TAX FLASH

NOVEMBER 2023

In this Issue

- PR No. 1/2023 – Taxation of Income from Employment on Board a Ship
- PR No. 2/2023 – Tax Incentives for Investment in Bionexus Status Company
- Updated E-Invoice Guidelines [Version 2.1]
- E-Invoice Specific Guideline [Version 1.1]
- Updated Technical Guidelines on Application Procedure for a Special Deduction in Respect of a Qualifying R&D Activity
- Tax Exemption for Iskandar Development Region in Respect of Statutory Income from Qualifying Activities
- Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2023
- Guideline on Application for Extension of Export Period under Section 40 of the Sales Tax Act 2018 and Sales Tax (Persons Exempted From Payment of Tax) Order 2018
- Sales Tax on Low Value Goods

- Moore Malaysia
- Moore Global
- Inland Revenue Board

PR No. 1/2023 – Taxation of Income from Employment on Board a Ship

The Inland Revenue Board ["IRB"] has recently issued the *Public Ruling ["PR"] No. 1/2023 – Taxation of Income from Employment on Board a Ship* to explain the tax treatment of the income of an individual derived from an employment exercised on board a ship. This new PR replaces the PR No. 12/2016 issued on 9th December 2016 with some clarifications and updated/new examples.

Among others, it is noteworthy that the new PR has provided a clarification on the meaning of seagoing ship as follows:-

- "Seagoing ship is not defined in the Income Tax Act 1967 ["ITA 1967"]. For the purpose of this PR, a seagoing ship refers to any vessel which sails beyond the port limit. This is in line with the definition of "seagoing ship" under the Merchant Shipping Ordinance (MSO) 1952. Port limit varies depending on each port's by laws and is controlled by the respective port authority. A seagoing ship is engaged in voyages for the transportation of passengers and cargo. The ship could take many months to reach its destination and may make port calls during its voyage to replenish supplies, fuel and others."
- Therefore, a ship sailing in Malaysian waters that does not sail beyond the port limit is not considered as a seagoing ship.

Note: *For further details relating to the previous PR No. 12/2016 – Taxation of Income from Employment on Board a Ship, kindly refer to our Tax Flash – January 2017 issue.*

PR No. 2/2023 – Tax Incentives for Investment in Bionexus Status Company

The IRB has recently issued the *PR No. 2/2023 – Tax Incentives for Investment in Bionexus Status Company* to explain the tax incentives offered to an investor who has invested in a Bionexus status company in Malaysia. This new PR replaces the PR No. 10/2018 dated 4th December 2018 with some changes to the examples and relevant amendments in law.

Pertinent amendments included in the new PR are as follows:-

i. Legislation
   - Changes are made in the new PR to take into account the extension of the application period for an investor in respect of investment deduction in a Bionexus status company pursuant to the Income Tax (Deduction for Investment in BioNexus Status Companies) (Amendment) Rules 2022.

ii. Criteria for Investor
   - Application to make an investment in a Bionexus status company must be submitted to the Ministry of Finance through Bioeconomy Corporation for approval on or after 1st January 2021 but not later than 31st December 2022.

iii. Tax Incentive
   - The investment in a Bionexus status company must be made by the investor during the period from 1st January 2021 to 31st December 2022.

The above new PR should be read together with PR No. 1/2020 – Tax Incentives for Bionexus Status Companies.

Note: *For further information on the Income Tax Deduction for Investment in a Bionexus Status Company) (Amendment) Rules 2022 and PR No. 1/2020 - Tax Incentives for Bionexus Status Companies, kindly refer to our Tax Flash – June 2020 and Tax Flash – August 2022 issues respectively.*

Updated E-Invoice Guidelines [Version 2.1]

The IRB has recently issued the updated *e-Invoice Guideline dated 28th October 2023 [Version 2.1]* ["updated Guidelines"] with further clarifications and amendments relating to the implementation of e-Invoice.

