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TO ALL MEMBERS

TECHNICAL

Treasury Management Centre (TMC)

A) In [Paragraph 23](#) of the 2012 Budget Speech and [Appendix 8](#), it was **proposed** that the Treasury Management Centre (TMC) will be given an incentive package, applicable from 8 October 2011 until 31 December 2016, as follows:-

- I. 70% tax exemption on the **statutory income arising from the following qualifying treasury services** rendered by the TMC to its related companies for a period of 5 years.

The income arising from qualifying treasury services, in this proposal, is:

- a) All *fees* income and *management* income from providing **qualifying services** to related companies in Malaysia and overseas;

Qualifying Services means:

- (i) Cash management, which includes maintaining cash pooling arrangement through a centralised account with licensed onshore bank.
 - (ii) Current account management, which includes:
 - Managing account payables and receivables; and
 - Maintaining intercompany offsetting arrangement.
 - (iii) Financing and debt management, which includes:
 - Arranging for competitive financing from surplus funds within the group or from financial institutions in Malaysia and overseas and through the issuance of bonds in ringgit or foreign currency; and
 - Providing or arranging for financial and non-financial guarantee for its group of companies.
 - (iv) Investment services, which include:
 - Investing funds within the group in domestic money market and in foreign currency assets onshore and offshore.
 - (v) Financial risk management, which includes hedging of:
 - Exchange rate risk;
 - Interest rate risk;
 - Market risk;
 - Credit / counterparty risk;
 - Liquidity risk; and
 - Commodity price risk.
 - (vi) Corporate and financial advisory services, which include:
 - Economics or investment research and analysis;
 - Treasury forecasting and financial trend analysis; and
 - Credit administration and control.
- b) Interest income received from lending to related companies in Malaysia and overseas;
- c) Interest income gains received from placement of funds with licensed onshore banks or short term investments (onshore and offshore) as part of managing surplus funds within the group;

- d) Foreign exchange gains from managing risks for the group e.g. exchange rate risk, interest rate risk and commodity risk; and
 - e) Guarantee fees.
 - II. Exemption from withholding tax on interest payments on borrowings by the TMC to overseas banks and related companies provided the funds raised are used for the conduct of qualifying TMC activities.
 - III. Full exemption from stamp duty on all loan agreements and service agreements executed by TMC in Malaysia for qualifying TMC activities, and
 - IV. Expatriates working in a TMC are taxed only on the portion of their chargeable income attributable to the number of days they are in Malaysia.
- B) In connection with the above, the following **Orders** have been gazetted:

1) [Income Tax \(Exemption\) \(No.3\) Order 2012 \[P.U. \(A\) 184/2012\]](#)

This Order exempts a non-citizen individual from the payment of income tax in respect of income derived from an employment with a TMC. The amount exempted is in respect of employment income exercised outside Malaysia (a deemed "day" outside Malaysia is the whole of that day) and shall be ascertained in accordance with the formula:

$$A \times \frac{C}{B}$$

Where **A** is the chargeable income for a year of assessment attributable to a TMC;
B is the number of days in the year of assessment the individual is in employment with the TMC exercised outside Malaysia; and
C is the number of days in the year of assessment the individual is in employment with the TMC.

If the non-citizen individual has sources of income other than that of an employment with the TMC, the chargeable income shall be ascertained in accordance with the formula:

$$D \times \frac{E}{F}$$

Where **D** is the chargeable income for a year of assessment;
E is the gross income from employment with the TMC for a year of assessment; and
F is the total of gross income from all sources of income for a year of assessment.

TMC is defined as a Malaysian resident company, incorporated under Malaysian Companies Act, 1965, and carrying on a business of providing **qualifying financial and fund management services** in Malaysia and approved by the Minister.

This order shall have effect from the **year of assessment (YA) 2012**.

2) [Stamp Act \(Exemption\) \(No.2\) Order 2012 \[P.U. \(A\) 185/2012\]](#)

This Order exempts from stamp duty, all instruments of loan agreements and service agreements, executed by a TMC on or after 8 October 2011 but not later than 31 December 2016 for the provision of qualifying financial and fund management services in Malaysia.

