Building a better working world

EY Tax Alert

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Malaysian developments

Overseas developments

Malaysian developments

Income tax exemption and income tax deduction Orders and/or Rules

Tax incentive for organizing arts, cultural, sports and recreational activities in Malaysia

In Budget 2020, it was proposed that a 50% income tax exemption be given on the statutory income of companies that organize:

(a) Arts and cultural activities approved by the Ministry of Tourism, Arts and Culture (MOTAC), and
(b) International sports and recreational competitions approved by the Ministry of Youth and Sports (KBS)

The incentive was to apply from the year of assessment (YA) 2020 to YA 2022 (see *Special Tax Alert: Highlights of Budget 2020*).

In Budget 2022, it was proposed that the income tax exemption be extended for another three years, until YA 2025.

To legislate the above proposals, the Income Tax (Exemption) (No. 12) Order 2021 [P.U.(A) 478] was gazetted on 27 December 2021. The Order provides that a promoter of any arts or cultural activities, or sports or recreational competitions of international standard, is given an income tax exemption of 50% on statutory income derived from the organization of such activities.

The exemption is given on condition that:

(a) An arts or cultural activity is held in Malaysia at the Istana Budaya, National Visual Arts Gallery or Petronas Philharmonic Hall, or
(b) A sports or recreational competition of international standard is held in Malaysia

The following terms have been defined in the Order:

i. **Arts or cultural activities**
A stage performance approved by MOTAC and organized with the participation of foreign nationals who have performed at least three performances in any country other than their own

ii. **Promoter**
A company incorporated under the Companies Act 2016, or a society or organization registered under the Societies Act 1966

iii. **Sports or recreational competition of international standard**
Any sporting event or recreational activity approved by KBS and organized in any form with the participation of foreign nationals from a number of countries

The Order stipulates that the exemption granted does not absolve the company from any requirement to submit any return, statement of accounts or any other information as required under the Income Tax Act 1967 (ITA). The company is also required to maintain a separate account for the income exempted under the Order.

In addition, the Order provides that Paragraphs 5 and 6 of Schedule 7A of the ITA will apply to the amount of exempted income.

The Order is effective from YA 2020 to YA 2025.

Special deductions on rental discounts given to tenants

In Budget 2022, it was proposed that the special deduction given to property owners who provide rental reductions of at least 30% to their tenants be extended for another six months, until June 2022 (see *Take 5: Malaysia Budget 2022*).

To legislate the above proposal, the following Amendment Orders were gazetted on 27 December 2021:

- Income Tax (Special Deduction for Reduction of Rental to a Small and Medium Enterprise) (Amendment) Rules 2021 [P.U.(A) 479]
- Income Tax (Special Deduction for Reduction of Rental to a Tenant other than a Small and Medium Enterprise) (Amendment) Rules 2021 [P.U.(A) 480]

The Amendment Orders came into operation on 1 January 2022.

Tax deduction on the costs of renovation and refurbishment of business premises

In Budget 2022, it was proposed that the tax deduction of up to RM300,000 on the costs of

renovation and refurbishment of business premises be extended for another year, until 31 December 2022 (see *Take 5: Malaysia Budget 2022*).

To legislate the above proposal, the Income Tax (Costs of Renovation and Refurbishment of Business Premise) (Amendment) Rules 2021 [P.U.(A) 481] were gazetted on 27 December 2021.

The Amendment Rules are effective from YA 2022.

Income tax exemption for the export of private healthcare services

Taxpayers providing private healthcare services are eligible for a tax exemption on income derived from the export of healthcare services to foreign clients (as defined). The income tax exemption is equivalent to 100% of the value of the increased exports of services, to be set-off against 70% of statutory income. The exemption is subject to conditions and was available from YA 2018 to YA 2020 (see *Tax Alert No. 16/2020*).

In Budget 2021, it was proposed that the tax exemption be extended to YA 2022 (see *Take 5: Malaysia Budget 2021*).

To legislate the above proposal, the following Amendment Order and Order were gazetted on 31 December 2021.

A. Income Tax (Exemption) (No. 9) 2002 (Amendment) Order 2021 [P.U.(A) 499/2021]

Income Tax (Exemption) (No. 9) Order 2002 [P.U.(A) 57/2002] provides an income tax exemption on income from specified services, such as legal, accounting, architecture, marketing, education and private healthcare.

P.U.(A) 499/2021 was gazetted to remove "private healthcare" from the scope of services covered under the Order. A separate Order (refer below) was gazetted to legislate the above-mentioned income tax exemption for private healthcare services.

The Amendment Order is deemed to be effective from YA 2021.

B. Income Tax (Exemption) (No. 13) Order 2021 [P.U.(A) 501/2021]

The Order provides that a person, who is a Malaysian resident, is exempted from the payment of income tax in respect of income derived from the export of private healthcare services, provided either in Malaysia or from Malaysia, to foreign clients. The income tax exemption is equivalent to 100% of the value of the increased exports of services, to be set-off against 70% of statutory income, on condition that:

(a) At least 10% of the person's total number of patients consist of foreign clients who have obtained private healthcare services in each YA, and
(b) At least 10% of the person's gross income is derived from foreign clients who have obtained private healthcare services in each YA

The following terms have been defined in the Order:

i. Foreign client
Company, partnership, organization or co-operative society which is incorporated or registered outside Malaysia, or a non-Malaysian citizen individual or a non-resident Malaysian citizen living abroad and his dependents

ii. Non-Malaysian citizen individual
A non-Malaysian citizen individual other than a:
(a) Participant of the Malaysia My Second Home programme and his dependents
(b) Holder of a Malaysian student pass and his dependents, and
(c) Holder of a Malaysian work permit and his dependents

iii. **Value of increased exports**
Difference between the value of private healthcare services exported in the basis period and that of the immediate-preceding basis period

The Order stipulates that the exemption granted does not absolve the company from any requirement to submit any return, statement of accounts or any other information as required under the ITA. The company is also required to maintain a separate account for the income exempted under the Order.

In addition, the Order provides that Paragraphs 5 and 6 of Schedule 7A of the ITA will apply to the amount of exempted income.

The non-application provisos stipulate that the Order shall not apply where the person has been granted:

- Any incentives (except for deductions on the promotion of exports) under the Promotion of Investments Act 1986
- Investment allowance under Schedule 7B of the ITA
- An exemption under Sections 127(3)(b) or 127(3A) of the ITA
- An exemption under P.U.(A) 57/2002

The Order is effective from YA 2021 to YA 2022.

Double deduction for scholarships awarded to students in vocational and technical courses

In Budget 2015, to encourage companies to provide scholarships to full-time students in the vocational and technical fields, it was proposed that the following expenses in relation to such scholarships be given a double deduction (see *Special Tax Alert: Highlights of the 2015 Budget*):

- Fee on course of study, and
- Educational aid and cost of living expenses throughout the student's period of study at Government-recognized institutions

To legislate the above proposal, the Income Tax (Deduction for the Sponsorship of Scholarship to Malaysian Students Pursuing Studies at the Technical and Vocational Certificate Levels) Rules 2021 [P.U.(A) 503] were gazetted on 31 December 2021. The Rules provide that in ascertaining a company's adjusted income from its business for a YA, a double deduction shall be allowed for the expenses incurred and paid by the company in that basis period, for sponsoring a scholarship for a student according to the period of the relevant sponsorship agreement.

The double deduction is given for the following expenses incurred for sponsoring the scholarship:

(a) Payment required by the relevant institution in relation 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

Any amount refunded by the student to the company shall, when received, be treated as gross business income of the company derived from Malaysia in the basis period for that YA.

The Rules shall apply to a company which:

(a) Is a Malaysian resident company incorporated under the Companies Act 2016
(b) Sponsors a scholarship for a student pursuing a full-time course of study at a technical and vocational certificate level in an institution, and
(c) Executes a scholarship agreement with a student between 11 October 2014 and 31 December 2016

The following terms have been defined in the Order:

i. **Institution**
Any institution recognized by the Malaysian Qualifications Agency or the Skills Development Department

ii. **Student**
Means an individual:
- Who is a Malaysian citizen and a Malaysian resident
- Who receives a full-time course of study at a technical or vocational certificate level in an institution
- Who has no means of his own, and
- Whose parents' or guardians' total monthly income do not exceed RM5,000

The Rules are deemed to be effective from YA 2015.

