

# Rödl & Partner

**MALAYSIA NEWSFLASH**

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Latest News on Law, Tax and Business in Malaysia

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## Tax Updates

### INTRODUCTION OF NEW PRINCIPAL HUB (“PH”) GUIDELINES

The Malaysian Investment Development Authority (“MIDA”) issued new Guidelines for the Principal Hub Incentive, i.e. PH 2.0.

The new guidelines apply for applications received by MIDA from 1 January 2019, as well as pre-January 2019 applications that have not yet been approved. New applications must be submitted to MIDA by 31 December 2020.

The key changes to the PH incentive are as follows:

- The definition of network companies is expanded to include non-related companies having a contractual business agreement with the applicant or with the applicant’s ultimate holding company;
- Network companies are no longer required to be situated outside Malaysia. However, the minimum number of companies has been increased to 15;
- The annual sales turnover has been increased to RM 500 million;
- The annual operating expenditure excludes the cost of goods sold as well as expenses not directly related to the core income generating activities;
- Applicants must undertake structured internship and training programs approved by the Talent Corporation Malaysia.

PH 2.0 offers a concessionary tax rate of 10 per cent on statutory income from qualifying PH activities for five years of assessment to companies that have been granted the PH status.

### REVISED PENALTY SCHEME

The Inland Revenue Board of Malaysia (“IRB”) issued Operational Guidelines GPHDN 5/2019 – Imposition of Penalties under Subsection 112(3) of the Malaysian Income Tax Act, 1967, Subsection 51(3) of the Petroleum (Income Tax) Act 1967, and Subsection 29(3) of the Real Property Gains Tax Act 1976, which came into effect on 1 October 2019.

These new Guidelines revoke the Operational Guidelines GPHDN 1/2015 dated 5 March 2015, which only covered penalties under subsection 112(3) of the Income Tax Act, 1967.

The penalty rates provided under the new Guidelines are set out in the table below.

Period from due date	Penalty rates		
	Income Tax Act 1967	Petroleum Income Tax Act 1967	Real Property Gains Tax Act 1967
Up to 12 months	15 %	15 %	15 %
> 12 months and up to 24 months	30 %	30 %	20 %
> 24 months	45 %	45 %	25 %

For any failure to submit tax returns, a notice of assessment can be issued by the IRB with the same penalty rates as those for late submissions exceeding a period of 24 months as stated above.

### AMENDMENT OF TAX BILLS

#### FINANCE BILL 2019

- Acquisition price for the disposal of real properties acquired prior to year 2013:

It was originally proposed in the Budget 2020 speech, that the market value as of 1 January 2013 shall be considered as the acquisition price in computing the gains arising from the disposal of real property acquired by Malaysian citizens and permanent residents prior to the year 2013.

With the passing of the Finance Bill 2019, this proposal was amended to clarify that it will not apply to: (1) the disposal of shares in a real property company; and (2) the disposal of shares acquired by an individual in exchange of real property transferred to a company controlled by that individual, his wife, jointly with his wife or a connected person.

Therefore, the general treatment for determining the acquisition price for the disposal of the above mentioned shares will remain based on the actual historical cost.

**- Power to approve a tax agent's license**

The proposal to review the power to approve a tax agent's license under Section 153 of the Income Tax Act has been cancelled. The power will remain with the Minister of Finance.

[Income Tax \(Amendment\) Bill 2019 & Petroleum \(Income Tax\) \(Amendment\) Bill 2019](#)

**- Reduction in quorum of Special Commissioners of Income Tax ("SCIT") hearing**

The Chairman of SCIT may decide for tax appeals to be heard by one SCIT sitting alone, as opposed to the previous requirement of three SCIT.

However, hearings which are pending by the SCIT prior to the enactment of this change shall not be effected by the changes and shall continue to be heard by a quorum of three SCIT.

**- Procedure for appeals to the High Court**

The Income Tax (Amendment) Bill 2019 and the Petroleum (Income Tax) (Amendment) Bill 2019 set out the new procedures for filing an appeal to the High Court. Previously, a dissatisfied party could appeal to the High Court by requesting the SCIT to state the case to the High Court within 21 days after service of the Deciding Order.

[Labuan Business Activity Tax \(Amendment\) Bill 2019](#)

**- Compliance with substantial activities requirement effective year of assessment 2020**

The Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 specify the following substantial activities requirements in order to enjoy the preferential tax rate of 3 per cent:

- A minimum number of full time employees in Labuan; and
- A minimum number of annual operating expenditure in Labuan.

Under this Bill, a Labuan entity that does not meet the above requirements will be taxed at the prevailing corporate income tax rate (currently 24 per cent) on its chargeable profits, i.e. on net profits under the Labuan Business Activity and Tax Act 1990, and not under the Income Tax Act 1967.

