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PR No. 10/2016 – Industrial Buildings Part II

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 10/2016 – Industrial Buildings Part II to provide guidance on the types of building prescribed as industrial buildings under Paragraph 80, Schedule 3 of the Income Tax Act 1967 ["the Act"].

Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)

- [PR No. 10/2016](#)

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The types of building prescribed as industrial buildings eligible for industrial building allowance are summarised below:-

- i. Old Folks Care Centre
 - A building (constructed or purchased) used as an old folks care centre approved by the Department of Social Welfare
 - Effective year of assessment ["YA"] 2003
- ii. Approved Multimedia Super Corridor ["MSC"] Status Company
 - A new building that provides world-class physical and information infrastructure located in the Cyberjaya Flagship Zone which is:-
 - used by the owner for the purpose of his business as an approved MSC status company; or
 - rented to an approved MSC status company
 - The building must first be occupied by an approved MSC status company
 - Effective YA 2006
- iii. BioNexus Status Company
 - A building (constructed or purchased) used by a resident company approved by the Minister of Finance as a BioNexus status company for the purposes of its new business or expansion project
 - Effective 2nd September 2006
- iv. Building under Privatisation Project and Private Financing Initiatives
 - A building constructed:-
 - under a privatisation project and private financing initiatives ["PFI"] approved by the Privatisation/PFI Committee, Public Private Partnership Unit of the Prime Minister's Department; and
 - pursuant to an agreement entered into between a person and the Government or statutory body on a build-lease-maintain-transfer basis and for which no consideration has been paid by the Government or statutory body to that person
 - Effective YA 2009
- v. Kindergarten
 - A building (constructed or purchased) used by the owner for the purpose of a business relating to the provision and maintenance of a kindergarten approved by the Ministry of Education
 - Effective YA 2013
- vi. Child Care Centre
 - A building (constructed or purchased) used by the owner for the purpose of a business of a child care centre registered with the Department of Social Welfare
 - Effective YA 2013

Hyperlinks

- [Income Tax \(Industrial Building Allowance\) \(Old Folks Care Centre\) Rules 2003](#)
- [Income Tax \(Industrial Building Allowance\) \(Approved MSC Status Company\) Rules 2006](#)
- [Income Tax \(Industrial Building Allowance\) \(BioNexus Status Company\) Rules 2007](#)
- [Income Tax \(Industrial Building Allowance\) \(Building under Privatisation Project and PFI\) Rules 2010](#)
- [Income Tax \(Industrial Building Allowance\) \(Kindergarten\) Rules 2013](#)
- [Income Tax \(Industrial Building Allowance\) \(Child Care Centre\) Rules 2013](#)

vii. Tun Razak Exchange Marquee Status Company

- A commercial building (constructed or purchased) used by a Tun Razak Exchange Marquee status company (the owner) in the Tun Razak Exchange for the purpose of specific businesses
- Effective YA 2014 for qualifying building expenditure incurred on or before 31st December 2020

PR No. 11/2016 – Tax Borne by Employers

The IRB has recently issued the PR No. 11/2016 – Tax Borne by Employers to provide guidance on the computation of tax payable by an employee who is entitled to the perquisite relating to the income tax of the employee borne by the employer.

Salient points of the abovementioned PR include:-

- i. Income Tax of the Employee Borne by the Employer
 - The income tax liability of an employee which is paid by the employer (under an agreement between the employer and employee) falls within the definition of perquisite and is part of the gross income from employment under Section 13(1)(a) of the Act.
- ii. Tax Treatment of Employee's Tax Borne by the Employer
 - The income tax of an employee borne by his employer for a basis year for a year of assessment is treated as income of that employee in that basis year when the actual amount of tax for that year of assessment can be ascertained, i.e. the following basis period.
 - Where there is a change in taxable income or chargeable income which results in reduced/additional assessment for a year of assessment, the tax payable for that year of assessment and the following year of assessment has to be recomputed to ascertain the actual tax payable which should be borne by the employer. The additional tax for a year of assessment borne by the employer is an additional perquisite to the employee and regarded as the employee's gross income from employment for the year of assessment in which the additional assessment is made.
 - Where an employee's tax is partially borne by the employer, only the portion of tax borne by the employer is a perquisite and treated as gross income from employment of the employee.
 - Where an employee has defaulted or has not furnished the income tax return form within the stipulated time and the penalty imposed on that employee under Section 112(3) of the Act is borne by the employer, the total amount of tax payable (inclusive of the penalty imposed) is treated as gross income from employment.

