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Guidelines on Imposition of Penalty under Section 112(3) of the Act

The Inland Revenue Board ["IRB"] has recently issued the Operational Guidelines No. 1/2015 to provide clarification on the imposition of penalty under Section 112(3) of the Income Tax Act 1967 ["the Act"] for late submission of tax returns in accordance with Sections 77(1) or 77A(1) of the Act.

Hyperlinks

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

- [Operational Guidelines No. 1/2015 - Imposition of Penalty under Section 112\(3\) of the Act \(in Bahasa Malaysia\)](#)

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Hyperlinks

Among others, it is noteworthy that:-

i. Rate of Penalty for Late Submission of Tax Returns

- Pursuant to Section 112(3) of the Act, where a person fails to furnish a return to the IRB for a year of assessment within the stipulated period and no prosecution under Section 112(1) of the Act is instituted, the Director General ["DG"] may require the person to pay a penalty equal to treble the amount of tax which is payable (before any set-off or relief) for that year of assessment.
- The rate of penalty for late submission of tax returns will be imposed based on the length of delay the tax return is submitted. Details of the penalties imposable are as follows:-

Length of Delay (from Due Date of Submission)	Penalty Rate on Tax Payable
Within 12 months	20%
> 12 months to 24 months	25%
> 24 months to 36 months	30%
> 36 months	35%

ii. Additional Penalty

Where a person has failed to submit his tax return for a year of assessment by the stipulated deadline, the DG may impose additional penalty in respect of any additional tax assessed for a year of assessment in accordance with Section 112(4) of the Act.

Guideline on Obtaining Confirmation from RMCD on Approved Training for the Purposes of Claiming Deduction under the Income Tax (Deduction for Cost Relating to Training for Employees for the Implementation of GST) Rules 2014

The Royal Malaysian Customs Department ["RMCD"] has recently issued the Guideline on Obtaining Confirmation for Approved Training for the Purposes of Claiming Deduction under the Income Tax (Deduction for Cost Relating to Training for Employees for the Implementation of Goods and Services Tax) Rules 2014 which provides guidance to companies and employers to identify Goods and Services Tax ["GST"] training programmes allowable for tax deduction for the year of assessment ["YA"] 2014 and YA 2015. The guideline also serves to ensure that the training programmes conducted on accounting or information and communication technology are for the purposes of GST implementation and in line with the GST Act 2014.

- [Guideline on Obtaining Confirmation from RMCD on Approved Training for the Purposes of Claiming Deduction under the Income Tax \(Deduction for Cost Relating to Training for Employees for the Implementation of GST\) Rules 2014 \(in Bahasa Malaysia\)](#)

Hyperlinks

Salient points of the abovementioned Guideline include:-

i. Eligibility Criteria

To be eligible for a deduction under the Income Tax (Deduction for Cost Relating to Training for Employees for the Implementation of GST) Rules 2014, the following conditions must be satisfied:-

- The training programmes must be organised by:-
 - professional bodies (e.g. Malaysian Association of Tax Accountants, Chartered Tax Institute of Malaysia, Malaysian Institute of Accountants or any recognised professional bodies as listed in Appendix B of the above Guideline);
 - any organiser who has obtained endorsement from RMCD (e.g. academic institutions, accounting firms and industry/business associations); or
 - employers who undertake in-house training conducted by a qualified trainer.
- At least 80% of the topics in the training programmes must cover the aspects of accounting or information and communication technology relating to GST.
- A claim for the cost of the training programme from the Human Resource Development Fund established under Section 22 of the Pembangunan Sumber Manusia Berhad Act 2001 must not be made by the company or employer.

A list of topics that must be covered in the training programmes are provided in Appendix A of the Guideline.

ii. Application Methods

In order to obtain a confirmation of the training programmes qualifying for deduction under the Income Tax (Deduction for Cost Relating to Training for Employees for the Implementation of GST) Rules 2014, the following documents must be submitted together with the application form:-

- For application by companies and employers who sent their employees to attend courses that have yet to be approved by RMCD:-
 - certified receipt of payment for the relevant year;
 - certificate of attendance issued by the organiser; and
 - course contents and advertisement flyers by the organiser.
- For application by the organisers of the training programme:-
 - course contents and advertisement flyers by the organiser;
 - the trainer's resume; and
 - confirmation letter from professional bodies on awarding CPD points (if any).

