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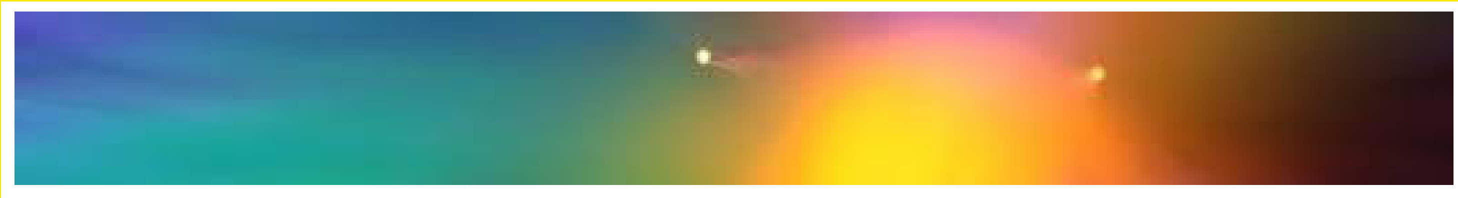
2021 income tax return filing programme issued

The Inland Revenue Board (IRB) has recently made available on its website the 2021 income tax return filing programme (2021 filing programme) titled "Return Form (RF) Filing Programme For The Year 2021". The 2021 filing programme is broadly similar in concept to the position laid out in the original 2020 filing programme (see *Tax Alert No. 1/2020*), prior to the extensions of the grace period given due to COVID-19. Where a grace period is given, submissions shall be deemed to have been received by the stipulated due date if received within the grace period. The grace period also applies to the settlement of the balance of tax payable under Section 103(1) of the Income Tax Act (ITA). Where the income tax return form or balance of tax payable is not furnished within the grace period, the original due date will be taken for the purpose of calculating penalties (note that all references to "due date" in the table below refer to the original due date).



Some of the key changes in the 2021 filing programme are as follows:

- In line with the legislative change to Section 77A(1A) of the ITA which was enacted via the Finance Act 2020, with effect from YA 2021, the Form PT for Limited Liability Partnerships (LLPs) is to be furnished to the IRB in an electronic medium or by way of electronic transmission only (i.e. manual filing is no longer available).
- The C.P.8D [i.e. Statement of Remuneration from Employment for the Year ending 31 December 2020 and Particulars of Tax Deduction under the Income Tax Rules (Deduction from Remuneration) 1994] can now be submitted by way of e-mail to CP8D@hasil.gov.my (txt file format or Microsoft Excel format).
- The paper Form E is to be submitted to Bahagian Pengurusan Rekod & Maklumat Percukaian, Jabatan Operasi Cukai (previously Pusat Pemprosesan Maklumat).
- The 2021 filing programme clarifies that employers which are a sole proprietorship, partnership, Hindu Joint Family or Deceased Person's Estate that does not have employees, are exempted from submitting the C.P.8D.

Summary of the 2021 Filing Programme

ITRF	Due date	Mode of submission	Grace period
Forms BE, BT, M, MT, TF, TJ and TP for YA 2020 for taxpayers not carrying on a business	30 April 2021	a) e-Filing N.B. e-Filing is not available for Form TJ	Within 15 days after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period
Forms B, BT, M, MT, P, TF, TJ and TP for YA 2020 for taxpayers carrying on a business	30 June 2021	a) e-Filing N.B. e-Filing is not available for Form TJ	Within 15 days after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period
Form e-C and e-PT for YA 2021	Last day of the 7th month from the financial year-end	e-Filing	Within 1 month after the due date
Form C1 for YA 2021	Last day of the 7th month from the financial year-end	a) e-Filing	Within 1 month after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period

