Crowe

Tax Chat

Vol. 4/2019 April

Audit / Tax / Advisory

Smart decisions. Lasting value.

Table of Contents

1. Public Ruling (PR) 2/2019 – Director's Liability
2. Income tax deduction for employers on Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN) loan amount paid by employers on behalf of employees
3. Contribution to SOCSO (Social Security Organisation) in respect of the Employment Insurance Scheme (EIS)
4. Recent Update on Multimedia Super Corridor (MSC) Malaysia Status Tax Incentives
5. Broadening The Tax Net Under Sections 12(3) and 12(4) of the Income Tax Act 1967 (ITA)

PR2/2019 – Director's Liability

PR2/2019 – Director's Liability

The Inland Revenue Board of Malaysia (IRBM) issued PR2/2019 – Director's Liability on 18 February 2019. PR2/2019 explains the liabilities of a company director pursuant to Section 75A of the ITA.

Meaning of "director" under Section 75A(2) of the ITA

Occupying the position of director (by whatever name it is called) including any person who is concerned in the management of the business

+

Owns and controls not less than twenty per cent (20%) of the ordinary shares of the company

or

With one or more associates, directly or indirectly controls not less than twenty per cent (20%) of the ordinary shares of the company

Note:
"Associate" in relation to a person for the purposes of this PR means -

a) A person in any of the following relationships to that person, that is to say, husband or wife, parent or remoter forebear, child or remoter issue, brother, sister and partner; or

b) Where that person is interested in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person, any other person interested therein.

PR2/2019 – Director’s Liability

An illustration of the liabilities of a company director is as follows:

What is the liability?

- responsible for any tax or debt that is due and payable by the company

When does the liability arise?

- during the period in which the tax or debt is liable to be paid

from the date the notice of assessment is served or the notice of assessment is deemed to have been served on the company

How are the directors liable?

- jointly and severally liable

Action can be taken jointly on the company and the directors

Action can be taken separately on the directors

PR2/2019 – Director's Liability

Examples from PR2/2019 on situations where directors of a company are NOT LIABLE for the company's tax and debt due to the Government are:

A person who is a director of a company after the notice of assessment is served or the Notice of Assessment is deemed to have been served

A director of a company who ceases to be a director before the notice of assessment is served or the Notice of Assessment is deemed to have been served

A director of a company which has taxes or debts arising after the winding up of the company commences

Income tax deduction for employers on PTPTN loan amount paid by employers on behalf of employees

Income tax deduction for employers on PTPTN loan amount paid by employers on behalf of employees

Subsequent to the 2019 Budget Announcement, it is proposed that employers who have made payments of PTPTN loans on behalf of their full-time employees between 1 January 2019 and 31 December 2019 are eligible for income tax deduction on the repayment amount, provided that the employees shall not be required to make any payment to the employers in respect of the PTPTN loans repaid by their employers.

? Would the repayment of employee's PTPTN loan made by the employer be classified as a benefit in kind to that employee?

Ministry of Finance's reply: The repayment of employee's PTPTN loan made by employer is classified as a perquisites to that employee and should be counted as part of the calculation of the personal income tax. **However, the government has agreed to EXEMPT the repayment amount from the calculation of the personal income tax for the year of assessment 2019.**

Contribution to SOCSO in respect of the EIS

Contribution to SOCSO in respect of the EIS

The Chartered Tax Institute of Malaysia (CTIM) has sought clarification with the IRBM on whether the employee's contribution made to SOCSO in respect of the EIS is included as part of the maximum claim of RM250 under Section 46(1)(n) of the ITA.

PART F:	RELIEF			
F1	Individual and dependent relatives		9,000	.00
F2a	Medical treatment, special needs and carer expenses for parents *(Medical condition certified by medical practitioner)* .00	*Restricted to 5,000*		
OR				
F2b	Parent: Identification / passport no. — Eligible amount + No. of individuals who claim = Amount claimable		F2	.00
	i. Mother — 1,500 + = .00	*Restricted to 1,500 for only one mother* — *Restricted to 3,000*		
	ii. Father — 1,500 + = .00	*Restricted to 1,500 for only one father*		
F3	Basic supporting equipment for disabled self, spouse, child or parent	*Restricted to 6,000*		.00
F4	Disabled individual	*6,000*		.00
F5	Education fees (Self): (i) Other than a degree at masters or doctorate level – Course of study in law, accounting, Islamic financing, technical, vocational, industrial, scientific or technology (ii) Degree at masters or doctorate level - Any course of study	*Restricted to 7,000*		.00
F6	Medical expenses on serious diseases for self, spouse or child	*Restricted to 6,000*		.00
F7	Complete medical examination for self, spouse or child *(Restricted to 500)*			.00
F8	Lifestyle – Expenses for the use / benefit of self, spouse or child in respect of: (i) purchase of books / journals / magazines / printed newspapers / other similar publications (Not banned reading materials) (ii) purchase of personal computer, smartphone or tablet (Not for business use) (iii) purchase of sports equipment for sports activity defined under the Sports Development Act 1997 and payment of gym membership (iv) payment of monthly bill for internet subscription (Under own name)	*Restricted to 2,500*		.00
F9	Purchase of breastfeeding equipment for own use for a child aged 2 years and below *(Deduction allowed once in every 2 years of assessment)*	*Restricted to 1,000*		.00
F10	Child care fees to a registered child care centre / kindergarten for a child aged 6 years and below	*Restricted to 1,000*		.00
F11	Net deposit in *Skim Simpanan Pendidikan Nasional* *(Total deposit in 2018 minus total withdrawal in 2018)*	*Restricted to 6,000*		.00
F12	Husband / Wife / Payment of alimony to former wife	*Restricted to 4,000*		.00
F13	Disabled husband / wife	*3,500*		.00

