



JOINT MEMORANDUM TO IRBM ON ISSUES ARISING FROM 2014 BUDGET AND FINANCE BILL (NO.2) 2013

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Prepared by:

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This memorandum serves to highlight the main concerns that tax practitioners have with regard to proposals announced during the 2014 Budget on 25 October 2013, and the proposed legislative changes found in Finance Bill (No. 2) 2013.

It also seeks to get clarification from the authorities on specific areas and matters - through examples citing specific scenarios and circumstances.

The Institutes have also provided recommendations for consideration

.....

1) Section 107C(4A) -- [Exemption from Furnishing Estimate of Tax Payable for Companies.]

Proposal

A new subsection(4A)(c) is inserted and the proviso is amended as follows:

(4A) Subject to subsections (4B) and (4C), where a company first commences operation in a year of assessment, subsections (1), (2) and (3) shall not apply to the company-

.....

(c) where the company has no basis period for that year of assessment and for the immediate following year of assessment, for that year of assessment and the immediate two following years of assessment:

~~Provided that at the beginning of the basis period for the years of assessment referred to in paragraph (a) or for the two following years of assessment referred to in paragraph (b), the paid up capital of that company in respect of ordinary shares is two million five hundred thousand ringgit and less.~~

Provided that at the commencement of the operation and at the beginning of the immediate two following years of assessment the paid up capital of the company in respect of ordinary shares is two million five hundred thousand ringgit or less.

Comments

It has been proposed that the proviso to this section be replaced. The existing proviso effectively requires the paid up capital at the beginning of the *respective* year of assessment to be not exceeding RM 2.5 million. But, the new proviso appears to be introducing a "all or none" rule, i.e. the paid up capital at the beginning of both years of assessment should be RM 2.5 million or less for the company to be waived from paying the tax instalments. It appears impractical to disqualify the waiver for year 1 in cases where unexpectedly the paid up capital at the beginning of year 2 exceeds the threshold.

Recommendation:

We strongly advocate rewording of the proviso to be more clear and practical

LHDNM Reply

Section 107C(4A) ITA is intended to address cases where a company commenced business and closed its account in the third year of assessment, the effect of which the company would have a basis period of more than 13 months. For the purposes of the section, a company is not required to file an estimate for that basis period if the paid up capital of the company is RM 2.5 million or less at the commencement of the business and at the beginning of the two following years of assessment.

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If the company first complies with the requirement but subsequently exceeded the threshold, strictly the tax payer is required to furnish an estimate, one month before the beginning of the basis period.

However, since the time to furnish the estimate has lapsed, the tax payer is required to furnish an estimate of tax payable for that basis period to the DGIR to enable the DGIR to issue a direction under section 107C(8) ITA.

If there is no direction issued by the DGIR, the case will be treated as a case of 'no estimate furnish' and will subject to the penalty of 10% of the tax payable for that basis period under section 107C(10A) ITA. In addition, the failure to furnish an estimate is an offence under section 120 ITA.

As of today, there is no intention to amend the existing provision. The company is required to maintain it's paid up capital of RM 2.5 million or less at the commencement of its business and at the beginning of the two following years of assessment.

2) Monthly Tax Deduction as Final Tax

Proposal

A new Section 77C [**Deduction of tax as final tax**] is introduced as follows:

- (1) *Notwithstanding section 77, where for a year of assessment an individual-*
- a) has income only in respect of gains or profits from an employment other than gains or profits in respect of the use or enjoyment of benefits provided by his employer under paragraph 13(1)(b) or (1)(c);*
 - b) deductions have been made by his employer in accordance with subsection 107(2) in respect of such gains or profits;*
 - c) the individual is employed by the same employer for a period of twelve months in that year of assessment;*
 - d) such deductions are not borne by his employer for that year of assessment; and*
 - e) that individual whose husband or wife has not made an election pursuant to section 45,*
- the individual may elect not to furnish a return for a year of assessment to the Director General in accordance with section 77.*
- (2) *Where subsection (1) applies and no return for a year of assessment has been furnished by an individual in accordance with section 77-*
- (a) an individual is deemed to have made an election under that subsection;*
 - (b) the total amount of tax deducted referred to under paragraph (1)(b) shall be deemed to be the amount of tax payable of that individual for that year of assessment; and*
 - (c) no assessment shall be made by the Director General in respect of that individual for that year of assessment.*

