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PR No. 5/2017 – Taxation of Real Estate Investment Trust or Property Trust Fund

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 5/2017 – 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 which may either be listed on Bursa Malaysia or unlisted.

Some of the updates in the abovementioned PR include:-

- REIT/PTF – Special Tax Treatment [Paragraph 6.3]
 - Effective year of assessment [“YA”] 2017, a unit trust under Section 61A(2) of the the Income Tax Act 1967 [“the Act”] means a unit trust which is approved by the Securities Commission Malaysia and also listed on Bursa Malaysia. Therefore, only REIT/PTF that is listed on Bursa Malaysia will be fully exempted from tax if it distributes 90% or more of its total income in the basis period for the year of assessment to its unit holders.
 - Both listed and unlisted will still be eligible for the special tax treatment on rental income from the letting of real property under Section 63C of the Act.

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Contact details

Advent MS Tax Consultants Sdn Bhd [703669-U]
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



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- ii. Deductibility of Expenses [Paragraph 7.2]
 - It is clarified that management fees paid to the management company which is appointed to establish, operate and administer the REIT/PTF, and account to the trustee is deductible under Section 33(1) of the Act.
 - However, the fee paid to a trustee, i.e. an approved custodian appointed to hold the investments on behalf of the unit holders is not a deductible expense under Section 33(1) of the Act.
- iii. Acquisition of an Industrial Building by a REIT/PTF [Para 8.3.3 (a) & (b)]
 - The disposal of building by a company to REIT/PTF is subject to control transfer provisions under Paragraph 38A, Schedule 3 of the Act i.e. not subject to balancing charge / allowance if the company holds not less than 50% of the residual profits or residual assets available for distribution by the REIT/PTF.
 - The definition of “residual profits” and “residual assets” have been amended as follows:-
 - “Residual profits” means net profits of a REIT/PTF.
 - “Residual assets” means net assets of a REIT/PTF.
- iv. REIT/PTF that establishes Special Purposes Vehicle [“SPV”] [Paragraph 11]
 - Effective YA 2015, where a REIT/PTF establishes a SPV solely for the issuance of *sukuk*, any source of the SPV shall be treated as a source and income of that REIT/PTF.
 - In addition, such REIT/PTF shall have the right to receive and utilise any proceeds derived from the issuance of such *sukuk*.

The above PR replaces the PR No. 2/2015 dated 19th June 2015.

Note: For further information on taxation of REIT/PTF, kindly refer to our *Tax Flash – July 2015 issue*.

Tax Incentives for Automation Equipment

Following the 2015 Budget announcement, the Income Tax (Accelerated Capital Allowance) (Automation Equipment) Rules 2017 and Income Tax (Exemption) (No.8) Order 2017 have been gazetted to provide incentive in the form of allowance on capital expenditure incurred by a qualifying company on plant and machinery i.e. automation equipment for the purpose of modernizing or automating its existing manufacturing activity of a product. The automation equipment used for the project must adopts technology that is more advanced than the current technology used by the company which has carried on a qualifying project for a period of at least 36 months.

➤ [Tax Flash – July 2015](#)

➤ [Income Tax \(Accelerated Capital Allowance\) \(Automation Equipment\) Rules 2017](#)

➤ [Income Tax \(Exemption\) \(No. 8\) Order 2017](#)

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Pursuant to the Income Tax (Accelerated Capital Allowance) (Automation Equipment) Rules 2017, the qualifying company is entitled to claim accelerated capital allowance ["ACA"] i.e. initial allowance and annual allowance of 20% and 80% respectively on qualifying capital expenditure in the manufacturing sectors as follows:-

i. Rubbers, plastics, wood, furniture and textile

First RM4,000,000 of the qualifying capital expenditure incurred in the basis period for the YA 2015 until YA 2017; or

ii. Other sectors as determined by the minister

First RM2,000,000 of the qualifying capital expenditure incurred in the basis period for the YA 2015 until YA 2017.

The Income Tax (Exemption) (No.8) Order 2017 provides that the qualifying company shall also be exempted from payment of income tax in respect of statutory income derived from a qualifying project which is equivalent to the amount of allowance i.e. ACA given under the Income Tax (ACA) (Automation Equipment) Rules 2017 mentioned above. The amount of statutory income exempted is restricted to 70% of statutory income for each year of assessment and any utilized allowance can be carried forward to subsequent years of assessment for which the qualifying company has statutory income from the qualifying project until it is fully utilised.

The above Rules / Order shall have effect from YA 2015.

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