

## ▶▶ Tax Flash



August 2013

### PR No. 9/2013 – Special Deduction for Expenditure on Treasury Shares

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 9/2013 – Special Deduction for Expenditure in Treasury Shares to provide guidance on tax treatment of cost incurred by companies in acquiring treasury shares which are offered to employees under an employee share scheme.

Salient points of the abovementioned PR include:-

#### i. Special Deduction for Expenditure on Treasury Shares

- From year of assessment ["YA"] 2013 onwards, a new Section 34D of the Income Tax Act 1967 ["the Act"] is introduced to accord special deduction on cost incurred in acquiring treasury shares by a company having a business source to fulfil its obligations under an employee share scheme.
- In accordance with Malaysian Financial Reporting Standards ["MFRS"] 2 on Share-based Payment, the cost of repurchase of company's shares in the open market to fulfill the obligations under such scheme is charged to the income statement as staff costs (cost of an employee's equity-based remuneration scheme). This cost incurred is meant to retain employees necessary for the operation of the company i.e. part of the remuneration payment which is necessary for the operation and revenue of the company.
- Among the expenses that are directly related to the acquisition of treasury shares are:-
  - Brokerage charges, commission to broker and Central Depository System charges;
  - Stamp duty; and
  - Interest costs incurred to finance the acquisition of treasury shares intended for use by company to fulfill obligations under an employee share scheme.

For tax purposes, the above expenses should be included as the cost of purchase of the treasury shares. If the above expenses are expensed off to the profit and loss account, the necessary tax adjustments should be made.

#### Hyperlinks

Advent Consulting Group  
Inland Revenue Board

#### References

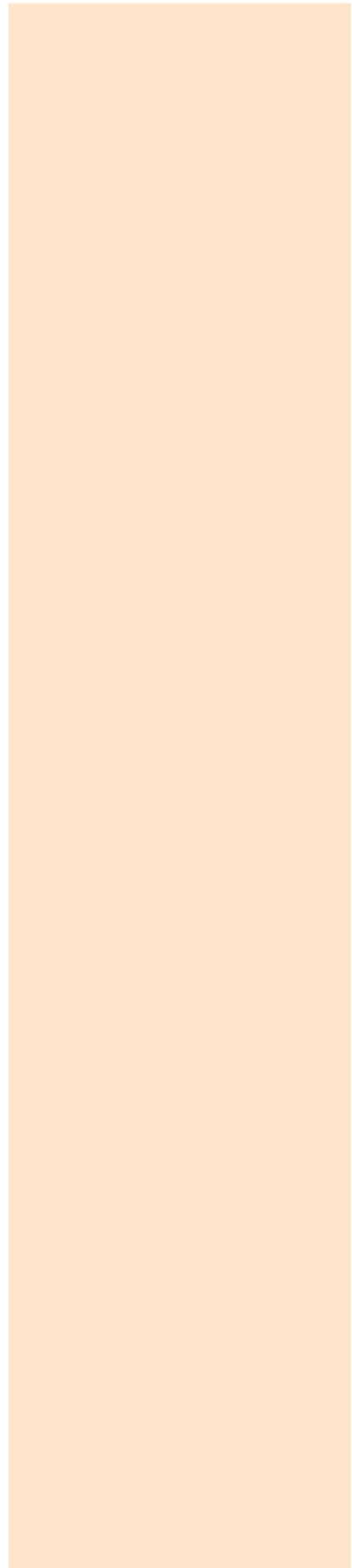
PR No. 9/2013

ii. Determination of Special Deduction for Expenditure on Treasury Shares

- In ascertaining the adjusted income of a company from a business source for the basis period for a year of assessment, the amount deductible against its gross income is determined as follows:-

	<b>RM</b>
Cost of acquiring treasury shares which are transferred to the employee	XX
Less :	
Any amount payable by that employee for such treasury shares	XX
Amount allowable for deduction	XX

