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### PR No. 3/2014 – Taxation of LLP

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 3/2014 – Taxation of Limited Liability Partnership ["LLP"] to provide guidance on tax treatment of a LLP.

Salient points of the abovementioned PR include:-

#### i. LLP

- LLP is a body corporate and new form of business vehicle governed by the Limited Liability Partnerships Act 2012 ["LLPA 2012"]. It has hybrid features of a company and a partnership that provides limited liability to its partners.
- A LLP or a foreign LLP that is registered under the LLPA 2012 should end with the abbreviation "PLT" (stands for *Perkongsian Liabiliti Terhad*) after the partnership's name
- It is a legal entity capable of:-
  - suing or being sued;
  - acquiring, owning, holding and developing or disposing of properties; and
  - doing and responsible for such other acts as a body corporate may lawfully do.

## Hyperlinks

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

- [PR No. 3/2014](#)

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## Hyperlinks

- LLP is not required to prepare audited financial statements by an auditor but needs to keep proper and sufficient accounting and other records. For income tax purposes, it is required to prepare complete accounting records containing the profit and loss account, balance sheet and explanatory notes to the accounts.
  - A conventional partnership or a company can be converted to LLP pursuant to Sections 29 or 30 of the LLPA 2012.
- ii. Determining Residence Status of LLP
- A LLP carrying on a business or any other LLP is resident in Malaysia for the basis year of assessment if any time during that basis year the management and control of its business/any one of its businesses or affairs are exercised in Malaysia in accordance with Sections 8(1A)(a) and (b) of the Income Tax Act 1967 [“the Act”].
- iii. Tax Treatment of LLP
- Imposition of Tax and Tax Rate
    - Income from LLP will be taxed at LLP level. Definition of “person” in the Act includes LLP. Therefore, any provision of the Act, exemption order and income tax rules applicable to “person” shall apply to LLP except for specific incentives provided to a company.
    - The income tax for LLP with total capital contribution exceeding RM2.5 million at the beginning of the basis period is charged at 25%.
    - However, the tax charged on LLP with total capital contribution of RM2.5 million or less at the beginning of the basis period shall be at 20% for first RM500,000 of its chargeable income. The said rate does not apply to LLP which has related companies within the group (i.e. related by way of shareholding of more than 50%) having paid-up capital exceeding RM2.5 million at the beginning of the basis period for a year of assessment.
  - Restrictions on Partner’s Salary Deduction
    - All terms and conditions and the basis of making remuneration or similar payments to partners of LLP shall be documented in the LLP agreement. Remunerations or similar payments to partners not specified in the LLP agreement are not allowable for tax deduction.
  - Incorporation Expenses
    - LLP with capital contribution not exceeding RM2.5 million shall be allowed a deduction in respect of incorporation expenditure for the basis period for a year of assessment.
  - Losses and Capital Allowances
    - Where a conventional partnership or a company converts to LLP, it is considered carrying on a continuous business.

## Hyperlinks

- Pursuant to Section 44(5E) of the Act, the unabsorbed losses for any relevant year in respect of a conventional partnership or a company should be allowed for ascertaining the aggregate income of LLP in the following year of assessment.
  - Similarly, the unabsorbed capital allowances for the relevant year in respect of a partnership or a company shall be allowed to be utilised by LLP for the following year of assessment [Paragraph 75AA, Schedule 3 of the Act].
  - LLP is not entitled to claim capital allowances on assets transferred during the conversion of partnership or company to LLP if the capital allowances have been claimed by a partner or a company in the same year of assessment where changes to the entity occurs.
  - When a partnership or company is converted to LLP, the transfer of assets to LLP is deemed a control transfer where the residual expenditure of the assets (if any) will be taken over by LLP for the purpose of capital allowances.
  - Special Allowances for Small Value Assets
    - LLP is entitled to claim special rate of allowances for small value assets.
  - Distribution of Profits to Partners
    - LLP can distribute profits to its partners. Paragraph 12C of Schedule 6 of the Act provides that profits paid, credited or distributed to partners in the LLP are exempt from tax.
  - Submission of Estimate of Tax Payable
    - LLP is required to furnish estimate of tax payable and make instalment payments under Section 107C of the Act.
- iv. Tax Treatment of Partners of LLP
- Partners are not liable to tax on their share of income/profits from LLP (whether distributed or not). They are taxed on remunerations, perquisites and benefits-in-kind received from LLP.
- v. Bilateral Credit and Unilateral Credit
- A resident LLP in Malaysia can claim bilateral and unilateral credit on the same income that is taxed twice in the same year of assessment i.e. in the country in which the sources arises and again in the country in which LLP is resident and received the income.
  - Foreign-sourced income of LLP is exempted from tax (except where LLP is carrying on the business of banking, insurance and sea or air transport and whose foreign income, although is considered derived from Malaysia has suffered foreign tax).

