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Tax Espresso

Latest Gazette Orders, IRBM Media Release and more
January 2022



Greetings from Deloitte Malaysia Tax Services

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Important deadlines:

| Task | Due Date | |
|--|-----------------|-----------------|
| | 29 January 2022 | 31 January 2022 |
| 1. 2023 tax estimates for companies with February year-end | √ | |
| 2. 6 th month revision of tax estimates for companies with July year-end | | √ |
| 3. 9 th month revision of tax estimates for companies with April year-end | | √ |
| 4. Statutory filing of 2021 tax returns for companies with June year-end | | √ |
| 5. Maintenance of transfer pricing documentation for companies with June year-end | | √ |
| 6. Deadline for 2022 CbCR notification for applicable entities with January year-end | | √ |

1. Income Tax (Exchange of Information) Rules 2021 [P.U.(A) 436/2021]

[P.U.\(A\) 436/2021](#) was gazetted on 1 December 2021. P.U.(A) 436/2021 which has revoked the Income Tax (Exchange of Information) Rules 2011 [P.U.(A) 219/2011] and now includes the following in the definition of “bank”:

- A Labuan company or bank licensed under the Labuan Financial Services and Securities Act 2010 [Act 704]; and
- A Labuan company or bank licensed under the Labuan Islamic Financial Services and Securities Act 2010 [Act 705].

Request for information

A competent authority may request from the Director General information of a person to whom an arrangement entered into by the government of such competent authority with the Government of Malaysia relates.

Where the request is received, the Director General may, by notice under Section 81 of the Income Tax Act 1967, require the person referred to in the request to provide the information as requested by the competent authority within the time specified in the notice.

Any person to whom a notice is issued who, without any reasonable excuse, fails to comply with such notice commits an offence under Section 120 of the Income Tax Act 1967.

For the purposes of the Rules, “arrangement” refers to:

- (a) the Convention on Mutual Administrative Assistance in Tax Matters;
- (b) any arrangements with participating jurisdictions to improve international tax compliance through —
 - (i) any bilateral or multilateral tax convention;
 - (ii) any bilateral or multilateral competent authority agreements; or
 - (iii) any tax information exchange agreement.

Revocation

The Income Tax (Exchange of Information) Rules 2011 [[P.U.\(A\) 219/2011](#)] is revoked.

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

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2. Income Tax (Exemption) (No. 13) 2013 (Amendment) Order 2021 [P.U.(A) 448/2021]

[P.U.\(A\) 448/2021](#) (the Amendment Order) was gazetted on 9 December 2021 and has effect from the year of assessment (YA) 2021.

The Amendment Order amended the Income Tax (Exemption) (No. 13) Order 2013 [[P.U.\(A\) 294/2013](#)] to legislate the proposed extension and expansion of scope of tax incentive for commercialisation of research and development (R&D) findings announced in Budget 2021 as summarised below:

- i. Reintroduced 100% income tax exemption on statutory income for 10 years for the commercialisation of non-resource based R&D findings.
- ii. Tax incentive for the commercialisation of R&D findings by public research institutions including public higher learning institutions is expanded to include private higher learning institutions.
- iii. Tax incentive is extended for applications received by the Malaysian Investment Development Authority from 7 November 2020 until 31 December 2025.

Amendments in paragraph 2 of P.U. (A) 294/2013:

- the definition of “research and development findings” is expanded to include private institution of higher learning”
- the definition of “investor company” and “qualifying company” were amended by substituting for the words “Companies Act 1965 [Act 125]” to the words “Companies Act 2016 [Act 777]”.

Please refer to [P.U.\(A\) 294/2013](#) for full details on the exemption.

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3. Income Tax (Deduction for The Sponsorship of Scholarship to Malaysian Students Pursuing Studies in the Field of Engineering and Technology at the Technical and Vocational Certificate, Diploma or Bachelor's Degree Levels) Rules 2021 [P.U. (A) 468/2021]

[P.U.\(A\) 468/2021](#) (the Rules) was gazetted on 23 December 2021 and is deemed to have effect from the YA 2019 to legislate the proposed income tax incentive for human capital development in relation to Industry4WRD.

