the business use test, the fact that they are also served as premises upon which the business is conducted and only provides facility to occupiers of the parking bays, does not save the multi-storey car parks from being disqualified as plant. As regards the taxpayer’s reliance on *Tropiland*, the DGIR argued that the COA in *Tropiland* had failed to investigate the true intention of the Parliament in legislating Schedule 3 of the ITA. The DGIR submitted that a building structure is never meant to fall under the meaning of “plant” and hence the introduction of industrial building allowance under Schedule 3 of the ITA to cover capital expenditure on building structures. The facts found in the current appeal should also be distinguished from the case of *Tropiland* and caution must be exercised in applying precedents as tax cases depend very much on its peculiar facts.

Issue:

Whether the multi-storey car parks are “plant” and therefore qualified for capital allowance under Schedule 3 of the ITA.

Decision:

The SCIT had on 22 September 2023 allowed the taxpayer’s appeal and held that the taxpayer had successfully proven its case as required under Paragraph 13, Schedule 5 of the ITA. The SCIT ruled that the multi-storey car parks are “plant” and therefore qualified for capital allowance under Schedule 3 of the ITA. As such, the Notice of Assessment for the YA 2017 raised by the DGIR is to be set aside.

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

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7. L&L v Director General of Inland Revenue (SCIT)

HASiL has recently uploaded a case report, "L&L v DGIR (SCIT)" on its website.

Facts:

The taxpayers acquired shares in a real property company (RPC), APSB, through a Settlement Agreement dated 21 August 2015, and subsequently disposed of the said shares and submitted Form CKHT 1B. The DGIR raised Notices of Assessment for real property gains tax (RPGT) for the YA 2018. The taxpayers filed their appeals through Form Q dated 8 February 2021, on the ground that the assessments raised were inaccurate and/or erroneous.

The taxpayers contended that the acquisition price of the RPC shares in APSB was RM3,095,650 which comprised of the ex-gratia sum due to the taxpayers amounting to RM1,251,433 and the unpaid balance of the land's purchase price of RM1,844,217 in accordance with the Settlement Agreement.

In response, the DGIR submitted that pursuant to Paragraph 34A(4) of Schedule 2 to the RPGT Act 1976, 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. It was an agreed fact during the trial that the disposal price of the said shares received by the taxpayers from the purchaser was RM4,927,784. During the trial, the taxpayers also agreed that the acquisition price of their shares in APSB was RM60,000 and RM40,000, respectively. Based on the above evidence, it is evident that the acquisition price of the shares is the amount or value of the consideration in money paid by the taxpayers as provided under Paragraph 34A(4) of Schedule 2 to the RPGT Act 1976.

Further, the taxpayers' contention that the acquisition price should be RM3,095,650 was wrong as the Settlement Agreement was not verified and there was no evidence adduced to support the Settlement Agreement, hence the contents of the Settlement Agreement were detrimental and inadmissible. Paragraph 34A of Schedule 2 to the RPGT Act 1976 also does not provide that the disposal price of chargeable assets includes liabilities incurred by the taxpayers as mentioned in the Settlement Agreement.

Issue:

Whether the Notices of Assessment raised on the taxpayers in respect of RPGT for the YA 2018 were inaccurate and/or erroneous.

Decision:

The SCIT dismissed the taxpayers' appeal and held that the Notices of Assessment raised on the taxpayers for the RPGT were reasonable and justified. The taxpayers failed to discharge the burden of proof placed upon them that the assessments for the YA 2018 were excessive or erroneous in accordance with Paragraph 13 of Schedule 5 to the ITA.

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

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8. SPBSP v Director General of Inland Revenue (SCIT)

HASiL has recently uploaded a case report, "SPBSP v DGIR (SCIT)" on its website.

Facts:

The taxpayer is an investment holding company. On 17 October 2001, the taxpayer acquired a piece of land (the said Land) from Pengurusan Danaharta Nasional Berhad and disposed of the said Land to Desa Wibawa Sdn Bhd on 12 December 2014. The taxpayer claimed that the gains of RM8,170,876 from the disposal of the said Land should be taxed under the RPGT Act 1976 instead of the ITA. Dissatisfied with the Notices of Additional Assessment (Forms JA) raised by the DGIR to assess the gains of RM8,170,876 under Section 4(a) of the ITA, the taxpayer appealed to the SCIT.

The taxpayer contended that the DGIR had erred in raising the assessments under the ITA as the gains of the said Land should be subject to the RPGT Act 1976. The taxpayer also contended that there were no badges of trade elements in this appeal. The said Land was intended to be a long-term investment, and the taxpayer's principal activity had consistently been investment holding. Therefore, the disposal of the said Land should be subject to tax under the RPGT Act 1976. The DGIR also failed to exercise his discretion on the imposition of penalties.

In response, the DGIR asserted that the gains of RM8,170,876 were to be taxed under Section 4(a) of the ITA as business income. Although no alteration was made to the said Land, that does not mean that no trading has taken place. In fact, the DGIR contended that there was more than one element of badges of trade that existed in this appeal. The DGIR further argued that if the said Land was truly acquired for investment purposes as claimed by the taxpayer, the taxpayer would have taken steps to develop the said Land instead of selling it after thirteen years with a minimum income from rental and oil palm plantations. This showed that the taxpayer was not retaining the said Land for long-term investment purposes but was waiting for its value to appreciate.