Double deduction for operating expenses incurred by anchor companies under the Vendor Development Programme (VDP)

In Budget 2022, it was proposed that the double deduction for anchor companies under the VDP be extended for another five years, to 31 December 2025 (see *Take 5: Malaysia Budget 2022*). The double deduction on qualifying expenses will also be increased from RM300,000 to RM500,000 per YA, for three consecutive YAs.

To legislate the above proposals, the Income Tax (Deduction for Expenditure in relation to Vendor Development Programme) Rules 2022 [P.U.(A) 2] were gazetted on 6 January 2022. The Rules provide that in ascertaining the adjusted income of an anchor company from its business for a YA, a double deduction shall be allowed for expenditure* incurred by the anchor company to carry out, in the basis period for that YA, the activities in relation to the VDP as follows:

(a) Activities in relation to product development, namely product quality development, product innovation or research and development (R&D)
(b) Activities in relation to capability improvements, namely certification programmes, assessment programmes or business process re-engineering, or
(c) Activities in relation to human capital, namely hard-skills training, lean management, financial management systems or capacity building

*Excludes capital expenditure incurred on plant, machinery, fixtures, land, premises, buildings, structures or works of a permanent nature or on alterations, additions or extensions thereof, or in the acquisition of any rights in or over any property.

The double deduction is given for a period of three consecutive YAs, commencing from the YA in which the expenditure is first incurred. The amount of expenditure is capped at RM500,000 for each YA, and is to be verified by the Minister of Entrepreneur Development and Cooperatives (MEDAC).

The Rules shall apply to an anchor company which:

(a) Is incorporated or deemed to be registered under the Companies Act 2016
(b) Is a Malaysian resident
(c) Participates in the VDP, and
(d) Signs a memorandum of understanding with MEDAC under the VDP between 1 January 2021 and 31 December 2025

The Rules also provide that the VDP is a programme approved by MEDAC, to be implemented by an anchor company to develop a new vendor company or strengthen the development of an existing vendor company, at the domestic and/or international level.

The vendor company shall be a company which is:

(a) Incorporated or deemed to be registered under the Companies Act 2016
(b) A Malaysian resident, and

(c) A manufacturer or supplier of components, or service provider of the anchor company under the VDP

The Rules are effective from YA 2021.

Tax incentive for the commercialization of R&D findings

In Budget 2021, it was proposed that investor companies be given a deduction for the amount of investment made in a subsidiary company that commercializes the R&D findings of public research institutions, including public or private higher learning institutions (see *Take 5: Malaysia Budget 2021*).

To legislate the above proposal, the Income Tax (Deduction for Investment in a Project of Commercialisation of Research and Development Findings) Rules 2022 were gazetted on 6 January 2022. The Rules provide that in ascertaining a company's adjusted income from its business for a YA, a deduction equivalent to the value of investment made in a related company for the sole purpose of financing a project on commercialization of R&D findings in the basis period for that YA, shall be allowed.

The investment shall:

(a) Be equivalent to the expenditure incurred by the related company in the basis period for the same YA for the operation of its commercialization activity and the asset used for that activity, and
(b) Not be disposed of within five years from the date of the last investment made, if such investment is in the form of paid-up ordinary share capital

Where a company that has made an investment in the form of paid-up ordinary share capital and claimed a deduction in respect of the investment receives an amount as consideration for the disposal of shares, the amount received by that company shall be included in ascertaining its adjusted income for the YA in which that amount was received (capped at the total deductions allowed in relation to that investment). This however does not apply if the disposal of shares take place after five years from the date of the last investment in the form of paid-up ordinary share capital made in the related company.

The deduction shall cease in the basis period for the YA in which the tax exemption period of the related company commences, as determined by the Minister or Minister of International Trade and Industry, as the case may be.

To qualify for the deduction, the company must comply with the following conditions:

(a) It is a Malaysian resident company incorporated in Malaysia under the Companies Act 2016
(b) The application for approval for the project of commercialization must be received by the Malaysian Investment Development Authority (MIDA) between 7 November 2020 and 31 December 2025
(c) The project of commercialization must commence within one year from the date of approval issued by MIDA

The following terms have been defined in the Order:

i. **R&D findings**
R&D findings in non-resource-based activities or products listed below and wholly owned by a public research institute or a public or private institute of higher learning in Malaysia:
- Electrical and electronics
- Medical devices
- Technical or functional textiles
- Machinery and equipment
- Metals
- Transport equipment

ii. **Investment**
- Investment in the form of cash in a related company for which the related company has no obligation to repay, or
- Paid-up ordinary share capital in cash in a related company

iii. **Commercialization**
Process of transforming R&D findings into a product or process that has an industrial application or that is marketable

iv. **Related company**
Company incorporated under the Companies Act 2016, where at least 70% of its paid-up ordinary share capital is directly owned by a company that has invested in a commercialization project

The Rules are deemed to have come into operation on 7 November 2020.

Tax incentives for the Tun Razak Exchange (TRX) project

The TRX project, previously known as the Kuala Lumpur International Financial District, is a component of the Economic Transformation Programme. To attract leading financial organizations to operate in the TRX, a number of incentives were proposed in Budget 2012 and subsequently legislated via the gazettement of Rules and/or Orders on 31 January 2013 (see *Tax Alert No. 4/2013*).

Following the above, five Amendment Rules or Amendment Orders were gazetted on 27 December 2021.

Industrial building allowance (IBA)

The Income Tax (Industrial Building Allowance) (Tun Razak Exchange Marquee Status Company) Rules 2013 [P.U.(A) 27/2013] provide that a commercial building constructed or purchased by a Tun Razak Exchange Marquee (TRXM) status company in the TRX shall be treated as an "industrial building" (IB) and thus qualify for IBA, where:

(a) The company owns the commercial building, and
(b) The commercial building is used by the company for the purpose of a business as specified in the Schedule of the Rules

The Rules provide for an annual allowance of 10% on the qualifying building expenditure (QBE).

Following the above, the Income Tax (Industrial Building Allowance) (Tun Razak Exchange Marquee Status Company) (Amendment) Rules 2021 [P.U.(A) 473] were gazetted. The Amendment Rules:

(a) Clarify that:
- The Rules shall apply in respect of QBE incurred by a TRXM status company for the purpose of its business, as specified in the Schedule, for an IB referred to in Rule 5 (previously Rule 3) of the Rules
- The definition of "disposed of" includes a situation where the commercial building ceases to be used for the purposes prescribed in Rule 5 (previously Rule 3) of the Rules

(b) Clarify that in computing IBA in a situation where only part of the building is used as an IB, the capital expenditure incurred for the construction or purchase (previously, construction only) of the part of the building that is not used as an IB will need to be taken into account

(c) Extend the incentive and provide that the Rules will not apply to QBE incurred after 31 December 2025 (previously 31 December 2020)

The Amendment Rules are deemed to be effective from YA 2014 (similar to P.U.(A) 27/2013).

Accelerated capital allowance (ACA)

The Income Tax (Accelerated Capital Allowance) (Tun Razak Exchange Marquee Status Company) Rules 2013 [P.U.(A) 29/2013] provide an initial allowance of 20% and an annual allowance of 40% on renovation costs (as specified in the Schedule of the Rules) incurred by a TRXM status company for a building located in the TRX and used for the company's business.

Following the above, the Income Tax (Accelerated Capital Allowance) (Tun Razak Exchange Marquee Status Company) (Amendment) Rules 2021 [P.U.(A) 474] were gazetted. The Amendment Rules provide that:

(a) The incentive is extended, and the Rules will apply to the renovation costs incurred for a building located in the TRX and used for the company's business from 1 January 2014 to 31 December 2025
(b) The Rules are effective from 1 January 2014

Previously, P.U.(A) 29/2013 stated that the Rules were effective from 1 January 2014 to 31 December 2020.

The Amendment Rules are deemed to be effective from 1 January 2014.

