



MOORE Advent

TAX FLASH

JULY 2021

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PR No. 1/2021 – Taxation of Unit Holders of REIT/PTF

The Inland Revenue Board [“IRB”] has recently issued the *Public Ruling [“PR”] No. 1/2021 – Taxation of Unit Holders of Real Estate Investment Trusts [“REIT”] / Property Trust Fund [“PTF”]* to provide guidance on the tax treatment of distribution of income from REIT/PTF to its unit holders. This new PR replaces the PR No. 9/2018 dated 12th October 2018 to take into account the amendments in tax laws related to unit holders as well as some updates in the examples.

Salient amendments included in the new PR are:-

- i. The definition of “person” has been amended to include a company, a body of persons, a limited liability partnership, a corporation sole and partnership.
- ii. Pursuant to the amendments of Section 5(1A) of the ITA 1967, effective year of assessment [“YA”] 2021, any distribution of income received by unit holders which has been subjected to withholding tax under Section 109D shall be excluded for the purpose of ascertaining the chargeable income of the unit holders. Hence, the withholding tax deducted from the distribution of income by REIT/PTF listed on Bursa Malaysia which is exempt under Section 61A to its unit holders is treated as a final tax.
- iii. The prevailing withholding tax rates applicable to various categories of unit holders have been extended to YA 2025.

Note : For further information relating to previous PR No. 9/2018, kindly refer to our *Tax Flash – November 2018* issue.

Guidelines on Application for Approval of the DGIR for Acquisition of Religious Schools, Construction of Schools and Contribution to Schools under Section 44(6) of the ITA 1967

The IRB has recently issued the following:-

- *Guidelines on Application for Approval of the Director General of Inland Revenue [“DGIR”] for Acquisition of Religious Schools i.e. Tabung Pembelian Sekolah Agama [“TBSA”] under Section 44(6) of the ITA 1967;*
- *Guidelines on Application for Approval of the DGIR for Construction of Schools i.e. Tabung Pembinaan Sekolah [“TPS”] under Section 44(6) of the ITA 1967; and*
- *Guidelines on Application for Approval of the DGIR for Contribution to Schools i.e. Tabung Sumbangan Wang Awam Sekolah [“TSUWAS”] under Section 44(6) of the ITA 1967.*

The abovementioned Guidelines provide guidance on the criteria for eligibility, application procedure, responsibilities after obtaining approval, consequences of violation after obtaining approval, approval time period, extension of application, power of IRB over approvals and imposition of approval criteria and tax treatments of donors.

Salient points of the abovementioned Guidelines include:-

- i. Criteria for Eligibility
 - Objective of the fund is established with no intention of making a profit and it is solely for the purpose of TBSA, TPS and TSUWAS under Section 44(6) of the ITA 1967
 - Type of schools that would qualify are as specified in the Guidelines
 - Consideration of approval amount as stated in the Guidelines

- Application for approval must be obtained from Ministry of Education / *Jabatan Pendidikan Negeri / Majlis Agama Islam Negeri / Jabatan Agama Islam Negeri* prior to the submission of the application under Section 44(6) of the ITA 1967
 - Appointment of committee to manage the funds as stated in the Guidelines
- ii. Application Procedure
- Application for approval under Section 44(6) of the ITA 1967 must be submitted together with the relevant supporting documents as stated in the Guidelines including the person to submit the application and the method of submission
- iii. Responsibility of the Committee after Obtaining the Approval
- The Guidelines outline the responsibilities of the committee such as:-
 - objective of the approved funds
 - period of collection of funds
 - notification to the IRB pertaining to the excess fund collection
 - bank account of the funds
 - the preparation and submission of audited financial statements
 - notifying the IRB and obtaining approval prior to the to the appointment of or change in the committee members
 - issuance of official receipts with the requirements stated in the Guidelines
- iv. Consequences of a Breach of the Conditions of Approval Obtained
- If any of the conditions of the approval stated in the respective Guidelines or the ITA 1967 is breached, the DGIR has the discretion to revoke the approval granted
 - The above includes any conditions as stipulated by the IRB from time to time after approval obtained
- v. Approval Period and Application for Extension
- The approval period given are as follows:-
 - TBSA
 - 12 months from the date of collection of money approved by the DGIR is sufficient or 2 years from the approval date, whichever is earlier
 - TPS
 - 3 years or the completion of the construction of schools, whichever is earlier
 - TSUWAS
 - 2 or 3 years from the approval date or the collection of money has reached the amount approved by the IRB, whichever is earlier
 - An application for extension of the approval period is required to be submitted 6 months before expiration of the approval period together with valid reasons and supporting documents
 - Extension of the approval period will be considered by the IRB based on the review of previous records of compliance
- vi. Power of IRB Over Approvals and Imposition of Approval Criteria
- The IRB has power over the approval criteria and responsibilities of fund listed in the Guidelines
- vii. Tax Treatment
- Donors will be eligible for tax deduction restricted to 10% of aggregate income for individuals / companies in respect of the cash contribution supported by official receipts verified by the IRB made to the approved funds

