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August 2021

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Quick links:

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Takeaways:

1. Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) (Amendment) Rules 2021 [P.U.(A) 325/2021]
2. Income Tax (Accelerated Capital Allowance) (Excursion Bus) Rules 2021 [P.U.(A) 291/2021]
3. Stamp duty exemption on acquisition of residential property
4. Extended due date for submission of online application form for MSC Malaysia Status Transition (Services Incentive) for MSC Malaysia Status companies
5. Inspirasi Elit Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (HC)
6. Puncak Niaga Construction Sdn Bhd v Menteri Kewangan Malaysia (HC)
7. SEO Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (SCIT)
8. Sri Seltra Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (HC)
9. PR 3/2021 – Special Allowances for Small Value Assets
10. PR 2/2021 – Tax Deduction for Sponsoring Arts, Cultural and Heritage Activities
11. Operational Guidelines 3/2021: Application for Tax Clearance Letter for Company, LLP and Labuan Entity (Updated)

Important deadlines:

Task	Due Date
	31 August 2021
1. 2022 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 2021 tax returns for companies with January year-end	√
5. Maintenance of transfer pricing documentation for companies with January year-end	√
6. Deadline for 2021 CbCR notification for companies with August year-end	√

1. Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) (Amendment) Rules 2021 [P.U.(A) 325/2021]

P.U.(A) 325/2021 (the Amendment Rules) was gazetted on 2 August 2021.

According to the Amendment Rules, the deduction period for fee incurred on Industry4WRD Readiness Assessment program provided under the Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) Rules 2020 [P.U.(A) 272/2020] has been extended to year of assessment (YA) 2026. The extension is legislated through the following amendments:

1) **Amendment of Rule 1(2)**: The deduction which expires in YA 2021 is extended for another 5 YAs to YA 2026.

2) **Amendment of Rule 3(1)(a)**: The period for the fee expenditure incurred on Industry 4.0 Readiness Assessment is extended for another 5 years, i.e. shall be incurred no later than 31 December 2025.

3) **Amendment of Rule 3(1)(b)**: The period for application for deduction to the Minister through the Malaysia Productivity Corporation is extended for another 5 years, i.e. from 1 January 2022 to 31 December 2026.

Please refer to the Amendment Rules and the P.U.(A) 272/2020 for full details.

Back to top

2. Income Tax (Accelerated Capital Allowance) (Excursion Bus) Rules 2021 [P.U.(A) 291/2021]

P.U.(A) 291/2021 (the Rules) was gazetted on 1 July 2021 and is effective for the YA 2020 and YA 2021.

Initial allowance

According to Rule 5, the licensed tour operator qualifies for an initial allowance provided under Paragraph 10 of Schedule 3 to the Income Tax Act 1967 (ITA) which shall be equal to one-fifth of the capital expenditure incurred for the purchase of the excursion bus.

Annual allowance

According to Rule 6, the licensed tour operator qualifies for an annual allowance provided under Paragraph 15 of Schedule 3 to the ITA which shall be equal to two-fifths of the capital expenditure incurred for the purchase of the excursion bus.

"Licensed tour operator" has the same meaning assigned to it under section 2 of the Tourism Industry Act 1992 [Act 482].

Application

1. These Rules shall apply to a licensed tour operator who is—
   (a) a resident in Malaysia;
   (b) incurred capital expenditure for the purchase of an excursion bus as the first registered owner in the basis period for a YA from a source consisting of his business in relation to the tour operations; and
   (c) a holder of the tourism vehicle licence issued under the Land Public Transport Act 2010 [Act 715] or the Tourism Vehicles Licensing Act 1999 [Act 594].

2. The excursion bus purchased by the licensed tour operator shall—
   (a) be used exclusively for the conveyance of tourists pursuant to the Land Public Transport Act 2010 or the Tourism Vehicles Licensing Act 1999;
   (b) be assembled or constructed in Malaysia pursuant to Motor Vehicles (Registration and Licensing) Rules 1959 [L.N. 173/1959]; and
   (c) is not a reconditioned excursion bus.

Please refer to the Rules for full details including the non-application rule and the deeming provision relating to hire purchase agreement.

[The above accelerated capital allowance was proposed in the Budget 2020.]

Back to top

3. Stamp duty exemption on acquisition of residential property

Two (2) Orders were gazetted on 12 July 2021 and deemed to have come into operation on 1 June 2021.

