

e-CTIM No.71/2012

28 May 2012

TO ALL MEMBERS

TECHNICAL

IRB Letter – Refund of Tax Credits of Companies Liquidated by the Registrar, under Section 308, Companies Act 1965

In response to CTIM's request for expedient finalization of cases under liquidation in the Operations Dialogue, the Inland Revenue Board (IRB) has informed, via its letter dated 14 May 2012, as follows:

A company applying to strike off its name under Section 308 of Companies Act 1965 (CA) must make a *Statement Of Declaration By Applicant* to the Companies Commission of Malaysia, including a declaration that **“the company does not have any assets or liabilities including any outstanding charges in the Register of Charges kept at the office of the Registrar of Companies”**. All assets, including tax credit, of the company after the name of the company has been struck off shall be vested in the Registrar of Companies. In view of this, all applications for refund of tax credit in such cases must be submitted directly to the Companies Commission of Malaysia.

Members may view the IRB letter at the Institute's website.

For reference on the procedure for striking off the name of a company, members may refer to the [Guidelines to Strike Off the Name of a Company](#) issued by the Companies Commission of Malaysia.

Extracts from the Companies Act 1965, are provided for your ease of reference:

Section 308. Power of Registrar to strike defunct company off register.

- (1) *Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect and stating that if an answer showing cause to the contrary is not received within one month from the date thereof a notice will be published in the Gazette with a view to striking the name of the company off the register.*
- (2) *Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the Gazette and send to the company by registered post a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.*
- (3) *If in any case where a company is being wound up the Registrar has reasonable cause to believe that—*
 - (a) *no liquidator is acting;*
 - (b) *the affairs of the company are fully wound up and for a period of six months the liquidator has been in default in lodging any return required to be made by him; or*

- (c) *the affairs of the company have been fully wound up under Division 2 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,*

he may publish in the Gazette and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

- (4) *At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown, strike the name of the company off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved; but*
- (a) *the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and*
- (b) *nothing in this subsection shall affect the power of the Court to wind up a company, the name of which has been struck off the register.*
- (5) *If any person feels aggrieved by the name of the company having been struck off the register, the Court on an application made by the person at any time within fifteen years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being lodged with the Registrar the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.*
- (6) *A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company, or if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum of the company, addressed to him at the address mentioned in the memorandum.*

Section 310. Outstanding assets of defunct company to vest in Registrar.

- (1) *Where, after a company has been dissolved, there remains any outstanding property, movable or immovable, including things in action and whether within or outside Malaysia which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the company or its liquidator, the property except called and uncalled capital shall, for the purposes of the following sections of this Subdivision and notwithstanding any written law or rule of law to the contrary, by the operation of this section be and become vested in the Registrar for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.*

- (2) *Where any claim, right or remedy of the liquidator may, under this Act, be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Registrar may, for the purposes of this section, make, exercise or avail himself of that claim, right or remedy without that approval or concurrence.*

Disclaimer

This document is only meant for members of the Chartered Tax Institute of Malaysia (CTIM) only. Although the CTIM has taken all reasonable care in the preparation and compilation of the information contained in the CTIM e-circular, the Institute / each party providing the material displayed herein expressly disclaim all and any liability or responsibility to any person(s) for any errors or omissions in the contents of the CTIM e-circular or for anything done or omitted to be done by any such person in reliance whether wholly or partially, upon the whole or any part of the contents of the CTIM e-circular.