

# Tax Flash



November 2012

## PR No. 6/2012 – Reinvestment Allowance

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 6/2012 – Reinvestment Allowance [“RA”]. This PR provides guidance on the claim of RA incentive in the light of recent changes of the tax provisions of the Income Tax Act 1967 [“the Act”] related to RA.

Salient points of the abovementioned PR include:-

### i. Minimum Period of Operation to be Eligible for RA

- RA is given to:-
  - a resident company that has incurred capital expenditure on a factory, plant or machinery used in Malaysia;
  - a resident company that has incurred capital expenditure in relation to an agricultural project in Malaysia; and
  - a resident person who carries on a business and has incurred capital expenditure in relation to an agricultural project in Malaysia

for the purposes of a qualifying project where the company or person has been in operation for not less than 36 months (effective year of assessment [“YA”] 2009) (*prior to YA 2009 - 12 months*).

- The period of operation is calculated from the day the company or person commenced the business.
- As a concession, if a company or person has made the first claim for RA prior to YA 2009, RA may continue to be claimed even though the period of operation may be less than 36 months.

### ii. RA as an Incentive

- RA is given based on 60% of capital expenditure incurred in the basis period for a year of assessment in relation to a qualifying project.
- RA is to be deducted against the statutory income of the business but is restricted to 70% of the statutory income for qualifying projects located in both non-promoted and promoted areas (*prior to YA 2012 – 100% for promoted area*) except where the qualifying project has achieved the level of productivity as prescribed by the Minister of Finance [“MoF”] measured by using a Process Efficiency [“PE”] ratio. The percentages of statutory income that may be utilised for the deduction of RA are summarised as follows:-

## Hyperlinks

Advent Consulting Group  
Inland Revenue Board

## References

PR No. 6/2012

Activity of Company or Person	Percentage of Statutory Income to be Deducted	
	Promoted Area/Non-Promoted Area	
Manufacturing	PE not achieved	PE achieved
	70%	100%
Agriculture	70%	Not applicable

- Unabsorbed RA
  - Any RA not absorbed in a year of assessment by reason of an insufficiency or absence of statutory income can be carried forward and deducted against the statutory income of the business in the following years of assessment until the allowance is fully absorbed.
  - Any unabsorbed RA to be carried forward and deducted in subsequent years of assessment is restricted to 70% of the statutory income of the business.
  - In the case where the current year RA is to be deducted up to 100% of the statutory income i.e. located in promoted area prior to YA 2012, the amount of RA brought forward may also be deducted up to 100% of the statutory income.
  - In the case where the current year RA is to be deducted up to 100% of the statutory income because the company has met the prescribed level of productivity, the amount of RA brought forward may be deducted up to 70% of the statutory income. However, the RA can be deducted up to 100% of the statutory income in the relevant year if the company achieves the level of productivity.
- RA is given on company basis and not project basis. Therefore, a company can enjoy RA for more than 1 project for the same year of assessment.

### iii. Qualifying Project

- Effective YA 2009, “qualifying project” has been redefined as a project undertaken by a company in expanding, modernising or automating existing business in respect of the manufacturing (*prior to YA 2009 – the definition of “qualifying project” includes processing activity*) of a product or any related product within the same industry or diversifying existing business into any related product within the same industry.
- “Manufacturing” is defined as:-
  - Conversion of organic or inorganic materials into a new product by changing the size, shape, composition, nature or quality of such materials;
  - Assembly of parts into a piece of machinery or products; or
  - Mixing materials by a chemical reaction process.

- Manufacturing does not include:-
  - installation of machinery or equipment for the purpose of a construction
  - simple packaging operations, fixing, mixing, assembly of any products or parts (“simple” means an activity which does not require special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity)
  - any activity to ensure the preservation of products in good condition during transportation and storage
  - any activity to facilitate shipment and transportation
  - any activity of packaging or presenting goods for sale
  - any activity as prescribed by the MoF [i.e. activities listed in the Income Tax (Prescription of Activity Excluded from the Definition of Manufacturing) Rules 2012]
- As a concession, though processing is no longer an activity that qualifies for RA or there are certain manufacturing activities that do not fall under the definition of “manufacturing” for RA purposes from the YA 2009 onwards, the company will continue to be allowed to claim RA until the end of qualifying period of 15 years of assessment on the condition that the company has made the first RA claim prior to YA 2009.
- Expansion, Modernisation, Automation and Diversification
  - Expansion is often associated with increase in production capacity that would normally be followed by increased capacity utilisation, accompanied by a higher allocation and utilisation of other resources which should result in increase in production output and sales
  - Modernisation refers to the upgrading of manufacturing equipment and processes to achieve greater efficiency in production, improvement in product quality and/or reduction in costs
  - Automation is a process whereby manual operations are substituted by mechanical operations with human judgment and control
  - Diversification means undertaking a project to produce additional or new related products within the same industry including:-
    - manufacturing of by-products or waste i.e. conversion of a by-product or waste of a manufacturing activity into a new product or related product by way of manufacturing; and
    - forward integration project i.e. moving from existing production of raw materials or intermediate products to the production of downstream products such as another intermediate product or an end product.

