

## ▶▶ Tax Flash



July 2012

### **PR No. 4/2012 – Deduction for Loss of Cash and Treatment of Recoveries**

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 4/2012 – Deduction for Loss of Cash and Treatment of Recoveries. This PR provides guidance on the deductibility of loss of cash in the course of business caused by theft, defalcation or embezzlement and the tax treatment of recoveries in respect of the loss of cash which has been given a deduction earlier.

Salient points of the abovementioned PR include:-

- i. Deductibility of Loss of Cash Caused by Theft, Defalcation or Embezzlement
  - Loss of cash caused by theft, defalcation or embezzlement by third party is allowable if:-
    - banking of cash takings is a necessary part of the operations of the business e.g. loss of cash caused by theft or robbery while in transit to the bank; or
    - an agent who is assigned to collect the cash embezzles the cash.
  - Loss of cash caused by theft or embezzlement by employee is allowable as it arises directly from the necessity of delegating certain duties of the business to employee.
- ii. Loss of Cash Not Deductible
  - Loss of cash caused by theft, defalcation or embezzlement is not allowable under the following circumstances:-
    - the employee who is involved in the theft or embezzlement is a relative of the proprietor and there is clear evidence that the proprietor proposes to overlook the theft;
    - loss of cash or embezzlement by a sole proprietor, a partner, a director of a company, an administrator of a deceased person's estate or any person who is in control of the business operations; or
    - loss of cash caused by theft, burglary or robbery which is not incidental to the business.

#### Hyperlinks

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#### References

PR No. 4/2012

iii. Supporting Evidence

- Any claim for a deduction for loss of cash caused by theft, defalcation or embezzlement should be substantiated by more than one of the following documents:-
  - police report;
  - bank statement;
  - responsibility of the staff involved;
  - letter of termination of employment;
  - the minutes of board of directors meeting;
  - proof of recovery action; or
  - other relevant documents.

iv. Tax Treatment of Recoveries

- Recoveries obtained in respect of loss of cash that has been allowed in computing the adjusted income earlier shall be treated as gross income of a business.
- The recovery shall be treated as gross income of a business for the basis period for a year of assessment in which it is receivable or deemed to have been received. The date the cash is actually received is irrelevant.

The above PR replaces the PR No. 5/2005 dated 14<sup>th</sup> November 2005.

**Guidelines on Deduction of Expenditure under Sections 34(6)(m) and 34(6)(ma)**

The IRB has recently issued the Guidelines on Deduction of Expenditure under Sections 34(6)(m) and 34(6)(ma) of the Income Tax Act 1967 [“the Act”]. The Guidelines provide clarification on the eligibility criteria and deductible expenses incurred by companies for the purpose of obtaining:-

- accreditation for a laboratory or as a certification body [Section 34(6)(m)]; and
- certification for recognised quality systems and standards and halal certification [Section 34(6)(ma)].

Salient points of the above guidelines include:-

i. Eligibility Criteria

- The claim for single deduction under Section 34(6)(m) must be evidenced by a certificate issued by Department of Standards Malaysia [“JSM”]. The following schemes were accredited by JSM:-
  - National Laboratory Accreditation Scheme;
  - Scheme for the Accreditation of Certification Bodies; and
  - Malaysia Inspection Bodies Accreditation Scheme.

Guidelines on Deduction of Expenditure under Sections 34(6)(m) and 34(6)(ma)



- The claim for double deduction under Section 34(6)(ma) must be evidenced by a certificate issued by a certification body determined by the Minister. The list of approved certification bodies are updated from time to time and can be obtained from the IRB website.
  - The expenditure incurred in the basis period for a year of assessment prior to obtaining the certificate shall be deemed to be incurred in the year of assessment in which the certificate is issued.
- ii. Deductible Expenditure
- Deductible expenditure incurred for obtaining accreditation or certification for recognised quality systems and standards and halal certification includes:-
    - application fee;
    - annual fee (for first year only);
    - assessment fee; and
    - other fees charged by JSM / certification bodies for obtaining accreditation prior to the companies obtaining the accreditation / certification.
  - After obtaining the accreditation / certification, the expenditure charged by JSM / certification body in the subsequent years will be allowed a deduction under Section 33(1) which includes:-
    - annual surveillance fee;
    - annual renewal fee;
    - re-assessment fee; and
    - other fees charged by JSM / certification bodies after the certificate is issued.
- iii. Non-deductible Expenditure
- Expenses in relation to consultancy services to obtain certificate (e.g. travelling, accommodation and food).
  - Staff training in the process of obtaining accreditation / certificates.
  - Other expenses incurred for obtaining accreditation / certificates which are not charged by JSM / certification body.
- iv. Procedures for Claiming Deduction
- Claim for deduction must be made in the tax return form.
  - The accreditation / certification obtained from JSM / certification body and other relevant documents must be kept and made available in the event of a tax audit by the IRB.



