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### Public Ruling No. 1/2018 – Disposal of Plant and Machinery Part II – Controlled Sales

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 1/2018 - Disposal of Plant and Machinery Part II – Controlled Sales to provide guidance on the tax treatment on the disposal and acquisition of an asset between two parties that are related in terms of control.

Salient points of the abovementioned PR include:-

- i. Date of Disposal
  - Under Paragraph 39(1), Schedule 3 of the Income Tax Act 1967 [“the Act”], the date of disposal of a plant or machinery which is subject to control shall be deemed to have taken place on the First Day of the Disposer’s Final Period [“FDDFP”].

## Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)
  
- [PR No. 1/2018](#)

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## Hyperlinks

- Under Paragraph 39(2), Schedule 3 of the Act, '**The Disposer's Final Period**' is the basis period for the year of assessment of a disposer which coincides with the first year of assessment for which an acquirer is eligible to claim capital allowance if the asset is used for the purposes of an acquirer's business at the end of basis period for a year of assessment, determined as follows:-
  - Step 1 Determine the actual date of disposal.
  - Step 2 Based on the actual date of disposal, determine the first year of assessment the acquirer is eligible to claim for the capital allowances for the asset acquired.
  - Step 3 Determine the basis period of the disposer for the year of assessment which coincides with the first year of assessment for which the acquirer is eligible to claim capital allowance as referred to in Step 2.
- ii. Disposal Price
  - The disposal price of a plant or machinery which is subject to control is deemed equal to the residual expenditure of the disposer. The actual price of the disposal of plant or machinery is disregarded.
- iii. Qualifying Expenditure ["QE"]
  - The acquirer shall be deemed to have incurred QE which is equivalent to the residual expenditure of the disposer as explained under various circumstances below. The capital expenditure incurred by the acquirer to obtain the assets under a disposal of which is subject to control (if any) will not be considered.
  - Where the disposer incurred QE (purchase of assets) on or after FDDFP, the QE is deemed to have been incurred by the acquirer on the same date i.e. the date the expenditure was incurred by the disposer [Rule 4 of the Income Tax (Capital Allowances and Charges) Rules 1969 ("ITR 1969")].
  - When the actual date of disposal of a plant or machinery takes place earlier than the FDDFP, the plant or machinery will be deemed to be owned and in use by the disposer at the end of the basis period immediately preceding the FDDFP [Rule 5 of the ITR 1969].
  - If an asset is acquired by an acquirer (acquirer 1) from a disposer (disposer 1) in a situation of disposal which is subject to control and then the asset is disposed of to a second acquirer (acquirer 2) under normal disposal circumstances, then the computation of balancing charge or balancing allowance in this disposal to the disposer (disposer 2 who is also acquirer 1) shall take into account the capital allowances given to disposer 1 [Rule 6 and Rule 9 of the ITR 1969].

- Paragraph 39, Schedule 3 of the Act is not applicable if a plant or machinery is not subsequently used for the business of the acquirer after a controlled sale. Therefore, the disposal under Paragraph 38, Schedule 3 of the Act does not seem to have occurred and the transfer is deemed as a normal disposal. The disposer will be liable to balancing allowance or balancing charge whichever is relevant.
- iv. Controlled Sale of Assets as a Result of Death
- The provision for controlled sale under the Act and ITR 1969 would also apply if an asset that is used in the business of a deceased is transferred to the business of a recipient under the terms of a will.
- v. Controlled Sale of Partnership Assets
- The provision for controlled sale under the Act and ITR 1969 would also apply to partnership assets disposed of by a partner to an acquirer that is subject to control.
- vi. Disposal of Assets within 2 Years
- Paragraph 71, Schedule 3 of the Act does not apply to the disposal of plant and machinery where a disposal is subject to the controlled sale provision.

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

The IRB has recently issued the Amendments to 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 for non-current assets which is classified under held for sale [“HFS”] under MFRS 5.

