



Tax Flash



November 2011

Update on PR No. 3/2011 – Investment Holding Company

The IRB has recently updated paragraph 10 of the Public Ruling ["PR"] No. 3/2011 – Investment Holding Company in relation to the eligibility to claim industrial building allowance ["IBA"] for an investment holding company where rental income is treated as non-business source under Section 4(d) of the Income Tax Act 1967 ["the Act"] as follows:-

- i. the company will not be eligible for capital allowances in respect of its plant and machinery;
- ii. however, the company is still eligible to claim IBA on its building, provided the tenant uses the building as an industrial building pursuant to Paragraph 60, Schedule 3 of the Act.

The above PR takes effect from the year of assessment ["YA"] 2006.

Tax Exemption for Buildings Awarded with GBI Certificate

Pursuant to the Income Tax (Exemption) (No. 5) Order 2011, a resident person is given tax exemption in respect of statutory income from a business equivalent to the amount of qualifying expenditure incurred for the purpose of obtaining a greenbuildingindex ["GBI"] certificate issued by the Board of Architects Malaysia for a building used for the purpose of that business.

Qualifying expenditure refers to the additional expenditure incurred in relation to the construction of a building, alteration, renovation, extension or improvement of an existing building or plant or machinery for the purpose of obtaining a GBI certificate.

The exemption shall apply to the GBI certificate issued from 24th October 2009 until 31st December 2014 in respect of:-

- i. any building constructed, owned and used by the person for the purpose of his business; or

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References

PR No. 3/2011

Income Tax (Exemption)
(No. 5) Order 2011



ii. any building constructed:-

- under a privatization project and private financing initiatives approved by the Privatisation / PFI Committee, Public Private Partnership Unit, Prime Minister's Department; and
- pursuant to an agreement entered into between the person and the Government of Malaysia or a statutory authority on a build-lease-transfer basis, build-lease-maintain-transfer basis or any other similar arrangement and for which no consideration has been paid by the Government of Malaysia or a statutory authority to that person.

In the absence or insufficiency of statutory income for a YA such that the exemption cannot be given or cannot be given in full, the amount which cannot be exempted or exempted in full for that YA will be allowed in the subsequent years of assessment until the whole of the amount to be exempted is given.

In addition, certain other requirements/conditions must be observed in order to qualify for the above exemption.

The above Order takes effect from the YA 2009. The Income Tax (Exemption) (No. 8) Order 2009 has been revoked by this Order.

Deduction for Expenditure on Issuance of Islamic Securities Pursuant to Principles of *Murabahah* and *Bai'Bithaman Ajil*

Following the 2011 Budget announcement, the Income Tax (Deduction for Expenditure on Issuance of Islamic Securities Pursuant to Principles of *Murabahah* and *Bai'Bithaman Ajil*) Rules 2011 has been gazetted to allow deduction for expenditure incurred by a resident company on the issuance of Islamic securities pursuant to the principles of *Murabahah* and *Bai'Bithaman Ajil* based on the concept of *tawarruq* and approved by the Securities Commission or the Labuan Financial Services Authority.

This order takes effect from the YA 2011 until YA 2015.

Income Tax (Deduction for Expenditure on Issuance of Islamic Securities Pursuant to Principles of *Murabahah* and *Bai'Bithaman Ajil*) Rules 2011

Deduction Relating to Transaction with Non-Members for Club, Association or Similar Institution

Pursuant to the Income Tax (Deduction Relating to Transaction with Non-Members for Club, Association or Similar Institution) Rules 2011, the amount of deduction for allowable expenses, capital allowances and gift of money under Section 44(6) in arriving at the adjusted income, statutory income and total income respectively of a club, association or similar institution relating to transaction with non-members shall be determined based on the following formulas:-

- i. Deduction for allowable expenses or capital allowances

$$\begin{array}{l} \text{Allowable expenses} \\ \text{or} \\ \text{capital allowances} \end{array} \times \frac{\text{Gross income from transaction with non-members}}{\text{Gross income from transaction with both members and non-members}}$$

- ii. Deduction for gift of money under Section 44(6)

$$\text{Gift of money} \times \frac{\text{Aggregate income from transaction with non-members}}{\text{Aggregate income from transaction with both members and non-members}}$$

However, the amount to be deducted for gift of money shall not exceed 7% of the aggregate income of the club, association or similar institution.

The above Rules take effect from the YA 2009.

Income Tax (Deduction Relating to Transaction with Non-Members for Club, Association or Similar Institution) Rules 2011



Protocol to Amend the Article on Exchange of Information - Double Tax Agreement between Malaysia and South Africa

The protocol signed between Malaysia and South Africa pertaining to the article on Exchange of Information ["EOI"] has recently been gazetted. The new article on EOI is in line with the EOI provision of Article 26 of the Organisation for Economic Co-operation and Development ["OECD"] Model Convention.

In accordance with Article 26 of the OECD Model Convention, any information received shall be treated as secret and disclosed only to persons or authorities concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes. There is no obligation for the authorities of one contracting state to supply information which is not obtainable under the laws or in the normal course of the administration of that contracting state or the other contracting state or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. This, however, shall not be construed as to permit a contracting state to decline the supply of information held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or information which relates to ownership interests in a person.

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Double Taxation Relief
(The Government of The
Republic of South Africa)
(Amendment) Order 2011