JOINT MEMORANDUM ON ISSUES FOR POST 2011 BUDGET DIALOGUE

8 April 2011

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Joint Memorandum on Issues for Post 2011 Budget Dialogue

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1. INDIVIDUAL INCOME TAX

1.1 Relief for contribution to private pension fund [Section 49(1)(b) of Income Tax Act 1967(ITA)]

Effective from year of assessment (YA) 2011, the relief for contributions under Section 49(1)(b) of the ITA will be extended to contributions made to the Private Pension Fund (PPF) which will be launched by the Government in 2011.

Issues:

Although the modus operandi and the mechanism of the PPF have not been disclosed, as the law now stands, Section 34(4) *[contribution to approved scheme by employer restricted to 19% of the employee's remuneration]* and Section 49(1) [relief for the aggregate of premium paid on life insurance or deferred annuity and contributions to Employees Provident Fund (EPF) and approved scheme restricted to RM6,000] of the ITA will apply to the contributions made to PPF. Hence, the proposal will only benefit tax resident individuals whose life insurance premiums, contributions to the EPF and deferred annuity premiums are below the maximum relief of RM6,000.

The Institutes are of the view that unless contributions to PPF is granted an additional relief and the restriction imposed on contribution are applied separately for contributions to PPF, there is no incentive for the self-employed individuals to contribute to PPF. Under the current system, a self-employed/sole proprietor/partner in a partnership may contribute to the EPF to get the same benefit if they so wish.

In this regard, the Institutes suggest that a separate relief be given for contributions to PPF; i.e. the contribution to PPF be excluded from the restriction under Section 34(4) and Section 49(1) of the ITA. Alternatively, if a restriction on the amount of contribution to PPF is deemed appropriate, the Institutes propose that the restriction is to be provided separately from the existing restriction under Section 34(4) and Section 49 of the ITA.

Answer:

Since the legal framework and modus operandi of the Private Pension Fund (PPF) has not been finalised and no amendment has been made to section 49(1)(b), suggestion by the institutions that separate relief be given for contribution to Private Pension Fund (PPF) is noted.

1.2 Expansion of relief on medical expenses for own parents [Section 46(1)(c) of the ITA]

Presently, relief of up to RM5,000 is available for resident individuals on medical expenses for their parents but restricted to the following medical treatment:

(i) treatment in clinics and hospitals;

(ii) treatment in nursing homes; and
(iii) dental treatment excluding cosmetic dental treatment.

Public Ruling No. 2/2005 [Computation of Income Tax Payable by a Resident Individual] further clarified that medical expenses include:

(i) medical care and treatment provided by a nursing home; and

(ii) dental treatment limited to tooth extraction, filling, scaling and cleaning but not including cosmetic dental treatment expenses such as teeth restoration and replacement involving crowning, root canal and dentures.

In a case where the receipt is issued in the name of the patient, the individual who is making the claim must obtain an endorsement on the receipt by the doctor to certify that the medical charges were paid by him.

With effect from YA 2011, the existing relief will be extended to include expenses on medical treatment and care for parents. Based on Appendix 12 of the 2011 Budget Speech, "such expenses relating to the care are for parents who suffer from diseases or with physical or mental disabilities and who need regular treatment certified by qualified medical practitioners. Such treatment and care provided include treatment and care at home, day care centres or home care centres.

Qualifying expenses related to the treatment and care are as follows:

(i) treatment and medical expenses supported with receipts issued by registered medical centres, pharmacies or licensed medical stores; or

(ii) expenses for the care of parents supported with receipts or written certification by carers (does not include the individual claiming the relief, the spouse and the children) certifying that the care was provided and the total payment involved. Foreign hired carers are required to possess valid Visas/special work permits for the care of parents of the individual; or

(iii) expenses on special needs for parents certified by qualified medical practitioners and supported by receipts as proof of purchase."

Based on the Finance (No. 2) Bill 2010, Section 46(1)(c) will be amended (words inserted in bold italic and strikethrough words deleted) as follows:

"(c) an amount limited to a maximum of five thousand ringgit in respect of medical **treatment, special needs or carer** expenses expended in that basis year by that individual for his parents **and** ~~Provided that~~ the claim is evidenced by ~~a receipt~~ **certification of** by a medical practitioner that ~~treatment was provided to the parents~~ **the medical condition of the parents require medical treatment or special needs or carer and -**

(i) in the case of medical treatment or special needs, a receipt on the amount expended; or

(ii) in the case of carer, a written certification or receipt from, or work permit of, the carer;

provided that for the purpose of this paragraph, "carer" shall not include that individual, his wife or her husband, or the child of that individual."

