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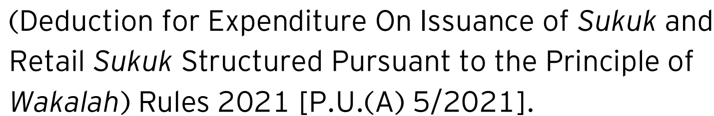
In Budget 2020, it was proposed that the tax deduction for issuance cost and further deduction on additional issuance cost of *sukuk* under the principles of *Wakalah* be extended for another five years, until the year of assessment (YA) 2025. This proposal was subsequently legislated via the Income Tax (Deduction for Expenditure on Issuance of *Sukuk* and Retail *Sukuk* Structured Pursuant to Principle of *Wakalah*) Rules 2021 [P.U.(A) 5/2021] (see *Tax Alert No. 2/2021*).

Following the above, the Inland Revenue Board (IRB) has recently issued a two-page Practice Note No. 2/2021 (PN) dated 3 September 2021, titled “Explanation Relating to Expenditure or Additional Expenses for the Purpose of Deduction Allowed in the Income Tax



(Deduction for Expenditure On Issuance of *Sukuk* and Retail *Sukuk* Structured Pursuant to the Principle of *Wakalah*) Rules 2021 [P.U.(A) 5/2021].

The PN stipulates that the tax incentive under P.U.(A) 5/2021 maintains and extends the incentives which were previously provided under the following orders, which were effective until YA 2020:

- Income Tax (Deduction for Expenditure on Issuance of *Sukuk*) Rules 2019 [P.U.(A) 118/2019]
- Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail *Sukuk*) Rules 2019 [P.U.(A) 117/2019]

Pursuant to P.U.(A) 5/2021, the following "expenditure" or "additional expenses" incurred by a company on the issuance of *sukuk* or retail *sukuk* shall be allowed as a single or double deduction in ascertaining the adjusted income of the company from its business for a YA:

(a) Single deduction on the expenditure incurred on the issuance of *sukuk* structured pursuant to the principles of *Wakalah* comprising mixed asset and debt components:
   (i) Approved or authorized by, or lodged with, the Securities Commission Malaysia (SC) under the Capital Markets and Services Act 2007 (CMSA), or
   (ii) Approved by the Labuan Financial Services Authority (LFSA)

   and

(b) Single deduction on the "expenditure" and double deduction on the "additional expenses" incurred on the issuance of retail *sukuk* structured pursuant to the principles of *Wakalah* comprising mixed asset and debt components and approved or authorized by the SC under the CMSA

The definition of "additional expenses" is reiterated in the PN. The PN also outlines two examples to demonstrate the tabulation of deductible amounts under different scenarios.

Special deductions on rental discounts given to tenants

As highlighted in earlier tax alerts, it has been proposed that a special deduction be given to property owners who provide at least 30% rental discounts to tenants (see *Special Tax Alert No. 6/2020, Special Tax Alert No. 9/2020, Take 5: COVID-19: Short-term Economic Recovery Plan, Tax Alert No. 22/2020*, *Special Tax Alert No. 1/2021* and *Special Tax Alert No. 4/2021*). The deduction applies to rental of premises for business premises only.

To legislate the proposals, the following Rules were gazetted on 8 September 2021:

- Income Tax (Special Deduction for Reduction of Rental to a Small and Medium Enterprise) Rules 2021 [P.U.(A) 353/2021]
- Income Tax (Special Deduction for Reduction of Rental to a Tenant other than a Small and Medium Enterprise) Rules 2021 [P.U.(A) 354/2021]

The Rules provide that in ascertaining the adjusted income of a landlord from his rental income under Paragraph 4(a) or 4(d) of the Income Tax Act 1967 (ITA) in the basis period for a YA, a deduction shall be allowed equivalent to the total amount of reduction in rental given. The reduction must not be less than 30% of the original rental amount for each qualifying month under the existing tenancy agreement for the business premise.

The term "business premise" has been defined in the Rules to mean premises used by a tenant only for the

purpose of his business, including bazaar lots, stalls, vehicle parks, storage warehouses or any other place used only for business purposes.

To qualify for the deduction, the landlord is required to retain:

- The tenancy agreement which has been stamped under the Stamp Act 1949
- A separate statement of income in relation to the reduced rental income for the qualifying months
- Confirmations from both parties on the offer and acceptance of the reduced rental amount

The Rules also provide that the landlord remains eligible for the deduction in cases where the rental for the qualifying months have been paid in advance, on condition that the relevant supporting documents (e.g., whether the reduced rental was processed by way of refund or by any other means agreed between both parties) are retained.

Income Tax (Special Deduction for Reduction of Rental to a Small and Medium Enterprise) Rules 2021 [P.U.(A) 353/2021]

These Rules apply to landlords who rent out business premises to tenants that are small and medium enterprises (SMEs).