Deduction for relocation costs

The Income Tax (Deduction for Relocation Costs for Tun Razak Exchange Marquee Status Company) Rules 2013 [P.U.(A) 30/2013] provide that in ascertaining the adjusted income of a TRXM status company from its business for a YA, a deduction for relocation costs (as specified in the Schedule of the Rules) incurred by the company to relocate the whole or part of its business to the TRX shall be allowed, provided that such relocation takes place by 31 December 2020.

The deduction shall be in respect of costs which are not deductible under Section 33(1) of the ITA.

Following the above, the Income Tax (Deduction for Relocation Costs for Tun Razak Exchange Marquee Status Company) (Amendment) Rules 2021 [P.U.(A) 475] were gazetted. The Amendment Rules extend the incentive and provide that the deduction shall be allowed for relocations that takes place by 31 December 2025.

The Amendment Rules are effective from YA 2021.

Additional deduction for rental costs

The Income Tax (Deduction for Rental Payments) (Tun Razak Exchange Marquee Status Company) Rules 2013 [P.U.(A) 31/2013] provide that in ascertaining the adjusted income of a TRXM status company from its business for a YA, an additional deduction (i.e., deduction in addition to any deduction allowable under Section 33(1) of the ITA), equal to half of the rental payments incurred by the company for renting a commercial building in the TRX for its business, shall be allowed. The Rules are effective from YA 2014 and does not apply to a TRXM company that commences the undertaking of its business in the TRX after 31 December 2020.

Following the above, the Income Tax (Deduction for Rental Payments) (Tun Razak Exchange Marquee Status Company) (Amendment) Rules 2021 [P.U.(A) 476] were gazetted. The Amendment Rules extend the incentive and provide that the additional deduction shall apply to a TRXM company that commences undertaking its business in the TRX by 31 December 2025.

The Amendment Rules are effective from YA 2021.

Income tax exemption

The Income Tax (Exemption) (No. 4) Order 2013 [P.U.(A) 28/2013] provides a 70% tax exemption on statutory income derived by an approved developer from:

(a) The disposal of any building or rights over any building or part of a building, up to YA 2022, and
(b) The rental of a building or part of a building, up to YA 2027

The "building" refers to a building located within the TRX which is constructed by the approved developer according to the development plan for the TRX. The exemption applies for a maximum of five consecutive YAs.

Following the above, the Income Tax (Exemption) (No. 4) 2013 (Amendment) Order 2021 [P.U.(A) 477] was gazetted. The key updates are as follows:

- The definition of "building" has been updated to mean "any building" (previously, a building) located within the TRX
- The exemption for the disposal of any building or rights over any building or part of a building is extended until YA 2025
- References to Subsubparagraph 3(1)(a) or (b) in the Order have been amended to accurately state Subsubparagraph 4(1)(a) or (b) instead
- The Amendment Order clarifies under a special provision that:
  (i) Subject to Point (ii) below, the Income Tax (Property Development) Regulations 2007 [P.U.(A) 277/2007] shall apply to the income of an approved developer derived from the business referred to in Point (a) above
  (ii) Regulation 6 of P.U.(A) 277/2007 shall not apply to the income of an approved developer derived from the business referred to in Point (a) above, where the developer carries on a property development project using the build-then-sell method

The Amendment Order is deemed to be effective from YA 2013 (similar to P.U.(A) 28/2013).

Stamp duty exemption

Stamp duty exemption for micro enterprises or small and medium enterprises (MSMEs) on instruments for peer-to-peer (P2P) financing

In Budget 2022, it was proposed that a stamp duty exemption be given on P2P loans or financing agreements executed between MSMEs and their investors from 1 January 2022 to 31 December 2026 (see *Take 5: Malaysia Budget 2022*).

To legislate the above proposal, the Stamp Duty (Exemption) (No. 17) Order 2021 [P.U.(A) 487] was gazetted on 28 December 2021. The Order provides a stamp duty exemption for the instrument of investment notes or Islamic investment notes for P2P financing executed by MSMEs, or between MSMEs and their investor or a person authorized to act on behalf of the investor.

The exemption is given on condition that:

(a) The P2P platform is operated by a P2P operator registered with the Securities Commission Malaysia (SC), and
(b) The investment note or Islamic investment note is executed between 1 January 2022 and 31 December 2026

The following terms have been defined in the Order:

i. **MSMEs**
MSMEs as may be determined by the National Entrepreneur and Small and Medium Enterprises Development Council established under Section 2A of the Small and Medium Industries Development Corporation Act 1995

ii. **P2P platform**
Electronic platform that facilitates directly or indirectly the issuance, execution or offering of an investment note or an Islamic investment note specified in the Guidelines on Recognized Markets issued or revised from time to time by the SC

iii. **Investment note or Islamic investment note**
Has the same meaning assigned to it under the Capital Markets and Services (Prescription of Securities and Islamic Securities) (Investment Note and Islamic Investment Note) Order 2016

The Order came into operation on 1 January 2022.

Stamp duty exemption for small and medium enterprises (SMEs) on any instrument executed for mergers and acquisitions (M&A)

In Budget 2022, the Government proposed to extend the waiver of the stamp duty on any instrument executed by SMEs for M&A (see *Take 5: Malaysia Budget 2022*).

To legislate the above proposal, the Stamp Duty (Exemption) (No. 18) Order 2021 [P.U.(A) 502] was gazetted on 31 December 2021. The Order provides a stamp duty exemption for the instruments outlined below, in relation to an approved M&A executed by SMEs:

- Contract or agreement for the sale or lease of property (land, building, machinery and equipment)
- Instrument of transfer and memorandum of understanding
- Loan or financing agreement
- First leasing agreement

The exemption will apply to instruments executed between 1 July 2021 and 31 December 2022. However, the exemption is also subject to the condition that the application for M&A is received by the MEDAC between 1 July 2021 and 30 June 2022.

The Order is deemed to have come into operation on 1 July 2021.

Income tax rebate for new SMEs or Limited Liability Partnerships (LLPs)

Pursuant to the Finance Act 2020, a new Section 6D was introduced into the ITA to provide an income tax rebate of up to RM20,000 per YA, for a period of three consecutive YAs, for a new SME or LLP which fulfils the requirements specified in Section 6D and/or any other conditions which may be imposed by the Minister via a statutory order.

Following the above, the Income Tax (Conditions for the Grant of Rebate under Subsection 6D(4)) Order 2021 [P.U.(A) 504] was gazetted on 31 December 2021. To qualify for the rebate, the Order provides that the company or LLP must comply with the following conditions:

(a) The company or LLP shall not own or be owned (directly or indirectly) by a related company or related LLP (as defined), which has paid-up ordinary share capital or contribution of capital (whether in cash or in-kind) of more than RM2.5 million at the beginning of the basis period for a YA

(b) The operations of the company or LLP shall be carried out in a different premise from its related company or related LLP

(c) The company or LLP shall not use any plant, equipment or facility owned by its related company or related LLP, or which has been disposed of by its related company or related LLP to the company or LLP

(d) The employees of the company or LLP, except for the Chief Executive Officer and Director, shall be different from its related company or related LLP

(e) The business activity carried out by the company or LLP shall be:
    (i) Different from its related company or related LLP, or
    (ii) Different from a sole proprietorship where the sole proprietorship is converted to a company or LLP

(f) The company or LLP shall not be the result of a merger or acquisition of two or more companies or LLPs which have paid-up ordinary share capital or contribution of capital (whether cash or in-kind) of RM2.5 million or less at the beginning of the basis period for a YA, and gross income from business sources of not more than RM50 million for the relevant YA

(g) The company or LLP is not a partnership or company that has been converted into an LLP in accordance with Section 29 or 30 of the LLP Act 2012

The Order stipulates that where the company or LLP first commences its operations on or after 1 July 2020, and its basis period ends on or before 31 December 2020, the rebate may be granted in accordance with the Order for YA 2021 and YA 2022 only.

The Order is effective from YA 2021.

