

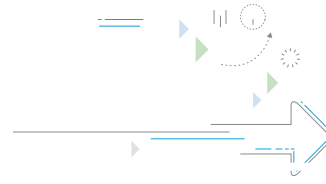
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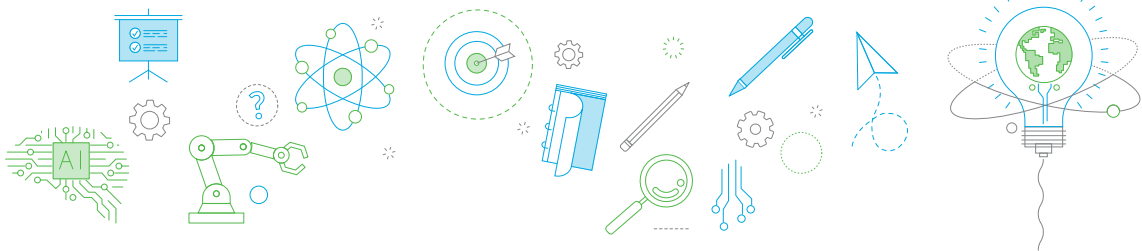
MONTHLY TAX UPDATE: APRIL 2023

RSM Tax Consultants (Malaysia) Sdn Bhd

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1. POSTPONEMENT ON EXCISE DUTY ON PRE-MIX PREPARATION PRODUCTS

On 10 March 2023, the RMCD announced that the introduction of excise duty on pre-mix preparation products is postponed until further notice.

During the tabling of Budget 2022, the Minister of Finance had proposed to expand the scope of the excise duty to include pre-mixed preparation of the products with the following HS tariff code: -

HS tariff code	Product description as per HS tariff code by World Customs Organization
18.06	Chocolate and other food preparations containing cocoa
19.01	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included.
21.01	Extracts, essences and concentrates, of coffee, tea or maté, and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof.

The excise duty was proposed to be imposed at the rate RM0.47 per 100g based on the threshold of sugar content exceeding 33.3g/100g - intended to address issues of obesity, diabetes, and other non-communicable diseases associated with nutrition among the people.

2. CUSTOMS DUTIES (EXEMPTION) (AMENDMENT) ORDER 2023

On 8 March 2023, the RMCD had issued Customs Duties (Exemption) (Amendment) Order 2023 [P.U.(A) 59].

The salient point of P.U.(A) 59/2023 includes the amendment on item 94 of Schedule of Customs Duties (Exemption) Order 2017 on the following: -

Clarity given that air courier services used in importing goods shall include postal services	Goods excluded from exemption now include the following: -		
	smoking pipes (including pipe bowls)	electronic cigarettes and similar personal electric vaporizing devices	preparation of a kind used for smoking through electronic cigarette and electric vaporizing device, in forms of liquid or gel, not containing nicotine

P.U.(A) 59/2023 shall be in operation with effect from 9 March 2023.

3. TOURISM TAX AMENDMENT REGULATIONS

The RMCD had issued the following regulations / amendment on regulations in relation to tourism tax (“TTx”) on 1 March 2023: -



The salient points of the above regulations / amendment on regulations are as follows: -

P.U.(A) 54/2023

- Mandatory use of electronic platform or other manner allowed by the DGC in furnishing TTx returns. Furnishing of returns via post or courier services are no longer acceptable;
- Mandatory use of electronic banking or other manner allowed by the DGC on payment matters on TTx and its related surcharge, penalty and any other payments. Payments via cheque/ bank draft by post/ courier services are no longer acceptable.

P.U.(A) 55/2023

- This Order prescribes the types of offense which may be compounded, criteria for compounding such offense, method and procedure for compounding such offense as well as payment of the compound. Prior to the issuance of this Order, there were no regulations prescribing the compounding of offenses under the TTx legislation.

P.U.(A) 56/2023

- The last date for furnishing of TTx returns or payment of TTx and its related penalty will not be extended by reason of it falling on Malaysian Federal weekly/public holiday or the public holiday of the country in which the digital platform services provider (“DPSP”) is located.

