



Tax Flash



November 2009

5% Effective RPGT Rate

Following the 2010 Budget announcement to reintroduce Real Property Gains Tax ["RPGT"], the RPGT (Exemption) Order 2009 has been gazetted to effect the Government's intention to charge an effective tax rate of 5% on the chargeable gain from any disposal of chargeable assets (i.e. real properties or shares in real property companies) on or after 1st January 2010, regardless of the holding period of the chargeable assets.

This order which comes into operation on 1st January 2010 also revokes the RPGT (Exemption)(No. 2) Order 2007 which had provided the RPGT exemption window period from 1st April 2007 until 31st December 2009.

Labuan Offshore Companies – Exemption from WT Deductions on Payments of Section 4(f) Income

Labuan Offshore Companies ["LOC"] are currently being exempted from the obligation to deduct withholding tax ["WT"] from payments of interest, royalties and special classes of income to non-residents.

To extend the same treatment to payments of Section 4(f) income which includes commissions, guarantee fees and introducer's fees which are not part of the business income of the non-residents, the Income Tax (Exemption)(No. 4) Order 2009 has now been gazetted to exempt LOC from deducting WT from the abovesaid payments.

The Exemption Order takes effect from 1st January 2009 which is aligned with the effective date of the introduction of new WT provisions on Section 4(f) income.

Deferment of Effective Date for the Abolishment of "Exported Taxable Services" from the Service Tax Act 1975

Effective 1st January 2003, the definition and wordings of "exported taxable services" have been deleted from the Service Tax Act 1975. As a result, service tax shall be chargeable on all taxable services including exported services, except for the services specifically exempted in Group G, Second Schedule of the Service Tax Act 1975 (e.g. services in connection with goods or land situated outside Malaysia).

Hyperlinks

[Advent Consulting Group
Inland Revenue Board](#)

References

[RPGT \(Exemption\) Order
2009](#)

[Income Tax \(Exemption\)
\(No.4\) Order 2009](#)



However, the above changes have created confusion whereby the old concept of “exported taxable services” is still being applied today in some of the cases. In this respect, the Royal Malaysian Customs Department [“RMCD”] has issued circulars to inform that the Ministry Of Finance [“MOF”] has agreed to defer the effective date for the abolishment of the concept of “exported taxable services” to 1st January 2010.

The RMCD has further clarified the following in its circulars:-

- i. For a taxable person who has charged service tax based on the new legislations, the service tax shall continue to be charged. That person shall not be eligible to any refund of service tax charged on “exported taxable services”; and
- ii. Any letters issued by the RMCD in the past confirming that “exported taxable services” are exempted from service tax shall be void if the taxable services are in connection with Malaysia.

Concessionary Stamp Duty Rate on Service Agreement

With effect from 1st January 2009, service agreements would be subject to stamp duty at ad valorem rate of RM5 for every RM1,000 of the value of the contract (i.e. 0.5%), but limited to the service portion thereof.

However as a concession, the MOF has, via an issuance of statement, agreed that the ad valorem duty on service agreements shall not exceed RM50 for agreements executed during the period of 15th September 2009 to 31st December 2010. The MOF’s concession has now been gazetted under the Stamp Duty (Remission) Order 2009.

Unilateral Advance Pricing Arrangement Application Form

Following the 2009 Budget announcement, Section 138C has been introduced to the Income Tax Act 1967 to empower the Inland Revenue Board [“IRB”] to enter into advance pricing arrangement [“APA”] with taxpayers. The APA serves as an assurance to the taxpayer concerned that the agreed transfer price with its associated person(s) outside Malaysia is determined under the arm’s length principle and agreed by the IRB to avoid future dispute.

To facilitate the application of APA, the IRB has now issued the application form containing the following 5 main sections:-

- i. Particulars of applicant;
- ii. Particulars of representative;
- iii. Disclosure requirement – detailed information and analysis of the related party transactions, transfer pricing methodology and arm’s length results;
- iv. Applicant’s declaration; and
- v. Representative’s declaration on behalf of application

The application form can be downloaded from the IRB’s official website.

**Stamp Duty (Remission)
Order 2009**

APA application form

3 New MSC Malaysia Cybercentres

The Multimedia Development Corporation has recently announced that 3 new locations in the Klang Valley will be developed into Multimedia Super Corridor ["MSC"] cybercentres. They are :-

- i. Persoft Tower (Petaling Jaya)
- ii. GTower (Kuala Lumpur)
- iii. Bangsar South City (Kuala Lumpur)

With the expansion of the MSC designated areas, MSC-status companies would now have more options to locate their business premises in order to enjoy the incentives and facilities accorded to them.

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