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PR No. 4/2015 – Entertainment Expenses

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 4/2015 – Entertainment Expenses to provide guidance on tax treatment of entertainment expenses as a deduction against gross income and steps to determine the amount of entertainment expense allowable as a deduction.

Salient points of the abovementioned PR include:-

- i. Deduction for Entertainment Expense
 - An entertainment expense that is wholly and exclusively incurred in the production of gross income under Section 33(1) of the Income Tax Act 1967 ["the Act"] is allowed a deduction of 50%.
 - If the entertainment expense falls within any of the specified categories in provisos (i) to (viii) of Section 39(1)(l) of the Act, then it qualifies for a deduction of 100%.

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- [Inland Revenue Board](#)

- [PR No. 4/2015](#)

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- ii. Principles in Determining the Allowable Entertainment Expenses
- To determine whether an expense can be allowed as deduction and the amount to be allowed as a deduction, the following steps must be adhered to:-
 - Determine whether the expense falls within the meaning of entertainment as provided in Section 18 of the Act;
 - Determine whether the expense is wholly and exclusively incurred in the production of gross income under Section 33(1) of the Act;
 - If affirmative, determine whether the expense is included in any of the categories of expenses in provisos (i) to (viii) of Section 39(1)(l) of the Act:-
 - for expense included in the provisos under Section 39(1)(l) of the Act, a deduction of 100% against the gross income;
 - for expense not included in the provisos under Section 39(1)(l) of the Act, a deduction of 50% against the gross income.
 - Pursuant to Section 18 of the Act, entertainment includes:-
 - a. the provision of food, drink, recreation or hospitality of any kind; or
 - b. the provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in paragraph (a) above, by a person or an employee of his, with or without consideration paid whether in cash or in kind, in promoting or in connection with a trade or business carried on by that person.
- iii. Entertainment Expense which Qualifies for 100% Deduction
- The provision of entertainment expenses to employees except where such provision is incidental to the provision of entertainment for others [proviso (i) of Section 39(1)(l) of the Act]
 - Examples are expenses on free meals and refreshment, annual dinners, outings, family day or club membership for employees.
 - The provision of entertainment for payment in the ordinary course of business [proviso (ii) of Section 39(1)(l) of the Act]
 - Examples are providing cultural show by restaurant or hotels at their premises to entertain their customers and meals provided by airlines or other transportation business to its passengers.

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- The provision of promotional gifts at trade fairs or trade exhibitions or industrial exhibitions outside Malaysia for promotion of export from Malaysia [proviso (iii) of Section 39(1)(l) of the Act]
 - Examples are expenditure incurred on samples of products of the business, small souvenirs, bags, and travel tickets provided as gifts to customers or visitors at the trade fairs or trade exhibitions or industrial exhibitions held outside Malaysia.
- The provision of promotional samples of products of the business [proviso (iv) of Section 39(1)(l) of the Act]
 - Examples are free samples of products of the business given to schools or for certain other functions.
- The provision of entertainment for cultural or sporting events open to members of the public wholly to promote the business [proviso (v) of Section 39(1)(l) of the Act]
 - For the purpose of this proviso, cultural event means an event which is specifically held to promote arts activities.
 - Examples of cultural or sporting events are:-
 - Promotion of arts such as painting, sculpture, music, drama and dance (cultural event).
 - Badminton tournaments, golf tournaments, motor racing and swimming events (sporting event).
- The provision of promotional gifts within Malaysia of articles incorporating the logo of the business [proviso (vi) of Section 39(1)(l) of the Act]
 - Articles given away as promotional gifts need not necessarily be the products of the business and the company's logo or the logo of its products can be affixed or embossed on those articles.
 - The promotional gifts should be given to the public on a non-discriminatory basis.
- The provision of entertainment related wholly to sales arising from the business [proviso (vii) of Section 39(1)(l) of the Act]
 - Examples of entertainment expense incurred related wholly to sales arising from the business are as follows:-
 - expenses on food and drink for launching of new product;
 - redemption vouchers given for purchases made;
 - cash vouchers, discount vouchers, shopping vouchers, meal vouchers, concert or movie tickets;
 - redemption of gifts based on a scheme of accumulated points;
 - free gifts for purchases exceeding a certain amount;
 - "free" maintenance/service charges or contribution to sinking fund by property developers;
 - lucky draw prizes given to customers for purchase made;

