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Tax Espresso

Gazette Orders, Tax Cases, Media Releases, and more

August 2023

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Greetings from Deloitte Malaysia Tax Services

Quick links:

Deloitte Malaysia
Inland Revenue Board of Malaysia

Takeaways:

1. Stamp Duty (Remission) (Revocation) Order 2023 [P.U.(A) 189/2023]
2. Stamp Duty (Remission) (No. 3) Order 2023 [P.U.(A) 208/2023]
3. ESH v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (SCIT)
4. Horizon Hills Resort Berhad v DGIR (HC)
5. GESB v KPHDN (SCIT)
6. Akamai Technologies Malaysia Sdn Bhd & Anor v KPHDN (HC) [(2022) MSTC 30-511]
7. KPHDN v Watsons Personal Care Stores (M) Holdings Limited (HC) [2023] MLJU 827]
8. Merimem Online Sdn Bhd v KPHDN (HC) [(2023) MLJU 1272]
9. IRBM Media Release – e-107D for 2% tax deduction for commission payments to agents, dealers or distributors under Section 107D
10. IRBM Announcement – e-Form for the YA 2012 to YA 2015 will no longer be available for use from 1 July 2023 onwards
11. Form CP22A / CP22B / CP21 submission requirements and online submission of employee-related notification forms

Upcoming events:

1. Briefing: Special Voluntary Disclosure Programme (SVDP 2.0)
2. SVDP 2.0 : Enhancing Tax Compliance and Opportunities
3. SVDP 2.0, Mandatory E-Invoicing, and Employer Obligations: Are you ready?

Important deadlines:

Task	Deadline
	31 August 2023
1. 2024 tax estimates for companies with September year-end	√
2. 6th month revision of tax estimates for companies with February year-end	√
3. 9th month revision of tax estimates for companies with November year-end	√
4. Statutory filing of 2023 tax returns for companies with January year-end	√
5. Maintenance of transfer pricing documentation for companies with January year-end	√
6. 2023 CbCR notification for applicable entities with August year-end	√

1. Stamp Duty (Remission) (Revocation) Order 2023 [P.U.(A) 189/2023]

P.U.(A) 189/2023 (the Revocation Order) was gazetted on 26 June 2023 to revoke the Stamp Duty (Remission) (No. 2) Order 2019 [P.U.(A) 369/2019]. The Revocation Order is deemed to have come into effect on 1 April 2023.

P.U.(A) 369/2019 provides for a 50% remission of the stamp duty payable under the Stamp Act 1949 (the SA) in respect of the transfer of immovable property from parents to children and vice versa by way of love and affection. The 50% remission was only applicable for the transfer of immovable property executed on or after 1 January 2020, in which the recipient of that property must be a Malaysian citizen.

With effect from 1 April 2023, the above-mentioned remission will be revoked through the Revocation Order to be in line with the Government's initiative to revise the stamp duty remission for the transfer of immovable property between family members by way of love and affection, as announced in the National Budget 2023 and legislated via the Stamp Duty (Exemption) (No. 3) Order 2023 [P.U.(A) 178/2023] [reported in Deloitte Malaysia Tax Espresso July 2023 issue].

An instrument of transfer of immovable property executed before 1 April 2023 but has not been presented for stamping shall be entitled to the remission of stamp duty under the revoked Order [P.U.(A) 369/2019].

Please refer to the Revocation Order and P.U.(A) 369/2019 for more details.

Back to top

2. Stamp Duty (Remission) (No. 3) Order 2023 [P.U.(A) 208/2023]

P.U.(A) 208/2023 (the Remission Order) was gazetted on 12 July 2023 and is applicable to instruments of contract notes for trading of shares/stocks listed on Bursa Malaysia Securities Bhd (Bursa Malaysia) executed between 13 July 2023 and 12 July 2028 (both dates inclusive).

