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### PR No. 3/2017 – Income Tax Treatment of GST Part III – Employee Benefits: GST Borne by an Employer

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 3/2017 – Income Tax Treatment of Goods and Services Tax [“GST”] Part III Employee Benefit: GST Borne by an Employer to provide guidance on output tax accounted for and borne by the employer on goods and services given free to its employees as a benefit.

Salient points of the abovementioned PR include:-

- i. Employee Benefits
  - An individual under employment may be provided employee benefits by his employer e.g.:-
    - goods or services given or provided free of charge to an employee;
    - any rights, privilege, service or facility provided free of charge to an employee;
    - goods or services given or provided to an employee by an employer or another person on behalf of the employer; and

## Hyperlinks

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

- [PR No. 3/2017](#)

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## Hyperlinks

- goods and services acquired by an employer and given to an employee as employee benefits. The goods and services acquired are considered as used for the purpose of the employer's business.
- ii. Accounting for Output Tax on Employee Benefits
- Generally, a GST-registered employer has to account for output tax on the provision of goods and services given or provided as employee benefits.
  - Goods given free to employees would be a deemed supply and output tax has to be accounted for by the employer except the following:-
    - Goods given free to employees as stated in the contract of employment, contract of service or company policy;
    - Zero-rated supply;
    - Exempt supply;
    - Blocked input tax goods;
    - Supplies where the recovery of input tax were disallowed under the GST Act 2014 ["the GST Act"];
    - Supply of goods under gift rule where the cost of goods given to the same person is not more than RM500 in the same year; or
    - Goods acquired from a non-GST registered person.
  - For services provided free to employees, no output tax needs to be accounted for as such services are not regarded as a supply. However, where such services are provided for the benefit of sole proprietors, partners, directors of a company or persons connected to the taxable person (employer), output tax has to be accounted for based on the open market value of the services provided.
- iii. Tax Treatment
- Section 39(1)(p) of the Income Tax Act 1967 ["the Act"] stipulates that output tax which is borne by a person who is registered or liable to be registered under the GST Act is not deductible.
  - Effective year of assessment ["YA"] 2015, a new Section 13(1A) of the Act was introduced to provide that employment income under Section 13(1) of the Act include any amount of output tax under the GST Act which is borne by the employer.

### Update on Transfer Pricing Guidelines 2012

The IRB has recently updated the Transfer Pricing Guidelines 2012 in respect of the following:-

- Chapter II – The Arm's Length Principle;
- Chapter VII – Intangibles; and
- Chapter XI – Documentations.

➤ [Transfer Pricing Guideline 2012 \(Updated\)](#)

## Hyperlinks

The Transfer Pricing Guidelines 2012 is updated to provide further clarification and guidance on the application of arm's length principle in relation to related party transactions which fall within the ambit of Section 140A of the Act.

A new chapter X on "Commodity Transactions" has been added which provides explanation on the application of the comparable uncontrolled price (CUP) method as the preferred method for establishing the arm's length price for transfer of commodities between associated enterprises.

**Note:** For further information on the Transfer Pricing Guideline 2012, kindly refer to our Tax Flash – August 2012 issue.

### Practice Notes No. 1/2017 and No. 2/2017 - Amendment of Section 15A of the Act

The IRB has recently issued the Practice Note ["PN"] 1/2017 and PN 2/2017 – Amendment of Section 15A of the Act: Issues on Effective Date and Issues on Existing Double Taxation Avoidance Agreement ["DTAA"] to clarify on the implementation of the amendment to Section 15A of the Act and its implication on DTAA.

With the amendment to Section 15A of the Act, any income which falls under Section 4A(i) and (ii) of the Act will be subject to withholding tax ["WT"] at 10% under Section 109B of the Act or a reduced rate under the double tax treaty (if applicable) irrespective of whether the services are performed in Malaysia or outside Malaysia with effect from 17<sup>th</sup> January 2017.

PN 1/2017 provides guidance on when WT would be applicable in various scenarios as follows:-

- For contracts signed and performed after 17<sup>th</sup> January 2017
  - subject to WT
- For contracts signed before 17<sup>th</sup> January 2017 and services are performed outside Malaysia
  - before 17<sup>th</sup> January 2017
    - not subject to WT
  - after 17<sup>th</sup> January 2017
    - subject to WT
- For contracts signed and services performed outside Malaysia before 17<sup>th</sup> January 2017, but payment made after 17<sup>th</sup> January 2017
  - not subject to WT
- For contracts signed and payment made before 17<sup>th</sup> January 2017, but services performed outside Malaysia after 17<sup>th</sup> January 2017
  - not subject to WT

➤ Tax Flash – August 2012

➤ Practice Note No. 1/2017

➤ Practice Note No. 2/2017

## Hyperlinks

PN 2/2017 clarifies that Malaysia has right to impose WT under Section 109B of the Act on payment for services to the resident of the other Contracting State irrespective of whether the services are performed in or outside Malaysia. However, under the following DTAA with other Contracting States, Malaysia's right to impose WT is restricted as follows:-

- Singapore and Spain
  - Payment for services performed outside Malaysia is not subject to WT.
- Australia and Turkmenistan
  - Payment for services is not subject to WT.

### Tax Exemption for Medical Tourism

Following the 2015 Budget announcement, the Income Tax (Exemption) (No.3) Order 2017 has been gazetted to provide tax exemption to new or existing companies engaged in expansion, modernization and refurbishment of healthcare facilities that provide private healthcare services to health traveller which has been approved by the Minister of Health and registered with the Malaysia Healthcare Travel Council.

The exemption is given to a qualifying company in respect of the statutory income derived from a qualifying project. The amount of tax exempted shall be equal to the amount of qualifying capital expenditure incurred in the basis period for a year of assessment, for a period of 5 consecutive years commencing from the date of the first qualifying capital expenditure incurred by the qualifying company as determined by the Malaysian Investment Development Authority ["MIDA"]. The commencement date shall not be earlier than 3 years immediately preceding the date of application but not earlier than 1<sup>st</sup> January 2015.

Among others, the following conditions must be satisfied:-

- The number of health traveller who receive the private healthcare services from the qualifying project is at least 5% of the total patients from the qualifying project for each year of assessment;
- At least 5% of the gross income of the qualifying company from the qualifying project is generated from the health traveller for each year of assessment; and
- The application for exemption must be made to MIDA from 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2017.

The above Order is deemed to have come into operation from YA 2015.

- [Income Tax \(Exemption\) \(No.3\) Order 2017](#)

### **Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment *Sukuk***

Following the Budget 2016 announcement, the Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment *Sukuk*) Rules 2017 has been gazetted to allow a deduction for expenditure incurred by a company resident in Malaysia on the issuance or offering of *sukuk* that complies with the requirements of Sustainable and Responsible Investment:-

- approved or authorised by, or lodged with, the Securities Commission Malaysia under the Capital Markets and Services Act 2007; and
- 90% of the proceeds raised are used solely for the purpose of funding the Sustainable and Responsible Investment Project specified in the guidelines relating to *sukuk*.

The above Rules shall have effect from the YA 2016 until YA 2020.

### Hyperlinks

- [Income Tax \(Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment \*Sukuk\*\) Rules 2017](#)

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