The following terms have been defined in the Rules:

(a) Qualifying months
April 2020 to December 2021

(b) Small and medium enterprise (SME)
A Malaysian-resident and certified as an SME by SME Corporation Malaysia (SME Corp)

To qualify for the deduction, the landlord is also required to retain the certificate by SME Corp confirming the status of the tenant as an SME.[Note]

Note:
Based on the latest Frequently Asked Questions (FAQs) document in Bahasa Malaysia, titled "Potongan Khas Kepada Pembayar Cukai Yang Memberi Pengurangan Sewa Premis Perniagaan Kepada Perusahaan Kecil Dan Sederhana (PKS) Dan Bukan PKS" dated 3 September 2021, for the period between January 2021 and December 2021, the certificate is no longer required as a supporting document in cases where the certification has not yet been issued by SME Corp (see *Tax Alert No. 18/2021*).

The Rules are deemed to be effective from YA 2020.

Income Tax (Special Deduction for Reduction of Rental to a Tenant other than a Small and Medium Enterprise) Rules 2021 [P.U.(A) 354/2021]

These Rules apply to landlords who rent out business premises to any tenant who is a Malaysian-resident carrying on his business at the business premise. The qualifying months for the purpose of these Rules are January 2021 to December 2021.

The non-application proviso stipulates that these Rules will not apply to a landlord who has made a claim for deduction under P.U.(A) 353/2021 (discussed above).

The Rules are effective from YA 2021.

Stamp duty exemption on the instrument of loan or financing agreement executed between an SME and a financial institution

The Stimulus Package proposals announced by the Government include the following financing facilities to assist Malaysian SMEs:

(a) All Economic Sectors Facility to improve SMEs' access to financing and to support growth
(b) SME Automation and Digitalization Facility to incentivize SMEs to automate processes and digitalize operations to increase productivity and efficiency
(c) Agrofood Facility to increase food production for Malaysia and for export purposes

The Stamp Duty (Exemption) Order 2020, gazetted on 14 May 2020, provide a stamp duty exemption on the instrument of loan or financing agreement relating to the above-mentioned loans or financing facilities executed between an SME and a financial institution (FI). The exemption shall apply to relevant instruments executed pursuant to a letter of offer issued by the FI between 27 February 2020 and 31 December 2020 (see *Special Tax Alert No. 13/2020*).

Following the above, the Stamp Duty (Exemption) (No. 10) Order 2021 [P.U.(A) 364] was gazetted on 10 September 2021. The Order provides that the exemption shall also apply to relevant instruments executed pursuant to a letter of offer issued by the FI between 1 January 2021 and 31 December 2021.

The exemption is not automatic and must be applied for. The application for the exemption will have to be accompanied by the letter of offer, stipulating the approval of the loan or financing facility.

The following terms have been defined in the Order:

(a) Financial institution
Same meaning as that assigned to "banker" in Section 2 of the Stamp Act 1949, and any person prescribed as a FI by the Minister under Section 2(1) of the Central Bank of Malaysia Act 2009 (CBA) for the purposes of Section 49 of the CBA

(b) Loan or financing facility
Loan or financing facility approved under Bank Negara Malaysia (BNM)'s Fund for SMEs:
(i) All Economic Sectors Facility
(ii) Small Medium Enterprises Automation and Digitalization Facility; or
(iii) Agrofood Facility

(c) Small and medium enterprises
Enterprises as may be determined by the National Small and Medium Enterprises Development Council established under Section 2A of the Small and Medium Industries Development Corporation Act 1995

The Order is deemed to have come into operation on 1 January 2021.

Stamp duty exemption on the instrument of loan or financing agreement executed relating to the restructuring or rescheduling of a business loan or financing executed between a borrower or customer and a financial institution

The Stamp Duty (Exemption) (No. 2) Order 2020 and Stamp Duty (Exemption) (No. 2) 2020 (Amendment) Order 2021, gazetted on 21 May 2020 and 25 January 2021 respectively, provide a stamp duty exemption on the instrument of loan or financing agreement relating to the restructuring or rescheduling of a loan or financing between a borrower or customer and an FI, which is executed between 1 March 2020 and 30 June 2021 (see *Special Tax Alert No. 15/2020* and *Tax Alert No. 3/2021*).

Following the above, the Stamp Duty (Exemption) (No. 11) Order 2021 [P.U.(A) 367] was gazetted on 15 September 2021. The Order provides that the exemption will also apply to the above-mentioned instruments of loan or financing agreements executed between 1 July 2021 and 31 December 2021.

