

In this Issue

- PR No. 6/2017 – WT on Income of a Non-Resident Public Entertainer
- Amendment to Guideline on Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee
- Tax Incentives for Waste Eco Park
- Exemption from WT on Payments to Non-Residents for Services Rendered Outside Malaysia
- GST Guides
- GST Orders
- GST Regulations
- GST – Relief by Minister of Finance
- GST: PR 1/2017 – Imposition of Penalty
- GST: PR 2/2017 – Supply by Healthcare Professional
- GST Announcement

PR No. 6/2017 – WT on Income of a Non-Resident Public Entertainer

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 6/2017 – Withholding Tax ["WT"] on Income of a Non-Resident Public Entertainer to provide guidance on the income received by a non-resident public entertainer, deduction of tax therefrom and consequence for non-compliance.

Salient points of the abovementioned PR include:-

- i. Non-Resident Public Entertainer
 - A non-resident public entertainer means a non-resident individual who carries out the following activities:-

Hyperlinks

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

- [PR No. 6/2017](#)

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Hyperlinks

- solo or group performance as an actor, model, circus performer, compere, dancer, entertainer, musician, singer, other artiste, or any profession, vocation or employment of a similar nature for cultural, educational, entertainment, religious or any other purposes;
 - the use of the non-resident individual's intellectual, artistic, musical, personal or physical skill or character for cultural, educational, entertainment, religious or any other purposes;
 - lecture, speech or talk for any purpose; or
 - a sporting event or sporting competition of any nature.
 - The activities may be carried out through live, print, electronic, satellite, cable, fibre optic or other medium, for film or tape, or for television or radio broadcast.
 - Individuals who works behind the scenes in arts-related activity such as cinematographers, directors, producers, choreographers and technical personnel do not qualify as public entertainers.
- ii. WT on Payments to a Non-Resident Public Entertainer
- A non-resident public entertainer is liable to tax on the remuneration or other income in respect of service performed or rendered in Malaysia. The income received by the non-resident public entertainer is subject to WT of 15% on gross amount under Section 109A of the Income Tax Act 1967 ["the Act"].
 - The income of a public entertainer includes both monetary and non-monetary payments such as fees, prize money, allowances and reimbursements or disbursements such as accommodation, meals, air fares and tax borne by a sponsor.
 - Besides fees for the actual performance, other payments such as appearance fees and share of the sale receipts, fees from image rights are also subject to WT under Section 109A of the Act.
- iii. Application to Film and Perform in Malaysia
- The Central Agency for Application for Filming and Performance by Foreign Artistes ["PUSPAL"] and Multimedia Malaysia process all applications for filming and performances by foreign artistes in Malaysia.
- iv. Public Entertainers Other than Filming and Foreign Artistes
- The sponsor or organiser is required to submit information and details to the IRB relating to a non-resident public entertainer who is attending or performing in any sports event, tournament, competition or other event in Malaysia, who do not fall under the guidelines issued by PUSPAL before that non-resident public entertainer performs in Malaysia.
 - The sponsor or organiser of any sports event, tournament competition or any event in Malaysia is responsible for payment of WT under Section 109A of the Act.

- v. Remittance of Tax
 - The WT must be paid to the Director General of Inland Revenue ["DGIR"] within 1 month after paying or crediting the payment to the non-resident public entertainer.
- vi. Consequences of Not Remitting Tax
 - Failure to pay any amount of WT due to the DGIR will render the payer liable to a penalty of 10% of that amount.
 - The payment will be disallowed as an expense in the computation of adjusted income of the payer. However, if the payer subsequently pays the WT plus penalty, that payment to the non-resident public entertainer can be subsequently allowed as a deduction.
 - In addition, the DGIR is empowered to impose a penalty under Section 113(2) of the Act for incorrect return where a claim for deduction of the expense is made but the WT has not been remitted by the due date for furnishing the tax return form.

Amendment to Guideline on Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee

The IRB has issued an amended Guideline on Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee to clarify on the following:-

- Tax Filing Fee
 - Fee eligible for tax deduction includes advisory and services rendered in connection with the preparation of the company's income tax computation for submission of the company's tax return (i.e. Form e-C)
 - Reimbursement and out-of-pocket expenses are non-deductible
 - The tax filing fee incurred for a year of assessment must be paid in the basis period for the immediate following year of assessment to be eligible for the tax deduction

Note : For further information on the above Guidelines, kindly refer to our Tax Flash – March 2017 issue.