**- Treatment of royalty and other income from intellectual property rights effective 1 January 2019**

Currently, a Labuan entity carrying out a Labuan non-trading activity is not subject to tax. Under this Bill, royalty income or other income from the commercial exploitation of an intellectual property right are excluded from the profits of a Labuan entity carrying on Labuan non-trading activities; and such royalty income and other income from intellectual property right will be subject to tax under the Income Tax Act 1967.

**- Determination of residence status effective year of assessment 2020**

This Bill introduces rules for determining the residence status. With reference to double taxation arrangements under Section 132 of the Income Tax Act, the residence status of a Labuan entity for a year of assessment will be determined as follows:

- *Labuan entity carrying on business:* Management and control of its business at any time during the basis year for a year of assessment is exercised in Malaysia;
- *Other Labuan entities:* Management and control of its affairs, at any time during the basis year for a year of assessment are exercised in Malaysia by its directors, partners, trustees or other controlling authorities.

**- Administration and enforcement effective year of assessment 2020**

This Bill also introduces new provisions and modifications to facilitate the administration and enforcement of the taxation of Labuan entities which are similar to those under the Income Tax Act 1967.

**OPERATIONAL GUIDELINES FOR APPLICATION FOR TAX CLEARANCE LETTER**

The IRB has issued new Operational Guidelines GPHDN 2/2019 – Application for Tax Clearance Letter for Company, Limited Liability Partnership ("LLP"), and Labuan Entity on 12 November 2019.

The new operational guidelines are essentially similar to the previous operational guidelines – GPHDN 3/2016 – but updated to incorporate information or documentation required under the Companies Act 2016.

- An updated checklist of forms and documents required to be completed and submitted to the IRB;
- Sample tax clearance forms;
- A list of documents that need to be submitted in order to close an income tax file after receiving the tax clearance letter.

In addition to the submission of a complete documentation, full payment of taxes and submission of tax returns to the IRB, the tax clearance letter will only be issued where no legal action – either criminal and/or civil – has been instituted against the taxpayer.

## WITHDRAWAL OF WITHHOLDING TAX EXEMPTION FOR MSC COMPANIES

Income Tax (Exemption) (No. 13) 2005 (Revocation) Order 2019 was gazetted and came into effect on 1 January 2020.

This Order revokes the tax exemption granted to a non-resident company under the Income Tax (Exemption) (No. 13) Order 2005 on the following types of income received from an approved MSC Malaysia status company:

- Fee for technical advice or technical services;
- Licensing fee in relation to technology development; and
- Interest on loans for technology development.

As such, with effect as of 1 January 2020, payments made to non-resident companies by approved MSC Malaysia companies will be subject to withholding tax.

## STAMP DUTY REMISSION FOR TRANSFER OF PROPERTY BY WAY OF LOVE AND AFFECTION

Following the Budget 2020 proposal, the Stamp Duty (Remission) (No. 2) Order 2019 has been issued and took effect on 1 January 2020. This remission order revokes the Stamp Duty (Remission) (No. 7) Order 2002.

The salient points of this Remission Order are as follows:

- Remission of 50 per cent stamp duty chargeable on instruments of transfer of immovable property executed on or after 1 January 2020;
- Parties involved in the transfer are to be mother and/or father to child or vice versa; transfers between husband and wife have been removed;
- Recipients must be Malaysian. Non-Malaysians may no longer enjoy the remission of stamp duty.

## STAMP DUTY EXEMPTION ON RENT-TO-OWN SCHEME

Stamp Duty (Exemption) (No. 4) Order 2019 has been gazetted to provide stamp duty exemption under the Rent-to-Own scheme, and is effective for instruments of transfer executed from 1 January 2020 to 31 December 2022.

Under this Exemption Order, Sale & Purchase Agreements between developer and financial institution as well as Rent-to-Own Agreements between the financial institution and an individual are exempt from Stamp Duty, provided the following criteria are fulfilled:

- The value of the residential property may not exceed RM 500,000;
- The value of the property is based on the purchase price in the sale and purchase agreement between the developer and the financial institution;
- The individual is a Malaysian citizen and has never owned any residential property before;
- The Rent-to-Own period may not exceed five years.

## REVISIONS TO PUBLIC RULINGS AND NEW PUBLIC RULINGS

### **PR No. 4/2019 – Tax Treatment of Wholly & Partly Irrecoverable Debts and Debt Recoveries**

This PR replaces PR No. 1/2002, and updates the interpretation of the wording to be in line with the definitions outlined in the Income Tax Act:

- **Bad Debt** is a trade debt included in the gross business income that is reasonably estimated to be irrecoverable after reasonable steps have been taken to recover it;
- **Person** includes LLP;
- **Relative** includes ancestor and lineal descendant;
- **Associate** is updated to have the same meaning as in Section 139(7) of the Income Tax Act;
- **Director and related company** are updated to have the same meaning as in Section 2 of the Income Tax Act. Related company is controlled by not more than five persons.

