

Tax Developments –

1st Quarter 2022

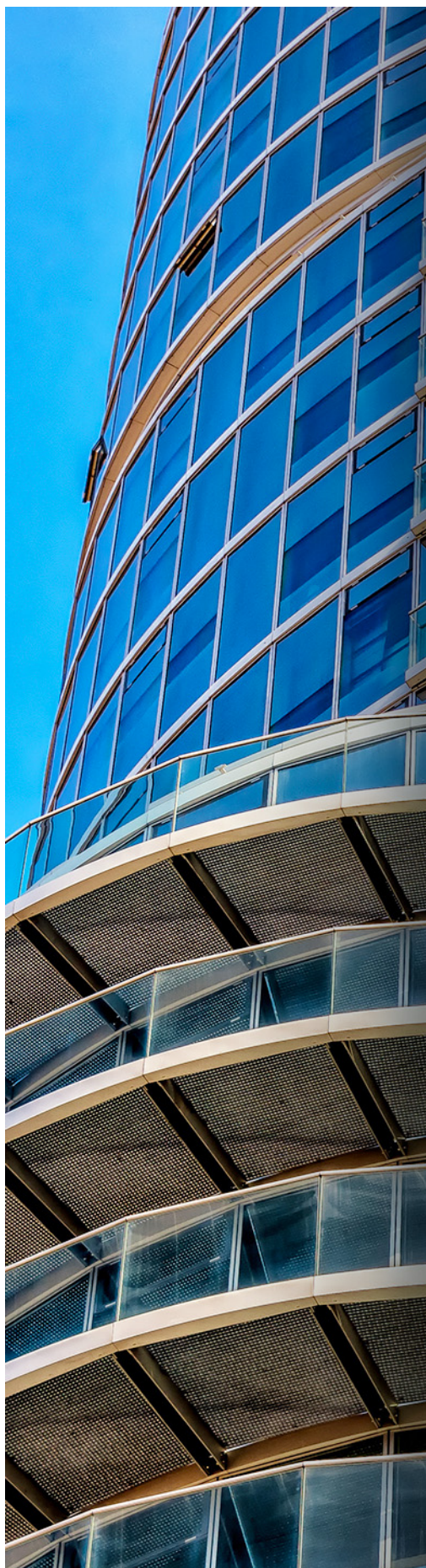


28 March 2022

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Income Tax



Income Tax

The relevant authorities have issued the following:

Implementation of e-Telegraphic System for Payment Methods via Telegraphic Transfer / Electronic Funds Transfer / Interbank Giro

The MIRB in a [media release](#) (which is only available in the Malay Language) had announced that effective 1 April 2022, a new e-Telegraphic System will be introduced to cater for payment of income taxes (including Petroleum income tax, income tax of foreign artists), withholding tax, Real Property Gains Tax and compounds through Telegraphic Transfer, Electronic Funds Transfer and Interbank Giro from within and outside Malaysia.

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

DTA between Malaysia and Ukraine

The MIRB issued an [announcement](#) (which is only available in the Malay Language) that the above [DTA](#) has entered into force on 29 December 2021 and is effective in Malaysia from 1 January 2022.

The DTA provides for the following withholding tax rates in respect of payments made to a resident of Ukraine:

| Type of payments | Withholding tax rate | |
|--------------------|----------------------|-----------|
| | Domestic rate | DTA rate |
| Interest | 15% | Nil / 10% |
| Royalties | 10% | 8% |
| Technical services | 10% | 8% |

It is important to note that this DTA is not applicable to a Labuan entity, except for a Labuan entity which has made an irrevocable election to be charged to tax in accordance with the Income Tax Act 1967.

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

Practice Note No. 1/2022 – Explanation in Relation to the Definition of Factory for the Purpose of Reinvestment Allowance Claim

The MIRB has issued the above [Practice Note](#) to provide further clarification and explanation on the meaning of 'factory' for the purposes of reinvestment allowance claim. Where the storage space exceeds 10% of the total floor area of the factory building or extension, only the storage space, and not the total floor area, is not regarded as a factory.

The above Practice Note overrides the MIRB's interpretation in Paragraph 8.2 of the [Public Ruling 10/2020](#).

