



# BDO TAX BUZZ

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An aerial photograph of a large port facility. The foreground shows a body of blue water with a yellow and red tugboat on the left. The middle ground is dominated by a long pier with several yellow gantry cranes. Behind the pier, there are stacks of colorful shipping containers (blue, red, yellow) and more cranes. In the background, a city skyline is visible under a bright blue sky with scattered white clouds.

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## INCOME TAX



### Income Tax (Advance Pricing Arrangement) Rules 2023 [P.U. (A) 166/2023] (“APA Rules 2023”)

On 29 May 2023, the Ministry of Finance Malaysia (“MOF”) issued the APA Rules 2023 which takes effect from the year of assessment (“YA”) 2023 to update the rules for applications for Advanced Pricing Arrangement (“APA”). The APA Rules 2023 replaces the Income Tax (Advanced Pricing Arrangement) Rules 2012 [P.U. (A) 133/2012] which was issued on 7 May 2012.

The key changes in the APA Rules 2023 are summarised as below:

Key Changes	Description
Application of APA	<p><b><u>Bilateral or multilateral APA</u></b></p> <ul style="list-style-type: none"> <li>▶ For cross-border transactions conducted with an associated person from a country <u>that has double taxation arrangement (“DTA”)</u> with Malaysia under Section 132 of the Income Tax Act 1967 (“ITA”).</li> <li>▶ For a permanent establishment (“PE”), the application shall be made by its head office on behalf of the PE.</li> </ul> <p><b><u>Unilateral APA</u></b></p> <ul style="list-style-type: none"> <li>▶ For cross-border transactions conducted with an associated person from a country <u>that does not have a DTA with Malaysia.</u></li> </ul>
Request for pre-filing meeting	<p>In requesting for a pre-filing meeting, taxpayers are now required to submit the following documents to the Inland Revenue Board of Malaysia (“IRBM”):</p> <ul style="list-style-type: none"> <li>▶ Contemporaneous transfer pricing documentation as specified in the Transfer Pricing (“TP”) Rules 2023;</li> <li>▶ Names, addresses and tax file references of taxpayer and other persons involved in the proposed APA whether in or outside Malaysia;</li> <li>▶ Description of the critical assumptions under which the proposed transfer pricing methodology will operate and the events that should be taken into account when considering the said assumption;</li> <li>▶ Financial statements and tax computations that are available at least for the latest three years prior to the application; and</li> <li>▶ A written indication whether the income in relation to the covered transactions is tax-exempted by the other competent authority.</li> </ul>
Submission of application for APA	<p>Submission should be made within 6 months (instead of 2 months) after receipt of the notification from the IRBM to submit the application.</p>
Dismissal of application for APA	<p>If the APA application involves improper use or abuse of the arrangement made under section 132 of the ITA to obtain unintended benefit, the IRBM may decline the application.</p>

## INCOME TAX

Key Changes	Description
Power to request further information	Any request for further information and documents at any stage of the APA process must be fulfilled within 30 days. Failure to meet the requirements will result in the application being deemed as withdrawn.
Request for rollback	A rollback shall be allowed for not more than three YAs immediately preceding the covered period, provided that the taxpayer submits the amended tax computation for rollback years within 30 days from the date of signing the APA.
Filing of APA compliance report	The compliance report shall also include: <ul style="list-style-type: none"> <li>▶ a copy of a report and analysis which consists of the ownership structure of the local and foreign entities involved in the covered transaction, local organisation chart, details of the controlled transactions and details of the covered transaction's flow; and</li> <li>▶ relevant accounting entries in relation to the compensating adjustments for taxpayer and foreign entities to ensure the economic and tax position of the arm's length price is aligned.</li> </ul>
Revocation of APA	The IRBM may now revoke an APA if taxpayers fail to disclose any occurrence of voluntary disclosure, investigation, audit or incentive approval.
Renewal of APA	Application for renewal of an APA should be made within 2 months after receipt of the IRBM's written decision. Otherwise, the application is deemed to have been withdrawn by the taxpayer.
Fee and other payment	In respect of an application for APA, a taxpayer shall pay a non-refundable fee of: <ul style="list-style-type: none"> <li>▶ RM5,000 if taxpayer submits application within 2 months after receipt of the notification from the IRBM; or</li> <li>▶ RM10,000 if taxpayer submits application after 2 months but within 6 months after receipt of the notification from the IRBM; and</li> <li>▶ RM5,000 for any renewal of APA.</li> </ul>



