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Public rulings on income tax treatment of Goods and Services Tax

The Inland Revenue Board (IRB) has recently issued *Public Ruling 1/2017 – Income Tax Treatment of Goods and Services Tax (GST) Part 1 (Expenses)* (“PR 1/2017”) and *Public Ruling 2/2017 – Income Tax Treatment of GST Part 2 (Qualifying Expenditure for Purposes of Capital Allowances)* (“PR 2/2017”).

PR 1/2017 provides an explanation on the basic concepts of GST; the income tax treatment of GST (input tax, output tax and reverse charge mechanism for imported services and bad debts relief) and the documentation required for income tax purposes.

PR 2/2017 explains the tax treatment of GST paid or to be paid on qualifying expenditure incurred for purposes of claiming capital allowances.

1) Public Ruling 1/2017 – Income Tax Treatment of GST Part 1 (Expenses)

Among the pertinent points covered in this public ruling (PR) are the following:

- GST incurred (input tax) would be a deductible expense under section 33(1) of the Income Tax Act 1967 (ITA) if the underlining expense to which GST (input tax) is attributable is wholly and exclusively incurred in the production of gross income and is not prohibited by any provision under section 39(1) of the ITA.
- When a company chooses not to claim input tax credit due to administrative reasons, e.g. in the absence of a tax invoice or valid tax invoice, the company is not entitled to claim a deduction by virtue of section 39(1)(o) of the ITA. In one of the examples in the PR, IRB explained that the company could have requested for the tax invoice to be issued under the company's name instead of the director's name in order to be eligible for tax deduction under section 33(1) of the ITA.
- Any penalty imposed by the Royal Malaysian Customs Department (RMCD) due to the taxpayer's mistake is not tax deductible.
- Where a supply is made by a GST-registered person to a non GST-registered person, bad debt relief is not available for GST purposes. Any output tax not recoverable from RMCD as bad debt relief, is not deductible under section 34(2) of the ITA, the provision dealing with special deduction for bad debts. IRB explained in the public ruling this is because the debt was not included as part of the gross income for the relevant year of assessment.
- Residual input tax which is attributable to exempt supply and not claimable from RMCD is a deductible expense for income tax purposes. The amount deductible is subject to the effects of annual adjustment or longer period adjustment required under the GST Act 2014, when the actual amount of input tax credit is finally ascertained to be non-claimable from RMCD.

2) Public Ruling 2/2017 – Income Tax Treatment of GST Part 2 (Qualifying Expenditure for Purposes of Capital Allowances)

Among the pertinent points covered in this PR are the following:

