

▶▶ Tax Flash



February 2013

Finance Act 2013

The Finance Act 2013 has been gazetted on 10th January 2013 to take effect the proposals made in the 2013 Budget with the following notable changes in respect of the new Section 4B and amendment to Section 24(5) of the Income Tax Act 1967 [“the Act”] relating to interest income:-

- Finance (No. 2) Bill 2012

Under the proposed amendment to Section 24(5) of the Act, only the following types of interest income are treated as business source under Section 4(a) of the Act:-

- interest income derived from debenture, mortgage or other source which forms part of the stock in trade of a business; or
- interest income receivable from the business of lending money (licensed under any written law).

Interest other than the above shall be treated as non-business income (effective year of assessment [“YA”] 2013).

The saving and transitional provisions relating to the above provide that any unabsorbed capital allowances for the YA 2012 prior to the introduction of this proposed amendment shall be carried forward and to be deducted against the adjusted income from a source (other than a source from a business) for the YA 2013 until it is fully deducted.

- Finance Act 2013

The wordings in the savings and transitional provisions relating to the above have been changed to provide that such unabsorbed capital allowances for the YA 2012 shall be carried forward and to be deducted against the adjusted income from a source (other than a source from a business) for the YA 2013 **and subsequent years of assessment** until it is fully deducted.

Hyperlinks

Advent Consulting Group
Inland Revenue Board

References

Finance Act 2013

PR No. 12/2012 – Share Schemes Benefit for Cross Border Employees

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 12/2012 – Share Schemes Benefit for Cross Border Employees. This PR provides guidance on the tax treatment on the share benefit arising from an employee share scheme received by employees from Malaysia who are seconded to work overseas and foreign national employees who are seconded to Malaysia.

Salient points of the abovementioned PR include:-

i. Tax Treatment of Share Scheme Benefits for Cross Border Employees

- Share benefit taxed in the year of assessment share scheme is exercised
 - Pursuant to Section 25(1A) of the Act, if an employee who is offered the option to acquire shares (conditional or unconditional shares) in the company has been seconded overseas, the apportioned share benefit will be treated as gross income from employment in the year of assessment in which the option to the share scheme is exercised.
 - The computation of share scheme benefit is as shown below:-

	RM
Market value of share on the date the scheme is exercisable or exercised, whichever is lower	XXX
Less : Price paid for the share (if any)	(XXX)
	XXX
Perquisite under Section 13(1)(a) of the Act	XXX

- Allocation of the benefit from share schemes where employment is exercised in more than one country
 - Where a share scheme is considered to be derived from employment exercised in more than one country, the portions of the share scheme derived from the employment exercised in each country need to be determined. The formula for the computation of benefit attributable to the share scheme derived from Malaysia is as follows:-

$$\begin{array}{r}
 \text{Share scheme benefit} \\
 \text{from date of offer to} \\
 \text{exercisable date}
 \end{array}
 \times
 \frac{\begin{array}{l} \text{No. of working days in Malaysia} \\ \text{(including leave days) from date} \\ \text{of offer to exercisable date} \end{array}}{\begin{array}{l} \text{No. of working days from date of} \\ \text{offer to exercisable date} \end{array}}$$

PR No. 12/2012

ii. Employees from Malaysia Seconded to Work Overseas

- In relation to share schemes offered to employees working in Malaysia, a charge to Malaysia tax will continue to arise even where the schemes are exercised after they have ceased employment in Malaysia.
- If the employee has been sent to work in a treaty country overseas, the treaty provisions relating to the employment income and the domestic tax laws of that overseas country will determine whether the benefit from the exercise of the share scheme will be subject to tax in that country.
- If part of the benefit which is taxable in Malaysia is also liable to income tax in the other country overseas, bilateral credit relief in accordance with the respective country's tax laws can be allowed by the country of residence.
- Where the other country overseas is a non-treaty country, a unilateral credit relief can be allowed by Malaysia if the benefit from the share scheme is taxed in both countries.

iii. Foreign Nationals Seconded to Work in Malaysia

- When foreign nationals are offered share schemes by their employers overseas prior to their secondment to Malaysia, it is necessary to determine whether the benefit from share schemes is in respect of employment exercised in Malaysia or home country overseas. The share benefit that accrues up to the exercise of the scheme will be treated as an employment income to which the Article on Income from Employment / Dependent Personal Services (commonly Article 15 of Double Tax Agreement ["DTA"]) applies.
- Generally, if the duties of an overseas employment are exercised in Malaysia such that the employment income is taxable here, then a charge to Malaysian tax is likely to arise on the benefit from the exercise of the share schemes offered by the employer overseas but exercised while in Malaysia. If the foreign national who is offered a share scheme by his overseas employer prior to his secondment to Malaysia only exercises his right to the share scheme after he returns to his overseas office, a charge to Malaysian tax is also likely to arise.
- Subject to the provisions of the relevant DTA, the charge to Malaysian tax upon exercise will be limited to the proportion of the option gain which relates to working days in Malaysia.
- If part of the option gain which is taxable in Malaysia is also taxed in a DTA country, then the country of residence may allow a bilateral credit in respect of income tax paid in the other country.

