



Tax developments



16 January 2023

KPMG in Malaysia

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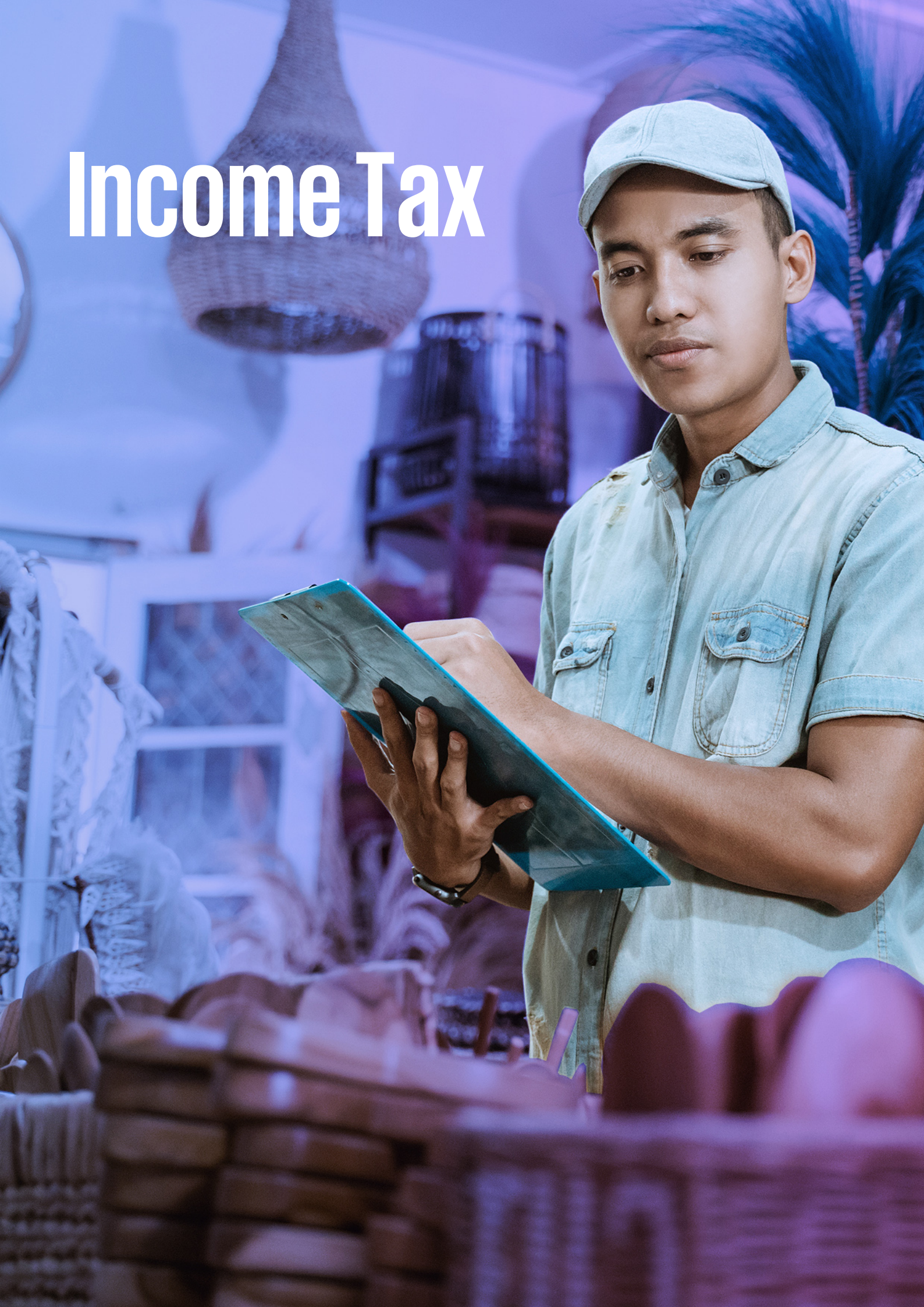
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Income Tax



Income Tax

The relevant authorities have issued the following:

MIRB's amended guideline on tax treatment of income received from abroad

The MIRB's guideline setting out the qualifying conditions for the income tax exemption on foreign dividend income received in Malaysia (click [here](#) for the earlier KPMG's Tax Whiz for details) by a resident company, LLP or individual in relation to a partnership business in Malaysia, has been amended on 29 December 2022 to include economic substance requirements, on top of the existing conditions.