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- expenditure on trips given as incentive to dealers for achieving targets; and
 - expenditure incurred on refreshment given to its customer while waiting for their cars to be serviced.
 - The provision of leave passage benefit provided by any employees to facilitate a yearly event within Malaysia [proviso (viii) of Section 39(1)(l) of the Act]
 - Examples are the costs of travelling (leave passage), food, drinks and accommodation incurred by a company during a family day trip for its employees and immediate family members of the employees at Pulau Manukan, Sabah.
- iv. Entertainment Expense which Qualifies for 50% Deductions
- Entertainment expenditure which is wholly and exclusively incurred in the production of gross income under Section 33(1) of the Act but does not fall within any of the categories of entertainment expenses specified in provisos (i) to (viii) of Section 39(1)(l) of the Act only qualifies for a 50% deduction against gross income.
- v. Promotion Expense is Part of Entertainment Expense
- Effective year of assessment ["YA"] 2014, entertainment expense as defined under Section 18 of the Act also includes the provision of entertainment incurred for the purpose of:-
 - promotion which is in connection with a business carried on; and
 - with or without any consideration and paid whether in cash or in kind.
 - The tax treatment for promotional expenses which have an entertainment element are allowed:-
 - a deduction of 50% (Example 14 of the PR); or
 - a deduction of 100% if the expenses falls under the provisos (i) to (viii) of Section 39(1)(l) of the Act (Example 15 of the PR).
 - Promotional expenses which do not have an entertainment element are allowed a full deduction of 100% under Section 33(1) of the Act (Example 13 of the PR).

PR No. 5/2015 – Taxation of Limited Liability Partnership

The IRB has recently issued the PR No. 5/2015 – Taxation of Limited Liability Partnership ["LLP"] to provide guidance and updates on the tax treatment accorded to an approved LLP. This PR replaces the PR No. 3/2014 dated 9th May 2014.

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

➤ [PR No. 5/2015](#)

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- i. Responsibilities of Compliance Officer of an LLP
- Compliance officer or partner of the LLP is required to keep complete accounting records of the business of the LLP. In addition, it is provided that for a partnership or company that has converted to an LLP, accounts or documents of the partnership are still required to be kept by the LLP for a period of 7 years even though the entity has been dissolved after the conversion.
- ii. Assessments related to Years of Assessment of a Partnership or Company before conversion to an LLP
- Every partner of a partnership shall continue to be personally assessable and chargeable to tax for any years of assessment prior to the conversion.
 - For a company that has converted to LLP, the LLP shall be assessable and chargeable to tax for any years of assessment prior to the conversion.
 - Any assessment associated with income of a partnership or company before conversion to an LLP is made as follows:-

| Type of business before conversion to LLP- | Assessment is made under the name of- |
|--|---|
| i) Partnership | Each partner in the partnership before conversion to an LLP |
| ii) Company | LLP |

Note: For further information relating to the PR No. 3/2014, kindly refer to our Tax Flash – June 2014 issue.

PR No. 6/2015 – Qualifying Expenditure and Computation of Capital Allowances

The IRB has recently issued the PR No. 6/2015 – Qualifying Expenditure and Computation of Capital Allowances to provide guidance on the tax treatment of qualifying expenditure [“QE”] on plant and machinery for the purpose of claiming capital allowances [“CA”] and computation of CA for expenditure on plant and machinery.

Salient points of the abovementioned PR include:-

- i. QE
- Plant and Machinery
 - Apart from the cost of plant or machinery, incidental expenditure incurred on the provision of the plant and machinery is also included as QE for CA claims. Incidental expenditure includes:-

➤ [Tax Flash – June 2014](#)

➤ [PR No. 6/2015](#)

