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EY Tax Alert

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Malaysian developments

Tax deduction for secretarial and tax filing fees

Currently, expenses incurred on secretarial and tax filing fees are given a tax deduction of up to RM5,000 and RM10,000 respectively for each year of assessment (YA), under the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [P.U. (A) 336].

In Budget 2020, to provide additional flexibility to taxpayers, it was proposed that the tax deduction limit for secretarial and tax filing fees be combined, such that a total deduction of up to RM15,000 per YA be allowed for both expenses from YA 2020 onwards (see *Special Tax Alert: Highlights of Budget 2020*).

To legislate this proposal, the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [P.U.(A) 162] were gazetted on 19 May 2020. The Rules provide a deduction, capped at RM15,000 per YA, to a resident person who has incurred and paid the following fees in the basis period for that YA:

(a) Secretarial fee charged in respect of secretarial services provided by a company secretary registered under the Companies Act 2016 (CA), to comply with the statutory requirements under the CA; and

(b) Tax filing fee charged by:

(i) A tax agent approved under the Income Tax Act 1967 (ITA) in respect of services provided for the:

- Preparation and submission of income tax returns in the prescribed form for the purposes of Sections 77, 77A, 77B, 83 and 86 of the ITA for the basis period for the immediate-preceding YA; and
- Preparation and submission of forms prescribed for the purpose of the estimate of tax payable under Section 107C of the ITA

(ii) A person in respect of services provided for the preparation and submission of returns in the prescribed form for the purposes of:

- Section 26 of the Sales Tax Act 2018;
- Section 26 of the Service Tax Act 2018;
- Section 19 of the Departure Levy Act 2019; or
- Section 19 of the Tourism Tax Act 2017

With this, the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [P.U. (A) 336] are revoked.

The new 2020 Rules are effective from YA 2020.

Stamp duty exemption on transfer of real property to a trustee of a Real Estate Investment Trust or a Property Trust Fund

Currently, an exemption from stamp duty is granted on the instrument of transfer of real property to a Real Estate Investment Trust (REIT) or Property Trust Fund (PTF) which is approved by the Securities Commission. This exemption is provided by way of the Stamp Duty (Exemption) (No. 4) 2004 [P.U. (A) 21] (see *Tax Alert No. 2/2004*). This Order is effective from 13 September 2003.

The above-mentioned Order was amended via the (Stamp Duty (Exemption) (No. 4) Order 2004) (Amendment) Order 2020 [P.U. (A) 154] which was gazetted on 19 May 2020. The following paragraph was introduced to replace Paragraph 2 of the earlier Order:

“All instruments of transfer of real property to **a trustee, of** a REIT or a PTF approved by the Securities Commission Malaysia, are exempted from stamp duty.”

The new paragraph now specifically refers to the “trustee of a REIT or a PTF”, as the trustee would be the registered legal owner of the properties of the REIT or PTF.

The Amendment Order is deemed to be effective retrospectively from 13 September 2003 (i.e. the effective date of the original Order).

Overseas developments

Hong Kong conducts compulsory spontaneous exchange of information for certain tax rulings

Hong Kong's Inland Revenue Department (IRD) recently issued a revised practice note (Revised DIPN 31) which explains that the IRD is now required to spontaneously furnish to the tax authorities of certain foreign jurisdictions any of the following four categories of tax rulings issued by the IRD:

- (i) Rulings related to preferential tax regimes
- (ii) Unilateral Advance Pricing Arrangements and any other cross-border unilateral rulings in respect of transfer pricing
- (iii) Permanent establishment (PE) rulings
- (iv) Related party conduit rulings

IRD rulings on offshore claims in Hong Kong are not in-scope rulings

Revised DIPN 31 indicates that tax rulings in respect of Hong Kong offshore claims are not in-scope rulings that are required to be spontaneously exchanged as they do not fall within the four specified categories.