Updated Operational Guidelines on Compensation on Late Refund of Overpayment of Tax

The IRB has, on 21st May 2021, issued the updated *Operational Guidelines on Compensation on Late Refund of Overpayment of Tax* to replace previous Operational Guidelines No.1/2014 dated 15th May 2014 to provide some updates on criteria of eligibility / non-eligibility for the 2% compensation to taxpayers due to late refund of overpayment of tax.

The salient amendments included in the above updated Guidelines are as follows:-

- i. Besides taxpayers who file their tax returns for a year of assessment by the statutory due date, those who file their tax return within the grace period allowed under the annual Return Form Filing Programme will also be eligible for the compensation **[Paragraph 2.1 (d)]**.
- ii. The non-eligibility conditions for the compensation have been updated to include cases where:-
 - Assessments have been raised under Sections 90(3), 91, 91A, 92 and 96A of the ITA 1967 **[Paragraph 3.3]**.
 - Request for further extension of time for submission of tax return has been made by taxpayers **[Paragraph 3.4]**.
 - There is tax or additional tax to be paid due to audit findings within 90 or 120 days from the due date of e-filing or manual tax filing respectively **[Paragraph 3.6]**.
 - Overpayment of tax is not arisen from instalment schedule under Sections 107, 107B and 107C of the ITA 1967 **[Paragraph 3.7]**.
- iii. Previously, taxpayers who do not have schedule of instalment or fail to remit the instalment payments under Sections 107, 107B and 107C of the ITA 1967 are not eligible for the compensation. This requirement has now been removed.
- iv. Previously, application for refund of less than RM100 for companies or RM50 for individual must be submitted within a stipulated period. This requirement has now been removed.

Note : For further information on the previous *Operational Guidelines on Compensation on Late Refund of Overpayment of Tax* dated 15th May 2014, kindly refer to our *Tax Flash – June 2014* issue.

ACA for Machinery and Equipment Including ICT Equipment

Following the 2020 Economic Stimulus Package and Short-Term Economic Recovery Plan (*PENJANA*) announced by the Government recently, the *Income Tax (Accelerated Capital Allowance) ["ACA"] (Machinery and Equipment Including Information and Technology Equipment) ["ICT"] Rules 2021* has been gazetted to allow a person to claim for ACA (i.e. at initial allowance and annual allowance rates of 20% and 40% respectively) in respect of the qualifying plant expenditure ["QPE"] incurred for the purpose of his business from 1st March 2020 until 31st December 2021.

For the purpose of the above Rules:-

"QPE" means capital expenditure incurred under Paragraph 2 of Schedule 3 of the ITA 1967 in relation to the provision of machinery and equipment (including ICT equipment) except motor vehicle.

"ICT equipment" means ICT equipment as specified in the Schedule of the Rules.

The above Rules shall not apply to a person who is eligible and has claimed in respect of the same QPE under the following statutory orders:-

- Income Tax (Accelerated Capital Allowance) (Automation Equipment) Rules 2017; and
- Income Tax (Exemption) (No. 8) Order 2017.

The above Rules shall have effect from YA 2020 onwards.

Tax Deduction on Expenses Incurred on Personal Protective Equipment

Following the 2020 Economic Stimulus Package and *PENJANA* announcements, the *Income Tax (Deduction for Expenses in Relation to the Cost of Personal Protective Equipment) Rules 2021* has been gazetted to allow for deduction of the cost of personal protective equipment incurred by an employer for the purpose of its business from 1st March 2020 in ascertaining the adjusted income from its business in a basis period for a year of assessment.

“Cost of personal protective equipment” means the expenditure incurred by an employer for the purpose of prevention and protection of its workers from Coronavirus Disease 2019.

The above Rules shall not apply to an employer, where in the basis period for a year of assessment, the employer has claimed the cost of the personal protective equipment under:-

- capital allowance for qualifying expenditure under Schedule 3 of the ITA 1967; or
- ACA under Income Tax (Accelerated Capital Allowance) (Machinery and Equipment Including Information and Communication Technology Equipment) Rules 2021.

The above Rules shall have effect from YA 2020.

