



# FAQ: Taxation in Malaysia

*for LexisNexis Resource Hub – COVID-19*

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## Income Tax

### 1. In light of the Movement Control Order ('MCO'), what are the extended deadlines to file tax returns?

For companies with their financial year ending 31 July 2019 to 31 December 2019, the deadline to file tax returns is extended for an additional two months, ie nine months from their financial year-end. Labuan entities which are required to submit tax returns during the MCO period are granted an extension of time until 31 May 2020.

Individuals who have employment income are given an additional two months to file their income tax returns, until 30 June 2020. For individuals who have business income, the deadline to file their income tax returns is also extended for two months until 30 August 2020.

### 2. What is the extended filing period for various tax forms?

The extensions granted by the Inland Revenue Board ('IRB') are as follows:

- (a) The submission deadline for all types of tax estimates which are due between 18 March 2020 and 28 April 2020 is extended to 31 May 2020.
- (b) The submission deadline for revisions of tax estimates in the third month of instalment which fall in April 2020 is extended to 31 May 2020.
- (c) The submission deadline for Notifications of Change in Accounting Period (Form CP204B) which are due within the MCO period is extended to 31 May 2020.
- (d) Labuan entities are allowed to submit Form LE3 by 31 May 2020 if the due date falls within the MCO period.
- (e) The submission deadline for the Monthly Tax Deduction ('MTD') of employees' remuneration for March and April 2020 is extended to 31 May 2020.

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- (f) The submission deadline for Country-by-Country Reporting ('CbCR') report by entities in Malaysia which is due on 31 March 2020 and 30 April 2020 will be given an extension of time until 15 May 2020 and 31 May 2020 respectively.
- (g) The submission deadline for CbCR notification by constituent entities in Malaysia which is due by 31 March 2020 and 30 April 2020 is extended to 31 May 2020.
- (h) Forms CP21, CP22, CP22A, or CP22B which are required to be submitted during the MCO period can be submitted to the IRB from 29 April 2020.
- (i) In regard to submission of Application Form of an Approved Research and Development (R&D) Project under section 34A ITA 1967 (Borang 1), the due date for submission of the completed Borang 1 (New Project/Extension Project) which ends on 31 March 2020 and 30 April 2020 is extended until 30 June 2020.
- (j) Extension of time will be given until 30 June 2020 for the submission of the audited accounts by the institution or organisation approved under section 44(6) of the ITA 1967.
- (k) Extension of time is given until 31 May 2020 for the submission of Form CP58 where the due date falls within the MCO period.

**3. Are there any extensions of time given for payment of taxes which are due during the MCO period?**

The IRB has granted the following extensions of time:

- (a) Tax estimate payments which are on 15 April 2020 and 15 May 2020 can be paid by 31 May 2020.
- (b) Extension of time is given to Labuan entities which are required to make tax payments during the MCO period until 31 May 2020.
- (c) Payment for CP500 which is due in March and May can be deferred starting from April 2020 to June 2020.
- (d) The payment of MTD compounds and/or CP38 payments for the remuneration for March and April 2020 has been extended until 31 May 2020.

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**4. Does the special revision of tax estimate in the 3rd monthly instalment payment apply to all companies?**

Yes, all affected companies are allowed to revise their tax estimates in the 3rd monthly instalment payment.

**5. Are companies allowed to defer payment of income tax instalments?**

In addition to the deferment of tax instalments which are due on 15 April 2020 and 15 May 2020 as stated in Answer No 3 above, companies that undertake activities relating to tourism may defer payment of their instalment payments for six months beginning April 2020 until September 2020. Further, Small and Medium Enterprises ('SMEs') can defer monthly income tax instalment payments for three months starting from April 2020 until June 2020.

**6. What are the business criteria of an SME?**

An SME must:

- (a) be incorporated in Malaysia;
- (b) have a paid-up capital of less than or equal to RM2.5 million ordinary shares at the beginning of the basis period for a year of assessment; and
- (c) have a gross business income of RM50 million and below.

**7. Are taxpayers required to remit withholding tax to the IRB during the MCO period?**

Withholding tax payments which are due within the MCO period can be paid to the IRB from 29 April 2020 to 31 May 2020. A penalty will not be imposed for late payment during the MCO period.

