Tax Espresso
A snappy delight

Greetings from Deloitte Malaysia Tax Services

Tax implications arising from the Companies Act 2016

The Companies Act 2016 (the CA 2016), which is in effect from 31 January 2017, aims to facilitate Malaysia's status as the place to do business and to strengthen corporate governance for companies. Below is a summary of the tax implications that may arise:

1. **Abolishment of Share Premium Account**

   Pursuant to Section 618 of the CA 2016, share premium account and capital redemption reserve will no longer be applicable. Upon commencement of Section 74 of the CA 2016, any amount in the company's share premium accounts and capital redemption reserve shall become part of the company's share capital. A

Quick links:

Deloitte Malaysia
Inland Revenue Board

Takeaways:

Tax implications arising from the Companies Act 2016

Tax Audit Framework 2017

Upcoming events

Big Data Analytics Seminar

Important deadlines:

Due date for 2018 tax estimates for companies with July year-end (1 July 2017)

6th month revision of tax estimates for companies with December year-end (30 June 2017) transitional period of 24 months is given for companies to utilise the amount standing in credit in the company's share premium accounts.

With the abolishment of share premium account, a company which previously qualifies for SME status (paid-up share capital below RM2.5million) may be a non-SME upon the conversion of share premium to share capital and may lose its preferential treatment, e.g., preferential tax rates on the first RM500,000 of the chargeable income, exemptions from providing an estimate of tax payable for the first 2 years of operations, etc.

9th month revision of tax estimates for companies with September year-end (30 June 2017)

Statutory filing of 2016 tax returns for companies with November year-end (30 June 2017)

2. Capital reduction

Under the new Section 115 of the CA 2016, a capital reduction can be done without a Court order, i.e., "self-do" capital reduction by a notice sent to the Director General of the Inland Revenue (the IRB) within 7 days from the date of the resolution.

3. Shares will be issued at a price with no par value – Impact on computation of Stamp Duty

Pursuant to Section 74 of the CA 2016, all shares issued before or upon the commencement of the CA 2016 will no longer carry a nominal / par value. This means a company may issue shares at a price depending on the factors affecting the current circumstances and needs of the company.

For the purpose of calculating stamp duty for transfer of ordinary shares of companies that are not listed on the Bursa Malaysia, there are 4 bases for determining the value of shares:

- Par value per share;
- Net Tangible Assets (NTA);
- Price Earning Multiple/Price Earnings Ratio (PER); or
- Sale consideration

whichever is the highest.

With the abolition of par value, the par value-based computation formula will no longer be applicable.

4. Exemption from the appointment of Auditor

The Registrar is empowered under Section 267(2) of the CA 2016 to exempt certain private companies from having to appoint auditors. The Companies Commission of Malaysia (CCM) has yet to confirm the criteria for audit exemption.

- This exemption conflicts with Section 77A(4) of the Income Tax Act 1967 (the ITA), which requires a company to furnish the return based on audited accounts. It was clarified by the IRB previously that if it was stipulated under the CA 1965 that should a company not be required to submit audited accounts, then Section 77A(4) of the ITA would not be applicable.

  With the new CA 2016, the IRB will need to clarify whether audited accounts are required when preparing tax returns of those companies exempted from appointing an auditor under the CA 2016.

- With the exemption from appointment of auditors, the Stamp Office would need to clarify whether the company's management accounts would be accepted for the purpose of determining the value of shares based on NTA and PER.

5. Abolishment of the Authorised Share Capital concept

Following the abolishment of the par value concept pursuant to Section 74 of the CA 2016, the authorised share capital concept that is tied to the par value concept under the CA 1965 is likewise abolished.

Tax implications would arise in relation to gazette orders, e.g., the Income Tax (Deduction for Incorporation Expenses) Rules 2003 [PU(A) 475/2003] allows a company having authorised share capital of not more than RM2.5million to claim for deduction of expenditure incurred in relation to its incorporation.

6. Option not to have a Memorandum and Articles of Association (M&A)

The CA 2016 provides the option not to have an M&A.

- In the absence of M&A and if the company is exempted from preparing statutory audited accounts, the company may need to rely on alternative means such as business code in the Form C, etc. in determining a company's business intention or principal activities, e.g., a company which is engaged in share investment or share dealing.

- This may result in various tax implications, e.g., in determining whether the company is carrying on a single business or multiple businesses, or in assessing whether gains made by the company from the disposal of property are subject to income tax or whether these are capital gains.

