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# EY Tax Alert

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- ▶ Australia's Significant Global Entity definition expanded, impacting tax integrity laws (DPT and MAAL), reporting requirements (CbCR and general-purpose financial statements) and related penalty provisions

## Malaysian developments

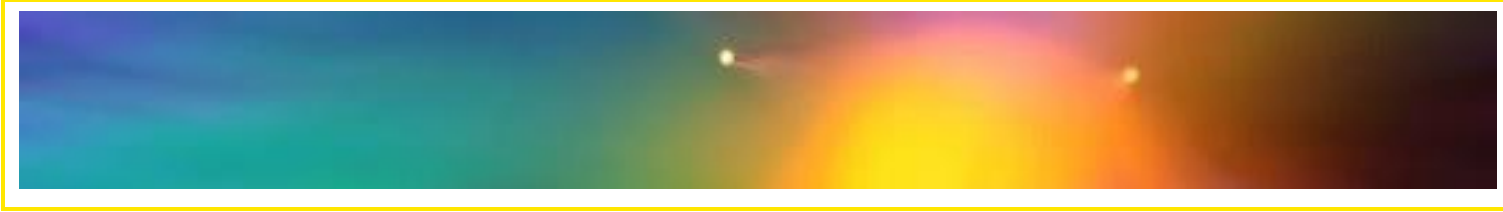
### Updated guidelines on IRB approval under Subsection 44(6) of the Income Tax Act 1967

The Inland Revenue Board (IRB) has recently published on its website the "Guidelines for approval of Director General of Inland Revenue under Subsection 44(6) of the Income Tax Act 1967" (Guidelines) dated 30 January 2020. The 21-page Guidelines replace the earlier Guidelines issued on 5 September 2019 (see *Tax Alert No. 18/2019*).

The new Guidelines are broadly similar to the earlier Guidelines, with some minor changes as outlined below:

- Terms of the institution's / organization's Board of Trustees (BOT) / Board of Directors (BOD) / Committee Members (CM)**

One of the criteria to qualify for approval under Subsection 44(6) of the Income Tax Act 1967 (ITA) is that more than 50% of the members of the BOT / BOD / CM must consist of outsiders who are not related to the institution / organization and founder.



The new Guidelines clarify that the above condition applies only to institutions / organizations that are registered with the Companies Commission of Malaysia (SSM) and the Legal Affairs Division of the Prime Minister's Department (BHEUU). For institutions / organizations that are registered with the Malaysian Registration Department, the BOT / BOD / CM should be registered members with voting powers.

#### ii. Documentation required for the application

As highlighted in an earlier tax alert (see *Tax Alert No. 18/2019*), the checklists of documents required for the application are outlined in the appendices to the Guidelines. The new Guidelines stipulate that the relevant checklist must be completed and submitted together with the supporting documents. Otherwise, the application will not be processed.

#### iii. Requirement for list of donors to be provided to the IRB

The donation threshold above which a donor needs to be included in the list of donors provided to the IRB has been increased from RM10,000 to RM20,000, in line with the Budget 2020 proposal (see *Special Tax Alert: Highlights of Budget 2020*).

#### iv. Increase in deduction limit for donations

Pursuant to the Finance Act 2019, Section 44(6) of the ITA was amended to increase the cap on tax deduction for taxpayers other than companies from 7% to 10% of the aggregate income.

The new Guidelines have been amended to take into account the above change.

## Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2020 [P.U.(A) 54] was gazetted on 12 February 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 Malaysia Rail Link Sdn Bhd (i.e. *Sukuk Murabahah*) pursuant to the *Sukuk Murabahah* Programme, in nominal values of up to RM9.75 billion, provided that the combined aggregate of the outstanding nominal value of the *Sukuk Murabahah* and the outstanding principal amount under the Syndicated Islamic Short-Term Revolving Credit-i Facility (i.e. STRC-i Facility, see (b) below) shall not exceed RM9.5 billion;
- (b) STRC-i Facility obtained or to be obtained by Malaysia Rail Link Sdn Bhd in the aggregate outstanding principal amount of up to RM3 billion (or such other increased maximum aggregate principal limit of up to RM3.6 billion, as may be approved by the financiers of the STRC-i Facility), subject to the combined aggregate referred to in (a) above; and
- (c) Guarantee provided or to be provided by the Government of Malaysia in relation to the *Sukuk Murabahah* and the STRC-i Facility

The Order comes into operation on 13 February 2020.

