



# Tax developments



9 September 2022

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KPMG in Malaysia

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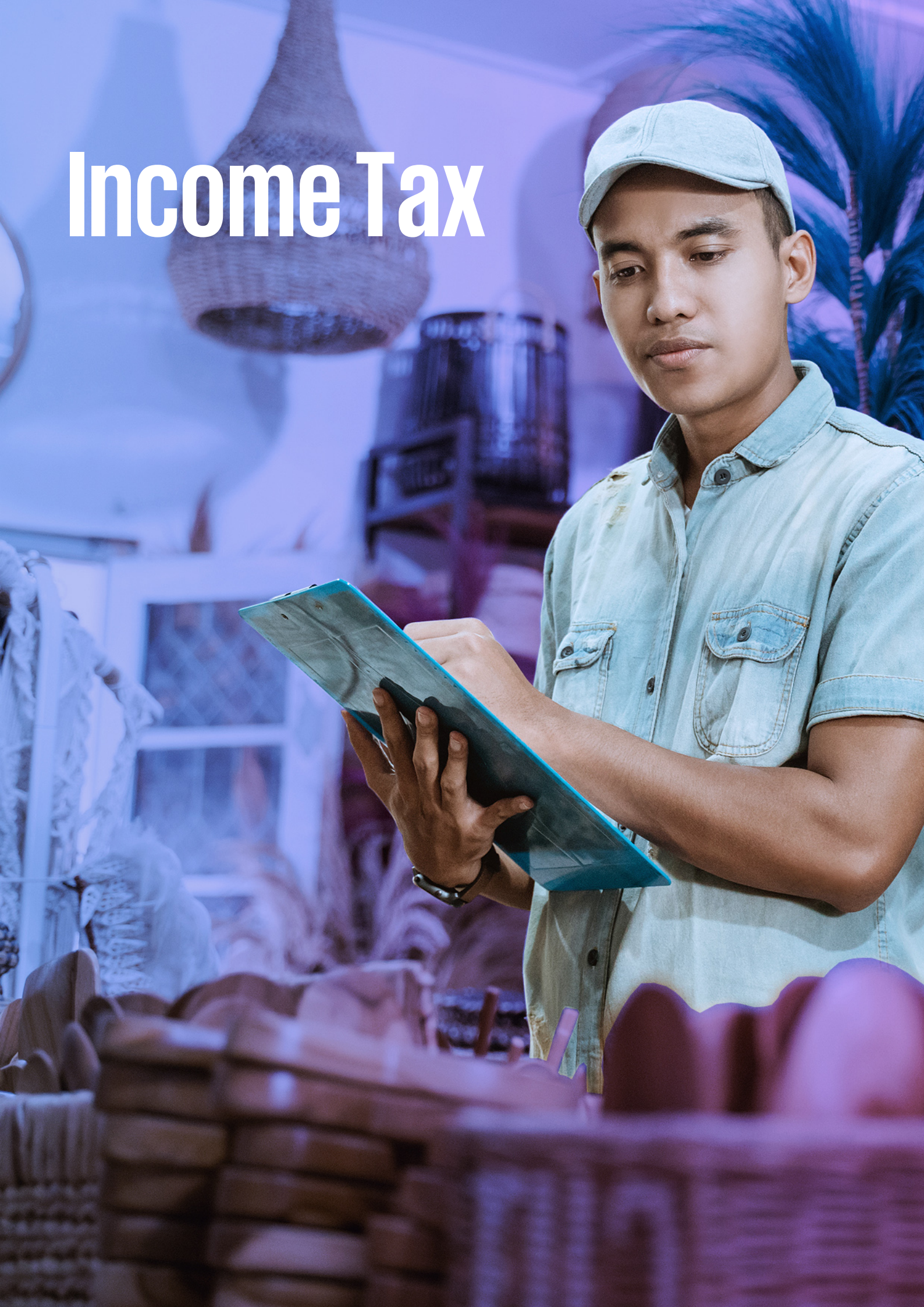
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# Income Tax





# Income Tax

The relevant authorities have issued the following:

## MIRB's revised guideline for the tax deduction for expenses in relation to secretarial fees and tax filing fees effective from YA 2022

The MIRB has issued the above revised [Guideline](#) to clarify the tax treatment for secretarial fees and tax filing fees incurred from YA 2022 following the gazette of the [Income Tax \(Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee\) \(Amendment\) Rules 2021](#) ("2021 Rules").

The table below summarises the criteria to claim a tax deduction for secretarial fees and tax filing fees:

Income Tax Deduction Rules	In force in YA	Criteria to claim		Maximum allowable amount for each YA (RM)
		Incurred and paid	Incurred	
(i) <a href="#">P.U.(A) 336/2014</a>	2015 – 2019			
Secretarial fees		√		5,000 (quota utilised on incurred basis)
Tax filing fees		√		10,000 (quota utilised on incurred basis)
(ii) <a href="#">P.U.(A) 162/2020</a>	2020 – 2021			
Secretarial fees		√		15,000 (quota utilised on
Tax filing fees		√		payment basis)
(iii) <a href="#">P.U.(A) 162/2020</a>	2022 onwards			
Secretarial fees			√	15,000 (quota utilised on
Tax filing fees			√	payment basis)

The 2021 Rules provide that for qualifying secretarial fees and tax filing fees which were incurred in YA 2020 and YA 2021, a tax deduction is only allowed in the YA the fee is paid. Based on the revised Guideline, no tax deduction is allowed for any fees incurred before YA 2020 where the payments are made from 1 January 2022.

