MOORE Advent

TAX FLASH

DECEMBER 2020

In this Issue

- Moore Malaysia
- Moore Global
- Inland Revenue Board

PR No. 9/2020 – Taxation of Trusts

The Inland Revenue Board ["IRB"] has recently issued the *Public Ruling ["PR"] No. 9/2020 – Taxation of Trusts* to provide guidance on the taxation of trusts including the ascertainment of a trust beneficiary's statutory income from the trust.

Salient points of the abovementioned PR include:-

i. Creation of a trust
   - Legal transfer of ownership of property / assets
     - A trust is an arrangement created when there is a legal transfer of ownership by the owner of property/assets (settlor) to an appointed person (trustee) with instructions that the trustee holds and manages the property/assets for the benefit of specified person (beneficiaries)

- Not a separate legal entity
  - A trust is not a separate legal entity but an equitable obligation, binding a person (trustee) to deal with the property/assets for the benefit of specified person (beneficiaries)
- Created by living person or in the event of death
  - A trust may be created during the lifetime of a settlor or shortly after the death of a settlor
- Deed of family arrangement
  - Beneficiaries may collectively decide to make some arrangement for the benefit of one of the beneficiaries

ii. Chargeable person
- For the purpose of tax, a trustee or trustees of a trust is a trust body. A trust body of a trust is treated as chargeable person that is subject to all the provisions under the Income Tax Act 1967 ["the Act"] except for Part VIII – Offense and Penalties (other than Section 122 of the Act)
- The income of a trust body is assessed and charged to tax separately from the income of a beneficiary from any source of his in relation to the trust, whether or not that beneficiary is also a trustee member of the trust body

iii. Tax Treatment of a Trust Body
- A trust body is subject to tax on all income accrued in or derived from Malaysia at the prevailing tax rate of 24% [effective year of assessment ("YA") 2016]
- Foreign source of income received by the trust is exempted from tax by virtue of Section 28, Schedule 6 of the Act
- Expenses wholly and exclusively incurred in the production of the income are deductible by virtue of Section 33(1) of the Act subject to any specific prohibition under Section 39 of the Act
- Remuneration paid to a trustee for the management and administration of the trust is not deductible as it is not considered to be "wholly and exclusively incurred in the production of income" unless it can be proven that the trustee is directly involved in carrying on the business of the trust
- The total income of a trust body for a year of assessment is subject to tax regardless whether a share of that total income may be deemed (under Section 61 or 62 of the Act) to be the statutory income of a beneficiary. Where a share of the total income of the trust body (which is resident) for a year of assessment is deemed to be the statutory income of a beneficiary (who is resident), the Director General of Inland Revenue ["DGIR"] may, in ascertaining the chargeable income of the trust body for that year of assessment, deduct from the total income of the trust body that share of the beneficiary. In other words, income derived from trust would not be taxed more than once i.e. either taxed in the hands of the trust itself or the beneficiaries

iv. Residence Status
- A trust body that is resident in Malaysia will enjoy the following tax treatment:-
  - May deduct from its total income, the beneficiary's share of the total income of the trust body;
  - May deduct any annuity payable to a beneficiary; and
  - Any annuity paid by a trust body of a trust that is resident to its beneficiaries is deemed to be derived from Malaysia, whether or not the trust body has any total income in the relevant year of assessment

v. Beneficiary of a Trust
- A beneficiary is subject to tax in respect of any income of his from his ordinary source or further source (foreign source)
- Income from ordinary source means entitlement of a beneficiary at any time and from time to time to any income from a trust is deemed to be a source of his in relation to the trust. A beneficiary's share of any total income of the trust body of the trust for a year is deemed to be his statutory income from his ordinary source for that year

- Income from further source (foreign source) derived if the total amount of all income received in Malaysia or outside Malaysia by a beneficiary from the trust body of a trust exceeds the amount of statutory income from the beneficiary's ordinary source in relation to the trust for that year of assessment
- A further source income of a resident beneficiary is exempted from tax by virtue of Section 28 of Schedule 6 of the Act
- A further source income received by a non-resident beneficiary would not be subject to tax as it is not derived from Malaysia
- The beneficiary's entitlement to the total income in the basis year for a year of assessment will be taxed on the beneficiary irrespective whether the beneficiary has received that income or not
- Income derived from trust would not be taxed more than once i.e. either taxed in the hands of the trust itself or the beneficiaries
    - A set-off under Section 110(8) of the Act is allowed if the beneficiary's share of the total income from the trust body has been taxed at the trust body level
    - Set-of under Section 110(8) of the Act would not be available if the beneficiary's share of the total income has been deducted from the total income in arriving at chargeable income of the trust body

vi. Filing of Income Tax Return Form
- The trust body of a trust is required to submit the Income Tax Return Form (Form TA) for the relevant year of assessment and pay the balance of tax payable to the DGIR within seven months from the date following the close of the relevant accounting period.

