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Tax Exemption on Shipping Profits

The Income Tax (Exemption) (No. 7) Order 2022 providing tax exemption on shipping profits has been gazetted.

The Income Tax (Exemption) (No. 7) Order 2022 ("the 2022 Order") has been gazetted to provide tax exemption on shipping profits with effect from the year of assessment (YA) 2021 to YA 2023. The 2022 Order extends the tax exemption on shipping profits which was previously provided under the Income Tax (Exemption) (No. 2) Order 2018 ("the 2018 Order") for YA 2016 to YA 2020.

The salient points from the 2022 Order are as follows:

<table>
<tr><td>Qualifying person</td><td>A Malaysian resident who carries on the business of:
Transporting passengers or cargo by sea on a Malaysian ship; or
Letting out on charter a Malaysian ship owned by him on a voyage or time charter basis.</td></tr>
<tr><td>Tax exemption</td><td>Statutory income derived from a source of business consisting of a Malaysian ship</td></tr>
<tr><td>Conditions</td><td>Unlike the 2018 Order, the tax exemption under the 2022 Order is subject to the qualifying person obtaining an annual verification from the Ministry of Transport Malaysia that the following conditions have been fulfilled:
Minimum RM250,000 annual operating expenditure incurred per Malaysian ship
Minimum number of full-time employees in Malaysia per Malaysian ship:
Shore employees - At least 4 and majority of the following shall be Malaysians:
Chief executive officer
Administrative and finance officer
Operating officer
Health, protection, safety and environmental affairs officer
Ship personnel under Part III of the Merchant Shipping Ordinance 1952 - Subject to minimum requirement specified in the Safe-Manning Certificate issued by the Marine Department Malaysia.</td></tr>
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Updated FAQ in relation to Withholding Tax on Payments Made to Agents, Dealers and Distributors

The Inland Revenue Board (IRB) has issued the FAQ on the deduction of tax at 2% on payments made to agents, dealers and distributors (ADD) by a company under Budget 2022, updated on 21 October 2022 (“FAQ”).

The IRB has updated its comment to Item A6 of the FAQ on whether credit notes are to be included as payments to ADDs which are subject to the 2% withholding tax under Section 107D of the Income Tax Act 1967 (ITA 1967).

Previously, the FAQ has commented that payments by way of credit notes are not subject to the withholding tax (TaXavvy 3/2022 refers). The IRB has now clarified that the determination of whether a payment made to an ADD is subject to the 2% withholding tax is subject to the substance of the payment and not the label that is attached to it. If it is proven that the credit note is a commission payment in the form of cash arising from sales, transactions or schemes carried out by the ADD, the provisions under Section 107D of the ITA 1967 shall be applicable.

The updated FAQ can be downloaded from IRB’s website www.hasil.gov.my (Legislation > Budget > 2022).

Special Withholding Tax Forms for Payment of Small-Value Withholding Tax

The IRB has issued a media release dated 27 October 2022 to inform that special withholding tax forms have been issued for the purposes of small-value withholding tax.

On 27 September 2022, the IRB has issued a media release on the deferment of payment of small-value withholding tax (in respect of royalty, interest and special classes of income paid to non-residents which does not exceed RM500 per transaction). It was stated in the said media release that Form CP37 or Form CP37D shall be submitted together with the remittance of the deferred small-value withholding tax (please refer to TaXavvy 20-2022).

The IRB has recently issued a media release to inform that special withholding tax forms for remittance of the small-value withholding tax have been uploaded to the IRB's website. The following forms shall be completed and submitted together with the remittance of the withholding tax to the IRB:

Categories of withholding tax	Special withholding tax form
Royalty and interest income	Form CP37S
Special classes of income under Section 4A of ITA 1967	Form CP37DS

To recap, the deferment of payment of small-value withholding tax granted by the IRB is as follows:

Period when payments are made to non-residents during a year	Due date for remittance of deferred small-value withholding tax
1 June to 30 November (with effect from August 2022)	On or before 31 December of that year
1 December to 31 May	On or before 30 June of that year

The media release is available on the IRB's website www.hasil.gov.my (Home > Media Release 27 October 2022) and the special withholding tax forms can be downloaded from the IRB's website www.hasil.gov.my (Home > Forms > Download Forms > Withholding Tax).

Approved Food Production Incentives

The following gazette orders on Approved Food Production incentives have been issued:

- Income Tax (Exemption) (No.6) 2020 (Amendment) Order 2022
- Income Tax (Deduction for Investment in Approved New Food Production Project) Rules 2022

Income Tax (Exemption) (No.6) 2020 (Amendment) Order 2022

The Income Tax (Exemption) (No.6) 2020 (Amendment) Order 2022 has been gazetted and amends the Income Tax (Exemption) (No. 6) Order 2020. The following are the key changes (effective from 1 January 2016 unless otherwise stated):

- The eligibility period for the existing income tax exemption incentives* have been extended to applications for new or expansion food production projects received by the Minister of Finance until 31 December 2022 (previously until 31 December 2020).
  ** The existing incentives are:*
  - *Income tax exemption for 10 YAs for new approved food production projects.*
  - *Income tax exemption for 5 YAs for expansion of approved food production projects.*

- For expansion projects, the scope of the income tax exemption has been expanded to cover statutory income derived from the existing project (in addition to exemption on statutory income from the expansion project).

- Effective from 1 January 2021, the list of approved food production projects has been expanded to include high seas fishing and planting of seeds for agro food. Existing approved food production projects are: planting of industrial crop, vegetables, fruits, herbs, spices or cash crop; aquaculture; rearing of honey or urena lobata bees; rearing of cows, buffaloes, goats, sheep and deer; deep sea fishing; and planting of feed mill.