The Order halts the increase in stamp duty chargeable rate on the contract notes for trading of shares/stocks listed on Bursa Malaysia to 0.15% (i.e. RM1.50 per every RM1,000 of the value of shares transacted) which was legislated via the Finance Act 2021 [reported in Deloitte Malaysia Tax Espresso (Special Edition) - Highlights of Budget 2022 - Part I] while at the same time, maintaining the maximum stamp duty of RM1,000 per contract note legislated via the Stamp Duty (Remission) Order 2022 [P.U.(A) 112/2022] for the period from 1 January 2022 to 31 December 2026 [reported in Deloitte Malaysia Tax Espresso May 2022 issue].

<u>Salient points</u>

- The Minister of Finance (the Minister) remits the stamp duty which is in excess of 0.1% of the stamp duty payable under Item 31(a) of the First Schedule to the SA, in respect of all instruments of contract notes relating to the sale of any shares/stocks that are listed on the stock market of a stock exchange approved under Section 8(2) of the Capital Markets and Services Act 2007 i.e. Bursa Malaysia. Effectively a stamp duty of RM1 will be charged for every RM1,000 of the value of shares transacted, with the excess of RM0.50 per every RM1,000 of the value of shares transacted provided under Item 31(a) of the First Schedule to the SA being remitted under the Remission Order.

- The Minister further remits any stamp duty payable after the above remission, which is in excess of RM1,000 on each contract notes relating to the sale of any shares/stocks that are listed on Bursa Malaysia.

- The Stamp Duty (Remission) Order 2022 [P.U.(A) 112/2022] is revoked by the Remission Order i.e., P.U.(A) 112/2022, which was applicable from 1 January 2022 until 12 July 2023 only.

Please refer to the Order and P.U.(A) 112/2022 for full details.

Back to top

3. ESH v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (SCIT)

The Inland Revenue Board of Malaysia (IRBM) has recently uploaded a case report, "ESH v KPHDN" on its website.

Facts:

The taxpayer carries on the business of supplying and selling live poultry. The taxpayer buys live chickens directly from farms and sells it on the same day to buyers, which includes traders and individuals at public night markets around Bukit Gambir, Tangkak, Muar, retail shops, and restaurants around Melaka.

The Director General of Inland Revenue (DGIR) conducted an audit on the taxpayer and found that there was an issue of underreporting of income for the years of assessment (YAs) 2012, 2013, and 2014, when the taxpayer reported8%. of chicken weight loss during delivery. The DGIR was of the view that a reasonable rate for chicken weight loss is 5%. Therefore, Notices of Additional Assessment for the YAs 2012, 2013, and 2014 were raised on 18 April 2017. The taxpayer filed an appeal through Form Q against the Notices of Additional Assessment issued by the DGIR.

The taxpayer argued that the adjustment with respect to the rate of chicken weight loss during delivery (i.e., 5%) made by the DGIR was merely an estimate and was not supported by any evidence or facts while the available evidence indicated that the chicken weight loss during delivery was at least 8%. In fact, the penalty imposed was unjustified considering that the taxpayer had acted in good faith.

The DGIR argued that the percentage of chicken weight loss set by the Ministry of Domestic Trade and Cost of Living was only 1%, which was significantly lower than the 5% rate set by the DGIR. The DGIR also found that the taxpayer failed to keep business records to substantiate the percentage of chicken weight loss at 8%.

Issues:

a) Whether the DGIR's audit findings regarding the underreported sales by the taxpayer were justified; and

b) Whether the DGIR was right to impose penalties under Section 113(2) of the Income Tax Act (ITA) for the YAs 2012, 2013, and 2014.

Decision:

The Special Commissioners of Income Tax (SCIT) held that the taxpayer had successfully proved that the Notices of Additional Assessment raised by the DGIR for the YAs 2012, 2013, and 2014 were incorrect and excessive in accordance with Paragraph 13 of Schedule 5 to the ITA. In addition, the SCIT held that the DGIR had no legal and factual basis to impose penalties under Section 113(2) of the ITA.

[Details of the above tax case at the SCIT level are not available as of the date of publication.]

Please refer to the case for full details.