PR No. 10/2020 – Reinvestment Allowance Part I – Manufacturing Activity

The IRB has recently issued the *PR No. 10/2020 – Reinvestment Allowance ["RA"] Part I – Manufacturing Activity* to provide guidance on eligibility to claim RA by a company resident in Malaysia and engaged in manufacturing activities. This PR replaces the PR No. 9/2017 dated 22nd February 2017 mainly to incorporate some minor changes to the examples and the latest amendments.

Pertinent amendments included in the abovementioned PR are as follows:-

i. Limitation of maximum period to absorb RA balances
- Prior to YA 2019, any unabsorbed RA in a year of assessment can be carried forward and deducted against the statutory income from the business of the qualifying project in the subsequent years of assessment until it is fully absorbed
- Commencing from YA 2019:-
    - The unabsorbed RA can only be carried forward for a maximum period of 7 consecutive years of assessment upon expiry of the qualifying period of 15 years
    - Any unabsorbed allowances remaining at the end of the 7 consecutive years of assessment will be disregarded
    - For business that still have unabsorbed RA as at the end of YA 2018 but the qualifying period of 15 years has ended prior to that, these unabsorbed RA can be carried forward for a maximum period of 7 consecutive years of assessment i.e. until YA 2025. Any balance of unabsorbed RA after the end of YA 2025 will be disregarded

Note: *For further information relating to RA claim for manufacturing activities in the PR No. 9/2017, please refer to our Tax Flash – January 2018 issue.*

PR No. 11/2020 – Reinvestment Allowance Part II – Agricultural and Integrated Activities

The IRB has recently issued the *PR No. 11/2020 – RA Part II – Agricultural and Integrated Activities* to provide guidance for a resident company engaged in agricultural and integrated activities in ascertaining the eligibility for RA claim. This PR replaces the PR No. 10/2017 dated 22nd December 2017 with minor changes to the examples and incorporation of the latest amendments.

Pertinent amendments included in the abovementioned PR are as follows:-

i. Unabsorbed RA
- Prior to YA 2019, any unabsorbed RA can be carried forward and deducted against the portion of statutory income from the business in respect of the qualifying project until it is fully absorbed
- Commencing from YA 2019:-
  - The unabsorbed RA can only be carried forward for a maximum period of 7 consecutive years of assessment to be absorbed
  - The calculation of the maximum period of 7 consecutive years of assessment begins immediately after the expiry of the qualifying period for RA
  - Any RA balances that is unabsorbed after the end of that 7 consecutive years of assessment will be disregarded
  - In situations where the RA qualifying period of 15 years has ended prior to YA 2019, any unabsorbed RA as at the end of YA 2018 will be allowed to be carried forward for a maximum period of 7 consecutive years of assessment i.e. until YA 2025. Any balance of unabsorbed RA after the end of YA 2025 will be disregarded

ii. Claim Procedure
- A claim for RA must be made in the related Income Tax Return Forms
- No written approval from the IRB is required for RA claims. However, the RA claim must be recorded in the RA claim form
- The original copy the RA claim form and all relevant documents related to the claim are to be kept by the claimant

Note: *For further information relating to RA claim for agriculture and integrated activities in the PR No. 10/2017, please refer to our Tax Flash – January 2018 issue.*

PR No. 12/2020 – Tax Incentive for Angel Investor

The IRB has recently issued the *PR No. 12/2020 – Tax Incentive for Angel Investor* to provide guidance on tax incentive given to an angel investor who has invested in a qualified investee company. This new PR replaces the PR No. 11/2015 issued on 16th December 2015 with incorporation of amended examples and the following updates:-

i. Criteria for Angel Investor
- Extension of the period up to 31st December 2023 is granted for an angel investor to make an application to the Minister of Finance to make an investment in an investee company

ii. Tax Incentive
- The amount of tax exemption given to the angel investor in the basis period for a year of assessment is equal to the amount of investment made by the angel investor in the investee company where the minimum investment must be RM5,000 per annum and not more than RM500,000

Note: *For further information on the previous PR No. 11/2015, kindly refer to our Tax Flash – February 2016 issue.*

Review of Tax Exemption for Export of Private Healthcare Services

Currently, taxpayers providing qualifying services are eligible for exemption of tax equivalents to 50% of the value of increased exports from the export of such qualifying services to foreign clients under the Income Tax (Exemption) (No.9) Order 2002. The exemption can be set-off against up to 70% of statutory income.

