



MEMORANDUM ON TECHNICAL ISSUES

8 APRIL 2011

Prepared by:
Chartered Tax Institute of Malaysia

Comments on IRB's reply on Memorandum On Technical Issues

1. Income Tax (Exemption) (No.11) (Amendment) Order 2011 [P.U.(A) No.76/2011]

The incentive for undertaking forest plantation projects was included in the 2003 Economic Stimulus Package. However, the gazette order on the project was only published in the year 2009 [P.U.(A) 474/2009]. The Order allowed applications to undertake the project to be made to the Minister on or after 21 May 2003 but not later than 31 December 2011. The above Order [P.U.(A) No.76/2011] specifies that applications are to be made on or after 21 May 2003 but not later than 31 December 2005.

CTIM would like to know the rationale for changing the deadline for making the application to 31 December 2005 when this date has long expired and therefore applications by this date would not be possible.

Answer :

As announced in the 2003 Economic Stimulus Package, a company that invests in an approved forest plantation project qualifies for group relief under Schedule 4C ITA 1967. Since the Schedule was deleted with effect from YA 2006, similar provisions are provided under P.U.(A) No. 474/2009 to make the incentive available for applications made before the year 2006. This exemption order is not applicable to application for approved forest plantation project after 31 December 2005.

2. Implementation of Financial Reporting Standards (FRS)

On 22 January 2010, the Joint Tax Working Group on FRS (JTWG-FRS) submitted to 8 discussion papers on the tax implications related to the implementation of Financial Reporting Standards (FRS) to the MOF and IRB. Several meetings were held between the JTWG-FRS and the IRB, MOF and MASB subsequently on the tax issues raised in the discussion papers.

CTIM would like to know the progress of issuing guidelines for the implementation of FRS from a tax perspective. The issuance of guidelines on the tax treatment as proposed in the discussion papers prepared by JTWG-FRS needs to be expedited to avoid any uncertainties when preparing tax returns.

The FRSs that require urgent attention are the following:

FRS 139 – Financial instruments: Recognition & measurement (for non-financial institutions)

FRS 121 – The Effects of Changes in Foreign Exchange Rates

FRS 2 – Share Based Payments

Comments on IRB's reply on Memorandum On Technical Issues

Answer :

LHDNM is preparing the Guidelines for the three FRSSs. The Guidelines will be issued upon approval by Ministry of Finance.

3. Income Tax (Deduction for Benefit and Gift from Employer to Employee) Rules 2009 [P.U. (A) 153/2009]

Pursuant to Rule 2(b) of P.U. (A) 153/2009, in ascertaining the adjusted income of an employer, travelling allowance, petrol card or petrol allowance provided to employees for to and fro home/place of work travelling shall be allowed as deduction for the year of assessment from 2008 to 2010.

CTIM is of the view that benefits such as travelling allowance, petrol card or petrol allowance provided by an employer to its employees are part of the remuneration package designed to attract and retain employees. Hence, the costs incurred in providing these benefits are allowable deductions under Section 33(1) of the ITA, regardless of whether they are taxable or not in the hands of the employees. The above Rules are thus unnecessary and create confusion as it implies that the expenses incurred in providing the benefits are not deductible prior to the year of assessment 2008 and after the year of assessment 2010.

CTIM would like to point the potential anomaly in tax treatment in the following scenario:

For a company with an early financial year-end, say 31 March 2010, although the employees are still enjoying tax exemption on the travelling allowances for to and fro home/place of work in year of assessment 2010 (1 January 2010 to 31 December 2010), the company would not allowed a deduction for the expenses incurred in providing these benefits in the year of assessment 2011 (1 April 2010 to 31 March 2011).

Answer :

Travelling allowance between home and place of work provided by an employer to his employees is not an allowable expenditure under section 33(1), ITA 1967. To encourage employers to provide additional benefits to his employees, the Government decided to allow of such deduction of travelling allowance to employers for 3 years of assessment from YA 2008 to 2010. This is in line with the exemption period provided to employees.

The grant of the deduction to employers based on a year of assessment is a policy decision.