Back to top

4. Horizon Hills Resort Berhad v DGIR (HC)

The IRBM has recently uploaded a case report, "Horizon Hills Resort Berhad v DGIR (HC)" on its website.

Facts:

The taxpayer, Horizon Hills Resort Berhad, is the proprietor of a golf and recreational club. The taxpayer's revenue consists of membership and subscription fees as well as other fees from members relating to the use of facilities for the taxpayer's club operations. The taxpayer claimed capital allowance on capital expenditure incurred in relation to the golf course (which includes the drainage system, grass and turfing, land cost, maintenance workshop, buggy charging station, golf bag station, caddies station, and other incidental costs), swimming pool (including kid's fun pool), gymnasium, two tennis courts, table tennis room, children's playing area, changing rooms (including towel stations and toilets), multipurpose rooms, food & beverage outlets, reading room, health centre, pro shop, and a sports shop (collectively known as "Disputed Items").

Since the taxpayer is a proprietor of the golf and recreational club, the taxpayer contended that the Disputed Items fall within the definition of a "Plant" under Schedule 3 of the ITA and thus qualify for the capital allowance claim. The taxpayer further contended that the Disputed Items were used solely to generate income for the taxpayer's business, as the taxpayer would not be able to operate its golf and recreational club without the Disputed Items.

The DGIR disallowed all the capital allowance claimed by the taxpayer in relation to capital expenditure incurred on Disputed Items as the taxpayer failed to meet the mandatory eligibility requirements under Schedule 3 of the ITA. A capital allowance shall only be claimed if the capital expenditure incurred in relation to an item falls within the definition of a "Plant". The DGIR submitted that the Disputed Items were not apparatus or tools that the taxpayer used in its business but merely places where the taxpayer conducted its business and where facilities were provided to the members of the taxpayer's golf and recreational club. The DGIR further submitted that the Disputed Items were not integral to running the taxpayer's business, as the business can still operate and generate income for the taxpayer without the said items.

Issue:

Whether the DGIR was right in law to disallow the capital allowance claimed by the taxpayer in relation to capital expenditure incurred on the Disputed Items.

Decision:

The High Court (HC) found in favour of the DGIR and dismissed the taxpayer's appeal with costs.

Please refer to the case for full details.

Back to top

5. GESB v KPHDN (SCIT)

The IRBM has recently uploaded a case report, "GESB v KPHDN (SCIT)" on its website.

Facts:

The taxpayer is an investment holding company. Apart from rental income, the taxpayer also earned other income from dividends, interest, and management fees. The taxpayer owns 14 properties (the Properties), which were rented out.

The taxpayer alleged that the rental income is a business source and is taxable under Section 4(a) of the ITA as all the Properties were not put to any other use apart from generating rental income. The taxpayer further contended that they are not a 'passive' service provider as they maintain the Properties by always keeping them in a tenantable condition and mostly hire third parties to carry out maintenance and security services as well as other services such as electricians, gardeners, general contractors, and plumbers. Otherwise, the taxpayer's employees will attend to the tenants' general needs. The taxpayer alleged that the DGIR had wrongly applied Public Ruling No. 12/2018 (PR 12/2018) in assessing that tax should be imposed on the taxpayer, as PR 12/2018 cannot apply retrospectively. PR 12/2018 only came into force on 19 December 2018, and the additional assessments were for financial years ending 2015, 2016, and 2017.

The DGIR submitted that since the taxpayer is an investment holding company that is not listed on Bursa Malaysia, the taxpayer should be assessed to tax under Section 60F of the ITA, where any income received from investment holdings such as interest, dividends, rent (non-business), and rent (investment holding business) is considered a non-business source. Furthermore, it was not mentioned nor stated in the tenancy agreement that the taxpayer had to provide comprehensive maintenance on the Properties, and there was no evidence indicating that the maintenance or support services were comprehensively and actively provided by the taxpayer on the Properties other than upon request or complaint by the tenants. The DGIR further submitted that he was correct in relying on PR 12/2018 [replaced PR No. 4/2011 (issued on 10 March 2011)], which was issued as a guildeline in determining if a rental receipt should be subject to tax under Section 4(a) or Section 4(d) of the ITA.