The tax treatment remains the same whereby the bad debt is allowed for a tax deduction if the above definition is met; doubtful debt is also allowed for a deduction under Subsection 34(2) of the Income Tax Act if such trade debt is reasonably estimated to be either wholly or partly irrecoverable.

## PR No. 5/2019 – Perquisites from Employment

PR No. 5/2019 explains the tax treatment on perquisites received by an employee from an employment. This updated PR No. 5/2019 replaces PR No. 2/2013 and brings the public ruling up to date with the current legislation.

### – Payment in lieu of notice or buy out payment

Payment in lieu of notice or buy-out payment is regarded as a perquisite and to be treated as gross income from employment under Section 13(1)(a) of the Income Tax Act.

Payment made in lieu of notice or buy-out payment is made by the new employer of a new employee directly to the previous employer to reimburse the amount to be paid to his/her previous employer as immediate compensation at an amount equal to the one the employee would have earned as salary or wages by working through the whole notice period.

### – Tax exemption on perquisites under Paragraph 25C, Schedule 6 of the Income Tax Act

The claim for tax exemption on perquisites received by an employee in respect of excellent service, long service, past achievements, innovation or productivity awards has been amended from RM 1,000 to RM 2,000.

### – Keeping of records

In line with the requirements of Section 82 and 82A of the Income Tax Act, where an employer or employee has failed to furnish the tax return within the stipulated deadline for a year of assessment, the employer or employee is required to keep and retain records relating to that year of assessment for seven years from the end of the year of assessment in which the tax return is furnished.

## PR No. 6/2019 – Tax Treatment on Expenditure for Repairs and Renewal of Assets

PR No. 6/2019 is a new public ruling that outlines the tax treatment of expenditure incurred on the various types of repairs undertaken in the course of a taxpayers' business.

Revenue expenditure (tax deduction allowed)	Capital expenditure (tax deduction not allowed)
Repair to restore assets to their original condition	Repair with element of improvement/alteration
Repair to allow business to continue	Initial repair to enable asset to be usable right after acquisition
Replacement of part of the asset	Replacement of entire asset
Replacement of implements, utensils or articles with an expected life span of not more than two years	

## PR No. 7/2019 – Taxation of Foreign Fund Management Company

PR No. 7/2019 replaces PR No. 6/2014, and incorporates changes to the Income Tax Act.

- Extension of tax exemption period from year of assessment 2016 to year of assessment 2020 for income earned by a foreign fund management company from the provision of fund management services based on shariah principles;
- Management fee income earned by a foreign fund management company from foreign investors will be subject to tax at the prevailing corporate income tax rate of 24 per cent instead of 10 per cent from year of assessment 2021.

A summary of the tax rates is set out in the table below:

Shareholding of a Foreign Fund Management Company	Types of Investor		Tax Rate (%)
			Year of Assessment
	2020 and prior		2021 onwards
100 % foreign equity	Foreign	10	24
At least 30 % local equity	Foreign	10	24
At least 30 % local equity	Local		Prevailing domestic tax rates applicable to the Foreign Fund Management Company resident in Malaysia

## PR No. 9/2019 – Residence Status of Companies and Bodies of Persons

PR No. 9/2019 replaces PR No. 5/2011, with the key update being the introduction of the criteria for determining residence status of an LLO and business trust.

Similar to companies, the residence status of an LLP and business trust depends on whether the management and control of its business are exercised by the LLP partners and trustee manager in Malaysia.

Foreign corporations with a Malaysian branch claiming to be tax resident in Malaysia have to provide proof that the management and control of its affairs, businesses or any one of the foreign corporations businesses is exercised in Malaysia.

## PR No. 10/2019 – Withholding tax on Special Classes of Income

This public ruling updates the previous PR No. 11/2018 by incorporating the following changes of the Income Tax Act.

- Removal of the word “technical” from the definition of Special Classes of Income in line with the amendment of the Income Tax Act with effect from 28 September 2018;
- Exemption of withholding tax on services performed outside Malaysia effective from 6 September 2017;

- Where withholding tax is borne by the payer, no regrossing is required for payments made to non-residents on or after 5 December 2018.

## PR No. 11/2019 – Benefits in Kind (“BIK”)

PR No. 11/2019 has been updated to include the following benefits or gifts and monthly bills as BIK:

- Fixed line telephone, mobile phone, pager, personal digital assistant (“PDA”) registered under the employer’s name for personal use; and
- Subscription of broadband.

