

# ▶▶ Tax Flash



January 2014

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#### Getting Ready for GST in Malaysia

A half-day workshop titled **Getting Ready for GST in Malaysia** will be held at Sime Darby Convention Centre in February 2014.

#### Details of Workshop

Date	:	17 <sup>th</sup> February 2014
Time	:	8.15 a.m. to 1.00 p.m. (morning session) ; or 1.15 p.m. to 6.00 p.m. (afternoon session)
Venue	:	Dillenia Room (Ground Floor) Sime Darby Convention Centre 1A, Jalan Bukit Kiara 1 60000 Kuala Lumpur
Fees	:	RM180 per delegate (client) RM200 per delegate (non-client)
Registration Deadline	:	<b>10<sup>th</sup> February 2014</b>

#### Hyperlinks

Advent Consulting Group  
Inland Revenue Board

#### References

Workshop Outline

### **PR No. 12/2013 – Rescuing Contractor and Developer**

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 12/2013 – Rescuing Contractor and Developer. This PR provides guidance on the tax treatment accorded to a rescuing contractor or developer [“qualifying person”] appointed or approved by the Minister of Urban Wellbeing, Housing and Local Government [“MUHLG”] or liquidator to revive an abandoned project.

Salient points of the abovementioned PR includes:-

- i. Special Deduction of Expenses
  - A qualifying person is allowed the following deductions:-
    - Double deduction of the expenses incurred in acquiring loan to finance the abandoned project; and
    - Further deduction [in addition to tax deduction allowed under Section 33(1) of the Income Tax Act 1967 [“the Act”]] on the interest expense incurred on the loan acquired for a period of 3 consecutive years of assessment from the year of assessment in which the loan is approved.
  - For the purpose of the deduction, the loan must be:-
    - granted by a bank or financial institution to finance an abandoned project; and
    - approved during the period from 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2015.
  - Expenses incurred in acquiring loan includes:-
    - legal and other professional fees for preparing the documents and negotiating the loan;
    - commissions, brokerage or introduction fees;
    - inspection or search fee, appraisal or valuer’s fees, land registry fees and hypothecation or collateral fees in connection with the security for the loan;
    - arrangement fees;
    - guarantee fees;
    - processing fees; and
    - cancellation fees.
  - The above double/further deduction on the expenses incurred by a qualifying person shall only be claimed in the basis period for a year of assessment in which the abandoned project is completed.
- ii. Abandoned Project as a Separate and Distinct Source
  - Each of the abandoned projects and any other project shall be treated as a separate and distant source of income.
  - A separate account for an abandoned project must be maintained.
- iii. Date of Commencement
  - The date of commencement of an abandoned project shall be the date of letter of award issued by MUHLG or a liquidator appointed by a court for the purpose of an abandoned project.

PR No. 12/2013

- iv. Date of Completion of an Abandoned Project
- An abandoned project shall be deemed to have been completed on the date of issuance of:-
    - the Certificate of Practical Completion;
    - the Certificate of Completion and Compliance; or
    - any other certification which has a similar effect, to the qualifying person by an authorised person or body and surrendered by the qualifying person to MUHLG or a liquidator.
  - In the case of late issuance of the certificate, the date of completion may be an earlier date as stated in the certificate.
  - When the abandoned project is completed, a final account has to be prepared to ascertain the actual profit or loss derived therefrom.
- v. Tax Treatment for an Abandoned Project
- Gross income from an abandoned project is recognised based on completion basis in the basis period for a year of assessment in which the abandoned project is deemed to be completed.
  - The development expenditure (including loan interest) and general and administrative expenses (including expenses of acquiring loan) attributable to the abandoned project shall be accumulated and claimed in the basis period for a year of assessment in which the abandoned project is completed.
  - Capital allowances and balancing allowance/charge in respect of assets used for the abandoned project shall be accumulated and deducted from / added to the adjusted income in the basis period for a year of assessment in which the abandoned project is completed.
  - Any unabsorbed capital allowances of an abandoned project can be carried forward and allowed against the adjusted income of another abandoned project carried out by the qualifying person. However, if the qualifying person does not carry out any more rehabilitation works on abandoned projects, then the unabsorbed allowances are disregarded.
  - Any adjusted loss of an abandoned project in the basis period shall be utilised to set off against the aggregate income from all sources in that basis period [Section 44(2) of the Act].
  - Any unabsorbed loss of an abandoned project shall be carried forward to the following year of assessment and utilised to set off against the statutory income from all businesses [Section 43(2) of the Act].
  - Adjusted losses (other than estimated loss) from the property development or construction business of the qualifying person are deductible against the income from an abandoned project [Sections 44(2) and 43(2) of the Act].
- vi. Stamp Duty Exemption
- Exemption from stamp duty is granted to a qualifying person on the following:-
    - any loan instrument or loan agreement approved by the bank or financial institution to finance the abandoned project; and
    - any instrument of transfer for the purpose of transferring revived residential property in relation to the abandoned project.
  - The above exemption applies to the instruments executed from 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2015.
  - Instrument of transfer for transferring non-residential property of an abandoned project does not qualify for the above exemption.

### **Tax Exemption of Income for Middle Income Taxpayers**

Following the 2014 Budget announcement, the Income Tax (Exemption) (No. 14) Order 2013 has been gazetted to provide exemption of RM2,000 on chargeable income of an individual resident in Malaysia provided that his total aggregate income shall not exceed RM96,000.

The above Order shall only apply for the year of assessment ["YA"] 2013.