ITRF	Due date	Mode of submission	Grace period
Forms TA, TC, TN and TR for YA 2021	Last day of the 7th month from the financial year-end	a) e-Filing N.B. e-Filing is not available for Forms TN and TR	Within 1 month after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period
Form E (Company / Labuan company employers)	31 March 2021	e-Filing	Within 1 month after the due date
Form E (Non-company / Non-Labuan company employers)	31 March 2021	a) e-Filing	Form to be received by IRB within 1 month after the due date
		b) Via postal delivery	Within 3 working days after the due date
		c) Hand-delivery	No grace period
Form CPE	Within 7 months from the date following the end of the exploration period	a) e-Filing	Within 1 month after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period
Form CPP	Within 7 months from the date following the end of the basis period	a) e-Filing	Within 1 month after the due date
		b) Via postal delivery	Form to be received by IRB within 3 working days after the due date
		c) Hand-delivery	No grace period

Practice Note No. 4/2020: Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or LLP

The IRB has issued Practice Note (PN) No. 4/2020: Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or Limited Liability Partnership (LLP), dated 21 December 2020. This new PN replaces PN No. 3/2020, which was issued on 18 May 2020 (see *Tax Alert No. 9/2020*).

The contents of the new PN are broadly similar to the earlier PN, with additional clarifications on the tax treatment for the two scenarios outlined below:

1. The company or LLP carrying on a business does not have gross business income but has current year business losses instead.

   Where a company or LLP carries out business activities and incurs expenses in relation to the

business, e.g. purchase of stock, payment of salaries, rental of premises, promotional expenses or any other allowable expenses under Section 33(1) of the ITA, but suffers losses as it has not received any gross business income during the year, the company or LLP is deemed to have gross income from a business source equivalent to NIL.

In this case, the company or LLP will be eligible for the preferential tax treatments as follows:

(i) The company is eligible for the tax treatment under Paragraph 2A, Part 1 of Schedule 1 and Paragraph 19A(3) of Schedule 3 of the ITA; or

(ii) The LLP is eligible for the tax treatment under Paragraph 2D, Part 1 of Schedule 1 of the ITA.

2. The company or LLP does not have gross business income but has current year business losses instead due to the temporary closure of its business operations.

   A company or LLP that temporarily closes its business operations but still incurs expenses in relation to the business, e.g. payment of salaries, utilities, maintenance, rental of premises or any other allowable expenses under Section 33(1) of the ITA, is deemed to have gross income from a business source equivalent to NIL.

   This company or LLP will also be eligible for the preferential tax treatments as outlined in Point 1 above.

   Note:
   In the earlier PN No. 3/2020, it was stated that in the case where a company or LLP does not have gross business income due to the temporary cessation of business operations, but derives other income such as rent and interest (which are not assessed as gains or profits from a business), the company or LLP will not be eligible for the preferential tax treatments.

Incentives for food production projects

Food production projects as approved by the Minister of Finance (MoF) for the planting of vegetables, fruits, kenaf, herbs or spices; rearing of cows, buffaloes, goats or sheep and aquaculture and deep-sea fishing, qualify for certain tax incentives where applications were received by the Ministry of Agriculture and Agro-Based Industry by 31 December 2015 (see *Tax Alert No. 11/2011*). The incentives are as follows:

- For a company that makes an investment in a subsidiary company undertaking a new food production project, a tax deduction equivalent to the amount of investment made in that subsidiary for that YA;
- For a company carrying out new food production projects, a 100% income tax exemption of the statutory income for 10 YAs; or
- For a company carrying out an expansion of an existing food production project, a 100% income tax exemption of the statutory income for five YAs

In Budget 2016, the Government, recognizing that it needs to continue to support the development and growth of the agro-food industry, proposed to extend the application period of the incentives for another five years, to 31 December 2020. It was also proposed that the list of approved food projects that qualify for tax incentives be extended (see *Tax Alert No. 22/2015*).

To legislate the above proposals, the following Exemption Order and Rules were gazetted on 24 December 2020 and are deemed to have come into operation on 1 January 2016.

