



Tax Flash



November 2010

Preferential Tax Treatment for Knowledge Workers in Iskandar Malaysia

Following the 2010 Budget announcement, the Income Tax (Determination of Knowledge Worker, Qualified Activity and Specified Region) Rules 2010 [“the Rules”] have been gazetted to provide clarification on the qualified person as a knowledge worker, designated company, qualifying activities and specified region for carrying out these activities

Pursuant to the Rules, income received by the qualified person as a knowledge worker from an employment with a designated company beginning from 1st January 2010 can be taxed at the preferential tax rate of 15%. In this respect, an application of the preferential tax treatment must be made to the Minister of Finance [“the Minister”] between 24th October 2009 to 31st December 2015 and be approved by the Minister.

The Rules provide that a knowledge worker is a qualified person who:-

- hold a recognised degree or masters degree from a college, institution or university with at least 10 years of relevant working experience; or
- hold a recognised doctoral degree from a college, institution or university with at least 5 years of relevant working experience; and
- has fulfilled any other criteria that may be determined by the Minister

However, the Minister may at his discretion waive this requirement.

To be eligible for the above preferential tax treatment, other criteria that need to be observed are:-

- i. A qualified person is an individual who:-
 - is a Malaysian or foreign citizen;
 - has not derived any employment income in Malaysia for at least 3 years prior to making an application to the Minister for the preferential tax treatment;
 - has commenced employment on or after 24th October 2009 but not later than 31st December 2015 with a designated company;
 - is residing within the Iskandar Development Region [“IDR”]

Hyperlinks

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[Income Tax \(Determination of Knowledge Worker, Qualified Activity and Specified Region\) Rules 2010](#)

- ii. Designated company means a company which is:-
- granted IDR, BioNexus or Multimedia Super Corridor status; or
 - incorporated in Malaysia and is a tax resident in Malaysia; and
 - undertaking a qualifying activity in the specified region (i.e. Nusajaya, Western Business District, Eastern Gate Development and Skudai-Senai) within IDR
- iii. Qualifying activities that may be undertaken by a designated company include those in the following sectors:-
- biotechnology
 - green technology
 - educational services
 - healthcare services
 - creative industry and related services
 - financial advisory and consulting services
 - logistics services; and
 - tourism

The Rules also stipulate the manner of determining the chargeable income subject to tax at the preferential rate.

The Rules shall have effect from the year of assessment 2010.

DTA between Malaysia and The Republic of San Marino

The Double Tax Agreement ["DTA"] between Malaysia and The Republic of San Marino 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 6 months.
- ii. A PE is also deemed to exist if supervisory activities are carried out for more than 6 months in connection with a building site or 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 (*Note*)
 - Interest - 10%. Penalty charges for late payment are not considered as interest.
 - Royalties - 10%
 - Technical fees - 10%
 - Section 4(f) income - 10%

Double Taxation Relief
(The Government of The
Republic of San Marino)
Order 2010



The above DTA will enter in force upon ratification.

Note : Currently, there is no withholding tax on outbound dividends under the Malaysia Income Tax Act 1967.

Protocol Amending DTA between Malaysia and United Kingdom

The protocol signed between Malaysia and United Kingdom pertaining to the article on Exchange of Information ["EOI"] has recently been gazetted. The new article on EOI is in line with the EOI provision of Article 26 of the Organisation for Economic Co-operation and Development ["OECD"] Model Convention.

In accordance with Article 26 of the OECD Model Convention, any information received shall be treated as secret and disclosed only to persons or authorities concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes. There is no obligation for the authorities of one contracting state to supply information which is not obtainable under the laws or in the normal course of the administration of that contracting state or the other contracting state or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. This, however, shall not be construed as to permit a contracting state to decline the supply of information held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or information which relates to ownership interests in a person.

Guidelines on Captive Insurance Business in Labuan IBFC

New Guidelines on Captive Insurance Business in Labuan International Business and Financial Centre ["Labuan IBFC"] ["the Guidelines"] have recently been issued to supersede the existing "Guidelines on Captive Insurance Companies" issued on 10th December 2001. The Guidelines provide more clarity on captive insurance business and take into account certain new provisions of the new Labuan Financial Services and Securities Act 2010. Amongst others, the Guidelines provide clarification as follows :-

- i. Applicants who intend to undertake a captive insurance business include :-
 - Labuan company incorporated or registered under the Labuan Companies Act 1990 including Protected Cell Company; and
 - Special Purpose Vehicle set up to undertake captive insurance in Labuan IBFC.

