

Malaysia publishes updated Guidelines on Taxation of e-Commerce Transactions

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Executive summary

The Malaysian Inland Revenue Board (IRB) has published updated *Guidelines on Taxation of Electronic Commerce Transactions* (the 2019 Guidelines), replacing the earlier guidelines dated 1 January 2013 (the 2013 Guidelines).¹

This Alert summarizes the key aspects of the 2019 Guidelines.

Detailed discussion

The 2019 Guidelines update guidance on the Malaysian income tax treatment of e-Commerce Transactions (e-CT).

Key terms defined by the 2019 Guidelines include:

- **e-CT:** Any sale or purchase of goods or services over any networks by methods specifically designed for receiving or placing orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be made online. An e-CT can be between enterprises, households, individuals, governments, and other public or private organizations.
- **Digital currency:** A digital representation of value which is recorded on a distributed digital ledger, whether cryptographically-secured or otherwise, that functions as a medium of exchange and is interchangeable with any money, including through the crediting or debiting of an account.

- **Digital token:** A digital representation which is recorded on a distributed digital ledger, whether cryptographically-secured or otherwise.²

As innovation in e-CT allows for rapid development of new business models, the 2019 Guidelines provide examples of business models which would be considered “e-commerce business models,” including:

- Online trading/service providers
- App stores
- Online advertising
- Cloud computing
- Payment services
- Digital currency/token

Under the “scope of charge” of income tax, the 2019 Guidelines state “any income in relation to e-CT is deemed to be derived from Malaysia if it is associated to any activities in Malaysia regardless of whether that income is received in Malaysia or otherwise.”

Under the “scope of tax liability for business,” the 2019 Guidelines stipulate that for business income, where the business operations are carried on in Malaysia, the income attributable to those business operations is deemed to be derived from Malaysia. This aspect is similar to the 2013 Guidelines. However, the explanations and illustrations regarding the treatment of servers and websites in determining the derivation of e-commerce income outlined in the 2013 Guidelines have been removed.

The 2019 Guidelines adopt the legislative definition of royalty.³ The 2019 Guidelines also introduce a new paragraph on the scope of tax liability for special classes of income.⁴

Practice Note 1/2018⁵ provides further clarification of the examples provided in the 2019 Guidelines.

Implications

Companies with Malaysian e-CT should consider the impact of the 2019 Guidelines on operating models and any potential Malaysian tax obligations.

Endnotes

1. The 2019 Guidelines were published on 13 May 2019.
2. The definitions of “digital currency” and “digital token” are the same as the definitions in the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 [P.U.(A) 12/2019], gazetted on 8 January 2019 to regulate digital currencies and tokens, which are prescribed as securities under the securities regulations.
3. Section 2 of the *Income Tax Act 1967* (ITA) - See EY Global Tax Alert, [Malaysia enacts Finance Act 2017](#), dated 3 February 2017.
4. Section 109B of the ITA.
5. See EY Global Tax Alert, [Malaysia issues practice note on tax treatment of digital advertising provided by nonresidents](#), dated 9 April 2019.

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EYG no. 003459-19Gbl

1508-1600216 NY
ED None

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