P.U.(A) 54/2023 and P.U.(A) 56/2023

- Particulars that need to be included in the invoice / receipt issued by the accommodation premises operator or DPSP have been prescribed;
- Particulars that need to be included in the credit note / debit note issued by the accommodation premises operator or DPSP have been amended.

The above Orders shall be in operation with effect from 2 March 2023.



4. RMCD'S GUIDELINES ON APPLICATION FOR EXCISE DUTY AND SALES TAX EXEMPTIONS ON THE SALE, TRANSFER, PRIVATE USE OR DISPOSAL OF SPECIFIC TYPE OF TAXIS AND HIRED CARS

In accordance with the announcements in the re-tabled Budget 2023, the RMCD had issued the guidelines on application for excise duty and sales tax exemptions on the sale, transfer, private use or disposal of specific type of taxis and hired cars (hereinafter referred to in this Section as “the Guidelines”).

The salient point of the Guidelines are as follows: -

<p>The exemption is only applicable for the above mentioned vehicles after five (5) years from the date of vehicles registration.</p>	<p>The exemption will not be applicable for premier airport taxis and luxury taxis.</p>	<p>The exemption is only applicable for vehicles owned by individual.</p>	<p>Application is to be made using the prescribed forms and relevant supporting documentation are required for verification.</p>
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The exemption is applicable with effect from 1 March 2023.

5. WINDFALL PROFIT LEVY (VALIDATION) BILL 2023 (“THE BILL”)

The Bill seeks to validate the imposition and collection of windfall profit levy (“WPL”) between 1 January 1999 to 31 January 2023. This covers the WPL imposed on crude palm oil, crude palm kernel oil, oil palm fruit and electricity.

Prior to the Bill, the WPL orders were imposed during the said period although it did not comply with stipulated requirements under the Windfall Profit Levy Act 1998 (“WPLA”).

The Bill, if passed, will indemnify the Government and its officers from any action or legal proceedings in relation to the levy collected.

As of 9 April 2023, the Dewan Rakyat has approved the Bill.

6. RENAME OF PAYMENTS CENTRES BY THE IRBM

Effective 15 March 2023, the IRBM's Payments Centres will be renamed as follows: -

Existing name	Updated name
Inland Revenue Board of Malaysia, Kuala Lumpur Payment Centre	Revenue Management Centre, Kuala Lumpur
Inland Revenue Board of Malaysia, Collection Unit (Kuching)	Revenue Management Centre, Kuching
Inland Revenue Board of Malaysia, Collection Unit (Kota Kinabalu)	Revenue Management Centre, Kota Kinabalu

The function of each Revenue Management Centre will remain unchanged.

7. PLANNED ROLL-OUT OF ELECTRONIC INVOICING (“E-INVOICING”) SYSTEM

During the Budget 2023 which was announced in October 2022, it is indicated that the e-invoicing system will be gradually implemented and introduced starting from year 2023. However, the re-tabled Budget 2023 in February 2023 did not disclose any details about the roll-out of e-invoicing.

Nevertheless, further from the National Tax Seminar organised by IRBM in March 2023, the IRBM has shared the following timeline for the roll-out of e-invoicing system: -

Period	Planned action
Year 2023	Preparation of infrastructure and launch of pilot project for selected companies. Companies not selected for pilot project may voluntarily apply for participation.
From June 2024	Mandatory implementation for businesses with annual sales value exceeding RM100 million.
From January 2025	Mandatory implementation for businesses with annual sales value exceeding RM50 million.
From January 2026	Mandatory implementation for businesses with annual sales value exceeding RM25 million.
From January 2027	Mandatory implementation for all businesses.

To recap, e-invoicing is a process that allows automated exchange of invoice data between vendors and customers digitally. This will eliminate the need for issuing and sending invoices via email or any other methods. Instead, the relevant information will be transmitted through a third-party network, where the government or tax authorities may administer.



8. TAX CASE - KLSB V DGIR

This is a case decided by the Special Commissioners of Income Tax (“SCIT”) on 10 February 2023 which pertains to the issue on deductibility of payment made for release of bumiputera quota.

Background facts

The taxpayer is principally involved in property development activity.

It appealed against the Notice of Non-Chargeability (“NONC”) for Year of Assessment (“YA”) 2018 because the IRBM disallowed the taxpayer’s claim for deduction in respect of the payment made to Johor State Government amounting to RM70,200 on the basis that the above was not wholly and exclusively incurred in the production of business income under Section 33(1) of the Income Tax Act 1967 (“the Act”).

