# e-CIRCULAR TO MEMBERS

**CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)**
**(formerly known as Malaysian Institute of Taxation)**

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**TO ALL MEMBERS**

## TECHNICAL

### A Stamp Duty

**1 Remission on principal / primary instrument of Islamic financing**
**-- Stamp Duty (Remission)(No.2) Order 2009 [P.U. (A) 409/2009]**

Pursuant to the 2010 Budget speech, the above Order has been gazetted whereby the period for which a remission of stamp duty is available (under the Stamp Duty (Remission) (No.2) Order 2007) has been extended to 31 December 2015.

Under the Stamp Duty (Remission) (No. 2) Order 2007 [P.U.(A) 85/2007], 20% of the stamp duty chargeable (pursuant to the First schedule), and payable on the principal or primary instrument of financing made according to Syariah principles is remitted with effect from 2 September 2006, subject to the condition that the instrument is approved by the Syariah Advisory Council of Bank Negara Malaysia or the Securities Commission. This was due to expire on 31 December 2009.

**2 Purchase of property with Green Building Index Certificate**
**-- Stamp Duty (Exemption) Order 2009 [P.U. (A) 410/2009]**

This order provides for a stamp duty exemption on additional costs incurred to obtain a Green Building Index (GBI) certificate from the Board of Architects Malaysia (BAM). The exemption is available to purchasers of buildings including residential properties, who purchase their properties directly from developers. The costs in respect of which the stamp duty exemption will be given are those costs incurred on the design and construction elements of the property which are required for the GBI certification purposes. It should be noted that these costs must be verified by the BAM. This exemption is available for sale and purchase agreements executed from 24 October 2009 until 31 December 2014 (both dates inclusive) and the purchaser must be the first owner of the building.

### B Income Tax

**1 Income from overseas branch / investee company by an insurer / takaful operator**
**-- Income Tax (Exemption) (No. 5) Order 2009 [P.U. (A) 411/2009]**

Following the 2010 Budget announcement, the statutory income which is derived from a branch or an investee company of a resident insurer licensed under the Insurance Act 1996, and a takaful operator registered under the Takaful Act 1984 is exempted from income tax. The resident insurer and takaful operator should own at least 20 % of the issued share capital of the branch or investee company, which carries on or will carry on insurance /

takaful business, or any part of such insurance / takaful business and is located outside Malaysia. The exemption is for five consecutive years of assessment.

The exemption is available if the application, which is to be made to the Minister, by the branch / investee company to carry out insurance / takaful business is received by Bank Negara Malaysia (BNM) between 24 October 2009 and 31 December 2015 (both days inclusive), and the branch / investee company commences the insurance / takaful business within two years from the date of approval issued by BNM

The commencement of the 5-year exemption period shall be determined by the company but it shall not be later than the third year of assessment in which the branch / investee company commences its insurance / takaful business. The company shall maintain a separate account for the income exempted.

**2. Increase in value on provision of healthcare services to foreign clients -- Income Tax (Exemption) (No. 6) Order 2009 [P.U. (A) 412/2009]**

A resident person is exempt from tax on income derived from a healthcare services business in respect of services given to a *foreign client* in the basis period for a year of assessment to the extent equivalent to 100% of the *value of increased services*, provided that the amount shall not exceed 70% of the *statutory income from the business*. Where there is insufficiency or absence of statutory income and exemption cannot be given in full, the unutilised portion can be carried forward to set off future statutory income from that business. A separate account shall be maintained for the income derived from the healthcare services business.

The exemption is effective from year of assessment 2010 until year of assessment 2014. It shall not apply to a person who in the basis period for a year of assessment has been granted
(a) any incentives under the Promotion of Investments Act 1986, except for deductions for promotion of exports;
(b) investment allowance in respect of an approved service project under Schedule 7B of the Income Tax Act 1967
(c) an exemption under Section 127(3)(b) or 127(3A) of the Income Tax Act 1967, or
(d) an exemption under the Income Tax (Exemption) (No.9) Order 2002 [P.U.(A) 57/2002].

A *foreign client* is a company / partnership / organisation / co-operative society which is incorporated or registered outside Malaysia; or a non-Malaysian citizen individual but excludes the following individuals:
(i) a participant in the *Malaysia My Second Home* programme and his dependents;
(ii) a foreigner holding a Malaysian student pass and his dependents;
(iii) a foreigner holding a Malaysian work permit and his dependents; and
(iv) a non-resident Malaysian citizen living abroad and his dependents

*Value of increased services* means the increase in the value of the healthcare services provided in Malaysia in the basis period as compared with the immediately preceding basis period.

Statutory income from the business shall be determined after deducting Schedule 3 allowances notwithstanding that no claim for such allowances has been made.