Jurisdictions to be provided with in-scope tax rulings

Information on in-scope tax rulings will be spontaneously exchanged by the IRD with the tax authorities of the resident jurisdictions of all of the following:

- (i) All related parties with which the taxpayer has entered into a transaction for which a ruling is granted. In the case of a PE ruling, the ruling is required to be exchanged with the residence jurisdiction of the head office or the jurisdiction of the PE, as the case may be
- (ii) The taxpayer's ultimate parent company
- (iii) The taxpayer's immediate parent company

Legal framework for exchange of in-scope tax rulings

In-scope rulings can be exchanged within the framework of either: (i) Hong Kong's network of tax treaties; or (ii) the Multilateral Convention on Mutual Administration Assistance on Tax Matters.

Turkey collects Digital Services Tax payments

A Digital Services Tax (DST) has been levied for the first time in Turkey.

DST return filings and payments for the first taxation period (March 2020) have been made by taxpayers subject to the DST, who exceed the thresholds in the 2019 accounting period. Filings and payments were made through the following link:

<https://digitalservice.gib.gov.tr> by the last day of April.

The website is still accessible for tax registrations, filings and payments for those who have not yet filed.

Detailed discussion

Consequences of failing to register for DST, file or make payments

Digital service providers or their representatives in Turkey who have not yet filed returns or made payments in accordance with Turkish Tax Procedural Law may be served a notice urging them to comply with their obligations. This notice will be issued based on information obtained through the communication instruments listed on their websites, domain names, IP addresses, and information obtained from similar sources through the notification methods listed under the Law, electronic mail, or any other communication instruments. The notice will also be announced on the Revenue Administration's website.

- ▶ If the obligation of declaration and payment are not met within 30 days following the announcement, the Ministry of Treasury and Finance may block access to the services provided by these service providers until the obligations are fulfilled. This decision will be sent to the Information and Communication Technologies Authority in order to notify the access providers. Decisions to block access would be executed 24 hours after the notification had been served to the access providers. In other words, the Treasury and Finance Ministry may block access to the digital services provided by the taxpayer until these obligations are fulfilled.
- ▶ Taxpayers who fail to register for DST, submit returns or make payments on time could also be subject to a tax loss penalty, late payment interest charge and irregularity penalties.
- ▶ Domain(s) and IP(s) related to the digital services rendered
- ▶ Information (title, contact details etc.) of the authorized contact person (if any)
- ▶ Revenue amounts generated in Turkey for each type of taxable digital services
- ▶ Revenue amounts generated worldwide for each type of taxable digital services
- ▶ An assessment of the DST exemption status of the company

For the fiscal year 2020, the thresholds will be monitored by considering the three-month period, cumulatively.

EY can assist with analysis on the applicability of the DST, compliance for online registration and filing for taxpayers who fall within scope and exceed the thresholds. EY can also help with the coordination of the independent audit reports for exempt taxpayers.

Steps to register post-deadline

If the service providers have not yet complied with the requirements, they can immediately complete their compliance requirements on a voluntary basis. If the payments are made within a specific period, penalties may be mitigated.

Requirements to claim exemption from the DST

Digital service providers whose revenue generated from services falling within the scope of the DST exceeds the local threshold (20 million Turkish Liras) in 2019, and who claim to be exempt from the DST, must certify their status by submitting a report. The report is to be furnished in accordance with international auditing standards by independent auditors from at least five different countries, including Turkey, by 30 June following the relevant fiscal period.

This report should include the following information:

- ▶ Full name of the company, contact information (address, phone, e-mail etc.) and partnership information and activities

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Important dates

Note: Please see EY Special Tax Alert No. 11/2020 and EY Special Tax Alert No. 12/2020 for information on the grace periods which have been provided to help businesses cope with the Movement Control Order.

31 May 2020	6 th month revision of tax estimates for companies with November year-end
31 May 2020	9 th month revision of tax estimates for companies with August year-end
31 May 2020	Statutory deadline for filing of 2019 tax returns for companies with October year-end. As a concession, this deadline is extended to 31 August pursuant to the Return Form (RF) Filing Programme for the Year 2020 (Amendment 3/2020) ("updated RF Filing Programme").
15 June 2020	Due date for monthly instalments
30 June 2020	6 th month revision of tax estimates for companies with December year-end
30 June 2020	9 th month revision of tax estimates for companies with September year-end
30 June 2020	Statutory deadline for filing of 2019 tax returns for companies with November year-end. As a concession, this deadline is extended to 30 September 2020 pursuant to the updated RF Filing Programme.

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