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June 2022

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Greetings from Deloitte Malaysia Tax Services

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Takeaways:

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2. Income Tax (Deduction for the Sponsorship of Hallmark Event) (Amendment) Rules 2022 [P.U.(A) 126/2022]
3. Income Tax (Exemption) (No. 4) 2022 [P.U.(A) 142/2022]
4. Income Tax (The Principal Hub Incentive Scheme) Rules 2022 [P.U.(A) 164/2022]
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6. Tax Audit Frameworks 2022

Important deadlines:

Task	Deadline	
	30 June 2022	1 July 2022
1. 2023 tax estimates for companies with July year-end		√
2. 6th month revision of tax estimates for companies with December year-end	√	
3. 9th month revision of tax estimates for companies with September year-end	√	
4. Statutory filing of 2021 tax returns for companies with November year-end	√	
5. Maintenance of transfer pricing documentation for companies with November year-end	√	
6. 2022 CbCR notification for applicable entities with June year-end	√	

1. Income Tax (Deduction for Investment in Qualifying Activity) (Amendment) Rules 2022 [P.U.(A) 125/2022]

On 22 April 2022, the Malaysian government gazetted P.U.(A) 125/2022 (the Amendment Rules) to extend the application period by another two years for the application for deduction under the Income Tax (Deduction for Investment in Qualifying Activity) Rules 2016 [P.U. (A) 166/2016].

Subparagraph 6(1) of P.U.(A) 166/2016 allows a qualifying person to claim a deduction in arriving at the adjusted income from his business on the value of investment made by the qualifying person which is equivalent to an amount incurred by the related company in relation to the qualifying activity in respect of which the investment is made, provided that the application for the deduction is made to the Minister of Finance (the Minister) through the East Coast Economic Region Development Council between the period of 13 June 2008 and 31 December 2020 (both dates inclusive). The application for the deduction shall be presented concurrently with the application for the exemption by the related company in relation to the qualifying activity under the following orders:

i. Income Tax (Exemption) (No. 4) Order 2016 [P.U. (A) 157/2016];
ii. Income Tax (Exemption) (No. 5) Order 2016 [P.U. (A) 158/2016];
iii. Income Tax (Exemption) (No. 6) Order 2016 [P.U. (A) 159/2016]; and
iv. Income Tax (Exemption) (No. 7) Order 2016 [P.U. (A) 160/2016].

The application period for the deduction under P.U.(A) 166/2016 as well as the orders mentioned above has now been extended from 1 January 2021 to 31 December 2022 (both dates inclusive).

Please refer to the Amendment Rules and P.U. (A) 166/2016 for more details.

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2. Income Tax (Deduction for the Sponsorship of Hallmark Event) (Amendment) Rules 2022 [P.U.(A) 126/2022]

On 22 April 2022, the Malaysian government gazetted P.U.(A) 126/2022 (the Amendment Rules) to extend the application period by another two years for the application for deduction under the Income Tax (Deduction for the Sponsorship of Hallmark Event) Rules 2016 [P.U. (A) 165/2016].

Subparagraph 4(1) of P.U.(A) 165/2016 allows a qualifying person to claim a deduction in arriving at the adjusted income from his business for an amount equal to any cash contribution or contribution in kind made by the qualifying person in relation to a hallmark event approved by the Minister, which was carried out in the East Coast Economic Region between the period of 13 June 2008 and 31 December 2020 (both dates inclusive), provided that the application for the deduction is made to the Minister through the East Coast Economic Region Development Council between the period of 13 June 2008 and 31 December 2020 (both dates inclusive). The qualifying person shall produce a letter from the East Coast Economic Region Development Council confirming:

(a) that the event is a hallmark event;
(b) the date of the hallmark event;
(c) the organiser of the hallmark event; and
(d) the amount of cash contribution or contribution in kind made in relation to the hallmark event.

The hallmark event as mentioned above and the application period for the deduction under P.U.(A) 165/2016 is now extended from 1 January 2021 to 31 December 2022 (both dates inclusive).

Please refer to the Amendment Rules and P.U. (A) 165/2016 for more details.

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3. Income Tax (Exemption) (No. 4) 2022 [P.U.(A) 142/2022]

On 28 April 2022, the Malaysian government gazetted P.U.(A) 142/2022 (the Order) to legislate the proposed tax incentive for investment in equity crowdfunding as announced in the National Budget 2021. The Order has effect from the year of assessment (YA) 2021.

According to the Order:

1) The Minister exempts a qualifying individual in respect of his aggregate income from the payment of income tax on an amount equivalent to 50% of investment made in the investee company in the second YA following the YA in which the investment is made by the qualifying individual. The 50% exemption granted is capped at RM50,000 for each YA and shall be limited to 10% of the aggregate income of the qualifying individual in the basis period for a YA in which the exemption is granted.

