



## TAX FLASH

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### In this Issue

- [PN No. 2/2020 – Claiming Capital Allowance on the Development Cost for Customised Computer Software under the Income Tax Rule 2019](#)
- [Tax Exemption for Religious Institution or Organisation Registered as a Company Limited by Guarantee](#)
- [Extension of Tax Exemption for Medical Tourism](#)
- [Service Tax](#)

### **PN No. 2/2020 – Claiming Capital Allowance on the Development Cost for Customised Computer Software under the Income Tax Rule 2019**

The Inland Revenue Board [“IRB”] has recently issued the *Practice Note [“PN”] No. 2/2020 – Claiming Capital Allowance on the Development Cost for Customised Computer Software under the Income Tax Rule 2019* to provide guidance on the implementation of the Income Tax (Capital Allowance) (Development Cost for Customised Computer Software) Rules 2019 which provides for the claim of Accelerated Capital Allowance on the development cost for customised computer software, effective year of assessment [“YA”] 2018.

Salient points of the abovementioned PN include:-

- i. Development cost for customised computer software refers to the expenditure incurred in the production of new software or in the improvement of the existing software to be used for the purpose of a business which consists of:-

- [Moore Malaysia](#)
- [Moore Global](#)
- [Inland Revenue Board](#)

- Consultation fee incurred on the development of the software specifically for the purpose of developing a new software system, modification or modernisation of the existing software, **excluding** consultation fees related to initial procedure or planning stage such as feasibility study or preliminary study;
- Payment for the rights of software ownership; and
- Incidental fee, i.e. payment incurred which enables the use of the software in a business and being capitalised such as change of requirement of the software.

Payment for the above expenditure (if any) incurred which are made to a non-resident will be subject to the withholding tax provisions under Section 109 or Section 109B of the Income Tax Act 1967.

- ii. The development cost for customised computer software shall be deemed to be incurred by the person in the basis period for a year of assessment in which the customised computer software is capable of being used for the purpose of his business. Examples are given in the PN to provide illustration that development cost for customised computer software incurred from YA 2018 onwards will be treated as a qualifying expenditure and hence, capital allowance can be claimed in the year of assessment the customised computer software is capable of being used in the business.

**Note:** For further information on the Income Tax (Capital Allowance) (Development Cost for Customised Computer Software) Rules 2019, kindly refer to our [Tax Flash – October 2019 issue](#).

### **Tax Exemption for Religious Institution or Organisation Registered as a Company Limited by Guarantee**

Currently, tax exemption is given on all income received by a religious institution or organisation established for the purpose of religious worship or advancement of religion and registered under the Registrar of Societies Malaysia or any written law governing the institution or organisation. Following the 2020 Budget announcement, the [Income Tax \(Exemption\) Order 2020](#) has been gazetted to extend the above exemption to a religious institution or organisation registered as a company limited by guarantee incorporated under the Companies Act 2016 and resident in Malaysia.

Application for the above exemption can be made to the Director General of Inland Revenue on or after 1<sup>st</sup> January 2020.

The above Order shall have effect from the YA 2020.

**Note:** For further information relating to the tax exemption given to existing religious institutions or organisations, kindly refer to our [Tax Flash – March 2017 issue](#).

### **Extension of Tax Exemption for Medical Tourism**

The [Income Tax \(Exemption\) \(No. 3\) Order 2017](#) was previously gazetted to provide tax exemption to new or existing companies engaged in expansion, modernisation and refurbishment of healthcare facilities that provide private healthcare services to health traveller which has been approved by the Minister of Health and registered with the Malaysia Healthcare Travel Council. The IRB has recently issued the [Income Tax \(Exemption\) \(No. 2\) Order 2020](#) to provide extension of the application period which expired on 31<sup>st</sup> December 2017 to 31<sup>st</sup> December 2020 as well as the revised eligibility conditions for the tax exemption.

The exemption is given to a qualifying company in respect of the statutory income derived from a qualifying project. The amount of tax exempted shall be equal to the amount of qualifying capital expenditure incurred in the basis period for a year of assessment, for a period of 5 consecutive years commencing from the date of the first qualifying capital expenditure incurred by the qualifying company as determined by the Malaysian Investment Development Authority ["MIDA"]. The commencement date shall not be earlier than 3 years immediately preceding the date of application but not earlier than 1<sup>st</sup> January 2018.

The above exemption is given subject to fulfilment of certain conditions which include:-

- The number of health traveller who receive the private healthcare services from the qualifying project is at least 10% of the total patients from the qualifying project for each year of assessment.
- At least 10% of the gross income of the qualifying company from the qualifying project is generated from the health traveller for each year of assessment.
- Application for exemption must be made to MIDA from 1<sup>st</sup> January 2018 to 31<sup>st</sup> December 2020.

The above Income Tax (Exemption) (No. 2) Order 2020 is deemed to have come into operation from YA 2018.

**Note:** For further information on the previous Income Tax (Exemption) (No. 3) Order 2017, kindly refer to our [Tax Flash – July 2017 issue](#).

## Service Tax Policy

Royal Malaysian Customs Department has on 22<sup>nd</sup> April 2020 published the [Service Tax Policy No. 10/2020 – Service Tax Exemption on Provision of Digital Services Related to Banking or Financial Services](#).