Issues:

(i) The Institutes note that the claim now requires a certification on the necessity of medical treatment or care by a medical practitioner, in addition to the receipt on the amount expended. This is unlike the previous requirement where a receipt on treatment rendered by a medical practitioner will suffice. This may increase the costs of claiming the relief (additional cost on certification by medical practitioner) and create uncertainties.

The Institutes would like to seek clarification on the following:

- **Whether a certification is required for each medical treatment or is it required only for the first time. It appears that for non-chronic diseases, certification may be required for each medical treatment.**
- **The meaning of "special needs".**
- **Where by virtue of old age, the parents cannot be left alone at home, a maid is hired to take care of the parents and also helps with the daily household chores, whether the salary paid to the maid qualify for the relief although the old parents are physically healthy.**

The Institutes are of the view that if the Government intends to extend the relief to promote a caring society, the law should be simple to facilitate the claims and should not be complicated and burdensome on the administration of tax compliance as it will only defeat the objectives of the Budget proposal.

The Institutes suggest that the proposed wordings in the Finance Bill be amended to waive the requirement for certification by a medical practitioner and the receipt for medical expenses incurred should be sufficient evidence. This means that the current wordings of the law before the proposed amendment should be reinstated.

Answer:

- *Certification for medical treatment is required only for the first time.*
- *Special needs for parents include nutritional food, disposable diapers, urine bags and others as prescribed by a medical practitioner registered with MMC and supported by receipts. The list of special needs is per Attachment 1.*
- *Salary paid to the maid to take care of physically and mentally healthy parents does not qualify for the relief. A maid's salary only qualifies where a medical practitioner has certified that the medical conditions of the parents require medical treatment, special needs or a carer.*

(ii) In practice, a medical receipt is normally issued in the name of the patient but payment is made by the children or relatives of the patient. The medical expenses paid by one person may be shared in various proportions between the children or relatives.

To facilitate the claim for relief and facilitate compliance with tax administration, the Institutes propose that the original receipt with the name of the person who made the payment, indicate the names and tax reference numbers of the other persons who will also be making the claim for relief and their respective share of the claim. The original copy of the receipt is kept by the person who made the payment and a photocopy of the receipt is kept by the other persons making the claim for tax audit purposes.

Answer:

LHDNM agreed with the proposal. Besides the name, income tax reference number and the amount of expenses, the relationship between the claimant and the patient should also be indicated at the back of the receipt. The receipt should be kept for audit purpose.

(iii) It is stipulated in Paragraph 2.3.3 (Traditional medicine and maternity) of the Third Addendum to Public Ruling No. 2/2004 (Benefits-in-kind) that with effect from the YA 2008, the medical treatment benefit exempted from tax is extended to traditional medicine.

Traditional medicine can be defined as diverse health practices, approaches, knowledge and belief incorporating plant, animal and/or mineral based medicines, spiritual therapies, manual techniques and exercises applied singularly or in combination to maintain well-being, as well as to treat, diagnose or prevent illness.

Traditional medicine which qualifies for the exemption is treatment given by a medical practitioner registered with bodies which are certified or registered in accordance with the rules governing traditional medicine as laid down by the Ministry of Health. Some of the qualifying bodies are as listed below:

(a) Malay traditional treatment
Persatuan Perubatan Tradisional Melayu Malaysia (PUTRAMAS)

(b) Indian traditional treatment
Pertubuhan Perubatan Tradisional India Malaysia (PEPTIM)

(c) Chinese traditional treatment
- Federation of Chinese Physicians and Chinese Dealers Associations of Malaysia (FCPMDM)
- Federation of Chinese Physicians & Acupuncturists Associations of Malaysia (FCPAAM)

- Chinese Physician's Associations of Malaysia (MCPA)

(d) *Complementary medicine and homeopathy, including aromatheraphy, reflexology, spa and Thai traditional massage are not included in this exemption.*

Do the expenses on medical treatment include expenses on traditional medical treatment as stipulated in the Public Ruling No. 2/2004 (Benefit-in-kind)?

Answer:

Pending policy decision from Ministry of Finance.

(iv) It is common for people to undergo regular medical check-ups to monitor their health and the reports of the medical check-ups may indicate that they are in good health and no further treatment is required.