The taxpayer contended that the said payment was in relation to release of bumiputera quota, which is closely related to the taxpayer’s business activity and it is not capital in nature or penalty related.

On the other hand, the IRBM contended that such payment was indeed capital in nature because the payment enables the taxpayer to sell the units allocated to bumiputera to non-bumiputera and it is one-off / non-recurring in nature. Therefore, IRBM argued that this was not related to the business activity of the taxpayer as a property developer.

Subject matter

Whether payment for release of bumiputera lot is a deductible expense under Section 33(1) of the Act.

Decision

The SCIT dismissed the appeal made by taxpayer on the basis that the payment for the release of bumiputera lot is not deductible under Section 33(1) of the Act.



9. TAX CASE - MHHSB, SLSB, MTSB (COLLECTIVELY KNOWN IN THIS SECTION AS “THE TAXPAYERS”) V DGIR

This is a case decided by the SCIT on 13 January 2023 which pertains to the issue on determination of disposal price in the case of disposal of real property company’s (“RPC”) shares.

Background facts

The Taxpayers disposed their shares owned in a RPC (i.e. MHHSB) and submitted Form CKHT 1B to the DGIR. The DGIR raised Notices of Assessment (“NOAs”) for Real Property Gains Tax (“RPGT”). The taxpayers informed the DGIR that the NOAs were erroneous as certain costs such as non-tax allowable development expenditure and cost of resting TNB high tension cables (collectively known in this Section as “the Expenditures”), which were listed in the Share Sale Agreement (“SSA”), have not been taken into account in determining the disposal price of the RPC shares, pursuant to subparagraph 34A (4), Schedule 2 of Real Property Gains Tax Act 1976 (“RPGTA”).

The Taxpayers contended that payment of the Expenditures was made pursuant to the SSA and by virtue of subparagraph 34A(4), Schedule 2 of RPGTA, the amount or value of the consideration in money or money’s worth for the disposal of the shares by the Taxpayers was wrongly computed by the DGIR and the DGIR should have considered the Expenditures in determining the disposal price of the shares.

The DGIR contended that MHHSB is a RPC by virtue of its defined value of shares owned at the date of acquisition being 97% of the value of its total tangible assets (subparagraph 34A (6), Schedule 2 of RPGTA). The DGIR further argued that pursuant to subparagraph 34A (4), Schedule 2 of RPGTA, the disposal price of the chargeable asset is the amount or value of the consideration in money or money’s worth for the disposal of the chargeable asset. As far as the disposal price is concerned, both submitted SSA and the RPGT Form (i.e. CKHT 1B) had specified the total disposal price of shares without entitlement for claiming any deduction for the Expenditures. In addition, there are no columns provided in the said form that allows the Taxpayers to claim for any related deduction.

Subject matter

Whether the NOAs issued are reasonable and justly.

Decision

SCIT dismissed the Taxpayers’ appeal on the basis that the NOAs raised are reasonable and justly. The SCIT held that deduction cannot be given to Taxpayers in relation to the Expenditures pursuant to Paragraph 34A(4), Schedule 2 of RPGTA.

10. TAX CASE - MALAYSIA LNG SDN BHD V DGIR

This is a case decided by the High Court (“HC”) on 13 February 2023 which pertains to the scope of withholding tax (“WHT”) under Section 109B of the Act.

Background facts

The taxpayer is in the business of purchasing natural gas, liquefied natural gas, and the marketing of the liquefied natural gas all over the world.

The DGIR raised NOA under Sections 4A(ii) and 109B(1)(b) of the Act (prior to the amendment under Finance Act 2018) against the taxpayer due to its failure to withhold tax for the payment of services rendered from Jamalco, Samsung, Bonny Gas, and Surveyors (“non-Malaysian tax residents”).

The taxpayer contended that the payment to non-Malaysian tax residents for the said services should not be subject to WHT as the services were only “a liaison service” and “day-to-day routine services” instead of “technical services” provided under Section 4A(ii) of the Act. Referring to the case of Esso Production Malaysia Inc v KPHDN (2003) MSTC 4,016 (“EPMI case”), Sections 4A(ii) and 109B(1)(b) of the Act (prior to the Finance Act 2018 amendment) were only applicable to “technical services”.