**8. What is the IRB's position with regard to the filing of Real Property Gains Tax ('RPGT') returns and payment of RPGT during the MCO period?**

The filing deadline for RPGT returns which are due to be submitted from 18 March 2020 to 31 May 2020 can be submitted by 31 May 2020. Similarly, the IRB has also extended the deadline for payments of RPGT which are due between 18 March 2020 to 31 May 2020 is extended to 31 May 2020.

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**9. What is the IRB's position on ongoing tax investigations and tax audits during the MCO period?**

Documents requested by the IRB for an audit or investigation which were due to be submitted within the period of 18 March 2020 to 15 May 2020 can be submitted to the IRB by 31 May 2020. Likewise, for replies which are due between 18 March 2020 to 15 May 2020, taxpayers can submit their reply to the IRB's letters by 31 May 2020. However, all IRB officers are required to continue performing their respective tasks from home, as stated in the [announcement issued by the IRB](#) on 27 March 2020.

**10. Can taxpayers file tax appeals during the MCO period?**

Under the Income Tax Act 1967 (Act 53) ('ITA'), a taxpayer who is aggrieved by the notice of assessment issued by the IRB shall appeal within 30 days from the day of receipt of the said notice. The submission deadline for notices of appeal (Form Q) which are due during the MCO period is extended until 31 May 2020. However, taxpayers are also required to file an application for extension of time to file their notice of appeal (Form N) and state that the delay is due to the implementation of the MCO.

**11. What is the status in respect to the stamping of documents and payment of stamp duty during the MCO period?**

Sale and Purchase Agreements can still be stamped, and tax stamps can be purchased at post offices.

All law firms, companies, partnerships, businesses, financial institutions, and authorised agents, including individuals with a business that is registered with the Companies Commission of Malaysia ('SSM'), are able to access '*Sistem Taksiran*' dan '*Pembayaran Duti Setem Secara Dalam Talian*' ([STAMPS](#)). STAMPS is an online system which allows users to make applications for stamp duty assessment and payment of stamp duty.

Stamp duty counters nationwide are operational from 3 April 2020 onwards to cater to individual duty payers. However, the services available will be limited to:

- (a) stamping for individuals and members of the public who do not have a STAMPS user ID; or

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- (b) payment of stamp duty on a notice of assessment which cannot be made online.

The IRB has also clarified that no penalty will be imposed as an extension of time will be given until 31 May 2020 for all documents which should have been duly stamped between 18 March 2020 to 30 May 2020. If payment for the notice of assessment on stamp duty falls in the MCO period, the payment can be made until 31 May 2020, and no late payment penalty will be imposed.

**12. Will a tax increase be imposed for late payment of taxes (all types of income taxes) which are due to be paid during the MCO period?**

The IRB has stated in [its FAQs](#) that tax increase will not be imposed if payment of taxes is made on or before 31 May 2020.

**13. Given the difficult economic circumstances now, what happens if customers cannot pay their debts?**

Taxpayers and businesses can deduct the bad debts that cannot be recovered. For the purposes of bad debt deductions, debt means trade debts or debts arising in the course of business.<sup>1</sup> Under the ITA, two conditions must be satisfied for bad debt to be deductible. Firstly, the debt must be reasonably estimated in all the circumstances to be wholly or partly irrecoverable at the end of the basis period for the year of assessment. Secondly, the amount of the debt must have been included in the taxpayer's gross income in a prior year of assessment.<sup>2</sup>

To qualify for deductions, debts which have turned bad should be specifically identified. Taxpayers must also take reasonable steps to recover a debt before making a bad debt deduction.

**14. What constitutes reasonable steps for debt recovery?**

What amounts to reasonable steps in the circumstances would depend on the amount of the debt and the anticipated cost-effectiveness of the action. Examples of reasonable steps include issuing reminder notices,

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<sup>1</sup> Sections 34(3)(a) and 34(3)(b) read together with sections 24(1) and 24(5) of the ITA.

<sup>2</sup> Section 34(3)(a) of the ITA.

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exploring schemes for debt restructuring, entering into negotiations or arbitrations, and taking timely legal action.<sup>3</sup>

**15. Must court action always be taken to recover a debt before making a bad debt deduction?**

No. Case law has recognised that when legal costs for debt recovery are anticipated to be prohibitive, and attempts at alternative dispute resolution between the parties have failed, the difference in amount between the original debt and the settlement sum can amount to a deductible bad debt.<sup>4</sup>

**16. For tax audit purposes, what kind of records should a taxpayer keep to justify the deduction of bad debts?**

Taxpayers should maintain good documentation of:

- (a) why a specific debt has been evaluated as being bad;
- (b) the information leading to that conclusion;
- (c) when and by whom this evaluation is made;
- (d) steps taken to recover the debt; and
- (e) if a particular course of action was not pursued to recover the debt, the reason why.

