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Finance (No. 2) Act 2017

The Finance (No. 2) Act 2017 has been gazetted on 29th December 2017 to take effect the proposals made in the 2018 Budget with minor changes.

Hyperlinks

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

- [Finance \(No. 2\) Act 2017](#)

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Income Tax (Amendment) Act 2017 and Labuan Business Activity Tax (Amendment) (No. 2) Act 2017

The above amendment Acts have been gazetted on 29th December 2017 to take effect the proposals made in the 2018 Budget with no changes to the relevant Bills.

PR No. 7/2017 – Disposal of Plant or Machinery Part I – other than Controlled Sales

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 7/2017 – Disposal of Plant or Machinery Part I – other than Controlled Sales to provide guidance on the disposal of plant or machinery which is not subject to controlled sales.

Salient points of the abovementioned PR include:-

i. Application of Relevant Law

- Balancing allowance or balancing charge would be computed on disposal of a plant or machinery on which capital allowances [“CA”] have been claimed.
- Disposal value of an asset shall be taken at the time of disposal which is equivalent to:-
 - market value; or
 - if an asset is disposed of by way of sale, transfer or assignment:-
 - market value at the date of sale, transfer or assignment; or
 - net proceeds of sale, transfer or assignment, whichever is the greater.
- Balancing allowance
 - arises when the disposal value of a plant or machinery is less than the residual expenditure.
 - balancing allowance is allowed as a deduction from the adjusted income.
- Balancing charge
 - arises when the disposal value of a plant or machinery is greater than the residual expenditure.
 - balancing charge will be added back to the adjusted income and restricted to the amount of CA that has been claimed in respect of the asset.
- For motor vehicles not licenced for commercial purposes (i.e. lorry, truck, bus, taxi and van) for transportation of goods or passengers, the disposal value is restricted to the ratio as follows:-

$$\text{Qualifying Expenditure} \times \frac{\text{Disposal Value}}{\text{Purchase Price}}$$

Hyperlinks

- [Income Tax \(Amendment\) Act 2017](#)
- [Labuan Business Activity Tax \(Amendment\) \(No. 2\) Act 2017](#)

- [PR No. 7/2017](#)

Hyperlinks

- ii. Other Disposal of Assets
 - For an asset used in privatisation project, the disposal value of the asset to the Government, State Government or a local authority is equal to the net proceeds of the disposal.
 - For disposal of an asset by way of gift or donation to:-
 - a technical or vocational training institute that is established and maintained by the Government or a statutory body;
 - a technical or vocational training institute as approved by the Minister; or
 - an approved research institute as defined in Section 34B of the Income Tax Act 1967 [“the Act”], the disposal value shall be deemed to be zero and the giver or donor of the asset will be given balancing allowance which is equal to the residual expenditure of the asset.
- iii. Replacing Part of an Asset
 - Effective year of assessment [“YA”] 2016, where a significant part of an asset is replaced with a new part and that new part is depreciated in accordance with generally accepted accounting principles, the old part is deemed to have been disposed of where a balancing allowance or balancing charge must be computed.
 - The cost of the significant part disposed of is determined based on approved accounting principles e.g. discounted value basis.
- iv. Disposal of Asset that is Owned for Less Than 2 Years
 - Where a person has incurred qualifying expenditure in respect of an asset which is owned for a period of less than 2 years, the CA claimed previously will be clawback by way of balancing charge.
 - However, CA will not be withdrawn for disposal of asset which is owned for a period of less than 2 years with a valid commercial reason.
- v. Disposal of an Asset together with Other Assets
 - Where an asset is disposed of together with other assets for one aggregate sum, the sale price shall be allocated based on:-
 - Cost of the asset compared to the total cost of the assets sold; or
 - Residual expenditure of the asset compared to the total residual expenditure of the assets that are sold.
- vi. Asset Written Off
 - Market value of an asset written off is deemed to be zero where the asset is obsolete or damaged and the asset cannot be repaired or sold.

vii. Non-Current Assets Held For Sales

- Non-current assets held for sale ["HFS"] are assets that are held and classified as assets planned to be sold within a year or an extended period and not used in the business. (*Note*)
- Assets that are worn-out and damaged are not included in the classification of HFS.

