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# EY Tax Alert

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## Malaysian developments

- Guidelines on automation capital allowance for the services sector
- Extension of tax incentive for issuance of *sukuk* under the principles of *Wakalah*
- Extension of income tax exemption for directors of a Labuan entity

## Overseas developments

- Poland introduces new obligation to publish reports on tax strategy
- Spanish Parliament approves final legislation to implement Mandatory Disclosure Rules (MDR)

## Malaysian developments

### Guidelines on automation capital allowance for the services sector

In Budget 2020, to enhance productivity and efficiency in the labour-intensive industries, it was proposed that the existing automation capital allowance (ACA) incentive be expanded to the services sector (see *Special Tax Alert: Highlights of Budget 2020*). The incentive will apply to applications received by the Malaysian Investment Development Authority (MIDA) from 1 January 2020 to 31 December 2021.

Following the above proposal, MIDA has recently issued the guidelines and procedures, dated 1 January 2020, for the application of ACA by existing companies in the services sector.

The guidelines stipulate that ACA of 200% will be given on the first RM2 million incurred on the purchase of machinery and equipment for business purposes, from the year of assessment (YA) 2020 until YA 2023. This incentive is mutually exclusive from other incentives,



including pioneer status or investment tax allowance under the Promotion of Investments Act 1986 and income tax exemptions under the Income Tax Act 1967 (ITA). The approval for this incentive will be provided under Sections 127(3)(b) and 154(1)(b) of the ITA.

To qualify for the incentive, the following conditions must be adhered to:

- (i) The company must be a Malaysian-resident company which is incorporated under the Companies Act 2016.
- (ii) The company is engaged in service activities and has incurred expenditure on machinery, equipment or software that fulfils the criteria as outlined in the Appendix to this Alert.
- (iii) The automation machinery, equipment or software is used directly in the process of carrying out the services and adopts technology that is more advanced in improving the delivery of the services.
- (iv) The machinery, equipment or software must be used for at least one month after installation, for the purpose of technical verification by SIRIM. The assets should not be disposed of within five years.
- (v) The company has been in operation for at least 36 months.
- (vi) The company possesses a valid business license from the local authority.
- (vii) The company possesses a permit, license, registration, accreditation, certificate, approval letter, or supporting letter from the relevant Ministry, Agency or Regulator (whichever applicable).
- (viii) Applications for the incentive should be received by MIDA between 1 January 2020 and 31 December 2023.

The guidelines also explain the application process, the documents which are to be furnished in support

of the application, and the procedures for the application.

In addition to the guidelines, further details are available on the MIDA website [[Forms & Guidelines - MIDA | Malaysian Investment Development Authority](#) → Services Sector → M) Automation Capital Allowance] as outlined below:

- (a) ACA application form for the services sector
- (b) Process workflow for the ACA application
- (c) Process workflow for the SIRIM verification
- (d) SIRIM verification of machine or equipment for ACA
- (e) SIRIM contact details for verification process

### Extension of tax incentive for issuance of *sukuk* under the principles of *Wakalah*

In Budget 2020, it was proposed that the tax deduction for issuance cost and further deduction on additional issuance cost of *sukuk* under the principles of *Wakalah* be extended for another five years, until YA 2025 (see *Special Tax Alert: Highlights of Budget 2020*).

To legislate the above, the Income Tax (Deduction for Expenditure on Issuance of *Sukuk* and Retail *Sukuk* Structured Pursuant to Principle of *Wakalah*) Rules 2021 [P.U.(A) 5] were gazetted on 12 January 2021. The Rules provide that the following “expenditure” or “additional expenses” incurred by a company on the issuance of *sukuk* or retail *sukuk* shall be allowed as a deduction (single and/or double) in ascertaining the adjusted income of the company from its business for a YA:

- (a) Single deduction on the expenditure incurred on the issuance of *sukuk* structured pursuant to the

principles of *Wakalah* comprising mixed asset and debt components:

- (i) Approved or authorized by, or lodged with, the Securities Commission Malaysia (SC) under the Capital Markets and Services Act 2007 (CMSA), or
- (ii) Approved by the Labuan Financial Services Authority (LFSA) established under the LFSA Act 1996

and

- (b) Single deduction on the “expenditure” and double deduction on the “additional expenses” incurred on the issuance of retail *sukuk*<sup>Note</sup> structured pursuant to the principles of *Wakalah* comprising mixed asset and debt components and approved or authorized by the SC under the CMSA

Note:

Retail *sukuk* is any *sukuk* that is issued or offered to a retail investor, including *sukuk* where an invitation to subscribe or purchase the *sukuk* is made to the retail investor (as defined).

