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Public Ruling No.1/2017 Income Tax Treatment Of Goods And Services Tax ("GST") Part I – Expenses

This Public Ruling explains the tax treatment of GST (input tax, output tax, and reverse charge mechanism for imported services and bad debt relief) as well as the documentation required for income tax purposes

The salient points covered in this Public Ruling are:

- If a person purchases or acquires goods or services for the purpose of his business, the GST incurred (input tax) would be a deductible expense under Section 33(1) of the Income Tax Act, 1967 ("ITA") provided that it is wholly and exclusively incurred in the production of gross income and is not prohibited by any provision under Section 39(1) of the ITA.

- When a company chooses not to claim input tax credit due to reasons such as the absence of tax invoice or invalid tax invoice, the company is not entitled to claim a deduction by virtue of Section 39(1)(o) of the ITA.

- Any penalty imposed by Royal Malaysia Customs Department ("RMCD") due to taxpayer's mistake in not tax deductible.

- Bad debt relief is not applicable for a supply made by a GST-registered person to a non GST-registered person for GST purposes. Any output tax is not recoverable from RMCD as bad debt relief as bad debt relief is not deductible under Section 34(2) of the ITA. This is because the debt was not included as part of the gross income for the relevant year of assessment.

- Residual input tax which is attributable to exempt supply and not claimable from RMCD is a deductible expense for income tax purposes. The amount deductible is subject to the effects of annual adjustment or longer period adjustment required under the GST Act 2014, when the actual amount of input tax credit is finally ascertained to be non-claimable from RMCD.

Public Ruling No.2/2017 Income Tax Treatment Of Goods And Services Tax Part II – Qualifying Expenditure ("QE") For Purposes Of Claiming Allowances

This Public Ruling explains the tax treatment of GST paid or to be paid on qualifying expenditure incurred for purposes of claiming capital allowances.

The salient points covered in this Public Ruling are:

- Where a GST registered person is eligible to claim input tax credit but fails to do so, the GST incurred is not to be included as part of the qualifying expenditure (QE).

- A person who is liable to registered for GST but fails to do so, is not allowed to include into the QE the GST incurred in the period prior to registration.

- Where a person's GST status changes from not liable to liable to be registered, the QE previously claimed has to be adjusted to exclude the GST portion which he is not entitled to credit as input tax.

- Income tax treatment for Capital Goods Adjustment (CGA) made under the GST Act 2014.

  > CGA is carried out in a situation where a capital asset is used for making mixed supplies, i.e. taxable and exempt supplies because the input

tax in relation to the asset's usage for making exempt supplies is not claimable under the GST Act. Adjustment is made to the initial portion of input tax claimed from the RMCD where there is a change in the proportion of usage of the capital asset in making taxable and exempt supplies.

> For income tax purposes, the QE also has to be adjusted to take into account the CGA made. Only the input tax portion in relation to making exempt supplies is to be included in the QE of the asset.

Public Ruling No.3/2017 Income Tax Treatment Of Goods And Services Tax Part III – Employee Benefits: GST Borne By An Employer

This Public Ruling explains the income tax treatment on GST, that is the output tax accounted for and borne by the employer on goods or services given free to its employees as a benefit.

The salient points covered in this Public Ruling are:

- Output tax borne by an employer in respect of any benefits in kind or perquisites are to be included as part of gross employment income of the employee.
- The output tax borne is not tax deductible for the employer.

Public Ruling No.4/2017 Basis Period For A Business Source For Persons Other Than A Company, Limited Liability Partnership, Trust Body And Co-Operative Society (replaces Public Ruling 6/2001)

This Public Ruling explains that with effect from the year of assessment 2004, Section 21 of the ITA was amended to be in line with the self-assessment system. It explains the determination of basis period under the new provisions of Section 21 effective from year of assessment 2004.

This means that for any person other than a company, limited liability partnership, trust body and a co-operative society, the basis period for a year of assessment for each source of income is based on the calendar year.

