



Tax Espresso A snappy delight

Greetings from Deloitte Malaysia's Tax services group

Tax Case

Positive Vision Labuan Limited v Ketua Pengarah Hasil Dalam Negeri (KPHDN)

All the appellants (Positive Vision Labuan Limited, GA Investment Limited and Avenues Zone Inc.) are in the

Quick links:

[Deloitte Malaysia](#)

[Inland Revenue Board](#)

Takeaways:

Tax Case:

Positive Vision Labuan Limited v Ketua Pengarah Hasil Dalam Negeri

Gazette Orders:

Income Tax (Deduction for Expenditure in relation to Minimum Wages) Rules 2014

business of investment holding. They are offshore companies incorporated under the Labuan Companies Act 1990 in year 2011 and known as “Labuan companies” and “Labuan entities” under the Labuan Business Activity Tax Act 1990 (LBATA).

In year of assessment 2011, the appellants received dividend income and made irrevocable elections under Section 3A of the LBATA to be taxed under the Income Tax Act 1967 (ITA). The appellants’ tax consultants wrote to the KPHDN to seek confirmation whether a Labuan company which had made an election under Section 3A of the LBATA to be taxed under the ITA, is exempted from income tax on dividends received based on the Income Tax (Exemption) (No. 22) Order 2007 (“Exemption Order”). The KPHDN replied that the Ministry of Finance had decided that Labuan entities which had made elections under Section 3A of the LBATA would not be eligible for tax exemption under the Exemption Order with effect from 12 February 2010. Dissatisfied with the reply from the KPHDN, the appellants applied to the High Court for a judicial review.

The High Court held that once companies have elected to be taxed under the ITA, the companies are no longer eligible for the tax exemption under the Exemption Order. The non-eligibility of the companies under the Exemption Order took effect from the date of election. Prior to that date, the appellants were still entitled to the exemption. Dissatisfied with the High Court’s decision, the appellants appealed to the Court of Appeal.

The Court of Appeal upheld the decision made by the High Court. With the amendment to Section 3B of the ITA, it was clear that Parliament intended to distinguish between an offshore company which has made the election under Section 3(A)(1) of the LBATA as opposed to those companies which did not. It is clear that the words “chargeable offshore company” referred to an offshore company which had made an election to be taxed under the ITA. The Exemption Order

Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2014

Amendment Bill:

Promotion of Investments (Amendment) Bill 2014

Important deadlines:

Due date for 2015 tax estimates for companies with September year-end (31 August 2014)

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

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

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

was only applicable to an “offshore company” which must be interpreted as defined under the ITA. The Court of Appeal held that with effect from the date the appellants made their respective elections to be taxed under the ITA, the appellants were “chargeable offshore companies” and were, therefore, no longer within the terms of the Exemption Order.

Gazette Orders

Income Tax (Deduction for Expenditure in relation to Minimum Wages) Rules 2014

The difference between the amount of minimum wages paid by a qualifying person to his employee for January 2014 and the amount of wages paid by that qualifying person to the same employee in December 2013 is allowed for double deduction in arriving at the adjusted income of the qualifying person.

A qualifying person is a resident in Malaysia who is:-

- a small and medium enterprise in the manufacturing sector which has not more than 200 full-time employees or has achieved annual sales of not more than RM50 million at the end of the basis period for a year of assessment;
- a small and medium enterprise in the services and other sectors which has not more than 75 full-time employees or has achieved annual sales of not more than RM20 million at the end of the basis period for a year of assessment;
- a co-operative society established under the Co-operative Societies Act 1993; or
- a society established under the Societies Act 1966.

The Rules are applicable to minimum wages paid to employees from January to December 2014
[Income Tax (Deduction for Expenditure in relation to Minimum Wages) Rules 2014 - PU(A) 206/2014].

Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2014

A Malaysian resident person is entitled to claim initial allowance of 20% and annual allowance of 80% of the capital expenditure incurred for the purchase of Information and Communication Technology (ICT) equipment as specified in the Schedule of these Rules from year of assessment 2014 to year of assessment 2016. The purchase of the abovementioned ICT equipment includes the installation of such equipment.

The above capital allowance claimed will be withdrawn if the ICT equipment are disposed within 2 years from the date of the purchase of the ICT equipment (from year of assessment 2014 to year of assessment 2018).