- The timing of deduction for cost incurred by a company in acquiring treasury shares to be transferred to employees under an employee share scheme occurs when all the following conditions are fulfilled:-
  - The company incurs cost for treasury shares applied for the benefit of employees i.e. when the treasury shares vest to the employee under an employee share scheme;
  - An employee exercised his employee share option scheme to acquire treasury shares; and
  - The company transfers treasury shares held by it to an employee when the employee acquires the legal and beneficial interest in the treasury shares.
- As the company may acquire treasury shares at different prices and at different times, the cost of acquiring treasury shares which are subsequently transferred to the company's employees under the employee share scheme will be determined on the basis that treasury shares acquired at an earlier point in time are deemed to be transferred first (i.e. first-in-first-out method).
- Treatment of excess of amount payable by an employee over the cost of treasury shares
  - Where any amount payable by an employee for any treasury shares transferred to him exceeds the cost incurred by the company, the excess will be credited to an account to be kept by the company to reduce the cost of subsequent treasury shares which will be transferred to its employees.
  - No deduction is due to the company in the case where any amount payable by an employee for any treasury shares transferred to him exceeds the cost incurred by the company in acquiring the treasury shares transferred.
  - Any excess of the amount payable by the employee over the cost of treasury shares incurred by the company will not be subject to tax.

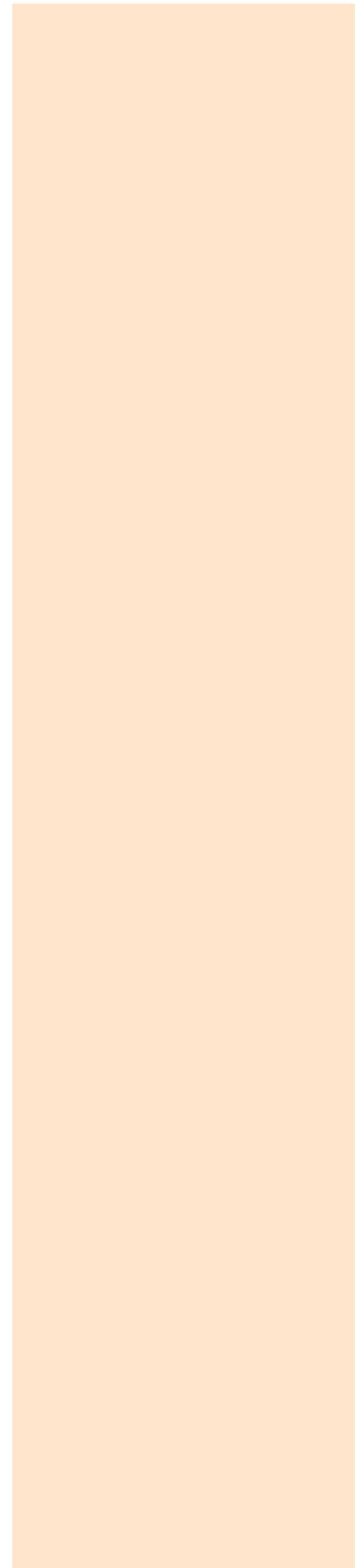


- Recharges from holding company for shares transferred to subsidiary's company – timing and amount of deduction to be allowed.

- Where a holding company repurchased its own shares and transferred them to employees of a subsidiary under an employee share scheme, the subsidiary is allowed deduction on the:-

	RM
Cost recharged to it by the holding company; or Cost of acquisition of treasury shares by the holding company (whichever is lower)	XX
Less : Amount payable by the employee for the treasury shares	XX
Deduction allowable	XX

- The deduction is allowable on the date the shares are transferred or on the date the payment is made to the holding company by the subsidiary company, whichever is the later.
- The deduction allowed for cost recharged under various circumstances is as explained below:-
  - Holding company does not recharge its subsidiary company
    - Where a holding company does not recharge its subsidiary company, no deduction is allowed to the holding company for the cost incurred in repurchasing its own shares for transfer to the employees of its subsidiary.
    - Similarly, if the cost of treasury shares transferred by a holding company to employees of its subsidiary under an employee share scheme is not recharged by the holding company, the subsidiary is not entitled to claim a deduction for the treasury shares.



- Holding company recharges its subsidiary company

- Amount of deduction where cost of treasury shares is lower than the amount recharged

A subsidiary company may be recharged by its holding company an amount for treasury shares which is more than the holding company's cost of acquisition of its treasury shares. In such instance, the deduction allowable to the subsidiary is restricted to the holding company's cost of acquisition of treasury shares less the amount payable by the subsidiary's employees.

- Amount payable by employees is higher than cost of treasury shares or amount of recharge

Where the amount payable by the subsidiary's employees is higher than the holding company's actual cost of treasury shares or the amount of recharge, whichever is the lower, no tax deduction is allowed to the subsidiary. In addition, the excess need not be credited to an account to reduce the cost of subsequent treasury shares and will not be subject to tax.

