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Revised Forms CP204 and CP204A

The Inland Revenue Board (“IRB”) has recently issued the revised forms CP204 [Pin 2/2015] and CP204A [Pin 2/2015] for the estimate and revised estimate of tax payable by companies / limited liability partnerships / trust bodies / cooperative societies.

The changes in the forms mainly apply to non-resident companies. Where the income of the non-resident company is fully subjected to the withholding tax under Section 107A of the Income Tax Act 1967 (“ITA”) the estimate/revised estimate of tax payable are not required to be provided.

However, please note that the taxpayer is still required to submit the relevant form CP204 to the IRB.

Both the forms are available on IRB website www.hasil.gov.my (Forms > Return Forms > Other Forms).

Public Ruling 5/2015 – Taxation of Limited Liability Partnership

The IRB has issued *Public Ruling 5/2015 – Taxation of Limited Liability Partnership* (“PR 5/2015”) dated 14 August 2015, which replaces *Public Ruling 3/2014 – Taxation of Limited Liability Partnership* (“PR 3/2014”). PR 5/2015 is essentially the same as PR 3/2014 except for additional comments to provide further clarity.

The following as the salient changes:

- A Limited Liability Partnership (“LLP”) is required to retain the records of the partnership or company prior to its conversion to a LLP, for a period of 7 years.
- New examples and explanation have been included to explain the liability and assessment of a partnership or company under section 75B(3) and (4) of the ITA, after its conversion to an LLP.

The public rulings are available on IRB’s website www.hasil.gov.my (Laws and Regulations > Public Ruling).

Tax audit framework on withholding tax

The IRB has issued a new tax audit framework on withholding tax (currently available in Malay version only), effective from 1 August 2015. The contents of the withholding tax audit framework are mostly similar to the general tax audit framework.

The following are the salient differences from the general tax audit framework:

- The number of years of assessment (“YA”) covered under a withholding tax (“WHT”) audit is generally 3 YAs, but can be extended to 5 YAs.

- The timeframe for settlement of a WHT audit is 6 months from the commencement of the audit.
- The Monitoring Deliberate Tax Defaulters programme is not mentioned in the WHT audit framework.
- An increase in WHT will be imposed for non-payment or underpayment of WHT. Section 113(2) penalties will also be imposed on deductions disallowed due to failure to withhold or pay WHT before the submission of tax returns. However, taxpayers may be eligible for concessionary penalty rates if there is voluntarily disclose from them.
- The payer may submit an appeal to the Special Commissioners, under section 109H of the ITA (using form CP 15D) on the basis that WHT is not applicable. However, the appeal under section 109H would not be available in the following situations:
 - a) Where the non-resident has filed an appeal to the Special Commissioners in respect of WHT for payments under section 4(f) or 4A of the ITA,
 - b) Where the deduction for payments under section 4(f) or 4A of the ITA are disallowed under section 39 of the ITA, or
 - c) Where the payer has not remitted the WHT to the IRB.

The WHT audit framework can be downloaded from IRB's website www.hasil.gov.my (Laws and Regulations > IRBM Tax Audit Framework).

Clarification on item VII (date of commencement of operations) & definition of “related companies” in the Form C for YA 2015

Date of commencement of operations (item VII)

The Form C for YA 2015 requires the completion of the company's date of commencement of operations under item VII in page 1 of the form. As many companies face difficulties in providing this information, the Chartered Tax Institute of Malaysia (“CTIM”) has written to the IRB on this matter. Members of CTIM will be able to view the correspondences between CTIM and IRB on CTIM's website www.ctim.org.my.

The following has been clarified by IRB:

- The completion of the “date of commencement of operations” is not compulsory. However, IRB encourages all companies (with a date of commencement of operations) to provide the information. Once it is provided in YA 2015, companies are no longer required to complete item VII in subsequent YAs.
- Companies which have more than one business source with different dates of commencement of operations should select the earliest of these dates for the purposes of completing item VII.

Meaning of “related companies” for purposes of Part N (transaction between related companies)

CTIM has also sought clarification from IRB on the definition of “related companies” in Part N of the sample company return form and guidebook for YA 2015. IRB clarified that for the purposes of Part N, the definition of “related companies” should be based on paragraph 5.1 of the Transfer Pricing Guidelines 2012 which states:

“Section 139 of the ITA refers to “control” as both direct and indirect control. The interpretation of related companies or companies in the same group (referred to in the context of holding and subsidiary companies) is provided for under subsection 2(4) of the same Act”.

Upcoming events

GST Workshop Series: Getting compliance right

A series of one (1) day and two (2) days workshops are being offered from **October to December 2015**. The workshops aim to provide participants with an understanding of GST rules and equip them with the knowledge to be able to deal with common GST errors and issues in complying with the GST law.

For further details, please refer to <http://www.pwc.com/my/en/theacademy/public-programmes.jhtml>

GST customised workshops

You may already be confident in certain aspects of GST knowledge within your organisation. If you would like a GST course which addresses specific parts of the legislation or your business, we would be happy to customise a course that addresses your specific requirements.

For further details, please contact:

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