MEMORANDUM FOR DISCUSSION ON ISSUES ARISING FROM 2013 BUDGET AND FINANCE (NO.2) BILL 2012

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1. Tax Treatment Of Limited Liability Partnership (LLP)

The Finance (No.2) Bill 2012 (FB) proposes to amend the definition of "person" in the Income Tax Act, 1967 (ITA) to include an LLP. An LLP is defined in the Bill as "*a limited liability partnership registered under section 11 of the Limited Liability Partnerships Act 2012* (LLP Act) or *a foreign limited liability partnership registered under section 45 of the LLP Act*.

The proposal stipulates that the LLP is excluded from the definition of "partnership" under Section 2 of the ITA and instead, it will be taxed as a corporate entity.

Comments

(a) Issues Related to the conversion to LLP

(i) Transfer of Assets and Liabilities

Part V of the LLP Act (Sections 29 - 43) deals with Conversion to LLP. Section 33(1) stipulates that on the date of registration as stated in the Notice of registration issued by the Registrar of LLP, "*all properties vested in the conventional partnership or private company, all interests, rights, privileges, liabilities and obligations relating to the conventional partnership or private company, and the whole of the undertaking of the conventional partnership or private company, as the case may be, shall be transferred to and shall vest in the LLP without further assurance, act or deed.*" It further provides that "*the conventional partnership or private company shall be deemed to be dissolved*" and removed from the register of businesses or companies maintained under the Companies Act 1965.

To encourage the conversion of partnerships and companies to LLPs, transaction costs should be kept at a minimum and incorporation costs to be allowed. However, both the LLP Act and the FB are silent on the income tax treatment on the transfer of the assets and liabilities, such as stock-in-trade, debtors, creditors, etc. upon the conversion into an LLP. There are also real property gains tax and stamp duty implications on such transfers. These are the tax costs associated with the conversion into LLP.

The Institutes believe that tax neutrality should be maintained at the point of the transfer. Looking from the point of preserving efficiency, there should not be extra costs incurred upon conversion.

In this respect, the Institutes would like to seek clarification whether a Ministerial Order will be gazetted to provide the assurance to taxpayers on tax neutrality upon conversion into LLP. If the Ministerial Order is not going to be issued, then the Institutes would urge the MOF and the IRB to issue policy guidelines to provide clarity and transparency and to ensure that the tax neutrality principle is carried out in practice. It is particularly important that the stand of the revenue authority be made known clearly to the taxpayers to enhance compliance and facilitate business decision.

Reply by IRB

For tax purposes, the business of LLP from the conversion of partnerships and companies to LLP is deemed to be a continuous business as long as it complies with section 29 and 30 of LLP Act respectively. Therefore, the value of balance sheet items such as stock-in-trade, debtors and creditors at the date of conversion shall continue to be used in the LLP.

The transfer of asset (chargeable asset) to LLP is subjected to RPGT. Since the transfer is without consideration, the market value of the asset is taken as

the disposal value. The determination of market value is provided under paragraph 11, Schedule 2 of RPGT Act 1976.

All instruments of transfer upon the conversion of partnerships and companies to LLP under section 29 of the LLP Act 2012 are subject to stamp duty.

However, IRB has been given the policy by Ministry Of Finance to exempt RPGT and stamp duty in relation to the said conversion. The Exemption Orders are not yet gazetted.

(ii) Carry forward of unabsorbed business losses and unutilised capital allowances

To encourage the use of the new vehicle, it is proposed that the **unabsorbed business losses and unutilised capital allowances** of a partnership or a company be allowed to be transferred to an LLP upon its conversion to LLP.

In this respect, Clause 15 of FB introduces a new Section 44(5E) as follows:

"(5E) Where a partnership or a company is converted into a limited liability partnership in accordance with section 29 or 30 of the Limited Liability Partnerships Act 2012, the amount ascertained under subsection 44(4) or (5) for any relevant year in respect of that partnership or company shall be allowed for the purposes of ascertaining the aggregate income of that limited liability partnership for a year of assessment following the relevant year.".