## **Guidelines and Procedures for Claiming Exemption from Tax and Stamp Duty on Expenditure for the Purpose of Obtaining GBI Certificate**

The IRB has recently issued the Guidelines and Procedures for Claiming Exemption from Tax and Stamp Duty on Expenditure for the Purpose of Obtaining Greenbuildingindex ["GBI"] which provide guidance on the computation of tax exemption on statutory income and stamp duty exemption pursuant to the Income Tax (Exemption) (No. 5) Order 2011 and Stamp Duty (Exemption) Order 2009.

Salient points of the abovementioned guidelines include:-

### **i. GBI Criteria**

The GBI is a green rating index on environmental friendly buildings which is determined based on certain criteria such as:

- Energy efficiency;
- Indoor environmental quality;
- Sustainable site planning and management in respect of pollution control and facilities for workers;
- Usage of recyclable and environmental friendly material and resources;
- Water efficiency; and
- Use of new technologies.

### **ii. Tax Exemption**

- Claim for tax exemption shall be made in the year of assessment the GBI certificate is issued and applies to GBI certificate issued by the Board of Architects Malaysia between 24<sup>th</sup> October 2009 to 31<sup>st</sup> December 2014.
- Tax exemption equivalent to 100% of the amount of additional expenditure incurred for the purpose of obtaining the GBI is given to a resident person for set-off against the statutory business income. Any unutilised amount can be carried forward to subsequent years of assessment for set-off against statutory business income from the same source.
- For assets acquired under hire purchase, exemption will be given on the capital portion for any instalment payment made during the relevant period.

Guidelines and Procedures for Claiming Exemption from Tax and Stamp Duty on Expenditure for the Purpose of Obtaining GBI



- Consultant fee incurred by an owner of building for obtaining GBI is not a qualifying expenditure for tax exemption. However, consultant fee incurred by property developers for the construction of building with green building facilities shall be tax deductible under Section 33(1) of the Act.
- A person making a claim for tax exemption on the expenditure incurred for obtaining GBI will also be eligible for capital allowances and industrial building allowance on relevant qualifying expenditure under Schedule 3 of the Act.
- Where a building, plant or machinery in respect of which tax exemption has been made is disposed of within 2 years from the date of acquisition, the amount exempted will be clawed back in the year of disposal.
- A person granted certain other incentives or exemption during the basis period concerned will not be eligible for the above tax exemption.

### iii. Stamp Duty Exemption

- Stamp duty exemption is granted and computed based on the amount of the cost incurred for the purpose of obtaining GBI as indicated in the GBI certificate.
- This applies to sale and purchase agreement ["SPA"] for purchase of the property issued with GBI executed between 24<sup>th</sup> October 2009 to 31<sup>st</sup> December 2014.

### **Guidelines on Recognition of Gross Business Income for Property Developers Adopting 10/90 Scheme under Build-Then-Sell Method**

The IRB has recently issued the Guidelines on Recognition of Gross Business Income for Property Developers Adopting 10/90 Scheme under Build-Then-Sell Method to provide clarification on the tax treatment in respect of recognition of gross business income for property developers adopting the aforesaid scheme.

Under the 10/90 Scheme, the purchaser of a property unit will pay a 10% deposit of the selling price upon signing of SPA. No payment is made during the construction period and the balance of 90% will be made in one lump sum upon the completion of the unit.

