

BDO TAX BUZZ

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INTRODUCTION

Dear Readers,

We are very pleased to introduce you to the relaunch of BDO Malaysia's Tax Buzz newsletter, a bi-monthly publication by BDO Malaysia. This newsletter is intended to brief you on the recent tax developments and updates in Malaysia covering both direct and indirect tax. In this edition, we shall highlight the key tax developments and updates for the period January to April 2023 and a commentary on Tax Corporate Governance Framework.

We trust that you will find this newsletter informative and useful. If you need further information on any of the topics featured or would like to discuss its implications on you or your business, you may get in touch with our talented tax specialists listed at the end of this publication.

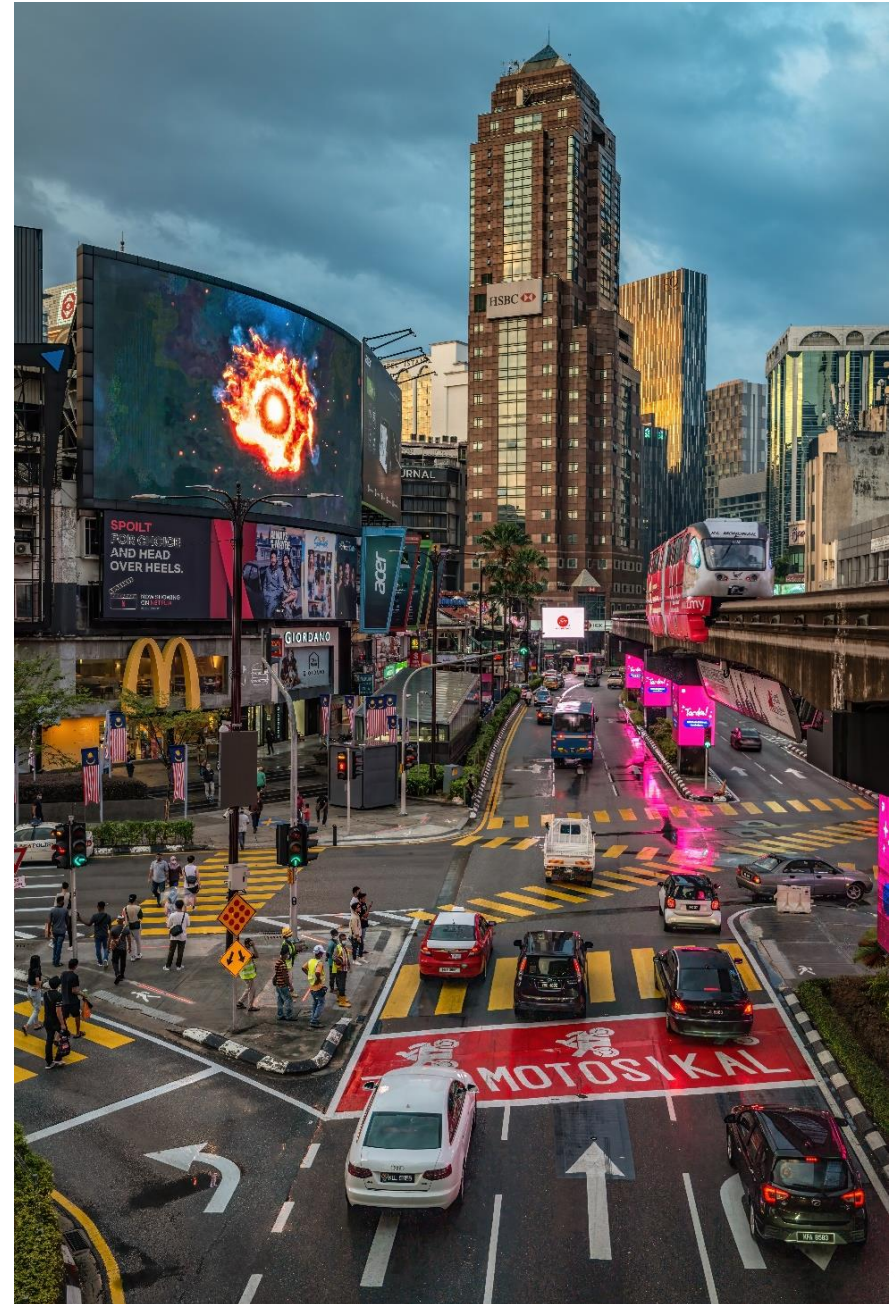


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INCOME TAX

Tax Investigation Framework 2023

The Inland Revenue Board of Malaysia (“IRBM”) has issued the Tax Investigation Framework (“2023 Framework”) dated 1 January 2023, which supersedes the Tax Investigation Framework dated 1 January 2020 (2020 Framework).