Following the Budget 2018 announcement, the *Income Tax (Exemption) (No.9) 2002 (Amendment) Order 2020* has been gazetted to provide for tax exemption equivalents to 100% of the value of increased exports of services derived from the export of healthcare services to foreign clients, subject to the following conditions:-

- at least 10% of the total patients consist of foreign clients who have obtained private health care services in each year of assessment; and
- at least 10% of the gross income is derived from foreign clients who have obtained private health care services in each year of assessment.

For the above purposes, "**qualifying services**" means services which are provided to foreign clients, from Malaysia, and in relation to the provisions of private health care and private education, the services to be provided to foreign clients are to be provided either in Malaysia, or provided from Malaysia.

The above amendment Order is deemed to have come into operation from the YA 2018 to YA 2020.

Prescribed Fees under Schedule 5 (Appeals) to the Act

The *Income Tax (Prescribed Fees under Schedule 5 to the Act) Rules 2020* has been gazetted to provide the prescribed fees payable under Schedule 5 (Appeals) to the Act as below:

i. The filing of a notice of appeal to the High Court [Paragraph 34 of Schedule 5]
   - RM200,000 in respect of each deciding order against which an appeal is lodged

ii. Cost of notes of proceedings [Paragraph 37A of Schedule 5]
   - In the form of printed copy
     - RM2.00 per page for the first copy
     - RM1.00 per page for the second or subsequent copy
   - In the form of compact disc
     - RM10.00 per unit

iii. Copy of any document filed during the proceedings before the Special Commissioner [Paragraph 37A of Schedule 5]
   - RM2.00 per page

iv. Copy of grounds of decision from the Special Commissioner for the purpose of authorized publication [Paragraph 43(2) of Schedule 5]
   - RM5.00 per page

With the gazette of the above Rules, the Income Tax (Prescribed Fees under Schedule 5 to the Act) Rules 1998 are revoked.

The above Rules come into operation on 25th September 2020.

Stamp Duty Exemption on Loan or Financing Facility Between Bank Negara Malaysia and Financial Institution under the Special Relief Fund for SME

The *Stamp Duty (Exemption) (No.6) Order 2020* has been gazetted to provide exemption from stamp duty for loan or financing facility between Bank Negara Malaysia and a participating financial institution for the purposes of the Special Relief Fund under the Bank Negara Malaysia's Fund for small and medium enterprises ["SME"].

For the above purposes, "SME" has the meaning assigned to it in Section 2 of the SME Industries Development Corporation Act 1995.

The above exemption applies to the instrument of loan or financing agreement which is executed on or after 1st June 2020 but not later than 31st December 2020.

Service Tax (Amendment) Bill 2020

The *Service Tax (Amendment) Bill 2020* was tabled for first reading on 10th December 2020. We wish to highlight the following salient points extracted from the Service Tax (Amendment) Bill 2020.

i. Inclusion of New Definitions for "Goods" and "Conveyance"
   - "Goods" means all kinds of movable property.
   - "Conveyance" includes any vessel, train, vehicle, aircraft or any other means of transport by which persons or goods can be carried.

ii. Amendment to Section 18(1) of the Service Tax Act 2018 ["the SET Act"] – Cessation of liability to be registered
   - The proposal involves replacing the word "succeeding" with "preceding".
   - The proposed amendment seeks to replace the adoption of "future method" with "historical method" in calculating the total value of all taxable services in a period of 12 months for the purpose of determining whether a registered person shall cease to be liable to be registered at the end of any month.

iii. Introduction of Section 20A to the SET Act – Variation of Registration
   - The proposed introduction of this new provision seeks to empower the Director General ["DG"] to vary the person's registration or the particulars of the person's registration from the date the registered person ceased to carry on the business of providing any taxable service.
   - The above empowerment will be exercised by the DG if:-
     - the registered person makes a notification of cessation of liability under Section 19 of the SET Act; or
     - the DG is satisfied that the registered person has ceased to provide any taxable service or has ceased to be liable to be registered, even though no such notification is made by the registered person.
   - Where the DG is satisfied that on the day on which the person was registered, he was not providing any taxable service or has ceased to provide any taxable service, the DG may vary the registration of such person or the particulars of registration of such person with effect from the date so determined by the DG and notification in writing will be served by the DG to such person.

iv. Introduction of Section 34A to the SET Act – Refund by Deduction of Service Tax

