



# Tax Flash



February 2012

## PR No. 1/2012 – Compensation for Loss of Employment

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 1/2012 – Compensation for Loss of Employment. This PR provides guidance on the tax treatment of compensation for loss of employment.

Salient points of the abovementioned PR include:-

- i. Lump Sum Payment on Termination of Employment
  - Amount paid on the termination of an employment may consist of the following:-
    - payment attributable to the loss of employment such as redundancy (compensation); and
    - payment attributable to the past services of the employee (gratuity).
- ii. Payment of Compensation for Loss of Employment
  - It may be made:-
    - at the discretion of employer where the employment is terminated prematurely, possibly due to reduction or ceasing of a particular kind of work or a closure of a business or department or a takeover, merger and requisition of a business, or
    - under a court order in proceedings for wrongful dismissal or otherwise for breach of contract of employment, or
    - by way of compensation for the extinguishment of any right, the infringement of which will be actionable.

### Hyperlinks

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Inland Revenue Board

### References

PR No. 1/2012



### iii. Determination of Elements of Compensation and Gratuity

- Generally, consideration for making an apportionment between gratuity and compensation is given to the employer's normal practice in granting gratuities to employees leaving his service and the rate or amount of gratuities generally granted.
- If the lump sum payment is received due to the premature termination of an employment which has the prospect of continuing up to the retirement age, such sum should be treated as compensation for loss of employment.
- Where the employment contract is for specific number of years and it ends at the specified time or retirement age, any lump sum paid to the employee should be considered as gratuity since the employment has ceased due to the full term of contract has expired or attaining the retirement age.

### iv. Tax Treatment of Compensation for Loss of Employment

- Amount received by an employee by way of compensation for loss of employment or in consideration of any covenant entered into by the employee restricting his right after leaving the employment to engage in employment of a similar kind forms part of gross income from an employment under Section 13(1)(e) of the Income Tax Act 1967 ["the Act"].
- Such payment (other than a payment by a controlled company to a director of the company who is not a full time service director) made by an employer to an employee is given full or partial exemption pursuant to Paragraph 15(1), Schedule 6 of the Act:-
  - if the Director General is satisfied that the payment is made on account of loss of employment due to ill health, it is fully exempted; or
  - in the case of a payment in connection with a period of employment with the same employer or with companies within a group, an exemption of RM10,000 (with effect from 1<sup>st</sup> July 2008) is given for each completed year of service.



- Under Paragraph 15(3), Schedule 6 of the Act, “compensation for loss of employment” includes any payment received for an early termination of employment contract under a separation scheme, provided that such scheme from which payment had been made does not expressly or impliedly provide for the employee to be re-employed under any other scheme of employment by the same or any other employer (with effect from the year of assessment [“YA”] 2007).

v. Period of Employment with the Same Employer

- A period of employment with the same employer includes a period of employment in a business where the employer has changed but the management and control of the business remains substantially with the same person or persons.
- If an employment is with companies in the same group [as defined under Section 2(4) of the Act], any period of employment with the various employers within the same group of companies is taken to be a period of employment with the same employer.

The above PR takes effect from the YA 2012.

**Deduction for Expenditure on Issuance of Islamic Securities Pursuant to the Principle of *Wakalah***

Following the 2012 Budget announcement, the Income Tax (Deduction for Expenditure on Issuance of Islamic Securities) Rules 2011 has been gazetted to allow deduction for expenditure incurred by a resident company on the issuance of Islamic securities pursuant to the principle of *Wakalah* and approved by the Securities Commission [“SC”] or the Labuan Financial Services Authority.

The above Rules shall have effect from the YA 2012 until YA 2015.