“Additional expenses” have been defined to mean:

- (a) Professional fees relating to due diligence, drafting and preparation of the prospectus
- (b) Printing cost of the prospectus
- (c) Advertisement cost of the prospectus
- (d) SC prospectus registration fee
- (e) Bursa Malaysia processing fee and initial listing fee
- (f) Bursa Malaysia new issue crediting fee, and
- (g) Primary distribution fee

The Rules are effective from YA 2021 until YA 2025.

## Extension of income tax exemption for directors of a Labuan entity

As highlighted in an earlier tax alert, the LFSA had issued a circular dated 4 December 2020 to confirm that the income tax exemption in respect of fees received by a non-Malaysian individual in his capacity

as a director of a Labuan entity, would be extended for another five years, i.e. until YA 2025 (see *Tax Alert No. 22/2020*).

To legislate the above, the Income Tax (Exemption) (No. 7) (Amendment) Order 2021 [P.U.(A) 6] was gazetted on 12 January 2021 and is effective from YA 2021.

## Overseas developments

### Poland introduces new obligation to publish reports on tax strategy

On 30 November 2020, the Polish Government published significant changes to its corporate income tax laws which came into force as of 1 January 2021. Among other changes, tax capital groups and taxpayers with revenues over €50m are required to prepare and publish an annual report on the execution of the tax strategy they have implemented.

The reports should be made publicly available and should include specific information such as information on the applied tax processes and procedures to manage tax compliance, transactions with related parties, implemented or planned restructurings, and transactions with entities from black-listed jurisdictions.

#### Detailed discussion

A taxpayer shall publish the report, in Polish, on its website no later than the end of the 12th month after the end of the tax year. If the taxpayer does not have a website, the report can be published on a related party's website.

Before the above deadline, the taxpayer is required to provide the director of the taxpayer's competent tax office with the address of the website on which the report is published.

Failure to provide this information may result in a fine of up to PLN 250,000 (approximately US\$70k) for the taxpayer. Individual penalties for board members or other persons responsible for tax matters are also possible.

Based on an unofficial (non-binding) communication issued by the Ministry of Finance in a press release, the first publication of such reports should be made in 2021 (with respect to 2020).

All reports for subsequent years should be kept together and made available on the above-mentioned website.

Companies which participate in the Horizontal Monitoring Program in Poland (who are party to a cooperation agreement) are released from these obligations.

The tax strategy report should include the following (considering the nature, type and size of the taxpayer's business), in particular:

1. Information about:
  - (a) The processes and procedures that the taxpayer applies in governing management of the fulfilment of duties arising from tax laws and ensuring their correct fulfilment
  - (b) The voluntary forms of cooperation with the National Tax Administration (Polish tax authorities) that the taxpayer applies
2. Information about the taxpayer's fulfilment of tax duties in Poland along with information on the number of Mandatory Disclosure reports submitted to the Director of the National Tax Administration Office, with a breakdown regarding the taxes to which they refer.
3. Information about:
  - (a) Transactions with related parties within the meaning of the respective Polish tax provisions, the value of which exceeds 5% of the balance sheet total of the assets within the

meaning of accounting law, established by reference to the taxpayer's latest approved financial statement

- (b) Restructuring projects that the taxpayer plans to implement or is implementing which may affect the amount of the taxpayer's tax liabilities or tax liabilities of the related parties

4. Information about applications the taxpayer has filed for:
  - (a) A general tax ruling from the tax authorities
  - (b) An individual tax ruling from the tax authorities
  - (c) A binding rate information decision for the purpose of Value Added Tax settlements
  - (d) A binding excise information decision for the purpose of Excise Duty settlements
5. Information on the taxpayer's tax settlements in the jurisdictions pursuing harmful tax competition listed in the regulations issued under personal income tax and corporate income tax laws and the announcements of the Minister of Finance

The taxpayer does not need to submit any information qualifying as trade, industrial, professional or manufacturing process secrets.