- Stamp Duty (Exemption) (No. 4) Order 2021 [P.U.(A) 301/2021]
- Stamp Duty (Exemption) (No. 5) Order 2021 [P.U.(A) 302/2021]

The above Orders were gazetted to legislate the proposed extension of stamp duty exemption by another 7 months (i.e. **1 June 2021 to 31 December 2021**), applicable for purchase of residential property valued between RM300,000 to RM2,500,000 by an individual under the Home Ownership Campaign 2021.

The exemption of stamp duty are as follow:

- on the loan agreement: full exemption [P.U.(A) 301/2021]; and
- on the instrument of transfer: on the first RM1 million from the value of the residential property and stamp duty of RM3 shall be imposed for every RM100 of the balance amount of the value of the residential property which is more than RM1 million [P.U.(A) 302/2021]].

Previously, the stamp duty exemption was given up to **31 May 2021**.

The above mentioned stamp duty exemption shall only apply if:

a) the sale and purchase agreement for the purchase of the residential property is executed between an individual and a property developer;
b) the purchase price in the sale and purchase agreement referred to in paragraph (a) is the price after a discount of at least 10% from the original price offered by the property developer, except for a residential property which is subject to controlled pricing; and
c) the sale and purchase agreement for the purchase of the residential property is executed on or after 1 June 2021 but no later than 31 December 2021 and is stamped at any branch of the Inland Revenue Board of Malaysia (IRBM).

According to the Orders, a Home Ownership Campaign 2021 Certification issued by the Real Estate and Housing Developers' Association (REHDA) Malaysia, Sabah Housing and Real Estate Developers' Association (SHAREDA) or Sarawak Housing and Real Estate Developers' Association (SHEDA) shall be submitted by the individual concerned to any branch of the IRBM for the purpose of obtaining the stamp duty exemption.

"residential property" means a house, a condominium unit, an apartment or a flat, purchased or obtained solely to be used as a dwelling house, and includes a service apartment and small office home office (SOHO) for which the property developer has obtained an approval for a Developer's License and Advertising and Sales Permit under the Housing Development (Control and Licensing) Act 1966 [Act 118], Housing Development (Control and Licensing) Enactment 1978, Sabah [No.24 of 1978] or Housing Development (Control and Licensing) Ordinance 2013, Sarawak [Cap. 69];

"individual" means a purchaser of a residential property who is a Malaysian citizen or co-purchasers of a residential property who are Malaysian citizens; and

"property developer" means a property developer registered with the Real Estate and Housing Developers' Association (REHDA) Malaysia, Sabah Housing and Real Estate Developers' Association (SHAREDA) or Sarawak Housing and Real Estate Developers' Association (SHEDA).

Please refer to P.U.(A) 301/2021 and P.U.(A) 302/2021 for full details.

Back to top

4. Extended due date for submission of online application form for MSC Malaysia Status Transition (Services Incentive) for MSC Malaysia Status companies

Further to the MDEC announcement 'MSC Malaysia BOG 5 Revised Tax Regime Comes into Force On 1 July 2021' recently, it is noted from the MDEC website that the due date for online submission of the completed application form for transition into the revised tax regime [MSC Malaysia Status - Services Incentive] has been extended from 31 July 2021 to **31 October 2021**.

Please click on this link for full details.

Back to top

5. Inspirasi Elit Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (HC)

Issues:

1. Whether judicial review (JR) to quash the decision of the Director General of Inland Revenue (DGIR) in raising notice of additional assessment for the YA 2017 was available to the taxpayer when the alternative domestic remedy of appeal was available;

2. Whether there were exceptional circumstances to grant the taxpayer's application for stay of decision of the DGIR pending the appeal; and

3. Whether the instant matter involved dispute of facts and that this matter ought to be ventilated before the Special Commissioners of Income Tax (SCIT) where witnesses and evidence could be adduced.

Decision:

The High Court (HC) allowed the taxpayer's application for leave for JR and granted the taxpayer's application for a stay of proceedings with the following grounds of judgement.

*[**Note:** The DGIR had raised notice of additional assessment for YA 2017 following an audit in July 2019, on the basis that the taxpayer's (a property developer) contributions made to the State Government Housing Division and Penang State Secretary's Office Housing Division for releasing the low-cost and Bumiputera units, were not tax deductible since they were capital expenditure for the right to sell the low-cost and Bumiputera units. The taxpayer had claimed a deduction with the view that the contributions were deductible under Sections 33(1) and 44(6) of the ITA.]*

1. Based on the decisions in WRP Asia Pacific Sdn Bhd v Tenaga Nasional Berhad [2012] 4 MLJ 296, Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 1 CLJ 927 and Teh Guat Hong v Perbadanan Tabung Pendidikan Tinggi Nasional [2015] 3 AMR 35 and Order 53 Rule 2(4) of the Rules of Court 2012, the taxpayer was adversely affected by the impugned decision. As such, the taxpayer had the necessary locus standi to apply for JR.

