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Tax Flash

MOORE STEPHENS

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PR No. 1/2014 – WT on Special Classes of Income

The Inland Revenue Board ["IRB"] has recently amended the Public Ruling ["PR"] No. 1/2014 – Withholding Tax ["WT"] on Special Classes of Income issued on 23rd January 2014 i.e. changes made to Paragraphs 14.1 and 19, Examples 24, 25, 29, 30, 31 and 36 and deletion of Paragraph 8.5(f).

The pertinent points relating to the above amendments are as follows:-

i. Services Pertaining to the Entertainment Industry not Falling within the Scope of a Public Entertainer [Paragraph 8.5(f) of the previous PR – now deleted]
   - Previously, it was clarified in Example 12 that fee received by a model (non-resident) for photo shooting is considered as a special class of income and subject to WT under Section 109B of the Income Tax Act 1967 ["the Act"] as there is no element of entertainment in the photo-shoot.
   - The aforesaid paragraph and Example 12 have now been deleted. The IRB has now taken the position (i.e. with reference to Example 5 in PR No. 6/2017 – WT on Income of A Non-Resident Public Entertainer) that a model (non-resident) who uses his/her personal skills when participating in a photo shoot would be considered as a public entertainer and therefore, the fee received by the model for photo shooting should be subject to WT under Section 109A of the Act.

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ii. WT Borne by Payer [Example 25 of the PR]

- Based on Example 25 of the previous PR, in the case where WT is borne by the payer, there was no regrossing of the fee payment made to the non-resident in determining the WT though it is mentioned in Paragraph 14.1 of the PR that in such situation, the said payment must be re-grossed to determine the WT.
- The IRB has amended Example 25 of the PR to reflect the requirement to re-gross the fee paid to the non-resident in computing the WT applicable as shown below:-

  WT = 10% x (fee paid to non-resident x 100 / 90)

  The fee paid to the non-resident is deductible in arriving at the adjusted business income of the payer [subject to Section 33(1) of the Act] whilst the WT borne by the payer is not allowed for tax deduction.

iii. Penalty under Section 113(2) of the Act [Examples 29 and 30 of the PR]

- In the event that a payer makes a claim for tax deduction in respect of an expense subject to WT without deducting and remitting WT to the IRB, tax adjustment will be made by the IRB and additional tax payable will arise. An additional assessment will be issued and the penalty under Section 113(2) of the Act for incorrect return will be imposed (computed based on the tax undercharged). Based on the previous Examples, the said penalty for incorrect return will be reduced i.e. imposed based on the revised tax payable when the taxpayer has settled the WT due subsequently (including penalty on late payment of WT) and a claim for tax deduction of the relevant expense is allowed.
- The IRB has amended the above Examples showing that the penalty for incorrect return imposed based on the tax undercharged (as per the additional assessment) will remain even after the taxpayer pays the WT and penalty on late payment of WT later on. In other words, the penalty imposed for incorrect return will not be reduced.

iv. Late Payment Interest Charged by Non-Resident [Example 31 of the PR]

- Previously, it was provided that late payment interest charged by the non-resident service provider is disallowed for tax deduction under Section 39(1)(b) of the Act i.e. it is an expense not being money wholly and exclusively laid out or expended for the purpose of producing gross income.
- The IRB has rephrased the “late payment interest” to “penalty for late payment” in the amended Example. The IRB has added that the late payment penalty charged by the non-resident (as well as the principal fee) will be disallowed for tax deduction under Section 39(1)(j) of the Act [instead of Section 39(1)(b) of the Act] on the basis that the WT due was not deducted and remitted to the IRB.
- However, it is indicated that the abovementioned late payment penalty is not subject to WT.

v. Clarification on Due Date of Payment [Paragraph 19 of the PR]
   - Where the due date for remitting payment falls on a weekly holiday or public holiday, the following working day would be considered as the due date for payment of WT.
   - The IRB has amended and clarified that “weekly holiday” refers to Saturday and Sunday (instead of “e.g. Saturday and Sunday in Kuala Lumpur or Friday and Saturday in Terengganu” previously).