- Treasury shares not applied for the benefit of employees

A holding company may recharge its subsidiaries for treasury shares transferred before an employee share option scheme is exercised or a share award scheme is vested to the subsidiary's employees (i.e. treasury shares have not yet been applied by the subsidiary for the benefit of its employees). No deduction is allowed to the subsidiary at the point of recharge. Deduction will only be allowed when the shares are subsequently transferred to the employees.

- Liability to pay for the recharge for treasury shares that have been applied for the benefit of employee

Where the holding company has transferred its treasury shares to its subsidiary but only recharges the subsidiary some time after the subsidiary has applied the treasury shares for the benefit of its employees, the subsidiary may claim for deduction only when it is liable to pay for the shares transferred.

- Date of recharge

The date of recharge is the date of invoice or the date on which the subsidiary is liable to pay the holding company for the shares transferred, whichever is the later.

iii. Non-application of Special Deduction

- The special deduction under Section 34D of the Act is not applicable to the following:-
  - Newly issued shares;
  - Newly issued shares of a holding company or subsidiary company; and
  - Warrants.

iv. Gain or Losses Upon Transfer / Disposal of Treasury Shares

- The difference between the purchase cost and the fair value of the treasury shares upon transfer or disposal of the treasury shares under an employee share scheme which gives rise to gains or losses are disregarded for tax purposes.

v. Documents Required

- Companies claiming a deduction for cost of treasury shares transferred to employees under an employee share scheme are required to furnish the relevant documents upon audit by the IRB.

**PR No. 10/2013 – Taxation on Business Trust**

The IRB has recently issued the PR No. 10/2013 – Taxation on Business Trust [“BT”]. This PR provides guidance on the tax treatment accorded to a BT registered with the Securities Commission Malaysia [“SC”].

Salient points of the abovementioned PR includes:-

i. BT in Malaysia

- A BT is essentially a business structured in the form of trust instead of corporations. Like all trusts, the constitutive document is a trust deed, and there will be a trustee. The trustee shall be a trustee-manager [“TM”] who holds legal ownership of the assets of the underlying business in its capacity as a trustee, and at the same time manage the business of the trust as its operator. Given its key role in a BT, the framework requires that the TM must be a company other than an exempt private company. Unit holders of a BT have a beneficial interest in the assets of a BT by acquiring units of the BT.
- The significant advantage of a BT over a company is that a distribution of income can be made to investors from a BT’s cash flow, subject to solvency requirements. This differs from a Malaysian company which can only make distributions out of accounting profits.

PR No. 10/2013

ii. Residence Status of a BT

- A BT is considered a resident in Malaysia for the basis year for a assessment if the TM of that BT is resident in Malaysia.
- The TM is said to be a resident in Malaysia if:-
  - the TM in its capacity carries on the business of such BT in Malaysia; and
  - the management and control of the business of such BT is exercised in Malaysia.

iii. Basis Period of a BT

- The basis year for a year of assessment or the financial accounting period which ends on a day other than 31<sup>st</sup> December is the basis period of BT for that year of assessment.

iv. Tax Treatment of a BT

- For income tax purposes, a BT would be given the same tax treatment as a company. The income of a BT will be taxable at the BT level.
- The provisions relating to the following matters under the Act are applicable to BT:-
  - Group relief
    - All requirements applicable to a company for the purpose of group relief will similarly apply to a BT within a group of BTs. For the purpose of applying the group relief provision to a BT, units of BT will be used in lieu of the ordinary shares of the company.
    - The following two (2) conditions must be fulfilled for the purpose of group relief:-
      - at least 70% of the unit holdings in respect of units of the surrendering BT are directly or indirectly owned by the claimant BT or vice versa or at least 70% of the surrendering BT and the claimant BT are directly or indirectly owned by another BT resident and incorporated in Malaysia; and
      - the owning BT must be beneficially entitled to at least 70% of the residual profit and residual assets of the other BT.
    - In determination of the 70% unit holdings threshold, any direct or indirect holdings owned by BTs that are not resident and not incorporated in Malaysia are disregarded.
    - Residual profit means the net profit before taxation (after deducting fixed returns on commercial and non-commercial loans).
    - Residual assets are net assets:-
      - available for distribution to unit holders in the event of winding up;
      - after deducting payment for commercial loans; and
      - distributed using the ratio used for the purpose of determining residual profits.