**17. In the event that one or more companies in a group are loss-making this year, are there any tax reliefs available under the ITA?**

Companies may apply for the existing group relief mechanism under section 44A of the ITA. Such a mechanism allows a loss-making company to surrender up to 70% of its adjusted losses in a particular year of assessment to other related companies within the group.

**18. What are the benefits of claiming group relief?**

The companies claiming the losses ('**claimant companies**') will be able to reduce the tax payable for that particular year of assessment. Surrendering companies may also receive payments from claimant companies as a consideration for the surrender of losses.

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<sup>3</sup> In *Sastep Sdn Bhd v KPHDN* [2017] MLJU 868, (2017) MSTC 30-143, the High Court took a dim view of the taxpayer's filing of a debt recovery suit against the debtor after it was time-barred, and disallowed the taxpayer's claim for bad debt deduction.

<sup>4</sup> *Ireka Corporation Bhd v Ketua Pengarah Hasil Dalam Negeri* (R2-14-04-2011) (HC) (Unreported).

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**19. Who is eligible for group relief?**

As of 27 December 2018, the group relief is only available to new companies and can only be claimed for three consecutive years of assessment after the first year of their commencement of operations.<sup>5</sup> The group relief can be claimed after the second year of commencement of operations provided that the first basis period of the company surrendering losses ('**surrendering companies**') is less or more than 12 months.<sup>6</sup> Surrendering companies may not surrender adjusted losses and also claim group relief from another related company and vice versa.<sup>7</sup>

**20. What are the requirements to claim group relief?**

As specified in section 44A(2)(a) of the ITA, the surrendering and claimant companies must:

- be related companies throughout the period;
- have paid-up capitals of more than RM 2.5 million at the beginning of the relevant years of assessment;
- share the same basis period;
- make an irrevocable election to surrender adjusted losses or claim group relief in the return furnished for that year of assessment; and
- be subject to the tax rate under paragraph 2 of Part I of Schedule 1.

The claimant companies must also have a defined aggregate income for that year of assessment.<sup>8</sup>

**21. What amounts to related companies?**

In brief, companies are related if at least 70% of the surrendering company's paid-up capital is directly or indirectly owned by the claimant company<sup>9</sup> or vice versa<sup>10</sup>, or if at least 70% of both the surrendering and claimant companies are directly or indirectly owned by another Malaysian company.<sup>11</sup> Further, the company which owns more than 70% of the other company must also be beneficially entitled to at least 70% of the residual

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<sup>5</sup> Sections 44A(1) and 44A(1A)(a) of the ITA.

<sup>6</sup> Section 44A(1A)(b) of the ITA.

<sup>7</sup> Section 44A(8) of the ITA.

<sup>8</sup> Section 44A(2)(b) of the ITA.

<sup>9</sup> Section 44A(3)(a) of the ITA.

<sup>10</sup> Section 44A(3)(b) of the ITA.

<sup>11</sup> Section 44A(3)(c) of the ITA.

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profits of the other company, and at least 70% of its assets in the event of a winding-up.<sup>12</sup>

**22. How much of the adjusted losses can be surrendered?**

The amount of adjusted losses that can be surrendered cannot be more than the defined aggregate income of the claimant company.<sup>13</sup> Where the adjusted losses are being surrendered to more than one company, the second claimant company may only claim if there is excess following a full deduction by the first claimant company.<sup>14</sup> Similarly, where a company is claiming from more than one surrendering companies, the claimant company may only claim from the second surrendering company if the adjusted losses surrendered by the first surrendering company has been fully deducted by the claimant company.<sup>15</sup>

**23. If additional intra-group financing is necessary during the MCO period or in the coming months, can the loans be interest-free?**

Generally no, as Malaysian transfer pricing laws require interest payable on the loans to be at arm's length.<sup>16</sup> In determining the arm's length interest rate, both the lender's and borrower's perspectives should be taken into account, particularly in relation to their respective risks of providing and accepting the financing.<sup>17</sup> The creditworthiness of the borrower, credit risks, and economic circumstances are relevant in determining whether a loan has been given on conditions which would have been agreed between independent parties.