The exemption is subject to the following conditions:

- The existing instrument of loan or financing agreement has been duly stamped under Item 22 or 27 of the First Schedule of the Stamp Act 1949, and
- The instrument of loan or financing agreement relating to the restructuring or rescheduling of a loan or financing does not contain the element of additional value to the original amount of loan or financing under the existing instrument of loan or financing agreement*

  *Any interest or profit accrued from the restructured or rescheduled payments is not considered to be an element of "additional value"

The exemption is not automatic and must be applied for. The application for the exemption will have to be accompanied by the relevant documents relating to the restructuring or rescheduling of that loan or financing.

The following terms have been defined in the Order:

(a) Financial institution
Same meaning as that assigned to "banker" in Section 2 of the Stamp Act 1949

(b) Restructuring or rescheduling
Any modification made to the existing repayment terms and conditions of the loan or financing agreement pursuant to a concession provided by the FI due to the inability of the borrower or customer to comply with the existing repayment schedule consequent to deteriorating financial conditions.

The Order is deemed to have come into operation on 1 July 2021.

Labuan: Guidelines on Digital Governance Framework

The Labuan Financial Services Authority (LFSA) has issued Guidelines on Digital Governance Framework (Guidelines) dated 13 September 2021 with the objective of strengthening the cyber resilience of Labuan FIs (LFIs) through the adoption of good governance and risk management practices.

The Guidelines outline the types of LFIs the Guidelines will apply to. The Guidelines also stipulate that the Guidelines are to be read together with other guidelines which have been issued by the LFSA, as outlined in the Appendix to the Guidelines.

The Guidelines outline the regulatory requirements on digital governance to be observed by Labuan FIs, which comprise six principles (outlined below). The six principles consist of minimum requirements which must be adhered to by all LFIs and are complemented by recommended best practices.

- **Principle 1: Digital governance oversight**
  The board of directors (BOD) are ultimately responsible for overseeing the LFI's digital governance and cyber risk management. The senior management puts into effect policies approved by the BOD and continuously monitors them to ensure that these remain appropriate to the LFI's business.

- **Principle 2: Cyber risk management**
  Effective cyber risk management entails enterprise-wide strategy to preserve data confidentiality, system security and resilience in a systematic and consistent manner.

- **Principle 3: Management of digital services offered by LFIs**
  The LFI needs to maintain robust security controls that commensurate with the risk and complexity of digital services rendered to its clients. The LFI

must ensure that these controls remain relevant and effective at all times.

- **Principle 4: External service arrangement**
  The LFI needs to ensure that all risks from external service arrangements are appropriately identified and managed. The obligations of the service provider and the LFI's expectation of the services to be rendered must be sufficiently captured in the service level agreement.

- **Principle 5: Maintenance and review**
  Periodic assessments, testing and maintenance of critical IT systems are essential to minimize and mitigate any potential threats in a timely manner. These would provide assurance to the LFI on the adequacy and effectiveness of its IT systems and cybersecurity internal controls.

- **Principle 6: Awareness and training**
  The LFI must conduct awareness programmes and participate in training on emerging cyber risks and digital-related issues to mitigate cyber threats and vulnerabilities.

The Guidelines will come into effect on 1 January 2022. However, an LFI may opt for an earlier adoption of the requirements if it wishes to do so.

The Guidelines are available at the following link:
Guidelines on Digital Governance Framework

A Frequently Asked Questions (FAQs) document has also been published to provide further clarification on the Guidelines. The FAQs are available at the following link:
FAQs on Guidelines on Digital Governance Framework

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2021 [P.U.(A) 366] was gazetted on 14 September 2021. The Order provides that any tax payable under the ITA and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

(a) Islamic Medium-Term Notes (IMTN) and Islamic Commercial Papers (ICP) issued by DanaInfra Nasional Berhad pursuant to the IMTN and ICP Programme
(b) Syndicated Revolving Credit Facility obtained by DanaInfra Nasional Berhad (RC-i Facility)
(c) Guarantee provided by the Government of Malaysia in relation to the IMTN and ICP Programme and RC-i Facility

provided that the combined aggregate of the outstanding nominal value of the IMTN and ICP issued pursuant to the IMTN and ICP Programme and the outstanding principal amount under the RC-i Facility shall not exceed RM7.6 billion.

The Order came into operation on 15 September 2021.

Overseas developments

Thailand: Non-resident electronic service providers subject to VAT from 1 September 2021

Effective 1 September 2021, non-resident providers of electronic services supplied to non-VAT registrant consumers in Thailand (B2C supplies) must register for value-added tax (VAT) if their annual turnover is above THB1.8 million (approximately €47,000 or US$55,500). Affected e-service providers must register for VAT, file VAT returns, and pay VAT. The first tax filing and due date for remittances is 25 October 2021. Examples of electronic services covered by the new rules include online games, mobile application services, and online advertising services.

