



Crowe Chat

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TAX

Audit / Tax / Advisory

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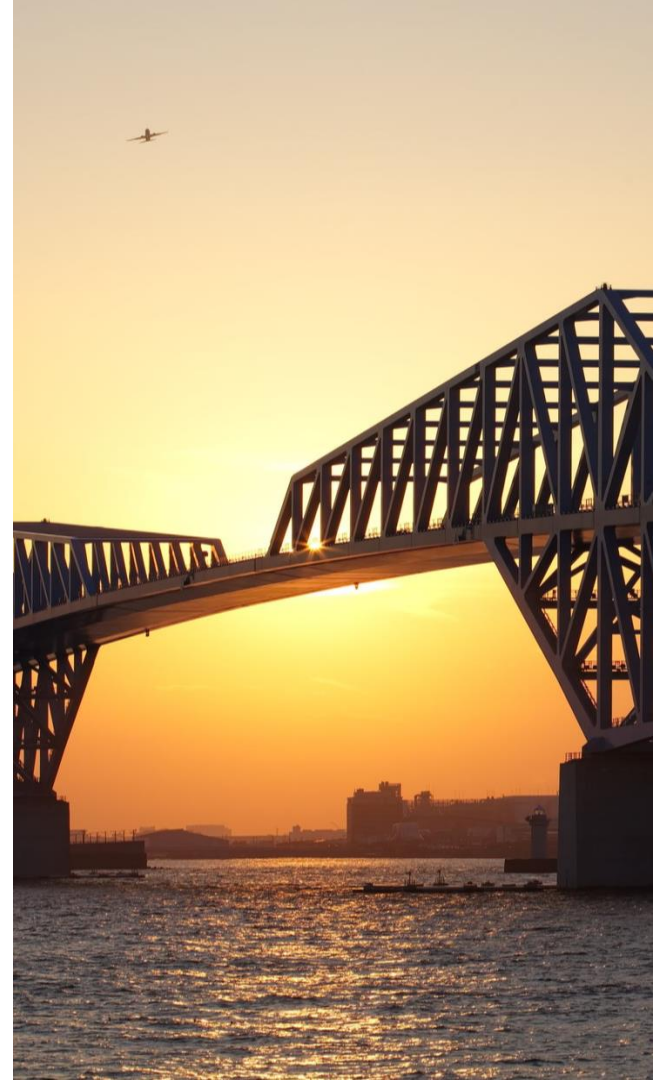
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Guidelines on the Application of Subsections 12(3) and 12(4) of the ITA in determining a “Place of Business”

Guideline - Application of Subsections 12(3) and 12(4) of the ITA in determining a “Place of Business”

Existing

The new provisions regarding income derived from a place of business in Malaysia were introduced with effect from 28 December 2018 as part of the Finance Act 2018.

Additional guidance

The IRBM issued the [Guidelines on the Application of Subsections 12\(3\) and 12\(4\) of the ITA in determining a “Place of Business”](#) on 21 May 2020 to provide clarification on the application of Subsections 12(3) and 12(4) of the ITA.

Details of additional guidance

The Guidelines stipulate that as long as the existence of a place of business in Malaysia can be established under Subsections 12(3) and 12(4) of the ITA, income attributable to the “place of business” is deemed derived from Malaysia. However, it is reiterated in the Guidelines that the provisions of the treaty (i.e. the articles on Permanent Establishment [PE] and business profits) will prevail if the non-resident is from a jurisdiction that has a tax treaty with Malaysia.



Guideline - Application of Subsections 12(3) and 12(4) of the ITA in determining a “Place of Business”

Details of additional guidance (cont’d)

The Guidelines also provide greater details on the following elements of “place of business”:



Physical “place of business”

The “place of business” must be fixed with these two (2) critical components taken into consideration:

- ❖ degree of permanence at a geographical point (the duration test); and
- ❖ a specific geographical point (the location test)



Preparatory or auxiliary activities

In line with the PE Article in tax treaties, a physical place maintained solely for preparatory or auxiliary activities would not constitute a “place of business”. However, these activities could constitute a “place of business” from the combination of preparatory or auxiliary activities which constitute complementary functions that are part of a cohesive business operation.