The Institutes would like to seek clarification whether the partnership loss in 2013 can be allowed to an LLP for the year assessment 2013?

Example:

A partnership converts to an LLP as at 1 July 2013 and the LLP closes accounts on 31 December 2013.

Can the loss for 1 January 2013 to 30 June 2013 be allowed to an LLP in the year of assessment 2013 (basis period 01.07.2013 – 31.12.2013)?

Reply by IRB

For tax purposes, the conversion of partnerships and companies to LLP is deemed to be a continuous business as long as it complies with section 29 and 30 of LLP Act respectively. Therefore, business losses and capital allowances not fully absorbed prior to conversion can be carried forward to the LLP.

In the example above, the loss or chargeable income for YA 2013 will be determined at 31.12.2013. Since the conversion of a partnership to LLP is deemed to be a continuous business, the basis period of LLP for YA 2013 will be from 1.1.2013 to 31.12.2013. Losses of the partnership from YA 2012 can be carried forward to be absorbed by the LLP in YA 2013.

Examples with different scenarios will be given in the Public Ruling.

Similarly, Clause 35(f) of FB proposes to insert a new Paragraph 75AA to Schedule 3 of ITA as follows:

"75AA Where a partnership or a company is converted into a limited liability partnership in accordance with section 29 or 30 of the Limited Liability Partnerships Act 2012, any allowance or aggregate amount of allowances for a year of assessment which has not been so made to that partnership or company as ascertained under paragraph 75 shall be made to that limited liability partnership for the purposes of this Schedule and section 42 for the following year of assessment.".

The Institutes would like to seek clarification on how this would operate for a partnership converting into an LLP, given that the business losses of a partnership for a year of assessment are attributed to the individual partners in proportion to their share in the partnership as stipulated by Section 59 of the ITA, and are not retained at the partnership level.

In the light of the provision, do the partners of the partnership have a choice?

Similarly, Rule 22(b)(i) of the Income Tax (Capital Allowances And Charges) Rules 1969 [P.U.(A) No.96/1969] also provides that "*capital allowances in the case of a partnership should be apportioned between the partners and therefore no allowance would have been made to a partnership as such*".

Do the unabsorbed tax losses and the unutilised capital allowances refer to the losses suffered and capital allowance claimed in the basis period for a year of assessment in which the conversion to LLP takes place?

In the situation of a loss not being carried forward to the LLP, can the capital allowance only be carried forward to the LLP under Paragraph 75AA?

Reply by IRB

For tax purposes, the conversion of partnership and companies to LLP is deemed to be a continuous business as long as it complies with section 29 & 30 of LLP Act respectively.

The taxpayer is allowed to carry forward CA or losses or both to LLP. However if the partner to the partnership decided to utilize losses or CA against the partnership income, then such losses or CA cannot be carried forward to LLP. In the above example, losses or CA in YA 2012 cannot be carried forward to YA 2013 if partners decide to absorb both against their partnership income. There must be agreement between the partners on such arrangement.

(b) Remuneration of partners of LLP

Clause 14 of FB introduces a new Section 39(1)(n) which stipulates that

"(n) any remuneration or any similar payment paid to a partner of a limited liability partnership where such remuneration or payment is not specified or provided in the limited liability partnership agreement made in accordance with section 9 of the Limited Liability Partnerships Act 2012.".

In circumstances where a valid amendment is genuinely required to be made to an LLP agreement in respect of a partner's remuneration, the Institutes would like to seek clarification whether a supplementary agreement made for that purpose is acceptable, to be eligible for a claim for a deduction on the partner's remuneration.

The Institutes would like to know, in the instance where the LLP agreement does provide in general terms that remuneration of an unspecified amount (subject to agreement & performance appraisal to be decided by Partners in the future) be payable to Partners, will the remuneration finally paid by the LLP be given a deduction under section 33(1) ITA?