2) The investment as mentioned above shall be made by the qualifying individual in the form of holding shares which are paid in cash to the investee company through an equity crowdfunding platform or through a nominee company (i.e. the investment) between the period from 1 January 2021 to 31 December 2023 (both dates inclusive).

3) Where the amount of investment as mentioned above exceeds the aggregate income of the qualifying individual in the basis period for the YA for which the exemption is granted, the excess amount shall not be refunded to the qualifying individual or be available as a credit to set off his tax liability for that YA or any subsequent YAs.

4) To qualify for the exemption, the qualifying individual shall:

   (a) obtain an annual certification from the equity crowdfunding operator in relation to the investment and the amount of investment, and that annual certification is verified by the Securities Commission Malaysia;
   (b) ensure that the investment must not be disposed of, either in full or in part, within two years from the date the investment is made; and
   (c) ensure that he does not have the following family members making any investment in the investee company:

      i. parent (including a parent-in-law);
      ii. child (including a stepchild or a child adopted in accordance with any law);
      iii. brother or sister;
      iv. grandparent or grandchild; or
      v. spouse.

5) The above-mentioned tax exemption will not be granted to a qualifying individual:

   (a) who has made a claim for deduction under the Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company Rules 2022 [P.U. (A) 117/2022]; or
   (b) who has been granted exemption under the Income Tax (Exemption) Order (No. 3) 2014 [P.U. (A) 167/2014].

Relevant definition

A "qualifying individual" is a resident individual in Malaysia who makes an investment in the investee company.

An "equity crowdfunding operator" is a company incorporated under the Companies Act 2016 and registered with the Securities Commission Malaysia as a recognised market operator to operate an equity crowdfunding platform in Malaysia under the Guidelines on Recognised Markets issued by the Securities Commission Malaysia.

An "equity crowdfunding platform" is an online equity fundraising platform operated by an equity crowdfunding operator.

A "nominee company" is a company which is:

(a) incorporated under the Companies Act 2016;
(b) resident in Malaysia; and
(c) established by an equity crowdfunding operator in Malaysia to receive investments from a qualifying individual for investment purposes through an equity crowdfunding platform into an investee company.

An "investee company" is a company which is:

(a) incorporated under the Companies Act 2016, and does not include an exempt private company as specified in Section 2 of the Companies Act 2016;
(b) resident in Malaysia; and
(c) hosted on an equity crowdfunding platform to offer its shares.

Please refer to the Order for more details.

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4. Income Tax (The Principal Hub Incentive Scheme) Rules 2022 [P.U.(A) 164/2022]

On 24 May 2022, the Malaysian government gazetted the "Income Tax (The Principal Hub Incentive Scheme) Rules 2022" (P.U.(A) 164/2022) to implement the extension of the tax incentive for "principal hubs" for two years (i.e., to be available for applications received up to 31 December 2022), as proposed in the 2021 national budget. The extension aims to encourage more companies to establish a centre in Malaysia to conduct their regional or global businesses and operations to manage, control, and support their key functions including management of risks, decision making, strategic business activities, commerce, finance, management, and human resource management. There have been some revisions to the incentive, which provides for a corporate income tax rate of 0% to 10% for certain income of qualifying companies for a period of five consecutive YAs, that is renewable for another five YAs for new companies (the general corporate income tax rate in Malaysia is 24%). The Rules are effective as from YA 2021. The issuance of the Rules follows the 2021 issuance by the Malaysian Investment Development Authority (MIDA) of guidelines ("PH 3.0") setting forth the eligibility criteria and conditions to qualify for the incentive.

The Rules are applicable to qualifying companies undertaking qualifying activities that apply in writing for the Principal Hub Incentive Scheme ("PH scheme") to the Minister through the MIDA and whose applications are received between 1 January 2021 and 31 December 2022.

Key definitions under the Rules are described below, followed by some additional salient points regarding the tax incentive.

Relevant definitions

A "new company" is a company that meets the following requirements:

- The company is incorporated under the Companies Act 2016 and is resident in Malaysia;
- The company has paid-up capital of more than RM2.5 million; and
- The company is established for the purpose of carrying on a qualifying activity under the Rules and:
  - Does not have an existing entity or related entity in Malaysia prior to the application to the Minister being made; or
  - Has an existing entity or related entity in Malaysia that has not carried on a qualifying activity in Malaysia prior to the application to the Minister being made.