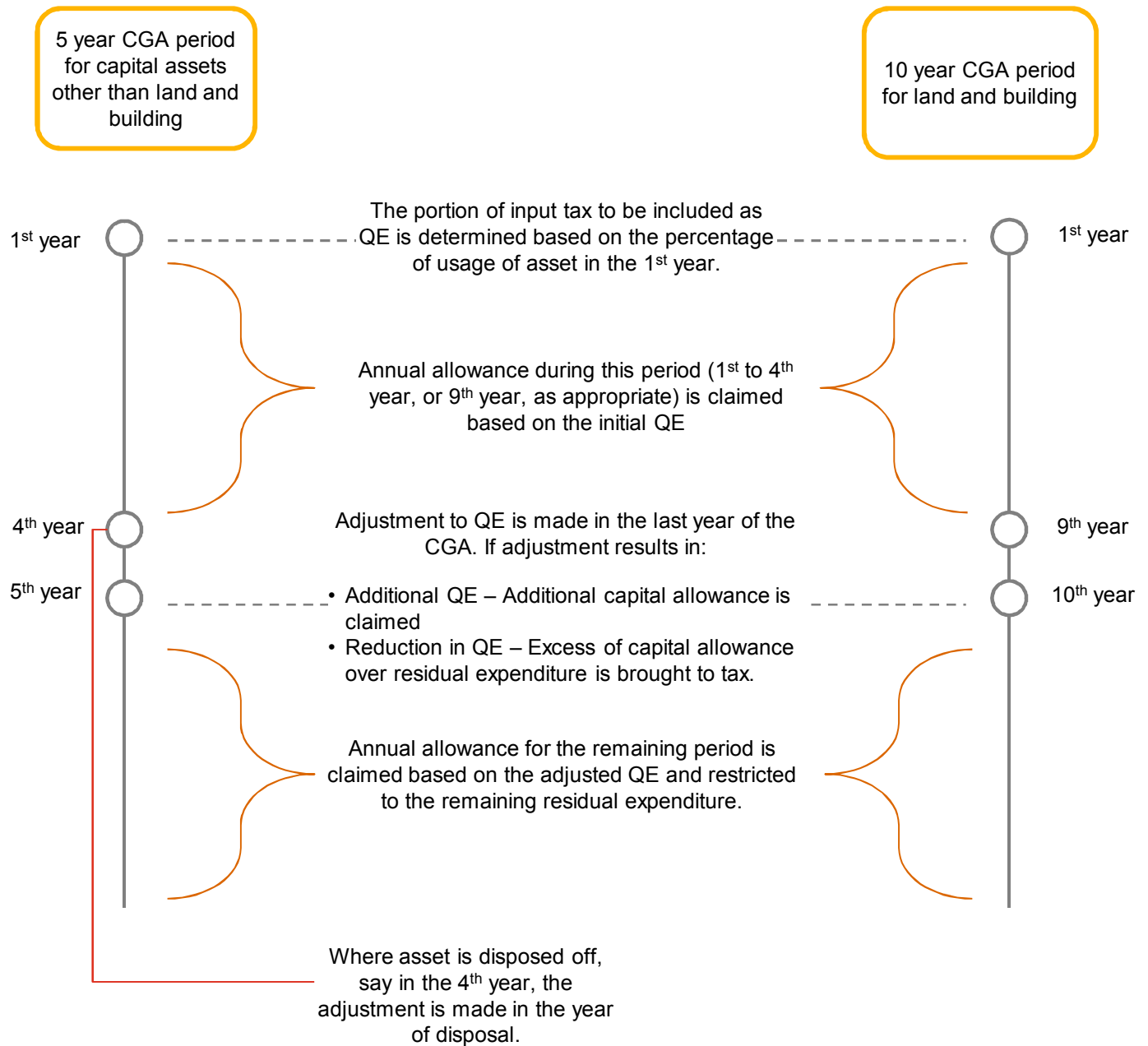
- Where a GST registered person is eligible to claim input tax credit but fails to do so, the GST incurred is not to be included as part of the qualifying expenditure (QE).
- A person who is liable to be registered for GST but registers late, is not allowed to include into the QE, the GST incurred in the period prior to registration.
- Where a person's GST status changes from not liable to liable to be registered, the QE previously claimed has to be adjusted to exclude the GST portion which he is now entitled to credit as input tax.
- Income tax treatment for Capital Goods Adjustment (CGA) made under the GST Act 2014.

CGA is carried out in a situation where a capital asset is used for making mixed supplies (i.e. taxable and exempt supplies) because the input tax in relation to the asset's usage for making exempt supplies is not claimable under the GST Act. Adjustment is made to the initial portion of input tax claimed from the RMCD when there is a change in the proportion of usage of the capital asset in making taxable and exempt supplies.

For income tax purposes, the QE also has to be adjusted to take into account the CGA made. Only the input tax portion in relation to making exempt supplies is to be included in the QE of the asset. The income tax treatment is explained in the diagram in the following page.

The PRs are available on the IRB's website www.hasil.gov.my (Internal Link > Public Rulings).

