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NEWSFLASH MALAYSIA

GROWING STRATEGICALLY

Issue:
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→ Tax incentives for relocation of services to Malaysia

The Malaysian Investment Development Authority ("MIDA") has published a Special Tax Incentive under the Economic Recovery Plan (PENJANA) for manufacturing companies that wish to relocate their manufacturing businesses to Malaysia. The Special Tax Incentive scope has been expanded to selected service activities, including companies adapting Industrial Revolution 4.0 and digitalization technology having a significant multiplier effect. The Special Tax Incentive applies to new companies and existing companies, effective from 1 July 2020 until 31 December 2022.

New Companies

0 percent special tax rate for a period of 10 years, for new investments in the manufacturing sector with capital investment between RM300 million to RM500 million. A new company refers to:

- a company which does not have any existing operation / entity in Malaysia (including its related company); or

- a company which does not have any existing service operation in Malaysia but has an existing operation / entity for non-service operation (e.g., manufacturing);

  and

- a company relocating its facility for qualifying service activities from any country to Malaysia; or

- a company which is relocating new service activities which are different from the existing service operation in the country (diversification activity); or

- a company establishing a new operation in Malaysia.

Existing companies

100 percent Investment Tax Allowance ("ITA") for a period of 5 years, for existing companies in Malaysia relocating their overseas facilities into Malaysia with capital investment above RM300 million. The allowance is offset against 100 percent of statutory income for each year of assessment. Existing companies refer to a foreign or a locally owned company with existing service operations in Malaysia (including qualifying services activities), and which proposes to undertake qualifying service activities for a new business segment, which are separated from the operation of the existing service activities.

In addition to the Special Tax incentive, the Government also announced the Special Income Tax Rate at a flat-rate of 15 percent for a period of 5 consecutive years to non-residents individuals holding key positions (i.e. C-Suite) for strategic investments made by companies relocating their operations to Malaysia (with monthly basic salary of at least RM 25,000 and who is a tax resident for 5 consecutive years of assessment). Date of application should be by 31 December 2022.

→ Guidelines for special ITA for Electrical and Electronic sector

The special ITA of income tax exemption of 50 percent on qualifying capital expenditure, applicable for a period of 5 years, was announced under the Budget 2020, especially for companies in the Electrical and Electronic sector which have exhausted their eligibility of reinvestment allowances. Guidelines for the special ITA have been published on MIDA's website for the Electrical and Electronic sector in this regard, providing the eligibility criteria and procedures for the application of the special ITA. For details, please refer to our Quarterly ASEAN Newsflash (Issue Q2/2021).

Following the above, the Income Tax (Exemption) (No.10) Order 2021 has been gazetted and is effective from 1 January 2020. The application period for the special ITA is from 1 January 2020 to 31 December 2021.

→ Principal Hub ("PH") 3.0

Following the announcement in Budget 2021, the MIDA has released guidelines on PH 3.0. Since the introduction of the PH incentive in 2015, the PH incentive has been enhanced at several intervals to strengthen Malaysia's competitiveness as a regional hub for multinational companies ("MNC's") in the region. The recent iteration of the PH incentive, i.e., PH 3.0, introduced relaxations to certain conditions. PH 3.0 is effective for applications received by MIDA from 1 January 2021 to 31 December 2022.

The salient features of PH 3.0 are set out below:

- PH approved companies will enjoy a preferential tax rate on service income derived from qualifying activities based on the level of commitment by the company;
- Incentives relating to trading activities are removed; and will now be covered under a new Global Trading Centre ("GTC") incentive;
- Relaxation of certain conditions (e.g., reduction in number of network companies to be served, annual operating expenditure, and number of high value jobs).

→ Global Trading Centre (GTC) Incentive

To attract global multinational companies ("MNC") to set up their regional trading hubs in Malaysia, the GTC incentive was announced in Budget 2021. Following this announcement, MIDA has released its guidelines on the GTC incentive; and eligible applicants may submit their application to MIDA from 1 January 2021 to 31 December 2022.

The applicant to the GTC incentive should be a locally incorporated company that uses Malaysia as its international trading base for undertaking strategic sourcing, procurement and distribution of raw materials, components and finished products to its related and unrelated companies in Malaysia and abroad. A GTC approved company may enjoy a concessionary corporate tax rate of 10 percent for a period of 5 years (with a possibility of extension for another 5 years).

