Tax Flash

July 2011

Hyperlinks

Advent Consulting Group
Inland Revenue Board

References

Guidelines on Tax Treatment on Interest Income for Pawnbroking Industry

Guidelines on Tax Treatment on Interest Income for Pawnbroking Industry

The Inland Revenue Board ["IRB"] has recently issued the Guidelines on Tax Treatment on Interest Income for Pawnbroking Industry which provide clarification on the basis of recognition and tax treatment of interest income for pawnbroking industry.

Pursuant to Section 24 of the Income Tax Act 1967 ["the Act"], interest income arising from pawnbroking shall be recognised and accrued from the date when an item is pledged or pawned with the pawnbroker. However, as a concession, the IRB has allowed the pawnbrokers to recognise and accrue the interest income or profit for conventional or Islamic (*Ar-Rahnu*) pawnbroking industry from the date of redemption if the items are pawned in the basis period for the year of assessment ["YA"] 2009 and subsequent years.

The guidelines also provide various examples to clarify the tax treatments during transitional period and situations where the pawner fails to redeem the pawned item on the redemption date or redeems it during extended period / earlier than redemption date or where the loan amount is increased / decreased and claim of deduction for bad debts.

The above guidelines take effect from the YA 2009.

Petroleum (Income Tax) (Amendment) Bill 2011

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The Petroleum (Income Tax) (Amendment) Bill 2011 has recently been tabled. This Bill seeks to amend the Petroleum (Income Tax) Act 1967 ["PITA"] with the introduction of the following:-

i. **New Chapter 6 - Part III**

The Director General is empowered to direct special treatment in respect of computing the gross income, adjusted income, statutory income and assessable income from petroleum operations.

ii. **New Section 65C**

The Minister may, by statutory order, exempt any chargeable person from all or any of the provisions of the PITA, either generally or in respect of any income of a particular kind.

iii. **New Paragraph 3A in the First Schedule**

The qualifying exploration expenditure incurred by a chargeable person may be deducted from the gross income of another chargeable person in another petroleum agreement provided that the original parties to the petroleum agreements are the same, determined in accordance with a prescribed formula.

This new paragraph 3A is not applicable to chargeable persons carrying petroleum operations in the Joint Development Area or in an area in respect of which an agreement or arrangement has been made between governments for joint exploration for petroleum in overlapping areas as provided in Section 65B of the PITA.

GST – Draft Guidelines

The Royal Malaysian Customs has recently issued the following draft guidelines on the Goods and Services Tax ["GST"] to provide the public an understanding of the GST and its implications:-

i. GST General Guide

ii. GST Industry Guides

- Manufacturing Sector
- Warehousing Scheme
- Approved Jeweller Scheme
- Approved Toll Manufacturer Scheme
- Approved Trader Sector

iii. GST Specific Guides

- Agent
- Exports
- Partial Exemption, Apportionment and Annual Adjustment

GST General Guide

GST Industry Guides
- Manufacturing Sector
- Warehousing Scheme
- Approved Jeweller Scheme
- Approved Toll Manufacturer Scheme
- Approved Trader Sector

GST Specific Guides
- Agent
- Exports
- Partial Exemption, Apportionment and Annual Adjustment

Recent Tax Case

MBMSB v KPHDN
[Tax deductibility of sponsorship / advertising, withdrawal of stock-in-trade for own use, payments to dealers etc.]

In the case of MBMSB v Ketua Pengarah Hasil Dalam Negeri ["KPHDN"] [(2010) MSTC 10-012], the taxpayer, MBMSB, was a franchise holder and wholesaler of vehicles in Malaysia and principally engaged in the assembly, distribution and sale of automotive vehicles. The case involved several issues on tax deductibility of various expenses for the YA 2003 and the decision of the Special Commissioners of Income Tax ["SCIT"] are as follows:-

i. Issue 1 – Payment for Sponsorship / Advertising

MBMSB made a payment of RM500,000 to M Sdn Bhd for sponsoring an international fashion event and in return, obtained the benefit of advertising space in media. MBMSB contended that the amount incurred was advertising expenditure whereas the IRB argued that the sum sponsored fulfilled the definition of "entertainment", constituting "hospitality of any kind" under Section 18(a) of the Act and not tax deductible.