Discontinuation of tax concessions under the Frequently Asked Questions on International Tax Issues due to COVID-19 Travel Restrictions

As highlighted in earlier alerts (see *Special Tax Alert No. 12/2020*, *Tax Alert No. 14/2020*, *Tax Alert No. 19/2020* and *Tax Alert No. 4/2021*), the IRB has published the "Frequently Asked Questions on International Tax Issues due to COVID-19 Travel Restrictions" (FAQs) document and various updates thereto, to address questions pertaining to the following:

(a) Residency status of individuals and companies
(b) Creation of permanent establishments (PEs)
(c) Cross-border employment income for individuals

Following the above, the IRB recently indicated on its website that in line with the Malaysian Government's announcement and the practices of several countries which have lifted travel restrictions due to COVID-19, the IRB will not be extending the various tax concessions given under the FAQs document due to COVID-19 travel restrictions. Hence, the concessions ended on 31 December 2021. The provisions under the ITA and double tax agreements (DTAs) (where relevant) will apply thereafter.

The IRB has also published an updated version of the FAQs document, dated 24 December 2021, to reflect the above.

Deferment of tax payments by taxpayers and/or employers affected by the recent floods

On 28 December 2021, the IRB issued a media release to state that taxpayers and/or employers affected by the recent floods may apply to defer their tax payments as follows:

(a) The deadline for the tax instalment payment (CP204) due in December 2021 shall be extended up to 31 January 2022
(b) The instalment payments for January 2022 arising from investigations, audits, collections or civil litigations shall be deferred to February 2022
(c) The deadline for remittances of Monthly Tax Deduction (MTDs) and/or CP38 of employees for

December 2021's remuneration shall be extended to 31 January 2022

(d) The balance of tax payable may be deferred until a period requested by the taxpayer

Applications for the above must be submitted via the following methods:

- **Item (a)**
  By e-mail to anggarancukai@hasil.gov.my

- **Items (b), (c) and (d)**
  Through the feedback form available at the IRB's official portal, or the following link: https://maklumbalaspelanggan.hasil.gov.my/MaklumBalas/ms-my/

The documents to be submitted to support the applications will be based on the facts and merits of each case.

Update on Malaysia's DTA with Ukraine

The Malaysia-Ukraine DTA, which was signed on 4 August 2016, entered into force on 29 December 2021 and is effective from 1 January 2022. The following table summarizes some of the withholding tax rates under the DTA in respect of payments from Malaysia to a resident of Ukraine:

Payments	Withholding tax rate	
	Normal rate	DTA rate
Interest	15%	0% / 10% Note
Royalties	10%	8%
Fees for technical services	10%	8%

Note:
The 0% applies if the recipient is the Government of Ukraine or certain qualifying institutions of Ukraine. In other cases, the 10% rate applies.

Four Public Rulings (PRs) updated, and two new PRs issued by the IRB

The IRB has published the following PRs:

- PR No. 6/2021: Notification of Change of Accounting Period by a Company / LLP / Trust Body / Co-operative Society
- PR No. 7/2021: Partnerships Taxation Part I – Determination of the Existence of a Partnership
- PR No. 8/2021: Partnerships Taxation Part II – Computation and Allocation of Income
- PR No. 9/2021: Private Retirement Scheme
- PR No. 10/2021: Tax Treatment of R&D Expenditure Part II – Special Deductions
- PR No. 11/2021: Bilateral Credit and Unilateral Credit

PRs No. 7/2021 and No. 8/2021 are new PRs, while the remaining PRs are to replace previous PRs.

The details are discussed below:

PR No. 6/2021: Notification of Change of Accounting Period by a Company / LLP / Trust Body / Co-operative Society

The IRB has published PR No. 6/2021: Notification of Change of Accounting Period by a Company / LLP / Trust Body / Co-operative Society, dated 29 December 2021. This new 22-page PR replaces PR No. 8/2019, which was issued on 6 December 2019 (see *Tax Alert No. 23/2019*). The new PR comprises the following paragraphs and sets out 13 examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Estimate of tax payable
5.0 Notification of change of the accounting period

6.0 Computation of the revised tax instalment after the change of the accounting period
7.0 Increase related to tax instalment payments and the revised estimate of tax payable
8.0 Failure to notify on the change of the accounting period
9.0 Updates and amendments
10.0 Disclaimer

The PR explains the requirement to notify the Director General of Inland Revenue (DGIR) of any change in the accounting period by a company, LLP, trust body or co-operative society, which has to make payments by instalments in respect of an estimate of tax payable for a YA.

The new PR is broadly similar to the earlier PR. The key changes are as outlined below:

- The new PR was updated to more accurately reflect that the determination of the due date for the submission of Form CP204 for a new company is based on when it commences operations ("operations" is defined in Section 21A of the ITA). Previously, it was stated as "business operations".

- As highlighted in an earlier alert, Operational Guidelines No. 1/2021 (OG) stipulate that entities intending to revise their tax estimates due to a change in their accounting periods will need to do so in the sixth or ninth month of the basis period for the YA (see *Tax Alert No. 3/2021*). Previously, the revision of the tax estimate due to the change in the accounting period was possible outside of the stipulated time frames, under certain circumstances.

  As the OG provide an updated methodology for ascertaining the tax instalment payments after a change in accounting period, the IRB had previously stipulated on its website that Paragraph 6 of PR No. 8/2019 with regard to the computation of revised tax instalment payments after a change in accounting period would no longer apply.

  In line with this, the above-mentioned Paragraph 6 has been removed from the new PR.

- The new PR outlines the circumstances under which a tax increase under Section 107C(10A) of the ITA will be imposed.

Please note that this new PR must be read together with PR No. 8/2014: Basis Period of a Company, LLP, Trust Body and Co-operative Society (see *Tax Alert No. 25/2014*).

PR No. 7/2021: Partnerships Taxation Part I – Determination of the Existence of a Partnership

The IRB has published PR No. 7/2021: Partnerships Taxation Part I – Determination of the Existence of a Partnership, dated 29 December 2021, to explain how the existence of a partnership is determined for income tax purposes. This new 15-page PR comprises the following paragraphs and sets out seven examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Introduction to a partnership
5.0 Characteristics of a partnership
6.0 Existence of a partnership
7.0 Types of partners
8.0 Partnership accounts
9.0 Filing of Income Tax Return Form (ITRF)
10.0 Disclaimer

Some of the key points are outlined below:

- The PR explains the definition and characteristics of a partnership under the Partnership Act 1961 and the ITA

- The PR provides guidance and examples on the factors to be taken into consideration in determining the existence of a partnership, including the existence of a formal partnership agreement (e.g., deed of partnership), the registration of the partnership, whether the terms of the deed of partnership are indeed followed, the determination of profit-sharing and others. The PR also discusses the distinction between a partnership and co-ownership or joint venture.

- The PR elaborates on the various categories of partners (e.g., active, salaried, inactive, limited, corporate and precedent) in a partnership.

- The PR broadly explains the preparation of a partnership's business accounts as well as the ITRF filing requirements

Please note that this PR should be read together with PR No. 8/2021: Partnerships Taxation Part II – Computation and Allocation of Income (see below).

PR No. 8/2021: Partnerships Taxation Part II – Computation and Allocation of Income

The IRB has published PR No. 8/2021: Partnerships Taxation Part II – Computation and Allocation of Income, dated 29 December 2021, to explain the computation of a partnership's income or loss and the ascertainment of the respective partners' share of the income or loss. This new 19-page PR comprises the following paragraphs and sets out seven examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Chargeable person
5.0 Basis period of a partnership
6.0 Computation of partnership income
7.0 Changes in a partnership
8.0 Sole proprietor business becoming a partnership
9.0 Partnership is a partner in another partnership
10.0 Non-business income
11.0 Partnership losses
12.0 Capital allowances
13.0 Partner incurring own capital expenditure in partnership
14.0 Disclaimer

Some of the key points are outlined below:

- The PR explains that for income tax purposes, a partnership is not a chargeable person. Income derived from a partnership is allocated to its partners based on an agreed profit-sharing ratio and taxed in the hands of the partners.

- The PR provides guidance and examples to demonstrate the methodology of computing the provisional adjusted income or loss of a partnership, the divisible income or loss of a partnership (i.e., the amount to be allocated to the partners), as well as a partner's income from a partnership.