Companies should also ensure that the terms and conditions of the loan themselves are at arm's length, and not merely the interest rate.<sup>18</sup>

**24. Do transfer pricing laws also apply to domestic intra-group loans?**

Yes, the law makes no distinction between cross-border and domestic transactions.

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<sup>12</sup> Section 44A(7) of the ITA.

<sup>13</sup> Section 44A(4)(c) of the ITA.

<sup>14</sup> Section 44A(5)(a) of the ITA.

<sup>15</sup> Section 44A(5)(b) of the ITA.

<sup>16</sup> Section 140A of the ITA, Income Tax (Transfer Pricing) Rules 2012, and IRB's Transfer Pricing Guidelines 2012 ('TP Guidelines').

<sup>17</sup> C.1 Intra-Group Loans in Transfer Pricing Guidance on Financial Transactions published by the OECD on 11 February 2020.

<sup>18</sup> Paragraph 9.5 of the TP Guidelines.

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Nevertheless, to ease compliance burden, the IRB has stated in their TP Guidelines that the obligations under the Guidelines only apply wholly to a business with a gross income exceeding RM25 million and where the total amount of related party transactions exceed RM15 million.<sup>19</sup> Further, where a person provides financial assistance, the guidelines on financial assistance are only applicable if that financial assistance exceeds RM50 million.<sup>20</sup> Any company falling outside this criteria is allowed to fulfil only selected TP documentation requirements.<sup>21</sup>

The TP Guidelines also need not apply to transactions between persons who are both assessable and chargeable to tax in Malaysia and where it can be proven that any adjustments made under the Guidelines will not alter the total tax payable or suffered by both persons.<sup>22</sup>

**25. Are interest expenses on the intra-group loans deductible?**

If the interest on an intra-group loan is payable by a Malaysian resident company, it is only deductible if the borrowed sum was employed in the production of the company's gross income or laid out on assets used or held for the production of gross income.<sup>23</sup> If the borrowings are used for both business and also non-business purposes (eg providing loans or investing), then the interest in respect of the sum used for non-business purposes would not be deductible.<sup>24</sup>

**26. Are there any laws restricting interest deductions?**

Earning stripping rules (**ESR**) have recently been introduced in Malaysia. ESR operates to limit deductions on interest payments to related companies to 20% of the taxpayer's tax earnings before interest, tax, depreciation, and amortisation (**EBITDA**).<sup>25</sup> The ESR applies to companies which have a total interest expenditure of over RM500,000 in a year.<sup>26</sup> Taxpayers can carry forward any excess interest expense indefinitely and

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<sup>19</sup> Paragraph 1.3.1 of the TP Guidelines.

<sup>20</sup> Paragraph 1.3.1 of the TP Guidelines.

<sup>21</sup> Paragraph 1.3.2 of the TP Guidelines.

<sup>22</sup> Paragraph 1.3.3 of the TP Guidelines.

<sup>23</sup> Section 33(1)(a) of the ITA.

<sup>24</sup> Section 33(2) of the ITA.

<sup>25</sup> Section 140C of the ITA and rule 5 of the Income Tax (Restriction on Deductibility of Interest) Rules 2019.

<sup>26</sup> Rule 2(1)(a) of the Income Tax (Restriction on Deductibility of Interest) Rules 2019.

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deduct the expenditure in future years of assessments, provided that the company's shareholders remain substantially the same.<sup>27</sup>

**27. If a foreign-related company provides the loan, is there withholding tax applicable to the interest that is paid to the foreign-related company?**

Interest payments to non-residents are subject to withholding tax, which is generally at 15%<sup>28</sup> unless different rates apply under double taxation agreements between Malaysia and the jurisdiction the recipient company is resident in.

**28. What are the areas which require special attention for companies to be prepared for future tax audits and investigations?**

Loss-making companies will have a higher chance of being audited or investigated by the IRB, especially those who have implemented inter-company financing and movement of stock measures to sustain the operational ability of their related companies. Hence, other than adherence to transfer pricing requirements, proper transfer pricing documentation should be kept in place to record such compliance as scrutiny from the IRB in this aspect would be anticipated. This is in addition to the keeping of documentation to justify the deductions and reliefs claimed and the extent of the losses faced by the company.