## INCOME TAX

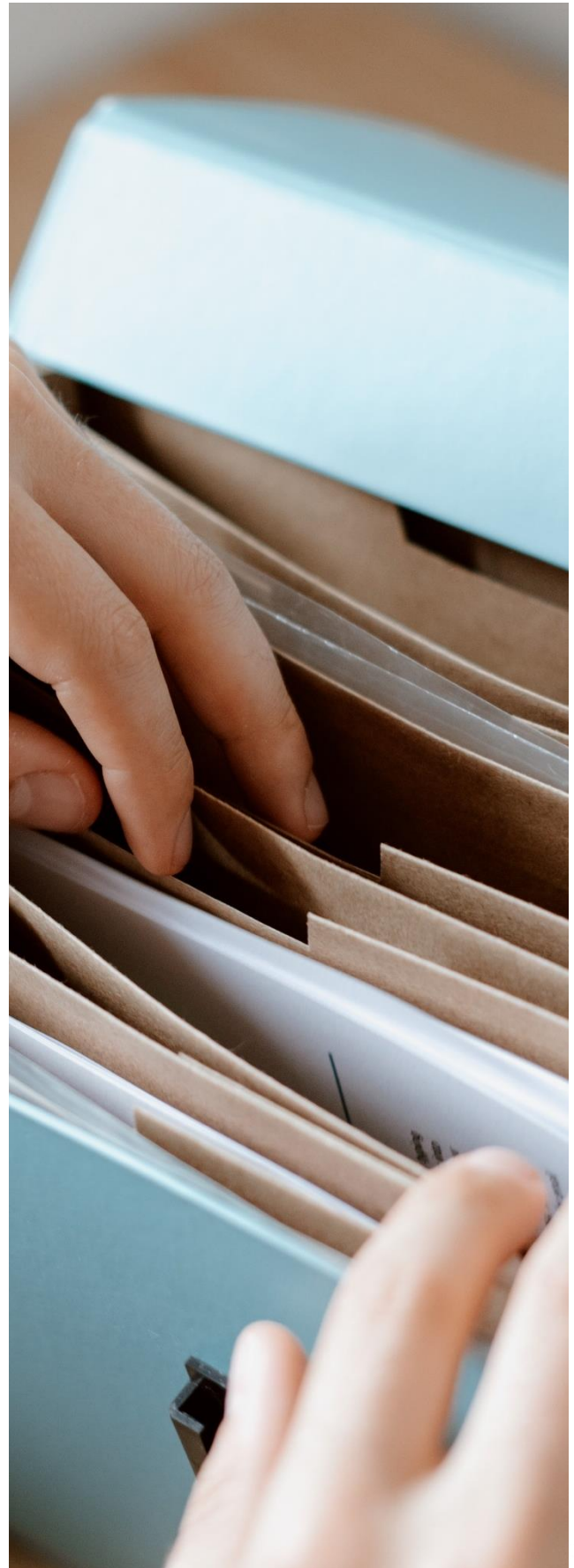
### Updated Minimum Transfer Pricing Documentation (“TPD”) Template and Explanatory Notes

On 30 May 2023, the IRBM updated its minimum TPD template and explanatory notes. The template serves as a guide for taxpayers who fall outside the scope of paragraph 1.3.1 of the Malaysian Transfer Pricing Guidelines 2012 (as updated in 2017) and are required to prepare a minimum TPD.

