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PR No. 1/2016 – Agriculture Allowances

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 1/2016 – Agriculture Allowances to provide guidance on the type of qualifying agriculture expenditure, computation of agriculture allowances/charges and tax treatment of a grant/subsidy.

Salient points of the abovementioned PR include:-

- i. Qualifying/Non-Qualifying Agriculture Expenditure
 - Qualifying agriculture expenditure is capital expenditure incurred by a person on the:-
 - clearing and preparation of land for the purposes of agriculture
 - including terrace of land to combat erosion and to provide easy access to estate workers, where crops are planted on hilly ground;
 - planting (but not replanting) of crops on land cleared for planting;
 - construction on a farm of a road or bridge
 - including construction of drains;
 - construction on a farm of a building used for the purposes of a business of that person which consists wholly or partly of the working of the farm
 - including estate office buildings, mills and godowns;

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- [Inland Revenue Board](#)

- [PR No. 1/2016](#)

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- construction on that farm of a building which is provided by that person for the welfare of persons or as living accommodation for a person, employed in or in connection with the working of that farm
 - including labour quarters, places of worship and community hall;
 - if the farm ceases to be worked, that building is likely to be of little or no value to any person except in connection with the working of another farm;

For building used as living accommodation, election may be made under the proviso to Paragraph 42(1) of Schedule 3 to the Income Tax Act 1967 ["the Act"] to treat such building as an industrial building i.e. to claim industrial building allowances instead of agriculture allowances.
- The expenditure incurred on:-
 - planting new crop of any product; or
 - replacing old crop with a crop of different product;

relates to new planting and would be considered as qualifying agriculture expenditure.
- Non-qualifying agriculture expenditure are:-
 - cost of land;
 - cost of plant and machinery used in the farm;
 - expenditure incurred for non-qualifying activities (e.g. nurseries, flowering and ornamental plants).
- The date of incurrence of qualifying agriculture expenditure is on the day the expenditure becomes payable. However, expenditure on a constructed building is deemed to be incurred on the day on which the building is completed.
- A person who has incurred qualifying agriculture expenditure in relation to an asset and a business of his is entitled to claim agriculture allowances for a year of assessment if:-
 - he is the owner of the asset at the end of the basis period; and
 - the asset is in use in the business of a farm or plantation.
- Replanting expenditure in relation to the replacement of a crop by a crop of the same product may be allowed a deduction under Section 34(6)(d) of the Act. Replacement of a vegetable by a vegetable of a different kind (applicable to vegetables having a relatively short life span when compared to fruits or other crops) may be regarded as replanting for purposes of Section 34(6)(d) of the Act.

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ii. Rates of Agriculture Allowances

- The rates of agriculture allowances depends on the type of expenditure as follows:-

Qualifying Agriculture Expenditure	Rate of Allowance
Clearing and preparation of land for purposes of agriculture	50%
Planting of crops on land cleared for planting	50%
Construction of roads or bridges on a farm	50%
Construction on a farm of a building for the welfare of persons or as living accommodation for a person employed for the working of a farm	20%
Construction of any other building	10%

iii. Apportionment of Agriculture Allowances upon Sale or Transfer of an Asset

- A person (transmitter) who has incurred qualifying agriculture expenditure on an asset for the purpose of a business of his may transfer or transmit the asset by operation of law or otherwise to some other person (recipient).
- Transmitter
 - Entitled to claim agriculture allowances up to the date of disposal in year of assessment of disposal if asset was in use one (1) month before disposal.
 - Formula for apportionment of agriculture allowances:-

$$\frac{\text{Days owned before transfer}}{365 \text{ days}} \times \text{Agriculture Allowances}$$

- Recipient
 - Entitled to claim the remaining agriculture allowances that would have been made to the transmitter if the asset had not been transferred.
 - Claims for the remaining apportioned agriculture allowances by the recipient must be in respect of the same year of assessment as when the transmitter claims the apportioned agriculture allowances.
- The apportionment of agriculture allowances is only applicable between the transmitter and recipient for the same year of assessment i.e. both having basis period ending on the same day. Otherwise, only the transmitter will be entitled to the apportioned agriculture allowances which is computed up to the date of transfer or sale of the asset. The remaining balance of agriculture allowances is disregarded and cannot be claimed by anyone.

