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### **Greetings from Deloitte Malaysia Tax Services**

#### **Public Rulings**

##### **Public Ruling (PR) 6/2016: Group Relief for Companies**

Group relief is provided under Section 44A of the Income Tax Act 1967 (ITA) to all locally incorporated resident companies. Group relief allows 70% of an adjusted loss in the basis period for a year of assessment (YA) in one company (surrendering company) to be surrendered to one or more related companies (claimant companies) that have defined aggregate income. "Defined aggregate income", in relation to a YA, means the aggregate income of a claimant company for that year reduced by deductions for: current year loss, expenditure on prospecting operations, qualifying pre-operational business expenditure, approved donation and gift of artefact, etc. Group relief

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would reduce the overall tax payable by the group of companies.

The Inland Revenue Board (IRB) has issued PR No. 6/2016 "Group Relief for Companies" on 22 August 2016 to explain the tax treatment of group relief for companies which are resident and incorporated in Malaysia.

#### **A. Qualifying criteria for group relief**

- i) Both the surrendering and the claimant companies must satisfy the following criteria:
  - ✓ incorporated and resident in Malaysia in the basis year for that YA;
  - ✓ related companies throughout the basis period for that YA and the twelve (12) months period immediately preceding that basis period;
  - ✓ have a paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for that YA;
  - ✓ have a twelve (12) month basis period ending on the same date;
  - ✓ make an irrevocable election to surrender or claim an amount of adjusted loss in the return form furnished for that YA under Section 77A of the ITA; and
  - ✓ subject to tax at the corporate tax rate of 24% (current rate).
- ii) The claimant company must have a defined aggregate income for that YA.

GPHDN No. 3/2016: Tax Clearance Letter Application for Companies, Limited Liability Partnerships (LLP) and Labuan Entities (Labuan Companies & Labuan LLP)

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

#### **Upcoming events**

Employee Share-based Compensation: the What, Why, When and How  
Date: 19 September 2016  
Venue: Menara LGB, Kuala Lumpur

Upstream Oil & Gas Forum  
Date: 29 September 2016  
Venue: Menara LGB, Kuala Lumpur

#### **Important deadlines:**

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

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

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

## **B. Definition of related companies and eligibility of group relief**

To be eligible for group relief, the surrendering and claimant companies must pass the following two tests:

i) First level test: Ordinary shareholding requirement

A surrendering company and claimant company are related companies if at least 70% of the paid-up ordinary share capital of the:

- ✓ surrendering company is owned directly or indirectly by the claimant company or vice versa; or
- ✓ surrendering company and claimant company are owned directly or indirectly by another company.

*Note: Any direct or indirect holdings by companies that are not resident or not incorporated in Malaysia will be disregarded.*

ii) Second level test: Beneficially entitled (directly or indirectly) to at least 70% of the residual profits and residual assets available for distribution to the company's equity holders.

- ✓ The proportion of an equity holder's beneficial entitlement to residual profits of a company is determined as follows:

$$\frac{\text{Value of ordinary shares + value of non-commercial loans attributable to an equity holder}}{\text{Value of ordinary shares + value of non-commercial loans attributable to all equity holders}} \times \text{Residual profits of company}$$

- ✓ The proportion of an equity holder's beneficial entitlement to residual assets of a company is determined as follows:

$$\frac{\text{Value of ordinary shares + value of non-commercial loans attributable to an equity holder}}{\text{Value of ordinary shares + value of non-commercial loans attributable to all equity holders}} \times \text{Residual assets of company}$$

“Ordinary share” means any share other than a share which carries only a right to any dividend which is of –

- a) a fixed amount or at a fixed rate per cent of the nominal value of the shares; or
- b) a fixed rate per cent of the profits of the company.

“Non-commercial loan” means any borrowing other than a commercial loan.

“Commercial loan” means any borrowing which entitles the creditor to any return which is of only –

- a) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or
- b) of a fixed rate per cent of the profits of the company.