Issue:

Whether the rental income received from the Properties owned by the taxpayer is a business income to be assessed under Section 4(a) of the ITA or a non-business income to be assessed under Section 4(d) of the ITA.

Decision:

On 14 July 2023, the SCIT dismissed the taxpayer's appeal and held that the DGIR was justified in law to issue Notices of Additional Assessment on the taxpayer. The SCIT ruled that there was a basis in law and in facts for the DGIR to impose a penalty under Section 113(2) of the ITA.

[Details of the above tax case at the SCIT level are not available as of the date of publication.]

Please refer to the case for full details.

Back to top

6. Akamai Technologies Malaysia Sdn Bhd & Anor v KPHDN (HC) [(2022) MSTC 30-511]

The applicants filed an application for leave to commence judicial review proceedings, seeking an order for certiorari to quash the DGIR's decision in the form of Notices of Additional Assessment for the YAs 2015, 2016, 2017, 2018, and 2019. The notices were raised on the grounds that the service reseller payments were subject to withholding tax.

Issues:

a) Whether the DGIR committed an error of law in applying the definition of royalty under Section 2 of the ITA instead of the definition under Article 12 of the Double Taxation Agreement (DTA) [read together with the Organisation for Economic Co-operation and Development (OECD) commentary on Article 12].

b) Whether the DGIR committed an error of law and/or exceeded its jurisdiction by failing to apply the binding principles established by the superior courts in *DGIR v Euromedical Industries Ltd [1983] CLJ (Rep) 128*, *KPHDN v Thomson Reuters Global Resources (2016) MSTC 30-124*, and *Damco Logistic Malaysia Sdn Bhd v KPHDN (2011) MSTC 30-033*, which collectively held that by applying Section 132 of the ITA and in the event of conflict, the provisions of a DTA or a relief order should prevail over the ITA.

c) Whether the DGIR committed an error of law and/or exceeded its authority by failing to apply the binding principles established by the HC in *Damco Logistic,* which held that a payment that had the following characteristics was not royalty and therefore not subjected to withholding tax under Section 109 of the ITA:
   - When it was a contract for payment of services;
   - When there was no imparting of special commercial knowledge; and
   - When there was no transfer, grant, or use of know-how or propriety rights.

d) Whether the DGIR committed a blatant failure to perform its statutory duty under Section 132 of the ITA by failing to give effect to the provisions of the DTA.

e) Whether the DGIR committed a blatant failure to perform its statutory duty under Section 91(3) of the ITA by failing to consider whether there had been any fraud, negligence, or wilful default by the first applicant in issuing the time-barred assessments.

f) Whether the DGIR's decision was made in breach of natural justice by failing to provide the first applicant with reasons for issuing the time-barred assessments.

g) Whether the DGIR's decision was made in breach of natural justice by failing to provide the first applicant with reasons for imposing a 45% penalty under Section 113(2) of the ITA.

Decision:

The HC allowed the applicants' application for judicial review and granted a stay of execution of the DGIR's decision on the following grounds:

- The DGIR's decision arose from an error of law amounting to a clear lack of jurisdiction. The DGIR had failed to recognise that the services reseller payments paid under the services reseller agreement were not subject to withholding tax under Section 109 of the ITA as such payments were not royalty within the meaning of Article 12 of the DTA (read together with the OECD commentary on Article 12). As a result, there was no basis for the DGIR to disallow the deduction claimed by the first applicant for the payments made to the second applicant under Section 39(1)(f) of the ITA.

- The DGIR had failed to abide by the binding decisions of the superior courts in *Euromedical Industries*, *Thomson Reuters*, and *Damco Logistic.* Under Section 132 of the ITA and in the event of conflict, the provisions of a DTA or a relief order should prevail over the ITA.