Do the expenses on medical treatment include expenses on medical check-ups?

Answer:

No. Expenses on medical treatment does not include expenses on regular medical check-ups.

2. INCOME TAX FOR BUSINESSES AND CORPORATIONS

2.1 Review of tax treatment on bonds for companies [Section 34C(1A) and (1B) of the ITA]

For a bond issuer, the bonds issued constitute a liability of the company. There will be bond premium income when the issue price of the bond is higher than its face value. Conversely, there will be bond discount expense when the reverse situation happens.

For a bond subscriber, the bonds subscribed constitute an asset of the company. There will be bond premium expense when the subscription price of the bond is higher than its face value. Conversely, there will be bond discount income when the reverse situation happens.

In Appendix 13 of the 2006 Budget Speech, it was stated that the disparity in tax treatment [i.e. discounts/premiums on issuance of bonds by financial institutions (FIs) were assessed or allowed deductions on an accrual basis while for non-financial institutions (NFIs) issuing bonds, discounts/premiums were assessed or allowed deductions on realised basis] did not encourage NFIs to opt for the issuance of bonds as an alternate source of funding. As such "to *further promote the corporate bond market, the Government proposed that companies issuing* *bonds be allowed tax deductions for discounts on an accrual basis for the period until the maturity date of the bonds."* However, no amendment was made in the ITA arising from the 2006 Budget proposals.

In the post-2006 Budget dialogue, the professional bodies had requested the IRB to issue detailed guidelines or a Public Ruling to clarify the following matters:

(i) Tax treatment for bond issuers and subscribers who may be resident and non-resident individuals/corporate bondholders;

(ii) Whether the non-resident bondholders would be subject to withholding tax on discount received and if so, when and how should this be accounted for;

(iii) Tax treatment of zero coupon bonds, eg. should the discount be treated as interest and how should the individual bondholder account for the discount.

The existing Section 34C of the ITA was introduced by Finance Act 2007 and took effect from YA 2006. This section provides that discount/ premium expenses incurred are allowed as a tax deduction on an accrual basis in ascertaining the adjusted income of company from a source consisting of discount or premium. In the post-2008 Budget dialogue on 14 December 2007, the professional bodies proposed that the words "a source consisting of discount or premium" be deleted as most of the NFIs which incur expenses in respect of discount or premium on bonds issued do not have any source of income consisting of discount or premium. To-date, there has not been any response nor guidelines issued on this matter.

It is now proposed that in the Finance (No. 2) Bill 2010 that Section 34C of the ITA be amended by inserting the following sub-sections:

"(1A) For the purpose of subsection (1), where by reason of an insufficiency or absence of gross income of a company from a source consisting of discount or premium for the basis period for a year of assessment, effect cannot be given or cannot be given in full to ***any amount of discount falling to be deducted*** *to that company for that basis period in relation to that source, that amount which has not been so deducted shall be allowed as a deduction in arriving at the adjusted income of that company from any source or sources <u>consisting of a business</u> for that basis period:*

Provided that the proceeds from the issuance of the bond that relates to that amount are utilized wholly by that company for the production of gross income from any source or sources <u>consisting of that business</u>.

(1B) This section shall not apply if in the basis period for a year of assessment the bond issued or subscribed forms part of the stock in trade of a business of a company.";

Issues:

(i) Although the proposed amendments appear to have somewhat "widened" the scope for deduction of discount/premium expenses incurred on bonds, the expenses incurred under the following scenarios would still not be deductible under the proposed revised Section 34C:-

- Bonds issued by special purpose vehicles or investment holding companies;

- Where proceeds from the bond issued are used for a mixed purpose; i.e. both for business and non-business purposes (eg. investments)

This does not seem to be in line with the original intention for the introduction of Section 34C as stated in the 2006 Budget Speech which was merely to align the timing of deductibility of discount/premium expenses incurred between FIs and NFIs.

The Institutes would like the authorities to consider amending Section 34C to be in line with the original intention under the 2006 Budget announcement.

Answer:

- *Section 34C is only applicable to resident company.*
- *In the case where the bondholder is a non resident person, the discount should not be subjected to withholding tax as the discount is not treated as an interest. However depending on the facts of the case, LHDNM may treat part or all of the discount as interest especially for related company transactions. In the case where discount is treated as interest, withholding tax is applicable.*
- *For zero coupon bond, the discount is not treated as interest. Therefore section 34C is applicable for deduction on discount expense and it is taxed as income in the hands of bondholders under paragraph 4(c).*

(a) It is common for private debt securities or bonds to be issued by NFIs through the use of special purpose vehicles (SPVs). These SPVs would derive interest income only and would not have a business source of income. Similarly, if the bond subscriber is an investment holding company, they would not have a business source.