The Rules stipulate that resident Company incorporated under the Companies Act 2016 [Act 777] will be allowed a double deduction in ascertaining its adjusted business income in a basis period for a YA on expenses incurred and paid by that Company for sponsoring scholarship in accordance with the period of the relevant sponsorship agreement executed with a student between the period of 1 January 2019 and 31 December 2021.

According to the Rules:

- 1) The Company is only allowed a double deduction on expenses incurred and paid by the Company for sponsoring scholarship to a student:
 - (a) who is a Malaysian citizen and resident in Malaysia;
 - (b) who is studying full-time in the field of engineering and technology at technical and vocational certificate levels in an institution or at diploma or bachelor's degree level in a higher educational institution;
 - (c) who has no means of his own; and
 - (d) whose parents or guardians, with a total monthly income not exceeding ten thousand ringgit (RM10,000.00).
- 2) The expenses incurred and paid by the Company for sponsoring scholarship to a student which are allowed a double deduction consist of:
 - (a) payment required by the relevant institution or higher educational institution relating to the course of study; and
 - (b) educational aid and reasonable cost of living expenses throughout the student's period of study at the relevant institution or higher educational institution.
- 3) Any amount refunded by the student to the Company shall when received be treated as gross income of that Company from the business derived from Malaysia in the basis period for that YA.

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

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4. Income Tax (Deduction for Expenditure on Provision of Employees' Accommodation) Rules 2021 [P.U.(A) 470/2021]

[P.U.\(A\) 470/2021](#) (the Rules) was gazetted on 24 December 2021 and have effect from YA 2021.

The Rules legislate the proposed additional tax deduction on rental expenses of premises provided as living accommodation for employees by manufacturing companies and manufacturing related service companies registered under the Safe@Work program as announced in PEMERKASA. To encourage manufacturing companies and manufacturing related service companies to comply with the Standard Operating Procedures, it was proposed in Budget 2022 that the above tax incentive be extended for a year until 31 December 2022.

According to the Rules:

- 1) A company carrying on the business of manufacturing or manufacturing related services is allowed a deduction of up to RM 50,000 in ascertaining the adjusted business income in a basis period for a YA for the expenses incurred by that company on rental of employees' accommodation within the period from 1 January 2021 until 31 December 2022. The amount of deduction allowed shall be in addition to any deduction allowable under Section 33 of the Income Tax Act 1967.

- 2) The employee's accommodation shall be certified with a Certificate for Accommodation as provided under Section 24D of the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 and shall exclude the accommodation for a director.

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

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5. Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing) (Amendment) Rules 2021 [P. U.(A) 471/2021]

[P.U.\(A\) 471/2021](#) (the Amendment Rules) was gazetted on 24 December 2021 and will have effect from YA 2022.

The Amendment Rules amended the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [[P.U.\(A\) 162/2020](#)] in rule 2:

- by deleting the words "and paid" in paragraphs (a) and (b) of subrule (1); and
- by inserting after subrule (2), the subrule (3)
"Any expenses referred in subrule (1) incurred in the basis period for the years of assessment 2020 and 2021, shall be paid before a deduction for that expenses is allowed under these Rules."

Deduction following the Amendment Rules

- 1) With effect from the YA 2022, a resident person in Malaysia can claim a deduction on the expenses incurred by him in relation to secretarial fee and tax filing fee under paragraphs (a) and (b) of subrule 2(1) of P.U.(A) 162/2020 in the basis period for a YA in arriving at his adjusted business income regardless of whether the expenses incurred have been paid before a deduction is allowed.
- 2) However, for the YAs 2020 and 2021, the Amendment Rules stipulate that a resident person in Malaysia is only allowed to claim a deduction on the expenses incurred by him in relation to secretarial fee and tax filing fee under paragraphs (a) and (b) of subrule 2(1) P.U.(A) 162/2020 in the basis period for a YA in arriving at his adjusted business income provided the expenses incurred have been paid before a deduction is allowed.
- 3) The total amount of deduction allowed under paragraphs (a) and (b) of subrule 2(1) of P.U.(A) 162/2020 is subject to a maximum amount of RM 15,000 for a YA.

Example:

Company ABC incurred RM6,000 a year in YAs 2020 and 2021 for secretarial and tax filing fees. The fees totalling RM12,000 are paid in the basis period for YA 2022. The secretarial and tax filing fees incurred but not paid in the basis period for YA 2022 is also RM6,000.