# Overseas developments

## India releases the 2020-21 Union Budget

The Finance Minister of India presented the Union Budget for the tax year 2020-21 (the Budget 2020) on 1 February 2020. The Budget 2020 includes proposals to abolish the Indian dividend distribution tax (DDT) and replace it with a conventional shareholder withholding tax, to introduce lower withholding tax rates for non-residents on certain debt instruments, to defer the application of the significant economic presence (SEP) rules and to introduce an attractive dispute resolution process for the settlement of existing tax litigation.

This Alert summarizes the key proposals.

### Detailed discussion

#### Corporate tax rates

- ▶ It has been proposed that the tax rates for Indian companies remain unchanged given the recent significant rate reduction to 15% for new manufacturing companies and 22% for all other companies, subject to certain conditions. Companies not qualifying for the lower rates will continue to be taxed at either 25% or 30%, depending on revenue thresholds.

#### Key international tax proposals

- ▶ DDT, currently applicable at a rate of 20.56% on dividends distributed by Indian companies, is proposed to be abolished. Non-resident shareholders will now be subject to tax at 20% on dividend income under domestic tax law. This rate may be reduced by a tax treaty. Interest expenditure is proposed to be tax-deductible against dividend income, limited to 20% of the dividend income. Rules to mitigate a multiplying

withholding tax impact by allowing the set-off of dividends distributed within multi-tiered structures are proposed, subject to conditions.

- ▶ Provisions originally introduced in 2018 to tax foreign companies with a SEP are proposed to be deferred to 1 April 2021, given the ongoing BEPS 2.0 deliberations by the OECD.
- ▶ A lower withholding tax rate of 4% is proposed for interest payable to non-residents on foreign currency denominated long-term bonds or rupee-denominated bonds issued between 1 April 2020 and 1 July 2023. The bonds need to be listed on recognized stock exchanges located in an International Financial Services Centre.
- ▶ The existing lower withholding tax rate of 5% on interest payments made to non-residents by an Indian company on foreign currency loans, long-term bonds (including long-term infrastructure bonds) and rupee-denominated bonds is proposed to be extended to 30 June 2023.
- ▶ The existing lower withholding tax rate of 5% on interest payments made to Foreign Portfolio Investors (FPI) on rupee-denominated bonds and government securities is proposed to be extended to 30 June 2023. This lower withholding tax rate is also proposed to be extended to interest payable between 1 April 2020 and 30 June 2023 on municipal debt securities.
- ▶ The domestic taxable presence rules are proposed to be expanded to tax income earned by non-residents from (i) advertisements; (ii) the sale of data collected from a person residing in India or using an Indian internet protocol address; and (iii) the sale of goods or services using data collected from a person residing in India or using an Indian internet protocol address. Non-residents entitled to tax treaty benefits may not be significantly impacted by the proposal.
- ▶ The definition of 'royalties' under the domestic tax law is proposed to be expanded to include income from the sale, distribution or exhibition of cinematographic films.
- ▶ Non-residents earning only specified interest income, dividend, royalty or fees for technical services from India are now exempt from filing

income tax returns in India, subject to conditions (previously this filing exemption was only applicable to non-residents earning specified interest income or dividend income).

- ▶ The exemption from indirect transfer tax rules is now proposed to be offered to Category-I FPIs registered under the Securities and Exchange Board of India (SEBI) (FPI) Regulations, 2019 and Category I and II FPIs registered under the SEBI (FPI) Regulations, 2014.
- ▶ Conditions relating to the safe harbor provisions (for exemptions from creating a domestic permanent establishment) applicable to eligible investment funds carrying on fund management activities through eligible fund managers in India are proposed to be relaxed.

### **Key corporate tax proposals**

- ▶ The Budget 2020 proposes that eligible start-up companies be provided a 100% tax exemption on profits earned from eligible businesses for any three consecutive years out of 10 years from incorporation (previously seven years), if the turnover from the eligible business in the year of deduction does not exceed US\$14.3m (previously US\$3.57m).
- ▶ The deadline to receive approval to claim a 100% tax holiday on profits earned by real estate companies from developing and building approved housing projects is proposed to be extended from 31 March 2020 to 31 March 2021.
- ▶ A tax dispute resolution process is proposed for the payment of disputed taxes, with a complete waiver of interest and penalties if (i) the payment of disputed taxes is made by 31 March 2020; or (ii) the payment of disputed taxes with certain additional amounts is made between 31 March 2020 and 30 June 2020. The process would cover cases where an appeal is pending at any appellate level.
- ▶ The threshold for companies to obtain a tax audit report from an accountant (in addition to the regular statutory audit) is proposed to be increased from US\$0.14m to US\$0.7m of total

sales, turnover or gross receipts, subject to certain conditions.