The DGIR further argued that the taxpayer had to borrow money from Maybank to finance the purchase of the said Land which shows that the taxpayer was incapable of operating as an investment holding company. The fact that the taxpayer enjoyed gains from 8 disposals and acquired 3 other lots of land after the disposal of the said Land, proved that the taxpayer traded lands in multiple transactions. Based on the elements of badges of trade that existed in this case, the gains of RM8,170,876 received by the taxpayer from the disposal of the said Land were rightfully taxed under Section 4(a) of the ITA. With that, the DGIR contended that he has correctly exercised his discretion to impose a penalty on the taxpayer at the rate of 60%.

Issue:

Whether the DGIR was right to subject the gains of RM8,170,876 arising from the disposal of the said Land as business income under Section 4(a) of the ITA.

Decision:

The SCIT allowed the taxpayers' appeal and held that the taxpayer had successfully proven its case under Paragraph 13 of Schedule 5 to the ITA. The SCIT ruled that the gains of RM8,170,876 shall be taxed under the RPGT Act 1976.

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

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9. TTSB v Director General of Inland Revenue (SCIT)

HASiL has recently uploaded a case report, "TTSB v DGIR (SCIT)" on its website.

Facts:

The taxpayer is a logging contractor. By entering the designated forest areas, the taxpayer had encroached on the natives' areas of occupation, which caused the natives of the longhouses to feel aggrieved. The taxpayer had employed the "Tuai Rumah", "Penghulu" and assistants (Committee Members) of the affected longhouses to assist in their negotiation with the natives. The taxpayer contended that they had paid allowances to the Committee Members amounting to RM87,210 (disputed expenditure) in the YA 2009 for their services. The DGIR disallowed the disputed expenditure claimed on the basis it was a form of compensation and subsequently raised an additional assessment with penalty against the taxpayer. Dissatisfied with the additional assessment raised, the taxpayer appealed to the SCIT.

The taxpayer argued that the disputed expenditure claimed was an allowable expense under Section 33(1) of the ITA. While entering the designated forest areas to carry out its logging activities, the taxpayer had encountered the natives' dispute, which had caused disruption and hindrance by way of road blockage and prevented the taxpayer from carrying on its logging activities. The disputed expenditure incurred was not only out of business necessity but with the sole intent of an immediate or direct benefit of commercial expediency in order to facilitate the taxpayer in carrying out the logging operation. Further, the predominant purpose of the payment made was to seek the assistance and service of the Committee Members of the longhouses concerned to negotiate, solve, and settle the dispute that had caused disruption to the taxpayer's business operation.

On the other hand, the DGIR contended that the payment made to the Committee Members was for compensation and that the actual nature and purpose of the payment was to avoid the disturbances from the natives, i.e., "wang perlindungan". It was argued that the taxpayer's general ledger had classified the payment as 'compensation to native', and evidence had shown that several requests were made from the Committee Members for “wang saguhati”. Further, there were many inconsistencies on the amount paid and received as stated in the agreements between the Committee Members and the taxpayer, and no evidence was adduced to show that the Committee Members had genuinely offered their services to resolve the dispute between the taxpayer and the natives. The DGIR also challenged the legality of the appointment of the Committee Members. Thus, based on the circumstances presented, the compensation payment made by the taxpayer was not a payment wholly and exclusively incurred in the production of income as envisaged under Section 33(1) of the ITA, but rather the payment of ‘protection money’.

Issue:

Whether the payment made to the Committee Members for their services amounting to RM87,210 in YA 2009 was a deductible expense under Section 33(1) of the ITA.

Decision:

The SCIT allowed the taxpayer’s appeal and held that the taxpayer had successfully discharged the onus of proving that the additional assessment raised by the DGIR was excessive or erroneous under Paragraph 13, Schedule 5 of the ITA.

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

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Ang Weina


Chee Ying Cheng


Ng Lan Kheng


Tham Lih Jiun


Tan Eng Yew


Senthuran Elalingam


Mohd Fariz Mohd Faruk


Subhabrata Dasgupta


Philip Yeoh


Gagan Deep Nagpal

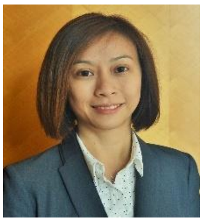

Vrushang Sheth


Tan Wei Chuan


Mark Chan


Toh Hong Peir


Thin Siew Chi


Thean Szu Ping


Suzanna Kavita


Shareena Martin


Michelle Lai

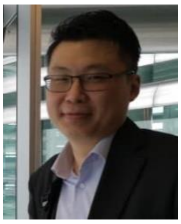

Tan Keat Meng


Janice Lim Yee Phing


Chandran TS Ramasamy


Larry James Sta Maria


Nicholas Lee Pak Wei


Kelvin Yee Rung Hua


Tan Chia Woon


Kei Ooi


Wong Yu Sann


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