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- Alteration of an existing building for the purpose of installing plant or machinery and other expenditure incurred incidentally to the installation thereof;
 - Expenditure incurred on preparing, cutting, tunnelling or levelling land in order to prepare a site for installation of machinery or plant provided that the expenditure incurred does not exceeds 10% of the aggregate cost of plant or machinery and the cost of preparing the site;
 - Expenditure incurred on fish ponds, animal pens, chicken houses, cages, buildings (other than those used as living accommodation of a director, an individual having control of a business or an individual who is a member of the management, administrative or clerical staff) and other structural improvements on land which are used for the purposes of poultry farms, animal farms, inland fishing industry and other agricultural or pastoral pursuits.
- Vehicle
 - Commercial Vehicle
 - Cash price of the vehicle including basic accessories (offered by all motor vehicle dealers, optional accessories are not included) and mandatory registration fee.
 - Road tax, insurance and hire purchase interest incurred on recurring basis are not eligible for CA claim but will be allowable for tax deduction under Section 33(1) of the Act.
 - Private expenses such as reserve price for vehicle registration number, number tendered and service fee are not eligible for CA claim.
 - Private Motor Vehicle
 - New motor vehicle with total cost not exceeding RM150,000, QE is restricted to RM100,000.
 - New motor vehicle with total cost exceeding RM150,000, QE is restricted to RM50,000.
 - Used motor vehicle, QE is restricted to RM50,000.
- Hire Purchase Asset
 - The QE incurred in the basis period for a year of assessment is the capital portion of installment payments that have been made in that basis period based on the terms and conditions of the hire purchase agreement.
- Asset that has been used for Non-Business Purpose or Outside Malaysia
 - Where an asset was initially used for non-business purpose and then brought into use for business purpose, the QE of the asset is the market value at the time it is brought into use for business purpose.
 - No initial allowance shall be given, but only annual allowance can be claimed on that asset.

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- Where an asset was used for the purpose of business outside Malaysia and brought into use for the business in Malaysia, the QE will be the market value or the net book value of the asset, whichever is lower, on the day it was brought into use in Malaysia.
 - Asset Installation Services
 - Payment made to a non-resident person for installation services or operation of plant and machinery is part of the capital expenditure and eligible for CA if the following conditions are fulfilled:-
 - The installation or operation services of the plant and machinery are rendered in Malaysia; and
 - The applicable withholding tax ["WT"] and penalty on WT (if any) have been deducted and remitted to the IRB.
 - Expenditure on Dismantling and Removing Asset and Restoring the Site
 - Expenditure on dismantling, removing and restoring the site shall deem to be included as part of the residual expenditure of asset when it is disposed of in the basis period for a year of assessment in computing balancing charge or allowance.
 - Such expenditure is only allowed to be claimed if:-
 - it is related to an asset that has been used in the business and is disposed of in the basis period for a year of assessment;
 - instructions for dismantling and removing the asset and restoring the site are in accordance with the obligations under a written law or agreement; and
 - the asset which has been dismantled and removed cannot be reused in any other business of that person or any other person.
 - If such expenditure is incurred after the company ceased its business operation, it is deemed to be incurred in the basis period for the year of assessment the business is terminated.
 - Foreign Exchange Difference
 - Only realised gain or loss on foreign exchange will be taken into account for the purposes of determining QE:-
 - gain on foreign exchange is to be deducted from the residual expenditure; and
 - loss on foreign exchange is to be added to the residual expenditure.
 - A person may choose to have that gain or loss on foreign currency exchange be deducted or added from or to the original cost of the asset.
- ii. Persons Eligible to Claim CA
- Owner of the asset and it is used for business purposes at the end of the basis period for a year of assessment.

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- iii. When the QE is Incurred
 - For an asset that is purchased other than hire purchase, QE is incurred when the asset is capable of being used for business purposes.
- iv. Assets with Expected Life Span of Less Than 2 Years
 - Expenditure incurred on the above assets is to be dealt with on a replacement basis.
 - The original cost or cost of purchase for the first time of the asset is not regarded as QE and not entitled to CA.
 - The cost of replacing such assets is allowable for tax deduction under Section 33(1)(c) of the Act.

The above PR and PR No. 12/2014 replace PR No. 2/2001 dated 18th January 2001.

Note: The PR No. 12/2014 relating to Qualifying Plant and Machinery for claiming Capital Allowances has been issued on 31st December 2014. For further information relating to PR No. 12/2014, kindly refer to our Tax Flash – February 2015 issue.

➤ [Tax Flash – February 2015](#)

Tax Audit Framework on WT

The IRB has recently uploaded to its website the 2015 Tax Audit Framework on WT which aims to ensure that tax audit on WT is carried out in a fair, transparent and impartial manner.