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

Double Deduction for the Sponsorship of Scholarships to Malaysian Students Pursuing Studies at Technical and Vocational Certificate, Diploma, Bachelor's Degree, Master's Degree or Doctor of Philosophy Levels

The [Income Tax \(Deduction for the Sponsorship of Scholarship to Malaysian Student Pursuing Studies at Technical and Vocational Certificate, Diploma, Bachelor's Degree, Master's Degree or Doctor of Philosophy Levels\) Rules 2022](#) have been gazetted to introduce the proposal for double deduction on

qualifying expenses incurred by qualifying companies for scholarships awarded to students pursuing any field of study. The scholarship agreement must be executed with a student not later than 31 December 2025.

The Rules are effective from YA 2022.

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

Amendments to Earning Stripping Rules

Under the [Income Tax \(Restriction on Deductibility of Interest\) Rules 2019](#), the tax-EBITDA is ascertained in accordance with the following formula:

$$\text{tax-EBITDA} = A + B + C$$

Where

A = Adjusted income from business before restriction under the ESR

B = Qualifying deductions

C = Interest expense subject to the ESR

The qualifying deductions (B) above has been redefined by the [Income Tax \(Restriction on Deductibility of Interest\) \(Amendment\) Rules 2022](#). The new definition reverses the amount claimed in the tax computation which is not reflected in the current year Profit/Loss account.

In addition, the carry forward rules on interest expense restricted under the ESR are now applicable to any "person" instead of being restricted to a company.

The Amendment Rules come into operation on 1 February 2022.

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

Incentives under the Approved Incentive Scheme

The following Income Tax Rules have been gazetted to provide special tax rates for a qualifying activity under the approved incentive scheme:

- (i) Manufacturers of pharmaceutical products including vaccines

Under the [Income Tax \(the Incentive for Manufacturers of Pharmaceutical Products Scheme\) Rules 2022](#), a qualifying company can enjoy preferential tax rates as follows, subject to meeting the prescribed conditions:-

| Time Frame | Tax Rate |
|--------------|----------|
| First 10 YAs | 0% - 10% |
| Next 10 YAs | 10% |

The application must be received by MIDA not later than 31 December 2022. MIDA has also issued its [Guidelines](#) to explain the eligibility criteria, application process and required documents to be submitted to apply for the above tax incentive.

- (ii) Global Trading Centre

Under the [Income Tax \(Global Trading Centre Incentive Scheme\) Rules 2022](#), a qualifying company could enjoy a concessionary income tax rate of 10% on the taxable income derived from qualifying trading activities for a period of 5 consecutive YAs, with the possibility to extend for another 5 YAs, subject to meeting the prescribed conditions.

The application for the said incentive must be received by MIDA not later than 31 December 2022. MIDA has also issued its [Guidelines](#) to explain the eligibility criteria and application process for the above tax incentive.

The above Rules are effective from YA 2021. A qualifying company which has filed its tax return without claiming the above incentives may submit a revised tax return. The revision must be made by 31 December 2027.

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

Rebranding of Multimedia Super Corridor Malaysia to Malaysia Digital

MSC Malaysia is rebranded to Malaysia Digital. Malaysia Digital is the enhanced and revamped initiative succeeding MSC Malaysia. MDEC has issued [FAQs](#) to provide further information on Malaysia Digital initiatives. One of the notable points is that the existing MSC Malaysia Status and benefits thereunder that have been granted, will continue to subsist, subject to compliance with the existing conditions.

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

Amendments to the Definition of Contract Research and Development Company and Research and Development Company

Following the gazetting of the Finance Act 2021, existing approved Contract R&D companies and R&D companies which intend to retain their R&D status after 30 June 2022, must notify MIDA of their intention by 30 June 2022.

MIDA has issued a [media release](#) to remind affected companies of the need to notify and provide documents by 30 June 2022 to prove that they are undertaking activities relating to R&D and fall within the new definition under the Finance Act 2021.