#### iv. Capital Expenditure

- Capital expenditure on factory, plant or machinery incurred for the purposes of a qualifying project qualifies for RA.
- Factory
  - Effective YA 2012, “factory” has been defined under Schedule 7A of the Act as portion of the floor areas of a building or an extension of a building used for qualifying project to place or install plant or machinery or to store materials or goods or materials prior to sale provided that the portion of areas used for storage of raw materials or goods or materials or both shall not be more than 10% of the total floor areas of that building or extension (*prior to YA 2012, the meaning of “factory” is as defined in Schedule 3 of the Act*).
  - A factory does not include a building or part of a building used for research and development or staff welfare.
  - A company renting a factory may claim RA on the costs of extension to the factory done for the purposes of a qualifying project.
  - Relocation of a factory does not qualify for RA unless it is for the purposes of a qualifying project. RA may then be claimed on the proportion of the floor area of the factory that is used for the qualifying project.
- Plant and Machinery
  - Plant refers to apparatus used for the manufacturing activity.
  - Machinery refers to device or apparatus consisting of fixed and moving parts that work together to perform some functions of the manufacturing activity.
- Expenditure is deemed “incurred” as follows:-
  - for assets acquired under hire purchase, qualifying expenditure [“QE”] incurred refers to capital portion of repayment made during the basis period for a particular year of assessment.
  - for building, on the day the construction of the building is completed.
  - for plant or machinery, on the day the plant or machinery is capable of being used for business purposes.
  - for the purposes of a business a person is about to carry on, when he commences to carry on the business.
- Capital expenditure incurred on commercial vehicles is not QE for RA purposes (unless the commercial vehicles are used in the factory vicinity for a qualifying project).

#### v. Qualifying Period

- A company is entitled to RA for 15 consecutive years of assessment, commencing from the year of assessment in which the first RA claim is made.



- A company which had been given RA before YA 1998 (i.e. financial year ended 1997), the 15-year qualifying period is calculated from YA 1998.

## vi. Disposal of Assets and Withdrawal of RA

- RA given shall be withdrawn if an asset is disposed of within 5 years (effective YA 2009) (*prior to YA 2009 - 2 years*) from the date of acquisition (including cases of control transfer), unless due to destruction by fire, flood or any other such disasters.
- As a concession, for asset acquired prior to YA 2009 but disposed of after YA 2009, RA will only be withdrawn if the asset is disposed of within 2 years from the date of acquisition.
- RA shall be withdrawn in the year of assessment in which the RA is claimed. However, for practical purposes, the relevant amount of RA can be withdrawn in the year of assessment the asset is disposed of.

## vii. Control Transfer

- Where the disposer (i.e. transferor) has incurred capital expenditure on an asset for the purposes of a qualifying project and the asset is subsequently disposed of and control transfer provisions apply, the acquirer (i.e. transferee) is not eligible to claim RA on the asset even if it is to be used for the purpose of a qualifying project by the acquirer (effective 9<sup>th</sup> January 2009) (*prior to 9<sup>th</sup> January 2009 – the acquirer is eligible to claim RA and the capital expenditure incurred will be the residual expenditure of the asset as ascertained under Schedule 3 of the Act*).
- However, as a concession, where the disposer (i.e. transferor) disposes of an asset used for the purposes of a qualifying project but no claim for RA was made on the asset by the disposer as the company chooses to claim a mutually exclusive incentive, the acquirer may claim RA on the asset based on its residual expenditure as ascertained under Schedule 3 of the Act if the asset is to be used for the purpose of a qualifying project by the acquirer.
- Where the RA claimed by the disposer has been withdrawn due to disposal within 5 years and control transfer provisions apply, the acquirer will not be eligible to claim RA on the asset even if it is to be used for the purpose of a qualifying project by the acquirer.
- Where the asset transferred was not used for the purposes of a qualifying project by the disposer, the acquirer is entitled to claim RA on the asset based on its market value on the date of acquisition if the asset is to be used for the purposes of a qualifying project by the acquirer.
- The QE of an asset acquired from overseas related parties shall be the prevailing market price of the asset at the time of transfer.

