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Tax Espresso
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Greetings from Deloitte Malaysia Tax Services

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Deloitte Malaysia

Inland Revenue Board

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Public Rulings

Public Ruling (PR) No. 2/2016: Venture Capital Tax Incentives

On 9 May 2016, the Inland Revenue Board (IRB) issued PR No. 2/2016 to explain the tax incentives in relation to the venture capital industry in Malaysia. The PR also provides various examples on the computation of tax exemption and deduction scenarios.

Among the key points of this PR are:

i) Interpretation

- "Individual" means a natural person.
- “Company” means a body corporate and includes any body of persons established with a separate legal entity by or under the laws of a territory outside Malaysia and a business trust.

ii) Subject to the stipulated conditions, a certification from the Securities Commission (SC) is needed by a venture capital company (VCC) in order to be eligible for exemption from the payment of tax in respect of the statutory income:

- from all sources of income except interest income arising from savings or fixed deposits and profits from syariah-based deposits; and
- for a period of ten years of assessment or the life of the fund established for the purpose of investing in a venture company (VC) whichever is the lesser.

iii) Where a VCC incurs a loss from the disposal of shares in a VC in the basis period for any year of assessment within the exempt period, such loss shall be carried forward to the post-exempt period.

Other Development:
Companies Bill 2015

Events:

GST & Property Forum

Date	Venue
20 June 2016	Kuala Lumpur
23 June 2016	Johor Bahru
12 July 2016	Ipoh
15 July 2016	Penang

Transfer Pricing: Return Filing Compliance and Audit

Date	Venue
21 June 2016	Kuala Lumpur
21 June 2016	Ipoh
28 June 2016	Melaka

Important deadlines:

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

6th month revision of tax estimates for companies with December year-end
(30 June 2016)

9th month revision of tax estimates for companies with September year-end
(30 June 2016)

Statutory filing of 2015 tax returns for companies with November year-end
(30 June 2016)

iv) Subject to the stipulated conditions, a certification from the SC is needed by an individual or a company (including a VCC) to qualify for a deduction of an amount equivalent to the value of the investment in shares (cost of investment) in a VC. The deduction is given in ascertaining the adjusted income for a basis period for a year of assessment if the individual or company (including a VCC):

- is resident in Malaysia;
- has a business source; and
- invested in a VC at start-up, seed capital and early stage financing for products and activities listed in P.U.(A) 76/2005,

provided that the investment was made at least two years prior to the date of its disposal.

Note: The tax deduction is given at the time the investment is disposed of as certified by the SC, and not at the time the investment was made.

v) Pursuant to the Income Tax (Exemption)(No.12) Order 2005 [P.U.(A) 77/2005], a venture capital management corporation (VCMC) that is registered with the SC will be exempted from the payment of income tax in respect of the statutory income from the share of profits received by it from a VCC on any investment made by the VCC as stipulated in the agreement entered into between the VCMC and the VCC.

vi) Based on the Venture Capital Tax Incentives Guidelines, applications for annual certification for the purposes of tax exemption and tax deduction must be made by completing the relevant forms and submitting the relevant documentation to the SC.

vii) The tax exemption and deduction are mutually exclusive, therefore, a VCC that has applied for tax exemption and received certification from the SC is not entitled to apply for a tax deduction under P.U.(A) 76/2005 for the whole of the tax exempt period.

PR No. 3/2016: Tax Treatment on Interest Income Received by a Person Carrying on a Business

On 16 May 2016, the IRB published PR No. 3/2016 to explain the tax treatment in respect of interest income received by a person carrying on a business.

Among the key points of this PR are:

i) Following the introduction of Section 4B to the Income Tax Act 1967 (ITA) and amendment to Section 24(5) of the ITA [both took effect from year of assessment 2013], interest income [except for those interest that fall under Section 24(5)] cannot be charged to tax as gain or profit from business under Section 4(a) of the ITA.

ii) Section 24(5) of the ITA provides that interest is assessed as business income under Section 4(a) of the ITA if:

- the debenture, mortgage or other source to which the interest relates forms part of the stock in trade of a person; or
- the interest is receivable by a person in the course of carrying on a business of lending money and that business is licensed under any written law.

iii) Below are situations where IRB treats interest arising therefrom as interest under Section 4(c) of the ITA:

- Interest charged on overdue trade debt

- Interest from an easy payment plan (EPP) *(Note: the difference between price offered through EPP and cash price is treated as interest)*

- Interest from Housing Development Account

- Interest from fixed deposit placed as security

- Interest from excess cash from working capital placed in the short term or long term investments

- Interest received from loan given to employees

- Interest received by an estate administrator after the death of a money lender

iv) To ensure the unabsorbed business losses and capital allowances in respect of interest income which had been previously assessed as business source prior to year of assessment 2013 to be fully absorbed within a short period, the Savings and Transitional Provisions of the Finance Act 2013 allow:

- Unabsorbed business losses brought forward from the year of assessment 2012 to be deducted from the adjusted income of the non-business sources if there is no aggregate statutory income from a business source for the year of assessment 2013 and subsequent years of assessment until the loss is fully absorbed [This was confirmed by the IRB in Item 5(c) of the minutes of 2013 Post Budget Dialogue held on 28 October 2013].

