



eNewsletter

06/2020

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SUMMARY OF CURRENT TAX UPDATES IN MALAYSIA

RSM Tax Consultants (Malaysia) Sdn Bhd

UPDATE ON PUBLIC RULING NO. 5/2019

Perquisites From Employment

The Inland Revenue Board (IRB) has issued Public Ruling no. 5/2019 – Perquisites from Employment which replaces Public Ruling no. 2/2013– Perquisites from Employment. In the updated Public Ruling, the IRB has provided further clarification on the following:

Taxability of Payment in lieu of notice or buy-out payment

The IRB explained that payment in lieu of notice or buy-out payment is made by the employer either to reimburse the new employee or to his/her previous employer directly as immediate compensation at an amount equal to what that employee would have earned as salary or wages by working through the whole notice period.

Such payment made on behalf of the employee is considered as a perquisite to the employee which must be treated as gross income from employment under paragraph 13(1)(a) of the Income Tax Act, 1967.

In addition, Monthly Tax Deduction (MTD) has to be accounted for by the new employer on the payment in lieu of notice as it is borne by the new employer and forms part of the employee's employment income.

With this clarification, it is important for employers to ensure that the amount is included in the MTD calculation and disclosed in the Form EA in the relevant year to avoid penalties being imposed for incorrect calculation and remittance of MTD / incorrect completion of Form EA.

UPDATE ON PUBLIC RULING NO. 11/2019

Benefits In Kind



The Inland Revenue Board (IRB) released the Public Ruling (PR) no. 11/2019 – Benefits in Kind to replace the PR no. 3/2013.

The main changes in PR 11/2019 are (see in **bold**):

- whichever method (i.e. formula method or prescribed value method) used in determining the value of the benefit provided for the employee must be consistently applied throughout the period of the provision of the benefit **for each unit of asset**.
- Benefits and monthly bills for fixed line telephone, mobile phone, pager, PDA or subscription of broadband paid by the employer is fully exempted from tax **in respect to one asset unit for each asset category**. The amount to be exempted includes registration cost and installation cost.
- The employer must ensure that the tax to be charged on the BIK of the employee is deducted from the employee's remuneration based on the Schedule (Rule 3) of the Income Tax (Deduction From Remuneration) Rules 1994 [P.U.(A) 507/1994] in the month in which the BIK is paid. If the salary of the employee is not sufficient to absorb the monthly income tax deduction on the BIK, the employer is required to obtain the approval of the IRB for payment of MTD on the BIK by instalments.

UPDATE ON PREFERENTIAL TAX TREATMENTS FOR SMALL AND MEDIUM ENTERPRISE (“SME”)

Existing legislation

Prior to Year of Assessment (“YA”) 2020, a resident company or limited liability partnership (“LLP”) with paid-up capital of up to RM2.5 million at the beginning of the basis period qualifies as a SME and is eligible for certain preferential tax treatments as provided in the Income Tax Act 1967 (“ITA”), as follows:

Preferential tax treatments	Prior to YA 2020	Effective YA 2020
Tax rate of 17%	on the first RM500,000 of chargeable income	on first RM600,000 of chargeable income
Limit on claiming of accelerated capital allowance for small value assets	limit of up to RM13,000 is not applicable (only for companies)	limit of up to RM20,000 is not applicable (only for companies)

New legislation

Effective from YA 2020, in order for SME to be eligible for the above preferential tax treatments, that SME must have gross income from business source(s) not exceeding RM50 million in that YA in addition to the requirement of having a paid-up capital of not exceeding RM2.5 million.

The Inland Revenue Board (“IRB”) has recently issued a Practice Note No. 3/2020 to provide clarification on determining the gross income threshold of RM50 million.

The Practice Note clarified that the additional criteria for a company / LLP to have gross income from all business sources shall be determined based on the relevant income recognition provisions of the ITA that apply to the business in question.

The Practice Note also clarifies on the issues arising from the implementation of the additional criteria which is summarized below:

No.	Category	Entitlement for preferential tax treatments
1.	Company / LLP which does not have gross business income but has non-business income such as rent and interest	Not entitled, unless the rent or interest is assessed as business income under paragraph 4(a) of the ITA
2.	Company / LLP which has foreign sourced business income	Yes, foreign sourced gross income from foreign business sources is taken into account as part of gross business income, subject to not exceeding the threshold of RM50 million
3.	Company / LLP exempted from tax under certain tax incentives such as pioneer status / investment tax allowance	Yes, exempted gross business income is taken into account as part of gross business income, subject to not exceeding the threshold of RM50 million
4.	An investment holding company (“IHC”)	Not entitled, unless the IHC is listed on Bursa Malaysia which is subject to Section 60FA of the ITA



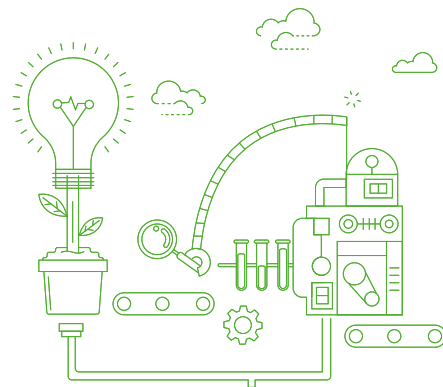
2.0 CORPORATE INCOME TAX (CONT.)