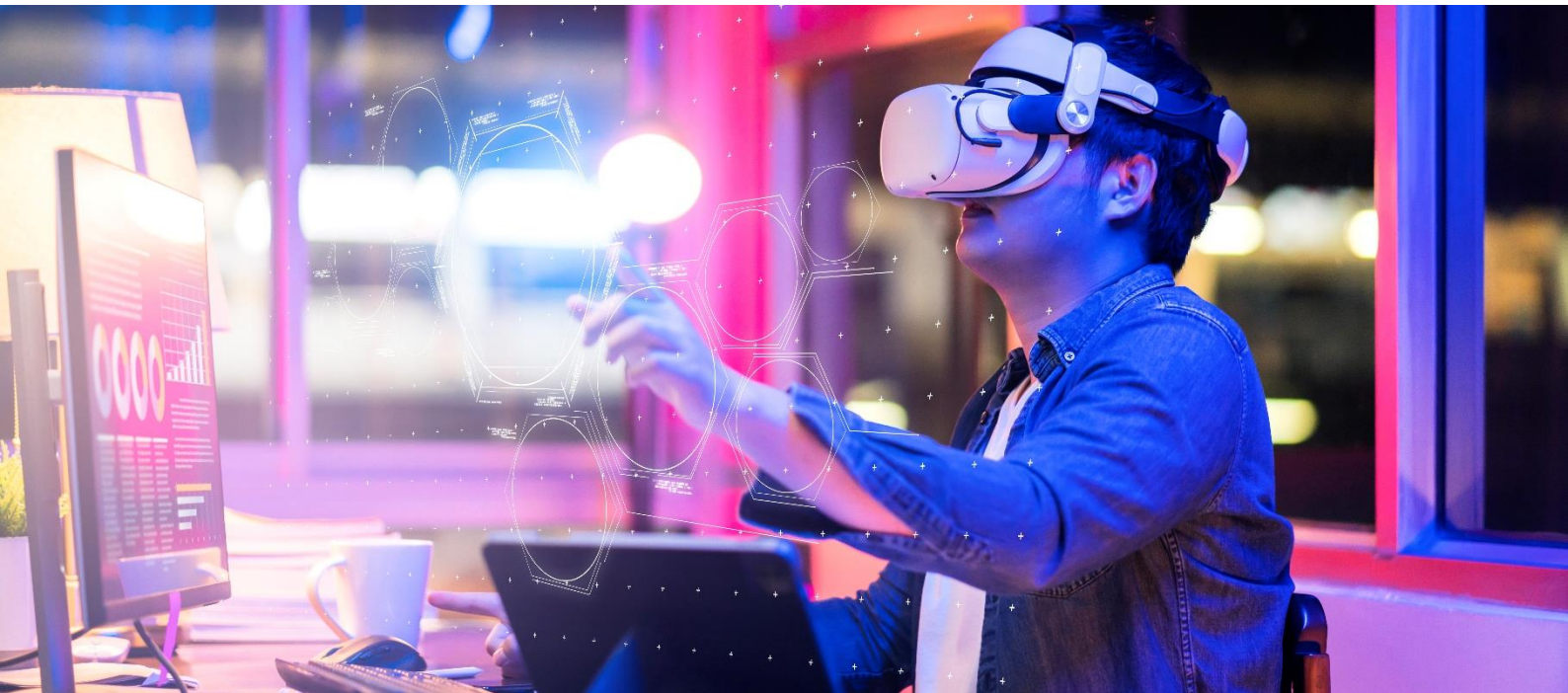
The updated template excludes the requirement for taxpayers to characterise their business activity. However, where the taxpayer opines that more information is required to justify the related party transactions, taxpayers are encouraged to do so.

The explanatory notes to the minimum TPD elaborates further on the information required by the IRBM in the following areas:

- ▶ company information;
- ▶ group information;
- ▶ controlled transactions; and
- ▶ pricing policy (for each type of controlled transaction).



## INCOME TAX



### Application for Tax Deduction on Contributions/Sponsorships of Smart Artificial Intelligence (“AI”)-Driven Reverse Vending Machine (“RVM”)

The MOF has recently issued the Guidelines for Application of Tax Deduction under Section 34(6)(h) of the ITA on Contributions/Sponsorships of Smart AI-Driven RVM (the “RVM Guidelines”). The RVM Guidelines explains the criteria and general procedures for applying for the said income tax deduction.

Smart AI-Driven RVMs are vending machines equipped with advanced technology such as internet connectivity and software that allow functions such as accepting returned empty beverage containers like bottles and cans for recycling and gives back a deposit or refund amount to the donors automatically without human intervention.

Based on the RVM Guidelines, the taxpayers having business income such as companies, individuals, partnerships, trust bodies and cooperatives societies are eligible to claim the said tax deduction on contributions made in cash or investment in RVM.

To claim the said tax deduction, taxpayers are required to apply in writing for MOF’s approval together with the following requisite information/documents as per the format stated in Appendix III of the RVM Guidelines, i.e.:

- ▶ official receipts/acceptance letter (Appendix I of the RVM Guidelines)/investment agreement which states the duration, location, and serial number of the equipment supplied; and
- ▶ verification from the Ministry of Natural Resources, Environment and Climate Change on the amount of cash, value of equipment, and services (Appendix II of the RVM Guidelines).

Taxpayers are required to keep the abovementioned documents together with the approval letter from the MOF to validate the said tax deduction claim in the event of tax audit or upon request by the IRBM.

The said tax deduction is for applications received by the MOF from 1 April 2023 until 31 December 2024. The RVM Guidelines can be obtained from MOF’s website.

## INCOME TAX

### Application of New Tax Rates for Calculation of Monthly Tax Deductions (“MTD”)

The IRBM has announced that the new tax rates for MTD calculation will come into effect on 1 June 2023 in line with the amendments to the ITA made by the Finance Act 2023 which was gazetted on 31 May 2023. The Specification for MTD Calculations Using Computerised Calculation for 2023 has been updated accordingly on IRBM’s website.

### Online Form for 2% Withholding Tax Deduction for Commission Payments to Agents, Dealers or Distributors under Section 107D of the ITA (“Form e-CP107D”)

The IRBM has introduced Form e-CP107D on 8 June 2023 for online submissions.

