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# Crowe Perspectives

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**A look at the tax impact of Malaysia's  
COVID-19 Bill 2020**

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## Malaysia's Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill

On 22 September 2020, Malaysia's Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill (COVID-19 Bill) was passed by the Dewan Negara and will come into force once Royal Assent is received and gazetted. It is to be noted that once passed, the COVID-19 Bill will have retrospective effect and will be deemed to have come into operation on the first day of the Movement Control Order, i.e. 18 March 2020.

Some of the key temporary reliefs proposed under the COVID-19 Bill and the effective period for such reliefs are highlighted in this article.

## Inability to Perform Contractual Obligation

In essence, this Part of the COVID-19 Bill restrains parties from exercising their strict contractual rights against counterparties who are unable to perform their contractual obligations from 18 March 2020 until 31 December 2020. The relevant Minister in charge has the power to enlarge the period from time to time if the need to do so arises. The Schedule of the List of Categories of Contracts in Part II of the COVID-19 Bill lists the parties who can get relief from their contractual duties due to steps taken to control or prevent the spread of COVID-19.

- *However, only limited types of contracts fall under this Schedule. “Professional services contract” is included in the Schedule but this term is not defined by the Bill. We are unsure whether reference can be made to the Income Tax (Deduction for Promotion of Export of Professional Services) Rules 2003 where “professional services” are defined as legal, accounting, architectural, engineering, medical and dental and services alike.*
- *It also appears that this Part of the COVID-19 Bill does not appear to extend to employment contracts, and employers will still have to honour all their contractual obligations under their employment contracts with their employees, and vice versa.*

However, the relief afforded appears to be diluted by the savings provision which provides that if a contract has already been terminated, any deposit or performance bond forfeited, any damages received, any legal proceedings, arbitration or mediation commenced, any judgement or award granted and any execution carried between 18 March 2020 and the date of publication, it is deemed valid. This may cause parties to file claims of breach of contract before the coming into force of the COVID-19 Act.

## Modifications to the Insolvency Act 1967

From the date of publication of the COVID-19 Bill up to 31 August 2021, a creditor shall not be entitled to present a bankruptcy petition against a debtor unless the amount of debt owing by the debtor in aggregate is at least RM100,000. This is an increase from the current threshold of RM50,000.

*However, the savings provisions provide that any bankruptcy proceedings or actions which are still pending immediately before the publication of the COVID-19 Act (if the Bill is passed) shall be dealt with as if the Insolvency Act had not been modified. This will encourage parties to commence any action before this Act is being published. Accordingly, instead of this COVID-19 Act trying to protect the parties from being sued for bankruptcy, it will hasten the process.*

Unlike the other parts of the COVID-19 Bill which carry a retrospective effect, this Part will be deemed to come into operation on the date of publication of the COVID-19 Act and will continue to remain in operation until 31 August 2021. However, the Minister has the discretion to extend the operation of this Part once before the expiry of the period of operation for no more than two (2) years from such date of publication of the COVID-19 Act.



## Modifications to the Hire-Purchase Act 1967

No owner can repossess any goods under a hire purchase agreement for any default of payment of instalment during the period from 1 April 2020 to 30 September 2020. However, any owner who has exercised his power of taking possession of goods in a hire purchase agreement prior to the date of publication of this Act shall be deemed to have validly exercised his power.



This COVID-19 Bill is supposed to reduce the incidence of repossession of cars during the Movement Control Order. However, it appears that any action being done prior to the publication of this Act is valid. This will encourage owners to institute proceedings as soon as possible prior to the COVID-19 Act being published.

## Modifications to the Housing Development (Control and Licensing) Act 1966

This Part of the COVID-19 Bill applies to sales and purchase agreements for housing accommodation (Schedules G, H, I and J contracts) entered into before 18 March 2020. If a purchaser fails to pay any instalment for the period from 18 March 2020 to 31 August 2020 due to COVID-19, the developer shall not impose any late payment charges in respect of such unpaid instalment on the purchaser.

- The period from 18 March 2020 to 31 August 2020 shall be excluded from the calculation of time of delivery of vacant possession, computation of liquidated damages and the defects liability period.
- However, any legal proceedings already commenced from 18 March 2020 until the date of publication of this COVID-19 Act is still valid. Any late payment charges paid by the purchaser or liquidated damages paid by the developer before the date of publication of this COVID-19 Act shall be deemed to have been validly paid and such payment shall not be refunded to the payer.



## Possible Tax Implications of the COVID-19 Bill

Under Public Ruling 4/2019 - Tax Treatment of Wholly & Partly Irrecoverable Debts and Debt Recoveries issued on 24 September 2019, one of the steps of reasonable action to be taken to claim a debt written off is, among others, legal action being initiated against the debtor.

### ***Tax Implication:***

Given that the legal action is suspended under this COVID-19 Bill, the question is whether the bad debt written off is allowed as a tax deduction in arriving at the adjusted income of the business.



## Possible Tax Implications of the COVID-19 Bill (cont'd)

In a hire purchase arrangement, businesses can claim capital allowance on the principal sum being paid in the year of assessment. Any default on the principal sum cannot be taken as “incurred” by the hire purchaser to claim capital allowance.



### ***Tax Implication:***

Will the Malaysian Inland Revenue Board allow a “special capital allowance” claim on this?



# Summary

In view of the possible tax implications of the COVID-19 Bill, companies are encouraged to consult their tax advisers before taking any actions.

Further, it is hoped that the COVID-19 Bill can be enacted soon as it could have the unintended effect of encouraging parties to commence litigation. This may go against the very spirit and purpose of the COVID-19 Bill.



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**Need assistance on these matters?**

Please contact us if you wish to seek clarification on any of these issues.

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