**29. What does the preparation of transfer pricing documentation entail?**

Companies are required to include, amongst others, information of the business nature and market conditions, as well as strategies influencing the setting of any pricing policies in the transfer pricing documentation.<sup>29</sup>

**30. When must transfer pricing documentation be prepared?**

Such documentation must be prepared during the implementation of the related party transaction. If there are any material changes in a particular year of assessment, the documentation must be updated before the filing of the company's tax returns.<sup>30</sup> Material changes include operational and economic changes that will affect the related party transaction. Examples include changes in shareholding, business model and activities, financing

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<sup>27</sup> Rule 6 of the Income Tax (Restriction on Deductibility of Interest) Rules 2019.

<sup>28</sup> Section 109 of the ITA.

<sup>29</sup> Paragraph 4(2) of the Income Tax (Transfer Pricing) Rules 2012.

<sup>30</sup> Paragraph 4(3) of the Income Tax (Transfer Pricing) Rules 2012.

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structure, merger and acquisitions, economic downturn, and natural disasters.<sup>31</sup>

**31. Are penalties imposed for failure to prepare proper transfer pricing documentation?**

Yes. Although there is no statutory requirement for such contemporaneous transfer pricing documentation to be submitted together with a company's annual tax return, it must be made available within 30 days upon the request of the IRB.<sup>32</sup> If a tax adjustment is made as a result of a transfer pricing audit, penalties under section 113(2) of the ITA would be imposed at the following rates:<sup>33</sup>

Scenario	Penalty
Failure to prepare contemporaneous transfer pricing documentation	50%
Failure to prepare transfer pricing documentation in accordance with the TP Guidelines	30%
Failure to provide the transfer pricing documentation within the 30 days period	

**32. Moving forward, what considerations should be kept in mind in making business decisions?**

Companies engaging in related party transactions are advised to consider transfer pricing implications and should consider the following:

- (a) Are all transactions (future and past) entered at arm's length as required under section 140A of the ITA?
- (b) Whether the arm's length value for existing transactions have changed in light of the current conditions?
- (c) Whether adjustments to existing transfer pricing policies and model are necessary to accommodate such deviations and business environment?
- (d) Are transfer pricing documentation prepared and all supporting documents kept in order?

<sup>31</sup> Paragraph 11.2.1 of the TP Guidelines.

<sup>32</sup> Paragraph 11.2.3 of the TP Guidelines.

<sup>33</sup> Paragraph 10.3 of the Tax Audit Framework for Transfer Pricing 2019.

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(e) Whether existing transfer pricing documentations require an update to account for any material changes?

**33. Would the IRB initiate civil recovery proceedings against taxpayers in respect of unpaid/disputed taxes after the MCO?**

Where there have been unpaid taxes pursuant to assessments raised by the IRB, the law allows the IRB to initiate civil recovery proceedings in court under sections 103 and 106 of the ITA against the taxpayer. It would not be surprising for the IRB to do so after the MCO.

**34. What are the options available to taxpayers in respect of unpaid / disputed taxes?**

Where there is genuine difficulty in making payment of taxes pursuant to assessments raised within the stipulated timeline under the ITA, taxpayers should seek to arrive at an amicable arrangement with the IRB for a time extension or instalment payment.

**35. What are the options available to taxpayers where civil recovery proceedings have been commenced or can be expected to be commenced against them?**

It is imperative for taxpayers to seek legal advice and representation immediately where civil recovery proceedings have been initiated, or are expected to be initiated against them. The provisions of the ITA may otherwise result in a judgment being entered against taxpayers swiftly. The courts have held that a stay of such proceedings can be granted where special circumstances can be demonstrated to exist.

**36. What are examples of special circumstances which may warrant the granting of a stay?**

There are various circumstances which could be sufficiently special to warrant the granting of a stay, depending on the facts. Amongst others, the courts have held that the existence of an appeal to the Special Commissioners of Income Tax ('SCIT'), the possibility of a settlement, merits in the taxpayer's appeal, and the balance of convenience are factors which would be relevant for consideration.

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**37. Can companies apply for tax remission in light of this pandemic-driven recession?**

Companies can apply for tax remission to the Finance Minister under section 129(1) of the ITA on the grounds of justice and equity. It should be noted that an application under section 129(1) of the ITA is a discretionary provision and such discretion is exercised sparingly by the Minister.

Extraordinary circumstances brought about by the COVID-19 pandemic may require companies to consider the extraordinary measure of making an application to the Minister. Thus, the Minister should take into consideration the possibility of such remission, especially as part of an overall incentive and stimulus package for affected industries.