iv. Exemption from Malaysian Income Tax

- Income tax will not be charged on benefit arising from a share scheme in the following circumstances:-
 - The schemes are offered to a non-resident whose employment income is not taxable in Malaysia as the employment exercised in Malaysia is less than 60 days, or
 - The share schemes are offered to an individual, who under the terms of a DTA is exempt from Malaysian tax on his employment income for the year in which the gain from the share scheme arises.

v. Responsibility of the Employee (Cross Border Cases)

- The employee is required to keep track of the days of his physical presence in Malaysia in order to determine the appropriate amount of income assessable to Malaysian tax. The share scheme offered prior to an expatriate employee's assignment in Malaysia will also need to be tracked. The employee will be required to furnish the income tax return form and pay the taxes in relation to the benefit from the share scheme.

vi. Responsibility of the Employer (Cross Border Cases)

- The Malaysian employer will have to:-
 - keep track of all employees (including non-resident employees and expatriates) who worked in Malaysia during a tax year and who had exercised the share option either in Malaysia or overseas, and
 - keep a record of the employees' days of physical presence in Malaysia.
- Employers are also required to keep documents for tax audit purposes.

Tax Exemption of Income Derived from the Business of a Child Care Centre

Following the 2013 Budget announcement, the Income Tax (Exemption) Order 2013 has been gazetted to provide tax exemption on income derived from the business of a child care centre.

Pursuant to this Order, a person undertaking a business of the provision and maintenance of a child care centre registered with the Department of Social Welfare under the Child Care Centre Act 1984 is exempted from payment of income tax in respect of statutory income derived from the business of a child care centre for a period of 5 consecutive years of assessment ["exempt years of assessment"] commencing from:-

- i. the YA 2013 in relation to an existing child care centre; or
- ii. the first invoice issued by a child care centre that commences its business from the YA 2013.

In addition, it is noteworthy that:-

- any adjusted loss incurred from the year of assessment in the basis period in which the income that qualifies for the exemption has commenced until the year of assessment immediately prior to the exempt years of assessment and during the exempt years of assessment shall be carried forward and deducted against the statutory income of that source of income in the post-exempt years of assessment until it is fully utilised.
- such adjusted loss that was utilised to reduce the statutory income shall be disregarded for the purposes of Sections 43(2) and 44(2) of the Act.

The above Order shall have effect from the YA 2013.

Tax Exemption of Income Derived from Group Inclusive Tours

Following the 2013 Budget announcement, the Income Tax (Exemption) (No. 2) Order 2013 has been gazetted to provide tax exemption on income derived from group inclusive tours.

Pursuant to this Order, a resident company undertaking a tour operating business is exempted from payment of income tax in respect of its statutory income derived from group inclusive tours if the total number of tourists from outside Malaysia in group inclusive tours is not less than 750 in the basis period for a year of assessment as certified by a letter from the Ministry of Tourism Malaysia.

“Group inclusive tour” means a tour package to or of Malaysia or any place within Malaysia undertaken by tourists from outside Malaysia, inclusive of transportation by air, land or sea and accommodation.

The above Order shall have effect from the YA 2013 until the YA 2015.

Tax Exemption of Income Derived from the Business of a Kindergarten

Following the 2013 Budget announcement, the Income Tax (Exemption) (No. 3) Order 2013 has been gazetted to provide tax exemption on income derived from the business of a kindergarten.

Pursuant to this Order, a person undertaking a business in relation to the provision and maintenance of a kindergarten registered with the Ministry of Education Malaysia [“MOE”] is exempted from payment of income tax in respect of the statutory income derived from the business of kindergarten for a period of 5 consecutive years of assessment [“exempt years of assessment”] commencing from:-

- i. the YA 2013 in relation to an existing kindergarten; or
- ii. the first invoice issued by kindergarten that commences its business from the YA 2013.

Income Tax (Exemption)
(No. 2) Order 2013

Income Tax (Exemption)
(No. 3) Order 2013

This exemption shall not apply to a kindergarten which is integrated with a private primary school.

In addition, it is noteworthy that:-

- any adjusted loss incurred from the year of assessment in the basis period in which the income that qualifies for the exemption has commenced until the year of assessment immediately prior to the exempt years of assessment and during the exempt years of assessment shall be carried forward and deducted against the statutory income of that source of income in the post-exempt years of assessment until it is fully utilised.
- such adjusted loss that was used to reduce the statutory income shall be disregarded for the purposes of Section 43(2) and Section 44(2) of the Act.

The above Order shall have effect from the YA 2013.

Double Deduction for the Provision of Child Care Centre

Following the 2013 Budget announcement, the Income Tax (Deduction for the Provision of Child Care Centre) Rules 2013 have been gazetted to allow double deduction for expenditure incurred by a resident person in respect of:-

- i. the provision and maintenance of a child care centre; and
- ii. child care allowance to the persons employed by him in his business.

The child care centre must be registered with the Department of Social Welfare under the Child Care Centre Act 1984.

