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August 2018

Greetings from Deloitte Malaysia Tax Services

Quick links: [Deloitte Malaysia](#)
[Inland Revenue Board of Malaysia](#)

Takeaways:

- [Revised Real Property Gains Tax Guidelines; and Revised Green Technology Guidelines](#)
- [Amendments to PR No. 1/2014 'Withholding Tax on Special Classes Of Income'](#)
- [Income Tax \(Accelerated Capital Allowance\) \(Information and Communication Technology Equipment\) Rules 2018 \[P.U.\(A\) 156/2018\]](#)
- [Cititower Sdn Bhd v Collector of Stamp Duties \(High Court\)](#)

Upcoming event:

- [\(Ipoh\) SST Update Seminar](#)

Important deadlines:

Task	Due Date
	31 August 2018
1. 2019 tax estimates for companies with September year-end	√
2. 6 th month revision of tax estimates for companies with February year-end	√
3. 9 th month revision of tax estimates for companies with November year-end	√
4. Statutory filing of 2018 tax returns for companies with January year-end	√
5. Due date for 2018 CbCR notification for companies with August year-end	√

Revised Real Property Gains Tax (“RPGT”) Guidelines; and Revised Green Technology Guidelines

The Inland Revenue Board of Malaysia (“IRBM”) has issued the [revised RPGT Guidelines dated 13 June 2018](#) mainly to incorporate the changes made to the Real Property Gains Tax Act 1976. It supersedes the [previous RPGT Guidelines dated 18 June 2013](#).

Aside from this, the Malaysian Investment Development Authority (“MIDA”) has issued the [revised Guidelines for Green Technology](#), which is effective from 1 July 2018.

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Amendments to Public Ruling (“PR”) No. 1/2014 ‘Withholding Tax on Special Classes Of Income’

The [PR No. 1/2014](#) was amended on 27 June 2018. The [original PR](#) was issued by the IRBM on 23 January 2014. Among the changes made in the PR are:

1. *Due date for payment of withholding tax*

The IRBM has amended the examples to clarify that the due date of remitting withholding tax (“WHT”) by the payer to the IRBM within **one month** of making or crediting the payment to the non-resident means if payment to the non-resident was made on 15.04.2012, then the applicable WHT was due on or before 15.5.2012.

2. *Regrossing of payment made to a non-resident*

Example 25 has been amended to reflect the correct computation where WHT is borne by a payer, the payment made to the non-resident is to be regrossed to determine the correct amount of WHT to be deducted, i.e., the amount paid to the non-resident is regarded as 90% of the gross payment as shown in the formula below.

$$\text{Regrossed sum} = \text{Payment made to non-resident} \times 100/90$$

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Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2018 [P.U.(A) 156/2018]

The [P.U.\(A\) 156/2018](#) (the Rules) was gazetted on 5 July 2018 and is deemed to have come into operation from the year of assessment (“YA”) 2017.

The Rules apply to a person resident in Malaysia, in respect of the capital expenditure incurred by such person in the basis period for a YA from a business source relating to the purchase of any information and communication technology equipment used for the purpose of that business.

An eligible person will be entitled to claim accelerated capital allowance on the capital expenditure incurred for the purchase of any information and communication technology equipment at an initial rate of 20% and an annual rate of 20%. The types of “information and

communication technology equipment” for the purpose of the Rules are specified in the Schedule (refer to Rule 2).

The non-application of the Rules are as provided in Rule 6.

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Cititower Sdn Bhd v Collector of Stamp Duties (High Court)

Issue:

Whether the taxpayer was also exempted from being liable to ad valorem stamp duty under Item 32(a), Schedule 1 of the Stamp Act [i.e., on the Memorandum of Transfer (“MOT”) for the transfer of land which was part of the sale of business agreement (“SBA”)] if the SBA is exempted pursuant to Section 15(1) of the Stamp Act 1949 (“the SA”).

Decision:

The High Court allowed the appeal by the taxpayer on the issue with the following grounds of judgement:

1. If as contended by the Collector of Stamp Duties that the exemption under Section 15(1) of the SA was only for the primary instrument (i.e., the SBA) and not the MOT which is a subsidiary instrument to complete the undertaking, then by virtue of Section 4(3) of the SA, the MOT was also exempted from stamp duty. Where a document was exempted from stamp duty, all subsidiary documents accessory to the primary purpose were also exempted (see *Cheah Choon Gan v Registrar of Titles, Kedah [1973] 1 MLJ 107*).
2. Section 15(1) of the SA did not state that it was only the SBA that was exempted from stamp duty. Section 15(1) clearly stated if the conditions were satisfied, then stamp duty under Item 32(a) or (b) in the First Schedule should not be chargeable on **any instrument** made for the purposes of or in connection with the transfer of the undertaking.
3. The word used by Parliament was “any instrument”. This clearly envisaged one or more instruments and whether the instrument in question was the principal or secondary instrument. If Parliament had intended the exemption to apply to only one instrument or a specific instrument, then Parliament would have surely specified this clearly in Section 15(1) of the SA.

It was not in dispute that the MOT was ordinarily chargeable instrument under Item 32(a) in the First Schedule and it was executed pursuant to the SBA; the MOT is entitled to be exempted from stamp duty pursuant to Section 15(1) of the SA.

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