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### PR No. 4/2016 – Tax Incentives for Child Care Centre and Kindergarten Operators

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 4/2016 – Tax Incentives for Child Care Centre and Kindergarten Operators to explain the tax treatment on the incentives given to child care centre and kindergarten operators.

Salient points of the abovementioned PR include:-

- i. Tax incentives for Child Care Centre Operators
  - A child care centre is a premises where 4 or more children under the age of 4 years from more than one household are cared for by its workers for a fee.
  - It must be registered with the Department of Social Welfare under the Ministry of Women, Family and Community Development and it is subject to the Child Care Centre Act 1984.

## Hyperlinks

- [Moore Stephens Malaysia](#)
  - [Moore Stephens International](#)
  - [Inland Revenue Board](#)
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- [PR No. 4/2016](#)

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- A child care centre operator is given a 100% tax exemption on his business statutory income for a period of 5 consecutive years of assessment commencing from the year of assessment ["YA"] 2013 for an existing child care centre. For a new child care centre that commences business from the YA 2013 onwards, the 5 year exemption period commences from the date the first invoice is issued.
  - Any amount of the adjusted loss incurred from the year of assessment in which the business of a child care centre commences until the year of assessment immediately prior to the exempt years of assessment and during the exempt years of assessment can be carried forward to the post-exempt years of assessment until it is fully utilised.
  - Industrial building allowance at the rate of 10% per annum can be claimed on a building if the individual or company is the owner of the building and that building is used by the owner for the purpose of a business of a child care centre.
- ii. Tax Incentives for Kindergarten Operators
- A kindergarten is a premises where 10 or more children of the age of 4 to 6 years are receiving early preparation (pre-school education) before they enter formal schooling at the age of 7 years.
  - It must be registered with the State Education Department under the Ministry of Education and it is subject to the Education Act 1996.
  - The tax incentives applicable to kindergarten operators are similar to those given to child care centre operators mentioned above.
- iii. Non-Application Rule
- The operators of private pre-school whose activities are integrated with the private primary school are not eligible for the tax exemption of statutory income mentioned above.

### **PR No. 5/2016 – Tax Incentives for Employers Who Provide Child Care Centres**

The IRB has recently issued the PR No. 5/2016 – Tax Incentives for Employers Who Provide Child Care Centres to provide guidance on the tax treatment on the incentives given to employers who provide child care centre facilities for the benefit of their employees.

Salient points of the abovementioned PR include:-

- i. Existing Tax Treatment
- Section 34(6)(i) of the Income Tax Act 1967 ["the Act"] allows the expenses (not being capital expenditure) incurred by an employer for the provision and maintenance of a child care centre provided for the benefit of the employees in computing its adjusted business income.

[▶ PR No. 5/2016](#)

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- Child care allowances paid by the employer to his employees who have children are also allowable expenses under Section 33(1) of the Act in computing the adjusted business income.
  - Employees who receive child care allowances from the employer will be subject to income tax as part of his gross income from his employment. However, tax exemption up to RM2,400 a year is given on the allowances received.
- ii. Additional Tax Incentive
- Effective YA 2013, further deduction for the following expenses are given to the employers who provide their own child care centres for the benefit of their employees:-
    - Expenses in respect of the provision and maintenance of child care centres; and
    - Expenses in respect of child care allowances paid to employees
- iii. Claiming for Industrial Building Allowance
- Pursuant to Paragraphs 42A(2) and 16B of Schedule 3 of the Act, an employer who builds or purchases a building and operates it as a child care centre for the children of his employees is allowed to claim industrial building allowance.

For the purposes of the above, the child care centre must be registered with the Department of Social Welfare under the Child Care Centre Act 1984.

### **PR No. 6/2016 – Group Relief for Companies**

The IRB has recently issued the PR No. 6/2016 – Group Relief for Companies to provide guidance on tax treatment of group relief for companies which are resident and incorporated in Malaysia.

The provision of group relief under Section 44A of the Act allows a company in a group to surrender (referred to as “surrendering company”) not more than 70% of its adjusted loss in the basis period for a year of assessment to one or more related companies (referred to as “claimant company”) within the same group.

Salient points of the abovementioned PR include:-

- i. Qualifying Criteria for Group Relief
- To qualify for group relief for any year of assessment, both the surrendering and the claimant companies must satisfy the following criteria:-
    - incorporated in Malaysia;
    - resident in Malaysia in the basis year for that year of assessment;
    - related companies throughout the basis period for that year of assessment and the 12 months period immediately preceding that basis period;

➤ [PR No. 6/2016](#)

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- have a paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for that year of assessment;
  - have a 12 month basis period ending on the same date;
  - make an irrecoverable election to surrender or claim an amount of adjusted loss in the return form furnished for that year of assessment under Section 77A of the Act; and
  - subject to tax at the appropriate rate as specified in Paragraph 2 of Part I of Schedule 1 of the Act.
  - The claimant company must also have a defined aggregate income for that year of assessment.
- ii. Definition of Related Companies and Eligibility for Group Relief
- To be eligible for group relief, the surrendering and claimant companies must pass the following test:-
    - First Level Test
      - For the purpose of group relief, a surrendering company and a claimant company are related companies if at least 70% of the paid-up capital in respect of ordinary shares:-
        - of the surrendering company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the claimant company; or
        - of the claimant company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the surrendering company; or
        - of the surrendering company and the claimant company are directly or indirectly owned by another company resident and incorporated in Malaysia.
    - Second Level Test
      - The company concerned must be beneficially entitled (directly or indirectly) to at least 70% of the residual profits and residual assets of the other company in proportion to their equity interest.
      - “Residual profits” means profits of the claimant or surrendering company after deducting any dividend which is of:-
        - a fixed amount or at a fixed rate per cent of the nominal value of the shares of that company; or
        - a fixed rate per cent of the profits of that company,
 but before deducting any return due to any non-commercial loan creditor which is not of:-
        - a fixed amount or at a fixed rate per cent of the amount of the borrowing; or
        - a fixed rate per cent of the profits of that company,

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and where that company has no residual profit, a notional amount of RM100 is deemed to be the residual profit of that company.