2. In Bintulu Lumber Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2020) MSTC ¶30-400, the Federal Court recognised the importance of JR in challenging the executive's decision, including the DGIR as the tax-collecting agency. The taxpayer's complaint could not be said to be frivolous. The issues of clear lack of jurisdiction or blatant failure to perform some statutory duty or a serious breach of the principles of natural justice and legitimate expectation were required to be dealt with on merit.

3. Going by Government of Malaysia & Anor v Jagdis Singh [1987] CLJ (Rep) 110, the taxpayer was entitled to resort to the remedy of JR in exceptional circumstances. Since there was an appeal provision available to the taxpayer, certiorari would not normally issue unless there was a clear lack of jurisdiction or a blatant failure to perform some statutory duty or, in an appropriate case, a serious breach of the principles of natural justice.

4. According to Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 and other authorities, the mere fact that the taxpayer might appeal to the SCIT did not mean that the taxpayer had lost its right to appeal to the HC by way of JR. An error of law amounted to a lack of jurisdiction, and certiorari would lie to correct it.

5. In Metacorp Development v Ketua Pengarah Hasil Dalam Negeri (2011) MSTC ¶30-024; [2011] 5 MLJ 447, Multi-Purpose International Ltd v Ketua Pengarah Hasil Dalam Negeri [2020] 1 LNS 49 and Prima Nova Harta Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Rayuan No WA-14-7-12/2019), the High Courts held that the availability of an alternative remedy in the form of an appeal process did not bar an application for JR. The decisions of the Court of Appeal and the High Courts were binding on the DGIR, and the failure to abide by such decisions or any misinterpretation of the law constituted an error of law amounting to a clear lack of jurisdiction and warranted the grant of leave.

6. Going by Magnum Holdings Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2018) MSTC ¶30-151 and Almurisi Holding Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2020] 1 LNS 1439, the alternative remedy argument ought not to be dealt with at the leave stage and had to be considered only at the substantive stage of the application for JR.

7. As per Hotel Sentral (JB) Sdn Bhd v Pengarah Tanah dan Galian Negeri Johor [2017] 6 CLJ 161, OSK & Partners Sdn v Tengku Noone Aziz & Anor [1983] 1 MLJ 179 and Petaling Tin Bhd v Lee Kiam Chan [1994] 1 MLJ 657, denial of legitimate expectations that had properly arisen would be unduly oppressive and an abuse of power. It was premature to determine at the leave stage if the granting of reliefs would amount to an abuse of process.

8. Kosma Palm Oil Mill Sdn Bhd v Koperasi Serbausaha Makmur Bhd [2003] 4 CLJ 1 laid down the special circumstances test which had been followed in many authorities including Nasioncom Holdings Bhd v Suruhanjaya Sekuriti [2008] 4 MLJ 620, R v Secretary of State for Education and Science, ex parte Avon County Council [1991] 1 All ER 282 and Chang Shu Hua v Goon Fook Hong [2008] 3 CLJ 429. A wide interpretation had to be given in a stay application in JR to enable the effectiveness of the JR jurisdiction and that the taxpayer was not denied the full benefit of a successful challenge. The status quo had to be preserved by suspending the decision under challenge pending the determination of the JR.

9. Going by Islamic Financial Services Board v Marlin Fairol Mohd Farouque & Anor [2010] 8 CLJ 173, the taxpayer had strong merits in its JR application. The balance of convenience lay in the taxpayer's favour. If a stay were not granted, the taxpayer would suffer damage and injury, which the refund of taxes could not remedy. On the other hand, the DGIR would not be affected by the Court's decision to grant the stay until the full and final determination of the JR application, because in the event the JR application was subsequently disallowed at the substantive stage, the DGIR would still be able to collect the taxes imposed on the taxpayer.

10. In conclusion, the HC held that it remained the case that the threshold at the leave stage was very low and the result of every leave application turned on its own facts based on the test. The facts of the present matter clearly demonstrated that leave for JR was warranted. The taxpayer had shown a prima facie case that it had exceptional circumstances relating to the impugned decisions. Premised on the above, the HC granted the leave for JR and stay application by the taxpayer.

