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Malaysia – Important Changes to Monthly Tax Deduction Rules

by KPMG, Kuala Lumpur
(KPMG in Malaysia is a KPMG International member firm)

New statutory provisions in Malaysia have been enacted that amend the definition of "remuneration" for Monthly Tax Deduction (MTD) – a form of withholding – purposes. Additionally, the due date of MTD payments is extended from the 10th of the calendar month to the 15th of the calendar month, among other changes.

Why This Matters

Employers should be aware that for certain employees who have an income tax liability in Malaysia, their compliance responsibilities have changed. With effect from Year of Assessment ("YA") 2014, employees whose total income tax is equivalent to the total amount of MTD, are deemed to have made an election *not* to submit their returns if no returns are furnished by 30 April of the following year (i.e., YA 2014 tax return is due for submission on 30 April 2015). The MTD made would be deemed as tax payable for that year of assessment, which represents the final tax paid.

However, the Director General of the Malaysian Inland Revenue Board ("MIRB") may raise assessment or additional assessment where it appears that additional income tax ought to have been charged. In this respect, it is important for an individual taxpayer to establish that the MTD deducted by the employer is equivalent to that individual's tax liability on his or her income prior to the election not to submit a tax return for the relevant YA.

For prior coverage of changes to MTD, see *Flash Alert* 2014-102, 14 November 2014.

Background

MTD represents the income tax deductions (withholding) from an employee's current monthly remuneration[1].

The *Income Tax (Deduction from Remuneration) (Amendment) (No. 2) Rules 2014* was recently issued to provide for changes to the MTD rules. The statutory rules were gazetted on 31 December 2014.[1]

The salient points regarding the changes to the MTD are outlined below.

Definition of Remuneration

The definition of remuneration for MTD purposes has been amended to mean income in respect of gains or profits from employment as specified under Section 13(1) of the *Income Tax Act, 1967* ("the Act"). Section 13(1) sets out the remuneration components of employment income, which among others include benefits-in-kind ("BIK") and value of living accommodation ("VOLA").

Prior to this amendment, "remuneration" for MTD purposes meant:

- (where no irrevocable election is made by an employee) income representing gains or profits from his or her employment *other than* BIK and VOLA; and
- (where an irrevocable election is made by an employee) income representing gains or profits from his or her employment *including* BIK and VOLA.

KPMG Note

With the recent amendment, BIK and VOLA would be mandatorily subject to MTD.

Due Date of MTD Payment and Notification of Cessation of Payment of Remuneration

The due date of MTD payment is extended from the 10th of the calendar month to the 15th of the calendar month.

As an example, the January 2015 MTD will be due for payment on 15 February 2015.

Similarly, the employer shall inform the MIRB not later than the 15th day after the cessation of payment of remuneration (in the case of cessation of employment).

Revised Schedule on Determination of MTD

The methods (i.e., based on the Schedule of MTD (under the new rules, now known as "Table of MTD") or computerized calculations) used to determine the MTD remain the same.

(i) Table of MTD (previously known as Schedule of MTD)[3]

The Table of MTD for 2015 has been issued to take into account the reduction in the personal income tax rates.[4] Effective in 2015, the individual income tax rates are reduced by 1 to 3 percentage points with the top marginal rate of 25 percent for tax resident individuals. Nonresident individuals are subject to a reduced flat rate of 25 percent.

Where the employer is using the Table of MTD, only the standard deduction for the individual, spouse, qualifying children, and Employees Provident Fund ("EPF") contribution would be accounted for. If additional deductions need to be claimed, the computerized calculation has to be used.

(ii) Computerized Calculation

The PCB calculator, which is made available in the MIRB's Web site (www.hasil.gov.my), has also been amended to take into account the reduction in the personal tax rates.

In determining the amount of the MTD based on the computerized calculation, the employer shall allow the employees to claim allowable deductions and rebates under the Act not less than twice in the current year. The claim has to be made in the form (Borang PCB/TP1 [1/2015]) prescribed by the MIRB.

KPMG Note

With the above directive, it becomes mandatory for an employer to allow the employee to claim allowable deductions and rebates at a minimum of twice a year when determining the MTD.

With the changes, employers would have to review their current practice of collating information on

KPMG Note (cont'd)

the employment income of each of their employees since BIK and VOLA are now subject to MTD. Further, employers need to have a process in place to allow the employees to submit their claims for personal deductions and rebates.

Potential Consequences of Non-Compliance with MTD

Where the MTD rules are not adhered to, there may be consequences. For instance, any employer who without reasonable excuse fails to comply with MTD shall be guilty of an offense and shall on conviction be liable to a fine between MYR 200 to MYR 20,000, or to imprisonment for a term not exceeding six months or to both; and where an employer is found guilty for failure to comply with MTD, the court that found the employer guilty shall order the employer to pay to the Director General of Inland Revenue the total amount of tax deducted or that should have been deducted.

Footnotes:

1 Made in accordance with the Schedule of MTD issued by the MIRB or the computerized calculation developed by the MIRB ("PCB Calculator") or a computerized payroll system which is developed or customized in accordance with the specifications determined and verified by the MIRB.

2 See:
http://www.federalgazette.agc.gov.my/outputp/pua_20141231_P.U.%20(A)%20362_KKCP%20(PDS).pdf .

For more information, see http://www.hasil.gov.my, go to "Employer" then "Monthly Tax Deduction" or see: http://www.hasil.gov.my/goindex.php?kump=5&skum=3&posi=1&unit=5100&sequ=6 .

3 The name change is set out in *Income Tax (Deduction from Remuneration) (Amendment) (No. 2) Rules 2014*.

4 For coverage of the changes to personal income tax rates and thresholds, see *Flash Alert* 2014-102, 14 November 2014.

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