



Tax Flash



October 2012

Guidelines on Non-Application of Accelerated Capital Allowance Rules

The Inland Revenue Board ["IRB"] has recently issued the Guidelines on Non-application of Accelerated Capital Allowance ["ACA"] Rules to provide clarification on the non-application paragraphs contained in the following income tax rules:-

- Income Tax (ACA) (Plant and Machinery) Rules 2008
- Income Tax (ACA) (Information and Communication Technology Equipment) Rules 2008
- Income Tax (ACA) (Plant and Machinery) Rules 2009

The tax treatments relating to the non-application paragraphs of the ACA rules as provided in the abovementioned Guidelines are as follows:-

- i. if a person has been granted any incentive under the Promotion of Investments Act 1986 ["PIA"], Reinvestment Allowance or exemption under subsections 127(3)(b) or 127(3A) of the Income Tax Act 1967 ["the Act"], that person will not be eligible for ACA. Hence, the normal annual allowance rate under Schedule 3 of the Act will apply.
- ii. if a person has made any special deduction or double deduction claim, that person will still be eligible for ACA.
- iii. if a person has made a claim for special allowances on small value assets, that person will still be eligible for ACA on other assets.
- iv. if an asset qualifies for an allowance (initial or annual) at a higher fraction under the income tax rules, that person will not be eligible for the ACA at a lower rate on the same asset.
- v. if a person disposes of an asset within 2 years from the date of acquisition, the capital allowances claimed will be "clawed back" by way of balancing charge equivalent to the amount of capital allowances claimed previously, except by reason of death of that person or any other reasons as the Director General ["DG"] thinks appropriate, pursuant to Paragraph 71, Schedule 3 to the Act.

Hyperlinks

[Advent Consulting Group](#)
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References

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- vi. in a situation where an asset on which ACA claim has been made is disposed of within 2 years from the date of acquisition under controlled transfer, the “claw back” of the capital allowances under Paragraph 71, Schedule 3 to the Act will apply. The acquirer of the asset will be eligible for the normal capital allowance rate on the qualifying expenditure incurred. If no consideration is paid by the acquirer for the asset under controlled transfer, no capital allowances shall be claimed by the acquirer as the acquirer did not incur any qualifying expenditure (*sic*).

[Note: For your information, a clarification will be sought from the IRB on the non-applicability of Paragraph 71, Schedule 3 of the Act in respect of assets under controlled transfer]

Guidelines on Application for Approval under Section 44(6) of the Act in respect of Fund for Management of a House of Religious Worship

The IRB has recently issued the abovementioned Guidelines which provide guidance on the application procedure and criteria for eligibility to obtain the approval in respect of a fund for management of a house of religious worship [“the Fund”] under Section 44(6) of the Act.

Among others, the Guidelines stipulate that the Fund must be set up solely for the purpose of managing a building in Malaysia used for religious worship or the advancement of religion or carrying on and managing any activities in relation to the house of religious worship or the advancement of religion. The Fund must be used solely for the daily operating expenditure of the house of worship i.e. management, utilities, repair and replacement basis and not for the purpose of constructing or major improvement and renovation of the house of religious worship. For fund to be utilised for constructing, major improvement or renovation of the house of worship, a separate application for approval will be required.

The approved Fund will be exempted from income tax (except for taxable dividend income) under Paragraph 13, Schedule 6 to the Act whereas the donors will be eligible for tax deduction (restricted to 7% or 10% of aggregate income) in respect of the cash contribution made to the Fund.

Guidelines on
Application for Approval
under Section 44(6) of
the Act in respect of
Fund for Management of
a House of Religious
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Tax Exemption of Income Derived by a TMC

Pursuant to the Income Tax (Exemption) (No. 5) Order 2012, a treasury management centre ["TMC"] is exempted from payment of income tax for 5 consecutive years of assessment ["exempt years of assessment"] in respect of the statutory income from the provision of qualifying services (i.e. centralised treasury management services) to its related companies located in Malaysia and at least 3 of its related companies located outside Malaysia in a basis period for each exempt years of assessment.

