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### PR No. 2/2015 – Taxation of Real Estate Investment Trust or Property Trust Fund

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 2/2015 – Taxation of Real Estate Investment Trust ["REIT"] or Property Trust Fund ["PTF"] to provide guidance and updates on the tax treatment accorded to an approved REIT/PTF.

Salient points of the abovementioned PR include:-

- i. Basis of Assessment of a REIT/PTF
  - The basis year for a year of assessment or the financial accounting period which ends on a day other than 31<sup>st</sup> December is the basis period of REIT/PTF for that year of assessment, determined in accordance with the provisions under Section 21A of the Income Tax Act 1967.

## Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)
  
- [PR No. 2/2015](#)

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## Hyperlinks

- ii. Rental Income of REIT/PTF – Special Tax Treatment
  - Special treatment is given to promote the growth of REIT/PTF in Malaysia [effective year of assessment (“YA”)2005].
    - Rental income received by REIT/PTF from its investment income in real properties is treated as business income.
    - In ascertaining the adjusted income for a year of assessment:-
      - the amount of deductible expenses incurred in a year of assessment is restricted to the rental income for that year of assessment. Any excess of expenditure not absorbed is disregarded; and
      - no deduction of expenses is allowed against other sources of income if that source does not produce any income.
    - In ascertaining the statutory income for a year of assessment:-
      - capital allowances [“CA”] is restricted to the adjusted income from rental source for that year of assessment. Any excess CA not absorbed is disregarded.
- iii. Deductibility of Expenses
  - Expenses wholly and exclusively incurred in the production of rental income are allowable against that rental income.
  - Pursuant to the Income Tax (Deduction for Establishment Expenditure of REIT/PTF) Rules 2006, legal, valuation and consultancy fees for establishing REIT/PTF prior to approval by the Securities Commission are allowed for tax deduction in the basis period for the year of assessment in which the business commences.
- iv. CA and Industrial Building Allowance [“IBA”]
  - CA:-
    - REIT/PTF qualifies for CA which is deductible against the adjusted rental business income from rental source. Any unabsorbed CA and balancing allowance [“BA”] however, is disregarded.
    - When a REIT/PTF disposes of an asset, any balancing charge [“BC”] arises must not exceed the CA previously allowed on that asset. Statutory income will be increased by the BC.
  - IBA:-
    - A REIT/PTF that rents out its building will only eligible for IBA if the tenant uses the building as an industrial building.
    - Where a REIT/PTF acquires an industrial building from a company it is eligible to claim IBA on the qualifying capital expenditure of the building i.e. purchase price of the building.

## Hyperlinks

- Where a REIT/PTF acquires a building from a related company:-
  - Effective YA 2013, a company that disposes an industrial building to a REIT/PTF and holds not less than 50% of the residual profits or residual assets of the REIT/PTF and has claimed IBA prior to the disposal of the industrial building is deemed to have disposed of the industrial building for a sum equal to its residual expenditure on the first day of the company's final period (i.e. it would not be subject to BC and BA).
  - The REIT/PTF is eligible to claim IBA on the remaining balance of the residual expenditure of the building that continues to be used as industrial building.
  - Where an industrial building is disposed of together with the plant and machinery, BC or BA of the plant and machinery has to be computed separately.
  - In ascertaining whether a company disposed of or transferred an industrial building to REIT/PTF is subject to the above control transfer provisions, the company's entitlement to residual profits and residual assets of the REIT/PTF has to be examined.
  
- v. Income Tax Exemption
  - REIT/PTF is fully exempted from tax for a year of assessment if it distributes 90% or more of its total income in the basis period for that year of assessment to its unit holders. Where distribution made by the REIT/PTF to its unit holders is less than 90% of the total income, the whole chargeable income will be subject to tax at prevailing corporate tax rate.
  
  - Certain interest income earned by REIT/PTF is exempt from tax (such as interest from securities or bonds issued or guaranteed by the government, a bank or financial institution licensed under the Banking and Financial Institutions Act 1989, etc.)
  
  - Dividend income (single-tier) received by REIT/PTF from a resident company in Malaysia are exempted from tax.
  
  - Tax exempt income (e.g. single-tier dividends) received by REIT/PTF will not be included in computing the total income of REIT/PTF.
  
- vi. Distribution of Income by REIT/PTF to Unit Holders
  - REIT/PTF is given a grace period of 2 months from closing of its accounts to distribute 90% or more of its total income so as to qualify for tax exemption as the REIT/PTF level.

## vii. Deduction of Withholding Tax ["WT"]

- A REIT/PTF that is fully exempt from tax i.e. distributes 90% or more of its total income to its unit holders is required to deduct WT as summarised below:-

|                                |     |
|--------------------------------|-----|
| Non-resident company           |     |
| - Up to YA 2015                | 25% |
| - Effective YA 2016            | 24% |
| Foreign institutional investor | 10% |
| Individual / Others            |     |
| - resident                     | 10% |
| - non-resident                 | 10% |

- Accumulated income of REIT/PTF
  - The undistributed accumulated income from REIT/PTF from prior years could fall under one of the following categories:-
    - Exempted from tax at REIT/PTF level; or
    - Subjected to tax at REIT/PTF level.
  - The undistributed accumulated income of a REIT/PTF from prior year which has been subjected to tax at the REIT/PTF level would not be subject to further tax when distributed in the following years.

