



Tax Espresso

Application Forms for Deferment of Tax Instalment Payments and Revision of Tax Estimate, New Labuan Entity Forms, and more

March 2020

Greetings from Deloitte Malaysia Tax Services

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Important deadlines:

Task	2020 Due Date
	31 March
1. 2021 tax estimates for companies with April year-end	✓
2. 6 th month revision of tax estimates for companies with September year-end	✓
3. 9 th month revision of tax estimates for companies with June year-end	✓
4. Statutory filing of 2019 tax returns for companies with August year-end	✓
5. Maintenance of transfer pricing documentation for companies with August year-end	✓
6. Due date for 2020 CbCR notification for companies with March year-end	✓

1. Application Forms for Deferment of Tax Instalment Payments and Revision of Tax Estimate

Following the announcements under the Economic Stimulus Package 2020, the Inland Revenue Board of Malaysia has released the application forms (*) for the:

- [Deferment of income tax instalment payments](#) (6 months beginning from 1 April 2020 to 30 September 2020, for tourism industry only)[#]; and
- [Revision of income tax estimate in the month of 3rd monthly tax instalment](#)[@].

Kindly click on the respective links above to view. (*Available in Bahasa Malaysia version only.)

[#] The total instalment payments deferred, beginning from 1 April 2020 to 30 September 2020, shall be divided equally over the remaining number of instalments unless there is a revision to the tax estimate amount for the year of assessment concerned. You may make reference to the example given in the application form.

[@] The revision of tax estimate in the month of 3rd monthly tax instalment is a concession given, taxpayer is still eligible for the statutory revision in the sixth and/or the ninth month of the basis period for the year of assessment concerned.

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2. Release of New Labuan Entity Forms for YA 2020 onwards

The Inland Revenue Board of Malaysia has recently uploaded the new Labuan Entity forms (dual English-Malay language) for the year of assessment (YA) 2020 onwards. Please refer to the respective forms below: -

- Form [LE 1](#) (Return Of Profits By A Labuan Entity Under Section 5 And Subsection 2B(1A) Of The Labuan Business Activity Tax Act 1990)

The new [Business Activity Code](#) and [LE1 Explanatory Notes](#) are also uploaded. It is now a requirement for a Labuan entity to include an appendix on the apportionment of income, if it carries out more than one approved Labuan business activity (i.e. if the business activity code is more than one).

- Form [LE 3](#) (Irrevocable Election By A Labuan Entity Under Section 3A Of The Labuan Business Activity Tax Act 1990)
- Form [LE 4](#) (Statutory Declaration Under Section 5 Of The Labuan Business Activity Tax Act 1990)
- Form [LE 5](#) (Statutory Declaration Under Section 10 Of The Labuan Business Activity Tax Act 1990)
- Form [LE 6](#) (Application For Advance Ruling Under Section 17B Of The Labuan Business Activity Tax Act 1990) – No changes noted if compared to the Form LE 6 for YA 2019 and prior.

Apart from the above, Form LE 2 (Irrevocable Election By A Labuan Entity Under Section 7 Of The Labuan Business Activity Tax Act 1990) is no longer available for YA 2020 onwards. Section 7 was deleted by the Finance Act 2018 (Act 812), the effective date of the deletion of the section is YA 2020, as decided via the Finance Act 2019 (Act 823).

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3. Revised Guidelines for Approval of Director General of Inland Revenue (DGIR) under Subsection 44(6) of the Income Tax Act 1967 (ITA)

The Inland Revenue Board of Malaysia (IRBM) has issued [new Guidelines](#) for the Application of Approval under Subsection 44(6) of the ITA (dated 30 January 2020). The new Guidelines supersedes, from 30 January 2020 onwards, the [previously issued Guidelines](#) for the Application of Approval under Subsection 44(6) of the ITA (dated 5 September 2019) as follows:

- Paragraph 3.3(i) now states that the requirement of more than 50% of the members of the Board of Trustees / Board of Directors / committee members must consist of outsiders who are not related to the institution or organisation and founder, only applies to institutions / organisations registered with the Companies Commission of Malaysia (SSM) and the Legal Affairs Division of the Prime Minister's Department (BHEUU).
- For institutions / organisations that are registered with the Malaysian Registration Department (i.e. Registry of Societies of Malaysia), the appointment of the Board of Trustees / Board of Directors / committee members should be among registered members who have the power to vote.
- A new paragraph 4.5 has been inserted to inform that upon submission of an application for approval under Subsection 44(6) of the ITA, the applicant must fill out the checklist, confirm and verify the submission of requisite documents.
- Paragraph 6.1(iv)(c) has been amended so that an institution or organisation which has obtained an approval under Subsection 44(6) of the ITA must submit a list of donors who have donated RM20,000 and above (*previously was RM10,000 and above in the superseded guidelines*). The list of donors should be submitted along with the institution's / organisation's annual audited financial statement (audited by an accredited Public Auditor) by or on 30 April each year to the IRBM office.
- Paragraph 10.3 has been updated pursuant to the enactment of Finance Act 2019 to allow a relief of the amount of donations and contributions under the approval of the DGIR, subject to a limit of 10% of the aggregate income of the taxpayer with effect from year of assessment 2020 (*for year of assessment 2019, the relief was capped at 7% and 10% of the aggregate income for taxpayers other than a company and a company respectively*); and
- The Appendices have also been updated accordingly.

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4. Bintulu Lumber Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (COA)*

Issue:

Whether the taxpayer's application for leave for judicial review to quash the notice of assessment raised for the year of assessment (YA) 2011 by the Director General of Inland Revenue (DGIR) after disallowing the claim for reinvestment allowance under Schedule 7A of the ITA, should be allowed.

Decision:

The Court of Appeal (COA) unanimously upheld the High Court's decision, and dismissed the application for leave for judicial review by the taxpayer on the issue. The COA held that the application for judicial review by the taxpayer was an abuse of process when other specific procedure (i.e. Section 99 of the ITA) was available. This had been spelled out in the grounds of judgment of the High Court (HC), as well as the executive summary of the DGIR. Furthermore, the taxpayer's appeal had no merit.

[**Note:** Details of the above tax case at the HC level is not available as of this date of publication.]

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5. LFSA: Addition to the Revised Substance Regulations

The Labuan Financial Services Authority (LFSA) have issued an [announcement](#) on the Addition to the Revised Substance Regulations pursuant to the Labuan Business Activity Tax (Requirements for Labuan Business Activity Regulations 2018) [[P.U. \(A\) 392/2018](#)] dated 31 December 2018 in relation to the substantial activity requirements.

Subject to the final release of the gazetted regulations on amendments to P.U. (A) 392/2018, LFSA clarified that the following additional business activity to be included under P.U.(A) 392/2018 has been approved by the Ministry of Finance.

Labuan entity	Existing substance regulations		Revised substance regulations	
	FTE	OPEX (RM)	FTE	OPEX (RM)
<u>Other trading entity</u> Labuan entity that carries out administrative, accounting and legal services including backroom processing, payroll services, talent management, agency services, insolvency related services, and management services	Nil	Nil	2	50,000

The effective date for the revised regulations is from 1 January 2019, subject to the final release of the gazetted regulations on amendments to P.U.(A) 392/2018.

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<http://www2.deloitte.com/my/en/services/tax.html>

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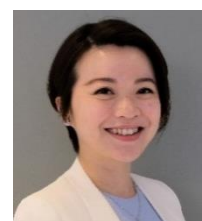
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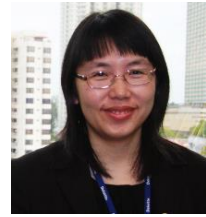
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