



## Tax Espresso

HASiL Guidelines, Practice Note, Gazette Orders, Tax Cases  
and more

May 2024



# Greetings from Deloitte Malaysia Tax Services

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## Important deadlines:

Task	Deadline
	31 May 2024
1. 2025 tax estimates for companies with June year-end	√
2. 6 <sup>th</sup> month revision of tax estimates for companies with November year-end	√
3. 9 <sup>th</sup> month revision of tax estimates for companies with August year-end	√
4. 11 <sup>th</sup> month revision of tax estimates for companies with June year-end	√
5. Statutory filing of 2023 tax returns for companies with October year-end	√
6. Maintenance of transfer pricing documentation for companies with October year-end	√
7. 2024 CbCR notification for applicable entities with May year-end	√

## 1. HASiL Media Release – Access of MYInvois Testing Environment Open for Integration Testing of Taxpayer Business System through the Application Programming Interface

The Inland Revenue Board of Malaysia (HASiL) has issued a [media release](#) dated 10 April 2024 on e-Invoicing, which outlines the following:

- 1) The MyInvois Testing Environment (MyInvois Sandbox) is accessible for taxpayers and service providers to conduct system integration testing between systems developed by taxpayers or service providers with MyInvois through the Application Programming Interface (API).
- 2) The accessibility start date of the MyInvois Sandbox is as follows:
  - For pilot company: **10 April 2024**
  - For other companies and service providers: **22 April 2024**
- 3) To access the MyInvois Sandbox, taxpayers or service providers need to apply for a Client ID and Client Secret from HASiL via email at [sdkmyinvois@hasil.gov.my](mailto:sdkmyinvois@hasil.gov.my) by providing the following details:
  - Tax Identification Number (TIN)
  - Business Registration Number
  - Company name
  - Company email address
  - Enterprise Resource Planning (ERP) system name
- 4) For any further inquiries on the Software Development Kit (SDK) and MyInvois Sandbox System, taxpayers can call 03-8682 8000 or email to [sdkmyinvois@hasil.gov.my](mailto:sdkmyinvois@hasil.gov.my)

Please refer to the [media release](#) for full details and access the HASiL's [e-Invoice webpage](#) for more information.

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## 2. Extension of the grace period for filing the Form e-E for the Year of Remuneration 2023

HASiL has updated the [Return Form Filing Programme for the Year 2024](#) (2024 Filing Programme) on 22 April 2024 by extending the grace period to 2 months (instead of 1 month previously) for filing the Form e-E for the Year of Remuneration 2023. Please be advised to file the Form e-E for the Year of Remuneration 2023 by the new deadline, **31 May 2024** (previously 30 April 2024), to avoid any imposition of late filing penalty.

Please refer to the [2024 Filing Programme](#) for full details.

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## 3. HASiL amended CGT Guidelines on Gains from the Disposal of Foreign Capital Assets received from Outside Malaysia on 26 April 2024

Following the release of the [Capital Gains Tax \(CGT\) Guidelines for Foreign Capital Assets dated 27 March 2024](#) [as reported in [Deloitte Malaysia Tax Espresso - Special Alert: Capital Gains Tax in Malaysia \(Part 3\)](#)], HASiL has issued the Amended Guidelines: CGT on Gains from the Disposal of Foreign Capital Assets received from Outside Malaysia ([Amended CGT Guidelines for Foreign Capital Assets](#)).

The amendment was made on 26 April 2024 in relation to the scenario in Example 5 of the CGT Guidelines for Foreign Capital Assets, as follows:

Before Amendment on 26 April 2024

### Example 5

Tech Innovate Sdn Bhd (TISB) is a chip manufacturing technology company with a factory in Malaysia. In 2024, TISB employs 150 people and makes operating expenditures amounting RM1,000,000.

TISB sell software copyrights located in Country T to a company in that country with a disposal gain of RM500,000 received in Malaysia in February 2024. The total tax paid in Country T is RM40,000.

