

In this Issue

- Finance (No. 2) Act 2014
- PR No. 8/2014 – Basis Period of a Company, LLP, Trust Body and Co-operative Society
- PR No. 9/2014 – PRS
- PR No. 10/2014 – Special Allowances for SVA
- Double Deduction for Expenditure for Cost Relating to Training of Employees for Implementation of GST
- Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee
- GST – Draft Guides
- GST – Frequently Asked Issues

Finance (No. 2) Act 2014

The Finance (No. 2) Act 2014 has been gazetted on 30th December 2014 to take effect the proposals made in the 2015 Budget.

PR No. 8/2014 – Basis Period of a Company, LLP, Trust Body and Co-operative Society

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 8/2014 – Basis Period of a Company, Limited Liability Partnership ["LLP"], Trust Body and Co-operative Society to provide guidance on determining the basis period for a company, LLP, trust body and co-operative society on commencement of operations and change of accounting period.

Salient points of the abovementioned PR include:-

Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)
- [Finance \(No. 2\) Act 2014](#)
- [PR No. 8/2014](#)

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Hyperlinks

i. Determination of Basis Period for an Entity on Commencement of Its Operations

- With effect from the year of assessment ["YA"] 2014, if the first set of accounts of an entity are prepared for:-
 - a period of less than 12 months ending on a day in the same year;
 - any period ending on a day in the second year; or
 - a period of more than 12 months ending on a day in the third year,
 that accounting period shall be the basis period for the first year of assessment.
- This is applicable to cases where the first set of accounts are closed in year 2014 and subsequent years.

ii. Determination of Basis Period for an Entity Which is in Operations and Change of Its Accounting Period

- Commencing from the YA 2014, where an entity which is in operations fails to close its accounts on the same date in the following year (failure year), the Director General of Inland Revenue ["DGIR"] will determine the basis periods for the failure year and the year following the failure year.
- In determining the basis period for the failure year and the following year, the accounting period made up by the taxpayer in the failure year would be accepted by the DGIR provided that:-
 - there is no missing year of assessment; and
 - there shall not be two or more accounts closed in the same year of assessment.
- The above applies to all cases irrespective whether the accounts before failure year are closed on 31st December or on a date other than 31st December.

iii. Company with Existing Operations Commencing New Operations

- Where a company which is already carrying on one or more operations commences a new operation, the basis period for the new operations is the same as the basis period of the existing operation.

iv. Company Joining a Partnership

- If a company joins a partnership, the partnership will be regarded as a new operation and the basis period for the company's existing operation is also the basis period for the partnership source, regardless of the accounting period of the partnership.

The abovementioned PR replaces the PR No. 5/2001 and PR No. 7/2001 both issued on 30th April 2001.

PR No. 9/2014 – PRS

The IRB has recently issued the PR No.9/2014 – Private Retirement Scheme [“PRS”] to provide guidance on tax treatment of the PRS contributions by an individual and the employer and income of the PRS fund.

Salient points of the abovementioned PR include:-

i. Deduction for Contributions Made by an Individual

- Deduction and eligibility
 - A resident individual who makes contribution to the PRS fund is eligible to claim a deduction on the amount made up to a maximum of RM3,000 in a year of assessment against the total income in arriving at his chargeable income [Section 49(1D) of the Income Tax Act 1967 [“the Act”]].
 - The maximum amount of RM3,000 eligible for deduction is inclusive of the premiums paid for deferred annuity.
 - The tax deduction is effective YA 2012 until YA 2021.
- Combined Assessment
 - Under the combined assessment, the PRS contributions or deferred annuity premiums paid by the husband or wife who elects for combined assessment will be deemed to have been made by the spouse and the amount claimable shall not exceed RM3,000 [Sections 50(2) & (3) of the Act].

ii. Deduction for Contributions Made by Employers

- Contributions made by the employers on behalf of their employees are allowable as a deduction up to a maximum of 19% of the employees’ remuneration. [Section 34(4) of the Act]
- PRS contributions made by the employer for his employees are subject to a vesting schedule which indicates when the employees have the legal rights to keep the benefits of the contributions made by the employer. Employees will receive accrued benefits when the scheme is vested for a specified period as stated in the agreement.
- In the event that an employee ceases employment before the pre-determined vesting period, the surplus amount (i.e. accrued benefits which the employee is not entitled to) from the PRS fund will be returned to the employer and treated as part of the gross income of the company pursuant to Section 22(2) of the Act.

Hyperlinks

- [PR No. 9/2014](#)

Hyperlinks

iii. Early Withdrawal

- Withholding tax (final tax) at the rate of 8% will be imposed for early withdrawal where the payers (PRS providers) will need to deduct withholding tax on the amount withdrawn and remit to the DGIR within 1 month after payments have been made to the investors pursuant to Section 109G of the Act.
- However, withdrawals made by individuals under the following conditions will be exempted from tax:-
 - upon reaching the retirement age of 55 years old; or
 - for reasons of permanent total disablement, serious disease, mental disability, death or permanently leaving Malaysia.

iv. Exemption from Tax on Income Received by PRS Fund

- Income received by a PRS fund is exempted from tax under Paragraph 20, Schedule 6 of the Act.
- The PRS providers are required to keep separate accounts for each PRS fund managed by them.

v. Distribution of Profits Received by Investors

- Distribution of profits in the form of units by the PRS funds which are credited to the investors' accounts will not be taxable as there is no withdrawal made by the investors from the funds.