### **IRB's Clarification on the Taxability of Withdrawal from PRS and Amendment of Section 75A of the Act**

The IRB has recently issued a media release dated 26<sup>th</sup> December 2013 to provide clarification on the following:-

i. Withdrawal from PRS

Early withdrawal from Private Retirement Scheme ["PRS"] before the age of 55 shall be subject to 8% withholding tax except under the circumstances where the contributor has:-

- passed away
- left Malaysia for good
- been diagnosed with serious/critical illness or mental disability
- certified permanent disability

ii. Amendment of Section 75A of the Act (Director's Liability)

Under the 2014 Budget announcement, it has been proposed that the interpretation of "director" under Section 75A of the Act be amended such that a company director with not less than 20% (reduced from more than 50%, presently) ownership of the ordinary shares of the company shall jointly and severally be liable for the payment of the company's tax or debt.

The IRB has clarified that the above only applies to company directors who have the authority to make decisions and control of the company.

Income Tax (Exemption)  
(No. 14) Order 2013

IRB's Media Release dated  
26<sup>th</sup> December 2013

### Review of RPGT Rates

The Real Property Gains Tax (Exemption) (Revocation) Order 2013 has been gazetted to revoke the Real Property Gains Tax (Exemption) Order 2012 which provides for the effective real property gains tax ["RPGT"] rates of between 0% to 15% (depending on holding period) on chargeable gains derived from the disposal of chargeable assets from 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2013.

With the gazette of the above revocation Order effective 1<sup>st</sup> January 2014, the new RPGT rates of between 0% to 30% (depending on holding period) as announced in the Budget 2014 proposals shall take effect from 1<sup>st</sup> January 2014 (**Note**).

**Note :** *The gazette order to provide for the new RPGT rates applicable to disposal of chargeable assets on or after 1<sup>st</sup> January 2014 has yet to be gazetted.*

### RMC - Compliance Audit

The Royal Malaysian Customs ["RMC"] has recently issued a compliance audit framework to provide an understanding of the nature and procedure of a compliance audit that may be performed on licensees/companies which are administered under the Customs Act 1967, Sales Tax Act 1972, Service Tax Act 1975, Excise Act 1976, Windfall Profit Levy Act 1988, and Free Zones Act 1990.

Among others, it is noteworthy that:-

#### i. Who Can be Audited

- Persons/entities that may be audited:-
  - Licensed manufacturers of sales taxable goods
  - Licensed manufacturers of excisable good
  - Licensed providers of taxable services
  - Importer/Declarant/Owner/Consignee of goods imported
  - Person/companies who are licensed/registered under the relevant Acts administered by the RMC
  - Transporters, Forwarding Agents and Warehousing Agents of imported goods
  - Person/companies granted duty and tax exemptions
  - Other persons/companies who are directly or indirectly involved with transactions concerning importation of goods and goods or services subject to tax

#### ii. Audit Type

- Audits can be performed as desk audits and field audits.

#### iii. Visit to Premises

- Auditee will receive a notice for an audit visit not less than 14 days before the audit and setting forth the date, time and place the audit is to be conducted.
- Auditee may request in writing on reasonable grounds for an extension of time to prepare for the audit visit.
- An audit investigation may be conducted without prior notice.

RPGT (Exemption)  
(Revocation) Order 2013

Compliance Audit Framework

- iv. Examination of Records/Documents
  - The audit officer shall send a notice indicating the records and documents required for audit purposes.
- v. Scope of Audit
  - Generally, an audit would cover 3 years.
- vi. Audit Coverage
  - The auditor is required to:-
    - examine that declaration, levy and charging, collection and the payment of duties and taxes are undertaken correctly and accurately.
    - scrutinise the eligibility and adherence of the conditions of duty and tax exemptions granted and that the exemptions was correctly claimed.
  - Compliance to licensing requirements and conditions are also checked.
- vii. Audit Findings
  - An exit conference to disclose and discuss the audit findings shall be held between the audit officer(s) and officers of the audited company.
  - If there is any short payment of duty/tax, a bill of demand will be issued by the RMC.
- viii. Appeals
  - Any person who is aggrieved by the decision of the Director General of Customs can make an appeal to the Tribunal on any matter except in any matter relating to compound or Section 128(3) of the Customs Act 1967, Section 55(3) of the Sales Tax Act 1972 and Section 67(3) of the Excise Act 1976.
  - An appeal can be made within 30 days from the date of notification of the decision in writing.
  - The decision of the Tribunal is final and binding on all parties to the proceedings and considered as an order from the Sessions Court.
  - Any person who is not satisfied with the decision of the Tribunal may appeal to the High Court.

## GST – Draft Guides

The RMC 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:-

### i. Industry Guides

- Guide on Hire Purchase and Credit Sale (revised as at 17.12.2013)
- Guide on Petroleum Upstream (revised as at 16.12.2013)
- Guide on Postal and Courier Services (draft as at 31.10.2013)
- Guide on Venture Capital (revised as at 25.10.2013)
- Guide on Retailing (draft as at 30.12.2013)
- Guide on Insurance and *Takaful* (revised as at 31.12.2013)
- Guide on Commercial Banking (draft as at 19.11.2013)
- Guide on Free Industrial Zone and Licensed Manufacturing Warehouse (draft as at 05.01.2014)
- Guide on Property Developer (draft as at 07.01.2014)

### ii. Specific Guides

- Guide on Free Commercial Zone (revised as at 06.11.2013)
- Guide on Capital Goods Adjustment (draft as at 15.11.2013)

Guide on Hire Purchase and Credit Sale  
Guide on Petroleum Upstream  
Guide on Postal and Courier Services  
Guide on Venture Capital  
Guide on Retailing  
Guide on Insurance and *Takaful*  
Guide on Commercial Banking  
Guide on Free Industrial Zone and Licensed Manufacturing Warehouse  
Guide on Property Developer  
Guide on Free Commercial Zone  
Guide on Capital Goods Adjustment

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