Income Tax (Exemption) (No. 6) Order 2020 [P.U.(A) 373]

The Order provides that a qualified person (which includes companies, sole proprietorships, partnerships and associations solely engaged in agriculture or fishery) that is resident in Malaysia is exempted from the payment of income tax in relation to:

(a) A new project[Note 1] for a period of 10 consecutive YAs in respect of its statutory income, commencing from the first YA in which the qualified person derived statutory income in relation to that project; or
(b) An expansion project[Note 2] for a period of five consecutive YAs in respect of its statutory income from the expansion project, commencing from the first YA in which the qualified person derived statutory income in relation to the expansion projects, and the first YA shall not be earlier than the YA in the basis period in which the date of approval from the relevant Minister falls

Note 1 - New project
A project which involves the following:
(a) Planting of industrial crops, vegetables, fruits, herbs, spices and cash crops;
(b) Aquaculture;
(c) Rearing of honey and urena lobata bees;
(d) Rearing of cows, buffaloes, goats, sheep and deer;
(e) Deep-sea fishing; and
(f) Planting of feed mill (cultivated in a project which has been identified by the Minister charged with the responsibility of that project and approved by the Minister)

Note 2 – Expansion project
A project:
(a) For the purpose of expanding the new project (per Note 1)
(b) Which involves a new area of land; and
(c) Which is approved by the Minister

The Order applies to:

(a) A new project:
    (i) Where an application for the exemption is made between 1 January 2016 and 31 December 2020 to the Minister through the Minister charged with the responsibility for that project;
    (ii) Which has not commenced on the date the application is made to the Minister; and
    (iii) Which commences within one year from the date of approval given by the Minister

(b) An expansion project that is approved by the Minister for the purpose of expanding the new project

The non-application provisos stipulate that the Order will not apply to a qualified person for a YA if the qualified person has:

(a) Been granted any incentive under the Promotion of Investments Act 1986;
(b) Made a claim for allowance under Schedule 7A or 7B of the ITA;
(c) Been granted an exemption under Section 127(3)(b) or 127(3A) of the ITA;
(d) Made a claim for deduction under any rules made under Section 154 of the ITA except:
    (i) The rules in relation to allowance in Schedule 3 of the ITA;
    (ii) The Income Tax (Deduction for Audit Expenditure) Rules 2006; or
    (iii) The Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014*

*As these Rules have been revoked, we believe that reference should be made to the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [P.U.(A) 162] instead and the Exemption Order should be updated accordingly.

Income Tax (Deduction of Investment in New Food Production Project or Expansion Project) Rules 2020 [P.U.(A) 374]

The Rules provide that in ascertaining the adjusted income of a company which has made an investment in its related company undertaking a new or expansion project under the Income Tax (Exemption) (No. 6) Order 2020, there shall be allowed a deduction equivalent to the value of investment (as defined) for the sole purpose of financing the new or expansion project in the basis period for a YA.

The Order applies to a company resident in Malaysia which is incorporated under the Companies Act 2016 (CA 2016), that has:

(a) Made an investment in its related company* that undertakes a new food production project or expansion project under the Income Tax (Exemption) (No. 6) Order 2020; and
(b) Made an application between 1 January 2016 and 31 December 2020 to the Minister through the Minister charged with the responsibility of a new food production project or an expansion project

*Means a company incorporated under the CA 2016 where at least 70% of its paid-up share capital in respect of ordinary shares are directly owned by the company which has made an investment for the purpose of a new food production project or an expansion project

Points (c) and (d) of the non-application provisos as outlined in Income Tax (Exemption) (No. 6) Order 2020 above also apply to the Rules.

Tax deduction on costs for renovation and refurbishment of business premises

As part of the First Economic Stimulus Package announced on 27 February 2020, it was proposed that a tax deduction of up to RM300,000 be given on costs for renovating and refurbishing business premises, where such costs are incurred between 1 March 2020 and 31 December 2020 (see *EY Take 5: Economic Stimulus Package 2020*). Thereafter, in the Short-term Economic Recovery Plan announced on 5 June 2020, it was proposed that the tax deduction be extended to cover such costs incurred until 31 December 2021 (see *EY Take 5: COVID-19: Short-term Economic Recovery Plan*).