The economic substance requirements shall be satisfied if the qualifying taxpayer employs an adequate number of employees with the necessary qualifications and incurs an adequate amount of operating expenditure for carrying out the specified economic activities in Malaysia. The [amended guideline](#) does not specify any minimum threshold but provides some factors to be considered. However, this may lead to uncertainty as to what is considered "adequate" in the eyes of the MIRB.

Taxpayers who have submitted their tax return for YA 2022 on or before 29 December 2022, are required to re-assess their eligibility for the income tax exemption. Based on the MIRB's [media release](#) (only available in the Malay Language), where the new economic substance requirements are not met, a revised tax return is required to be submitted although in such cases incorrect return penalties will not be imposed by the MIRB.

Source for the amended guideline and media release: Official portal of [MIRB](#)

Tax investigation framework

The MIRB has issued an updated [Tax Investigation Framework](#) (only available in the Malay Language) which replaces the [Tax Investigation Framework](#) dated 1 January 2020. The Framework comes into effect on 1 January 2023.

The updates made under the Framework amongst others are the focus of case selection for tax investigation involving willful failure in reporting income and making fraudulent claims.

We also wish to highlight below the notable updates to the Framework:-

- Taxpayers and other concerned persons may be summoned by MIRB officers to take statements. The statements can be taken at the taxpayer's business premises, place of residence, tax agent/representative's premises, third parties' premises and the MIRB offices.
- Taxpayers can be prosecuted if there is proof that an offence has occurred in accordance with the provisions of the relevant Act.
- Taxpayers are not allowed to make any payments to the MIRB officers. All payments resulting from tax evasion cases must be made in the name of Ketua Pengarah Hasil Dalam Negeri.
- Taxpayers, tax agents/representatives or witnesses may take own notes during the interview or when giving statements.
- If convicted, the court will impose sentence based on the provisions that have been set. On compound offences, the payment for the tax, special penalty and compound should be made in one payment to Ketua Pengarah Hasil Dalam Negeri. Taxpayers may also make application for instalment payments on the abovementioned.

In view of the above updates, it is important to ensure compliance with the tax laws and regulations at all times. This is critical to avoid being imposed a hefty penalty.

Kindly note the following has been excluded in the latest Framework:-

- Appeal on assessment under subsection 97A(2) and sections 99 to 102 of the ITA (as referred to in the Tax Investigation Framework dated 1 January 2020).

As a pre-emptive measure in mitigating the potential taxes and penalties, taxpayers may undertake tax risk assessment for the purpose of identifying significant areas of concerns and taking corrective actions.

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

Tax incentive for companies in selected service sectors to relocate to Malaysia

The [Income Tax \(Relocation of Provision of Services Business Incentive Scheme\) Rules 2022](#) provide the following concessionary income tax rates to a qualifying company on the chargeable income derived from the qualifying activities for up to 10 consecutive YAs:

	Concessionary income tax rates
New company	0% - 10%
Existing company	10%



The application period to MIDA is from 7 November 2020 to 31 December 2022.

The Rules are effective from YA 2021.

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

MIRB's guideline on tax treatment of interest / profit payable to banks or financial institutions during the moratorium period

With the introduction of the bank moratorium under the PRIHATIN package, the repayment of loan / financing facility including interest expense was deferred. The above [guideline](#) has clarified that such deferment will not affect the due date for payment which is set out in the original loan agreement, except where the agreement is expressly amended to vary the due date. The interest expense would therefore continue to be deductible when it is paid or due to be paid based on the original loan agreement.