The salient amendments included in the updated Guidelines are as follows:-

i. Exemption of E-Invoice

- The persons that are exempted from issuing e-Invoice (include the issuance of self-billed e-Invoice) [hereinafter referred to as "the exempted persons"] include:-
  - Ruler and Ruling Chief as defined in Section 76 of the ITA 1967;
  - Former Ruler and Ruling Chief as defined in Section 76 of the ITA 1967 (excluding a former Governer or *Yang di-Pertua Negara* of a State);
  - consort of a current/former ruler of a state having the title of *Raja Perempuan, Sultanah, Tengku Ampuan, Raja Permaisuri, Tengku Permaisuri* or *Permaisuri*;
  - the Government;
  - the State Government and state authority;
  - the Government authority;
  - local authority;
  - statutory authority and statutory body;
  - facilities provided by the above Government, authority or body (e.g. hospitals, clinics, multipurpose hall etc.); and
  - consular offices, diplomatic officers, consular officers and consular employees.
- Suppliers who provide goods/services to the exempted persons are still required to issue e-Invoice in accordance to the implementation timeline.
- Any entities owned by the exempted persons would still be required to implement e-Invoice in accordance to the implementation timeline.
- Transactions that are exempted from the e-Invoice (including self-billed e-Invoice) are as follows:-
  - employment income;
  - pension;
  - alimony;
  - distribution of dividend in specific circumstances;
  - zakat; and
  - scholarship.

ii. Revision of Implementation Date

- The implementation timeline for e-Invoice has been revised as follows:-

Targeted Taxpayers	Implementation Date
Taxpayers with an annual turnover/revenue of more than RM100 million	1st August 2024
Taxpayers with an annual turnover/revenue of more than RM25 million and up to RM100 million	1st January 2025
All other taxpayers	1st July 2025

- For new businesses or operations commencing from the year 2023 onwards, the e-Invoice implementation date is 1st July 2025.
- Invoices issued prior to the e-Invoice implementation date applicable to the respective taxpayers are not required to be converted into e-Invoice.

Note: *For further details on the previous e-Invoice Guidelines Year 2023 issued by the IRB previously, kindly refer to our Tax Flash – August 2023 issue.*

E-Invoice Specific Guideline [Version 1.1]

Following the release of the e-Invoice Guideline to address the scope of implementation / concept of e-Invoice, the IRB has recently issued the *e-Invoice Specific Guideline [Version 1.1]* dated 28th October 2023 to provide further guidance on specific areas, to aid taxpayers in gaining a better understanding of certain e-Invoice treatment and ultimately, to successfully implement e-Invoice.

The salient points included in the abovementioned e-Invoice Specific Guideline are as follows:-

i. Transaction with Buyers

- Suppliers are required to issue e-Invoice for all of its transaction. However, certain buyers, particularly end consumers and certain business, may not require e-Invoice as proof of expense.
- The IRB allows the suppliers to consolidate the transaction with buyers (who do not require an e-Invoice) into a consolidated e-Invoice on a monthly basis.
- Scenario : where the buyer requires an e-Invoice:-
    - The steps involved for the issuance of an e-Invoice to buyer are as follows:-

Step 1 :	Supplier seeks confirmation from buyer if an e-Invoice is required.
Step 2 :	If the buyer confirmed that he/she requires an e-Invoice, the buyer is required to furnish the supplier with the required information to facilitate the issuance of e-Invoice.
Step 3 :	The supplier is required to complete the remaining required fields as outlined in Appendices 1 and 2 of e-Invoice Guideline and proceed to issue an e-Invoice.
Step 4 :	The validated e-Invoice can be used as the buyer's proof of expense, to substantiate a particular transaction for tax purposes.

    - The following concession has been provided to individual buyers in providing the required information:-
        - For Malaysian individuals to provide either:-
            - Tax identification number ["TIN"];
            - MyKad identification number; or
            - Both TIN and MyKad identification number.
        - For non-Malaysian individuals to provide either:-
            - TIN; or
            - Both TIN or passport number.

