MALAYSIAN INSTITUTE OF TAXATION (MIT)
MALAYSIAN INSTITUTE OF ACCOUNTANTS (MIA)
THE MALAYSIAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS (MICPA)

2007 Post Budget Technical Issues To Be Raised With The Inland Revenue Board (IRBM)

I. 2007 BUDGET PROPOSALS

A. INCOME TAXATION

1. Review of Company Income Tax Rate

The Institutes welcome the pleasant surprise of a reduction in the corporate tax rate to 27% in year of assessment 2007 and 26% by year of assessment 2008. This move is expected to promote greater private sector investment.

The Institutes wish to highlight the following:-

(a) the reduction of the tax rate to 27% is evidenced by clause 30(a)(ii) of the Finance Bill 2006 (Bill). However, the reduction of the tax rate to 26% was not mentioned in that clause. The reduction should be included in order to provide certainty, especially to foreign investors.

(b) pending the gazetting of the Bill, the Institutes wish to confirm that taxpayers are allowed to apply the new tax rates in their preparation of the revised and initial tax estimates for years of assessment 2007 and 2008 respectively.

(c) where the basis period of a company declaring a dividend is different from that of the shareholder company, a reduction in the tax rate for year of assessment 2007 would result in either a tax repayable or tax payable of 1% for the shareholder company.

For example:

- Situation 1 - Dividend Paid on 31/12/06

YA 2006 Company (y/e 31 Dec)		YA 2007 Shareholder (y/e 31 Mar)	
	RM		*RM*
Gross	100	Gross	100 [i]
Tax deducted @ 28%	28	Tax @27%	27
Net Paid	72	S.110	28
		Tax repayable	1

- Situation 2 - Dividend Paid on 30/9/06

YA 2007 Company (y/e 31 Mar)		YA 2006 Shareholder (y/e 31 Dec)	
	RM		*RM*
Gross	100	Regross	99 [iii]
Tax deducted @ 28%	28 [ii]	Tax @28%	28
Net Paid	72	S.110 (regross)	27 [iii]
		Tax payable	1

i. based on section 108(3) of the Income Tax Act 1967 (the Act), no regrossing is required as there is no revision in the tax rate in the basis period for a year of assessment when the dividend was paid i.e. in YA 2006.

ii. current corporate tax rate of 28% applies pending gazette of the Bill.

iii. based on section 108(3), the amount of dividend received shall be regrossed based on the formula of 1/0.73 x 72 and the difference between amount regrossed and the amount paid i.e. RM27 (RM99 – RM72) shall be the tax deducted (sec 110).

Shareholders have to ensure regrossing is done for companies declaring dividend for year of assessment 2007 and where tax has been deducted at 28%. At present, dividend vouchers only show the accounting year end.

Answer:

a. **The IRBM responded that the reduction of the corporate tax rate from 27% to 26% will be amended in the next finance bill.**

b. **The IRBM confirmed that the new (proposed) corporate tax rate can be applied pending the gazette of the Bill.**

c. **The IRBM responded that the example given above is a correct example.**

2. Review of Penalty on Withholding Tax

With effect from 2 September 2006, it has been proposed that the 10% penalty on **withholding tax** be imposed on the amount of unpaid tax instead of on the total gross amount paid to a non-resident.

The Institutes laud this move by the Ministry and the IRB as being a fair approach which would reduce the cost of doing business for the private sector.

The Institutes wish to confirm that the effective date of 2 September 2006 onwards refers to the date when the penalty is actually imposed. That is to say that penalty of 10% on the unpaid tax will apply even though the payment to the non-resident was made in say, January 2004.

Answer:

The IRBM confirmed that the 10% penalty on withholding tax on the unpaid amount shall only be applicable for the payment due and payable on or after 2 September 2006. If the payment is due and payable prior to 2 September 2006 (for example, the 30 days fall on 30 August 2006), then the old provisions will apply.

3. Tax Audit and Investigation Framework

It has been proposed that the existing Guide on Tax Audit be updated and the framework for tax investigation be issued by the IRB. This proposal is effective from 1 January 2007.

The Institutes welcome the proposal. The framework will assist to maintain and enhance public confidence in the tax administration. The Institutes will revert with comments on the draft framework received and hopes that a dialogue will be convened to discuss the comments. Issues relating to tax audits and investigations have been forwarded earlier to the IRB on 21 July 2006 and the dialogue date has yet to be confirmed.

Answer:

The IRBM responded that the above matter will be discussed in a separate dialogue which will be confirmed later.

4. Public Rulings

The proposed new Section 138A of the Act empowers the Director General (DG) of the Inland Revenue to make a public ruling on the application of any provision to any person or class of persons or to any arrangements.

The Minister of Finance is also empowered under the proposed Section 154(1)(eb) and (ec) of the Act to provide for the scope and procedures relating to public rulings.

The Institutes would like to highlight the following issues:-

(a) a definition of "public ruling" and "arrangement" should be included in the Act.

(b) does the introduction of Section 138A remove the right of appeal accorded to taxpayers under Section 99 of the Act. That is to say that where a taxpayer disagrees with an assessment which has been made or deemed to have been made based upon a ruling, the normal appeal provisions in the Act will still apply.