Decision of the SCIT

The SCIT held that the letter dated 18th July 2003 between MBMSB and M Sdn Bhd indicated the true nature of payment, identifying MBMSB as the Principal Sponsor for the event organised by M Sdn Bhd. As such, the sponsorship expenses could not be regarded as advertisement expenses and therefore not deductible under Section 33(1) of the Act.

ii. Issue 2 – Cars Used by the Appelant

iii. Issue 3 – Written Down Value of Used Cars

MBMSB registered a number of motor vehicles (which remained as stock-in-trade in the accounts) under its name to be used by its employees on a short term basis and for test driving and reviews by journalists. These motor vehicles were then subsequently sold via MBMSB's secondary sales channel at prevailing market rates for a used car. MBMSB claimed for a tax deduction of the written down value of such pre-owned vehicles amounted to RM2,014,801 under Section 35 of the Act on the basis that these are stock in trade.

On the other hand, the IRB treated this as withdrawal from MBMSB's stock-in-trade and treated the vehicles as having been sold by MBMSB to itself under Section 24(2) of the Act and included a sum of RM2,815,414 as the gross income of MBMSB and disallowed the tax deduction on the written down value.

Decision of the SCIT

The SCIT held that as the cars have been registered as company cars, they became the company's fixed assets and no longer formed part of the trading stock. The tax treatment under Section 24(2) of the Act is in order. It followed that the written down value amounted to RM2,014,801 was not eligible for deduction under Section 35 of the Act as these used cars have became the fixed asset of the company and no longer the trading stock.

iv. Issue 4 – Target and Standard Margin Paid to Dealers

v. Issue 5 – Holdback Margin Paid to CCB

Dealers were entitled to a "target margin" on achieving a volume/quantitative target and a "standard margin" on achieving a qualitative target. The target / standard margin is paid to the dealers based on performance of each dealer as stipulated in the Dealer Agreement and not ascertained from the beginning.

In addition, MBMSB gave CCB, its largest dealer, a holdback of up to 1% of the applicable base price to provide them with additional margin in recognition of the long term business relationship and to assist CCB in the construction of a larger showroom. The holdback margin was given to CCB when the construction of the showroom commence.

MBMSB made a claim for deduction of the target / standard margin and holdback margin which amounted to RM3,122,231 and RM2,789,446 respectively under Section 33(1) of the Act while the IRB viewed the above as mere provision and not incurred in the YA.

Decision of the SCIT

The SCIT agreed with the IRB that as the target / standard margin and holdback margin were paid based on performance of each dealer and were not pre-ascertained, the legal liability to pay does not arise unless and until the performance of dealers are determined and assessed by MBMSB. Thus, the expenses are not allowable for tax deduction.

vi. Issue 6 – Other Expenses

MBMSB claimed for deduction of other expenses, *inter-alia*, trips for dealers, event launches, congratulatory advertisement in newspaper for the purpose of promoting its business under Section 33(1) of the Act while the IRB took the view that such items fall within the definition of "entertainment" and were not deductible pursuant to Section 39 of the Act.

Decision of the SCIT

The SCIT ruled that as a whole, the expenses constitute "entertainment" under the Section 18 of the Act and such expenses were prohibited from deduction under Section 39 of the Act.

vii. Issue 7 – Penalty

The issue is whether the IRB was right in the imposition of penalty for tax undercharged under Section 113(2) of the Act

Decision of the SCIT

The SCIT agreed that with the issuance of the additional assessment for YA 2003 in respect of the above issues, the penalty imposed by the IRB is in order.

The taxpayer being dissatisfied with the decisions had appealed to the High Court.