- Control transfer
  - The control transfer provisions under Paragraphs 38 to 40 of Schedule 3 of the Act will apply to a BT within a group of BTs.
  - Control in relation to a BT means the unit holder's right to at least 50% of the residual profit of the BT available for distribution or at least 50% of the residual assets of the BT available for distribution on a winding up.
- Foreign sourced income and remittances
  - The tax exemption in respect of foreign sourced income and received in Malaysia under Paragraph 28(1) of Schedule 6 of the Act is also applicable to a BT.
- Tax incentives
  - Generally, the provisions of the Act, the Income Tax Rules and Income Tax (Exemption) Orders related to tax incentives for a company are also applicable to a BT with effect from YA 2013. However, the tax incentives will not apply to a BT if the granting of incentives to a company registered under the Companies Act 1965 is expressly mentioned therein.

v. Preferential Tax Treatment Not Applicable to a BT

- The following preferential tax treatment enjoyed by a company (Small and Medium Enterprise) which has a paid up capital in respect of ordinary shares of RM2.5 million and less at the beginning of the basis period is not applicable to a BT:-
  - Exemption from submission of estimate of tax payable for the first 2 years of assessment
    - A BT is required to submit the estimate of tax payable within 3 months from the date of commencement of operations.
  - Preferential tax rate of 20% on the first RM500,000 of chargeable income
    - A BT is taxed at the prevailing corporate tax rate, currently @ 25%.
  - Non-applicability of RM10,000 restriction on special allowances for small value assets (i.e. cost not exceeding RM1,000 each)
    - The normal rate of capital allowance would be applicable to a BT for small value assets in excess of RM10,000 in a year of assessment.



## vi. Other Taxes and Tax Implications

- Real Property Gains Tax [“RPGT”]

RPGT exemption is given to any person on the chargeable gains accruing on the disposal of any chargeable asset, including shares in a real property company, to a TM on behalf of a BT in relation to the initial offering (initial transfer of real property or shares in a real property company from the promoter to a BT) of the BT which has been registered and approved by the SC from 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2017.

- Stamp Duty

- Stamp duty exemption is given on all instruments executed by a TM acting on behalf of a BT in relation to the transfer of any business, assets or real property to a BT for the purpose of initial offering (initial transfer of real property or shares in a real property company from the promoter to a BT) of the BT which has been registered and approved by the SC from 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2017.
- However, stamp duty exemption is not applicable in the case where loans are transferred to a BT.

- Trade Debts Taken Over from an Entity

- A BT cannot claim tax deduction in respect of trade debts taken over from an entity should the trade debts become bad or written off.
- Similarly, any recoveries in respect of the trade debts taken over are not taxable.

### 2013 Tax Audit Framework

The IRB has recently uploaded to its website the 2013 Tax Audit Framework i.e. English version of the “2013 Rangka Kerja Audit” which consists of the following:-

Section I : Tax Audit Framework  
Section II : Petroleum Tax Audit Framework  
Section III: Transfer Pricing Audit Framework

### Tax Audit Framework

This revised tax audit framework replaces the tax audit framework issued in January 2009 with some minor changes as follows:-

- i. The tax audit will normally cover a period of 1 year of assessment (previously 1 to 3 years) which may be extended up to 5 years.
- ii. The time frame required to complete an on-site examination of records is between 1 to 3 days (previously 2 to 3 days).

2013 Tax Audit Framework



- iii. A taxpayer is given 21 days (previously 14 days) from the date of notification of proposed tax adjustments to file an objection, if required.

