



## Tax Espresso A snappy delight

## Greetings from Deloitte Malaysia's Tax services group

### Reduction of Penalty for Voluntary Declaration and Remission of Increase in Tax on Payment of Tax Arrears

The Inland Revenue Board (IRB) had recently issued a media release on the reduction of penalty in respect of

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voluntary declaration and the remission of increase in tax on settlement of tax arrears during the period from **1 May 2015 until 30 November 2015**. The reduction of penalty or the remission of increase in tax is based on the merit of each case and subject to conditions as determined by the IRB.

Reduction of Penalty	Remission of Increase in Tax
<p>Voluntary declaration on:</p> <p>i) Failure to furnish a return [Penalty under Section 112(3) of the Income Tax Act 1967 (ITA)]; and</p> <p>ii) Incorrect returns [Penalty under Section 113(2) of the ITA]</p>	<p>Payment of tax arrears by 30 November 2015 in respect of:</p> <p>i) <u>Income tax</u> Increase in tax under Sections 103, 107C(9) and 107B(3) of the ITA;</p> <p>ii) <u>Real Property Gains Tax (RPGT)</u> Increase in tax under Sections 21(4) and 21B of the RPGT Act 1976; and</p> <p>iii) <u>Withholding tax</u> Increase in tax under Sections 107A(2); or 109(2), 109B(2), 109D(3), 109E(4), 109F(2) and 109G(2) of the ITA.</p>

This offer does not apply to taxpayers whose files are managed by Multinational Tax Branch and Petroleum Branch of the IRB.

Income Tax (Exemption) (No. 2) Order 2015 [P.U. (A) 50/2015]

Income Tax (Deduction for Training Costs under Skim Latihan 1Malaysia for Unemployed Graduates) (Amendment) Rules 2015 [P.U.(A) 53/2015]

Income Tax (Exemption) (No. 3) Order 2015 [P.U.(A) 61/2015]

#### Tax Case:

Kenny Heights Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Court of Appeal)

#### Important deadlines:

Due date for 2016 tax estimates for companies with June year-end (31 May 2015)

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

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

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

## Tax Incentives Guidelines

The Ministry of International Trade and Industry (MITI) had recently announced the detailed guidelines for 4 new tax incentives proposed in the 2015 Budget as follows:

i) Incentives for Less Developed Areas:

- ✓ Exemptions on withholding tax, stamp duty and import duty; and income tax exemption of 100% or Investment Tax Allowance (100% of qualifying capital expenditure) are available for newly established or existing companies expanding and undertaking manufacturing or services activities in the less developed areas.
- ✓ No specific definition or areas designated as “Less Developed”. Consideration will be based on consultation between Malaysian Investment Development Authority (MIDA), Economic Corridors and relevant authorities on a case-by-case basis.
- ✓ The relevant application form must be received by MIDA from 1 January 2015 until 31 December 2020.

ii) Incentive for Industrial Area Management:

- ✓ 100% tax exemption on statutory income for 5 years commencing from the date a company (newly established/existing companies appointed by local authority) commences its activities in management, upgrading and maintenance within an Industrial Estate.
- ✓ The relevant application form must be submitted to MIDA from 1 January 2015 until 31 December 2017.

iii) Capital Allowance to Increase Automation in Labour Intensive Industries:

- ✓ A company which possesses a valid business licence from a local authority and manufacturing licence from MITI, resides in Malaysia and has been in operation for at least 36 months is eligible for this incentive.
- ✓ Incentives:

Category	Incentives	Implementation Timeline
Category 1: High labour intensive industries (rubber products, plastics,	Automation capital allowance of 200% will be provided on the first RM4 million expenditure incurred within the years of	YA 2015 – YA 2017 (Including expenditure in 2014, if any)

wood, furniture and textiles)	assessment (YAs) 2015 to 2017	
Category 2: Other industries	Automation capital allowance of 200% will be provided on the first RM2 million expenditure incurred within the YAs 2015 to 2020.	YA 2015 – YA 2020 (Including expenditure in 2014, if any)

iv) Incentive for the Establishment of Principal Hub

- ✓ This incentive is introduced to replace the International Procurement Centres (IPC), Regional Distribution Centres (RDC) and Operational Headquarters (OHQ) incentive schemes effective 1 May 2015.
- ✓ A Principal Hub is a locally incorporated company that uses Malaysia as a base for conducting its regional and global businesses and operations to manage, control, and support its key functions including management of risks, decision making, strategic business activities, trading, finance, management and human resource.
- ✓ This incentive is available to companies incorporated in Malaysia with paid-up capital of more than RM2.5 million and carry out at least three qualifying services and serve network companies in at least 3 countries outside Malaysia.
- ✓ An approved Principal Hub is eligible for a 3-tiered corporate taxation rate as follows:

3-tier Incentive	Tier 3		Tier 2		Tier 1	
Blocks (years)	5	+5	5	+5	5	+5
Tax rate	10%		5%		0%	

- ✓ The incentive is in the form of tiered rate of tax reductions based on the level of value created. This includes level of business spending, high-value job creation, high level personnel, level of value-adding functions and risks transferred to the principal company and revenue.
- ✓ The relevant application form must be received by MIDA from 1 May 2015 until 30 April 2018.