The salient features of the GTC incentive are set out below:

– Minimum paid up capital of RM1 million;

– Annual sales turnover from qualifying activities of RM300 million;

– Annual operating expenditure from qualifying activities of RM1.5 million;

– Must operate in a Licensed Manufacturing Warehouse (“LMW”), Free Zone (“FZ”) and/or Bonded Warehouse;

– Minimum 15 high value jobs with a basic monthly salary of at least RM5,000 of which at least 50 percent must be Malaysians.

→ Special Reinvestment Allowance (“RA”)

This incentives was announced for manufacturing and selected agriculture projects that incurring capital expenditure to expand, modernize, automate, or diversify their existing manufacturing business or approved agriculture projects.

The objective of this incentive is to encourage reinvestment by existing companies which have exhausted their 15 year reinvestment allowance and special allowance granted on years of assessment 2016 to 2018. A special RA of 60 percent of qualifying capital expenditure will be granted for years of assessments 2020 to 2022.

→ Stamp Duty Exemption Order – BNM´ s Fund for SMEs

The Stamp Duty (Exemption) (No. 10) Order 2021 relating to the instrument of loan or a financing agreement relating to Bank Negara Malaysia (“BNM”)’s Fund for SMEs has been gazetted and is effective from 1 January 2021.

Loan or financing facilities approved under BNM’s Fund, or SMEs that qualify for this exemption are All Economic Sectors Facility, Automation and Digitalization Facility and Agrofood Facility.

The application for stamp duty exemption, which should be accompanied by a letter of offer/approval of financing facilities issued by the relevant financial institution to the SME, applies to instruments executed based on the letter of offer/approval on or after 1 January 2021 to 31 December 2021.

→ Stamp Duty Exemption Order – Restructuring or Rescheduling

The Stamp Duty (Exemption) (No. 11) Order 2021 has been gazetted following the BNM announcement that banking institutions will offer a reduction in instalments and other packages, including to reschedule and restructure financing to suit the specific financial circumstances of borrowers. This gazettement is effective from 1 July 2021.

The terms restructuring or rescheduling comprise any modification made to the existing repayment terms and conditions of the loan or financing as a result of a concession provided by financial institution due to the inability of the borrower to comply with the existing repayment schedule due to deteriorating financial conditions.

→ Malaysia is added to the European Union's tax "grey list"

Under the Malaysia tax rules, a Malaysian tax-resident company is exempted from Malaysia income tax on foreign sourced income derived by the company, as Malaysia adopts a territorial basis of taxation whereby income tax is payable on Malaysia sourced income/income to the extent of income earning activities undertaken in Malaysia.

Exception to this rule, however, applies on income derived by a resident company in the business of air/sea transport, banking, or insurance assessable on a worldwide basis.

The EU reviewed Malaysia's foreign income tax exemption rules, and on 5 October 2021, Malaysia has been added to Annex II (the so-called "grey list") of the EU list of non-cooperative jurisdictions for tax purposes. This is the first time Malaysia has been included in the list. The first EU list was published on 5 December 2017, purported to address tax avoidance, tax fraud or evasion and money laundering issues.

The jurisdictions listed under Annex II (which includes Malaysia) have yet to comply with all international tax standards but have, however, made sufficient commitments to reform their tax policies. The Annex I of the EU list are the black listed jurisdictions which have not implemented the tax reforms they committed to, by the agreed deadline. The "black listed" countries as of 5 October 2021 include American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Currently, Malaysia - being part of the grey list - will be subject to monitoring while it works on its commitments. Once Malaysia has fulfilled all its commitments, it will be removed from Annex II. Malaysia will, however, not be subject to any defensive measures (which would otherwise apply to jurisdictions listed under Annex I) which include denials of deductions or higher withholding taxes on payments by EU Member States to blacklisted countries.

Malaysia committed to amend or abolish its foreign-sourced income exemption rule. The exemption rule has been identified as a preferential tax regime or measure by the Code of Conduct Group (Business taxation) in 2019. Before this, Malaysia has amended or abolished preferential tax regimes in its commitment to implement tax good-governance principles.

Following the above, Malaysia committed to amend or abolish this regime by making the necessary legislative changes to its foreign sourced income exemption rules by 31 December 2022. Malaysia has amended or abolished preferential tax regimes in its commitment to implement tax good-governance principles previously. To comply with its commitments to the EU Council, Malaysia will need to revise the foreign-sourced income exemption under Paragraph 28 of Schedule 6 of the Income Tax Act 1967.

Any amendment to the foreign-source income exemption would be a fundamental change to the Malaysian tax system.

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