The penalty rates for under-statement or omission of income under the tax audit system remain unchanged as summarised below:-

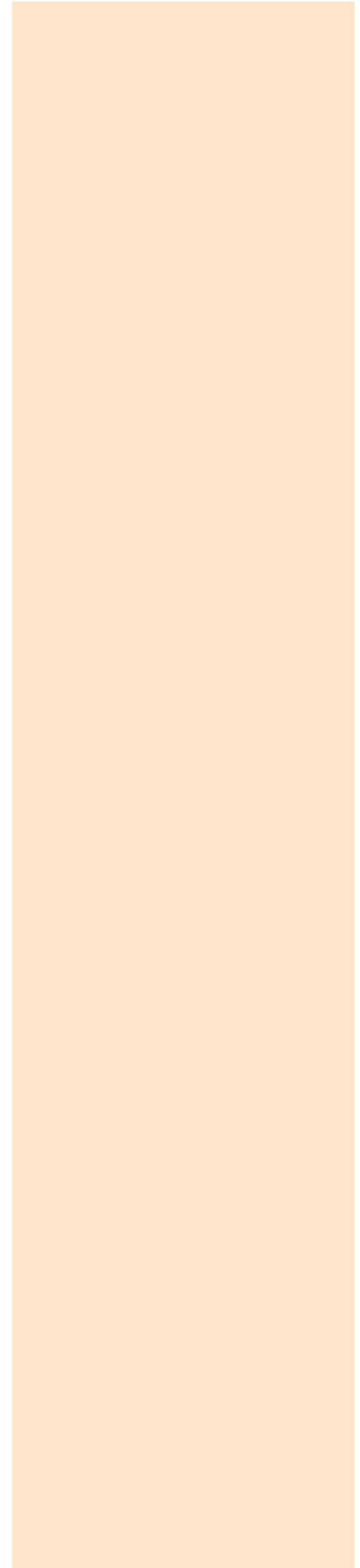
Disclosure / Discovery	Period from the due date of submitting tax return	Rate of penalty on tax undercharged
Voluntary disclosure before case is selected for tax audit	• Within 60 days	10%
	• > 60 days but not later than 6 months	15.5%
	• > 6 months to 1 year	20%
	• > 1 year to 3 years	25%
	• 3 years and above	30%
Voluntary disclosure after being informed of case selection but before commencement of tax audit		35%
Non-disclosure (discovery of omission during tax audit)		100% (45% may be considered by IRB for 1 <sup>st</sup> offence)
Repeated offences (up to maximum of 100%)		Last penalty rate imposed for previous offence + 10%

The above Tax Audit Framework takes effect from 1<sup>st</sup> April 2013.

### Petroleum Tax Audit Framework

The IRB has issued the Petroleum Tax Audit Framework to enhance voluntary compliance with tax laws and regulations as well as to ensure that tax audit is carried out in a fair, transparent and impartial manner. This framework is applicable to taxpayers carrying on petroleum operations in Malaysia which are subject to tax under the provisions of the Petroleum (Income Tax) Act 1967.

The above Petroleum Tax Audit Framework takes effect from 1<sup>st</sup> April 2013.





## Transfer Pricing Audit Framework

With the introduction of new Section 140A of the Act on transfer pricing, the IRB has issued the Transfer Pricing Guidelines 2012 and Income Tax (Transfer Pricing) Rules 2012 which are deemed to come into operation on 1<sup>st</sup> January 2009. Following this, the IRB has issued this Transfer Pricing Audit Framework.

The purpose of the Transfer Pricing Audit Framework is to ensure that cross border and local transfer pricing audits are carried out in a fair and transparent manner, in accordance with the provisions of law, guidelines and rulings issued by the IRB. Essentially, a transfer pricing audit is an examination of a taxpayer's business records and financial affairs to ensure that controlled transactions comply with the arm's length principle.

Salient points of the transfer pricing audit and procedures are as follows:-

- i. The IRB carries out 2 types of transfer pricing audit, namely transfer pricing desk audit and transfer pricing field audit. A desk audit is held at IRB's office whereas field audit would entail a visit by IRB to the taxpayer's premises.
- ii. Transfer pricing audit normally covers a period of 3 to 6 years of assessment depending on the issues. With effect from 1<sup>st</sup> January 2014, the years of assessment to be covered will be restricted to 5 years of assessment, in line with the amendment to Section 91(1) of the Act.
- iii. Cases of audit are selected based on the significance in amount of controlled transactions between related companies before a detailed risk analysis is carried out. The cases selected must be approved by a Selection Committee before proceeding with an audit.
- iv. Before an audit visit, the IRB will request a taxpayer to submit the relevant documents, including Transfer Pricing Documentation.
- v. The IRB will inform the selected taxpayer via an official letter of notification of audit. The period between the date of notification of audit and the audit visit is at least 14 days.