(b) Section 34C(1A) stipulates that *"the proceeds from the issuance of the bond are utilised wholly by that company for the production of gross income from any source or sources consisting of that business."*

Where the bond issuance proceeds are utilised for the purpose of acquiring assets used or held for the production of gross income from that business source, it is unclear whether a deduction of the discount is available to the bond issuers.

Answer

Since the proceeds are utilized wholly for the production of gross income from that business source therefore the deduction of the discount is available to the bond issuers.

Where bonds are issued using a SPV and there is no business source of income, the issue is whether Section 34C(1A) would be applicable. Similarly, investment holding companies under Section 60F of the ITA without any business source of income would not be eligible for a deduction of the bond discount expense.

(c) In practice, companies issue bonds for business and non-business purposes, hence, the provision that discount expense is deductible only if the proceeds from the issuance of the bonds are utilised wholly by that company for the production of gross income from any source or sources consisting of that business is impractical and difficult to implement.

The Institutes suggest that the phrases *"consisting of a business"* and *"consisting of that business"* in subsection (1A) (as underlined above) be deleted to enable NFIs to claim the discount as a deduction if they do not have a business source of income.

The Institutes also suggest that the revised Section 34C be reworded to avoid the need for the bond proceeds to be used solely for business purposes. If the bond proceeds are used partly for business purposes and partly for non-business purposes, the bond discount should be deductible to the extent that the bond discount relate to the proceeds used for business purposes.

Answer:

It is a policy matter. In accordance with section 34C, discount expense is deductible only if the proceeds from the issuance of the bonds are utilized wholly by that company for the production of business income.

(ii) Section 34C(1A) allows a deduction of *"any amount of discount falling to be deducted'.* This is different from Section 34C(1) which allows a deduction of *"any expenses in respect of the discount or premium incurred on bond issued or subscribed."* From the wording of Section 34C(1A), it appears that only the discount expense (and not other expenses incurred in respect of the bond or premium) of the bond issuer will be allowed a deduction against income from a source consisting of a discount or premium.

For bond subscribers, while they will have income from an interest source, they may not necessarily have income from a source consisting of discount or premium, hence, they would be unable to claim a deduction on their bond discount expenses.

The Institutes suggest that the phrase *"any amount of discount falling to be deducted'* in the proposed Section 34C(1A) be substituted with "any *expenses in respect of the discount or premium incurred on bond issued or subscribed"* to avoid ambiguity.

Answer:

The phrase "any amount of discount…." has the same meaning as the phrase proposed by CTIM. Therefore no amendment to be made on that subsection. The allowable expenses are confined to discount.

(iii) Bonds issued would be recorded as liabilities in the books of a company and would not form part of its stock-in-trade.

The Institutes would like to seek clarification on the intended meaning of "bond issued and subscribed forms part of the stock-in-trade of a business " as stipulated in Section 34C(1B) above.

Answer:

Subsection 34C(1B) ITA 1967 is to explain the non-application of this section to financial institution as money is stock in trade and for NFI that carrying business in bond dealing where bond is also stock in trade. Any expenses incurred for the issuance of bond by both institutions are deductible under section 33 ITA 1967.

(iv) The amendments are proposed to take effect from the year of assessment 2011. The proposed tax treatment had been announced in the 2006 Budget proposals and effective from year of assessment 2006. Following the announcement made in the 2006 Budget proposals, some taxpayers had already taken the position that discount/premium expenses incurred on bonds were deductible on an accrual basis against the relevant income source based on the spirit of the 2006 Budget announcement.

The Institutes propose that the revised Section 34C be made retrospective from YA 2006 when the tax treatment was first announced as there are many companies which have issued bonds to finance their business operations but they do not have a source consisting of a discount or premium.

Answer:

The new section 34C(1A) is effective from YA2011 and applicable to bonds issued in YA2011 and subsequent years of assessment. Prior to the year of assessment 2011, subsection 34C(1) is applicable for premium or discount expenses incurred on bonds issued against premium or discount source.