Hyperlinks

iv. Agriculture Charges

- Disposal of farm assets
 - An agriculture charge is made to a person who disposed of his farm asset within 5 years from the date of incurring the expenditure. The agriculture charge is equal to the aggregate of all those agriculture allowances that have been made to him for all the years of assessment.
 - The proceeds from the disposal of an asset are not relevant in the computation of agriculture charge.
- Grant or other payment by the Government, State Government or statutory authority
 - Subsidies or other payments in the form of capital or grants received from the Federal Government or State Government for the purpose of alleviating the burden of capital expenditure in carrying on agricultural or plantation activities will be accorded the following tax treatment:-
 - the grant received is not taxable; and
 - expenses financed from the grant are not eligible for any tax deduction or any allowances under Schedule 3 of the Act.
- Disposal of asset after business ceases
 - Where an asset is disposed of by a person after the end of the basis period for a year of assessment in which his business has ceased permanently, the disposal shall be deemed to have been made in the basis period the business ceased.
- Demolition of building
 - Demolition of building is not a disposal and no agriculture charge arises on such a demolition.
- Control transfers
 - Control transfers provision will apply if:-
 - a person disposes of or transfers an asset in which agriculture allowances have been made or would have been made and the transferor or transmitter must be carrying on a business;
 - one of the controlled situations in Paragraph 38(1) of Schedule 3 of the Act exists at the time of disposal or transfer; and
 - the recipient uses the asset in a business and is eligible for agriculture allowances.

v. Election to Spread Agriculture Charges

- A person who has disposed of a farm may elect that the amount of agriculture charges be divided equally by the number of years of assessment for which allowances are made.

Special Relief for Middle Income Taxpayers

Following the 2016 Budget Recalibration announcement, the Income Tax (Exemption) Order 2016 has been gazetted to provide tax exemption of RM2,000 in respect of the chargeable income of a resident individual with total aggregate income of not exceeding RM96,000.

The above Order shall only apply for the year of assessment 2015.

IRB's Announcement on the Reduction of Penalty for Voluntary Disclosure and Waiver of Tax Increase for the Settlement of Tax Arrears

Following the 2016 Budget Recalibration announcement, the IRB has recently issued a media release dated 10th February 2016 on the following matters:-

- i. Reduction of penalty at specific rate is offered to taxpayers who opt for voluntary disclosure in respect of the following cases:-
 - Failure to submit income tax return forms or petroleum tax returns for previous years of assessment; and
 - Declaration of correct income against the income declared in the income tax return forms submitted earlier.
 - Failure to report the gains derived from disposals of real properties within a stipulated period of time; and
 - Failure to present stampable instruments within a stipulated period of time by stamp duty payers.
- ii. Waiver of tax increase is offered to taxpayers who wish to fully settle their income tax, petroleum tax, real property gains tax ["RPGT"] or withholding tax arrears on or before 15th December 2016.

The reduction of penalty and waiver of tax increase apply to the tax penalty/increase imposed under the relevant laws as summarised below:-

a. Tax Penalty (Reduction)	Applicable Laws
<ul style="list-style-type: none"> • Voluntary disclosure in settling audit and investigation cases 	Sections 112(3) and 113(2) of the Act or Sections 51(3) and 52(2) of the Petroleum Income Tax Act 1967 ["the PITA"]
<ul style="list-style-type: none"> • Late submissions of RPGT forms via voluntary disclosure 	Section 29(3) of the RPGT Act 1976
<ul style="list-style-type: none"> • Settlement of late stamping via voluntary disclosure 	Section 47A(1) of the Stamp Act 1949