An "existing company" is a company that meets the following requirements:

- The company is incorporated under the Companies Act 2016 and is resident in Malaysia;
- The company is already operating in Malaysia and carrying on a manufacturing or services activity other than a qualifying activity prior to the application to the Minister being made; and
- The company has paid-up capital of more than MYR 2.5 million.

As noted above, the incentive under the PH scheme is available to qualifying companies that undertake a qualifying activity. A "qualifying activity" is a service activity undertaken by a qualifying company in respect of strategic services, business services, or shared services for other companies (details of each service activity are specified in schedule 1 to the Rules). The guidelines issued by the MIDA indicate that the other companies may include both related and unrelated companies.

Certain income derived from intellectual property rights is excluded from the incentive, as described further below. An "intellectual property right" is a right arising from any patent, utility innovation and discovery, copyright, trademark or

service mark, industrial design, layout-design of an integrated circuit, secret process or formula and know-how, geographical indication, or the grant of protection of a plant variety, and other like rights, whether registered or registrable.

Other salient points

- A qualifying company that carries on a business in respect of a qualifying activity may enjoy an income tax rate of 0% to 10% (depending on the category of the qualifying company, as specified in Schedule 2 to the Rules) on income derived from the qualifying activity for a period of five consecutive YAs ("specified YAs") commencing from the YA as determined by the Minister.

- A qualifying company approved under the PH scheme is entitled to the tax incentive only if it complies with all the conditions specified in Schedule 2 to the Rules (regarding employees and annual operating expenditure) and any other conditions imposed by the Minister as specified in the approval letter and the guidelines issued or as revised by the MIDA and approved by the Minister.

- A qualifying company must exclude intellectual property income (i.e., royalties or other income from the commercial exploitation of an intellectual property right) derived from the qualifying activity in ascertaining the qualifying company's statutory income for the purposes of the tax incentive. A qualifying company is deemed to own an intellectual property right if the qualifying company is the owner or the licensee of the right. Based on these provisions, intellectual property income will be subject to tax at the prevailing corporate income tax rate (currently, 24% in general).

- The Minister may extend the specified YAs for a new company for a period of five consecutive YAs, provided the new company fulfills all conditions specified in Schedule 3 to the Rules (regarding employees and annual operating expenditure, among other things) and any other conditions imposed by the Minister as specified in the approval letter. An application for the extension of the specified YAs must be made in writing by the new company, and must be received by the Minister through the MIDA at least 30 days before the end of the last specified YA. The extension of the specified YAs will begin from the subsequent YA after the end of the specified YAs and will continue for a period of five consecutive YAs.

- The Minister may, at any time (except where the qualifying company fails to comply with any conditions imposed in relation to the PH scheme), allow the qualifying company to surrender the incentive granted under the PH scheme Rules by a notice in writing to the Minister through the MIDA. The surrender of the incentive will have effect on the first day in the basis period for the YA in which the notification for surrender of the incentive is received by the Minister through the MIDA.

Please refer to P.U.(A) 164/2022 for full details.

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5. Income Tax (Deduction for Expenditure in relation to Industry4WRD Vendor Development Programme) Rules 2022 [P.U.(A) 172/2022]

P.U.(A) 172/2022 (the Rules) was gazetted on 30 May 2022 to legislate the proposed incentive for Industry4WRD Vendor Development Programme (VDP) as announced in the National Budget 2019. The Rules are deemed to have come into operation from the YA 2019 and shall apply to an anchor company which signs the Memorandum of Understanding (MOU) with the Ministry charged with the responsibility for International Trade and Industry (MITI) under the Industry4WRD VDP from 1 January 2019 to 31 December 2021 (both dates inclusive).

The Industry4WRD VDP is a programme certified by the MITI or agency, to be implemented by an anchor company in developing a vendor company, as specified in the Guideline for The Implementation of Industry4WRD VDP (the Guideline) issued or as revised by the MITI and approved by the Minister.

The salient points are as follow:

1. An anchor company will be allowed a double deduction on the expenditure incurred by that anchor company in arriving at its adjusted business income for each YA for a period of three consecutive YAs commencing from the YA in

the basis period of which the first expenditure is incurred in carrying out the following activities in relation to the Industry4WRD VDP:

(a) activities in relation to product development, namely product quality upgrading, product innovation or research and development;
(b) activities in relation to capability upgrading, namely certification programme, assessment programme or business process re-engineering; or
(c) activities in relation to human capital, namely hard skill training, lean management system, financial management practice or capacity upgrading.

2. To qualify for the double deduction as mentioned, the total expenditure incurred for the activities in relation to Industry4WRD VDP for each YA shall not exceed RM1,000,000 as verified by the MITI and shall not include 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, incurred by the anchor company.

Relevant definitions

An "agency" means any agency appointed by the MITI under the Industry4WRD VDP.