Reply by IRB

The LLP agreement must state whether the partner is getting salary or not without specifying the amount of the salary. If there is any changes to the agreement, for example due to the change of partners, IRB will accept the supplementary agreement. However such deduction is subject to the provision of section 33 ITA 1967. In the event that the salary claimed is an excessive and does not commensurate with the services rendered by the partners, IRB has the right to determine the amount to be allowed.

If the remuneration is not deductible at LLP level, is it taxable in the hands of the partners? If it is, which "class of income" does it fall under? CTIM is of the view that if the payment is not recognised as remuneration at LLP level, then it should be treated as either a distribution (dividend) or share of profit.

Reply by IRB

Yes, it is taxable under section 13 of ITA 1967 as it is salary in the hands of the partners. Deductibility of the employment income expense does not counter the character of the expense in the hand of recipient.

From the income tax perspective, the restriction above puts an LLP in a less favourable position compared to a company or a partnership - while an LLP is taxed as a company (at maximum rate), the partners' remuneration may not be deductible. Besides, the partners are still taxed on the receipts from the LLP. On the other hand, a company is allowed full deduction on all remuneration paid to directors. For a partnership, the profits are not taxable at the partnership level and the remuneration forms part of the partner's business income and is subject to personal income tax.

Such disadvantages in tax treatment may discourage companies and partnerships from converting into LLPs.

The Institutes are of the view that the restriction on the deductibility of partner's remuneration also creates an administrative and financial burden to the LLP. Each time there is a retirement or admission of partners, the LLP Agreement has to be revised and stamped. The process would be costly and unproductive.

The Institutes suggest that such a restriction on partner's remuneration be removed to facilitate the adoption of the LLP as a new vehicle and to improve tax administrative efficiency, while remuneration received by the partner be regarded as employment income. Such an arrangement will not result in any loss of revenue on the part of the Government.

Reply by IRB

SSM has specific reasons to impose a law regarding the payment of partners' remuneration. According to SSM, it is equally important to get agreement from each and every partner or shareholder in converting conventional partnership and company to LLP. Every business arrangement has to be clearly spelt out in the LLP agreement.

IRB is of the opinion that a few words in the agreement about the payment of partners' remuneration will not create administrative and financial burden to the LLP since it is also required by SSM. SSM also accepts supplementary agreement when there is an amendment to the original agreement. The agreement will serve as a supporting document for eligibility for tax

deduction.

Where the partner's remuneration is clearly stated in the LLP, the Institutes would like to seek clarification on the following:

Would the deduction allowed against the LLP's income for remuneration paid per an LLP agreement include the employer's share of EPF and is it subject to the 19% restriction?

Reply by IRB

Employer's share of EPF is allowable under subsection 34(4).

(c) Determination of Residence Status (Section 8(1A), ITA)

How is the "management and control" of an LLP business considered to be exercised in Malaysia - is it the place where the partners meet to conduct the LLP's business/affairs? If the LLP partners' meeting is conducted via a teleconference, how would the place of meeting be determined?

What will be the basis of determining residence, in the absence of such meetings?

The issue of residence is essential such as for withholding tax and double tax agreement purposes.

Reply by IRB

The residence status of LLP is determined based on the control and management of its business or its affairs which is a question of fact.

(d) Tax compliance of LLP

The Institutes would like to seek clarification relating to the following:

(i) Preferential tax treatments for Small- and Medium-sized LLP

Currently, a company resident in Malaysia with a paid-up ordinary share capital of 2 million five hundred thousand ringgit or less at the beginning of the basis period (the SME), will be assessed to income tax at a preferential rate under Paragraph 2A of Part 1, Schedule 1 of ITA.

The SME is also not required to submit tax estimates for the first two years of assessment upon commencement of business, as provided under Section 107C(4A) of ITA.