- The DGIR failed to abide by the binding decision of the HC in *Damco Logistic*, which outlined the characteristics of payments that were not royalty and hence, not subject to withholding tax under Section 109 of the ITA. Based on the characteristics outlined in *Damco Logistic*, the service reseller payments were clearly not royalty, and hence not subject to withholding tax under Section 109 of the ITA.

- Section 132 of the ITA gave primacy to DTAs and required the DGIR to give effect to their provisions. The DGIR, in arriving at its decision, did not appear to have ever considered the relevant provisions of the DTA. Therefore, it was clear that the DGIR had failed to perform its statutory duty under the ITA.

- As required in *Ensco Gerudi (M) Sdn Bhd v KPHDN [2021] 9 CLJ 918*, the DGIR had failed to raise any allegations of fraud, wilful default, or negligence to justify the imposition of the time-barred assessments despite the applicants' disclosure on its tax treatment since 2014.

- The facts of the case clearly demonstrated that leave for judicial review was warranted despite the existence of an alternative remedy. The applicants have shown a *prima facie* case where there were exceptional circumstances relating to the DGIR's decision.

- As per *YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Ja'afar v Datuk Bandar Kuala Lumpur & Anor [2002] 3 MLRH 313; [2003] 5 MLJ 128; [2003] 1 CLJ 210; [2003] 1 AMR 352*, a decision made by a public decision-making body could be stayed by an order of the court. In relation to tax matters, the existence of the provisions of Sections 103(1) and 106(3) of the ITA did not prohibit the court's jurisdiction to grant a stay until the full and final determination of the judicial review application and/or appeal to the Court of Appeal (COA).

  The DGIR's decision had created a significant tax liability for the first applicant. There was a genuine threat that the DGIR might invoke its powers under the ITA to demand payment of the assessed taxes and penalty by commencing civil actions against the first applicant for recovery of taxes, pending the determination of the applicants' appeal at the COA. This would amplify the irreparable harm and losses to the first applicant if a stay was not granted.

  The DGIR would not be affected by the granting of an interim stay pending the determination of the applicants' appeal at the COA. The DGIR could still collect the taxes imposed if the application was subsequently disallowed.

  A stay of execution of the DGIR's decision pending the final determination of the judicial review was therefore granted.

Back to top

7. KPHDN v Watsons Personal Care Stores (M) Holdings Limited (HC) [2023] MLJU 827]

This was an appeal filed by the DGIR against the Deciding Order of the learned SCIT dated 15 May 2020, which allowed the taxpayer's appeal to set aside the DGIR's Notice of Additional Assessment for the YA 2010 and Notices of Assessment for the YAs 2011 and 2012, all dated 29 December 2014 (collectively known as Impugned Assessments), raised pursuant to the adjustment made under Section 140A of the ITA.

Issues:

a) Whether the Impugned Assessments raised by the DGIR were in accordance with Section 140A of the ITA; and

b) Whether the DGIR was correct in imposing a penalty on the taxpayer under Section 113(2) of the ITA.

Decision:

The HC dismissed the DGIR's appeal based on the following grounds of judgement:

- It is trite law that a decision of the SCIT could be set aside if the decision was tainted with an error,misconception of law, or if the decision was not supported by the evidence before the SCIT [as per *Lower Perak Co-Operative Housing Society Bhd v KPHDN (1994) 1 MLRA 262*]. However, one may only appeal to the higher court on a question of law and not on the facts presented by the SCIT, who are the judges of facts.

- Based on Rule 8(1) of the Income Tax (Transfer Pricing) Rules 2012 (TP Rules), the DGIR has the power to disregard structures that differ from those that would have been adopted by independent persons behaving in a commercially rational manner or if the actual structure impedes the DGIR from determining an appropriate transfer price. However, if the DGIR chooses to disregard the structure pursuant to Rule 8(1) of the TP Rules, Rule 8(2) requires the DGIR to make the adjustment as it deems fit to reflect the structure that would have been adopted by an independent person dealing at arm's length. In this case, the taxpayer prepared the transfer pricing (TP) documentation in accordance with the law and explained how it arrived at the arm's length interest rate of LIBOR + 3% in respect of the loan repayment to Watson Labuan. The SCIT found that the interest rate adopted by the taxpayer was not excessive. However, the DGIR failed to provide documentation to rebut the SCIT's finding.