The 2023 Framework encompasses the guidelines to IRBM’s approach and protocols when carrying out tax investigations. Additionally, it specifies the rights and obligations of the IRBM, taxpayers, and tax agents throughout the investigation process.

Some of the key changes are outlined below:

1. The 2023 Framework states that the focus for the selection of tax investigation cases are cases involving deliberate failure to report income and fraudulent claims.
2. The 2020 Framework has an emphasis on civil investigation procedures while in the 2023 Framework has an emphasis on investigations leading to prosecution.
3. Taxpayers can be prosecuted if there is proof that an offence has been committed in accordance with the provisions of the relevant legislation. Failure of the taxpayer to attend court proceedings after the summons has been served may result in an arrest warrant being issued.
4. If there is a conviction, the court will impose a sentence as prescribed by the relevant legislation. However, in the event of a compounded offence, the tax, special penalty and compound must be paid either in one payment to the IRBM or by instalment as approved by IRBM.
5. The MIRB will no longer issue a letter to the taxpayer confirming the finalisation of the investigation upon completion of the tax investigation. References to an agreement or letter of undertaking if a settlement is agreed upon has been removed from the 2023 Framework.
6. The sections in the 2020 Framework on payment procedures and avenue for appeals against an assessment raised by the IRBM has been deleted from the 2023 Framework as all tax investigation cases will now be prosecuted in court. References in the 2020 Framework to Section 112(3) and 113(2) of the Income Tax Act 1967 in relation to the penalties in lieu of prosecution have also been removed in the 2023 Framework for the same reason.

INCOME TAX (Cont'd)

Double Taxation Relief (The Government of The Republic of Poland) Order 2014 [P.U. (A) 168/2014] - Entry into Force

On 22 February 2023, the IRBM announced that the Double Taxation Relief (The Government of The Republic of Poland) Order 2014 [P.U. (A) 168/2014] has entered into force and replaced the Double Taxation Relief (Poland) Order 1978 [P.U. (A) 124/1978].

The dates of entry into force of the Articles in P.U. (A) 168/2014 are as follows:

Article	Date of entry into force
Article 25 - Mutual Agreement Procedure	12 January 2023
Article 26 - Exchange of Information	12 January 2023
All other Articles	1 January 2024

You may refer the IRBM's website on double taxation agreements for a copy of the above said Order.

Frequently Asked Questions ("FAQ") on Mutual Agreement Procedures ("MAP") and Contact Details of Competent Authorities for MAP Applications

The IRBM has uploaded to its website the FAQ on MAP dated 1 February 2023 as well as the contact details of the Competent Authorities for MAP applications.

Generally, a taxpayer may request from the Malaysian Competent Authorities for a MAP in the case of Treaty Partner-initiated adjustments or Malaysia-initiated adjustments that results or will result in taxation not in accordance with the double taxation agreement (DTA). Examples of such situations include issuance of an amended assessment for transfer pricing adjustment, tax residence status, withholding tax, permanent establishment and characterisation or classification of income.

In the FAQ on MAP, the IRBM provides various useful information such as when a MAP request can be made, issues covered, documentation requirements and implementation of MAP.

