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Finance Act 2015

The Finance Act 2015 has been gazetted on 30th December 2015 to take effect the proposals made in the 2016 Budget announcement with the following notable changes:-

- i. Filing of Employer's Return (Form E) Electronically by Companies under New Section 83(1B) of the Income Tax Act 1967 ["the Act"]
 - The commencement of the above new Section 83(1B) of the Act has been changed to effective year ending 31st December 2016 (instead of year of assessment ["YA"] 2016 in the Finance Bill 2015).

Hyperlinks

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

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- ii. Furnishing of Estimate or Revised Estimate of Tax Payable (Forms CP 204 / CP 204A) by Companies Electronically under New Section 107C(7A) of the Act.
 - The commencement of the above new Section 107C(7A) of the Act has been changed to effective YA 2018 (instead of YA 2016 in the Finance Bill 2015).
- iii. Debt Due to Government Arising from Reduction in Section 108 Balance
 - The wordings i.e. “revised 108 balance” as referred to in Clause 31 and Clause 32 of the Finance Bill 2015 have been deleted in the saving and transitional provisions as enacted in Finance Act 2015 to fulfil the intended proposal such that where the amount of tax discharged, remitted or refunded exceeds the Section 108 balance, the amount of the excess shall be regarded as a debt due from the company to the government and be payable upon service of a written requisition by the Director General of Inland Revenue [“DGIR”].

PR No. 8/2015 Loans or Advances to Directors by a Company

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 8/2015 – Loan or Advances to Director by a Company to provide guidance on the tax treatment of a company that provides loans or advances to director of the company without interest or with interest rate lower than the arm’s length rate and interest income deemed to be received by the company from the loans or advances.

Salient points of the abovementioned PR include:-

- i. Loans or Advances to Directors
 - A company that provides loans or advances to directors without interest or with interest rate lower than arm’s length rate is deemed to receive interest income from the loans or advances and assessed under Section 4(c) of the Act.
 - A company is deemed to have a gross income consisting of interest from loans or advances to directors if the loans or advances are fully funded from internal funds and Section 140B of the Act is applicable.
 - Section 140B of the Act is not applicable for loans or advances financed from external funds or third party.
- ii. Funds for Loans or Advances – 3 Categories
 - Internal funds
 - These are surplus funds that may arise from injection of capital, retained earnings and company reserves.
 - External funds
 - These are financial resources acquired through loans from third parties specifically used to finance loans or advances to directors.

➤ [PR No. 8/2015](#)

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- Mixed funds
 - Deemed interest income is only computed on the portion of loans or advances to directors related to internal funds.
- iii. Loans or Advances from External Funds to Directors who are also Employees of a Company
 - Interest costs incurred by the employer on the external loan obtained to make loans or advances to directors who are also employees of the company constitute a perquisite to the said director and will form part of their gross employment income under Section 13(1)(a) of the Act.
- iv. Loans or Advances to Directors via a Partnership
 - Loans or advances made by a company to a partnership where the partners are also directors of the company providing the loan shall be subject to Section 140B of the Act.
 - Loan given to the partnership is deemed to be given to the directors as partnership is not a separate legal entity.
 - Total loans made to directors are based on the percentage of capital contribution of each partner.
- v. Determination of Interest Income Deemed to be Received
 - For the purposes of determining the rate and amount of interest income that is deemed to be received by a company in the basis period for a year of assessment, the interest will be computed monthly on the loan balance based on the prescribed formula below:-

$$\frac{1}{12} \times A \times B$$

where:-

A = the total amount of loans or advances outstanding at the end of the calendar month

B = Average Lending Rate (ALR) of commercial banks published by Bank Negara Malaysia ["BNM"] on interest free loan or advances at the end of the calendar month or other reference lending rate as may be prescribed by the DGIR if there is no ALR published.
 - Total loans or advances outstanding at the end of the calendar month refers to balance of loans or advances after deducting repayment of loans or advances and adding any new loans or advances made during the month.
- vi. Effective Date of Provision
 - The provision of Section 140B of the Act is effective YA 2014.