- Unabsorbed capital allowances under Schedule 3 of the ITA that was brought forward from the year of assessment 2012 be allowed to reduce the statutory income of any of the business sources for the year of assessment 2013 and the subsequent years of assessment. If there is no business source, the unabsorbed capital allowances can be deducted against the adjusted income from non-business sources until the allowances are fully absorbed.

v) If there is adjusted business loss in year of assessment 2013, the loss brought forward from the interest income assessed under Section 4(a) of the ITA prior to year of assessment 2013 should be given the priority to be deducted first. The unabsorbed business loss for year of assessment 2013 shall be carried forward to be absorbed by business sources from the year of assessment 2014 onwards.

vi) Taxpayers are advised to record separately the carried forward business losses and capital allowances with regard to interest income previously assessed under Section 4(a) of the ITA prior to the year of assessment 2013 for ease of tracing the amounts involved.

Amendments to Public Rulings

PR No. 10/2014: Special Allowances for Small Value Assets (Amended)

Following the amendment to Paragraph 19A(3) of Schedule 3 of the ITA, Paragraph 5.2 of the PR No. 10/2014 was amended accordingly by the IRB on 11 May 2016.

Pursuant to the amended Paragraph 19A(3) of Schedule 3 of the ITA which takes effect from year of assessment 2016, in order to claim special allowances for small value assets without any restriction on the amount, the small and medium companies, which have to be resident in Malaysia with a paid-up capital in respect of ordinary shares not exceeding RM2.5 million at the beginning of the basis period for a year of assessment, must also be companies incorporated in Malaysia.

PR No. 1/2009: Property Development (Amended)

Paragraph 13 of the PR No. 1/2009 was amended by the IRB on 16 May 2016. Under the new amendment, interest income derived from the Housing Development Account would be assessed under Section 4(c) and no longer under Section 4(a) of the ITA. This amendment is in line with the introduction of new Section 4B "Non-Business Income" of the ITA with effect from year of assessment 2013.

We invite you to explore other tax related information at:
http://www2.deloitte.com/my/en/services/tax.html

Other Development

Companies Bill 2015

The Companies Bill 2015 (the Bill) was passed at Dewan Rakyat on 4 April 2016 and Dewan Negara on 28 April 2016. It is anticipated that it will come into force by end of the year 2016.

Some of the key changes under the Bill are as follows:

i) Minimum number of directors for public & private companies

- A company can be incorporated by a single member and that single member can also be the sole director.

- This move will reduce incorporation and maintenance costs and doing business costs, generally.

- Public company must have at least two directors.

ii) Annual General Meeting (AGM)

- Private companies are no longer required to hold AGM.
    - ✓ Following the abolishment of AGM, there will be a timeline to circulate the audited accounts among the shareholders.
    - ✓ There is also a mechanism for the automatic reappointment of auditors, unless the shareholders decide otherwise.
    - ✓ The main method for private companies to make decision will be by way of written resolutions.
- Public companies are still required to hold AGM every calendar year.

iii) No-Par Value Regime

- Shares to be issued are without par value.
- Shares will be issued at a price.
- Share premium account, capital redemption reserves (CRR) and the concept of authorised capital will no longer be applicable.
- Transitional period of 24 months will be given to companies to utilize the amount standing in credit in the company's share premium account.

iv) No more Memorandum and Articles of Association

Companies will no longer be required to have a Memorandum and Articles of Association. However, if a company wishes to tailor certain provisions for itself, it can then adopt a Constitution. Existing companies will have their respective Memorandum and Articles of Association be deemed to be the new Constitution.

v) Introduction of Solvency Statements

There will be different varieties of new 'solvency test' that will be applied for different situations. Directors must sign on the equivalent of a statutory declaration to verify that the company is solvent when the company undertakes the following:

- Reduction of capital
- Redemption of preference shares
- Provision of financial assistance
- Share buyback

Where there is a breach of this solvency test, the directors will be personally liable and may face criminal sanctions.

vi) Distribution of dividends

- Dividends may only be distributed out of profits.
- Distribution can only be made when the company is solvent i.e. the company is able to pay debts as and when they fall due within 12 months immediately after the distribution is made.
- If after authorisation but before distribution is made, the company ceases to be solvent, the directors must take necessary steps to prevent the distribution.
- Company may recover distribution paid from shareholder, director and manager who has authorised the payment.

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