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Tax Deduction for Transfer Pricing Documentation in Malaysia

1. Are the expenses incurred in relation to the preparation of a full scope or minimum scope Contemporaneous Transfer Pricing Documentation (hereinafter referred to as "CTPD") deductible under the Income Tax (Deduction for Expenditure in Relation to Environmental Preservation, Social and Governance) Rules 2025 [P.U.(A) 193/2025] (hereinafter referred to as "ESG Rules 2025")?

Expenses incurred in the preparation of both the full scope and minimum scope CTPD are allowable for deduction under the ESG Rules 2025, as confirmed by the Ministry of Finance. The expenses should be incurred within the basis periods for the years of assessment ("YA") 2024 to YA 2027, and the CTPD should be prepared for YA2023 and subsequent YAs.

In addition, the preparation of the CTPD should meet all relevant requirements stipulated in the Income Tax (Transfer Pricing) Rules 2023 [P.U.(A) 165/2023] (TPR 2023), the Malaysia Transfer Pricing Guidelines (MTPG) 2024 and Malaysia Transfer Pricing Guidelines Controlled Financial Transactions: Intra-Group Loan (MFTIL) 2026.

2. If I incurred RM60,000 in YA 2024 for preparing CTPD for YA 2024, can I claim the full RM60,000 under the ESG Rules 2025? What is the maximum amount to be deductible under the ESG Rules 2025?

Subrule 3(1) of the ESG Rules 2025 specifies the eligible expenditure that is deductible under the ESG Rules 2025. The eligible expenditure is:

(1) expenditure incurred for the purpose of ESG reporting;
(2) expenditure incurred for the purpose of Tax Corporate Governance ("TCG") reporting, including expenses incurred in appointing an independent reviewer to review the compliance with the TCG Framework;
(3) expenditure incurred for preparing CTPD;
(4) consultation fees incurred by micro enterprise or small and medium enterprise for the development of customised software for the implementation of e-invoice in a business, or for obtaining external service providers for the implementation of e-Invoice in a business but does not include any:

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(a) expenditure incurred at the planning stage or preliminary procedures for the provision of the customised software; and
(b) consultation fees incurred in relation to the issuance of e-Invoice through the MyInvois Portal.

Subrule 3(3) of the ESG Rules 2025 states that the total amount of expenditure eligible for deduction in each YA is limited to RM50,000. Therefore, taxpayers can claim eligible expenditure up to a maximum of RM50,000 for each YA from YA 2024 to YA 2027. In the example above, the claim for YA 2024 is limited to RM50,000.

3. What is the deductibility of expenses incurred in relation to the preparation of CTPD?

To be eligible for deduction under the ESG Rules 2025, the expenditure for the preparation of CTPD should meet the following conditions:

(1) the expenditure is incurred in the qualifying period i.e. YA 2024 to YA 2027;
(2) the expenditure is incurred for preparing either the full scope or minimum scope CTPD that meets all relevant requirements stipulated in the TPR 2023, MTPD 2024 and MFTIL 2026;
(3) the CTPD is prepared for YA 2023 and subsequent YAs; and
(4) the expenditure does not include incidental expenses, such as reimbursements or out-of-pocket expenses, including ICT charges, telephone and internet fees, travel expenses, meal allowances and accommodation costs, which are considered allowable expenses if the costs are claimed by the service providers themselves.

Therefore:

(1) reimbursements for costs incurred in the preparation of a CTPD, such as purchase of financial statements, search fees and Companies Commission of Malaysia charges may qualify for a deduction under the ESG Rules 2025 if those costs meet all the above-mentioned conditions.
(2) reimbursements of out-of-pocket expenses, such as ICT charges, telephone and internet fees, travel expenses, meal allowances and accommodation costs, are not deductible under the ESG Rules 2025, as these expenditures may be claimed as allowable expenses under subsection 33(1) of the Income Tax Act 1967 (ITA 1967) by the service providers themselves; and
(3) professional fees or fees paid to external service providers may be deductible under the ESG Rules 2025 if those fees meet all the above-mentioned conditions.

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4. Can expenditure incurred in YA 2024 for the preparation of CTPD for YA 2022 and YA 2023 be deductible under the ESG Rules 2025, given that it is incurred within the qualifying period?

Only the expenditure relating to the CTPD for YA2023 is deductible. The CTPD contemplated by the ESG Rules 2025 is one prepared under TPR 2023, which takes effect from YA 2023.

Accordingly, the cost of preparing a full scope or minimum scope CTPD for YA 2023 may be claimed, whereas the cost of preparing documentation for YA 2022 falls outside the scope of deduction. It cannot be claimed under the ESG Rules 2025 notwithstanding the expenditure was incurred in YA 2024, which is within the qualifying period.

5. Do the deductible expenses under ESG Rules 2025 in relation to the preparation of the CTPD include: (a) fees incurred for the external service providers to review the CTPD prepared by the taxpayers; and (b) Fees incurred for the external service providers to prepare benchmarking analysis to be incorporated in the CTPD prepared by the taxpayers?

Both categories of fees may qualify for deduction under the ESG Rules 2025. They are the fees paid to external service providers for reviewing a CTPD prepared by the taxpayer, and the fees paid to them for preparing a benchmarking analysis for use in that CTPD. A deduction is allowed only where each of the following conditions is satisfied:

(1) the fees are incurred within the qualifying period, which runs from YA 2024 to YA 2027;
(2) the fees are incurred for a full scope or minimum scope CTPD that complies with all relevant requirements of TPR 2023, MTPG 2024 and MFTIL 2026;
(3) the CTPD is prepared for YA 2023 or any subsequent YA; and
(4) the fees do not include incidental expenses, namely reimbursements of out-of-pocket expenses such as ICT charges, telephone and internet fees, travel expenses, meal allowances and accommodation costs, as these are regarded as allowable expenses where the service providers claim them for themselves.

6. What happens to a claim made under the ESG Rules 2025 if during the audit, IRBM finds evidence that the TPD prepared is not contemporaneous?

The deduction under the ESG Rules 2025 is intended for a CTPD that was prepared contemporaneously, in accordance with TPR 2023, MTPG 2024 and MGTIL 2026. Where an audit by IRBM produces evidence that the documentation was not prepared contemporaneously, the claim may be disallowed and the amount claimed added back in computing the adjusted income for the relevant YA. Should this result in tax being undercharged, a penalty under subsection 113(2) of the ITA 1967 may also be imposed.

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For further information, please visit the official website of the Inland Revenue Board of Malaysia at https://www.hasil.gov.my/en

KAIZEN Group, together with its associate firms in Malaysia, can help the clients to perform these compliances formalities so as to maintain the Malaysia company in good standing. Please call and talk to our professional accountants in Kaizen for further clarification.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at ***www.kaizencpa.com*** *or contact us through the following and talk to our professionals:*

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