The MIRB views that any penalty charged by the banks or financial institutions on the deferment of the loan / financing repayments, due to a further extension of the moratorium period, is not tax deductible.

The guideline is only available in the Malay Language.

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

New PRs

PR	Contents
Commercialisation of public resource-based R&D findings	<ul style="list-style-type: none"> These new PRs provide explanations on the tax incentives relating to the commercialisation of public resource-based R&D findings in Malaysia:- <ol style="list-style-type: none"> PR 12/2022 – income tax deduction for a holding company that invests in its subsidiary; and PR 13/2022 – income tax exemption for the subsidiary company that undertakes the commercialisation activities. The new PRs reflect the current legislation without any notable points.

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

Revised PRs

The MIRB has issued 7 revised PRs in the month of December 2022. Please see below for those PRs with notable points or changes, apart from incorporating legislative changes which were gazetted after the issuance of the previous PRs :-

PR	Earlier PR replaced	Contents						
PR 6/2022 – Accelerated capital allowance	PR 7/2018	<ul style="list-style-type: none">PR 6/2022 incorporates the MIRB’s earlier confirmation to CTIM that, for assets acquired under hire purchase arrangement, the hire purchase instalments must commence and end within the qualifying period in order to qualify for the accelerated capital allowance claim.						
Reinvestment allowance <ul style="list-style-type: none">PR 10/2022 –Part I – Manufacturing activityPR 11/2022 - Part II – Agricultural and integrated activities	PR 10/2020 PR 11/2020	<ul style="list-style-type: none">PR 10/2022 and PR 11/2022 have been updated to explain the MIRB’s position pertaining to the sequence of utilising the unabsorbed RA and PENJANA RA. <table><tr><th>Scenario</th><th>RA to be utilised first</th></tr><tr><td>There is normal RA b/f and current year PENJANA RA</td><td>Current year PENJANA RA</td></tr><tr><td>There is normal RA b/f and PENJANA RA b/f</td><td>FIFO method, i.e. normal RA balances</td></tr></table>	Scenario	RA to be utilised first	There is normal RA b/f and current year PENJANA RA	Current year PENJANA RA	There is normal RA b/f and PENJANA RA b/f	FIFO method, i.e. normal RA balances
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PR	Earlier PR replaced	Contents
PR 9/2022 – Property development	PR 1/2009	<ul style="list-style-type: none"> • PR 9/2022 reflects the MIRB's positions. • Where a project ultimately incurs a loss, the company now has the option to make the relevant adjustment to its gross profit in the year of completion of the project, provided that there are no tax implications for all the relevant YAs. No such option was given previously as the company was required to revise its prior YAs tax returns. • Where the company is actively involved in managing and running the project after securing it, the fee paid to secure the project would be an allowable expense and shall be capitalised in the development expenditure account. Previously, such expense was deductible as part of administrative expenses (i.e. expensed to profit or loss account). • Show house expenditure shall be capitalised into the development expenditure account. Allowable expenditure excludes the cost of land if the show house is built outside the development project area. The furniture, fittings and fixtures related to the show house are also to be capitalised in the development expenditure account. Where they are resold as scrap, the proceeds shall be recognised as other business income. • Expenditure on the construction of a sales gallery or management office which are built in the same area or connected to the show house, are not allowable under Section 39 of the ITA. • Where unsold houses are transferred to fixed assets, the rental income derived therefrom will be assessed either under Section 4(a) or Section 4(d) of the ITA, depending on whether maintenance and support services are actively and comprehensively provided. Previously, the rental income was assessed under Section 4(d) of the ITA. • Explanations on what would constitute having an active role in property development activities for joint venture are laid out in paragraph 15.4 of the PR.

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

Bill number to be used as mandatory reference for payment of direct taxes effective 1 January 2023

The MIRB has issued a [media release](#) (only available in the Malay Language) on the above. The user manual and FAQ have also been uploaded to the [MyTax](#) portal to provide clarification on the e-Billing system.

