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CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

e-CTIM TECH-DT 5/2014 **28 January 2014**

TO ALL MEMBERS

TECHNICAL

PUBLIC RULING NO. 12/2013 – RESCUING CONTRACTOR AND DEVELOPER

The Inland Revenue Board of Malaysia (IRBM) issued the above Public Ruling on 17 December 2013. The main points are summarized below.

Subject (Para. No.)	Salient points
Objective (1)	To explain the tax treatment of a rescuing contractor or developer appointed to revive an "abandoned project" (AP) (see Para. 4 below).
Interpretation (3)	The words "loan" and "Bank or financial institution" are defined.
Tax incentives (4)	• The incentive is granted under the *Income Tax (Deduction For Expenses In Relation To Interest And Incidental Cost In Acquiring Loan For Abandoned Projects) Rules 2013* [P.U.(A) 89/2013]. (Please refer to *e-CTIM 37/2013*) • An "abandoned project" is a project which is certified by the Minister of Urban Wellbeing, Housing and Local Government (MUHLG) as an abandoned project pursuant to para. 11(1)(ca) of the *Housing Development (Control And Licensing) Act 1966 [Act 118].* • A "qualifying person" (QP) refers to a rescuing contractor or developer appointed or approved by the MUHLG or liquidator (also defined) to carry out rehabilitation works for an AP.
Special deduction for a QP (5)	• In ascertaining adjusted income of a QP's business for the basis period (BP) for a year of assessment (YA), a deduction is allowed for outgoings and expenses incurred in that BP by that QP primarily and principally for the purpose of an AP. • The expenses allowed refer to expenses incurred in the course of acquiring a loan for the purpose of an AP and interest incurred on the loan. • Other matters explained in this paragraph include: - Types of expenses that qualify for deduction; - Conditions for deductions; - Amount of deduction (twice the amount allowed); - Period of claim for interest expense; - YA for which deduction is claimed (upon completion of project).
Separate and distinct source (6)	• Each AP and any other project carried out by the QP must be treated as a separate and distinct source of income. • Separate accounts must be kept for an AP.
Commencement date (7)	• The commencement date is the date of award of the AP by the MUHLG or a liquidator.
Completion date (8)	• The project is deemed to have been completed on the date on which: - the Certificate of Practical Completion (CPC); - the Certificate of Completion and Compliance (CCC); or

	- any other certification which has a similar effect; is issued to the QP and surrendered by the QP to the MUHLG or liquidator.
Gross income (9)	• Gross income from an AP is the total amount accrued to the QP by MUHLG or the liquidator upon completion of the AP and must be recognized on a completion basis in the BP for a YA in which the AP is deemed to be completed.
Development expenditure & general and administrative expenses (10)	• Development expenditure of AP, including loan interest, is to be capitalized and claimed in the YA in which the AP is completed. • General and administrative expenses, including expenses of acquiring loan, are to be claimed in the BP for the YA in which the AP is completed.
Capital Allowances (CA) & Balancing Allowance (BA)/ Balancing Charge (BC) (11)	• CA, BA or BC are to be accumulated and claimed/ charged in the BP for a YA in which the AP is completed. • A QP who manages more than one AP is deemed to carry on the same business. • Unabsorbed CA of an AP can be carried forward and allowed against the adjusted income of another AP of that QP. • Any unabsorbed CA remaining after completion of an AP is disregarded if the QP does not carry on any more work on abandoned projects.
Losses (12)	• Sections 43(2) and 44(2) of the Income Tax Act 1967, shall apply in determining total income of a QP. • An adjusted loss of an AP is set off against aggregate income from all sources [S44(2)]. • Any unabsorbed loss of an AP is carried forward to the following year to be set off against statutory income from all businesses [*S43(2)*] • Adjusted loss from the property development business of the QP is also deductible against income from an AP.
Non-application (13)	The following regulations are not applicable to an AP: • Income Tax (Construction Contracts) Regulations 2007 • Income Tax (Property Development) Regulations 2007
Stamp Duty exemption (14)	• Stamp duty exemption is granted under the *Stamp Duty (Exemption) (No.6) Order 2013* [P.U.(A) 92/2013] (Please refer to *e-CTIM 37/2013*) on the following instruments executed (within the stipulated period) by a rescuing contractor or developer: a) Any loan instrument or loan agreement approved by the bank or financial institution to finance the AP; and b) Any instrument of transfer for the purpose of transferring revived residential property (defined in para 14.3 of the PR) in relation to the AP.

You may read the *PR 12/2013* in full from the IRB's website.