F14	Child	No.		100% Eligibility	No.		50% Eligibility			
F14a	Child - Under the age of 18 years		X 2,000 =			X 1,000 =		F14a		.00
F14b	Child - 18 years & above and studying		X 2,000 =			X 1,000 =				
			X 8,000 =			X 4,000 =		F14b		.00
F14c	Child - Disabled child		X 6,000 =			X 3,000 =				
			X 14,000 =			X 7,000 =		F14c		.00

F15	Life insurance and EPF	*Restricted to 6,000*		.00
F16	Private retirement scheme and deferred annuity	*Restricted to 3,000*		.00
F17	Education and medical insurance	*Restricted to 3,000*		.00
F18	Contribution to the Social Security Organization (SOCSO)	*Restricted to 250*		.00
F19	Total relief [F1 to F18] *(Transfer this amount to B9)*			.00

PART G:	NON-EMPLOYMENT INCOME OF PRECEDING YEARS NOT DECLARED		
	Type of Income	Year of Assessment	Amount (RM)

Contribution to SOCSO in respect of the EIS

IRBM's reply: The amount of contribution to SOCSO in respect of the EIS is **NOT ELIGIBLE** for personal deduction under Section 46(1)(n) of the ITA because EIS contribution is pursuant to the Employment Insurance System Act 2017 and not pursuant to the Employees' Social Security Act 1969.

Note: Section 46(1)(n) of the ITA states:- "Section 46(1): In the case of an individual or a Hindu joint family resident for the basis year for a year of assessment, there shall be allowed for that year of assessment personal deductions of – (n) an amount limited to a maximum of two hundred and fifty ringgit in respect of a contribution made or suffered in that basis year by that individual to the Social Security Organization pursuant to the Employees' Social Security Act 1969".

Recent Update on MSC Malaysia Status Tax Incentives

Recent Update on MSC Malaysia Status Tax Incentives

The MSC Malaysia Status Services Incentive has been approved by the Government and companies are eligible to apply for this incentive with effect from 2 April 2019. This incentive is given under Income Tax (Exemption) (No 10) Order 2018 – P.U. (A) 389/2018 which was gazetted by the Government on 31 December 2018.

Qualifying Activities and Key Criteria on MSC Malaysia Status

With effect from 1 January 2019, the MSC Malaysia promoted activities for the purpose of income tax exemption are as follows:

<table>
<tr><th>Qualifying MSC Malaysia Promoted Activities</th><th>Non-qualifying MSC Malaysia Promoted Activities</th></tr>
<tr><td>
❖ Big Data Analytics;
❖ Artificial Intelligence;
❖ Financial Technology;
❖ Internet of Things;
❖ Cybersecurity (technology/software/design and support);
❖ Data center and cloud (technology/software/design and support);
❖ Blockchain;
❖ Creative Media Technology;
❖ Sharing Economy Platform;
❖ User Interface and User Experience;
❖ Integrated Circuit design and Embedded Software;
❖ 3D printing (technology/software/design and support);
❖ Robotics (technology/software/design);
❖ Autonomous (technology/software/design and support);
❖ Systems/network architecture design and support; or
❖ Global Business Services or Knowledge Process Outsourcing excluding:
▪ Non-technical;
▪ Low value call center;
▪ Data entry;
▪ Recruitment process outsourcing
</td><td>
❖ Trading;
❖ Manufacturing;
❖ Provision of telecommunication services.
</td></tr>
</table>

Recent Update on MSC Malaysia Status Tax Incentives

There are no major changes on the tax incentives for MSC Status Company. The new substantive criteria are summarised below:

Type of Incentives	Tier 1	Tier 2	Tier 3
Percentage of income tax exemption	100% statutory income		70% statutory income
Exemption period	5 years		5 years
Extension of exemption period	5 years		May apply for extension provided that the company changes to Tier 1 or Tier 2 and fulfills the conditions being imposed.
Eligibility Criteria			

- ❖ Incorporated in Malaysia under the Companies Act 2016
- ❖ Resident in Malaysia
- ❖ Not enjoying any income tax exemption
- ❖ Has been awarded MSC status
- ❖ On date of application for MSC status:
  - the company has not issued any invoice for the core income generating activities in Malaysia, or
  - where the company has at least 60% Malaysian equity, the company has not issued any invoice for the core income generating activities in Malaysia more than 12 months prior to the date of said application. The 60% Malaysian ownership must be maintained throughout the exemption period.

