



Tax Flash



June 2011

PR No. 5/2011 – Residence Status of Companies and Bodies of Persons

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 5/2011 – Residence Status of Companies and Bodies of Persons. This PR provides guidance on the determination of the residence status of companies and bodies of persons.

Salient points of the abovementioned PR include:-

- i. The distinct differences in the tax treatment of resident company/bodies of persons and non-resident company/bodies of persons
- ii. Companies or bodies of persons carrying on a business
 - Section 8(1)(b) of the Income Tax Act 1967 [“the Act”] provides that a company or a body of persons (not being a Hindu Joint Family) carrying on a trade or business is resident in Malaysia for the basis year for a year of assessment [“YA”] if at any time during the basis year, the management and control of its business or of any one of its businesses are exercised in Malaysia.
 - Management and control refers to the controlling authority which determines the policies to be followed by the company. The management and control is considered to be exercised if a meeting is held with the presence of directors for conducting the company’s businesses or affairs irrespective of where the company might be incorporated.
- iii. Any other company or body of persons
 - Section 8(1)(c) of the Act provides that any other company or body of persons (not being a Hindu Joint Family) is resident in Malaysia for the basis year for a YA if at any time during the basis year, the management and control of its affairs are exercised in Malaysia by its directors or other controlling authority, e.g. a board of management / directors.

Hyperlinks

Advent Consulting Group
Inland Revenue Board

References

PR No. 5/2011



iv. A subsidiary or a branch of a foreign company in Malaysia

- The residence status of subsidiaries of foreign corporations is determined based on Sections 8(1)(b) and 8(1)(c) of the Act. The branches of foreign corporations in Malaysia are generally treated as non-residents in Malaysia unless it can be established that the management and control of its affairs or of its businesses or of any one of its businesses is exercised in Malaysia.

v. Trust bodies

- Pursuant to Section 61(3) of the Act, a trust body is deemed as a resident in Malaysia for the basis year for a YA only if any trustee of the trust is a resident in that basis year. However, a trust body will not be regarded as a resident if:-
 - the trust was created outside Malaysia by a person or persons who were not Malaysian citizens;
 - the income of that trust body for that basis year is wholly derived from outside Malaysia;
 - the trust is administered for the whole of that basis year outside Malaysia; and
 - at least one-half of the number of the member trustees are not resident in Malaysia for that basis year.

The above PR takes effect from the YA 2011.

PR No. 6/2011 – Residence Status of Individuals

The IRB has recently issued the PR No. 6/2011 – Residence Status of Individuals which provides guidance on the determination of residence of status for an individual. Generally, the residence status of an individual for the basis year for a YA is determined by reference to the physical presence of that individual in Malaysia under 4 sets of circumstances in accordance with Section 7(1) of the Act.

For a Malaysian citizen who is employed in the public services or service of a statutory authority, he would be deemed to be a resident in Malaysia under Section 7(1B) even if he is not in Malaysia at any day in the basis year for a particular YA by reason of:-

- having or exercising his employment outside Malaysia; or
- attending any course of study in any institution or professional body outside Malaysia which is fully sponsored by the employer.

The above PR takes effect from the YA 2011 and replaces Appendix A of the PR No. 2/2005 issued on 6th June 2005.

PR No. 6/2011



Tax Exemption on Gains or Profits Received from Investment in Islamic Securities

Pursuant to the Income Tax (Exemption) (No. 2) Order 2011, an individual, unit trust or listed close-end fund is exempted from payment of income tax in respect of any gains or profits received from the investment in Islamic securities, other than convertible loan stock, which are issued in accordance with the principles of *Mudharabah*, *Musarakah*, *Ijarah*, *Istisna'* or any other principle approved by the *Shariah* Advisory Council established by the Securities Commission.

Withholding tax under Section 109 of the Act will not apply to any gains or profits derived by a non-resident individual, unit trust or listed close-end fund.

This Order is deemed to have effect from the YA 2007 until YA 2009.

Tax Exemption for Approved Food Production Project

Pursuant to the Income Tax (Exemption) (No. 3) Order 2011, a qualified person (which includes companies, sole proprietorships, partnerships and associations solely engaged in agriculture or fishery) resident in Malaysia is exempted from the payment of income tax in relation to:-

- a new project for a period of 10 consecutive YA ["exempt YA"] in respect of its statutory income, commencing from the first YA in which the qualified person derived statutory income in relation to that project; or
- an expansion project for a period of 5 consecutive YA ["exempt YA"] in respect of its statutory income from its existing and expansion projects, commencing from the first YA in which the qualified person derived statutory income in relation to the existing and expansion projects, and the first YA shall not be earlier than the YA in the basis period in which the date of approval from the relevant Minister falls.