Source for the Guideline: Official portal of [MIRB](#)

## MIRB's guideline on tax treatment of digital currency transactions

The MIRB has issued the above [Guideline](#) to address the tax treatment of the acquisition and disposal of digital currencies or digital tokens. The Guideline is to be read together with the MIRB's updated [Guidelines on Taxation of E-Commerce Transactions](#) (dated 13 May 2019).

Based on the Guideline, the current tax provisions would apply to digital currency transactions where revenue income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia is taxable. The taxation of profits from cryptocurrency activities (including investment) would depend on whether the amount is capital or revenue in nature. The facts and circumstances of the case and the badges of trade are to be considered when determining the nature of the gains or losses. Explanations on whether elements of trade exist for transactions involving digital currencies have been provided in Appendix A of the Guideline.

Source for the Guideline: Official portal of [MIRB](#)

## MIRB's revised guideline for restriction on deductibility of interest - ESR



The MIRB has issued a revised [Guideline](#) to clarify on the ESR following the gazette of the [Income Tax \(Restriction on Deductibility of Interest\) \(Amendment\) Rules 2022](#) ("2022 Amendment Rules"). It replaces the earlier guideline dated 5 July 2019.

The 2022 Amendment Rules will take effect for the basis period beginning on or after 1 February 2022.

A notable point in the revised Guideline is that any interest payable which is not due to be paid is excluded from the tax-EBITDA calculation for that YA. A revision of the calculation is required when such interest becomes

due to be paid. This is in line with the current legislation where the interest expense payable in the basis period for a YA is only deductible when it is paid or due to be paid.

Please refer to our earlier [Tax Development – 1st Quarter 2022](#) for further details on the 2022 Amendment Rules.

Source for the Guideline: Official portal of [MIRB](#)

## Concession to submit and remit WHT of small value on recurring transactions

The MIRB has provided an administrative concession to a resident person to submit and remit WHT under Section 109 and Section 109B of the ITA. The concession is such that WHT amounts not exceeding RM500 per transaction on recurring transactions, can be remitted to the MIRB on a semi-annual basis as follows:

Period in which payments to non-resident recipients are made	Deadline to submit and remit WHT to the MIRB
1 December (in the year before) – 31 May (in the current year)	30 June of the current year
1 June – 30 November (in the current year)	30 December of the current year

The concession is effective for qualifying payments to non-residents from August 2022. Special WHT forms for the above purposes will be issued by the MIRB in due course.

## MIRB's updated FAQs on Section 107D WHT deducted by companies on payments made to resident individual ADDs

Following the MIRB's [media release](#) on 9 July 2022 (KPMG's [August monthly tax development](#) refers), the MIRB has updated the above [FAQs](#) to reflect the administrative concession given, payment procedures as well as the updated features in the WHT remittance form and appendix.

The FAQs are only available in the Malay Language.

Source for the FAQs: Official portal of [MIRB](#)

## Extension of time for filing of YA 2022 income tax return for Labuan entities

The MIRB has granted a concession to extend further the submission deadline for YA 2022 income tax returns under Sections 5 and 10 of LBATA to 31 October 2022.

## Implementation of the FATCA and CRS

The following instruments for FATCA and CRS implementation and compliance with the United States have been gazetted:

- [Income Tax \(Agreement between the Government of Malaysia and the Government of the United States of America to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act\) Order 2022.](#)
- [Income Tax \(Automatic Exchange of Financial Account Information between the Government of Malaysia and the Government of the United States of America to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act\) Rules 2022.](#)
- [Labuan Business Activity Tax \(Automatic Exchange of Financial Account Information between the Government of Malaysia and the Government of the United States of America to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act\) Regulations 2022.](#)

Please click [here](#) for further information on FATCA and CRS.

Source for the Rules: [Federal Legislation Portal of Malaysia](#)





# Indirect Tax



# Indirect Tax

## Amendment to Service Tax Policy 1/2022

The RMCD has issued the Amendment to Service Tax Policy 1/2022 (Amendment No 1) (dated 1 August 2022) in respect of **Service Tax exemption on provision of digital payment services by local non-bank providers.**

The Amendment was made to Paragraph 5(b) of the said Service Tax Policy, where the condition that specified the local non-bank service providers should be “regulated and licensed” by Bank Negara Malaysia under the relevant Acts is now revised to **only “regulated” (i.e. the wordings “and licensed” has been deleted).**

