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.

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)
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](http://www2.deloitte.com/my/en/services/tax.html) (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:

<table>
<thead>
<tr>
<th>Voluntary Disclosure / Discovery</th>
<th>Period from the prescribed deadline of submission</th>
<th>Penalty Rate</th>
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<tbody>
<tr>
<td>Voluntary disclosure before case is selected for audit</td>
<td>≤ 60 days</td>
<td>10%</td>
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<td>&gt; 60 days to ≤ 6 months</td>
<td>15.5%</td>
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<td></td>
<td>&gt; 6 months</td>
<td>35%</td>
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<tr>
<td>Non-disclosure (Discovery of omission during audit)</td>
<td>100% or as directed by the DGR, a penalty of 45% for the 1st offence</td>
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We invite you to explore other tax-related information at: [http://www2.deloitte.com/my/en/services/tax.html](http://www2.deloitte.com/my/en/services/tax.html)

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