- The PR also clarifies the treatment (with examples) of a change in profit-sharing arrangements.

- The PR clarifies and provides examples to demonstrate the treatment where there are changes in a partnership arrangement, when a sole proprietor business becomes a partnership, or when a partnership is a partner in another partnership.

As highlighted above, this PR should be read together with PR No. 7/2021: Partnerships Taxation Part I – Determination of the Existence of a Partnership (see above).

PR No. 9/2021: Private Retirement Scheme

The IRB has published PR No. 9/2021: Private Retirement Scheme, dated 29 December 2021. This

new 20-page PR replaces PR No. 9/2014, which was issued on 24 December 2014 (see *Tax Alert No. 2/2015*). The new PR comprises the following paragraphs and sets out 13 examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Establishment and features of the scheme
5.0 Tax treatment
6.0 Updates and amendments
7.0 Disclaimer

The PR provides guidance on the tax treatment of private retirement scheme (PRS) contributions by individuals and employers, income of the PRS fund and withdrawal of contributions to the PRS.

The new PR is broadly similar to the earlier PR. The key changes are as outlined below:

- The PRS offers various types of funds for investors to contribute to. A default option, which is based on age groups, is available for an investor who does not specify his choice of fund.

  The new PR reflects the updated age groups for each type of fund under the default option, in line with the Guidelines on PRS issued by the SC dated 4 May 2020.

- The new PR explains and provides examples to reflect the legislative changes below:
  - Pursuant to the Finance Act 2019, effective 1 January 2020, withdrawals from a PRS for the purpose of healthcare or housing before the contributor reaches the age of 55 will not be taxed as long as the withdrawals are made in compliance with the criteria set out in the relevant guidelines issued by the SC
  - Pursuant to the Finance Act 2020, the tax relief of RM3,000 for contributions to PRS is extended up to YA 2025

PR No. 10/2021: Tax Treatment of R&D Expenditure Part II – Special Deductions

The IRB has published PR No. 10/2021: Tax Treatment of R&D Expenditure Part II – Special Deductions, dated 29 December 2021. This new 25-page PR replaces PR No. 6/2020, which was issued on 13 August 2020 (see *Tax Alert No. 14/2020*). The new PR comprises the following paragraphs and sets out six examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Eligibility to claim an incentive for a qualifying R&D activity
5.0 Double deduction or single deduction
6.0 Qualifying R&D expenditure
7.0 Claim for a double deduction under Section 34A of the ITA
8.0 Pioneer company undertakes R&D activity and makes an election under Section 34A(4A) of the ITA
9.0 Claim for a double deduction under Section 34B of the ITA
10.0 Claim for a single deduction under Subsection 34(7) of the ITA
11.0 IBA and capital allowances
12.0 Penalty for incorrect information
13.0 Application for approval for R&D activities under Section 34A of the ITA
14.0 Updates and amendments
15.0 Disclaimer

The PR explains the types of expenditure in respect of a qualifying R&D activity that would be eligible for special deductions, and the relevant application processes.

The new PR is broadly similar to the earlier PR. The key changes are as outlined below:

- The new PR explains and provides examples to reflect the following legislative changes pursuant

to the Finance Act 2020, effective from 1 January 2021:
  - Only Malaysian residents are eligible for the deductions under Section 34(7), 34A and 34B of the ITA
  - Pursuant to Section 34A, if the R&D expenditure incurred outside Malaysia in a YA exceeds 30% of the total R&D expenditure in the YA, the claimant will not be eligible for a double deduction (i.e., the claimant is only eligible for a single deduction), and vice versa.

- The PR stipulates that the following will also need to be retained in respect of R&D expenditure for technical services, if any:
  - Agreement between the client and service provider
  - Explanation of the novelty or technical risk involved during the period the researcher, consultant and/or organization carried out the R&D activities

  (The above are in addition to the other information outlined in the earlier PR)

- The new PR stipulates that for deductions under Sections 34(7) and 34B of the ITA, if the project is outsourced to any service provider (approved by the relevant Minister), it is important for the company to understand how the product or process is developed. The company and service provider will have to identify, determine and explain any novelty or technical risk involved, and the systematic, investigative and experimental studies involved for the purpose of claiming the deductions, in the event of an audit by the IRB.

- References to the "Guidelines on the Application Procedure for a Special Deduction in respect of a Qualifying R&D Activity" have been updated accordingly to reflect the new guidelines (refer further below)

PR No. 11/2021: Bilateral Credit and Unilateral Credit

The IRB has published PR No. 11/2021: Bilateral Credit and Unilateral Credit, dated 31 December 2021. This new 16-page PR replaces PR No. 11/2011, which was issued on 20 December 2011 (see *Tax Alert No. 1/2012*). The new PR comprises the following paragraphs and sets out seven examples:

1.0 Objective
2.0 Relevant provisions of the law
3.0 Interpretation
4.0 Double taxation agreement
5.0 Bilateral credit
6.0 Unilateral credit
7.0 Foreign sourced income and remittances
8.0 Documents required for double taxation relief claim
9.0 Updates and amendments
10.0 Disclaimer

The PR explains how a person who has been charged to tax on the same income both in Malaysia and in another country may claim a bilateral or unilateral credit.

The new PR is broadly similar to the earlier PR. The key changes are as outlined below:

- The definitions of "foreign tax", "body of persons" and "person" have been updated

- The formula for the computation of bilateral credit and unilateral credit are as follows:

  Bilateral credit

$$\frac{\text{Foreign income (statutory income)}}{\text{Total income}} \times \text{Malaysian tax payable before bilateral credit*}$$

Unilateral credit

$$\frac{\text{Foreign income (statutory income)}}{\text{Total income}} \times \text{Malaysian tax payable before unilateral credit*}$$

*Previously "bilateral / unilateral credit"

Further updates may need to be made to the PR due to the removal of the foreign-sourced income exemption for Malaysian residents, pursuant to the Finance Act 2021. The IRB has also stated on its website that the PR has not taken into consideration the said legislative change.

Technical guidelines on the tax treatment of R&D expenditure

The IRB has published on its website the Guidelines on the Application Procedure for a Special Deduction in respect of a Qualifying R&D Activity (Technical Guidelines), dated 29 December 2021. The new 16-page Technical Guidelines replace the earlier Technical Guidelines, which were issued on 13 August 2020 (see *Tax Alert No. 14/2020*). The new Technical Guidelines set out eight examples to explain the application procedure for an approved qualifying R&D activity that qualifies for a special deduction under Section 34A of the ITA, and the requirement to submit the relevant forms when a claim is made for deductions under Sections 34(7), 34A or 34B of the ITA. The Guidelines comprise of the following paragraphs:

1.0 Introduction
2.0 R&D
3.0 Qualifying R&D expenditure
4.0 Application for a special deduction
Appendix

The new Technical Guidelines are broadly similar to the earlier Technical Guidelines. The key changes are as outlined below.

- The new Technical Guidelines incorporate the legislative changes enacted via the Finance Act 2020, as highlighted earlier in PR No. 10/2021 (refer above).
- To apply for an extension project under Section 34A of the ITA, an additional criterion has been included, i.e., that the project duration should be expected to be more than 12 months.
- The application forms have been updated
- References to the PR No. 6/2020 have been updated accordingly to reflect the new PR No. 10/2021 instead (refer above)

2022 income tax return filing programme issued

The IRB has published on its website the 2022 income tax return filing programme (2022 filing programme) titled "Return Form (RF) Filing Programme For The Year 2022", dated 30 December 2021. The 2022 filing programme is broadly similar in concept to the position laid out in the original 2022 filing programme (see *Tax Alert No. 1/2021*), prior to the extended grace periods given due to the COVID-19 pandemic. Where a grace period is given, submissions shall be deemed to have been received by the stipulated due date if received within the grace period. The grace period also applies to the settlement of the balance of tax payable under Section 103(1) of the ITA. Where the ITRF or balance of tax payable is not furnished within the grace period, the original due date will be used for the purpose of calculating penalties (note that all references to "due date" in the table below refer to the original due date).