Clause 33(b) & (c) of FB introduces new Paragraphs 2(f), 2D, 2E and 2F to Part I, Schedule I of ITA, to accord a similar preferential income tax rate treatment to LLP, as follows:

"***2.*** *Subject to paragraph 3, income tax shall be charged for a year of assessment on the chargeable income of-*

(a) a company other than a company to which paragraph 2A applies;
(b) (Deleted by Act 578).
(c) a trust body;
(d) an executor of an estate of a deceased individual who was domiciled outside Malaysia at the time of his death;
(e) a receiver with respect to whom section 68(4) applies,
(f) *a limited liability partnership other than a limited liability partnership to which paragraph 2D applies.*";

*"**2D.** Subject to paragraphs 2E, 2F and 3, income tax shall be charged for a year of assessment on the chargeable income of a limited liability partnership resident in Malaysia which has a total contribution of capital (whether in cash or in kind) of two million five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment at the following rates:*

Chargeable Income	***RM***	***Rate of Income Tax***
For every ringgit of the first	*500,000*	*20 per cent*
For every ringgit exceeding	*500,000*	*25 per cent*

2E. *The provisions of paragraph 2D shall not apply to a limited liability partnership referred to in that paragraph if more than—*

(a) fifty per cent of the capital contribution (whether in cash or in kind) of the limited liability partnership is directly or indirectly contributed by a company;

(b) fifty per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by the limited liability partnership; or

(c) fifty per cent of the capital contribution (whether in cash or in kind) of the limited liability partnership and fifty per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by another company.

2F. *The company referred to in paragraph 2E, other than another company referred to in subparagraph 2E(c), shall have a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment.";*

However, there are no similar amendments to Section 107C of ITA 1967 to exempt small and medium-sized LLP from submission of estimated tax payable for the first two years of assessment upon commencement of business.

Reply by IRB

LLP with a total contribution of capital of RM2.5 million and less would not enjoy the exemption from submission of estimated tax payable for the first two years of assessment upon commencement of business. Such LLP is also not entitled to claim special allowance on small value assets.

(ii) procedures in applying for a tax file, and

(iii) the type and format of tax return, etc.

Reply by IRB

ii.) Existing procedure applies. However, a partnership or company has to pay tax due and get tax clearance from IRB before conversion to LLP.

iii.) IRB has prepared the tax return form for LLP and BT.

(e) Exemption on any profit paid, credited or distributed to partners by an LLP – proposed Para 12C, Schedule 6, ITA 1967

The Institutes would like to refer to a situation where the partner is a company. In the event the company receives the distribution, can it pass this exempt distribution to its shareholders as exempt dividend? If so, how should it be done?

Reply by IRB

Yes. It's up to the company.

2. Withdrawal Of Contribution Made To A Private Retirement Scheme (PRS)

Clause 6 of FB introduces a new Section 6(1)(l) as follows:

"*(l) subject to section 109G but notwithstanding any other provisions of this Act, income tax shall be charged for a year of assessment upon the income of an individual consisting of a withdrawal of his contribution made to a private retirement scheme where the withdrawal is made by that individual before reaching the age of fifty-five (other than by reason of death or permanently leaving Malaysia) at the appropriate rate as specified under Part XVI of Schedule 1."*

Clause 30 inserts a new provision, Section 109G as follows:

"109G. Deduction of tax from income derived from withdrawal of contribution made to a private retirement scheme

(1) Where a person (in this section referred to as "the payer") makes payment to an individual (in this section referred to as "the recipient") in relation to a withdrawal of contribution before reaching the age of fifty-five (other than by reason of death or permanently leaving Malaysia) from a fund administered by that payer under a private retirement scheme, the payer shall upon paying the amount, deduct from that amount, tax at a rate applicable to such payment, and (whether or not tax is so deducted) shall within one month after paying the amount render an account and pay the amount of that tax to the Director General:

Provided that the Director General may under special circumstances allow extension of time for the amount of tax deducted to be paid over.

