Malaysian Tax Updates

By Vivian New

This article summarises the key tax developments (excluding case law developments) that have taken place during the period from December 2015 to April 2016. The key developments include the enactment of the Finance Act 2015 in December 2015, the gazetting of several proposals as well as the issuance of one Public Ruling and several administrative guidelines.

Gazette Orders

Income Tax

Income Tax (Exemption) Order 2016 (issued on 15 February 2016)

An individual will be entitled to a special relief of RM2,000 for the year of assessment (YA) 2015 if:-

i. he is a resident in Malaysia for that YA; and
ii. his total aggregate income in the YA does not exceed RM96,000.

Income Tax (Exemption) (No. 2) Order 2016 (issued on 7 April 2016)

This Order, which is effective from YA2016, grants an income tax exemption to any person who receives gains or profits (in lieu of interest) from "sukuk wakala" for each YA. The exemption is only applicable to "sukuk wakala" which has a nominal value of up to USD 1,500,000,000.00, other than convertible loan stock, issued by the Malaysia Sukuk Global Berhad (formerly known as 1Malaysia Sukuk Global Berhad).

It is noted that withholding tax provisions do not apply to the income exempted under this Order. However, the relevant person is still obliged to submit any relevant returns required under the Income Tax Act, 1967 (ITA).

Income Tax (Exemption) (Amendment) Order 2016 (issued on 7 April 2016)

This Order aims to make amendments to the Income Tax (Exemption) (No. 15) Order 2007 ("original Order") which is effective from YA 2007 to YA 2016. Based on the original Order, a company resident in Malaysia is exempt from the payment of income tax in respect of statutory income derived from a business of providing *Syariah* compliant fund management services to **foreign investors** in Malaysia. Through Income Tax (Exemption) (Amendment) Order 2016, the exemption period has now been extended to YA 2020.

Income Tax (Exemption) (Amendment) (No. 2) Order 2016 (issued on 7 April 2016)

This Order aims to make amendments to the Income Tax (Exemption) (No. 6) Order 2008 ("original Order") which is effective from YA 2008 to YA 2016. Based on the original Order, a company resident in Malaysia is exempt from the payment of income tax in respect of statutory income derived from a business of providing *Syariah* compliant fund management services to **local investors** in Malaysia. Through Income Tax (Exemption) (Amendment) (No. 2) Order 2016, the exemption period has now been extended to YA 2020.

Income Tax (Exemption) (Amendment) (No. 3) Order 2016 (issued on 7 April 2016)

This Order aims to make amendments to the Income Tax (Exemption) Order 2014 ("original Order") which is effective from YA 2014 to YA 2016. Based on the original Order, a company resident in Malaysia is exempt from the payment of income tax in respect of statutory income derived from a business of providing *Syariah* compliant fund management services to **business trusts or real estate investment trusts** in Malaysia. Through Income Tax (Exemption) (Amendment) (No. 3) Order 2016, the exemption period has now been extended to YA 2020.

Income Tax (Exemption) (No. 3) Order 2016 (issued on 22 April 2016)

This Order, which is deemed to have come into operation on 1 April 2016, grants an individual Malaysian resident from the payment of income tax on profits from an investment received by him within the period of 3 consecutive YAs starting from the first YA the profits are received.

However, the following conditions apply:-

a) The investment is made within the period from 1 April 2016 to 31 March 2019;

b) The investment is made through the investment account platform set up by a licensed Islamic Bank or prescribed institutions and managed by a person recognised by Bank Negara Malaysia;

   A prescribed institution means a development financial institution which is prescribed by the Minister, currently comprising the following:-

   - Bank Pembangunan dan Infrastruktur Malaysia Berhad;
   - Bank Industri dan Teknologi Malaysia Berhad;
   - Malaysia Export Credit Insurance Berhad;
   - Export-Import Bank of Malaysia Berhad;
   - Bank Kerjasama Rakyat Malaysia Berhad; and
   - Bank Simpanan Nasional.

c) The investment is to finance any venture or project in Malaysia in any industry or sector undertaken by a small and medium enterprise (SME) which fulfills the following criteria:-

   - A sole proprietor who is a Malaysian citizen and the business is registered under Registration of Businesses Act 1956;
   - A limited liability partnership registered under Limited Liability Partnership Act 2012 and at least 51% of its capital contribution are from Malaysian citizens;
   - A partnership registered under Registration of Businesses Act 1956 and at least 51% of its capital contribution are from Malaysian citizens; or
   - A company incorporated under the Companies Act 1965 and at least 51% of its issued ordinary share capital are directly held by Malaysian citizens.

d) The venture or project is sponsored by a licensed Islamic Bank or a prescribed institution;

e) A confirmation is obtained from the person who operates the investment account platform on the profits received and such confirmation is presented to the Director General; and

f) The venture or project does not involve relatives[1] of the individual resident in Malaysia.

The exemption will be withdrawn if during the exemption period the SME which undertakes the venture or project is no longer a SME or the conditions as mentioned in (c) above are not met. The exemption period refers to the period of 3 consecutive YAs starting from the first YA the profits are received.