Income Tax (Deduction for Expenditure on Issuance of Islamic Securities) Rules 2011



## **Prescription of Activities Excluded from the Definition of “Manufacturing” for Reinvestment Allowance Purposes**

Pursuant to the Income Tax (Prescription of Activity Excluded from the Definition of “Manufacturing”) Rules 2012, the following activities are excluded from the definition of “manufacturing” under Paragraph 9, Schedule 7A of the Act for claiming of reinvestment allowance:-

- Ice making
- Cutting, sorting, cleaning, drying, grinding, mixing, grading or packaging herbs or spice, or any of its combination
- Production of aggregates, asphaltic concrete, pre-mix cement, ready mixed concrete or bitumen, or any of its combination
- Folding and shaping paper box, cardboard, plastic bag, envelopes or any other folding and shaping activity
- Laminating
- Quarrying
- Mining or extraction of mineral
- Processing of photograph, picture, slide or film, or any of its combination
- Baking except where the activity is carried out in a factory
- Distillation or filtration of water
- Treatment of waste water and solid waste
- Mixing or blending of petroleum product
- Cleaning, processing, packing or freezing of product, or any of its combination
- Painting, polishing or varnishing, or any of its combination
- Coloring, stamping or printing of logo on materials or clothing, or any of its combination
- Production of herb or traditional medicine, or any of its combination
- Production of sawn timber, veneer or plywood including drying of the product, or any of its combination
- Photostating
- Recycling activity which involves sorting, cutting or packaging, or any of its combination
- Ship building activity

Such activities carried out by companies will not be eligible for the reinvestment allowance incentive.

The above Rules are deemed to have effect from the YA 2009.

Income Tax (Prescription of Activity Excluded from the Definition of “Manufacturing”) Rules 2012



## **Tax Exemption on Income from Dealing in Non-Ringgit *Sukuk***

Following the 2012 Budget announcement, the Income Tax (Exemption) (No. 10) Order 2011 has been gazetted to extend the period of exemption from the payment of income tax given to the licensed/registered persons who are resident in Malaysia in respect of statutory income derived from a business of dealing in non-ringgit *sukuk* under the Capital Markets and Services Act 2007 for further 3 years. The non-ringgit *sukuk* should originate from Malaysia and must be issued or guaranteed by the Government of Malaysia or approved by the SC.

The business or activity of dealing in non-ringgit *sukuk* shall be treated as a separate and distinct source of business or activity from any other business or activity. Separate accounts for the business or activity of dealing in such securities must be maintained.

The above Order shall have effect from the YA 2012 until YA 2014.

## **Tax Exemption on Income from Arranging, Underwriting and Distributing of Non-Ringgit *Sukuk***

Following the 2012 Budget announcement, the Income Tax (Exemption) (No. 11) Order 2011 has been gazetted to extend the period of exemption from the payment of income tax given to the licensed/registered persons who are resident in Malaysia in respect of statutory income derived from dealing in securities and advising on corporate finance under the Capital Markets and Services Act 2007 relating to the arranging, underwriting and distributing of non-ringgit *sukuk* for further 3 years. The non-ringgit *sukuk* should originate from Malaysia and must be issued or guaranteed by the Government of Malaysia or approved by the SC.

The business or activity of dealing in securities and advising on corporate finance relating to the arranging, underwriting and distributing of non-ringgit *sukuk* shall be treated as a separate and distinct source of business or activity from any other business or activity. Separate accounts for the business or activity of dealing in such securities must be maintained.

The above Order shall have effect from the YA 2012 until YA 2014.

Income Tax (Exemption)  
(No. 10) Order 2011

Income Tax (Exemption)  
(No. 11) Order 2011



## **Tax Exemption for a New Private Healthcare Facilities Business or a Project for Expansion, Modernisation or Refurbishment of Existing Private Healthcare Facilities Business**

Pursuant to the Income Tax (Exemption) Order 2012, a resident company undertaking a new private healthcare facilities business or a project for the expansion, modernisation or refurbishment of existing private healthcare facilities business approved by the Ministry of Health ["MOH"] and verified by the Malaysian Healthcare Travel Council is exempted from payment of income tax in respect of statutory income, equivalent to 100% of the qualifying capital expenditure incurred within a period of 5 years on:-

- a building, i.e. the cost of purchasing or constructing new building of an approved standard; and
- plant and machinery, i.e. the medical devices or other facilities verified by the MOH and approved by the Minister of Finance.

The date of commencement of the 5-year period shall be determined by Malaysian Investment Development Authority ["MIDA"].

In the absence or insufficiency of statutory income for a YA such that the exemption cannot be given or given in full, the amount which cannot be exempted or exempted in full for that YA shall be allowed in the subsequent years of assessment until the whole of the amount to be exempted is allowed.

