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Malaysia – Measures on Penalties, Receipt of Employment Income, Gratuity Payments

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Malaysia's government has proposed new tax measures affecting individuals additional to those highlighted in our earlier GMS *Flash Alert* 2015-134 on the 2016 Budget proposals.[1] These measures include new compliance-related penalties, relief on retirement or employment termination-related gratuity payments, and for employees departing from Malaysia, when income is deemed to have been "received."

Why This Matters

Individual taxpayers and their tax service providers should be aware of the proposed changes. The new definition concerning "received income" and when it is taxable will affect the tax burden of individuals as well as their compliance obligations. This could affect employers' international assignment program costs. However, there may be planning opportunities – consultation with a qualified tax adviser is recommended.

There may be some tax saving opportunities with respect to the proposed measure partially exempting certain retirement or employment termination-related gratuity payments.

Assessment of Employment Income

Currently, gross income from an employment is taxed upon receipt but shall be taxed in the year it is receivable, except for bonuses and director fees, which are taxed in the year of receipt regardless of the period to which they are attributed.

Employment-related income (apart from bonus and director fees) in respect of prior years that were received in the current year would be required to be reported as prior year income in the current year tax return. The Malaysian Inland Revenue Board (MIRB) would need to issue revised assessments for the previous year of assessment.

The government is proposing that all employment income receivable by an employee for any particular period will be deemed received and taxed in the year of receipt, i.e., upon payment by the employer.

This is planned to take effect from 1 January 2016.

KPMG Note

With this amendment, there is no requirement to report and relate the employment income to the particular year, as employment income will be taxed in the year of receipt. This would eliminate administrative time taken to follow up with the MIRB on past years' assessments.

Assessment of Employment Income for Departing Employees from Malaysia

A proposal has been made that any income receivable by an employee who will be departing Malaysia be deemed as received, i.e., deemed to have already been paid by the employer in the year of departure.

This is planned to take effect from 1 January 2016.

KPMG Note

Currently, if an employee ceases employment in Malaysia and receives employment-related income (e.g. bonus, vesting of Employee Share Scheme benefits) in the following years subsequent to his cessation of employment in Malaysia, such income would only be taxed in the year when payment is received or in the year when shares are vested or exercised, depending on the type of share plan.

With this amendment, the employment-related income received by an employee in the following years subsequent to his cessation of employment will be taxed based on the marginal tax rate applicable in the year of departure.

Gratuity Payment

A partial exemption has been proposed with respect to any gratuity payment representing sums received by way of gratuity on retirement from an employment under any written law or termination of a contract of employment. This proposal is intended for those payments that would not be able to fulfill the conditions for a full tax exemption.

The sum of the gratuity exempted is limited to MYR 1,000 per completed year of service of the individual.

This is planned to take effect from 1 January 2016.

KPMG Note

"Gratuity payment" refers to a lump-sum payment payable to an employee when an employment ceases upon his retirement or resignation, and the payment is attributable to his past services in accordance with the terms and conditions of the contract of service.

At present, gratuity payments are fully taxable except for a retirement gratuity which would qualify for full tax exemption if the retirement occurs under the following circumstances:

(a) If the MIRB is satisfied that the retirement was due to ill-health.

(b) If the retirement takes place on or after reaching the age of 55, or on reaching the compulsory age of retirement from employment specified under any written law, and in either case, from an employment that has lasted 10 years with the same employer or with companies in the same group. ("Under any written law" refers to laws legislated by Parliament such as The Employment Act 1955, Pensions Act 1980, etc.).

KPMG Note (cont'd)

(c) If the retirement takes place on reaching the compulsory age of retirement pursuant to a contract of employment or collective agreement at the age of 50 but before 55, and that employment has lasted 10 years with the same employer or with companies in the same group.

With this amendment, if any the above circumstances (a) to (c) do not apply, a partial exemption is given to gratuity received on retirement under any written law or termination of contract of employment.

Return Form of Employer (Form E)

Form E is an annual tax return to be filed by employers not later than 31 March of the following year, disclosing the employer's particulars and details of its employees' earnings for the calendar year concerned.

At present, the employer may opt to submit the Form E to the MIRB via paper filing or e-filing.

The government has proposed it is mandatory for employers to e-file the Form E to the MIRB.

This is planned to take effect from Year of Assessment 2016.

Offence and Fine for Failure to Furnish an Income Tax Return

A person who is convicted for failure to furnish income tax returns for two years of assessment or more without reasonable excuse would be subject to the following sanctions:

- Fine of between MYR 1,000 to MYR 20,000 or imprisonment for a term not exceeding six months or both; and
- Special penalty that is treble the amount of the tax payable for the year of assessment.

This is planned to take effect upon the coming into operation of the Finance Act 2015.

Offence and Fine for Failure to Furnish the Correct Particulars in the Income Tax Return

A person who is convicted for failure to furnish the correct details as required in the income tax return form would be liable to a fine of between MYR 200 to MYR 20,000 or to imprisonment for a term not exceeding six months, or to both.

This is planned to take effect upon the coming into operation of the Finance Act 2015.

KPMG Note

The penalties are more severe now for habitual tax defaulters. There is also a new penalty provision for those taxpayers who do not correctly fill in their personal details, as required, in their income tax returns. Currently, the tax penalty provision only applies to "under declaration" of

KPMG Note (cont'd)

income, "over claims" of expenses, defaults in filing of tax returns, statutory documents, and late payment of taxes, etc. In light of this, taxpayers should be mindful in the course of completing their returns, or in dealing with their tax agents, that they are providing details which are complete, true, and correct.

Footnote:

1 The related budget changes of the Finance Bill 2015 can be found on "The Official portal of Parliament of Malaysia." It is located at the House of Representatives | Bill section:

http://www.parlimen.gov.my/files/billindex/pdf/2015/DR/D.R.32_2015(BI).pdf .

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For further information or assistance, please contact your local KPMG Global Mobility Services or People Services practice professional, or Datin Pauline Tam (tel. +60 (3) 7721 7017, e-mail: pohlintam@kpmg.com.my), with the KPMG International member firm in Malaysia.

The information contained in this newsletter was submitted by the KPMG International member firm in Malaysia.

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