Although the new reporting obligation is included in the corporate income tax law, the wording of the regulations implies that the relevant tax procedures and processes should apply to all taxes paid or remitted, and not just corporate income taxes.

Next steps

The new reporting obligations imply that companies should implement processes and procedures for the entire fiscal year to be able to confirm adequate tax governance and compliance, and also have the proper basis and process in place for subsequent reporting.

This should include a relevant tax framework (policies) ensuring adequate tax risk management and assignment of roles and responsibilities within the

organization. Although not clearly defined in the regulations, it can be anticipated that companies should also document their tax strategy in written form. Some guidance is available in the manuals issued to applicants for Horizontal Monitoring.

Given that taxpayers will need to include certain information and statements relating to a whole fiscal year, taxpayers should consider starting actions aimed at verifying their readiness to meet the new compliance obligations in Q1 2021.

Since information will be publicly available, international groups may need to ensure that contents shared with the market by Polish subsidiaries comply with the group's policies and standards.

## Spanish Parliament approves final legislation to implement Mandatory Disclosure Rules (MDR)

On 29 December 2020, the Spanish Parliament approved final legislation to implement the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step was implemented between 25 June 2018 and 1 July 2020.

The Spanish legislation was published in the State Official Gazette on 30 December 2020 and entered into force on 31 December 2020, being effective from that same date.

The final Spanish Mandatory Disclosure Rules (MDR) legislation is broadly aligned to the requirements of the Directive.

The key highlights of the final Spanish legislation are summarized below.

### Key highlights

The final legislation has not changed since the draft (revised) Bill was submitted to Parliament for approval in May 2020, following a public consultation. For background on the draft Bill, see [EY Global Tax Alert, Spain sends MDR bill to Parliament for approval, dated 29 May 2020](#).

- The Spanish reporting deadlines will be included in the regulations setting forth the Spanish MDR, which have not yet been released, so the reporting deadlines are still uncertain.

### Next steps

Determining if there is a reportable cross-border arrangement raises complex technical and procedural issues for taxpayers and intermediaries. Taxpayers and intermediaries who have operations in Spain should review their policies and strategies for lodging and reporting tax arrangements so that they are fully prepared to meet these obligations.

## Eligibility of machinery, equipment or software to qualify for the ACA incentive

Eligible	Not eligible
<p>The machinery and equipment or software embedded in the machinery and equipment is eligible for the incentive subject to the following criteria:</p> <ul style="list-style-type: none"> <li>• Used directly in the process of carrying out the services</li> <li>• Adopts technology that is more advanced in improving service delivery</li> <li>• Used for at least one month after installation or commissioning for the purpose of technical verification by SIRIM, and</li> <li>• Contributes to productivity enhancement:               <ul style="list-style-type: none"> <li>(a) Reduction in number of workers or operators involved in its operations, or</li> <li>(b) Reduction in number of man-hours, or</li> <li>(c) Increase in efficiency by reducing human errors or reducing time taken to complete a task, or</li> <li>(d) Reduction in accident or complaint rate</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Standard software applications installed in the computer, i.e. basic programs for everyday use, such as:               <ul style="list-style-type: none"> <li>- Office suites</li> <li>- Accounting packages</li> <li>- Graphics software</li> <li>- Media player</li> <li>- Enterprise software</li> </ul> </li> <li>• Mobile apps for gaming and entertainment, travel-related, online shopping and online booking systems for hotels, flights, restaurants etc.</li> <li>• Retail and restaurant self-ordering or self-payment kiosks</li> <li>• New machinery or equipment to replace existing machinery or equipment with the same specifications</li> </ul>

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## Important dates

31 December 2020	6 <sup>th</sup> month revision of tax estimates for companies with June year-end
31 December 2020	9 <sup>th</sup> month revision of tax estimates for companies with March year-end
31 December 2020	Statutory deadline for filing of 2020 tax returns for companies with May year-end
15 January 2021	Due date for monthly instalments
31 January 2021	6 <sup>th</sup> month revision of tax estimates for companies with July year-end
31 January 2021	9 <sup>th</sup> month revision of tax estimates for companies with April year-end
31 January 2021	Statutory deadline for filing of 2020 tax returns for companies with June year-end

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