Some of the key updates to the 2022 filing programme are as follows:

- The 2022 filing programme stipulates the due date for the submission of the RF (i.e., Form BT /

e-BT) for resident individuals who are non-citizen workers holding key positions

- The 2022 filing programme stipulates that the Form E and C.P.8D [i.e., Statement of Remuneration from Employment for the Year ending 31 December 2021 and Particulars of Tax Deduction under the Income Tax Rules (Deduction from Remuneration) 1994] must contain all the particulars of employees (including full-time, part-time or contract employees and interns) and individuals who are responsible for or engaged in the management of the organization (including company directors, co-operative society's board members, association's controlling members and partners of LLPs)

Summary of the 2022 Filing Programme

ITRF	Due date	Mode of submission	Grace period
Forms BE, BT, M, MT, TF, TP and TJ for YA 2021 for taxpayers not carrying on a business	30 April 2022	a) e-Filing N.B. e-Filing is not available for Form TJ	Within 15 days after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period
Forms B, P, BT, M, MT, TF, TP and TJ for YA 2021 for taxpayers carrying on a business	30 June 2022	a) e-Filing N.B. e-Filing is not available for Form TJ	Within 15 days after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period
Form e-C and e-PT for YA 2022	Last day of the 7th month from the financial year-end	e-Filing	Within 1 month after the due date
Form C1 for YA 2022	Last day of the 7th month from the financial year-end	a) e-Filing	Within 1 month after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period
Forms TC, TA, TR and TN for YA 2022	Last day of the 7th month from the financial year-end	a) e-Filing N.B. e-Filing is not available for Forms TR and TN	Within 1 month after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period
Form E (Company / Labuan company employers)	31 March 2022	e-Filing	Within 1 month after the due date

ITRF	Due date	Mode of submission	Grace period
Form E (Non-company / Non-Labuan company employers)	31 March 2022	a) e-Filing	Form to be received by IRB within 1 month after the due date
		b) Via postal delivery	Within 3 working days after the due date
		c) Hand-delivery	No grace period
Form CPE	Within 7 months from the date following the end of the exploration period	a) e-Filing	Within 1 month after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period
Form CPP	Within 7 months from the date following the end of the basis period	a) e-Filing	Within 1 month after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period

FAQs on the implementation of Tax Identification Number (TIN)

In Budget 2022, it was announced that TIN will be implemented for all companies, and individuals above 18 years of age, from the year 2022.

Following the above, the IRB published on its website an FAQ document, titled "Frequently Asked Questions on the Implementation of Tax Identification Number", dated 31 December 2021. The details set out in the FAQs are outlined in the Appendix to this Alert.

The FAQs are available at the following link: FAQ_TIN_2.pdf (hasil.gov.my)

Updates on Labuan entities

Updates on Labuan International Commodity Trading (LICT) companies

A. Exemption Orders and Amendment Orders

The following Exemption Orders and Amendment Orders were gazetted in 2013 and 2017 respectively (see *Tax Alert No. 8/2013* and *Tax Alert No. 13/2017*):

(a) (i) Labuan Business Activity Tax (Exemption) Order 2013 - gazetted on 21 March 2013

(ii) Labuan Business Activity Tax (Exemption) 2013 (Amendment) Order 2017 – gazetted on 30 May 2017

The above provide a 100% income tax exemption to an LICT company on income derived from the trading of physical products and related derivative instruments in relation to liquefied natural gas (LNG) with non-resident companies in any currency other than Malaysian currency. The

exemption shall be for a period of three consecutive years commencing from the first year of the LICT's operation and is effective from YA 2013.

Following the above, the Labuan Business Activity Tax (Exemption) 2013 (Amendment) Order 2021 [P.U.(A) 484] was gazetted on 27 December 2021. The Amendment Order provides that the requirement for the trading activity to be undertaken "with non-resident companies in currency other than Malaysian currency" for the exemption to apply, has been removed.

The Amendment Order is deemed to have come into operation on 1 January 2019.

(b) (i) **Labuan Business Activity Tax (Exemption) (No. 2) Order 2013** - gazetted on 21 March 2013

(ii) **Labuan Business Activity Tax (Exemption) (No. 2) 2013 (Amendment) Order 2017** - gazetted on 30 May 2017

The above exempts an LICT company from the election to pay a fixed tax of RM20,000 on income derived from qualifying activities (as defined). The election was previously provided for under Section 7(1) of the Labuan Business Activity Tax Act 1990 (LBATA), which has since been deleted from the LBATA pursuant to the Finance Act 2018.

Following the above, the Labuan Business Activity Tax (Exemption) (No. 2) 2013 (Revocation) Order 2021 [P.U.(A) 483] was gazetted on 27 December 2021. With this, the above-mentioned exemption is revoked effective from YA 2020, as it is no longer relevant.

B. Substantial activity requirements for an LICT company

As highlighted in an earlier alert, the substantial activity requirements for an LICT company were removed from the Labuan Business Activity Tax Act (Requirements for Labuan Business Activity Tax) 2018 (Amendment) Regulations 2020, which were gazetted on 24 December 2020. Thereafter, the Labuan Investment Committee (LIC) issued LIC Pronouncement 4-2020 dated 9 February 2021 to clarify that the substantial activity requirements for LITC companies would be regulated under a separate gazette order which would be released in due course (see *Tax Alert No. 4/2021*).

Following the above, the Labuan Business Activity Tax (Requirements for Labuan International Commodity Trading Company) Regulations 2021 [P.U.(A) 482/2021] were gazetted on 27 December 2021. The Regulations provide that:

(a) An LICT company, which is a Labuan entity carrying on a Labuan business activity, shall in the basis period for a YA fulfill the following requirements:
   (i) Have at least three full-time employees, and
   (ii) Have annual operating expenditure of at least RM3 million

(b) Where an LICT company does not have more than five related companies carrying on qualifying activities, that LICT company shall:
   (i) Have at least three full-time employees, which includes at least two full-time employees in its business operational office in Labuan, within the group of companies
   (ii) Incur an annual operating expenditure of at least RM3 million in Malaysia, which includes at least RM100,000 incurred in Labuan for each company

(c) Subject to Point (b) above, where an LICT company has more than five related companies carrying on qualifying activities, the LICT company shall have an additional full-time employee in its business operational office in Labuan for every addition of up to five related companies in its group of companies.

The requirement in Point (a) above is deemed to have been operational from 1 January 2019 to 31 December 2020, whereas the requirements in Points (b) and (c) above are deemed to have come into operation on 1 January 2021.

The following terms have been defined in the Regulations:

i. **Qualifying activity**
Trading of physical products and related derivative instruments in relation to:
- Petroleum and petroleum-related products including LNG
- Minerals
- Agriculture products
- Refined raw materials
- Chemicals
- Base minerals, or
- Coal

ii. **Global Incentives for Trading (GIFT)**
The programme of incentives for an LICT company to use Malaysia as its international trading base to undertake a qualifying activity

iii. **LICT company**
A Labuan company which:
- Is incorporated or registered under the Labuan Companies Act 1990 (LCA)
- Is licensed under Section 92 of the Labuan Financial Services and Securities Act 2010
- Maintains a registered office in Labuan but is allowed to establish its business operational office anywhere in Malaysia, and
- Undertakes a qualifying activity under the GIFT programme

iv. **Related companies**
Companies that are deemed to be related to each other in accordance with Section 4 of the LCA

C. Extension of time (EOT) for the submission of tax returns for LICT companies for YA 2020 and YA 2021

Following the gazettement of P.U.(A) 482/2021 above, the IRB's Labuan Branch has issued a letter dated 30 December 2021 to the Association of Labuan Trust Companies (ALTC), stating that LICT companies will be given an EOT up to 31 January 2022 to submit their ITRFs for YA 2020 and YA 2021. The payment of taxes must be made at the time of filing, pursuant to Section 11 of the LBATA.