Back to top

6. Puncak Niaga Construction Sdn Bhd v Menteri Kewangan Malaysia (HC)

The Applicant was seeking leave for JR against the "decision" of the Respondent who did not respond to its request i.e. for the Respondent to exercise his powers under Section 135 and/or Section 127(3A) of the ITA to set aside or exempt the notices of additional assessment raised by the DGIR/Proposed Intervener for the YAs 2017 and 2018 with regard to penalty imposed under Section 44A(9)(b) of the ITA on the tax undercharged in respect of Group Relief.

Enclosure 8 is the application of the DGIR/Proposed Intervener to intervene in the Applicant's JR application pursuant to O 53 r 8 of the Rules of Court 2012.

Issue:

Whether the DGIR/Proposed Intervener has a direct interest to the Applicant's application for JR.

Decision:

The HC dismissed enclosure 8 on the basis that the DGIR/Proposed Intervener has failed to fulfil the direct interest test. The wordings of Section 127(3A) and Section 135 of the ITA are unambiguous. The power is exclusively vested in the Respondent to decide on whether to grant an exemption and give directions of a general character. The DGIR/Proposed Intervener is not the proper party to argue on the issue. The provisions also do not provide for the Respondent to delegate to the DGIR/Proposed Intervener the decision-making tasks. Therefore, the DGIR/Proposed Intervener at best has only an indirect interest in the Applicant's application. The reasons provided by the DGIR/Proposed Intervener are insufficient to show that he is a proper person with direct interest.

Back to top

7. SEO Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (SCIT)

Issues:

1) In making the transfer pricing adjustments under Section 140A of the ITA, whether the DGIR is required under the Organisation for Economic Co-operation and Development Transfer Pricing Guidelines and the Inland Revenue Board Transfer Pricing Guidelines 2003 or 2012 to adjust the taxpayer's profits to the median in cases where the margins were in the interquartile range.

2) Whether the DGIR correctly invoked Section 140A of the ITA to issue the notice of additional assessment for the YA 2010.

3) Whether there was any legal or factual basis for the DGIR to impose a penalty under Section 113(2) of the ITA.

Decision:

The SCIT allowed the appeal of the taxpayer on all issues based on the following grounds:

1) Based on the decision in *Re Ex Parte Application For Leave To Apply For Judicial Review By Shell People Services Asia Sdn Bhd*, the DGIR had the discretionary power under Section 140A of the ITA whether to adjust the transfer price or not. Going by Rule 13(1) of the Income Tax (Transfer Pricing) Rules 2012 when the DGIR had reason to believe that the price charged in the controlled transaction was not an arm's length price, the DGIR had the discretion to make an adjustment to indicate the arm's length price for the transaction by substituting or charging the price. So, adjusting to indicate the arm's length price was not a mandatory requirement.

2) The DGIR failed to support their decision to use the median point within the minimum and maximum range of - 0.11% and 2.91%, respectively. The DGIR was unable to prove that the adjustment to the median point was in fact in line with or at the arm's length price, or that the decision to adjust the price to the median was backed by any legal provisions or guidelines.

3) The taxpayer had proved that there were no facts to support the decision/assessment of the DGIR to make a transfer pricing adjustment with the use of the median point to ensure arm's length pricing. Therefore, the decision of the DGIR to raise an additional assessment against the taxpayer was both an excessive and erroneous decision.

Back to top

8. Sri Seltra Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (HC)

Issue:

Whether a "special circumstance" existed for the HC to exercise its discretion and grant a stay of execution on the enforcement of the notice of additional assessment raised by the DGIR until the Court of Appeal (COA) decides on the dismissal of the taxpayer's application for JR by the HC.

Decision:

The HC allowed the taxpayer's application for a stay of execution order until the appeal to the COA for JR was decided with the following grounds of judgement.

*[**Note:** The DGIR raised a notice of additional assessment of RM70,919,239.81 for the YA 2017 on the taxpayer, and the taxpayer had applied for JR of the DGIR's decision, which the HC had dismissed. The taxpayer consequently appealed against the HC's decision to the COA.]*

1) Based on Section 73 of the Courts of Judicature Act 1964 and the decision in Ong Koh Hou v DA Land Sdn Bhd & Ors [2019] 4 CLJ 622, the HC on its own can grant a stay or if the stay is not successful, the COA may do so. It is not stated in the section that a special circumstance must be shown for the grant of stay.

