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PR No. 4/2017 – Basis Period for a Business Source for a Persons other than a Company, LLP, Trust Body and Co-operative Society

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 4/2017 – Basis Period for a Business Source for a Persons other than a Company, Limited Liability Partnership ["LLP"], Trust Body and Co-operative Society to provide guidance on determining the basis period relating to a business source of a person other than a company, LLP, trust body and co-operative society under various scenarios where:-

- a new operation commences;
- changing the accounting date of the existing business; and
- an individual joining a partnership.

"Persons other than a Company, LLP, Trust Body and Co-operative Society" includes an individual, Hindu joint family, an estate under administration, club and association.

Hyperlinks

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

- [PR No. 4/2017](#)

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In general, the basis period for a year of assessment for each source of income for any person other than a company, LLP, trust body and co-operative society is the year ended 31st December. This is in accordance with Section 21 of the Income Tax Act 1967 [“the Act”].

Various examples are provided in the abovementioned PR to illustrate the manner the basis periods are determined.

The abovementioned PR replaces the PR No. 6/2001 issued on 30th April 2001.

IRB’s Media Release on Tax Treatment of a Deceased Individual

The IRB has recently issued a media release dated 28th July 2017 relating to the tax treatment of a deceased individual as follows:-

➤ [IRB Media Release dated 28th July 2017](#)

- i. Section 74 and Section 106 of the Act allow the IRB to make a claim for arrears of tax owing by a deceased individual from the legal representative / heir of the deceased individual. Payment by instalments can be arranged if the tax arrears could not be settled in one lump sum.
- ii. The tax treatment for a deceased individual is as follows:-
 - The income accruing to the deceased individual up to the date of death will be assessed as income of the individual but the assessment will be raised in the name of the legal representative.
 - Income received after the date of death will not be treated as income of the deceased individual, but as an income of the estate of deceased which will be assessed in the name of the executor or administrator of the estate. A new tax file will be registered under the name of the estate of the deceased.
 - The tax rate charged on the executor or administrator of the estate of the deceased individual is the same as the rate applies to an individual.
 - Form TP will be filed by the executor or administrator of the estate for making a return of income of the estate of a deceased individual.
- iii. Any balance of tax due from the IRB will be dealt with as follows:-
 - The legal representative of the deceased may apply for a repayment of tax credit by submitting the following documents:-
 - Death certificate;
 - Grant of probate which is certified by a Commissioner of Oath, Magistrate of a Civil Servant in Category A;
 - In the case where repayment is made to the heir / representative or administrator, the name of these person must be stated, followed by the name of the estate.

- Where there are more than one administrator of the estate, the repayment will only be made to one administrator;
 - If the deceased individual did not own any property / assets, “Surat Akuan Sumpah” (Borang Am 80) which is signed by a Commissioner of Oaths or Magistrate is acceptable; and
 - If the deceased was a non-resident taxpayer, the “Surat Akuan” must be signed before a Notary Public.
 - Repayment will only be processed when all assessments have been raised.
- iv. The administrator of the estate is responsible for settlement of debt due if there are any arrears of tax owing by the deceased individual.

Tourism Tax

The Tourism Tax Act 2017 which provides for the imposition and collection of tourism tax and for matters connected therewith has been enacted by the Parliament. In exercise of the powers conferred by Section 1(2) of the Tourism Tax Act 2017, The Appointment of Date of Coming into Operation has been issued to appoint 1st August 2017 as the date on which Parts I, II, III (Sections 8 and 9), IV and X of the Tourism Tax Act 2017 come into operation whereas the rest of the Parts / Sections come into operation on 1st September 2017. The Tourism Tax Regulations 2017 has been gazetted to explain the detailed framework of the tourism tax regime.

Pertinent information relating to the Tourism Tax Act 2017 and the Tourism Tax Regulations 2017 include:-

- i. Registration
- An existing operator who operates accommodation premises prior to 1st August 2017 shall apply to the Director General of Royal Malaysian Customs Department [“the Director General”] to be registered by 31st August 2017.
 - As regards new operators, they must apply for registration within thirty (30) days from the date the operator begins operations of the accommodation premises.
 - Upon approving the application for registration, the Director General will allot a specific tourism tax identification number and issue a certificate of registration [i.e. Form TTx-02] to the operator. The operator shall display the Form TTx-02 in a conspicuous place at his accommodation premises.