Note : For further information on HFS assets, kindly refer to our Tax Flash – July 2013 issue.

PR No. 8/2017 – Professional Indemnity Insurance

The IRB has recently issued the PR No. 8/2017 – Professional Indemnity Insurance to provide guidance on the tax treatments on premium paid and the proceeds from insurance and compensation paid in respect of professional indemnity insurance ["PII"] policy.

Salient points of the abovementioned PR include:-

- Prerequisite for a Professional to Carry on or to Practise a Profession
 - Some professions require a person to be a member of the professional body in order to practice and maintain his profession. e.g. accountants, lawyers and engineers.
 - Other professions such as medical doctors, dentists and architects do not require a person to be a member of a professional body. However, the person has to be registered with a body of corporate which governs the profession and recognised by the Malaysian Government for the purpose of practising and maintaining the profession.
- Requirement to Purchase PII
 - Some professions require their members to purchase PII as provided under the profession's by-law or rules.
 - Whereas in other professions, PII is purchased on grounds of prudence (i.e. not a requirement under the profession's by-laws or rules).
- Tax Treatment on PII Premium
 - A practising professional which carries on a business related to his profession is allowed for tax deduction for PII premium.
 - Where a particular professional body allows its members to practise the profession in the form of a company, the PII premium paid by the company is allowed for deduction against its gross income if the company carries on the business related to the profession.
 - Where a professional carries out duties as a locum purchases PII, the PII paid will not be allowed for deduction from his income of his locum or any other income. "Locum" means as a person who temporarily fulfils the duty of another person carrying out the same profession.

Hyperlinks

➤ [Tax Flash – July 2013](#)

➤ [PR No. 8/2017](#)

Hyperlinks

iv. Tax Treatment on Insurance Proceeds and Compensation

- Proceeds received in connection with PII will be subject to tax under Section 22(2) of the Act if the PII premium paid by a professional has been allowed for tax deduction.
- Compensation to a claimant can be made in the following manner:-
 - the insurance company pays the proceeds to the professional and professional pays to the claimant; or
 - the insurance company pays directly to the claimant

The compensation paid in both of the above manner is allowed a deduction under Section 33(1) of the Act as it is incurred in the ordinary course of the business of a professional who is constantly exposed to the risk of being sued by his clients for negligence, error or breach of duty.

- Any shortfall of compensation (i.e. amount of compensation claimed by the claimant exceeds the proceeds received from insurer) which is borne by the professional will be allowed as tax deduction under Section 33(1) of the Act.

PR No. 9/2017 – Reinvestment Allowance Part I – Manufacturing Activity

The IRB has recently issued the PR No. 9/2017 – Reinvestment Allowance Part I – Manufacturing Activity to provide guidance to a resident company and engaged in manufacturing activities for the claim of reinvestment allowance [“RA”]. The contents of PR No. 6/2012 issued on 12th October 2012 have been rewritten, rearranged and updated.

Some of the important changes/updates contained in the PR No. 9/2017 are as below:-

i. Qualifying Project [Paragraph 7.3.1 of the PR]

- Under the previous PR, diversification includes forward integration project i.e. the activity which involves in moving from existing production of raw materials or intermediate products to the production of downstream products such as another intermediate product or an end product. However, it does not include backward integration i.e. production of components or raw materials used in an existing end product of the company.
- Under the “expansion” scope of qualifying project, it is now inclusive of backward integration which involves production of components or raw materials used in an existing end product manufactured.

ii. Meaning of Plant and Machinery [Paragraph 8.3.1 of the PR]

- A plant means an apparatus used in respect of a manufacturing activity, which is directly used in carrying out that activity in a factory.

