



MOORE Advent

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PR No. 9/2023 – The Deceased Part 1 – Introduction

The Inland Revenue Board [“IRB”] has recently issued the *Public Ruling [“PR”] No. 9/2023 – The Deceased Part 1 – Introduction* to provide clarification on the administration of the estate and the liabilities of the Deceased.

The pertinent points provided in the abovementioned PR are as follows:-

i. Sources of Individual’s Income Before Death

The income of living individuals consist of sources of income as follows:-

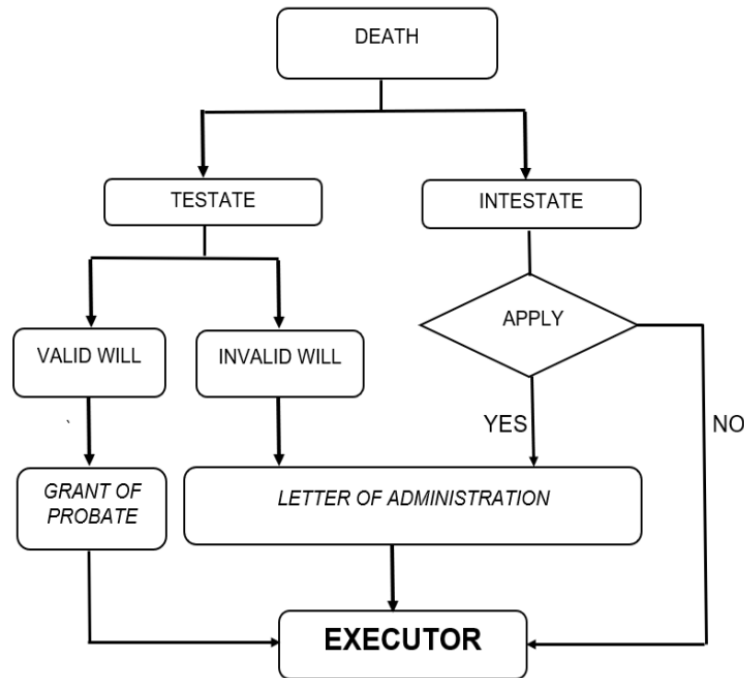
- Business Income – Section 4(a) of the Income Tax Act 1967 [“ITA 1967”] i.e. through:-
 - Sole proprietorship;
 - Partnership;
 - Limited liability partnership; and
 - Private limited company;
- Employment Income – Section 4(b) of the ITA 1967; and
- Other Income
 - Rental income – Section 4(a) or 4(d) of the ITA 1967;
 - Commission income – Section 4(a) or 4(d) of the ITA 1967;
 - Dividends – Section 4(c) or 4(d) of the ITA 1967;
 - Interest – Section 4(c) of the ITA 1967;
 - Pension – Section 4(e) of the ITA 1967; and
 - Annuities – Section 4(e) of the ITA 1967.

ii. The Act of the Notifying the Death of the Deceased

- When reporting the death of the Deceased to IRB, the next of kin of the Deceased should provide the following documents:-
 - a copy of death certificate; and
 - a copy of grant of probate; or
 - a copy of the Letter of Administration together with the Notification of the Demise of Taxpayer Form [“Form CP57”].
- The next of kin is advised to contact the Hasil Care Line to find out the IRB locality that handle the Deceased’s file, and to obtain e-mail address of the locality for the submission of the notification and copies of supporting documents via email.
- The next of kin can directly check the tax status of the Deceased to determine if there are any outstanding taxes that need to be paid or if tax overpayments can be claimed for a refund from the IRB.
- If the Deceased was an employee, the next of kin must immediately notify the Deceased’s employer who must then convey the information about the employee’s death to the IRB within 30 days after notification is given by the next of kin.

iii. Estate of the Deceased

- Estate of the Deceased refers to the property owned by an individual on the day of his death. These assets includes both cash and non-cash assets and left by the Deceased which will be inherited by his beneficiaries.
- When death occurs, the next of kin of the Deceased must determine whether or not the Deceased has left a will.
- The process for appointing a legal representative (executor) of the Deceased estate is summarised as follows:-



iv. Administration of Estate by Executor

- According to Section 2 of the ITA 1967, an executor means:-
 - executor;
 - administration; or
 - other person
 who administer or managers the estate of a deceased person.
- The executor is an individual appointed by the court through a Grant of Probate or Letter of Administration on behalf of the heirs to administer the estate of the Deceased and settle the liabilities left by the Deceased.

