



Tax Espresso

A snappy delight

Greetings from Deloitte Malaysia Tax Services

Labuan Business Activity Tax (Amendment) Bill 2017 – Increased Penalties

The Labuan Business Activity Tax (Amendment) Bill 2017 has passed the Dewan Negara and is now waiting to be published in the official gazette as an amending act before it is enacted. It proposes to amend Section 21 of the Labuan Business Activity Tax Act 1990 (LBATA 1990).

The existing Section 21 will be re-numbered as Subsection (1) and the words *“and prescribing penalties for any contravention or failure to comply with any of the provisions of any regulations made under this paragraph”* in the re-numbered Paragraph 21(1)(b) will be deleted. A new Subsection (2) as shown below will be inserted:

Quick links:

[Deloitte Malaysia](#)
[Inland Revenue Board](#)

Takeaways:

Labuan Business
Activity Tax
(Amendment) Bill 2017
– Increased Penalties

Gazette Orders

Income Tax
(Exemption)(No. 2)
Order 2017 [P.U.(A)
117/2017]

Loans Guarantee
(Bodies Corporate)
(Remission Of Tax And
Stamp Duty) Order
2017 [P.U.(A) 78/2017]

Tax Case

Society of La Salle
Brothers v Ketua
Pengaruh Hasil Dalam
Negeri (KPHDN) (Court
of Appeal) 2017

Upcoming events

“(2) The regulations made under this section may prescribe a penalty of a fine not exceeding one million ringgit or imprisonment for a term not exceeding two years or both for any contravention or failure to comply with any of the provisions of the regulations.”

This proposed amendment is to provide for a higher penalty for offences committed in regulations that are made under Section 21 of the LBATA 1990.

[GST Appeal Tribunal Workshop](#)

[New Withholding Tax Regime Workshop](#)

Important deadlines:

Due date for 2018 tax estimates for companies with June year-end (31 May 2017)

6th month revision of tax estimates for companies with November year-end (31 May 2017)

9th month revision of tax estimates for companies with August year-end (31 May 2017)

Statutory filing of 2016 tax returns for companies with October year-end (31 May 2017)

Gazette Orders

[Income Tax \(Exemption\)\(No. 2\) Order 2017 \[P.U.\(A\) 117/2017\]](#)

[P.U.\(A\) 117/2017 \(the Order\)](#) was gazetted on 10 April 2017 and will have effect for the years of assessment (YAs) 2017 and 2018. The Order exempts a ‘qualifying person’ from paying an ascertained amount of income tax derived from carrying on of a business, provided it has achieved at least 5% of increase in its chargeable income (from a business source) as compared to the immediately preceding YA, as announced in the Budget 2017.

The following summarises the contents including the eligibility and non-application of the Order:

Paragraph	Subject
2	The conditions a ‘qualifying person’ has to fulfil
3	Definition of a ‘qualifying person’
4	Formula in determining the amount of chargeable income that is exempted
5	Non-application of the Order, e.g., the Order is not applicable to a ‘qualifying person’ who has a debt waived under Subsection 30(4) of the Income Tax Act 1967 (the ITA) in the basis period for a year of assessment.

The amount of chargeable income exempted is by way of a tax rate reduction of 1% to 4% based on the *incremental chargeable income* as summarised in the Table below:

% of incremental chargeable income (from a business source) compared with preceding year	% point reduction in tax rate	Tax rate after reduction, on the incremental CI
Less than 5%	n/a	24%
5% - 9.99%	1	23%
10% - 14.99%	2	22%
15% - 19.99%	3	21%
20% and more	4	20%

[Loans Guarantee \(Bodies Corporate\) \(Remission Of Tax And Stamp Duty\) Order 2017 \[P.U.\(A\) 78/2017\]](#)

[P.U.\(A\) 78/2017](#) provides that any stamp duty payable under the Stamp Act 1949 in respect of any agreement, note, instrument and document relating to the following be remitted in full:

- Medium Term Notes (MTN) issued by the National Savings Bank pursuant to the MTN programme in nominal value of up to RM1 billion*;
- Sukuk Murabahah issued by the National Savings Bank pursuant to the Sukuk Murabahah programme in nominal value of up to RM1 billion*; and
- The guarantee provided or to be provided by the Government of Malaysia relating to the MTN and Sukuk Murabahah.

* Note: The combined aggregate of the outstanding nominal value of both programmes should not exceed RM1 billion.

Any income tax payable under the Income Tax Act 1967 in relation to the abovementioned agreement, note, instrument and document by the below listed individual or entity is also to be remitted in full:

- The National Savings Bank;
- Any holder of the MTN or Sukuk Murabahah; or
- Any other party to any agreement, note, instrument and document in relation to the MTN; or Sukuk Murabahah Programme or the guarantee provided or to be provided by the Government of Malaysia.

Tax Case

Society of La Salle Brothers v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (Court of Appeal) 2017

Issues:

1. Whether the High Court made an error by considering only the provisions amended in the Income Tax Act 1967 (the ITA) when the taxpayer had instead obtained the exemption right under the Income Tax Ordinance 1947 (the Ordinance), and not under the ITA;
2. Whether the High Court was correct that the burden of proof on fraud, negligence and wilful default as regards the notices of assessment issued during the 'time-bar' period rests on the taxpayer; and
3. Whether the taxpayer was correct in opting for a judicial review.

The Court of Appeal overruled the decisions of the High Court in favour of taxpayer. Here are the grounds of judgement:

1. It was found that the amendments to the ITA will not affect the taxpayer who was granted the exemption under the Ordinance. Although the Ordinance was repealed and replaced in whole by the ITA, the taxpayer continues to be entitled to the tax exemption under the Ordinance which remains valid and has not been revoked because:
 - There are no express provisions in the ITA which indicated that the vested right under the Ordinance shall be revoked;
 - The amendments to the ITA have expressly been stated to have prospective effect, and where the amended provision specifically excludes taxpayers previously exempted under the ITA, it did not exclude those exempted under the Ordinance; and
 - The amendments to the ITA should be considered with the application of Section 30 of the Interpretations Act 1948 and 1947, which provides that the "repeal of a written law shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law".

The Court of Appeal also made reference to a similar case law, i.e., *National Land Finance Co-Operative Society Ltd v Director General of Inland Revenue [1993] 4 CLJ 339*, which gave the same judgement. Furthermore, the Court of Appeal also gave its view that the failure of the taxpayer to re-apply for the tax exemption was insignificant. That said, the Court of Appeal held that the High Court had erred in its judgement on Issue 1.

2. The High Court had erred in its ruling on the burden of proof relating to time-barred assessments. Indeed, it is the burden of Inland Revenue Board (IRB) to prove that the taxpayer had committed fraud, willful default or negligence.
3. Although the taxpayer had failed to resort to the appeal procedure under Section 99 of the ITA, the Court of Appeal ruled in favour of the taxpayer following the principle set out in *Government of Malaysia & Anor v Jagdis Singh*, where 'a clear lack of jurisdiction' would suffice for a judicial review. This follows the Court of Appeal's decision, in Issue 1, that the

taxpayer's exemption right remains. In consequence, the IRB lost its legal basis to issue the notices of assessments that are no longer in accordance with the ITA, rendering the decision to issue such notices illegal and without jurisdiction. The IRB's decision was thus amenable to judicial review.

We invite you to explore other tax-related information at:
<http://www2.deloitte.com/my/en/services/tax.html>

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