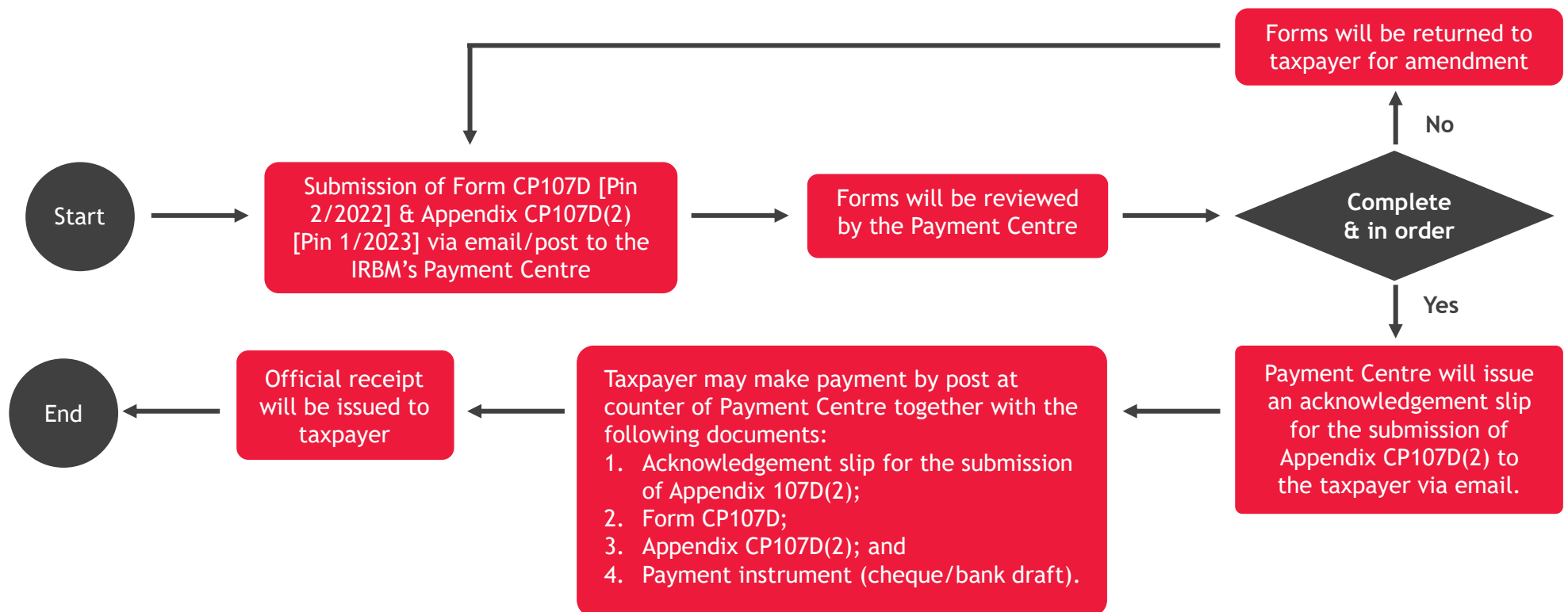
The IRBM has also provided the contact details of the officers in the Malaysian Competent Authorities for MAP applications effective from 1 January 2023.

INCOME TAX (Cont'd)

Submission of Form and Appendix for Section 107D Withholding Tax (WHT)

IRBM had on 13 January 2023 uploaded the following on its website:

- Guide for submission of Form CP107D [Pin 2/2022] and Appendix 107D(2) [Pin 1/2023] for payment of WHT under Section 107D; and
- Flowchart for submission of Form, Appendix and Payments of the WHT under Section 107D as follows:



INCOME TAX (Cont'd)

Contributions to Skim Simpanan Pendidikan Nasional (SSPN)

The Finance Minister announced on 29 March 2023 that the personal tax relief of up to RM8,000 for net contributions to SSPN will be extended to the year of assessment (“YA”) 2024. This supersedes the previous decision to allow this tax relief to expire in YA 2022.

The extension of this tax relief has been included in the amended Finance Bill 2023.

Synthesised Texts of Malaysia’s DTAs with Australia, Ireland, Romania and South Africa

The IRBM has uploaded on its website the Synthesised Texts of Malaysia’s DTAs with Australia, Ireland, Romania and South Africa as modified by the provisions of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”). The Synthesised Texts were prepared by the IRBM in consultation with the competent authority of the respective jurisdictions and represents their shared understanding of the modifications made to the respective DTAs by the MLI. The purpose of the Synthesised Texts is to facilitate the understanding of the application of the MLI to the respective DTAs and does not constitute a source of law.