## Gazette Orders

### Income Tax (Exemption) (No. 2) Order 2015 [P.U. (A) 50/2015]

Pursuant to P.U. (A) 50/2015 which was gazetted on 19 March 2015, a qualifying company carrying on a qualifying activity **outside** the Multimedia Super Corridor (MSC) cyber city or cyber centre may be awarded the status of a MSC company. Such company is exempted from the payment of income tax on:-

- i) 70% of the statutory income for a period of 5 years; or
- ii) 100% of the statutory income for another period of 5 years if the company carries on a qualifying activity **in** a MSC cyber city or cyber centre within the extended exemption period. An application for extension of the exemption period shall be made by the company in writing to the Minister not later than 90 days before expiry of the first 5-year exemption period.

An application for MSC status shall be made to the Minister of Finance and the Minister of International Trade and Industry on or after 1 January 2015. The applicant shall ensure that no qualifying activity has commenced at the time the application is made.

### Income Tax (Deduction for Training Costs under Skim Latihan 1Malaysia for Unemployed Graduates) (Amendment) Rules 2015 [P.U.(A) 53/2015]

P.U.(A) 53/2015 was gazetted recently to amend Paragraph 3(5)(a) of the Income Tax (Deduction for Training Costs under Skim Latihan 1Malaysia for Unemployed Graduates) Rules 2013 [P.U.(A) 260/2013] to extend the ending period from 31 December 2016 to 31 December 2020. These Rules are effective from year of assessment 2015.

### Income Tax (Exemption) (No. 3) Order 2015 [P.U.(A) 61/2015]

Effective year of assessment 2015, a person is exempted from the payment of income tax in the basis period for a year of assessment in relation to gains or profits derived, in lieu of interest, from *sukuk wakala* in accordance with the principle of *Wakala Bil Istithmar*. This exemption order is applicable to *sukuk wakala* with the nominal value of up to USD1,500,000,000.00, other than convertible loan stock, issued by the Malaysia Sovereign Sukuk Berhad.

## Tax Case

### Kenny Heights Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (Court of Appeal)

#### Issues

- i) What were the disposal dates and the consideration price of the Conditional Agreements both dated 14 August 2000 which were subsequently amended by Supplemental Agreements both dated 14 February 2003;
- ii) Whether the Real Property Gains Tax (Exemption) (No. 2) Order 2007 [P.U.(A) 146/2007] dated 27 March 2007 applied to exempt the taxpayer from RPGT; and
- iii) Whether the Notice of Assessment for YA 2000 dated 31 December 2008 was statute barred by virtue of Section 15(1) of the RPGT Act 1976.

#### Decision

The Court of Appeal (COA) set aside the decision of the High Court and restored the deciding order of the Special Commissioners of Income Tax (SCIT) by allowing the taxpayer's appeal as follows:

- i) The amount of consideration was the actual consideration as at the time the conditions were satisfied, and the date of disposal was regarded as the date when all the conditions were satisfied. In this case, the amount of consideration at the time the conditions were satisfied by 27 April 2007 was no longer the consideration price set out in the Sale and Purchase Agreements dated 14 August 2000, but the consideration as amended and set out in the Supplemental Agreements dated 14 February 2003.

*[Note: Paragraph 16, Schedule 2 of the RPGT Act 1976 had been substituted by the Finance Act 2006 where a conditional contract requires the approval from the Government or a State Government or an authority or committee appointed by the Government or a State Government, the date of disposal would be the date when the last of all such conditions is satisfied. This amendment is effective 2 September 2006.]*

- ii) Since the disposal date was 27 April 2007, the taxpayer was entitled to the exemption under the Real Property Gains Tax (Exemption) (No. 2) Order 2007 [P.U.(A) 146/2007] which exempted a person from all provisions of the RPGT Act 1976 for any disposal of chargeable asset from 1 April 2007 until 31 December 2009.

iii) The Notice of Assessment for YA 2000 dated 31 December 2008 and served on 2 February 2009 was statute barred by virtue of Section 15(1) of the RPGT Act 1976.

We invite you to explore other tax related information at:

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

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