Tax Chat

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New Gazette Orders on Allowance for Increased Exports

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New Gazette Orders on Allowance for Increased Exports

Presently, all companies engaged in the manufacturing and agricultural businesses are given tax incentives for achieving incremental export sales for their manufacturing goods or agricultural produce.

Income Tax (Exemption) (No. 5) Order 2019 and Income Tax (Exemption) (No. 6) Order 2019 were recently gazetted to revoke the earlier Gazette Orders. Notwithstanding the revocation of the earlier Orders, the relevant rules under the earlier Orders shall continue to apply to any exemption which has been granted under the earlier Orders as if that Order has not been revoked.

The following details of the new Orders are the same as the revoked Orders:

	Income Tax (Exemption) (No. 5) Order 2019	Income Tax (Exemption) (No. 6) Order 2019
Amount of statutory income exempted	▪ 30% of the value of increased exports for companies who achieved at least 50% increase in exports. ▪ 50% of the value of increased exports for companies which succeeded in penetrating new export markets. ▪ 100% of the value of increased exports for companies which have been awarded "Export Excellence Award". ***these are in respect of both manufactured goods and agricultural produce.***	▪ 10% of the value of increased exports for companies whose exported manufactured goods attain at least 30% value added. ▪ 15% of the value of increased exports for companies whose exported manufactured goods attain at least 50% value added. ▪ 10% of the value of increased exports for companies which export agricultural produce.

New Gazette Orders on Allowance for Increased Exports

There are a number of changes made in the new Orders such as:

❖ Inclusion of additional conditions which include:

a) at least sixty (60) per cent of the issued share capital of the qualifying company is owned directly by Malaysian citizens;

b) the agricultural produce is planted, reared or caught by the qualifying company; and

c) the product from manufacturing is manufactured by the qualifying company.

❖ Explanation on determining the value of increased exports in two circumstances:

- where both basis periods of the qualifying company are twelve-month periods ending on the same date:

> Value of increased export = Free-on-board (FOB) value (current basis period) – FOB value (immediate preceding basis period)
>
> ** the FOB value shall not be equal to zero*

- where both basis periods of the qualifying company are NOT twelve-month periods ending on the same date (due to change of basis period or it is a newly incorporated company):

> Value of increased export = Average FOB value (current basis period) – Average FOB value (immediate preceding basis period)
>
> ** the FOB value shall not be equal to zero*

New Gazette Orders on Allowance for Increased Exports

Alongside those Orders, Income Tax (Exemption) (No. 7) Order 2019 was also gazetted to provide income tax exemption to small medium enterprises (SME) on their export sales. This was proposed in the 2016 Budget to encourage SMEs to increase their export sales to promote Malaysian goods to the international market.

The key points of this Exemption Order are as follows:

- it is effective from the year of assessment (YA) 2016 until YA 2020.
- the paid-up ordinary share capital does not exceed RM2,500,000 at the beginning of the basis period for a YA.
- the amount of the statutory income exempted is:
  - 10% of the value of increased exports for companies whose exported manufactured goods attain at least 20% value added;
  - 15% of the value of increased exports for companies whose exported manufactured goods attain at least 40% value added; or
  - 10% of the value of increased exports for companies which export agricultural produce.
- the value of increased exports is determined in the same manner as the previous two Orders.

Extension of Stamp Duty Exemption

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Extension of Stamp Duty Exemption

Pursuant to the 2019 Budget Proposal, stamp duty exemptions were provided for the purchase of residential property under the National Home Ownership Campaign 2019 through the issuance of two stamp duty exemption orders on 15 March 2019. These Orders provided stamp duty exemption as follows:

	Category of property	Instrument exempted	Exemption given on stamp duty	Stamp duty exemption period
Stamp Duty (Exemption) (No. 2) Order 2019	Residential property valued more than RM300,000 but not more than RM2,500,000	Loan agreement	100% exemption	Sale and purchase agreement executed from 1 January 2019 to 30 June 2019
Stamp Duty (Exemption) (No. 3) Order 2019		Instrument of transfer	a) 100% exemption on the first RM1,000,000 of the value of the residential property. b) Stamp duty of RM3 is imposed on every RM100 of the balance amount of the value of residential property in excess of RM1,000,000	Sale and purchase agreement executed from 1 January 2019 to 30 June 2019

The Stamp Duty (Exemption) (No. 2) (Amendment) Order 2019 and Stamp Duty (Exemption) (No. 3) (Amendment) Order 2019 were recently gazetted on 27 June 2019.