(2) Where the payer fails to pay any amount due from him under subsection (1), the amount which he fails to pay shall be increased by a sum equal to ten per cent of the amount which he fails to pay, and that amount and the increased sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General.

(3) Where in pursuance of this section any amount is paid to the Director General by the payer or recovered by the Director General from the payer and if the payer has not deducted that amount in paying the amount under subsection (1) with respect to which that amount relates, the payer may recover that amount from the recipient as a debt due to the payer.

(4) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.

(5) In this section, "payer" refers to a private retirement scheme provider as approved under section 139Q of the Capital Markets and Services Act 2007 to provide and manage a private retirement scheme."

Clause 33(e) further provides that a new Part XVI, Schedule 1of ITA 1967 be inserted as follows:

"Notwithstanding Part I, income tax shall be charged for a year of assessment on any amount of contribution withdrawn by an individual from a private retirement scheme before that individual

reaches the age of 55 (other than by reason of death or permanently leaving Malaysia) at the rate of 8 per cent on every ringgit of that contribution withdrawn."

"Contribution" is defined under Section 139A of the Capital Markets and Services Act 2007 as an amount paid by a contributor in respect of a private retirement scheme. All contributions made to PRS will be split and maintained in sub-accounts A and B as follows:

Private Pension Administrator Account

Sub-Account A	Sub-Account B
Can be withdrawn upon reaching retirement age	Can be withdrawn once a year

The value of sub-account A and B will increase or decrease according to the unit price which varies daily.

The members' accounts consist of members' contributions and distributions of income and units to the members, i.e. they are more than just the contributions.

Comments:

Since the contributions will earn returns over time, for the purpose of deducting the 8% withholding tax on withdrawal before the member reaches the age of 55, is the withholding tax applicable on (a) the portion (if determinable) which relates directly to the contribution withdrawn (excluding the returns) or (b) the actual amount withdrawn?

Reply by IRB

The actual amount withdrawn. PRS is meant for retirement and early withdrawal is discouraged.

3. Deduction For Expenditure On Treasury Shares (TS)

Clause 13 of FB introduces a new Section 34D which allows a deduction on the cost of acquiring the treasury shares under the employee-based remuneration scheme as follows:

"***34D Special deduction for expenditure on treasury shares***

(1) Notwithstanding section 33 but subject to this section, in ascertaining the adjusted income of a company from a business for the basis period for a year of assessment, a deduction shall be made from the gross income for that period any expenses incurred by that company in acquiring treasury shares.

(2) The amount of deduction referred to in subsection (1)—

(a) shall be the cost of acquiring the treasury shares which are transferred to its employee less any amount payable by that employee for such treasury shares; and

(b) shall be allowed in the basis period for a year of assessment where the employee exercised his rights to acquire such treasury shares.

(3) For the purpose of subsection (2), the cost of acquiring treasury shares which are transferred to its employee shall be determined on the basis that the treasury shares

acquired by the company at an earlier point in time are deemed to be transferred first.

(4) Where any amount payable by an employee for any treasury shares transferred to him exceeds the cost to the company of acquiring the treasury shares transferred as provided under subsection (3), the amount of the excess shall be credited to an account to be kept by the company for the purpose of this section.

(5) Where there is any balance in the account kept by the company under subsection (4) and any treasury shares are subsequently transferred by the company to any employee under subsection (1), the cost to the company of acquiring the treasury shares as determined under subsection (3) shall be reduced—

(a) where the amount of the balance is equal to or exceeds the amount of the cost, to zero; or

(b) where the amount of the balance is less than the amount of the cost, by the amount of the balance,

and the amount of reduction shall be debited to the account.

(6) For the purpose of this section, a company transfers treasury shares held by it to an employee when the employee acquires the legal and beneficial interest in the treasury shares.

