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Mustapha Khoo Group of Companies

Greetings from the Managing Partner




The long awaited and eagerly anticipated Malaysia Budget 2011 (Budget 2011) was finally delivered and tabled by Prime Minister/Finance Minister on 15th October 2010. As with all budgets, there are winners and losers, and in Budget 2011 the focus is clearly aligned towards the interests of Corporate Malaysia with some benefits given to the ordinary man in the street.

While many are unhappy with the one percent increase in service tax from 5% to 6%, it has been widely accepted that the Government has to do something to widen the government tax base in view of the postponement of the Goods and Services Tax or GST.

It is also heartening to note that the Government has kept in view the interest and well being of the elderly segments of society by extending the current individual **tax relief** of up to RM5,000 for parents' medical expenses **to cover expenses to care for parents** with effect from year of assessment 2011. These expenses are for parents who suffer from diseases or with physical or mental disabilities and who need regular treatment certified by a qualified medical practitioner and includes treatment and care at home, day care centres or home care centres. The existing tax relief of up to RM5,000 medical expenses for parents are for treatment in clinics and hospitals, treatment in nursing homes and dental treatment and specifically excludes cosmetic dental treatment.

Another notable incentive which can be enjoyed by the ordinary rakyat is the stamp duty exemption allowing first-time Malaysian citizen house buyers **stamp duty exemption of 50%** on instruments of transfer (i.e. **sale and purchase agreement**) and **loan agreement** on a residential house price not exceeding **RM350,000** during 1 Jan 2011 to 31 Dec 2012. The definition of residential property includes a terrace house, condominium, apartment or flat.

Having said all that, we will proceed to the eighth edition of our newsletter. Have a good year ahead.


Stephen Khoo

ANNOUNCEMENT

Audit Oversight Board Registration

We are proud to announce that Mustapha Khoo & Co are now registered with the Malaysian Audit Oversight Board (AOB). Under the Malaysian Securities Commission Act 1963 (SCA) and effective from 1st April 2010, only companies and individuals that are registered with the AOB are allowed to audit the books of public-interest entities.

Under Schedule 1 of the SCA, among the types of entities covered under the definition of public-listed entities includes Public listed companies and corporations that are listed on Bursa Malaysia, Insurance and takaful companies licensed under Insurance Act and Takaful Act as well as licensed financial institutions among others.

Expansion to Labuan

Mustapha, Khoo & Co has been granted approval as an Approved Auditor pursuant to subsection 10 (1) of the Labuan Companies Act 1990 by the Licencing & Legal Division of the Labuan Financial Service Authorities. With this, Mustapha, Khoo & Co is now able to carry out audit services for companies incorporated in Labuan

Sale of BVI & Labuan Companies

Please call Secfin Management (KL) Sdn Bhd if you are sourcing for companies incorporated in British Virgin Island or in Labuan

Review on Penalty for Withholding Tax Payments

Existing Tax Legislation

Prior to 1st January 2011, where a person making payment to a non-resident in respect of contract payments under Section 107A of the Income Tax Act, 1967 (The Act), interest or royalties under Section 109 of the Act and Special Classes of Income (i.e. rental or technical fees) under Section 109B of the Act and fails to deduct the withholding tax due to the Malaysian Inland Revenue Board (MIRB), the maximum penalty which the MIRB is able to impose is up to 10% of the outstanding withholding tax and the entire gross amount being disallowed as a deduction in the income tax computation. Where the taxpayer pays the withholding tax and penalty imposed, the gross amount would then be eligible for deduction.

This in turn have allowed many taxpayers who despite not having paid the withholding tax that due is to claim the entire gross amount as a deduction in tax returns for the year of assessment (YA) in which the expense was incurred.

Proposed Amendments with Effect from 1st January 2011

In addition to the late payment penalty and disallowance of the gross amount of the payment made to the non-resident, the MIRB has proposed to impose a penalty for incorrect returns pursuant to Section 113(2) of the Act for instances where a claim for deduction has been made in the tax returns. This penalty will be imposed immediately after the filing due date of the said returns. The penalty rate for incorrect returns under Section 113(2) is somewhat higher than the normal penalty rate and can reach up to 45% for the first offence on the additional tax payable. Furthermore, section 113(2) allows the MIRB to impose a penalty for incorrect returns equal to 100% of the tax undercharged. The effective date in which the new law takes place is from 1st January 2011 onwards.

Example :

Payer makes payment of technical fee under Section 109B of the Act to a non-resident amounting to RM 1,000.00 in a year of assessment (YA).

Assuming that the rate of withholding tax under Section 109B is 10%.

Total chargeable income for the year for the payer is RM 10,000.00.

The payer has not deducted any withholding tax on the above gross fee paid to the NR but has made the claim for deduction for the RM1,000.00 in the tax return for the said YA.

Tax Implication:-

Prior to 1st January 2011

In the event of a field audit the RM1,000.00 will be disallowed and the total chargeable income for the year would be increased to RM11,000.00 (RM10,000 + RM 1,000.00).

