



HSS ADVISORY SDN BHD
(722956-M)

Tax & Business Advisors

Proposed Amendment to the Income Tax Act 1967

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Section 44 (5F) Deduction Allowed for Losses Ascertained under Sub-S (4) or (5)

- It was proposed that the **unabsorbed business losses carried forward** for a maximum of 7 consecutive years of assessment to be **extended** to 10 consecutive years of assessment.

7 years → 10 years

- The accumulated unabsorbed business losses up to **Year of Assessment 2018** will be allowed to carry forward until **Year of Assessment 2028**.



Section 106A – Power to Call for Bank Account Information for Purpose of Making Garnishee Order Application

- It was proposed that with effect from **1st January 2022**, the Director General of IRB Malaysia will **require financial institution to furnish bank account information** within a **specified timeframe** for the application to court for a garnishee order.
- The financial institution shall not disclosed the information to any person.

Section 106A – Power to Call for Bank Account Information for Purpose of Making Garnishee Order Application

- Financial institution includes –
 - i) Any person carrying **banking business** with licensed under Financial Services Act 2013 in Malaysia;
 - ii) Any person carrying **Islamic banking business** licensed under Islamic Financial Services Act 2013 in Malaysia;
 - iii) Any **development financial institution** prescribed under the Development Financial Institutions Act 2002.

[S107D] Withholding Tax on Payments to Agents

- It is proposed that, with effect from **1st January 2022**, the company is required to **withhold 2% tax** from commission (in **monetary** form) paid to resident individual agent, dealer or distributor **and remit** the 2% withholding tax **to IRB within 30 days** from the date of payment of commission.
- **10% penalty** will be imposed by IRB for failure to remit withholding tax within the stipulated time frame.
- Company is required to comply with S107D if it paid commission to any individual resident who :-
 - is authorized by the company to act as its agent, dealer or distributor;
 - Receives payments (whether in monetary form or otherwise) from the company arising from sales, transaction or schemes carried out by him as the company's agent, dealer or distributor; and
 - was being paid by the company a total payment (whether in monetary form or otherwise) of more than RM 100,000 in the immediately preceding basis year for a year of assessment.

[S39] Deductions not Allowed

- It was proposed that, **no deduction shall be allowed** for payment (i.e. expense) that is subject to withholding tax under Section 107D **unless the respective withholding tax and penalty** (if any) are paid before the submission of the income tax return.
- Effective date on **1st January 2022**.

Schedule 6 [Exemptions from Tax]

It was proposed that the income tax exemption for foreign income formerly granted to resident person (except company carrying on the business of banking, insurance or sea or air transport) is **revoked** with effect from **1st January 2022**.

HSS Comment:

Based on the response from IRBM during the Budget 2022 webinar, any foreign income which is –

- i. revenue in nature (e.g. business income, employment income, dividend income, interest income, royalty income, etc.);*
- ii. derived by a resident person; and*
- iii. received by the resident person in Malaysia on or after 1st January 2022*

will be subject to income tax regardless such foreign income is derived prior to 1st January 2022.



Schedule 6 [Exemptions from Tax]

HSS Comment (cont'd) :

That means, any foreign income which was earned prior to 1st January 2022 will still be subject to income tax if it is remitted into Malaysia on or after 1st January 2022.

Although the foreign income which is capital in nature (e.g. gain from disposal of property, investment, etc.) will not be subject to income tax as it is not within the scope of Income Tax Act 1967 [ITA], the taxpayer is required to retain sufficient document to justify the foreign income is capital in nature. In the event where the taxpayer is unable to prove the foreign income is capital in nature, such income will be subject to income tax when it is remitted into Malaysia on or after 1st January 2022.

In view on the above, resident taxpayer is reminded that foreign income remitted into Malaysia (other than those which had been granted exemption by ITA and its subsidiary legislation) will be subject to tax with effect from 1st January 2022.

Schedule 6 [Exemptions from Tax]

HSS Comment (cont'd) :

Double Taxation Relief

In the event where any foreign source of income of a resident person had suffered foreign tax in the country where the income was derived, the taxpayer may claim Double Taxation Relief on the foreign tax suffered as provided under Section 132, 133 and Schedule 7 of the ITA so long as the conditions for claiming the Double Taxation Relief stipulated in the said Sections and Schedule are fulfilled.



Schedule 1 [Rates of Tax]

It was proposed that -

- i. the foreign income of a resident person received in Malaysia from **1st January 2022 to 30th June 2022** will be subject to income tax at the rate of **3% of gross income** ; and
- i. the foreign income of a resident person received in Malaysia **from 1st July 2022** onwards will be **subject to income tax** in accordance with the Part I (i.e. **Individual and Corporate Tax Rates on chargeable income.**) and Part IV of Schedule I of the ITA.



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