Extension of Tax Exemption for Medical Tourism

Pursuant to the Income Tax (Exemption) (No. 3) Order 2017, tax exemption is granted to new or existing companies engaged in expansion, modernisation and refurbishment of healthcare facilities that provide private healthcare services to approved health traveller. The Income Tax (Exemption) (No. 2) Order 2020 was previously gazetted to provide extension of the application period which expired on 31st December 2017 to 31st December 2020 with revised eligibility conditions.

The tax exemption is provided to a qualifying company in respect of the statutory income derived from a qualifying project. The amount of tax exempted shall be equal to the amount of qualifying capital expenditure incurred in the basis period for a year of assessment, for a period of 5 consecutive years commencing from the date of the first qualifying capital expenditure incurred by the qualifying company as determined by the Malaysian Investment Development Authority [“MIDA”]. The commencement date shall not be earlier than 3 years immediately preceding the date of application but not earlier than 1st January 2018.

The IRB has recently issued the *Income Tax (Exemption) (No. 2) 2020 (Amendment) Order 2021* to provide extension of the application period which expired on 31st December 2020 to 31st December 2022.

Note : For further information on the previous *Income Tax (Exemption) (No. 2) Order 2020*, please refer to our *Tax Flash – May 2020* issue.

Exemption from Payment of HRDF Levy

Pursuant to the *Pembangunan Sumber Manusia Berhad (Exemption of Levy) (No. 2) Order 2021*, new employers register with the Corporation from 1st March 2021 to 30th June 2021 that fall under the industries for sectors or activities specified in the Schedule of the aforesaid Order are given exemption from paying levy to the Human Resources Development Fund ["HRDF"] for the period from 1st June 2021 to 31st December 2021.

CbCR Notification Using Form C

The IRB has on 25th May 2021 announced via its website that commencing from YA 2021, constituent entities can furnish the *Country-by-Country Reporting ["CbCR"] Notification using Form C*. For constituent entities filing other than Form C, they should continue furnishing the notification using the existing method of submitting the CbCR notification.

The notification via Form C should be made on or before the due date for submission of Form C.

Note : For further details relating to the CbCR Notification, kindly refer to our *Tax Flash – February 2017* and *Tax Flash – February 2018* issues.

Service Tax Policy No. 2/2021

Royal Malaysian Customs Department ["RMCD"] has published the *Service Tax Policy No. 2/2021* dated 1st July 2021. The Service Tax Policy No. 9/2020 (Amendment No. 2) is revoked and replaced with this policy. The salient points pertaining to this policy are summarised below:-

- i. Service tax exemption for accommodation premises will be extended until 31st December 2021.
- ii. The service tax exemption is only applicable to provision of accommodation services.
- iii. The following taxable services provided by a registered accommodation premises operator are not entitled to the service tax exemption and hence, will continue to be subject to service tax:-
 - Provision of other taxable services as specified in other Groups in the First Schedule to the Service Tax Regulations 2018;
 - Provision of other services within the accommodation premises; and
 - Provision or sale of tobacco products and alcoholic and non-alcoholic beverages.
- iv. Responsibilities of the accommodation premises operator include:-
 - Issuing invoices whereby the tax column shall be stated as "0%" or "tax exempted";
 - Submitting Form SST-02 in accordance to the taxable period; and
 - Declaring the total value of exempted services in Item 18(c) of Form SST-02.
- v. Where the exempted services occur on 31st December 2021 and end on 1st January 2022, such services shall be exempted from service tax.

Note : For further details, kindly refer to our *Tax Flash – May 2021* issue.

Sales Tax Orders

The following sales tax orders were gazetted:-

- *Sales Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2021* which took effect from 15th June 2021; and
- *Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2021* which took effect from 1st July 2021.

Submission of Sales Tax and Service Tax Returns for the Taxable Period of April 2021 and/or May 2021

RMCD has issued a *notice dated 8th July 2021* in relation to the submission of returns and payment of sales tax and service tax for the taxable period of April 2021 and May 2021 which is due on 30th June 2021. The salient points pertaining to this notice are summarised below:-

- i. Any registered manufacturer / registered person who is unable to submit the sales tax / service tax return for the taxable period of April 2021 and May 2021 on or before 30th June 2021 due to the implementation of the Movement Control Order will be given an extension of time until 31st July 2021 to do so.
- ii. Any penalty imposed for the late submission of the sales tax / service tax return or for the late payment of sales tax / service tax for the taxable period of April 2021 and May 2021 will be remitted upon receipt of the application made by the abovementioned registered manufacturer / registered person provided that the sales tax / service tax return and the payment are submitted / made no later than 31st July 2021.

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