- Scenario : where the buyer does not require e-Invoice
    - Supplier will issue a normal receipt/bill/invoice to the buyer and will be allowed to aggregate transaction with buyers who do not require e-Invoice on a monthly basis and submit a consolidated e-Invoice to the IRB, within 7 calendar days after the month end.
    - Supplier may opt for the following consolidation methods:-
        (a) The summary of each receipts/bills/invoice is presented as separate line items in the consolidated e-Invoice.
        (b) The summary of all the receipts/bills/invoices is presented as a single line item in the consolidated e-Invoice.
        (c) Each branch or location will submit a consolidated e-Invoice, adopting either (a) or (b) above for the receipts/bills/invoices issued by the said branch or location.
        (d) The summary of all the receipts/bills/invoices issued by each branch or location is presented as separate line items in the consolidated e-Invoice.

- Certain activities or transaction of industries where e-Invoice is required to be issued for each transaction are as follows:-

Industry/Activity	Types of Activities/Transactions where Consolidated e-Invoice is not Allowed
Automotive	Sale of any motor vehicle
Aviation	o Sale of flight ticket o Private charter
Luxury goods and jewellery	Details will be released in due course
Construction	Construction contractor undertaking construction contract, as defined in the Income Tax (Construction Contracts) Regulations 2007
Wholesalers and retailers of construction materials	Sale of construction materials, regardless of volume sold
Licensed betting and gaming	Pay-out to winners for all betting and gaming activities
Payment to agents, dealers or distributors ["ADD"]	Payments made to ADD

ii. Statements or Bills on a Periodic Basis

- Certain business/industries/sector practices the issuance of statements or bills to record multiple transactions between supplier and buyer over set period of time instead of issuance of individual invoices for each transaction. These industries/sectors include but not limited to:-
  - Digital/Electronic payment;
  - Financial services, including banking and financial institutions;
  - Healthcare;
  - Insurance;
  - Stockbroking;
  - Telecommunications.
- Upon implementation of e-Invoice, suppliers are required to issue e-Invoice as proof of income. The suppliers are allowed to issue statement/bill on a periodic basis in the format XML or JSON for IRB's validation and convert the validated e-Invoice into visual presentation in the form of statements/bills, to be sent to buyers.
- Supplier is allowed to create and submit e-Invoice for IRB's validation in accordance with their respective issuance frequency (e.g. monthly, bi-monthly, quarterly, bi-annually, annually).
- Issuance of consolidate e-Invoice for buyers who do not require e-Invoice.
  - Supplier will issue a normal statement/bill to buyer.
  - Supplier is allowed to aggregate statements/bills to create and submit consolidated e-Invoice for IRB's validation in accordance with the current issuance period for statements/bills for the respective business within 7 days after the end of the billing period (whichever is applicable).

iii. Disbursement or Reimbursement

- Currently, suppliers would include the reimbursement and disbursement in their invoices to the buyers.
- Upon implementation of e-Invoice, a supplier which has paid expenses on behalf of the buyer should neither include such payment made on behalf of buyer in the e-Invoice issued to the buyer nor issue an additional e-Invoice for it which has been issued an e-Invoice by another supplier.
- The supplier will be required to provide payment proof to the buyer to recover the payment made to another supplier on behalf of the buyer.

iv. Employment Perquisites and Benefits

- Upon implementation of e-Invoice, employees are required to request for the e-Invoices to be issued to their employer for proof of expenses, where possible. Example of expenses incurred by employees are:-
  - Employees' pecuniary liabilities (e.g. utility bills, parking fees, and car maintenance charges);
  - Club membership;
  - Gym membership;

    - Professional subscriptions;
    - Allowances (e.g. travelling allowance, petrol allowance or toll rate, parking rate/allowance, meal allowance).
- The IRB recognises the potential challenges in getting e-Invoices to be issued in the name of the employer as buyer and has provided the following concession:-
    - Businesses will be allowed to proceed with the use of e-Invoice issued in the name of the employee to support the particular transactions as proof of expense for tax purposes.
    - In the event where payment in relation to perquisite and benefit is made to foreign suppliers, both employer and employee are not required to issue a self-billed e-Invoice. As such, the IRB will accept foreign supplier's receipts/bills/invoices as a proof of expense.
- The concession will only be applicable if the perquisites and benefits are clearly stated in the employer's policy.

