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TO ALL MEMBERS

TECHNICAL

Direct Taxation

TAX INCENTIVES FOR PRESCHOOL EDUCATION AND CHILD CARE CENTRES

1. Income Tax (Exemption) (No. 3) Order 2013 [P.U.(A)13/2013]
2. Income Tax (Deduction For The Provision Of Child Care Centre) Rules 2013 [P.U.(A)15/2013]

The above legislation (both dated 11 January 2013) give legal effect to the proposal in the 2013 Budget for granting tax incentives for preschool education and child care centres.

Income Tax (Exemption) (No. 3) Order 2013 [P.U.(A) 13/2013]

This Order is effective from the year of assessment (YA) 2013.

Application – The Order applies to a person in respect of a business of his for the provision and maintenance of a kindergarten registered with the Ministry of Education Malaysia.

Non-application – The Order is not applicable to a kindergarten which is integrated with a private primary school.

Exemption – Exemption from payment of income tax is granted to a person referred to above in respect of statutory income derived from the business referred to above for a period of five consecutive years of assessment (the exempt YA) commencing from –

- a) YA 2013 for an existing child care centre; or
- b) the first invoice issued by the child care centre that commences its business from YA 2013.

“Statutory income” is determined after deducting allowances under Schedule 3 of the Income Tax Act 1967 (ITA) notwithstanding that no claim for such allowances has been made.

Losses – Any adjusted loss incurred –

- a) from the YA in the basis period in which the income that qualifies for exemption commenced until the YA immediately prior to the exempt YA; and
- b) during the exempt YA;

must be carried forward to be deducted against statutory income from that source in the post-exempt years of assessment until fully utilized, and any losses utilized in this way will be disregarded for the purposes of subsection 43(2) and 44(2) of the ITA.

Separate sources and accounts – Where a person exempted under this Order carries on another business other than a child care centre, separate accounts must be maintained in respect of the business of provision and maintenance of a kindergarten, which is treated as a separate business source.

Income Tax (Deduction For The Provision Of Child Care Centre) Rules 2013 [P.U.(A) 15/2013]

The Rules are effective from YA 2013.

Application – These Rules apply to a child care centre registered with the Department of Social Welfare under the Child Care Centre Act 1984.

Deduction (Rule 3) – The following expenses are allowed to be deducted in ascertaining adjusted income for a basis period for a year of assessment from the business of a person who is resident in Malaysia:

- a) expenditure on the provision and maintenance of a child care centre; and
- b) child care allowance to persons employed by him in his business.

(“Person” refers to any person who, for the purpose of a business of his, provides a child care centre for the benefit of persons employed by him in his business.)

The deduction allowed under this rule is in addition to any deduction allowed under section 33 of the Income Tax Act 1967 (ITA). (In other words, a double deduction is allowed to be claimed.) However, where the Director General of Inland Revenue (DGIR) is of the opinion that the amount claimed exceeds what would reasonably be expected to be incurred in the ordinary course of business, the DGIR may disallow the amount of the excess as a deduction under these Rules.

Where the expense is claimed for a period which overlaps two basis periods, the period common to both periods is deemed to fall into the first basis period only.

The legislation can be viewed from the attorney general's chambers website-www.federalgazette.agc.gov.my

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