

# **Session 8**

## **Changes in the Companies Act and the Implications on the Malaysia Tax Regime**

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## Question No. 1

**Recently, SSM has issued Practice Directive NO. 3/2017 in regard to audit exemption for certain companies. For the purpose of this Practice Directive, the following categories of private companies will qualify for audit exemption:**

- (a) Dormant companies**
- (b) Zero-Revenue Companies**
- (c) Threshold-Qualified Companies**

**What are the potential tax implications that may arise from this development?**

# Audit exemption

## Existing

### Appointment of auditor

- All companies must appoint auditor

## New

### Appointment of auditor

- For private company, the Registrar is empowered to **exempt** certain category of companies from having to appoint auditors
- Dormant companies, zero-revenue companies, threshold-qualified companies

### Stamp duty

Calculation of goodwill in relation to transfer of asset

### Income Tax

IHC - Permitted expenses

### Stamp duty

4 methods of calculation

### Income Tax

Corporate tax return has to be prepared based on audited financial statement

## **Question No. 2**

**Under Section 21 of the CA 2016, all companies would have the full capacity to undertake any business (no longer restricted by the object clause). In addition, under Section 31, constitution (M&A) is optional. What do these mean from the tax perspective?**

# Tax Consideration

Section 21  
All companies  
would have the  
full capacity to  
undertake any  
business (no  
longer restricted  
by the object  
clause)

Any tax implication?  
- Capital gain v revenue

Section 31  
Constitution (M&A) is optional

### **Question No. 3**

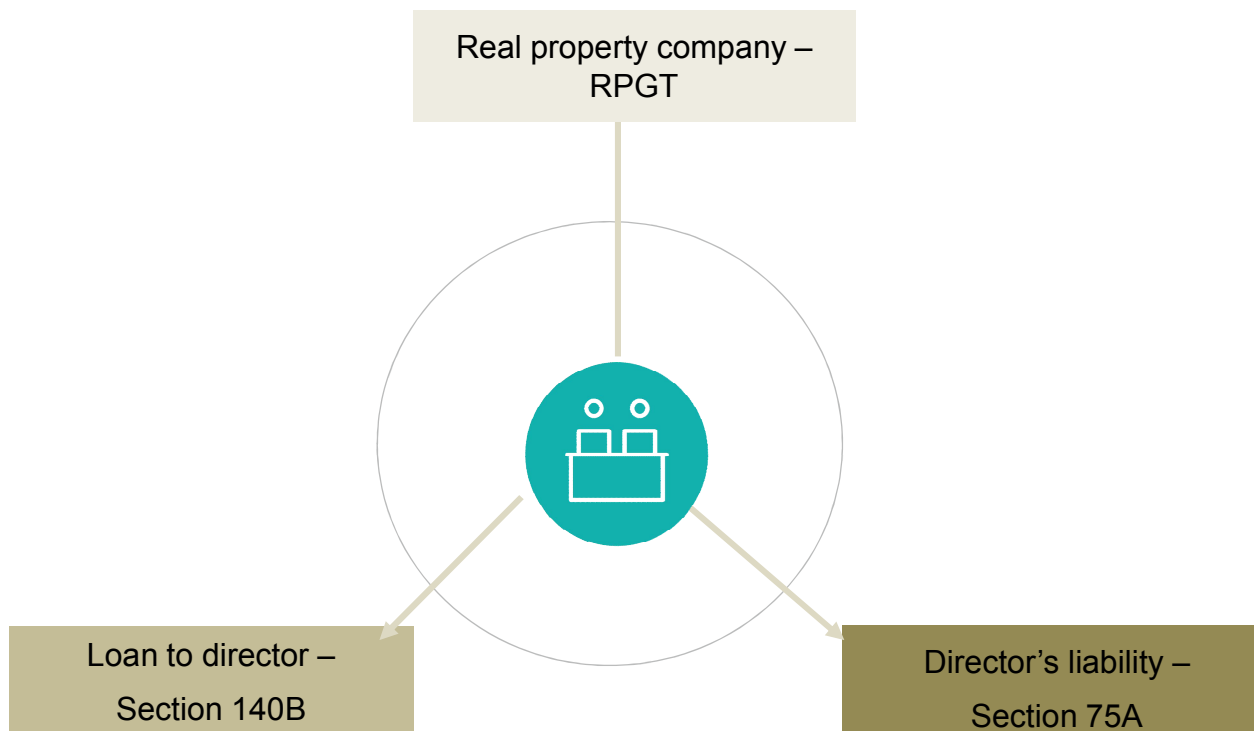
**Under the CA 2016, a company can be incorporated by a single member and that single member can also be the sole director. Is this a positive move from the tax perspective?**