It appears that the amount of secretarial and tax filing fees that are deductible in YA 2022 is RM18,000, subject to a maximum of RM15,000.

The Inland Revenue Board of Malaysia is expected to provide guidance on the Amendment Rules by updating the *"Guidelines for deducting expenses in relation to secretarial fee and tax filing fee from YA 2020 onwards"*.

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

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6. Stamp Duty (Exemption) (No. 11) 2021 (Amendment) Order 2021 [P.U.(A) 439/2021]

[P.U.\(A\) 439/2021](#) (the Amendment Order) was gazetted on 6 December 2021 and comes into operation on 1 January 2022.

According to the Amendment Order, the exemption of stamp duty on an instrument of loan or financing agreement related to the restructuring or rescheduling of loan or financing between a borrower and a financial institution will be

extended for another year, i.e. the exemption from stamp duty will apply to instruments executed between the period of 1 January 2022 and 31 December 2022.

The above exemption from stamp duty is originally granted for instruments executed on or after 1 July 2021, but not later than 31 December 2021 under the Stamp Duty (Exemption) (No. 11) Order 2021 [[P.U.\(A\) 367/2021](#)].

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7. Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2021 [[P.U.\(A\) 462/2021](#)]

[P.U.\(A\) 462/2021](#) (the Amendment Order) was gazetted on 21 December 2021 and comes into operation on 1 January 2022.

In line with the Government's effort to increase access to insurance and takaful products for the low-income group (B40), the Amendment Order stipulates that stamp duty exemption on the annual premium or annual takaful contribution of any insurance policies and takaful certificates for "Perlindungan Tenang" products issued by a licensed insurer or a licensed takaful operator will be increased from RM100 to RM150 with effect from 1 January 2022.

The above exemption from stamp duty on the annual premium or annual takaful contribution was originally capped at RM100 for any insurance policies and takaful certificates for "Perlindungan Tenang" products issued by a licensed insurer or a licensed takaful operator from 1 January 2019 to 31 December 2025 under the Stamp Duty (Exemption) (No. 5) Order 2018 [[P.U. \(A\) 359/2018](#)] as amended by [P.U.\(A\) 397/2020](#).

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8. Stamp Duty (Exemption) (No. 15) Order 2021 [[P.U.\(A\) 464/2021](#)]

[P.U.\(A\) 464/2021](#) (the Order) was gazetted on 22 December 2021 and comes into operation on 1 January 2022 to legislate the proposed stamp duty exemption on the purchase of insurance policies or takaful certificates by micro enterprise or small and medium enterprises (MSMEs) announced in the National Budget 2022, which is in line with the Government's effort to increase access to insurance and takaful products by MSMEs at a lower cost.

According to the Order:

- 1) Any insurance policies or takaful certificates issued by a licensed insurer or a licensed takaful operator on or after 1 January 2022, but not later than 31 December 2025 to MSMEs with an annual premium or takaful contribution not exceeding two hundred fifty ringgit (RM250.00), are exempted from stamp duty.
- 2) The insurance or takaful product must be approved by the Central Bank of Malaysia and issued by a licensed insurer or licensed takaful operator to qualify for the stamp duty exemption. The insurance or takaful products eligible for stamp duty exemption are:
 - (a) Fire insurance or takaful;
 - (b) Fire business interruption insurance or takaful;
 - (c) Personal accident insurance or takaful;
 - (d) Travel insurance or takaful;
 - (e) Liability insurance or takaful; and
 - (f) Engineering insurance or takaful.

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

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9. Stamp Duty (Exemption) (No. 16) Order 2021 [P.U.(A) 465/2021]

[P.U.\(A\) 465/2021](#) (the Order) was gazetted on 22 December 2021 and comes into operation on 1 January 2022 to legislate the proposed stamp duty exemption on the purchase of other insurance policies or takaful certificates by individuals announced in the National Budget 2022 which is in line with the Government's effort to increase access to insurance and takaful products for the low-income group (B40) at a lower cost.

