



# Recent Tax Developments Malaysia

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**November 20, 2008**

**TAX**



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# Advanced Pricing Arrangement (APA)

- **Key Features**

- Mechanism to reach agreement with tax authority(ies) on prices of goods and services to be transacted in future between taxpayer and related companies for a specified period
- Enhance certainty on pricing issues for international dealings with related parties
- Types of APA: Unilateral, Bilateral and Multilateral APAs
- New Section 138C in Income Tax Act, 1967

- **Effective: From 1 January 2009**

# Arm's Length Principle

- **Key Features**

- Specific provision established to empower DGIR to make adjustments on transactions of goods, services or financial assistance by:

- Substituting price of goods and services; and

- Disallowing interest on excessive financial assistance provided to related parties

which do not conform to the arm's length principle

- New Section 140A in the Act

- **Effective: From 1 January 2009**

# Arm's Length Principle (Cont'd)

- The Act does not define what is the arm's length principle
- Para 1, Article 9 of OECD Model Tax Convention on Income and Capital definition:  
*“Where...conditions are made or imposed between...2 (associated) enterprises which differ from those which would be made between independent enterprises, then any profits which would have accrued to one of the enterprises, but, by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.”*

# Thin Capitalisation

- A new Section 140A(4) will be introduced which empowers the DGIR to disallow deduction on interest or finance charges which relates to the amount of financial assistance deemed excessive by reference to the fixed capital of such persons
- At this stage, it is unclear how the arm's length ratio will be determined - benchmarking?
- For example, if the arm's length debt to equity ratio is 3:1, then any interest on debt in excess of this ratio will not be deductible
- Also there is no definition of "Financial Assistance" and "Fixed Capital" proposed

# Thin Capitalisation (Cont'd)

<b>Tax consideration</b>	<b>Australia</b>	<b>Korea</b>	<b>Japan</b>
<b>Tax rate</b>	<b>30%</b>	<b>27.5%</b>	<b>Approx. 42%</b>
<b>Thin capitalisation</b>	<b>Safe harbour debt amount equal to 75% of net Australian assets but have arms length test as fall back. Special rules for financial institutions (20:1)</b>	<b>Yes, debt to equity ratio of 3:1 (6:1 in case of financial business) on loans from overseas controlling shareholders (generally over 50% ownership)</b>	<b>Debt to equity ratio of 3:1 on loans from overseas controlling shareholders (generally over 50% ownership)</b>
<b>Transfer pricing</b>	<b>Arm's length</b>	<b>Arm's length</b>	<b>Arm's length</b>
<b>Interest withholding taxes</b>	<b>10% or treaty rate</b>	<b>27.5% or treaty rate</b>	<b>20% or treaty rate</b>

# Thin Capitalisation (Cont'd)

- **Considerations:**

- How is equity measured
- How is debt measured
- What is the acceptable ratio
- When is compliance with ratio measured
- What is the effect of non-compliance
- Applicable only for cross border transactions or to all transactions
- Any grandfather provisions

# 解説(1) 移転価格税制に係る改正

マレーシアでは、2003年7月に移転価格ガイドラインが発行され、会社は当ガイドラインで認められている移転価格の算定方法により特定の移転価格文書を作成し、内国歳入庁の要請があれば速やかに提出することを義務付けられた。

## 改正案

### (1) 事前確認制度 ( Advanced Pricing Agreement)の導入(所得税法138C条)

- 関係会社間の移転価格算定方法について、事前に内国歳入庁の確認を得る制度。
- 関係会社間の価格設定プロセスを明確にし、将来の当局による移転価格調査リスクを排除する。
- ユニラテラル、バイラテラル、マルチラテラルAPA

### (2) 独立企業間価格コンセプトの導入 ( 所得税法140A条)

- 納税者が関連会社との間で行った物品又はサービスの取引価格を「独立企業間価格」に修正する権限を歳入庁長官に与えた。

### (3) 過小資本税制の導入 ( 所得税法140A条(4) )

2009年1月1日より有効

# Reinvestment Allowance

## ◆ Tightening of eligibility for RA

<b>Present</b>	<b>Proposed</b>
RA is eligible for a qualifying project	Change in definition of qualifying project by excluding the word "Processing"
Manufacturing activity is not defined	Manufacturing activity is defined and specific
Operation for at least 12 months	Operation for at least 36 months
RA claimed based on TWDV for CT assets	No RA claimable on CT assets
Claw back RA for assets disposed off within 2 years	Claw back RA for assets disposed off within 5 years

# Reinvestment Allowance (Cont'd)

- **New definition of “Manufacturing” in the Act**

- (a) conversion by *manual* or *mechanical* means of organic or inorganic materials into a new product by changing the **size, shape, composition, nature** or **quality** of such materials;
- (b) assembly of parts into a piece of machinery or products; or
- (c) mixing of materials by a chemical reaction process including biochemical process that changes the structure of a molecule by the breaking of the intra molecular bonds or by altering the spatial arrangement of atom in the molecule,

but excludes

- Simple packaging, fixing, mixing, assembly (amongst others)
- **Definition of qualifying project now excludes the word “Processing”**
- **Effective: From YA 2009**