"Related company" has the same meaning as defined under Section 2 of the PIA.

The amount of income exempted from tax shall be:-

- a. 70% of the statutory income from the provision of qualifying services to its related companies located outside Malaysia; and
- b. a portion of the statutory income from the provision of qualifying services to its related companies located in Malaysia determined based on a prescribed formula (**Note**).

Note: *The amount of income derived by a TMC from provision of qualifying services to its related companies in Malaysia exempted from tax will be restricted if it exceeds 20% of total income derived from provision of qualifying services.*

In addition, it is noteworthy that:-

- Any payment in relation to the provision of qualifying services received from/paid to or interest charged/paid to any of its related companies located outside Malaysia or in Malaysia shall be at arm's length or market rate. Otherwise, the DG may substitute the price in respect of the provision of qualifying services or disallow the excessive amount of interest charged or paid, in determining of the adjusted income of the TMC.
- The business of providing qualifying services to its related companies in / outside Malaysia of a TMC shall be treated as a separate and distinct source of business.
- Any adjusted loss under Section 43(2) or Section 44(2) of the Act during the exempt years of assessment in respect of a business source consisting of provision of qualifying services to its related companies outside Malaysia shall be disregarded:-
 - from the source of the provision of qualifying services to its related companies in Malaysia and other business sources; or
 - in the subsequent years after the exempt years of assessment.



- Applications for the incentive must be made to the Malaysia Investment Development Authority ["MIDA"] not later than 31st December 2016.
- Certain other conditions must also be satisfied to be eligible for the incentive (**Note**).

Note: Further details of eligibility criteria and qualifying services can be obtained from the MIDA's website.

The above Order shall have effect from the year of assessment ["YA"] 2012.

Tax Exemption for Interest on Borrowings to a TMC

Pursuant to the Income Tax (Exemption) (No. 6) Order 2012, tax exemption is given to a non-resident person from the payment of income tax in respect of interest on borrowings to a TMC for the purpose of providing qualifying services by that TMC during the exempt years of assessment.

The withholding tax under Section 109 of the Act shall not apply to the interest income exempted under this Order.

The above Order shall have effect from the YA 2012.

Stamp Duty Exemption for Purchase of a Flat

Pursuant to the Stamp Duty (Exemption) (No. 4) Order 2012, exemption from stamp duty is granted on the following instruments for the purchase of a flat under the *Program Perumahan Rakyat Majlis Tindakan Ekonomi Negara and Perumahan Awam Dewan Bandaraya Kuala Lumpur*:-

- i. the Sale and Purchase Agreement ["SPA"] of a flat between *Dewan Bandaraya Kuala Lumpur* ["DBKL"] and the purchaser;
- ii. the instrument of transfer of title of the flat from DBKL to the purchaser named in the SPA; and
- iii. the instrument in the nature of security executed between the purchaser named in the SPA and a bank or financial institution to finance the purchase of the flat.

The above exemption applies to instruments executed between 1st January 2012 and 31st December 2013.

Income Tax (Exemption)
(No. 6) Order 2012

Stamp Duty (Exemption)
(No. 4) Order 2012



Secondment of Employees and Outsourcing/Supply of Employees is not Subject to Service Tax

The Royal Malaysian Customs ["RMC"] has recently issued an official letter to clarify that the provision of employment services in the form of secondment of employees/outsourcing employees for a specific period of time by an agreement is not subject to service tax under item (i), Group G of the Second Schedule to the Service Tax Regulations 1975.

In relation to the above, the relevant employment agencies may apply to the respective RMC branches for cancellation of their service tax licences. However, all service taxes that were levied and collected (if any) by the relevant employment agencies must be paid over to the RMC.

RMC's letter

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