(c) based on Section 138A(3), the public ruling is binding on the DG and only binding on the taxpayer if the taxpayer applies the said ruling. If the taxpayer chooses not to apply the ruling, would the taxpayer need to indicate the reasons for such an action in the submission of the tax return? In the event of a tax audit, no penalty should be imposed where a disclosure was made by the taxpayer.

(d) as a public ruling is only binding on the DG, the requirement to indicate compliance with public rulings in tax returns will not be applicable.

Answer:

(a) **The IRBM responded that a Public Ruling will be issued on this matter pending the issuance of a Rules on the scope and procedure to be prescribed by the Minister. The definition of these terms will be addressed either in the said Rules or Public Ruling.**

(b) **The IRBM responded that the right of appeal still remains (i.e appeal on the assessment and not on the Public Ruling).**

(c) **No. The taxpayer need not indicate the reason. The taxpayer only needs to indicate whether he applied the Public Ruling or not. The issue of penalty will be clarified in the "tax audit framework". However, the taxpayer is free to indicate reasons for non-compliance to a public ruling in the covering letter enclosing the tax return.**

(d) **The indication on the tax return is only for IRBM tax administration purposes. The IRBM assured that the indication of non-compliance with the public ruling is not the only factor leading to selection for an audit.**

5. Advance Rulings

In order to promote clarity and certainty in the interpretation and application of the tax law, Section 138B of the Act has been introduced to allow taxpayers to request for an advance ruling with effect from 1 January 2007. The Minister of Finance is also empowered under the proposed Section 154(1)(eb) and (ec) of the Act to provide for the scope and procedures relating to the rulings (advance and public) as well as prescribe the fees to be charged for an advance ruling.

The Institutes welcome the introduction of an advance ruling system which is necessary as Malaysia is under a full self-assessment system of taxation. However, the Institutes would like to seek confirmation on and highlight the following issues:-

(a) as with Section 138A, we understand that the introduction of Section 138B does not remove the right of appeal accorded to taxpayers under Section 99 of the Act. That is to say that where a taxpayer disagrees with an assessment which has been made or deemed to have been made based upon the application of a ruling, the normal appeal provisions in the Act will still apply.

(b) the taxpayer has the option not to follow the advance ruling if he disagrees with it. We note however that Section 138B(5) appears to indicate that the taxpayer has no such option and must follow the advance ruling issued, whether favourable or not.

(c) section 138B(3) should be deleted. The inclusion of this provision does not provide taxpayers with certainty. Section 138B(6) should suffice as it provides very clearly the various circumstances in which an advance ruling issued by the IRB would fail to apply.

Answer:

(a) The IRBM responded that the right of appeal still remains (i.e appeal on the assessment and not on the Public Ruling).

(b) Yes. It is binding on the tax payer but the tax payer can appeal under the normal appeal procedure.

(c) The IRBM responded that section 138B(3) and section 138B(6) are different as section 138B(3) is in respect of withdrawal and section 138B(6) is in respect of non-application. Section 138B(3) is an enabling provision allowing the Director General of IRBM to withdraw ruling in cases where there is a justifiable reason.

In view of the approaching effective date, we would urge the authorities to expedite the issuance of a guideline on the advance rulings system which would set out, amongst others, the application procedures, processing time and fee structure. We hope the following issues would be considered in the finalisation of the guideline:-

(a) the amount of prescribed fees to be charged should be reasonable. Such fees imposed should be an allowable deduction to the company.

(b) the processing time should be reasonable. The IRB should endeavour to provide a ruling within 8 weeks or earlier. However, where a delay is anticipated especially in a complex request, the taxpayer must be informed accordingly on a timely basis.

The Institutes propose that an opportunity be provided for the Institutes to provide comments on the draft guidelines before these are finalised.

Answer:

Rules will be prescribed by the Minister. It is the decision of the Ministry of Finance whether draft guidelines will be provided to the Institute for comment.

6. Review of Incentives for Biotechnology Industry

The 2007 Budget has proposed, amongst others, the following new incentives to enhance the biotechnology industry:

- a bionexus company be given a concessionary tax rate of 20% on income from qualifying activities for 10 years upon the expiry of the tax exemption period;

- a company or an individual investing in a bionexus company be given a tax deduction equivalent to total investment made in seed capital and early stage financing.

The Institutes would like to seek clarification on the following:

(a) the definition of "seed capital financing" and "early stage financing". Would the definition of both terms be the same as that defined under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005?

(b) whether existing companies already engaged in biotechnology would qualify for the new incentives. If so, whether these companies will be granted approval retrospectively.

Answer:

a) **The IRBM clarified that both terms are applicable for incentives in the biotechnology industry.**

b) **Yes, if the company expands its existing biotechnology activity.**

The company can apply for either:

i) **Exemption of statutory income for 5 years commencing from the first year the company has a statutory income and shall not be earlier than the year of assessment the approval is given by the Minister; or,**

ii) **Tax Allowance for 5 years commencing from the first qualifying capital expenditure and that date shall not be earlier than the date of application to Malaysian Biotechnology Corporation.**

7. Promotion of Malaysian Brand Name

It has been proposed that double deduction on expenses incurred on advertising Malaysian brand names be extended to a company within the same group that has incurred the advertising expenditure, subject to the conditions that the company *must be owned more than 50%* by the registered proprietor of the Malaysian brand name and the deduction can only be claimed by one company in a year of assessment.

