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MOORE STEPHENS

Tax Flash

SEPTEMBER 2014

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In this Issue

GST – Draft Guides

The Royal Malaysian Customs Department ["RMCD"] has recently issued the following draft guides on Goods and Services Tax ["GST"] to provide an understanding of GST and its implications on various businesses/matters:-

- Industry Guides
  - E-Commerce (draft as at 20.08.2014)
  - Travel Industry (draft as at 10.08.2014)

GST Regulations 2014

The GST Regulations 2014 have been gazetted recently to explain the detailed framework of the GST regime.

Regulations 11 and 12, and Parts VI, VII, VIII, IX and X come into operation on 1st April 2015 whereas the rest of the Regulations / Parts come into operation on 1st July 2014.

Hyperlinks

- Moore Stephens Malaysia
- Moore Stephens International
- Inland Revenue Board

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Change of Effective Date of GST Regulations

The date of coming into operation of the following GST Regulations has been amended from 1st July 2014 to 1st April 2015:-

- GST (Advance Ruling) Regulations 2014
- GST (Review and Appeal) Regulations 2014

Note *: For further information relating to the above Regulations, kindly refer to our Tax Flash – July 2014 issue.*

KPHDN v Resort Poresia Bhd
[Whether turfing and grass on golf course are qualifying plant expenditure under Schedule 3 of the Act]

In the case of Ketua Pengarah Hasil Dalam Negeri ["KPHDN"] v Resort Poresia Bhd ["RPB"] [Civil Appeal No. J-01-577-10], the taxpayer carried on the business of operating a golf club and claimed capital allowances on expenditure of RM18,094,574 incurred on turfing and grass on its golf course in the year of assessment ["YA"] 1995. The Inland Revenue Board ["IRB"] raised additional tax for the YA 1999 and YA 2001 on the taxpayer by disallowing the claim of capital allowances made on those expenditure.

The taxpayer appealed to the Special Commissioners of Income Tax ["SCIT"] and contended that turfing and grass on the golf course are qualifying plant expenditure under Schedule 3 of the Income Tax Act 1967 ["the Act"] relying on the functionality of the turfing and grass. However, the IRB contended that the golf course was a setting or premises in which the taxpayer's business was carried out and not a plant under Schedule 3 of the Act and hence, not qualifying for the capital allowances under Schedule 3 of the Act. The SCIT ruled that the greens are part and parcel of the golf course constructed for the purpose of taxpayer's trade as a golf club i.e. the premises within which the business was carried out and dismissed the appeal. Dissatisfied with the decision, RPB appealed to the High Court ["HC"].

The HC subsequently ruled that the decision of the SCIT was flawed as they had failed to distinguish golf course from turfing and grass in determining the issue whether the capital expenditure incurred was qualifying plant expenditure. There was no findings made by the SCIT in respect of the submission from the taxpayer in the form of a capital allowance study on the functionality of the various grass used in the fairways and greens which according to the HC, had gravely prejudiced the taxpayer. Hence the decision of the SCIT cannot stand and the appeal by taxpayer is allowed. Thereafter, KPHDN appealed to the Court of Appeal ["COA"].

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The COA contended on the argument that turf grasses is distinct from the golf course, overlooks the facts a course is a golf course only when the grasses planted thereon allows golf to be played on it. The grasses chosen are therefore an inseparable part and parcel of the golf course, and therefore if the golf course is premises the business of RPB is carried on from, the turf and grasses are part and parcel of such premises.The COA ruled that the decision made by the SCIT had not erred in their application of the principles set-out in relevant case law and thus the SCIT's findings should not have been disturbed. Hence, the decision by the SCIT is reinstated.

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