v. Certain Expenses Incurred by Employee on Behalf of the Employer

- An individual under a contract of service (i.e. employment) may incur certain expenses on behalf of the employer where currently, employees are required to submit their claim to the employers with the supporting documents (e.g. bills, receipts, invoices, statements, payment slips, etc.). Such expenses include, but not limited to, accommodation, toll, mileage, parking, telecommunication expenses, expenses incurred in a foreign country.
- Upon implementation of e-Invoice, similar concession with regard to the issuance of e-Invoice as per item (iv) above will also be allowed.

vi. Self-Billed e-Invoice

- Self-billed e-Invoice will be allowed for the following transactions:-
    - Payment to ADD;
    - Goods sold or services rendered by foreign suppliers;
    - Profit distribution (e.g. dividend distribution);
    - e-Commerce transactions;
    - Pay-out to all betting and gaming winners;
    - Acquisition of goods or services from individual taxpayers.
- In cases where the buyer is required to issue a self-billed e-Invoice, the buyer will assume the role of the supplier as the issuer of e-Invoice and submits it to the IRB for validation. Upon validation, buyer would be able to use the validated e-Invoice as a proof of expense for tax purposes.

vii. Transaction Which Involved Payments in Monetary Form to ADD

- In a business supply chain involving ADD, the ADD will earn commission on the sale of products or provision of services to consumers as illustrated below:-

$$\text{Seller} \xrightarrow{\text{Pays commissions}} \text{ADD} \xrightarrow{\text{Sales of goods or services rendered}} \text{Purchaser}$$

- Issuance of e-Invoice from Seller to Purchaser
    - Seller (Supplier) is required to issue an invoice to the purchaser (buyer) when a purchaser acquires goods or services from the seller (supplier) through an ADD.
    - When the purchaser does not request for an e-Invoice to be issued, seller will issue normal receipt/bill/invoice to the purchaser.
    - Seller is required to issue consolidate e-Invoice, aggregating all receipts/bills/invoices issued for the prior month, for proof of income within 7 calendar days after month-end.
- Issuance of self-billed e-Invoice from Seller to ADD
    - In cases where an ADD is involved, the ADD is regarded as the supplier whereas the seller is the buyer which is required to issue a self-billed e-Invoice as a proof of expense.

viii. Cross Border Transaction

- Cross border transaction consists of the following:-
    - Goods sold or services rendered by foreign seller (supplier) to Malaysian purchaser (buyer); and
    - Goods sold or services rendered by Malaysian seller (supplier) to foreign purchaser (buyer).
- Goods sold or services rendered by foreign seller (supplier) to Malaysian purchaser
    - Malaysian purchaser is required to issue a self-billed invoice to document the said expense given that the foreign seller is not mandated to implement Malaysia's e-Invoice.
    - The process of issuing a self-billed e-Invoice by the Malaysian purchaser shall follow the detailed e-Invoice, with the following exceptions:-
        - Once the consolidated e-Invoice has been validated, the IRB will send notification to the Malaysian purchaser only.
        - The validated e-Invoice will serve as the proof of expense. The self-bill e-Invoice is not required to be shared with foreign seller and there would not be any request for rejection from foreign seller.
- Goods sold or services rendered by Malaysian seller (supplier) to foreign purchaser
    - The process of issuing a self-billed e-Invoice by the Malaysian seller shall follow the detailed e-Invoice, with the following exceptions:-
        - Once the consolidated e-Invoice has been validated, IRB will send notification to the Malaysian seller only.
        - The validated e-Invoice will serve as the proof of income. Hence, the Malaysian seller would share a copy of the validated of e-Invoice to the foreign purchaser for record purposes.
        - As foreign purchaser is not part of MyInvois System, there would not be any request for rejection from foreign purchaser. Should there be any error on the validated e-Invoice, any adjustment should be made by issuance of e-Invoice credit note / debit note / refund note by the Malaysian seller.

ix. Profit Distribution (E.g. : Dividend Distribution)