The Form e-CP107D can be accessed by taxpayers through the MyTax application and includes the following functions:

- ▶ filling in the information of payer and payee commission payments online;
- ▶ downloading the Form e-CP107D Appendix;
- ▶ uploading the Form e-CP107D Appendix; and
- ▶ generating bill number for the purpose of withholding tax payment via ByrHASiL after the Form e-CP107D has been submitted.

### Removal of Online Forms for YA 2012 to YA 2015

On 28 June 2023, the IRBM announced that the online forms for YA 2012 to YA 2015 will no longer be available for use from 1 July 2023 onwards.

The submission of the return forms for the said YAs must be submitted via manual forms which can be downloaded from the IRBM’s website.



## INCOME TAX

### Updated Guidelines for Employers on Submission of Notice of Termination of Employees (“Form CP22A/CP22B/CP21”)

On 9 June 2023, the IRBM updated the guidelines for employers on the submission requirements of Form CP22A/CP22B/CP21 on termination of employment. Where the Form CP22A/CP22B/CP21 is required to be submitted, the employer is also required to withhold any moneys payable to the employee and shall not, without the permission of the IRBM, pay any part of the moneys to or for the benefit of the employee until 90 days after the relevant form has been received by the IRBM.

Under the updated guidelines, the submission of Form CP22A/CP22B is now required for non-Malaysian employees who have resigned or whose employment have been terminated when their annual income is subject to tax, without any exceptions. It should be noted that this is inconsistent with Section 83(3) of the ITA, which does not have a notification requirement based on the nationality of the employee.

Nevertheless, based on the IRBM’s updated guidelines, situations where Form CP22A/CP22B is required to be submitted are summarised as below:

Type of termination	Annual income subject to tax?	Monthly income below MTD threshold?	Has employer made required MTD?	Employer knows employee will continue working?	Need to submit Form CP22A/CP22B?	
					Malaysian employees	Non - Malaysian employees
Resignation/ Termination	No				No	No
	Yes	Yes		Yes	No	Yes
	Yes	Yes		No	Yes	Yes
	Yes		Yes	Yes	No	Yes
	Yes		Yes	No	Yes	Yes
	Yes		No		Yes	Yes
Retirement/ Death	No				No	No
	Yes				Yes	Yes

Meanwhile, the situations where the Form CP21 is required to be submitted are summarised as below:

Type of termination	Annual income subject to tax?	Where annual income is subject to tax, is employee required to work outside Malaysia regularly by the employer?	Need to submit Form CP21?
Employee leaving Malaysia for more than 3 months	No		No
	Yes	Yes (with approval from IRBM)	No
	Yes	No	Yes



## INCOME TAX

### Income Tax (Deduction for Expenditure Incurred for Provision of Approved Internship Programme) (Amendment) Rules 2023 [P.U. (A) 188/2023] (the “Amendment Rules”)

The Amendment Rules was gazetted on 23 June 2023 to amend the Income Tax (Deduction for Expenditure Incurred for Provision of Approved Internship Programme) Rules 2019 [P.U.(A) 398/2019]. The amendments are effective from YA 2022.

The key changes by the Amendment Rules are as follows:

- ▶ A person who is a resident in Malaysia and approved by Talent Corporation Malaysia Berhad to conduct an approved internship programme is eligible to claim double deduction for YA 2022 to YA 2025.
- ▶ The eligibility criteria are expanded to include the following:
  - The definition of “higher educational institution” expanded to include institutions registered with Ministry of Higher Education (“MOHE”) Malaysia or educational institutions outside Malaysia recognised by MOHE;
  - The definition of “qualified course” includes technical and vocational education and training programmes (minimum Malaysian Skills Certificate Level 1 or its equivalent) offered in or outside Malaysia; and
  - The definition of “student” includes students pursuing bachelor’s degree, master’s degree or a professional certificate programme.

▶ Qualifying expenses eligible for double deduction are summarised as below:

a) Payment of internship monthly allowance to students as follows:

Qualified course	Eligible amount
Malaysian Skills Certificate Level 1 until 4 or diploma level or its equivalent	Not less than RM500
Malaysian Skills Certificate Level 5 or bachelors degree or masters degree or its equivalent, or professional certificate level	Not less than RM600

- b) Expenditure incurred for the provision of training for the students;
- c) Expenditure incurred on meal, travelling and accommodation for the students during the internship programme; and
- d) Expenditure incurred for digital and communication costs.

The total expenses for (b), (c) and (d) above allowed for each student shall not exceed RM5,000 per YA.