INCOME TAX (Cont'd)

Synthesised Texts of Malaysia's DTAs with Australia, Ireland, Romania and South Africa (Cont'd)

The provisions of the MLI applicable to the DTAs do not take effect on the same dates as the original provisions of the DTAs. Each of the provisions of the MLI could take effect on different dates, depending on the type of taxes involved and on choices made by the jurisdictions in their respective MLI positions. Unless stated otherwise in the Synthesised Texts, the provisions of the MLI are to have effect as set out in the table below:

Synthesised Texts of Malaysia's DTAs with:	Provisions of the MLI to have effect with respect to:	
	WHT	All other taxes
Australia	Where the event giving rise to WHT occurs on or after 1 January 2022.	For taxes levied with respect to taxable periods beginning on or after 1 December 2021.
Ireland	Where the event giving rise to WHT occurs on or after 1 January 2022.	For taxes levied with respect to taxable periods beginning on or after 1 December 2021.
Romania	Where the event giving rise to WHT occurs on or after 1 January 2024.	For taxes levied by Malaysia with respect to taxable periods beginning on or after 5 October 2023. For taxes levied by Romania with respect to taxable periods beginning on or after 1 January 2024.
South Africa	Where the event giving rise to WHT occurs on or after 1 January 2023.	For taxes levied with respect to taxable periods beginning on or after 1 July 2023.

REAL PROPERTY GAINS TAX (“RPGT”)

Guideline on RPGT

The IRBM has issued the updated Guideline on RPGT dated 6 January 2023. As in the previous guidelines on the same subject, the updated guideline provides clarifications on the scope of charge, computation of RPGT, exemptions as well as the responsibilities of the disposer and the acquirer in transactions involving the disposal of chargeable assets in Malaysia. The updated guideline includes the amendments to the RPGT Act 1976 up to the Finance Act 2021.

The previous guidelines dated 13 June 2018 and 18 June 2013 are still applicable based on the provisions of the RPGT Act 1976 in force on the date of disposal of the said asset.



Mandatory Use of Form CKHT 502 via e-CKHT

Section 21B of the RPGTA Act 1976 relates to the duty of the acquirer to retain and pay to the IRBM part of the consideration for the purchase of a chargeable asset.

The IRBM has announced in its media release dated 16 February 2023 that for payments under Section 21B of the RPGT Act 1976, the use of Form CKHT 502 via e-CKHT in the MyTax portal is made mandatory in line with the implementation of the Bill Number as a reference for direct tax payment transactions beginning 1 January 2023.

The procedures for completing the Form CKHT 502 and for making payment through the e-CKHT system can be obtained from the IRBM's website.

RPGT Return Forms for YA 2023

The RPGT return forms for YA 2023 have been uploaded to the IRBM's website for the declaration of disposals and acquisitions of assets which are subject to RPGT in YA 2023.

Notwithstanding the above, the IRBM encourages taxpayers to submit their RPGT return forms online via e-CKHT in the MyTax portal in support of the IRBM's effort to digitalise its services to taxpayers beginning from the year 2023.

SALES TAX

Amendments on e-Cigarette or Vape Liquids or Gel Containing Nicotine

With the standardisation of sales tax on liquid or gel products used in e-cigarette and vape devices irrespective of whether they contain nicotine or not, the following legislations have been amended:

Affected Legislations	New Legislations and Amendments	Effective Date
Sales Tax (Imposition of Sales Tax in respect of Designated Areas) Order 2018 [P.U. (A) 206/2018]	Sales Tax (Imposition of Sales Tax in respect of Designated Areas) (Amendment) Order 2023 [P.U. (A) 94/2023]: Amendment made to paragraph 2(a)(vi) by substituting the words “not containing nicotine” with “whether or not containing nicotine”.	1 April 2023
Sales Tax Regulations 2018 [P.U. (A) 203/2018]	Sales Tax (Amendment) Regulations 2023 [P.U. (A) 97/2023]: Amendment made to paragraph 17(1)(h)(v) by substituting the words “not containing nicotine” with “whether or not containing nicotine”.	1 April 2023
Sales Tax (Imposition of Sales Tax in respect of Special Areas) Order 2018 [P.U. (A) 207/2018]	Sales Tax (Imposition of Sales Tax in respect of Special Areas) (Amendment) Order 2023 [P.U. (A) 100/2023]: Amendment made to paragraph 2(1)(c)(v) and paragraph 2(1)(d)(v) by substituting the words “not containing nicotine” with “whether or not containing nicotine”.	1 April 2023

