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Tax Flash

June 2010

PR No. 2/2010 – Allowable Pre-operational and Pre-commencement of Business Expenses

The Inland Revenue Board ["IRB"] has issued the Public Ruling ["PR"] No. 2/2010 – Allowable Pre-operational and Pre-commencement of Business Expenses on 3rd June 2010 which provides clarification on the tax treatment of pre-operational or pre-commencement of business expenses allowable when a person commences operations or business. The PR No. 2/2010 takes effect from the year of assessment ["YA"] 2010 and supersedes the PR No. 2/2002 issued on 8th July 2002.

Some of the pertinent changes are as follows:-

i. Incorporation Expenses
[Income Tax (Deduction for Incorporation Expenses) Rules 2003 and Income Tax (Deduction for Incorporation Expenses) (Amendment) Rules 2005]

The maximum authorised share capital requirement for companies to be eligible to claim a deduction for "incorporation expenses" has been increased from RM250,000 (for companies incorporated in Malaysia on or after 1st January 1973 but prior to 13th September 2003) to RM2,500,000 (for companies incorporated in Malaysia on or after 13th September 2003) (with effect from the YA 2004). The said incorporation expenses incurred shall be deemed to be incurred in the basis period for a YA in which the business commences.

A sole proprietorship or partnership which converts to a private limited company, with an authorised share capital of not exceeding RM2,500,000 is also eligible for the above deduction.

ii. Establishment Expenditure of a REIT or PTF
[Income Tax (Deduction for Establishment Expenditure of REIT or PTF) Rules 2006]

A Real Estate Investment Trust ["REIT"] or Property Trust Fund ["PTF"] approved by the Securities Commission which has incurred establishment expenditure can claim a tax deduction of such expenditure against its gross income (with effect from the YA 2006).

Hyperlinks

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Reference

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iii. **Establishment Expenditure of an Islamic Stock Broking Company**
[Income Tax (Deduction on Expenditure for Establishment of an Islamic Stock Broking Business) Rules 2007]

An Islamic stock broking company qualifies for the deduction of establishment expenditure if the application for approval of the Islamic stock broking business is made to the Bursa Malaysia from 2nd September 2006 until 31st December 2015 and the company commences its Islamic stock broking business within 2 years from the date of approval by the Bursa Malaysia.

iv. **Pre-commencement of Business Expenses Relating to Recruitment of Employees**
[Income Tax (Deduction of Pre-Commencement of Business Expenses relating to Employee Recruitment) Rules 2008]

A person who has incurred expenses within the period of 1 year prior to the commencement of his business in respect of recruitment of employees for his business qualifies for tax deduction of such expenses against his gross income from the business (with effect from the YA 2009).

Exemption Income from *Sukuk Ijarah*

Income Tax (Exemption) Order 2010

Effective the YA 2010, tax exemption is given to a person who derives income from *sukuk ijarah,* other than convertible loan stock, issued in any currency by 1 Malaysia Sukuk Global Bhd.

Where such income from the *sukuk ijarah* is derived by a non-resident person, withholding tax under Section 109 and 109B of the Income Tax Act 1967 shall not be applicable.

This exemption has been gazetted under the Income Tax (Exemption) Order 2010.

DTA between Malaysia and Republic of Senegal

Double Taxation Relief (The Government of the Republic of Senegal) Order 2010

The Double Tax Agreement ["DTA"] between Malaysia and Republic of Senegal has recently been gazetted. Salient points of the DTA include:-

i. A building site, a construction, installation or assembly project will constitute a permanent establishment ["PE"] if it exists for more than 8 months.

ii. A PE is also deemed to exist if supervisory activities are carried out for more than 8 months within any 12-month period in connection with a building site, a construction, installation or assembly project.

iii. The withholding tax rates applicable on certain payments are as follows:-

- Dividends - 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the shareholding or 10% in all other cases
- Interest - 10%. Penalty charges for late payment are not considered as interest.
- Royalties - 10%
- Technical fees - 10%
- Section 4(f) income - 10%

The above DTA will enter in force upon ratification.

Protocol Amending DTA between Malaysia and Belgium

Double Taxation Relief (The Government of Belgium) (Amendment) Order 2010

The Protocol amending the DTA between Malaysia and Belgium has recently been gazetted. The major changes observed, amongst others, are:-

Withholding Tax Rates

- Dividends - 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the shareholding or 10% in all other cases
- Interest – remains at 10%. Penalty charges for late payment are excluded.
- Royalty - reduced from 10% to 7%
- Technical fees - 7% (new article)

The above protocol has yet to be ratified.

Protocol to Amend the Article on Exchange of Information in Certain Double Tax Agreements

Double Taxation Relief (Amendment) Orders 2010
- France, Japan Netherlands, Ireland, Australia and Turkey

Several protocols have been gazetted to amend the Article on Exchange of Information in the double tax agreements between Malaysia and France, Japan, Netherlands, Ireland, Australia and Turkey to enhance the compliance with the internationally agreed tax standard on transparency and exchange of information between countries as required under the Organisation of Economic Cooperation and Development.

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