



## Tax Espresso A snappy delight

## Greetings from Deloitte Malaysia Tax Services

### 2016 Budget Recalibration Speech

On 28 January 2016, the Minister of Finance announced the recalibration of the 2016 Budget given the current economic climate.

#### Quick links:

[Deloitte Malaysia](#)

[Inland Revenue Board](#)

#### Takeaways:

[2016 Budget Recalibration Speech](#)

[Monthly Tax Deduction 2016](#)

[Public Ruling \(PR\) No. 11/2015: Tax Incentive for Angel Investor](#)

[PR No. 12/2015: Recovery from Persons Leaving Malaysia](#)

Among the measures that have been proposed are:

- i) Reduction of the employees' contribution to the Employees Provident Fund (EPF) by 3% beginning March 2016 to December 2017. This remains as an option to the employees.
- ii) Provision of a special tax relief of RM2,000 to individual taxpayers with a monthly income of RM8,000 or below for the year of assessment (YA) 2015.
- iii) Increase efforts in ensuring tax compliance and auditing of tax evaders.
- iv) Relaxation of penalties on taxpayers to encourage voluntary disclosure of their prior years' income. The tax arrears must be settled before 31 December 2016.
- v) For duty-free islands, restructure and limit the selling channel of cigarettes and liquors to duty-free outlets licensed by the Royal Malaysian Customs Department.

### Monthly Tax Deduction (MTD) 2016

Income Tax (Deduction from Remuneration) (Amendment) Rules 2015 [P.U. (A) 311/2015] was gazetted on 29 December 2015 and came into operation on 1 January 2016. It amends the principal Rules, Income Tax (Deduction from Remuneration) Rules 1994 [P.U. (A) 507/1994], by amending the following:

- i) Rule 17 of the principal Rules  
[Note: the maximum fine is increased from RM2,000 to RM20,000 for failure to comply with subrule 10(1) or rule 13]
- ii) Table 1 in Rule 4(1) of Income Tax (Deduction from Remuneration) (Amendment) (No. 2) Rules 2014 [P.U. (A) 362/2014]

Events:

GST: A year in review (Workshop series)

Date	Venue
24 Feb 2016	Johor Bahru
25 Feb 2016	Kuala Lumpur
23 Mar 2016	Kuala Lumpur
20 Apr 2016	Kuala Lumpur

SEA Deloitte Tax Challenge 2016

Date: 25 – 26 February 2016

Venue: Menara LGB  
Kuala Lumpur

Important deadlines:

Due date for 2017 tax estimates for companies with March year-end  
(1 March 2016)

6th month revision of tax estimates for companies with August year-end  
(29 February 2016)

9th month revision of tax estimates for companies with May year-end  
(29 February 2016)

Statutory filing of 2015 tax returns for companies with July year-end  
(29 February 2016)

[Note: Table 1 gives the values to be used in the formula for determination of the amount of MTD.]

iii) Rule 7 of P.U. (A) 362/2014

[Note: The amount of MTD for additional remuneration before the year 2016 which is received in the current year shall be calculated in accordance with the method and Table of MTD applicable for the year the additional remuneration is received.]

## Public Rulings

### Public Ruling (PR) No. 11/2015: Tax Incentive for Angel Investor

The Government has granted a tax incentive for investment made by an angel investor in a qualified investee company in the early stage of a technology based start-up effective from 1 January 2013. The objective of PR 11/2015 which was issued by the Inland Revenue Board (IRB) on 16 December 2015 is to explain the tax incentive offered to an angel investor who has invested in an investee company.

Among the key points of this PR are:

#### Interpretation

“Investment” means holding of shares, which is paid in cash, in respect of ordinary shares in an investee company.

#### Angel Investor

- i) An angel investor is a high net-worth individual who provides funding needed to start a business in exchange for a share ownership in an investee company. In order to qualify for the tax incentive, all prospective angel investors are required to submit an application to the Malaysian Business Angel Network (MBAN) to ensure that the eligibility criteria are met and to accredit them as angel investors.
- ii) To qualify for the tax incentive, an angel investor would have to fulfill the following criteria:
  - ✓ must be an individual resident in Malaysia;
  - ✓ sources of income is not derived solely from business;

- ✓ investment is solely to finance activities of investee company as approved by the Minister of Finance and the investment shall not be more than 30% of the total paid-up share capital (ordinary shares) of the investee company;
  - ✓ an application to make an investment in an investee company is made **on or after 1 January 2013 but not later than 31 December 2017** for the approval of the Minister of Finance; and
  - ✓ must not have family relationship with other shareholder of the investee company i.e. none of the paid-up share capital of the investee company is owned by a parent, including a parent-in-law, a child, including a step child, or child adopted in accordance with any law, a brother or sister, or grandparent or grandchild, or a spouse of the angel investor.
- iii) An angel investor is required to comply with the relevant provisions of the Income Tax Act 1967 (ITA) and submit the relevant income tax return form for each YA on or before the due date. The angel investor has to furnish his statement of accounts (where applicable) or any other information under the provisions of the ITA when required.
- iv) An individual investor who has made a claim for a deduction under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [P.U.(A) 76/2005] is not eligible to claim a tax exemption as an angel investor under the Income Tax (Exemption) (No.3) Order 2014 [P.U.(A) 167/2014].

#### Investee Company

- i) An investee company is a start-up company which has to be certified by the Angel Tax Incentive Office (ATIO) (a unit under Cradle Fund Sdn Bhd which is an agency under the MOF) as eligible to be invested in before an accredited angel investor can invest in the investee company. Generally, a start-up company is a company in its earliest stage of development concentrating on product development, securing financing, laying down the basic structure of the business and initiating operations or trading.
- ii) In order to qualify as an investee company, the company has to fulfill the following criteria:
- ✓ it must be incorporated under the Companies Act 1965 and resident in Malaysia;
  - ✓ at least 51% of the company's issued share capital is directly owned by a shareholder (other than the prospective angel investor who intends to invest in the investee company) who is a Malaysian citizen; and
  - ✓ must carry on activities as approved by the Minister of Finance.