SALES TAX (Cont'd)

Amendments on e-Cigarette or Vape Liquids or Gel Containing Nicotine

Affected Legislations	New Legislations and Amendments	Effective Date
Sales Tax (Person Exempted from Payment of Tax) Order 2018 [P.U. (A) 210/2018]	<p>Sales Tax (Person Exempted from Payment of Tax) (Amendment) Order 2023 [P.U. (A) 106/2023]:</p> <p>Amendment made to item (vi) in column (3) of Item 24 of Schedule A by substituting the words “not containing nicotine” with “whether or not containing nicotine”.</p>	1 April 2023
Sales Tax (Rate of Tax) Order 2022 [P.U. (A) 176/2022]	<p>Sales Tax (Rate of Tax) (Amendment) Order 2023 [P.U. (A) 102/2023]:</p> <p>Amendment made to paragraph 2(1)(b) by replacing the whole paragraph as follows:</p> <p>“goods imported on or with any person entering Malaysia or in the baggage of such person and the goods are not for commercial use, excluding:</p> <ol style="list-style-type: none"> I. Motor vehicles; II. Alcoholic beverages; III. Spirits; IV. Cigarettes; V. Tobacco products; VI. Smoking pipes (including pipe bowls); VII. Electronic cigarettes and similar personal electric vaporizing devices; VIII. Preparation of a kind used for smoking through electronic cigarettes and electric vaporizing device, in form of liquid or gel, whether or not containing nicotine; IX. Tyres; and X. Tube.” 	1 April 2023

SALES TAX (Cont'd)

Amendments in respect of Goods Exempted from Sales Tax

Effective from 5 April 2023, Schedule A of the Sales Tax (Goods Exempted from Tax) Order 2022 [P.U. (A) 175/2022] is amended by the Sales Tax (Goods Exempted from Tax) (Amendment) Order 2023 [P.U. (A) 109/2023] as follows:

Heading	Subheading	Amendment
12.07 Other oil seeds and oleaginous fruits, whether or not broken	1208.10.00 00 - Of soya beans 1208.90.00 00 - Other	The subheadings and the particulars relating to it have been deleted.
30.06 Pharmaceutical goods specified in Note 4 to this Chapter	3006.93.00 00 -- Placebos and blinded (or double-blinded) clinical trials kits for a recognised clinical trial, put in measured doses (Solely for medicaments)	The words “(Solely for medicaments)” after “measured doses” has been deleted.
84.38 Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable or microbial fats or oils	8438.90.19 00 --- Other	The subheading and the particulars relating to it have been deleted.

SALES TAX (Cont'd)

Amendments in respect of Goods Exempted from Sales Tax (Cont'd)

As a result of the above amendments, goods with subheadings 1208.10.00 00, 1208.90.00 00 and 8438.90.19 00 will no longer be exempted from sales tax. The rates of sales tax that are now applicable to the said subheadings are as follows:

Heading	Subheading	Sales Tax Rate
12.08	1208.10.00 00	5%
12.08	1208.90.00 00	5%
84.38	8438.90.19 00	10%

Deferment of Sales Tax on Low Value Goods

Sales tax on low value goods was intended to take effect from 1 April 2023 under the Appointment of Effective Date for Charging and Levying of Sales Tax on Low Value Goods [P.U. (B) 642/2022].

However, the Royal Malaysian Customs Department announced on 10 March 2023 that the imposition of sales tax on low value goods has been deferred to a date to be determined later.