- For application by employers who conduct in-house training:-
 - course contents;
 - the trainer's resume; and
 - copy of the contract with the outside training provider (if any).

All applications must be submitted to the RMCD not later than 29th February 2016.

Deduction for Training Costs Under *Skim Latihan 1Malaysia* for Unemployed Graduates

The Income Tax (Deduction for Training Costs under *Skim Latihan 1Malaysia* for Unemployed Graduates) Rules 2013 provides a double deduction on expenditure incurred by a qualifying company for conducting the *Skim Latihan 1Malaysia* programme for unemployed graduates. Among others, the training scheme must be approved by the Economic Planning Unit under the Prime Minister's Department during the period from 1st June 2012 to 31st December 2016. Pursuant to the Amendment Rules 2015, the period of approval has been extended from 31st December 2016 to 31st December 2020.

The above Amendment Rules 2015 shall have effect from the YA 2015.

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

Tax Exemption of Income Derived by Angel Investor

The Income Tax (Exemption) (No. 3) Order 2014 provides tax exemption to an angel investor in respect of the aggregate income for the basis period for the second year of assessment following the year of assessment in which an investment is made by the angel investor in an investee company.

The Income Tax (Exemption) (Amendment) Order 2015 has been gazetted to specify that the amount of aggregate income exempted (previously stated as amount of income tax exempted) shall be an amount equal to the amount of investment made by the angel investor in that investee company.

The above Amendment Order is deemed to have come into operation on 1st January 2013.

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

Hyperlinks

➤ [Income Tax \(Deduction for Training Costs under *Skim Latihan 1Malaysia* for Unemployed Graduates\) Rules 2015](#)

➤ [Tax Flash – September 2013](#)

➤ [Income Tax \(Exemption\) \(Amendment\) Order 2015](#)

➤ [Tax Flash – July 2014](#)

Tax Exemption Relating to Withdrawal of Deferred Annuity

The Income Tax (Exemption) Order 2015 has been gazetted to provide exemption of income tax on deferred annuity withdrawn by an individual before reaching the age of 55 in respect of schemes contracted for the period from 1st January 2014 until 31st May 2014 with an insurer carrying on life business and licensed under the Financial Service Act 2013 or a *takaful* operator carrying on family *takaful* business and licensed under the Islamic Financial Services Act 2013.

The withholding tax provision under Section 109G of the Act shall not apply to the above income.

The above Order is deemed to have come into operation from the YA 2014.

Tax Exemption for MSC Status Companies

Pursuant to the Income Tax (Exemption) (No. 2) Order 2015, tax exemption is given to Multimedia Super Corridor ["MSC"] status companies ["qualifying companies"] carrying out qualifying activity outside or within the MSC cyber city or cyber centre in respect of 70% of the statutory income derived from the qualifying activity for a period of 5 years ["exemption period"] beginning from the date determined by the Minister of Finance ["MOF"].

For a qualifying company carrying out activity within the MSC cyber city or cyber centre, the MOF may extend the exemption period for another period of 5 years with 100% tax exemption of the statutory income for the extended exemption period subject to conditions determined by the MOF. Application for extension of the exemption period shall be made by the qualifying company not later than 90 days before the expiry of the exemption period.

The qualifying company must maintain a separate account for the income derived from the qualifying activity for the basis period for each year of assessment and the qualifying activity shall be treated as separate and distinct source of income.

Qualifying company means a company:-

- i. incorporated under the Companies Act 1965;
- ii. resident in Malaysia;
- iii. which has made an application to the MOF and Minister of International Trade and Industry to be awarded the status of a MSC company on or after 1st January 2015 and has not carried out the qualifying activity at the time the application was made; and
- iv. has been awarded the status of a MSC company.

The above Order has effect from the YA 2015.

Hyperlinks

- [Income Tax \(Exemption\) Order 2015](#)
- [Income Tax \(Exemption\) \(No. 2\) Order 2015](#)

Tax Exemption of Gains or Profits from *Sukuk Wakala*

The Income Tax (Exemption) (No. 3) Order 2015 has been gazetted to provide exemption from tax on gains or profits derived, in lieu of interest, from *sukuk wakala* in accordance with the principle of *Wakala Bil Istithmar*.

This exemption shall apply to *sukuk wakala* with the nominal value of not more than USD1.5 billion, other than convertible loan stock, issued by Malaysian Sovereign Sukuk Berhad.

The withholding tax provisions under Section 109 of the Act shall not apply to such income derived from *sukuk wakala*.