To legislate this, the Income Tax (Costs of Renovation and Refurbishment of Business Premise) Rules 2020 [P.U.(A) 381] were gazetted on 28 December 2020. The Rules provide that in ascertaining the adjusted income of a person from its business for a YA, there shall be allowed a deduction, capped at RM300,000, for the costs of renovation and refurbishment of a business premise incurred by the person from 1 March 2020 until 31 December 2021, and used for the purpose of its business.

The Rules provide that the above-mentioned costs mean the costs outlined in Note 1 below, which are certified by an external auditor. However, the costs outlined in Note 2 below would not qualify for the tax deduction.

Note 1

1. General electrical installations
2. Lighting
3. Gas systems
4. Water systems
5. Kitchen fittings
6. Sanitary fittings
7. Doors, gates, windows, grilles and roller shutters
8. Fixed partitions

9. Flooring (including carpets)
10. Wall coverings (including paint work)
11. False ceilings and cornices
12. Ornamental features or decorations excluding fine art
13. Canopies or awnings
14. Fitting rooms or changing rooms
15. Recreational rooms for employees
16. Air-conditioning systems
17. Children play areas
18. Reception areas
19. Suraus

Note 2

1. Designer's fees
2. Professional fees
3. Purchase of antiques (purchase of an object or work of art which, representing a previous era in human society, is a collectible item due to its age, rarity, craftsmanship or other unique features and appreciates in value over time)

The non-application provisos provide that the Rules will not apply to a person who has made any of the following claims in relation to the costs of renovation and refurbishment:

(a) As allowable expenses under Section 33(1) of the ITA;
(b) Capital allowance under Schedule 2 of the ITA; or
(c) Capital allowance under Schedule 3 of the ITA

The Rules are effective from YA 2020.

Stamp duty updates

Stamp duty exemption on financing agreements under the TSPKS and IPPKS financing programmes

In 2019, the Government announced that RM550 million had been allocated for the Oil Palm Smallholders Replanting (TSPKS) and the Oil Palm Smallholders Agriculture Input (IPPKS) soft loan schemes. The loans are given at an interest rate of 2%.

The Stamp Duty (Exemption) (No. 7) Order 2020 [P.U.(A) 379] was gazetted on 28 December 2020 to provide a stamp duty exemption on the financing agreements under the TSPKS and IPPKS financing programmes pursuant to the *Tawarruq* concept executed between an individual and Bank Pertanian Malaysia Berhad (Agrobank). The exemption will apply to financing agreements executed between 24 July 2019 and 31 December 2021.

The Order is effective 24 July 2019.

Stamp duty exemptions to revive abandoned housing projects extended to 31 December 2025

In Budget 2021, it was proposed that the stamp duty exemption provided on the relevant instruments executed by the original house purchaser and the approved rescuing contractor or developer be extended to 31 December 2025 (see *EY Take 5: Malaysia Budget 2021*). To legislate this, the following Amendment Orders were gazetted on 31 December 2020:

- Stamp duty (Exemption) (No. 5) 2013 (Amendment) Order 2020 [P.U.(A) 395]

  This Order amends the Stamp Duty (Exemption) (No. 5) Order 2013 [P.U.(A) 91] that provides stamp duty exemption on the relevant instruments executed by the original house purchaser.

- Stamp Duty (Exemption) (No. 6) 2013 (Amendment) Order 2020 [P.U.(A) 396]

  This Order amends the Stamp Duty (Exemption) (No. 6) Order 2013 [P.U.(A) 92] that provides stamp duty exemption on the relevant instruments executed by a rescuing contractor or developer

approved by the Minister of Housing and Local Government (MHLG).

Stamp duty exemption on Tenang Insurance products extended to 31 December 2025

In Budget 2021, to continue encouraging the B40 households to learn the benefit of insurance and *takaful*, and over time acquire their own protection policies, the Government proposed to extend the waiver of stamp duty for all Tenang Insurance products for another five years.