## Existing

- Two members/directors company

## New

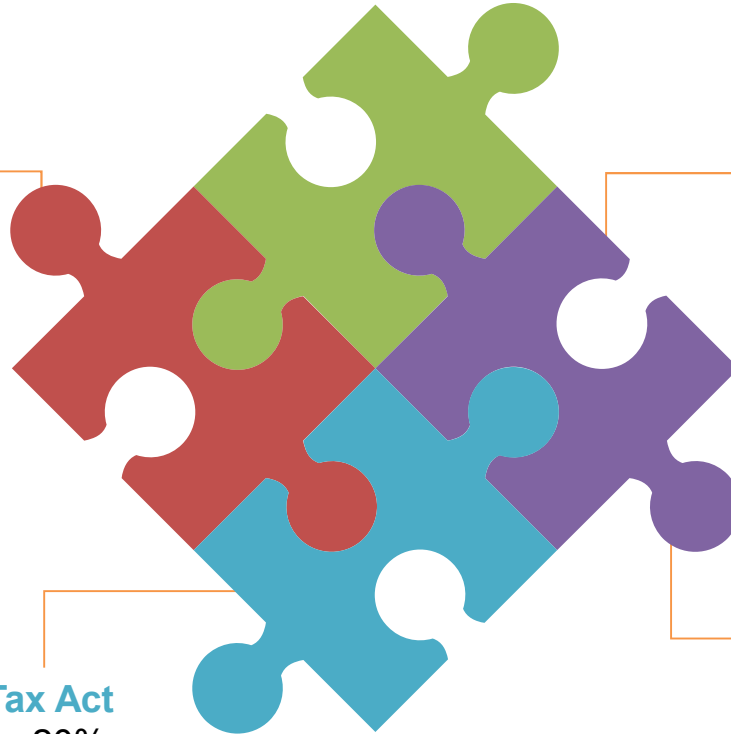
- A company can be incorporated by a single member and that single member can also be the sole director
- Public company must have at least two directors



# Tax Considerations

## Income Tax Act

Directors with more than 20% shareholding (directly or indirectly) in the ordinary share of a company will be jointly and severally liable to the tax (e.g. corporate income tax, MTD payment etc) of the company.



## GST Act

All directors are jointly and severally liable to the tax, surcharge, penalty, fee or any other money of the company

## Real Property Gains Tax Act

Directors with more than 20% shareholding (directly or indirectly) in the ordinary share of a company will be jointly and severally assessable and chargeable with the tax payable by the company

## Companies Act

Dividend can only be distributed if the directors is satisfied that the company will be solvent immediately after the distribution is made.



## **Question No. 4**

**Pursuant to S.74 of the CA 2016, any shares issued before or upon the commencement of the CA 2016 will no longer carry a nominal / par value. What is the significance of par value from the tax perspective?**

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## Existing

### Shares

- Shares **with par value**
- Share premium account
- Capital redemption reserves (CRR)