Hyperlinks

- [Income Tax \(Industrial Building Allowance\) \(Tun Razak Exchange Marquee Status Company\) Rules 2013](#)
- [PR No. 11/2016](#)

Hyperlinks

- In the case of an employee who has left or intends to leave Malaysia:-
 - Section 25(6) of the Act provides that where an employee:-
 - has left or will be leaving Malaysia in the basis year for a year of assessment;
 - is not a tax resident in Malaysia for the basis year for the following year of assessment and does not derive any pension from Malaysia for that basis year; and
 - cease to derive gross income from employment from Malaysia on the expiration of a period of leave following his departure from Malaysia,
 the employment income receivable for the relevant year or for the basis year of the year of assessment following the relevant year shall be deemed to have been received in the basis year in which he leaves Malaysia.
 - However, the employee may elect to make a written request stating the gross income for the following year of assessment to be taxed in that following year.
 - For leaver cases, the computation of tax has to be made twice for the final year in which the employee is in Malaysia.
- iii. Monthly Tax Deduction
- The employer must ensure that the tax to be charged on the perquisite (i.e. employee's income tax borne by the employer) is deducted from the employee's remuneration based on Schedule of the Monthly Income Tax Deductions under the Income Tax (Deduction from Remuneration) Rules in the month in which the perquisite is paid.

PR No. 12/2016 – Taxation of Income from Employment on Board a Ship

The IRB has recently issued the PR No. 12/2016 – Taxation of Income from Employment on Board a Ship to explain the tax treatment of income of an individual derived from an employment exercised on board a ship.

Salient points of the abovementioned PR include:-

- i. Gross income of an individual from an employment is deemed to be derived from Malaysia:-
 - for any period during which the employment is exercised on board a ship that is used in a business; and
 - the business is operated by a person who is resident in Malaysia.

[➤ PR No. 12/2016](#)

- ii. "Ship" means a sea-going ship other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel.
- iii. Income of an individual derived from exercising an employment on board a ship is exempted from tax under Paragraph 34, Schedule 6 of the Act on the conditions that:-
 - the employment is exercised on board a ship that is used in a business;
 - the business is operated by a person who is a resident in Malaysia; and
 - the person who operates the business must be the registered owner of a ship under the Merchant Shipping Ordinance 1952 ["MSO"].
- iv. Income of an individual derived from exercising an employment onshore will be subject to tax under Section 4(b) of the Act.
- v. Income derived from employment with an operator who is not a registered owner of a ship under the MSO would not be exempted under Paragraph 34, Schedule 6 of the Act.
- vi. An individual will be required to provide supporting documents (eg: seafarer card, seaman's book, employment contract) as evidence to substantiate his claim that his income is eligible for exemption from tax.

Tax Exemption on Income Derived from Group Inclusive Tour Package

Following the Budget 2016 announcement, the Income Tax (Exemption) (No. 11) Order 2016 has been gazetted to extend the tax exemption granted to a company resident in Malaysia in respect of its income derived from group inclusive tour package for another 3 years.

To be eligible for the exemption, the company must be licenced under the Tourism Industry Act 1992 to carry out a tour operating business and the number of tourists from outside Malaysia under the group inclusive tour package is not less than 750 in a basis period for a year of assessment as verified by the Ministry of Tourism and Culture Malaysia.

The above order shall have effect from the YA 2016 until YA 2018.