viii. Non-Application Rule

- RA shall not be available to a company for the basis period (effective YA 2011, change from “period” to “basis period”) during which the company has been granted or enjoys the following incentives which are mutually exclusive:-
  - Pioneer status
  - Investment tax allowance
  - Incentive under Investment Incentive Act 1968
  - Industrial adjustment allowance under the Promotion of Investments Act 1986
  - Group relief under Section 44A of the Act
  - Deductions under any rules made under Section 154 of the Act where those rules provide that RA should not apply to that company or person
  - Tax exemption under any orders made under Section 127(3)(b) or (3A) of the Act where those orders provide that RA should not apply to that company or person
- A company which has been granted such incentive is only eligible to claim RA in the basis period for a year of assessment after the end of the basis period for that year of assessment.
- As a concession, a company claiming RA in a year of assessment is allowed to utilise brought forward unabsorbed allowances arising from a mutually exclusive incentives. Similarly, where a company has brought forward RA from the preceding year of assessment, the company is not precluded from claiming any other incentive that is mutually exclusive. However, the company has to deduct the RA or allowance claimed (as the case may be) for the current year first before deducting any allowance or RA (as the case may be) brought forward.

ix. RA for Agriculture Projects

- RA is available to a company which undertakes an agriculture project in expanding or modernising or diversifying its cultivation and farming business, excluding the business of rearing chicken and ducks.
- RA is available to a person who undertakes a project
  - in transforming his business of rearing chicken and ducks from an opened house system to a closed house system; or
  - in expanding his existing business of rearing chicken and ducks in a closed house system.(applicable for YA 2009 and YA 2010 only)
- As a concession, a person who relocates the activity of rearing chicken and ducks under an opened house system to another location and construct a closed house system is eligible to claim RA (applicable for YA 2009 and YA 2010 only).



## x. Claiming Procedure

- Claim for RA must be made in the Income Tax Return Form
- The original copy of the claim form LHDN/BT/RA/2007 is to be kept by the claimant together with the relevant documents

The above PR replaces the PR No. 2/2008 dated 3<sup>rd</sup> April 2008.

### **Double Deduction for Expenditure Incurred for the Provision of an Approved Internship Programme**

The Petroleum (Income Tax) (Deduction for Expenditure Incurred for the Provision of an Approved Internship Programme) Rules 2012 have been gazetted to allow a double deduction under the Petroleum Income Tax Act 1967, for expenditure incurred by a resident person approved by the Talent Corporation Malaysia Berhad ["TalentCorp"] to conduct an approved internship programme for a minimum period of 10 weeks.

The double deduction is given to the following expenses incurred during the basis period for a year of assessment:-

- i. internship monthly allowance of not less than RM500 paid to the students;
- ii. expenditure incurred for the provision of training to the students;
- iii. expenditure incurred on meal, travelling and accommodation for the students during the internship programme; and
- iv. fee paid to a person who has been appointed to conduct an approved internship programme.

The total amount of deduction allowable under (ii), (iii) and (iv) above for each student is restricted to RM5,000 for a year of assessment. A letter from TalentCorp confirming that the internship programme conducted is an approved internship programme is required in support of the double deduction claim.

A similar incentive is also granted under the Act in pursuance to the Income Tax (Deduction for Expenditure Incurred for the Provision of an Approved Internship Programme) Rules 2012.

The above Rules take effect from the YA 2012 to YA 2016.

**Note:** For further information on the Income Tax (Deduction for Expenditure Incurred for the Provision of an Approved Internship Programme) Rules 2012, kindly refer to our Tax Flash – June 2012 issue.

Petroleum (Income Tax)  
(Deduction for  
Expenditure Incurred for  
the Provision of an  
Approved Internship  
Programme) Rules 2012

Tax Flash – June 2012

### New DTA between Malaysia and India

The new Double Taxation Agreement ["DTA"] between Malaysia and India has recently been gazetted. Salient points of the DTA include:-

- i. A building site or construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment ["PE"] only if such site, project or activities last more than 9 months.
- ii. The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose will constitute a PE if the activities of that nature continue (for the same or connected project) for a period or periods of more than 90 days within any 12-month period.
- iii. The withholding tax rates applicable on certain payments are as follows:-
  - Dividends – 5% (*Note*)
  - Interest – 10%
  - Royalties – 10%
  - Technical fees – 10%
  - Section 4(f) income – 10%

The above DTA will enter in force upon ratification.

**Note :** *Currently, there is no withholding tax on outbound dividends under the Act.*

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Double Taxation Relief (The Government of the Republic of India) Order 2012