The salient points pertaining to the abovementioned service tax policy are as summarised below:-

- i. The Minister of Finance, in exercising his power under Section 34(3)(a) of the Service Tax Act 2018, exempts the following recipients that acquire digital services related to banking/financial services ["DSBFS"] from local service providers from payment of service tax effective 1<sup>st</sup> January 2020:-
  - Banks, investment banks or any financial institution licensed under the Financial Services Act 2013 [Act 758], Islamic Financial Services Act 2013 [Act 759], the Labuan Financial Services and Securities Act 2010 [Act 704] and the Labuan Islamic Financial Services and Securities Act 2010 [Act 705];
  - Development Financial Institutions as prescribed under the Development Financial Institutions Act 2002 [Act 618] or other written law; or
  - Any digital service provider who fulfills the following criteria:-
    - He is a registered person under the Service Tax Act 2018;
    - He is a digital service provider in Malaysia; and
    - Provides digital service in relation to service of withdrawals or transfer of funds from one bank account to another, where service charges are charged separately to the account holder.
- ii. The above exemption does not apply to:-
  - Provision of DSBFS rendered by foreign registered person to consumers in Malaysia; and
  - Provision of any other digital services apart from those mentioned above.

iii. Adjustment on service tax:-

- Where service tax charged has been accounted for based on “invoice basis” in relation to the DSBFS made available on or after 1<sup>st</sup> January 2020 and no payment has been received, the registered person shall issue a credit note to its qualifying customer to make adjustment on the service tax.
- Where the service (which was grouped under Information Technology Service prior to 1<sup>st</sup> January 2020) is provided for a period spanning 1<sup>st</sup> January 2020, the registered person only needs to account and pay service tax on the service provided before 1<sup>st</sup> January 2020.
- No claiming of service tax refund is allowed for any person who has paid service tax.

### **Service Tax (Digital Service) (Amendment) Regulations 2020**

The *Service Tax (Digital Service) (Amendment) Regulations 2020* [“the DS Regulations”] was gazetted and in force effective 14<sup>th</sup> May 2020. The salient points extracted from the DS Regulations are as follows:-

- Where a company, which is a foreign registered person [“FRP”], provides any digital service to any company in Malaysia within the same group of companies with the FRP, such digital service shall not be subject to (digital) service tax.
- Notwithstanding the above, where a FRP provides any digital service to another person in Malaysia outside the group of companies of the FRP, the same digital service provided to any person or company in Malaysia outside or within the group of companies of the FRP shall be subject to (digital) service tax.

### **Service Tax (Person Exempted from Payment of Tax) (Amendment) Order 2020**

The *Service Tax (Person Exempted from Payment of Tax) (Amendment) Order 2020* [“the Order”] was gazetted and in force effective 14<sup>th</sup> May 2020. The salient points extracted from the Order are as follows:-

- i. Any person who acquires digital services from a FRP for the purpose of carrying on his business will be exempted from payment of digital service tax subject to the following conditions:-
  - (a) the person (taxable and non-taxable persons) shall account for the service tax due in accordance with the relevant service tax legislations; and
  - (b) the person exempted from payment of digital service tax holds an invoice or a document issued in connection with the digital service from the FRP.
- ii. The deletion of the existing third condition as stated below (c) provides that any person who acquires digital services from a FRP irrespective of whether the services are acquired for personal consumption or onwards supply will now be exempted from payment of digital service tax subject to fulfillment of the two (2) conditions mentioned above:-

“(c) *the taxable service exempted from payment of digital service tax is not for personal consumption by the person who is carrying on his business.*”

### **Service Tax (Amendment) Regulations 2020**

The *Service Tax (Amendment) Regulations 2020* [“the ST Regulations”] was gazetted and in force effective 14<sup>th</sup> May 2020. The salient points extracted from the ST Regulations are as follows:-

- i. Amendment to Paragraph 3, First Schedule of the Service Tax Regulations 2018 [“the 2018 Regulations”]
  - Expansion of Group Relief Facility
  - Where a company in a group of companies acquires any taxable service specified in item (a), (b), (c), (d), (e), (f), (g), (h), (i) or (l) in column (2) of Group G from any company within the same group of companies, such service shall not be a taxable service.

- As a result of the amendment made to the above, the taxable services under item (l) – provision of digital services including provision of electronic medium [refer to (iii) below] will now be covered under the group relief facility.
- ii. Amendment to Paragraph 3A, First Schedule of the 2018 Regulations – Taxability of Imported Taxable Services
- Where a company in a group of companies acquires any taxable service specified in item (a), (b), (c), (d), (e), (f), (g), (h), (i) and (l) in column (2) of Group G from any company other than a FRP within the same group of companies outside Malaysia, such service shall not be an imported taxable service.
  - As a result of the amendment made to the above, the taxable services under item (l) – provision of digital services including provision of electronic medium [refer to item (iii) below] will no longer be regarded as an imported taxable service effective 14<sup>th</sup> May 2020.
- iii. Consolidation of “Taxable Service” under Items (l) and (m) of Group G, First Schedule of the 2018 Regulations
- Both items (l) and (m), Group G have been consolidated to a single item (l).
  - Provision of digital services under Item (l) now includes provision of electronic medium that allows the suppliers to provide supplies to customers or transaction for provision of digital services on behalf of any person, excluding provision of such services in relation to matters outside Malaysia.

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