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Tax Espresso

Guidelines for stamp duty relief,
rental income exemption order and more

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Greetings from Deloitte Malaysia Tax Services

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Takeaways:

1. Guidelines for Application of Stamp Duty Relief under Section 15 and Section 15A of the Stamp Act 1949

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Upcoming events:

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Important deadlines:

Task	2019 Due Date
	31 March
1. 2020 tax estimates for companies with April year-end	√
2. 6th month revision of tax estimates for companies with September year-end	√
3. 9th month revision of tax estimates for companies with June year-end	√
4. Statutory filing of 2018 tax returns for companies with August year-end	√
5. Due date for 2019 CbCR notification for companies with March year-end	√

Guidelines for Application of Stamp Duty Relief under Section 15 and Section 15A of the Stamp Act 1949

The Inland Revenue Board of Malaysia (IRBM) has issued two technical guidelines (in Bahasa Malaysia only) on 26 February 2019 to provide guidance in the application of stamp duty relief under Section 15 and Section 15A of the Stamp Act 1949:

(i) Garis Panduan Permohonan Pelepasan Duti Setem Di Bawah Seksyen 15, Akta Setem 1949; and
(ii) Garis Panduan Permohonan Pelepasan Duti Setem Di Bawah Seksyen 15A, Akta Setem 1949.

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Exemption of Rental Income from Residential Property

The Income Tax (Exemption) (No. 2) Order 2019 [the Order] was gazetted on 27 February 2019 and is effective for the year of assessment (YA) 2018. It exempts a landlord who rents out his residential property (for any period from 1 January 2018 to 31 December 2018) from the payment of income tax in respect of 50% of his statutory income derived from the rental of residential property for YA 2018. The landlord must be a citizen who resides in Malaysia and he must also be the registered proprietor of his residential property. The monthly rental amount received should not exceed RM2,000 per month for each residential property.

It should be noted that the exemption period is for one year only, i.e. YA 2018, instead of the proposed three YAs in Budget 2018 [Appendix 2 of the 2018 Budget Speech and Appendices refers]. The tenancy agreement between the landlord and the tenant has to be executed and stamped for coming into effect on or after 1 January 2018. Please refer to the abovementioned Order for the full details.

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Tax Case: NMS Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (Special Commissioners of Income Tax)

Issues:

1. Whether the Director General of Inland Revenue (DGIR) had correctly raised a Notice of Assessment (i.e. Form J) dated 8 March 2012 for YA 2007;

2. Whether the taxpayer qualified for the income tax exemption in YA 2007 as provided by the Income Tax (Exemption)(No. 9) Order 2002 [Exemption Order];

3. Whether the DGIR had correctly included a sum of RM21,865.40 as tax previously refunded in the Form J raised for YA 2007 against the taxpayer; and

4. Whether the DGIR had correctly imposed a penalty on the taxpayer under Section 113(2) of the Income Tax Act 1967 (ITA).

Decision:

The Special Commissioners of Income Tax (SCIT) allowed the appeal by the taxpayer on all issues with the following grounds of judgement:

Issue 1

Based on Subsections 90(1) and 90(2) of the ITA, the DGIR was deemed to have made an assessment on 20 April 2008 because that was the date the taxpayer had furnished its Income Tax Return Form (i.e. Form C). Hence, the DGIR had not acted correctly in law by raising a Notice of Assessment (Form J) dated 8 March 2012 for YA 2007 against the taxpayer. The DGIR should have instead raised a Notice of Additional Assessment (i.e. Form JA) as provided for under Subsection 91(1) of the ITA. The Form J dated 8 March 2012 was therefore in contravention of Sections 90(1), 90(2) and 91(1) of the ITA. The Form J raised was wrong in law and should be discharged in full.

Issue 2

(a) The taxpayer fulfilled all the criteria required under the Exemption Order, to be entitled to an income tax exemption which was equal to 50% of the "value of increased exports" of qualifying services as stipulated in Paragraph 4(1) of the Exemption Order. In the SCIT's view, the DGIR had misinterpreted the meaning of "value of increased export" in Paragraph 2 of the Exemption Order when disallowing the taxpayer's claim as the DGIR's stand was that 'value must consist of figures and zero does not represent any value'. The SCIT instead agreed with the taxpayer that the word 'value' was not defined in the Exemption Order and hence should be given its **ordinary and usual meaning**. In that context, 'value' meant 'monetary worth', a precise amount represented by a figure. Furthermore, 'value' could be negative ('-'), zero ('0') or positive ('+').

(b) The Exemption Order stated that the value of increased exports was "the difference of the value of the qualifying services exported in the basis period and that of the immediately preceding basis period."

The fact that the taxpayer was negotiating with a foreign client to export services in 2006, i.e. in the immediately preceding basis period, which supported the taxpayer's contention that the taxpayer qualified for the income tax exemption.

A fact established in front of the SCIT was that the taxpayer already had the know-how and had commenced the process to export services in 2006, i.e. there was an on-going export oriented activity in the basis period for 2006 but the value of the services at the end of the basis period was '0'. The taxpayer had therefore, shown the value of the qualifying services in 2006 as '0' which indicated that there was a difference in the value of the export in the basis period and the immediately preceding basis period.

Hence, the SCIT unanimously allowed the appeal on Issue 2.

Issue 3

The DGIR's witness admitted that there was a mistake in the taxpayer's tax computation for the year of assessment (YA) 2007 where the Inland Revenue Board of Malaysia's (IRBM) Self-Assessment System (SAS) for company taxpayers had incorrectly created the repayment of RM21,865.40 in the IRBM ledger, and that the taxpayer was not informed of a repayment due to the taxpayer. The sum of RM21,865.40 as being "Repayment" in the Notice of Assessment for YA 2007 dated 8 March 2012 was a mistake made by the DGIR.

Issue 4

(a) The taxpayer did not submit an incorrect return for YA 2007 by giving any incorrect information but it was merely a different interpretation of the meaning of "value of increased export" in the Exemption Order. The taxpayer had disclosed that the value of export was "0" in their interpretation of "value" for the preceding year in the Exemption Form, which the DGIR disagreed with, as the DGIR's interpretation was that "value" must consist of figures and zero did not represent any value.

(b) The taxpayer had fully disclosed the claiming of export incentive in its Form C and Exemption Form submitted to the DGIR with the view that those expenses were deductible. If the DGIR later did not allow those expenses to be deductible due to interpretation of the meaning of "value of increased export", then the taxpayer should not be penalised under Subsection 113(2) of the ITA.

(c) It was also acceptable in practice that no penalty should be imposed if it was a technical adjustment, reference being made to the Minutes of Dialogue Session held on 2 October 2003 and Minutes of Tax Audit and Investigation Dialogue held on 10 May 2005, of the DGIR's assurance given to taxpayers that no penalty should be imposed for technical adjustment.

(d) The DGIR was not correct in law to impose a penalty under Subsection 113(2) of the ITA, as there was ample evidence to conclude that the taxpayer did not make any incorrect return or give any incorrect information in its submission of Form C for YA 2007. It was just a technical error in the taxpayer's interpretation of the meaning of "value of increased export" in the Exemption Order.

(e) Therefore the penalty amounting RM24,996.42 under Subsection 113(2) of the ITA on YA 2007's income tax return should not be imposed.

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