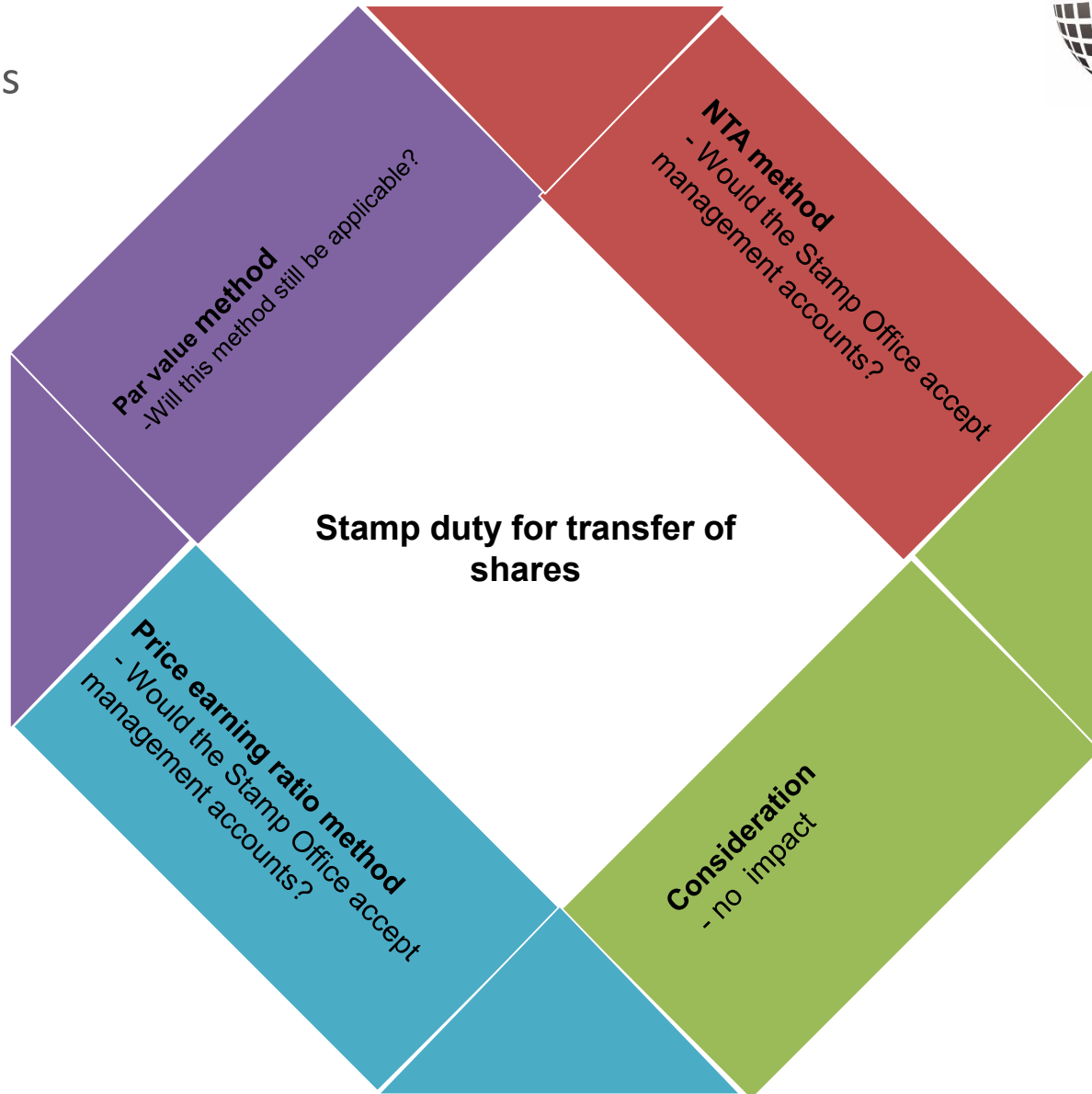
## New

### Shares

- Shares to be issued **without par value**
- Shares will be issued at a price
- Share premium account , Capital Redemption Reserve and the concept of authorised capital will no longer be applicable.
- Transitional period of 24 months will be given for companies to utilise the amount standing in credit in the company's share premium accounts.