- Residual assets are net assets of the claimant or surrendering company after distribution made to:-
  - creditors of that company in respect of commercial loans; and
  - holders of shares other than ordinary share, and where that company has no residual asset, a notional amount of RM100 is deemed to be the residual assets of the company.

### iii. Companies not Eligible for Group Relief

- Group relief is not applicable to a surrendering company or a claimant company for the basis period for a year of assessment where the period during which that company:-
  - is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investment Act 1986;
  - is exempt from tax on its shipping profits under Section 54A, or a ministerial exemption under paragraph 127(3)(b) or Section 127(3A) of the Act;
  - has made a claim for reinvestment allowance under Schedule 7A of the Act;
  - has made a claim for deduction in respect of an approved food production under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006;
  - has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of Proprietary Rights) Rules 2002;
  - has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of a Foreign Owned Company) Rules 2003; or
  - has made a claim for deduction under any Rules made under Section 154, and those Rules provided that Section 44A of the Act shall not apply to that company.

### **Guidelines on Tax Clearance Letter Application for Companies, LLP and Labuan Entities**

The IRB has recently issued the Guidelines on Tax Clearance Letter ["SPC"] Application for Companies, Limited Liability Partnerships ["LLP"] and Labuan Entities. The Guidelines provide guidance on the procedures and requirements for application of SPC for Companies, LLP and Labuan Entities as follows:-

- To apply for SPC, a company / LLP / Labuan entity is required to submit the Income Tax Return Form until the latest year of assessment.

- [Operational Guidelines No. 3/2016 - Tax Clearance Letter Application for Companies, LLP and Labuan Entities](#)

- If the electronic return form for the latest year of assessment has not been made available, manual form can be obtained from any IRB branch. The completed form has to be submitted together with the SPC application letter/form to the IRB branch / Labuan Entities Unit that handles the relevant income tax file.
- The relevant documents as specified in the Guidelines are required to be submitted together with the SPC application letter/form.

The SPC will be issued by the IRB after all relevant and complete documents are received and income tax (including the employees' monthly tax deductions) are fully paid.

### Revised Operational Guidelines on Reduction of Penalty and Waiver of Tax Increase

The IRB has issued the revised Operational Guidelines No. 1/2016 to extend the offer for reduction of penalty to taxpayers for transfer pricing ["TP"] audit cases.

The reduced rates offered in respect of TP audit case under income tax and petroleum income tax are as below:-

Rate of Penalty	TP Documentation
15%	Available
25%	Not available

The above offer is applicable to cases being audited/finalised during the period from 1<sup>st</sup> March 2016 to 15<sup>th</sup> December 2016.

**Note:** For further information on the above Guidelines, kindly refer to our *Tax Flash – March 2016 issue*.

### Revised Tax Collection Framework

The IRB has recently issued the revised Tax Collection Framework to replace the previous Tax Collection Framework issued in August 2015 with some amendments/updates as follows:-

- i. Paragraph 2.2.4(a)
  - Taxpayers (previously stated as employers) who failed to make any installment payment per CP500 within 30 days of the due date shall be liable to a 10% penalty under Section 107B(3) of the Act.

## Hyperlinks

➤ [Operational Guidelines No. 1/2016 \(Amended on 1<sup>st</sup> August 2016\) \(in Bahasa Malaysia\)](#)

➤ [Tax Flash – March 2016](#)

➤ [Tax Collection Framework \(Revised 1/2016\) \(in Bahasa Malaysia\)](#)

## Hyperlinks

- ii. Paragraph 2.3.2(e)
  - A company, body of persons, co-operative or LLP, (other than a company which falls under Section 107C(4A) of the Act), which first commences operation and the basis period for that year is not less than 6 months is required to furnish an estimate of tax payable not later than 3 months from the date of commencement of its business operations.
  
- iii. Paragraphs 4.2.4(a) and (d)
  - The exemption from remittance of 3% of the consideration applies to:-
    - real property / shares in a property company owned by Malaysian citizen and permanent resident for more than 5 years.
    - disposal of chargeable assets to an Amanah Pelaburan Hartanah (REIT) or Amanah Saham Hartanah (PTF) approved by the Security Commission Malaysia under exemption order in force.
  
- iv. Paragraphs 9.4.1(a) and 1(b)
  - Refund of tax credit can be made to:-
    - other individuals such as husband / wife / parents / children. Information required for process of the refund:-
      - Name and Identification card of the recipient
      - Bank account no. of the recipient
      - Power of attorney
    - a company. Information required for process of the refund:-
      - Name and business registration no. of the recipient company
      - Bank account no. of the recipient company
      - Power of attorney

**Note:** For further information on the Tax Collection Framework, kindly refer to our Tax Flash – October 2015 and January 2016 issues.

- [Tax Flash – October 2015](#)
- [Tax Flash – January 2016](#)

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