2.2 Review of penalty on withholding tax [Section 39(1)(f), (i) and (j) of the ITA]

If a person makes a payment to a non-resident under Sections 107A, 109, 109B or 109F of the ITA and fails to deduct and remit the applicable withholding tax (WT) thereon within one month of paying or crediting the non-resident, the Director General of Inland Revenue (DGIR) is empowered to impose a penalty of 10% on the unpaid WT. In addition, the payer would be disallowed a deduction for the payment made. However, if the payer pays the WT and the penalty imposed thereon, the payer would be allowed to claim a deduction of the payment made.

It is proposed that in addition to the above late payment penalty, the DGIR is empowered to impose a penalty for submitting incorrect returns under Section 113(2) of the ITA if a deduction is claimed on the expenses subject to WT under Sections 107A, 109, 109B or 109F but the WT has not been paid by the due date for submission of the tax return which claimed the expenses as a deduction.

Issues:

The Institutes would like to seek confirmation on the imposition of Section 113(2) penalty for submitting incorrect returns in the following situations:-

(i) Where the liability to pay expenses has crystalised in the basis period for a year of assessment but the payment or crediting takes place after the due date for submission of the tax return for that year of assessment, a penalty will not be imposed.

For example, Company A incurs a commission to be paid to a non-resident for introducing a business deal during the basis period for a year of assessment. Payment of the commission is made to the non-resident 8 months after the end of the basis period for that year of assessment and this payment is made after the due date of submission of the tax return (7 months after the close of the financial year-end).

Similarly, a foreign holding company provides funds to its Malaysian subsidiary for its working capital requirements and interest is charged on the total amount outstanding at the end of each financial year. The total amount outstanding can only be ascertained after the accounts of the Malaysian subsidiary are finalised and the amount of interest payable can then be ascertained. Payment of interest is due 9 months after the end of the financial year to which the interest relates. As at the due date of submission of the tax return (7 months after the close of the financial year-end), the WT is not due and payable as the payment of the interest is made after the due date of submission of the tax return.

The Institutes are of the view that in both the above situations, Company A and the Malaysian subsidiary should not be subjected to penalty under Section 113(2) of the ITA for submitting incorrect tax returns as the commission and interest expenses are actually incurred during the basis period for that year of assessment but the WT is not due and payable as at the due date for submission of tax returns.

Answer:

The claim can be made under section 33(1) ITA 1967. However this section should be read together with paragraph 39(1)(f), (i) and (j) where no deduction should be allowed if payment of WHT has not been made to DGIR.

Penalty under section 113 will be imposed if no adjustment is made to add back the expenses subject to WHT even though the WHT is not due and payable. To avoid penalty being imposed, adjustments should be made accordingly.

(ii) The penalty imposed under Section 113(2) of the ITA will follow the rate stipulated in the Tax Audit Framework issued by the IRB

Amendments to Section 39(1)(f), (i) and (j) are introduced to curb non-compliance with the WT provisions. For transparency and equity, the Institutes suggest that the rate of penalty imposed should follow the rate stipulated in the Tax Audit Framework.

Answer:

Penalty is according to Tax Audit Framework.

2.3 Direction to make payment by instalments for companies, trust bodies and cooperative societies [Section 107C(8) of the ITA]

Presently, if a taxpayer fails to submit any tax estimates (Form CP 204), the DGIR is empowered to issue a direction for tax instalments (Form CP 205) to be paid during the basis period for a year of assessment. There will not be any issue of understating the estimated tax payable for that year of assessment.

Effective from YA 2012, the DGIR may at any time issue a direction for tax instalments (Form CP 205) and the direction is deemed to be the revised estimate for the purposes of determining the under-estimation penalty. Where the Form CP 205 issued by the IRB is made before the 9^{th} month of the basis period for a year of assessment, a further revised estimate of tax payable by the company, trust body or cooperative society is allowed.

Issues:

The Institutes would like to seek confirmation from the IRB on the following:

(i) Whether the taxpayer is allowed to revise the tax estimate in the 6^{th} and 9^{th} month of the basis period for a year of assessment if the Form CP205 issued by the IRB is made in the 5^{th} month of the basis period for that year of assessment.

Answer:

Yes. It is provided under the amended subsection 107C(8).

(ii) Whether the direction (Form CP 205) will be issued in accordance with Section 107C(3) of the ITA? The Institutes proposed that the IRB issue guidelines to explain the circumstances and basis of direction for clarity and transparency.

Answer:

A Public Rulling will be issued.