“Person” means any person who, for the purpose of a business of his, provides a child care centre for the benefit of persons employed by him in his business.

The above Rules shall have effect from the YA 2013.

IBA for Child Care Centre

Following the 2013 Budget announcement, the Income Tax (Industrial Building Allowance) (Child Care Centre) Rules 2013 have been gazetted to provide that a building which is constructed or purchased by a “person” for the purpose of his business of a child care centre shall be treated as an industrial building and qualifies for industrial building allowance [“IBA”] of 10% annually on the qualifying building expenditure.

“Person” means an individual or a company carry on the business relating to the provision and maintenance of a child care centre registered with the Department of Social Welfare under the Child Care Centre Act 1984.

Income Tax (Deduction
for the Provision of Child
Care Centre) Rules 2013

Income Tax (IBA) (Child
Care Centre) Rules 2013

In addition, it is noteworthy that:-

- where part of the building is used as an industrial building and the other part of the building is not so used, the building shall be deemed to be an industrial building if the capital expenditure incurred on the construction of the part which is not so used is not more than 10% of the capital expenditure incurred on the construction of the whole building.
- where the capital expenditure incurred on the construction of the part not used as industrial building is not identifiable from the expenditure incurred on the whole building, the capital expenditure incurred on the part thereof not identifiable shall be apportioned by reference to the respective floor areas or in such manner as directed by the Director General of Inland Revenue.
- where the industrial building is also used for the purpose of another business or an activity other than the business of a child care centre, then the allowances shall be deducted as is reasonable having regard to the extent to which the industrial building is used for the purpose of the business or activity of a child care centre.
- if the building is disposed of within 2 years from the date the qualifying building expenditure was incurred, a balancing charge equivalent to the amount of allowance that has been given previously will be made for the year of assessment in the basis period in which the building was disposed of.

The above Rules shall have effect from the YA 2013.

IBA for Kindergarten

Following the 2013 Budget announcement, the Income Tax (IBA) (Kindergarten) Rules 2013 have been gazetted to provide that a building which is constructed or purchased by a “person” for the purpose of his business relating to the provision and maintenance of a kindergarten shall be treated as an industrial building and qualifies for IBA of 10% annually on the qualifying building expenditure.

Person means an individual or a company carry on the business relating to the provision and maintenance of a kindergarten registered with the MOE.

The above Rules also set out certain criteria for claiming of IBA in circumstances where part of the building is not used as industrial building and disposal of the building within 2 years from the date the qualifying building expenditure was incurred, similar to those provided under the Income Tax (IBA) (Child Care Centre) Rules 2013 mentioned above.

The above Rules shall have effect from the YA 2013.

Accelerated Capital Allowance for Security Control Equipment and Monitoring Equipment

Following the Budget 2013 announcement, the Income Tax (Accelerated Capital Allowance) (Security Control Equipment and Monitoring Equipment) Rules 2013 have been gazetted to extend the accelerated capital allowance granted to:-

- i. a resident individual in respect of capital expenditure for the installation of any security control equipment and monitoring equipment (other than the Global Positioning System ["GPS"] for vehicle tracking) at any building or permanent structure used for the purpose of his business; or
- ii. a resident company in respect of capital expenditure for the installation of:-
 - any security control equipment and monitoring equipment (other than the GPS for vehicle tracking) for a factory of the company provided that such company is a company approved under the Industrial Co-ordination Act 1975;
 - any GPS for vehicle tracking for a container lorry (bearing Carrier Licence A) and for a cargo lorry (bearing Carrier Licence A or C) of such company used for the business purpose; or
 - any security control equipment (other than the GPS for vehicle tracking) in residential areas.

Initial allowance and annual allowance at the rates of 20% and 80% respectively shall be granted on the qualifying capital expenditure.

The above Rules shall have effect from the YA 2013 until the YA 2015.

Double Deduction for Participation in an Approved Career Fair

The Petroleum (Income Tax) (Deduction for Participation in an Approved Career Fair) Rules 2013 have been gazetted to allow double deduction for expenditure incurred by a resident person for participation in a career fair held outside Malaysia organised or endorsed by Talent Corporation Malaysia Berhad and approved by the Minister of Finance.

Expenditures incurred for an approved career fair qualifying for double deduction are:-

- i. Overseas travelling expenses incurred by a person or representative of that person (not more than 3 including that person), limited to:-
 - economy class air fare;
 - RM300 per day for accommodation; and
 - RM150 per day for sustenance.

Income Tax (Accelerated Capital Allowance) (Security Control Equipment and Monitoring Equipment) Rules 2013

Petroleum (Income Tax) (Deduction for Participation in an Approved Career Fair) Rules 2013

- ii. Marketing and promotional materials (e.g. pamphlets, prints and banners) which contain specific information relating to the approved career fair.
- iii. Payment to the organiser of an approved career fair.
- iv. Other expenses directly incurred for participating in the approved career fair.

A similar incentive is also granted under the Act pursuant to the Income Tax (Deduction for Participation in an Approved Career Fair) Rules 2012.

The above Rules shall have effect from the YA 2012 until YA 2016.

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