To legislate this, the Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2020 [P.U.(A) 397] was gazetted on 31 December 2020. The Amendment Order provides a stamp duty exemption for any insurance policies and *takaful* certificates for Perlindungan Tenang products issued by a licensed insurer or a licensed *takaful* operator until 31 December 2025, with an annual premium or takaful contribution not exceeding RM100.

The Amendment Order is effective 1 January 2021.

Stamp duty exemption for sale and purchase transaction of an exchange-traded fund

The Stamp Duty (Exemption) (No. 2) Order 2017 [P.U.(A) 408], gazetted on 26 December 2017, provides a stamp duty exemption on a contract note executed for the sale and purchase transaction of a structured warrant or exchange-traded fund approved by the Securities Commission (SC) under the Capital Markets and Services Act 2007. The Order applies to contract notes executed between 1 January 2018 and 31 December 2020.

In Budget 2021, it was proposed that the exemption for the contract note executed for the sale and purchase transaction of an exchange-traded fund be extended for another five years, until 31 December 2025.

To legislate this, the Stamp Duty (Exemption) (No. 2) 2017 (Amendment) Order 2020 [P.U.(A) 421] was gazetted on 31 December 2020.

The Amendment Order came into operation on 1 January 2021.

Stamp duty exemptions on instruments for the purchase of a flat under the PPR-MTEN and PA DBKL programmes

As part of the Government's efforts to provide comfortable and quality housing, especially to the low-income group, the Stamp Duty (Exemption) (No. 8) Order 2020 [P.U.(A) 423] was gazetted on 31 December 2020. The Order provides a stamp duty exemption on the following instruments for the purchase of a flat under the National Economic Action Council's People Housing Programme (PPR-MTEN) and Dewan Bandaraya Kuala Lumpur (DBKL)'s Public Housing Programme (PA DBKL), which are executed between 1 January 2020 and 31 December 2024:

Loan scheme	Instruments	Party
Special Financing Scheme (SFS)	Sale and purchase agreement (SPA)	Between a purchaser and Syarikat Perumahan Wilayah Persekutuan (SPWP)
	Loan agreement	
	Instrument of transfer	Between a purchaser and DBKL
	SPA	
Other than SFS	SPA	Between a purchaser and DBKL
	Instrument of transfer	
	Loan agreement	Between a purchaser and a financial institution

The following terms have been defined in the Order:

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

(b) SFS
Loan facilities provided by SPWP which are fully owned by Yayasan Wilayah Persekutuan

The Order is deemed to be in operation from 1 January 2020 until 31 December 2024.

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 6) Order 2020 [P.U.(A) 360] was gazetted on 17 December 2020. 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 issued by the Federal Land Development Authority pursuant to the Islamic Medium-Term Notes Programme (GG *Sukuk Murabahah* Programme) in nominal values of up to RM9.9 billion
(b) GG *Sukuk Murabahah* Programme in nominal values of up to RM9.9 billion; and
(c) Guarantee provided by the Government of Malaysia relating to the GG *Sukuk Murabahah* Programme

The Order came into operation on 18 December 2020.

Deduction for issuance of sustainable and responsible investment *sukuk* extended to YA 2023

The Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017 [P.U.(A) 221], gazetted on 28 July 2017, provide that a deduction shall be allowed for the expenditure incurred by a company on the issuance or offering of a Sustainable and Responsible Investment (SRI) *sukuk*, approved or authorized by, or lodged with, the SC under the Capital Markets and Services Act 2007 (see *Tax Alert No. 17/2017*). To qualify for the deduction, 90% of the proceeds raised from the issuance or offering of the SRI *sukuk* must be used solely for the purpose of funding the SRI project specified in the guidelines issued by the SC. The Rules are effective from YA 2016 until YA 2020.

In Budget 2020, it was proposed that the above-mentioned tax deduction be extended for another three years, until YA 2023.