### **C. More than one surrendering or claimant company**

- i) A surrendering company can surrender its adjusted loss to one or more claimant companies. The surrendering company has to surrender the amount of adjusted loss to be fully set-off against the amount of defined aggregate income of the first claimant company and any balance of the loss can then be surrendered to the second claimant company and so on based on the order of priority.
- ii) A claimant company can also claim adjusted loss from one or more surrendering companies. The adjusted loss surrendered by the first surrendering company shall be fully deducted from the defined aggregate income of the claimant company before the adjusted loss from the second surrendering company and so on based on the order of priority.
- iii) Both the surrendering company and the claimant company have to ascertain the order of priority by making an irrevocable election in the prescribed Forms together with the Income Tax Return Form (Form C).

### **D. Companies not eligible for group relief**

Group relief is not applicable to a surrendering or a claimant company for the basis period for a YA where the period during which that company:

- i) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investment Act 1986;
- ii) is exempt from tax on its shipping profits or a ministerial exemption under Section 127 of the ITA;
- iii) has made a claim for a reinvestment allowance;
- iv) has made a claim for deduction in respect of an approved food production project;
- v) has made a claim for deduction for cost of acquisition of proprietary rights;
- vi) has been granted a deduction for cost of acquisition of a foreign owned company; or

- vii) has made a claim for deduction under any Rules and those Rules provide that group relief shall not apply to that company.

### **PR No. 5/2016: Tax Incentives for Employers who Provide Child Care Centres**

On 22 August 2016, the IRB published PR No. 5/2016 to explain the tax treatment on the incentives given to employers who provide child care centre facilities for the benefit of their employees.

Among the key points of this PR are:

#### **A. Interpretation:**

A "**child care centre**" is defined as a premise where four (4) or more children under the age of four (4) years from more than one household are cared for a fee. It must be registered with the Department of Social Welfare (DSW) under the Child Care Centre Act 1984.

#### **B. Existing tax treatment:**

- i) Pursuant to Section 34(6)(i) of the ITA, an employer is allowed to claim a tax deduction on the expenses incurred for the provision and maintenance of a child care centre.
- ii) In addition, child care allowances paid to employees are also allowable expenses under Section 33(1) of the ITA.
- iii) An employer who constructs or purchases a building and operates it as a child care centre for the children of his employees is entitled to claim industrial building allowance.
- iv) Industrial building allowance equal to 10% of the qualifying building expenditure (not including the land cost) is given for a YA and for each of the nine (9) subsequent YAs.

#### **C. Additional tax incentives:**

- i) Effective YA 2013, in ascertaining the adjusted income of a person resident in Malaysia for the basis period for a year of assessment, an additional deduction shall be allowed for any outgoings and expenses which are:
  - ✓ expenses in respect of the provision and maintenance of a child care centre; and
  - ✓ expenses in respect of child care allowance paid to employees.
- ii) The tax incentives shall apply to child care centres registered with the DSW under the Child Care Centre Act 1984.

## Tax Collection Framework (Amendment 1/2016)

The IRB has recently uploaded the Tax Collection Framework (Amendment 1/2016) on its website.

The key changes are highlighted below:

Reference	Remarks
Paragraph 2.2.4(a) - Increase in tax and compliance with CP500	The word "employer" (majikan) is replaced with the word "taxpayer" (pembayar cukai).  [Note: Taxpayer is required to comply with CP500 instalment payments.]
Paragraph 2.3.2(e) - Submission of CP204	<u>Amendments are highlighted in bold</u>  A company (other than a company to which Section 107C(4A) applies), trust body, co-operative society or limited liability partnership which commences operation, <b>and its first basis period for the year of assessment is not less than six months</b> , is required to furnish its tax estimate within three months from the date of commencement of operations.
Paragraph 4.2.4(a) - Exemption from withholding 3% of money consideration	<u>Amendments are highlighted in bold</u>  Real property/share in a real property company owned more than 5 years <b>by a citizen or a permanent resident</b> .
Paragraph 4.2.4(d) - Exemption from withholding 3% of money consideration	<u>Amendments are highlighted in bold</u>  Disposal of chargeable assets to a Real Estate Investment Trust (REIT) or a Property Trust Fund (PTF) approved by the Securities Commission under the <b>relevant exemption orders which are in force</b> .
Paragraph 9.4.1(b) - Refund to third party for an individual	<u>New paragraph (b) is inserted</u>  Refund to an individual taxpayer can be made to a company. The requisite information are:  i) the name and the registration number of the company with SSM ii) the company's bank account number iii) authorisation letter