v. Responsibilities of the Executor

- Administering the estate of the deceased
 - The executor is responsible for administering the estate on behalf of the heirs before it is distributed to the beneficiaries, as well as the welfare of the Deceased's minor children and surviving parents (if any).
- Clarifying the debt and tax liability of the deceased
 - Debts of the Deceased
 - The asset of the Deceased cannot be distributed to the beneficiaries or heirs until all debts of the Deceased are paid by the executor.
 - The executor will utilise the Deceased's estate especially available cash, or sell real estate to settle the debt.
 - Tax liability of the Deceased
 - Section 74 of the ITA 1967 stipulated that any outstanding income tax cannot be automatically waived even if the individual has passed away.
 - The Deceased's tax liability is as follows:-

Year Before Death	Year of Death	Year after Death
<ul style="list-style-type: none"> • The executor must check with the IRB the amount of outstanding taxes for the years preceding his or her death. • The executor must file the Income Tax Return Form ["ITRF"] for each year of assessment that was not filed by the Deceased during his or her lifetime. • Tax assessment will be made by the IRB after the ITRF is received. • The executor is responsible for setting all the tax assessed including any penalties imposed and also entitled to apply for tax refunds on behalf the Deceased. 	<ul style="list-style-type: none"> • The executor is responsible for submitting the ITRF for that particular year because the Deceased died before he or she submits the ITRF for that year. 	<ul style="list-style-type: none"> • Income received from the sources of the Deceased's estate after the date of death is considered part of the Deceased's estate income and not the personal income of the Deceased. • Therefore, such income shall be assessed on the Deceased's executors.

- The executor must pay the Deceased's outstanding tax liabilities to the IRB failing which the executor may be subject to the civil action as provided under Section 106 of the ITA 1967.

vi. Period of Estate of Administration by Executor

- The period of estate of administration by executor shall be between the date of death until the date of distribution of the Deceased's estate to the entitled heirs and beneficiaries.
- The executor must settle all outstanding debts and taxes according to the testamentary documents before distributing the estate.
- In certain cases, a testamentary death provides for the establishment of a trust to carry out the specific instructions of the Deceased. An executor can only transfer all his duties to the trustee once the balance of the Deceased's estate has been determined within the executor's administration period.
- In the case of intestacy, where the executor has determined the balance of the Deceased's estate for distribution to identified eligible heirs, it is recommended to have written evidence such as an agreement among the heirs.

vii. Procedures

- The closest heirs or executors can notify the IRB regarding the Deceased's death by submitting the Form CP57 to the IRB that handle the Deceased files.
- The submission of the Form CP57 can be made online.
- Employers are required to submit the Tax Clearance Form for Cessation of Employment of Private Sector Employee ["Form CP 22A"] or Tax Clearance Form for Cessation of Employment of Public Sector Employee ["Form CP 22B"] to the IRB.

PR No. 10/2023 – Pioneer Status Incentive

The IRB has recently published the [PR No. 10/2023 – Pioneer Status \[“PS”\] Incentive](#) to provide guidance on PS incentive that is available to a resident company participating or intending to participate in a business in relation to promoted activities or in the production of promoted products in Malaysia.

Salient points of the abovementioned PR include:-

i. Pioneer Status

- PS is a tax incentive granted under the Promotion of Investments Act 1986 [“PIA 1986”] and this incentive provides a tax exemption on part or all of a statutory income to a pioneer company participating in a promoted activity or producing a promoted product in Malaysia.

ii. Application for Pioneer Status and Pioneer Certificate

- The application and granting of PS are under the authority of the Minister of International Trade and Industry [“the Minister”] and companies applying for the incentive have to submit their applications to the Malaysian Investment Development Authority [“MIDA”].
- Pioneer company or company that has been granted a pioneer status may apply for a pioneer status for other promoted activities or promoted products in addition to the existing approved activity or product i.e. a company can enjoy a pioneer status for one (1) or more promoted activities or products.
- A company that has been granted PS must make an application to the Minister to request for a pioneer certificate within 24 months from the date of PS approval is granted, or within an extended period allowed by the Minister.
- The pioneer certificate issued may certify the following matters:-
 - the company is a pioneer company;
 - the factory at which the promoted activity is carried on or the promoted product is produced to be a pioneer factory; and
 - the production day of the pioneer company.