- The proposed Section 34A(1) seeks to empower the DG to direct any registered person to deduct the amount of refund due to him against the amount of service tax to be paid from his service tax return if the registered person has been granted refund of service tax or has made a deduction under the SET Act, as summarised below:-
  - the registered person has been granted refund of service tax via a ministerial direction under Section 34(3)(b); or
  - the registered person has made a deduction under Section 23, for instance, via issuance of credit notes; or
  - the registered person has been approved by the DG under Section 39 to deduct from his return the amount of service tax paid but subsequently refunded to his customers.
- The proposed Section 34A(2) seeks to provide that any balance in excess of the deduction made under the proposed Section 34A(1) shall be refunded to the registered person by the DG.
- The proposed Section 34A(3) seeks to empower the DG to withhold the whole or any part of any amount refundable mentioned in the preceding paragraph to be credited to any following or subsequent taxable period as the DG deems appropriate.

v. Removal of Exception Clause under Section 40 of the SET Act – Remission of Service Tax, etc

- The proposed amendment seeks to delete subsection (4) of Section 40.
- With the proposed deletion, remission of service tax, surcharge, penalty, fee or other money payable will be extended to a foreign registered person and any such amount paid by the foreign registered person will be refunded upon granting of the remission.

vi. Introduction of Section 56A(4A) to the SET Act – Invoice Basis for Service Tax on Digital Services

- The proposed introduction of this new provision seeks to empower the DG, upon application in writing by any foreign registered person and subject to fulfillment of the stipulated conditions, to approve service tax in respect of digital services provided by the foreign registered person to be due at the time the invoice is issued.

vii. Introduction of Section 56GA to the SET Act – Credit Notes and Debit Notes

- The proposed introduction of this new provision allows the foreign registered person to make deduction or addition of service tax in his returns upon issuance or receipt of valid credit notes or debit notes under the prescribed circumstances and conditions.

viii. Introduction of Section 56H(4A) to the SET Act

- The proposed introduction of this new provision seeks to require a foreign registered person who ceases to be liable to be registered under Section 56D to furnish a return not later than 30 days or such later date containing particulars as the DG may determine in respect of that part of the last taxable period during which the foreign registered person was registered.

ix. Introduction of Section 73A to the SET Act – Improperly Obtaining Deduction of Service Tax

- The proposed introduction of this new provision seeks to penalise a person who commits an offence for improperly obtaining a deduction of service tax under Section 23, 34A or 39 mentioned in (iv) above.
- Any person who commits an offence shall, upon conviction, be liable to:-
  - a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 3 years or to both; and
  - a penalty of 2 times the amount deducted in excess of the amount properly so deductible.

Sales Tax (Amendment) Bill 2020

The *Sales Tax (Amendment) Bill 2020* was tabled for first reading on 10th December 2020 and the following salient points are worth highlighting.

i. Amendment to Section 17(1) of the Sales Tax Act 2018 ["the SAT Act"] – Cessation of liability to be registered
   - In tandem with the proposed amendment for service tax mentioned in (ii) above, the similar amendment is introduced in the SAT Act which seeks to replace the "future method" with the "historical method" in calculating the total sales value of all taxable goods in a period of 12 months for the purpose of determining whether a registered manufacturer shall cease to be liable to be registered or not

ii. Introduction of Section 35A to the SAT Act – Refund by Deduction of Sales Tax
   - The proposed Section 35A(1) seeks to empower the DG to direct any registered manufacturer to deduct the amount of refund against the amount of sales tax to be paid from his sales tax return if the registered manufacturer has been granted refund of sales tax or has made a deduction under the SAT Act, as summarised below:-
     - the registered manufacturer has been granted refund of sales tax via a ministerial direction under Section 35(3)(c); or
     - the registered manufacturer has made a deduction under Section 23, for instance, via issuance of credit notes; or
     - the registered manufacturer has been approved by the DG under Section 41A to deduct from his return the amount of sales tax incurred in respect of acquisition of taxable goods such as raw materials, components, or packing and packaging materials used solely in the manufacturing of taxable goods.
   - The proposed Section 35A(2) seeks to provide that any balance in excess of the deduction made under the proposed Section 35A(1) shall be refunded to the registered manufacturer by the DG.
   - The proposed Section 35A(3) seeks to empower the DG to withhold the whole or any part of any amount refundable mentioned in the preceding paragraph to be credited to any following or subsequent taxable period as the DG deems appropriate.

iii. Amendment to Section 88A of the SAT Act – Improperly Obtaining Deduction of Sales Tax
   - The proposed amendment aims at penalising a person who commits an offence for improperly obtaining a deduction of sales tax under Section 23, 35A or 41A mentioned in (ii) above. Upon conviction, the person will be liable to the similar fine and penalty as well as terms of imprisonment as provided for under the proposed Section 73A to the SET Act mentioned in (ix) above.