



Tax Flash



August 2011

Income Tax (Exchange of Information) Rules 2011

Pursuant to the Income Tax (Exchange of Information) Rules 2011, a competent authority (i.e. the duly authorised servant or agent of a government of any territory outside Malaysia with which the Government of Malaysia has entered into a double taxation arrangement ["DTA"]) may request for information on any person in Malaysia from the Director General of Inland Revenue ["DGIR"]. For the purpose of these Rules, "information" means an information required to be disclosed pursuant to the article on exchange of information of a DTA.

The DGIR may by notice, under Section 81 of the Income Tax Act 1967 ["the Act"], require the person to provide information as requested by the competent authority within a specified time frame. Any person who, without reasonable excuse, fails to comply with such notice commits an offence under Section 120 of the Act.

Where the DGIR fails to obtain information from the person, the DGIR may require a bank which has the information of such person to provide the information as requested by the competent authority.

The above Rules revoke the Income Tax (Request for Information) Rules 2009 which came into force on 26th August 2009.

Tax Exemption on Gains and Profits Received from *Sukuk Wakala*

Pursuant to the Income Tax (Exemption) (No. 4) Order 2011, a person is exempted from the payment of income tax in relation to gains or profits received, in lieu of interest, derived from the *sukuk wakala*, other than convertible loan stock, issued in any currency by Wakala Global Sukuk Berhad under the concept of *Al-Wakala Bil Istismar*.

Withholding tax under Section 109 of the Act will not apply to any gains or profits derived by a non-resident.

This Order takes effect from the year of assessment ["YA"] 2011.

Hyperlinks

[Advent Consulting Group](#)
[Inland Revenue Board](#)

References

[Income Tax \(Exchange of Information\) Rules 2011](#)

[Income Tax \(Exemption\) \(No. 4\) Order 2011](#)

New Form - Information on Cross Border Transactions

The Inland Revenue Board ["IRB"] has recently announced that a new Form MNE [1/2011] – Information on Cross Border Transactions will be issued to selected taxpayers requiring them to provide information on related party transactions for transfer pricing risk assessment purposes.

The following information, which is essentially covering related party transactions is required to be furnished:-

- i. Name(s) of the related companies, both local and foreign, and percentage of shareholding;
- ii. A chart of the entire global group structure, indicating the companies with which the taxpayer carries out related party transactions;
- iii. Particulars of cross border related party transactions, financial assistance and the value of the transactions.
- iv. Characterisation of taxpayer's business activity; and
- v. A declaration whether a transfer pricing documentation has been prepared for the relevant year.

The information required in the aforesaid Form is more detailed than that required in the annual income tax return (Form C). With the intensified effort by the IRB to enhance the compliance with the transfer pricing regulations, it is envisaged that taxpayers may be required to complete the Form on a yearly basis in the near future.

Form MNE [1/2011] –
Information on Cross
Border Transactions



GST – Draft Guidelines

The Royal Malaysian Customs has recently issued the following draft guidelines on the Goods and Services Tax ["GST"] to provide the public an understanding of the GST and its implications:-

- i. GST Guide on Duty Free Shop
- ii. GST Guide on Designated Areas

Recent Tax Case

SHSB v KPHDN

[Whether the claim for IBA should be continued upon the expiration of tax relief period]

In the case of Saujana Hotel Sdn Bhd ["SHSB"] v Ketua Pengarah Hasil Dalam Negeri ["KPHDN"][(2011) MSTC 30-022], the taxpayer, SHSB, owner of a hotel, undertook efforts to extend and modernise its facilities. In relation to this, SHSB was granted investment tax allowance ["ITA"] for a period of 5 years from 31st January 1992 to 30th January 1997 (i.e. tax relief period). In addition, SHSB claimed industrial building allowance ["IBA"] in respect of the qualifying building expenditure by virtue of Section 30 of the Promotion of Investments Act 1986 ["PIA"] whereby the hotel was treated as an industrial building and thus, eligible for IBA.

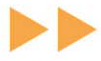
SHSB continued to claim the IBA upon the expiration of the tax relief period. However, the IRB disallowed the IBA claim upon the expiration of the 5-year tax relief period which ended on 30th January 1997.

Pursuant to the appeal to the Special Commissioners of Income Tax ["SCIT"], the SCIT held that the IBA claimed by SHSB pursuant to Section 30 of the PIA expired upon expiration of the 5-year tax relief period which ended on 30th January 1997. The SCIT took the view that as the hotel is not an industrial building by virtue of paragraph 65(3), Schedule 3 of the Act, it is deemed that Section 19 of the PIA is applicable to SHSB on the claim for IBA, i.e. SHSB is entitled to claim IBA for the 5-year tax relief period only.

On the appeal to the High Court, the High Court held that Sections 19, 27 and 30 of the PIA are silent as to whether IBA expires upon the expiration of the tax relief period. Thus, the SCIT cannot act beyond its power to prescribe the time limit in which the IBA should be allowed. Hence, the entitlement of IBA cannot be restricted to the grant of ITA during the 5-year tax relief period only.

GST Guides

- Duty Free Shop
- Designated Areas



Citing the case of GASMSB v KPHDN in which the SCIT stated that the claim for capital allowances commences in the year when the expenditure is incurred and continues to be given in subsequent years until the qualifying expenditure is fully set-off or the asset is disposed, the allowances due for each YA are calculated on the residual expenditure of the asset. Similarly, applying the same principle for IBA, SHSB is entitled to claim IBA until the total qualifying expenditure has been exhausted. As such, the IBA claim of SHSB had yet to expire as it only started to claim the IBA from the YA 1993. Applying the prevailing rate for IBA, the entitlement for the IBA should be 45 years from the YA 1993. Hence, SHSB is entitled to continue claiming IBA although the 5-year tax relief period had expired.

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