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Global Tax Alert

Malaysia enacts Finance Act 2017

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On 16 January 2017, Malaysia enacted the *Finance Act 2017* (the Act), effective as of 17 January 2017, incorporating many of the changes proposed in the 2017 budget.[1]

This Alert summarizes the key features of the Act.

Expansion of withholding tax on service fees and royalties

The Act amends the Malaysian withholding tax laws to apply a 10% withholding tax to all amounts paid or credited to nonresidents in consideration for services, irrespective of where services are performed. The Malaysian tax authorities take the position that service income of a nonresident is a "special class of income" distinct from business profits; accordingly, it may not be protected under a given income tax treaty. However, certain treaties may still provide relief or reduced withholding tax rates.

In addition, the Act expands the definition of "royalty" to include, among others, any consideration paid for the use of or the right to use software.[2] Accordingly, such amounts will be subject to the 10% domestic royalty withholding tax which may be reduced under tax treaties.

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Penalty provisions introduced for Country-by-Country (CbC) Reporting

On 23 December 2016, Malaysia issued the Income Tax Rules 2016 to introduce CbC reporting requirements in line with Action 13 of the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting action plan.[3] In order to ensure compliance with the changes, the Act introduces penalties for the failure to furnish CbC reports, incorrect reporting or omission of information, and noncompliance with mutual administrative assistance. Failure to comply with the rules may result in a fine of between RM20,000 (US$4,800) and RM100,000 (US$24,000), imprisonment for a maximum of six months, or both. The court may also issue a further order for the taxpayer to comply with the rules within 30 days or any other period as the court deems appropriate.

Endnotes

1. See Global Tax Alert, *Malaysia announces 2017 budget*, dated 11 November 2016.
2. The definition of royalty also includes the reception of or the right to receive visual images or sounds transmitted to the public by satellite, cable, fiber optic or similar technology; the use of or the right to use visual images or sounds in connection with television or radio broadcasting; and the use of or the right to use radio frequency spectrums.
3. See Global Tax Alert, *Malaysia introduces Country-by-Country Reporting requirements*, dated 25 January 2017.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Tax Consultants Sdn Bhd, Kuala Lumpur

- Sockalingam Murugesan +6 03 7495 8224 sockalingam.murugesan@my.ey.com
- Vinay Nichani +6 03 7405 8433 vinay.nichani@my.ey.com
- Amarjeet Singh +6 03 7495 8383 amarjeet.singh@my.ey.com
- Anil Kumar Puri +6 03 7495 8413 anil-kumar.puri@my.ey.com

Ernst & Young LLP, Asia Pacific Business Group, New York

- Chris Finnerty +1 212 773 7479 chris.finnerty@ey.com
- Kaz Parsch +1 212 773 7201 kazuyo.parsch@ey.com
- Bee Khun Yap +1 212 773 1816 bee-khun.yap@ey.com

Ernst & Young LLP, Asia Pacific Business Group, Houston

- Trang Martin +1 713 751 5775 trang.martin@ey.com

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