Gains from the disposal of foreign capital assets amounting RM500,000 are exempt from the imposition of CKM because TISB has met the economic substance requirements in Malaysia.

After Amendment on 26 April 2024

### Example 5

Tech Innovate Sdn Bhd (TISB), a manufacturing company in Malaysia hires 150 employees and incurs operating expenditures amounting to RM1,000,000 in 2024.

TISB sells a building located in Country T to a company in that country with a disposal gains of RM500,000 received in Malaysia in February 2024. The total tax paid in Country T is RM40,000.

Gains from the disposal of foreign capital assets amounting RM500,000 are exempt from the imposition of CGT because TISB has fulfilled the economic substance requirements in Malaysia.

#### Note:

The scenario in Example 5 has been amended to depict a company that sells a building in a foreign country instead of a company that sells software copyrights as stated in the previous scenario. In the previous scenario, the gain from the sale of software copyrights in a foreign country received in Malaysia were exempted from CGT. The amendment was made to align with the provision in the Income Tax (Exemption) (No. 3) Order 2024 [[P.U.\(A\) 75/2024](#)], in which gains from the disposal of intellectual property rights situated outside Malaysia (where companies resident in Malaysia are the owner or licensee of the intellectual property rights) are not exempt from CGT and are taxable upon remittance into Malaysia.

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## 4. HASiL Practice Note No. 1/2024 – Tax Treatment on the Recognition of Actual Gross Profit or Loss from a Construction Contract

HASiL has issued the [Practice Note No. 1/2024](#) dated 29 March 2024 (*Available in Bahasa Malaysia only*) to explain the tax treatment on the recognition of actual gross profit or loss from a construction contract.

Paragraphs 2 and 3 of the Practice Note indicate the provisions of the law to determine the following:

- The date a construction contract is deemed to have been completed.
- The actual gross profit or loss from the construction contract based on the actual contract income and cost for the basis period in which the construction contract is deemed to have been completed.

Paragraph 4 of the Practice Note states that with effect from the year of assessment (YA) 2023, in the event that the final accounts of a construction contract are finalised after the basis period in which the completion date is determined, the construction contractor may determine and recognise the actual gross profit or loss in the basis period of either of the following, whichever comes earlier:

- i. Twelve (12) months after the date of completion of a construction contract; or
- ii. On the date the final accounts of a construction contract are agreed between the contractor and the employer (i.e., client).

Examples 3, 4, and 5 are provided in the Practice Note in relation to the above.

Please refer to [Practice Note No. 1/2024](#) dated 29 March 2024 for full details.

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## 5. HASiL Operational Guidelines No. 2/2024 – Application Procedure for Tax Clearance Letter for Individual

On 1 April 2024, HASiL issued the Operational Guidelines No. 2/2024 - Application Procedure for Tax Clearance Letter (SPC) for Individual dated 1 January 2024 ([GPHDN No. 2/2024](#)) on its website (*Available in Bahasa Malaysia only*). It supersedes the Operational Guidelines No. 2/2016 ([GPHDN No. 2/2016](#)) dated 12 February 2016.

The key points from the GPHDN No. 2/2024 are as follows:

1) The employer is required to submit the following SPC application form online through e-SPC on the MyTax Portal:

- Form CP22A - Tax Clearance Form for Cessation of Employment of Private Sector Employees
- Form CP22B - Tax Clearance Form for Cessation of Employment / Termination of Employment / Cessation by Reason of Death of Public Sector Employees
- Form CP21 - Notification by Employer of Departure from the Country of an Employee

Please refer to Appendix A of the guidelines for the checklist and supporting documents required for the SPC application. The flow chart for the SPC application process is provided in Appendix B of the guidelines.

2) Application for revision / addition / cancellation in relation to the original SPC application cannot be submitted via e-SPC. It needs to be submitted to the HASiL branch which handles the employee's tax file or the nearest HASiL branch.

