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Malaysia News:

Update on withholding tax:
exemption for offshore services

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Update on withholding tax: exemption for offshore services

Under Malaysian tax law, non-residents who derive income from Malaysia are subject to (withholding) tax in respect of this income. Since the implementation of the Finance Act 2017, withholding tax was due even when services were performed outside Malaysia. However, following feedback sessions and consultations with the industry, the Minister of Finance has eventually agreed to grant an exemption for certain services performed outside of Malaysia, (Income Tax (Exemption) (No. 9) Order 2017, gazetted on 24 October 2017).

Scope of the withholding tax on services since the Finance Act 2017

Pursuant to section 4A of the Income Tax Act 1967, non-residents who derive income from Malaysia in respect of:

- amounts paid in consideration of services rendered in connection with the use of property or rights belonging to them, or the installation or operation of any plant, machinery or other apparatus purchased from them; or
- amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or
- rent or other payments made under any agreement or arrangement for the use of any moveable property;

are subject to (withholding) tax.

Pursuant to section 15A of this Act, income is deemed to be derived from Malaysia if:

- the responsibility for payment lies with the Government, a State Government or a local authority; or
- the responsibility for the payment of the above lies with a person who is a Malaysian resident for that basis year; or
- the payment is charged as an outgoing or expense in the accounts of a business carried out in Malaysia.

Before the implementation of the Finance Act 2017, there was also a geographical requirement: Income was deemed to be derived from Malaysia only if it was attributable to services performed in Malaysia. However, the Finance Act 2017 deleted this requirement. As a consequence, since 17 January 2017, withholding tax was due regardless of the place of performance of the contract. The amendment and its effects were sharply criticized by the business community.

Scope of the exemption

Pursuant to the Income Tax (Exemption) (No. 9) Order 2017, gazetted on 24 October 2017, non-residents are now exempted from withholding tax in respect of income derived from Malaysia in relation to:

- Services in connection with the use of property or rights belonging to them, or the installation or operation of any plant, machinery or other apparatus purchased from them,
- Technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme,

insofar as these services are rendered and performed outside of Malaysia. Conversely, withholding tax remains due when these services are performed within Malaysia.

Besides, it should be noted that rental and other payments received under any agreement for the use of any moveable property remain subject to withholding tax regardless of the place where this property is used.

Effective date

The Exemption Order is deemed to have come into effect on 6 September 2017. The Malaysian Inland Revenue Board (MIRB) is expected to clarify soon whether this refers to the date of signature of the contract, the date on which the service is performed or the date of payment.

Going forward, it is recommendable for companies to check if they may qualify for this exemption and, if they do, to retain sufficient records with regards to the place and date of performance of the contract.

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