In the example given in the amendments to the guidelines i.e. in the scenario where an asset was classified as HFS in a particular year (year 1) but sale was completed in more than 1 year but not within the following year of assessment, it would be deemed sold in year 2 and deduction for notional allowance of the asset in year 1 (previously year 2) be computed in arriving at the residual expenditure for the purpose of computing the balancing allowance / charge. This is in line with the amended Paragraph 61A(5), Schedule 3 of the Act under the Finance (No. 2) Act 2017.

**Note:** For further information relating to the Guidelines for Income Tax Treatment of MFRS 5, kindly refer to our Tax Flash – July 2013 issue.

## Hyperlinks

➤ [Guideline for Income Tax Treatment of MFRS 5 \(Amendment\)](#)

➤ [Tax Flash – July 2013](#)

## Hyperlinks

### Tax Exemption on Shipping Profits

The amendment to Section 54A of the Act under the Finance Act 2012 reduces the tax exemption in respect of statutory income of shipping companies derived from the operation of Malaysian ships from 100% to 70% [effective year of assessment (“YA”) 2012].

Following the lobbying by the Malaysian Shipowners’ Association, the Ministry of Finance has deferred the above reduction in the tax exemption and granted a full exemption (100%) of statutory income pursuant to the Income Tax (Exemption) (No. 2) Order 2012 from the YA 2012 until YA 2013.

The following exemption orders have been gazetted to extend the 100% exemption on statutory income derived from the operation of Malaysian ships:-

- i. Income Tax (Exemption) Order 2018, i.e. from YA 2014 until YA 2015; and
- ii. Income Tax (Exemption) (No. 2) Order 2018, i.e. from YA 2016 until YA 2020.

**Note:** For further information relating to the above, please refer to our Tax Flash – June 2012 issue.

### GST Guide on Accounting Software Enhancement Towards GST Compliance (Revised as at 8<sup>th</sup> March 2018)

The Royal Malaysian Customs Department [“RMCD”] has recently issued the Guide on Accounting Software Enhancement Towards Goods and Services Tax [“GST”] Compliance (revised as at 8th March 2018) to provide guidance on the relevant disclosure requirements in item 15 of the GST-03 return effective 1<sup>st</sup> January 2018.

Salient points of the abovementioned guide include:-

- i. A grace period of 6 months (up to 30<sup>th</sup> June 2018) is given to a registered person to prepare his accounting system to adopt the abovementioned changes. Accordingly, a registered person is not mandatorily required to declare the “Total Value of Other Supplies” in item 15 of the GST-03 return before 1<sup>st</sup> July 2018.
- ii. The types of supply that should be included in item 15 of the GST-03 return are summarised as follows:-

- [Income Tax \(Exemption\) Order 2018](#)
- [Income Tax \(Exemption\) \(No. 2\) Order 2018](#)
- [Tax Flash – June 2012](#)

## Hyperlinks

Supplies	Proposed Tax Code
Disregarded Supplies	GS
Supplies where GST is not chargeable (e.g. supply of goods between Free Zone)	NTX
Supplies under Approved Jeweller Scheme ["AJS"]	SR-JWS
Supplies made outside Malaysia	OS-TXM
Supplies made not within the scope of GST, including:- <ul style="list-style-type: none"> <li>• Disbursement;</li> <li>• Refundable deposit;</li> <li>• Contribution, donation, grant, sponsorship or compensation received from another party where the donor or payer does not receive any benefits in return for the sum made; and</li> <li>• Transactions treated as neither a supply of goods nor services under the Second Schedule of the GST Act 2014 as listed below:- <ul style="list-style-type: none"> <li>○ Transfer of going concern;</li> <li>○ Supply by any society or similar organisation;</li> <li>○ Supplies excluded from any credit;</li> <li>○ Supply of goods or services under Islamic financial arrangement;</li> <li>○ Insurance indemnity settlement; and</li> <li>○ Diplomatic and consular services.</li> </ul> </li> </ul>	OS

iii. The types of transactions or supplies (tax code proposed by RMCD is NS) that are not required to be disclosed in item 15 of the GST-03 return are as follows:-

- Goods given for free and total cost to the donor is not more than RM500 per year;
- Payment and contribution made to Employees' Provident Fund or Social Security Organisation;
- Salary or allowance; and
- Accounting transactions such as depreciation, classification of account and etc.

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