- vi. During the audit process, the audit officers will examine business records and other records such as :
  - all agreements, contracts and other binding documents concerning business activities with the related companies or third parties as required under paragraph 25.4 of the Transfer Pricing Guidelines 2012;
  - documentation on specific transactions as required under Appendix A of the Transfer Pricing Guidelines 2012;
  - records relating to the ownership of properties;
  - other statements as required under Section 79 of the Act.
- vii. The time frame required to complete an on-site examination of records is between 4 to 5 days.
- viii. Upon the completion of audit, the IRB will issue a notification with details of proposed tax adjustments and rationale for making such adjustment based on their findings.
- ix. A taxpayer is allowed 21 days from the date of notification of the proposed tax adjustments to file an objection. If no objection is made within the stipulated period, the taxpayer shall be deemed to have agreed to the proposed tax adjustments.
- x. A notice of additional assessment and appropriate penalty imposed under Section 113(2) or paragraph 44B(7)(b) or Section 112(3) of the Act or a notification of non-chargeable to tax will be issued by the IRB.
- xi. The taxpayer may still appeal against the additional assessment by submitting a formal appeal to the Special Commissioners of Income Tax ["Form Q"] within 30 days from the date of service of additional assessment.

Under the transfer pricing audit system, the IRB has issued a new penalty regime for non-disclosure and omission of information as summarised below:

Condition	Penalty Rate on Tax Undercharged		
	Normal Case	Voluntary disclosure after taxpayer has been informed but before commencement of audit visit	Voluntary disclosure before case is selected for audit
Understatement or omission of income	45%	35%	15%
Taxpayer did not prepare transfer pricing documentation	35%	30% *	15%*
Taxpayer prepared transfer pricing documentation but did not fully comply with the requirements under the Transfer Pricing Guidelines	25%	20%	10%
Taxpayer prepared a comprehensive, good quality, contemporaneous transfer pricing documentation in accordance with existing regulations	0%	0%	0%
Repeated offences	+ 20% for each repeated offence (up to maximum of 100%)		

\* Upon voluntary disclosure, the taxpayer is still required to prepare the Transfer Pricing Documentation.

The audit framework also explains on the following offsetting adjustment arising from the transfer pricing audit:-

- Any additional adjustments in respect of transfer pricing for a particular assessment made in controlled transactions can be presented with an offsetting adjustment on the assessment of the related party in the same transaction.
- The related party concerned should apply for the offsetting adjustment in writing within 21 days from the date of the notice of assessment is issued, to the branch where tax filed is handled.

The above Transfer Pricing Audit Framework takes effect from 1<sup>st</sup> April 2013.

#### **Guidelines for Income Tax Treatment of MFRS 140: Investment Property**

The IRB has recently issue the Guidelines for Income Tax Treatment of MFRS 140: Investment Property ["IP"] to explain the tax treatment arising from the adoption of MFRS 140 which requires all entities to determine the fair value ["FV"] of IP using either:-

- Cost model (i.e. acquisition cost is reflected in the audited accounts with disclosure note on the FV of the property).
- FV model (i.e. FV of the IP is reflected in the audited accounts and the increase or decrease in FV is taken to the income statement).

Salient points of the abovementioned Guidelines include:-

i. Adoption of Cost Model

- IP classified as industrial building ["IB"]
  - The owner of the IP is entitled to claim industrial building allowance ["IBA"] on the cost incurred on the building used as an IB even though the letting of property may constitute a non-business source. Any depreciation and impairment loss are not tax deductible.
- Interest expense (IP is financed by borrowings)
  - Interest expenses are allowable against the rental income regardless whether under Section 4(a) [business source] or 4(d) [rental source] of the Act.
  - Where there is more than 1 source of rental income [i.e. Section 4(a) and Section 4(d)], the interest allowable against business source has to be restricted under Section 33(2) of the Act and part of the interest restricted attributable to the IP is allowable against the rental source.

Guidelines for Income Tax Treatment of MFRS 140: Investment Property

- ii. Adoption of FV Model
  - The same tax treatments mentioned in (i) above apply.
  - Any changes in FV taken to the income statement will be disregarded.
  