2) Going by Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257 (Kosma), the test of whether an order of stay was permissible or not was if a "special circumstance" existed. That special circumstance depended on the facts of the case. Thus, the appeal would be in vain as it was accepted as a special circumstance even though it was a regular occurrence. Kosma decided that the factors leading to special circumstances always change with time and circumstances.

3) As per Chang Shu Hua v Goon Fook Hong [2008] 3 CLJ 429, other factors, including whether damages would be an adequate remedy if the taxpayer who applied for the stay succeeded in his appeal, had to be taken into account in applying the special circumstances approach.

4) The amount of additional tax assessment in dispute was large, standing at RM70,919,239.81. The imposition of this amount would cause the taxpayer to face a major financial crisis. If the stay was not allowed, the taxpayer as a company carrying on property development business would not only face heavy cash flow problems, but would also require a large influx of capital to avoid any disruption to the operation of existing projects.

5) The need to pay substantial tax liabilities arising from the notice of additional assessment before the merits of the taxpayer's appeal being heard in the COA, would divert the focus of the taxpayer's resources and effort, which would, in turn, affect its economic interests as a whole. The taxpayer would experience undue hardship. The impact could not be calculated and compensated through the repayment of money by the DGIR in the future.

6) The Government of Malaysia v Datuk Haji Kadir Mohamad Mastan and another case [1993] 4 CLJ 98 and other authorities had also recognised that the category of "special circumstances" was unlimited and would expand over time depending on the facts of each case. The scenario of a slowdown of economic growth due to the COVID-19 pandemic had a major impact both locally and globally. Such extraordinary circumstances had to be seen as a whole and according to the current circumstances, and not subject to some of the circumstances decided in previous cases, which the Court believed, was also dependent on the facts of the case.

7) Although it was the DGIR's responsibility to collect taxes in the interest of the country and the people, there had to be a balance with the needs of the taxpayer to fulfil his duties and responsibilities to the national economy, to meet the needs of its business and generate the taxable income to be enjoyed by the country and its people. A stay might be granted if special circumstances were justifying it, notwithstanding that the tax was payable under Section 103(1) of the ITA or that it was the policy of the ITA that the assessed tax ought to be paid first before the hearing of the appeal. Section 103 ought not to be seen as a "blanket" that denied the taxpayer's interest until its case was heard and decided at the appeal stage.

8) The status quo of the taxpayer's case needed to be maintained until the taxpayer's appeal was heard and decided by the COA. The appeal to the COA was against the dismissal of the leave application for JR by this Court, and the substantive merits of JR had not yet been heard if the taxpayer succeeded at the appeal stage.

9) The DGIR failed to prove that the taxpayer's application for a stay was a tactic meant to delay the payment of taxes imposed or made in a mala fide, frivolous and troublesome manner. The balance of convenience was more in favour of the taxpayer. The taxpayer had successfully established the legal burden indicating that there were special circumstances that justified a stay of execution order being granted to the taxpayer until the appeal in the COA was decided.

Back to top

9. PR 3/2021 – Special Allowances for Small Value Assets

The IRBM has recently released Public Ruling (PR) 3/2021 – Special Allowances for Small Value Assets (issued on 21 July 2021) to replace PR 10/2014 'Special Allowances for Small Value Assets' (amended on 11 May 2016). The list of updates and amendments are provided in Paragraph 17 of the PR 3/2021. The PR was updated mainly to include the changes made via Finance Act 2019 which amended Paragraphs 19A(1) and 19A(3) of Schedule 3 of the ITA with effect from **YA 2020.**:

Paragraph 19A(1) of Schedule 3 of the ITA provides that -

i) a person is eligible to claim the special rate of allowance which is 100%/equivalent to the amount of qualifying plant expenditure (QPE) incurred on small value asset;
ii) the value of each small value asset shall not exceed RM2,000; and
iii) if the total QPE in respect of small value assets exceeds the amount of RM20,000, the total claim for special allowances for small value assets is limited to a maximum amount of RM20,000 for each YA.

Nevertheless, pursuant to Paragraph 19A(3) of Schedule 3 of the ITA, such limitation of RM20,000 per YA does not apply to a Small Medium Company (SMC[1]) if the company is a resident and incorporated in Malaysia that–

a) has a paid-up capital in respect of ordinary shares of RM2.5 million and less at the beginning of the basis period for a YA; and
b) has gross income from a source or sources consisting of business not exceeding RM50 million for the basis period for that YA.