➤ [PR No. 9/2017](#)

Hyperlinks

- A machinery means a device or apparatus consisting of fixed and moving parts that work together to perform function in respect of a manufacturing activity, which is directly used in carrying out that activity in a factory.
 - Directly used in carrying out the manufacturing activity in a factory means that during the manufacturing activity, the plant and machinery used in the factory must:-
 - effect a change in material to form a product to be sold;
 - have an active or necessary role in the manufacture of the product for sale;
 - be used in handling, storage, or conveyance of materials or the product to be sold; or
 - be used to package the product for sale.
- iii. Tax Treatment [Paragraph 9 of the PR]
- RA is to be deducted against the statutory income of a business but is restricted to 70% of the statutory income. Effective YA 2015, statutory income is construed as the amount of statutory income of a person from a source in respect of the qualifying project for RA purposes.
- iv. Qualifying Period [Paragraph 10.5 of the PR]
- If a company has first made a claim for RA during the qualifying period of 15 consecutive years of assessment and the qualifying period ends in the year prior to YA 2015 or in the YA 2015, it is entitled to make a further claim for RA in respect of capital expenditure incurred for a qualifying project undertaken in the basis period for the YA 2016 to YA 2018 as follows:-

YA in which the RA Incentive Period of 15 Consecutive YA Ended	YA in which Capital Expenditure Incurred Qualifies for Further RA
YA 2015 or prior years of assessment	YA 2016, YA 2017 and YA 2018
YA 2016	YA 2017 and YA 2018
YA 2017	YA 2018

- v. Disposal of Assets [Paragraph 11 of the PR]
- Where an asset is disposed of at any time within 5 years from the date of acquisition of that asset, the RA claimed shall be withdrawn irrespective of whether the disposal is between related or non-related parties.

Effective YA 2015, the amount of RA withdrawn is deemed as part of the statutory income in the basis period for a year of assessment in which the asset is disposed of. The RA withdrawn should be equal to the RA which has been claimed in the preceding years of assessment and any unutilised RA will not be available to be carried forward.

- An asset is disposed of when it is sold, conveyed, transferred, assigned, ceased to be used or alienated with or without consideration.

An asset that has ceased to be used in a business includes an asset classified as held for sale. Effective YA 2016, once an asset has ceased to be used, it is considered disposed of. In a case of a factory, if there is a change in the usage of the floor area, that floor area is considered as ceased to be used.

Note: For further information on reinvestment allowance under the previous PR, kindly refer to our Tax Flash – November 2012 issue.

PR No. 10/2017 - Reinvestment Allowance Part II - Agricultural and Integrated Activities

The IRB has recently issued the PR No. 10/2017 - RA Part II - Agricultural and Integrated Activities to provide guidance for resident company engaged in agricultural and integrated activities for the claim of RA. This PR has been re-written, rearranged and updated from the PR No. 6/2012 issued on 12th October 2012.

Among others, it is noteworthy of the following updates in the PR No. 10/2017:-

- i. Non Qualifying Projects for Agricultural Activity (Paragraph 6 of the PR)
 - The activity of rearing chicken and ducks under transformation from an opened house system to closed house system is no longer a qualifying agriculture project for claiming of RA.
 - Besides, oil palm, the cultivation of coffee, cocoa, coconut and other similar crops is not included as cultivation of fruits activities and hence, not eligible for RA.
- ii. Integrated Project (Paragraph 7 of the PR)
 - A company may carry on both agricultural activity and manufacturing activity as an integrated project that constitutes one business source. If the agricultural produce used for manufacturing activity of that integrated project is purchased from a third party, then any RA of that manufacturing activity can only be deducted from the statutory income of the manufacturing activity using purchased agriculture produce.

The abovementioned PR should be read together with PR No. 9/2017 - Reinvestment Allowance Part I – Manufacturing Activity.