An "anchor company" is a company which:

(a) is resident in Malaysia and is incorporated or deemed to be registered under the Companies Act 2016;
(b) engages in manufacturing or manufacturing-related services sector;
(c) holds a business license issued by relevant local authority and a manufacturing license issued by the MITI, if relevant;
(d) has been in operation for a period of at least thirty six months;
(e) participates in the Industry4WRD VDP; and
(f) fulfills other conditions as specified in the Guideline issued or as revised by the MITI and approved by the Minister.

A "vendor company" is a company which:

(a) is resident in Malaysia and is incorporated or deemed to be registered under the Companies Act 2016;
(b) engages in manufacturing or manufacturing-related services sector; and
(c) fulfills other conditions as specified in the Guideline issued or as revised by the MITI and approved by the Minister.

Please refer to the Rules for more details.

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6. Tax Audit Frameworks 2022

The Inland Revenue Board of Malaysia (IRBM) has recently published the following updated Tax Audit Frameworks (*available in Bahasa Malaysia only*) to provide guidance to taxpayers with regards to the latest tax audit policy that was adopted by the IRBM effective from 1 May 2022, which clarifies, among others, that no penalty will be imposed on audit findings that is related to technical adjustments:

- Tax Audit Framework 2022 (replaces the Tax Audit Framework 2019 dated 15 December 2019);
- Petroleum Tax Audit Framework 2022 (replaces the Petroleum Tax Audit Framework 2019 dated 15 December 2019); and
- Tax Audit Framework on Finance and Insurance 2022 (replaces the Tax Audit Framework on Finance and Insurance 2020 dated 18 November 2020).

The main changes / updates to the respective 2022 Tax Audit Frameworks are made in "**Item 10 – Offences and Penalties**" as outlined below:

Item 10.1

If there is an understatement or omission of any income as a result of the audit findings, a penalty equivalent to the amount of the tax undercharged (i.e. 100%) may be imposed under Section 113(2) of the Income Tax Act 1967 (ITA) / Section 52(2) of the Petroleum (Income Tax) Act 1967 (PITA). However, further to the publications of the updated Tax Audit Frameworks, penalties under Section 113(2) of the ITA / Section 52(2) of the PITA will be imposed at the following rates:

Offences	Penalty rate
1st offence	15%
2nd offence	30%
3rd offence and subsequent offences	45%

Item 10.3

The penalty rate for the first or second offense will be determined based on each taxpayer's past record of the penalties imposed under Section 113(2) of the ITA / Section 52(2) of the PITA during the period from **1 January 2020 to 30 April 2022**. If the taxpayer has never been imposed with any penalty under Section 113(2) of the ITA / Section 52(2) of the PITA during the period from 1 January 2020 to 30 April 2022, any audit findings from 1 May 2022 involving the imposition of a penalty under Section 113(2) of the ITA / Section 52(2) of the PITA will be considered as a first offence (i.e. at 15%). On the other hand, if the taxpayer has been imposed with a penalty under Section 113(2) of the ITA / Section 52(2) of the PITA between the period from 1 January 2020 to 30 April 2022, any audit findings from 1 May 2022 involving the imposition of a penalty under Section 113(2) of the ITA / Section 52(2) of the PITA will be considered as a second offence (i.e. at 30%).

Item 10.4

The penalty under Section 113(2) of the ITA / Section 52(2) of the PITA **will not be imposed (i.e. 0%)** for understatement or omission of any income resulting from audit findings involving technical adjustments.

Item 10.5

Technical adjustment refers to cases involving differences in interpretation of tax legislation as determined based on the facts and issues of each case. The above-mentioned 0% penalty will not be applicable on audit findings involving technical adjustment where the IRBM has issued Public Rulings / Guidelines / Practice Notes / Income Tax Regulations / Income Tax Exemption Orders / Income Tax Rules.

Item 10.6

For **fraud cases** where the taxpayer is found to have intentionally made incorrect tax reporting, a penalty will be imposed under Section 113(2) of the ITA / Section 52(2) of the PITA at **a rate of 100%** of the tax undercharged.

Item 10.8

The penalty rate under Section 113(2) of the ITA / Section 52(2) of the PITA for voluntary disclosure cases is **15%**. However, if the taxpayer has submitted the first voluntary disclosure through the Revised Income Tax Return Form (Revised ITRF) and subsequently made an **additional voluntary disclosure within six (6) months** from the due date for the submission of the ITRF, the penalty rate for such voluntary disclosure is **10%**.

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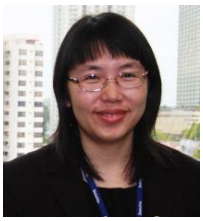

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