**3. Income from overseas branch / investee company by a banking institution -- Income Tax (Exemption) (No. 7) Order 2009 [P.U. (A) 413/2009]**

The statutory income of a resident bank licensed under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1989, derived from a branch or an investee company (in which it owns at least 20 % of the issued share capital) is exempt from tax for five consecutive years of assessment. The branch / investee company shall carry on or will carry on banking / Islamic banking and is located outside Malaysia.

The exemption is available if the application for such exemption is received by Bank Negara Malaysia (BNM) between 24 October 2009 and 31 December 2015 (both days inclusive), and the branch / investee company commences the banking / Islamic banking business within two years from the date of approval issued by BNM.

The commencement of the 5-year exemption period shall be determined by the company but it shall not be later than the third year of assessment in which the branch / investee company commences its banking / Islamic banking business. The company shall maintain a separate account for the income exempted.

Where a bank has been granted an exemption under the Income Tax (Exemption) (No. 16) Order 2007 [P.U. (A) 278/2007], such exemption shall continue to remain in full force and effect. If the bank has been granted an approval by BNM before 24 October 2009 but has not commenced the business, the exemption period shall commence in accordance with the provisions of this Order.

**4. Qualifying expenditure incurred to obtain a Green Building Index Certificate --Income Tax (Exemption) (No. 8) Order 2009 [P.U. (A) 414/2009]**

A resident person (including a resident company incorporated under the Companies Act 1965), who has obtained a green building index certificate (GBIC) issued by the Board of Architects Malaysia from 24 October 2009 until 31 December 2014 is exempt from income tax on statutory income which is equal to the amount of *qualifying expenditure* incurred by that person for the purpose of obtaining a GBIC. Where the exemption cannot be given in full due to insufficiency of statutory income, the unabsorbed portion shall be carried forward until the whole amount is fully exempted.

Qualifying expenditure means additional expenditure incurred in relation to the construction of a building, alteration, renovation, extension or improvement of an existing building

Qualifying expenditure incurred prior to the issuance of a GBIC shall be deemed to have been incurred on the day the GBIC is issued; and may be claimed in the basis period for a year of assessment in which the person commences to carry on with his business at the building.

Capital allowances and industrial building allowances may be claimed on qualifying expenditure if it is also qualifying capital expenditure under Schedule 3 of the Income Tax Act 1967.

Where the person purchases an asset under hire-purchase for the purpose of his business which is being conducted at a building issued with the GBIC and incurs qualifying expenditure, the person shall be deemed to be the owner of the asset purchased and is entitled to the exemption on the capital portion of the installment payments made.

This Order shall not apply to a person who has been granted an investment tax allowance or pioneer status under the Promotion of Investments Act 1986, in respect of qualifying expenditure incurred on activity for the generation of renewable energy or for conservation of energy.

**5. Consolidation of management of smallholding and idle land (CMS & IL) projects -- Income Tax (Exemption) (No. 9) Order 2009 [P.U. (A) 415/2009]**

This Order is deemed to have effect for the year of assessment 2003 and subsequent years of assessment

Under these rules, the Minister exempts the statutory income derived from a CMS & IL project of a resident person (including an individual, a partnership, a co-operative society, a company established under the Companies Act 1965) having a business source in Malaysia. The exemption is for a period of 5 consecutive years of assessment commencing from the basis period for a year of assessment in which the CMS & IL project commences.

An application for approval to carry out a CMS & IL project shall be made by the resident person to the Minister on or after 21 September 2002 but not later than 31 December 2011. The CMS & IL project shall be approved by the Minister charged with the responsibility of approving such projects.

Where a qualifying person carries out a CMS & IL project and any other project or business, each of these projects and businesses shall be treated as a separate and distinct source of project or business of the qualifying person and a separate account for the income derived from the CMS & IL project shall be maintained.

**6. Income Tax (Deduction for Promotion of Malaysia as an International Islamic Financial Centre) Rules 2009 [P.U. (A) 416/2009]**

The Rules are effective from the year of assessment 2011 until the year of assessment 2015.

In ascertaining the adjusted income of a person (as defined) resident in Malaysia from his / its business, a deduction shall be allowed, in addition to any deduction under Section 33 of the Act, for the following outgoings and expenses incurred relating to a person's business for promoting Malaysia as an international Islamic financial centre(MIIFC):

(a) expenses incurred in respect of market research and feasibility study;
(b) the cost of preparing technical information to a person outside Malaysia relating to the type of services offered but excluding expenses for giving technical information to that person after purchase;
(c) expenses directly incurred for participating in an event (as defined) other than expenses specified in (d) below;
(d) expenses by way of fares in respect of travel to a country outside Malaysia by a representative of a person for the purpose of any event and the actual expenses are subject to a maximum of RM300 per day for accommodation; and RM150 per day for

sustenance for the whole period commencing from the departure from Malaysia and ending with his return to Malaysia for participating in the event;

(e) expenses incurred for the cost of maintaining a sales office overseas provided that the sales office has been approved by the MIIFC Secretariat;

(f) expenses verified by the MIIFC Secretariat which are incurred for participating in an event other than those specified in paragraphs (c) and (d); and

(g) expenses incurred in respect of publicity and advertisement in any media outside Malaysia

The following outgoings and expenses are excluded:

(a) outgoings and expenses specified in Section 39(1) of the Act; and

(b) outgoings and expense which are incurred by a person that has a place of business and is subject to tax in the country where such outgoings or expenses were incurred.

