

Client Alert

February 2016

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Tax Amnesty Programme 2016

Following the 2016 Budget recalibration speech on 28 January 2016, the Ministry of Finance announced a tax amnesty programme for 2016 ("**Programme**") to encourage taxpayers to voluntarily disclose their income accurately and to settle tax arrears, if any. Under the Programme, taxpayers are invited to approach the Inland Revenue Board ("**IRB**") to rectify any prior non-compliances with Malaysian tax obligations and as an incentive, the IRB is willing to make the following offers:

- a) reduce tax penalties for voluntary disclosure at specific rates; and
- b) waive the tax increment in respect of the settlement of tax arrears.

It must be noted that the making of these offers are subject to the discretion of the IRB and will be made based on the facts and merits of each case. Notwithstanding this, the guidelines on the Programme published by the IRB on 10 February 2016 ("**Guidelines**") sets out the criteria that the IRB takes into account in determining whether the tax payer is eligible for these offers. The Programme is valid from 1 March 2016 until 15 December 2016.

Whilst the contents of the Guidelines are largely similar to the guidelines released last year, there are several notable changes. A key change is the expansion of ambit of the offers to now include tax payers who failed to submit their petroleum income tax returns and tax payers who have failed to present chargeable instruments for stamping.

Reduction of tax penalties

The offer for reduction of penalty may be made available to tax payers with regard to voluntary disclosures in respect of the following:

- a) tax payers who have yet to submit their tax returns for previous years of assessment;
- b) tax payers who would like to correct the information previously provided in the submitted tax returns;
- c) tax payers who have failed to report the disposal of real properties within the stipulated period;
- d) tax payers who have failed to present the chargeable instruments for stamping within the prescribed timeline.

In cases where a tax audit or investigation has already commenced, the offer may still be offered albeit at different concessionary rates.

The concessionary rates are summarised as follows:

Failure to furnish returns / filing of incorrect declarations

REQUIREMENTS

Under the Income Tax Act 1967 ("ITA") and the Petroleum (Income Tax) Act 1967 ("PITA"), every chargeable person is required to furnish to the Director General, a return in the prescribed form for each year of assessment, within the prescribed timelines. For example, under the ITA and PITA (whichever is applicable), a Malaysian company is required to file a tax return within 7 months from the end of the basis period for that year of assessment.

Furthermore, each tax return that is filed with the IRB must be a true, accurate and full account of the income received by the chargeable person.

STATUTORY PENALTY RATES

- Failure to furnish returns within the prescribed timeline - up to 300% of the amount of tax underpaid
- Filing of incorrect returns - up to 100% of the amount of tax undercharged

CONCESSIONARY RATES

- Voluntary disclosure (before commencement of audit) - 15% or 20%, depending on timing of payment
- Audit cases settled between 1 January 2016 and 15 December 2016 - 25% or 35%, depending on timing of payment

Cases under investigation

REQUIREMENTS

A tax investigation may be commenced against any tax payer in respect of tax offences under, amongst others, the ITA, Penal Code, Criminal Procedure Code, Evidence Act 1950, Whistleblower Protection Act 2010 and the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLATFPUAA**").

However, under the Programme, the IRB may consider offering the concessionary penalty rates in respect of:

- investigations still pending as of 31 December 2015, where settlement is reached by 31 July 2016; or
- new investigations commenced from 1 January 2016 onwards where settlement is reached by 15 December 2016.

Whilst it is not clear under the Guidelines as to why there is a difference in terms of the deadlines for settlement under both situations, it appears to be a policy decision made by the IRB to expedite the settlement of investigations pending as of 31 December 2015, given that some of these cases may have been outstanding for some time.

The IRB may also offer the reduced penalty rates:

- in view of objections to the additional assessments raised on the tax payer under the ITA; or
- in connection with violations under the AMLATFPUAA.

The money laundering offence under the AMLATFPUAA is intended to apply to any serious offence, including specific offences under the ITA (i.e., failure to file a tax return within the prescribed timeline, filing of incorrect returns, willful evasion). As such, a non-compliant tax offender may be prosecuted under the ITA and the AMLATFPUAA concurrently.

With the introduction of the Guidelines, it is not clear how the acceptance of the offer made to the tax payer in connection with tax offences, affects the investigation under AMLATFPUAA.

However, in the absence of further clarification from the IRB, it must be noted that an investigation commenced in respect of an offence under the ITA does not hinder the commencement or continuance of an investigation under AMLATFPUAA.

STATUTORY PENALTY RATES

Varies, depending on the nature of the offence

CONCESSIONARY RATES

20%, 25% or 35%, depending on timing of payment

Non-filing / late filing of disposal of chargeable assets

REQUIREMENTS

Under the Real Property Gains Tax Act 1976 ("**RPGT Act**"), every chargeable person who disposes of a chargeable asset and every person who acquires the asset so disposed of shall, within 60 days (or such further period as the Director General may allow) make a return to the IRB in a prescribed form.

Furthermore, each tax return that is filed with the IRB must be a true, accurate and full account of the income received by the chargeable person.

STATUTORY PENALTY RATES

300% of the amount of real property gains tax payable

CONCESSIONARY RATES

5% or 8%, depending on timing of payment

Non-stamping / late stamping of chargeable instruments

REQUIREMENTS

Under the Stamp Act 1949, all documents categorised as Items within the First Schedule, which are executed in Malaysia, must be stamped within 30 days of execution.

All documents executed outside of Malaysia but subsequently brought into Malaysia, must be stamped within 30 days of their arrival into Malaysia.

STATUTORY PENALTY RATES

The greater of:

- RM 25 or 5% of the deficient duty, if the instrument is stamped within 3 months after the time of stamping;
- RM 50 or 10% of the deficient duty, if the instrument is stamped later than 3 months but before 6 months after the time of stamping; or
- RM 100 or 20% of the deficient duty, in any other case

CONCESSIONARY RATES

5% or 10%, depending on timing of payment

If an offer is made to the tax payer, the tax payer will be required to execute a letter of undertaking confirming, amongst others:

- the tax payer's admission to the offence committed;
- the tax payer's agreement to pay the reduced penalty offered by the IRB; and
- the offer will be revoked in the event that the tax payer fails to pay the reduced penalty within the prescribed timeline.

Full waiver of tax increment

In addition to the above, IRB may also offer a full waiver of tax increment to tax payers who wish to settle in full their tax arrears under the ITA, PITA or RPGT Act. For example, under the ITA, any tax that is due and payable shall be increased:

- if the tax is paid within 60 days from the due date for payment, by a sum equal to 10% of the tax unpaid; or
- if the tax is paid after 60 days from the due date for payment, by an additional sum of 5% of the tax unpaid.

The offer for the full waiver may be made provided that the tax payer fulfills the eligibility criteria under the Guidelines, and that the tax due and payable is paid before or on 15 December 2016.

Conclusion

In view of the Programme, it would be advisable and timely for tax payers to take the opportunity to undertake a comprehensive review of their tax compliance affairs to date. Once the status of the tax compliance has been determined, the tax payers should approach their advisors for guidance on the submission strategy, in order to take advantage of the offers under the Programme.