

▶▶ Tax Flash



September 2010

Income Tax (Special Treatment on Interest on Housing Loan) (Amendment) Regulations 2010

The Income Tax (Special Treatment on Interest on Housing Loan) (Amendment) Regulations 2010 ["Regulations 2010"] have recently been gazetted to amend regulation 5 of the Income Tax (Special Treatment on Interest on Housing Loan) Regulations 2009 ["Regulations 2009"].

Pursuant to the Regulations 2009, interest due and payable by an individual under a moratorium on interest approved by a bank or financial institution in respect of a housing loan granted to the individual whose employment has been terminated pursuant to a separation scheme or retrenchment, on or after 1st July 2008 shall not constitute the gross income of that bank or financial institution and therefore, not subject to income tax. This applies to interest which is due and payable for a 12-month period beginning from the month where the moratorium is approved by the bank or financial institution in respect of the housing loan granted prior to the termination of the employment of the individual.

Under the Regulations 2010, the conditions for granting the above tax treatment to the bank or financial institution have been relaxed. Such tax treatment would also apply to a moratorium on interest approved by the bank and financial institution in respect of loan relating to :-

- an individual who is a sole proprietor or a partner in a partnership;
- an individual under an employment whose monthly income has been reduced due to a salary cut or the number of his working days in a month has been shortened from 1st July 2008;
- an individual whose spouse's employment has been terminated on or after 1st July 2008, in the case of a joint loan;
- an individual who is a guarantor under a housing loan and who is the primary source for the repayment of such loan, where the employment of the guarantor has been terminated on or after 1st July 2008.

Hyperlinks

Advent Consulting Group
Inland Revenue Board

Reference

Income Tax (Special Treatment on Interest on Housing Loan)(Amendment) Regulations 2010

Other conditions that need to be observed are :-

- the housing loan must be granted to an individual under employment prior to the termination of the employment of the individual or to an individual who is a sole proprietor or a partner of a partnership before 10th March 2009;
- the termination of the employment of the individuals mentioned above must be registered with the Director General of Labour, Ministry of Human Resources;
- the application for the moratorium must be made by the individuals during the period from 10th March 2009 to 9th March 2010.

The amendments shall have retrospective effect from the year of assessment 2009.

Protocol Amending DTA between Malaysia and Indonesia

The Protocol amending the Double Tax Agreement ["DTA"] between Malaysia and Indonesia was ratified on 15th July 2010. The major changes observed, amongst others, are :-

- i. Withholding tax ["WT"] rate applicable to the following payments :-
 - Dividends – WT on dividends paid by a company which is a resident of Indonesia to a resident of Malaysia is reduced from 15% to 10%.
 - Interest – reduced from 15% to 10%.
 - Royalty – reduced from 15% to 10%.
- ii. Article 10 on "Dividends" of the DTA shall not affect the provisions contained in any production sharing contracts relating to oil and gas sector concluded by the Government of Indonesia, its instrumentality, its relevant state oil and gas company or any other entity thereof with a person who is a resident of Malaysia.
- iii. Labuan entities carrying on Labuan business activity under the Labuan Business Activity Tax Act 1990 will not be entitled to the benefits under the tax treaty.

Application of the protocol will take effect from 1st September 2010.

Protocol Amending the DTA
between Malaysia and
Indonesia



Protocols to Amend the Articles on Exchange of Information

- **DTA between Malaysia and Kuwait**
- **DTA between Malaysia and Seychelles**

The protocols signed between Malaysia and the above two countries pertaining to the article on Exchange of Information ["EOI"] have recently been gazetted. The new articles on EOI are in line with the EOI provision of Article 26 of the OECD Model Convention.

In accordance with Article 26 of the OECD Model Convention, any information received shall be treated as secret and disclosed only to persons or authorities concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes. There is no obligation for the authorities of one contracting state to supply information which is not obtainable under the laws or in the normal course of the administration of that contracting state or the other contracting state or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. This, however, shall not be construed as to permit a contracting state to decline the supply of information held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or information which relates to ownership interests in a person.

Liberalisation of Foreign Exchange Administration Rules

Bank Negara Malaysia has further liberalised the following foreign exchange administration rules in its continuous efforts to enhance Malaysia's competitiveness with immediate effect:-

- Settlement of goods and services by residents and non-residents
 - Borrowings in foreign currency by residents
 - Anticipatory hedging by residents
- i. Settlement of Goods and Services by Residents and Non-residents
- A resident is allowed to make payments to, or receive payments from a non-resident for settlement of goods and services in Ringgit Malaysia ["RM"] other than using foreign currency provided that:-
 - any payment in RM made by the resident to the non-resident must be made to an External Account (an account in RM) of the non-resident;
 - any receipt from the non-resident in RM must be made through an External Account of the non-resident or an External Account of an appointed overseas branch of the banking group of a licensed onshore bank;

Double Taxation Relief (The Government of The State of Kuwait) (Amendment) Order 2010

Double Taxation Relief (The Government of The Republic of Seychelles) (Amendment) Order 2010

- any conversion of foreign currency into RM or vice versa for the settlement must be undertaken by a licensed onshore bank or an appointed overseas branch of the banking group of a licensed onshore bank; and
 - any remittance abroad must be made in foreign currency.
 - A resident is allowed to issue invoice in RM for its exports or accept an invoice in RM for its imports of goods and services with a non-resident.
 - A non-resident can make payment to or receive payment in RM from a resident for settlement of goods or services through its External Account.
 - For the purpose of settlement of goods and services, a licensed onshore bank is allowed to:-
 - purchase RM vis-à-vis foreign currency on spot or forward basis with a non-resident for payment to be received by a non-resident in RM;
 - sell RM vis-à-vis foreign currency on spot or forward basis with a non-resident for payment to be received by a resident in RM;
 - appoint overseas branches of its banking group to purchase or sell RM vis-à-vis foreign currency on spot or forward basis with a non-resident for payment to be received by a resident;
 - provide any amount of trade financing in RM to a non-resident to finance the purchase or sale of goods or services with a resident.
- ii. Borrowings in Foreign Currency by Residents
- A resident company is allowed to obtain borrowing from a non-resident related company which is not a bank for any amount of borrowings in foreign currency. Related company includes the ultimate holding, parent/head office, subsidiary/branch, associate or sister (common shareholder) company.
 - However, the borrowing will be limited to the aggregate amount of RM100 million equivalent if it is obtained from the non-resident non-bank related company which is set up solely for the purpose to obtain foreign currency loans from a non-resident financial institution.

iii. Anticipatory Hedging by Residents

The limit which caps the amount of hedging by residents (with the licensed onshore banks and licensed international Islamic banks) for anticipated current account transactions to the cumulative amount received or paid in the preceding 12 months is abolished.

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