- ▶ A 1% withholding tax is proposed to be introduced on payments made by an e-commerce operator to e-commerce participants for the sale of goods or provision of services facilitated through its digital or electronic facility or platform, subject to exemptions for individual e-commerce participants on fulfillment of certain conditions.
- ▶ The withholding tax rate on fees paid for technical services (other than professional services) to Indian residents is proposed to be reduced from 10% to 2% (aligned with the withholding tax rate currently applicable to works contracts).
- ▶ The due date for filing a tax return by taxpayers subject to a tax audit (other than taxpayers liable to transfer pricing compliance requirements) is proposed to be extended to 31 October (previously 30 September) following the relevant tax year.
- ▶ The due date for lodging a tax audit report, maintaining transfer pricing documentation and lodging a transfer pricing certificate is proposed to be advanced by one month (e.g., 31 October following the relevant tax year for taxpayers subject to transfer pricing regulations).
- ▶ The Government has proposed to develop an “e-appeal” process for the resolution of tax appeals at the first appellate court stage to impart greater efficiency, transparency and accountability in the appellate process, and an “e-penalty” process to reduce human interface in tax penalty proceedings.

### **Key transfer pricing proposals**

- ▶ The scopes of the advance pricing agreement and safe harbor programs are proposed to be expanded to cover the determination of income attributable to a business connection or a permanent establishment of a non-resident in India.

## Australia's Significant Global Entity definition expanded, impacting tax integrity laws (DPT and MAAL), reporting requirements (CbCR and general-purpose financial statements) and related penalty provisions

On 12 February 2020, the Australian Government introduced into Parliament a Bill to broaden the significant global entity (SGE) definition after the May 2018 budget announcement. Treasury Laws Amendment (2020 Measures No. 1) Bill 2020 (Treasury link [here](#)) follows an earlier Bill which lapsed with the calling of the 2019 Federal Election and the updated November 2019 exposure draft (ED) law.

Expansion of the SGE definition will impact:

- ▶ The multinational anti-avoidance law (MAAL), the diverted profits tax (DPT) integrity laws and country-by-country reporting (CbCR) as well as the general-purpose financial statements (GPFS) reporting requirements, from years starting on or after 1 July 2019. Compared to previous proposals, this one-year deferral (from the previous proposed commencement date of 1 July 2018) is a positive development and follows the EY submission which sought such an extension due to the complexity of working through the intricate details of the changed definition.
- ▶ Administrative tax penalties that will increase from 1 July 2020

Importantly, the Bill introduces slightly different rules for CbCR and GPFS with a new definition of a "country-by-country reporting entity"; the SGE definition continues to apply for other purposes. As a result, the proposals require review and assessment by entities that may not currently meet the SGE definition due to various exclusions from accounting consolidation, including notably those groups headed by individuals, partnerships, trusts, private companies and investment entities.

An entity will be an SGE generally if it is either:

- ▶ A global parent entity (an entity that is not controlled by another entity) with an annual global income of AU\$1 billion or more (including trusts and partnerships); or
- ▶ A member of a group of entities that are consolidated for accounting purposes and the global parent entity of that group has an annual global income of AU\$1 billion or more

The Bill expands the SGE definition to groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company (notional listed company group). The criteria will apply despite exceptions to the rules setting out when a group of entities must consolidate for accounting purposes, including materiality rules, according to the applicable accounting rules. If there are no or inadequate consolidated global financial statements for the notional listed company group, the annual global income is the amount determined on the assumption that such statements had been prepared.

To better align the CbCR reporting rules with international standards, the Bill also adjusts the CbCR obligations to apply only to a "country-by-country reporting entity" (CbCRE). Most significant global entity groups that are notional listed company groups will also be CbCREs. However, some exceptions apply. The requirement for certain corporate tax entities to provide GPFSs to the Commissioner will also now apply to CbCREs rather than all SGEs.

The potential impact of these changes will require review and assessment of each case, in conjunction with accounting professionals, and various other technical changes will need to be considered.

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## Important dates

29 February 2020	6 <sup>th</sup> month revision of tax estimates for companies with August year-end
29 February 2020	9 <sup>th</sup> month revision of tax estimates for companies with May year-end
29 February 2020	Statutory deadline for filing of 2019 tax returns for companies with July year-end
15 March 2020	Due date for monthly instalments
31 March 2020	6 <sup>th</sup> month revision of tax estimates for companies with September year-end
31 March 2020	9 <sup>th</sup> month revision of tax estimates for companies with June year-end
31 March 2020	Statutory deadline for filing of 2019 tax returns for companies with August year-end

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