The above Order has effect from the YA 2015.

Tax Audit Framework

The IRB has recently issued a revised Tax Audit Framework. This revised tax audit framework replaces the tax audit framework issued in April 2013 with some updates as follows:-

- i. The tax audit process should be completed within a period of 4 months (previously 3 months) from the commencement of the audit. The IRB will notify the taxpayer if it requires more than 4 months to be completed.
- ii. Programme for Monitoring Deliberate Tax Defaulters [“MDTD”] was introduced to monitor taxpayers who have failed to comply with the law, i.e. those who have committed offence in furnishing incorrect information in their income tax return forms, such as omission of business code or use of wrong business codes. These non-compliant taxpayers will be removed from the listing of MDTD if the monitoring finds that they no longer commit offences in the subsequent years of assessment.

Except for the time frame for voluntary disclosure after a tax audit is selected, the penalty rates for under-statement or omission of income under the tax audit system remain unchanged as summarised below:-

Disclosure / Discovery	Period from the due date of submitting tax return	Rate of penalty on tax undercharged
Voluntary disclosure before case is selected for tax audit	• Within 60 days	10%
	• > 60 days to 6 months	15.5%
	• > 6 months to 1 year	20%
	• > 1 year to 3 years	25%
	• > 3 years	30%

Hyperlinks

➤ [Income Tax \(Exemption\) \(No. 3\) Order 2015](#)

➤ [Tax Audit Framework \(in Bahasa Malaysia\)](#)

Hyperlinks

<p>Field Audit Voluntary disclosure after being informed of case selection but before commencement of tax audit</p> <p>Desk Audit Voluntary disclosure after letter of request for document is issued to taxpayer i.e. within 21 days, the taxpayer takes the following actions:-</p> <ul style="list-style-type: none"> i. Voluntarily disclose the income, reliefs and rebate declared which is incorrect, stating the correct amount together with supporting documents; and ii. Voluntarily confess either by writing, via electronic media or interview in the IRB's office 	Not Applicable	35%
Non-disclosure (discovery of omission during tax audit)		100% (45% may be considered by IRB for 1 st offence)
Repeated offences (up to maximum of 100%)		Last penalty rate imposed for previous offence + 10%

For MDTD cases, a penalty of 100% of the tax undercharged will be imposed under Section 113(2) of the Act if the taxpayers are found to have failed to comply with the law during the tax audit for the second time.

The above Tax Audit Framework takes effect from 1st February 2015.

Hyperlinks

GST – Draft Guides

The RMCD has recently issued the following revised guides on GST to provide an understanding of GST and its implications on various businesses/matters:-

- Industry Guides
 - Approved Jeweller Scheme (revised as at 07.02.2015)
 - Approved Toll Manufacturer Scheme (revised as at 07.02.2015)
 - Approved Trader Scheme (revised as at 09.02.2015)
 - Property Developer (revised as at 30.03.2015)
 - Travel Industry (revised as at 06.04.2015)
- Specific Guides
 - Transitional Rules (revised as at 19.03.2015)
- GST General Guide (as at 16.03.2015)

GST Orders

The following amendment Orders on GST matters have recently been gazetted:-

- i. GST (Exempt Supply) (Amendment) Order 2015
- ii. GST (Zero-Rated Supply) (Amendment) Order 2015
- iii. GST (Relief) (Amendment) Order 2015

The above amendment Orders come into operation on 30th March 2015.

Note: For further information relating to the GST (Exempt Supply) Order 2014, GST (Zero-Rated Supply) Order 2014 and GST (Relief) Order 2014, kindly refer to our Tax Flash – November 2014 issue.

GST Regulations

The GST (Amendment) Regulations 2015 on GST matters have recently been gazetted.

The amendment Regulations come into operation on 30th March 2015 and 1st April 2015.

Note: For further information relating to the GST Regulations 2014, kindly refer to our Tax Flash – September 2014 issue.

➤ [Tax Flash – November 2014](#)

➤ [Tax Flash – September 2014](#)

GST – Frequently Asked Issues

The RMCD has recently issued the following panel decisions to provide clarification on GST frequently asked issues:-

- DG's Decision Amendments 1/2015
- DG's Decision 2/2015
- DG's Decision Amendments 2/2015

Hyperlinks

- [DG's Decision Amendment 1/2015](#)
- [DG's Decision 2/2015](#)
- [DG's Decision Amendment 2/2015](#)

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