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Tax Flash

September 2012

Advance Pricing Arrangement Guidelines 2012

Following the gazette of the Income Tax (Advance Pricing Arrangement) Rules 2012 recently, the Inland Revenue Board ["IRB"] has issued the Advance Pricing Arrangement ["APA"] Guidelines to provide guidance on the procedures to apply for an APA and the manner in which such an application will be processed and administrated.

Pertinent points of the APA Guidelines include:-

i. Who Can Apply

- An application for APA will only be considered for cases involving:-
    - a company assessable and chargeable to tax under the Income Tax Act 1967 ["the Act"];
    - turnover exceeding RM100 million; and
    - threshold of the proposed covered transaction:-
        - for sales, it must exceeds 50% of turnover;
        - for purchases, it must exceeds 50% of total purchases; or
        - for other transactions, the total value must exceed RM25 million.
- For covered transaction involving financial assistance, the value of financial assistance must exceed RM50 million;
- All covered transactions must relate to income that is chargeable and not income which is exempt.

ii. Scope of Agreement

- The scope of an APA covers the following:-
    - taxpayer and the foreign related parties;
    - cross-border transactions to be covered;
    - agreed transfer pricing methodology ["TPM"] to be employed including arm's length outcomes from applying the said TPM;
    - duration of the APA;
    - critical assumptions; and
    - other agreed terms and conditions.

Hyperlinks

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References

Advance Pricing Arrangement Guidelines 2012

iii. The APA Process

- Expected duration of the whole process of applying for:-

  - Unilateral APA - 6 to 12 months
  - Bilateral APA or Multilateral APA - 1 to 2 years

iv. Adjustments

- In the event that the taxpayer fails to make the compensating adjustments if the result of the covered transaction is not in agreement with the APA, the IRB shall make the appropriate adjustment and a penalty under Section 113(2) of the Act will be imposed on any upward compensating adjustment made.

v. Disbursements

- The taxpayer shall bear any overseas travelling and accommodation expenses incurred by the Malaysian government in relation to the application for Bilateral APA or Multilateral APA.

vi. Penalty

- As long as an APA remains in effect and the taxpayers comply with the terms and conditions of the APA, no penalty under the Act will be imposed with respect to the covered transactions for the covered period.

- However, where as a result of application for an APA, there is a need to revise rollback years of assessment, such adjustments may be subject to penalty provisions under the Act.

Note: *For further information on the Income Tax (Advance Pricing Arrangement) Rules 2012, kindly refer to our Tax Flash - June 2012 issue.*

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Guidelines on Application for Approval under Section 44(6) of the Act for Public Contribution to a School Fund

Guidelines on Application for Approval under Section 44(6) of the Act for Public Contribution to a School Fund

The IRB has recently issued the Guidelines on Application for Approval under Section 44(6) of the Act for Public Contribution to a School Fund which provide guidance on the application procedure and criteria for eligibility to obtain the approval for public contribution to a school fund ["School Fund"] under Section 44(6) of the Act.

Among others, the Guidelines stipulate that the School Fund must be set up solely for the purpose of learning and teaching of students of the school and the school must be registered with the Ministry of Education or State Religious Council/State Islamic Religious Department. The approved School Fund will be exempted from income tax (except for dividend income) under Paragraph 13, Schedule 6 to the Act whereas the donors will be eligible to claim for tax deduction in respect of the cash contribution made to the School Fund.

Guidelines on Treatment of Single-Tier Dividend in Actuarial Surplus Transferred to Shareholders' Fund

Guidelines on Treatment of Single-Tier Dividend in Actuarial Surplus Transferred to Shareholders' Fund

The IRB has recently issued the Guidelines on Treatment of Single-Tier Dividend in Actuarial Surplus Transferred to Shareholders' Fund to provide guidance on the tax treatment of single-tier dividend in actuarial surplus and method of computing the portion of single-tier dividend to be deducted from the actuarial surplus transferred to shareholders' chargeable to tax.

The actuarial surplus that is transferred from the life fund to the shareholders' fund is subject to income tax at 25% under the shareholders' fund of an insurer. As the actuarial surplus may include single-tier dividend which is tax-exempt, it should be excluded from the actuarial surplus transferred to the shareholders' fund determined by using a prescribed formula as provided in the abovementioned Guidelines.

Guidelines : Encourage Small Malaysian Service Providers to Merge into Large Entities

Guidelines : Encourage Small Malaysian Service Providers to Merge into Larger Entities

The Malaysian Investment Development Authority has on 3rd July 2012 issued the abovementioned Guidelines to encourage small Malaysian service providers to merge into larger entities to increase the competiveness of smaller entities in services sector.

Salient points of the abovementioned Guidelines include:-

i. Incentives

- Flat rate of 20% on all taxable income for a period of 5 years (effective from the date of the merger);
- Exemption from stamp duty on the merger documents; and
- The above incentives will be provided by way of statutory order.

ii. Eligibility Criteria

- Merging enterprises must be:-
    - 100% Malaysian owned; and
    - have annual sales turnover of less than RM5 million or full-time employees of less than 50.

- Sectors eligible for the incentives include:-
    - professional services (accounting and taxation services, specialised medical and dental practices, architectural services and engineering services);
    - courier services;
    - technical and vocational secondary education services (generic and special needs); and
    - skills training services.

Applications for the incentives must be submitted to the IRB within 3 years from 3rd July 2012.

Stamp Duty Remission on Loan Agreement without Security

Stamp Duty (Remission) (No. 2) Order 2012

Pursuant to the Stamp Duty (Remission) (No. 2) Order 2012, the stamp duty that is chargeable under item 22(1)(b) of the First Schedule to the Stamp Act 1949 on loan agreement or loan instrument without security for any sum or sums of money repayable on demand or in a single bullet repayment which is in excess of 0.1% is remitted.

Stamp Duty Exemption for Labuan Entities

Stamp Duty (Exemption) (No. 3) Order 2012

Pursuant to the Stamp Duty (Exemption) (No. 3) Order 2012, exemption from stamp duty is granted on:-

i. all instruments executed by a Labuan entity in connection with a Labuan business activity;
ii. all Memorandum and Articles of Association, statute, charter, rules, by-laws, partnership agreement or other instrument, under or by which a Labuan entity is established and the scope of that entity's function, business, powers and duties are set out, whether contained in one or more documents, and
iii. all instruments of transfer of shares in a Labuan entity.

The above Order is deemed to come into operation on 11th February 2010 and the Stamp Duty (Exemption) Order 2000 is revoked.

Service Tax (Amendment) Regulations 2012

Service Tax (Amendment) Regulations 2012

The Service Tax (Amendment) Regulations 2012 have been gazetted recently to amend the Second Schedule in Group G under the heading of "Taxable Service" to exclude the charge for service tax on provision of hire-and-drive car defined under the Tourism Vehicles Licensing Act 1999 as operated by tourism operators registered under the Tourism Industry Act 1992.

The above Regulations are deemed to have come into operation on 31st January 2011.

Advent Tax Consultants Sdn Bhd (703669-U)
Unit 3.3A, 3rd Floor, Surian Tower, No. 1 Jalan PJU 7/3, Mutiara Damansara, 47810 Petaling Jaya, Selangor, Malaysia
tel : +603 7728 1800 fax : +603 7728 9800 email : technical@adventconsulting.com.my url : www.adventconsulting.com.my

member of advent consulting group