Source for the Media Release: Official portal of [MIDA](#)

Income Tax Deduction for Investment in a Project of Commercialisation of Research and Development Findings for Non-resource Based Activities

The [Income Tax \(Deduction for Investment in a Project of Commercialisation of Research and Development Findings\) Rules 2022](#) have been gazetted to reintroduce the tax deduction incentive for investments made for commercialisation of non-resource based R&D findings. The Rules also expand the scope of tax deductions to include commercialisation of R&D findings by a private institution of higher learning in Malaysia (previously limited to a public research institute or public institute of higher learning in Malaysia).

The Rules are deemed to have come into operation on 7 November 2020. Applications for approval for the project of commercialisation must be received by MIDA not later than 31 December 2025.

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

Submission of Prescribed Form on Change of Address

Following the gazetting of the Finance Act 2021, effective from 1 January 2022, taxpayers are required to notify the MIRB of a change of address using a prescribed form (CP 600B) which can be submitted by post or through electronic transmission.

The MIRB in a [media release](#) (which is only available in the Malay Language) had announced the submission method of the Form CP600B as follows:

| Submission Period | Submission Method |
|--------------------------------|---|
| 1 January 2022 to 30 June 2022 | By hand, post, email, fax, or through the customer feedback portal or the e-Kemaskini application |

| | |
|------------------|---|
| From 1 July 2022 | By hand or by post or through the e-Kemaskini application |
|------------------|---|

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

Double Deduction for Expenditure Incurred by Anchor Companies under the Vendor Development Programme

The [Income Tax \(Deduction for Expenditure in relation to Vendor Development Programme\) Rules 2022](#) have been gazetted to extend the memorandum of understanding signing period between a qualifying anchor company and the Minister of Entrepreneur Development and Cooperatives, for another 5 years up to 31 December 2025 to be eligible for the tax incentive. The qualifying expenses incurred are allowed for a double deduction for 3 consecutive YAs commencing from the YA in which the expenditure is first incurred, but is capped at RM500,000 (previously RM300,000) per YA.

The Rules have effect from YA 2021.

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

Accelerated Capital Allowance for Excursion Bus

The [Income Tax \(Accelerated Capital Allowance\)\(Excursion Bus\)\(Amendment\) Rules 2022](#) have been gazetted to extend the accelerated capital allowances (initial allowance of 20% and annual allowance of 40%) for acquisition of new locally assembled excursion buses, for another 3 YAs until YA 2024, subject to meeting the prescribed conditions.

The Amendment Rules are effective from YA 2022.

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

Guidelines on Prescribed Labuan Activities for Non-Licensed Trading Entities in Labuan International Business and Financial Centre

Further to the gazetting of [Labuan Business Activity Tax \(Requirements for Labuan Business Activity\) Regulations 2021](#), the LFSA has issued its [FAQ](#) to provide further clarification and guidance on the type of business activities that would be covered under "other trading activity". Included are administrative services, accounting services, legal services, backroom processing services, payroll services, talent management services, agency services, insolvency related services and management services other than Labuan company management.

Subsequently, the LFSA has released its [Guidelines](#), which are consistent with its FAQ. The Guidelines are deemed to have come into effect on 1 January 2019.

Source for the Guidelines: Official portal of [LFSA](#)

Stamp Duty



Stamp Duty

The MIRB has issued the following:

Guidelines for Application of Stamp Duty Relief under Sections 15 and 15A of the Stamp Act 1949

The MIRB has updated the below guidelines, which are effective from 1 March 2022, to replace the old guidelines issued in year 2019, with the following notable changes:

- (i) [Guideline for Application of Relief from Stamp Duty under Section 15 of the SA](#)
 - The transferee company and the existing company are required to furnish the annual returns for 3 years to the MIRB, from the date of the registration / incorporation of the transferee company or the date of the resolution for the increase in the issued share capital of the transferee company.
- (ii) [Guideline for Application of Relief from Stamp Duty under Section 15A of the SA](#)
 - The transferee and transferor company as well as the associated companies involved in the transfer of property, are required to furnish audited account for 3 financial years after the transfer has been made.

In addition to the above, the guidelines further clarify the application of the existing legislation. The application procedure, list of documents required as well as the authorized person to endorse the supporting documents have also been updated.

The above updated guidelines are only available in the Malay Language.