- Furthermore, the DGIR did not provide any evidence that they performed any serious TP analysis, as there was no documentation on functional, asset, or risk analysis. The taxpayer, on the other hand, had provided a functional analysis on its functions, assets, risks, considerations on the contractual terms, and information regarding economic circumstances, as well as a benchmarking or comparability analysis to ascertain independent companies with similar characteristics based on the findings in the functional analysis. If the DGIR disagreed with the TP documentation provided by the taxpayer, the DGIR would have commissioned a counter-veiling TP study, which was clearly not done by the DGIR.

- The HC ruled that Section 140A of the ITA does not give the DGIR the power to disregard or ignore any transactions but requires the DGIR to substitute the price in respect of the transaction to reflect an arm's length price for the transaction where the DGIR had reasons to believe that the transactions were not carried out at arm's length. Thus, the SCIT was right in holding that the DGIR's failure to make any adjustments to the structure of the loans received or substitute an arm's length rate was contrary to what is provided under Section 140A of the ITA. Additionally, the DGIR's insistence on substituting a price with zero is misconceived. In doing so, it effectively ignores the transaction without replacing it with an arm's length price. Hence, it was clear that the DGIR failed to read Rule 8 of the TP Rules in its entirety, as the DGIR chose to only apply Rule 8(1) of the TP Rules while ignoring Rule 8(2) of the TP Rules.

- The loans provided to the taxpayer were like those of an uncommitted facility typically offered by commercial banks, whereby both a borrower and a lender would have more flexibility on when to make or request a repayment of such debt. Clause 3 of the Loan Agreement between the taxpayer and Watson Labuan stated that the facility may be repaid at any time, together with the interest accrued. Thus, the DGIR's contention that the interest should be substituted with 0% because no independent person or company would enter into such a similar transaction was devoid of merit and was not consistent with Rule 8(2) of the TP Rules.

- The HC held that the DGIR's reference to Investopedia to invoke Section 140A of the ITA in the absence of a TP report or other TP-related findings amounted to an error of law as Investopedia is not an authority on the issue as alleged by the DGIR. Additionally, the writings contained in Investopedia were not authoritative and should not be used as a tool to determine TP analysis under Section 140A of the ITA.

- With the above in mind, the HC ruled that the taxpayer's TP documentation should be maintained, and in the absence of a contrary TP report prepared by the DGIR, the Impugned Assessments issued by the DGIR were erroneous and excessive, and all adjustments made by the DGIR with regard to the TP against the taxpayer should be disregarded [as per *Aik Ming (M) Sdn Bhd v Chang Ching Chuen Ors & Another Appeal [1995] 2 MLJ 770*].

- It is not disputed that the DGIR has discretionary power to impose a penalty on the taxpayer under Section 113(2) of the ITA after considering all relevant facts and circumstances of the case. However, Section 113(2) of the ITA is not a mandatory provision but a provision that confers discretion on the DGIR as to whether penalties should be imposed based on the facts and circumstances of each case [as per *KPHDN v Kim Thye & Co [1992] 1 MLRA 184*]. The HC held that the taxpayer did not deliberately or recklessly submit an incorrect return as the taxpayer had consulted an independent professional, which illustrates that they had no intention to evade or avoid tax. The taxpayer had also acted in good faith, taken professional advice, and made full disclosure to the DGIR, which was sufficient to set aside the penalties imposed.

Back to top

8. Merimem Online Sdn Bhd v KPHDN (HC) [(2023) MLJU 1272]

Further to the IRBM's case report, "Merimen Online Sdn Bhd v DGIR (HC)" [reported in Deloitte Malaysia Tax Espresso March 2023 issue], the details of the above tax case are summarised below.