Note: For further information relating to reinvestment allowance for agriculture projects and the PR No. 6/2012, kindly refer to our Tax Flash – November 2012 issue.

Hyperlinks

➤ [Tax Flash – November 2012](#)

➤ [PR No. 10/2017](#)

➤ [Tax Flash – November 2012](#)

Practice Note No. 3/2017 - Income Tax (Exemption) (No. 9) Order 2017

The IRB has recently issued the Practice Note ["PN"] 3/2017 - Clarifications on Effective Date of Income Tax (Exemption) (No. 9) Order 2017 to clarify on exemption/applicability of withholding tax ["WT"] relating to services performed outside Malaysia.

Pursuant to the Income Tax (Exemption) (No. 9) Order 2017, income falling under Sections 4A(i) and 4A(ii) of the Act are not subject to WT under Section 109B of the Act if the services are performed outside Malaysia with effect from 6th September 2017.

PN 3/2017 provides guidance on when WT would be applicable in various scenarios as follows:-

- For contracts signed and performed outside Malaysia after 6th September 2017
 - not subject to WT
- For contracts signed before 6th September 2017 and services are performed outside Malaysia
 - from 1st February 2017 to 5th September 2017
 - subject to WT
 - from 6th September 2017 onwards
 - not subject to WT
- For contracts signed and services performed outside Malaysia before 6th September 2017 (services period: 1st February 2017 to 5th September 2017), but payments are made after 6th September 2017
 - subject to WT
- For contracts signed and payment made before 6th September 2017, but services performed outside Malaysia after 6th September 2017
 - not subject to WT
 - eligible to claim for refund if WT payment has been made

Note : For further information on the Income Tax (Exemption) (No. 9) Order 2017, kindly refer to our Tax Flash – November 2017 issue.

Hyperlinks

➤ [Practice Note No. 3/2017](#)

➤ [Tax Flash – November 2017](#)

Set-Off for Tax Charged on Actuarial Surplus under Takaful Business

Following the Budget 2015 announcement, the Income Tax (Set-Off for Tax Charged on Actuarial Surplus under *Takaful* Business) Rules 2017 has been gazetted to provide that a portion of the actuarial surplus from the family fund of a *takaful* operator transferred to the shareholders' fund of the *takaful* operator in respect of the family business of the *takaful* operator pursuant to Section 60AA(9)(a)(vi) or 60AA(10)(a)(vi) of the Act in respect of which tax charged is set-off against the tax charged on the chargeable income from the shareholders' fund in a basis period for a year of assessment pursuant to Section 110C of the Act shall be ascertained in accordance with the following formula:-

$$A \times \frac{B}{C}$$

- where A is the amount of the actuarial surplus from the family fund of the *takaful* operator transferred to the shareholders' fund pursuant to subsection 60AA(9)(a)(vi) or 60AA(10)(a)(vi) of the Act in the basis period for that year of assessment;
- B is the net income from investment and net proceeds from realization of investment or any rights arising from them in the basis period for that year of assessment from the family fund in respect of the family business of the *takaful* operator; and
- C is the amount of actuarial surplus in the basis period for that year of assessment from the family fund in respect of the family business of the *takaful* operator including contribution and income from investment.

The above Rules shall have effect from YA 2015.

Stamp Duty Exemption for Purchasers of a Revived Residential Property

The Stamp Duty (Exemption) (No. 5) Order 2013 provides stamp duty exemption to purchasers of a revived residential property in respect of any instrument of transfer / loan agreement approved by bank or financial institution for the purposes of transferring / financing the revived residential property in relation to an abandoned project.

The Stamp Duty (Exemption) (No. 5) 2013 (Amendment) Order 2017 has been gazetted to extend the exemption period from 31st December 2017 to 31st December 2020.

Note: For further information, kindly refer to our *Tax Flash – April 2013* and *February 2016* issues.

