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TaXavvy

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Asset-Backed Securitisation

The *Income Tax (Asset-Backed Securitisation) Regulations 2014* ("ABS Regulations") gazetted on 24 June 2014 are effective from the year of assessment ("YA") 2013. The ABS Regulations apply to an *originator* and *a special purpose vehicle* ("SPV") in an asset-backed securitisation transaction which is authorised by the Securities Commission ("SC") on or after 1 January 2013. The ABS Regulations are to be read together with the Capital Markets and Services Act 2007 and the guidelines on the offering of asset-backed securities issued by the SC on 26 July 2004 ("the SC guidelines").

Some of the salient points of the ABS Regulations include:

1. Business source of an SPV

- The income of the SPV from all sources is regarded as gross income from a single source consisting of a business in the basis period of a YA.
- Any expense incurred by the SPV for the acquisition of trade receivables or stock in trade pursuant to a securitisation transaction is deemed to have been incurred throughout the period of the securitisation transaction and allowed as a deduction in the basis period for a YA that relates to the period of the securitisation transaction.

2. Originator

- *Proceeds/gains (or loss) from disposal of trade receivables or stock in trade*

  Proceeds/gains (or loss) from disposal of trade receivables or stock pursuant to a securitisation transaction is deemed to accrue evenly throughout the period of the securitisation and constitute the gross income (or allowed as deduction, as the case may be) of the originator in the basis period for a YA that relates to the period of the securitisation transaction.

- *Disposal of fixed asset*

  Any balancing charge or allowance under Schedule 3 of the Income Tax Act 1967 ("ITA") arising from disposal of fixed assets, is deemed to have been made in the basis period for a YA that relates to the period of the securitisation transaction determined using a prescribed formula. The disposal value of the fixed asset shall be equal to a fair value based on an independent valuer's valuation report.

3. Non-application

- Group relief provision (section 44A of the ITA) shall not apply to the transfer of loss between the originator and the SPV.

- The investment holding company provisions (section 60F & 60FA of the ITA) shall not apply to the SPV.

4. Consequential amendments

The *Income Tax Leasing Regulations 1986* ("Leasing Regulations") were amended by the *Income Tax Leasing (Amendment) Regulations 2014* following the issuances of the ABS Regulations. With effect from YA 2013, the Leasing Regulations shall not apply to a lease transaction in relation to an asset-backed securitisation transaction authorised by the SC on or after 1 January 2013.

- "Originator" refers to any entity that is seeking to transfer or dispose of its assets to a SPV in a securitisation transaction.
- "SPV" refers to any entity which issues asset-backed securities and which satisfies all criteria stipulated under the SC guidelines.

Source: SC guidelines

Tax deduction for vendor development programme expenditure

The *Income Tax (Deduction for expenditure in relation to Vendor Development Programme) Rules 2014* ("the Rules"), gazetted on 20 June 2014, are effective from YA 2014.

The Rules provide a double deduction on expenditure incurred by an anchor company for three consecutive YAs commencing from the YA in the basis period in which the first expenditure is incurred in carrying out Vendor Development Programme (VDP) activities in:

a) product development, namely product quality development, product innovation or research and development,
b) capability improvement, namely certification programme, assessment programme or business process re-engineering, or
c) human capital namely, hard skill training, lean management, financial management system or capacity building.

The expenditure must be revenue in nature, verified by the Ministry of International Trade and Industry ("MITI"), and not exceed RM300,000 for each YA.

An anchor company must be a resident company which is incorporated under the Companies Act 1965, participating in the VDP, and has signed a memorandum of understanding with MITI under the VDP between 1 January 2014 to 31 December 2016.

Tax treatment of deferred annuity

Public Ruling 4/2014 – Deferred annuity ("PR 4/2014") was issued by the Inland Revenue Board ("IRB") on 24 June 2014. The salient points of PR 4/2014 include:

1. Deductibility of premiums paid

A resident individual is entitled to a deduction for total deferred annuity premium and contribution to a private retirement scheme of up to RM3,000 per YA (effective from YA 2012 to YA 2021).

2. Exemption of income

An individual's annuity income is exempt from tax if the annuities are granted under annuity contracts issued by Malaysian life insurers and takaful operators.

A life insurer or takaful operator's income from investments made out of a life fund or family fund in respect of a deferred annuity scheme which is established in accordance with the Retirement Scheme Standards approved by the Central Bank of Malaysia is exempt from tax (effective from YA 2012).

3. Early withdrawal

Tax at the rate of 8% is imposed on the total amount withdrawn from a deferred annuity scheme by a policy holder if the withdrawal is made before the age of 55. The life insurer or takaful operator is required to deduct and remit tax to the IRB within one month from payment of the amount withdrawn (net of tax) to the policy holder.

The public ruling is available for download on IRB's website at www.hasil.gov.my (Laws and Regulations > Public Ruling).

New Malaysia – Poland tax treaty

A new Malaysia – Poland Double Taxation Agreement ("DTA") has been gazetted on 23 June 2014. The new DTA will enter into force once both countries complete the ratification procedure. The new Malaysia – Poland DTA revises the 1978 DTA between the two countries, and includes *anti-treaty shopping provisions in the dividends, interest, royalties and technical services articles.*

Some of the salient changes from the 1978 DTA are:

DTA Article	Salient changes
General definitions	Several definitions such as "Malaysia", "Poland", "person" and "company" have been amended and standardised for both countries.
Resident	The definition of "resident of a Contracting State" has been amended.
Permanent establishment (PE)	The provision deeming supervisory activities carried out for more than 6 months in connection with a construction, installation or assembly project to be a PE, previously included in the protocol to the 1978 DTA, is no longer included in the PE article.
Business profits	In the absence of information required to determine profits to be attributed to the PE, the State where the PE is situated may assess estimated tax on the PE according to its laws based on available information and the principles of the business profits article in the DTA.
Dividends	Tax on dividend shall not exceed 5% (previously exempted). Under the protocol to the DTA, Malaysian dividends exempted from tax by virtue of special incentives, will be exempt from Polish tax in the hands of Polish shareholders resident in Poland holding 25% of share capital of the Malaysian company. This exemption expires on 31 December 2020.
Interest	Tax on interest shall not exceed 10% (previously 15%).
Royalties	Tax on royalties shall not exceed 8% (previously 15%).
Technical services	A new article for technical services is introduced, where tax on fees for technical services shall not exceed 8%.
Capital gains	A clause to tax capital gains from alienation of shares deriving more than 50% of their value directly / indirectly from immovable property situated in a State by that State is now included.

DTA Article	Salient changes
Other income	A new article on other income is introduced.
Labuan	Persons taxed under the Labuan Business Activity Tax Act 1990 are excluded from the benefits of the DTA. However, companies which made an irrevocable election to be charged under the ITA is still entitled to the treaty benefits.

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