Tax Chat

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Audit / Tax / Advisory

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Exemption of Income Received from Rental of Residential Properties

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The Income Tax (Exemption) (No.2) Order 2019 was gazetted on 27 February 2019 pursuant to the Budget 2018 proposal that 50% income tax exemption be given on income received from rental of residential properties.

The Order has defined the following words:

> **"residential property"** means a house, condominium unit, flat or an apartment which is built as a dwelling house;
>
> **"rent"** means any sum paid by a tenant to a landlord for the occupation of a residential property including the use of parking space, furniture and any other amenities provided by the landlord.

The conditions for the exemption are as follows:

- the landlord must be an individual citizen who resides in Malaysia and is the registered proprietor of his residential property (i.e. holds the title to the property).
- the monthly rental amount received from each residential property does not exceed RM2,000.
- the tenancy agreement between the landlord and the tenant which has been executed and stamped comes into effect on or after 1 January 2018.
- the residential property is rented out for any period from 1 January 2018 until 31 December 2018.

If the landlord receives rent from more than one (1) residential property, each residential property is to be treated as a separate source of rental and the landlord who is granted an exemption shall maintain separate accounts for each residential property rented out.

It should also be noted that the exemption period is only for one (1) year of assessment (YA), i.e. YA 2018, instead of the original proposal in the 2018 Budget Speech to cover a period from YAs 2018 to 2020.

Guidelines for Application of Stamp Duty Relief under Section 15 and Section 15A of the Stamp Act 1949

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The Inland Revenue Board of Malaysia (IRBM) issued two (2) technical guidelines (available in Bahasa Malaysia only) dated 26 January 2019 for application of stamp duty relief under Section 15 and Section 15A of the Stamp Act 1949:

1) Guidelines for Application on Relief from Stamp Duty under Section 15 of the Stamp Act 1949
   (Relief from stamp duty in case of reconstructions or amalgamations of companies)

2) Guideline for Application for Stamp Duty under Section 15A of the Stamp Act 1949
   (Relief from stamp duty in case of transfer of property between associated companies)

These technical guidelines are issued to provide guidance on the conditions to be fulfilled and documents to be submitted when applying for the stamp duty reliefs. Further, these new guidelines also take into account the provisions under the Companies Act 2016 and amendments made to the stamp duty provisions in the Finance Act 2018.

PR1/2019 – Professional Indemnity Insurance

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The IRBM issued PR1/2019 – Professional Indemnity Insurance on 18 February 2019 which replaces PR8/2017 – Professional Indemnity Insurance.

The purpose of this PR is to explain –

(i) the deductibility of premium paid for a professional indemnity insurance policy; and

(ii) the tax treatment on insurance proceeds received and compensation paid in relation to a professional indemnity insurance policy.

The key changes in this PR as compared to the old PR8/2017 are:

- If a professional is registered with a professional body outside Malaysia, that professional body must be recognised by a written law or statute in Malaysia.
- The full amount of the proceeds received from the policy will be taxed under Section 22(2)(a)(ii) of the Income Tax Act 1967 (ITA) even though the payment of compensation is less than the amount of the proceeds received.
- In a case where a professional chooses not to claim a deduction for the premium expenses under Section 33(1) of the ITA, any proceeds received in connection with the policy will still be taxed as a gross income of the chargeable professional under Section 22(2)(a)(ii) of the ITA.

Compliance with Tax Reporting in the Forms E & EA

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It is mandatory for all companies including partnerships and sole proprietorships to submit the Form E to the IRBM by 31 March 2019. This is regardless of whether they have employees or not. Any dormant company which is not in operation is also required to submit the Form E. For employees, they should have received by now the Form EA from their employers which should have been furnished to each of the employees by 28 February 2019.

Failure to furnish the Form E and EA correctly and on a timely basis without a reasonable excuse is an offence and employers will be liable to a fine ranging from RM200 to RM20,000 or face imprisonment of not more than six (6) months or both. The good news is that based on the Income Tax Return Form Filing Programme for the year 2019, the IRBM has allowed a one (1) month grace period (i.e. until 30 April 2019) for the submission of the 2018 Form E via e-filing.

Form EA shows employees' employment income and tax-exempt income as well as total deductions during the year of employment which will be used by the employees to fill up their income tax returns accordingly. Form E acts as a reference to the IRBM to check on whether the employees have reported their income correctly. Any discrepancy will trigger an audit by the IRBM and any incorrect return will result in a fine and/or imprisonment as mentioned above.

The Forms EA and E may seem simple to complete. However, there are a few tricky areas where many employers have made mistakes. Some employers are confused on the treatment for perquisites and benefits-in-kind (BIK). Perquisites are benefits in cash or in-kind which are convertible into money such as a pecuniary liability of an employee paid by the employer (income tax payment, electricity bills, water, telephone bills, etc.), whilst, BIK are benefits to the employees which cannot be sold, assigned or exchanged for cash due to the employment contract or nature of the benefit itself. An example of BIK is a company's car used by the employee exclusively or driver hired by the employer and provided to the employee.

