

# ▶▶ Tax Flash



April 2014

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## IRB's Clarification on the Application of Sections 77A(4) and 140B of the Act

The Inland Revenue Board ["IRB"] has recently issued an announcement dated 19<sup>th</sup> March 2014 to provide clarification on the following:-

### i. Submission of Tax Return by Companies Based on Audited Accounts

The new Section 77A(4) of the Income Tax Act 1967 ["the Act"] (effective year of assessment ["YA"] 2014) requires that the tax return filed by a company be prepared based on accounts audited by a professional accountant together with a report made by that accountant (i.e. audited financial statements). This requirement is in line with the provisions of the Companies Act 1965 which requires every company to submit audited accounts to the Companies Commission of Malaysia ["CCM"] within specified time.

The IRB has clarified that the provisions under Section 77A(4) of the Act will not apply to those companies which are exempted from lodgement of audited accounts with the CCM as provided for under the Companies Act 1965 (such as companies under liquidation). However, the tax returns furnished by such companies must be prepared based on the information in the final accounts.

### ii. Loans or Advances to a Director by a Company

The new Section 140B of the Act (effective YA 2014) provides that where a company gives loans or advances from its internal funds to its director, the company shall be deemed to have derived interest income from such loans or advances chargeable to tax under Section 4(c) of the Act.

## Hyperlinks

Advent Consulting Group  
Inland Revenue Board

## References

IRB's Announcement  
dated 19<sup>th</sup> March 2014



The IRB has clarified that the above only applies to directors as defined under Section 75A(2) of the Act and loans or advances which are financed by the company's internal funds. It does not apply to loans or advances funded from external funds or third parties.

In addition, it is also clarified that the computation of interest income shall be based on the month-end outstanding loans or advances commencing from January 2014.

The average lending rate of commercial banks published by the Bank Negara Malaysia shall be used in the prescribed formula to compute the interest income.

Further clarification on loans or advances to a director by a company given by the IRB during the Technical Dialogue between the Chartered Tax Institute of Malaysia ["CTIM"] and IRB on 17<sup>th</sup> February 2014 are as follows:-

- Meaning of "internal funds"

CTIM proposed that the meaning of "internal funds" be included in the law or by Public Ruling for the purposes of clarity.

*Clarification from IRB:*

*Internal fund is the excess funds of the company which may arise from capital injection, retained earnings and reserve. On the contrary, loans obtained from a third party, for example, bank or holding company is external fund of the company.*

*The meaning of "internal funds" will be clarified further in Public Ruling.*

- Interaction with other laws

CTIM raised the question as to whether the provisions of the Moneylenders Act 1951 were taken into consideration.

*Clarification from IRB:*

*IRB will seek legal advice on this issue.*

- Mixed funds

CTIM raised the question where loans to directors are financed by both internal and external funds, it is not clear how Section 140B would apply.

*Clarification from IRB:*

*Where the loan is financed by both internal and external funds, Section 140B is applicable on the internal fund portion only. Company is advised to segregate the two different funds for purposes of tax computation. Further clarification will be made in Public Ruling.*



- The question of whether Section 140A or Section 140B takes precedence in the case where both provisions potentially apply

*Clarification from IRB:*

*Section 140A is not applicable in respect of the transaction where Section 140B applies. Where Section 140B applies, transfer pricing documentation is not required.*

- Meaning of “loans and advances”

*Clarification from IRB:*

*The meaning of “loans and advances” to director will be clarified in a Public Ruling.*

## **Remission of Tax and Stamp Duty Relating to *Sukuk Murabahah* Issued by Syarikat Prasarana Negara Berhad / PTPTN**

Pursuant to the Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2014 and Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2014, remission of tax and stamp duty are granted relating to the issuance of *Sukuk Murabahah* by Syarikat Prasarana Negara Berhad and Perbadanan Tabung Pendidikan Tinggi Nasional [“PTPTN”] respectively as follows:-

### i. Remission of Tax

- Any tax payable under the Act by the issuer, any holder of *Sukuk Murabahah* or any other party in respect of any agreement, note, instrument or document in relation to the *Sukuk Murabahah* issued by Syarikat Prasarana Negara Berhad and PTPTN, or the guarantee provided by the Government of Malaysia shall be remitted in full.

### ii. Remission of Stamp Duty

- Any stamp duty payable under the Stamp Act 1949 in respect of any agreement, note or instrument and document in relation to the *Sukuk Murabahah* or the guarantee provided by the Government of Malaysia shall also be remitted in full.