## viii. Filing of Income Tax Return Form

- REIT/PTF is required to file an income tax return form (i.e. Form TR) within 7 months from the date following the close of accounting period.

The above PR replaces PR No. 9/2012 dated 26<sup>th</sup> November 2012.

### **Guideline on the Procedures to Give Effect to the 50% Tax Reduction on Income Derived from Exploration and Exploitation of Petroleum in the Malaysia – Thailand Joint Development Area**

The IRB has recently issued the Guideline on the Procedures to Give Effect to the 50% Tax Reduction on Income Derived from Exploration of Petroleum in the Malaysia – Thailand Joint Development Area which provides guidance to production sharing contractors and other categories of taxpayers on the procedures to give effect to the 50% reduction on income derived from activities directly related to exploration and exploitation of petroleum in the Malaysia-Thailand Joint Development Area.

## Hyperlinks

- [Guideline on the Procedures to Give Effect to the 50% Tax Reduction on Income Derived from Exploration and Exploitation of Petroleum in the Malaysia – Thailand Joint Development Area](#)

## Tax Audit Framework - Finance and Insurance

The IRB has recently issued the Tax Audit Framework - Finance and Insurance which is applicable to the following industries:-

- i. Finance Industry
  - Conventional and Islamic financial institutions such as commercial banks, investment banks, Islamic banks, international Islamic banks as well as non-financial institutions such as development banks, agricultural banks and import-export banks.
  - Conventional and Islamic financial intermediaries which provide services such as finance leasing, factoring, credit card, brokerage for shares and bonds, financial market control etc.
- ii. Insurance Industry
  - Insurance and *Takaful* operators providing composite, life and general insurance.
  - Insurance and *Takaful* intermediaries such as broker, loss adjuster and licenced insurance agents.

The above Tax Audit Framework takes effect from 1<sup>st</sup> June 2015.

## Petroleum (Income Tax) (Deduction for Consultation and Training Costs for the Implementation of Flexible Work Arrangements) Rules 2015

Following the Budget 2014 announcement, the Petroleum (Income Tax) (Deduction for Consultation and Training Costs for the Implementation of Flexible Work Arrangements) Rules 2015 has been gazetted to provide a double deduction of the consultation fee and costs of training the employees incurred (restricted to RM500,000 per year) by a chargeable person in the basis period for a year of assessment for the implementation of flexible work arrangements or enhancement of existing flexible work arrangements certified by Talent Corporation Malaysia Berhad ["Talent Corp"]. The application for such certification must be received by Talent Corp within the period from 1<sup>st</sup> January 2014 to 31<sup>st</sup> December 2016. The double deduction is given for a period of 3 consecutive years of assessment commencing from the year in which the certification is given by Talent Corp.

The above Rules are deemed to have effect from the YA 2014.

## Hyperlinks

- [Tax Audit Framework - Finance and Insurance \(in \*Bahasa Malaysia\*\)](#)
- [Petroleum \(Income Tax\) \(Deduction for Consultation and Training Costs for the Implementation of Flexible Work Arrangements\) Rules 2015](#)

## GST – Guides

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

- Industry Guides
  - Warehousing Scheme (revised as at 22.06.2015)
- Specific Guides
  - Guide on GST-04 Online Submission
- Relief Order Guides
  - GST Refund Guidelines on the Acquisition of Services by Foreign Missions and International Organisations, Section 56, GST Act 2014 (issued on 29.06.2015)

## GST Orders

- i. A list of approved private medical equipment (additional items) that qualify for GST relief under Item 6, First Schedule of GST (Relief) Order 2014 has recently been updated (revised as at 09.06.2015).

*Note : For further information relating to the list of approved private medical equipment that qualify for GST relief under Item 6, First Schedule of GST (Relief) Order 2014 (as at 14.04.2015), kindly refer to our Tax Flash – May 2015 issue.*

- ii. A list of approved private educational equipment that qualify for GST relief under Item 5(a), (b) and (c), First Schedule of GST (Relief) Order 2014 has recently been updated (as at 27.05.2015).

## GST – Relief by Minister

The RMCD has recently issued the following Minister’s Reliefs to provide an understanding of GST treatment for Free Commercial Zone, Free Industrial Zone and Licenced Manufacturing Warehouse:-

- i. Minister’s Relief 1/2015
- ii. Minister’s Relief 2/2015

## Hyperlinks

➤ [List of Approved Private Medical Equipment](#)

➤ [Tax Flash – May 2015](#)

➤ [List of Approved Private Educational Equipment](#)

➤ [Minister’s Relief 1/2015](#)

➤ [Minister’s Relief 2/2015](#)

## GST – Frequently Asked Issues

The RMCD has recently issued the Director General's Decision 6/2015 on 7<sup>th</sup> July 2015 to provide clarification on GST frequently asked issues.

### Hyperlinks

- [Director General's Decision 6/2015](#)

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.