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Malaysian developments

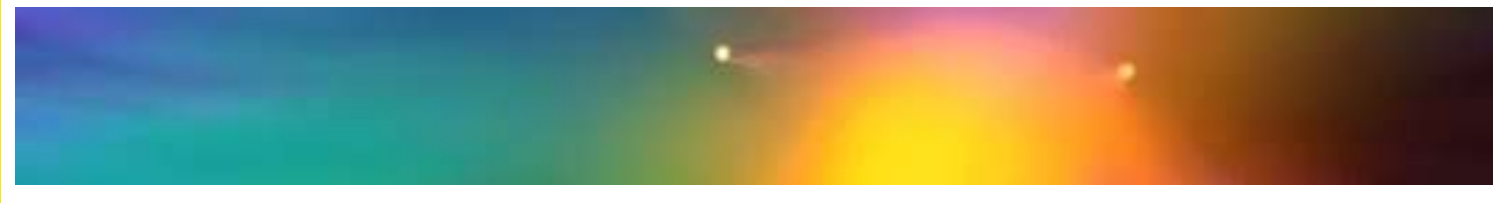
Remission of tax and stamp duty

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Public Sector Home Financing Board) Order 2023

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Public Sector Home Financing Board) Order 2023 [P.U.(A) 276] was gazetted on 18 September 2023. The Order provides that any tax payable under the Income Tax Act 1967 and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

- a) Business Financing-i Facility (BF-i Facility) obtained by the Public Sector Home Financing Board from Bank Islam Malaysia Berhad with the aggregate principal amount not exceeding RM1 billion (RM1,000,000,000.00); and
- b) Guarantee provided by the Government of Malaysia in relation to the BF-i Facility

The Order came into operation on 19 September 2023.



Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Digital Nasional Berhad) Order 2023

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Digital Nasional Berhad) Order 2023 [P.U.(A) 277] was gazetted on 19 September 2023. The Order provides that any tax payable under the Income Tax Act 1967 and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

- a) Short Term Revolving Credit-i Facility (GGRC-i Facility) obtained by Digital Nasional Berhad from Maybank Islamic Berhad with the aggregate principal amount not exceeding RM2 billion (RM2,000,000,000.00); and
- b) Guarantee provided by the Government of Malaysia in relation to the GGRC-i Facility

The Order came into operation on 20 September 2023.

Overseas developments

Hong Kong issues consultation paper on new patent-box tax incentive; accepting comments until 30 September

Hong Kong issued a consultation paper on 1 September 2023 regarding the introduction of a new patent box tax incentive, proposing that eligible intellectual property (IP) income derived from eligible patents or patent-like IP assets be taxed in Hong Kong at a concessionary tax rate.

Subject to the views collected in a one-month consultation period ending on 30 September 2023, the proposed tax incentive will be codified by the first half of 2024.

Detailed discussion

Eligible IP assets under the proposed patent box tax incentive regime are patents, copyrighted software and plant-variety rights. These eligible IP assets are required to be both legally protected and subject to approval and registration processes, where such processes are relevant. In particular, patents and plant-variety rights will need to be locally registered after a 24-month transitional period.

Under the proposals, Hong Kong-sourced eligible IP income includes:

- ▶ Income derived from the exhibition or use of an eligible IP asset, which generally covers most royalties and licensing income
- ▶ Disposal gain of an eligible IP asset
- ▶ Sales of products or services that include an amount attributable to an eligible IP asset

While most of the existing Hong Kong preferential tax regimes offer a concessionary tax rate at 8.25%, the government is aware of the lower rates offered by other patent box regimes and welcomes public comments. The extent of the eligible IP income that will be taxed at the concessionary rate will be determined based on the "nexus approach" under the BEPS Action 5 and a jurisdictional approach will be adopted. The nexus ratio will be calculated by dividing the qualifying research and development (R&D) expenditures (QE) by the total expenditure incurred to develop the eligible IP asset. The QE refers to expenditures incurred for (i) R&D activities that the taxpayer undertakes within or outside of Hong Kong or outsources to unrelated parties, and (ii) R&D activities undertaken in Hong Kong that are

outsourced to domestic related parties. Acquisition costs of an IP asset are specifically excluded from the QE. However, the QE in the nexus ratio can be increased by 30% with a cap at 100% of the total related R&D expenditures.

There will be transitional measures to ease the burden on tracking pre-regime incurred expenses. Loss set-off across different tax regimes is permitted with tax-rate difference adjustment.

Netherlands budget proposals: Key legislative developments for 2024 and 2025, including Pillar Two minimum tax

On 19 September 2023, the Dutch Government published its budget proposals, which are subject to review and discussions by Parliament and may be subject to change.