# Reinvestment Allowance (Cont'd)

## ◆ Controlled Transfer (CT)

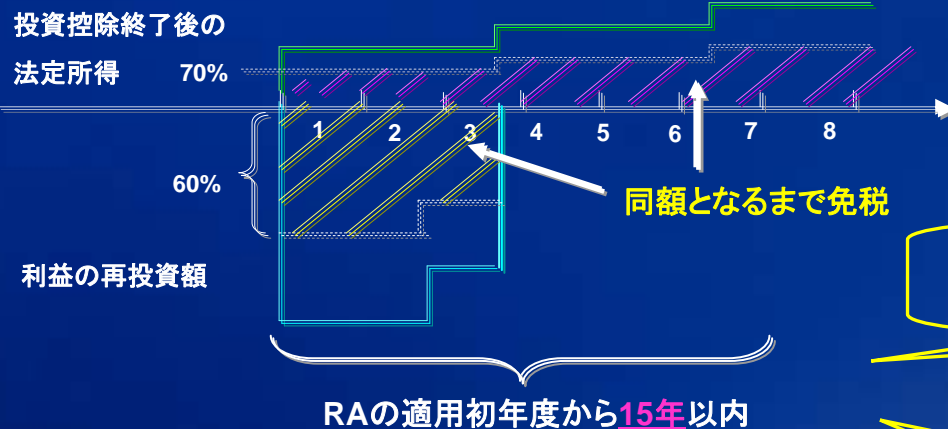
	Disposer	Acquirer
Capital Allowance (CA)	No claw back	CA claimed based on TWDV
RA (Present)	Claw back if < 2 years	RA claimed based on TWDV
RA (Proposed)	Claw back if < 5 years	No RA claimable

Claw back of RA still applicable even though acquirer not eligible to RA claim at all?

# 解説(2) 再投資控除に係る改正

## <再投資控除 : Reinvestment Allowance (RA)>

パイオニア期間又は  
投資控除終了後の  
法定所得 70%



製造或いは加工に関連した事業の拡大、近代化もしくは多様化を条件として指定された資本的支出の60%の額 (控除枠)を各年の法定所得の70%から控除する制度。

単純な工程 (Processing)は含まれない。  
(例: 梱包、取り付け、ミキシング、単純組み立て他)

❑ 会社が他のグループ会社により既にRAが適用された資産を取得した場合、RAを適用することはできない。

❑ 会社の合併により取得された資産についてはRAを適用することはできない。

### ➤ 適格となる資本的支出の条件

- ① 会社の設立後、少なくとも12ヶ月が経過していること。
- ② 承認されたプロジェクトに関連し、マレーシア国内で使用される機械設備・工場に係る資本的支出。
- ③ 支出が行われた年度 或いはそれ以降の年度において、生産性 (工程効率比率) の向上が見られること。

延長?

36ヶ月

➤ 又、RAの対象となった資産が2年以内に他に譲渡された場合は、当該資産に係るRAは認められない (Claw-back)

5年

2009年賦課年度

# Withholding Tax Under Section 109F

- **Withholding tax under Section 4(f) of the Income Tax Act, 1967**
  - Section 4(f) income is defined as gains or profits not falling under Section 4(a) to Section 4(e) of the Act
  - New Section 109F & Section 15B – WHT rate 10%
- **Effective: From 1 January 2009**

# Withholding Tax Under Section 109F (Cont'd)

- **Issues:**

- Business income or non-business income of a non-resident?
  - Example of income provided in Budget Speech such as commissions, guarantee fees, and introducer's fees could be business income for certain non-resident service providers – Section 4(a) or Section 4(f) income?
  - Interaction with DTAs
    - Business Income Article
    - Other Income Article

# Withholding Tax Under Section 109F (Cont'd)

- **Issues (Cont'd):**

- Services performed outside Malaysia – withholding tax under Section 109F still applicable!
- Services rendered outside Malaysia – no withholding tax if Section 4A income

# 解説(3) 源泉税の対象となる取引の追加

<日馬租税条約とマレーシア税法による限定>



# Group Relief

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- **Increasing rate of current year losses allowed to be set-off in group relief from 50% to 70%**
- **Conditions under Section 44A of the Income Tax Act, 1967 still applies**
- **Effective: From YA 2009**

# Group Relief (Cont'd)

- **Section 44A conditions – group relief applicable to resident companies subject to conditions:**
  - Paid-up capital exceeding RM2.5 million
  - Same accounting period
  - Shareholding (direct or indirect) in the group must not be less than 70%
  - 70% shareholding continuous in preceding & relevant year
  - Not applicable if either company enjoys Pioneer Status, ITA, Section 127 exemption, RA claims, etc

# 解説(4) 申告・納税手続きの改正

## (1) グループ・レリーフ(連結納税制度)に係る修正

70%

2009年 賦課年度

当年度の調整後損失の50%を限度として、同グループ内の他の会社の所得と相殺できる制度。

<要件>

- ① グループレリーフを申請する会社と損失のある会社双方の普通株式払込み資本金がRM 2,500千 超
  - ② 同 2 社の会計期間が同一である。
  - ③ 同 2 社間に、直接又は間接に70%以上の持ち株関係がある(双方共にマレーシア法人であること)。
  - ④ ③の持ち株関係が前年度と当年度で継続している。
- 又、パイオニア、ITA、RA等の免税措置を適用している会社を除く

## (2) 申告修正に係るペナルティー

2009年 賦課年度

以下の要件を満たす課税所得の修正にはペナルティーを課さない。

- ① 申告期限後6ヶ月以内の自主的な修正申告
- ② 追加の納付税額が生じる修正申告
- ③ 誤った計算により還付された税額を返納するような修正申告
- ④ 延滞税の計算

－申告書提出期限後60日以内の修正 ⇒ 追加的な納付税額 (A) × 10% = 延滞税(B)

－申告書提出期限後60日超6ヶ月以内の修正 ⇒  $B + \{(A+B) \times 5\%$



**Thank You**



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