Public Ruling No.5/2017 Taxation Of Real Estate Investment Trust Or Property Trust Fund (replaces Public Ruling 2/2015)

This Public Ruling explains the tax treatment accorded to a Real Estate Investment Trust ("REIT") or a Property Trust Fund ("PTF") in Malaysia which may either be listed on Bursa Malaysia or unlisted, that is approved by the Securities Commission of Malaysia ("SC"). It has been updated to reflect the changes introduced in Budgets 2015 to 2017.

The salient points covered in this Public Ruling are:

- Changes to the meaning of unit trust
  Meaning of unit trust in Section 61A(2) of the ITA was amended to include a requirement for the unit trust to be listed on Bursa Malaysia. The tax transparency treatment under Section 61A(1) of the ITA is accorded only to REIT's / PTF's listed on Bursa Malaysia.

- Withholding tax
  A REIT/PTF listed on Bursa Malaysia and exempt from tax under S61A of the ITA and distributes income to a unit holder (other than resident companies) is required to deduct tax under Section 109D of the ITA at the rate applicable to the unit holder. Where the REIT / PTF is not listed, the income distributed is not subject to withholding tax under Section 109D of the ITA.

  The Public Ruling was updated with the following:

  > The period for which the 10 % withholding tax for resident and non-resident individuals and foreign institutional investors applies is extended to 31 December 2019; and

  > the withholding tax rate for non-resident companies is 24 % in line with the corporate tax rate.

- Definition of residual profits and residual assets.
  Under Paragraph 38A, Schedule 3 of the ITA, a company's entitlement to the residual profits and residual assets of a REIT / PTF are examined if control transfer provisions apply to a disposal of an industrial building to a REIT / PTF. The definition of residual profits and residual assets have been amended to net profits and net assets respectively.

- Special Purpose Vehicle ("SPV") established by a REIT/PTF
  Effective year of assessment 2015, pursuant to Section 60I of the ITA, where a REIT/PTF establishes a SPV solely for the issuance of sukuk, any source income of the SPV and any income from that source shall be treated as a source of income of that REIT/PTF and such REIT / PTF shall have the right to

receive and utilise any proceeds derived from the issuance of such sukuk.

Public Ruling No.6/2017 Withholding Tax On Income Of A Non-Resident Public Entertainer

This Public Ruling explains the income received by a non-resident public entertainer, deductions of tax from income received and consequences of not remitting tax deducted from income received.

The salient points covered in this Public Ruling are:

- A public entertainer will be treated as a non-resident if he is in Malaysia for less than 182 days in a calendar year. The residence status of an individual for a basis year for a year of assessment is determined with reference to the physical presence of that individual in Malaysia and not by their nationality or citizenship.

- A non-resident public entertainer is liable to tax on the remuneration or other income in respect of services performed or rendered in Malaysia. A non-resident public entertainer performing or rendering services inn Malaysia can be exercising a profession, vocation or employment.

- Income of a non-resident public entertainer (other than a company) consisting of remuneration or other income in respect of services rendered in Malaysia is taxed at the rate of 15 % on the gross amount under Part II of Schedule 1 of the ITA.

Public Ruling No.7/2017 Disposal Of Plant Or Machinery Part I - Other Than Controlled Sales

This Public Ruling provides clarification on the tax treatment of the disposal of plant and machinery by a person that is not a controlled sale.

The salient points covered in this Public Ruling are:

- Where a person disposes of plant or machinery on which capital allowance was previously claimed, a balancing charge or balancing allowance may arise. In computing balancing allowance the disposal value is determined by the market value of the assets or net proceeds of the asset. However, if the asset was disposed of to the government, state government or local authority, the general rule of using market value will not apply.

- With effect from year of assessment 2016, where a significant part of an asset is replaced with a new part and depreciated separately, the old part is deemed to have been disposed of.

- Where a person disposed of an asset within 2 years of purchase, the Director General has the discretion to withdraw the capital allowance that has been made on the asset and impose a balancing charge on the disposed asset.

- If an asset is written off due to being obsolete or damaged beyond repair and could not be sold, the market value of such an asset is considered to be zero.

Public Ruling No.8/2017 Professional Indemnity Insurance (”PII”)

This Public Ruling explains the deductibility of premium paid for a PII policy and the tax treatment on insurance proceeds received and compensation paid in relation to a PII policy.