3) To ease administration, the employer is not required to submit the SPC application form in the following circumstances:

- a) The employee's income is not subject to tax.
- b) The employee is a Malaysian citizen whose:
  - monthly salary is below the monthly tax deduction (MTD) threshold and does not receive any gratuities / compensation from the cessation of employment; or
  - monthly salary is subject to MTD and does not receive any gratuities / compensation from the cessation of employment.
- c) The employee receives retirement gratuities but does not retire and continues to be employed by the same employer.

4) Employee who ceased employment / is retired / intends to leave Malaysia for more than 3 months is required to ensure that his/her tax returns and assessments are complete and up to date to the current YA or the YA in which the employee ceased employment. Additionally, the employee is required to pay all the outstanding tax payable by the set deadline, notwithstanding that there is an appeal made against an assessment.

Please refer to [GPHDN No. 2/2024](#) full details.

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## 6. HASiL - Advance Pricing Arrangement Guidelines 2024

HASiL has issued the [Advance Pricing Arrangement \(APA\) Guidelines 2024 dated 2 April 2024](#) on the [APA webpage](#) of its [website](#).

An APA represents an arrangement between a taxpayer and the Director General of Inland Revenue (DGIR) or between Competent Authorities (CA) that establishes the transfer pricing methodology (TPM) to determine the prospective arm's length transfer prices of specified related party transactions between the taxpayer and its foreign affiliates over a defined period, subject to specified terms and conditions. An APA determines the appropriate TPM to ensure that the prices of specific cross-border transactions are at arm's length in future income apportionment or allocation.

The APA Guidelines explain the ways a taxpayer may apply for an APA to the DGIR/CA, as well as the manner in which such an application will be processed and administered. The Guidelines also explain procedural and administrative requirements of Section 138C of the Income Tax Act 1967 (ITA) and the Income Tax (Advance Pricing Arrangement) Rules 2023 [[P.U.\(A\) 166/2023](#)].

Please refer to the [APA Guidelines 2024](#) at HASiL's website for full details.

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## 7. Income Tax Exemption Amendment Orders [[P.U.\(A\) 106/2024](#), [107/2024](#), [108/2024](#) and [109/2024](#)] in relation to Fund Management Services

[P.U.\(A\) 106/2024](#), [107/2024](#), [108/2024](#) and [109/2024](#) (the Amendment Orders) were gazetted on 5 April 2024.

[P.U.\(A\) 107/2024](#), [108/2024](#) and [109/2024](#) have effect from the YA 2024. [Note: The commencement date for [P.U.\(A\) 106/2024](#) was not specifically stated in the order.]

### **Amendments**

The Amendment Orders amend the respective Principal Orders [[P.U.\(A\) 209/2021](#), [282/2021](#), [283/2021](#) and [284/2021](#)] as follows:

- 1) The effect of the Principal Orders, previously until YA 2023, has been extended until YA 2027 as proposed in Budget 2024.
- 2) The 100% income tax exemption granted under the P.U.(A) 209/2021 is in respect of the statutory income derived from a business of providing fund management services for Sustainable and Responsible Investment (SRI) Fund in Malaysia;
- 3) The income tax exemption granted under the following Principal Orders is in respect of 60% (reduced from 100% as proposed in Budget 2024) of the statutory income derived from a business of providing fund management services to the following in accordance with Shariah principles:
  - Business trust or real estate investment trust in Malaysia [[P.U.\(A\) 282/2021](#)];
  - Local investors in Malaysia [[P.U.\(A\) 283/2021](#)]; and
  - Foreign investors in Malaysia [[P.U.\(A\) 284/2021](#)].

Please refer to the respective Principal Orders and Amendment Orders for full details.

### **References**

[Appendices 12 and 15 in Appendix II Tax Measures Budget 2024](#)

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## 8. Income Tax (Exemption) (No. 10) 2018 (Amendment) Order 2024 [[P.U.\(A\) 84/2024](#)] – Exemption for MSC Status Companies

[P.U.\(A\) 84/2024](#) (the Amendment Order) was gazetted on 8 March 2024 and is deemed to have come into operation on 1 January 2019 except for Paragraphs 2(d), 2(e), and 9(b) which are deemed to have come into operation on 25 March 2022.

