

In this Issue

- PR No. 11/2014 – Forest Allowances and Expenses Relating to Timber Extraction
- PR No. 12/2014 – Determination of Plant and Machinery for CA Purposes
- PR No. 1/2015 – Club, Association or Similar Institution
- Mutual Agreement Procedure Guidelines
- GST – Draft Guides
- GST – Frequently Asked Issues

PR No. 11/2014 – Forest Allowances and Expenses Relating to Timber Extraction

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 11/2014 – Forest Allowances and Expenses Relating to Timber Extraction to provide guidance on the qualifying expenditure for forest allowances, computation of forest allowances, forest charges and tax treatment of logging expenses.

Salient points of the abovementioned PR include:-

- i. Qualifying Forest Expenditure and Computation of Allowances
 - A person granted with a concession or licence and carries on a business of timber extraction is entitled to claim forest allowances on expenditure incurred in the forest on the construction of:-
 - roads or buildings which are used for the purpose of the business of extracting timber at the rate of allowance of 10% of the expenditure incurred. Concession is given for claiming of forest allowances for bridges or jetties constructed for such business; or

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- [PR No. 11/2014](#)

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- buildings provided for the purposes of welfare or living accommodation of employees engaged in the extraction of timber and the rate of allowance is 20% of the expenditure incurred. Instead of this, a person may elect to treat the building as an industrial building and claim industrial building allowance at an increased initial allowance at the rate of 40% provided that it is not used by employees who are directors or management, administrative or clerical staff of the business.
- ii. Permanent Cessation of Timber Extraction Business
 - If a person has permanently ceased his business of timber extraction, an allowance equivalent to the residual expenditure will be allowed in the year of cessation of the business.
- iii. Disposal of Forest and Computation of Forest Charges
 - Where a person who has incurred qualifying forest expenditure disposes that forest, a forest charge shall be made to him in the year of disposal i.e. equivalent to the amount of forest allowances made to him for each year of assessment and on permanent cessation of the business of extracting timber.
 - The actual sale consideration received or receivable by the person is not taken into account for the purpose of computing forest charge.
 - Where a forest is disposed of after the end of the basis period for a year of assessment in which the business has ceased permanently, the disposal is deemed to have been made in the basis period the business ceased.
- iv. Election to Spread Forest Charges
 - A person who has disposed of a forest may elect that the amount of forest charges be divided equally by the number of years of assessment for which forest allowances were made.
- v. Logging Contractor Who Is Not a Licence-Holder
 - Payments made by a logging contractor allowed as a deduction from gross income are:-
 - royalty or premium paid to State Government by a logging contractor in the name of the licence-holder;
 - purchase of timber from the licence-holder;
 - licence fee paid to Forest Department; and
 - survey and demarcation fees paid to Forest Department.

- Payments made by a logging contractor not allowed as a deduction from gross income are:-
 - payment for the use of licence or permit (other than to a State Government or Statutory Authority, etc.);
 - payment to the licence-holder for the right to perform work, cut down, exploit and extract timber (i.e. capital expenditure);
 - commission to licence-holder to obtain timber concession (i.e. capital expenditure); and
 - fine or penalty paid to Forest Department.
- vi. One Business or Separate Business
- A person who carries on the activities of extracting timber in a forest and processing of sawn timber (operating a sawmill in the vicinity) is generally considered to be carrying on two separate businesses.

PR No. 12/2014 – Determination of Plant and Machinery for CA Purposes

The IRB has recently issued the PR No. 12/2014 – Qualifying Plant and Machinery for Claiming Capital Allowances [“CA”] to explain whether an asset is a qualifying plant and machinery for the purpose of claiming CA in determining the statutory income from a business.

Salient points of the abovementioned PR include:-

- i. Classification of Asset
- The rates of initial allowance [“IA”] and annual allowance [“AA”] prescribed for the 3 main categories of assets are:-

Category of Qualifying Asset	IA (%)	AA (%)
Heavy machinery, motor vehicle	20	20
Plant and machinery	20	14
Others	20	10

- Generally, heavy machineries are those specifically designed for carrying out construction works, especially used in earthwork operations. Examples of heavy machinery are crane, root puller, rake, shovel, tower crane, offshore crane, wharf crane, bulldozer, land levelling equipment (dozer), excavating equipment (backhoe and excavator) and other similar machinery.
- Motor vehicles includes all types of vehicles that are powered by motors or engines such as car, van, motorcycle, aircraft, boat, motorised bicycle and other similar vehicles.

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[PR No. 12/2014](#)

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- General plant and machinery does not fall under the category of 'heavy machinery' and 'motor vehicle'. Examples are compressors, elevators, medical and laboratory equipment and other similar assets.
- The category of "Others" consists of office equipment (such as facsimile machine, telephone, calculator, printer and photocopier) and furniture and fittings (such as cabinet, rack, chair and table).

ii. Determination of Plant

- Generally, a plant is whatever equipment used by a person for carrying on his business. An asset regarded as a plant in a business may not be regarded as a plant in another business. For example, a ship that is used as a floating restaurant in the restaurant business is not a plant but a ship used in the shipping business is a plant and eligible for CA.
- To determine whether an asset is a plant, the function and need of the asset in a business activity have to be ascertained by the following tests:-
 - Functional test
 - The functional test or business use test is applied when the type of business carried on and the role of an asset in the business activity are taken into account. If an asset meets the function as a tool which needs to be used in carrying on a business, it qualifies as a plant and eligible for CA.
 - For example, in the hotel industry, the assets used for decorative purposes (such as decorative lights, paintings and sculptures within the confines of the hotel) functioned as tools for creating ambience that is comfortable and cosy which is an important factor to attract customers to stay and dine in the hotel, and therefore eligible for CA.
 - Premise test:-
 - An asset that is used and functioned as a premise or a setting within which a business is carried on is not eligible for CA.
 - For example, in the business of property management and golf resort carried out by a company, the turfing and grass are part and parcel of the golf course which functioned as premise or setting within which the company carries on its business. Turfing and grass are not plant eligible for CA.