The bill number can be obtained from either:

- e-Billing under the drop-down of ezHASiL Services in the MIRB's [MyTax](#) portal; or
- the notice of assessment / estimates and letters of demand for payment issued by the MIRB.

The bill number is not applicable for the payment of monthly tax deductions and stamp duty.

Due to the problems faced by taxpayers following the implementation of the Bill Number, the MIRB has subsequently [announced](#) that taxpayers can opt to use either the Tax Identification Number or Bill Number for their tax payments. Meanwhile, an extension of time until 20 January 2023 is given for the payment of all types of taxes and late payment penalty will not be imposed. However, this concession is not applicable for monthly tax deductions and stamp duty.

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

MIRB's return form filing programme for the year 2023

The [above](#) has been issued and is similar to the filing programme for the year 2022 where:

- An extension of time (1 month / 15 days / 3 working days, where relevant) is given for submission of return forms via e-Filing or by post. A similar grace period is given for the payment of the balance of tax.
- There is no grace period for filings made by hand.
- No manual filing is allowed for income tax returns by companies and LLPs (Form PT and Form C) as well as employer's return by companies including Labuan companies (Form E).

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



Indirect Tax

Indirect Tax

Amendments to Sales Tax (Persons Exempted from Payment of Tax) Order 2018 (“Exemption Order”)

The following amendment Orders have been gazetted and published on the federal legislation with an effective date of 1 January 2023:

1. Sales Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2022

The salient points are as follows:

- Amendment made to Schedule A and Schedule B of the Exemption Order to reflect the updated tariff codes in accordance with the Customs Duties Order 2022 (earlier was based on Customs Duties Order 2017). The goods exempted remained to be the same.
- Amendments to items 1 and 3, Schedule C of the Exemption Order to: -
 - i. expand the exemption to also cover specified exempted goods transported from bonded warehouse, LMW or free zone. Earlier, the same condition only covers goods imported or purchased from bonded warehouse or LMW.
 - ii. provide that the specified exempted goods are allowed to be used in the manufacturing of both taxable finished goods and exempted finished goods. In respect of the exempted finished goods, it must be:

(a) exported; or

Note: If the finished goods are not exported within 12 months from the date of import, transport or purchase (or any other approved period), the Sales Tax exempted becomes due and payable by the person granted with exemption.

(b) goods falling within prescribed categories (e.g. controlled article under the Control of Supplies Act 1961 and subject to price control, pharmaceutical product falling under chapter 30 and milk products falling under the prescribed headings or subheadings of the prevailing Customs Duties Order), if sold locally.

It should be noted that the goods falling within the abovementioned prescribed categories are the same finished goods as listed under Schedule B of the Exemption Order. On this note, it appears that moving forward, a registered manufacturer of both taxable and exempted finished goods falling under Schedule B of the Exemption Order should apply for an exemption under Schedule C (instead of Schedule C for taxable goods and Schedule B for exempted goods).

2. Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2022

Amendment has been made to item 24, Schedule A of the Exemption Order in relation to the *de minimis* facility for goods imported via air courier services (including postal service).

Please click [here](#) for a copy of our earlier Tax Whiz for details.

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

Updates on LVG

In line with the implementation of Sales Tax on LVG (charging and levying of Sales Tax on LVG effective 1 April 2023), there are a few updates in relation to this matter, i.e.:

1. Sales Tax on LVG legislations issued by the MOF
2. MyLVG portal launched by RMCD
3. LVG guide issued by RMCD (in draft format as at 9 January 2023)

Please click [here](#) for a copy of our earlier Tax Whiz for details.

Application for Sales Tax exemption certificate under Item 65, Schedule A of the Exemption Order

The RMCD has issued an announcement regarding the application process for Sales Tax exemption certificate under Item 65, Schedule A of the Exemption Order for the purchase of prime mover or container trailer.

Effective 1 January 2023, there is a change in the process of applying for the Sales Tax exemption. Haulage operators are now expected to apply for the Sales Tax exemption certificate via the MySST portal and the Vehicle Tax Exemption Monitoring System ("eVTEMS").

Further details and guidance are available via the official MySST portal.