## INCOME TAX

### Practice Note 2/2023: Clarification of Tax Treatment on Political Parties and Politicians (“PN 2/2023”)

The IRBM has on 27 June 2023 issued PN 2/2023 to clarify the tax treatment of political parties and politicians.

Whilst “political party” is not defined in the Income Tax Act 1967, reference has been made to the definition contained in Section 2 of the Societies Act 1966 and is defined as:

- a) Any society which by any of its objects or rules, regardless whether such object or rule is its principal object or rule, or constitutes merely an object or rule which is ancillary to its principal object or objects or to its principal rule or rules, makes provision for the society to participate, through its candidates, in elections to the Dewan Rakyat, or to a Dewan Undangan Negeri, or to a local authority, or makes provision for it to seek the appointment or election of a person proposed or supported by it to the Dewan Negara; or
- b) Any society notwithstanding anything contained in its objects or rules, carries on any activity or pursues any objective which involves its participation, through its candidates, in elections to the Dewan Rakyat, or to a Dewan Undangan Negeri, or to a local authority, or which involves its seeking the appointment or election of a person proposed or supported by it to the Dewan Negara.

PN 2/2023 further mentions that a politician is an individual who stands for election or who holds positions through political parties or activities including a congressman, chancellor, governor, mayor, member of parliament, minister, president, prime minister or senator, at the local government, state government or federal government.

Category	Tax Treatment
Political parties	All income of political parties are exempted from tax pursuant to Income Tax (Exemption) (No 22) Order 2002 with effect from YA 2001. This includes all donations received by political parties from within or outside Malaysia.
Politician	<p>Tax on a politician is similar to any other individual. In line with this, donations received by a politician from within or outside Malaysia are not exempted from tax but subject to tax as gains or profits under Section 4(f) of the ITA.</p> <p>Gratuities or pensions received by politicians (holding the following positions) from employment paid by the Government are exempted from tax:</p> <ul style="list-style-type: none"> <li>▶ President or Deputy President of the Senate.</li> <li>▶ Speaker or Deputy Speaker of the House of Representative.</li> <li>▶ Speaker of the State Legislative Assembly.</li> <li>▶ Member of the Senate.</li> <li>▶ Member of the House of Representative.</li> <li>▶ Member of the State Legislative Assembly.</li> </ul> <p>The exemption in respect of pension is however, subject to conditions set out under paragraph 30A of Schedule 6 of the ITA which amongst others, include the person reaching the age of 55 or ceases to hold the position due to ill-health. The exemption shall be applicable only to the higher pension payable.</p>

## STAMP DUTY

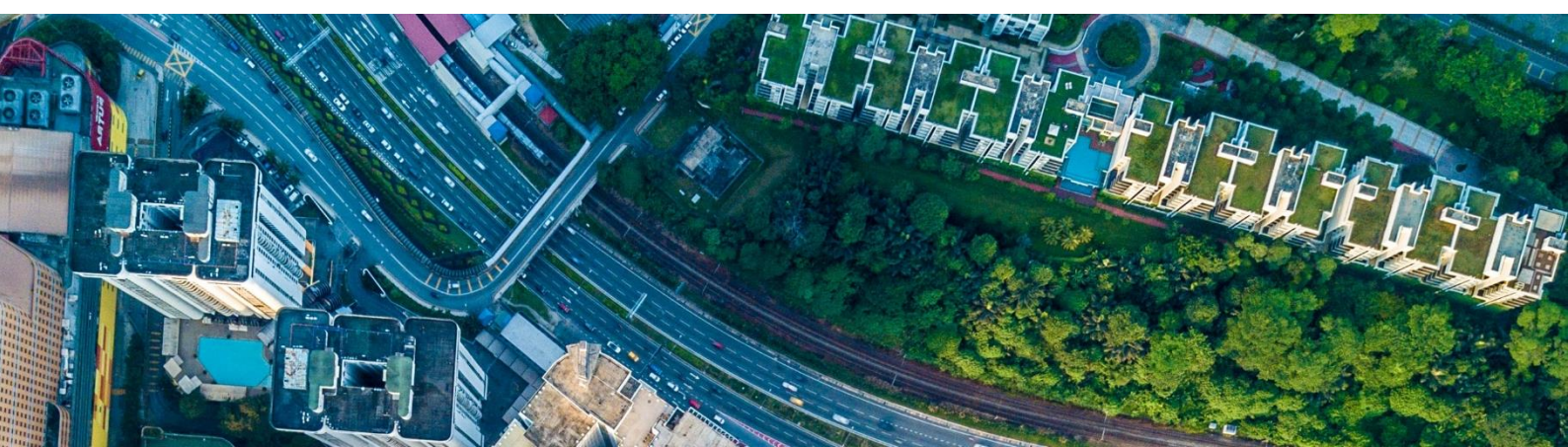
### Stamp Duty Exemption for First Time Home Buyers

Several orders have been issued to provide for stamp duty remission or exemption to first time home buyers of residential properties through the Malaysian Home Ownership Initiative (“i-Miliki”) under the Home Ownership Programme 2022/2023 as announced in the re-tabled Budget 2023.