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iii. Other Assets

- Examples of other assets that qualify as plant are:-
 - Demountable office partition i.e. can be moved and relocated easily and does not form an integral and fixed part of the permanent structure of the building.
 - Transportable camps and cabin for agriculture activity i.e. used as living accommodation for workers which functioned as a building pursuant to Paragraph 2(1)(c), Schedule 3 of the Income Tax Act [“the Act”].
 - Computer software i.e. cost of provision of computer software (software systems or software packages) which are considered to be part and parcel of the information technology equipment.
- Examples of other assets that do not qualify as plant:-
 - Transportable camp and cabin such as those normally used as office, store, laboratory, canteen and living accommodation at construction site or at a place near to the construction site.
 - Payment other than cost of provision of computer software i.e. payment for developing software such as consulting fees, right to use software such as licence fee and other incidental charges are not part of the cost for the provision of computer software.
 - Trading stock such as dairy cattle for sale which are reared from birth and sold as trading stocks of the company.
 - Database such as core deposits and credit card customer databases owned by a financial institution which are records containing customer’s information.

The above PR replaces PR No. 2/2001 dated 18th January 2001.

PR No. 1/2015 – Club, Association or Similar Institution

The IRB has recently issued the PR No. 1/2015 – Club, Association or Similar Institution [“CASI”] to provide guidance on the taxation of a CASI. This PR is to replace the PR No. 5/2012 issued on 25th June 2012 with some updates and amendments.

Among others, it is noteworthy that 4 new paragraphs are added in the abovementioned new PR as follows:-

- i. Basis of Assessment (Paragraph 6 of the PR)
 - The basis year for a year of assessment is the calendar year coinciding with a year of assessment.
 - Where the accounting period of a CASI ends on a date other than 31st December, adjustments have to be made to ensure that the income tax computation is for a basis period from January to December of a calendar year.

➤ [PR No. 1/2015](#)

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- ii. Residence Status (Paragraph 7 of the PR)
 - The residence status of a CASI is determined in accordance with Sections 8(1)(b) and 8(1)(c) of the Act.
 - A CASI carrying on / not carrying on a trade or business is resident in Malaysia for the basis year for a year of assessment if at any time during the basis year the management and control of its business or of any one of its business/affairs are exercised in Malaysia.
- iii. Income from Investment and External Sources [Paragraph 9.3 (d) and (e) of the PR]
 - Receipts of voluntary gifts of money from the general public and used solely for charitable purposes by a CASI which is not an approved charitable institution under Section 44(6) of the Act are taxable. The amount expensed off to any specific charitable purposes is deductible.
 - A CASI which qualifies as an institution under Section 44(7) of the Act and approved for the purposes of Section 44(6) of the Act will be given a tax exemption on its income, including gifts of money.
- iv. Filing of Income Tax Returns Forms
 - The income tax returns forms ["Form TF"] of a CASI for each year of assessment must be filed in the year following that year of assessment as follows :-

<u>Source of Income</u>	<u>Due Date for Submission</u>
Non-business income	30 th April
Business income	30 th June

It is also noteworthy that there is a correction in the calculation of the apportionment of gift of money relating to transactions with non-members in Example 8 of the abovementioned PR (i.e. replaces Example 7 of the previous PR)

Note: For further information relating to taxation of CASI and the previous PR No. 5/2012, kindly refer to our Tax Flash – August 2012 issue.

➤ [Tax Flash – August 2012](#)

Mutual Agreement Procedure Guidelines

The IRB has recently issued the Mutual Agreement Procedure ["MAP"] Guidelines to provide guidance on obtaining assistance from the Malaysian Competent Authority to persons that fall within the scope of an effective Tax Treaty that Malaysia has with its Treaty Partners in resolving international tax disputes involving double taxation agreement and inconsistencies in the interpretation and application of a tax treaty.

Where a Malaysian resident or national considers that the actions of either or both Malaysia's and its Treaty Partner's tax administrations result or will result in taxation not in accordance with the provisions of the Tax Treaty, he may request for assistance from the Malaysian Competent Authority under the MAP Article of an applicable Tax Treaty. Examples of taxation issues or disputes not in accordance with a tax treaty that may warrant a request for assistance to the Malaysian Competent Authority include:-

- Transfer pricing;
- Resident status;
- Withholding tax;
- Permanent establishment; and
- Characterisation or classification of income.

The guidelines also set out the procedures in making a submission for a formal request for MAP, review and negotiation process, acceptance and non-acceptance of the agreement negotiated by the relevant Competent Authority, termination and withdrawal of a request.

GST – Draft Guides

The Royal Malaysian Customs Department ["RMCD"] has recently issued the following draft/revised guides on Goods and Services Tax ["GST"] to provide an understanding of GST and its implications on various businesses/matters:-

- Industry Guides
 - Agents (revised as at 23.01.2015)
 - Entertainment Industry (draft as at 08.12.2014)
 - Legal Practitioners (revised as at 03.01.2015)
- Specific Guides
 - Capital Goods Adjustment (revised as at 22.01.2015)
 - Designated Area (revised as at 19.12.2014)

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- [Mutual Agreement Procedure Guidelines](#)

GST – Frequently Asked Issues

The RMCD has recently issued the Director General's Decision 1/2005 to provide clarification on GST frequently asked issues.

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- [RMCD's Decision 1/2015](#)

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