The Institutes wish to propose that the double deduction be extended to *any* company within the same group regardless of shareholding. The restriction to one company with 50% ownership will only cause inflexibility for the group of companies especially where the registered brand name owner is not the holding company.

Answer:

The IRBM responded that the above matter is a policy decision. However, the IRBM clarified that the double deduction will still be applicable where the company which incurred the expenditure owns more than 50% of the registered proprietor of the brand name.

8. Income Tax Exemption for Islamic Banking and Takaful Business

It has been proposed that full tax exemption for 10 years be given under the Act to the following:-

(i) Islamic banks and Islamic banking units licensed under the Islamic Banking Act 1983 on income derived from Islamic banking business conducted in international currencies; and

(ii) takaful companies and takaful units licensed under the Takaful Act 1984 on income derived from takaful business conducted in international currencies.

The Institutes wish to clarify the following:-

(a) the meaning of "Islamic banking business conducted in international currencies" i.e. which type of activities are included?

(b) the basis of apportionment of common expenses incurred between conventional and Islamic banking units (transacting in foreign currencies).

Answer:

a) **The IRBM clarified that Islamic banking business conducted in international currencies qualifying for the incentive are commercial banking business, investment banking business and other banking businesses in Malaysia as may be specified by Bank Negara Malaysia. The activities include dealing in international foreign currencies, taking deposits, providing financing facilities, providing investment banking services and investing in securities and properties (Please refer to the Guideline on The Establishment Of International Islamic Bank).**

b) **The IRBM clarified that the gross income is the acceptable basis for the apportionment of the common expenses incurred.**

Rules will be issued on this matter.

9. Tax Exemption for Companies Managing Foreign Islamic Funds

It has been proposed that local and foreign companies managing funds of foreign investors established under the Shariah principle be given full income tax exemption on the management fees for 10 years. The Securities Commission must approve such funds.

The Institutes wish to clarify the following:-

(a) whether the term "fund" refers to collective investment schemes such as unit trust funds, private equity funds or foreign investors' monies being passed onto fund managers for investment.

(b) where the fund manager manages funds of both locals and foreigners, would the exemption be based on the net income from the services to the foreign investors? This means separate accounts would need to be maintained. How then would common expenses be apportioned between the two categories?

(c) what exactly would the Securities Commission be approving - the fund manager or the funds to be managed?

Answer:

The IRBM responded that for issues (a) and (c), the matter will be clarified in the Order that will be issued soon.

The IRBM clarified that the tax exemption is granted on the statutory income derived from the services to the foreign investors. A separate account is required and the acceptable basis for the apportionment of the common expenses incurred would be on gross income.

10. Deduction on Expenses to Establish Islamic Stock Broking Company

It is proposed that expenses incurred prior to the commencement of an Islamic stock broking business be allowed as a deduction provided the company commences its business within a period of 2 years from the date of approval by the Securities Commission.

The Institutes would like to confirm whether All the pre-commencement revenue expenditures of an Islamic stock broking company such as professional and consultancy fees, etc be allowed as a deduction or is it only certain pre-commencement expenditure.

Answer:

All pre-commencement expenses of a revenue nature would be deductable.

11. Review of Tax Treatment on Special Purpose Vehicle for Islamic Financing

It has been proposed that the Special Purpose Vehicle (SPV) established solely to obtain financing through the Islamic capital market would not be subject to income tax and therefore, not required to adhere to administrative procedures under the Act. The company that establishes the SPV would be given a deduction on the cost of issuance of the Islamic bonds incurred by the SPV.

The Institutes wish to clarify the following:-

(a) whether the above treatment would apply to SPVs under an Islamic Asset Backed Securities transaction. We also wish to propose that this treatment be extended to SPVs established for conventional financing activities.

(b) whether operating costs incurred by the SPV would be allowed to be claimed by the company that establishes the SPV. Thus, what is taxed on the company would be the net income of the SPV and if there is a loss, then the loss is claimable by the company.

Answer:

a) **The IRBM responded that it is not applicable to Asset Backed Securitisation transactions.**

b) **in principle, the company will be taxed on the net income of the SPV. Anyway, IRBM will seek further clarification/confirmation from the Ministry on this issue and will address the issue in the legislation.**

12. Incentive for Banks to Set Up Operations Overseas

It is proposed that tax exemption is available to Malaysian-owned banks for 5 years on profits derived from newly established branches overseas or remittances of new overseas subsidiaries.

The Institutes would like to clarify the following:

(a) whether this incentive is extended to all types of banks such as investment banks, Islamic banks, etc.

(b) whether there would be any restrictions on the type of operations carried out by the overseas subsidiaries to qualify for this incentive.

(c) the proposal is effective from 2 September 2006 until 31 December 2009. We wish to confirm that this period refers to the period within which the applications are made to Bank Negara Malaysia.

