

e-Tax News (January/2017)

PKF Management Team wishes you a very

Happy, Healthy and Prosperous
Chinese New Year!

Gong Xi Fatt Chai !!



To our valuable customers and business associates,

On 21 November, 2016, PKF Tax Services Sdn Bhd in collaboration with PKF Avant Edge Sdn Bhd has successfully organized our 2017 PKF Tax Seminar being held in Dewan Berjaya, Bukit Kiara Equestrian & Country Resort. With astounding success, our Tax Seminar has received overwhelming support from our fellow business associates and valued clients, with over 120 participants. The main objective of our Tax Seminar is to provide a critical analysis of the tax impacts in respect of the 2017 Budget proposals in order to disseminate any potential tax planning opportunity and tax risk.

We wish to inform that Finance Act 2017 has received Royal Assent on 9 January, 2017 and has been published in the Gazette on 16 January, 2017. The Act amends the Income Tax Act 1967, the Petroleum (Income Tax) Act 1967, the Real Property Gains Tax Act 1976, the Labuan Business Activity Tax Act 1990 and the Goods and Services Tax Act 2014. Thus, those amendments proposed in 2017 Budget proposals will be effective starting from 16 January, 2017.

To benefit all of our clients/business associates, we have summarised below the main amendments of 2017 Budget proposals that will have a significant impact on most businesses:-

i) **The new withholding tax landscape in Malaysia**

The scope of withholding tax has been widened in respect of any of the following payments made to non-residents:-

- Income falling under Section 4A (i) and (ii) of the Income Tax Act, 1967 mainly in respect of technical / management advice, assistance or services rendered or installation services, **irrespective of whether the services are performed in Malaysia or outside Malaysia.**

The Inland Revenue Board (IRB) has verbally clarified that in respect of existing contracts for services with non-residents during the transitional period, the withholding tax provision under the above amendment will be based on **when the services are rendered** and the date of payment for the services will be disregarded.

- In accordance to the verbal clarification provided by the IRB, the new definition of “royalty” is the definition prescribed by the IRB in respect of the definition of royalty in the double tax treaty. The inclusion of “software” in the new definition of “royalty” may indicate that the purchase of software from a non-resident may fall within the ambit of withholding tax; and
- The widening of the definition of “public entertainer” may result in potential overlapping of the provisions of withholding tax under Section 109B (special classes of income in certain cases as highlighted above) and Section 109A (public entertainer).

Editor’s comments

With the changes of the above withholding tax landscape in Malaysia effective from 16 January, 2017, the existing contracts for services with non-residents must be reviewed in light of the above amendments in order to identify the scope of the services and to address whether the new withholding tax provisions would be applicable. We understand that it is a common practice where most of the centralised support and management services provided within a group of companies are not well supported by a clear and defined contract / agreement which clearly indicates the nature and the scope of the services with their corresponding amount. Thus, it is advisable to have the existing contract / agreement to be reviewed by a tax practitioner in light of the latest development in the withholding tax landscape in Malaysia. The exposure to withholding tax must be properly addressed in order to avoid any potential tax penalty and the disallowance of the expenses in the tax computation conducted by IRB during tax audit.

ii) Hefty penalty for late payment of GST for both GST registered and non-GST registered persons and introduction of a device to be affix for real-time monitoring

The Government has introduced a higher penalty rate for late payment of GST. During the previous Budget 2016, the Government had introduced a scheduler penalty rate for late payment on GST from 5% onwards, however 12 months down the road, the Government has increased the penalty rates from 10% on unpaid GST amount with the highest penalty rate fixed at 45%. This shows the intention of the relevant authority to ensure every taxpayer prioritise their GST obligation.

Apart from the introduction of a higher penalty rate, the Government has announced a new Section 34A and 34B in the GST Act 2014 which empowers the Royal Malaysian Customs (RMC) to affix a device to the tax payers POS system in order to obtain real-time data for GST monitoring purposes. It is yet to be known how this device will be implemented, however we are made to understand that the retail and restaurant industries will be targeted for the initial roll out. Again, this has further evidence that the Government is serious in regulating GST in Malaysia with the aim to ensure full compliance of GST requirements in Malaysia..

Editor's comments

With GST been implemented in Malaysia for just over 21 months, the Government is taking the necessary actions to ensure compliance towards the GST regime is adhered by tax payers. Tax payers are advisable to take all necessary measures to ensure its business reporting are closely monitored and proper compliance are observed. It would be advisable to engage a GST expert to provide a GST health check from time to time to ensure the reporting are in compliances with the current GST regime.

iii) Reduction of corporate income tax rates on the increase of chargeable income

The incremental portion of chargeable income will enjoy stages of tax reduction below the existing headline corporate income tax rate of 24% in years of assessment 2017 and 2018. The rate reduction between 1% to 4% for companies (both SMEs and non-SMEs) is only restricted to the incremental of the chargeable income as compared with the immediate preceding year of assessment.

