Tax Flash

January 2011

Hyperlinks

Advent Consulting Group
Inland Revenue Board

Tax Exemption on Income Received from Sale of CER

Income Tax (Exemption) (No. 2) Order 2010

Following the 2011 Budget announcement, the Income Tax (Exemption) (No. 2) Order 2010 has been gazetted to exempt a company resident in Malaysia from payment of tax in respect of income received from the sale of certified emission reduction ["CER"] from an activity of clean development mechanism project approved by the Ministry of Natural Resources and Environment.

The amount of income to be exempted shall be the gross income from the sale of CER less any revenue expenditure incurred in obtaining the CER. The expenditure shall be deemed to be incurred in the basis period for a year of assessment ["YA"] in which the income from the sale of CER is received by the company.

A separate record for the income exempted is required to be maintained by the company.

The above Order shall have effect from the YA 2011 until YA 2012.

Double Deduction for Premium for Export Credit Insurance Based on Takaful Concept

Income Tax (Deduction for Premium for Export Credit Insurance Based on Takaful Concept) Rules 2010

Pursuant to the Income Tax (Deduction for Premium for Export Credit Insurance Based on Takaful Concept) Rules 2010, a double deduction of the amount of premium incurred for export credit insurance based on takaful concept and paid to a company approved by the Minister of Finance shall be allowed in arriving at the adjusted income of a person from its business.

The above Rules shall have effect from the YA 2011.

Stamp Duty on Service Agreements

Stamp Duty (Remission) (No. 4) Order 2010

Pursuant to the Stamp Duty (Remission) (No.4) Order 2010, service agreements executed on or after 1st January 2010 will be subject to stamp duty at *ad valorem* rate of 0.1% on the value of the service agreement.

For multi-tier service agreements, *ad valorem* duty of 0.1% will be levied at one level only. The *ad valorem* duty of 0.1% will be imposed on:-

i. the first tier for service agreements executed between a private entity and the service provider; or

ii. the second tier for service agreements executed between an entity which is exempted from payment of stamp duty (e.g. the Government of Malaysia) and the service provider.

The service agreements for other tiers will be subject to stamp duty at the fixed rate of RM50 and the excess duty will be remitted.

The above Order shall have effect from 1st January 2011.

Stamp Duty Exemption on Loan Agreements to Purchase Residential Properties

Stamp Duty (Remission) (No. 2) Order 2010

Following the 2011 Budget announcement, the Stamp Duty (Remission) (No. 2) Order 2010 has been gazetted to provide 50% stamp duty exemption on loan agreement to a Malaysian citizen for the purchase of only one residential property (i.e. a house, a condominium unit, an apartment or a flat) costing not more than RM350,000. This exemption is given on the conditions that:-

i. the sale and purchase agreement is executed from 1st January 2011 to 31st December 2012;

ii. the purchaser must not own any other residential property or part thereof at the date of execution of the sale and purchase agreement; and

iii. the application of this exemption can only be made once and applicable to co-purchasers.

Stamp Duty Exemption on Instruments of Transfer of Ownership for Residential Properties

Stamp Duty (Remission) (No. 3) Order 2010

Following the 2011 Budget announcement, the Stamp Duty (Remission) (No. 3) Order 2010 has been gazetted to provide 50% stamp duty exemption on any instrument of transfer to a Malaysian citizen for the purchase of only one residential property (i.e. a house, a condominium unit, an apartment or a flat) costing not more than RM350,000. This exemption is given on the conditions that:-

i. the sale and purchase agreement for the purchase of the residential property is executed from 1st January 2011 to 31st December 2012;

ii. the purchaser must not own any other residential property or part thereof at the date of execution of the sale and purchase agreement; and

iii. the application of this exemption can only be made once and applicable to co-purchasers.

Double Taxation Relief (The Government of the Lao People's Democratic Republic) Order 2010

Double Tax Relief (The Government of the Lao People's Democratic Republic) Order 2010

The Double Tax Agreement ["DTA"] between Malaysia and the Lao People's Democratic Republic has recently been gazetted. Salient points of the DTA include:-

i. A building site, a construction, installation or assembly project will constitute a permanent establishment ["PE"] if it exists for more than 6 months.

ii. A PE is also deemed to exist if supervisory activities are carried out for more than 6 months in connection with a building site or a construction, installation or assembly project.

iii. The withholding tax rate applicable on certain payments are as follows:-

- Dividends – 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the share capital or 10% in all other cases *(Note)*
- Interest – 10%
- Royalties – 10%
- Technical fees – 10%
- Section 4(f) income – 10%

The above DTA will enter in force upon ratification.

Note : Currently, there is no withholding tax on outbound dividends under the Malaysian Income Tax Act 1967.

DTA Between Malaysia and Germany Enters into Force

The new DTA between Malaysia and Germany which was signed on 23rd February 2010 has entered into force on 21st December 2010. The provisions of the DTA shall have effect for the YA:-

- beginning on or after 1st January 2011 in respect of income tax; and
- beginning on or after 1st January 2012 in respect of petroleum income tax.

Salient points of the DTA are provided in our April 2010 issue of Tax Flash.

Tax Flash – April 2010

DTA Between Malaysia and San Marino Enters into Force

The DTA between Malaysia and San Marino which was signed on 19th November 2009 has entered into force on 28th December 2010. The provisions of the DTA shall have effect for the YA:-

- beginning on or after 1st January 2011 in respect of income tax;
- beginning on or after 1st January 2012 in respect of petroleum income tax.

Salient points of the DTA are provided in our November 2010 issue of Tax Flash.

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