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

FAQ on the Implementation of Processing Fee for the Endorsement of Instruments Exempted from Stamp Duty

Following the gazetting of the Finance Act 2021, a processing fee of RM10 is imposed for the endorsement of instruments exempted from stamp duty with effect from 1 January 2022. This processing fee is only applicable to instruments which would be chargeable with stamp duty exceeding RM10 if the stamp duty had not been exempted.

The MIRB has released its [FAQ](#), which is only available in the Malay Language, to provide further clarification on the implementation.

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

Indirect Tax



Indirect Tax

Reports for Approved Major Exporter Scheme

The RMCD has published updated reporting templates in relation to AMES, as follows:

| Reports | Details |
|------------------|---|
| AMES -02 | Payment of Sales Tax due and payable under Section 61A of the Sales Tax Act 2018 (i.e. failure to comply with the conditions attached to AMES approval) |
| AMES -03 | Monthly statement for movement of taxable goods (of a trader) |
| AMES -03A | Statement for payment of Sales Tax on local sales of taxable goods (of a trader) |
| AMES -04 | Monthly statement for movement of raw materials, components, packing and packaging materials (of a manufacturer of exempted goods) |
| AMES -04A | Monthly statement for export or local sales of exempted finished goods (of a manufacturer of exempted goods) |
| AMES -04B | Statement for payment of Sales Tax on local sales of exempted finished goods (of a manufacturer of exempted goods) |

Source for the Announcement: [RMCD - MySST \(News\)](#)

Revised Guides

The following Guides were issued during the first quarter of 2022:

- Guide on Parking Services (as at 19 January 2022)
- Guide on Advertising Services (as at 10 January 2022)

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

Amendment to Service Tax Policy 3/2021 (Dated 1 March 2022)

The RMCD has issued Amendment to Service Tax Policy 3/2021, which is only available in the Malay language, on the provision of brokerage services relating to trading of shares, to replace:

- Paragraph 2.2 – to clarify that the service provider is exempted from charging Service Tax on brokerage services related to trading of shares, pursuant to Section 34 (4) of the Service Tax Act 2018 (note that the existing Paragraph 2.3 still states that the exemption is only applicable for shares listed in Bursa Malaysia); and
- FAQ No. 7 – to clarify that the service provider is still liable to be registered for Service Tax and be required to furnish SST-02 Return although there is no Service Tax payable arising from the provision of the abovementioned brokerage services. The value of such services exempted from Service Tax shall be declared in Part D, item 18(c) of the SST-02 Return.

Source for the Service Tax Policy: [RMCD - MySST \(Service Tax Policy\)](#)

Insights on Earlier Tax Whiz

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

| No | Subject Matter | Date of Issue |
|----|--|---------------|
| 1 | Deferment of Remittance of Withholding Tax on Payments Made to Resident Individual Agents, Dealers or Distributors | 13.01.2022 |
| 2 | Regional Comprehensive Economic Partnership in Malaysia | 27.01.2022 |
| 3 | Updated Frequently Asked Questions on the Special Revision of Estimated Tax Payable in the 11th Month Basis Period | 28.01.2022 |
| 4 | Tax Incentive on Implementing or Enhancing the Existing Flexible Work Arrangements | 23.02.2022 |
| 5 | Frequently Asked Questions on Section 107D Withholding Tax on Payments Made by a Company to Resident Individual Agents, Dealers and Distributors | 02.03.2022 |
| 6 | Termination of Special Income Remittance Programme | 11.03.2022 |
| 7 | Update on Pillar 2 following Commentary Release – March 2022 | 22.03.2022 |

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

| Abbreviation | Reference |
|--------------|--|
| AMES | Approved Major Exporter Scheme |
| DTA | Double Taxation Agreement |
| EBITDA | Earnings before Interest, Taxes, Depreciation and Amortisation |
| ESR | Earnings Stripping Rules |
| FAQ | Frequently Asked Question |
| LFSA | Labuan Financial Services Authority |
| MDEC | Malaysia Digital Economy Corporation |
| MIDA | Malaysian Investment Development Authority |
| MIRB | Malaysian Inland Revenue Board |
| MSC | Multimedia Super Corridor |
| R&D | Research and Development |
| RMCD | Royal Malaysian Customs Department |
| SA | Stamp Act 1949 |
| YA | Year of Assessment |

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