ISSUES TO BE BROUGHT UP TO CTIM HQ

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS
1	<u>Waiver of Debt</u> Many companies in group usually will have non-trade balance owing to/from each other. Usually this happens is because one of the company is not doing well, making losses therefore the other companies in the group will have to pump in money as advances to help them with operating cash flow instead of borrowings from bank. Finally, the loss making company will close down because really cannot sustain the business. So the lender will write off the non-trade debts (not deductible) and the recipient will treat as waiver of non-trade debts (income).	We wish to seek confirmation on the interpretation of Section 30(4) of the ITA, 1967 which can be interpreted either way:- 1. Section 30(4) is only applicable when the debt is waived directly by supplier – for eg. supplier of asset, supplier of purchases / stocks, landlord because a deduction of rental expense, purchases etc would have been deductible under Section 33(1) previously and capital allowances claimed on the asset previously. This means that the non-trade amount as mentioned is not taxable because such advances do not fall under these categories. 2. Section 30(4) applies to non-trade advances and loans which were used indirectly to finance purchases / stock, assets and other operating expenses because the Company will use these advances to pay off suppliers, landlord etc. This means that the Company needs to trace back exactly how these advances are utilized to prove that it is not used to finance operating expenses and assets which in practice are nearly impossible.	Strictly reading the Act – it mentioned "debt in respect of such outgoing, expense, sum, rent or expenditure ….". Therefore, the debt should only refer to direct debt from suppliers as mentioned in #1. If the stand in #2 is adopted by LHDN – it would have meant that almost all non-trade advances waiver is taxable. Very seldom a loss making company will borrow money in order to loan to directors or put in fixed deposits or buy investments. We wish to seek clarity on the interpretation of Section 30(4) because usually such waiver of non-trade debts are substantial and it is important to ensure that tax agents adopts the correct tax treatment.

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2	<u>Tax Treatment for Employees Pertaining to Petrol Claims Based on Receipts from Petrol Station</u> Many companies' directors and employees claim petrol from the Company based on actual petrol receipts from petrol station. However, the above Income Tax (Exemption) Order 2009 Para 3(b) only states petrol allowances and petrol card is exempted whereas Para 9.2.12 of Public Rulings 3-2013 mentioned that petrol bills paid by employer is a BIK received by employee. Normally such claims based on whole petrol bill will also include personal use unless it is for specific business trips – such as to Kuala Lumpur.	We wish to confirm whether such petrol claims based on actual receipts (without specific business trips) from petrol station should be:- (a) Stated in Form EA (taxable) for employees with control over the company and stated in Form EA Part G (tax exempt) for normal employees; OR (b) No need to state in Form EA because this is considered as business travelling reimbursement. We also wish to confirm if such petrol claims based on actual receipts falls under the exemption in Income Tax (Exemption) Order 2009.	Petrol claims based on receipts without any records of business travelling should be considered as perquisite based on the definition provided in Paragraph 4.7 of the Public Rulings 3-2013 and needs to be reported in Form EA. However, if the petrol receipts claims are supported by business travelling claim form indicating specific business trips such as to Kuala Lumpur for meeting with customer (with purpose of trip, date, toll etc), such claims should be considered as business travelling claims akin to mileage and is not required to be reported in Form EA. Such petrol claims will not enjoy tax exemption if strictly relying on the Income Tax (Exemption) Order 2009. However, we can rely on Paragraph 9.2.12 (a) of Public Rulings 3-2013 which mentioned that petrol benefits also includes petrol bills paid by employer. Paragraph 9.2.12 (c) further explains that such petrol benefit is tax exempted for employees without any control over employer.
3	<u>Control of Employee Over Company</u> Income Tax (Exemption) Order 2009 Paragraph 3 (a) mentioned that tax exemption is not applicable to an employee who has control over the Company.	We wish to confirm whether "control" as referred in the Exemption Order only looks at direct shareholdings of the employee or includes family relationship as defined under Section 139 (7)(a) of the ITA, 1967? For example – Company A is owned 20% by Mother, 20% by Child 1, 20% by Child 2 and 40% by Child 3. Father is a director without any shareholdings. Is the travelling allowances received by Father tax exempt under the Gazette Order?	The Income Tax (Exemption) Order 2009 only mentions control by the employee without mentioning control together with associates as defined under Section 139. Therefore, it should be strictly interpreted that taxpayers should only look at direct shareholding or power of the employee himself. In the stated example, the travelling allowances received by Father falls under the tax exemption as stated in the Income Tax (Exemption) Order 2009.

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4	<u>SME Definition</u> Paragraph 2B of Schedule 1 provides the definition of SME as a company with share capital not more than RM2.5 million AND not more than 50% of its shares are owned by a company with share capital more than RM2.5 million.	We wish to confirm whether LHDN agrees with the strict interpretation of the Act that Company A falls under the definition of SME in this situation: The shares of Company A (share capital below RM2.5 million) is held by the following shareholders:- 50% - Company B (share capital = RM3 million) 50% - Company C (share capital = RM4 million) Both Company B and Company C are not related at all.	Paragraph 2B of Schedule 1 only mentions MORE than 50%. In the given example, Company A is not MORE than 50% owned by any single company with share capital more than RM2.5 million. Therefore, Company A is a SME notwithstanding that it is fully owned by 2 companies with share capital more than RM2.5 million.
5	<u>Shareholder's Continuity Test for Dormant Company</u> Referring to Paragraph 2.2 of the Guideline from MOF, the definition of dormant company is "tidak mempunyai sebarang transaksi akaun yang signifikan dalam satu tahun kewangan sebelum berlakunya perubahan sebahagian besar (iaitu 50% atau lebih) dalam pemegangan ekuitinya. Ini bermakna tidak ada daftar masuk dalam akaun syarikat selain daripada perbelanjaan minimum untuk memenuhi keperluan perundangan yang telah ditetapkan."	We wish to confirm whether a Company in the scenario below falls within the definition of a dormant company as mentioned in Paragraph 2.2 of the Guideline from MOF. For example – Company A has still has active business in YA 2015 (January to December 2015) and its P&L showed significant transactions in YA 2015 because the business only ceased in August 2015. The Company fully changed its shareholders in YA 2016 (eg. March 2016) when it is dormant; and the new shareholders started a new business in June 2016. Will its unabsorbed business losses and capital allowances be disregarded?	The Guideline mentioned that a dormant company is defined as a company without ANY significant transactions in its accounts in the financial year immediately preceding the year which there is a significant change in shareholders. In the given example, change in shareholders happened in FYE 2016 and the previous financial year FYE 2015 still showed significant transactions. Once new business is injected into the company by new shareholders, FYE 2016 accounts will also show significant transactions. Therefore, Company A does not fall within the definition of a dormant company as mentioned in Paragraph 2.2 of the Guideline from MOF and the unabsorbed business losses and capital allowances from YA 2015 can be carried forward to YA 2016.
6	Clarity on pre-commencement expenses		
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