**38. Are there any tax measures or incentives announced by the Malaysian Government to address the financial impact of the COVID-19 pandemic?**

Yes, a number of tax measures and incentives to mitigate the financial impact of the COVID-19 pandemic have been introduced by the Malaysian Government through several Economic Stimulus Packages. These include:

**(a) Accelerated Capital Allowance for Machinery and Equipment including ICT Equipment**

Companies may claim the accelerated capital allowance in relation to qualifying capital expenditure incurred on machinery and equipment, including ICT equipment. The capital allowance is given at a rate of 20% for initial allowance, and 40% for annual allowance. The qualifying capital expenditure must be incurred within the period of 1 March 2020 to 31 December 2020.

**(b) Special Tax Deduction on Costs of Renovation and Refurbishment**

Companies may claim a tax deduction on costs of renovation and refurbishment of business premises. The tax deduction is limited to RM300,000. It is not available if the expenditure is claimed as capital allowance under Schedule 2 or Schedule 3 of the ITA. It is applicable for expenses incurred from 1 March 2020 to 31 December 2020.

**(c) Special Tax Deduction on Donations to the COVID-19 Fund**

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Taxpayers may claim a tax deductions on donations made to combat the Covid-19 outbreak. A summary of the provisions under which tax deductions can be claimed for the donations made is as follows:

Provision	Type of Contribution	Description
Section 34(6)(h) of the ITA	Cash or in-kind	<p>(a) Available to businesses</p> <p>(b) For donations made to qualified community projects or charities related to the tackling of the COVID-19 outbreak, eg the COVID-19 Fund managed by the Ministry of Health</p> <p>(c) Proper letters of acknowledgement of contributions, official receipts and evidence of payment must be acquired and submitted to the Ministry of Finance for approval.</p> <p>(d) The tax deduction is effective from YA 2020 and applicable to contributions made from February 2020 until the Government announces the end of the pandemic.</p> <p>(e) Businesses cannot further claim for tax deductions on contributions under section 44(6) of the ITA.</p>
Section 44(6) of the ITA	Cash only	<p>(a) Available to businesses.</p> <p>(b) For donations made to the Natural Disaster Management Agency of the Prime Minister's Department or other approved institutions or organisations.</p>

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		<p>(c) Taxpayers are required to keep relevant supporting documents, such as official receipts and evidence of payment, for the purpose of claiming deductions.</p> <p>(d) The amount that is allowed to be deducted for the donations made is as follows:</p> <ul style="list-style-type: none"> <li>(i) The National Disaster Management of the Prime Minister's Department: amount equal to the contribution made;</li> <li>(ii) Other institution or organisation or fund approved under section 44(6) of the ITA: restricted to 10% of the aggregate income.</li> </ul> <p>(e) The tax deduction is effective for YA 2020 and applicable to contributions made from February 2020 until the Government announces the end of the pandemic.</p> <p>(f) Businesses cannot further claim for tax deductions on contributions under section 34(6)(h) of the ITA.</p>
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Businesses may also claim for tax deductions on donations made in cash or in-kind to approved projects of national interest under section 44(11C) of the ITA. On the other hand, individual taxpayers may claim for tax deductions for contributions made in cash or in the form of medical equipment to approved healthcare facility under section 44(10) of the ITA.

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(d) Stamp Duty Exemption on Loan Agreements arising from Restructuring and Rescheduling of Business Loans

Stamp duty in relation to loan agreements arising from restructuring and rescheduling of business loans between borrowers and financial institutions is fully exempted. The original loan agreement must have been duly stamped. Such exemption is applicable for loan restructuring and rescheduling agreements executed from 1 March 2020 to 31 December 2020.

## Customs (Trade)

**39. Are the Royal Malaysian Customs Department's ('RMCD') facilities and services available during the MCO period?**

RMCD's facilities and services will operate as usual with fewer personnel. Nevertheless, businesses that have any queries regarding customs matters are advised to either call the nearest RMCD office or submit their queries online.

Applications or renewals regarding customs matters may be submitted online via email to the relevant officers. RMCD has allocated specific officers for different customs matters. Other online systems, such as the e-Excise system and AEO system, will also be functional as usual.