Where in the opinion of the Director General of Inland Revenue (DGIR), the amount of any outgoings and expenses is excessive, the DGIR may disallow the excess.

“Event” means event for promoting Malaysia as an international Islamic financial centre, i.e.

(i) Global Islamic Finance Forum (GIFF) organised by or on behalf of MIIFC Secretariat, and

(ii) any exhibition, conference, promotional fair, seminar, summit, road show or meeting or any participation in relation to the GIFF which will be held inside or outside Malaysia as approved by the MIIFC Secretariat.

“MIIFC Secretariat” means a secretariat established by Bank Negara Malaysia (BNM) pursuant to the MIIFC initiatives, and

“Person” means

(i) a person approved by the MIIFC who establishes, manages and owns a private higher educational institution registered with the Ministry of Higher Education that provides professional courses in Islamic finance;

(ii) a person licensed, registered or approved by the Securities Commission under the Capital Markets and Services Act 2007;

(iii) a person licensed under the Islamic Banking Act

(iv) a person licensed under the Banking and Financial Institutions Act 1989

(v) a person registered under the Takaful Act 1984

(vi) Bursa Malaysia Berhad and its related companies; or

(vii) Such other persons as the MIIFC may approve.

**7. Income Tax (Deduction for Investment in an Approved Consolidation of Management of Smallholding and Idle Land Project) Rules 2009 [P.U. (A) 417/2009]**

An individual, partnership, co-operative society or company that invests in an approved consolidation (of management of smallholding and idle land) project may apply for a deduction under these rules.

The application for approval must be made on or after 21 October 2002 but not later than 31 December 2011.

"Investment" means an investment in the form of cash or holding of shares solely for the purpose of the approved consolidation project.

**8. Income Tax (Deduction for Expenditure on Registration of Patent and Trade Mark) Rules 2009 [P.U. (A) 418/2009]**

These Rules have effect from the year of assessment 2010 until the year of assessment 2014.

Application for the deduction shall be in respect of the qualifying expenditure incurred by the qualifying person i.e a small and medium sized entity (SME).

Essentially, the qualifying expenditure includes the expenditure for application for the registration of the trademark (or grant of the patent), obtaining the certificate, and service fees paid to a relevant agent registered and authorised to undertake the registration.

For the purposes of these rules, an SME is defined as follows:
A company ("the relevant company') with a paid up capital (PUC) of less than RM2.5 million and which meets the following requirements:

i) 50% of the PUC of the relevant company must not be owned by a related company,
ii) the relevant company itself must not own 50% of the PUC of a related company, and
iii) a third company does not own 50% of the PUC of the relevant company and a related company.

In addition to the above, the following conditions must also be fulfilled by the SME, depending on the industry the company is involved in:
*Manufacturing, Manufacturing-Related and Agro Based Industries:*

- the SME must be resident in Malaysia at the end of the basis period for the year of assessment
- it should not have more than 150 full-time employees, and
- its annual sales should not have exceeded RM25 million

*Services, Primary Agriculture and Information & Communications Technology (ICT) Industries:*

- the SME must be resident in Malaysia at the end of the basis period of the year of assessment
- it should not have more than 50 employees, and
- its annual sales should not have exceeded RM5 million.

**9 Income Tax (Deduction for Cost of Preparation of Corporate Knowledge-Based Master Plan) Rules 2009 [P.U. (A) 419/2009]**

These Rules are deemed to have come into effect from the year of assessment 2003 and subsequent years of assessment, and apply to a Malaysian resident company approved by the Minister to participate in a strategic knowledge-intensive activity under the Promotion of Investments Act 1986.

The company shall be allowed a deduction for the cost incurred for the preparation of the corporate knowledge-based master plan, which shall be verified by the Malaysian Industrial Development Authority (MIDA). The cost shall be deemed to have been incurred in the basis period for a year of assessment in which the master plan is implemented.

The implementation shall be within 2 years of the date of verification by MIDA, and subsequent claims may be allowed after a three-year period.

**10. Income Tax (Deduction for Expenditure on Issuance of Islamic Securities) Rules 2009 [P.U. (A) 420/2009]**

The above-mentioned deduction was given for the year of assessment 2010 in respect of the approval by the Securities Commission, for the issuance of Islamic securities, and has been extended until the year of assessment 2015.

The deduction is now also extended to Islamic securities approved by the Labuan Offshore Financial Services Authority, and is effective from year of assessment 2010 to year of assessment 2015

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