Update on the management and control requirements for pure equity holding Labuan entities

As highlighted in an earlier alert, the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 were gazetted on 22 November 2021 (see *Tax Alert No. 23/2021*). The Regulations stipulate that a Labuan entity that undertakes pure equity holding activities will be required to hold a board of directors (BOD) meeting in Labuan at least once a year, in order to comply with the management and control requirements which are part of the Labuan substance requirements. Other requirements must also be met.

Following the above, the IRB's Labuan Branch has issued a letter dated 28 December 2021 to the ALTC, stating that a pure equity holding Labuan entity which fulfill the requirements below will not be required to hold its BOD meeting in Labuan:

(i) The directors are unable to convene the meeting in Labuan due to COVID-19 travel restrictions from their country of origin and/or COVID-19 travel restrictions which prevent them from entering Labuan
(ii) Meetings are held via an electronic medium (e.g., virtual meeting, teleconferencing etc.)

The concession applies only to Labuan entities affected by COVID-19 travel restrictions. The letter also states that the Labuan entities will not be required to submit any documents to the IRB unless required for compliance monitoring purposes. In cases of non-compliance, taxes will be imposed as per Section 2B(1A) of the LBATA (i.e., 24% on chargeable profits).

Overseas developments

Singapore enacts the Income Tax (Amendment) Act 2021

Singapore's Income Tax (Amendment) Act 2021 (the Amendment Act) was passed by the Singapore Parliament on 5 October 2021 and gazetted on 16 November 2021.

The Amendment Act gives legislative effect to the Budget 2021 tax changes, as well as non-Budget changes arising from the periodic review of Singapore's income tax system.

The key changes pursuant to the Amendment Act are summarized below. Unless otherwise specified, the amendments have taken effect from 16 November 2021, i.e., the date on which the Amendment Act was gazetted.

Detailed discussion

The tax changes announced in Budget 2021 include:

- Extending the option to accelerate a capital allowance claim over two years (i.e., 75% in the first year and 25% in the second year) for plant and machinery acquired in the basis period for the Year of Assessment (YA) 2022.
- Extending the option to claim an accelerated (100%) deduction in one YA for qualifying renovation and refurbishment expenditure incurred in the basis period for YA 2022.
- Expanding the scope of the Double Tax Deduction for Internationalization (DTDi) to include new categories of expenses and activities on or after 17 February 2021, such as approved virtual trade fairs, the design of packaging for overseas markets, approved product or service certifications to increase buyer acceptance in overseas markets and overseas advertising and promotional campaigns.

Some notable non-Budget tax changes are listed below.

Tax treatment of trading stock appropriated for non-trade or capital purposes and vice versa

Under the newly legislated Section 10P, when trading stock is appropriated for non-trade or capital purposes (other than for donation), the open market value of the trading stock on the date of appropriation is treated as income that is subject to tax in the YA relating to the basis period during which the appropriation occurred. For qualifying donations made to approved museums or institutions of a public character, the cost of the stock is treated as the income, such that no gain or loss arises on the appropriation.

Conversely, under the newly legislated Section 32A, where non-trade or capital assets are converted to trading stock, the open market value on that date is treated as the cost of the trading stock. Upon disposal of the trading stock, the taxable profits will be computed based on this cost.

Tax deductions for upfront lease expenses

A new Section 14ZG was enacted to allow income tax deductions for upfront lease expenses (e.g., commission fees, legal fees, stamp duties and advertising expenses) incurred by:

- Tenants for obtaining, renewing or extending the lease of an immovable property used for trade or business purposes.
- Landlords for granting, renewing or extending the lease of an immovable property used to derive passive rental income.

This takes place with effect from YA 2022, if the lease term does not exceed three years, and if the lease is not under a sale and leaseback arrangement, or associated with the acquisition, sale, transfer or restructuring of any business.

Amendments to the foreign tax credit claim process

With effect from YA 2022, the time limit for the claim of a foreign tax credit (FTC) will be increased from two years to four years from the end of the YA in which the income is assessed to tax in Singapore.

In addition, a new subsection requires taxpayers to give a written notice to the Comptroller of Income Tax (Comptroller) within one year if a foreign tax authority makes a downward adjustment of the foreign tax, such that the FTC previously allowed becomes excessive. Consequently, the time limit for the Comptroller to raise additional tax assessments or for taxpayers to claim additional FTC due to adjustments in the foreign tax paid or payable is increased from two years to three years from the time such adjustments are made.

Lifting of the statutory time limit in relation to advance pricing arrangements (APAs)

The statutory time limit of four years for the Comptroller to raise additional assessments is lifted for additional assessments relating to APAs concluded with foreign tax authorities, similar to those relating to mutual agreement procedures (MAP), to facilitate the implementation of the outcome of such agreements.

Increase of the maximum penalty for various non-filing and non-registration offenses

The maximum penalty has been increased from SG$1,000 to SG$5,000 for the non-filing of income tax returns and non-registration and non-filing offenses related to the Automatic Exchange of Information (AEOI) [i.e., country-by-country reporting (CbCR), the Foreign Account Tax Compliance Act of the United States of America (FATCA) and the Common Reporting Standard (CRS)]. For each day the non-registration or non-filing offense continues after conviction, the penalty has been increased from SG$50 to SG$100 per day.

This aligns the maximum penalty with those for similar offenses under the Goods and Services Tax (GST) Act and the Property Tax Act.

Amendment to the official secrecy provision

The amendment allows for access to the Inland Revenue Authority of Singapore's (IRAS) records and documents containing taxpayers' information by persons authorized by the IRAS, including non-public servants such as private sector auditors and information technology consultants, to conduct audits in relation to the administration of public schemes (e.g., Jobs Support Scheme). The authorized persons are prohibited from using the data in an unauthorized manner.

Similar amendments will be legislated in the GST Act.

French Parliament approves the Finance Bill for 2022

On 15 December 2021, the French Parliament approved the Finance Bill for 2022 (the Bill). Except for the constitutionality review by the *Conseil Constitutionnel* (French Constitutional Council), the Bill is final.

As a preliminary remark, the Bill does not affect the already enacted decrease of the French corporate income tax (CIT) rate from 26.5%, for the fiscal years (FYs) starting on or after 1 January 2021, to 25%, for FYs starting on or after 1 January 2022.
Some of the main direct tax reforms in this Bill that may affect corporations are summarized below:

Detailed discussion

Adjustment of certain French withholding taxes

In order to comply with European Union (EU) law and the French Administrative Supreme Court (*Conseil d'Etat*) case law, the Bill provides for an adjustment of certain withholding taxes, in particular: (i) those of Article 182 B of the French Tax Code (FTC) applicable to payments made for royalties and for the provision of certain services; and (ii) those of Article 119 bis 2 of the FTC applicable to dividends.

- **Withholding taxes imposed under Article 182 B of the FTC**
  - The withholding tax will now be computed based on the gross amount of the sums paid, minus a 10% allowance, when the eligible beneficiary is subject to local CIT outside of France and established either in an EU Member State or in a Member State of the European Economic Area (EEA), other than a Non-Cooperative State or Territory (NCST), that has concluded a treaty with France that includes an administrative assistance provision aimed at combating tax fraud and tax evasion.
  - The eligible beneficiary will also be able to claim, provided that it cannot offset the French withholding tax on its local CIT liability, a refund of the portion exceeding the taxation that would have been due in France on-said income, taking into account the corresponding expenses directly incurred to generate or retain that revenue which would have been tax deductible if the beneficiary had been located in France.
  - The Bill also extends such a claim to withholding taxes under Article 182 A bis of the FTC applicable to payments made for the provision of artistic services provided or used in France.

- **Withholding taxes imposed under Article 119 bis 2 of the FTC**
  The above-mentioned claim will also apply to withholding taxes applicable to French-sourced dividends provided that the beneficiary is established:
  - Either in an EU Member State or an EEA Member State, other than an NCST, that has concluded a treaty with France that includes an administrative assistance provision aimed at combating tax fraud and tax evasion.
  - Or in a third State, other than an NCST, that has concluded a treaty with France that includes an administrative assistance provision aimed at combating tax fraud and tax evasion, but only if the beneficiary is not effectively involved in the management or the control of the distributing entity.

Finally, this Bill also provides for slight adjustments in the procedure for obtaining a refund of French withholding taxes borne by non-French resident loss-making companies.

