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### **PR No. 12/2017 – Appeal Against an Assessment and Application for Relief**

The Inland Revenue Board has recently issued the Public Ruling ["PR"] No. 12/2017 – Appeal Against an Assessment and Application for Relief to provide guidance on the procedures with regard to appeal and application for relief. This PR is to replace the PR No. 7/2015 issued on 22<sup>nd</sup> October 2015 with updates and explanation on the appeal and relief application under Section 97A (non-taxable cases) of the Income Tax Act 1967 ["the Act"] and the relief application in respect of non-error or mistake under Section 131A (taxable case) of the Act.

Among others, it is noteworthy of the following updates/additional explanation included in the abovementioned PR:-

## Hyperlinks

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

- [PR No. 12/2017](#)

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## Hyperlinks

- i. Rights of Appeal [Paragraph 4.2 of the PR]
  - The appeal under Section 99 of the Act shall not apply to deemed assessment under Sections 90(1) and 91A unless the taxpayer disagrees with the treatment stated in PR or known stand, rules and practices of the Director General of Inland Revenue ["DGIR"] prevailing at the time when the assessment is made. It is noted that "slide presentations given by IRB officers" has now been deleted as one of the items which would otherwise constitute practices of the DGIR.
  
- ii. Grounds of Appeal [Paragraph 7.1 of the PR]
  - The appellant does not have to submit supporting documents with the Form Q until requested by the DGIR upon reviewing the Form Q.
  
- iii. Review of Assessment through Application for Relief [Paragraph 12 of the PR]
  - In respect of Non-Error or Mistake under Section 131A of the Act (taxable case)
    - A person may make an application for relief for non-error or mistake in the Income Tax Return Form ["ITRF"] made by him.
    - Conditions to apply for relief:-
      - The taxpayer must furnish the ITRF in accordance with Section 77(1) or 77A(1) of the Act.
      - The taxpayer shall pay all taxes that have been made for the year of assessment.
    - Circumstances in which an application for relief can be made:-
      - Any exemption, reliefs, remissions, allowance or deduction granted under the Act or any written law gazetted after the year of assessment in which the ITRF is furnished. The application must be made within 5 years after the end of the year in which the exemption, relief, remission, allowance or deduction is published in the Gazette.
      - Approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the ITRF is furnished. The application must be made within 5 years after the end of the year in which the approval is granted.
      - A deduction not allowed in respect of payment not due to be paid under Section 107A(2) or 109(2), Section 109A, or Section 109B(2) or 109F of the Act on the day the ITRF is furnished. The application must be made within 1 year after the end of the year in which the payment was made.

- In respect of Non-Taxable Case under Section 97A(5) of the Act
  - A person who has furnished the ITRF to the DGIR and has no chargeable income for that year of assessment may make an application for relief in writing:-
    - to amend the ITRF in the event of any errors or mistakes; or
    - in the case of non-error or mistake (i.e. under the circumstances similar to taxable case as specified above).
  - Period of time for the above application
    - In the case of error or mistakes, application should be made within 6 months from the date the ITRF is furnished.
    - In the case of non-error or mistake, application should be made within the stipulated period similar to taxable case as specified above.

**Note:** For further information relating to appeal against an assessment, kindly refer to our Tax Flash – June 2012 and November 2015 issues.

### Tax Exemption on Income Derived by Angel Investor

Pursuant to the Income Tax (Exemption) (No.3) Order 2014, exemption is granted to an angel investor in respect of the aggregate income for the basis period for the second year of assessment following year of assessment in which an investment is made by the angel investor in an investee company. The amount of income exempted shall be an amount equal to the amount of investment made in that investee company.

Following the 2018 Budget announcement, the Income Tax (Exemption) (No.3) 2014 (Amendment) Order 2017 has been gazetted to allow extension of 3 years, i.e. until 31<sup>st</sup> December 2020 for an angel investor to make an application to the Minister of Finance to make an investment in an investee company.

**Note:** For further information relating to the exemption of income under the previous Income Tax (Exemption) (No.3) Order 2014 (applicable from 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2017), please refer to our Tax Flash – July 2014 issue.

## Hyperlinks

- [Tax Flash – June 2012](#)
- [Tax Flash – November 2015](#)

- [Income Tax \(Exemption\) \(No. 3\) 2014 \(Amendment\) Order 2017](#)

- [Tax Flash – July 2014](#)

### Tax Exemption on Income Derived from Group Inclusive Tour Package

Following the 2018 Budget announcement, the Income Tax (Exemption) (No.11) 2016 (Amendment) Order 2017 has been gazetted to extend the tax exemption granted to a company resident in Malaysia in respect of its income derived from group inclusive tour package for another 2 years, i.e. until year of assessment ["YA"] 2020.

To be eligible for the tax exemption, the company must be licenced under the Tourism Industry Act 1992 to carry out a tour operating business and the number of tourists from outside Malaysia under the group inclusive tour package is not less than 750 in a basis period for a year of assessment as verified by the Ministry of Tourism and Culture Malaysia.

**Note:** For further information relating to the exemption of income under the previous Income Tax (Exemption) (No.11) Order 2016 (applicable to YA 2016 to YA 2018), please refer to our Tax Flash – January 2017 issue.

### Tax Exemption on Income Derived from Domestic Tour Package

Following the 2018 Budget announcement, the Income Tax (Exemption) (No.12) 2016 (Amendment) Order 2017 has been gazetted to extend the tax exemption granted to a company resident in Malaysia in respect of its income derived from domestic tours package for another 2 years, i.e. until YA 2020.