- Domestic distribution
    - Companies that are not entitled to deduct tax under Section 108 of the ITA 1967 as well as taxpayers who are listed on Bursa Malaysia will be exempted from issuing self-billed e-Invoice on dividend distribution. The current practice of issuing dividend vouchers or warrants to the shareholders will continue.
    - Correspondingly, their shareholders are not required to issue an e-Invoice for proof of income. This exemption will be reviewed and updated from time to time.
    - However, taxpayer other than those mentioned above are required to issue self-billed invoice.
- Foreign Profits/Dividend
    - The recipient is required to issue an e-Invoice to document as a proof of income for tax purposes.

x. Foreign Income

- An e-Invoice would be required for all foreign income received in Malaysia from outside Malaysia as a proof of income.
- The income recipient should issue the e-Invoice by the end of the month following the month of receipt of the said foreign income.

xi. Currency Exchange Rate

- Currency exchange rate shall be determine based on the following order:-
    - Supplier shall comply with the legal or tax requirements on currency exchange rate as imposed by relevant authorities (e.g. Royal Malaysian Customs Department ["RMCD"], IRB, etc.), where applicable.
    - In the circumstances that no legal or tax requirement on the currency exchange rate is applicable), supplier may follow the currency exchange rate per their internal policy.

Updated Technical Guidelines on Application Procedure for a Special Deduction in Respect of a Qualifying R&D Activity

The IRB has recently uploaded on its website the *Updated Guidelines on the Application Procedure for a Special Deduction in Respect of a Qualifying Research and Development ["R&D"] Activity dated 26th June 2023* to replace the previous Guidelines on the Application Procedure for a Special Deduction in Respect of a Qualifying R&D Activity dated 29th December 2021.

There are no changes made in the updated guidelines except for the following supporting application forms:-

- *Borang 1* for the application for an approved R&D activity under Section 34A of the ITA 1967;
- *Borang 2* for the claim for double deduction on R&D expenditure under Section 34A of the ITA 1967;
- *Borang 3* for the claim for double deduction on R&D expenditure under Section 34B of the ITA 1967; and
- *Borang 4* for the claim for a single deduction under Section 34(7) of the ITA 1967.

Generally, there is no change in the contents of the application forms except for some minor updates on the references made in the forms.

Note: *For further information on the special deductions in respect of a qualifying R&D activity, kindly refer our Tax Flash – September 2020 and Tax Flash – February 2022 issues.*

Tax Exemption for Iskandar Development Region in Respect of Statutory Income from Qualifying Activities

The Income Tax (Exemption) (No. 20) Order 2007 provides income tax exemption to an Iskandar Development Region ["IDR"] status company in respect of 100% of statutory income derived from a Qualifying Activity ["QA"] provided to persons situated:-

- both within an approved node and outside Malaysia; or
- outside Malaysia only.

The exemption is for a period of 10 years commencing from the date of commencement of the QA.

The *Income Tax (Exemption) (No. 20) 2007 (Amendment) Order 2023* has been gazetted with the following salient amendments:-

- The date of commencement of a QA in an approved node is further extended to 31st December 2024 i.e. the incentive will not be available to an IDR status company that commences its QA after 31st December 2024 (effective year of assessment 2021). Prior to this amendment, the commencement period was extended to 31st December 2020 under the Income Tax (exemption) (No. 20) 2007 (Amendment) Order 2018.
- The scope of QA has been expanded to include wellness and assisted living (under healthcare and related services sector) and emerging digital technologies under a new sector "digital business and services" (effective 1st January 2021).

Note: *For further information on the previous Income Tax (Exemption) (No. 20) Order 2007 and Income Tax (Exemption) (No. 20) (Amendment) Order 2018, kindly refer to our Tax Flash – February 2019 issue.*

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2023

The *Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2023* ["the Order"] has been gazetted on 2nd November 2023 and will come into operation on 1st December 2023.