Guidelines on Recognition of Gross Business Income for Property Developers Adopting 10/90 Scheme under Build-Then-Sell Method



Salient points of the above guidelines include:-

- i. It is noteworthy that the PR No. 1/2009 – Property Development issued by the IRB on 22<sup>nd</sup> May 2009 is still applicable to property developers adopting 10/90 Scheme with the exception that the estimation of gross profit will not be required (i.e. Paragraphs 5.7 and 5.9 of the PR No. 1/2009 is not applicable).
- ii. The 10% deposit received by the developers upon signing SPA in the basis period for a year of assessment constitutes the gross business income for that particular year of assessment.
- iii. The balance of 90% to be received in one lump sum will be accrued on the date when the unit is completed. Any unsold units of property represent trading stocks of the company to be accounted for in the income statement and balance sheet accordingly.
- iii. The property development costs i.e. the direct expenses including interest should be capitalised in the Development Expenditure Account. However, 10% of the actual development costs (excluding cost of land) can be charged to income statement and deducted from development income (deposit) proportionately based on number of units sold.
- iv. Interest restriction under Section 33(2) of the Act applies in arriving at the adjusted business income of the property developer under build-then-sell method (if applicable).
- v. Property developers adopting both build-then-sell and sell-then-build methods have to treat each property development project as a separate source of income and separate accounts are to be prepared.

## **Income Tax (Amendment) Act 2012**

The Income Tax (Amendment) Act 2012 has been gazetted on 22<sup>nd</sup> June 2012 to take effect the amendments to Section 44(7) proposed in the Income Tax (Amendment) Bill 2012.

For further information on the amendments, kindly refer to our *Tax Flash - May 2012* issue.

Income Tax (Amendment)  
Act 2012

Tax Flash – May 2012



## Tax Exemption on Income Derived from an Employment with a TMC

Pursuant to the Income Tax (Exemption) (No. 3) Order 2012, an individual who is a non-Malaysian citizen is exempted from the payment of income tax in respect of income derived from an employment with a treasury management centre ["TMC"] exercised outside Malaysia.

The amount of income exempted from tax shall be determined based on the following formula:-

$$A \times \frac{B}{C}$$

where A is the chargeable income for a year of assessment attributable to a TMC;

B is the number of days in the year of assessment that the individual is in employment with the TMC exercised outside Malaysia (**Note**); and

C is the number of days in the year of assessment that the individual is in employment with the TMC.

**Note :** *The non-Malaysian individual is deemed to be outside Malaysia for a day if that individual is outside Malaysia for the whole of that day.*

TMC is defined as a company which is:-

- i. incorporated under the Companies Act 1965 and resident in Malaysia;
- ii. carrying on a business of providing qualifying financial and fund management services in Malaysia as specified by the Minister; and
- iii. approved by the Minister upon fulfilling certain specified conditions.

The above Order takes effect from the YA 2012.

## Stamp Duty Exemption on Loan Agreement Executed by TMC

Pursuant to Stamp Duty (Exemption) (No. 2) Order 2012, exemption from stamp duty is granted on any instrument of loan agreement and servicing agreement executed by a TMC.

This exemption applies to instruments executed between 8<sup>th</sup> October 2011 and 31<sup>st</sup> December 2016.

Income Tax (Exemption)  
(No. 3) Order 2012

Stamp Duty (Exemption)  
(No. 2) Order 2012



## Remission of Tax and Stamp Duty Relating to Islamic Medium Term Notes Issued by PTPTN / Johor Corporation

Pursuant to the Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2012 and Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2012, remission of tax and stamp duty are granted relating to the issuance of Islamic Medium Term Notes ["IMTN"] by Perbadanan Tabung Pendidikan Tinggi Nasional ["PTPTN"] and Johor Corporation respectively as follows:-

### i. Remission of Tax

- any tax payable under the Act shall be remitted in full in respect of any money payable under any agreement, note, instrument or document in relation to any of the IMTN issued pursuant to the IMTN Programme in nominal values of RM3.5 billion and RM3 billion by PTPTN and Johor Corporation respectively, including any agreement, note, instrument and document in relation to the guarantee provided by the Government of Malaysia.

### ii. Remission of Stamp Duty

- any stamp duty payable under the Stamp Act 1949 in respect of any agreement, note, instrument and document in relation to the IMTN, the IMTN Programme or the guarantee shall be remitted in full.

The above Orders come into operation on 30<sup>th</sup> May 2012.

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Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2012

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2012