

In this Issue

- PR No. 4/2014 – Deferred Annuity
- PR No. 5/2014 – Ownership and Use of Asset for the Purpose of Claiming Capital Allowances
- Double Deduction for Expenditure in Relation to Vendor Development Programme
- Tax Exemption on Income Derived from Providing Fund Management Services
- Tax Exemption on Income Derived by a Qualifying Person from Qualifying Activities in RAPID Complex
- Tax Exemption on Income Derived by Angel Investor
- New DTA between Malaysia and Poland
- GST Act 2014
- GST Orders
- GST Regulations

PR No. 4/2014 – Deferred Annuity

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 4/2014 – Deferred Annuity to provide guidance on the deductibility of premiums and exemption of annuity income for an individual and exemptions of income of a life insurer and *takaful* operator derived from investment made out of life fund / family fund in respect of deferred annuity.

Salient points of the abovementioned PR include:-

- i. Annuity
 - Annuity can be categorised into 2 types:-
 - Immediate annuity i.e. annuitant begins to receive the annuity income immediately upon or within a year of the purchase of the annuity policy. The purchase price is normally paid as a lump sum premium contribution at the time of purchase.

Hyperlinks

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

- [PR No. 4/2014](#)

Contact details

Advent MS Tax Consultants Sdn Bhd (703669-U)
(formerly known as Advent Tax Consultants Sdn Bhd)

Unit 3.3A, 3rd Floor, Surian Tower
No. 1 Jalan PJU 7/3, Mutiara Damansara
47810 Petaling Jaya, Selangor, Malaysia

T +603 7728 1800
F +603 7728 9800
E tax@moorestephens.com.my

www.moorestephens.com.my



Hyperlinks

- Deferred annuity refers to insurance or *takaful* contract, plan, scheme or policy by which a life insurer or takaful operator agrees to make a series of annuity income payments, in exchange for a purchase price at a regular intervals for a specific period of time which commences on a specified date more than 12 months after the purchase of the insurance or takaful contract, plan, scheme or policy.
- ii. Deferred Annuity for Income Tax Purposes
 - Deferred annuity contracted on or after 1st January 2014 must have the following features:-
 - issued by the insurers licensed under the Financial Services Act 2013 or takaful operators registered under the Islamic Financial Services Act 2013; and
 - contains the Retirement Saving Standards ["RSS"] approved by the Central Bank of Malaysia.
 - RSS
 - Minimum payment age and minimum payment method
 - The annuity payment should commence from age 55 onwards or the minimum retirement age as specified under the relevant written law applicable at the time of purchase, whichever is later;
 - The annuity payment should be payable for a minimum period of 10 years or at least until age 70, whichever is the later;
 - Benefits may be payable in the event of death, permanent total disability or critical illness of the life assured before the annuity payment commences or during the annuity payment period.
 - Minimum Retention Amount
 - Partial withdrawal is allowed at any time subject to a minimum retention amount ["MRA"] being maintained i.e. the unit fund value and the cash value immediately after withdrawal should be at least equal to the MRA for investment-linked and traditional products respectively.
 - The total premiums of a deferred annuity policy should be apportioned into 2 components:-
 - annuity premiums (must consist at least 50% of the total premiums)
 - non-annuity premiums

Hyperlinks

iii. Tax Treatment of Deferred Annuity

- Deduction for deferred annuity premiums paid by an individual
 - Section 49(1D) of the Income Tax Act 1967 [“the Act”] provides that premiums paid for deferred annuity or contribution made to a Private Retirement Scheme [“PRS”] in the basis year for a year of assessment are allowed a tax deduction of RM3,000 (maximum) for that year of assessment in computing the chargeable income of an individual resident in Malaysia.
 - The deduction is effective for 10 years from year of assessment [“YA”] 2012 until YA 2021.
 - Deferred annuities that qualify for deduction are those contracted:-
 - on/after 1st January 2014 that is licensed under the Financial Services Act 2013 or *takaful* operators registered under the Islamic Financial Services Act 2013 and contains the RSS approved by the Central Bank of Malaysia; and
 - before 1st January 2014 irrespective of availability of features mentioned above.
- Deduction against total income
 - The amount of deferred annuity premium allowable in a year of assessment shall be deducted against the total income of a resident individual in arriving at his chargeable income.
 - Under combined assessment, the amount of deduction allowed for the aggregate amount of the deferred annuity premiums and PRS contributions shall not exceed RM3,000.
 - Where an individual has total income but the wife has no total income, the amount of deferred annuity premium expended by the spouse is deemed to be expended by the individual.
- Non-deductibility of premiums
 - For deferred annuity that comprises of both annuity premiums and non-annuity premiums, only annuity premiums are eligible for tax relief.
 - Deferred annuity premiums are not allowed for tax deductions if:-
 - premiums are not in fact paid although treated by the life insurer or *takaful* operator as having been paid under a non-forfeiture clause in the policy; or
 - premiums or arrears of premiums are not paid but carried forward as a debt and deducted from the capital sum due on maturity or surrender of the policy.
- Policy holder and annuitant are not the same person
 - The policy holder who pays the premiums is entitled to claim for tax deduction although the annuitant may not be the policy holder.