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- (3) *Notwithstanding subsections (1) and (2), the Director General shall have the power to make an assessment under subsection 90(3) or section 91 for any year of assessment and where an assessment is made by the Director General, the amount which is deemed to be the tax payable under paragraph (2)(b) shall be disregarded.*

Comments

We welcome the proposal to accept monthly tax deductions as final tax which allows employees to elect for non-submission of their tax returns provided certain criteria are met. Further, it is important that:

- i) employers and employees both understand each other's obligations and responsibilities with regard to the monthly tax deductions, and
- ii) measures are in place to minimize "excessive" deductions.

Section 77C does not define clearly the duties and responsibilities of the employer and employee under the new regime. The duties and responsibilities should be clearly set out in the law before implementation of the new regime.

Some practical challenges may arise, and **clarification is sought on the following:**

- 1) Currently, processing (by employers) of Forms TP1 and TP2 that are submitted by the employees is optional. With the proposed amendment, will it be compulsory for employers to process Forms TP1 and TP2 that are submitted by the employees?

LHDNM Reply

There is no amendment to MTD rules for implementation of Forms TP1 and TP2 for the year 2014. It's still optional. However, the employers are encouraged to process the Forms TP1 and TP2.

- 2) If the employees provide the correct information to the employer, but the employer makes an error when keying in the information, resulting in insufficient MTD being deducted, who will be responsible for the penalties (which may be eventually imposed)?

LHDNM Reply

If an employer fails to comply with MTD - rule 3, compound will be imposed on the employer. Employer still has to deduct the shortfall from the employee's remuneration.

Clarification is also sought on the following procedural matters:

- 1) Can an employee elect not to file a tax return in Year 1, and decide to do so in Year 2, and again elect not to file a tax return in Year 3?

LHDNM Reply

Yes.

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- 2) A taxpayer may not file a return form as he/she thinks that the MTDs are equal to his/her final tax. Subsequently, after the filing deadline, he/she discovers that the final tax is higher/lower than the MTDs. Can he submit a tax return to rectify his position? Under such circumstances, will the filing of tax return constitute a late return?

LHDNM Reply

Yes. Submission of tax return after the due date constitute as late return under subsection 112 (3), ITA 1967.

- 3) If a taxpayer files a tax return in good faith after the filing deadline to report the additional income (and therefore, the tax), would due consideration be given such that no penalty is imposed?

LHDNM Reply

The filing of return would render the final tax be disregarded. Original assessment would be issued with penalty imposed under subsection 112 (3), ITA 1967.

3) Section 77A(1A) - Filing of Tax Return in Prescribed Form on an Electronic Medium

Proposals

Section 77A [Return of income by every company, trust body or co-operative society] is amended by inserting after subsection (1) the following subsection:

"(1A) For the purposes of this section, a company shall furnish to the Director General a return in the prescribed form on an electronic medium or by way of electronic transmission in accordance with section 152A."; and

Comments:

The prevailing practice, as spelt out in the yearly Filing Programme is that a grace period of 15 days is available to taxpayers who file their returns electronically. With the proposed amendment, enforcing compulsory e-filing, will the grace period still be available to taxpayers?

LHDNM Reply

The Filing Programme for Income Tax Return Forms in Year 2014 has been officially released to the professional bodies and published in the IRBM website on 23 December 2013. Having regard to the newly enforced subsection 77A(1A) of the Income Tax Act 1967, a longer grace period i.e. one month from the due date is thereby given to companies for the filing of returns for Year of Assessment 2014 where the due date falls in the calendar year 2014 (paragraph 2.2 of the Filing

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Programme). Pursuant to subsection 77A (1A), the filing of paper return is no longer deem received for the purpose of section 77A of the same Act.