The salient points covered in this Public Ruling are:

- Practicing professionals are allowed a tax deduction for PII premiums paid if they carry on a business related to their professions.

- If a professional carries on a business that is not related to his profession or his employment in a company, any PII premiums paid by him are not eligible for tax deduction.

- Where a professional body allows its members to practice in the form of a company and PII is purchased by the company, the premiums paid are allowed as a tax deduction if the company carries on a business related to that profession.

- No tax deduction is available for PII premiums paid by a professional who carries out his duty as a locum.

- Any proceeds received by a professional or a company in connection with a PII is subject to tax if the premiums paid have been allowed for deduction previously. Subsequently, any compensation or damages paid to a claimant for the PII proceeds are allowed as a tax deduction against the gross income of the professional or company. The treatment is the same regardless of whether the compensation is paid by the insurance company to the claimant through the professional or company, or directly to the claimant.

- If the compensation claimed by the claimant exceeds the insurance proceeds received the shortfall borne by the professional is allowed as a tax deduction.

Public Ruling No.9 and No.10/2017 Reinvestment Allowance (”RA”)

This Public Ruling is to assist a company resident in Malaysia and engaged in manufacturing activities in ascertaining its eligibility to claim RA and provides clarification in relation to projects that qualify for RA, expenditure that qualifies for RA, period of eligibility, and computation of RA.

The salient points covered in this Public Ruling are:

- A qualifying project is a project that is undertaken by a company in expanding, modernizing, or automating its existing business in respect of manufacturing a project or any related product within the same industry or in diversifying its existing business into any related product within the same industry.

- An eligible company, i.e. been in operation for not less than 36 months, and has incurred in the basis period for a year of assessment capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project, can claim RA of an amount equivalent to 60 % of the capital expenditure incurred in the basis period for a year of assessment. RA is to be deducted against the statutory income of a business but is restricted to 70 % of the statutory income.

- Any unabsorbed RA in a year of assessment by reason of restriction of the allowance to 70 % of the statutory income or of an insufficiency or absence of statutory income of a business which undertakes a qualifying project can be carried forward to subsequent years of assessment.

- A company is entitled to claim RA for 15 consecutive years of assessment.

- Where an asset is disposed of at any time within 5 years from the date of acquisition of that asset, the RA claimed shall be withdrawn irrespective of whether the disposal is between related or non-related parties.

Public Ruling No.11/2017 Residence Status Of Individuals

This Public Ruling explains the determination of residence status for individuals.

The salient points covered in this Public Ruling are:

- The residence status of an individual is generally determined by reference to the physical presence of that individual in Malaysia and not by their nationality or citizenship. In certain situations, the physical presence for the basis years preceding and following a particular year of assessment has to be taken into consideration also in determining the residence status of an individual.

- There are 4 sets of circumstances in which an individual can qualify as a resident in Malaysia for the basis period for a year of assessment.

> If an individual is in Malaysia in the basis period for a year of assessment for a period or periods amounting in all to 182 days or more. The period of stay in Malaysia does not have to consecutive days.

> If an individual is in Malaysia in the basis year for a particular year of assessment for a period of less than 182 days but the period is linked by or to another period of 182 or more consecutive days throughout which he was in Malaysia in the basis year for the preceding or immediately following that particular year of assessment. In calculating the period of less than 182 days or the period of 128 days or more consecutive days, temporary absence is given where the absence is (a) connected with the individual's service in Malaysia; (b) due to ill health involving the individual or a member of his immediate family; or (c) in respect of social visits not exceeding 14 days in the aggregate.

> If an individual is in Malaysia in the basis period for a particular year of assessment for a period or periods amounting in all to 90 days or more, he is resident for that particular year of assessment if in each of any 3 out of 4 years of assessment immediately preceding that particular year of assessment he was either (a) resident in accordance with Section 7 of the ITA; or (b) in Malaysia for a period or periods amounting in all to 90 days or more.

- > An individual is considered to be resident for the basis year for a year of assessment if he is resident for the immediately following basis year and had been resident for the 3 immediately preceding basis years.

- Malaysia has entered into agreements with a number of countries that avoid double taxation by allocation taxing rights over bilateral income flows between treaty partners.

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Growing strategically

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