TMC is defined as a Malaysian resident company, incorporated under Malaysian Companies Act, 1965, and carrying on a business of providing **qualifying financial and fund management services** in Malaysia and approved by the Minister.

This Order is deemed to have come into operation on 8 October 2011 and shall continue to be in operation until 31 December 2016.

3) [Income Tax \(Exemption\) \(No.5\) Order 2012 \[P.U.\(A\) 240/2012\]](#)

This order exempts a TMC from the payment of income tax for five consecutive years of assessment in respect of the statutory income from the provision of qualifying services to its related companies, and at least three of which are located outside Malaysia. The commencement of the exempt YA shall be determined by the Minister.

The statutory income exempted shall be on -

- (a) 70% of the statutory income from the provision of qualifying services to its related companies located outside Malaysia; and
- (b) a part of the income from the provision of qualifying services to its related companies located in Malaysia, determined as follows:

$$\frac{A}{B} \times C$$

Where **A** = $\frac{20}{80}$ x the amount of **all income** from the provision of qualifying services

B is the amount of **gross income** from the provision of qualifying services to its related companies in Malaysia; and

C is the amount of **statutory income** from the provision of qualifying services to its related companies in Malaysia.

The statutory income mentioned above shall be determined after deducting allowances which should have been made under Schedule 3 of the Act, notwithstanding that no claim has been made.

Where the Director General of Income Tax is of the opinion that any payment received by TMC or made to its related companies in relation to the provision of the qualifying services is not at arm's length, or any interest charged or paid is excessive, he may substitute the price in respect of the provision of qualifying services or disallow the excessive interest charged or paid, in determining the adjusted income of the TMC.

Where the TMC carries on a business of providing qualifying services to its office or related company located outside / in Malaysia, the business of providing qualifying services in Malaysia shall be treated as a separate and distinct source.

Tax Treatment for TMC that suffered losses during exempt YA

- a). Where the TMC is ascertained to have an adjusted loss under subsection 44(2) of the Income Tax Act 1967 (ITA) in respect of the business of provision of qualifying services to its related companies located outside Malaysia, that loss shall be disregarded from the source consisting of the provision of qualifying services in Malaysia and other businesses.
- b). Similarly, any loss ascertained under subsection 43(2) is accorded a similar treatment.
- c). In addition, any balance of adjusted loss pursuant to subsections 43(2) and 44(2) of the Act shall be disregarded in the subsequent YA after the exempt YA, as the case may be.

TMC is defined as a Malaysian resident company, incorporated under Malaysian Companies Act 1965, and carrying on a business of providing **qualifying services** in Malaysia specified and approved by the Minister.

This Order shall have effect from the year of assessment 2012 and applies to any application made to the Malaysia Industrial Development Authority (MIDA) not later than 31 December 2016.

The Order shall not apply to TMC if for that year of assessment, the TMC

- a) has made a claim for reinvestment allowance under Schedule 7A or investment allowance under Schedule 7B of the ITA;
- b) has been granted any incentive under the Promotion of Investment Act 1986;
- c) has been granted any exemption under Section 127 of ITA;
- d) has made a claim for a deduction under any Rules made under Section 154 of ITA except Schedule 3 allowance; or
- e) fails to satisfy the conditions as specified by the Minister.

4) [Income Tax \(Exemption\) \(No.6\) Order 2012 \[P.U.\(A\) 241/2012\]](#)

This Order exempts a non-resident person (i.e. a related company of the TMC or a financial institution which is not resident in Malaysia under Section 8 of Income Tax Act) from payment of income tax in respect of interest on borrowings to the TMC for the purpose of providing qualifying services during the exempt years of assessment as specified in Income Tax (Exemption)(No.5) Order 2012 [P.U.(A) 240/2012].

TMC is defined as a Malaysian resident company, incorporated under Malaysian Companies Act 1965, and carrying on a business of providing **qualifying services** in Malaysia specified and approved by the Minister.

This Order shall have effect from the year of assessment 2012.

Members may visit the [Attorney-General's Chambers](#) (AGC) to view the above Orders.

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