Income tax treatment of capital goods adjustments

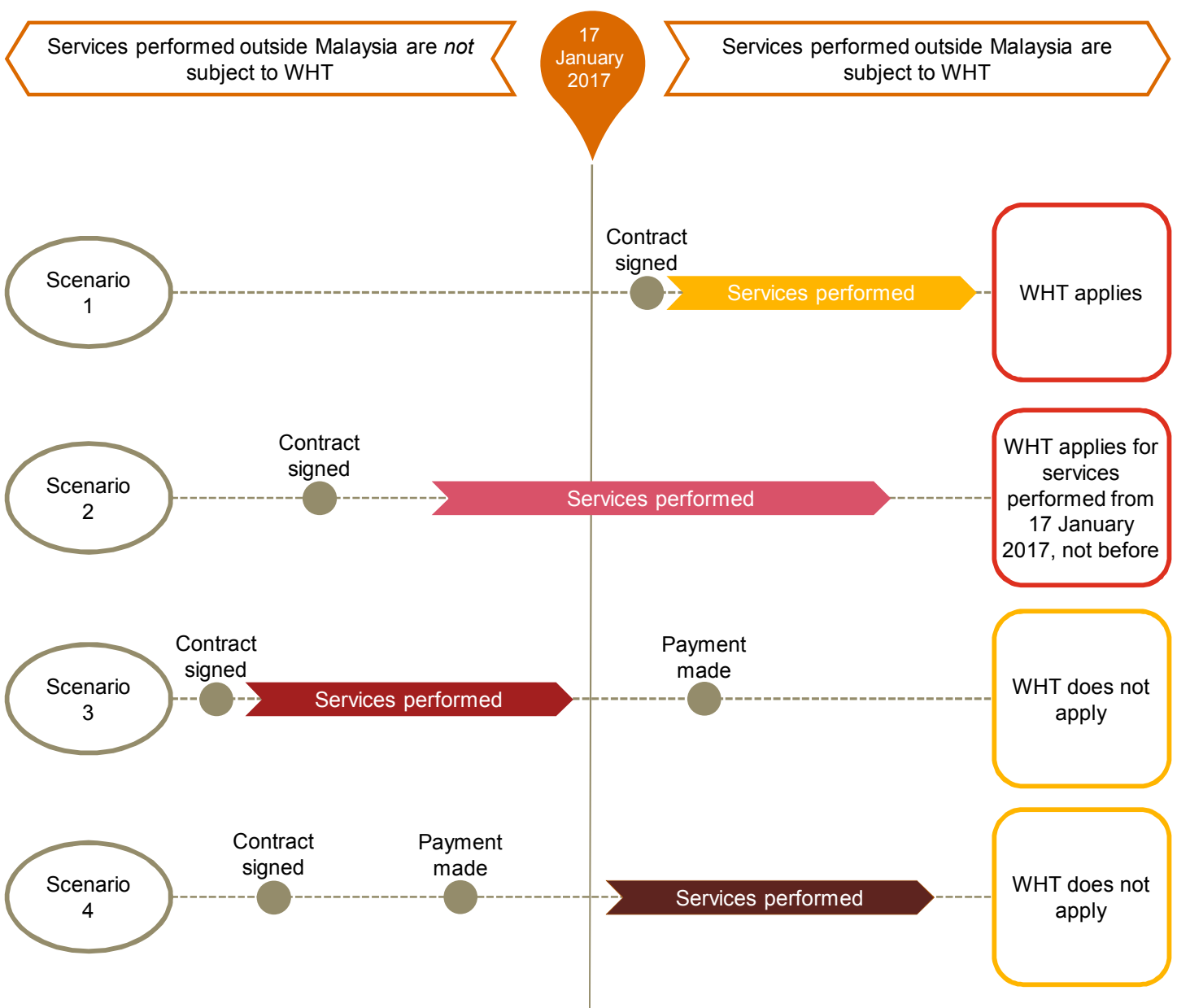


A similar income tax treatment applies for assets on which reinvestment allowance is claimed. Where the adjustment results in increased reinvestment allowance, the amount is deducted from statutory income. Where the adjustment results in reduced reinvestment allowance, the amount is added to the statutory income.

The IRB has issued two Practice Notes in relation to the removal of the proviso to section 15A of the Income Tax Act 1967 effective from 17 January 2017. With the amendment to section 15A, services by non-resident persons which are performed outside of Malaysia are now subject to withholding tax (WHT). The Practice Notes seeks to provide guidance on the application of WHT following the amendment.

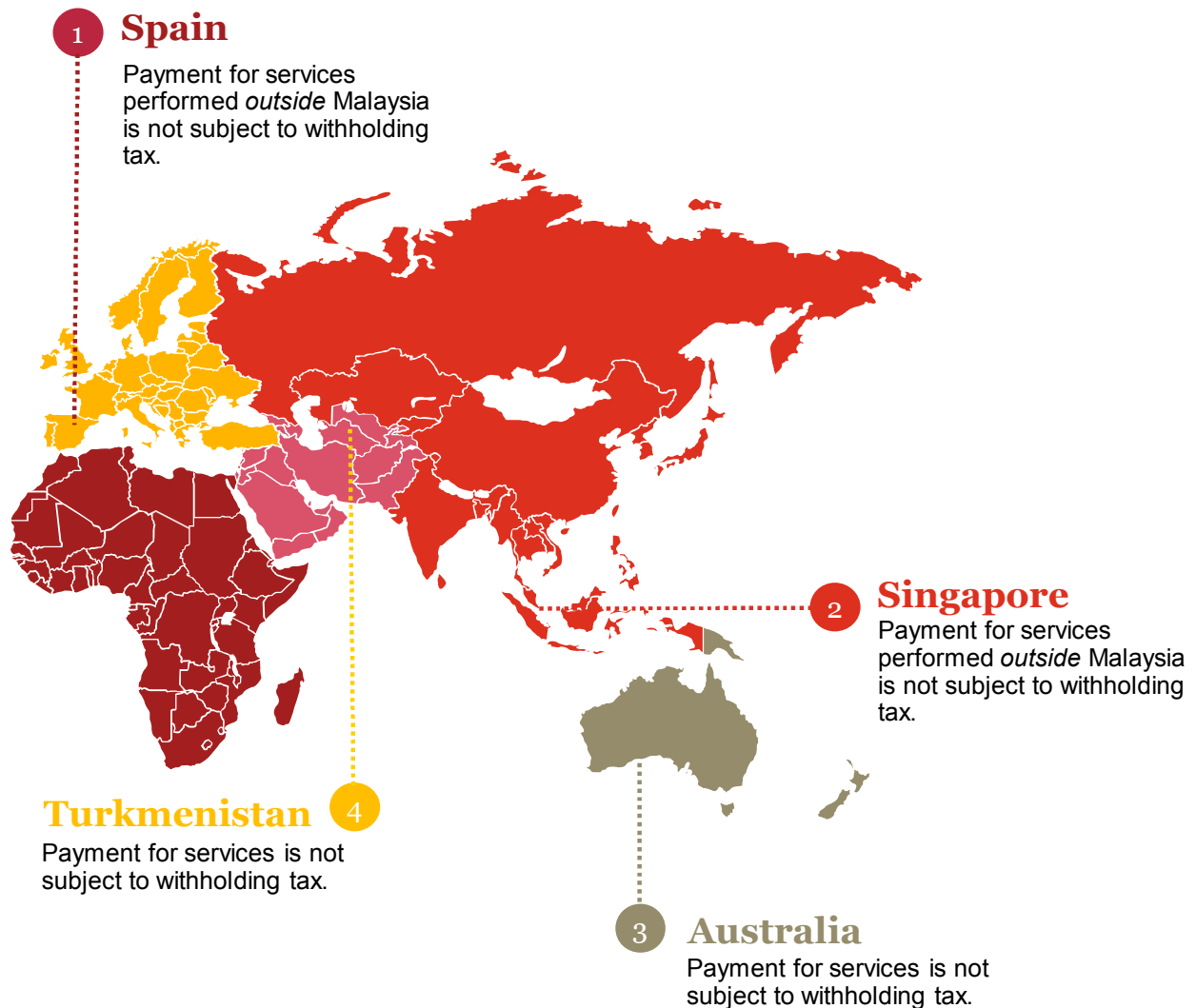
Practice Note No. 1/2017 – Amendment of Section 15A of the Income Tax Act 1967 Issues on Effective Date

