



## Tax Espresso A snappy delight

## Greetings from Deloitte Malaysia's Tax services group

### Transfer Pricing Compliance Alert

Effective year of assessment 2014, the income tax return form for companies has a specific disclosure requirement on availability of transfer pricing documentation to support intragroup pricing arrangements. Therefore, it is imperative

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that all taxpayers with related party transactions prepare transfer pricing documentation on an annual basis and adhere to the tax return filing deadline.

The following are the potential implications of a “No” response on the tax return, if the taxpayer has related party transactions:

- i) The taxpayer could become an obvious target for transfer pricing audit;
- ii) No penalty protection in the event of a transfer pricing audit;
- iii) A “No” response could be viewed as “willful default” or “negligence” – two circumstances under which the statute of limitation will be revoked.

As such, it is important to prepare transfer pricing documentation as prescribed under the Transfer Pricing Guidelines 2012 and the Transfer Pricing Rules. Such transfer pricing documentation should also be updated when there are material changes in the factors used to establish the arm’s length transfer price. An annual update of at least the benchmarking study is required where no such material changes take place. What constitutes “material changes” is often a contentious issue with the authorities as the words “material changes” are not defined. We would recommend professional advice being sought in determining whether or not there are “material changes” in the related party transactions prior to ticking a “Yes” on the tax return.

### **Revenue Board (IRB):**

IRB’s Denial Relating to Social Media Message on Overseas Travel Restriction

Revised Form CKHT 3 (Pin 1/2014)

### **Goods and Services Tax (GST):**

GST Handbook for Businesses

### **Important deadlines:**

Due date for 2015 tax estimates for companies with December year-end (1 December 2014)

6th month revision of tax estimates for companies with May year-end (30 November 2014)

9th month revision of tax estimates for companies with February year-end (30 November 2014)

Statutory filing of 2014 tax returns for companies with April year-end (30 November 2014)

## Public Ruling

### Public Ruling (PR) No. 6/2014: Taxation of Foreign Fund Management Company

PR 6/2014 was issued by the IRB on 4 September 2014 to explain the tax treatment of income received by a foreign fund management company that provides fund management services to foreign and local investors. This PR is not applicable to a foreign fund management company that issues, offers or makes an invitation to subscribe or purchase units of conventional unit trust funds.

A foreign fund management company that carries on the business of providing fund management services to foreign and local investors derives management fees for its services which will be treated as business income under Section 4(a) of the Income Tax Act 1967 (ITA). Where a foreign fund management company provides fund management services to both foreign investors and local investors, the income derived from the provision of such services to each of these categories of investors will be treated as arising from separate and distinct business sources according to Section 60G(1) of the ITA.

Pursuant to Section 60G(2) of the ITA, the chargeable income in relation to the source consisting of the provision of fund management services to foreign investors for a year of assessment is the statutory income from that source reduced by unabsorbed losses brought forward from earlier years from the same source and the chargeable income shall be subject to tax at the rate of 10% [Part IX of Schedule 1 of the ITA].

Foreign fund management companies which manage funds according to Syariah principles are exempted from the payment of income tax until year of assessment 2016 as provided under the relevant Exemption Orders in respect of statutory income derived from a business of providing fund management services to foreign and local investors in Malaysia. The Syariah funds shall be certified by the Securities Commission for each year of assessment during the exempt period. With the full implementation of the single-tier tax system effective from 1 January 2014, the foreign fund management company no longer needs to maintain any exempt account.

## News from Inland Revenue Board (IRB)

### IRB's Denial Relating to Social Media Message on Overseas Travel Restriction

In response to the inaccurate message relating to overseas travel restriction circulated via social media recently, the IRB advises the public not to believe the message received as it did not originate from the

IRB.

The IRB clarified that it will take action to enforce overseas travel restriction pursuant to Section 104 of the ITA and Section 22 of the Real Property Gains Tax Act 1976 (RPGTA) if taxpayers refuse to settle outstanding income tax or real property gains tax liability after the IRB has taken the following steps to recover the tax liabilities:

- i) Notification of increase/late payment penalty under Section 103 of the ITA;
- ii) Notification of Tax in Arrears;
- iii) A phone call reminder from the IRB's Call Centre;
- iv) Notification of court action.

A copy of the overseas travel restriction letter will be posted to the taxpayer's correspondence address registered with the IRB. The overseas travel restriction is enforced at the international gateways only. Taxpayers can check the status of the overseas travel restriction from the official website of the Malaysian Immigration Department at <http://sspi2.imi.gov.my/>.

The overseas travel restriction can be cancelled if a taxpayer has settled his outstanding tax liability. The overseas travel restriction can also be cancelled temporarily upon the taxpayer having settled 50% of his outstanding tax liability and the balance can be paid in installments as approved by the IRB.

### **Revised Form CKHT 3 (Pin 1/2014)**

Following the amendments to the RPGTA in 2014, the IRB has recently posted the revised Form CKHT 3 (Pin 1/2014) on its website under the heading "*Forms > Return Forms > Real Property Gains Tax > CKHT3*".

The first amendment is made in the first option statement by inserting the words "*by individual*" after the wordings "*Real property or shares in a real property company owned for more than 5 years*".

The second amendment is to replace option 4 with the statement "*Disposal of asset which is exempted from tax under an exemption order. Please state the relevant exemption order number*".

## **Goods and Services Tax (GST)**

### **GST Handbook for Businesses**

The Royal Malaysian Customs Department (RMCD) has recently issued the “Handbook for Goods and Services Tax for Businesses”. This GST Handbook provides basic guidance and explanation on the salient features of GST, accounting for tax, preparation for the implementation of GST, GST implications, tax code, business preparation for GST, supplies spanning GST, non-reviewable contract and special refund.

We invite you to explore other tax related information at:

[http://www.deloitte.com/view/en\\_MY/my/mysvc/mytax/index.htm](http://www.deloitte.com/view/en_MY/my/mysvc/mytax/index.htm)

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