Answer:

a) **The IRBM clarified that this incentive is granted to all types of bank.**

b) **The IRBM clarified that exemption is given only for banking business.**

c) **Yes. The period refers to the period within which the application is made to the Bank Negara Malaysia.**

13. Review of Incentives for Real Estate Investment Trusts (REIT)

Based on clause 30(b) of the Bill, income tax shall be charged on the following unit holders as below:-

Type of Unit holder	Tax Rate
(i) Institutional investor	20%
(ii) Resident/Non resident company	27%
(iii) Unit holder other than (i) and (ii) above	15%

"Institutional investor" has been defined to mean a pension fund, collective investment scheme or such other person approved by the Minister.

The Institutes wish to clarify the following issues:-

(a) the Budget Speech (Appendix 22) refers to "foreign institutional investors" whilst clause 30(b) has no such reference.

(b) the different rates of tax for different investors will only cause a greater administrative burden for the REIT.

(c) resident individuals will be taxed at the rate of 15% which is a final withholding tax. As it is a final withholding tax, are individual taxpayers required to declare the income received from the REIT in their personal tax returns?

Answer:

a) The IRBM clarified that the law will be amended to give effect to the proposal.

b) The IRBM responded that the above matter is a policy decision.

c) The IRBM clarified that an individual taxpayer is not required to declare the income from REIT because it is a final tax.

Section 110 set-off is not applicable as the witholding tax is imposed on income distributed out of the total income exempted in the hands of REIT.

IRBM agreed that subsection 109D(5) need to be reviewed as this subsection is not applicable to tax deducted under S109D.

14. Local Leave Passage

The following has been proposed:-

(a) local leave passage costs which is exempted from tax for employees be extended to include expenses on meals and accommodation.

(b) the provision of a benefit or amenity to an employee consisting of a leave passage to facilitate a yearly event within Malaysia which involves the employer, employee and the immediate family members of that employee be allowed as a deduction.

In view of the above proposal, the Institutes wish to highlight that Public Ruling 1/2003 on Tax Treatment of Leave Passage and Public Ruling 3/2004 on Entertainment needs to be updated accordingly.

Answer:

The IRBM took note of the above matter. The relevant Public Ruling will be amended accordingly.

Based on the Minutes of the Technical Dialogue with the IRB on 15 March 2006, Item 6.3 clarified that where family day expenses include travel expenses, food and accommodation, only expenses relating to provision of food and accommodation is allowable. With this clarification and proposal (b) above, the Institutes wish to confirm that family day (yearly event) expenses such as travel, food and accommodation (for employer, employee and immediate family members) are now fully deductible to the employer with effect from year of assessment 2007.

Answer:

Yes.

The Institutes also wish to highlight that there may be instances where there is more than one yearly event, especially in large organisations. Under such instances, would the employer have the option to select which trip would qualify for the deduction?

Further, due to the size of an organisation, different departments could organise such an event separately. Since this involves different employees, would the costs involved for all such events be fully deductible as collectively, any employee would only be involved in one such event?

Answer:

The IRBM confirmed that the cost incurred for all "family days" organised by the employer will be fully deductable.

In addition, the Institutes wish to confirm that there is no requirement for the "yearly event" to be organised every year in order to qualify for the deduction i.e. it could be organised in year 1 and year 3 and as such, the necessary deduction will be granted in the years concerned.

Answer:

The IRBM confirmed that there is no requirement for the "yearly event" to be organised.

15. Special Tax Treatment for the Property Development and Construction Contract Business

It is proposed that special regulations be formulated and published in the Gazette for the property development and construction contract business. Some of the salient features of the regulations include the deductibility of expenses incurred during the defect liability or warranty period and the carry back of losses. This proposal is effective from year of assessment 2006.

The Institutes wish to clarify when the regulations will be issued and hope to be involved in its finalisation. Pending the issuance of the regulations, can taxpayers apply the proposal in completing their 2006 tax returns. The Institutes also wish to highlight that companies with January year ends would have submitted their 2006 tax returns by 30 August 2006. Therefore, these companies would not have been able to avail themselves of this new treatment. These companies should be allowed to revise their tax returns accordingly. What mechanism will be in place to allow this?

The Institutes also wish to reiterate the following points:-

Date of commencement of business

In the case where a new company has been incorporated and purchases land purportedly with the intention of carrying on a property development business, the actions taken by the company, and the timing of the subsequent actions may indicate for a fact whether a business has commenced. One should consider the ultimate purpose and intent of the company in acquiring the land before deciding whether the company has commenced business.

In the case of construction contracts, it is indicated in the Public Ruling 3/2006 that there are various circumstances which may be indicative of the commencement of a construction business. These include the date on which the contract is secured, letter of award offered, the date on which possession of a construction site is obtained or the commencement of an activity which constitutes part of a series of active activities such as the leveling of land.

The date of commencement of business for a contractor should not be limited to these circumstances alone as there are other activities carried out which are already indicative of the commencement of a business such as the date when the contractor's services are available for offer. Thus, greater flexibility must be exercised to review the circumstances for determining the date of business commencement.

Date of completion of a project or contract

Based on the Speech (Appendix 27), it is stated that in the case of property development, a project or phase is deemed completed when the temporary certificate of fitness for occupation or certificate of fitness for occupation is issued and in the case of construction contracts, a contract or project is deemed completed when a certificate of practical completion is issued or where no such certificate is issued, the date upon which the contract work is substantially completed.