PR No. 10/2014 – Special Allowances for SVA

The IRB has recently issued the PR No. 10/2014 – Special Allowances for Small Value Assets to provide guidance on the special allowances accorded to small value assets ["SVA"].

Salient points of the abovementioned PR include:-

i. SVA and Special Allowances

- Pursuant to Paragraph 19A(1), Schedule 3 of the Act, special allowances of 100% is given in respect of qualifying expenditure incurred on SVA (excluding assets that have an expected life span of not more than 2 years) costing not more than RM1,300 (prior to YA 2015, not more than RM1,000) each.
- Such claim of special allowances by a person is restricted to RM13,000 (prior to YA 2015, not more than RM10,000) per year of assessment.

[➤ PR No. 10/2014](#)

Hyperlinks

ii. Special Allowances for SME

- Paragraph 19A(3), Schedule 3 of the Act provides a special treatment to small and medium enterprises ["SME"] where there is no restriction on the total amount of special allowances claimed on SVA by SME for a year of assessment.
- SME means a company:-
 - resident in Malaysia having paid-up capital in respect of ordinary shares of not exceeding RM2.5 million at the beginning of the basis period of a year of assessment; and
 - not having any related companies (related by way of more than 50% shareholding) with paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period of a year of assessment.

iii. Persons not Eligible to Claim Special Allowances

- The persons who are not eligible to claim special allowances are:-
 - a business trust or a Special Purpose Vehicle which is established for the purpose of asset-backed securitisation in a securitisation transaction approved by the Securities Commission;
 - a person who has elected to claim capital allowances under Paragraphs 10 and 15, Schedule 3 of the Act.

iv. Hire Purchase of SVA

- SVA acquired under hire purchase are not eligible for the claim of special allowances. The normal capital allowances claim under Paragraphs 10 and 15, Schedule 3 of the Act can be made on such SVA.

v. Disposal of SVA

- A balancing charge shall be made in relation to a SVA on which special allowances had been claimed and disposed of subsequently in the basis period for a year of assessment, restricted to the amount of capital allowances claimed on that asset if its disposal value exceeds the residual expenditure.

The abovementioned PR replaces the original PR No. 1/2008 issued on 27th March 2008.

Double Deduction for Expenditure for Cost Relating to Training of Employees for Implementation of GST

Following the 2014 and 2015 Budget Announcements, the Income Tax (Deduction for Cost relating to Training for Employees for the Implementation of Goods and Services Tax ["GST"]) Rules 2014 has been gazetted to provide a double deduction on the expenditure incurred by a qualifying person in training its full-time employees under an accounting or information and communication technology training programme which is conducted in Malaysia for the purposes of implementation of the GST Act 2014.

"Qualifying person" means a resident in Malaysia who is a registered person or a taxable person as defined in the GST Act 2014.

These Rules shall not apply to a qualifying person in the basis period for a year of assessment where he has claimed:-

- a deduction in relation to the cost of training programme for that year of assessment under the Income Tax (Deductions for Approved Training Rules 1992); or
- the cost of training programme from the Human Resource Development Fund established under Section 22 of the Pembangunan Sumber Manusia Berhad Act 2001.

The above Rules have effect for the YA 2014 and YA 2015.

Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee

Following the 2014 and 2015 Budget Announcements, the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 has been gazetted to allow a deduction on the following expenses in ascertaining the adjusted income of a person resident in Malaysia from his business in the basis period for a year of assessment:-

- i. Secretarial fee of not exceeding RM5,000 per year charged in respect of secretarial services provided by a company secretary registered under the Companies Act 1965 to comply with the statutory requirements under that Act which is incurred and paid by the person in the basis period for that year of assessment (effective YA 2015); and
- ii. Tax filing fee of not exceeding RM10,000 per year charged by a tax agent approved under the Act or the GST Act 2014 which is incurred and paid by the person in the basis period for that year of assessment in respect of:-
 - preparation and submission of return in the prescribed form for the basis period for the immediately preceding year of assessment for the purposes of Sections 77, 77A, 77B, 83 and 86 of the Act (effective YA 2016); and

Hyperlinks

- [Income Tax \(Deduction for Cost Relating to Training for Employees for the Implementation of GST\) Rules 2014](#)

- [Income Tax \(Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee\) Rules 2014](#)

- preparation and submission of forms or return in the prescribed forms for the purposes of Section 107C of the Act or Section 41 of the GST Act 2014 (effective YA 2015).

Fees incurred other than those specifically mentioned above are not tax deductible.

GST – Draft Guides

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

- Industry Guides
 - Bereavement Care Services Industry (draft as at 24.11.2014)
 - Co-operatives (draft as at 14.11.2014)
 - Event Management Industry (draft as at 23.11.2014)
 - Pre-tertiary Education (draft as at 09.12.2014)
 - Professional Services (revised as at 14.11.2014)
 - Societies and Similar Organizations (draft as at 18.12.2014)
- Specific Guide
 - Partial Exemption (revised as at 21.11.2014)

GST – Frequently Asked Issues

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

- Panel Decision 3/2014
- Panel Decision 4/2014

Hyperlinks

- [RMCD’s Panel Decision 3/2014](#)
- [RMCD’s Panel Decision 4/2014](#)

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for advice. Accordingly, Advent MS Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team.