Goods and Services Tax

Goods and Services Tax (Zero-Rated Supply) (Amendment) Order 2016 (issued on 8 March 2016)

This Order aims to make amendments to the Goods and Services Tax (Zero-Rated Supply) Order 2014 ("Principal Order") and came into operation on 14 March 2016.

The amendments to the First and Second Schedules of the Principal Order are as follows:-

	Principal Order	Amendment made
First Schedule (in item 2)	"Medicaments **and** medical gasses and medical devices"	"Medicaments, medical gasses and medical devices"
Second Schedule (in item 24)	"the lease **or** air container"	"the lease **of** air container"

1 *Relatives include spouse, parent (including step parent and parent in-law), child (including a step child or an adopted child in accordance with any law), brother or sister (including step brother and step sister) and grandparent or grandchild (including step grandparent and step grandchildren).*

In addition, the Appendix to the Principal Order has also been amended as follows:-

Principal Order		Amendment made	
07.13	Dried leguminous vegetables, shelled, whether or not skinned or split	07.13	Dried leguminous vegetables, shelled, whether or not skinned or split
0713.10 000	Peas (Pisum sativum)	0713.10 000	- Peas *(Pisum sativum) (exclude whole and not skinned)*
0713.40 000	Lentils (Dhall)		
		0713.20 000	- Chickpeas (garbanzos) *(exclude whole and not skinned)*
		0713.31 000	- Beans *(Vigna spp., Phaselous spp.)*
		0713.40 000	- Beans of the species *Vigna mungo (L.) Hepper or Vigna radiate (L.) Wilczek (exclude whole and not skinned)*
		0713.60 000	- Lentils *(exclude whole and not skinned)*
			- Pigeon peas *(Cajanus cajan) (exclude whole and not skinned)*
		11.08	Starches; inulin
			- Starches:
		1108.14 000	- Manioc (cassava) starch
		1108.19	- Other starches
		100	- Sago

Stamp Duty

Stamp Duty (Exemption) Order 2016 (issued on 16 March 2016)

The Order, which is deemed to have come into operation on 1 January 2015, grants an exemption from stamp duty on any instrument of loan agreement or financing according to *syariah* which is chargeable under sub-item 27(a)(i) of the First Schedule to the Stamp Act 1949. The instrument must have been executed between a Small and Medium Enterprise, which has obtained the approval for an incentive under the Green Lane Policy from the Secretariat for Green Lane Policy of the Ministry of Finance and:-

a) Bank Perusahaan Kecil & Sederhana Malaysia Berhad;
b) Bank Pembangunan Malaysia Berhad;
c) Export-Import Bank of Malaysia Berhad;
d) Bank Pertanian Malaysia Berhad;
e) Malaysia Industrial Development Finance Berhad (MIDF); or
f) Malaysia Debt Ventures Berhad (MDV)

For the purpose of the exemption, the instrument of loan agreement or financing according to Syariah shall be executed on or after 1 January 2015 but not later than 31 December 2017. In addition, the exemption above will only be given once.

Public Ruling

Public Ruling No. 1/2016 - Agriculture Allowance

This Public Ruling (PR) was issued on 20 January 2016 and explains the tax treatment of qualifying agriculture expenditure. The salient points of the PR are as follows:

- A person who has incurred qualifying expenditure on construction on a farm of a building which is provided by that person for the welfare of persons or as living accommodation for employees (excluding an employee who is a director, an individual having control of the business or an individual who is a member of the management, administration or clerical staff of that business) may make an election to treat such a building as an industrial building. Under such circumstances, industrial building allowances (initial allowance of 40% and annual allowance of 3%) can be claimed instead of agriculture allowances (annual allowance of 20%). The election is to be made in the income tax return form for the basis year in which the expenditure is incurred.

- New planting expenditure is considered as qualifying agriculture expenditure and it relates to the planting of new crop of any product or the replacement of old crop with a crop of a different product.
- The cost of acquiring plantation land and the cost of plant and machinery used in the farm are not regarded as qualifying agriculture expenditure. However, capital allowances would be applicable to the plant and machinery if the "functional test" of plant and machinery is met.
- A deduction may be allowed for replanting expenses incurred in relation to the replacement of a crop by a crop of the same product, including any expenses on improvement works carried out on the farm in connection with such planting and expenditure incurred in relation to re-afforestation of timber.
- A person (transmitter) who has incurred qualifying agriculture expenditure on an asset may transfer or transmit the asset by operation of law[2] or otherwise to some other person (recipient). The tax treatment on such transfer/ disposal is summarised below:

Transmitter	Recipient
Entitled to claim agriculture allowances up to the date of disposal in the YA of disposal if the asset was in use one month before the disposal	Entitled to claim the remaining agriculture allowances that would have been made to the transmitter if the asset had not been transferred
Apportionment of agriculture allowances is made using the following formula: $\frac{\text{Days owned by transfer}}{\text{365 Days}} \times \text{Agriculture allowances}$	Claims for the remaining apportioned agriculture allowances by the recipient must be in respect of the same YA as when the transmitter claims the apportioned agriculture allowances

- A person who has disposed of a farm within 5 years from the date of acquisition may elect for the amount of agriculture charges be divided equally by the number of YAs for which the allowances were made. Such election has to be made in writing to the IRB together with revised tax computations for the relevant YAs.
- For a person who receives subsidies and other payments in the form of capital or government grants to be used in the business of agriculture or plantation, the following tax treatment applies:
  - the grant received is not taxable; and
  - expenses financed from the grant are not eligible for any tax deduction or any agriculture/ capital/ industrial building allowances.

