



## Tax Espresso A snappy delight

## Greetings from Deloitte Malaysia Tax Services

### Transfer Pricing Compliance Alert

As you approach the time to close the annual books and to prepare for filing return for year of assessment (YA) 2015, we would like to take this opportunity to reiterate the requirements specified in Section 140A of the Income Tax

#### Quick links:

[Deloitte Malaysia](#)

[Inland Revenue Board](#)

#### Takeaways:

[Transfer Pricing Compliance Alert](#)

[Employees Provident Fund \(Amendment of Third Schedule\) Order 2016 \[P.U.\(A\) 21/2016\]](#)

[Income Tax \(Exemption\) Order 2016 \[P.U.\(A\) 40/2016\]](#)

Act 1967 (ITA) and the Income Tax (Transfer Pricing) Rules 2012 (TP Rules), read in conjunction with the Malaysian Transfer Pricing Guidelines 2012 (MTPG), concerning preparation of contemporaneous transfer pricing documentation.

While Section 140A of the ITA mandates application of arm's length price in related party transactions, the TP Rules and the MTPG require the documentation to be ready by the return filing due date. To ensure compliance, effective YA 2014, income tax return form for companies (Form C) has a specific disclosure requirement (Item R4) on availability of transfer pricing documentation to support intragroup pricing arrangements.

#### **Key considerations for taxpayers:**

- i) Ensuring correct disclosure of related party transaction values in Part N of Form C. Understanding the difference between the statutory audit and the tax definitions of "related party" is paramount to this.
- ii) Timing of year-end transfer pricing adjustments to ensure deductibility, where the adjustment reduces profits attributable to tax in Malaysia.
- iii) Tax provision – need to assess potential exposure emanating from on-going audit and/or lower than arm's length results for current YA.
- iv) Current year transfer pricing documentation should be ready by return filing due date – annual requirement so long as related party transactions exist in that YA.
- v) Potential implications for non-compliance with contemporaneous transfer pricing documentation requirement:
  - No penalty protection in the event of a transfer pricing audit – penalty would apply at 25%-35% of the amount of tax undercharged;

## **Operational Guidelines (GPHDN)**

GPHDN No. 1/2016: Reduction of Penalty and Remission of Increase in Tax

GPHDN No. 2/2016: Tax Clearance Letter Application Procedure for Individual

## **Public Ruling**

Public Ruling No. 1/2016: Agriculture Allowances

Events:

GST: A year in review (Workshop series)

Date	Venue
16 Mar 2016	Penang
17 Mar 2016	Ipoh
23 Mar 2016	Kuala Lumpur
29 Mar 2016	Melaka
20 Apr 2016	Kuala Lumpur

Financial Institutions Breakfast  
Talk Series 2016

Date: 17 March 2016

Venue: Menara LGB  
Kuala Lumpur

Important deadlines:

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

6th month revision of tax estimates for companies with September year-end  
(31 March 2016)

- Penalty implications under Sections 114 and 120 of the ITA;
  - Easy target for transfer pricing audit; and
  - Revocation of statute of limitation (7 years) on grounds of willful default and/or negligence.
- vi) Depending on the number, nature and complexity of related party transactions, preparation of proper penalty protection transfer pricing documentation may take anywhere between 6-14 weeks. So the timing of commencement of work is critical to ensure completion by return filing due date.

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

Statutory filing of 2015 tax returns for companies with August year-end  
(31 March 2016)

## Gazette Orders

### Employees Provident Fund (Amendment of Third Schedule) Order 2016 [P.U.(A) 21/2016]

P.U.(A) 21/2016 was gazetted on 2 February 2016 following the announcement of the reduction of employees' contribution to the Employees Provident Fund (EPF) by 3% beginning March 2016 to December 2017 in the 2016 Budget Recalibration on 28 January 2016.

### Income Tax (Exemption) Order 2016 [P.U.(A) 40/2016]

Following the announcement in the 2016 Budget Recalibration, P.U.(A) 40/2016 was gazetted on 17 February 2016 to grant a special tax relief of RM2,000 to individual taxpayers.

Pursuant to P.U.(A) 40/2016, an individual resident in Malaysia with a total aggregate income not exceeding RM96,000 for the YA 2015 is exempted from the payment of income tax in respect of RM2,000 of his chargeable income for the YA 2015.

## Operational Guidelines

### Operational Guidelines (GPHDN) No. 1/2016: Reduction of Penalty and Remission of Increase in Tax

The Inland Revenue Board (IRB) has issued GPHDN No.1/2016 dated 10 February 2016 in respect of the offer to reduce penalty and remit increase in tax (hereinafter referred to as "the offer"). The offer is a

follow-up to the announcement by the Prime Minister on 28 January 2016 during the 2016 Budget Recalibration Speech.

The offer is given to taxpayers who pay their arrears in income tax (IT), petroleum income tax (PIT), real property gains tax (RPGT) and withholding tax on or before 15 December 2016.