(7) Where a holding company transfers treasury shares held by it to any employee employed at any time by a subsidiary company of the holding company who has the right to acquire such shares—

(a) no deduction shall be allowed to the holding company under subsection (1);

(b) if any amount is paid or payable by the subsidiary company to the holding company for the transfer of the treasury shares, there shall be allowed to the subsidiary company, on the date of the transfer of the shares or of the payment to the holding company for the shares, whichever is the later, a deduction under subsection (1) for the amount, or an amount equal to the cost to the holding company of acquiring the treasury shares transferred to the employee of the subsidiary less any amount payable by that employee for the treasury shares, whichever is less."

The FB further defines *"treasury share"* as *"a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by such company and not cancelled".*

Comments:

(a) Application of Companies Act 1965 (Act 125) [CA]

The relevant provisions of CA are extracted as follows:

*"**Section 67: Dealing by a company in its own shares, etc.***

(1) Except as is otherwise expressly provided by this Act no company shall give, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary, in its holding company or in any way purchase, deal in or lend money on its own shares.

(2) Nothing in subsection (1) shall prohibit—

(a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company or a subsidiary of the company, including any director holding a salaried employment or office in the company or a subsidiary of the company; or

(c) the giving of financial assistance by a company to persons, other than directors, bona fide in the employment of the company or of a subsidiary of the company with a view to enabling those persons to purchase fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

…………………………………”

“**Section 67A: Purchase by a company of its own shares, etc.**

(1) Notwithstanding section 67, a public company with a share capital may, if so authorized by its articles, purchase its own shares.

(2) A company shall not purchase its own shares unless—

(a) it is solvent at the date of the purchase and will not become insolvent by incurring the debts involved in the obligation to pay for the shares so purchased;

(b) the purchase is made through the Stock Exchange on which the shares of the company are quoted and in accordance with the relevant rules of the Stock Exchange; and

(c) the purchase is made in good faith and in the interests of the company.

(3) Notwithstanding section 60, the company may apply its share premium account to provide the consideration for the purchase of its own shares.

(3A) Where a company has purchased its own shares, the directors of the company may resolve—

(a) to cancel the shares so purchased;

(b) to retain the shares so purchased in treasury (in this Act referred to as "treasury shares"); or

(c) to retain part of the shares so purchased as treasury shares and cancel the remainder.

(3B) The directors of the company may—

(a) <u>distribute the treasury shares as dividends</u> to shareholders, such dividends to be known as "share dividends"; or

(b) <u>resell the treasury shares on the market of the Stock Exchange</u> on which the shares are quoted, in accordance with the relevant rules of the Stock Exchange.

(3C) While the shares are held as treasury shares, the rights attached to them as to voting, dividends and participation in other distribution and otherwise are suspended and the treasury shares shall not be taken into account in calculating the number or percentage of shares or of a class of shares in the company for any purposes including, without limiting the generality of this provision, the provisions of any law or requirements of the articles of association of the company or the listing rules of a Stock Exchange on substantial shareholding, takeovers, notices, the requisitioning of

meetings, the quorum for a meeting and the result of a vote on a resolution at a meeting.

(3D) Where the directors decide to distribute the treasury shares as share dividends, the costs of the shares on the original purchase shall be applied in the reduction of either the share premium account or the funds otherwise available for distribution as dividends or both.

(3E) Where the directors resolve to cancel the shares so purchased, or cancel any treasury shares, the issued capital of the company shall be diminished by the shares so cancelled and the amount by which the company's issued capital is diminished shall be transferred to the capital redemption reserve.

………………………………………………………….."

Sec 34D is fundamentally about rewarding employees and retaining talent (looking at Employee Share Option Schemes (ESOS) as a whole); therefore, it is important that the Ministry of Finance (MoF) provides consistency in the laws for this purpose i.e. the legal framework must be in place for the new Sec 34D to work.