To legislate this, the Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) (Amendment) Rules 2021 [P.U.(A) 2] were gazetted on 6 January 2021. The Amendment Rules provide that for the purpose of the Rules, a "company" would now mean a company resident in Malaysia which is:
(a) Incorporated, or deemed to be registered, under the CA 2016; or
(b) Incorporated under the Labuan Companies Act 1990

Previously, the Rules stipulated that a company incorporated under the Labuan Companies Act 1990 "must have made an election under Section 3A of the Labuan Business Activity Tax Act 1990 (LBATA) to be charged to tax in accordance with the LBATA" in order to be within the scope of the rules.

Updated guidelines for upstream petroleum industry tax incentive claim

The IRB has published on its website, updated guidelines for upstream petroleum industry tax incentive claims dated 30 December 2020. The guidelines are in Bahasa Malaysia and are titled "Garis Panduan Tuntutan Insentif Bagi Industri Petroleum Huluan Di Bawah Akta Petroleum (Cukai Pendapatan) 1967 (Pindaan)" (Guidelines). The new 23-page 2020 Guidelines replace the earlier Guidelines dated 22 May 2014 (see *Tax Alert No. 13/2014*).

The new Guidelines are broadly similar to the earlier guidelines, and provide clarification on whether chargeable persons undertaking petroleum operations in marginal fields and in fields that require intensive capital investment, would qualify for the incentives listed below:

- Petroleum Income Tax (Accelerated Capital Allowances) (Marginal Field) Rules 2013 [P.U.(A) 119] as amended by the Petroleum Income Tax (Accelerated Capital Allowances) (Marginal Field) (Amendment) Rules 2014 [P.U.(A) 58]
- Petroleum Income Tax (Exemption) Order 2013 [P.U.(A) 122] (as amended by the Petroleum Income Tax (Exemption) (Amendment) Order 2014 [P.U.(A) 57]
- Petroleum Income Tax (Marginal Field) Regulations 2013 [P.U.(A) 121]
- Petroleum Income Tax (Investment Allowances) Regulations 2013 [P.U.(A) 120] (as amended by the Petroleum Income Tax (Investment Allowance) (Amendment) Regulations 2014 [P.U.(A) 69]

The key changes are outlined below:

- As highlighted in the earlier tax alert, the previous Guidelines stated that applications for the above incentives are to be submitted to the Malaysian Petroleum Management, Petroliam Nasional Berhad (PETRONAS) for verification of eligibility, before onward submission to the Upstream Petroleum Industry Incentive Commission at the Ministry of Finance for approval. The new Guidelines stipulate that the application for the incentives must be submitted to PETRONAS not later than five years from the date of approval of the Field Development Plan (FDP).

- Examples 8 and 9 of the new Guidelines have been updated to reflect that pursuant to Regulation 13(1) of the Petroleum (Income Tax) (Investment Allowances) Regulations 2013, the chargeable person's assessable income from petroleum operations in respect of a qualifying project for a YA (i.e. relevant year) shall consist of the amount of his statutory income in respect of a qualifying project for the relevant year from that petroleum operations, reduced by –
  (a) The amount of any adjusted loss for the basis period from the YA preceding the relevant YA; then
  (b) The amount of any investment allowance or the aggregate amount of investment allowance

  Previously, the examples showed the utilisation of "investment allowance" before the utilisation of "adjusted loss".

Overseas developments

Japan releases 2021 tax reform outline

On 10 December 2020, Japan's coalition of leading parties released the 2021 tax reform outline (the Outline). A tax reform bill (the Bill) will be prepared based on the Outline. The Bill will be submitted to the Diet and is expected to be enacted by the end of March 2021.

The key provisions relevant to multinational corporate taxpayers are summarized below.

Detailed discussion

Digital transformation investment incentives

Digital transformation-related investments up to JPY30 billion (US$300 million) under a certified business adaptation plan made by 31 March 2023 will be eligible for a 30% special depreciation or a 3% to 5% tax credit (capped, together with the carbon-neutral investment incentives, at 20% of the corporate income tax payable). Digital transformation-related investments include software, machinery and equipment that contribute to improved productivity and marketing development.