According to the Order:

- 1) Any insurance policies or takaful certificates issued by a licensed insurer or a licensed takaful operator on or after 1 January 2022, but not later than 31 December 2025 to an individual with an annual premium or takaful contribution not exceeding one hundred fifty ringgit (RM150.00), are exempted from stamp duty.
- 2) The insurance or takaful product must be approved by the Central Bank of Malaysia and issued by a licensed insurer or licensed takaful operator to qualify for the stamp duty exemption. The insurance or takaful products eligible for stamp duty exemption are as follow:
 - (a) Fire insurance or takaful;
 - (b) Fire business interruption insurance or takaful;
 - (c) Personal accident insurance or takaful;
 - (d) Travel insurance or takaful;
 - (e) Liability insurance or takaful; and
 - (f) Engineering insurance or takaful.

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

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10. Labuan Business Activity Tax (Exemption) 2020 (Amendment) Order 2021 [P.U.(A) 466/2021]

[P.U.\(A\) 466/2021](#) (the Amendment Order) was gazetted on 23 December 2021 and has effect from 1 January 2021.

The Amendment Order amended the Labuan Business Activity Tax (Exemption) Order 2020 [[P.U.\(A\) 177/2020](#)] in paragraph 2 by substituting for the words "subparagraph 2B(1)(b)(i)" the words "subsubparagraph 2B(1)(b)(ii)(A)" in consequence of amendment made to Section 2B of the Labuan Business Activity Tax Act 1990 via Finance Act 2020 whereby the substance requirements for the purpose of the Labuan business activity are segregated into Labuan trading activity under subparagraph 2B(1)(b)(i) and Labuan non-trading activity under subparagraph 2B(1)(b)(ii).

Exemption following the Amendment Order

The Minister exempts a Labuan entity carrying on a Labuan non-trading activity related to pure equity holding from the application of subparagraph 2B(1)(b)(ii)(A) of the Labuan Business Activity Tax Act 1990 which states that:

"The Labuan entities shall, for the purpose of the Labuan business activity, in relation to a Labuan non-trading activity, have an adequate number of full time employees in Labuan as prescribed by the Minister by regulations made under this Act."

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

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11. Labuan Business Activity Tax (Requirements for Labuan International Commodity Trading Company) Regulations 2021 [P.U.(A) 482/2021]

[P.U.\(A\) 482/2021](#) (the Regulations) was gazetted on 27 December 2021 to specify the requirements for a Labuan International Commodity Trading Company (LICTC). Previously, an LICTC was included in the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 [[P.U.\(A\) 392/2018](#)]. However, it was subsequently removed by [P.U.\(A\) 375/2020](#) with effect from 1 January 2019.

The changes are seen in the requirements for LICTC as stipulated in Regulations 3(2) and 3(3) of the Regulations which are deemed to have come into operation on 1 January 2021.

According to the Regulations:

- 1) An LICTC which has not more than five related companies to carry on the qualifying activity shall:
 - (a) have not less than three full-time employees including at least two of them being full-time employees in its business operational office in Labuan in a group of companies; and
 - (b) incur an annual operating expenditure of at least three million ringgit (RM3,000,000.00) in Malaysia including at least one hundred thousand ringgit (RM100,000.00) therefrom is incurred in Labuan for each company.
- 2) An LICTC which has more than five related companies to carry on the qualifying activity shall have an additional full-time employee in its business operational office in Labuan for every addition of up to five related companies in a group of companies.
- 3) The requirements for LICTC as per Regulation 3(1) of the Regulations are deemed to be valid from 1 January 2019 to 31 December 2020 where the LICTC is required to fulfil the following:
 - (a) has at least three full-time employees; and
 - (b) has an annual operating expenditure of at least three million ringgit (RM3,000,000.00).

Interpretation

For the purpose of the Regulations:

- “Global Incentives for Trading” means a program of incentives for the Labuan International Commodity Trading Company to use Malaysia as their international trading base to undertake qualifying activity;
- “Labuan International Commodity Trading Company” means a Labuan company which:
 - (a) is incorporated or registered under the Labuan Companies Act 1990 [*Act 441*];
 - (b) is licensed under section 92 of the Labuan Financial Services and Securities Act 2010 [*Act 704*];
 - (c) maintains a registered office in Labuan but is allowed to establish its operational office anywhere in Malaysia; and
 - (d) undertakes a qualifying activity under the Global Incentives for Trading program;
- “Qualifying activity” means the trading of physical products and related derivative instruments in relation to—
 - (a) petroleum and petroleum related products including liquefied natural gas;
 - (b) minerals;
 - (c) agriculture products;
 - (d) refined raw materials;
 - (e) chemicals;
 - (f) base minerals; or
 - (g) coal;