Note : *For further information relating to the exemption of income under the previous Income Tax (Exemption) (No.2) Order 2013 (applicable to YA 2013 to YA 2015), please refer to our Tax Flash - February 2013 issue.*

Hyperlinks

➤ [Income Tax \(Exemption\) \(No.11\) Order 2016](#)

➤ [Tax Flash – February 2013](#)

Tax Exemption on Income Derived from Domestic Tour Package

Following the Budget 2016 announcement, the Income Tax (Exemption) (No. 12) Order 2016 has been gazetted to extend the tax exemption granted to a company resident in Malaysia in respect of its income derived from domestic tours for another 3 years.

To be eligible for the exemption, the company must be licenced under the Tourism Industry Act 1992 to carry out a tour operating business and the number of local tourists for the domestic tour package is not less than 1,500 in a basis period for a year of assessment as verified by the Ministry of Tourism and Culture Malaysia.

The above order shall have effect from the YA 2016 until YA 2018.

Note : For further information relating to the exemption of income under the previous Income Tax (Exemption)(No.2) Order 2013 (applicable to YA 2013 to YA 2015), please refer to our Tax Flash - February 2013 issue.

Deduction for Investment in a Bionexus Status Company

Pursuant to the Income Tax (Deduction for Investment in a Bionexus Status Company) Rules 2016, a deduction is allowed in the basis period for a year of assessment of an amount equivalent to the actual value of investment made by a qualifying person in a BioNexus status company approved by the Minister.

The investment (either in the form of cash or holding of paid up capital) shall be made during the period from 1st January 2016 to 31st December 2020 for the purpose of financing activities at the initiation of commercialisation stage of a new business. The investment made by the qualifying person prior to the commencement of a new business shall be deemed to be made on the date the new business commences as determined by Malaysia Bioeconomy Development Corporation Sdn Bhd.

Where an investment is in the form of holding of paid-up capital, the ordinary shares shall not be disposed of within 5 years from the date of last investment. If this occurs, the amount received by the qualifying person as the consideration for the disposal of such shares shall be added in ascertaining his adjusted income for the year of assessment in the basis period in which the amount is received.

The deduction of the above is subject to certain conditions as prescribed in the above Rules.

Hyperlinks

- [Income Tax \(Exemption\) \(No. 12\) Order 2016](#)
- [Tax Flash – February 2013](#)
- [Income Tax \(Deduction for Investment in a Bionexus Status Company\) Rules 2016](#)

For the purpose of the above Rules “qualifying person” means:-

- a company incorporated under the Companies Act 1965; or
- an individual who is a Malaysian citizen, resident and has business income source.

The above Rules shall have effect from the YA 2016.

Deduction for Expenditure on Issuance of Retail Debenture and Retail *Sukuk*

Following the Budget 2016 announcement, the Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail *Sukuk*) Rules 2016 has been gazetted to provide deduction of the additional expenses incurred by a company on the issuance of:-

- i. a retail debenture;
- ii. a retail *sukuk* structured pursuant to the principle of *Murabahah* or *Bai’ Bithaman Ajil* (based on the concept of *Tawarruq*), *Mudharabah*, *Musarakah*, *Istisna’* or any *Shariah* principle other than principle mentioned in (c); and
- iii. a retail *sukuk* structured pursuant to the principle of *Ijarah* or *Wakalah* comprising a mixed component of asset and debt;

approved or authorised by the Securities Commission under the Capital Markets and Services Act 2007.

The allowable additional expenses are:-

- the professional fee relating to due diligence, drafting and preparation of prospectus;
- the printing cost of prospectus;
- the advertisement cost of prospectus;
- the Securities Commission Malaysia prospectus registration fee;
- the Bursa Malaysia processing fee and initial listing fee;
- the Bursa Malaysia new issue crediting fee; and
- the primary distribution fee.

The amount of deduction allowed in respect of a retail debenture / retail *sukuk* under (i) and (ii) shall be a double deduction whereas the deduction in respect of a retail *sukuk* under (iii) shall be a single deduction.