Salient points of the abovementioned framework include:-

- i. Years of Assessment Covered
 - Generally, a tax audit covers a period of 3 years of assessment which may be extended to cover a period up to 5 years of assessment depending on the issues uncovered during an audit.
- ii. Examinations of Records
 - The audit officer should be allowed to examine all business records including physical inspection of the equipment for the purpose of verifying the claims made by the payer.
- iii. Audit Time Frame
 - Normally, the time required to complete an on-site examination of records is between 1 to 3 days.
- iv. Settlement of Audit
 - After concluding the audit work, the IRB will inform the payer on the audit findings which will cover the following areas:-
 - audit issues raised;
 - reasons and rationale for raising the audit issues; and
 - the amount of proposed tax adjustments (if any) and the years of assessment involved.

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- An official objection to the proposed tax adjustments can be filed by the payer within 21 days from the date of the notification by the IRB. Otherwise, the payer shall be deemed to have agreed to the proposed tax adjustments.
 - Subsequently, a settlement letter for the audit case with appropriate penalty imposed under Section 107A(2) / Section 109(2) / Section 109B(2) / Section 109D(3) / Section 109E(4) / Section 109F(2) / Section 109G(2) of the Act will be issued. Likewise, a letter will be issued to inform that the audit has been finalised without any adjustment.
 - The time frame for settlement of a tax audit on WT is 6 months from the commencement of audit.
- v. Appeals
- Effective 1st January 2013, a payer who is required to remit the WT to the IRB under Sections 109, 109B or 109F of the Act can appeal to the Special Commissioners of Income Tax ["SCIT"] if such amount is not liable to be paid under the Act. The appeal must be made by the payer within 30 days from the date the amount is due to be paid to the IRB via Form CP15D.
 - However, an appeal cannot be made under the following circumstances:-
 - an appeal has been filed to the SCIT by the non-resident person to whom the payer is liable to pay the amount under Section 4A or Section 4(f) of the Act relating to the WT involved;
 - payment made under Section 4A or Section 4(f) of the Act to the non-resident has been disallowed as a tax deduction under Section 39 of the Act in arriving at the adjusted income of the payer; or
 - the WT due to be paid has not been remitted to the IRB by the payer.
 - Should either party be dissatisfied with the decision of the SCIT, the aggrieved party may apply to have the case heard in the High Court and thereafter to the Court of Appeal.

The above Tax Audit Framework on WT takes effect from 1st August 2015.

Deduction for Pre-Commencement Expenses in relation to RAPID

Pursuant to the Income Tax (Deduction for Pre-Commencement Expenses in relation to RAPID) Rules 2013, a qualifying person is allowed a deduction for certain pre-commencement expenses incurred in respect of a qualifying activity carried out in Refinery and Petrochemical Integrated Development ["RAPID"]. The Income Tax (Deduction for Pre-Commencement Expenses in relation to RAPID) (Amendment) Rules 2015 has been gazetted to provide that the pre-commencement expenses shall be incurred within 7 years (previously 4 years) prior to the date of commencement of the qualifying activity and that date shall not be earlier than 1st October 2010.

➤ [Income Tax \(Deduction for Pre-Commencement Expenses in relation to RAPID\) Rules 2013](#)

The above amendment Rules shall be deemed to have come into effect from the YA 2010.

Note: For further information relating to the Income Tax (Deduction for Pre-Commencement Expenses in relation to RAPID) 2013, please refer to our Tax Flash - March 2013 issue.

GST – List of Taxable and Non-Taxable Goods

The Royal Malaysian Customs Department [“RMCD”] has on 13th August 2015 updated the handbook on the list of taxable and non-taxable goods to provide a guide for shop owners on the classification of zero-rated [not subject to Goods and Services Tax (“GST”)] and standard rated (subject to GST) supply. The list comprises 13 categories of sundry goods as listed below:-

- Grocery
- Food and beverages
- Fruits and vegetables
- Beauty and health
- Household
- Hardware
- Kitchen ware
- Garment, footwear, bag and accessories
- Medicine
- Books and stationery
- Toy and games
- Pets
- Others

GST Return Guidelines

The RMCD has recently issued the GST-03 Guidelines – GST return to provide guidance on completion of the GST return form.

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.

Hyperlinks

- [Tax Flash – March 2013](#)
- [Updated List of Taxable Goods and Non-Taxable Goods](#)
- [GST-03 Guidelines – GST Return](#)