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Malaysia: Budget news

Overview

This update on the 2016 National Budget announced by Minister of Finance, Malaysia, on 23 October 2015, represents the following relevant issues from the individual tax perspective:

Review of income tax rates for individuals

Currently the income tax of a resident individual is calculated based on scale rates ranging from 0% to 26%. The highest rate of 25% is applicable to chargeable income exceeding RM400,000.

To enhance the progressivity of the individual income tax structure, the Budget 2016 proposed that income tax rate for resident individuals with chargeable income from RM600,001 to RM1 million be increased by 1%, while those with chargeable income exceeding RM1 million be increased by 3%. The proposed tax rates are to be revised as follows:

Chargeable Income (RM)	Current Tax Rate %	Proposed Tax Rate%
0-5,500	0	0
5,001-20,000	1	1
20,001-35,000	5	5
35,001-50,000	10	10
50,001-70,000	16	16

Chargeable Income (RM)	Current Tax Rate %	Proposed Tax Rate%
70,001-100,000	21	21
100,001-250,000	24	24
250,001-400,000	24.5	24.5
400,001-600,000	25	25
600,001-1,000,000	25	26
Exceeding 1,000,000	25	28

The flat income tax rate for nonresident individuals will be increased from 25% to 28%.

Effective date: Year of assessment 2016

Relief for middle-income taxpayers

To increase the disposable income of the middle-income group and to help them cope with the higher cost of living, increase in the following tax reliefs have been proposed as below:

	Current (RM)	Proposed (RM)
Spouse (husband/wife) relief	3,000	4,000
Child relief (below 18 years age)	1,000	2,000
Child relief (studying at tertiary level)	6,000	8,000
Child relief (handicapped child studying at tertiary level)	12,000	14,000
Fees for tertiary education (for taxpayer)	5,000	7,000

In addition, two new tax reliefs have been proposed in Budget 2016:

	Proposed (RM)
Parental care (subject to certain conditions being met)	1,500 for each parent
Contributions to social security protection scheme	250 (maximum)

Exemption on gratuity on retirement from employment

Gratuity on retirement from an employment under any written law or termination of a contract of employment, regardless of the individual's age and period of service, can qualify for exemption of RM1,000 per completed year of service of the individual.

This proposal aims to exempt gratuity given to individuals who opt for early retirement or termination of employment contract other than the circumstance currently covered under the existing legislation.

Effective date: Year of assessment 2016

Mandatory to efile Form E (Return of Remuneration by an Employer)

A company must now furnish its Form E by way of an electronic medium or electronic transmission. This is in line with the government's objective to encourage the use of electronic medium for submission of returns forms.

Effective date: Year of assessment 2016

Changes to basis period to which employment income is related

It is proposed that gross income from an employment will be treated as gross income for current year of assessment. The requirement to relate the income to the particular period is removed.

This proposal is intended to simplify the reporting of employment income and eliminates the burden related to the issuance of Notices of Additional Assessment for prior years of assessment.

Effective date: Year of assessment 2016

Increased penalty for not furnishing tax return

In addition to the existing penalty, additional penalty will be imposed on taxpayers who default in furnishing tax returns for two years or more.

Effective date: Upon coming into operation of the Finance 2015

Penalty for not providing correct particulars

Generally and currently, there is no penalty if a taxpayer fails to furnish the correct particulars in the tax return. However, it is now proposed that penalty shall be imposed if a taxpayer fails to furnish correct particulars as required under the law.

Effective date: Upon coming into operation of the Finance 2015

Deloitte's view

Budget 2016 is aimed towards transforming the nation into a high-income advance economy. Despite the strong headwinds brought by slowdown in global economy, especially China, decline in oil and commodity prices, Ringgit depreciation, and political instability, our economy is still holding up modestly well due to its diversity, resilience, and solid fundamentals.

From an individual tax perspective, the 2016 budget has strong social aspect that is meant to alleviate the high cost of living and to strengthen the tax structure to be more competitive and progressive. Those in the middle-income category stand to benefit the most as the intention is for the reliefs to free up more disposable income, thus encouraging consumption. The hike in income tax rates for taxpayers of annual chargeable income exceeding RM600,000 was a surprise but could be inevitable as Malaysia moves toward being a high-income nation by year 2020. Planning of remuneration package is, therefore, vital and should be done timely to avoid the impact of additional taxes with effect from 2016 income.

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Sweden:

Swedish taxation of share and stock option benefits earned abroad is considered contrary to Article 45 TFEU on free movement of workers in some cases

Overview

The Supreme Administrative Court (“the Court”) has ruled that Swedish taxation on shares vested or stock options exercised at a time when an EU citizen is working and residing in Sweden, but earned partly or fully outside Sweden at a time when the taxpayer was non-resident, is contrary to Article 45 in the Treaty on the Functioning of the European Union (TFEU) on free movement of workers.

The Supreme Administrative Court’s ruling

The question in the case concerned share and stock option benefits and whether this would be taxed in Sweden at the time of acquisition (vesting) respective exercise, despite the benefits being earned partly or fully during a time when the individual (EU citizen) was considered as a non-resident in Sweden under domestic law.

The Court establishes in the judgement that Sweden has the right to tax the full benefit under both Swedish law and applicable tax treaty but that, if double taxation arises, the right to credit foreign tax exists (Sweden uses the method of tax credit rather than exemption in most tax treaties). The Court then raises Article 45 in the TFEU and the principle of free movement of workers, which prohibits direct and indirect discrimination on the grounds of nationality. The above situation is compared to situations where a Swedish tax resident individual moves abroad to work for a shorter period of time. In such situation, the individual may typically exempt such benefits from taxation in Sweden on the basis of internal legislation (the so-called six-month rule and one year rule).