#### Tax Incentive

- i) The incentive granted to an angel investor is tax exemption in respect of his aggregate income for the basis period for a YA, in the second YA following the YA in which an investment is made. The

amount of aggregate income exempted for each eligible YA is an amount equal to the amount of investment made by the angel investor in the investee company or RM500,000, whichever is the lower.

- ii) Where the amount of investment exceeds the aggregate income of an angel investor for the basis period for a YA, the excess amount of investment is disregarded and will not be available as a credit to set off his tax liability for subsequent YAs.
- iii) The exemption granted is subject to the following conditions:
  - ✓ the investment must not be disposed of (in full or in part) within two (2) years from the date the investment is made; and
  - ✓ the conditions specified by the Minister of Finance in the approval letter for the investment have been complied with.
- iv) The tax exemption may be withdrawn by the Minister of Finance if the angel investor fails to comply with the conditions specified by the Minister in the approval letter for the investment.

### **PR No. 12/2015: Recovery from Persons Leaving Malaysia**

The IRB issued PR 12/2015 on 17 December 2015 to explain the circumstances and procedures for recovery of tax and debts due from taxpayers who will be leaving Malaysia.

Among the key points of this PR are:

- i) Interpretation
  - "Taxpayer" means an individual or a company director.
  - "Director" means any person who:
    - ✓ holds the post of director (by whatever name called), including any person who is concerned in the business management of the company; and
    - ✓ by himself or with his associates as defined in Section 139(7) of the ITA:
      - a) holds not less than 20% of the ordinary share capital of the company; or
      - b) controls directly or indirectly not less than 20% of ordinary share capital of the company.
  - "Stoppage order" means preventing a person from leaving Malaysia if he fails to pay all the tax, sums and debts so payable.
- ii) Under Section 104 of the ITA, if the Director General of Inland Revenue (DGIR) is of the opinion that a taxpayer is about or likely to leave Malaysia without paying:
  - All tax payable by him (whether or not due or due and payable);
  - All sums payable by him in relation to increase in tax charged under Sections 103(1A), (3), (4), (5), (6), (7) or (8) or Sections 107B(3) or (4) or Sections 107C(9) or (10);

- All debts payable by him on withholding tax under Sections 107A(2), 109(2), 109B(2) or 109F(2);

the DGIR may issue a certificate to a Commissioner of Police or a Director of Immigration requesting for that taxpayer to be prevented from leaving Malaysia until he has paid all the tax, sums and debts so payable or furnishes security to the satisfaction of the DGIR for the payment.

[**Note:** The DGIR does not have to prove that a taxpayer intends to leave the country permanently.]

- iii) The certificate that invokes stoppage order contains details of the tax, sums and debts so payable. The date of issuance of the certificate is the effective date of stoppage order.
- iv) The certificate will be served by personal service or by registered post to an individual or a company director who is liable under Section 75A of the ITA.
- v) A taxpayer is responsible to inform in writing any change of his address (correspondence, residential and business premises) to the IRB branch office that handles his income tax file. Issuance of the certificate by the DGIR to the latest known address is deemed to have been served on the taxpayer.
- vi) A taxpayer will be allowed to leave the country if the amount of tax or debts due on the certificate has been settled in full. Documentary evidence or receipt of payment must be submitted to the IRB branch office that handles his income tax file. For payment by cheque, taxpayer is allowed to leave the country after the cheque has been cleared by the bank. A revocation letter will then be issued to the taxpayer.
- vii) A taxpayer (excluding foreign nationals) who is unable to settle his tax liability and debts in full will only be allowed to leave the country if the following conditions are fulfilled:
  - Makes payment of at least 50% (or a rate as determined by the DGIR) of the amount of the claim in the certificate issued under Section 104 of the ITA.
  - Payment is to be made in cash or bank draft to enable a letter for temporary release to be issued to the taxpayer. Documentary evidence or receipt must be submitted to prove that payment has been made.
  - Payment by installments for the balance of tax and debts that are still outstanding must be arranged.
  - A taxpayer who fails to comply with the schedule of payments is not eligible to be considered for subsequent application for temporary release to leave Malaysia.
- viii) A letter for temporary release will be issued and the period a taxpayer is allowed to travel out of the country will be stated in the letter. Information on the revocation of the stoppage order and temporary release will be made available on the website of the Immigration Department of Malaysia (IDM) at [www.imi.gov.my](http://www.imi.gov.my).
- ix) Taxpayers are advised to check and settle their arrears of tax and debts before planning to go abroad. Taxpayers can check on the status of the imposition of stoppage order on the official

website of IDM. Foreign nationals are advised to contact the IRB branch office or IRB call centre regarding their status.

- x) Payment of outstanding tax and debts can be made by cash, bank draft, money order or postal order at the IRB payment counters, payment via internet at IRB ByrHASiL and IRB ByrHASiL credit card, via internet banking or at the counters of banks that are appointed as agents of IRB.
- xi) A taxpayer who leaves Malaysia voluntarily or attempts to leave Malaysia without making payment for all tax, sums and debts so payable as mentioned in the certificate may be liable to:
- a fine of not less than two hundred ringgit (RM200) and not more than twenty thousand ringgit (RM20,000); or
  - imprisonment for a period not exceeding six (6) months; or
  - both.

We invite you to explore other tax related information at:

<http://www2.deloitte.com/my/en/services/tax.html>

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