Any amount of adjusted loss incurred prior to and during the exempt YA shall be carried forward and deducted against the statutory income of the project in its post-exempt YA until the whole amount of the adjusted loss is fully utilised.

The above incentive shall apply to a new project or expansion project in an approved food production project:-

- for which the application is made to the Minister through Minister charged with the responsibility for that project, on or after 1st October 2005 but not later than 31st December 2015;
- which has not commenced at the date the application is made to the Minister; and
- which commences within a year from the date of approval given by the Minister.

Income Tax (Exemption)
(No. 2) Order 2011

Income Tax (Exemption)
(No. 3) Order 2011



“Approved food production project” means a project in relation to:-

- planting of kenaf, vegetables, fruits, herbs or spices;
- aquaculture;
- rearing of cows, buffaloes, goats or sheep; or
- deep sea fishing

which is deemed to be as a separate and distinct business.

In addition, certain other conditions have to be met in order to be eligible for the above incentive.

This Order is deemed to come into operation on 1st October 2005.

Tax Deduction for Investment in Approved Food Production Project

Pursuant to the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2011, for the purpose of ascertaining the adjusted income of a company which has made an investment in its related company undertaking a new approved food production project under the Income Tax (Exemption) (No. 3) Order 2011, there shall be allowed as a deduction in the basis period for a YA an amount equivalent to the value of investment for the sole purpose of financing the project.

“Related company” means a company incorporated under the Companies Act 1965 where at least 70% of its paid-up share capital in respect of ordinary shares is directly owned by a company that made an investment for the purpose of an approved food production project.

Among others, it should be noted that:-

- The value of investment which is claimed as a deduction shall be equivalent to the expenditure incurred by the related company in the basis period for the same YA and is made for a period and up to an amount as approved by the Minister;
- The deduction to the company shall cease in the basis period for a YA in which the period of exemption of the related company commences;
- The investment in the form of holding of paid-up share capital in respect of ordinary shares of the related company shall not be disposed of within 5 years from the date of the last investment made.
- The amount of consideration for disposal of such shares within the 5-year period shall be brought to tax (restricted to the total deduction allowed) in the basis period in which that amount is received by the company.

The above Rules are deemed to have come into operation on 1st October 2005.

Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2011



Tax Deduction for Contribution to Universal Service Provision Fund

Pursuant to the Income Tax (Deduction for Contribution to Universal Service Provision Fund) Rules 2011, the amount of contribution made by a licensee to the Universal Service Provision Fund shall be allowed as deduction in arriving at the adjusted income of the licensee resident in Malaysia from its business of providing designated services under the Communications and Multimedia (Universal Service Provision) Regulations 2002. Such deduction must be supported by a verification from the Malaysian Communications and Multimedia Commission specifying the amount of contribution required to be paid and the date the contribution is due.

The above Rules shall be deemed to have effect from the YA 2002.

Updated List of Certification Bodies

The IRB has recently issued an updated list of certification bodies accredited for the purpose of issuing certification for recognised quality systems and standards, and *halal* certification to companies in relation to the claim for double deduction of expenses incurred on obtaining such certifications under Section 34(6)(ma) of the Act.

Revised Guidelines on RPGT

The IRB has issued revised Guidelines on Real Property Gains Tax ["RPGT"] on 5th May 2011 with inclusion of additional examples, information and minor correction etc. to an earlier guidelines issued on 2nd February 2010. However, there are no significant changes in tax treatment.

Income Tax (Deduction for Contribution to Universal Service Provision Fund) Rules 2011

List of Certification Bodies

Guidelines on RPGT (Revised)



Protocol to Amend the Article on Exchange of Information - Double Taxation Agreement between Malaysia and Bahrain

The protocol signed between Malaysia and Bahrain pertaining to the article on Exchange of Information ["EOI"] has recently been gazetted. The new article on EOI is 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.

Double Taxation Relief
(The Government of The
Kingdom of Bahrain)
(Amendment) Order 2011

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