Tax Incentives for Waste Eco Park

The following orders have been gazetted to provide income tax exemption in respect of statutory income of a company incorporated under the Companies Act 2016 and resident in Malaysia that carries out qualifying activities in relation to Waste Eco Park:-

- i. **Income Tax (Exemption) (No. 4) Order 2017**
 - An operator is exempted from tax in respect of the statutory income (restricted to 70% for a year of assessment) derived from a qualifying activity equivalent to the amount of allowance of 100% of the qualifying expenditure incurred for a period of 5 consecutive years.
 - The abovementioned Order shall have effect from year of assessment ["YA"] 2016.

Hyperlinks

➤ [Guideline on Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee \(Amended\)](#)

➤ [Tax Flash – March 2017](#)

➤ [Income Tax \(Exemption\) \(No. 4\) Order 2017](#)

ii. **Income Tax (Exemption) (No. 5) Order 2017**

- An operator is exempted from payment of tax in respect of 100% of statutory income derived from a qualifying activity for a period of 5 consecutive years.
- The abovementioned Order shall have effect from YA 2016.

iii. **Income Tax (Exemption) (No. 6) Order 2017**

- A manager is exempted from payment of tax in respect of the statutory income (restricted to 70% for a year of assessment) derived from a qualifying activity.
- The abovementioned Order shall have effect from YA 2016 to YA 2025.

iv. **Income Tax (Exemption) (No. 7) Order 2017**

- A developer is exempted from payment of tax in respect of statutory income (restricted to 70% for a year of assessment) derived from a qualifying activity.
- The abovementioned Order shall have effect from YA 2016 to YA 2025.

The tax exemptions are subject to specific conditions as stated in the abovementioned Orders.

For the purposes of the abovementioned Orders, a “Waste Eco Park” means a place for waste recycling, recovery and treatment activities to be carried out which incorporates the following minimal elements:-

- basic infrastructure such as roads, drainage system, utilities and sewerage;
- building and facility for waste receipt and separation;
- waste water treatment facility;
- building for waste recycling, recovery or treatment facility; and
- building for education and awareness centre.

Applications for the exemptions must be submitted to Malaysia Investment Development Authority between 1st January 2016 and 31st December 2020.

Exemption from WT on Payments to Non-Residents for Services Rendered Outside Malaysia

Pursuant to the Income Tax (Exemption) (No. 9) Order 2017, payments to non-residents in respect of following Special Classes of Income derived from Malaysia where the services are performed outside Malaysia shall be exempted from WT under Section 109B of the Act:-

- Services referred to under Section 4A(i) of the Act; or
- Technical advice, assistance or services referred to under Section 4A(ii) of the Act.

The abovementioned Order comes into operation on 6th September 2017.

Hyperlinks

➤ [Income Tax \(Exemption\) \(No. 5\) Order 2017](#)

➤ [Income Tax \(Exemption\) \(No. 6\) Order 2017](#)

➤ [Income Tax \(Exemption\) \(No. 7\) Order 2017](#)

➤ [Income Tax \(Exemption\) \(No. 9\) Order 2017](#)

Hyperlinks

GST Guides

The Royal Malaysian Customs Department ["RMCD"] has recently issued the following revised guides on Goods and Services Tax ["GST"] to provide guidance on GST related matters:-

- i. General Guide (revised as at 24.08.2017)
 - The salient amendments to the General Guide are summarised below:-
 - Implication of GST on Imported Services
 - "Imported services" refers to services provided by a supplier who belongs in a country other than Malaysia to a recipient who belongs in Malaysia and such services are consumed in Malaysia.
 - Imported services include intangible and intellectual properties such as trademarks, rights, patents, licence, goodwill etc.
 - "Consumed in Malaysia" for the purpose of imported services refers to any services which is used, utilised and enjoyed in Malaysia.
 - "Location of consumption" refers to the location where the services are received (i.e. where benefits of services are enjoyed), rather than the location of the recipients or the billing location.
- ii. Industry Guides
 - Tourist Refund Scheme (revised as at 06.06.2017)
 - Duty Free Shop (revised as at 15.06.2017)
 - Warehousing Scheme (revised as at 15.06.2017)
 - Event Management Services (revised as at 13.9.2017)
 - Insurance and Takaful (revised as at 02.11.2017)
 - Lodging or Holiday Accommodation Services (revised as at 20.09.2017)
 - The salient amendments to the Lodging or Holiday Accommodation Services Guide are summarised below:-
 - The difference between the provision of dwelling (exempt supply) and lodging/holiday accommodation (taxable supply at 6%) as per Appendix 1 to the above-mentioned guide is reproduced below:-

