e-CIRCULAR TO MEMBERS

CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

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TO ALL MEMBERS

TECHNICAL

TAX INCENTIVES FOR PROFIT-ORIENTED PRIVATE SCHOOLS AND INTERNATIONAL SCHOOLS – ISSUANCE OF EXEMPTION ORDERS

The following statutory orders were recently gazetted:

P.U.(A)	Order	Effective from
420	Income Tax (Exemption) (No.7) Order 2012	8 October 2011
421	Income Tax (Exemption) (No.8) Order 2012	8 October 2011
422	Income Tax Exemption) (No.9) Order 2012	14 July 2010

Background
Budget 2012 contained a proposal to grant the following tax incentives for profit-oriented private schools and international schools:

- Private schools:
  (i) 70% income tax exemption for a period of 5 years: or
  (ii) Investment tax allowance (ITA) of 100% on qualifying capital expenditure (QCE) incurred within a period of 5 years to be set off against a maximum of 70% of statutory income (SI).
- International schools
  (i) 70% income tax exemption for a period of 5 years
  (Legislation (prior to issuance of above Orders) allows such schools to enjoy ITA of 100% of QCE to be set off against a maximum of 70% of SI for 5 years.)

The above orders give legal effect to these proposals.
The following are some salient features of the respective Exemption Orders.

Income Tax (Exemption) (No.7) Order 2012 and
Income Tax (Exemption) (No.9) Order 2012

Exemption
The above orders grant exemption from payment of income tax in a basis period for a year of assessment to a qualifying person (QP), on the statutory income derived from a business of private school in Malaysia, in an amount which is equivalent to 100% of QCE incurred in that basis period, subject to a maximum of 70% of SI. The effect of the exemption is similar to the granting of ITA, as proposed under Budget 2012.

The first Order (No.7) applies to *private schools* and the latter (No. 9) applies to *international schools.* The exemption is granted for a period of 5 years commencing from a date to be determined by the Malaysian Investment Development Authority under both Orders.

Qualifying person
The following table lists the conditions to be a QP under the respective Orders.

A “qualifying person” means:	
(No.7) Order	**(No. 9) Order**
(a) A society established under the Societies Act 1966 prior to *8 Oct 2011* or a	A society established under the Societies Act 1966 prior to *14 July 2010* or a company

company incorporated under the Companies Act 1965.	incorporated under the Companies Act 1965.
(b) Resident in Malaysia	
(c) Registered with the Ministry of Education (MOE) and has complied with terms and regulations as determined by that Ministry under the Education Act 1996 to carry on the business of *private school*;	Registered with the MOE and has complied with terms and regulations as determined by that Ministry under the Education Act 1996 to carry on the business of *international school*;
(d) Approved by the Minister	

Definitions

- The following terms are defined in each respective Order (please refer to the full text for definitions).

(No.7) Order	(No 9) Order
Qualifying capital expenditure	Qualifying capital expenditure
Private school	International School

- The terms "incurred", "Malaysian Industrial Development Authority", "pre-school education", and "related company" are similarly defined in both Orders. (Please refer to full text.)

Withdrawal of tax Exemption

Under both Orders, the exemption will be withdrawn if the QP disposes of the asset within 2 years from the date of acquisition of the asset.

Application

(No.7) Order	(No 9) Order
The Order applies to a QP who has made an application to MIDA :	
between 8 October 2011 and 31 December 2015; and	between 14 July 2010 and 31 December 2015; and
has not commenced the business of private school prior to the above application	incurred QCE from the year of assessment 2010

Non-application

It is provided under both Orders, that the respective Order would not apply for a year of assessment if the QP has, in that year of assessment:

- Made any claims for Reinvestment allowance, or for any deductions under any Rules made under section 154 of the Income Tax Act 1967 (ITA) (except for Schedule 3 allowances);
- Been granted any incentive under the Promotion of Investments Act 1986, or any exemption under section 127 of the ITA; or
- Fails to meet any conditions specified by the Minister of Finance in his letter of approval.

Please read the full text of the Rules by clicking on the following link.

Income Tax (Exemption) (No.8) Order 2012

Exemption

This Order grants income tax exemption to a QP for a year of assessment on the statutory income derived from a business of private school or international school in Malaysia. The amount exempted is 70% of statutory income, which must be reduced:

(i) firstly, by current year adjusted loss from a business/es other than the business of private or international school in Malaysia; and

(ii) next, by any unabsorbed loss or current year adjusted loss from the business of private school or international school in Malaysia exempted under this Order.

"Private school" and "international school" are among the terms which are defined in the Order.

Exempt period

The exemption is granted for a period of 5 years, commencing from a date to be determined by MIDA.

Qualifying person

The conditions for a qualifying person are the same as for Orders No. 7 and 9, except for item (c) which should read:

> "registered with the Ministry of Education Malaysia and has complied with terms and regulations as determined by that Ministry under the Education Act 1996 to carry on the business of a private school or international school on or after 8 October 2011".

Adjusted losses

The Order sets out the rules relating to adjusted loss (current year loss and unabsorbed loss brought forward) in the computation of exempt statutory income of the business of private schools or international schools. Among these are the following:

- Any losses (current year and brought forward) which are utilized to reduce the statutory income of the business of private school or international school should not be taken into account for the purpose of subsections 43(2) and 44(2) of the ITA
- Any current year loss or unabsorbed loss from the business of private school or international school that are not utilized to reduce the statutory income during the exempt period is carried forward for utilization in the basis period following cessation of the exempt period, in accordance with subsections 43(2) and 44(2) of the ITA, and in subsequent basis periods.

Application

The Order applies to a QP who has made an application to MIDA on or after 8 October 2011 but not later than 31 December 2015, and who has not commenced the business of private school or international school prior to the application.

Non-application

The circumstances listed in this Order under which the Order is not applicable are the same as those listed for Orders No. 7 and No.9. (Refer above.)

Please read the full text of the Rules by clicking on the following link.