



Tax Espresso

A snappy delight

Greetings from Deloitte Malaysia's Tax services group

Finance (No. 2) Act 2014

The Finance Bill (No. 2) 2014 (Bill 2014) has been gazetted as the Finance (No. 2) Act 2014 (Act 2014) on 30 December 2014. There are no material changes to the Bill 2014 which had been highlighted in our October 2014 Tax Espresso

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Gazette Orders

[Income Tax \(Deduction from Remuneration\) \(Amendment\) \(No. 2\) Rules 2014 \[P.U.\(A\) 362/2014\]](#)

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(Special Edition).

Gazette Orders

Income Tax (Deduction from Remuneration) (Amendment) (No. 2) Rules 2014 [P.U.(A) 362/2014]

The Income Tax (Deduction from Remuneration) (Amendment) (No. 2) Rules 2014 (the Rules 2014) made by the Second Minister of Finance on 31 December 2014 comes into operation on 1 January 2015. The Rules 2014 amended certain Rules in the Income Tax (Deduction from Remuneration) Rules 1994 [P.U. (A) 507/1994]. Among the amendments are:

- i) Definition of “remuneration” ***[with this amendment, the benefit in kind and value of living accommodation are subjected to monthly tax deduction (MTD)];***
- ii) Deletion of Rule 2A;
- iii) Changes in certain words in of Rules 3, 10 and 13; and
- iv) Substitution of schedule (Rule 3).

One of the amendments is the change on the due date for payment of MTD from the 10th day of the following month to the 15th day of the following month. This change of due date applies to payment of MTD from remuneration for January 2015 and subsequent months. For example, MTD for January 2015 is due for payment to IRB on 15 February 2015.

The due date for payment of MTD for December 2014 still falls on 10 January 2015 in accordance to the P.U. (A) 507/1994.

The MTD Scheduler 2015 is now available in the **IRB's website**.

for Cost Relating to Training for Employees for the Implementation of Goods and Services Tax) Rules 2014 [P.U.(A) 334/2014]

Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [P.U.(A) 336/2014]

Tax Case:

TSD Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (SCIT)

Important deadlines:

Due date for 2016 tax estimates for companies with February year-end (29 January 2015)

6th month revision of tax estimates for companies with July year-end (31 January 2015)

9th month revision of tax estimates for companies with April year-end (31 January 2015)

Statutory filing of 2014 tax returns for companies with June year-end (31 January 2015)

Income Tax (Deduction for Cost Relating to Training for Employees for the Implementation of Goods and Services Tax) Rules 2014 [P.U.(A) 334/2014]

In ascertaining the adjusted income of a qualifying person from its business in the basis period for years of assessment **2014 and 2015**, a double deduction is allowed on the expenditure incurred by the qualifying person in training its full-time employees who are Malaysian citizen under an accounting or information and communication technology training programme which is conducted in Malaysia for the purpose of the implementation of the Goods and Services Tax (GST) Act 2014 as verified by the Director General of Customs and Excise.

Qualifying person referred to in the above paragraph is a person who is:

- i) a resident in Malaysia; and
- ii) a registered person or a taxable person as defined in the GST Act 2014.

These Rules shall not apply to a qualifying person in the basis period for a year of assessment where the qualifying person has claimed:

- i) a deduction in relation to the cost of training programme for that year of assessment under the Income Tax (Deductions for Approved Training) Rules 1992 [P.U. (A) 61/1992]; or
- ii) the cost of training programme from the Human Resource Development Fund established under Section 22 of the Pembangunan Sumber Manusia Berhad Act 2001.

Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [P.U.(A) 336/2014]

Tax Deduction for Secretarial Fee

Effective year of assessment 2015, secretarial fee of up to RM5,000 charged in respect of secretarial services provided by a company secretary registered under the Companies Act 1965 (CA 1965) to comply with the statutory requirements under CA 1965, which is **incurred and paid** by a person in the basis period for a year of assessment is allowed as a deduction in ascertaining the adjusted income of the person resident in Malaysia from his business in the basis period for that year of assessment.

Tax Deduction for Tax Filing Fee

Total amount of tax filing fee of up to RM10,000 charged by a tax agent approved under the ITA or the GST Act 2014 which is **incurred and paid** by a person in a basis period for a year of assessment is

allowed as a deduction in ascertaining the adjusted income of the person resident in Malaysia from his business in the basis period for that year of assessment in respect of:

- i) preparation and submission of return for the basis period for the immediately preceding year of assessment in the prescribed form for the purposes of Sections 77, 77A, 77B, 83 and 86 of the ITA effective year of assessment 2016; and
- ii) preparation and submission of forms prescribed for the purposes of Section 107C of the ITA or a return in the prescribed form for the purposes of Section 41 of the GST Act 2014 in the basis period for that year of assessment with effect from year of assessment 2015.

Tax Case

TSD Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (SCIT)

Issue

Whether the taxpayer was entitled to claim industrial building allowance (IBA) pursuant to Paragraph 42B of Schedule 3 read together with Paragraph 60 of the same schedule of the ITA.

Decision

The Special Commissioners of Income Tax (SCIT) was of the view that the taxpayer was entitled to claim IBA and allowed its appeal based on the following grounds:

- i) Based on the interpretation of Paragraph 42B of the ITA in the case of JTSTB v Ketua Pengarah Hasil Dalam Negeri [2011] AMTC 1319, the learned Special Commissioners had unanimously ruled in favour of the taxpayer and held that the KPHDN had no legal basis to impose the requirement that the school must be operated by the taxpayer who constructed and owned the school building in order to claim IBA.
- ii) The words in Paragraph 42B of Schedule 3 does not require the taxpayer to operate the school in order to qualify for IBA for the school building. The word 'operate' or any other word of like effect was not found in the said paragraph; nor in the Hansard dated 27.10.1995, nor in Clause 15 of the Finance (No.2) Bill 1995 and the Explanatory Statement to Clause 15 of the Finance (No.2) Bill 1995.
- iii) Paragraph 60 of Schedule 3 provides that "Where a person who owns a building grants a lease thereof and that building is in use as an industrial building, then, in the application of Schedule 3 to that person in relation to that building any reference to a business of his shall be taken to be a

reference to the source in respect of any income to which that person is entitled under that lease..”. Based on Paragraph 60, the taxpayer as the owner of the school building which was an industrial building by virtue of Paragraph 42B of Schedule 3 and in use as an industrial building, the taxpayer was entitled to claim IBA on the qualifying building expenditure on the school building.

- iv) The taxpayer subjected the rentals received from EY Sdn Bhd to tax as its business source income under Section 4(a) of the ITA. The rentals constitute income from a source consisting of a business as they were received in the course of carrying on a business of putting the taxpayer’s property to profitable use by letting it out for rent. The school building was rented to EY Sdn Bhd for the purposes of a business of the taxpayer namely the business of leasing or letting buildings. Pursuant to Paragraph 60 of Schedule 3, the taxpayer was entitled to claim IBA as the school building was used as an industrial building by its lessee i.e. EY Sdn Bhd.

Dissatisfied with the decision of the SCIT, the KPHDN had filed a Notice of Appeal to the High Court.

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<http://www2.deloitte.com/my/en/services/tax.html>

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