Further to the above, P.U. (B) 642/2022 has been revoked via the Revocation of Appointment of Effective Date for Charging and Levying of Sales Tax on Low Value Goods [P.U. (B) 161/2023] dated 15 May 2023.



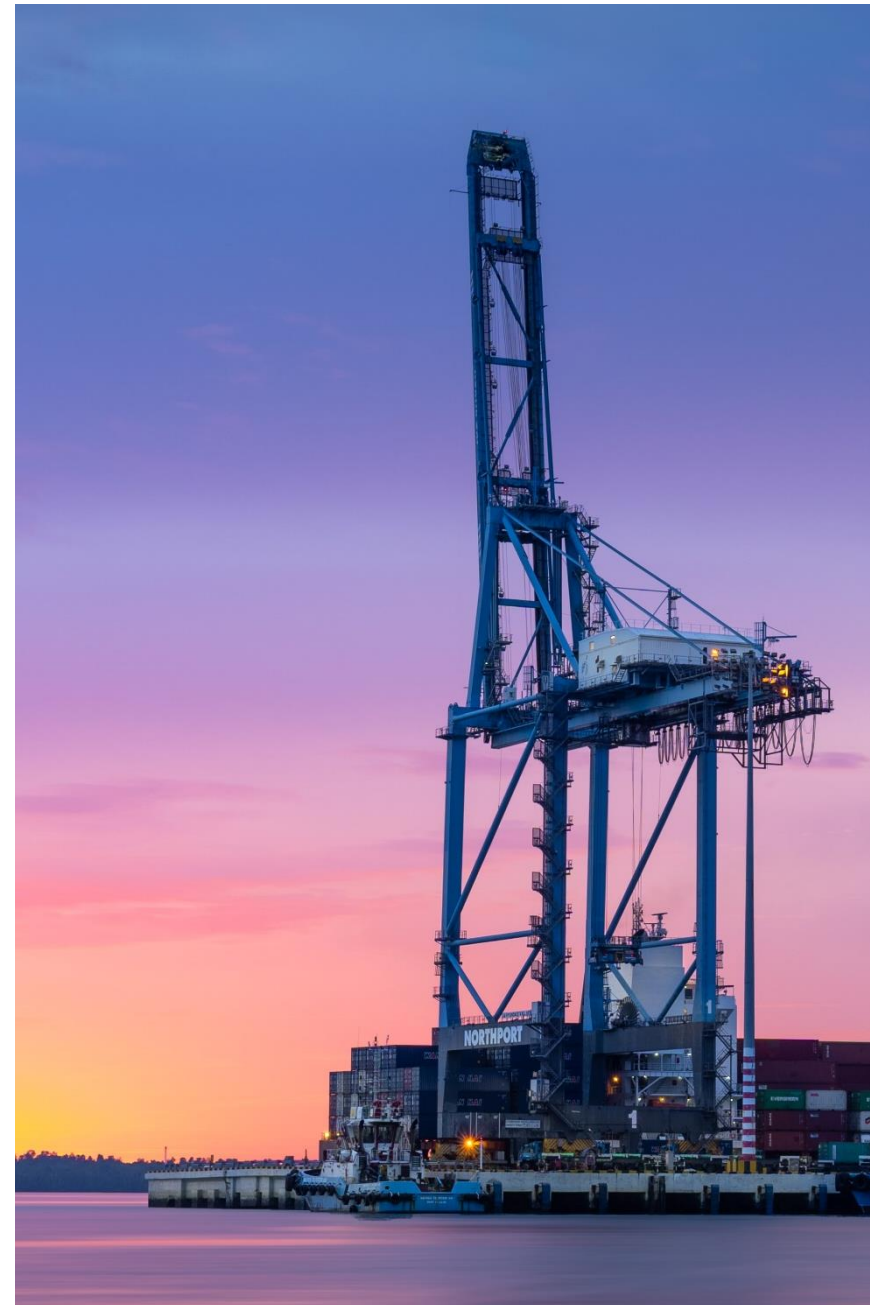
SERVICE TAX

Addition to the List of Offences Which May Be Compounded

The Service Tax (Compounding of Offences) (Amendment) Regulations 2023 [P.U. (A) 115/2023] effective from 13 April 2023 amends the Service Tax (Compounding of Offences) Regulations 2018 [P.U. (A) 218/2018] by inserting item (xiA) in paragraph (a) of the First Schedule as follows:

“(xiA) Section 73A;”

Under Section 73A of the Service Tax Act 2018, any person who causes or attempts to cause the deduction of service tax under subsection 23(1), 34A(1) or 39(2) for himself or for any other person of any amount in excess of the amount properly so deductible for him or for that other person commits an offence and shall, on conviction, be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding three years or to both, and to a penalty of two times the amount deducted in excess of the amount properly so deductible.