The reduction in penalty and remission of increase in tax is subject to the facts and merits of each case and the conditions laid down by the IRB.

#### **Reduction of Penalty for Voluntary Disclosure**

<b>Rate of Penalty Subsection 112(3) / 113(2) ITA; Subsection 51(3) / 52(2) Petroleum (Income Tax) Act 1967 (PITA)</b>	<b>Payment Period</b>
15%	Payment made within 30 days from the date of the notice of assessment
20%	Payments made in 6 instalments or less from the date of the notice of assessment

#### **Conditions:**

- i) Disclosure is made before audit or investigation has commenced.
- ii) Taxpayer submits all outstanding return forms during the offer period.
- iii) Taxpayer admits to errors in the return forms.
- iv) Taxpayer signs Letter of Undertaking and agreement to pay.

#### **Reduction of Penalty for Audit Cases**

<b>Rate of Penalty Subsection 112(3) / 113(2) ITA; Subsection 51(3) / 52(2) PITA</b>	<b>Payment Period</b>
25%	Payment made within 30 days from the date of the notice of assessment
35%	Payments made in 6 instalments or less from the date of the notice of assessment

**Conditions:**

- i) Audit cases are finalised (assessment raised) between 1 January 2016 and 15 December 2016.
- ii) Taxpayer receives a Penalty Reduction Offer Letter from the IRB and signs a Letter of Undertaking and agreement to pay.

**Reduction of Penalty for Investigation Cases**

Rate of Penalty Subsection 112(3) / 113(2) ITA	Payment Period
20%* / 25%	Payment made on the date of agreement / Letter of Undertaking signed by taxpayer
25%* / 35%	Initial payment of 50% made on the date of agreement / Letter of Undertaking signed by taxpayer and the balance of tax settled in 6 instalments or less

\* Further reduction of penalty applies in the case of voluntary disclosure within 14 days from the date of the investigation visit.

**Conditions:**

- i) For investigation cases in progress as at 31 December 2015 and settled by way of agreement / Letter of Undertaking signed on or before 31 July 2016.
- ii) For new (2016) investigation cases settled on or before 15 December 2016.
- iii) For cases of best judgement assessments where taxpayer disagrees with the penalty under Subsections 112(3) or 113(2) of the ITA and agreement / Letter of Undertaking is signed on or before 15 December 2016 (including cases where Form Q has been filed).
- iv) Cases investigated concurrently under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 and fulfills condition (i), (ii) or (iii) above.
- v) Taxpayer agrees to sign a Letter of Undertaking and agreement to pay.
- vi) Cases that have been finalized with agreement / Letter of Undertaking signed before the offer became effective are not eligible for the offer.

### Reduction of RPGT Penalty

Rate of Penalty Subsection 29(3) RPGT Act 1976	Payment Period
5%	Payment made within 30 days from the date Letter of Undertaking is signed
8%	Payments made in 6 instalments or less from the date Letter of Undertaking is signed

#### Conditions:

- i) A disposer who fails to declare the disposal within the permitted period should apply within the penalty reduction offer period.
- ii) Taxpayer signs a Letter of Undertaking and agreement to pay.

### Reduction of Stamp Duty Penalty

Rate of Penalty Subsection 47A(1) Stamp Act 1949	Payment Period
5%	Pay stamp duty between 1 March 2016 and 30 June 2016
10%	Pay stamp duty between 1 July 2016 and 15 December 2016

#### Conditions:

Duty payer who has failed to present a document for stamping within the permitted period presents the document within the penalty reduction offer period.

#### Note:

- a) The offer on reduction of penalty in all the above cases is subject to the payment of tax / duty and penalty by 15 December 2016.
- b) The offer is invalid if taxpayer fails to comply with the Letter of Undertaking and agreement to pay.

## Remission of Increase in Tax for Cases of Tax in Arrears

**[Sections 103, 107B(3), 107B(4), 107C(9) and 107C(10), 107A(2), 109(2), 109B(2), 109D(3), 109E(4), 109F(2) and 109G(2) ITA; Sections 48 and 49A(11) PITA; Sections 21(4) and 21B RPGT Act 1976]**

The remission of increase in tax is applicable if taxpayer:

- i) Has outstanding tax (not increase in tax only); or
- ii) Fails to remit withholding tax and its increase; and
- iii) Is not under receivership or bankruptcy.

Payments can be made in one lump sum or in equal instalments (instalments can be considered until 15 December 2016).

For cases under civil suit action, remission of increase in tax is subject to full payment of court cost and interest.

### **GPHDN No. 2/2016: Tax Clearance Letter (SPC) Application Procedure for Individual**

The IRB issued GPHDN No. 2/2016 on 12 February 2016 to explain the application procedures from the date of receipt of the application for SPC until the SPC is issued. It explains the application methods, the responsibilities of an employer, an employee and the IRB respectively. A checklist on the required documents for the application of SPC for an employee is attached as Appendix A to GPHDN No. 2/2016.