Issues:

a) Whether the Notice of Additional Assessment (Form JA) for the YA 2009 and the Notice of Assessment (Form J) for the YA 2010, both dated 27 June 2016, are time barred pursuant to Section 91 of the ITA;

b) Whether the taxpayer's income during the pioneer period for the YAs 2009 to 2013 was subject to income tax; and

c) Whether the DGIR was correct in imposing penalties under Section 113(2) of the ITA for the YAs 2009 to YA 2013.

Decision:

The HC upheld the decision of the SCIT and dismissed the taxpayer's appeal on the following grounds:

- Section 91(3) of the ITA is clear and unambiguous. It expressly empowers the DGIR to make an assessment where the taxpayer had been negligent. There is no limitation to this power, such as any contributory conduct on the part of the DGIR. The taxpayer had been careless and even reckless in his responsibility to submit correct returns. The responsibility was imposed on the taxpayer by the ITA, and the taxpayer clearly failed to give care and attention to the filing of the amended returns promptly, according to the ruling of the DGIR. The DGIR had successfully discharged the burden of proof that the taxpayer was negligent in connection with or in relation to tax for a specific YA.

- For a company that is already operating in Malaysia, its income for each accounting period of its pioneer business shall be the 'value-added income'. The phrase 'value-added income' was made plain and clear by Section 21C(2A)(a) of the Promotion of Investment Act 1986 (PIA), wherein the phrase was defined to mean "the statutory income for the basis period for the YA less the inflation-adjusted base income". Thus, only the whole of the taxpayer's 'value-added income' was exempted while the remaining statutory income was chargeable income for tax purposes. There was no ambiguity in the provision. The SCIT did not misdirect itself in law and had correctly interpreted Section 21C of the PIA.

- The undisputed facts showed that the taxpayer had submitted incorrect returns and had further delayed the submission of the amended returns, notwithstanding that the DGIR had conveyed his position on the interpretation of Section 21C of the PIA much earlier. The DGIR was clearly authorised to impose a penalty under Section 113(2) of the ITA where the taxpayer had submitted an incorrect return.

Back to top

9. IRBM Media Release – e-107D for 2% tax deduction for commission payments to agents, dealers or distributors under Section 107D

The IRBM issued a media release dated 27 June 2023 (available in Bahasa Malaysia only) on its website to inform that the e-107D has been introduced effective from 8 June 2023 for online submission of the prescribed form CP107D for the 2% tax deduction for commission payments by a paying Company to agents, dealers, or distributors under Section 107D of the ITA.

According to the media release, the e-107D includes functions such as:

(a) Online filling in of the information of the payer and payee of the commission payments for the purpose of Section 107D;

(b) Downloading the CP107D Appendix;
(c) Uploading the CP107D Appendix; and
(d) Bill Number generation for the purpose of Section 107D tax payment via ByrHASiL after the Form CP107D has been successfully submitted.

Taxpayers can access e-107D through the MyTax Portal on IRBM's website. The MyTax user needs to log in and select the role of Director or Director's representative to use the e-107D. Taxpayers may also refer to the User Manual of the e-107D, which is available on the MyTax Portal by clicking User Manual > User Manual CP107D.

Please refer to the media release for full details.

Back to top

10. IRBM Announcement – e-Form for the YA 2012 to YA 2015 will no longer be available for use from 1 July 2023 onwards

The IRBM recently announced that e-Form for the YA 2012 to YA 2015 will no longer be available for use from 1 July 2023 onwards. Therefore, the submission of return forms for the said YAs must be submitted via manual form which can be downloaded from the IRBM's website.

For any enquiries, please contact the IRBM through the HASiL Care Line at 03-8911 1000 or through the Hasil Chat.

Back to top

11. Form CP22A / CP22B / CP21 submission requirements and online submission of employee-related notification forms

Recently, the IRBM updated the guidance for Employers to determine the need to notify the IRBM of cessation of employment through Forms CP22A / CP22B, and CP21 on its website.