In order to claim the gross amount of technical fees as a deduction, the payer is required to pay the outstanding withholding tax of RM 100.00 (10% X 1,000.00) as well as the late payment penalty of RM 10.00 (10% X RM 100.00)

Total penalty: RM 100.00

After 1st January 2011

Similar to the above, in the event of a field audit, the RM1,000.00 will be disallowed and the total chargeable income for the year is RM11,000.00 (RM10,000 + RM 1,000.00). In order to claim the gross amount of technical fees as a deduction, the payer is required to pay the outstanding withholding tax of RM 100.00 (10% X 1,000.00) as well as the late payment penalty of RM 10.00 (10% X RM100.00)

However, in addition to the late payment penalty for the withholding tax, the MIRB will now impose a penalty for incorrect returns which is computed as follows :-

Assuming that the tax rate is 25%,

Tax payable **prior to the field audit** is RM 10,000 x 25% = RM 2,500.00

Tax payable **after the field audit** is RM1 1,000.00 X 25% = RM2,750.00

Additional tax payable of RM 250.00 (RM2,750.00 – RM2,500.00)

Penalty under Section 113(2) of the Act – 45% x RM 250.00 = RM112.50

Total penalty (for 1st offence) = RM 212.50 (RM 112.50 + RM100.00)

It should be noted that Section 113(2) allows the MIRB to impose a penalty of up to 100% of the tax undercharged which is computed as follows :-

Penalty under Section 113(2) – 100% x RM250.00 = RM250.00

Total penalty (2nd offence onwards) = RM 350.00 (RM250.00 + RM100.00)

Public Ruling No. 2/2010 – Allowable Pre-Operational and Pre-Commencement of Business Expenses

The Malaysian Inland Revenue Board (MIRB) has issued Public Ruling (PR) No. 2/2010 in relation to Allowable Pre-operational and Pre-commencement of Business Expenses on 3rd June 2010 which provides clarification and explanation regarding the tax treatment of pre-operational or pre-commencement of business expenses allowable when a person commences operations or business. The PR No. 2/2010 takes effect from the year of assessment (YA) 2010 and supersedes the PR No. 2/2002 issued on 8th July 2002.

Some of the pertinent changes are as follows:-

i) Incorporation Expenses

[Income Tax (Deduction for Incorporation Expenses) Rules 2003 and Income Tax (Deduction for Incorporation Expenses) (Amendment) Rules 2005]

The maximum authorised share capital requirement for companies to be eligible to claim a deduction for "incorporation expenses" has been increased from RM250,000 (for companies incorporated in Malaysia on or after 1st January 1973 but prior to 13th September 2003) to

RM2,500,000 (for companies incorporated in Malaysia on or after 13th September 2003) (with effect from the YA 2004). The said incorporation expenses incurred shall be deemed to be incurred in the basis period for a YA in which the business commences.

A sole proprietorship or partnership which converts to a private limited company, with an authorised share capital of not exceeding RM2,500,000 is also eligible for the above deduction.

ii) Establishment Expenditure of a REIT or PTF

[Income Tax (Deduction for Establishment Expenditure of Real Estate Investment Trust (REIT) or Property Trust Fund (PTF) Rules 2006]

A REIT or PTF approved by the Securities Commission which has incurred establishment expenditure can claim a tax deduction of such expenditure against its gross income (with effect from the YA 2006).

Establishment expenditure that can be allowed as a deduction are legal, valuation and consultancy fees for purpose of establishing the unit trust prior to approval by the SC. The expenditure incurred by the unit

trust shall be deemed to have been incurred in the basis period for a year of assessment in which the business of that unit trust commenced.

iii) Establishment Expenditure of an Islamic Stock Broking Company

[Income Tax (Deduction on Expenditure for Establishment of an Islamic Stock Broking Business) Rules 2007]

An Islamic stock broking company qualifies for the deduction of establishment expenditure if the application for approval of the

Islamic stock broking business is made to the Bursa Malaysia from 2nd September 2006 until 31st December 2015 and the company commences

its Islamic stock broking business within 2 years from the date of approval by the Bursa Malaysia.

iv) Pre-commencement of Business Expenses Relating to Recruitment of Employees

Income Tax (Deduction of Pre-Commencement of Business Expenses relating to Employee Recruitment) Rules 2008 [P.U.(A) 361/2008]

A person who has incurred expenses within the period of 1 year prior to the commencement of his business in respect of recruitment of employees for his business qualifies for tax deduction of such expenses

against his gross income from the business (with effect from YA 2009). The recruitment expenses which qualify for deduction include expenses incurred in participation of job fairs, payment to employment

agencies and head-hunters. The expenses of the kind allowable under section 33 of the ITA relating to the recruitment of employees which shall be deemed to have been incurred on the day the business commences.



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Photo with Labuan Associates

After a briefing on the Legislation of Labuan by our business associate in Labuan



In MK, we all serious with our work and business **BUT** we also have **great FUN** too. This is **MK CULTURE!!**



"We can DO IT AS A TEAM"

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