We are of the opinion that the date of completion of a project or contract should be the date when the warranty/defects liability and/or maintenance period ends

as the developers and contractors are still obligated to incur expenses during the warranty/defects and/or maintenance period.

Revision of estimates

Based on the Speech (Appendix 27), revision of estimates of gross profits can be allowed based on other commercial reasons which are acceptable to the DG. We wish to seek confirmation on this.

Interest Expense

Currently, interest expense incurred on money borrowed and employed in the production of gross income of a property developer is allowable and only interest attributable to the phases and projects, whichever is applicable, which produce income would be allowed as a deduction.

Where the business of a company has already commenced, such interest expenses incurred should be deductible regardless of whether the projects are income-producing or not. Interest paid on money borrowed to finance the projects should be allowed a tax deduction in the year it is incurred. The fact that it is for the purpose of the business means that Section 33(1)(a) of the Act applies to allow a deduction irrespective of whether the project has commenced producing income or where the interest expense is reflected in the accounts.

It is obvious that in situations where development has not commenced that interest expenses incurred would not be deductible on the basis that they are pre-commencement expenses. However, where business has already commenced, such interest expenses incurred should be deductible regardless of whether the projects are income-producing or not.

Guarantee fees

Currently, under the Public Ruling, a guarantee fee paid in respect of loan or bank facility granted to a property developer or construction contractor is a capital cost of raising funds and is not deductible. We are of the opinion that guarantee fees are akin to interest, and accordingly, should be accorded the same treatment as interest.

Answer:

The issue will be discussed in a different forum later. Pending the issuance of the Regulations, the Public Ruling and IRBM's stand on issues pertaining to this industry apply.

16. Extending the Promoted Area

It is proposed that Perlis be declared as a promoted area and this is effected by clause 34 of the Bill. It is indicated in the Budget Speech (Appendix 30) that companies currently located in the promoted areas are eligible for Infrastructure Allowance of 100% of qualifying capital expenditure which can be set-off against 100% of the statutory income for each year of assessment.

The Institutes wish to highlight/clarify the following:-

(a) that the Promotion of Investments (Promoted Areas) Order 1994 [P.U. (A) 482/94] would also need to be amended (apart from the proviso to paragraph 3 of Schedule 7A) in view of the above proposal.

(b) based on Section 41B(2) of the Promotion of Investments Act 1986, the amount that can be exempted under the Infrastructure Allowance is 85% of statutory income, and not 100% of statutory income as stated in the Speech.

Answer:

a) The IRBM clarified that the amendment will be made by the Ministry of International Trade & Industry (MITI) .

b) The IRBM confirmed that the Infrastructure Allowance is allowed as a deduction up to 85% of the statutory income of the business.

17. Widening the Scope of Deduction for Donations

Tax deduction under Section 44(6) of the Act has been proposed to include any gift of money or cost of contribution in kind made by companies towards sports activities approved by the Minister of Finance and sports bodies approved by the Commissioner of Sports as well as contributions for projects of national interest approved by the Minister of Finance. However, the deduction against aggregate income is still subject to a maximum of 7% of aggregate income.

The Institutes wishes to seek clarification on the following:-

(a) the list of approved sports activities by the Minister of Finance.

(b) the meaning of "project of national interest" and some examples of such projects would be helpful.

To further encourage the participation of companies in corporate social responsibility programmes, it is suggested that the threshold of 7% should be totally removed.

Answer:

The IRBM clarified that there will be no such list. The Minister will make a decision upon an application.

The threshold of 7% is a policy decision.

18. Tax Treatment of Perquisites

It has been proposed that tax exemption of up to a maximum amount or value of RM1,000 be given to each employee for a year of assessment on service awards received by the employee. It is also proposed that the exemption in respect of long service award shall only be given to employees who have served the same employer for more than 10 years.

The Institutes would like to seek clarification whether the above exemption would be extended to employees who have served at least 10 years with companies within the same group as defined under the Companies Act, 1965. The Institutes would also suggest that guidance be given as to how the IRB would determine the value of an award which is not in monetary terms. It is suggested that although an employer incurs RM500 on an award, such an award may not have a second hand value (as it is engraved with the name of the employee, etc) and as such, attributing a value is unnecessary.

Answer:

The IRBM will confirm with the Ministry of Finance whether the "same employer" includes "companies within the same group".

The amount exempted is the cost of the award and the maximum amount is as proposed.

19. Review of Tax Incentive for the Purchase of Computers

It is proposed that the rebate of RM500 be amended to a tax relief of up to RM3,000 which will be given once in 3 years. This proposal is effective from year of assessment 2007.

The Institutes wish to confirm the following:-

For example,

An individual has bought a computer in year 2004 and has claimed a rebate of RM400 in his YA 2004 tax return. He is thinking of purchasing a new computer in 2007.

He should be able to claim a relief of up to RM3,000 for the purchase of the computer in his YA 2007 tax return. If he happens to buy another computer in 2010, he should also be able to enjoy the relief in 2010.

Answer:

Yes. The individual may claim the relief in both years of assessment 2007 and 2010 respectively.