[1]Note: Effective YA 2020, SMC means a company that fulfils the two criteria (a) and (b) stated above. For further explanation on the additional criteria (b) above, please refer to the Practice Note No. 4/2020 'Clarification on Determining the Gross Income from Business Sources of Not More Than RM50 Million of a Company or Limited Liability Partnership' dated 21 December 2020.

With effect from YA 2009, an SMC that falls under Paragraph 19A(4) of Schedule 3 of the ITA is only eligible to claim special allowance for small value assets limited to a maximum amount of total QPE, i.e. from YA 2020: RM20,000 for each YA (YA 2009 – YA 2014: RM10,000 and YA 2015 - YA 2019: RM13,000).

An SMC referred to in Paragraph 19A(4) of Schedule 3 of the ITA is a company where–
a) more than 50% of the paid-up capital of the SMC's ordinary shares are owned directly or indirectly by a related company;
b) more than 50% of the paid-up capital of the related company's ordinary shares are owned directly or indirectly by the SMC;
c) more than 50% of the paid-up capital of the ordinary shares of the SMC and its related company are owned directly or indirectly by another company.

"Related company" in relation to a company referred to in Paragraph 19A(4) of Schedule 3 of the ITA means a company with paid-up capital of ordinary shares exceeding RM2.5 million at the beginning of the basis period for a YA.

Please refer to the PR 3/2021 for full details, including the tax treatment applicable prior to YA 2020 (Paragraph 7 of the PR) and the steps to claim special allowances (Paragraph 9 of the PR).

Back to top

10. PR 2/2021 – Tax Deduction for Sponsoring Arts, Cultural and Heritage Activities

The IRBM has recently uploaded PR 2/2021 (dated 8 July 2021) on its website. The objective of the PR is to provide an explanation on the tax deduction available to a company that sponsors any approved local or foreign arts, cultural and heritage activities in Malaysia. In Budget 2020 **(*)** the Government increased the tax deduction limit of sponsorships to encourage the sponsoring of any arts, cultural or heritage activity approved by the Minister, to further develop Malaysian arts, culture and heritage.

1. Sponsorships for the purpose of Section 34(6)(k) are for eligible arts, cultural and heritage activities or programs jointly organised with Ministries, government departments or agencies as well as the private sector, non-governmental organisations or associations. Private and corporate sponsors of such activities would be eligible for a tax deduction.

2. An organiser, representative or program owner that wants to carry out a proposed activity or program would have to submit an application to the Ministry of Tourism, Arts and Culture Malaysia (MOTAC) by completing and submitting the relevant application form. The application has to be submitted **30 days before** the activity or program is carried out. After reviewing the application, MOTAC may issue a **supporting letter for sponsorship**. With this letter, sponsorship may then be sourced from private or corporate sponsors.

3. The organiser, representative or program owner would have to submit an application to MOTAC no later than **90 days after** the activity or program has been carried out to obtain a **letter of approval for tax deduction**.

4. In accordance with the guidelines on the application for a tax deduction related to sponsorship of arts, cultural and heritage activities issued by the MOTAC, sponsors would have to fulfil various criteria in order to be eligible for a tax deduction, such as:
   (a) eligible activities or programs related to arts, culture and heritage identified by MOTAC which includes stage performances, festivals or fairs, exhibitions or expo, etc.; and
   (b) form of sponsorship for local and foreign arts, culture and heritage as determined by MOTAC which includes sponsorship of cash, artist and professional fee, purchase of goods and equipment, etc.

Please refer to the guidelines titled Tax Deduction on Sponsorship of Arts, Cultural and Heritage Activities under Subsection 34(6)(k) Income Tax Act 1967, at www.motac.gov.my for more information on the application.

[***Note:** Pursuant to Budget 2020 announcement, Section 34(6)(k) of the ITA was amended via Finance Act 2019 by increasing the deduction limit from RM700,000 to RM1 million with effect from YA 2020. Effective YA 2020, Section 34(6)(k) provides that, "*There may be deducted from the relevant gross income an amount equal to the expenditure incurred by the relevant person in the relevant period for sponsoring any arts, cultural or heritage activity approved by the Minister charged with the responsibility for arts, culture or heritage:*

Provided that the amount deducted in respect of expenditure incurred for sponsoring those activities shall not in aggregate exceed one million ringgit of which the amount deducted in respect of expenditure incurred in sponsoring foreign arts, cultural or heritage activity shall not exceed three hundred thousand ringgit;"]

Please refer to the PR 2/2021 for full details.