### **Amendment**

It amends the Income Tax (Exemption) (No. 10) Order 2018 [[P.U.\(A\) 389/2018](#)] (Principal Order) which is in respect of tax exemption for Multimedia Super Corridor (MSC) status companies.

The amendments include the following:

- 1) The application for MSC status is to be made to the Minister through Malaysia Digital Economy Corporation Sdn Bhd.
- 2) Trading, manufacturing activities, or provision of telecommunication services are excluded from the list of promoted activities for MSC.
- 3) If a qualifying company has any related business which has been granted an exemption in respect of any core income generating activities, the qualifying company is not qualified for an exemption due to the said activities.
- 4) The Minister may allow the qualifying company to surrender the exemption through a written notice to the Minister, except where the qualifying company fails to comply with any conditions imposed by the Minister.
- 5) The location where core income generating activities are carried out and its related details have been removed from Schedule 2 of the Principal Order.

Please refer to [P.U.\(A\) 84/2024](#) for full details.

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## 9. WYC v DGIR (SCIT)

HASiL has recently uploaded a case report, "[WYC v DGIR \(SCIT\)](#)" on its website.

### **Facts:**

The taxpayer is a citizen of Hong Kong, China, who had obtained a probate grant from the High Court of Hong Kong as an heir and administrator of his father's inheritance of 1/10 of the property (said Property) in Daerah Kota Setar, Kedah. The taxpayer disposed the said Property to IVSB through a Sale and Purchase Agreement dated 9 May 2017.

On 31 December 2019, the taxpayer submitted the Form CKHT 1A dated 5 July 2017 (for the disposal of the said Property by his father to him) and the Property Transfer Form (Form KTN14A) dated 30 May 2018 (for the disposal of the said Property by the taxpayer to IVSB) to the DGIR. The DGIR used the said Property's market value of RM512,600, issued by the Property Valuation and Services Department (JPPH), in raising the Notice of Assessment (Form K) dated 19 February 2020 for the YA 2018, which amounted to RM100,741.86. The taxpayer appealed against the JPPH valuation and submitted a valuation of RM840,000 provided by a private valuer, i.e., Intra Harta Consultants (North) Sdn Bhd. JPPH had subsequently revised and increased the said Property's value to RM674,500. As the taxpayer was still unsatisfied with the assessment, an appeal was filed through Form Q dated 13 August 2020 against Form K.

### **Taxpayer's argument:**

The taxpayer appealed against the acquisition date and acquisition price used by the DGIR. The taxpayer argued that the date of acquisition was based on the date of receipt of the Land Department's administration which is 26 March 2019 on the grounds that the said Property's transfer of ownership was subjected to the permission from the State Authority, not the date of Form KTN14A. In fact, the valuation that should have been used by the DGIR was RM840,000, as assessed by the private valuer, instead of the valuation by JPPH amounting to RM512,600. The taxpayer disputed the acquisition price used by the DGIR and claimed that the JPPH report deliberately ignored the previous transactions and the comparisons of

other land transactions. According to the taxpayer, these transactions were incomparable and inaccurate, compared to the private valuer's report. The taxpayer also argued that the same market value should be used for the purpose of stamp duty and real property gains tax.

**DGIR's argument:**

The DGIR argued that the Form K raised on the taxpayer, which was based on the date of acquisition, 30 May 2018, was correct, and the acquisition price should be based on the market value determined by the JPPH, amounting to RM512,600. The determination of the said Property's date of acquisition was based on the Form 14A dated 30 May 2018, which was in accordance with the provisions of Paragraph 19(1), Schedule 2 of the Real Property Gains Tax Act 1976 (RPGTA). Paragraph 19(1), Schedule 2 of the RPGTA provides that the date of disposal of assets for cases involving the deceased's property is to be determined based on the date of transfer of ownership of the property to the recipient. With regards to the acquisition price issue, the DGIR used the market value determined by the JPPH, the party responsible for property valuation on behalf of the Government of Malaysia, in accordance with Section 25(2) and Paragraph 19(1), Schedule 2 of the RPGTA.