# Stamp Duty

- Valuation methods



# Stamp Duty

## - Valuation methods



### ABC Sdn Bhd

Basis of Valuation :	Value of Shares RM		Stamp duty Payable @ 0.3% RM
(a) Par value method (15,000 shares @ RM1 each)	15,000		45
(b) Net tangible asset method (based on audited accounts as at 31.12.2015)			
Share capital	15,000		
Retained earnings	2,331,353		
	<u>2,346,353</u>		<u>7,039</u>
(c) Net earnings per share method (based on audited accounts as at 31.12.2015)			
Net profit after tax	323,393		
Number of shares	15,000	[i]	
Earning per share	21.56	[ii]	
PE ratio (for property sector)	3.5	[iii]	
Value of shares based on net earnings method (number of shares transferred x EPS x PE ratio)	<u>1,131,900</u>	[i]x[ii]x[iii]	<u>3,396</u>
(d) Sales consideration	1,000,000		<u>3,000</u>
STAMP DUTY PAYABLE			<u>7,039</u>
<i>(whichever is the highest)</i>			

## **Question No. 5**

**Under the CA 2016, capital reduction can still be done by the usual way of applying to the Court OR, under the new S.115 of the CA 2016, by the so called “self-do” capital reduction which requires a notice to be sent to the Director General of the Inland Revenue within 7 days from the date of the resolution.**

**Are there any tax implications that may arise from the capital reduction exercise?**

# Capital reduction

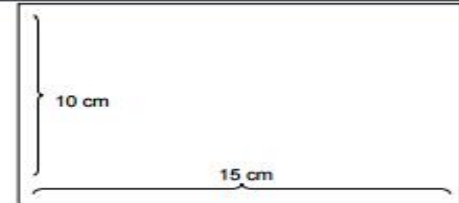


## Section 117(1) – Notification to the IRB

### What's next?

Company No.

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COMPANIES ACT 2016

Section 117(1)

### NOTICE OF PROPOSED REDUCTION OF SHARE CAPITAL

\_\_\_\_\_ (Company Name)

To  
1. Director General of the Inland Revenue Board  
2. Registrar of Companies,

..... (Name of Company and Co. Registration No.) hereby gives notice that a special resolution to reduce the share capital of the company has been passed on the ..... day of ..... 20.... The extract of the special resolution is set out below:

.....  
.....  
.....

**Declaration:**

I confirm that the facts and information stated in this document are true and to the best of my knowledge.

**Signed:**

\_\_\_\_\_  
(Secretary)

Name  
License No/ Membership No.

:  
:



## **Question No. 6**

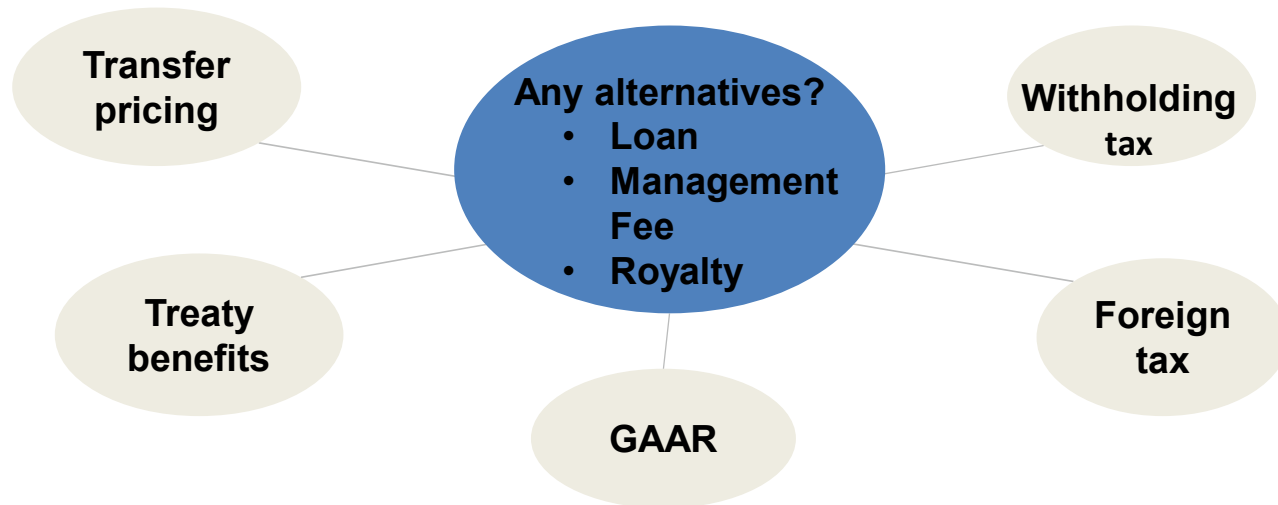
**Under the CA 2016, dividends can be distributed out of profits and is only allowed if it meets solvency test. Would this lead to other schemes of profit extraction?**

## Existing

- Dividends should be distributed out of profits.