Hyperlinks

➤ [Income Tax \(Set-Off for Tax Charged on Actuarial Surplus under *Takaful* Business\) Rules](#)

➤ [Stamp Duty \(Exemption\) \(No. 5\) 2013 \(Amendment\) Order 2017](#)

➤ [Tax Flash – April 2013](#)
 ➤ [Tax Flash – February 2016](#)

Stamp Duty Exemption for a Rescuing Contractor/Developer

The Stamp Duty (Exemption) (No. 6) Order 2013 provides stamp duty exemption to a rescuing contractor/developer of an abandoned housing project in respect of any instrument of transfer / loan agreement approved by the bank and financial institution for the purpose of transferring/financing the revived residential property in relation to an abandoned project.

The Stamp Duty (Exemption) (No. 6) 2013 (Amendment) Order 2017 has been gazetted to extend the exemption period from 31st December 2017 to 31st December 2020.

Note: For further information, kindly refer to our Tax Flash – April 2013 and February 2016 issues.

Stamp Duty Exemption for Sale and Purchase Transaction of Structured Warrant or Exchanged-Traded Fund

Following the Budget 2018 announcement, the Stamp Duty (Exemption) (No. 2) Order 2017 has been gazetted to provide stamp duty exemption on a contract note executed for the sale and purchase transaction of structured warrant or exchange-traded fund approved by the Securities Commission Malaysia under the Capital Markets and Services Act 2007 in Bursa Malaysia Securities Berhad.

For the purpose of the above Order, “structured warrant” and “exchange-traded fund” have the meanings assigned to them in the guidelines issued by the Securities Commission Malaysia under the Capital Markets and Services Act 2007.

The above exemption applies to contract notes executed from 1st January 2018 to 31st December 2020.

GST: PR No. 01/2018 - Supply of Commercial Residential Premises

The Royal Malaysian Customs Department [“RMCD”] has recently issued the PR No. 1/2018 to clarify the Goods and Services Tax [“GST”] treatment in relation to supply of commercial residential premises.

Salient points of the abovementioned PR include:-

- i. “Commercial residential building or premises” means any multilevel strata title building developed on a commercial land for the purpose of either commercial or residential namely:-
 - Small office home office [“SOHO”];
 - Small office flexible office [“SOFO”];
 - Small office virtual office [“SOVO”];
 - Serviced apartment;
 - Commercial suite; or
 - Any other building of similar nature.

Hyperlinks

- [Stamp Duty \(Exemption\) \(No. 6\) Order 2013 \(Amendment\) Order 2017](#)
- [Tax Flash – April 2013](#)
- [Tax Flash – February 2016](#)
- [Stamp Duty \(Exemption\) \(No. 2\) Order 2017](#)

Hyperlinks

- ii. The supply of commercial residential premises by a developer can only be treated as a supply of residential property and be exempted from GST if **all** of the following conditions are fulfilled:-
 - Planning Permission is approved and issued by any relevant local authority for mixed development purposes that is for both commercial and residential development;
 - Layout plan for the building is approved for dwelling purpose;
 - The Housing Development Licence is issued under:-
 - The Housing Development (Control and Licensing) Act 1966 (Act 118);
 - The Housing Development (Control and Licensing) Enactment 1978 (Sabah); or
 - The Housing Development (Control and Licensing) Ordinance 2013 (Sarawak);
 - The Advertisement and Sale Permit, and Sale and Purchase Agreement are issued under:-
 - The Housing Development (Control and Licensing) Regulation 1989;
 - The Housing Development (Control and Licensing) Rules 2008 (Sabah); or
 - The Housing Development (Control and Licensing) Regulations 2014 (Sarawak).
- iii. The supply of commercial residential premises is exempted from GST if the premises is approved solely for “residential use”. It will be subject to 6% GST if the premises is approved solely for “commercial use”.
- iv. The GST treatment for sub-sale or second hand sale of the commercial residential premises is accorded based on the usage of the property at the time when the supply takes place. The supply of the sub-sale commercial residential premises (initially exempted from GST) will be subject to 6% GST if the said premises is used for commercial activity at the time the supply takes place. If the sub-sale is in respect of commercial residential premises under construction, the GST treatment will be determined based on the approved use of the property. Any sub-sale of commercial residential premises under construction is exempted from GST if the premises is approved solely for “residential use”. The sub-sale of commercial residential premises will be subject to 6% GST if the premises is approved solely for “commercial use”.
- v. Any lease, tenancy or rent of commercial residential premises is a supply of service and the GST treatment of the supply of service will be determined based on the usage of the property. The supply of service is an exempt supply if the commercial residential property is used for residential purposes. If the property is being used for commercial purpose by the tenant, 6% GST is chargeable on such leasing.