These Rules shall not apply to a person if in the basis period for a year of assessment, the person has been granted any incentive under the Promotion of Investments Act 1986, reinvestment allowance or an investment allowance under Schedule 7A or 7B of the ITA; exemption under Section 127 of the ITA or qualified for a deduction under any other rules made under Section 154 of the ITA [*Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2014 - PU(A) 217/2014*].

Amendment Bill

Promotion of Investments (Amendment) Bill 2014

The Promotion of Investments (Amendment) Bill 2014 was recently released to seek amendment to the Promotion of Investment Act 1986 (PIA).

The major proposed amendments to the PIA are tabulated as follows:

No.	Major Proposed Amendments to PIA	Remarks
1.	Deletion of the definitions of “promoted area” and “industrial linkage programme” under Section 2: Interpretation and Chapter 7: Infrastructure Allowance.	These incentives have been discontinued since 1 January 2011.
2.	Amendment to Section 2: Interpretation New definition of “company” is	This newly inserted definition ensures that only companies incorporated in Malaysia under the Companies Act, 1965 are eligible

	<p>introduced.</p> <p>“company” means a company—</p> <p>(a) incorporated in Malaysia under the Companies Act 1965; and</p> <p>(b) resident in Malaysia in the basis year for a year of assessment.</p>	<p>for the incentives under PIA.</p>
3.	<p>Amendment to Section 7: Pioneer Certificate.</p> <p>New Section 7(1A) is introduced.</p>	<p>The application for extension of time to request for a pioneer certificate should be made before the expiry of twenty-four months or such extended period as allowed by the Minister.</p>
4.	<p>Insertion of a new proviso to Section 21F(2)(b).</p>	<p>Tax exemption is provided for the value-added income for companies which upgrade their existing medical devices testing laboratories in Malaysia.</p>
5.	<p>Amendment to Sections 26I, 26N, 27N, 29O and 43A.</p> <p>New Section 26I(1B) is introduced.</p>	<p>The period of incentives for generation of renewable energy for own consumption is extended to 31 December 2015.</p> <p>A company engaging in the generation of renewable energy for own consumption is exempted from the requirement to have a separate account.</p>
6.	<p>Introduction of new Section 27P: Determination of effective date and compliance for investment tax allowance</p>	<p>A time frame is provided to a company that has been granted investment tax allowance to apply for the determination of its effective date or an extension of time for such application before the expiry of the period of twenty-four months or such extended period as the Minister may allow.</p>
7.	<p>Amendment to Section 29: Investment tax allowance.</p>	<p>“Purchase of a building” is included as part of the definition of capital expenditure for</p>

	“Purchase of a building” is inserted in Section 29(7)(iii).	hotel business.
8.	Saving and transitional provision	Notwithstanding the deletion of the definitions of “promoted area” and “industrial linkage programme”, Chapter 7 and other provisions, the provisions shall remain in operation and continue to apply to any company as if the provisions had not been deleted.

We invite you to explore other tax related information at:

http://www.deloitte.com/view/en_MY/my/mysvc/mytax/index.htm

Contact Us

Business tax

Compliance & Advisory

Yee Wing Peng (603) 7610 8800

Ng Lan Kheng (604) 228 8255

Julie Tan (603) 7610 8847

Financial Services

Chee Pei Pei (603) 7610 8862

International Tax

Tan Hooi Beng (603) 7610 8843

Oil & Gas

Toh Hong Peir (603) 7610 8808

Mergers & Acquisitions

Sim Kwang Gek (603) 7610 8849

R&D and Government Incentives

Daniel Lim (603) 7610 8845

Real Estate

Tham Lih Jiun (603) 7610 8875

Tax Audit & Investigation

Chow Kuo Seng (603) 7610 8836

Global Employer Services

Ang Weina (603) 7610 8841

Indirect Tax

Tan Eng Yew (603) 7610 8870

Fan Kah Seong (603) 7610 8859

Robert Tsang (+65) 6530 5523

Transfer Pricing

Theresa Goh (603) 7610 8837

Ian Clarke (603) 7610 8824

[Deloitte Malaysia](#) | [Add Deloitte as a safe sender](#)



[Deloitte](#)

Level 16, Menara LGB
1, Jalan Wan Kadir
Taman Tun Dr. Ismail
60000 Kuala Lumpur, Malaysia

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their

related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see <http://www.deloitte.com/my/about> for a more detailed description of DTTL and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

© 2014 Deloitte Tax Services Sdn Bhd

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.