

# Tax Flash



February 2014

## In this issue

- Finance Act 2014
- PR No. 1/2014 – WT on Special Classes of Income
- Stamp Duty Exemption on Loan Agreement for SME under Green Lane Policy
- Extension of Sales Tax Exemption for Bus Operators
- GST – Draft Guides

## Finance Act 2014

The Finance Act 2014 has been gazetted on 23<sup>rd</sup> January 2014 to take effect the proposals made in the 2014 Budget.

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

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 1/2014 – Withholding Tax [“WT”] on Special Classes of Income. This PR is to replace the original PR No. 4/2005 issued on 12<sup>th</sup> September 2005 with inclusion of additional paragraphs, examples, renumbering of paragraphs/examples, minor changes and merging the following addendums with the original PR:-

- Addendum to PR No. 4/2005 dated 30<sup>th</sup> November 2007; and
- Second Addendum to PR No. 4/2005 dated 4<sup>th</sup> January 2010.

Among others, it is noteworthy of the following additional points:-

- i. Services Pertaining to the Entertainment Industry not Falling within the Scope of a Public Entertainer [Paragraph 8.5(f) of the PR]
  - 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.
- ii. Tax Rate – Regrossing of Disbursements/Payments [Paragraphs 11 and 14 of the PR]
  - Where WT on the disbursements/payments made to non-resident persons are borne by the payer, that disbursement/payment is considered net of tax. In such situation, the disbursement/payment that is incurred by the non-resident has to be regrossed to determine the amount of income on which WT should be deducted.

## Hyperlinks

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Inland Revenue Board

## References

Finance Act 2014

PR No. 1/2014

- Example 15 of the PR illustrates the regrossing of disbursement to determine the amount of WT to be paid to the IRB where the payer does not recover the tax from the non-resident. However, in Example 25 of the PR, the fee payment made to the non-resident (i.e. WT borne by payer) is not re-grossed eventhough it is mentioned in the PR that in such situation, the payment must be regrossed to determine the WT.
- iii. Consequences of not Deducting and Remitting WT [Paragraph 16 of the PR]
- Where a payer fails to deduct and remit any WT due within 1 month from the date of payment to the non-resident, the payer is liable to a late payment penalty of 10% on the WT payable. Prior to 2<sup>nd</sup> September 2006, the penalty for late payment of WT due is 10% of the gross amount payable to the non-resident. In addition, the payment made to the non-resident will be disallowed in the computation of adjusted income of the payer unless he subsequently pays the WT due together with the penalty.
  - Effective 1<sup>st</sup> January 2011 (i.e. for YA 2011 onwards), if a payer claims a deduction in the tax return for expenses that are subject to WT (where the tax return has been filed within the due date for submission for the relevant year of assessment) whereas the WT has not been paid or remitted by the due date for furnishing a return, the Director General of Inland Revenue [“DGIR”] is empowered to impose a penalty under Section 113(2) of the Act for incorrect returns.
  - Non-Application of Sections 39(1)(f), (i) and (j) of the Act
- Effective 1<sup>st</sup> January 2012, where a payer enjoys full exemption on income from all sources for the basis period of a year of assessment under:-
- Promotion of Investments Act 1986;
  - Section 127(3)(b) of the Act; or
  - Section 127(3A) of the Act
- (with exception of cases where the exemption is granted on income equivalent to capital expenditure incurred or the payer has no chargeable income), there will be no disallowance of payments made to non-resident even though WT has not been remitted within the specified period.
- iv. Appeal by Payer on Payment of WT [Paragraph 17 of the PR]
- Effective 1<sup>st</sup> January 2013, a payer may appeal to the Special Commissioners of Income Tax [“SCIT”] on the basis that the WT due is not liable to be paid under the Act. The appeal shall be made within 30 days from the date the payment is due to be made to the DGIR.



- However, no appeal shall be made to the SCIT under the following circumstances:-
  - the payee (non-resident) has filed an appeal to the SCIT in respect of the payment under Section 4A to which the WT relates;
  - the payment to the non-resident has been disallowed in the payer's tax computation under Section 39(1) of the Act; or
  - the WT due has not been remitted/paid to the DGIR by the payer.

v. Clarification on Due Date of Payment [Paragraph 19 of the PR]

- Where the due date for remitting payment is a weekly holiday or public holiday, the following working day would be considered as the due date for payment of WT.

### **Stamp Duty Exemption on Loan Agreement for SME under Green Lane Policy**

Pursuant to the Stamp Duty (Exemption) Order 2014, exemption from stamp duty is granted on any instrument of loan agreement or financing under *syariah* executed between a Small and Medium Enterprise ["SME"] which has been approved for an incentive under the Green Lane Policy of the Ministry of Finance ["MOF"] and:-

- Bank Pertanian Malaysia Berhad;
- Malaysian Industrial Development Finance Berhad; or
- Malaysia Debt Ventures Berhad.

This exemption applies to:-

- the instrument executed between 1<sup>st</sup> January 2013 and 31<sup>st</sup> December 2014; and
- the application for this exemption can only be made once.

**Note :** *A similar exemption is available to the instruments executed between approved SMEs and other financial institutions from 15<sup>th</sup> June 2011 to 31<sup>st</sup> December 2014. For further information, kindly refer to our Tax Flash – May 2012 issue.*

### **Extension of Sales Tax Exemption for Bus Operators**

The existing sales tax exemption given to bus operators on the purchase of locally assembly buses including air-conditioners installed therein shall be extended for applications made to the MOF for the period from 30<sup>th</sup> August 2008 until 31<sup>st</sup> December 2016.

Stamp Duty (Exemption)  
Order 2014

Tax Flash – May 2012

Guideline from MOF dated  
14<sup>th</sup> November 2013

## GST – Draft Guides

The Royal Malaysia Customs has recently issued the following draft/revised draft guides on Goods and Services Tax [“GST”] to provide an understanding of GST and its implications on various businesses/matters :-

- Industry Guides
  - Advertising Services (draft as at 28.01.2014)
  - Development Financial Institution (draft as at 30.01.2014)
  - Islamic Banking (draft as at 01.11.2013)
  - Share Issuing House and Share Registrar (draft as at 10.01.2014)
  - Direct Selling (draft as at 27.11.2013)
  - Trustee Services (draft as at 15.05.2013)
- Specific Guides
  - Registration (revised as at 20.01.2014)
  - Payment Basis (draft as at 30.01.2014)

Guide on Advertising Services  
Guide on Development  
Financial Institution  
Guide on Islamic Banking  
Guide on Share Issuing  
House and Share Registrar  
Guide on Direct Selling  
Guide on Trustee Services

Guide on Registration  
Guide on Payment Basis

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