Hyperlinks

- iv. Tax Charged for Withdrawal of Contribution before Age 55
 - A policy holder who makes full or partial withdrawal at any time during the premium payment before the age of 55 would be subject to withholding tax ["WT"] at the rate of 8% on the total amount withdrawn.
 - However, no tax shall be imposed on the amount withdrawn by a policy holder before the age of 55 if withdrawal was made by reason of permanent total disablement, serious disease, mental disability, death or permanently leaving Malaysia.
- v. Tax Exemption of Annuity Income
 - Annuity income received by the annuitant are exempt from tax under Paragraph 36, Schedule 6 of the Act.
- vi. Income Tax Exemption for Life Insurer and *Takaful* Operator
 - Tax exemption is granted to life insurance and *takaful* operators on investment income derived from deferred annuity funds at chargeable income level with effect from YA 2012.
 - For the purpose of tax treatment, a separate sub-fund should be set up for deferred annuity and maintained in accounts separate from other life funds or family funds.

PR No. 5/2014 – Ownership and Use of Asset for the Purpose of Claiming Capital Allowances

The IRB has recently issued the PR No. 5/2014 – Ownership and Use of Asset for the Purpose of Claiming Capital Allowances to provide guidance on the ownership and use of asset and the effect on whether a person qualifies to claim capital allowances ["CA"] in respect of that asset in determining the statutory income from a business of the person.

Salient points of the abovementioned PR include:-

- i. Application of Relevant Law
 - CA is only given to the person who incurred the qualifying expenditure ["QE"] on an asset used in his business and would only be allowed a deduction if claimed. CA is given in the form of initial allowance and annual allowance.
 - QE means capital expenditure incurred on the provision, construction or purchase of plant or machinery used for the purpose of a business other than assets that have an expected life span of not more than 2 years.
 - A person has to satisfy the following conditions in order to qualify for initial allowance in respect of an asset for a year of assessment:-
 - was carrying on a business during the basis period;
 - had incurred QE during the basis period; and
 - at the end of the basis period (or, if the asset was disposed of, at the time of disposal), he was the owner of the asset.

➤ [PR No. 5/2014](#)

Hyperlinks

- A person has to satisfy the following conditions in order to qualify for annual allowance in respect of an asset for a year of assessment:-
 - was carrying on a business during the basis period;
 - had incurred QE during the basis period;
 - that asset was used for the purpose of the business; and
 - at the end of the basis period, he was the owner of the asset and the asset was in use.

- ii. Ownership of Asset
 - Ownership of an asset refers to either legal or beneficial ownership.
 - Legal owner is the person whose name is registered or documented as proof of ownership.
 - Beneficial owner is the person who has actually incurred the QE and payment for the asset. If a beneficial owner has incurred the QE and used the asset for his business, he is entitled to claim CA although the asset is registered in the name of another person (the legal owner).
 - A legal owner who incurs the QE is also the beneficial owner. If the asset owned is used in his business, the owner is entitled to claim CA.
 - A legal owner who does not incur the QE even though he uses the asset for the purpose of his business, is not entitled to claim CA.
 - A beneficial owner who incurs the QE but asset is not used in his business (e.g. the asset is being used by the legal owner or some other person) is not eligible to claim CA.

- iii. Jointly Owned Asset
 - Where:-
 - more than one person has incurred the QE on an asset;
 - the asset is used for the purpose of a business of each of them during the basis period'
 - the asset is still in use at the end of the basis period; and
 - the asset is registered in the name of only one of the beneficial owners or in the name of some other person,
 each of the beneficial owners is entitled to claim CA in respect of the asset in the appropriate portion based on his share of QE incurred.

- iv. Partnership Asset
 - Asset of a partnership is jointly owned by all the partners. If the asset is used in the partnership business and QE is incurred by all partners at the end of a basis period, all the partners are beneficial owners and are entitled to claim CA.