Among the key points of GPHDN No. 2/2016 are:

#### A. Employer's responsibilities:

- i) An employer is required to make an application for SPC to the Director General of Inland Revenue (DGIR) not less than one month before the date of cessation of employment of an employee or before the employee is about to leave or intending to leave Malaysia via e-SPC or Forms CP21, CP22A or CP22B which can be printed from the IRB's official portal.
- ii) The checklist for the SPC application (Appendix A) together with the completed forms and required documents have to be submitted to the IRB branch handling the income tax file of the employee or the nearest IRB branch not less than one month before the date of cessation of employment of an employee or before the employee is about to leave or intending to leave Malaysia.

iii) Pursuant to Section 83(5) of the ITA, where an employer has in his possession any moneys which are payable to an employee who has ceased or is about to cease employment or who is about to leave Malaysia for a period of more than 3 months, he shall not, without the permission of the DGIR, pay any part of those moneys to the employee until 90 days after the receipt by the DGIR of the Forms CP21, CP22A or CP22B (whichever is relevant). The employer shall pay the full amount or a portion of those moneys to the IRB at any time as directed by the DGIR.

B. Employee's responsibilities:

<b>Criteria</b>	<b>Employee who is about to cease employment / retire</b>	<b>Employee who is about to leave Malaysia</b>
Eligible and elect for Monthly Tax Deduction (MTD) as final Tax	Submit Income Tax Return Form (ITRF) for the YA in which employment ceased in the following year. ITRF for the YA immediately preceding the YA in which employment ceased is not required to be submitted.	Submit ITRF for the YA in which employment ceased upon submission of SPC application. ITRF for the YA immediately preceding the YA in which employment ceased is not required to be submitted.
Not eligible / eligible but did not elect for MTD as final Tax	Submit relevant ITRFs by the respective due dates.	Submit relevant ITRFs upon submission of SPC application.

Note: Where the ITRF for the current YA has not yet been made available by the IRB, the ITRF for the immediately preceding YA may be used with some modifications as shown below:

Example:

If the ITRF for YA 2015 is still not available, the employee who is about to leave Malaysia is required to use the ITRF for YA 2014, strikethrough "2014" and replace it with "2015".

C. IRB's responsibilities:

- i) The IRB could impose travel restriction under Section 104 of the ITA on employees who fail to settle the outstanding tax liability.
- ii) The IRB could take civil suits against employers who fail to pay the amount as directed in the SPC issued for the employee concerned under Section 107(4) of the ITA.



- iii) Any problem encountered in the issuance of SPC can be referred to the branch Public Relations Officer. The name list of Public Relations Officers is available at the IRB's website.

## Public Ruling (PR) No. 1/2016: Agriculture Allowances

The IRB issued PR No. 1/2016 on 20 January 2016 to explain the following:

- i) types of qualifying agriculture expenditure (QAE);
- ii) computation of agriculture allowances (AA);
- iii) computation of agriculture charges; and
- iv) tax treatment on receipt of a grant or subsidy.

Among the key points of this PR are:

- i) Expenditure on construction of drains and levelling of land are considered as QAE.
- ii) Expenditure on new planting is considered as QAE while replanting expenditure is allowed as a tax deduction under Section 34(6)(d) of the ITA.
- iii) Cost of acquiring the land for plantation is not regarded as QAE.
- iv) QAE is incurred on the day the expenditure becomes payable. However, expenditure on a constructed building is deemed to be incurred on the day on which the building is completed.
- v) Tax treatment for subsidies or other payments in the form of capital or grants received from the Federal Government or State Government for the purpose of alleviating the burden of capital expenditure in carrying on agricultural or plantation activities are:
  - ✓ the grant received is not taxable; and
  - ✓ expenses financed from the grant are not eligible for any tax deduction or allowances under Schedule 3 of the ITA.
- vi) Tax treatment on disposal:
  - ✓ Transmitter is entitled to claim AA up to the date of disposal in YA of disposal if asset was in use one month before disposal.
  - ✓ Recipient is entitled to claim the remaining AA that would have been made to the transmitter if the asset had not been transferred. The claims for the remaining apportioned AA by the recipient must be in respect of the same YA as when the transmitter claims the apportioned AA.
- vii) Control transfers provision will apply if:
  - ✓ The transferor and recipient carry on business, use the asset in the business and eligible for AA; and
  - ✓ One of the controlled situations under Paragraph 38(1) of Schedule 3 of the ITA exists at the time of transfer.

viii) Agriculture charge

- ✓ is made to a person who disposed of his farm asset within 5 years from the date of incurring the expenditure.
- ✓ is equal to the aggregate of all those agriculture allowances that have been made to him for all the YAs.

ix) A person who has disposed of a farm may elect in writing that the amount of agriculture charges be divided equally and assessed over the number of YAs for which the allowances were made.

We invite you to explore other tax related information at:

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

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