**40. Are businesses allowed to carry out exports and imports during the MCO period?**

Businesses are allowed to carry out exports and imports as usual. However, it should be noted that any approval or clearance granted by RMCD does not amount to permission for movement of goods – any movement of goods (including movement to and from a Licensed Warehouse) during the MCO period is still subject to the directions given under the MCO. Businesses are advised to contact RMCD immediately in the event that there is a complication in obtaining customs clearance.

**41. What happens to on-going RMCD audits during the MCO period?**

All meetings and round-table discussions with RMCD in respect of any on-going audits are adjourned unless parties agree for the meeting to be held

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virtually. Any decision arising from the virtual meeting will be subject to verification of relevant documents by RMCD.

**42. How should businesses deal with Bills of Demand (BOD) issued by RMCD during the MCO period?**

Businesses that are dissatisfied with the BOD issued by RMCD may submit a review application to the Director-General of Customs ('DGC') within 30 days from the date of receipt of the BOD. The application may be submitted by way of an email to the DGC. The email must include a copy of the application form and the relevant supporting documents for the DGC's reference.<sup>34</sup>

In respect of businesses that are dissatisfied with the DGC's decision made pursuant to a review application, an appeal may be filed to the Customs Appeal Tribunal ('CAT') within 30 days from the date when the decision is communicated. In this regard, it shall be noted that CAT will be closed and would not be accepting the service of new appeals during the MCO period. Nevertheless, businesses may attempt to submit the appeal to CAT via their [official portal](#). In the event the submission is unsuccessful, businesses should obtain proof of the failure and apply for an extension of time after the MCO is lifted.

As an alternative to the review application or appeal to CAT, businesses may challenge the BOD by way of a judicial review application at the High Court within three months from the date of receipt of the BOD. The judicial review application may be submitted online through the court e-filing system.

It should be noted that the time limit to file the necessary application or appeal stated above must be strictly complied with notwithstanding the fact that the last day to file the application or appeal falls within the MCO period. RMCD has clarified in an announcement that no blanket extension of time would be granted to businesses to appeal against the RMCD's decision.

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<sup>34</sup> [Link to DGC'S reference](#)

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**43. What are the trade exemptions or incentives granted by the Minister of Finance ('Minister') during the MCO period?**

The trade exemptions granted by the Minister are focused on goods which are essential in combating the COVID-19 pandemic. The following is a list of goods which have been exempted by the Minister from payment of import duty:

- (a) Surgical or medical face masks;<sup>35</sup> and
- (b) Laboratory and medical equipment, personal protective equipment ('PPE'), and disposable goods<sup>36</sup> used to combat the COVID-19 pandemic which are donated to the Ministry of Health – the import must be accompanied by a verification letter from the Ministry of Health.<sup>37</sup>

Businesses which produce hand sanitisers may submit an application to the Minister to request for an exemption on the import duty, sales tax, and excise duty payable on the raw materials used for the production of hand sanitisers (such as undenatured ethyl alcohol and denatured ethyl alcohol).<sup>38</sup>

In addition to the above, the Minister has also granted the following incentives to businesses in conjunction with the Government's Economic Stimulus Package 2020:<sup>39</sup>

- (a) Starting from 1 April 2020 to 31 March 2023, port operators may submit an application to the Minister for import duty and sales tax exemption on imports or local purchases of machines and equipment used directly in port operations; and

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<sup>35</sup>[http://www.customs.gov.my/ms/Documents/Pengecualian%20Duti%20Import%20Dan%20Cukai%20Jualan%20Mulai%2023%20Mac%202020%20\(Terbaru\)%20\(2\).pdf](http://www.customs.gov.my/ms/Documents/Pengecualian%20Duti%20Import%20Dan%20Cukai%20Jualan%20Mulai%2023%20Mac%202020%20(Terbaru)%20(2).pdf)

<sup>36</sup>[http://www.customs.gov.my/ms/Documents/LAMPIRAN%20A.%20B%20dan%20C%20-%20Pengecualian%20\(1\).pdf](http://www.customs.gov.my/ms/Documents/LAMPIRAN%20A.%20B%20dan%20C%20-%20Pengecualian%20(1).pdf)

<sup>37</sup>

[http://www.customs.gov.my/ms/Documents/MAKLUMAN%20PENGEUALIAN%20DUTI%20IM-PORT%20DAN%20CUKAI%20JUALAN%20MULAI%2024%20MAC%202020%20\(1\).pdf](http://www.customs.gov.my/ms/Documents/MAKLUMAN%20PENGEUALIAN%20DUTI%20IM-PORT%20DAN%20CUKAI%20JUALAN%20MULAI%2024%20MAC%202020%20(1).pdf)