No.	Description	Accommodation (Standard-Rated Supply)	Dwelling (Exempt Supply)
1.	Short-term vs Long-term	Short-term; rate determined based on per night stay	Short-term or long-term; rate determined based on monthly or annual rental

Hyperlinks

No.	Description	Accommodation (Standard-Rated Supply)	Dwelling (Exempt Supply)
2.	Central Management Services such as front office, security, parking facilities, house-keeping, etc.	Hotel-like amenities without charges	Non hotel-like amenities include maintenance fee
3.	Multiple Occupancy	High frequency	Low frequency
4.	Tenancy Agreement	With operator	With landlord
5.	Deposit	Fixed amount based on stay per night	Based on monthly or annual rental
6.	Responsibility to upkeep the premises occupied	Operator	Tenant
7.	Notice of extension	Short notice (verbally)	Generally 30 days notification in writing before expiry of tenancy agreement
8.	Renewal term	Not applicable	One month commencing from the date of agreement
9.	Renewal rental	Not applicable	Applicable
10.	Notice of termination	Not applicable	Applicable
11.	Furnishing and fittings	Fully furnished without any charges	Fully/partially furnished with charges or no furnishing and fittings
12.	Period of usage	Temporary	Permanent

- Pawnbroking (revised as at 27.09.2017)
- Travel Industry (revised as at 30.10.2017)
 - The salient amendments to the Travel Industry Guide are summarised below:-

- Deposit refundable, forfeitable, or act as a security for the supply by hotel operator paid for non-hotel room related activities such as wedding banquet corporate functions and rental of conference rooms is not treated as part of the consideration for supply. Hence, it is not subject to GST.
- Heritage charge and tourism tax are not subject to GST.

GST Orders

The following orders have recently been gazetted:-

- i. GST (Zero-Rated Supply) (Amendment) Order 2017 – deemed to have effect from 1st April 2017
- ii. GST (Zero-Rated Supply) (Amendment) (No. 2) Order 2017 - comes into operation on 1st July 2017 but has been revoked subsequently via the issuance of the GST (Zero-Rated Supply) (Amendment) (No. 2) (Revocation) Order 2017.

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

- iii. GST (Exempt Supply) (Amendment) Order 2017 – comes into operation on 1st September 2017.
 - The salient amendments to the GST (Exempt Supply) (Amendment) Order 2017 are summarised below:-
 - The scope of healthcare services qualifies as exempt supply is expanded to include services provided by any facility managed by any university established under the Universities and University Colleges Act 1971 [Act 30] or the University Teknologi MARA Act 1976 [Act 173] for the purposes of healthcare.

GST Regulations

GST (Provision of Information) Regulations 2017 has recently been gazetted.

A dongle device will be installed at point-of-sales cash registers / equipment of selected companies in respect of the following industries to record daily transactions and the data will be channelled directly to the RMCD's headquarters:-

Business Industry	Sector / Category
Food and beverages	Restaurants
Retail	Hardware shop, grocery shop, bookstore and pharmacy
Entertainment	Any business providing services of entertainment

The Regulations comes into operation on 1st July 2017.

Hyperlinks

- [Tax Flash – November 2014](#)

Hyperlinks

- [Relief by Minister of Finance No. 1/2017](#)

GST – Relief by Minister of Finance

The RMCD has recently issued the Relief by Minister of Finance No. 1/2017 under Section 56(3)(b) of the GST Act 2014 to provide relief from GST in respect of the following services or activities:-

- Relief from charging GST on the supply of handling or storage services
- Relief from charging GST on the supply of the following services:-
 - Manufacturing activities;
 - Activities in the construction, building and modifications of the ship (including any floating structure) and aircraft.
 - Maintenance, repair and overhaul (MRO) activities of floating structure;
 - Activities in installation, repair, cleaning, restoration and modification of the goods; or
 - Blending, homogenising, heating and other related activities in the oil and gas industry.
- Relief from charging GST on the supply of research & development services.
- Relief from charging GST on the supply of tools or machines, or services related to such tools or machines.

