



IRB GUIDELINES

UTILISATION OF INCOME TAX CREDIT AS SET-OFF

1. Tax credit for a year of assessment arises from:
 - 1.1 Excess of payment on the date the assessment is deemed or formal assessment is raised,
 - 1.2 Tax discharged,
 - 1.3 Tax credit claimed under section 110 Income Tax Act (ITA) 1967 / section 51 of Finance Act 2007.

[Monthly Tax Deductions (MTD) or instalment payments under section 107, 107B or 107C ITA 1967 for current year assessment and advance payments in respect of investigation or audit cases are not considered as tax credit]
2. Tax credit shall first be used to settle all income tax liabilities in the following order of priority:
 - 2.1 Income tax arrears (inclusive of increases in tax) which are due and payable for current and previous years of assessment;
 - 2.2 Outstanding debts (inclusive of increases in tax) which are due and payable under section 108 ITA 1967 / subsection 48(2) Act 683 Finance Act 2007 and section 49 Savings And Transitional Provisions Act 693 Finance Act 2009;
 - 2.3 Overdue instalments and increases in tax due and payable under section 107B / 107C ITA 1967.
3. In accordance with the new subsection 111(4A) ITA 1967, any excess tax credit may thereafter be utilised by The Director General to set-off:
 - 3.1 Real property gains tax arrears (inclusive of increases in tax) which are due and payable under the **Real Property Gains Tax Act 1976**, and

- 3.2 Petroleum income tax inclusive of overdue instalments and increases in tax due and payable under Section 48 and 49A **Petroleum (Income Tax) Act 1967**.
4. An application must be made to the Collections Branch / Unit of the relevant branch of the Inland Revenue Board Of Malaysia (IRBM) to request any excess tax credit, after taking into consideration paragraph 2 and 3 above, be utilized to set-off:
- 4.1 Non-overdue instalments payable under 107B / 107C ITA 1967 for the current year and following year of assessment, or
- 4.2 Tax within the same group of companies.
5. For purposes of paragraph 4.2 above, the following documents are to be furnished together with the application letter:
- 5.1 Organisational structure to illustrate the relationship between the company with the excess tax credit and the recipient company within the same group.
- 5.2 For a local company:
- i. Board of Director's Resolution which bears the company's common seal and signed in manuscript by all the directors of the company to authorize the transfer of the said tax credit; and
 - ii. Form 49 [subsection 141(6) of the Companies Act 1965] certified true copy by the Company's Secretary with his name and full address stated.
- 5.3 For a foreign company:
- i. Deed of Assignment; or
 - ii. Board of Director's Resolution as stated in paragraph 5.2(i) above.
6. The company shall not claim for refund the tax credit which has already been used to set off the tax of another company within the same group. The date of utilisation of the tax credit is the date the application letter and specified documents are received by IRBM.

INLAND REVENUE BOARD OF MALAYSIA

30 December 2010