Research and Development (R&D) tax credit

- Under the existing law, qualified R&D expenditures are eligible for a 6% to 14% tax credit. The 2021 reform will amend the creditable ratio to 2% to 14% (generally capped at 25% of the corporate income tax payable).
- If gross sales in a year between 1 April 2021 and 31 March 2023 decrease by 2% or more compared to sales of the latest year ended before 1 February 2020, and qualified R&D expenditures for the year are greater than the amount spent in that latest year, an additional creditable amount of 5% will be provided.
- The additional credit measures, available under the current law if qualified R&D expenditures exceed 10% of the average gross sales, will be extended for two years.
- The existing measures for certain small and medium-sized enterprises (SMEs) and for special R&D expenditures will be refined.

Increased employee compensation credit

The existing increased employee compensation credit will be refined to encourage businesses to hire new employees such that if the compensation paid to newly-hired employees in the current year increases by 2% or more compared to the compensation paid to newly-hired employees in the previous year, the compensation paid to newly-hired employees in the current year will be eligible for a 15% to 20% tax credit, subject to certain conditions (capped at 20% of the corporate income tax payable).

Increased limit for net operating loss (NOL) deductions

Under the existing law, NOLs carried forward can only shelter up to 50% of the current year's taxable income (except for certain SMEs). Under the 2021 reform, an increased NOL limit, up to the "outstanding amount of accumulated qualified investment" for the applicable fiscal years, will be provided to eligible NOLs. This measure is intended to stimulate new investments associated with digital transformation, carbon neutrality and business restructuring.

- Eligible NOLs are NOLs incurred in fiscal years that include any dates between 1 April 2020 and 1 April 2021 (in certain circumstances, a fiscal year ended between 1 February 2020 and 31 March 2020 and the following fiscal year).
- The "outstanding amount of accumulated qualified investment" is the amount of investment made under a business adaptation plan certified within a year of the enactment of the revised *Act on Strengthening Industrial Competitiveness*, reduced by the amount of such investment that was already eligible for this regime.
- The applicable fiscal years are fiscal years that meet all the following:
  - Fiscal years beginning within five years of the first day of the "basis year". The "basis year" is the earliest profitable fiscal year after the fiscal year during which the eligible NOLs were incurred.
  - Fiscal years that include the business adaptation plan period
  - Fiscal years beginning before 1 April 2026

Tax treatment of share-for-share acquisitions

Certain share-for-share acquisitions will qualify for tax-neutral (i.e. tax-deferred) treatment for existing shareholders, subject to certain conditions, including that 80% or more of the acquisition consideration must be in the form of the acquirer's shares.

Incentives to attract foreign financial services companies and fund managers

- Profit-linked directors' compensation (that is generally non-deductible except for certain public companies) paid by specified investment management companies will be deductible subject to certain conditions, including approval by investors and the making of certain public disclosures.
- Carried interest (excess distributions from investment partnerships) earned by fund managers will be taxed as capital gains, which is subject to a flat tax rate of approximately 20%, and not as income that is subject to progressive tax rates.
- No inheritance tax or gift tax will be imposed on property outside of Japan acquired by certain non-Japanese nationals.

Carbon-neutral investment incentives

Carbon neutral-related investments of up to JPY50 billion (US$500 million) under a certified environment adaptation plan made by 31 March 2024 will be eligible for a 50% special depreciation or a 5% to 10% tax credit (capped at 20% of corporate income tax payable together with the digital transformation investment incentives).

Carbon neutral-related investments include equipment that contributes to reduced greenhouse gas emissions.

Digitalization of tax compliance

- The majority of tax-related documentation (including tax returns) will no longer need to be physically stamped.
- The electronic data and documentation retention regime will be refined, including abolishing the tax authorities' pre-approval for the electronic retention.
- Certain tax compliance for cross-border transactions (including applications for exemption of qualified bond interest withholding tax and forms for tax treaty benefits) will be accepted via electronic filing, subject to certain conditions.