Non-resident suppliers may apply for VAT registration on the Thai Tax Administration's website.

The Revenue Department of Thailand has also published guidance on this topic in English on its website: A Guide on VAT on Electronic Service Provided to Non-VAT Registrants in Thailand by Non-resident Business Person. The guidance sets out in detail the services covered by the new regime and outlines a non-resident service providers' VAT obligations (including registration, filing and payment), the rules regarding VAT refunds, and answers to frequently asked questions.

Indian Tax Tribunal rules on re-domiciliation and its impact on treaty entitlement

The Mumbai Tax Tribunal has ruled in favor of non-Indian taxpayers that the re-domiciliation of a taxpayer does not affect treaty entitlement. The re-domiciled taxpayer was held to be entitled to the tax treaty benefits between India and the country of re-domiciliation. The Tribunal noted that re-domiciliation of the company by itself cannot lead to denial of treaty entitlements of the jurisdiction in which the company is re-domiciled. However, it also noted that the fact of re-domiciliation of the company could trigger a detailed examination on the re-domiciled company being actually fiscally domiciled in that jurisdiction.

The Tribunal's decision and its implications for taxpayers are summarized below.

Detailed discussion

Facts

The taxpayer was initially incorporated in the British Virgin Islands (BVI) as an "international business company." Subsequently, the taxpayer re-domiciled itself to Mauritius and the Mauritius Registrar of Companies issued a "certificate of incorporation by continuation", which was effective from the date of deregistration of the company in the BVI.

The Registrar of Companies of the BVI issued a certificate stating that the taxpayer had discontinued its operations in the BVI on 30 June 1998. The taxpayer also obtained a tax residency certificate (TRC) from the Mauritian tax authority.

During the course of the appeals filed by the tax authorities on several grounds, the tax department representative mentioned that since the taxpayer was initially incorporated in the BVI, the benefits of the India-Mauritius tax treaty could not be extended to the taxpayer.

There has been a lack of judicial guidance on the acceptability of the process of re-domiciliation and its impact on tax treaty benefits for the taxpayer. This ruling provides much-needed guidance on this issue.

Indian Tribunal Ruling

The Tribunal's considerations from its ruling are summarized as follows:

- Corporate re-domiciliation, also referred to as "continuation," is the process by which a company moves its "domicile" (or place of incorporation) from one jurisdiction to another by changing the country under whose laws it is registered or incorporated, while maintaining the same legal identity.
- Re-domiciliation is a dynamic and constantly evolving concept and is generally implemented when an offshore entity faces a situation where the rules and regulations then prevailing in the current "domicile" are no longer aligned with the company's purpose, or the prevailing rules and regulations restrict business prospects, which necessitates a transfer of the domicile by way of continuation from one place to another.
- To effect a re-domiciliation, both the existing jurisdiction (where the company is currently registered) and the target jurisdiction (where the

company is to be “continued”) need to be on the list of countries where corporate re-domiciliation is possible.
- Re-domiciliation of offshore companies is not uncommon in offshore corporate holding structures. Re-domiciliation of the company by itself cannot lead to denial of treaty entitlements of the jurisdiction in which the company is re-domiciled, though, of course, the fact of re-domiciliation of the company could trigger a detailed examination on the re-domiciled company being actually fiscally domiciled in that jurisdiction.

Implications

The concept of re-domiciliation has been a recent development with no precedence in an Indian tax context. This Tribunal decision, in the context of re-domiciliation of a taxpayer from BVI to Mauritius, provides much-needed guidance on the manner in which Indian Tribunals are likely to interpret or apply the re-domiciliation concept from a tax treaty perspective. The Tribunal recognized that the tax residency of the taxpayer could be changed through the legal process of re-domiciliation and such action by itself does not adversely impact treaty entitlement of the target jurisdiction.

It is recommended that multinational companies which hold Indian investments and which are contemplating a re-domiciliation should evaluate the impact of this favorable ruling based on their facts and applicable provisions in corporate laws of both the existing and target jurisdictions.

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Important dates

30 September 2021	6th month revision of tax estimates for companies with March year-end
30 September 2021	9th month revision of tax estimates for companies with December year-end
30 September 2021	Statutory deadline for filing of 2021 tax returns for companies with February year-end. As a concession, this deadline is extended to 30 November 2021 pursuant to the RF Filing Programme (Amendment 4/2021).
15 October 2021	Due date for monthly instalments
31 October 2021	6th month revision of tax estimates for companies with April year-end
31 October 2021	9th month revision of tax estimates for companies with January year-end
31 October 2021	Statutory deadline for filing of 2021 tax returns for companies with March year-end. As a concession, this deadline is extended to 31 December 2021 pursuant to the RF Filing Programme (Amendment 4/2021).

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