Hyperlinks

- However, if a company's basis period for the YA 2014 commenced in the year 2013, then the interest income taken into account is the amount of interest computed on the loans or advances outstanding from 1st January 2014.
 - The determination of interest income deemed to be received by the company will be computed on loans or advances outstanding at the end of each month, including any existing balance on loans or advances made before the YA 2014.
- vii. Determination and the Amount of Interest Income Deemed to be Received by the Company
- The amount of interest determined or deemed to be received by the company is subject to the rate of interest charged.
 - For loans or advances made by a company to directors which are interest-free, the amount of interest will be computed or determined based on the prescribed formula.
 - For loans or advances made by a company to directors with interest charged, the amount of interest deemed to be received by the company will be the higher of the interest calculated using the:-
 - interest rates charged by the company; or
 - prescribed formula.
- viii. Loans or Advances by a Dormant Company to its Directors
- A dormant company which makes loans or advances to its directors will be deemed to have commenced operations as provided under Section 21A(8) of the Act. Loans or advances to directors are subject to Section 140B of the Act.

PR No. 9/2015 – Deduction of Interest Expense and Recognition of Interest Income for Loan Transactions between Related Persons

The IRB has recently issued the PR No. 9/2015 – Deduction of Interest Expense and Recognition of Interest Income for Loan Transactions between Related Persons to provide guidance on the tax deductibility of interest expense and recognition of interest income for loans transacted between related persons.

Salient points of the abovementioned PR include:-

- i. Tax Treatment of Interest Expense
- Interest expenses incurred and payable on monies borrowed between related persons for the basis period for a year of assessment is only deductible in ascertaining the adjusted income of a person when the said interest is due to be paid [Section 33(4) of the Act – effective YA 2014]. The monies borrowed has to be employed in that period for the production of gross income from that source or laid out on assets used for held in that period for the production of income from that source.

➤ [PR No. 9/2015](#)

Hyperlinks

- For claim for tax deduction of interest for prior years of assessment, the taxpayer has to inform the IRB via letter attaching the revised income tax computations for the relevant years of assessment when the interest is due to be paid. After the review and confirmation by the IRB of the claim for deduction in respect of the interest payable, amendment to the assessments for the relevant years of assessment will be made.
 - Deductibility of interest expense:-
 - For loan agreements that were effective prior to YA 2014 but the interest is not due to be paid yet, interest expense will only be deductible when it is due to be paid (effective YA 2014). The claim of interest expense prior to YA 2014 that had been allowed is maintained.
 - If no payment of interest is made by the taxpayer (borrower) on the date the interest is due to be paid, a claim for deduction of the interest expense can still be made under Section 33(1)(a) of the Act as the liability to pay interest arises on the due date.
 - If a payment is made before the date when the interest is due to be paid, the interest payment will be allowed as a deduction in the year of assessment the interest is paid.
- ii. Recognition of Interest Income
- Loan transactions between unrelated persons:-
 - Section 29(1) of the Act provides that interest will be recognised as income of the lender if the said interest income has been received or obtainable on demand by lender. Interest would be taxable according to the basis period for a year of assessment the said interest is receivable under Section 29 of the Act.
 - Loan transaction between related persons:-
 - A lender is deemed to be able to obtain on demand the receipt of the interest from a loan transaction between related persons in the basis period for a year of assessment where such interest is due to be paid by the borrower in the said basis period (i.e. interest income is deemed to be received by the lender on the date interest is due to be paid whether or not interest has been received) [Section 29(3) of the Act – effective YA 2014].
 - “Related persons” means:-
 - between persons one of whom has control over the other;
 - between individuals who are relatives of each other; or
 - between persons both of whom are controlled by some other person.