(iii) Whether Company A (year end 31 December) will be penalised for underestimating tax for YA2013 made on 1 December 2012 in the following situation:

Company A has submitted a tax estimate for YA2013 on 1 December 2012 pursuant to Section 107C(3) of the ITA. The IRB subsequently issued a direction for YA2012 which is higher than the last revised estimate of Company A for YA2012.

Answer:

No penalty will be imposed as the revised tax estimate of YA 2012 is directed by the DGIR.

2.4 Utilisation of tax paid in excess [Section 111(1A), (4A) & (4B) of the ITA, Section 24(7A) & (7B) of the Real Property Gains Tax Act 1976 and Section 50(4) & (5) of the Petroleum (Income Tax) Act 1967]

It is proposed that the DGIR be empowered under Section 111(4A) of the ITA to utilise any excess tax paid (which is to be refunded to a person) for the payment of any other amount of tax which is due and payable (including any amount of instalments which are due and payable) by that person under the ITA, the Petroleum (Income Tax) 1967 or the Real Property Gains Tax Act 1976.

Similarly, it is proposed under Section 111(4B) of the ITA that any overpayment of taxes under the Petroleum (Income Tax) Act 1967 or the Real Property Gains Tax Act 1976 may be utilised for the payment of tax which is due and payable under the ITA.

Issues:

(i) The Institutes would like to seek clarification on whether the DGIR will exercise his power under Section 111(4A) and (4B) of the ITA unilaterally or will consult the taxpayer before utilisation of the tax paid in excess for payment of real property gains tax or petroleum income tax.

Answer:

DGIR will exercised his power under section 111(4A) and (4B) ITA 1967 unilaterally. The taxpayer will be notified of the transfer between different Acts.

(ii) The Institutes would like to know the IRB's treatment under the following situation and whether a penalty will be imposed.

Due to the unabsorbed losses and capital allowances brought forward from the previous YAs, a taxpayer has a credit balance in his income tax account arising from tax paid in excess. The excess funds are later utilised by the IRB to settle his real property gains tax (RPGT) which is under dispute with the IRB. Subsequently, the IRB issued revised tax computations for the previous YAs which eliminated the unabsorbed losses and capital allowances brought forward, resulting in notices of additional assessment being issued for the previous YAs and a shortfall in his income tax account.

Answer:

Yes. A penalty will be imposed if no payment is made within 30 days from the date of notice of assessment.

(iii) **Where there is a credit in the income tax account, can the taxpayer request for a refund although there is an outstanding tax liability in the real property gains tax account? Does the taxpayer have the option to pay off any outstanding taxes instead of utilising the credit in one of the accounts? Will the refund process be delayed?**

Answer:

Yes. Taxpayer must make payment for RPGT account before requesting for a refund from income tax account.

(iv) Under the Petroleum (Income Tax) Act 1967, a partnership for each production sharing contract (PSC) is a chargeable person. Hence, the tax return is filed in the name of the PSC and the PSC is assessed to tax accordingly. In a situation where there is a tax refund due to a particular PSC, the excess petroleum income tax paid could be used to offset income tax or RPGT of the PSC's liability or the individual JV partners' liability.

Where the taxpayer is a partner to two or more PSCs in Malaysia, would the DGIR utilise the credit balance of the taxpayer in one PSC to set off the tax liability of the taxpayer in another PSC?

Answer:

No. DGIR has no power to utilise the credit balance of the taxpayer in one PSC to set off the tax liability of the taxpayer in another PSC.

IRB noted that PSC can operate in the form of joint ventures or sole operation. In addition, different blocks will have different tax file reference number.

3. STAMP DUTY

3.1 Stamp duty exemption on instruments of transfer on residential property [to be gazetted by way of a statutory order]

For sale and purchase agreements executed from 1 January 2011 to 31 December 2012, a stamp duty exemption of 50% will be given on instruments of transfer of a residential property priced not exceeding RM350,000 provided that the purchaser is a Malaysian citizen and does not own any residential property (or does not own part of a residential property in the case of joint ownership) in his name at the time he applies for the 50% stamp duty exemption. The exemption is eligible to be claimed once only within the exemption period. A residential property includes a terrace house, condominium, apartment or flat.

Issue:

The Institutes would like to confirm that in the case of joint ownership of a residential property, the 50% stamp duty exemption on the instrument of transfer is given to each co-owner in proportion to his/her share of ownership.