Hyperlinks

- [Tourism Tax Act 2017](#)
- [Tourism Tax Regulation 2017](#)
- [Tourism Tax \(Rate of Tax\) Order 2017](#)
- [Tourism Tax \(Exemption\) Order 2017](#)

Hyperlinks

ii. Taxable Period

- Generally, the taxable period for tourism tax shall be a period of three (3) calendar months. Despite the above, in the event that the operator is a Goods and Services Tax ["GST"] registrant and has been assigned with a taxable period (either monthly or quarterly) for the purposes of the GST Act 2014, the same taxable period shall be assigned for the reporting of tourism tax purposes.

iii. Furnishing of Returns

- Every operator is required, in respect of his taxable period, to account for the tourism tax received in a return [i.e. Form TTx-03] and must submit the Form TTx-03 to the Director General not later than the last day of the month following the end of the operator's taxable period to which the return relates.
- Any operator who fails to furnish the Form TTx-03 commits an offence and shall, on conviction, be liable to a fine not exceeding RM30,000 or to imprisonment for a term not exceeding one (1) year or to both.

iv. Payment of Tourism Tax

- Tourism tax is only accounted (in the relevant taxable period) to Royal Malaysian Customs Department when payment for the tourism tax is received by the operator. The operator is required to pay to the Director General the amount of the tourism tax collected in respect of the taxable period to which the return relates not later than the last day on which the operator is required to furnish the return.
- Notwithstanding the above, where payment (whether wholly or partly) for the tourism tax is not received by the operator from the tourist within a period of twelve (12) months from the date of issue of the invoice for the accommodation provided, then the tourism tax shall be due in the taxable period following that period of twelve (12) months.
- Any operator who fails to pay the tourism tax to the Director General within the stipulated deadline commits an offence and shall, on conviction, be liable to a fine not exceeding RM30,000 or to imprisonment for a term not exceeding one (1) year or to both.
- Where no prosecution is instituted by the Director General, the operator will be liable to pay for the following penalty:-

Period of Default from Payment Due Date	Rate of Penalty on Unpaid Tourism Tax
≤ 30 days	10%
> 30 days but ≤ 60 days	20%
> 60 days	30%

Hyperlinks

For the purpose of Tourism Tax Act 2017, “Tourist” and “Accommodation Premises” are defined under the Tourism Industry Act 1992 as follows:-

“Tourist” means any person, whether he is a Malaysian national or otherwise, visiting any place in Malaysia for any of the following purposes, namely–

- (a) pleasure, recreation or holiday;
- (b) culture;
- (c) religion;
- (d) visiting friends or relatives;
- (e) sports;
- (f) business;
- (g) meetings, conferences, seminars or conventions;
- (h) studies or research; and
- (i) any other purpose which is not related to an occupation that is remunerated from the place visited.

“Accommodation Premises” means any building, including hostels, hotels, inns, boarding-houses, rest houses and lodging houses, held out by the proprietor, owner or manager, either wholly or partly, as offering lodging or sleeping accommodation to tourists for hire or any other form of reward, whether or not food or drink is also offered.

Additionally, the following Orders on tourism tax matters have recently been gazetted:-

- i. Tourism Tax (Exemption) Order 2017
 - The following tourists are exempted from the payment of the whole of tourism tax:-
 - Malaysian national; and
 - Permanent resident of Malaysia.
 - The following accommodation operated by the operators are exempted from collecting the whole of tourism tax:-
 - homestay under the *Pengalaman* Homestay Malaysia Programme;
 - *kampungstay* under the Visit My *Kampung* Programme;
 - accommodation premises as a facility for educational, training or welfare purposes operated by the Federal Government, State Government, statutory body, local authority or private higher educational institutions registered under the Private Higher Educational Institutions Act 1996;
 - accommodation premises provided by the employer as a facility to his employees;
 - accommodation premises established and maintained by the religious or welfare body as approved by the Minister for the purpose of religious or welfare activities and not for commercial purpose and registered with the Registrar of Societies Malaysia or under any written law governing such body; and
 - accommodation premises having four (4) accommodation rooms or less.

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- ii. Tourism Tax (Rate of Tax) Order 2017
 - The rate of tax shall be fixed at RM10 per room per night.

These Orders come into operation on 22nd August 2017.

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