20. Tax Treatment on Payment for Rental of Ships

It is proposed that rental payments of ships under voyage charter, time charter or bare boat charter to a non-resident by a Malaysian resident company be exempted from income tax from 2 September 2006.

The Institutes welcome this proposal and wish to highlight that Public Ruling 4/2006 on Withholding Tax on Special Classes of Income needs to be revised.

Answer:

The relevant Public Ruling will be amended.

The Institutes would also like to seek confirmation on the following:-

(a) the effective date of 2 September 2006 applies to amounts paid or credited to the non-resident from that date onwards.

(b) pending the gazette of the Order, can taxpayers rely on the Budget proposal and stop withholding tax on the payments to non-residents for the rental payments stated above.

(c) the definition of the word "ship" referred to in the Speech.

Answer:

a) According to the Ministry of Finance, the date of 2 September 2006 applies to the amount that is due and payable.

b) Yes.

c) The IRBM responded that, as confirmed by the Ministry of Finance, 'ship' refers to an ocean-going ship i.e excluding barge, tug boat etc. The matter will be addressed in the Order.

21. Income Tax Exemption for Seafarers Working on Board a Foreign Ship

It has been proposed that the income of a seafarer who is employed by a Malaysian shipping company on board a *foreign ship* chartered by the employer be given tax exemption. Clause 32(e) of the Bill provides that income of an individual derived from exercising an employment on board a ship used in a business operated by a Malaysian resident person being a registered owner of a ship under the Merchant Shipping Ordinance 1952.

The Institutes wish to confirm that the income of a seafarer who is employed by a Malaysian shipping company on board a Malaysian ship OR on a foreign ship being used by the shipping company would be exempted from tax. As such, the foreign ship need not be owned by the Malaysian shipping company. However, the Malaysian shipping company must have at least one Malaysian ship.

Answer:

Yes.

22. Definition of Investment Holding Company (IHC)

It has been proposed that an IHC be redefined as a company whose activities consist mainly of the holding of investments and not less than 80% of its gross income other than gross income from a source consisting of the business of holding of an investment (whether exempt or not) is derived therefrom. The "business of holding of an investment" means business of letting of property where a company in any year of assessment provides any maintenance or support services in respect of the property.

It now appears that taxpayers would need to firstly, determine whether their business of letting of property falls into the above definition of "business of holding of an investment". If it does, then that portion of income would be excluded in applying the 80%/20% rule. However, it is not clear whether that portion should be excluded from the gross income i.e. the denominator in determining whether the 80% threshold is exceeded.

For example, Company X is established for a sole purpose of carrying out the business of letting properties. The company is actively involved in renting out its properties and provides an ancillary or support services/facilities. In addition to the income from rental business, the company also derives dividend income.

	Scenario A *RM*	*Scenario B* *RM*
Dividend	60	85
Rent	40	15

In determining the percentage of income from holding of investments, should it be 60/60 or 60/100 for Scenario A and should it be 85/85 or 85/100 for Scenario B?

The Institutes are of the view that such an approach would result in genuine business activities being treated as income of an IHC. The Institutes are puzzled as to why it is necessary to introduce such a complex provision in the Act and the rationale for this. The approach is an attempt to deny a company carrying on an actual business of letting of property (taxed under Section 4(a) of the Act) from being treated as carrying on a business.

Answer:

The IRBM responded that the determination of the percentage of income from holding of investments is as follows:

Scenario A - $\frac{60}{100}$ X 100 = 60% (not an IHC)

Scenario B - $\frac{85}{100}$ X 100 = 85% (an IHC)

Note: For the purpose of determining whether the company is an IHC, an income from "business of holding of an investment" (i.e business of letting of property) is not taken into consideration in calculating the percentage.

Where a company has been determined as an IHC, the rental income derived from the "business of holding of an investment" shall be treated as income of IHC under section 60F or 60FA.

23. Tax Treatment on Release of a Debt

It has been proposed under clause 10 of the Bill that where capital allowances under Schedule 3 of the Act had been made on expenditure, the whole or any part of a debt in respect of such expenditure so released in the relevant period will be treated as gross income of the period.

The Institutes would like to seek clarification/confirmation on the following:-

(a) the tax treatment where the qualifying capital expenditure on which capital allowances have been claimed is restricted (for example private motor vehicles costing above RM150,000 are restricted to a maximum of RM50,000). Under such instances, the amount of debt treated as gross income should only be limited to the amount of capital allowances claimed.

(b) capital allowances shall continue to be claimed on the same asset in the year of assessment in which the debts are waived as well as for subsequent years of assessment.

In addition, the Institutes would like to highlight that clause 10 should only apply to loans which are taken specifically to acquire assets on which capital allowances have been claimed. In practice, it would be difficult to identify loans which are taken for working capital purposes and also used to purchase assets.

