



Tax Espresso

A snappy delight

Greetings from Deloitte Malaysia's Tax services group

Tax developments

Announcement by Inland Revenue Board Malaysia (dated 19 March 2014)

(a) Submission Of Income Tax Return Form (ITRF) Based On The Audited Account - Subsection 77A(4) Of The ITA 1967

"If there are provisions under the Companies Act 1965 which state that a company need not submit audited accounts to the Companies Commission of Malaysia, then provision of subsection 77A(4) would not apply. However, the company must submit its ITRF based on information in the final accounts."

(b) Loan Or Advances To Director By A Company - Section 140B Of ITA 1967

"The provision applies to a directors who is defined under subsection 75A (2) of the ITA 1967 and loans or advances which are financed by the company's internal fund only. It does not apply to loan or advances made by the company from loans obtained from external funds or third parties. The provision is effective from the year of assessment 2014. However, if the basis period of a company for the year of assessment 2014 commenced in 2013 the computation of interest income is based on the outstanding loans or advances from 1/1/2014". [The interest income would be computed based on the outstanding balance at the end of each relevant calendar month]

Issue 3/2014

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Takeaways:

IRB Announcement:
Submission of ITRF
based on Audited
Accounts;
Loans or Advances to
Director by a company

Tax Case:

[MM Sdn Bhd v Ketua
Pengarah Hasil Dalam
Negeri](#)

Important deadlines:

Due date for 2015 tax
estimates for companies
with April year-end
(31 March 2014)

6th month revision of tax
estimates for companies
with September year-end
(31 March 2014)

9th month revision of tax
estimates for companies
with June year-end
(31 March 2014)

Statutory filing of 2013 tax
returns for companies
with August year-end
(31 March 2014)

“The interest rate charged is based on the Average Lending Rate (ALR) published by Bank Negara Malaysia every month at its website www.bnm.gov.my.”

Case law: Commission payments, business process improvement services and regional services payments and EDP charges paid to related companies

MM Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

In the case of MM Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri, MM is engaged as a shipping agent for APMM, a holding company indirectly owning 70% of shares in MM. Customers entered into contract with APMM and MM was appointed to manage these customers. MM received commission payment from APMM, which was treated as business income. After conducting audits, the Inland Revenue Board (IRB) made adjustments to MM's commission income, disallowed payments for business process improvement (BPI) services and regional services and disallowed electronic data processing (EDP) charges. Aggrieved, MM appealed to the Special Commissioners of Income Tax (SCIT).

The first issue was in respect of the 0.25% reduction in the commission paid by APMM to MM between 2002 and 2005. The rationale for the reduction was that APMM had ceased to charge IT development costs to agents and MM would have less cost to incur. The commission rate was therefore proportionately reduced. IRB had invoked Section 140(1) of the Income Tax Act 1967 (ITA) to adjust the commission rate.

The second issue was whether the IRB had any basis to invoke Section 140(1) of the ITA; IRB alleged that the business process improvement (BPI) services and regional services were not provided to MM and consequently the BPI services and regional services charges paid by MM in the years 1998 to 2005 were disallowed.

The third issue was whether the EDP charges paid in years of assessment 2002 to 2005 by MM to APMM were royalty and therefore correctly disallowed as no withholding tax had been deducted and remitted to IRB.

The SCIT decided in favour of MM in all the issues.

The IRB's transfer pricing guidelines, based on the OECD Guidelines, have no force of law. The transfer pricing reports prepared by MM were accepted by the SCIT. The SCIT accepted that transfer pricing is not an exact science; that there are no uncontrolled comparables available in the market; and that MM had applied the transactional net margin method (TNMM) by looking at the operating margin of 13 independent companies which had similar functions as MM.

On the BPI and regional services payments, MM's witnesses had testified consistently that the BPI and regional services had been rendered to MM and the format of cost sharing had been explained.

On the EDP charges, the facts and issues in MM were identical to the facts and issues in the High Court case of D L

which was relied on by MM. The D L case was decided in favour of the taxpayer and based on the Doctrine of Precedent, MM's appeal regarding EDP charges was allowed.

We invite you to explore other tax related information at:
http://www.deloitte.com/view/en_MY/my/mysvc/mytax/index.htm

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