Based on the Order and subject to fulfilment of the conditions, the persons exempted from the payment of tax have been extended to include:-

- franchise holders, distributors or dealers of motor vehicle who purchase a locally manufactured motor vehicle under heading 87.02 of the prevailing Customs Duties Order; and
- express bus, stage bus and school bus operators who purchase van or bus under heading 87.02 (with at least 18-seater) of the prevailing Customs Duties Order.

Guideline on Application for Extension of Export Period under Section 40 of the Sales Tax Act 2018 and Sales Tax (Persons Exempted From Payment of Tax) Order 2018

The RMCD has on 1st November 2023 published the *Guideline on Application for Extension of Export Period under Section 40 of the Sales Tax Act 2018 and Sales Tax (Persons Exempted from Payment of Tax) Order 2018* ["the Guideline"] (currently only made available in *Bahasa Malaysia*). The salient points extracted from the Guideline are as follows:-

- This Guideline covers the application for the extension of the export period as follows:-
  - Regulation 17 of the Sales Tax Regulations 2018;
  - Item 57 to Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018;
  - Item 4 to Schedule B of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018; and
  - Items 1 and 3 to Schedule C of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018.
- The application must be submitted before the date of exportation/transportation to a Special Area or Designated Area ends.

Sales Tax on Low Value Goods

The RMCD has issued the *Guideline for Sales Tax on Low Value Goods ["LVG"]* and *Frequently Asked Questions ["FAQ"] on Implementation of Sales Tax on LVG* dated 3rd November 2023 and 6th November 2023 respectively. The salient points extracted from the Guideline and the FAQ are as follows:-

- The laws concerning sales tax on LVG were enacted on 1st January 2023. However, the imposition of sales tax on LVG will only begin from 1st January 2024.
- LVG refers to all goods (excluding cigarettes, tobacco products, intoxicating liquors, smoking pipes (including pipe bowls), electronic cigarettes and similar personal electric vaporizing devices and preparation of a kind of used for smoking through electronic cigarette and electric vaporizing device, in forms of liquid or gel, whether or not containing nicotine) which are sold at a price not exceeding RM500 and are brought into Malaysia by land, sea or air (including postal service).
- The sales tax rate on LVG is 10% and it will be imposed by registered sellers.
- The sales tax is charged on the sale value of LVG not including any tax, duty, fee or other charges such as transportation, insurance or other costs.
- Sellers consist of:-
  - For local and overseas sellers, who sells LVG on an online platform directly to consumers; and
  - For local and overseas online marketplace operators, whom will be regarded as the seller if any of these conditions below are met:-
    - authorised to charge the customer;

- authorised to deliver the LVG to the customer;
- sets the terms and conditions under which the transaction of sales is made;
- documentation issued to customer identifies the transaction of sales is made by the marketplace; or
- the marketplace and merchant contractually agree that the marketplace is responsible for sales tax on LVG obligations.

- For the purpose of submission of the sales tax return on LVG ["LVG-02 return"], all the transaction values shall be accounted for in Ringgit Malaysia ["MYR"].
- For currency conversion of LVG sales in foreign currency to MYR, the registered seller ["RS"] may use the prevailing acceptable exchange rate at the following times, provided that the basis is consistently applied:-
  - daily basis;
  - the end of taxable period; or
  - the time of filing the LVG-02 return.
- The RS may apply the exchange rate published by any of the following banks/agencies and once the source of reference is selected, it has to be applied consistently:-
  - Central Bank of Malaysia;
  - Local banks (i.e. Commercial Banks, Islamic Banks and Investment Banks in Malaysia); or
  - Reputable news agencies.
- Any LVG purchased before the effective date of the sales tax on LVG shall not be subjected to sales tax even if they are delivered after the effective date. Please refer to the summary below:-

Date of Order Confirmed by RS	Date of Goods being Removed to Consumer	Subject to Sales Tax?
Before 1st January 2024	Before 1st January 2024	No
	On or after 1st January 2024	
On or after 1st January 2024	On or after 1st January 2024	Yes

Note: *For further details, kindly refer to our Tax Flash – January 2023 issue.*

For other issues of our Tax Flash, please go to:
www.moore.com.my/publications