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Promotion of Investments (Amendment) Bill 2014

The Promotion of Investments (Amendment) Bill 2014 (“the Amendment Bill”) has been released on 12 June 2014. The key proposed changes in the Amendment Bill include:

1. The term “company” is now defined in the Promotion of Investments Act 1986 (“the PIA”) to ensure that only companies which are incorporated in Malaysia under the Companies Act 1965 and resident in Malaysia are eligible for tax incentives granted under the PIA. This proposed amendment is to be effective upon gazetting of the Amendment Bill.
2. Proposed amendments to reflect new, extension or expiry of various tax incentives. Examples of proposed amendments include the following:

Extension of tax incentives

Pioneer status (“PS”) and investment tax allowance (“ITA”) granted for the generation of renewable energy or provision of energy conservation services – application to the Malaysian Investment Development Authority (“MIDA”) can be made up to the extended date of 31 December 2015 (previously 31 December 2010).

New tax incentives

Addition of the PS and ITA incentives for establishment of medical devices testing laboratories or upgrade of such laboratories in Malaysia – application to be made to MIDA by 31 December 2012.

Expired tax incentives

Deletion of the enhanced PS and ITA incentives for companies below following the expiry of these incentives from 1 January 2011:

- participating in promoted activities or producing promoted products in promoted areas, or
- relocating from a non-promoted to a promoted area, or
- participating in an industrial linkage programme.

Transitional provisions have been proposed to enable the relevant provisions of the PIA relating to the proposed deleted incentives to continue to apply to any application approved before the coming into operation of the Amendment Bill.

3. Currently, section 7 of the PIA provides that a company which has been granted PS shall request for a pioneer certificate within 24 months from the date of the grant of the incentive or such extended period, as the Minister of Finance (MoF) may allow. It is now proposed that with effect from 1 January 2011, the application for extension of time to request for a pioneer certificate must be made before the expiry of the abovementioned 24 months or extended period as allowed by the MoF.

A new section 27P of the PIA has been proposed to provide the same time frame as stated in section 7 of the PIA for a company which has been granted ITA to apply for the determination of its effective date or an extension of time for such application to be made. This proposed insertion is to be effective upon gazetting of the Amendment Bill.

Tax exemption for an angel investor

The *Income Tax (Exemption) (No. 3) Order 2014* was gazetted on 20 June 2014 and is effective from 1 January 2013.

It provides income tax exemption on the aggregate income of an angel investor, starting from the second year of assessment (“YA”) following the YA in which an investment is made in an investee company. The amount of exemption given is limited to the lower of the aggregate income or the amount of investment made. The excess investment amount exceeding the aggregate income is not available to be carried forward into the next YA.

The angel investor is an individual who:

- is a resident in Malaysia and whose sources of income is not derived solely from business;
- has applied to the MoF between 1 January 2013 to 31 December 2017 to invest in an investee company;
- does not have a parent, including a parent in law, a child, including a step child, or adopted child, a brother or sister, or a grandparent or grandchild, or a spouse, who makes any investment in the investee company;
- invests solely to finance the activities of the investee company as approved by the MoF;
- invests into not more than 30 per cent of the investee company’s total paid-up share capital; and
- has not made a claim for deduction under the *Income Tax (Deduction for Investment in a Venture Company) Rules 2005*.

The investee company must be a resident company which is incorporated in Malaysia and carrying on MoF approved activities, with at least 50% of its issued ordinary share capital directly owned by a citizen shareholder who is not the angel investor.

Further income tax exemption for qualifying activities in RAPID complex

The *Income Tax (Exemption) (No.2) Order 2014* (the 2014 Order) was gazetted on 20 June 2014 and is effective from YA 2011.

The 2014 order grants a qualifying person a further 5 years income tax exemption of 50% of his statutory income from the qualifying activities in the Refinery and Petrochemical Integrated Development (RAPID) complex. This incentive is given after the expiry of the 15 year exemption period granted under the *Income Tax (Exemption) (No.7) Order 2013* which provides for income tax exemption of 100% of a qualifying person’s statutory income from the abovementioned qualifying activities.

RAPID complex means a complex which consists of liquid cracker plants, refinery plants, petrochemical or chemical production plants and all support and auxiliary facilities including but not limited to liquid natural gas (LNG), Receiving and Re-gasification Terminal (RGT), COGEN power plant, storage facilities or waste disposal facilities, and located in Pengerang, Johor.

Errata

Please note under “Criteria on incomplete income tax return form” on page 3 of TaXavvy Issue 8-2014, “section 113(2)” should read as “section 112(3)”.

We regret the error.

Let's talk

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