Double Taxation Relief
(The Government of The
United Kingdom of Great
Britain and Northern
Ireland) Order 2010

Guidelines on Captive
Insurance Business in
Labuan IBFC



ii. Permitted business activities include:-

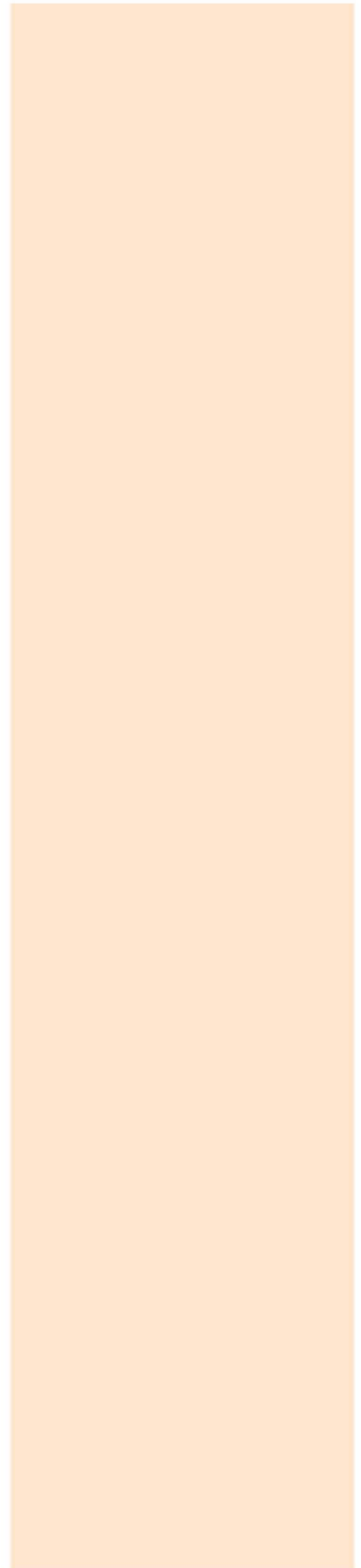
- Pure / single owner captive may include single parent company writing only the risks of their owner / affiliates.
- Group captives / association captives may include multi-owned insurance companies writing only the risks of their owners and / or affiliates, usually within a specific trade or activity or a captive formed or owned by members of a common industry or trade association to share risks of that industry among its members.
- Master rent-a-captive acts as a master captive, which provides captive facilities and services to subsidiary rent-a-captive.
- Subsidiary rent-a-captive is an entity with separate licences, assets and accounts but at the same time using the working capital of master captive.
- Cell captives may include protected cell captive where legislation protects each individual cell or amount from the liabilities of other cells within the captive.
- Multi-owner captive is owned by two or more unrelated persons or organisations and writing the risks of its owner and / or affiliates and is designed to insure the risks of these different entities.

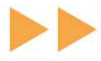
iii. Operational requirements of operating a captive insurance business :-

- Every Labuan Captive Insurer must have an operational management office in Labuan managed by a management team that has an adequate knowledge and expertise in insurance business including captive, or appoint a licensed Labuan underwriting manager.
- The person in control, director, and Principal Officer must be of fit and proper persons whose appointment must obtain prior approval from the Labuan Financial Services Authority ["LFSA"].

iv. Paid-up Capital / Working Funds :-

Types of Captives	Labuan Company	Foreign Labuan Company
<ul style="list-style-type: none"> • Pure / Single owner captive • Group, Association & Multi-owner captives 	A paid-up capital unimpaired by losses of RM300,000 or its equivalent in any foreign currency	A surplus of asset over liabilities of at least RM300,000 or its equivalent in any foreign currency, to be maintained in the book of its office in Labuan
<ul style="list-style-type: none"> • Rent-a-captive • Master rent-a-captive • Cell captive • Other similar vehicles 	A paid-up capital unimpaired losses of RM500,000 or its equivalent in any foreign currency	A surplus of asset over liabilities of at least RM500,000 or its equivalent in any foreign currency, to be maintained in the book of its office in Labuan





v. Margin of Solvency Requirement:-

- Surplus of assets over liabilities, which is equivalent to, or more than the amount of its working fund; or
- 20% of the net premium income for the preceding year in respect of the general insurance business, or 3% of the actuarial valuation of the liabilities for life insurance business as at the last valuation date in respect of the life insurance business,

whichever is greater

The applicant is required to submit an application in a prescribed form together with the necessary documentation / information to the LFSA.

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