Compliance with Tax Reporting in the Forms E & EA

The value of a BIK can be determined by using either the formula method or the prescribed value method. Value of the BIK using the formula method can be apportioned if it is shared, provided for less than a year, and partly used for business. On the other hand, prescribed value method does not allow apportionment of BIK partly used for business. If an employee makes a payment to the employer for the BIK, the amount can be deducted under the formula method, but not under the prescribed value method. Both methods are allowed and once a method has been chosen, it must be applied consistently.

If an employee is provided with a motorcar and free petrol, the employer can choose either to use the IRBM's prescribed value or the actual petrol cost less the exemption of RM6,000 (under the formula method). Only the taxable amount should be stated as petrol and the exempted amount should be included in Part E of the Form EA. If the formula method is chosen and the employee has kept proper records of his/her business travelling, he/she can claim deduction on the actual amount expended for business travelling in his/her income tax return.

Employers should note that exemptions on BIK are not applicable to those employees who have control over their employers. This includes an employee who is holding shares or possessing voting power in the company (employer), partner in a partnership or sole proprietor.

Classification of income is important as failure to do so does not only result in incorrect reporting of income, but also affects the total amount of income. For example, a fully furnished accommodation which was provided for the whole year with the total rental of RM60,000 was not segregated between the household furnishings of RM3,360 (IRBM's prescribed rate for household furnishings) and the defined value of unfurnished accommodation of RM56,640 (RM60,000 – RM3,360). It is stated in the IRBM's PR3/2005 - Living Accommodation Benefit Provided for the Employee by the Employer that the amount of value of living accommodation (VOLA) to be taken into account in the gross income from employment is either (i) a defined value of the living accommodation, or (ii) 30% of the gross income from employment under Section 13(1)(a) of the ITA, whichever is the lower.

Compliance with Tax Reporting in the Forms E & EA

Assuming that the gross income from employment under Section 13(1)(a) of the ITA is RM195,000,in order to determine the taxable VOLA, the employer might choose the 30% of total gross income method which is RM58,500 (e.g.: 30% x RM195,000 = RM58,500) since the amount is lower as compared to the defined value of RM60,000 and thereafter, report the said value in the Form EA. This will result in a total income of RM253,500 (RM195,000 + RM58,500) instead of the correct total income of RM255,000 (i.e. total gross income of RM195,000 + household furnishings of RM3,360 + accommodation of RM56,640).

There are many more examples of mistakes frequently made by employers. To avoid these mistakes, employers can visit the IRBM's website at www.hasil.gov.my and refer to the guidelines on Forms E and EA, and also PRs relating to employment income such as PR2/2013 (Perquisites from Employment), PR3/2013 (Benefits-in-Kind) and PR3/2005 (Living Accommodation Benefit Provided for the Employee by the Employer). The IRBM's employers unit is also very helpful should you need to contact them for further clarifications.

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

Are Tax Havens Still Worth The Risk?

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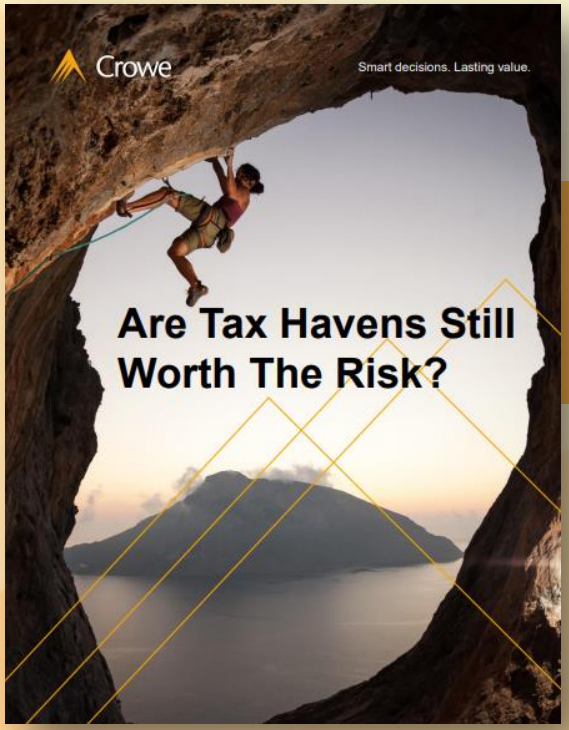

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Questions surrounding tax havens and profit shifting have existed for some time now….

Is the utilization of tax havens in any legitimate business model worth the risk?

This is especially true considering that tax havens are facing increasing scrutiny as time progresses.

In March 2019, the European Union (EU) unveiled an updated list of tax havens, blacklisting additional countries in order to discourage taxpayers from using these jurisdictions for profit shifting purposes. The blacklisted jurisdictions are now facing damage to their reputations as legitimate places of doing business and would be subject to increased scrutiny by EU regulators and tax administrators.

The most surprising addition to the list has to be the...

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