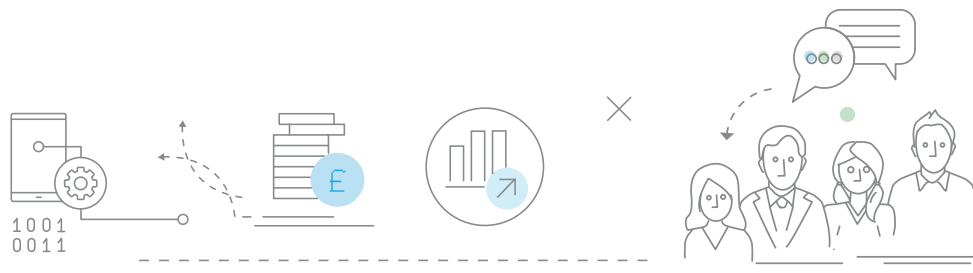
On the other hand, the DGIR contended that the Taxpayer had mistakenly relied on EPMI case as the Court has laid down the principle in reading Section 4A(ii) of the Act (prior to the Finance Act 2018 amendment) where it includes “technical and non-technical” services. Any services rendered, whether technical or non-technical, is inconsequential with the exclusion of the word “technical” from Section 4A(ii) of the Act in year 2018. It is in the Parliament’s mind during the introduction of Section 4A(ii) of the Act that both technical and non-technical service payments are to be scoped in this Section. Further, the DGIR argued that the payments made for the services rendered by the non-Malaysian tax residents falls within the ambit of Section 4A(ii) of the Act and therefore, WHT under Section 109B of the Act shall be applicable and complied with.

Subject matter

Whether the payment made for the services rendered by the non-Malaysian tax residents falls within the ambit of Section 4A(ii) of the Act and therefore, subject to WHT under Section 109B of the Act.

Decision

The HC dismissed the Taxpayer’s appeal as without merit and upheld the decision of the SCIT.



11. TAX CASE - JT BROADWAY SDN BHD V DGC AND THE TRIBUNAL

This is a case decided by the HC on 30 January 2023 which pertains to the application for extension of time (“EOT”) on the appeal against refund approved by DGC.

Background facts

During the GST era, the Taxpayer submitted a claim to DGC for input tax refund under Regulation 46 of the Goods and Services Tax Regulations 2014. After more than a year, DGC approved only a portion of the input tax claim, subject to meeting certain conditions (“1st Response”). Three months later, DGC issued another letter which only approved even smaller portion of the input tax claimed, without reference to 1st Response (2nd Response), stating that no approval had been issued for the input tax refund.

Eight months later, the Taxpayer’s bank account was credited with the input tax claimed as per the 1st Response, while the amount stated in the 2nd Response was never credited to the Taxpayer.

Subsequently the Taxpayer filed an application for EOT for appeal to the Tribunal under Regulations 3 of Customs (Appeal Tribunal) Regulations 2007, as appeal to Tribunal must be made within 30 days from the date of DGC’s decision. However, the Tribunal rejected the appeal, and the Taxpayers appealed to the HC.

Subject matter

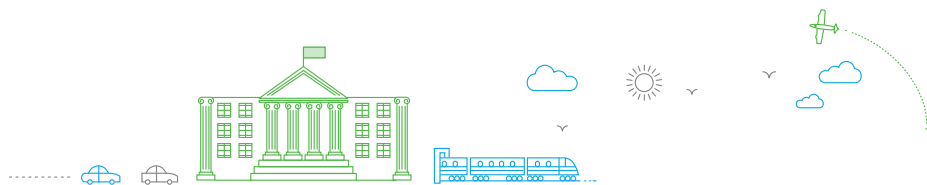
Whether the Tribunal was right in rejecting the application for EOT on appeal against DGC’s decision.

Decision

The HC upheld the Taxpayer’s appeal on the basis that the Taxpayer was reasonable in not filing any appeal to the Tribunal upon receiving the ambiguous response by the DGC but file an EOT for appeal upon confirming that the input tax allowed was per the 1st Response instead of the 2nd Response. Therefore, the HC asserted that the delay in appeal was only 11 days instead of 403 days (contended by DGC).