To qualify for the remission or exemption, the sale and purchase agreement must be executed between a Malaysian citizen and a property developer from 1 June 2022 to 31 December 2023 and is duly stamped by 31 January 2024. In addition, the developer is required to provide a statutory declaration that a minimum 10% discount on the original price has been given, except for residential properties which are subject to controlled pricing. Meanwhile, the individual is required to provide a statutory declaration confirming that the individual has never owned any residential properties either individually or jointly including residential property obtained by way of inheritance or gift.

The salient attributes of each of the respective remission and exemption orders are as follows:

Gazette Order	Stamp Duty (Exemption) Order 2023 [P.U. (A) 176/2023]	Stamp Duty (Exemption) (No. 2) Order 2023 [P.U. (A) 177/2023]	Stamp Duty (Remission) Order 2023 [P.U. (A) 179/2023]	Stamp Duty (Remission) (No.2) Order 2023 [P.U. (A) 180/2023]
Instrument exempted from Malaysian Stamp duty	Loan agreement between an individual and a licensed financial institution, licensed co-operative society or employer providing housing loan services.	Instrument of transfer between an individual and an approved property developer.	Loan agreement between an individual and a licensed financial institution, licensed co-operative society or employer providing housing loan services.	Instrument of transfer between an individual and an approved property developer.
Rate of exemption or remission	Full stamp duty exemption		Remission of 75% from stamp duty chargeable	
Value of qualifying property	Not more than RM500,000		More than RM500,000 but not exceeding RM1,000,000	



## STAMP DUTY

### Stamp Duty (Exemption) (No.3) Order 2023 [P.U. (A) 178/2023]

As announced in the re-tabled Budget 2023, Stamp Duty (Exemption) (No.3) Order 2023 [P.U. (A) 178/2023] provides that the transfer of immovable property on the grounds of love and affection between family members may receive a 100% stamp duty exemption on the first RM1 million of the property's market value and a further 50% exemption on the remaining balance of the market value of the same immovable property for transfers executed on or after 1 April 2023.

As such, the earlier remission order relating to transfers of immovable property between family members under the Stamp Duty (Remission) (No.2) Order 2019 [P.U. (A) 369/2019] is revoked with effect from 1 April 2023 onwards under the Stamp Duty (Remission) (Revocation) Order 2023 [P.U. (A) 189/2023]. However, qualifying instruments of transfer for immovable property executed before 1 April 2023 but has not been presented for stamping are still entitled to the earlier remission order.



The exemption applies to transfers between:

Donor	Recipient (must be Malaysian citizen)
<ul style="list-style-type: none"> <li>• Mother or father; or</li> <li>• Mother and father</li> </ul>	<ul style="list-style-type: none"> <li>• Child</li> </ul>
<ul style="list-style-type: none"> <li>• Child</li> </ul>	<ul style="list-style-type: none"> <li>• Mother or father; or</li> <li>• Mother and father</li> </ul>
<ul style="list-style-type: none"> <li>• Grandfather or grandmother; or</li> <li>• Grandfather and grandmother</li> </ul>	<ul style="list-style-type: none"> <li>• Grandchild</li> </ul>
<ul style="list-style-type: none"> <li>• Grandchild</li> </ul>	<ul style="list-style-type: none"> <li>• Grandfather or grandmother; or</li> <li>• Grandfather and grandmother</li> </ul>

### Stamp Duty (Exemption) (No. 11) 2021 (Amendment) Order 2023 [P.U. (A) 141/2023]

The above order is to extend to 31 December 2024 of the exemption period for the Stamp Duty (Exemption) (No. 11) Order 2021 [P.U.(A) 367/2021], which exempts an instrument of loan or financing agreement relating to the restructuring or rescheduling of loans or financing between a borrower or customer and a financial institution.

Thus, a qualifying instrument executed on or after 1 July 2021 but no later than 31 December 2024 will qualify for exemption from stamp duty, provided that the conditions stipulated in the original order are satisfied.