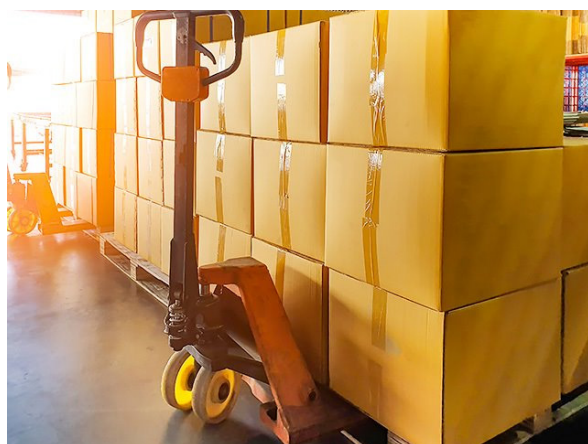
Source for the Service Tax Policy: [RMCD - MySST \(Service Tax Policy\)](#) - available in Malay language only



## Sales Tax Policy 2/2022 – Export Drop Shipments

The RMCD has just published the Sales Tax Policy 2/2022 (dated 24 August 2022) relating to drop shipment arrangements involving a registered manufacturer, a trader and the trader’s customer overseas.

In particular, the Sales Tax Policy addresses the scenario **where a trader purchases goods from a registered manufacturer, and requested for the goods to be exported to the trader’s customer in overseas.**



In this case, the invoice issued by the registered manufacturer to the trader is not subject to Sales Tax [i.e. exempted from Sales Tax under item 56, Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018], subject to the following conditions:

- In addition to the invoice particulars prescribed under Regulation 7 of the Sales Tax Regulations 2018, the “bill to” and “ship to” details must be stated in the invoice
- There is only one trader involved in the arrangement, who purchased directly from the registered manufacturer
- In respect of the Customs export declaration (i.e. K2 form), the registered manufacturer is stated as the consignor/ exporter and the trader’s customer overseas is stated as the consignee/ importer. In addition, the K2 form must state “care of” the trader’s full name and its address
- In respect of the Bill of Lading, similarly, the registered manufacturer is stated as the consignor and the trader’s customer overseas is stated as the consignee. In addition, the Bill of Lading must state the trader as the “notify party”
- The registered manufacturer must report the value of goods exported in column 18(a) of the SST-02 Return



This facility is indeed a welcome relaxation as it takes into account actual/ practical business transactions, particularly where businesses need to balance the cost, logistical requirements and tax. Manufacturers and traders can now explore this facility in addition to the other existing exemptions available. Care however needs to be taken to ensure both the substance as well as form (documentation) are in order.

Source for the Sales Tax Policy: [RMCD - MySST \(Sales Tax Policy\)](#) - available in Malay language only

## Sales Tax (Exemption from Registration) (Amendment) Order 2022

The Sales Tax (Exemption from Registration) (Amendment) Order 2022 has been published on the federal legislation portal on 1 September 2022. The amendments include:

Paragraph/ Schedule	Amendment
<b>Para 2</b>	<p>The exemption covers a person who only operates one manufacturing operation out of several operations in a manufacturing chain to produce goods and that operation is specified in Schedule A.</p> <p>If the person operates more than one manufacturing operations as specified in Schedule A, the exemption applies provided such manufacturing operations does not relate to producing goods.</p>

- Schedule A**
- The following are removed:
    - The incorporation of goods into buildings
    - The installation of air conditioners in motor vehicles
    - The manufacture of jewellery and goldsmiths wares
    - The extraction of gold from mineral ores
    - The recovery of gold from jewellery and/or the refining of gold
  - Elaboration/ addition on the operations listed, e.g.:
    - For preparation of foods or drinks, it covers (a) any person who provides services or (b) central kitchen for distribution to its premises which provide services, under Group B, First Schedule, Service Tax Regulations 2018
    - The repacking of the same bulk goods into smaller packages (by any person), instead of limiting it to a person other than a registered manufacturer.
    - A cleaning operation by removing dirt or dust without any further operations.

Please note that the above list is not exhaustive.

The effective date of the abovementioned amendment Order has yet to be announced.

With the above changes, manufacturers who relied on the Sales Tax (Exemption from Registration) Order 2018 and not registered for Sales Tax should start reviewing its current status, e.g. whether it is involved in the activities mentioned in Schedule A, whether the finished goods manufactured are taxable goods for Sales Tax purposes and the liability to register for Sales Tax.

Source for the Amendment Order: [Federal Legislation Portal of Malaysia](#)

## Revised guide

The RMCD has issued a revised guide (dated 22 July 2022) relating to **Sales Tax Exemption under Schedule C, Sales Tax (Persons Exempted from Payment of Tax) Order 2018**.

Source for the Guide: Official portal of [RMCD – MySST \(SST Guides\)](#)





The table below sets out the various abbreviations and references used in this publication.

Abbreviation	Reference
ADD	Agent, Dealer or Distributor
CRS	Common Reporting Standard
ESR	Earning Stripping Rules
FAQ	Frequently Asked Question
FATCA	Foreign Account Tax Compliance Act
ITA	Income Tax Act 1967
LBATA	Labuan Business Activity Tax Act 1990
MIRB	Malaysian Inland Revenue Board
RMCD	Royal Malaysian Customs Department
Tax-EBITDA	Tax-Earnings Before Interest, Taxes, Depreciation and Amortisation
WHT	Withholding Tax
YA	Year of Assessment

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