Comments on IRB's reply on Memorandum On Technical Issues

4. Status of Management Corporation coming into existence under the Strata Titles Act 1985

Section 39 of the Strata Titles Act 1985 (Act 318) (refer Appendix 1) stipulates that “upon the opening of a book of the strata register in respect of a subdivided building or land there shall, by the operation of this section, come into existence a management corporation consisting of all the parcel proprietors including in the case of phased development, the proprietor of the provisional block or blocks.” The management corporations receive service charges from parcel proprietors of these buildings and at the same time receive income from rental of shops, restaurants, etc located in certain common areas. There are currently no guidelines on the appropriate tax treatment of management corporations.

CTIM would like to seek confirmation that management corporations are to be assessed to tax similar to clubs and associations. Profits derived from providing maintenance services to parcel proprietors (members of the management corporation) are not taxable following the mutuality principle. Only profits derived from the letting out of common areas to third parties are taxable.

Answer :

A guideline will be issued.

5. Income Tax (Accelerated Capital Allowance) (Plant and Machinery) Rules 2009 [P.U.(A) No. 111/2009]

P.U.(A) No. 111/2009 applies to a resident person “who incurs qualifying plant expenditure under Schedule 3 on or after 10 March 2009 but not later than 31 December 2010” (Rule 2). Rule 3 further provides that “where a person incurs qualifying plant expenditure under a hire purchase agreement..... and that qualifying plant expenditure incurred by such person in the basis period for a year of assessment shall be taken to be the capital portion of any instalment paymentmade by such person under such hire purchase agreement in that period”.

CTIM would like to seek confirmation from the IRB that a resident person who signed a hire purchase agreement before 10 March 2009 and continues to make instalment payments after 10 March 2009 would be eligible for accelerated capital allowance on the qualifying plant expenditure incurred during the period from 10.03.2009 to 31.12.2010.

Answer :

These Rules shall only apply to assets where the date of acquisition falls between 10 March 2009 and 31 December 2010. Therefore, a resident person who signed a hire purchase agreement before 10 March 2009 will not be eligible for accelerated capital allowance on instalments made during that period. For

Comments on IRB's reply on Memorandum On Technical Issues

details please refer to Garis Panduan Bajet Mini 2009 available on IRB's website.

6. Investment tax allowance (ITA) on assets acquired through controlled transfer

Section 29 of the Promotion of Investments Act 1986 (Act 327) provides that “where a companyhas incurred..... capital expenditure for the purposes of that promoted activity or promoted product, there shall be given to the company for that year of assessment an investment tax allowance”

CTIM would like to seek confirmation that the transfer value of a qualifying plant under a controlled transfer is to be taken as the qualifying capital expenditure for the purposes of claiming ITA.

Answer :

The qualifying capital expenditure to be taken for the purpose of investment tax allowance is the cost incurred by the acquirer. It has to be at arm's length price and the asset must not have been given investment tax allowance.

7. Schedule 3, Paragraph 42B of ITA – Building used as a school or an educational institution

Paragraph 42B, Schedule 3 of ITA provides that “..... a person has for the purpose of a business of his incurred capital expenditure on the construction or purchase of a building for a school or an educational institution approved by the Minister of Education... , that building shall be treated as an industrial building”.

Paragraph 60, Schedule 3 of ITA further provides that “where a person who owns a building grants a lease thereof and that building is in use as an industrial building, then, in the application of this Schedule to that person in relation to that building any reference to a business of his shall be taken to be a reference to the source in respect of any income to which that person is entitled under that lease, any reference to a basis period (in relation to any such reference to a business) shall be taken to be a reference to the basis period in relation to that source.”

CTIM would like to seek confirmation on the following:

- (i) a school or an educational institution generally consists of library, students' hostel/ dining hall, canteen, lecture hall, an administration centre, tennis courts, a multi-purpose hall and swimming pool. So long that the school or educational institution is approved by the Ministry of Education, all the buildings would be eligible for industrial building allowance under Paragraph 42B.

