e-CIRCULAR TO MEMBERS

CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

CTIM No.143/2012 **1 October 2012**

TO ALL MEMBERS

TECHNICAL

2012 Budget --- The President's Message

Dear Members

The 2013 Budget was announced on 28 September 2012. It was a Budget focussed on both long-term growth of the economy and the lower-income groups.

Having reviewed the Budget proposals and the Finance (No.2) Bill 2012 (The Bill), I wish to highlight to you a few important areas which may impact taxpayers and they are summarised as follows:

1. Limited Liability Partnership (LLP)

CTIM, together with the other professional bodies, has been actively involved in the past year, submitting our suggestions on the tax treatment of LLP. Our proposals were to offer the taxpayers an irrevocable choice of taxing LLP either as a partnership or a company.

The 2013 Budget has stipulated that it will be taxed as a corporate entity. The Institute will issue a separate e-CTIM highlighting the key features of an LLP as stated in the Limited Liability Partnerships Act 2012 (Act 743).

Issues on this subject that remain unresolved are:

(i) the real property gains tax and stamp duty implications on the transfer of assets and liabilities upon the conversion into an LLP

(ii) Tax treatment on the transfer of the balance sheet items such as stock-in-trade, debtors, creditors, etc.

The Finance (No.2) Bill 2012 is silent on these areas and there will be tax costs associated with such transfer. If the authority wishes to encourage the conversion of partnerships and companies to LLPs, then I believe tax neutrality should be maintained at the point of the transfer. In this respect, CTIM will take up these issues from the income tax, real property gains tax and stamp duty angles with the Ministry of Finance (MOF).

2. Business Trust (BT)

Business trust is a new business vehicle established under Capital Market and Services Act 2007 (CMSA). It adopts the unit trust structure as a basis for its business and is governed by Section 256K to 256ZP of CMSA. The introduction of the BT will broaden the range of investment products and vehicles in the Malaysia capital market.

Since this is a new business vehicle in Malaysia, CTIM will shortly send a separate e-CTIM outlining the basic information and operation of a BT. You may also visit the Securities Commission website to search for further information.

3. Withholding Tax (WHT) – New Section 109H – Appeal by Payer

The Bill now allows the payer to appeal on the Sections 109, 109B and 109F withholding taxes. However, the right of appeal will be denied to the payer if

(i) An appeal has been filed with the Special Commissioners of Income Tax by the non-resident recipient, to whom the payer was liable to make the payment; or

(ii) Such payment to the non-resident is disallowed as a deduction under S.39 of the Income Tax Act 1967 (ITA), or

(iii) The amount due has not been paid to the Director General of Inland Revenue

An issue will arise here if the payer legitimately believes (and has legal ground to do so) that the payer does not need to withhold the taxes but in a later tax audit, the tax auditors take a different position and disallow the payment to the non-resident under S. 39 and further demand the payment of the withholding tax. In such an event, under the proposed changes in the Bill, the payer will be denied the right to appeal.

This position is completely contrary to the basic principle that a taxpayer cannot be denied his right of appeal.

Again, this is a matter that needs to be brought to the attention of MOF

4. Change in Tax Treatment of Interest Income

The treatment of interest as a business income under S.4(a) has now become extremely restrictive under the New Section 4B. The Bill seeks to confine interest income as business source if the amended S.24(5) applies, i.e. interest arising from a business of lending money and the business is licensed under any written law.

A strict interpretation appears to exclude interest income e.g. overdue interest payment from trade debtors, etc. as business income. The decisions in the Malaysian Courts such as that on Pan Century Edible Oils may no longer apply.

This treatment is not conducive to encouraging the use of funds in carrying out business activities and this treatment would likely result in increasing the cost of doing business in Malaysia.

5. Treasury Shares (TS)

The Bill proposes that a deduction be given to the company having a business income on the cost of acquiring the treasury shares which are to be transferred to its employees under the employee-based remuneration scheme. The details of the proposal are available in the Bill.

Members should be aware of the following issues:

(i) As defined in the Bill, *"treasury share"* means a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by such company and not cancelled. It does not apply to new issue of shares to employees.

(ii) Significant efforts in keeping track of costs of acquisition on a First In First Out (FIFO) basis will be required for many larger organizations, where the shares are acquired over a period of time and subsequently transferred to the employees at different points in time.

This is a potential issue which could lead to disputes between the taxpayer and the tax auditors from the Inland Revenue Board in future.

Again CTIM will raise this issue to the MOF.

6. Assets Held for Sale (AHFS)

The Bill proposes that assets classified as AHFS shall be deemed to have ceased to be used for business for Schedule 3 of ITA purposes. Consequently, such classification will lead to a deemed disposal and computation of balancing allowance/balancing charge has to be done.

The legislation is silent on what happens if such as asset is then reclassified (back) as an asset that is being used again: will the balancing allowance/balancing charge calculated be reversed? The mechanism for this reversal is missing.

Again CTIM will raise this issue to the MOF

Meanwhile, we would be pleased if you could also forward your suggestions, comments and feedback on the 2013 Budget proposals to the Institute as soon as possible. The Technical Committees (both direct tax and indirect tax) will review all suggestions, comments and proposals and where appropriate, include them in the Memorandum for submission to the IRB, Royal Malaysian Customs and MOF.

Please submit all comments and proposals to technical@ctim.org.my and Secretariat@ctim.org.my or fax to 03-2162 8990.