## Guideline on Compensation on Late Refund of Overpayment of Tax

The IRB has recently issued the Guideline on Compensation on Late Refund of Overpayment of Tax which provides guidance on the payment of 2% compensation that will be paid to eligible taxpayer for late refund made by the IRB under Section 111D of the Act (effective year of assessment 2013). "Late refund" refers to refund made after the period of:-

- 90 days in the case of Return Form ["Return"] furnished via e-filing; or
- 120 days in the case of Return furnished by post or by hand.

Salient points of the abovementioned Guideline include:-

### i. Eligible Taxpayers

- To be eligible for the compensation, the Return must be furnished:-
  - on/before 30<sup>th</sup> April for individual who has employment income;
  - on/before 30<sup>th</sup> June for individual who has business income;
  - within 7 months from the date following the close of accounting period for business / LLP / trust body / co-operative society.
- The entitlement of refund for over-payment of tax refers to the excess tax made under:-
  - Monthly Tax Deduction ["MTD"]
  - Instalment Payment Notice – CP500
  - Estimated Tax Payable by Companies / LLP / Trust Body / Co-operative Society – CP204/CP205

### ii. Calculation of Compensation

- The compensation is calculated based on daily basis starting from the first day:-
  - after 90 days from the last date Return is required to be furnished via e-filing based on the category of the taxpayer; or
  - after 120 days from the last date Return is required to be furnished by post or at the counter based on the category of the taxpayer.

### iii. Non-application

- Compensation will not be paid in cases where:-
  - Return is submitted after the statutory due date;
  - claim wrongly made;
  - appeal is being made against the assessment;
  - no instalment schedule (i.e. MTD, CP500 or CP204/CP205) being issued by the IRB to the taxpayer;
  - tax set-off under Section 110 of the Act is in excess of tax payable.
  - there is a mathematical error;
  - failure to settle instalment payment under MTD, CP500 and CP204/CP205.

## Hyperlinks

- [Guideline on Compensation on Late Refund of Overpayment of Tax](#)

## Hyperlinks

- iv. Refund less than RM100 for Companies or RM50 for Individual
- The IRB will notify the taxpayer if the refund due to taxpayer is RM100 or less for company or RM50 or less for individual.
  - If no application of refund is made, the tax credit will be brought forward in the taxpayer's ledger to the following year.
  - Any application for refund must be made within a stipulated time.
  - Taxpayer is eligible for compensation if the refund is made out of time as provided under Section 111D of the Act.
- v. Calculation of Compensation on Late Refund of Overpayment of Tax
- The compensation of 2% is calculated in accordance with the following formula:-
- $$A \times \frac{B}{C} \times 2\%$$
- Where:-
- A : Amount of refund for a year of assessment
- B : Number of days calculated from the first day after the end of 90 days or 120 days from the last date of Return is required to be furnished until the refund is approved.
- C : Number of days in a year
- vi. Recovery of Compensation and Increase of 10% on Compensation
- If an error was committed by the IRB, the compensation wrongly paid out may be recovered from the taxpayer.
  - If an error was committed by the taxpayer, the amount of compensation may be recovered from the taxpayer together with an increase of 10% on the amount of compensation that was not supposed to be paid out.
  - If the taxpayer failed to return the total amount of the compensation which is wrongly paid including the 10% increase, the IRB will issue a letter of demand to the taxpayer followed by civil action.
  - If a cheque for refund is returned undelivered, the compensation will be credited into the taxpayer's ledger.