In summary, WHT under section 109B will apply as follows:



**Practice Note No. 2/2017 – Amendment of Section 15A of the Income Tax Act 1967
Issues on Existing Double Taxation Avoidance Agreement (DTA)**

The IRB clarified its position on the DTA with the following countries with respect to Malaysia's right to impose WHT under section 109B as follows:



Let's talk

Our offices	Name	Email	Telephone
Kuala Lumpur	Jagdev Singh	jagdev.singh@my.pwc.com	+60(3) 2173 1469
Penang / Ipoh	Tony Chua	tony.chua@my.pwc.com	+60(4) 238 9118
Johor Bahru	Benedict Francis	benedict.francis@my.pwc.com	+60(7) 222 4448
Melaka	Benedict Francis Au Yong	benedict.francis@my.pwc.com paik.hup.au@my.pwc.com	+60(7) 222 4448 +60(6) 283 6169
Labuan	Jennifer Chang	jennifer.chang@my.pwc.com	+60(3) 2173 1828

Our services	Name	Email	Telephone
Corporate Tax Compliance & Planning			
▪ Consumer & Industrial Product Services	Margaret Lee Steve Chia	margaret.lee.seet.cheng@my.pwc.com steve.chia.siang.hai@my.pwc.com	+60(3) 2173 1501 +60(3) 2173 1572
▪ Emerging Markets	Fung Mei Lin	mei.lin.fung@my.pwc.com	+60(3) 2173 1505
▪ Energy, Utilities & Mining	Lavindran Sandragasu	lavindran.sandragasu@my.pwc.com	+60(3) 2173 1494
▪ Financial Services	Jennifer Chang	jennifer.chang@my.pwc.com	+60(3) 2173 1828
▪ Technology, InfoComm & Entertainment	Heather Khoo	heather.khoo@my.pwc.com	+60(3) 2173 1636
GST / Indirect Tax	Raja Kumaran Yap Lai Han Chan Wai Choong	raja.kumaran@my.pwc.com lai.han.yap@my.pwc.com wai.choong.chan@my.pwc.com	+60(3) 2173 1701 +60(3) 2173 1491 +60(3) 2173 3100
International Tax Services / Mergers and Acquisition	Frances Po	frances.po@my.pwc.com	+60(3) 2173 1618
Transfer Pricing, Tax Audits & Investigations	Jagdev Singh	jagdev.singh@my.pwc.com	+60(3) 2173 1469
International Assignment Services	Sakaya Johns Rani Hilda Liow	sakaya.johns.rani@my.pwc.com hilda.liow.wun.chee@my.pwc.com	+60(3) 2173 1553 +60(3) 2173 1638
Corporate Services	Lee Shuk Yee	shuk.yee.lee@my.pwc.com	+60(3) 2173 1626
Japanese Business Consulting	Clifford Yap	clifford.eng.hong.yap@my.pwc.com	+60(3) 2173 1446

pwc.com/my

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