Hyperlinks

- [Income Tax \(Exemption\) Order 2016](#)
- [IRB Media Release dated 10th February 2016](#)

Hyperlinks

b. Tax Increase (Waiver)	Applicable Laws
<ul style="list-style-type: none"> Settlement of income tax arrears under the Act 	Sections 103, 107B(3), 107B(4), 107C(9) and 107C(10) of the Act
<ul style="list-style-type: none"> Settlement of petroleum tax arrears under the PITA 	Sections 48 and 49A(1) of the PITA
<ul style="list-style-type: none"> Settlement of RPGT arrears under the RPGT Act 1976 	Sections 21(4) and 21B of the RPGT Act 1976
<ul style="list-style-type: none"> Settlement of withholding tax arrears under the Act 	Section 107A(2) of the Act; or Section 109 (2), 109B(2), 109D(3), 109E(4), 109F(2) and 109G(2) of the Act

Subject to certain requirements, the reduced rates offered for penalties applicable under the relevant laws in respect of voluntary disclosure / audit / investigation cases under income tax, petroleum income tax, RPGT and stamp duty are as below:-

a. Income Tax / Petroleum Tax	Period of Payment
<ul style="list-style-type: none"> Voluntary Disclosure 	
15%	Full settlement made within 30 days from the date of the Notice of Assessment for audit case / Letter of Undertaking signed for investigation case
20%	Settlement in 6 installments or less from the date of the Notice of Assessment for audit case / Letter of Undertaking signed for investigation case

➤ [IRB's Operational Guidelines No. 1/2016](#)

Hyperlinks

a. Income Tax / Petroleum Tax	Period of Payment
<ul style="list-style-type: none"> Audit Cases <ul style="list-style-type: none"> 25% Full settlement for additional tax and penalty within 30 days from the date of the Notice of Assessment 35% Settlement of additional tax and penalty in 6 installments or less Investigation Cases <ul style="list-style-type: none"> 25% Full settlement on the date of the agreement / Letter of Undertaking signed by taxpayers 35% 50% initial payment made on the date of the agreement / Letter of Undertaking signed by taxpayers and the balance in 6 installments or less Investigation Cases - Voluntary disclosure made within 14 days from the date of visit for investigation <ul style="list-style-type: none"> 20% Full settlement on the date of the agreement / Letter of Undertaking signed by taxpayers 25% 50% initial payment made on the date of the agreement / Letter of Undertaking signed by taxpayers and the balance in 6 installments or less 	

b. RPGT	Period of Payment
<ul style="list-style-type: none"> Voluntary Disclosure <ul style="list-style-type: none"> 5% Full settlement made within 30 days from the date of the Letter of Undertaking signed by taxpayers 8% Settlement via 6 installments or less from the date of the Letter of Undertaking signed by taxpayers 	

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c. Stamp Duty	Period of Payment
<ul style="list-style-type: none"> Voluntary Disclosure 	
5%	Stamping (payment of duty) done from 1 st March 2016 to 30 th June 2016
8%	Stamping (payment of duty) done from 1 st July 2016 to 15 th December 2016

The waiver of tax increase for tax arrears will be considered for cases where taxpayers have:-

- tax arrears; or
- failed to remit withholding tax and penalty; or
- tax arrears which comprise not only increase on tax; or
- granted the offer previously but failed to make payment
- not been issued with the winding up or bankruptcy order by the court

On the implementation of the waiver of tax increase:-

- only the tax increase (per table above) will be waived if taxpayers meet all the requirements
- payment by lump sum or equal instalments can be considered up to 15th December 2016
- for cases under civil proceedings, the waiver of tax increase is subject to full payment of cost and interest by the court (if any)
- waiver of tax increase will only be effected upon full settlement

The above offers are effective 1st March 2016 to 15th December 2016. The eligibility of these offers depends on the merits of the case and subject to the relevant regulations set forth by the IRB.

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