iii. Withdrawal of Pioneer Status and Cancellation of Pioneer Certificate

- The Minister may withdraw the PS granted or cancel the pioneer certificate issued if the pioneer company fails to comply with any of the terms or conditions imposed.
- The Minister may deliver a written notice requiring the pioneer company to give reasons why the approval should not be withdrawn or why the pioneer certificate should not be cancelled within 30 days from the date of service of the notice.

iv. Surrender of Pioneer Status or Pioneer Certificate

- A pioneer company may surrender the pioneer status or the pioneer certificate by giving a written notice to the Minister at any time.
- If the Minister is satisfied with the reasons provided, an approval letter will be issued to specify the effective date of the surrender.

v. Tax Relief Period and Extension of Tax Relief Period

- The tax relief period for a pioneer company is for 5 years from the production date stated in the pioneer certificate.
- An extension of the tax relief period for another 5 years can be granted to a pioneer company and the application for such extension shall be made within 30 days or any further period allowed by the Minister after the expiration of the tax relief period.

vi. Tax Treatment for Pioneer Company

- The business of a pioneer company which carried out the business of promoted activity or promoted product before or after the tax relief period can be classified into 3 different categories:-
 - pre-pioneer business;
 - pioneer business; and
 - post-pioneer business.
- The pioneer business is considered as a separate source from the same business after the end of the pioneer period. Therefore, a pioneer company that continues the same business after the pioneer period must keep separate accounts for each of these businesses.

vii. Computation of Pioneer Business Statutory Income During the Tax Relief Period

- The amount of tax exemption to be applied on the statutory income varies based on the promoted activity or promoted product as stated in the pioneer certificate.
- If the amount of tax exempted statutory income is 70%, the balance of 30% of the non-tax exempted statutory income will be the deemed total income for that relevant year of assessment and the income shall be taxed at prevailing tax rate.
- The tax exempted statutory income for a pioneer company during the tax relief period is subject to:-
 - any conditions stated in the pioneer certificate;
 - deduction for current adjusted losses for non-pioneer business; and
 - deduction for current adjusted losses of pioneer business.

viii. Capital Allowances

- If an asset used in pre-pioneer business and the same assets continues to be used in the pioneer business, the residual expenditure in respect of that asset as at the end of the basis period for the pre-pioneer business shall be deemed to be the residual expenditure of the asset on the day of commencement of that pioneer business.
- A pioneer company that incurred capital expenditure for an asset during the basis period in which the date of cessation of that pre-pioneer business falls shall be deemed to have been incurred such capital expenditure on the day of commencement of that pioneer business.
- If an asset used in pioneer business and the same assets continues to be used in the post-pioneer business, the residual expenditure in respect of that asset as at the end of the basis period for the pioneer business shall be deemed to be the residual expenditure of the asset on the day of commencement of that post-pioneer business.
- A pioneer company that incurred capital expenditure for an asset during the basis period in which the date of cessation of that pioneer business falls shall be deemed to have been incurred such capital expenditure on the day of commencement of that post-pioneer business.
- Any unabsorbed capital allowance shall be allowed to carry forward and deduct from the post-pioneer income of a business relating to the same promoted activity or promoted product.
- Capital allowance shall be apportioned based on the use of the asset among pioneer and non-pioneer businesses.

ix. Pioneer Company Losses

- The exempted statutory income from a pioneer business is subject to the deduction of current year non-pioneer business losses, carried forward pioneer losses from prior years and current year pioneer business losses.
- Effective year of assessment ["YA"] 2019, any unabsorbed pioneer losses after the end of the tax relief period will only be allowed to be carried forward for a maximum period of 7 consecutive years of assessment and any unabsorbed pioneer losses remaining thereafter shall be disregarded.