Hyperlinks

- CA is computed based on QE incurred amongst the partners based on 2 different situations as follows:-
 - CA is computed based on QE incurred and then allocated amongst the partners based on their profit sharing ratios in the partnership if the asset is used in the partnership business and QE is incurred by all partners at the end of a basis period; or
 - CA is allocated amongst those who are partners at the end of the basis period in accordance with their profit sharing ratios if there are changes of partners in a partnership such as termination or entry of a partner and the partnership business continues as an on-going business.
 - If an asset is used in a partnership but only one partner has incurred QE in respect of the asset, CA is allowed to the partner who incurred the QE.
- v. Limited Liability Partnership ["LLP"] Asset
- An LLP is a separate legal entity from its partners for tax purposes.
 - An LLP is entitled to claim CA and would be allowed deduction if a claim is made.
 - Any change of partners in an LLP does not affect the business of the LLP.
- vi. Hire Purchase ["HP"] Asset
- Conventional HP
 - For the purposes of CA, the hirer is deemed to be the owner of the asset. The hirer is the beneficial owner as he has incurred the QE and is entitled to claim CA if the asset is used for business purposes.
 - QE for a HP asset refers to the capital expenditure actually incurred by the hirer. CA is computed based on capital installment payments that have been made for the year of assessment.
 - Asset under Islamic financing
 - In the context of Islamic finance, a lease contract is referred to as *Ijarah* that involves an exchange of *usufruct* or benefits of an asset for rent for an agreed period.
 - For the purposes of CA, the hirer is the beneficial owner as he has incurred the QE and if the asset is used for the purpose of his business from the date of the rental agreement (*Ijarah*), the hirer is entitled to claim CA in respect of the asset.
 - The financing in accordance with the principles of *Syariah* involves the lease or disposal of an asset. However, these transactions are deemed not taking place as provided under Section 2(8) of the Act.

Hyperlinks

- Refinancing
 - Refinancing is treated as borrowing with the asset as a security. Where an asset on which CA has been claimed is refinanced through a HP arrangement, the hirer is allowed to continue his claim on the CA based on RE of the asset, provided it is still being used in the business.

- vii. Leased Asset
 - A lease transaction involves the acquisition of an asset by the lessor to be leased to the lessee via a leasing agreement. The lessee uses the leased asset by paying rent only based on amount of payments stated in the lease agreement. The lessor has acquired the asset to be used in his leasing business. As such, the lessor as the legal and beneficial owner is entitled to claim CA as he has incurred the QE and used the asset in his business.
 - However, if a lease transaction is deemed to be a sale transaction as stated under Regulation 4 of the Income Tax Leasing Regulations 1986 (LR) [P.U. (A) 131], it will constitute an outright sale. The lessee can claim CA on the leased asset.

- viii. Business Trust Asset
 - A business trust ["BT"] is a unit trust scheme that has hybrid features of a company and a unit trust in which a trustee-manager holds assets on trust for the unit holders of the BT.
 - For the purposes of tax treatment, BT is defined as a company in the Act and hence, is entitled to claim CA.

- ix. Use of Asset
 - Asset wholly used in the business
 - The owner is entitled to claim full amount of the CA if he incurred the QE and used the asset wholly and exclusively for the purpose of carrying on his business.
 - For asset that is temporarily disused in the business for a period, CA is granted provided:-
 - the asset was in use for the purposes of the business immediately before becoming disused; and
 - during the period when asset is disused, the asset is constantly maintained in readiness to be brought back into use.
 - If the asset ceases to be ready for use or its disuse is no longer considered as temporary, the asset is deemed to have been disposed of at the beginning of the period of disuse and computation of balancing charge or balancing allowance would be made.