Answer:

Yes. The 50% exemption will be given proportionately to the co-owner who does not own any residential property during the application period.

Guidelines will be issued by Stamped Duty Division.

3.2 Stamp duty exemption on loan agreements for residential property [To be gazetted by way of a statutory order]

Similarly, for sale and purchase agreements executed from 1 January 2011 to 31 December 2012, a stamp duty exemption of 50% will be given on loan agreement instrument for a residential property priced not exceeding RM350,000 provided that the purchaser is a Malaysian citizen and does not own any residential property (or does not own part of a residential property in the case of joint ownership) in his name at the time he applies for the 50% stamp duty exemption. The exemption is eligible to be claimed once only within the exemption period. A residential property includes a terrace house, condominium, apartment or flat.

Issue:

The Institutes would like to confirm that in the case of joint ownership of a residential property, the 50% stamp duty exemption on the loan agreement is given to each co-owner provided that the residential property is not priced exceeding RM350,000.

Answer:

Yes. The 50% exemption will be given proportionately to the co-owner who does not own any residential property during the application period.

Guidelines will be issued by Stamp Duty Division.

4. SERVICE TAX

4.1 Review of service tax rate [Service Tax (Rate of Tax) Order 2000]

It is proposed that the existing rate of service tax on all taxable services be increased from 5% to 6% with effect from 1 January 2011.

The Institutes would like to commend the Ministry of Finance and Royal Malaysian Customs for conducting the dialogue on 2 December 2010 with various bodies and associations on the increase in the rate of service tax from 5% to 6% with effect from 1 January 2011. The Institutes would like to request that guidelines be issued as soon as possible to allow service providers sufficient time to modify their financial system to cater for the increase in the rate of services and to avoid any ambiguities in view of the time line of 1 January 2011 drawing near.

Answer:

It is a policy matter.

5. OUTSTANDING MATTERS

Matters which are outstanding are listed below. The Institutes are of the view that detailed information must be disseminated on a timely basis so that taxpayers have enough time to comply with the requirements.

5.1 2004 Budget

It was announced in the 2004 Budget that in order to stimulate the capital market and diversify sources of financing for economic development, the Government intended to ensure neutrality in tax treatment between asset-backed securities and other securities approved by the Securities Commission. On this matter, CTIM had submitted its comments on the draft **Income Tax (Asset-Backed Securitisation) Regulations 2003** to the IRB on 4 July 2007. CTIM had also been invited to a dialogue with the IRB and the Securities Commission on the draft **Income Tax (Asset-Backed Securitisation) Regulations 2007** on 21 February 2008.

The Institutes would like to have an update on the progress of the regulations.

Answer:

The draft of the Regulations has been submitted to Ministry of Finance for approval.

5.2 2009 Budget

a) Transfer pricing rules and guidelines
b) Advance pricing arrangement rules and guidelines
c) Thin capitalisation guidelines

Although the relevant law has come into operation with effect from 1.1.2009, the Rules for the above have not been gazetted and guidelines too have yet to be issued in respect of these matters. This has caused uncertainty in handling cases pertaining to such matters. The Institutes would like to know the status of the Rules and Guidelines.

Answer:

The draft of the Rules and the Guidelines have been submitted to MOF for approval.

5.3 2010 Budget

The Institutes would like to have an update on the following guidelines:

(i) Item No. 6 of the minutes of Post 2010 Budget Dialogue has indicated that Guidelines on the 16 qualifying services eligible for the promotion of export incentives will be issued.

(ii) It was also stated in item 9 of the minutes of the Post 2010 Budget Dialogue (in respect of tax incentives for buildings awarded Green Building Index (GBI) certificate) that *"Guidelines relating to taxation matters will be issued soon by IRBM'* and that the Guidelines will be available on the IRB's website.

Answer:

(i) There are a few outstanding issues yet to be finalised by Ministry of Finance.

(ii) The Guidelines on Green Building Index will be issued once the Exemption Order is gazetted.

5.4 Draft Guidelines on e-Commerce

The Joint Public Ruling Working Group (JPRWG) had submitted its comments on the draft e-Commerce Guidelines to the IRB on 28 September 2010. The JPRWG would like to have an update on the progress.

Answer:

The draft Guidelines has been submitted to MOF for approval.