4) Section 21A(4) - Basis Period on Commencement of Business for Companies

Proposal

It is proposed that Section 21A [Basis period of a company, limited liability partnership, trust body or co-operative society] be amended as follows:

".....

- (3) Where the company, limited liability partnership, trust body or co-operative society has made up the accounts of its operations for a period of twelve months ending on a day ~~other than 31 December~~ *in a basis year* and there is a failure to make up the accounts of the company, limited liability partnership, trust body or cooperative society ending on the corresponding day in the following basis year, the Director General may direct that the basis period for the year of assessment in which the failure occurs, or the basis periods for that year and the following year of assessment, shall consist of a period or periods (which may be of any length) as specified in the direction.
- (4) ~~Subject to subsections (5) and (6), where a company, limited liability partnership, trust body or co-operative society commences operations on a day in a basis year and makes up its accounts for a period of twelve months ending on a day other than 31 December, there shall be no basis period in relation to any of its sources of income for the first year.~~
 - (4) *Subject to subsections (5) and (6), where a company, limited liability partnership, trust body or co-operative society commences operations on a day in a basis year for a year of assessment (hereinafter referred to as the "first year of assessment") and make up its account ---*
 - (a) *for a period of less than twelve months ending on a day in that basis year, that period shall constitute the basis period for the first year of assessment*
 - (b) *for any period of months ending on a day in the immediately following basis year (hereinafter referred to as the "second basis year"), that period shall constitute the basis period for the year of assessment (hereinafter referred to as the "second year of assessment") immediately following the first year of assessment, there shall be no basis period in relation to any of its sources of income for the first year of assessment, or*
 - (c) *for a period of more than twelve months ending on a day in the basis year immediately following the second basis year, that period shall constitute the basis period for the year of assessment immediately following the second year of assessment and there shall be no basis period in relation to any of its sources of income for the first year of assessment and second year of assessment.*

Clarification is sought for the case below:

A company's accounting periods are as follows:

Existing accounts	1 January 2013 - 31 December 2013 (12 months)
New accounts	1 January 2014 - 31 January 2015 (13 months)

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Would the basis period for YA 2015 be from 1 January 2014 to 31 January 2015 such that there is no basis period for YA 2014, i.e. no tax filing is required for YA 2014?

LHDNM Reply

A company's accounting periods are as follows:

Existing accounts 1 January 2013 - 31 December 2013 (12 months)

New accounts 1 January 2014 - 31 January 2015 (13 months)

Since there is a failure to make up the accounts of the company, ending on the corresponding day in the following basis year, the Director General may direct as follows:

Basis period for the company

YA 2013 - 1 January 2013 - 31 December 2013 (12 months)

YA 2014 – 1 January 2014 – 31 July 2014 (7 months)

YA 2015 – 1 August 2014 – 31 January 2015 (6 months)

YA 2016 - 1 February 2015 – 31 January 2016 (12 months)

There should not be any missing year of assessment.

5) Deduction of Tax Filing Fees

Proposal

Currently, secretarial fees and tax filing fees are not deductible expenses for the purpose of computing income tax since these are considered by the authorities as not having been incurred directly in the production of business income. As part of the GST implementation initiatives, it is proposed that the following be given tax deductions:

Secretarial fee --- up to RM5,000

Tax filing fee --- up to RM10,000

a) Clarification sought:

- i) Is the deduction only for corporate tax filing fees? If not, are fees for the filing of returns for other taxes, e.g. RPGT, included?

LHDNM Reply

Tax filing fees incurred by taxpayers for filing of income tax return and GST form will qualify for tax deduction under Income Tax Rules (to be gazetted). Fees for the filing of returns for other taxes are not included.