- iii. Transfer from IP to Owner-Occupied Property ["OOP"]
  - The IB previously rented out is taken back for own use
    - The owner of the property may continue to claim IBA if the building is continued to be used as an IB.
    - If the property ceased to be used as an IB, then the property is considered to be disposed of at the market value on the date of transfer. Balancing charge or balancing allowance will be calculated at the time of transfer (i.e. deemed disposed of) if the building was used as an IB (i.e. IBA claimed) prior to the transfer.
    - Where a non-IB becomes an IB, the qualifying expenditure of the building shall be reduced by notional allowance during the period it was not used as an IB.
  - Interest expense
    - Interest expense is allowable against the business income provided that the building continues to be used for business purposes.
    - For an investment holding company ["IHC"], once the building is transferred to OOP, it is no longer part of the property that generates income for the company. Hence, the interest and other expenses attributable to that property will not be deductible against any income of the IHC.
  
- iv. Transfer from OOP to IP
  - The building previously occupied for own use is now rented out
    - The same tax treatments mentioned in (iii) above apply.
  - Interest expense
    - The interest expense should be apportioned according to the relevant period the building was used as business (OOP) and as rental (IP) during the basis period when it is transferred to IP during the basis period for a year of assessment.
  
- v. Transfer from IP to Inventory
  - The property is deemed to be disposed of at the market value on the date of transfer.
  - The gains from the difference between historical cost and market value taken to the income statement will be subjected to RPGT depending on the holding period.
  - Balancing charge or balancing allowance will be calculated if the building was used as an IB prior to the transfer.
  
- vi. Transfer from Inventory to IP
  - When the building is transferred from inventory to IP, the market value at the time of transfer will be treated as gross income and the differences between the market value and the cost of the inventory is subject to income tax [Section 24(2)(a)].



- vii. Transfer from Property in the Course of the Construction or Development to IP
  - The same tax treatments mentioned in (vi) above apply.
- viii. Other Issue
  - A disposal of an IP is subject to RPGT (unless it can be established that badges of trade exist, the gain can be subject to income tax).

## **Guidelines on Responsibility to Disclose Payment Details to Agents, Distributors or Dealers in the Form CP58 under Section 83A of the Act**

The IRB has recently issued the Guidelines on Responsibility to Disclose Payment Details to Agents, Distributors or Dealers in the Form CP58 under Section 83A of the Act ["Guidelines"] to provide clarifications on the criteria and types of payments made by a company to its agents, distributors or dealers pursuant to Section 83A of the Act.

Salient points of the above Guidelines include:-

- A company is required to prepare and furnish the Form CP58 to each of its agents, distributors or dealers for payments of incentive exceeding RM5,000 in a calendar year not later than 31<sup>st</sup> March of the following year. For recipients of incentive of less than RM5,000, the company shall prepare and furnish the Form CP58 upon request by them.
- The company is required to keep the details of the agents, distributors or dealers for at least seven (7) years from the end of the year in which the payment of incentive is made.
- The value of non-monetary incentives e.g. motor vehicle and house disclosed in the Form CP58 should be based on the amount incurred by the payer company.
- "Agents, distributors or dealers" do not include those receiving incentives under contract of services where the incentives have been disclosed together with employment income i.e. in the Form EA.
- The recipients of incentive are required to declare the amount disclosed in the Form CP58 in their respective tax return forms for the year of assessment in which the payment is received.

The Guidelines set out various examples of payments of monetary and non-monetary incentives which may be made by a payer company to agents, distributors or dealers falling / not falling under Section 83A of the Act for Form CP58 purpose.

Guidelines on Responsibility to Disclose Payment Details to Agents, Distributors or Dealers in the Form CP58



In addition, the IRB has, on 15<sup>th</sup> August 2013, issued an Addendum to the above Guidelines confirming that incentives related to the following events do not constitute monetary or non-monetary incentives to the recipients i.e. not required to be included in the Form CP58:-

- i. Appreciation night organised by companies in Malaysia for agents, distributors or dealers for achieving targets.
- ii. Dinner / entertainment organised by companies in Malaysia in conjunction with festive celebrations.
- iii. Convention held in Malaysia, specifically for agents e.g. leadership training session, management session and other activities for the purpose of increasing sales which do not form part of the travelling package / program in Malaysia that are treated as a non-monetary incentive.

