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Update on Transfer Pricing Guidelines 2012

The Inland Revenue Board ["IRB"] has recently updated Appendix A of the Transfer Pricing Guidelines 2012 in respect of the documentation required pertaining to intragroup financial assistance. In addition to the documentation requirements in paragraph 11.2, Chapter XI of the Transfer Pricing Guidelines 2012, taxpayers who engaged in intragroup financial assistance should also prepare documentation that contains the following:-

- a. Loan agreement;
- b. For each financial assistance received or provided, the following information is required:-
 - i. Details of lenders/borrowers;
 - ii. Date of agreement, the date of loan drawn down / disburse, duration of loan;
 - iii. Total amount of loan, balance of loan at the end of financial year;
 - iv. When interest was first paid, interest paid for each financial year;

Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)

- [Appendix A of Transfer Pricing Guidelines 2012 \(Updated\)](#)

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- v. Interest rate charge and basis of the rate charged, e.g. the base reference rate and spread, and prove that the rate is arm's length;
 - vi. Withholding tax documentations, if applicable;
- c. Document supporting all items covered under comparability factors under paragraph 9.4 of Chapter XI;
 - d. Currency of loan; and
 - e. A copy of the accounts of the borrower (where Malaysian entity is the lender).

Note: For further information on the Transfer Pricing Guidelines 2012, kindly refer to our Tax Flash – July 2017 issue.

Reduced Penalty Rates under Special Program for Voluntary Disclosure

The IRB has issued the revised Operational Guidelines No. 1 /2018 dated 30th November 2018 on Special Program for Voluntary Disclosure [“the Special Program”] and also uploaded the amended document titled “Frequently Asked Questions” [“FAQs”] on its website.

The Special Program was launched by Government following the 2019 Budget announcement to encourage taxpayers to voluntarily declare any unreported income, including income which is maintained in offshore accounts, for Malaysian tax purposes commencing from 3rd November 2018 until 30th June 2019 with reduced penalty rates.

The Operational Guidelines No. 1/2018 dated 30th November 2018 and the FAQs for the Special Program have been issued with some clarifications as follows:-

- i. For voluntary disclosure made based on management accounts, taxpayers should report any additional tax to the IRB upon finalisation of the audited accounts. **The IRB will raise additional assessment with penalty and the penalty rate will be in accordance with the rate offered under the Special Program.**

Hyperlinks

➤ [Tax Flash – July 2017](#)

➤ [Operational Guidelines No. 1/2018 dated 30th November 2018](#)

Hyperlinks

- ii. For any taxpayer who has submitted the Income Tax Return Form ["ITRF"], Petroleum Return Form ["PRF"] and Real Property Gains Tax Return Form ["RPGTRF"] but has not reported the correct income or gain on disposal of asset for any year of assessment, the taxpayer is required to submit a written declaration to the IRB via a letter or an email within the Special Program period to state that he has made a **full declaration** on the income or gain on disposal of asset that has not been declared previously.
- iii. The Special Program is also applicable to **withholding tax cases**.
- iv. For cases where the audit and investigation has commenced, the voluntary disclosure which has been submitted to the IRB is **subject to any findings of the audit or investigation**.
- v. For cases where the audit and investigation has yet to commence, IRB will accept in good faith all voluntary disclosures made during the implementation period of the Special Program and no further review will be made on the reported information and **audit action will not be taken on the year of assessment where voluntary disclosure has been made**. This is also applicable to the information or complaints received by IRB from the third parties after the voluntary disclosure is made by the taxpayer.
- vi. The Special Program is **not applicable** to cases where criminal investigation has commenced or prosecution proceeding as a result of criminal investigation has been instituted in Courts pursuant to the provision of the:-
 - Income Tax Act 1967;
 - Petroleum (Income Tax) Act 1967;
 - Real Property Gains Tax Act 1976;
 - Stamp Act 1949; or
 - AntiMoney Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

Note: For further information relating to reduction of penalty for voluntary disclosure, kindly refer to our Tax Flash – November 2018 (Special Edition No. 2) issue.

➤ [Tax Flash – November 2018 \(Special Edition No. 2\)](#)

Minimum Wages

Following the 2019 Budget announcement, the Minimum Wages Order (Amendment) 2018 has been gazetted to revise the minimum rate of monthly wages payable to an employee from RM1,050 per month to RM1,100 per month as follows:

Minimum wages rate			
Monthly	Daily		Hourly
	Number of working days in a week		
RM1,100.00	6	RM42.31	RM5.29
	5	RM50.77	
	4	RM63.46	

The above amendment Order comes into operation on 1st January 2019.

Note: For further information, kindly refer to our *Tax Flash – November 2018 issue*.

Hyperlinks

- [Minimum Wages Order \(Amendment\) 2018](#)
- [Tax Flash – November 2018](#)

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for advice. Accordingly, Advent MS Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team.