

# ▶▶ Tax Flash



July 2013

## PR No. 7/2013 – Unit Trust Funds – Part 1 – An Overview

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 7/2013 – Unit Trust Funds - Part 1 – An Overview. This PR provides an overview *inter alia* the regulatory framework, structure and investment activities of the conventional unit trusts and Islamic unit trusts other than real estate investment trusts and property trust funds.

## PR No. 8/2013 – Gratuity

The IRB has recently issued the PR No. 8/2013 – Gratuity. This PR is to replace the PR No. 10/2011 issued on 5<sup>th</sup> December 2011 with inclusion of additional examples, renumbering of paragraphs/examples and minor changes.

Among others, it is noteworthy that 2 new paragraphs are added in the abovementioned new PR as follows:-

- i. Death Gratuities (Paragraph 10 of the PR)
  - Sums received as death gratuities or consolidated compensation for death or injuries are tax exempt under Paragraph 14, Schedule 6 of the Income Tax Act 1967 ["the Act"].
- ii. Retirement Benefits (Paragraph 11 of the PR)
  - All retirement benefits (i.e. gratuities and pensions) are taxable unless specifically exempted under Schedule 6 of the Act or Exemption Orders.
  - Retirement benefits received by an employee from an approved pension or provident fund, scheme or society under Section 150 of the Act are tax exempt.
  - Where an employee received contributions in respect of contributions made by an employer to an unapproved pension or provident fund (e.g. where approved status under Section 150 of the Act is withdrawn), it should be included in his gross employment income under Section 13(1)(d) of the Act.

*Note : For further information relating to PR No. 10/2011, kindly refer to our Tax Flash – January 2012 issue.*

### Hyperlinks

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### References

PR No. 7/2013

PR No. 8/2013

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### **Guidelines for Income Tax Treatment of MFRS 5: Non-Current Assets Held for Sale and Discontinued Operations**

The IRB has recently issued the Guidelines for Income Tax Treatment of Malaysian Financial Reporting Standard ["MFRS"] 5 : Non-Current Assets Held for Sale and Discontinued Operations to explain the timing of calculation of balancing charge and balancing allowance ["BA / BC"] for non-current assets which is classified under held for sale ["HFS"] under MFRS 5.

An asset can be classified as HFS if it is available for immediate sale in its present condition and its sale must be highly probable, usually completed within 1 year. Asset refers to plant and machinery and owner occupied property (industrial building) that qualifies for capital allowance / industrial building allowance.

Salient points of the abovementioned Guidelines includes:-

i. Temporary Disused

- For tax purposes, a temporarily disused asset (Paragraph 56, Schedule 3 of the Act) is an asset that is constantly maintained in readiness to be brought back into use for business purposes in which annual allowance will be available.
- Based on the criteria for classification, an asset classified as HFS does not fall within the meaning of "temporary disuse" mentioned above.

ii. Ceased to be Used

- Under Paragraphs 48 and 61, Schedule 3 of the Act, disposal of assets includes assets ceased to be used and BA / BC will be computed in the year when the asset is sold.
- Such tax treatment will be applied when the asset classified as HFS is sold within 1 year.
- BA / BC shall be computed:-
  - in the same year of assessment (i.e. Year 1) the asset is classified as HFS, if the sale is completed in the same basis period; or
  - in the following year of assessment (i.e. Year 2) when the sale is completed within a period of 1 year.
- In the event that a sale is completed in more than 1 year but not within the following year of assessment, it is deemed sold in the following year of assessment (i.e. Year 2) and hence BA / BC will be computed.
- For asset HFS reclassified back to property, plant and equipment (i.e. failed to be sold) after Year 2, BA / BC shall still be computed in the following year of assessment (i.e. Year 2).

Guidelines for Income Tax Treatment of MFRS 5 : Non-Current Assets Held for Sale and Discontinued Operations

iii. Reused

- Claim for capital allowance / industrial building allowance (only annual allowance) shall be allowed on the asset if it continues to be used for business purposes. The qualifying expenditure shall be the fair value of the asset at the date of transfer from assets HFS to property, plant and equipment.

**Guidelines for Income Tax Treatment of MFRS 123 : Borrowing Cost**

The IRB has recently issued the Guidelines for Income Tax Treatment of MFRS 123 : Borrowing Cost to explain the tax treatment arising from the adoption of MFRS 123.

Salient points of the abovementioned Guidelines include:-

i. Capitalisation of Interest Expense

- Stock/Inventories
  - Interest expense payable for a period and capitalised with the inventories can be claimed as a deduction in the tax computation for a year of assessment in which it is capitalised. Tax adjustment shall be made in the relevant year of assessment when the interest is charged to the profit and loss account.
- Plant and Machinery
  - Where a business has commenced, interest expense payable for a period and capitalised with the plant and machinery can be claimed as deduction in the tax computation for a year of assessment in which it is capitalised. Tax adjustment shall be made in the relevant year of assessment when the interest is charged to the profit and loss account.
  - Interest expense incurred on borrowings on purchase of plant and machinery prior to the commencement of business is not allowable as a deduction.
  - Interest expense capitalised under investment properties cannot be claimed in the tax computation in the year of assessment it is incurred if there is no rental source (building is not completed). According to MFRS 123, the interest capitalised shall be charge to profit and loss account in the year the construction of the building is completed. When completed and the accumulated interest is charged to profit and loss account, only interest incurred in the basis period for the year of assessment rental is first derived is allowable against the rental income.