Netherlands budget proposals

Alignment of legal entity and partnership classification rules with international tax standards – [Budget Day Proposal]

- ▶ Effective date: 1 January 2025.
- ▶ Key takeaway: Taxpayers should carefully review their legal group structures and consider the potential consequences of the new Dutch classification of (foreign) legal entities/partnerships.

The budget proposes to revise Dutch classification rules for legal entities and partnerships to align better with international tax standards, where partnerships are generally tax transparent. It is expected that this will result in a reduction of potential hybrid outcomes due to mismatches in entity classifications between the Netherlands and foreign jurisdictions.

In general, the relevant Dutch tax laws are proposed to be amended to fully codify the new classification methods of foreign legal entities/partnerships. Basis would be determined using (a) a comparison method (main rule) which applies if there is sufficient comparison with Dutch legal entities/partnerships; and (b) two alternative methods ((i) fixed classification and (ii) symmetrical classification) if there is insufficient comparison.

Furthermore, and accompanying the above, the Dutch "consent requirement" (in Dutch: *toestemmingsvereiste*), which was an important condition historically required to consider Dutch (and comparable foreign) partnerships as transparent from a Dutch tax perspective (i.e., transferability of legal partnership interest was only allowed with prior written consent of all (general and limited partners), will be abolished. As a result, among other things, non-transparent Dutch (incorporated or tax-resident) partnerships basically cease to exist. Only in specific situations (e.g., under fixed method – explained above) the Netherlands could consider foreign transparent legal entities/partnerships as non-transparent with regard to Dutch income.

The proposed amendments are relevant for, among other things, the application of the Anti-Tax Avoidance Directive (ATAD2), or the (conditional) withholding tax (WHT) rules that could apply on certain payments to hybrid entities – the latter being applicable to dividends as well for 2024 (The 2024 conditional WHT on dividends is already enacted legislation).

In particular, taxpayers with foreign partnerships in the ownership structure should consider the impact of the (conditional) WHT on dividend payments in the "gap" year between the introduction of the (conditional) WHT (as of 1 January 2024) and the alignment of the classification rules (as of 1 January 2025). The rules also include certain grandfathering methods to deal with the Dutch "deemed" (taxable) liquidation of non-transparent partnerships prior to 1

January 2025 (when the new doctrine becomes effective).

Revision of the Dutch Fiscal Investment Funds regime - [Budget Day Proposal]

- ▶ Effective date: 1 January 2025
- ▶ Key takeaway: Taxpayers should monitor details of upcoming legislative proposal.

The special regime that exists for qualifying Fiscal Investment Funds (FIF) that are – as a result of the regime – taxed against a 0% corporate income tax (CIT) rate, will be revised. Based on the announced revision, Dutch FIFs may no longer invest directly in real estate as of 1 January 2025 to keep its FIF status (and hence benefit from the 0% CIT rate). This announced measure will apply only to Dutch real estate.

Because of the expected restructuring of current real estate-FIFs, the Dutch government announced that existing FIFs can apply a one-time real estate transfer tax exemption in 2024 to transfer real estate to a non-FIF.

Changes to the Dutch Exempt Investment Institution and Fund for Joint Account regime - [Budget Day Proposal]

- ▶ Effective date: 1 January 2025
- ▶ Key takeaway: Taxpayers should monitor details of the upcoming legislative proposal.

The Dutch regime for Exempt Investment Institutions (EII) will be reviewed. Under the special regime, EIIs are exempt from Dutch CIT if the requirements of the regime are met.

The revision of the regime proposes that the EII regime will only be available to entities that are an investment institution or Undertakings for Collective Investment in Transferable Securities (UCITS) as referred to in the Financial Supervision Act. The aim

is to only allow the regime to apply to institutional investors.

For the FJA regime, a similar revision is proposed. Currently, an FJA can qualify as a taxable FJA (open FJA) or as a tax transparent FJA.

The regime will be revised such that an FJA will only be considered a taxable FJA for Dutch tax purposes if the FJA is an investment institution or a UCITS, as referred to in the Financial Supervision Act, and the certificates of participation are tradable. Like the EII regime revision, this regime will only apply to institutional investors.

Counter dividend-stripping transactions – [Budget Day Proposal]

- ▶ Effective date: 1 January 2024
- ▶ Key takeaway: The burden of proof is shifted for the dividend WHT at the source and to credit the dividend WHT levied.