OTHERS

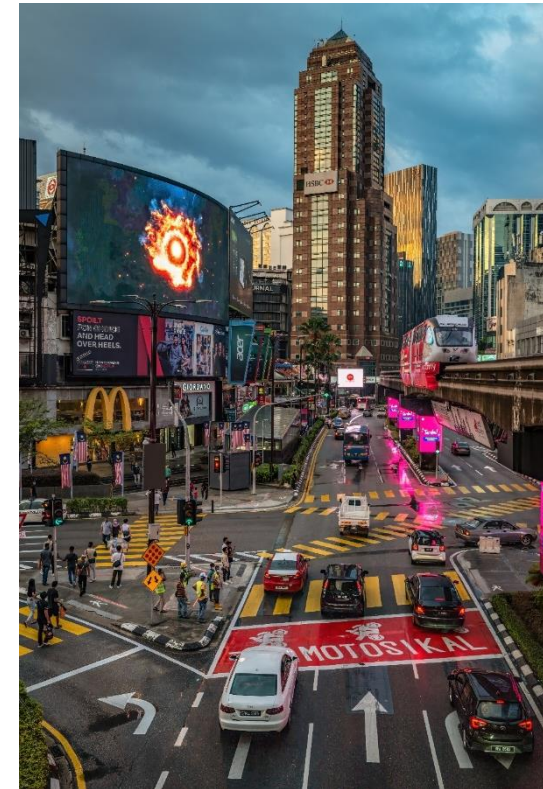
FAQ on Implementation of e-Billing & Bill Number as a Mandatory Reference for Tax Payment

IRBM had previously issued a media release that a Bill Number will be used as a mandatory reference for the payment of all types of direct taxes except for the payment of monthly tax deductions and stamp duty with effect from 1 January 2023. However, as a transitional measure, taxpayers can continue to use their own Tax Identification Number for tax payments until 30 June 2023. IRBM has also issued a User Manual for the Use of Bill Number and the e-Billing system for Tax Payments dated 29 December 2022.

In this regard, IRBM has issued a FAQ on Implementation of e-Billing & Bill Number as a Mandatory Reference for Tax Payment dated 3 January 2023. The FAQ provides explanations and clarifications on the e-Billing system and Bill Number as well as addressing the practical issues which may be faced by taxpayers. The FAQ can be downloaded from IRBM's website.

Finance Bill 2023

The Finance Bill 2023 with amendments has been passed by both houses of parliament on 3 April 2023 and 10 April 2023 respectively. The bill has been gazetted as the Finance Act 2023 on 31 May 2023.



TAX CORPORATE GOVERNANCE FRAMEWORK (TCGF)

IRBM has issued the following documents in response to the growing expectation that organisations in Malaysia will implement governance practices that enhance the accountability, transparency, and integrity of the tax systems below:

- TCGF dated 11 April 2022; and
- Guidelines to the TCGF dated 27 July 2022.

The introduction of the TCGF is part of the IRBM's initiative to adopt a cooperative tax compliance process that is fair and effective in Malaysia.



Corporate governance encompasses the rules, relationships, systems and processes under which authority is exercised and controlled within an organisation. Depending on the size and nature of the business, the organisation may already have governance arrangements in place to meet the expectations of various stakeholders and IRBM.

TCGF includes all forms of direct taxes that are applicable in Malaysia and IRBM encourages organisations to develop their TCGF in the following areas:

- Income tax;
- Petroleum tax;
- Real property gains tax;
- Transfer pricing/advance pricing arrangement;
- Withholding tax;
- Tax payment;
- Monthly tax deduction of employees;
- Stamp duty;
- Taxation of Labuan business activities;
- Tax incentives;
- Tax strategies;
- Public ruling compliance;
- Tax rules and regulations; and
- Advance ruling.