Guidelines for Income  
Tax Treatment of MFRS  
123 : Borrowing Cost

- ii. Company Obtains Funds for Construction of a Factory and Pending the Commencement of Construction Activity, it may Temporarily Invest the Amount Borrowed
  - MFRS 123 allows the amount of actual borrowing cost to be deducted against the income derived from the investment.
  - Any interest income derived from the investment will be subject to tax. A detailed analysis is required on the interest expense capitalised to determine the portion of the interest expense incurred on the borrowing used for the investment.
  
- iii. Interest Expense Calculated Using Effective Interest Method as Described in MFRS 139 Financial Instruments : Recognition and Measurement
  - For tax purposes, contractual rate will be used as it represents the amount incurred and paid to the loan provider. Relevant tax adjustments shall be made accordingly.
  
- iv. Withholding Tax
  - For interest incurred on borrowings from overseas, payment of interest is subject to withholding tax.
  
- v. Borrowing Cost Other Than Interest Expense
  - Finance charges in respect of finance leases recognised in accordance with MFRS 117 : Leases.
    - The same tax treatment on interest capitalised as described above applies.
  - Exchange differences arising from foreign currency borrowings to the extent they are regarded as an adjustment to interest cost.
    - The same tax treatment on interest capitalised as described above applies.
    - However, the foreign exchange losses are only deductible if it is trade related and allowable when it is realised.
    - Foreign exchange gain/loss arising from borrowing for purchase of fixed asset qualifying for industrial building allowances / capital allowances will be deducted from / added to the qualifying capital expenditure in the year the gain/loss is realised.

**Guidelines on RPGT – Updated on 18 June 2013**

The IRB has recently issued the updated Guidelines on Real Property Gains Tax [“RPGT”] to explain the changes on disposal of chargeable assets after 31<sup>st</sup> December 2011 taking into account the following exemption orders:-

- RPGT (Exemption) Order 2011 (effective 1<sup>st</sup> January 2012 to 31<sup>st</sup> December 2012)
- RPGT (Exemption) Order 2012 (effective 1<sup>st</sup> January 2013 onwards)

The aforesaid Guidelines supersede the previous guidelines issued on 5<sup>th</sup> May 2011 (applicable to disposal from 1<sup>st</sup> January 2010 to 31<sup>st</sup> December 2011).

Among others, it is noteworthy that:-

i. RPGT Rates

- The effective RPGT rates applicable to disposal of chargeable assets from 1<sup>st</sup> January 2013 onwards are as follows:-

Holding Period	Rates
Up to 2 years	15% (10%)
Exceeding 2 years but within 5 years	10% (5%)
Exceeding 5 years	0% (0%)

*Note : The figures in bracket denote the rates applicable to disposal during the period from 1<sup>st</sup> January 2012 to 31<sup>st</sup> December 2012.*

ii. Exemption under Paragraph 2, Schedule 4 of the RPGT Act 1976

- Effective 1<sup>st</sup> January 2010, exemption of RM10,000 or 10% of the chargeable gain (previously exemption of RM5,000 or 10% of the chargeable gain), whichever the higher, in respect of disposal of chargeable assets is available to an individual on disposal of a chargeable asset which is not part of a larger chargeable asset.
- Effective 11<sup>th</sup> January 2013, the above exemption is extended to cover partial disposal of a chargeable asset and the amount to be exempted to be ascertained in accordance with a prescribed formula.

iii. Transfer of Real Property from Fixed Asset to Stock In Trade

- Pursuant to Paragraph 17A, Schedule 2 of the RPGT Act 1976, the transfer of a real property from fixed asset to stock in trade would be deemed as disposal of a chargeable asset.
- The disposal price of the chargeable asset shall be the market value at the date of transfer.
- The acquisition price would be the consideration paid for the real property (including permitted expenses).

### **Stamp Duty Exemption on Instruments to Promote Malaysia International Islamic Financial Centre**

Pursuant to the Stamp Duty (Exemption) (No. 9) Order 2013, exemption from stamp duty is granted to the following instruments relating to Islamic banking, *takaful* activities and Islamic capital market under a scheme to promote Malaysia International Islamic Financial Centre:-

- instruments on transaction in currencies other than ringgit between a qualifying person (i.e. International Currency Business Unit in an Islamic bank / institution / *takaful* operator or an international Islamic bank licensed under the relevant laws) and a resident or non-resident customer; and
- instruments relating to the issuance of Islamic bonds in ringgit or foreign currencies.

The above exemption applies to instruments executed or instruments relating to the issuance of Islamic bonds approved by the Securities Commissions from 1<sup>st</sup> January 2007 to 31<sup>st</sup> December 2016.

Stamp Duty (Exemption)  
(No. 9) Order 2013

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