Editor's comments

The above initiative will be gazetted by way of a statutory order and the said statutory order is currently still pending. Thus, pending the above statutory order and the proposed mechanism of the above incentive, it would not be advisable for companies to revise their tax estimate until the full clarification is provided by the IRB on the scope of the above incentive and any non-application condition.

On a separate matter, we wish to highlight that the IRB has discontinued the practice on the utilisation of tax credits to set off against future tax instalments as per the instalment scheme furnished to the IRB. Utilisation of tax credits for set off will only be approved by the IRB in respect of payment of additional tax liabilities from back years. Also, in the recent months, we experienced that the IRB has taken a longer time in refunding any tax credit due to overpayment of tax due. In order to ensure a better cash flow management for the taxpayers, we would advise a tax provisioning be carried out in the 9th month of the basis period in order to have an accurate tax estimate and if necessary, the tax estimate is revised accordingly in order to avoid the delay in the refund of any tax overpaid.

iv) The evolving Transfer Pricing landscape in Malaysia

The IRB has recently releases the relevant legislations to effect the implementation of Country by Country Reporting (CbCR) and exchange of financial account information on 4 January, 2017.

Income Tax (Automatic Exchange of Financial Account Information) Rules 2016/ Income Tax (Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information) Order 2016

The abovementioned Rules covers, among others, the due diligence obligations of a Reporting Financial Institution, allowable modifications to the due diligence procedures, reporting obligations of a Reporting Financial Institution, record keeping requirements, appointment of a third party to carry out the obligations, powers of the IRB and anti-avoidance provisions.

The abovementioned Rules came into operation on 1 January, 2017. A Reporting Financial Institution shall furnish an information return to the IRB on or before 30 June of the year following the calendar year to which the return relates.

Income Tax (Country-by-Country Reporting) Rules 2016 / Income Tax (Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports) Order 2016

These Rules are in respect of the requirements for filing a CbCR and other related requirements, in line with the recommendations of OECD base erosion profit shifting (BEPS) Action Plan 13. The abovementioned Rules covers, among others, the conditions that require a multinational corporation group to perform CbCR, details that should be reported in a CbCR, filing obligations, time for filing as well as use and confidentiality of the CbCR information. The threshold set for furnishing CbCR in Malaysia is set at the total consideration group revenue in the financial year preceding the reporting financial year is at least 3 billion ringgit.

The abovementioned Rules came into operation on 1 January 2017. CbCR shall be filed not later than 12 months after the last day of the reporting financial year.

The information provided under CbCR will assist IRB in conducting their tax audits in a more transparent basis where the financial / non-financial information of a Multinational Group (MNC Group) will be made available. However, the Rules also state that the IRB may use the CbCR for the purpose of assessing high level transfer pricing risks and other BEPS related risks in Malaysia but cannot be used as a substitute for a detailed transfer pricing analysis for the purpose of transfer pricing adjustments.

To facilitate the filing of CbCR and to ensure proper compliance by taxpayers, the following new penalty provisions are introduced:

<u>Section</u>	<u>Offence</u>	<u>Proposed penalty</u>
112A	Failure to furnish CbCR	Fine of not less than RM20,000 and not more than RM100,000; or Imprisonment for a term not exceeding 6 months or both
113A	Incorrect returns, information returns or reports	
119B	Failure to comply with rules made by the Ministers on mutual administrative assistance	

Editor's comments

The transfer pricing landscape in Malaysia continues to evolve over the last few years where the IRB becomes increasingly proactive and vigilant in scrutinising controlled transactions of both MNC Group and local group of companies. For local group of companies, the most common transfer pricing issues are related to the provision of shared services, mainly the lack of proper documentation, inconsistency in the methodology adopted, the failure to meet the benefit test for the payer companies and the lack of substance in the provision of shared services, just to name a few.

The IRB enforces transfer pricing compliance through tax audits, at which point taxpayers are required to submit their Transfer Pricing documentation within 30 days. In addition, a declaration is also required in the tax return form on the availability of Transfer Pricing documentation serves as one of the selection criteria used by the IRB for the selection of taxpayers for tax audit purposes. Moving forward, the maintenance of Transfer Pricing documentation is crucial in order to ensure compliance and to mitigate the exposure of tax audit risk.

Photos from PKF Tax Seminar 2017:-



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