## **Deduction for Cost of Acquisition of Foreign Owned Company**

Following the 2013 Budget Announcement, the Income Tax (Deduction for Cost of Acquisition of Foreign Owned Company) Rules 2013 have been gazetted to allow a deduction of the cost of acquisition of a foreign owned company paid by a locally owned company carrying on the business of manufacturing of product or the provision of selected services in Malaysia. For ascertaining the adjusted income of that locally owned company, the deduction given shall be equal to one-fifth (1/5) of the cost of acquisition commencing from the year of assessment in which the cost is fully settled and for the 4 following years of assessment. The foreign owned company must be located outside Malaysia which owns and uses high technology in the activity of manufacturing or provision of selected services outside Malaysia.

Among others, the conditions that must be fulfilled by the locally owned company are:-

- i. The application for deduction under these Rules must be submitted to the Malaysian Investment Development Authority ["MIDA"] between 3<sup>rd</sup> July 2012 to 31<sup>st</sup> December 2016.
- ii. Must acquire at least 50% of paid-up capital in respect of ordinary shares of the foreign owned company in the form of cash consideration.
- iii. Must use the high technology acquired from that foreign owned company for the purpose of creating or increasing demand on the product manufactured or services provided in Malaysia.
- iv. The acquisition of the foreign company must be completed within 3 years from the date of application to MIDA.
- v. The company has not been granted any incentives under the Promotion of Investments Act 1986 except pioneer status or investment tax allowance as a high technology company.

Guidelines - Form CP58  
(Addendum)

Income Tax (Deduction for  
Cost of Acquisition of  
Foreign Owned Company)  
Rules 2013



vi. The company has not in the basis period for a year of assessment:-

- made a claim for reinvestment allowance;
- been granted an exemption under Section 127 of the Act;
- made a claim for tax deduction under any rules made under Section 154 of the Act except for allowance under Schedule 3 of the Act.

vii. The company is not a related company (i.e. related by way of 20% or more shareholding) of a locally owned company which application for deduction under these Rules has been approved.

The above Rules are deemed to have come into operation on 3 July 2012.

### **Meaning of “Personal Computer” for Deduction under Section 46(1)(j) of the Act**

The IRB has recently uploaded on its website an announcement dated 15<sup>th</sup> July 2013 stating that the Ministry of Finance via a letter dated 20<sup>th</sup> March 2013 defined “personal computer” as a desktop computer, a laptop computer, Notebook and Ultrabook (not being used for the purpose of a business) that would qualify for tax deduction under Section 46(1)(j) of the Act for an individual.

The eligibility of tax deduction allowed does not include purchase of other gadgets that are able to perform functions similar to a computer e.g. tablet and handphone. As a concession, any claim for deduction of such gadgets which has been made until YA 2012 will not be withdrawn.

The above tax treatment shall have effect from the YA 2013.

### **Labuan Business Activity Tax (Forms) Regulations 2013**

The Labuan Business Activity Tax (Forms) Regulations 2013 have been gazetted to prescribe the forms to be used for the purposes of the Labuan Business Activity Tax Act 1990 [“LBATA”] as follows:-

- Form 1 - Return of Profits by a Labuan Entity
- Form 2 - Notice of Assessment for a Labuan Entity
- Form 3 - Election by a Labuan Entity (to be charged to tax under Section 7 of the LBATA)
- Form 4 - Notice of Demand to a Labuan Entity
- Form 5 - Statutory Declaration (Section 5 / 7 / 8 of the LBATA)
- Form 6 - Statutory Declaration (Section 10 of the LBATA)
- Form 7 - Remittance Form (Payment of Tax)
- Form 8 - Election by a Labuan Entity (to be charged to tax in accordance with the Act)
- Form 9 - Application for Advance Ruling

The above regulations are deemed to have come into operation on 11<sup>th</sup> February 2010 and the Labuan Offshore Business Activity Tax (Forms) Regulations 1991 are revoked.

IRB - Announcement

Labuan Business Activity  
Tax (Forms) Regulations  
2013



## **GST – Draft Guides**

The Royal Malaysian Customs has recently issued the following draft industry guides on Goods and Services Tax [“GST”] matters:-

- i. GST Guide on Pawnbroking to provide an understanding of GST treatment on pawnbroking and accounting for GST on sale of pledges in conventional pawnbroking / Islamic pawnbroking.
- ii. GST Guide on Moneylenders to provide an understanding of GST treatment on money lending operation.
- iii. GST Guide on Airline Industry to provide an understanding of GST treatment on airline industry.

GST Guide on  
Pawnbroking

GST Guide on  
Moneylenders

GST Guide on  
Airline Industry

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