## SERVICE TAX

### Service Tax (Amendment) Regulations 2023 [P.U. (A) 150/2023]

The above regulations were gazetted on 12 May 2023 and takes effect from 15 May 2023 in respect of the amendments to the Service Tax Regulations 2018 [P.U. (A) 214/2018]. The amendments are as follows:

- ▶ Amendments to the First Schedule:
  - amending Item (a)(iii) in Column 1 (taxable persons) of *Group A: Accommodation* to exclude private educational institutions registered under the Education Act 1996 [Act 550] that provide accommodation premises from the scope of taxable persons.
  - expanding the scope of prescribed taxable services under Column 2 of Groups A to E to include the provision or sale of:
    - cigarettes;
    - smoking pipes (including pipe bowls);
    - electronic cigarettes and similar personal electric vaporising devices; or
    - preparation of a kind used for smoking through electronic cigarette and electric vaporising device, in form of liquid or gel, whether or not containing nicotine.
  - deleting Item 7(c) in Column 1 of *Group G: Professionals*, which results in any training or coaching centre registered with the Ministry of Health (“MOH”) or Social Welfare Department, or recognised by any national association for persons with disabilities registered with the Registrar of Societies Malaysia which provides consultancy, training or coaching services being taxable persons.



## SERVICE TAX

### ▶ Amendments to the First Schedule:

- amending item g(iii) of Column 2 of *Group G: Professionals* to further restrict the exclusion from the scope of taxable services for the provision of training services or coaching services provided to a person who holds a valid Kad OKU issued under the Persons with Disabilities Act 2008 [Act 685], to such services provided by training or coaching centre service provider registered with the MOH or Social Welfare Department, or recognised by any national association for persons with disabilities registered with the Registrar of Societies Malaysia.
- substituting Item 7 in Column 1 of *Group I: Other Service Providers* to change the taxable persons under that Item to any person who:
  - a) is granted an operator's license under Section 18 or 38 of the Land Public Transport Act 2010 [Act 715] for Peninsular Malaysia;
  - b) is licensed under Section 16 of the Commercial Vehicles Licensing Board Act 1987 [Act 334] for Sabah, Sarawak and Federal Territory of Labuan; or
  - c) is licensed under Section 4 of the Tourism Vehicles Licensing Act 1999 [Act 594] for Sabah, Sarawak and Federal Territory of Labuan.
- amending Item g(iii) in Column 2 of *Group I: Other Service Providers* to separately include hired car services in the list of taxable services.
- ▶ Regulation 11 in respect of the issuance of credit note or debit note is amended to allow the Royal Malaysian Customs Department ("RMCD") to waive the requirement for any prescribed particulars to be stated on the debit note or credit note issued by a registered person, upon request in writing by the registered person and subject to conditions as the RMCD deems fit.
- ▶ Regulation 14 in respect of the submission of a return or declaration is amended to remove the provisions allowing submissions to be made by post or courier services to the Customs Processing Centre. However, the amendment also allows the RMCD to determine the other submission methods besides electronic services that may be used.
- ▶ Regulation 16 in respect of the mode of service tax payment is amended to remove the provisions relating to service tax payments by cheque and bank draft. However, the RMCD may allow other payment modes besides electronic banking.



## OTHER NEWS

### Cessation of Accepting Cheques and Money Orders/Postal Orders (“MOPO”) as Instruments of Payment to the IRBM

The IRBM has issued a statement on 12 June 2023 which states that it will cease to accept cheques and MOPO as instruments of payment for direct tax payments at all IRBM Revenue Management Centres (“PPTH”), Stamp Duty Payment Counters, as well as banks and post offices acting as IRBM collection agents.

The respective cessation dates for accepting cheques and MOPO are as follows:

Payment Centres	Instruments	Effective Date	
PPTH Kuala Lumpur, Kuching and Kota Kinabalu	Cheques/MOPO	1 August 2023	
Appointed Agent Banks	CIMB Bank	Cheques	1 August 2023
	Maybank	Cheques	1 June 2023
	Public Bank	Cheques	1 June 2023
Post Offices	MOPO	1 August 2023	
Stamp Duty Payment Counters	Cheques/MOPO	1 July 2023	

The cessation does not apply to the following payments:

- ▶ Advance payments and instalments for audit, investigation and civil law cases using cheques/post-dated cheques submitted to the IRBM before 1 August 2023; and
- ▶ Payment of withholding tax under Section 107D of the ITA.

The alternative direct tax payment mediums that may be used by taxpayers has also in the media release.

### Abolition of the Use of Facsimile Machines in IRBM Premises

The IRBM will shift to the full use of e-mail as one of its main information and communication delivery mediums, thus abolishing the use of facsimile in all IRBM premises throughout Malaysia with effect from 1 July 2023.