The Minister's Relief comes into operation on 1st July 2017.

GST: PR No. 1/2017 – Imposition of Penalty

The RMCD has recently issued the PR No. 1/2017 to provide explanation pertaining to the late payment penalty to be imposed on unpaid GST.

Among others, the abovementioned PR sets out various examples on the computation of late payment penalty on unpaid GST based on the penalty rates stated in the GST Act 2014 (reproduced as follows):-

Period of Default from Payment Due Date	Rate of Penalty Applicable	Total Penalty to be Imposed
First 30 days (≤ 30 days)	10% on unpaid GST	10% on unpaid GST
Second 30 days (> 30 days but ≤ 60 days)	15% on unpaid GST	10% on unpaid GST for first 30 days + 15% on unpaid GST for second 30 days

Hyperlinks

Period of Default from Payment Due Date	Rate of Penalty Applicable	Total Penalty to be Imposed
Third 30 days (> 60 days but ≤ 90 days)	15% on unpaid GST	10% on unpaid GST for first 30 days + 15% on unpaid GST for second 30 days + 15% on unpaid GST for third 30 days

Any person who defaults in making GST payment to RMCD after the 90-day period mentioned above may be prosecuted in court.

Example:-

Company with monthly taxable period

Taxable period	01.01.2017 – 31.01.2017
GST payable	RM5,000
Due date for GST payable	28.02.2017
GST payments made on:-	
- 15.03.2017	RM2,000
- 20.04.2017	RM3,000

Penalty impose on:-

- i. First 30 days : 01.03.2017 – 30.03.2017
Unpaid GST as at 28.02.2017 : RM5,000
Penalty = RM5,000 x 10%
= **RM500**
- ii. Second 30 days : 31.03.2017 – 29.04.2017
Partial payment made on 15.03.2017 : RM2,000
Unpaid GST as at 30.03.2017 : RM3,000 (RM5,000 – RM2,000)
Penalty = RM3,000 x 15%
= **RM450**
- iii. Third 30 days : 30.04.2017 – 29.05.2017
Partial payment made on 20.04.2017 : RM3,000
Unpaid GST as at 29.04.2017 :NIL (RM3,000 – RM3,000)
Penalty = **NIL**

Total penalty = RM950 (RM500 + RM450)

Although the PR takes effect from 1st November 2017, it is noteworthy that the above penalty rates take effect from 1st January 2017 (in line with the provisions of the GST Act 2014).

Hyperlinks

GST: PR No. 2/2017 – Supply by Healthcare Professional

The RMCD has recently issued the PR No. 2/2017 to clarify the GST treatment on the supply of services made by healthcare professionals as follows:-

- Healthcare services provided by any healthcare professional who is an employee (contract of service) under the private healthcare facilities will be regarded as an exempt supply
- Healthcare services provided by any healthcare professional who is not an employee (contract for service) under the private healthcare facilities will be regarded as a standard rated supply

Item 18(3), Second Schedule of the GST (Exempt Supply) Order 2014 defines “healthcare professional” and “private healthcare facilities” as follows:-

- “healthcare professional” includes a medical practitioner, dental practitioner, pharmacist, clinical psychologist, nurse, midwife, medical assistant, physiotherapist, occupational therapist and other allied healthcare professional and any other person involved in the giving of medical, health, dental, or pharmaceutical services under the jurisdiction of the Ministry of Health
- “private healthcare facilities” means any premises, other than a Government healthcare facility, used or intended to be used for the provision of healthcare services, such as private hospital, hospice, ambulatory care centre, nursing home, maternity home, psychiatric hospital, psychiatric nursing home, community mental health centre, hemodialysis centre, medical clinic and dental clinic and such other healthcare premises as specified by the Minister charged with the responsibility for health by notification in the Gazette under the Private Healthcare Facilities and Services Act 1998

The abovementioned PR takes effect from 1st November 2017

GST Announcement

- The RMCD has announced in their portal recently that any renewal for Special Scheme application shall be submitted at least two (2) months before the expiry date to RMCD. Please note that the above is applicable to those special schemes expiring on 31st March 2018 and thereafter.

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.