The HC also alluded to the numerous previous occasions in which the Tribunal had granted EOTs for filing appeals, taking into account the fact that Customs had never once informed the taxpayer of its right to appeal if dissatisfied with its decision, the timeline to appeal, or whether which of Customs’ two conflicting decisions was final.

In addition, in the absence of written grounds and sound reasons, the Tribunal’s rejection of EOT application was invalid.



12. TAX CASE - AHMAD ZAWAWI BIN ABDUL RAHIM V PUBLIC PROSECUTOR

This is a case decided by the HC of Ipoh on 9 December 2022 which pertains to Goods and Services Tax Act 2014 (the “GST Act”).

Background facts

On 7 April 2021, the taxpayer was convicted seven (7) charges under Section 89(1)(b) of the GST Act and sentenced to three (3) years imprisonment for each charge by the Sessions Court.

The taxpayer was convicted of falsifying his GST accounts which resulted in him getting 7 refunds for input tax from RMCD that he was not entitled to receive.

The taxpayer was a registered sole-proprietor and he claimed that he was in the business of raising, breeding and producing chicken broiler, which was zero-rated good under GST Act.

However, upon investigations by the RMCD, the RMCD found out that the taxpayer’s business does not exist: -

- The alleged location of business for chicken farming does not exist;
- His agreement with his customer to supply chickens as a contract chicken farmer has expired even before the first taxable period of 1 June 2015 to 30 June 2015; and
- The taxpayer’s livestock farm has been returned to Cooperative of Small Planters of Sungai Siput Perak.

Even though the GST Act has been repealed, the taxpayer committed the offences during the period where GST Act was still in force (i.e. 1 June 2015 to 30 April 2016). As such, the prosecutive and trial could still proceed.

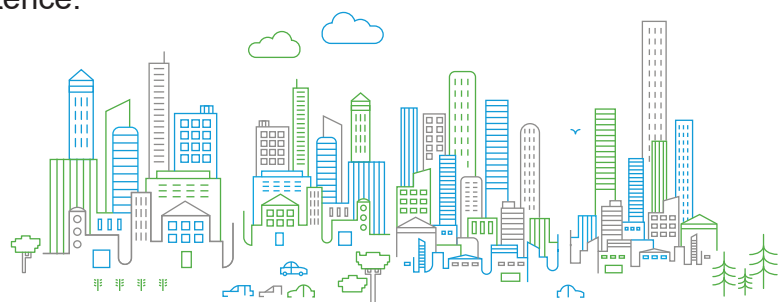
Section 89(5)(a) of the GST Act is clear that tax evasion includes obtaining tax refund for input tax against output tax where the taxable person is not entitled to receive.

Subject matter

The taxpayer appealed to the HC against the sentence.

Decision

The HC dismissed the Taxpayer’s appeal.



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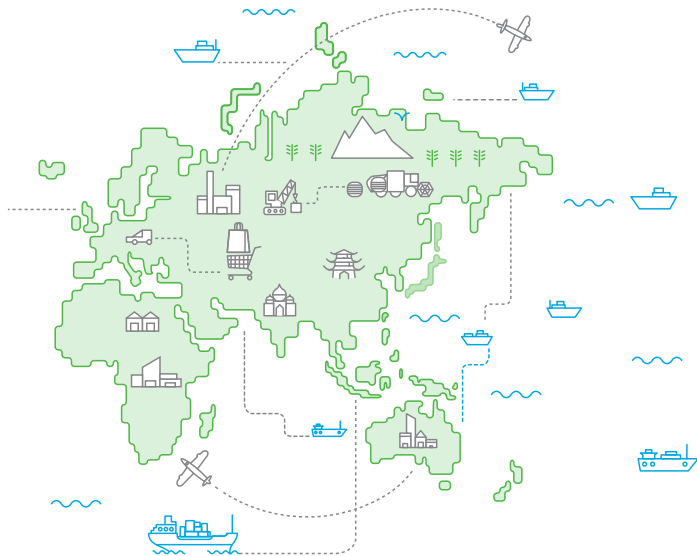
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