**Issues:**

- 1) Whether the said Property's date of acquisition should be determined based on the date of transfer of ownership of the property to the taxpayer or based on the date of receipt of the Land Department's administration.
- 2) Whether the acquisition price should be the market value as determined by the JPPH or by the taxpayer's private valuer.

**Decision:**

After hearing the arguments of both parties and examining the filed documents, the Special Commissioners of Income Tax (SCIT) decided that the taxpayer's appeal is dismissed in accordance with Paragraph 13, Schedule 5 of the ITA, and the Form K dated 19 February 2020 for the YA 2018 is final and conclusive.

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

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## 10. HPLKS v DGIR (SCIT)

HASiL has recently uploaded a case report, "[HPLKS v DGIR \(SCIT\)](#)" on its website.

**Facts:**

The deceased was the registered owner of 5/22 shares in 15 land lots (the Property). The deceased passed away on 2 April 2014. The taxpayer was appointed as the Administrator of the Estate of the Deceased on 17 July 2014. The property was acquired by the taxpayer on 2 April 2014, which was the deceased's date of death.

On 24 August 2018, the taxpayer entered into a Sale and Purchase Agreement with LKSDSB to dispose of the Property with a sale price of RM11,463,317.48. The DGIR raised fifteen (15) Notices of Assessment and Additional Assessment (Form K and Form KA respectively) dated 28 March 2019 for the YA 2018 on the taxpayer's disposal of the Property. The market value amounting to RM11,637,230 used by the DGIR was based on the Grant of Probate dated 17 July 2014 and Form CKHT 1A filed by the taxpayer. However, after further investigation, Form KA was raised by the DGIR on 2 October 2019, in view of the Jabatan Penilaian dan Perkhidmatan Harta Daerah Kulim (JPPH Kulim) having set the land's market value at RM5,702,000 on the date of acquisition by the taxpayer, which was on 2 April 2014.

**Taxpayer's argument:**

The taxpayer argued that the valuation made by the private valuer should be used instead of the JPPH Kulim's valuation on the following basis:

- The valuation by the private valuer had taken into account the potential of the Property based on the area and potential use;

- The private valuer had used the comparison method by taking into account properties that have the same characteristics as the taxpayer's Property;
- The amount of compensation awarded by the Government for taking a part of the taxpayer's Property should also be taken into account in this appeal; and
- The valuation had been made based on the Draft Kulim District Plan 2035.

**DGIR's argument:**

The DGIR argued that the comparative properties used by the private valuer was inaccurate because the land usage conditions for the Property were under the housing category, while the comparative properties used by the private valuer was under the commercial and public utility category. Furthermore, the taxpayer's argument regarding the potential of the land cannot be considered because the potential of the comparative property used by the private valuer was not in accordance with the conditions of use of the Property. On the other hand, the comparison property used by the JPPH Kulim was more comparable and parallel to the said Property zone under the Kulim District Local Plan 2004-2020 which was gazetted on 1 September 2011 through Gazette No.661 Vol. 64 No.18. The Draft Local Plan of Kulim District 2035 referred to by the private valuer has not been gazetted on the date of acquisition/valuation of the Property and cannot be used in determining the market value. The Kulim District Local Plan 2035 was only gazetted on 21 January 2021 through Gazette No.60 Vol.64 No.2. The DGIR also argued that the compensation amount awarded by the Government for taking a part of the Property cannot be used as the market value, in view that the determination of the payment amount was based on the Land Administrator's Award under the Land Acquisition Act 1960.

**Issue:**

Whether the Property's disposal price should be determined based on the valuation by the private valuer or JPPH Kulim.

**Decision:**

The SCIT held that the taxpayer failed to prove that the additional assessment raised by the DGIR for the YA 2018 was incorrect and excessive in accordance with Paragraph 13, Schedule 5 of the ITA.

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

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