The Court finds that the taxation of the benefit earned abroad by a non-resident would entail an unjustified discrimination. The fact that foreign tax credit would be granted does not ensure

that the discrimination is eliminated as the credit would reduce the taxation in Sweden but would not completely eliminate it. According to the ruling, it applies regardless of where the EU citizen earned the income, i.e. in or outside of the Union borders.

Deloitte's view

Deloitte agrees with the Supreme Administrative Court's assessment and welcomes the ruling.

The ruling should be seen as a clarification of existing legislation and may therefore be applied retroactively. If income tax or social security contributions have been imposed on a benefit value earned abroad, there is a possibility to claim for reassessment at the end of the sixth year following the tax year at the latest. It is urgent to file for reassessment for shares or stock options taxed in 2009 before the reassessment period expires December 31, 2015. It is unlikely that the Tax Agency will initiate reassessments on its own initiative, why it is important that employers and employees analyse if taxes or fees have been charged contrary to this new ruling.

The ruling may in our opinion not only be applied on share and stock option benefits where the right to acquire shares is earned abroad, but also on other remuneration earned abroad such as bonus payments, vacation pay etc. The ruling did not make mention of how similar situations that apply to non-EU citizens should be treated.

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Global Rewards Updates: Canada: Proposed limitations to the stock option deduction

Background

The newly elected Liberal government in Canada included in its electoral campaign proposals to reduce tax benefits by limiting the availability of the stock option deduction. It has yet to be seen how this promise will translate into legislative reality, however timely actions may help mitigate any adverse consequences.

Current rules

When an employee exercises a stock option, a taxable benefit equal to the difference between the fair market value of the share and the exercise price arises.

Under current Canadian legislation, an employee may claim a deduction equal to 50% of the taxable benefit, provided certain conditions are met (namely that the share is a common share and the exercise price paid is not less than the fair market value of the share when the option was granted).

This deduction allows many employees to enjoy the equivalent to capital gains treatment from a tax perspective on potentially large sums of compensation.

Potential changes

The new Liberal government stated in its electoral campaign that it would look for opportunities to reduce tax benefits that substantially benefit individuals earning in excess of CAD 200,000 annually.

It stated that a starting point for this review would be to cap the deduction which an employee can claim when exercising stock options. It is expected that legislation will be introduced to limit the deduction so that it only can only be claimed in respect of stock option benefits not exceeding CAD 100,000 annually.

It is not clear at this stage what the effective date for any proposed changes may be (for example, whether the changes will apply to any options exercised as of the date of the Budget that introduces the above changes, or whether, which is less likely, the changes will apply retrospectively). It has also yet to be seen whether the proposed changes will apply to options granted before but exercised after the effective date or whether they will only apply to options granted after the effective date.

Deloitte's view

Based on long-standing past practices of the Federal government, we anticipate that any changes will likely be on a prospective basis only. That said, it is important for companies to consider the potential changes to the regime in a timely manner and companies may want to communicate with employees who may be affected to allow them to best manage their affairs.

For instance, employees with vested yet unexercised stock options may want to consider the timing of future exercises of options. Additionally, some employers may (depending on the commercial circumstances) want to consider providing employees holding unvested stock options with opportunities to exercise their options early.

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Global Rewards Updates: Sweden: Changes to the taxation of share awards and stock options for EU citizens

Background

The Swedish Supreme Administrative Court (“the Court”) recently considered whether share awards and stock options should continue to be taxable in full for EU citizens resident in Sweden at the tax point (i.e. vesting for share awards or exercise for stock options), despite the benefits being earned partly or fully during a period when the individual was considered non-resident in Sweden.

The Court’s ruling

As mentioned, share awards and stock options have historically been taxable in full in Sweden if the individual was resident in Sweden at the time of vesting/exercise. In the event of double taxation, individuals could claim a foreign tax credit deduction in order to reduce their liabilities.

In its ruling, the Court established that Sweden has the right to tax the full benefit under Swedish law. However, the Court recognised that taxation in full of share awards which vested or stock options which were exercised at a time when an EU citizen is working and residing in Sweden, but earned partly or fully outside Sweden at a time when the taxpayer was non-resident, is contrary to EU legislation on the freedom of movement of workers (which prohibits discrimination on the grounds of nationality).

The Court held that the fact that an individual could claim a foreign tax credit does not ensure that the discrimination is eliminated as the credit would reduce the taxation in Sweden but would not completely eliminate it. This ruling applies regardless of where the EU citizen earned the income, i.e. in or outside of the EU borders.

The ruling only covers EU citizens; it does not cover how similar situations concerning non-EU citizens should be treated.

Deloitte’s view

Deloitte agrees with the Court’s assessment and welcomes the ruling.

The ruling should be seen as a clarification of existing legislation and may therefore be applied retroactively. If income tax or social security contributions have been imposed on a benefit earned abroad, there is a possibility to claim for reassessment by the end of the sixth year following the tax year in which the benefit was received, at the latest. Any claims for reassessment for share awards or stock options taxed in 2009 must therefore be made before 31 December 2015. Please note that it is sufficient for individuals to only make a formal request for reassessment before this deadline; the Swedish Tax Agency allows a short grace period for the individual to clarify the grounds and amounts involved.

It is unlikely that the Swedish Tax Agency will initiate reassessments on its own initiative; therefore it is important that employers and employees consider whether taxes have been charged contrary to this new ruling.

Going forward, employers should ensure that their payrolls are prepared to process share benefits on an apportioned basis according to workdays in Sweden over the grant to vest period, for EU citizens.

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