<sup>38</sup>[http://www.customs.gov.my/ms/Documents/PENGEUALIAN%20DUTI%20IMPORT.%20DUTI%20EKSAIS%20DAN%20CUKAI%20JUALAN%20UNTUK%20BAHAN%20MENTAH%20KEPADAA%20PENGILANG%20HAND%20SANITIZER%20\(3808.94.9000\)%20.pdf](http://www.customs.gov.my/ms/Documents/PENGEUALIAN%20DUTI%20IMPORT.%20DUTI%20EKSAIS%20DAN%20CUKAI%20JUALAN%20UNTUK%20BAHAN%20MENTAH%20KEPADAA%20PENGILANG%20HAND%20SANITIZER%20(3808.94.9000)%20.pdf)

<sup>39</sup><http://www.customs.gov.my/ms/Documents/PAKEJ%20RANGSANGAN%20EKONOMI%20-%20LAMAM%20WEB.pdf>

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- (b) Applications to carry out approved value-added services at Licensed Warehouses or Free Industrial Zones made after 16 March 2020 will be considered by the zone or state level, by the Zone Operation Director or State Customs Director. Approved value-added services include research and development; designing; marketing (for companies with IPC status); distribution (for companies with RDC status); quality control; testing and commission including calibration and configuration; labelling and packaging; and supply chain management strategic procurement operation and total support solutions.

**44. What are the trade restrictions imposed by the Minister during the MCO period?**

Starting from 20 March 2020, exports of surgical and medical face masks must be accompanied by a letter of approval issued by the Controller of Supplies, Minister of Domestic Trade and Consumer Affairs under the Control Act 1961.<sup>40</sup>

Apart from the above, the Minister has not imposed any trade restrictions on businesses. Subject to the movement restrictions under the MCO, businesses are still allowed to carry out exports and imports as usual. Nevertheless, it would be prudent for businesses to be mindful of the trade restrictions imposed by other countries. For instance, the Thai government has restricted the entry gates (land and sea) between Thailand and Malaysia to only one gate in every region in view of the COVID-19 pandemic.<sup>41</sup>

## **Sales Tax and Service Tax ('SST')**

**45. Has the filing deadline for SST returns due to be filed in March been extended?**

After the announcement of the MCO by the Government, RMCD has announced that the deadline of any returns due to be filed on 31 March 2020 will be extended until 30 April 2020. Any penalties applicable will

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<sup>40</sup> Section 2 of the Customs (Prohibition of Exports) (Amendment) (No 2) Order 2020.

<sup>41</sup><http://www.customs.gov.my/ms/Documents/ARAHAN%20PENUTUPAN%20SEMENTARA%20PINTU%20SEMPADAN%20MALAYSIA-THAILAND%20.pdf>

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also be fully remitted if payment is made before 31 May 2020. Businesses are encouraged to make payment online or through postal services. RMCD also stated in the [recent announcement dated 29 April 2020](#) that no legal action will be taken against taxpayers who file their returns late.

**46. What are the tax measures announced by the Government for SST in combating the impact of COVID-19 to businesses?**

Before the MCO, the Government in its Economic Stimulus Package 2020 has announced six months of service tax exemption (1 March 2020 until 31 August 2020) to be granted to accommodation service providers such as hotels, inns, lodging houses, service apartments, homestays, and other operators under Group A, First Schedule of the Service Tax Regulations 2018. Details of the exemption can be found in the Service Tax Policy No 9/2020 on the [RMCD's website](#).

## Others

**47. As the Government is encouraging private property and business space owners to ease the burden of SMEs on the rental of their business premises, what kind of benefits would these private property or business space owners receive for doing so?**

Private property or private business space owners will be given a special tax deduction equivalent to the amount of rental discount given to SMEs for the months of April to June 2020. This benefit will be subject to the rental discount being at least 30% of the original rent payable for that period.

**48. Is there any extension of time for the furnishing of documents to the Companies Commission of Malaysia (SSM)?**

An automatic moratorium will be granted starting from the last date of the MCO for 30 days for companies to submit their statutory documents to SSM.

Additionally, the filing period of a company's financial statement is extended for three months, starting from the date of the MCO. This extension is provided to companies with their financial year ending

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between 30 September and 31 December 2019. However, this is not automatic and would require the companies to apply to SSM.

*In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.*

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