Operational Guidelines 1/2023 – Issuance of Tax Compliance Certificate for Government Procurement Application

Following the Budget 2022 announcement, the IRB has recently issued the *Operational Guidelines 1/2023 – Issuance of Tax Compliance Certificate [“TCC”] for Government Procurement Application* dated 22nd November 2023 to provide guidance for companies that intend to participate in government procurement for supply of goods and services (other than consultancy), effective 1st January 2023.

Salient points of the abovementioned Guidelines include:-

- TCC issued by the IRB forms part of a pre-requisite document for a taxpayer who intends to tender for government projects commencing from year 2023. The TCC is not applicable for any other purpose.
- Taxpayer is not required to apply for the TCC as it will be issued automatically by the IRB via Tax Identification Number [“TIN”] of the taxpayer.
- For newly established businesses, in order to obtain the TCC, taxpayer is required to:-
 - check the TIN online which is accessible from MyTax portal; and
 - submit the application for TCC together with the business registration documents via email to the IRB at tcc@hasil.gov.my.
- TCC can be accessed by the taxpayer’s authorised person and checked from the MyTax portal. Tax agents do not have the authority to check the status of the TCC.
- The tax compliance criteria for the purpose of TCC are:-
 - submission of the annual income tax return form within the stipulated deadline; and
 - no outstanding taxes and/or in compliance with the on-going scheduled tax instalments.
- Taxpayers who have not complied with the above requirements are required to email to the IRB at tcc@hasil.gov.my with supporting documentation in order to update the TCC status.

Operational Guidelines 1/2024 – MTD under the Income Tax (Deduction from Remuneration) Rules 1994

The IRB has recently issued the amended *Operational Guidelines 1/2024 – Monthly Tax Deduction [“MTD”] under the Income Tax (Deduction from Remuneration) Rules 1994 (in Bahasa Malaysia)* dated 2nd January 2024 to provide guidance for employers in determining the correct of amount of MTD in accordance with the MTD (Deduction from Remuneration) Rules 1994. This amended Operational Guidelines replaces the previous Operational Guidelines 4/2020 dated 17th November 2020.

Salient amendments included in the amended Operational Guidelines are as follows:-

- i. The computerised calculation of the MTD for the non-citizen individuals who hold a C-Suite position in an approved company
 - the eligible employees are non-citizen individuals who are employed by an approved company and hold a C-Suite position throughout the specified year of assessment and fulfil the stipulated conditions
 - C-Suite positions mean the position of senior executives to which relies on functional know-how and technical skills such as Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and Chief Information Officer
 - the amount of MTD for the eligible employees is determined based on the prescribed formula provided
- ii. The computerised calculation of the MTD shall be subject to the following:-
 - the calculations are limited to two decimal points only;

- the MTD values are rounded to the nearest five cents as follows:-
 - one to four are rounded to 5 cents; and
 - six to nine are rounded to 10 cents.
- if the MTD amount before zakat deduction is less than RM10, the employer is not required to make the MTD;
- if the MTD amount after zakat deduction is less from RM10, the employer is required to make a MTD; and
- the minimum MTD amount is RM10.

Note: For further information on the Operational Guidelines 4/2020 – MTD under the Income Tax (Deduction from Remuneration) Rules 1994, kindly refer to our [Tax Flash - January 2021](#) issue.

Income Tax Exemption for Child Care Allowance under Perquisites from Employment

Pursuant to the Income Tax (Exemption) Order 2009, income tax exemption of up to RM2,400 is granted to an employee on child care allowance received from his employer in ascertaining gross income from his employment in the basis period for a year of assessment.

Following the Budget 2024 announcement, the [Income Tax \(Exemption\) 2009 \(Amendment\) Order 2023](#) has been gazetted to provide for tax exemption on the child care allowance received by an employee or child care fee paid directly by an employer to a child care centre of up to RM3,000 per year of assessment.

The above amendment Order shall have effect from the YA 2024.

FAQ on Implementation of e-Invoice for e-Commerce, Telecommunication and Petroleum Operations Industries

The IRB has recently issued the following Frequently Asked Questions [“FAQ”] to address issues faced by specific industries in the implementation of e-Invoice:-

- [FAQ for e-Commerce Industry](#) (updated 22nd December 2023);
- [FAQ for Telecommunication Industry](#) (updated 22nd December 2023); and
- [FAQ for Petroleum Operations Industry](#) (updated 18th January 2024).

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