- An expansion project, which is a project approved by the Minister of Finance for the purposes of expanding an existing approved food production project and involves a new area of land, has been amended to exclude an expansion project which has already been granted an exemption under the Income Tax (Exemption) (No. 6) Order 2020.

Income Tax (Deduction for Investment in Approved New Food Production Project) Rules 2022

The Income Tax (Deduction for Investment in Approved New Food Production Project) Rules 2022 is effective from 1 January 2021. The following are the salient points:

Incentive

- Tax deduction is given for 3 consecutive YAs on an amount equivalent to the value of investment to finance the approved food production project undertaken by a related company, up to an approved amount and for an approved period.

- The amount of tax deduction is equivalent to expenditure incurred by the related company in a YA.

- The tax deduction shall cease in the YA when the related company commences its tax exemption period upon deriving its first statutory income from the approved food production project.

- Where the investment is in respect of ordinary shares, it is not to be disposed of within 5 years from the last date of investment. The consideration received in the case of a disposal within the 5-year period is taxable, up to the total amount of tax deduction claimed.

Qualifying criteria

The incentive applies to a resident company incorporated under the Companies Act 2016 which:

- Has made an investment in its related company undertaking an approved new food production project under the Income Tax (Exemption) (No. 6) Order 2020; and

- Has made an application to the Minister of Finance during the period 1 January 2021 to 31 December 2022.

A related company is a company incorporated under the Companies Act 2016 where at least 70% of its paid-up ordinary share capital are directly owned by a company that makes an investment for the purpose of an approved new food production project.

Guidelines on Tax Treatment for Labuan Entities with Dormant Status

The IRB has issued the Guidelines on Tax Treatment for Labuan Entities with Dormant Status (“the Guidelines”) which is effective from YA 2020. The Guidelines is issued following the Labuan Investment Committee Pronouncements 1-2019 and 2-2019 in relation to compliance with substantial activities requirements (SAR) and audited accounts by dormant companies for the purposes of Labuan Business Activity Tax Act 1990.

Key points from the Guidelines are:

1. Labuan entities (LE) which are considered dormant, struck off including those under winding up proceeding or under liquidation process which do not derive any income need not comply with the prescribed SAR.

2. When a dormant Labuan entity has commenced business operations, it must comply with the SAR on minimum number of full-time employees from the date of commencement of business operations and fulfil the SAR on minimum annual operating expenditure by the end of the financial period (refer Example 3 of the Guidelines).

3. Key criteria when an LE is considered dormant:
   a. Never commenced operations since incorporation;
   b. Ceased operations or business; or
   c. No significant accounting transaction* for 1 financial year prior to change in 50% or more in equity shareholding
      ** No recording entry in the company accounts other than the minimum expenses for compliance with stipulated statutory requirement (filing of annual returns, secretarial, tax filing and audit fees).*

4. An LE is not considered dormant if it derives income and own assets such as real properties, fixed deposits, shares, etc.

5. Submission of audited accounts with tax return (Form LE1) by LEs which are dormant / under liquidation: Management account may be submitted if audited accounts are not available.

The Guidelines is available on IRB’s website www.hasil.gov.my (Legislation > Guidelines > Technical Guidelines).

FAQ on Tax Deduction of Renovation and Refurbishment Costs

The IRB has updated the FAQ on tax deduction of renovation and refurbishment costs ("the FAQ"). The FAQ was previously covered in TaXavvy 9/2021.

The following are the key changes in the FAQ:

1. It incorporates the extension of the eligibility period to 31 December 2022 (previously 31 December 2021) consistent with the Income Tax (Costs of Renovation and Refurbishment of Business Premise) (Amendment) Rules 2021 which is made pursuant to Budget 2022 proposal.

2. Examples have been inserted to explain the types of cost not eligible for deduction. These include refurbishment on roofing, curtains, and renovation cost on electrical power stations as these stations are located outside of the business premises of the company (refer to Q3).

3. An example have been inserted in Q7 to explain the timing of claim for the tax deduction, i.e. the tax deduction may be claimed on costs incurred during the eligibility period (1 March 2020 to 31 December 2022) before the renovation / refurbishment is completed and used in the business premises. The example is summarised in the following table:

Company with 31 December financial year end	Renovation & refurbishment period		Date premises is used in business	Amount of renovation and refurbishment costs incurred		
	Start	End		Prior to 1.3.2020	On or after 1.3.2020	Year 2021
A	1.5.2020	30.6.2022	30.6.2022	-	90,000 Deductible in YA 2020 when incurred	60,000 Deductible in YA 2021 when incurred
B	1.1.2020	30.8.2021	30.8.2021	20,000 Not deductible (incurred before incentive period)	50,000 Deductible in YA 2020 when incurred	-

4. A new Q8 has been inserted to explain the tax treatment of renovation / refurbishment costs on a multi-storey building where the renovation and refurbishment costs are incurred by the landlord and tenant, respectively as follows:

   - The floor area has to be determined and identified to the landlord and each of the tenants (whether renting separate floors or within the same floor).
   - Each claim by the landlord / tenant has to be individually certified by an external auditor and supported with invoices or relevant supporting documents.
   - The maximum amount claimable by each claimant, i.e. the landlord and tenant(s), respectively is limited to RM300,000 per claimant within the eligibility period from 1 March 2020 to 31 December 2022.

The FAQ is available on IRB's website www.hasil.gov.my (Quick Links > FAQs MCO 3.0).

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