Guideline - Application of Subsections 12(3) and 12(4) of the ITA in determining a “Place of Business”



Details of additional guidance (cont'd)

A building site, construction, installation, assembly, or supervisory activity

A person will be deemed to have a “place of business” if the person carries on activities at the site or project for a period or periods exceeding an aggregate of five (5) months in any twelve (12)-month period. It is worthwhile to note that the said threshold is lower than the threshold provided in most of the Malaysian tax treaties which is six (6) months.



Guideline - Application of Subsections 12(3) and 12(4) of the ITA in determining a “Place of Business”



Details of additional guidance (cont'd)

An agent as “place of business”

A person (principal) will be deemed to have a “place of business” in Malaysia if the person has another person acting on his behalf (agent) who:

- habitually concludes contracts; or
- habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification; or
- habitually maintains a stock of goods or merchandise of the person from which such person delivers goods or merchandise; or
- regularly fills orders on behalf of the person.

** The non-resident principal will be deemed to have a “place of business” if the agent conducts sales-related activities in addition to these activities.*



PR1/2020 - Tax Incentives for Bionexus Status Companies

PR1/2020 - Tax Incentives for Bionexus Status Companies

Previous PR

[PR8/2018 - Tax Incentives For Bionexus Status Companies](#) was issued on 4 December 2018.

New PR

The IRBM issued [PR1/2020 - Tax Incentives For Bionexus Status Companies](#) on 22 May 2020 to explain the treatment of tax incentives for a Bionexus Status Company in Malaysia.

Details of new PR

As a member of the G20 Base Erosion and Profit Shifting (BEPS) project, Malaysia is committed to adhere to the requirements of the Forum on Harmful Tax Practices. The following gazette orders were amended to incorporate the substantial activities requirement and exclude intellectual property income from the tax incentive:

- a) [Income Tax \(Exemption\) \(No. 2\) 2009 \(Amendment\) Order 2018](#)
- b) [Income Tax \(Exemption\) \(No. 17\) 2007 \(Amendment\) Order 2018](#).

PR1/2020 -Tax Incentives for Bionexus Status Companies were amended pursuant to the above changes in the legislation.

PN3/2020 - Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or LLP

PN3/2020 - Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or LLP



Existing

Following the amendments to the ITA as part of the Finance Act 2019, with effect from the year of assessment 2020, Small and Medium Enterprises (SMEs) will only be entitled to the tax treatment under paragraphs 2A and 2D, Part 1, Schedule 1 of the ITA (*17% preferential tax rate on the first RM600,000 chargeable income for companies and LLPs*) and subparagraph 19A(3), Schedule 3 of the ITA (*unlimited special capital allowance claim of 100% on assets valued at RM2,000 or less per asset*) if their gross income from a source or sources consisting of a business is not more than RM50 million for the relevant year of assessment:

Additional guidance

The IRBM issued [PN3/2020 - Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or LLP](#) on 18 May 2020 to provide clarification on the application of the RM50 million threshold.

PN3/2020 - Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or LLP

Details of additional guidance

The PN clarifies that the determination of gross business income is subject to:

For companies or LLPs engaged in manufacturing, trading or service activities

- ❖ Section 22 of the ITA – Gross income generally.
- ❖ Section 24 of the ITA – Basis period to which gross income from a business is related.
- ❖ Section 30 of the ITA – Special provisions applicable to gross income from a business.

For companies or LLPs carrying out activities such as banking, insurance, developers or contractors

- ❖ Specific provisions under the ITA or specific regulations for certain industries.

PN3/2020 - Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or LLP

Details of additional guidance (cont'd)

Issues arising on the implementation of the additional criteria of RM50 million threshold are summarised below:

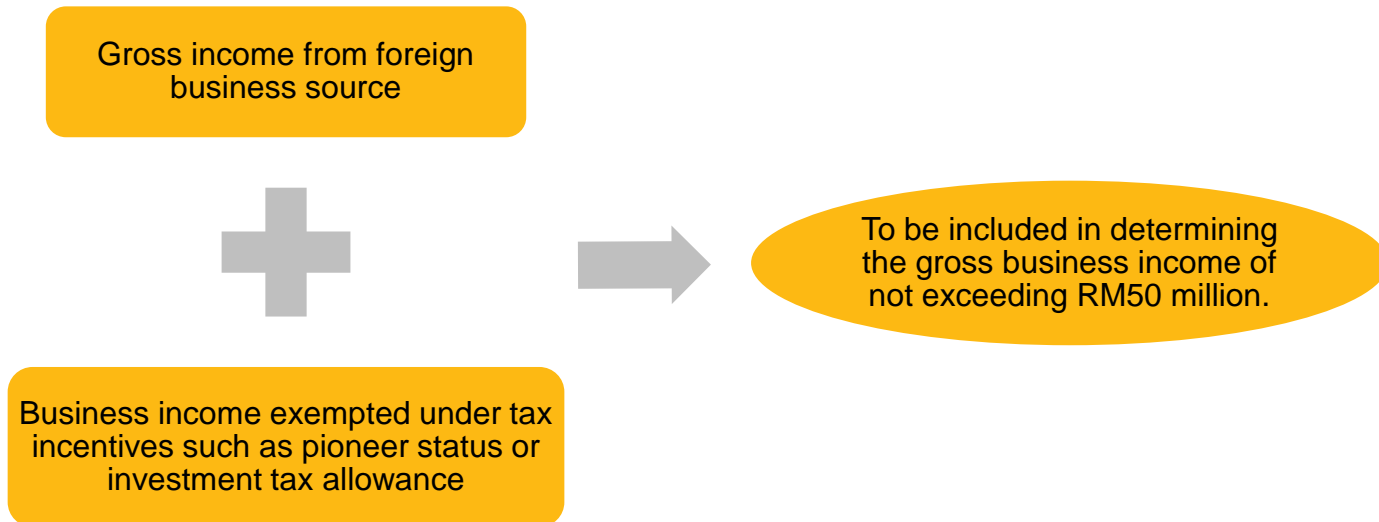
1. Eligibility to enjoy the preferential tax treatment

Investment holding company (IHC)	Listed in Bursa Malaysia (Section 60FA)	Deemed to have gross business income	Eligible for the preferential tax treatment
	Not listed in Bursa Malaysia (Section 60F)	Deemed to have no gross business income	Not eligible for the preferential tax treatment
Company / LLP	Without gross income from business source	Has passive income (rental, interest) which is not a source of business under Subsection 4(a) of the ITA	
		Temporarily closed operations	

PN3/2020 - Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or LLP

Details of additional guidance (cont'd)

2. Gross income to be included in determining the RM50 million threshold



Consequences of not Filing the ITRF on Time

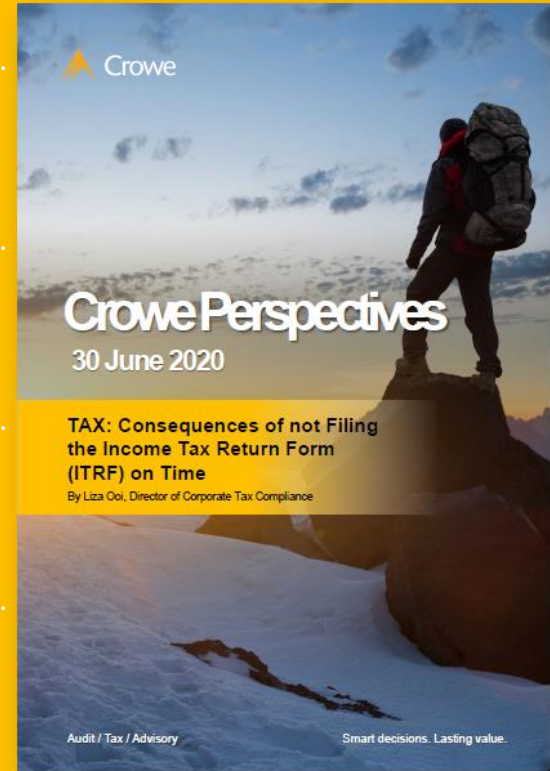
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Crowe KL Tax Events



Crowe

Tax Challenges in an Increasingly Digital World

A Webinar Training via Zoom

Date: 21 July 2020, Tuesday
Time: 10am – 12pm & 2pm – 4pm (4 hours)
Fee: RM00 nett / person

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[Read more](#) 

The COVID-19 pandemic has become a catalyst for digital transformation across many sectors, forcing businesses to adapt quickly in order to effectively reach out to different stakeholders (e.g. suppliers, customers and employees) more efficiently.

With the rising digital era, taxation of the digital economy remains one of the most challenging issues faced by businesses today. These tax challenges may include:

1. Income Tax
2. Withholding Tax
3. Digital Tax
4. Transfer Pricing

Join us for this webinar as our experts share the important key areas and practical cases to circumvent the complexities your team may encounter. We will also address your specific needs during our interactive Q&A session.

Start the Conversation with Us

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