**Operational Guidelines (GPHDN) 3/2016: Tax Clearance Letter Application for Companies, Limited Liability Partnerships (LLP) and Labuan Entities (Labuan Companies & Labuan LLP)**

The IRB had issued GPHDN No. 3/2016 on 31 July 2016 to specify the method of Tax Clearance Letter (SPC) application for companies, LLP and Labuan entities (Labuan companies & Labuan LLP).

Among the key points of GPHDN No. 3/2016 are:

**A. Application for SPC by companies**

- i) To apply for SPC, a company is required to submit Income Tax Return Form(s) (ITRFs) until the latest year of assessment.
- ii) If the Form e-C (electronic return form) for the latest year of assessment has not been made available by the IRB, Form C (for SPC purpose only) should be obtained from any of the IRB branch. The duly completed Form C should be submitted together with the SPC application letter to the IRB branch which handles the relevant income tax file.
- iii) Specific documents are required to be submitted together with the SPC application depending on the method of winding up of company.

**B. Application for SPC by LLPs**

- i) To apply for SPC, an LLP is required to submit ITRF (Form PT) until the latest year of assessment. The duly completed Form PT should be submitted together with the SPC application form to the IRB branch which handles the relevant income tax file.
- ii) If the Form PT for the latest year of assessment has not be made available by the IRB, Form PT for the immediately preceding year of assessment can be used with some modifications on the first page of the Form PT as follows:
  - ✓ Change the year from the preceding year of assessment to the latest year of assessment;
  - ✓ Write the word "SPC" above "Year of Assessment".
- iii) Specific documents are required to be submitted together with the SPC application depending on the method of winding up of LLP.

**C. Application for SPC by Labuan Entities**

- i) To apply for SPC, a Labuan Entity is required to submit ITRF (Form LE) until the latest year of assessment. The duly completed Form LE should be submitted together with the SPC application letter to the Labuan Entities Unit, Labuan Branch.

- ii) Specific documents are required to be submitted together with the SPC application depending on the method of winding up of Labuan Entity.

The SPC will be issued after all relevant and completed documents are received by the IRB and income tax including employees' monthly tax deductions are fully paid.

Any problem related to the issuance of SPC can be referred to the relevant branch Customer Care Officers whose names and contact numbers can be obtained from the IRB's website.

**GPHDN No. 1/2016 (Amendment): Reduction of Penalty and Remission of Increase in Tax**

The IRB has recently uploaded GPHDN No. 1/2016 (Amendment) on its website.

The key changes are highlighted below:

Reference	Remarks
New Paragraph 1.4	The reduced penalty rates also offered to taxpayers for transfer pricing (TP) audit cases.
Paragraph 4.a	Reduction of penalty is offered to audit cases which have been completed including the TP audit.
New Paragraph 5.2A	<p><u>Reduction of penalty for TP audit cases</u></p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>i) TP audit are finalised during the period 1 March 2016 until 15 December 2016;</li> <li>ii) Reduction of penalty for voluntary disclosure does not apply to TP audit. <i>[Note: the penalty rates provided in the TP Audit Framework 2013 continue to apply for voluntary disclosure]</i></li> </ul>
Paragraph 7	The helpdesk number for TP audit i.e. 03-8913 3800 ext 120603/ 120634 has been inserted.

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