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April 2012

Update on Furnishing of Form CP58 to an Agent, Dealer or Distributor

The Inland Revenue Board ["IRB"] has provided some clarifications on furnishing of Form CP58 to an agent, dealer or distributor pursuant to Section 83A of the Income Tax Act 1967 ["the Act"] as follows:-

- i. Companies that have issued the annual statement to an agent, dealer or distributor with particulars of payment of monetary and non-monetary incentives from January 2011 to December 2011 are not required to prepare the Form CP58 for the year ended 31st December 2011.

For the year ending 31st December 2012 and thereafter, the Form CP58 shall only need to be prepared if the monetary and non-monetary incentives exceeds RM5,000.

- ii. For payment of non-monetary incentives, the actual amount incurred by the companies should be disclosed in the Form CP58 and not the market value as stated in the Guide Notes for Filling Form CP58 ["Guide Notes"]. As such, items 2(a) and 2(b) of Part C of the Guide Notes are to be deleted.
- iii. An agent, dealer or distributor is required to declare the monetary and non-monetary incentives received during the year in the respective tax returns for the relevant year.

Note: For further information on the Form CP58, kindly refer to our Tax Flash - February 2012 Issue.

Deduction for Expenditure on Franchise Fee

Following the 2012 Budget announcement, the Income Tax (Deduction for Expenditure on Franchise Fee) Rules 2012 have been gazetted to allow deduction for the franchise fee paid to the franchisor by a franchisee who is resident in Malaysia for his "franchise business" prior to the commencement of that business. Franchise business means a business carried out using a local franchise brand. In addition, the franchise fee paid shall not be refundable and it shall be deemed to be incurred in the basis period for a year of assessment in which the franchise business commences.

The above Rules take effect from the year of assessment ["YA"] 2012.

Hyperlinks

Advent Consulting Group
Inland Revenue Board

References

IRB's Announcement –
Clarification on Preparation
of Form CP58

Tax Flash – February
2012

Income Tax
(Deduction for
Expenditure on
Franchise Fee) Rules
2012



Revised Lists of Promoted Activities and Promoted Products

Five (5) new orders providing the list of promoted activities and promoted products that qualify for tax incentives under the Promotion of Investments Act ["PIA"] 1986 have been gazetted. The new orders are:-

- PIA (Promoted Activities and Promoted Products for High Technology Companies) Order 2012
- PIA (Promoted Activities and Promoted Products for Selected Industries) Order 2012
- PIA (Promoted Activities and Promoted Products for Reinvestment) Order 2012
- PIA (Promoted Activities and Promoted Products) Order 2012
- PIA (Promoted Activities and Promoted Products for Small Scale Companies) Order 2012

With the gazette of the above new orders which came into operation on 2nd March 2012, the previous orders on the list of promoted activities and promoted products are revoked.

Recent Tax Case

BDHDSB v KPHDN

[Tax deductibility of loan-related expenses such as underwriting and guarantor's commissions, etc.]

In the case of BDHDSB v Ketua Pengarah Hasil Dalam Negeri ["KPHDN"] [(2011) MSTC 10-017], the taxpayer was principally involved in the letting of investment property and its sources of income were rental income. BDHDSB had initially obtained loans to finance the construction and completion of an investment property. Subsequently, BDHDSB refinanced the said loans as follows:-

- i. RM30,000,000 under a Syndicated Fixed Term Loan Facility; and
- ii. RM40,000,000 under a Guaranteed Revolving Underwriting Facility ["GRUF"].

PIA (Promoted Activities and Promoted Products for High Technology Companies) Order 2012

PIA (Promoted Activities and Promoted Products for Selected Industries) Order 2012

PIA (Promoted Activities and Promoted Products for Reinvestment) Order 2012

PIA (Promoted Activities and Promoted Products) Order 2012

PIA (Promoted Activities and Promoted Products for Small Scale Companies) Order 2012



Under the GRUF, BDHDSB issued commercial papers in the capital market to bankers. For this purpose, the taxpayer incurred underwriting and guarantor's commissions, agency fee, annual review fee, annual management fee and surveillance fee. The taxpayer contended that the expenses were wholly and exclusively incurred in the production of gross income as they facilitated the operation of the business of producing rental income. The IRB disallowed the said expenditure on the grounds that they were capital in nature and raised the additional assessments for the YA 2000 (Current Year Basis) to YA 2004.

The Special Commissioners of Income Tax ["SCIT"] took the view that the refinancing loans and facility under GRUF had been used bona fide in the business interest of the taxpayer in producing gross income of the taxpayer, and thus tax deductible. Citing the decisions in the cases of *KPHDN v FCD* and *Fernrite Sdn Bhd v KPHDN* stating that the guarantee and commission fees were analogous to interest payments, the SCIT concluded that the underwriting and guarantor's commissions and other loan-related expenses were an intergral part of a loan package as each item of expenses claimed by the taxpayer represents a different facet of the loan package which was inseparable and indivisible and hence deductible. As these were also recurring expenses incurred during the tenure of the loan / facility to facilitate the taxpayer's business operations, they qualify for tax deduction under Section 33(1) of the Act.

The IRB being dissatisfied with the above decision has appealed to the High Court.

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