### Guidelines on Incentive Claims for Upstream Petroleum Industry under the Petroleum (Income Tax) Act 1967

The IRB has recently issued the abovementioned guidelines to provide guidance on the application and claim of the following incentives available to eligible persons who have incurred capital expenditure for the purpose of carrying out petroleum operations in a marginal field:-

- Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) Rules 2013 to be read together with the Petroleum (Income Tax) (Marginal Field) (Amendment) Rules 2014;
- Petroleum (Income Tax) (Exemption) Order 2013 to be read together with the Petroleum (Income Tax) (Exemption) (Amendment) Order 2014;
- Petroleum (Income Tax) (Marginal Field) Regulations 2013; and
- Petroleum (Income Tax) (Investment Allowances) Regulations 2013 to be read together with the Petroleum (Income Tax) (Investment Allowances) (Amendments) Regulations 2014.

**Note :** For further information on the above incentives, kindly refer to our Tax Flash – April 2013, May 2013 and April 2014 issues.

### GST – Draft Guides

The Royal Malaysian Customs Department [“RMCD”] 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
  - Approved Jeweller Scheme (revised as at 06.05.2014)
  - Commercial Banking (revised as at 04.01.2014)
  - Insurance and *Takaful* (revised as at 08.05.2014)
  - Investment Banking (revised as at 13.03.2014)
  - Islamic Banking (revised as at 30.01.2014)
  - Legal Practitioners (revised as at 02.06.2014)
  - Money Services Business (revised as at 07.04.2014)
  - Property Developer (revised as at 11.03.2014)
  - Shipping Industries (draft as at 24.03.2014)
- Specific Guides
  - Registration (revised as at 23.04.2014)

### Hyperlinks

- Guidelines on Incentive Claims for Upstream Petroleum Industry under the Petroleum (Income Tax) Act 1967 (in Malay language)
- Tax Flash – April 2013
- Tax Flash – May 2013
- Tax Flash – April 2014

## Hyperlinks

### GST Electronic Services TAP Handbook

The RMCD has recently issued a “GST Electronic Services Taxpayer Access Point [“TAP”] Handbook” to provide guidance and to facilitate the taxpayer and public in the use of GST electronic services relating to the following aspects:-

- i. Non Login Function
  - GST registration
  - GST registration exemption
  - Submission of GST non-registrant declaration
  - Payment for GST related liabilities
  - Application for flat rate scheme
  - Application for advance ruling
  - Application for a review on any decision made by RMCD
  - Application for an appeal on certain decisions made by RMCD
  - Search function
    - Retrieve saved request
    - Lookup application status
    - Lookup GST status
- ii. Login Function
  - Group registration
  - Branch registration
  - Joint venture registration
  - Special scheme registration
  - Manage advance ruling registration
  - Manage designated person registration
  - Simplified tax invoice registration
  - Submission of GST return
  - Payment for GST related liabilities
  - Refund
    - Update of bank account
    - Application for refund
    - Application for special fund
    - Application for software rebate
    - Refund status
  - Miscellaneous
    - Application for review on any decision made by RMCD
    - Application for an appeal on certain decisions made by RMCD
    - Submission of GST documents
    - Request for remission of penalty/compound
    - Application for instalment plan
  - Application for authorised tax agent access to taxpayer's GST account
  - Search panel for taxpayer to check on application status
  - Request for closure of GST account
  - Manage taxpayer profile
  - Verification of business registration in Sabah and Sarawak

## Hyperlinks

### **GST Registration via Online**

From June 2014 onwards, any person who is required to be registered for GST may now use electronic services namely TAP to apply for registration via online.

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.