Comments on IRB's reply on Memorandum On Technical Issues

- (ii) **Where a lessor incurred capital expenditure on the construction of a building and leased it to a lessee who used it as a school or an educational institution approved by the Minister of Education, the lessor would be eligible to claim industrial building allowance thereon.**

Answer :

- (i) *IRB will seek clarification from MOF on whether the definition of " school or educational institution " should include other facilities.*
- (ii) *Paragraph 42 of Schedule 3 ITA 1967 is a specific provision for the grant of IBA for certain buildings. Paragraph 42B ITA 1967 is applicable to a building used as school or an educational institution approved by the Minister. As specified in that paragraph, IBA will only be given to a person if that person is the owner and operator of that school or educational institution. Therefore, paragraph 60 of Schedule 3 ITA 1967 shall not be applicable to the lessor although the lessee uses the building as school or educational institution.*

8. Availability of Form LHDN/BT/RA/2007 for reinvestment allowance (RA) application

There is no such form available on the website of the IRB. The form available is form LHDN/BT/RA/2005. We would like to enquire when the above Form LHDN/BT/RA/2007 will be made available to the public.

Currently, a taxpayer who is claiming RA uses the Form LHDN/BT/RA/2005. However, it is stated in Paragraph 12.1 of the Public Ruling No.2/2008 - Reinvestment Allowance that a claim for RA is to be made by completing two copies of the claim form LHDN/BT/RA/2007. Therefore, those who claimed RA using the Form LHDN/BT/RA/2005 would not have complied with the Public Ruling.

Answer :

The previous claim form for RA, LHDN/BT/RA/2005 has now been replaced by LHDN/BT/RA/2007.

9. Mismatch of Government grants received

A company has been granted a 50% research and development (R&D) matching grant amounting to RM3 million from SMIDEC for a period of 3 years. The reimbursement of the expenditure is subject to MIDA's approval upon submission of the relevant documentation. The company's financial year-end is 31 December.

Comments on IRB's reply on Memorandum On Technical Issues

In the year ended 31 December 2009 [year of assessment (YA) 2009], the company incurred R&D expenditure amounting to RM900,000 and has submitted a claim for reimbursement of 50% of the amount expended which is RM450,000. However, the grant has not been received when the income tax returns for YA 2009 was filed. Since the reimbursement is subject to MIDA's approval, ie, MIDA may reject or reduce the amount claimed, the company has claimed the whole amount of RM900,000 in YA 2009 tax computation.

The grant of RM400,000 (as opposed to RM450,000 claimed) was approved and received in YA 2010. The company has to revise its YA 2009 tax return to bring to tax the grant of RM400,000 received in YA 2010. This is impractical and any amendment to the prior years' tax returns will attract penalties.

In view of the above, the Institute proposes that grants be taxed in the basis period for a year of assessment in which they are received. This will alleviate the administrative burden to both the IRB and taxpayers.

Answer :

The current tax treatment on grant as in paragraph 2.3 of the Guideline remains where the grant is deemed received in the year the expenses are incurred.

Comments on IRB's reply on Memorandum On Technical Issues

APPENDIX 1

ACT 318 STRATA TITLES ACT 1985 PART VII - MANAGEMENT OF A SUBDIVIDED BUILDING

Section 39. Establishment of management corporation.

(1) Upon the opening of a book of the strata register in respect of a subdivided building or land there shall, by the operation of this section, come into existence a management corporation consisting of all the parcel proprietors including in the case of phased development, the proprietor of the provisional block or blocks.

[Am. Act A1290:s.22]

(2) The management corporation established by subsection (1) shall be known by the name appearing in the book of the strata register relating to a subdivided building or land, and shall be a body corporate having perpetual succession and a common seal.

[Am. Act A1290:s.22]

(2A) The management corporation may apply to the Registrar for a certificate certifying that the management corporation is a body corporate constituted under this Act on the day specified in the certificate.

[Ins. Act A1077:s.9]

(3) The management corporation may sue and be sued.

(4) The management corporation shall elect a council which, subject to any restriction imposed or direction given by the management corporation at a general meeting, shall perform the management corporation's duties and conduct the management corporation's business on its behalf, and may for that purpose exercise any of the management corporation's powers.

(5) The provisions of the Second Schedule shall have effect in relation to the management corporation and its council.