Salient points

- It is well settled that Section 83(3) of the ITA mandates an employer to furnish the prescribed Form CP22A / CP22B not less than 30 days before the cessation of employment (where an employer is about to cease to employ an employee who is or is likely to be chargeable to tax in respect of income from the employment) and not more than 30 days after being informed of the death of an employee (where an employee under the employment of the employer dies).

- However, the employer is exempt from such a requirement where the income of an employee has been subject to monthly tax deduction (MTD) or where the employee's monthly remuneration is below the minimum amount of income that is subject to MTD, provided that the employee will continue working or is not retiring from an employment in Malaysia. We reproduce below the table which provides guidance for employers to determine whether Form CP22A / CP22B is required to be submitted to the IRBM:

			Where Employee's Yearly Income Subject to Tax				Subject for Tax Clearence?		
			Scenario 1		Scenario 2				
No.	Service Termination Type	Employee's Yearly Income Subject to Tax ?	Monthly Income BELOW the Minimum Amount That Subject to MTD	Employer Know Employees Will Continue Working?	Employer Has Made MTD Deduction Accordingly	Employer Know Employees Will Continue Working?	Malaysian Employees	Non - Malaysian Employees	Notice Type (If Yes)
1	Resigned / Terminated	No					No	No	
		Yes	Yes	Yes			No	Yes	CP22A / CP22B
		Yes	Yes	No			Yes	Yes	CP22A / CP22B
		Yes			Yes	Yes	No	Yes	CP22A / CP22B
		Yes			Yes	No	Yes	Yes	CP22A / CP22B
		Yes			No	Yes / No	Yes	Yes	CP22A / CP22B
2	Retired / Death	No					No	No	
		Yes					Yes	Yes	CP22A / CP22B

- By virtue of Section 83(4) of the ITA, an employer is required to furnish the prescribed Form CP21 not less than 30 days before the expected date of an employee's departure (where an employee chargeable to tax in respect of the income from employment is about to leave or intends to leave Malaysia for a period exceeding 3 months). However, the employer is exempt from such a requirement if the IRBM is satisfied that the employee is required to leave Malaysia at frequent intervals in the course of his employment. We reproduce below the table which provides guidance for employers to determine whether form CP21 is required to be submitted to the IRBM:

Employee's Scenario	Employee's Yearly Income Subject to Tax ?	Where Employee's Yearly Income Subject to Tax Required to Work Abroad Regularly by the Employer?	Subject for Tax Clearance?	Notice Type (If Yes)
Employee Leaving Malaysia for More Than 3 Months	No		No	
	Yes	Yes (with approval from HASiL)	No	
	Yes	No	Yes	CP21

- Where an employee intends to leave Malaysia for a period of more than 3 months with no intention of returning, the employer is required to withhold any monies payable to that employee and shall not pay any part of such money withheld, except with the permission of the IRBM, to or for the benefit of the employee until 90 days after the receipt of the above-mentioned form by the IRBM.

- Employers are encouraged to submit the above-mentioned forms to the IRBM via e-SPC on MyTax Portal in line with the IRBM's effort to digitise its services. Submission of the forms via e-SPC will be mandatory with effect from 1 January 2024. Employers may refer to the e-SPC user manual on MyTax Portal for guidance on the submission of the forms by clicking User Manual > User Manual e-SPC System.

- Section 120 of the ITA provides that an employer who fails to comply with the requirements mentioned without any reasonable excuse shall be guilty of an offence and shall, upon conviction, be liable to a fine of not less than RM200 and not more than RM20,000, or to imprisonment for a term not exceeding 6 months, or to both. Additionally, the employer is liable for any tax due from the employee pursuant to Section 107(4) of the ITA, which constitutes a debt due to the government that may be recovered by way of civil proceedings under Section 106 of the ITA.

Back to top

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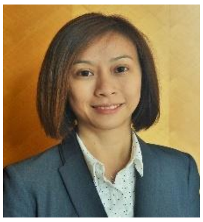
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