Note : There can be no change of tier during the exemption period.

Standard Conditions	Tier 1	Tier 2	Tier 3
To be complied within 24 months from the date of award of MSC Malaysia Status and thereafter during the exemption period:			
(1) Location of approved MSC Malaysia Promoted Activities	Designated premises within MSC Malaysia Cybercities or Cybercentres.	Other commercial premises within MSC Malaysia Cybercities or Cybercentres.	Not subjected to location requirements.
2) Commencement of operation and undertaking of the approved MSC Malaysia Promoted Activities in Malaysia			

Recent Update on MSC Malaysia Status Tax Incentives

	Minimum KPI Numbers					
	Tier 1		Tier 2		Tier 3	
To be complied with by the end of Year 2 from the commencement date of the exemption period and thereafter during the exemption period:						
(3) Paid-up capital	RM500,000*				RM250,000	
(4) Minimum number of full time employees (comprising Knowledge Workers)	50	30	50	30	30	20
	Data Centre: 5					
(5) Monthly base salary (for the full time employees in (4) above)	RM5k	RM10k	RM5k	RM10k	RM5,000	RM8,000
	Data Centre: RM5,000					
(6) Minimum annual operating expenditure and investment in fixed asset	RM3.5 million				RM 1 million	
	Data Centre: RM10 million					
(7) % of Malaysian Knowledge Workers (for the full time employees in (4) above)	70%				50%	
*The minimum paid-up capital amount needs to be increased to RM2.5 million for the extension of the exemption period for the second 5 years.						

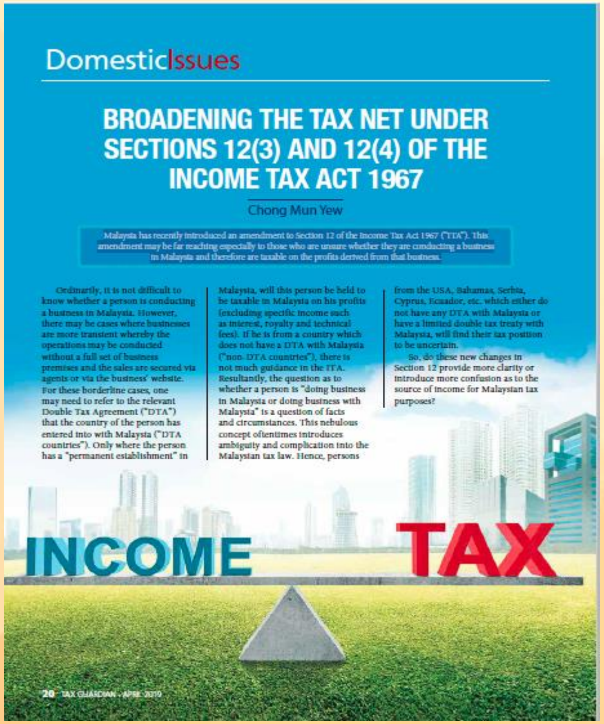
This article was written by Thomas Teoh, Director, Tax Advisory Team, Crowe KL Tax Sdn Bhd

To know more about the services provided by the
Tax Advisory team at Crowe KL Tax Sdn Bhd

CLICK HERE

Broadening The Tax Net Under Sections 12(3) and 12(4) of the ITA

Broadening The Tax Net Under Sections 12(3) and 12(4) of the ITA



DomesticIssues

BROADENING THE TAX NET UNDER SECTIONS 12(3) AND 12(4) OF THE INCOME TAX ACT 1967

Chong Mun Yew

Malaysia has recently introduced an amendment to Section 12 of the Income Tax Act 1967 ("ITA"). This amendment may be far reaching especially to those who are unsure whether they are conducting a business in Malaysia and therefore are taxable on the profits derived from that business.