To further tackle anti-dividend-stripping transactions, a proposed legislative change would shift the burden of proof to the taxpayer/withholding agent, to demonstrate that the recipient is entitled to the dividend and considered the beneficial owner. Besides this, a legal registration date will be introduced to document who the beneficial owner of the dividend is at a certain date, to determine who the beneficial owner is and what the corresponding (dividend withholding) tax considerations are. As a final item, an amendment is proposed to tackle dividend stripping within the group.

The Dutch government will review whether additional measures to combat dividend stripping are required.

Other key legislation/expected legislative proposals

WHT on dividend payments to low-taxed jurisdictions, hybrid entities and in abusive structures – [Already enacted]

- ▶ Effective date: 1 January 2024 (enacted in prior years)
- ▶ Key takeaway: Taxpayers should assess the impact on dividend payments by Dutch withholding agents in the organizational structure and assess whether there is a tax haven or hybrid entity directly or indirectly in the chain of ownership.

A bill enacted on 11 November 2021 introduced the WHT on dividend payments to low-taxed jurisdictions, hybrid entities and in abusive structures. This is an extension to the WHT on interest and royalty payments to low-taxed jurisdictions, hybrid entities and in abusive structures, that applies as of 1 January 2021. The WHT rate is equal to the headline CIT rate (currently 25.8%).

This WHT will exist next to the "normal" dividend WHT of 15%. However, an anti-cumulation rule will apply, limiting the total dividend WHT on relevant payments to low-taxed jurisdictions, hybrid entities or in abuse structures to 25.8% (with the expectation fewer hybrid entities will exist under the new classification rules (as of 1 January 2025)). The implications of this legislation must be carefully assessed on a case-by-case basis and could impact certain taxpayers that today are not subject to (the withholding of) dividend WHT.

Cap on the 30% facility for expatriates – [Already enacted]

- ▶ Effective date: 1 January 2024
- ▶ Key takeaway: Taxpayers should review the 30% facility applicability.

Special tax benefits exist whereby qualifying expatriates can receive a reimbursement of costs of 30% of their salary (irrespective of actual costs incurred). Based on the amendment as of 1 January 2024, the salary basis to which the 30% is applied is capped and set at €223,000 for 2023 (adjusted annually).

Minimum Tax Act 2024 (Pillar 2) – [Legislative Proposal]

- ▶ Effective date: 31 December 2023
- ▶ Key takeaway: Minimum taxation of 15% entering into force as of 31 December 2023.

Legislative proposal for the Minimum Tax Act 2024, based on the EU Directive dated 14 December 2022 following the OECD Pillar Two initiative to ensure a global minimum tax of 15% for multinational enterprises (MNEs) is currently undergoing parliamentary proceedings. The rules will apply to multinational groups and domestic groups with an annual turnover of at least €750 million.

The Minimum Tax Act 2024 will introduce a Domestic Top-Up Tax, an Income Inclusion Rule for reporting years starting on or after 31 December 2023 and an Undertaxed Payments Rule for reporting years starting 31 December 2024.

The EU Directive must be transposed into national legislation by 31 December 2023. The legislation is currently undergoing Parliamentary review and an updated proposal is expected by mid/end October 2023. Timely enactment is still expected.

Note that this is structured as a separate law and therefore it is not part of the corporate income tax act and current budget day proposals.

EU Public Country-by-Country Reporting (CbCR) – [Pending Senate approval]

- ▶ Key takeaway: Public disclosure of income taxes paid will be mandatory for MNEs with consolidated revenue exceeding €750M in the last consecutive two years.

Public disclosure of income taxes paid and other tax-related information such as a breakdown of profits, revenues and employees per country becomes required for MNEs with a consolidated revenue exceeding €750M in the last consecutive two years. This applies for both EU-based multinational enterprises (MNEs) and non-EU based MNEs doing business in the EU through a branch or subsidiary. The rules will apply for financial years starting on or after 22 June 2024.

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Important dates

30 September 2023	6 th month revision of tax estimates for companies with March year-end
30 September 2023	9 th month revision of tax estimates for companies with December year-end
30 September 2023	Statutory deadline for filing of 2023 tax returns for companies with February year-end. A blanket extension of time has been provided until 31 October 2023.
30 September 2023	Extended 2023 tax return filing deadline for companies with January year-end.
15 October 2023	Due date for monthly instalments
31 October 2023	6 th month revision of tax estimates for companies with April year-end
31 October 2023	9 th month revision of tax estimates for companies with January year-end
31 October 2023	Statutory deadline for filing of 2023 tax returns for companies with March year-end. A blanket extension of time has been provided until 30 November 2023.
31 October 2023	Extended 2023 tax return filing deadline for companies with February year-end.

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