Administrative Guidelines

Filing Programme for Income Tax Return Forms (ITRFs) in the year 2016

The IRB issued an updated 2016 Filing Programme in February 2016. The salient points to note are as follows:

- Where the due date for filing of the ITRFs falls during the calendar year 2016, a grace period is granted for ITRFs filed electronically. This grace period also applies to the settlement of tax under Section 103(1) of the ITA.
- The grace period granted for each type of ITRF is as follows:

Form	Grace period
e-BE, m-BE, e-B/BT, e-M/MT, e-P and e-TF	15 days
e-C	1 month

- With regard to filing via post, a grace period of 3 working days is granted. However, there is no grace period for filing by hand.
- Dormant companies[3], limited liability partnerships, trust bodies and co-operative societies are required to furnish the ITRF (including Form E) with effect from YA 2014.
- A grace period of one month until 30 April 2016 is also granted for the e-filing of Form E for the year 2015. However, corporate employers are compulsorily required to furnish Form E via e-filing with effect from the year of remuneration 2016.
- Employers are encouraged to furnish particulars of their employees' remuneration online using *e-Data Praisi*, which can be accessed via the IRB official portal.

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2 *Operation of law" means a right or liability has been created for a party due to existing legal principles, irrespective of the intent of that party.*
3 *Dormant companies include:*
- *companies which have never commenced operations since the date of incorporation; and*
- *companies which have previously been in operation or carried on business but have now ceased operations or business*

- Extension of time (extension from the expiry of the grace periods) will no longer be allowed for the submission of the following ITRFs:

Form	Effective date
Forms E, BE, B, BT, M, MT, P, TP, TJ and TF (including electronic forms)	With effect from YA 2015
Forms e-C, C1, PT, TA, TC, TR and TN	With effect from YA 2016

- For cases where a penalty is imposed under Section 112(3) of the ITA, a reduction of 5% from the rates fixed by the IRB will be given for e-filing cases.

Operational Guideline No.1/2016 – Reduction of Penalty for Voluntary Disclosure and Waiver of Tax Increase for the Settlement of Tax Arrears

This Operational Guideline was issued on 10 February 2016. The key points are summarised as follows:-

- Reduction of penalty at a specific rate is offered to taxpayers who opt for voluntary disclosure in respect of the following cases:
  i. Taxpayers who failed to submit their ITRF or Petroleum ITRF for previous YAs;
  ii. Taxpayers who wish to declare the correct income against income declared in the ITRF submitted earlier;
  iii. Disposers who failed to report gains arising from the disposal of real properties within a stipulated period of time (i.e. 60 days from the date of transfer); and
  iv. Stamp duty payers who failed to present stampable instruments within a stipulated period of time (i.e. 30 days from the date of transfer)

- Reduction of penalty at specific rate to taxpayers in tax audit and tax investigation cases.
- A waiver of tax increase is offered to taxpayers who wish to settle in full their income tax, petroleum tax, real property gains tax or withholding tax arrears on or before 15 December 2016.
- The offers of reduction of penalty and waiver of tax increase are effective from 1 March 2016 until 15 December 2016.
- However, such offers will be granted to taxpayers based on the merits of the respective cases and are subject to the rules and regulations set by the IRB.

Operational Guidelines No.2/2016 – Application Procedure for Individual Tax Settlement Letter

This Operational Guideline was issued on 12 February 2016 and sets out the procedures of tax settlement application for employees who have ceased employment, retired, deceased or leaving Malaysia for a period of not less than 3 months. The salient points to note are as follows:-

- Employers are required to inform the IRB not less than 1 month before the termination of employment, retirement or departure from Malaysia of each employee. The application can be made via:-
  i. e-SPC (an online application system that allows the employer to submit the relevant Forms) at the official website of the IRB; or
  ii. manual forms which can be downloaded at the IRB website

Form	Details
CP21	Notification by Employer of Departure from the Country of an Employee
CP22A	Tax Clearance Form for Cessation of Employment of Private Sector Employees
CP22B	Tax Clearance Form for Cessation of Employment of Public Sector Employees

- The completed form should be submitted to the IRB branch, which handles the taxpayer's tax file, or the nearest IRB branch. A checklist on the submission of the application for the Individual Tax Settlement Letter is provided in Appendix A to the Guidelines.
- The Guideline also set out the responsibilities of an employer, an employee and the IRB in relation to tax settlement of an individual.

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