Benefits received by an employee in the form of monthly bills are regarded as BIK in case the employer subscribes for the utilities, the bills are under the name of the employer and the employee only enjoys the benefits when provided by the employer who subscribes for them.

Full tax exemption is provided to one unit for each asset category. The amount to be exempted includes registration cost and installation cost.

PR No. 11/2019 has also been amended with regard to the qualifying bodies for an exemption on traditional medicine.

## PR No. 12/2019 – Tax Treatment of Foreign Exchange Gains and Losses

This public ruling clarifies the tax treatment of foreign exchange gains and losses and should be read together with the Guidelines on Tax Treatment Related to the Implementation of MFRS 121 (or other Similar Standards) (Revised) dated 16 May 2019.

The tax treatment of foreign exchange gains and losses is set out in the table below:

Foreign exchange	Realised	Unrealised
Trade Gains	Taxable	Non-taxable
Trade Losses	Deductible	Non-deductible
Capital Gains/ Losses	Non-taxable and non-deductible	

The tax treatment of foreign exchange gains and losses depends on the nature of the underlying transactions:

Revenue in nature (taxable / deductible)	Capital in nature (not taxable / not deductible)
Import/export of trading stock	Purchase of capital assets (qualify for capital allowances)
Circulating capital/ loan for daily business operations	Permanent working capital/loan to remedy under-capitalization
Devaluation of currency on asset that become stock in trade	Investments and speculations outside normal income earning activities

## SALES TAX DEDUCTIONS FACILITY FOR REGISTERED MANUFACTURERS

The Royal Malaysia Customs Department ("RMCD") has published the Guide on Sales Tax Deduction Facility to provide a guidance for registered manufacturers. This Sales Tax deduction facility has been effective since 1 January 2019.

This facility enables registered manufacturers to enjoy a reduced Sales Tax on purchase of taxable goods from suppliers who are not registered manufacturers.

The sales tax deduction amount shall be deducted from the total value of tax payable in the SST-02 tax return based on the following rates:

Sales Tax Rate of the Taxable Goods Purchased	Sales Tax Deduction Rate*
5 %	2 %
10 %	4 %

\*The sales tax deduction is based on the total value of the taxable goods purchased.

Key conditions associated with the Sales Tax deduction are as follows:-

- The registered manufacturer must not be connected to the supplier;
- The Sales Tax on taxable goods must have been paid;
- The invoice issued by the supplier should provide all required particulars;
- The taxable goods purchased shall be raw materials, components or packing and packaging materials used by the registered manufacturer in the manufacturing of taxable goods.

There are two levels of applications, i.e. registration as an approved person and registration for Sales Tax deduction for a taxable period.

## SERVICE TAX REFUND ON ACQUISITION OF CERTAIN SERVICES

RMCD has issued a guide on the procedure for the application of Service Tax Refund on the acquisition of services by foreign missions and international organization.

The taxable services that qualify for such refund are legal, accounting, repair and maintenance, cleaning, security and telecommunication. Hotel accommodation, food and beverages in restaurants, catering and event management also qualify, but with a minimum amount of RM 500 per invoice.

Service tax refund claims must be submitted to the RMCD and the Ministry of Foreign Affairs by the following due dates:

Period of when services are acquired	Due date for service tax refund claims
01/09/2018 - 31/08/2019	31/12/2019
01/09/2019 onward	Quarterly basis

## DOUBLE TAXATION AGREEMENT ("DTA") BETWEEN MALAYSIA AND CAMBODIA

The DTA between Malaysia and Cambodia was signed on 3 September 2019, and on 30 December 2019, the Double Taxation Relief (The Government of the Kingdom of Cambodia) Order 2019 was gazetted, which will provide relief from double taxation in relation to Malaysian and Cambodian taxes when the agreement comes into force.

The key points from the agreement are as follows:

### Permanent Establishment

- A building site, a construction, installation, or assembly project or supervisory activities which last more than nine months;
- Furnishing of services for a period or periods aggregating more than 183 days within any 12 month period;
- Activities (including operation of substantial equipment) for the exploitation of natural resources for a period or periods aggregating more than 183 days within any 12 month period.
- Operation of substantial equipment (excluding those used for the exploitation of natural resources) for a period or periods aggregating more than 183 days within any 12 month period.



## Withholding tax rates

- 10 per cent withholding tax will apply on interest, royalty and technical fee payments.

## Entry into force

### - Malaysia

Tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which this Agreement enters into force.

### - Cambodia

Withholding taxes – taxable amount as derived on or after the first day of January following the calendar year in which the Agreement enters into force and subsequent calendar years; and

Other taxes – income arising on or after the first day of January following the calendar year in which the Agreement enters into force and in subsequent calendar years.

We hope that this comprehensive review has provided you with a more thorough insight on what is to come, and its implications on you and your business in Malaysia.

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