Tax Audit Framework 2017

The IRB has issued the Tax Audit Framework 2017 (currently available in Bahasa Malaysia only), which is effective from 1 May 2017. It supersedes the Tax Audit Framework 2015 issued on 1 February 2015. Among the changes as compared to the Tax Audit Framework 2015 are:

- The number of years of assessment (YAs) covered under a tax audit is generally three YAs (previously one YA), and can be extended up to five YAs for cases not attributable to fraud, willful default or negligence.
- Voluntary disclosure is no longer allowed once tax audit has commenced.
- A tax audit can be extended to any related company / business having the same director without notification to the taxpayer.
- The concessionary penalty rate for a voluntary disclosure after 6 months from the due date of submitting the income tax return form (ITRF) is now 35%, provided that the ITRF was submitted by the stipulated deadline and the voluntary disclosure is made before the case is selected for audit.

Below is a summary of the penalty extracted from the Tax Audit Framework 2017 issued by the IRB:

Voluntary Disclosure / Discovery	Period from the prescribed deadline of submission	Penalty Rate
Voluntary disclosure before case is selected for audit	≤ 60 days >60 days to ≤6 months > 6 months	10% 15.5% 35%
Non-disclosure (Discovery of omission during audit)		100% or as directed by the DGIR, a penalty of 45% for the 1st offence

We invite you to explore other tax-related information at:
http://www2.deloitte.com/my/en/services/tax.html

Contact Us

Services / Names	Designation	Email	Telephone
Business Tax Compliance & Advisory			
Yee Wing Peng	Managing Director	wpyee@deloitte.com	+603 76108800
Julie Tan	Executive Director	jultan@deloitte.com	+603 76108847

Business Model Optimisation			
Tan Hooi Beng	Executive Director	hooitan@deloitte.com	+603 76108843
Business Process Solutions			
Julie Tan Gabriel Kua	Executive Director Director	jultan@deloitte.com gkua@deloitte.com	+603 76108847 +606 2811077
Financial Services			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 76108862
International Tax			
Tan Hooi Beng	Executive Director	hooitan@deloitte.com	+603 76108843
Oil & Gas			
Toh Hong Peir	Executive Director	htoh@deloitte.com	+603 76108808
Mergers & Acquisitions			
Sim Kwang Gek	Executive Director	kgsim@deloitte.com	+603 76108849
R&D and Government Incentives			
Sim Kwang Gek	Executive Director	kgsim@deloitte.com	+603 76108849
Real Estate			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 76108875
Tax Audit & Investigation			
Chow Kuo Seng	Executive Director	kuchow@deloitte.com	+603 76108836
Global Employer Services			
Ang Weina	Executive Director	angweina@deloitte.com	+603 76108841
Indirect Tax			
Tan Eng Yew Senthuran Elalingam	Executive Director Executive Director	etan@deloitte.com selalingam@deloitte.com	+603 76108870 +603 76108879
Transfer Pricing			
Theresa Goh	Executive Director	tgoh@deloitte.com	+603 76108837

Branches / Names	Designation	Email	Telephone
Penang			
Ng Lan Kheng Everlyn Lee	Executive Director Director	lkng@deloitte.com evelee@deloitte.com	+604 2189888 +604 2189913
Ipoh			
Ng Lan Kheng Lam Weng Keat	Executive Director Director	lkng@deloitte.com welam@deloitte.com	+604 2189888 +605 2534828
Melaka			

Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 76108862
Gabriel Kua	Director	gkua@deloitte.com	+606 2811077
Johor Bahru			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 76108862
Thean Szu Ping	Director	spthean@deloitte.com	+607 2225988
Kuching			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 76108875
Chai Suk Phin	Senior Manager	spchai@deloitte.com	+608 2463311
Kota Kinabalu			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 76108875


Yee Wing Peng


Julie Tan


Tan Hooi Beng


Chee Pei Pei


Toh Hong Peir


Sim Kwang Gek


Tham Lih Jiun


Chow Kuo Seng


Ang Weina


Tan Eng Yew


Senthuran Elalingam


Theresa Goh


Ng Lan Kheng


Everlyn Lee


Lam Weng Keat


Gabriel Kua


Thean Szu Ping


Chai Suk Phin

Deloitte Tax Services Sdn Bhd
Level 16, Menara LGB
1, Jalan Wan Kadir
Taman Tun Dr. Ismail
60000 Kuala Lumpur, Malaysia