Myanmar tax authority issues guidance on withholding tax reporting obligations

The Myanmar Internal Revenue Department (MIRD) promulgated Practice Statement 2/2020 (the Practice Statement) on 3 September 2020 regarding withholding tax (WHT) reporting obligations. The conditions for the WHT exemption to apply on payments made to non-resident foreigners, without the requirement to request upfront approval from the MIRD, are summarized below.

Prior to the issuance of the Practice Statement, the following payments made to non-resident foreigners were exempted from WHT, but required upfront approval from the MIRD:

- Payments for services performed entirely outside Myanmar
- Payments for services performed in Myanmar but with no permanent establishment (PE) of the service provider in Myanmar under a relevant tax treaty concluded with Myanmar

WHT reporting obligations under Practice Statement 2/2020

1. With effect from 3 September 2020, taxpayers can adopt the 2.5% WHT exemption without seeking upfront approval from the MIRD for service contracts with a value of less than US$100,000 (i.e. US$2,500 of WHT) or the equivalent amount in another currency, where the services are either:
   - Performed by non-resident foreigners entirely outside Myanmar
   - Performed by a business resident in a country with which Myanmar has signed a tax treaty agreement, and the provision of those services is not related to and will not create a PE in Myanmar

2. Practice Statement 2/2020 is applicable to all taxpayers assessed under the Self-Assessment System (SAS).

3. The MIRD has provided examples (as outlined in the Appendix to this Alert) for a clearer understanding of the Practice Statement . The examples in the Appendix are extracted from the English translation of the Practice Statement 2/2020 issued by the MIRD.

APPENDIX

Examples of withholding tax reporting obligations under Practice Statement 2/2020

Example	Case	Application of the Practice Statement
1	A Myanmar company sends all of its basic accounting records electronically to an accounting firm in Singapore for preparation of the annual financial accounts. The charge to the Myanmar company is US$80,000.	No withholding tax will be payable. The Myanmar company will not need to seek prior confirmation from the IRD regarding its obligation to withhold payments to the Singapore firm as all services are performed outside Myanmar and the value of the services is less than US$100,000.
2	An Indian architect firm is commissioned to design a bridge to be constructed in Myanmar by a Myanmar company. The architect firm sends a representative to Myanmar who meets the client and spends two days taking measurements and soil samples, and then returns to India. Over the next three months, the Indian architect firm does bridge design drawings and specifications, which it sends to Myanmar via e-mail. The total cost of the three months' work is US$50,000. The services are performed predominantly in India with only two days spent in Myanmar by the Indian company's representative. As such, no PE is created in Myanmar.	The Myanmar company will not need to seek prior confirmation from the IRD regarding its obligation to withhold payments to the Indian firm. Predominantly, all services are performed outside Myanmar. The two days in country do not create a "PE". The value of the services is less than US$100,000.
3	A Myanmar company contracts with a Vietnam company to provide consulting services on the development of its supply chain. The Vietnam company will be providing the services for a period of 10 months from a fixed base in Myanmar. The value of the consulting services provided by the Vietnam company is US$95,000.	As the Vietnam company will be providing consultancy services in Myanmar for more than six months within a 12-month period, it is deemed to have a PE in Myanmar, and the Myanmar company will need to obtain prior confirmation from the IRD regarding its obligation to withhold tax, regardless of the fact that the value of the contract is less than US$100,000.

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Important dates

15 January 2021	Due date for monthly instalments
31 January 2021	6th month revision of tax estimates for companies with July year-end
31 January 2021	9th month revision of tax estimates for companies with April year-end
31 January 2021	Statutory deadline for filing of 2020 tax returns for companies with June year-end
15 February 2021	Due date for monthly instalments
28 February 2021	6th month revision of tax estimates for companies with August year-end
28 February 2021	9th month revision of tax estimates for companies with May year-end
28 February 2021	Statutory deadline for filing of 2020 tax returns for companies with July year-end

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