Hyperlinks

- vi. The Director General ["DG"]'s Decisions listed below are withdrawn and replaced with this PR:-
- DG's Decision 2/2015, item 1, and
 - Amendment to DG's Decision 2/2015, item 1.

This PR takes effect from 11th January 2018.

GST Regulations

GST (Amendment) Regulations 2017 has recently been gazetted.

The salient amendments to the abovementioned GST Regulations are summarised below:-

- i. Effective 1st January 2018
 - The term "investment holding company" under Regulation 41(j) of the Goods and Services Tax Regulations ["GSTR"] 2014 is replaced with "company whose principal activity is the holding of investment including properties, shares of other companies or loans".
 - A local authority is no longer allowed to claim input tax credit incurred on the acquisition of goods and services attributable to its regulatory and enforcement functions effective 1st October 2018.
 - Item 15 of the GST-03 return is being replaced with "total value of other supplies". Item 15 formerly requires disclosure of "total value of GST suspended under item 14".
- ii. Effective 1st October 2018
 - A local authority is no longer allowed to claim input tax credit incurred on the acquisition of goods and services attributable to its regulatory and enforcement functions.

GST Orders

The following orders have recently been gazetted:-

- i. GST (Exempt Supply) (Amendment) (No. 2) Order 2017 – effective 1st January 2018
 - The salient amendments to the abovementioned Order are summarised below:-
 - The supply of management and maintenance services (including recovery of group insurance cost, assessment tax and quit rent) by a developer is regarded as an exempt supply.

Hyperlinks

- ii. GST (Relief) (Amendment) (No. 2) Order 2017
- The salient amendments to the abovementioned Order are summarised below:-
 - Definition of “private charitable entity” is deleted effective 1st January 2018.
 - All goods excluding petroleum, imported motor cars and land supplied to any local authority are regarded as relief supply effective 1st October 2018.
- iii. GST (Zero-Rated Supply) (Amendment) (No. 3) Order 2017 - effective 1st January 2018
- The salient amendments to the abovementioned Order are summarised below:-
 - The existing zero-rated supply of online services in respect of journals, newspapers and reading materials be substituted with the supply of online services for reading materials falling under the following tariff codes:-

Tariff Code		Description
49.01		Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets.
49.02		Newspapers, journals and periodicals, whether or not illustrated or containing advertising material.
49.05		Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed.
4905.91	00 00	- In book form
49.11		Other printed matter, including printed pictures and photographs.
4911.99	90 00	- Other

Hyperlinks

- The supply of goods falling under the following tariff codes are regarded as zero-rated supply:-

Tariff Code	Description
49.01	Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets.
49.02	Newspapers, journals and periodicals, whether or not illustrated or containing advertising material.

GST Announcement

The RMCD has announced in its portal recently that GST registrants with monthly taxable period may apply to the DG for a two-month taxable period (bi-monthly) via Taxpayer Access Point. Please note that all applications are subject to DG's approval and GST registrants under cash basis industries such as retailing are not allowed to apply for the bi-monthly taxable period.

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