Important point to note

Based on category 4 above, it appears that an IHC (Not listed on Bursa Malaysia) is not eligible for the preferential tax treatments accorded to SMEs as a non-listed IHC is considered as having NO business income.

RSM's view

This would drastically reduce the scope of SMEs that may enjoy the aforesaid preferential tax treatments.



RSM's action

We have written to IRB on the above and obtained IRB's confirmation that the aforesaid preferential tax treatments are not applicable to the following types of companies: –

- IHCs not listed on Bursa Malaysia which is subject to Section 60F of the ITA; and
- Non-IHCs and companies without gross income from business sources.

RSM's advice

Companies who are affected by the above changes should consider revising its tax estimates to take into account the increase in income tax rate effective YA 2020 and onwards.

3.0 TRANSFER PRICING

Update: FAQs on Advance Pricing Arrangement Treatment Due to Covid-19 Pandemic

COVID-19 pandemic has caused deep bearing on our economies, affecting market conditions in most industries and businesses. Luckily, our Malaysian government implemented various financial initiatives including tax measures to lessen the financial burden on many businesses.

Aligned with the numerous actions, recently the Inland Revenue Board of Malaysia (IRB) has issued *FAQs on Advance Pricing Arrangement (APA) Treatment Due to Covid-19 Pandemic*. The FAQs addresses some vital issues pertaining to the followings:

- New APA application
- Treatment of On-going APA
- Treatment of Concluded APA
- Renewal of APA

This guidance will be updated from time to time based on current development and circumstances relating to Covid-19 impacts and issues. The FAQs include references to the *Malaysian APA Guidelines* issued in 2012.

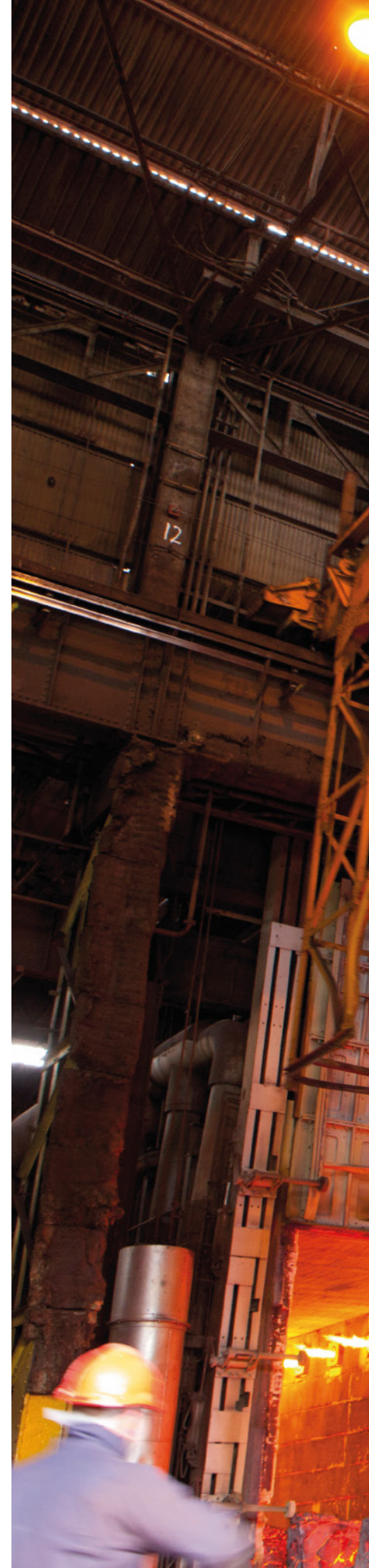
What is an APA?

Advance Pricing Arrangement ("APA") is an administrative approach introduced by the Organisation of Economic Co-operation and Development ("OECD") to avoid and resolve transfer pricing disputes. Malaysia introduced the specific provisions on APA in the Income Tax Act 1967 which took effect from 1 January 2009.

It is an arrangement that determines, in advance of controlled transactions the transfer pricing methodology/ies to ascertain the prospective arm's length transfer prices of specified related party transactions between the taxpayer and its foreign affiliates over a specified period of time, under specified terms and conditions.

This contrasts with traditional audit techniques that look to whether transactions, which have already taken place, reflect the application of the arm's length principle.

An APA is initiated by a taxpayer and entails negotiations between the taxpayer, one or more associated enterprises, and one or more tax administrations. It is applicable for cross-border transactions only.





3.0 TRANSFER PRICING (CONT.)

Types of APA

Unilateral APA

Arrangement between a taxpayer and the Director General of the Inland Revenue

Bilateral / Multilateral APA

Arrangements between Competent Authorities of two or more governments



Benefits of APA

- Provides certainty on the appropriate transfer pricing methodology to apply in pricing a covered transaction thus enhancing the predictability of tax treatment on international transactions
- Avoids and eliminates potential double taxation through bilateral or multilateral APA, ensuring that all profits are correctly allocated and taxed
- Alleviates costly and time-consuming examination of transfer pricing issues in the event of an audit, and lessens the possibility of protracted and expensive litigation
- Reduces record keeping burden as the taxpayer will know in advance the required documentation to be kept to substantiate the agreed transfer pricing methodology

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