Note: *For further information, kindly refer to our Tax Flash – February 2014 issue.*

RPGT Guidelines

The IRB has recently issued the updated Guidelines on Real Property Gains Tax [“RPGT”] to provide guidance on RPGT computation, exemptions and the responsibilities of the disposer and the acquirer in the disposal of real properties in Malaysia and updates based on amendments in the Finance (No. 2) Act 2017.

Among others, it is noteworthy that:-

i. RPGT Rates (Paragraph 4.7 of the Guidelines)
   - With effect from 1st January 2018, the RPGT rates applicable to a disposer who is an executor of the estate of a deceased person who is not a citizen and not a permanent resident are as follows:-
     - Disposal of chargeable asset within 5 years after the date of acquisition – 30%
     - Disposal of chargeable asset in the 6th year after the date of acquisition or thereafter – 5%

ii. Losses Not to be Allowable (Paragraph 9.2 of the Guidelines)
   - For disposals during the period from 1st January 2010 to 31st December 2013, any gain arising therefrom in respect of an asset held more than 5 years is exempted from RPGT. In this respect, any loss arising therefrom is not allowed to be set-off against chargeable gain in respect of the disposal of other assets in the same year of assessment or subsequent years of assessment. This is in accordance to Paragraph 33(b), Schedule 2 of the RPGT Act 1976.

iii. Joint Venture [“JV”] with Developer (Paragraph 13 of the Guidelines)
   - In the case where a landowner transfers his land to a property developer for the purpose of property development in return for a consideration consisting of solely units from the development project or a combination of units and cash upon completion of the project, the RPGT treatments to be accorded are as shown below:-

Hyperlinks

- Tax Flash – February 2014
- RPGT Guidelines (Updated on 13.06.2018)

- The disposal of the land by the landowner
  - The date of JV agreement shall be regarded as the date of disposal
  - The market value of the land on the date of the JV agreement shall be regarded as the disposal price
- The disposal of the units received from the developer by the landowner
  - The date of JV agreement shall be regarded as the date of acquisition
  - The acquisition price shall be determined based on the following formula:-

$$\frac{\text{Selling price fixed by the developer in respect of the units disposed of}}{\text{Total selling price fixed by the developer in respect of all units received from the developer plus cash consideration received (if any)}} \times \text{Market value of the land on the date of the JV agreement}$$

iv. Transactions in which disposal price is deemed equal to acquisition price (Paragraph 14.1 of the Guidelines)

- If an asset is transferred between
  - Spouses; or
  - an individual, his wife or an individual jointly with his wife or with a connected person and a company (whether or not resident in Malaysia) controlled by the individual, by his wife or by the individual jointly with his wife or with a connected person, for a consideration consisting of shares in the company, or for a consideration consisting substantially of shares in the company (75%) and the balance of a money payment,

  the disposal price of the said transfer shall be deemed equal to the acquisition price
- Commencing from 1st January 2018, the transfer of assets between spouses or to a company referred to above must be owned by a Malaysian citizen

v. Payment of RPGT – Responsibilities of Acquirer (Paragraph 24.1 of the Guidelines)

- Commencing from 1st January 2015, the acquirer is required to withhold either the whole amount of money received or 3% of the total value of the consideration, whichever is the less
- Commencing from 1st January 2018, where a disposer is not a Malaysian citizen and not a permanent resident, the acquirer shall retain the whole amount of money received or 7% of the total value of the consideration, whichever is the less
- The amount withheld is required to be remitted to the IRB within 60 days from the date of the disposal

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

Hyperlinks

› Tax Flash – July 2013

ACA for ICT Equipment

In the 2018 Budget, it was announced that the following expenditure be allowed for the claim of accelerated capital allowance ["ACA"] i.e. both initial and annual allowance at the rate of 20%:-

i. Purchase of information and communication technology ["ICT"] equipment; and
ii. Development of customised software which consists of consultation fee, licensing fee and incidental fee related to software development.

In this respect, the Income Tax (ACA) (ICT Equipment) Rules 2018 has been gazetted to allow the claim of ACA on the capital expenditure incurred for the purchase of ICT equipment as in (i) above. The Rules are deemed to have effect from YA 2017.

It is noteworthy that for expenditure incurred in (ii) above, the statutory order for the claim of capital allowance (proposed to have effect from YA 2018) has not been gazetted yet.

Hyperlinks

- Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2018

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