Back to top

11. Operational Guidelines 3/2021: Application for Tax Clearance Letter for Company, LLP and Labuan Entity (Updated)

The IRBM has recently issued an updated Operational Guidelines on Application for Tax Clearance Letter (TCL) for Company, Limited Liability Partnership (LLP) and Labuan Entity (GPHDN 3/2021) dated 30 June 2021 (*Available in Bahasa Malaysia only*). It supersedes the previously issued Guidelines (GPHDN 2/2019) dated 12 November 2019.

The significant changes are outlined below:

- The TCL will be issued by the IRBM within 14 working days from the date the application is received, together with complete documentation and information.
- The issuance of TCL is subject to an additional condition that all audit cases up to the current YA have been resolved.
- For the purpose of closing the income tax file after the TCL is issued, a strike off/dormant company is required to submit a Notice under Section 551 of the Companies Act 2016 to the IRBM.
- There are revised forms and list of supporting documents required for the purpose of TCL application by each category of taxpayer:

Category of taxpayer	Guidelines
Company	- Appendix 1A for Form CP7(C) - Appendix A for supporting documents
Defunct company	- Appendix 1D for Form CP7 - Appendix A for supporting documents
LLP	- Appendix 1B for Form CP7(PT) - Appendix B for supporting documents
Labuan Entity	- Appendix 1C for Form CP7(LE) - Appendix C for supporting documents

Please refer to the updated Guidelines (GPHDN 3/2021) for the full details.

Back to top

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Tax Team - Contact us

Service lines / Names	Designation	Email	Telephone
Business Tax Compliance & Advisory			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
Tan Hooi Beng	Deputy Managing Director	hooitan@deloitte.com	+603 7610 8843
Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878
Choy Mei Won	Executive Director	mwchoy@deloitte.com	+603 7610 8842
Suzanna Kavita	Director	sukavita@deloitte.com	+603 7610 8437
Business Process Solutions			
Julie Tan	Executive Director	jultan@deloitte.com	+603 7610 8847
Shareena Martin	Director	sbmartin@deloitte.com	+603 7610 8925
Eugene Chow Jan Liang	Director	euchow@deloitte.com	+605 254 0288
Capital Allowances Study			
Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Sumaisarah Abdul Sukor	Associate Director	sabdulsukor@deloitte.com	+603 7610 8331
Global Employer Services			
Ang Weina	Executive Director	angweina@deloitte.com	+603 7610 8841
Chee Ying Cheng	Executive Director	yichee@deloitte.com	+603 7610 8827
Michelle Lai	Director	michlai@deloitte.com	+603 7610 8846
Cynthia Wong	Director	cywong@deloitte.com	+603 7610 8091
Government Grants & Incentives			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878
Indirect Tax			
Tan Eng Yew	Executive Director	etan@deloitte.com	+603 7610 8870
Senthuran Elalingam	Executive Director	selalingam@deloitte.com	+603 7610 8879
Chandran TS Ramasamy	Director	ctsramasamy@deloitte.com	+603 7610 8873
Larry James Sta Maria	Director	lstamaria@deloitte.com	+603 7610 8636
Wong Poh Geng	Director	powong@deloitte.com	+603 7610 8834

Nicholas Lee Pak Wei	Director	nichlee@deloitte.com	+603 7610 8361
International Tax & Value Chain Alignment			
Tan Hooi Beng	Deputy Managing Director	hooitan@deloitte.com	+603 7610 8843
Kelvin Yee Rung Hua	Director	keyee@deloitte.com	+603 7610 8621
Mergers & Acquisitions			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
Private Wealth Services			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862
Chan Ee Lin	Director	eelchan@deloitte.com	+604 218 9888
Kei Ooi	Director	soooi@deloitte.com	+603 7610 8395
Tax Audit & Investigation			
Chow Kuo Seng	Executive Director	kuchow@deloitte.com	+603 7610 8836
Mohd Fariz Mohd Faruk	Executive Director	mmohdfaruk@deloitte.com	+603 7610 8153
Wong Yu Sann	Director	yuwong@deloitte.com	+603 7610 8176
Tax Management Consulting			
Senthuran Elalingam	Executive Director	selalingam@deloitte.com	+603 7610 8879
Cheong Mun Loong	Director	mucheong@deloitte.com	+603 7610 7652
Transfer Pricing			
Theresa Goh	Executive Director	tgoh@deloitte.com	+603 7610 8837
Subhabrata Dasgupta	Executive Director	sudasgupta@deloitte.com	+603 7610 8376
Philip Yeoh	Executive Director	phyeoh@deloitte.com	+603 7610 7375
Gagan Deep Nagpal	Executive Director	gnagpal@deloitte.com	+603 7610 8876
Vrushang Sheth	Executive Director	vsheth@deloitte.com	+603 7610 8534
Justine Fan	Director	jufan@deloitte.com	+603 7610 8182
Anil Kumar Gupta	Director	anilkgupta@deloitte.com	+603 7610 8224