The above Orders come into operation on 26<sup>th</sup> February 2014 and 17<sup>th</sup> March 2014 respectively.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2014

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2014



## **Remission of Income Tax and Stamp Duty Relating to Islamic Medium Term Notes and Islamic Commercial Papers Issued by Danainfra Nasional Berhad**

Pursuant to the Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2014, any tax payable under the Act and stamp duty payable under the Stamp Act 1949 in respect of any agreement, note, instrument and document in relation to the Islamic Medium Term Notes and Islamic Commercial Papers issued by Danainfra Nasional Berhad and guarantee provided by the Government of Malaysia shall be remitted in full.

The above Order comes into operation on 18<sup>th</sup> March 2014.

## **Tax Exemption on Income Derived from Petroleum Operations in a Marginal Field**

The Petroleum (Income Tax) (Exemption) (Amendment) Order 2014 has been gazetted with amendments to the non-application rules [i.e. Paragraph 6(2)] of the Petroleum (Income Tax) (Exemption) Order 2013. Pursuant to the amendment Order, where the accumulated production of petroleum in a marginal field of a chargeable person in the basis period for a year of assessment (i.e. accumulated from the first basis year petroleum is produced to that year of assessment) exceeds 30 million stock tank barrels of crude oil or 500 billion standard cubic feet of natural gas, the exemption of income shall not apply to that person in respect of the income derived in the basis period for that year of assessment and thereafter (previously, the exemption does not apply to income derived in excess of 30 million stock tank barrels of crude oil or 500 billion standard cubic feet of natural gas).

The above amendment Order is deemed to have come into operation on 30<sup>th</sup> November 2010.

*Note : For further information on the previous Order 2013, kindly refer to our Tax Flash – May 2013 issue.*

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2014

Petroleum (Income Tax) (Exemption) (Amendment) Order 2014

Tax Flash – May 2013



## **Accelerated Capital Allowances for Petroleum Operations in a Marginal Field**

The Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) (Amendment) Rules 2014 has been gazetted with amendments to the non-application rules [i.e. Rule 8] of the Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) Rules 2013. Pursuant to the amendment Rules, where the accumulated production of petroleum in a marginal field of a chargeable person in the basis period for a year of assessment (i.e. accumulated from the first basis year petroleum is produced to that year of assessment) exceeds 30 million stock tank barrels of crude oil or 500 billion standard cubic feet of natural gas, the accelerated capital allowances (i.e. rates of initial allowance and annual allowance of 25% and 15% respectively) shall not apply to the qualifying capital expenditure incurred for that year of assessment and thereafter.

The above amendment Rules are deemed to have come into operation on 30<sup>th</sup> November 2010.

*Note :* For further information on the previous Rules 2013, kindly refer to our Tax Flash – April 2013 issue.

## **Petroleum (Income Tax) (Investment Allowance) (Amendment) Regulations 2014**

The Petroleum (Income Tax) (Investment Allowance) (Amendment) Regulations 2014 has been gazetted with some amendments made to the Petroleum (Income Tax) (Investment Allowance) Regulations 2013. The notable changes are as follows:-

- extending the eligibility of a qualifying project to include deep water project [Regulation 5(a)];
- re-defining the commencement of the qualifying period for a qualifying project [Regulation 12(2)];
- removal of the deeming provision of 30% of statutory income as the assessable income [Regulation 13(4)]; and
- re-defining the non-application rules [Regulation 15].

The above amendment Regulations are deemed to have come into operation on 30<sup>th</sup> November 2010.

*Note :* For further information on the previous Regulations 2013, kindly refer to our Tax Flash – April 2013 issue.

Petroleum (Income Tax)  
(Accelerated Capital  
Allowances) (Marginal Field)  
(Amendment) Rules 2014

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Petroleum (Income Tax)  
(Investment Allowance)  
(Amendment) Regulations  
2014

Tax Flash – April 2013



## Service Tax – Updated List of Taxable/Non-Taxable Services

The Royal Malaysian Customs [“RMC”] has issued a list (updated as at 11<sup>th</sup> November 2013) of taxable/non-taxable services for service tax purposes. The list provided is for general guidance only and is not exhaustive.

## GST – Draft Guide

The RMC has recently issued the draft Guide on Valuation (draft as at 21.03.2014) to provide guidance for business in determining the value of a supply for charging Goods and Services Tax [“GST”].

Updated List of Taxable/Non-Taxable Services

Guide on Valuation

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for this advice. Accordingly, Advent Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team.