Hyperlinks

- Where the gross interest income of a relevant person is receivable in 2 or more basis periods (referred to as “overlapping period”) which overlaps the relevant period, the gross interest income is apportioned between the part of the overlapping period that overlaps the relevant period and the remaining parts of the overlapping period:-
 - Where part of an overlapping period in respect of which interest income is receivable elapsed more than 4 years before the day on which the receipt of the gross income first became known to the DGIR, that interest income is deemed to have accrued evenly over the overlapping period which has not elapsed [Proviso (b) of Section 27(2) of the Act].
 - Where the whole of the overlapping period in respect of which gross interest income is receivable elapsed more than 4 years before the day on which the receipt of that gross income first became known to the DGIR, that gross income would be treated as gross income for the basis period for the year of assessment which began 4 years before the beginning of the year of assessment which includes the day on which the receipt of the gross income first became known to the DGIR [Proviso (c) of Section 27(2) of the Act].

Revised Tax Collection Framework

The IRB has recently issued a revised Tax Collection Framework. This revised tax collection framework replaces the Tax Collection Framework issued in August 2015 with some updates as follows:-

- i. Paragraph 2.3.2(d) of revised Tax Collection Framework
 - A company with paid-up capital of ordinary share of not more than RM2.5 million which first commences operation in a year of assessment is required to submit Form CP204 without stating any estimate of tax payable for the first 2 years of assessment from the date of commencement of operation.
- ii. Paragraph 2.3.2(e) of revised Tax Collection Framework
 - A company, bodies of person, cooperation or limited liability partnership, other than a company which falls under Section 107C(4A) of the Act, which first commences operation is required to furnish an estimate of tax payable not later than 3 months from the date of commencement of its business operation.

➤ [2015 Tax Collection Framework \(Revised 1/2015\) \(in Bahasa Malaysia\)](#)

- iii. Paragraph 9.2.2 of revised Tax Collection Framework
- Application for refund of tax overpaid has to be made within 5 years from the end of basis period in which the tax credit arises (Section 111 of the Act).

Note: For further information on the Tax Collection Framework, kindly refer to our Tax Flash – October 2015 issue.

RPGT Exemption for Disposal of Chargeable Assets Pursuant to a Restructuring Scheme of a Licensed Insurer / *Takaful* Operator or its Corporate Group

The Real Property Gains Tax (Exemption) Order 2015 has been gazetted to provide exemption from payment of real property gains tax ["RPGT"] on chargeable gains deriving from the disposal of any chargeable asset by a licensed insurer / *takaful* operator or its corporate group pursuant to a restructuring scheme approved by BNM for the purpose of compliance with specific provision of laws under the Financial Services Act 2013 and Islamic Financial Services Act 2013. The exemption shall apply to disposal of chargeable asset:-

- made between 1st November 2014 and 30th June 2018; and
- which has been approved or not objected by BNM.

The Order shall be deemed to have come into operation on 1st November 2014.

Stamp Duty Exemption on Instruments Executed Pursuant to a Restructuring Scheme of a Licensed Insurer / *Takaful* Operator or its Corporate Group

The Stamp Duty (Exemption) Order 2015 has been gazetted to provide exemption of stamp duty on all instruments executed by a licensed insurer / *takaful* operator or its corporate group pursuant to a restructuring scheme approved by BNM for the purpose of complying with specific provisions of laws under the Financial Services Act 2013 and Islamic Financial Services Act 2013. The exemption shall apply to the instruments:-

- executed between 1st November 2014 and 30th June 2018; and
- approved or not objected by BNM.

The Order shall be deemed to have come into effect from 1st November 2014.

Hyperlinks

➤ [Tax Flash – October 2015](#)

➤ [Real Property Gains Tax \(Exemption\) Order 2015](#)

➤ [Stamp Duty \(Exemption\) Order 2015](#)

Remission of Stamp Duty Relating to Financing for the Purchase of a Residential Property under the Principles of *Shariah*

Pursuant to the Stamp Duty (Remission) Order 2015, remission of stamp duty of 20% shall be granted in respect of the principal or primary instrument of financing under subitem 27(a) of the First Schedule of the Stamp Act 1949 made under the principles of *Shariah* as approved by the *Shariah* Advisory Council on Islamic Finance established under the Central Bank of Malaysia Act 2009 for the purpose of financing the purchase of a residential property.

The above remission applies to instruments executed from 1st January 2016 until 31st December 2017.

Hyperlinks

- [Stamp Duty \(Remission\) Order 2015](#)

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