## New

- Dividends be distributed out of profits and is only allowed if it meets solvency test





## **Question 7:**

**Pursuant to S.65(1) of the CA 2016, a contract or transaction that purports to be made by or on behalf of a company at a time when the company has not been formed has effect as a contract or transaction made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract or transaction accordingly.**

**Notwithstanding subsection (1), a contract or transaction referred to in that subsection may be ratified by the company after its incorporation and the company shall be bound by the contract or transaction as if the company had been in existence at the date of the contract or transaction and had been a party to the contract or transaction.**

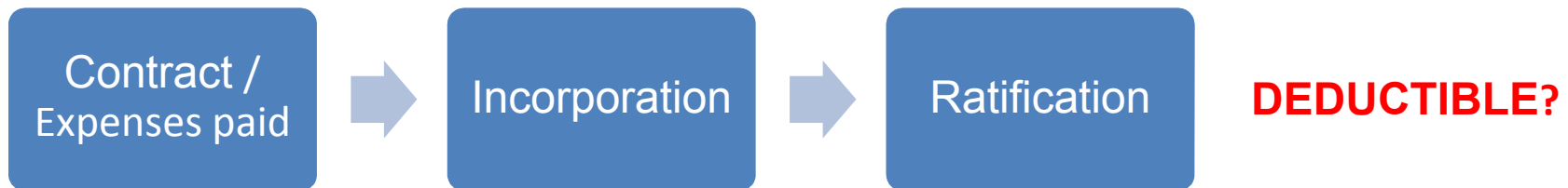
**Based on S.65 of the CA 2016, can an annual subscription to a service provider paid prior to incorporation of a company but ratified by the company after incorporation be considered as a deductible expense incurred in the production of income of its business under S.33(1) of the Income Tax Act 1967 (ITA)?**

# Pre-incorporation contract

## Example

- Company A was incorporated on 1.5.2017 and assuming that Company A commenced its business on the same day.
- On 1 April 2017, Mr X paid an annual subscription fee to LexisNexis for the use of database maintained by LexisNexis with effect 1 May 2017.
- Mr X was acting on behalf of Company A which he intended to incorporate.
- Company ratified the subscription on 5.5.2017.

Section 65(2) of the Companies Act 2016 – if the contract is ratified subsequent to the incorporation of the company, the company should be bound by the contract.



**If the commencement date is 1.6.2017 – will the expenses be deductible?  
Apportionment?**

## **Question 8:**

**What are the other tax implications that we should be aware of in light of the CA 2016?**

# Other tax implications

## Authorized share capital

The concept of authorized capital will no longer be applicable

### Potential revision of PU order - PU(A)475/2003

- Incorporation fee
  - a) the cost of preparing and printing the M&A, prospectus, circulating and advertising the prospectus;
  - b) the cost of registering the company and the statutory documents, fees and stamp duties payables thereon;
  - c) the cost of drawing up the preliminary contracts and stamp duties payable thereon;
  - d) the cost of printing debentures and stamp duty (if any) payable thereon and of share certificates and letters of allotment;
  - e) the cost of the seal of the company; and
  - f) underwriting commission.

## Share premium account

Companies are given 24 months to utilize the amount

### Small and medium enterprise status

- A company may become a non-SME upon the conversion of the share premium to share capital
- Benefits of a SME company
  - a) Tax rate – 19% for the first RM500,000 chargeable income
  - b) Capital allowance for small value assets – no restriction
  - c) Exempt from submission of estimate of tax payable (Form CP204) for first 2 years of assessment

THANK YOU