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GST Orders

Amendments were made to Goods and Services Tax ["GST"] gazette orders, some of which (as listed below) have recently been gazetted:-

- i. GST (Imposition of Tax for Supplies in Respect of Designated Areas) (Amendment) Order 2016
- ii. GST (Zero-Rated Supply) (Amendment) (No.2) Order 2016
- iii. GST (Relief) (Amendment) Order 2016

The above amended Orders come into operation on 1st November 2016.

Note: For further information relating to the GST (Zero-Rated Supply) Order 2014 and GST (Relief) Order 2014, kindly refer to our Tax Flash – November 2014 issue.

Hyperlinks

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

- [Tax Flash – November 2014](#)

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Imposition of Compound on GST Registrants

The Royal Malaysian Customs Department [“RMCD”] has via the announcement made in their website notified that a reduction of compound will be given to GST registrants who settle their outstanding GST liability relating to the year 2016 by 31st December 2016. The maximum compound of RM25,000 will be imposed if the outstanding GST liability is settled after 31st December 2016.

GST Audit Framework

RMCD has recently issued the GST Audit Framework which aims at ensuring that auditing tasks can be performed in a systematic, transparent and fair manner.

Salient points of the abovementioned framework include:-

- i. Audit Period
 - An audit work should be completed within 90 days. The auditee will be informed in writing if the period of audit exceeds the targeted time frame of 90 days.
- ii. Notice for Audit Visit
 - A notification of audit visit will be sent to the auditee by fax, email or through MyGST system 14 days prior to the date of the audit;
 - Auditee may request in writing to defer the date of the audit by providing reasonable grounds for deferment; and
 - Special audits can be conducted without prior notice of audit visit.
- iii. Documents Required for GST Audit
 - Paragraph 8.0 of the GST Audit Framework provides a list of the documents required for audit.
- iv. Audit Exit Conference
 - Where tax deficiency is detected, a Bill of Demand will be generated through MyGST system and the auditee is required to pay the deficiency within 14 days from the date of issuance of the notice; and
 - If any outstanding tax remains unpaid after the stipulated time, the following actions may be taken by RMCD:-
 - Imposing compound
 - Imposing trade restriction
 - Imposing restriction from travelling abroad
 - Initiating court proceedings

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v. Appeal

- An appeal for a review against the audit decision must be made to the Director General ["DG"] of Customs within 30 days from the date of the decision made by the audit officer; and
- Should the auditee be dissatisfied with the decision of the DG of Customs, subject to satisfying the prescribed conditions and paying the fee as prescribed, the auditee may appeal to the Customs Appeal Tribunal within 30 days from the date of that decision.

Recent Tax Case

KPHDN v Thomson Reuters Global Resources

[Whether the definition of "royalty" in Double Taxation Agreement ("DTA") prevails over the definition of the same in the Income Tax Act 1967 ("the Act") and whether distribution fee was the business profit of the taxpayer only taxable in Switzerland]

In the case of *Ketua Pengarah Hasil Dalam Negeri* ["KPHDN"] v Thomson Reuters Global Resources ["the taxpayer"] [Appeal No. 14-6-11/2014], the taxpayer entered into a Local Vendor Agreement : Information and Dealing Services ["the Agreement"] with Thomson Reuters Malaysia Sdn Bhd ["TRM"]. Under the Agreement, the taxpayer receives distribution fee from TRM to distribute, market, and sell the taxpayer's products (i.e. information services and dealing services which includes news, financial and economic information and capacity to negotiate and conclude trades in the case of dealing services). Besides, TRM also provides sales and marketing services to the customers in Malaysia. TRM has neither the right to reproduce the products in Malaysia nor exploit any of the intellectual property rights of the products.

The taxpayer treated the distribution fee received from TRM as business profit and taxed in Switzerland (where the taxpayer resides). The taxpayer has always taken the position that the distribution fee (i.e. business profit) is not to be taxed in Malaysia as the taxpayer does not carry on business in Malaysia through a permanent establishment, relying on Article 7 of the DTA between Malaysia and Switzerland.

In year 2010, TRM had mistook the distribution fee paid to the taxpayer as software product fee and erroneously remitted withholding tax ["WT"] amounting to RM1,666,750 to the Inland Revenue Board ["IRB"]. TRM applied to the IRB for a refund of the WT but rejected by the IRB on the basis that the distribution fee constitutes "royalty" under Section 2 of the Act and therefore, subject to WT. The taxpayer appealed to the Special Commissioners of Income Tax ["SCIT"] and the SCIT allowed the taxpayer's appeal. Dissatisfied with the decision, KPHDN appealed to the High Court ["HC"].

The HC took the view that on the first issue, DTA takes precedent over the Act as decided in the case of *Director General of Inland Revenue v Euromedical Industrial Ltd* if there is a conflict in the definition of “royalty” between DTA and the Act. The HC agreed with the findings made by the SCIT that the distribution fee is not a royalty as defined under Article 12(4) of the Malaysia/Switzerland DTA as it is merely payment for services rendered by TRM which cannot be considered to involve any special commercial knowledge. There is also no transfer, grant or use of know-how / propriety rights in consideration of the distribution fee. On the second issue, the HC also agreed that the distribution fee received by the taxpayer should only be taxed in Switzerland where the taxpayer operates pursuant to Article 7 of the Malaysia/Switzerland DTA as the taxpayer has no permanent establishment in Malaysia and hence, the distribution fee shall not be subject to WT in Malaysia.

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