The exemption period is extended by another six (6) months to 31 December 2019.

Tax Compliance Failure Leads to Penalties

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Tax Compliance Failure Leads to Penalties

Generally, tax compliance failure represents financial risk such as financial penalties and increase of tax charge. It also leads to business risk as the tax authority will view the taxpayers differently and conduct a tax audit in the future. The Malaysian tax authority has introduced the Monitoring Deliberate Tax Defaulters programme since 1 January 2014 to monitor the non-compliant taxpayers identified by them during tax audits. These taxpayers will be monitored until there are no repeated or new offences committed.

From the accounting perspective, it is true that the tax treatment does not always dovetail with the accounting treatment. The divergence between the accounting and tax treatments often increases the cost of doing business. As a result, more tax adjustments are required when furnishing income tax returns and a complicated accounting software will be necessary to facilitate tracking and retrieval of the business transactions for compilation of information purposes.

> *"The divergence between the accounting and tax treatments often increases the cost of doing business."*

As a good taxpayer, you must be aware of tax compliance issues such as filing of incorrect returns by omitting or understating any income or giving any incorrect information in relation to the chargeability of tax. Tax penalties will be imposed by the tax authority based on the preliminary findings and tax adjustments finalised during a tax audit.

There are many tax compliance issues found by the tax authority from tax audit cases. As the tax filing deadline for December year end companies approaches, let us look at four (4) common mistakes made by the taxpayers when submitting the income tax return form.

Tax Compliance Failure Leads to Penalties

Accrual expenses vs. provision for expenses

For tax purposes, all outgoing and expenses must be wholly and exclusively incurred during that period by taxpayers in the production of gross income for that business source. Expense is incurred when it is paid, payable or becomes payable, the liability is certain and it is an obligation incurred in that basis period. You may refer to the following table to differentiate between accrual expenses and provision for expenses. However, due regard must be given to the facts of each case.

	Accrual	Provision
Amount	Certain	Estimate
Document	Agreement / contract / invoice	Not available
Legal liability to pay	Yes	No
Certainty	Definite and outgoing	Contingency

Capital expenditure vs. revenue expenditure

Section 39(1) of the Income Tax Act 1967 states that any capital withdrawn or any sum employed or intended to be employed as capital is not tax deductible. In view of the above, taxpayers are required to highlight the following to their tax agent for preparation of tax computation purposes:

- ❖ Any capital items which may be expensed off to the statements of profit or loss and other comprehensive income (e.g. upkeep and maintenance);
- ❖ Any initial expenditure which are not separately analysed (e.g. subscription fee, new tenancy agreement);
- ❖ Any replacement items or spare parts which are categorised as fixed assets; and
- ❖ Any expenses incurred prior to the commencement of business.

Tax Compliance Failure Leads to Penalties

Withholding tax payments

Payments such as interest, royalty, special classes of income, contract payments and other gains or profits made to a non-resident person may be subject to the withholding tax provisions in the Income Tax Act 1967. Taxpayers are not allowed to claim tax deduction on the payments made to the non-residents until the withholding tax is remitted to the tax authority together with the late payment penalty of 10% on the unpaid tax. As a taxpayer, you need to take note of the following in respect of withholding tax payments:

- ❖ Is the payment categorised correctly?
- ❖ Are the supporting documents sufficient to be presented to the tax authority during future audit (e.g. services performed outside Malaysia)?
- ❖ Is the reduced rate under the Double Tax Agreement applicable?

Deferred income

Section 24 of the Income Tax Act 1967 provides that any sum received in the course of carrying out a business constitutes income which should be duly subjected to tax in that year (basis period). Based on this amended legislation, tax is paid upfront. From the business perspective, this will cause a negative impact on cash flow and takes away precious operating capital from the business. In view of the above, have you done the following?:

- ❖ Revised the estimate of tax payable to reflect the additional tax payable arising from the deferred income?
- ❖ Reviewed your clients' agreements / contracts, invoicing cycle and payment terms to assess the taxability of advance billing or deposit received?
- ❖ Highlighted to your tax agent on the deferred income?

In view of the above tax issues, you are advised to re-examine the documents or information available for tax submission purposes.

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