Hyperlinks

- Asset used partly for business
 - A person who incurs the QE and uses the asset in both business and non-business activities is entitled to claim a portion of the CA. Reasonable apportionment of its usage for business and non-business purposes must be determined, usually done on time basis.
 - Asset used in more than one business
 - A person who incurs the QE and uses the asset in more than one business is entitled to claim a portion of the CA for each of his business. A reasonable apportionment of use of the asset amongst his businesses must be ascertained.
 - Asset not used in a business
 - A person who incurs the QE would not be allowed to claim CA on an asset if it is:-
 - used for employment purposes;
 - used for personal purposes;
 - used for the purpose of the business of others; or
 - purchased for the purpose of a gift or donation.
 - Asset used by a person to manufacture products for the business of the beneficial owner
 - A beneficial owner is entitled to claim CA although the asset is registered in the name of another person (the legal owner) (e.g. a contract manufacturer) to produce the products for the beneficial owner, subject to the following conditions:-
 - the beneficial owner incurs and bears the maintenance expenditure of the asset;
 - the beneficial owner determines how the products are manufactured;
 - the beneficial owner pays a sum of contract fees to the contract manufacturer solely for the manufacture of the products;
 - the contract manufacturer uses the asset wholly and exclusively to manufacture the products of the beneficial owner; and
 - the products are not the stocks-in-trade of the contract manufacturer.
- x. Asset Classified as Held for Sale [“HFS”]
- A person who has incurred capital expenditure on an asset and classified it as HFS in a basis period would not be entitled to claim CA for the period as the asset is intended to be sold and is not used for purposes of the business.
 - If an asset that has been classified as HFS is reclassified as plant, property and equipment and then re-use them in the business, the QE for the purpose of claiming CA is the market value of the asset on the date the asset is reclassified.

The above PR replaces the original PR No. 1/2001 issued on 18th January 2001.

Hyperlinks

Double Deduction for Expenditure in Relation to Vendor Development Programme

Following the Budget 2014 announcement, the Income Tax (Deduction for Expenditure in Relation to Vendor Development Programme ["VDP"]) Rules 2014 have been gazetted to allow a double deduction for expenditure incurred by an anchor company to carry out the following activities relating to the VDP in ascertaining its adjusted income from business:-

- activities in relation to product development;
- activities in relation to capability improvement; or
- activities in relation to human capital.

The amount of deductible expenditure is restricted to RM300,000 for each year of assessment and is given for a period of 3 consecutive years of assessment commencing from the year of assessment in which the first expenditure is incurred.

VDP is an approved programme to be implemented by an anchor company in developing a new vendor company or strengthening of existing vendor company at domestic or international level.

The vendor company must be a locally incorporated and resident company which is a manufacturer or supplier of components or service provider of the anchor company under the VDP and signs a memorandum of understanding with the Ministry of International Trade and Industry from 1st January 2014 to 31st December 2016.

The above Rules shall have effect from YA 2014.

Tax Exemption on Income Derived from Providing Fund Management Services

Pursuant to the Income Tax (Exemption) Order 2014, a qualifying company is exempted from payment of income tax in respect of the statutory income derived from a business of providing fund management services to business trust or real estate investment trust in Malaysia which is managed in accordance with *Syariah* principles and certified by Securities Commission.

"Qualifying company" means a locally incorporated company which is resident in Malaysia and holds a Capital Markets Services Licence under the Capital Markets and Services Act 2007 to carry on the abovementioned business of providing fund management services.

The qualifying company is required to maintain a separate account for the income derived from the abovementioned business which shall be treated as a separate and distinct business source for tax purposes.

The above Order shall have effect from YA 2014 to YA 2016.

➤ [Income Tax \(Deduction for Expenditure in Relation to VDP\) Rules 2014](#)

➤ [Income Tax \(Exemption\) Order 2014](#)

Hyperlinks

Tax Exemption on Income Derived by a Qualifying Person from Qualifying Activities in RAPID Complex

Pursuant to the Income Tax (Exemption) (No. 7) Order 2013, a resident qualifying person is exempted from payment of income tax in respect of its statutory income derived from a qualifying activity in the Refinery Petrochemical Integrated Development ["RAPID"] Complex for a period of 15 consecutive years of assessment ["exemption period"] commencing from the first year of assessment in which the statutory income from such qualifying activity is derived.

The Income Tax (Exemption) (No. 2) Order 2014 ["this Order"] has recently gazetted to provide that a qualifying person is exempted from payment of income tax in respect of 50% of its statutory income derived from a qualifying activity for a period of 5 consecutive years of assessment commencing from the year of assessment in the basis period immediately after the exemption period under the Income Tax (Exemption) (No. 7) Order 2013 ["exempt years of assessment"].

Any adjusted loss incurred prior or during the exempt years of assessment under both Orders shall be carried forward and deducted against the statutory income of the qualifying activity in the years following the exempt years of assessment until it is fully utilised.

The qualifying person must made an application in respect of its qualifying activity to the Malaysia Investment Development Authority within 90 days before the expiry of the exemption period under the Income Tax (Exemption) (No. 7) 2013 Order.

This Order is deemed to have come into operation from YA 2011.