Sectors / Names	Designation	Email	Telephone
Automotive			
Tan Hooi Beng	Deputy Managing Director	hooitan@deloitte.com	+603 7610 8843

Consumer Products			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
Financial Services			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862
Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Mohd Fariz Mohd Faruk	Executive Director	mmohdfaruk@deloitte.com	+603 7610 8153
Oil & Gas			
Toh Hong Peir	Executive Director	htoh@deloitte.com	+603 7610 8808
Kelvin Kok	Director	kekok@deloitte.com	+603 7610 8157
Real Estate			
Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Gan Sin Reei	Director	sregan@deloitte.com	+603 7610 8166
Telecommunications			
Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878

Other Specialist Groups / Names	Designation	Email	Telephone
Chinese Services Group			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Japanese Services Group			
Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Korean Services Group			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862

Branches / Names	Designation	Email	Telephone
Penang			
Ng Lan Kheng	Executive Director	lkng@deloitte.com	+604 218 9268
Tan Wei Chuan	Executive Director	wctan@deloitte.com	+604 218 9888
Au Yeong Pui Nee	Director	pnauyeong@deloitte.com	+604 218 9888
Monica Liew	Director	monicaliew@deloitte.com	+604 218 9888

Ipoh

Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Lam Weng Keat	Director	welam@deloitte.com	+605 253 4828
Patricia Lau	Director	palau@deloitte.com	+605 254 0288
Eugene Chow Jan Liang	Director	euchow@deloitte.com	+605 254 0288

Melaka

Julie Tan	Executive Director	jultan@deloitte.com	+603 7610 8847
Gabriel Kua	Director	gkua@deloitte.com	+606 281 1077

Johor Bahru

Thean Szu Ping	Executive Director	spthean@deloitte.com	+607 268 0988
Caslin Ng Yuet Foong	Director	caslinng@deloitte.com	+607 268 0850
Catherine Kok Nyet Yean	Director	nykok@deloitte.com	+607 268 0882

Kuching

Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Philip Lim Su Sing	Director	suslim@deloitte.com	+608 246 3311
Chai Suk Phin	Director	spchai@deloitte.com	+608 246 3311

Kota Kinabalu

Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Leong Sing Yee	Assistant Manager	sleong@deloitte.com	+608 823 9601

Sim Kwang Gek

Tan Hooi Beng

Thin Siew Chi

Choy Mei Won

Julie Tan

Chia Swee How

Ang Weina

Chee Ying Cheng

Tham Lih Jiun

Tan Eng Yew

Senthuran Elalingam

Chee Pei Pei

Mark Chan

Mohd Fariz Mohd Faruk

Chow Kuo Seng

Theresa Goh

Subhabrata Dasgupta

Philip Yeoh

Gagan Deep Nagpal

Vrushang Sheth

Toh Hong Peir

Ng Lan Kheng

Tan Wei Chuan

Thean Szu Ping

Suzanna Kavita

Shareena Martin

Eugene Chow Jan Liang

Michelle Lai

Cynthia Wong

Chandran TS Ramasamy

Larry James Sta Maria

Wong Poh Geng

Nicholas Lee Pak Wei

Kelvin Yee Rung Hua

Chan Ee Lin

Kei Ooi

Wong Yu Sann

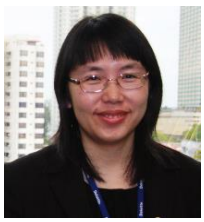
Cheong Mun Loong

Justine Fan

Anil Kumar Gupta

Kelvin Kok

Gan Sin Reei



Au Yeong Pui Nee

Monica Liew

Lam Weng Keat

Patricia Lau

Gabriel Kua

Caslin Ng Yuet Foong

Catherine Kok Nyet Yean

Philip Lim Su Sing

Chai Suk Phin

Sumaisarah Abdul Sukor

Leong Sing Yee

Deloitte.