Ordinarily, it is not difficult to know whether a person is conducting a business in Malaysia. However, there may be cases where businesses are more transient whereby the operations may be conducted without a full set of business premises and the sales are secured via agents or via the business' website. For these borderline cases, one may need to refer to the relevant Double Tax Agreement ("DTA") that the country of the person has entered into with Malaysia ("DTA countries"). Only where the person has a "permanent establishment" in Malaysia, will this person be held to be taxable in Malaysia on his profits (excluding specific income such as interest, royalty and technical fees). If he is from a country which does not have a DTA with Malaysia ("non-DTA countries"), there is not much guidance in the ITA. Resultantly, the question as to whether a person is "doing business in Malaysia or doing business with Malaysia" is a question of facts and circumstances. This nebulous concept oftentimes introduces ambiguity and complication into the Malaysian tax law. Hence, persons from the USA, Bahamas, Serbia, Cyprus, Ecuador, etc. which either do not have any DTA with Malaysia or have a limited double tax treaty with Malaysia, will find their tax position to be uncertain.

So, do these new changes in Section 12 provide more clarity or introduce more confusion as to the source of income for Malaysian tax purposes?

This article was written by Chong Mun Yew, Executive Director, Crowe KL Tax Sdn Bhd and featured in the Tax Guardian

To read more...

CLICK HERE

Malaysia has recently introduced an amendment to Section 12 of the ITA. This amendment may be far reaching especially to those who are unsure whether they are conducting a business in Malaysia and therefore are taxable on the profits derived from that business.

Ordinarily, it is not difficult to know whether a person is conducting a business in Malaysia. However, there may be cases where businesses are more transient whereby the operations may be conducted without a full set of business premises and the sales are secured via agents or via the business' website. For these borderline cases, one may need to refer to the relevant Double Tax Agreement (DTA) that the country of the person has entered into with Malaysia (DTA countries). Only where the person has a "permanent establishment" in Malaysia, will this person be held to be taxable in Malaysia on his profits (excluding specific income such as interest, royalty and technical fees). If he is from a country which does not have a DTA with Malaysia (non-DTA countries), there is not much guidance in the ITA.

Resultantly, the question as to whether a person is "doing business in Malaysia or doing business with Malaysia" is a question of facts and circumstances. This nebulous concept oftentimes introduces ambiguity and complication into the Malaysian tax law. Hence, persons from the USA, Bahamas, Serbia, Cyprus, Ecuador, etc. which either do not have any DTA with Malaysia or have a limited double tax treaty with Malaysia, will find their tax position to be uncertain. So, do these new changes in Section 12 provide more clarity or introduce more confusion as to the source of income for Malaysian tax purposes?

Start the Conversation

Corporate Tax Compliance

Foo Meng Huei
Executive Director
menghuei.foo@crowe.my
+603 2788 9898 Ext 2501

Liza Ooi Yap Lin
Director
liza.ooi@crowe.my
+603 2788 9898 Ext 2557

Lim Bee Chin
Director
beechin.lim@crowe.my
+603 2788 9898 Ext 2521

Voon Yuen Hoong
Director
yuenhoong.voon@crowe.my
+603 2788 9898 Ext 2522

Wong Man Yee
Director
manyee.wong@crowe.my
+603 2788 9898 Ext 2519

Tax Advisory

Chong Mun Yew
Executive Director
munyew.chong@crowe.my
+603 2788 9898 Ext 2523

Mervyn Ong Hean Chong
Director
mervyn.ong@crowe.my
+603 2788 9898 Ext 2587

Thomas Teoh Lian Gim
Director
thomas.teoh@crowe.my
+603 2788 9898 Ext 2526

Indirect Tax

Chris Yee Chun Lin
Director
chris.yee@crowe.my
+603 2788 9898 Ext 2529

Transfer Pricing

Becky Nguyen
Director
becky.nguyen@crowe.my
+603 2788 9898 Ext 2626

Song Sylvia
Director
sylvia.song@crowe.my
+603 2788 9898 Ext 2514

Employee Management Services

Shalina Binti Jaafar
Director
shalina.jaafar@crowe.my
+603 2788 9898 Ext 2505

Contact us

Crowe KL Tax Sdn Bhd
Level 15, Tower C
Megan Avenue 2
12, Jalan Yap Kwan Seng
50450 Kuala Lumpur
Malaysia

Tel. +603 2788 9898

www.crowe.my

About Crowe Malaysia PLT

Crowe Malaysia PLT is the 5th largest accounting firm in Malaysia and an independent member of Crowe Global. The firm in Malaysia has 13 offices, employs over 1,000 staff, serves mid-to-large companies that are privately-owned, publicly-listed and multinational entities, and is registered with the Audit Oversight Board in Malaysia and the Public Company Accounting Oversight Board in the US.

About Crowe Global

Ranked the 8th largest accounting network in the world, Crowe Global has over 250 independent accounting and advisory firms in 130 countries. For almost 100 years, Crowe has made smart decisions for multinational clients working across borders. Our leaders work with governments, regulatory bodies and industry groups to shape the future of the profession worldwide. Their exceptional knowledge of business, local laws and customs provide lasting value to clients undertaking international projects.