Note: For further information on "qualifying person", "qualifying person" and the Income Tax (Exemption) (No. 7) Order 2013 relating to RAPID Complex, kindly refer to our Tax Flash- March 2013 issue.

Tax Exemption on Income Derived by Angel Investor

Following the 2013 Budget announcement, the Income Tax (Exemption) (No. 3) Order 2014 has been gazetted to provide tax exemption to an angel investor in respect of the aggregate income for the basis period for the second year of assessment following year of assessment in which an investment is made by the angel investor in an investee company. The amount of income exempted shall be an amount equal to the amount of investment made in that investee company.

➤ [Income Tax \(Exemption\) \(No. 2\) Order 2014](#)

➤ [Tax Flash - March 2013](#)

➤ [Income Tax \(Exemption\) \(No. 3\) Order 2014](#)

Hyperlinks

Any excess of the amount of investment over the aggregate income for the basis period for a year of assessment shall not be refunded to the angel investor or be available as a credit to set off against tax liabilities of the angel investor for subsequent years of assessment.

Among others, the conditions to be observed are:-

- the angel investor must made an application to the Minister of Finance ["MoF"] between 1st January 2013 to 31st December 2017 to make an investment in an investee company;
- the investment shall not be more than 30% of the paid up share capital of the investee company;
- the investee company must carries on activities approved by the MoF; and
- the angel investor must not have made a claim for a deduction under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005.

The Order is deemed to have come into operation from 1st January 2013.

New DTA between Malaysia and Poland

The new Double Taxation Agreement ["DTA"] signed between Malaysia and Poland has recently been gazetted. Salient points of the DTA includes:-

- i. A building site, a construction, installation or assembly project which exists for more than 6 months will constitute a permanent establishment.
- ii. The WT rates applicable on certain payments made to non-residents are as follows :-
 - Dividends – 5% (*Note*)
 - Interest – 10%. Penalty charges for late payment are not considered as interest
 - Royalties – 8%
 - Technical fees – 8%
 - Section 4(f) income – 10%

The above DTA will enter into force upon ratification.

Note: *Currently, there is no WT on outbound dividends under the Act.*

➤ [Double Taxation Relief \(The Government of the Republic of Poland\) Order 2014](#)

Hyperlinks

GST Act 2014

The Goods and Services Tax ["GST"] Act 2014 which provides for the imposition and collection of GST and for matters connected therewith has been enacted by the Parliament. In exercise of the powers conferred by Section 1 of the GST Act 2014, the following gazettes have been issued to appoint the date of coming into operation and effective date for imposition of GST:-

- i. Appointment of Date of Coming into Operation
 - This Order stipulates the specific parts, sections and schedules of GST Act 2014 which come into operation on 1st July 2014 and those which will come into operation on 1st April 2015.
- ii. Appointment of Effective Date for Imposition of GST
 - This Order stipulates that the effective date for imposition of GST will be 1st April 2015.

GST Orders

The following Orders on GST matters have recently been gazetted:-

- i. GST (Amount of Taxable Supply) Order 2014
 - The amount of taxable supply for the purpose of GST registration shall be RM500,000.
- ii. GST (Rate of Tax) Order 2014
 - The rate of tax shall be fixed at 6% on the supply of goods or services or on the importation of goods.
- iii. GST (Application to Government) Order 2014
 - Supply of certain goods or services by the Federal Government and State Government specified in this Order shall be subject to GST.
- iv. GST (Tax Agent Application Fee) Order 2014
 - The application fee for an approval or renewal of an approval to be a tax agent shall be RM200.
- v. GST (Imposition of Tax for Supplies in respect of Designated Areas) Order 2014
 - Supply of certain goods and services within or between designated areas or importation of such goods into the designated areas specified in this Order shall be subjected to GST, currently fixed at 6%.

These Orders come into operation on 1st July 2014.

Hyperlinks

GST Regulations

The following Regulations on GST matters have recently been gazetted:-

- i. GST (Advance Ruling) Regulations 2014
 - The above Regulations explain the application procedures for GST advance ruling.
- ii. GST (Review and Appeal) Regulations 2014
 - The above Regulations explain the procedures of review and appeal to the GST Tribunal.
 - The forms for the review and appeal to the Tribunal are as follows:-
 - Form A - Application for review
 - Form B - Notice of appeal
 - Form C - Application for extension of time
 - Form D - Notice of hearing
 - Form E - Decision of the Tribunal
 - Form F - Application by parties
 - Form G - Summons to witness

These Regulations come into operation on 1st July 2014.

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 advice. Accordingly, Advent MS 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.