Answer:

a) **The IRBM confirmed that the gross income should be equivalent to the amount of the debt released.**

b) **The IRBM confirmed that the capital allowances can continue to be claimed.**

24. Gazette Orders

The Institutes would like to request the authorities to stipulate a time frame for the issuance of the relevant gazette orders for the following 2007 budget proposals:

- Tax treatment on payment for rental of ships
- Income tax exemption for Islamic banking and takaful business
- Tax exemption for companies managing foreign Islamic funds
- Deduction on expenses to establish Islamic stock broking companies
- Extension of tax incentive for issuance of Islamic securities
- Review of tax treatment on Special Purpose Vehicle for Islamic financing
- Incentive for banks to set up operations overseas
- Review of tax treatment for Venture Capital Companies
- Review of incentives for biotechnology industry
- Extending the incentive for promotion of Malaysian brand name
- Tax incentives for tour operators
- Extending the scope of incentive for the capital market graduate training scheme
- Extending the scope of a promoted area
- Exemption of stamp duty on Islamic Financial Instruments

Answer:

The IRBM responded that the IRBM is in the midst of preparing the gazette Orders.

B. REAL PROPERTY GAINS TAX (RPGT)

1. Conditional Contracts

It has been proposed that where an acquisition or disposal requires the approval by the Government or an authority or committee appointed by the Government, the date of disposal shall be the date of such approval or where the approval is conditional, the date of disposal shall be the date when the last of such conditions is satisfied.

The Institutes wish to highlight the following issues:-

(a) a contract for disposal may be subject to several conditions which may not necessarily be related to obtaining approvals from the Government or relevant authority or committee. For such contracts, it is proposed that the date of disposal be the date when the last of the conditions is satisfied.

(b) in a situation where there is an equity condition imposed by the Foreign Investments Committee (FIC) which is required to be fulfilled within a period of say, 3 years, would the date of disposal be the date when the FIC condition is finally fulfilled? What happens if the period of 3 years is further extended?

Answer:

(a) When a contract for disposal is subject to several conditions which may not be related to obtaining an approval from the Government or relevant authority/Committee, the date of disposal would be the date of the Sales and Purchase Agreement.

(b) Yes, the date of disposal is the date when the last of the conditions imposed by the FIC is finally fulfilled.

2. Transfer of Assets into Stock

It is proposed that a chargeable asset shall be deemed to be disposed of if an asset acquired or held by a person is taken into trading stock. The disposal price of the chargeable asset shall be equal to the market value at the date the asset is taken into stock.

The Institutes wish to highlight that the mere fact that an asset is transferred into trading stock should not be deemed to be a disposal of an asset. The facts of each case should be examined to determine whether or not there is in fact a disposal.

It is not unusual for a property development entity to hold large areas of land which are at varying stages of development, ranging from land on which there is no development to those which are in an advanced stage of development.

The reclassification of Land held for Property Development Account which is a current asset to stocks should not be construed as a deemed disposal. We seek confirmation that no RPGT will apply on this reclassification.

The Institutes wish to clarify the following:-

(a) whether a valuation report produced by a third party valuer would be sufficient to support the market value of the asset.

(b) whether the costs incurred (i.e. those referred to in paragraph 5 of Schedule 2 of the RPGT Act 1976) relating to the transfer of the asset to stocks including real property gains tax paid on the transfer would be deductible as these are legitimate costs incurred in transferring the land to be used for a trading activity.

Answer:

(a) **a valuation report by a third party valuer is acceptable unless the Director General believes that the valuation does not reflect the true value, in which case the government valuation is to be relied on and applied.**

(b) **RPGT is not an expense incurred in the production of income from a business. In case of property development, the issue will be discussed in the Regulations or the revised Public Ruling.**

C. SUPPLEMENTARY ISSUES

1. Definition of Investment Holding Company (IHC)

It has been proposed that an IHC be redefined as a company whose activities consist mainly of the holding of investments and not less than 80% of its gross income other than gross income from a source consisting of the business of holding of an investment (whether exempt or not) is derived therefrom. The "business of holding of an investment" means business of letting of property where a company in any year of assessment provides *any maintenance or support services in respect of the property.*

The Institutes would like to clarify the basis used in determining whether any maintenance or support services are provided. For example, would a one-off repair of the property constitute the provision of maintenance services?

Answer:

The IRBM clarified that the same test, as mentioned in the Public Ruling 1/2004 on letting of property applies.

2. Group Relief - Introduction of Appeal Procedure

It has been proposed that where the surrendering company is dissatisfied with the penalty imposed, it may within 30 days of being notified, appeal to the Special Commissioners of Income Tax.

The Institutes note that this proposal is effective from year of assessment 2007 whilst the group relief incentive is effective from year of assessment 2006. The Institutes wish to propose that the appeal procedure be effective from 1 September 2006 or earlier.

Answer:

The IRBM clarified that the above matter is a policy decision. Though the effective date is year of assessment 2007, the taxpayer can still appeal for year of assessment 2006.

II. ISSUES RELATING TO 2006 BUDGET

1. Scope of Individual Tax Relief for Further Education

Based on the Minutes of the Technical Dialogue with the IRB on 15 March 2006, Item 16 clarified that the cost incurred in acquiring professional accounting qualifications by way of self-study would be eligible for the relief. A list of the professional bodies approved in respect of this relief will be issued by the Ministry of Finance.

We wish to enquire on the status of the list.

Answer:

The IRBM will forward the enquiry on the status of the list to the Ministry of Finance (MOF).