To be eligible for the tax exemption, the company must be licenced under the Tourism Industry Act 1992 to carry out a tour operating business and the number of local tourists for the domestic tour package is not less than 1,500 in a basis period for a year of assessment as verified by the Ministry of Tourism and Culture Malaysia.

**Note:** For further information relating to the exemption of income under the previous Income Tax (Exemption) (No.12) Order 2016 (applicable to YA 2016 to YA 2018), please refer to our Tax Flash – January 2017 issue.

## Hyperlinks

➤ [Income Tax \(Exemption\) \(No. 11\) 2016 \(Amendment\) Order 2017](#)

➤ [Tax Flash – January 2017](#)

➤ [Income Tax \(Exemption\) \(No. 12\) 2016 \(Amendment\) Order 2017](#)

➤ [Tax Flash – January 2017](#)

### Automatic Exchange of Financial Account Information

Pursuant to the Income Tax (Automatic Exchange of Financial Account Information) Rules 2016, a Reporting Financial Institution has the obligation to furnish an information return to the DGIR on or before 30<sup>th</sup> June of the following year to which the return relates to facilitate the exchange of financial account information. The Income Tax (Automatic Exchange of Financial Account Information) (Amendment) Rules 2017 has recently been gazetted with some amendments to the application and reporting obligation of a Reporting Financial Institution.

**Note:** For further information relating to automatic exchange of financial account information, please refer to our Tax Flash – January 2017 issue.

### Country-by-Country Reporting

The Income Tax (Country-by-Country Reporting) Rules 2016 specifies the application, requirements and filing obligation of the country-by-country reporting by a reporting entity of MNC Group (now amended as MNE Group). The Income Tax (Country-by-Country Reporting) (Amendment) Rules 2017 has recently been gazetted with some amendments.

It is noteworthy that with the amendments to the application rules, the above Rules shall apply to a MNE Group where:-

- a. any constituent entities having cross border transaction with its other constituent entities (deleted);
- b. the total consolidated group revenue in the financial year preceding the reporting financial year is at least RM3 billion;
- c. its ultimate holding company is incorporated under the Companies Act 1965 [Act 125] or under any written law and resident in Malaysia;
- d. its constituent entities are incorporated or registered under the Companies Act 1965 or under any written law or under the laws of a territory outside Malaysia and resident in Malaysia;
- e. its constituent is an ultimate holding entity or surrogated holding entity which is incorporated under the Companies Act 2016 [Act 777] and resident in Malaysia;
- f. its constituent entities are incorporated, registered or established under the Companies Act 2016 and resident in Malaysia; and
- g. has a permanent establishment in Malaysia.

The information required to be reported under the Rules by the MNE Group as specified in (e), (f) and (g) above shall begin on 1<sup>st</sup> January 2017.

**Note:** For further information on Country-by-Country Reporting, kindly refer to our Tax Flash – February 2017 issue.

### Hyperlinks

- [Income Tax \(Automatic Exchange of Financial Account Information\) \(Amendment\) Rules 2017](#)
- [Tax Flash – January 2017](#)
- [Income Tax \(Country-by-Country Reporting\) \(Amendment\) Rules 2017](#)
- [Tax Flash – February 2017](#)

## Labuan - Country-by-Country Reporting

The Labuan Business Activity Tax (Country-by-Country Reporting) Regulations 2017 which specifies the application, requirements, and filing obligation of the country-by-country reporting involving a Labuan entity of a MNE Group has recently been gazetted.

Salient points of the above Regulations include:-

- i. Application
  - The Regulations shall apply to a MNE Group where:-
    - the total consolidated group revenue in the financial year preceding the reporting financial year is at least RM3 billion; and
    - its ultimate holding entity or any of its constituent entities is a Labuan entity carrying on a Labuan business activity.
- ii. Requirements of the Country-by-Country Report ["CbCR"]
  - A CbCR with respect to a MNE Group shall contain the following:-
    - aggregate information relating to amount of revenue, profit or loss before tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates; and
    - an identification of each constituent entity of the MNE Group setting out the jurisdiction of tax residence of such constituent entity, and the jurisdiction under the laws of which such constituent entity is incorporated, registered or established if it is different from the jurisdiction of tax residence of such constituent entity, and the nature of the main business activity or activities of such constituent entity.
  - The financial information shall be denominated in Ringgit Malaysia.
  - The information required to be reported under the Regulations shall be from 1<sup>st</sup> January 2017.
  - The CbCR should be filed with the DGIR on an electronic medium or through an electronic transmission in extensible markup language format.
- iii. Filing Obligation
  - The ultimate holding entity of an MNE Group which is a Labuan entity carrying on a Labuan business activity is required to file the CbCR.

## Hyperlinks

- [Labuan Business Activity Tax \(Country-by-Country Reporting\) Regulations 2017](#)

## Hyperlinks

### iv. Notification

- Any constituent entity of an MNE Group which is a Labuan entity carrying on a Labuan business activity must notify the DGIR in writing if it is the ultimate holding entity on or before the last day of the reporting financial year.
- Where such constituent entity is not the reporting entity (ultimate holding entity), it must notify the DGIR of the identity and tax residence of the reporting entity by the same deadline.

### v. Time for Filing

- The CbCR must be filed not later than 12 months after the last day of the reporting financial year end of the MNE Group.

### vi. Penalty for Non-Compliance

- Any person who fails to file the CbCR or makes an incorrect return by omitting or gives incorrect information required to be provided, shall on conviction, be liable to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 2 years or to both.

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