These measures will apply to all the above-mentioned withholding taxes for which the triggering event will be on or after 1 January 2022.

Tax deduction for goodwill amortization

Article 214-3 of the French General Chart of Accounts allows: (i) small businesses within the meaning of Article L. 123-16 of the French Commercial Code; and (ii) any other companies that can prove that the benefits deriving from their goodwill would cease on a certain date, to amortize goodwill for French GAAP purposes as follows:

- Over a 10-year period for small businesses

- Over its useful life or, when such useful life cannot be determined accurately, over a 10-year period for any other companies

However, such amortization is generally not deductible for tax purposes as the conditions set forth by the French Administrative Supreme Court case law are quite stringent. The Bill actually goes further and now prohibits, as a matter of principle, said tax deduction.

Yet, as a derogatory and temporary measure, the Bill provides for the possibility to deduct, for tax purposes, the amortization made in accordance with the above-mentioned French GAAP rules, for goodwill acquired between 1 January 2022 and 31 December 2025.

This measure applies to FYs ending on or after 31 December 2021.

New tax credit for cooperative research

This new tax credit has been designed to promote cooperation between private corporations and public research bodies and will be based on the research and development (R&D) expenses incurred as part of the research cooperation agreements concluded between 1 January 2022 and 31 December 2025.

The tax credit for cooperative research will amount to 40% of the eligible expenses up to €6 million per year (the expenses cannot simultaneously be used for the computation of the R&D tax credit).

Anti-hybrid rules - Clarification of the 24-month inclusion period

Pursuant to article 205 B of the FTC, designed to tackle hybrid instruments as well as hybrid entities, a company cannot deduct, for French CIT purposes, an expense that has not been included in the taxable result of the non-French resident beneficiary.

For hybrid financial instruments, a payment is deemed to be included in the beneficiary's taxable result if that inclusion takes place during a financial year that begins within 24 months following the end of the FY in respect of which the expense was deducted. This 24-month period is also used to assess the existence of a double deduction outcome in the case of a payment made to a hybrid entity.

The Bill provides that, in the absence of such an inclusion during the year of payment, the expense remains deductible for French CIT purposes in that year and will only have to be added back to the taxable result of the French company after the aforementioned 24-month period.

This measure applies to FYs ending on or after 31 December 2021.

It is also worth noting that the French administrative guidelines on the anti-hybrid rules have been published on 15 December 2021.

FAQs on the implementation of TIN

<table>
<tr><th colspan="3">A. General</th></tr>
<tr><th>No.</th><th>Question</th><th>Feedback</th></tr>
<tr><td>1.</td><td>What is a TIN?</td><td>The TIN is an income tax number (ITN) per the IRB's existing records (HASiL). For example:<table><tr><th>Category</th><th>File type</th></tr><tr><td>Resident individuals and non-resident individuals</td><td>SG / OG</td></tr><tr><td>Companies</td><td>C</td></tr></table></td></tr>
<tr><td>2.</td><td>Do all categories of taxpayers need to have an ITN?</td><td>Any taxpayer who falls within any of the following categories is required to have an ITN, i.e., a:
(a) Taxpayer who is assessable and chargeable to tax, or
(b) Taxpayer who is required to furnish a return

A taxpayer refers to an individual or person as defined under Section 2 of the ITA. A "person" includes a company, a body of persons, an LLP and a corporation sole.</td></tr>
<tr><td>3.</td><td>Will HASiL issue an ITN to all parties?</td><td>An ITN will be issued based on applications made, or as provided by HASiL through the following methods:
▸ Automatic registration (e.g., registration of ITN for individuals through monthly tax deduction (MTD))
▸ Automatic registration of newly incorporated companies (local or foreign) that have registered online with the Companies Commission of Malaysia (SSM) via the MyCOID Portal
▸ Online via e-Daftar
▸ Manual registration process at the nearest HASiL branch</td></tr>
<tr><td>4.</td><td>Do taxpayers who already have an ITN need to obtain a TIN?</td><td>No. For taxpayers who have been assigned an ITN by 1 January 2022, the ITN will be deemed to be the TIN for the relevant taxpayer.</td></tr>
<tr><td>5.</td><td>How can one register for an ITN?</td><td>Registrations for the ITN can be done:
▸ Online through e-Daftar at the following link: https://mytax.hasil.gov.my
▸ By submitting the registration form to the nearest HASiL branch</td></tr>
<tr><td>6.</td><td>How can one check his ITN registered with HASiL?</td><td>Registration of one's ITN can be checked via the following methods:
▸ Online through MyTax at the following link: https://mytax.hasil.gov.my
▸ HASiL Live Chat
▸ Hasil Care Line at 03 – 8911 1000 / 603 – 8911 1100 (overseas)</td></tr>
</table>

		▸ Customer feedback form on HASiL's official portal ▸ Nearest HASiL branch
B. Implementation of TIN under the ITA		
7.	When will the TIN take effect?	The implementation of TIN takes effect on 1 January 2022 according to the new provision under Section 66A of the ITA
8.	Do taxpayers who have an ITN need to submit an ITRF?	Taxpayers as specified under Sections 77 and 77A of the ITA are required to submit an ITRF.
9.	Will individuals with non-taxable income need to have an ITN and submit an ITRF?	ITN will be given to individuals who are citizens aged 18 years and above through an application made or provided by HASiL. Individuals as specified under Section 77 of the ITA are required to submit an ITRF.
10.	Will an individual who is 18 years old and undertaking full-time studies need to submit an ITRF?	No. Only taxpayers as specified under Section 77 of the ITA are required to submit an ITRF.
11.	Does a retired individual need to obtain an ITN and submit an ITRF?	An individual who has retired from employment must have an ITN if he: (a) Is required to submit an ITRF as specified under Section 77 of the ITA (b) Performs transactions on the disposal and acquisition of property or shares in real property companies under the Real Property Gains Tax Act 1976 (RPGTA), or (c) Has stamping of documents and instruments involving the transfer of property, shares or business under the Stamp Act 1949 (SA)
C. Implementation of TIN under the RPGTA		
12.	Will the implementation of TIN be applicable to transactions under the RPGTA?	Yes. The use of TIN in the RF involving transactions under the RPGTA is mandatory.
13.	What does transactions under the RPGTA mean?	All parties who wish to perform transactions involving the disposal and/or acquisition of real estate or shares in real property companies must have an ITN.
14.	What documents require a TIN under the RPGTA?	Documents that require a TIN include the following: ▸ Form CKHT 1A ▸ Form CKHT 1B ▸ Form CKHT 2A ▸ Form CKHT 3 ▸ Payment under Section 21B of the RPGTA through Form CKHT 502 by the acquirer, and

		▸ Correspondences and appeals
15.	When will the TIN take effect?	The implementation of TIN takes effect on 1 January 2022 according to the new provision under Section 57B of the RPGTA.
D. Implementation of TIN under the SA		
16.	Will the implementation of TIN be application to transactions under the SA?	Yes. The use of TIN in the stamping application involving transactions under the SA is mandatory.
17.	What does transactions under the SA mean?	In the initial phase of implementation, the ITN will need to be used for documents and instruments for stamping related to the transfer of property, shares and/or business for companies and individuals.
18.	When will the TIN take effect?	The implementation of TIN takes effect on 1 January 2022 according to the new provision under Section 77C of the SA.

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Important dates

15 January 2022	Due date for monthly instalments
31 January 2022	6th month revision of tax estimates for companies with July year-end
31 January 2022	9th month revision of tax estimates for companies with April year-end
31 January 2022	Special 11th month revision of tax estimates for YA 2022, for companies with February 2022 year-end
31 January 2022	Statutory deadline for filing of 2021 tax returns for companies with June year-end.
15 February 2022	Due date for monthly instalments
28 February 2022	6th month revision of tax estimates for companies with August year-end
28 February 2022	9th month revision of tax estimates for companies with May year-end
28 February 2022	Special 11th month revision of tax estimates for YA 2022, for companies with March 2022 year-end
28 February 2022	Statutory deadline for filing of 2021 tax returns for companies with July year-end.

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