TAX CORPORATE GOVERNANCE FRAMEWORK (TCGF) (Cont'd)



In the Organisation for Economic Co-operation and Development (OECD) publication titled *Co-operative Tax Compliance: Building Better Tax Control Frameworks (TCF)* published on 13 May 2016, a TCF is defined as a component of the system of internal controls that an organisation uses to ensure that the tax returns and disclosures it produces are accurate and complete.

In light of this, the OECD has identified the following six principles in developing a good TCF:

- Tax strategy established;
- Applied comprehensively;
- Responsibility assigned;
- Governance documented;
- Testing performed; and
- Assurance provided.

A TCGF Programme is established by IRBM for the implementation of the TCGF. Taxpayers who participate in the TCGF Programme will enjoy certain benefits including the following:

- ▶ Benefits within the Company:
 - Provide greater certainty on potential tax exposure;
 - Better tax risk management through proactive risk identification and earlier resolution of tax issues;
 - Better transparency through accurate tax reporting and reinforcing the business integrity; and
 - Cost savings by reduced compliance costs through enhanced operational efficiency.
- ▶ Benefits from IRBM:
 - Priority consideration for non-imposition of penalties;
 - Reduced scrutiny of compliance activities;
 - Appointment of dedicated tax officer; and
 - Expedited tax refunds.

TAX CORPORATE GOVERNANCE FRAMEWORK (TCGF) (Cont'd)

Conclusion

The TCGF, which is based on international best practices, provides taxpayers with a valuable reference to assess whether their organisation has a robust governance, control, and risk management framework in place for tax. This assessment is essential for providing the desired assurance to stakeholders.

A company that wishes to implement the TCGF should initiate several actions. Firstly, it needs to identify the individuals who are suitable for the task and clearly define their roles and responsibilities in developing a sound TCGF. Simultaneously, the company should conduct an evaluation of its tax compliance status, identifying any areas of potential non-compliance. It is crucial for the company to review its tax documentation, including memoranda, policy statements, circulars, and tax compliance manuals. Additionally, a comprehensive review of all IT systems and processes related to taxation and control should be undertaken.

Furthermore, the company will need to ensure that there is an independent reviewer (i.e. inhouse internal audit or professional firm who must be accredited tax practitioners) to review the effectiveness of its existing systems and processes.

By taking these actions, the company will be well-equipped to establish a comprehensive TCGF that is aligned with international best practices and increase the confidence of its stakeholders.



CONTACT

BDO TAX SERVICES SDN BHD (114863-K)
Level 8
BDO@Menara CenTARa
360 Jalan Tuanku Abdul Rahman
50100 Kuala Lumpur, Malaysia

t: +603 2616 2888
f: +603 2616 2970
e: marcomms@bdo.my

OUR TAX TEAM

BEH TOK KOAY
Senior Advisor
tkbeh@bdo.my

ONG ENG CHOON
Senior Advisor
ongec@bdo.my

ON BEE YEE
Executive Director
onby@bdo.my

YONG MEE THING
Executive Director
yongmt@bdo.my

DAVID LAI
Executive Director
davidlai@bdo.my

WOON YOKE LEE
Executive Director
woonyl@bdo.my

SOH PIN TAU
Executive Director
sohpt@bdo.my

YEAP LAY SUAT
Executive Director
yeapls@bdo.my

NG SWEE WENG
Senior Advisor
swng@bdo.my

KOO KIAN MING
Executive Director
kookm@bdo.my

YAP MEI SEI
Executive Director
yapms@bdo.my

CHAN KWAN YEE
Executive Director
chanky@bdo.my

CHRISTOPHER LOW
Executive Director
chrislow@bdo.my

LEE BOON HOOI
Executive Director
leebh@bdo.my

TAN CHIN TECK
Executive Director
tanct@bdo.my

TAN SIN HUAT
Advisor
shtan@bdo.my

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