The above Rules shall have effect from the YA 2016 until YA 2018.

Note : For further information relating to the deduction of the additional expenses under the previous Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail *Sukuk*) Rules 2013 (applicable to YA 2013 to YA 2015), please refer to our Tax Flash - March 2013 issue.

Hyperlinks

- [Income Tax \(Deduction for Expenditure on Issuance of Retail Debenture and Retail *Sukuk*\) Rules 2016](#)

- [Tax Flash – March 2013](#)

Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information

The Income Tax (Automatic Exchange of Financial Account Information) Rules 2016 has recently been gazetted to facilitate the implementation of Multilateral Competent Authority Agreement on automatic exchange of financial account information.

These Rules shall:-

- i. have effect for and in connection with the implementation of the Common Reporting Standard for the purpose of giving effect to the Arrangements; and
- ii. apply to a Financial Institution as defined under the Common Reporting Standard.

For the purpose of these Rules,

“Arrangements” means:-

- the Convention on Mutual Administrative Assistance in Tax Matters;
- the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information; and
- any arrangements with participating jurisdictions to improve international tax compliance through:-
 - any bilateral or multilateral tax convention;
 - any bilateral or multilateral competent authority agreements; or
 - any tax information exchange agreement.

The above Rules come into operation on 1st January 2017.

Automatic Exchange of Financial Account Information

Pursuant to the Income Tax (Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information) Order 2016, arrangements have been made by Government of Malaysia and Government which has signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information with a view of exchanging financial account information in tax matters which is in accordance to the Common Reporting Standard developed by the Organisation for Economic Co-operation and Development (OECD).

Hyperlinks

- [Income Tax \(Automatic Exchange of Financial Account Information\) Rules 2016](#)

- [Income Tax \(Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information\) Order 2016](#)

Mutual Administrative Assistance in Tax Matters

Pursuant to the Income Tax (Convention on Mutual Administrative Assistance in Tax Matters) Order 2016, specific arrangements have been made by the Government of Malaysia and the governments which have signed the Convention on Mutual Administrative Assistance in Tax Matters in order to foster all forms of administrative assistance in matters concerning taxes of any kind.

GST Guides

The Royal Malaysian Customs Department ["RMCD"] has recently issued the following revised guides on Goods and Services Tax ["GST"] to provide guidance on GST related matters:-

- Specific Guides
 - Designated Area (revised as at 01.01.2017)
 - Input Tax Credit (revised as at 04.01.2017)
 - Tax Invoice and Records Keeping (revised as at 06.01.2017)
 - Transfer of Business as a Going Concern (revised as at 06.01.2017)

GST Orders

The following orders have recently been gazetted:-

- i. GST (Exempt Supply) (Amendment) Order 2016
- ii. GST (Imposition of Tax for Supplies in Respect of Designated Areas) (Amendment) (No. 2) Order 2016
- iii. GST (Imposition of Tax for Supplies in Respect of Free Zones) Order 2016
- iv. GST (Relief) (Amendment) (No. 2) Order 2016
- v. GST (Zero-Rated Supply) (Amendment) (No. 3) Order 2016

The above Orders come into operation on 1st January 2017.

Note: For further information relating to the GST (Exempt Supply) Order, GST (Relief) Order 2014 and GST (Zero-Rated Supply) Order 2014, kindly refer to our Tax Flash – November 2014 issue.

Hyperlinks

- [Income Tax \(Convention on Mutual Administrative Assistance in Tax Matters\) Order 2016](#)

- [Tax Flash – November 2014](#)

GST Regulations

The GST (Amendment) Regulations 2016 governing the GST matters has recently been gazetted.

The amended Regulations comes into operation on 1st January 2017.

Note: For further information relating to the GST Regulations 2014, kindly refer to our *Tax Flash – September 2014* issue.

Hyperlinks

➤ [Tax Flash – September 2014](#)

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