“Related companies” means companies that are deemed to be related to each other in accordance with section 4 of the Labuan Companies Act 1990;

- Companies are deemed to be in the same group where:
 - (a) two or more companies are related companies;
 - (b) a company is related to another company which is itself so related to a third company;
 - (c) the same person is holding more than fifty per cent of the shares in each of two or more companies; or
 - (d) each of the two or more companies is so related to at least one of two or more companies to which paragraph (c) applies.

Please refer to the [Regulations](#) for more details.

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12. IRBM issued Updated Transfer Pricing Documentation Flowchart and Updated Self-test (2 December 2021)

The Inland Revenue Board of Malaysia (IRBM) has recently updated the following on 2 December 2021 to help taxpayers identify and determine their requirements to prepare transfer pricing documentation (TPD):

- [Updated Transfer Pricing Documentation Flowchart](#)
The Flowchart shows the steps to be taken for identifying the requirement in the preparation of a contemporaneous TPD. It helps to identify the circumstances where a full or minimum TPD is required, and the extent of information needed from the taxpayer.
- [Updated Transfer Pricing Documentation Self-test](#)
The TPD Self-test helps to determine if the taxpayer fulfills the TPD requirement through a series of questions and answers.

Please refer to the [updated TPD Flowchart](#) and [updated TPD Self-test](#) for full details.

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13. IRBM Media Release: Deferment of Tax Payments to Taxpayers and / or Employers affected by the flood disaster

The IRBM has issued a [Media Release](#) (*Available in Bahasa Malaysia only*) on 28 December 2021 in relation to the recent flood disaster in Peninsular Malaysia which impacted the liabilities and obligations of taxpayers and / or employers to make tax payments within the stipulated period including the payment of estimated taxes, tax instalments whether at the stage of investigation, audit, collection and civil suits as well as employee's Monthly Tax Deduction (MTD) payments. On the basis of concern, the IRBM has allowed a deferment of tax payments to taxpayers and / or employers affected by the disaster.

The salient points are as follow:

- The deadline for the payment of estimated tax payable (i.e. CP204) in the month of December 2021 has been extended to 31 January 2022;
- The instalment payment in relation to investigation / audit / collection / civil suit due in January 2022 has been extended to February 2022;
- The deadline to remit payment in relation to MTD and / or CP38 for employees for the remuneration received in the month of December 2021 has been extended to 31 January 2022;
- The deadline for the payment of balance of tax payable is allowed to be extended up to a period applied by the taxpayer; and
- The above taxpayers and / or employers who are affected are required to submit an application on the deferment through the following methods:
 - (a) by emailing to anggarancukai@HASIL.GOV.MY for item 1; and
 - (b) through the feedback form from HASiL official portal or via the following link <https://borangmaklumbalas.hasil.gov.my/Submission/Submission/?id=5001#/create/1> for items 2, 3 and 4.

Please note that the documents required to be submitted to support the application are based on the merits of each case.

Please refer to the [Media Release](#) for more details.

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14. IRBM Announcement: Discontinuation of Tax Concession under FAQs on International Tax Issues due to COVID-19 Travel Restrictions

The IRBM has announced that in conjunction with the Malaysian government's announcement and in line with the practices of several countries which have lifted travel restrictions due to COVID-19, the IRBM has decided not to extend the concessions on tax treatments for international tax issues due to COVID-19 travel restrictions through the 'Frequently Asked Questions ([FAQs](#)) on International Tax Issues COVID-19' which ended on 31 December 2021.

Following the discontinuation of the concession treatment, the provisions of the Income Tax Act 1967 as well as the provisions in the Double Taxation Avoidance Agreement with the relevant countries will apply as usual.

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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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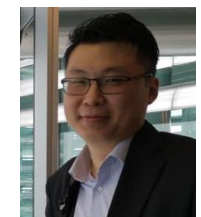
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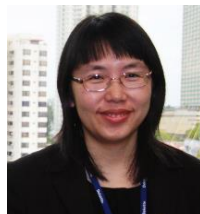
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