Source for the announcement: [Official portal of RMCD – MySST \(Announcements\)](#)

Postponement of implementation of Excise Duty on premixed beverages

The RMCD has issued an announcement dated 30 December 2022 on the further postponement of the implementation of Excise Duty on premixed beverages to a later date to be announced (initially proposed to be effective 1 April 2022 followed by 1 January 2023).

Source for the announcement: [RMCD's official website](#) – available in Malay language only



Service Tax on goods delivery services

1. Postponement of implementation

The RMCD has issued an announcement dated 30 December 2022 on the further postponement of the implementation of Service Tax on GDS to a later date to be announced (initially proposed to be effective 1 July 2022 followed by 1 January 2023).

Source for the announcement: [RMCD's official website](#)

2. Service Tax guide on GDS

The RMCD has issued a draft Service Tax guide on GDS (as at 9 January 2023) which provides some clarifications on the imposition of Service Tax on GDS.

Please click [here](#) for a copy of our earlier Tax Whiz for details.

Public Ruling 1/2022 – Prescribed forms under Customs Act 1967, Excise Act 1976 and Windfall Profit Levy Act 1998

The RMCD has issued an announcement dated 30 December 2022 for Public Ruling 1/2022 in relation to prescribed forms under the Customs Act 1967, Excise Act 1976 and Windfall Profit Levy Act 1998.

Please click [here](#) for a copy of the Public Ruling.

Source for the announcement: [RMCD's official website](#)

Indirect tax amendment acts' appointment of date of coming into operation

The following indirect tax amendment acts' appointment of date of coming into operation have been gazetted and published on the federal legislation portal:

With an effective date of 1 January 2023

- Sales Tax (Amendment) Act 2022 Appointment of Date of Coming into Operation
- Service Tax (Amendment) Act 2022 Appointment of Date of Coming into Operation
- Customs (Amendment) Act 2022 Appointment of Date of Coming into Operation
- Excise (Amendment) Act 2022 Appointment of Date of Coming into Operation
- Free Zones (Amendment) Act 2022 Appointment of Date of Coming into Operation
- Tourism Tax (Amendment) Act 2022 Appointment of Date of Coming into Operation
- Windfall Profit Levy (Amendment) Act 2022 Appointment of Date of Coming into Operation
- Departure Levy (Amendment) Act 2022 Appointment of Date of Coming into Operation
- Goods Vehicle Levy (Amendment) Act 2022 Appointment of Date of Coming into Operation

With an effective date of 1 April 2023

- Sales Tax (Amendment) Act 2022 Appointment of Effective Date for Charging and Levying of Sales Tax on Low Value Goods

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

Customs Duties (Goods Under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Order 2022

The MOF has issued the above CPTPP Order which is deemed to come into operation on 20 November 2022. This CPTPP Order will be the latest addition or the 17th FTA that takes effect in Malaysia.

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

Insights on Earlier Tax Whiz

Please refer below to our earlier Tax Whiz for more information.

No.	Subject	Date of issue
1	Sales Tax on LVG	27.12.2022
2	Sales Tax on LVG Legislations and MyLVG Portal	10.01.2023
3	Service Tax Guide on GDS	12.01.2023

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

Abbreviation	Reference
CTIM	Chartered Tax Institute of Malaysia
FAQ	Frequently Asked Questions
FIFO	First In First Out
FTA	Free Trade Agreement
GDS	Goods Delivery Services
ITA	Income Tax Act 1967
LLP	Limited Liability Partnership
LMW	Licensed Manufacturing Warehouse
LVG	Low Value Goods
MIDA	Malaysian Investment Development Authority
MIRB	Malaysian Inland Revenue Board
MOF	Ministry of Finance
PENJANA	National Economic Recovery Plan
PR	Public Ruling
PRIHATIN	Pakej Rangsangan Ekonomi Prihatin Rakyat
RA	Reinvestment Allowance
R&D	Research and Development
RMCD	Royal Malaysian Customs Department
YA	Year of Assessment

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