To be eligible for the above incentive, certain other conditions must be observed.

The application for approval must be made to MIDA between 1<sup>st</sup> January 2010 to 31<sup>st</sup> December 2014.

## **New Form - Statement of Monetary and Non-Monetary Incentive Payment to an Agent, Dealer or Distributor ["Form CP58"]**

Following the 2012 Budget announcement and pursuant to Section 83A of the Act, a new Form CP58 has been prescribed by the IRB requiring companies to furnish to each of its agent, dealer or distributor a copy of the said form with the following information:-

- payer company's particulars;
- recipient's particulars;
- particulars of incentive payment:-
  - value of monetary (commission/bonus/others); and
  - non-monetary incentive (vehicle/house/tour/travel package/others)

Income Tax (Exemption)  
Order 2012

Form CP58

Guide Note



An agent, dealer or distributor means any person appointed in writing or verbally, and the incentive payment is made by the payer company to the agent, dealer or distributor for products / services sold on its behalf.

The original copy of Form CP58 must be retained by the payer company for a period of 7 years from the end of the calendar year in which the incentive is paid to the agent, dealer or distributor. Agents, dealers or distributors must report all incentive received in their respective tax return forms.

The prescribed form shall be provided to the agent, dealer or distributor by 31<sup>st</sup> March in the year following the relevant year. However, the IRB has granted an extension of time until 31<sup>st</sup> May 2012 for companies to complete the Form CP58 for the year ended 31<sup>st</sup> December 2011.

### **Stamp Duty Remission on Instrument of Deed of Assignment for Bumiputra Class E and F Contractors**

Pursuant to the Stamp Duty (Remission) Order 2012, the stamp duty in excess of RM50 chargeable under Item 32(a) of the First Schedule to the Stamp Act 1949 on an instrument of deed of assignment executed between a contractor and subcontractor pursuant to *Dasar Pengagihan Kerja kepada Kontraktor Bumiputra Kelas E dan F* is remitted.

This Order is deemed to have come into operation on 1<sup>st</sup> May 2011.

### **Stamp Duty Exemption on Loan Agreement for Purchase of Residential Property under PR1MA**

Following the 2012 Budget announcement, the Stamp Duty (Exemption) (No. 3) Order 2011 has been gazatted to provide exemption from stamp duty on loan agreement to a Malaysian citizen for the purchase of a residential property (i.e. a house, a condominium unit, an apartment or a flat built as a dwelling house under the *Perumahan Rakyat 1Malaysia* programme costing not more than RM300,000) from PR1MA Corporation Malaysia. This exemption is given on the conditions that:-

- the sale and purchase agreement is executed from 1<sup>st</sup> January 2012 to 31<sup>st</sup> December 2016; and
- the application for this exemption can only be made once.

The above exemption applies to loan agreements executed on or after 1<sup>st</sup> January 2012.

Stamp Duty (Remission)  
Order 2012

Stamp Duty (Exemption)  
(No. 3) Order 2011



## **Stamp Duty Exemption on Micro Financing Scheme**

Following the 2012 Budget announcement, the Stamp Duty (Exemption) (No. 4) Order 2011 has been gazetted to provide exemption from stamp duty on the instrument of agreement for loan or financing not exceeding RM50,000 pursuant to a micro financing scheme approved by the National Small and Medium Enterprise Development Council between a borrower and a participating bank or financial institution.

The above exemption applies to instruments executed on or after 1<sup>st</sup> January 2012.

## **Stamp Duty Exemption on Loan or Financing Instruments Relating to Professional Service Fund**

Following the 2012 Budget announcement, the Stamp Duty (Exemption) (No. 5) Order 2011 has been gazetted to provide exemption from stamp duty on all loan or financing instruments relating to the Professional Service Fund for an amount not exceeding RM50,000 between a borrower and Bank Simpanan Nasional.

The above exemption applies to instruments executed on or after 1<sup>st</sup> January 2012.

Stamp Duty (Exemption)  
(No. 4) Order 2011

Stamp Duty (Exemption)  
(No. 5) Order 2011

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