## OTHER PUBLICATIONS

### Income Tax (Transfer Pricing) Rules 2023 [P.U. (A) 165/2023] (“TP Rules 2023”)

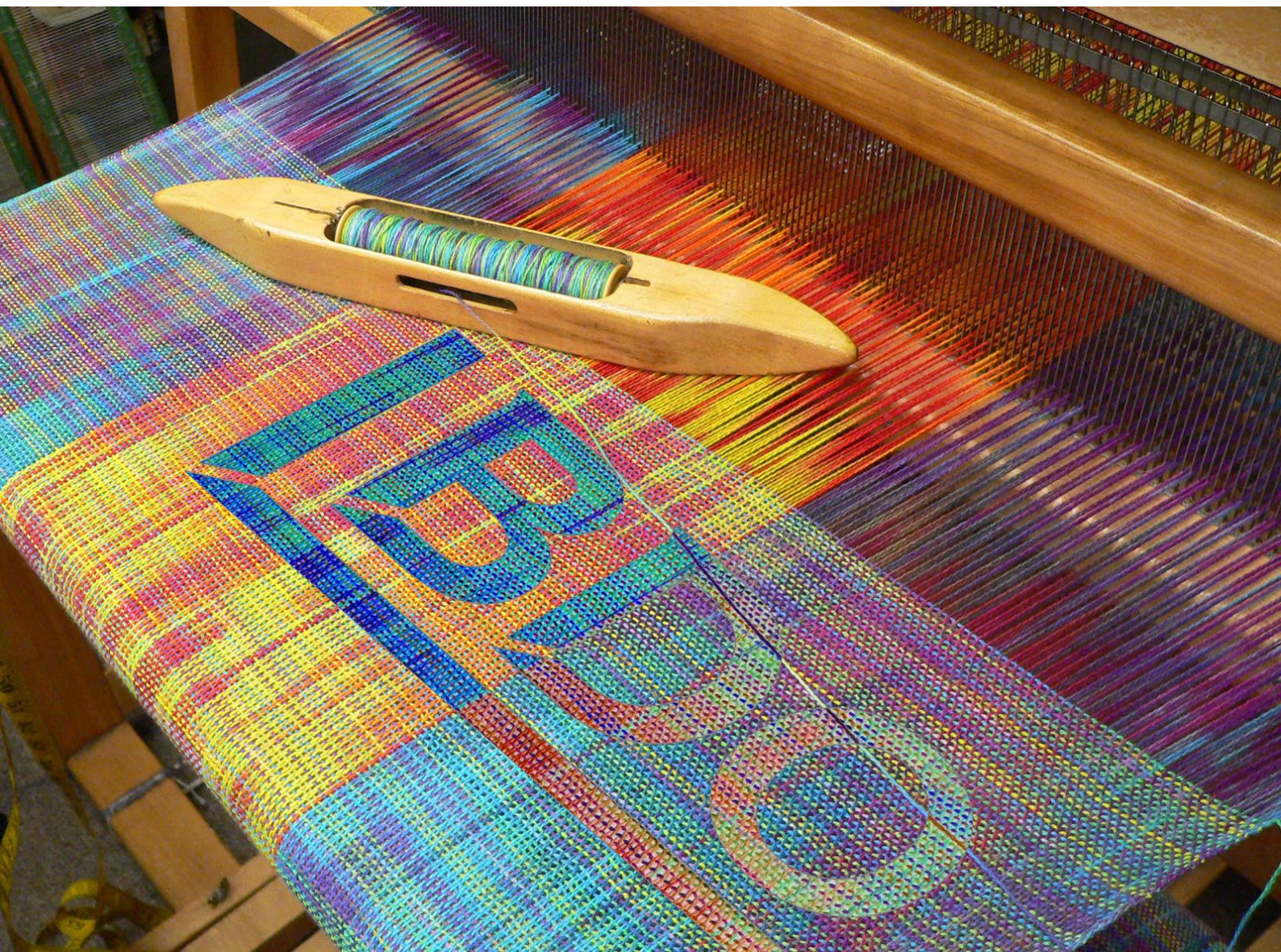
The TP Rules 2023 was gazetted on 29 May 2023 and replaces the Income Tax (Transfer Pricing) Rules 2012 [P.U. (A) 132/2012] with effect from the year of assessment (“YA”) 2023. Please refer to our publication "[10 Changes You Need to Know About the Malaysian TP Rules 2023](#)".

### Special Voluntary Disclosure Programme 2.0 (“SVDP 2.0”) and Voluntary Disclosure Programme (“VDP”)

The IRBM and the RMCD has announced on their respective websites their implementation of SVDP 2.0 and VDP respectively from 6 June 2023 to 31 May 2024. Please refer to our publication "[Special Voluntary Disclosure Programme / Voluntary Disclosure Programme 2.0](#)"

### Implementation of e-Invoicing

The IRBM has issued guidelines for the implementation of e-invoicing. Please refer to our publication "[E-invoicing Guideline](#)".





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