2. Outstanding Guidelines

Based on the Minutes of the Technical Dialogue with the IRB on 15 March 2006, Items 2.7 and 12.2 clarified that the IRB will issue a detailed guideline on group relief and the treatment of bonds respectively as soon as possible.

We wish to enquire on the status of these guidelines.

Answer:

The IRBM responded that it is in the midst of preparing a Public Ruling instead of a guideline.

III. ISSUES RELATING TO PREVIOUS BUDGET PROPOSALS

The Institutes would like to enquire on the status of the issuance of statutory orders (see Appendix A) for the previous budget proposals.

Answer:

As per appendix B

IV. OTHER MATTERS

Secretarial and Tax Fees

The Income Tax (Deduction for Audit Expenditure) Rules 2006 has been gazetted to allow the deduction of statutory audit fees in ascertaining the adjusted income of a company in the basis period for a year of assessment.

Based on the Minutes of the previous Technical Dialogue held on 15 March 2006, the concession for the deduction of secretarial and tax fees would not be continued with effect from year of assessment 2006. The non-deductibility was also indicated in the Public Ruling 6/2006 on Tax Treatment of Legal and Professional Expenses.

The Institutes would like to know the rationale of discontinuing the concession whilst statutory audit fee which is of similar nature, be allowed a deduction. To promote fair treatment, the Institutes urge that the concession for the deduction of secretarial and tax fees be continued.

Answer:

The IRBM responded that the above matter is a policy decision.

Lampiran B

1999 Budget	Orders/Rules	Status
1	The Income Tax Exemption Order for the income derived from repair and maintenance activities for luxury boats and yachts in Langkawi.	The exemption will be given under section 127(3A) of the ITA 1967- with respect to a particular operator.
2003 Budget	**Orders/Rules**	**Status**
1	The Income Tax Rules for the accelerated agriculture allowance on qualifying capital expenditure incurred by a non-rubber plantation company in the preparation of land, planting and maintenance of rubberwood cultivation.	Under discussion (awaiting guidelines from the relevant Ministry - Kementerian Perusahaan Perladangan & Komoditi).
2	The Income Tax Rules for a company that invests in a wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land.	Under discussion (awaiting guidelines from the relevant Ministry - Kementerian Perusahaan Perladangan & Komoditi).
3	The Income Tax Rules for expenditure incurred by a company for drafting the individual Corporate Knowledge-based Master Plan.	Under discussion (awaiting information from MOF)
2003 Economic Stimulus Package	**Orders/Rules**	**Status**
1	The Income Tax Exemption Order for group relief under a pre-packaged incentives i.e forest plantations and selected products in sectors such as biotechnology, nanotechnology, optics and photonics.	Provision of group relief under Schedule 4C has been deleted with effect from year assessment of 2006 The exemption order for biotechnology industry and forest plantations will be gazetted separately.

2	The Income Tax Exemption Order for the value of increased export of locally produced product exported by the hypermarkets and direct selling companies.	Under discussion (awaiting guidelines from the relevant Ministry - Kementerian Perdagangan Dalam Negeri & Hal Ehwal Pengguna).

MALAYSIAN INSTITUTE OF TAXATION (225750 T)
(Institut Percukaian Malaysia)

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Item 5. Advance Ruling

The Institute highlighted that the withdrawal of any advance ruling should be done prospectively rather than retrospectively.

Item 7. Promotion of Malaysian Brand Name

The Institute is of the view that the double deduction should be extended to any company within the same group regardless of shareholding. The Institute is seeking a meeting with the Ministry of Finance to discuss this further.

Item 17. Widening the Scope of Deduction for Donations

The Institute is of the view that the threshold of 7% should be removed to fully encourage corporate participation in social responsibility programmes. The Institute is seeking a meeting with the Ministry of Finance to discuss this further.

Item 18. Tax Treatment of Perquisites

The Institute is of the view that the exemption should apply where the employee has exercised an employment for more than 10 years with the same employer or companies in the same group. This would be in line with other exemptions granted under paragraphs 15 (compensation for loss of employment) and 25 (retirement gratuity) of Schedule 6 of the Income Tax Act 1967. Confirmation from the Ministry of Finance is pending.

Item 22. Definition of Investment Holding Company (IHC)

The Institute is of the view that the proposed definition of IHC would possibly result in genuine business activities being treated as income of an IHC. The Institute is seeking a meeting with the Ministry of Finance to discuss this further.

Item IV. Other Matters – Secretarial and Tax Fees

The Institute is of the view that these expenses are part of operating expenses necessarily incurred by businesses and therefore, should be given a deduction. It is only through the appointment of professionals like tax agents and company secretaries that taxpayers are assured that their duties and obligations are complied with. Taxpayers should not be penalised for engaging professionals in order to discharge their responsibilities. The Institute is seeking a meeting with the Ministry of Finance to discuss this further.

Disclaimer:-
The above comments expressed are the views of the Malaysian Institute of Taxation. Nothing herein should be construed as advice on the applicability of any provision of the law to a given set of facts.

Unit B-13-2, Block B, 13th Floor, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450, Kuala Lumpur
Tel: 03-2162 8989 Fax: 03-2162 8990 Email: secretariat@mit.org.my