5.5 Outstanding Public Rulings

The Institutes would like to know the status of the following draft public rulings (PR) on which the JPRWG has submitted its comments:

(a) Draft PR on Income from Letting of Real Property (Comments submitted on 3 November 2008)

(b) Draft PR on Interest Expense and Interest Restriction (Comments submitted on 10 March 2009)

(c) Draft PR on Investment Holding Company (Comments submitted on 16 March 2009)

(d) Draft Addendum to PR on Reinvestment Allowance (Comments submitted on 14 April 2009)

(e) Draft PR on Taxation Of Malaysian Employees Seconded Overseas (Comments submitted on 3 July 2009)

(f) 2nd Draft PR on Taxation on Foreign Nationals Working in Malaysia (Comments submitted on 16 July 2009)

(g) 2^{nd} Draft PR on Computation of Bilateral and Unilateral Relief (Comments submitted on 16 July 2009)

(h) Draft PR on Club, Association or Similar Institutions (Comments submitted on 27 August 2009)

(i) Draft PR on Taxation of Co-operative Society (Comments submitted on 9 December 2009)

(j) Draft PR on Employee Share Schemes Benefit (Comments submitted on 26 April 2010)

(k) Draft PR on Residence Status of Individuals (Comments submitted on 11 May 2010)

(l) Draft PR on Residence Status of Companies And Bodies of Persons (Comments submitted on 11 May 2010)

(m) Draft Addendum 3 to PR on Computation of Income Tax Payable by A Resident Individual (Comments submitted on 14 July 2010)

(n) Draft PR on Real Estate Investment Trust / Property Trust Fund (Comments submitted on 13 October 2010)

(o) Draft PR on Lump Sum Payment on Termination of Employment (Comments submitted on 9 Dec 2010)

Answer:

Bil.	***Topics of Public Ruling.***	***Status***
1	*Income from Letting of Real Property*	*Issued on 10.3.2011*
2	*Interest Expense and Interest Restriction*	*Issued on 7.2.2011*
3	*Investment Holding Company*	*Issued on 10.3.2011*
4	*Addendum to PR on Reinvestment Allowance*	*KIV gazette of exclusion list*
5	*Taxation of Malaysian Employees Seconded Overseas*	*Issued on 7.2.2011*
6	*Taxation on Foreign Nationals Working in Malaysia*	*Will be finalized in due course*
7	*Computation of Bilateral and Unilateral Relief*	*Will be finalized in due course*
8	*Club, Association or Similar Institutions*	*KIV gazette of the relevant Income Tax Rules*
9	*Taxation of Co-operative Society*	*Will be finalized in due course*
10	*Employee Share Schemes Benefit*	*Will be finalized in due course*
11	*Residence Status of Individuals*	*Issued on 26.5.2011*
12	*Residence Status of Companies and Bodies of Persons*	*Issued on 26.5.2011*
13	*Addendum 3 to PR on Computation of Income Tax Payable by A Resident Individual*	*KIV for approval*
14	*Real Estate Investment Trust / Property Trust Fund*	*Will be finalized in due course*
15	*Lump Sum Payment on Termination of Employment*	*Will be finalized in due course*

Attachment 1

LIST OF SPECIAL NEEDS FOR PARENTS

1. PORTABLE AUTOMATIC BLOOD PRESSURE MONITOR
2. SILICONE RYLES TUBE
3. COMMODE CHAIR
4. DETACHABLE arm rest WHEEL CHAIR (much easier for patient to transfer position)
5. STANDARD WHEEL CHAIR
6. WALKING FRAME
7. QUADRIPOD
8. ROLLATOR WITH 2 WHEEL AND BRAKE
9. ROLLER WITH ELBOW SUPPORT
10. AUTOMATIC ADJUSTABLE BED
11. RIPPLE MATRESS
12. J-CUSHION (relieves pressure for those with risk of pressure sore while sitting)
13. TRANSFER BOARD
14. ACCAPELLA (for lung physiotherapy)
15. LONG TERM OXYGEN THERAPY
16. PORTABLE SUCTION MACHINE
17. FOOD THICKENER – for patients with swallowing problems especially post stroke
18. CLEAN INTERMITTENT CATHETERIZATION (catheters)
19. MOIST DRESSINGS (examples are Duoederm etc. Many brands available with no brand preferences but they include hydrocolloids dressing)
20. GLUCOMETER
21. DIAPERS
22. URINARY CONDOM AND BAG
23. BEDPAN
24. NEBULIZER
25. INHALERS
26. INSULIN PEN
27. UNINARY CATHETHER