Under the current legal framework, it is unclear whether the treasury shares can be allotted to the employees since the CA only allows a public company to purchase its own shares and the Board of Directors shall either distribute the treasury shares as dividend or resell them in the open market of the Stock Exchange. In practice, the buyback of treasury shares is normally undertaken by a trust.

Further, unlike Section 34D which is confined to treasury shares, it is a common practice for companies to issue new shares for the purpose of ESOS.

Due to the above restrictions, if the government's intention is to prescribe a specific tax treatment for treasury shares used to satisfy employer's obligations under an ESOS and to promote the use of ESOS as a performance incentive**, the Institutes suggest that the provisions of Section 34D be extended to a trust or any other special purpose vehicle used to hold the shares for the purpose of ESOS and that the actual cost incurred in issuance of new shares, for the purpose of satisfying the obligations under a ESOS, be allowed a deduction so long as the provisions of Section 33(1) of the ITA are satisfied.**

Reply by IRB

Based on IRBM's understanding, new shares are ordinary shares and treated as equity in the account. Prior to the coming into effect of MFRS 2, they were not part of P&L account when offered as ESOS. With the introduction of MFRS 2, the cost of ordinary shares offered to employees is charged to the P&L account. However, it would eventually be credited as share capital. There is no actual cost incurred by the company. This has been explained in paragraph 10 of Public Ruling No.11/2012.

Extension of section 34D to a trust or other special purpose vehicle is a policy matter.

(b) Application of the Main Market Listing Requirements issued by Bursa Malaysia

We also note that Paragraph 18, Chapter 12 of the Main Market Listing Requirements issued by Bursa Malaysia Securities Berhad provides that:

"12.18 Resale price

A listed corporation may only resell treasury shares on the Exchange at -

(a) a price which is not less than the weighted average market price for the shares for the 5 market days immediately before the resale; or

(b) a discounted price of not more than 5% to the weighted average market price for the shares for the 5 market days immediately before the resale provided that -

(i) the resale takes place not earlier than 30 days from the date of purchase; and

(ii) the resale price is not less than the cost of purchase of the shares being resold."

The Institutes would like to seek clarification whether the sale of treasury shares to a company's own employees and employees of subsidiaries constitutes a resale of treasury shares and thereby violates the Rules of Listing Requirements.

Reply by IRB

Section 34D merely provides for deduction on costs incurred by the public listed companies which purchase their own shares from the open market and offer to its employee and employees of subsidiaries.

The question whether the sale of treasury shares to a company's own employees and employees of subsidiaries constitute a resale of treasury shares which violates the Rules of Listing Requirements should not be addressed by IRBM.

(c) Apportionment of the costs of acquiring the treasury shares

In a situation where a company has more than one (1) business source, what is the method acceptable by the authority for the purpose of apportioning the costs of acquiring treasury shares for each of the business sources?

Reply by IRB

The apportionment of the costs of acquiring the treasury shares is based on gross income basis. IRB's treatment is also consistent with the decision in Daya Leasing case.

(d) Determination of costs of acquiring the treasury shares

(i) The Proposed Section 34D does not define the costs of acquiring the treasury shares.

Do the costs of acquisition, besides the purchase price of the shares, also include incidental costs such as brokerage, stamp duty, etc.? In other words, what are the types of costs that qualify for deduction?

Reply by IRB

Broker's fee and stamp duty are incidental cost of acquiring the shares. Such other expenses that can be identified as incidental to the purchase of treasury shares is subject to verification by IRB.

(ii) Proposed Section 34D(3) provides that the cost of treasury shares shall be determined base on first-in-first-out (FIFO) method.

The Institutes are of the view that significant efforts will be required to keep track of the costs of acquisition on a First-In-First-Out (FIFO) basis as the shares are likely to be acquired over a period of time and subsequently transferred to the employees at different points in time. This is an issue which could lead to potential disputes between the taxpayer and the tax auditors from the Inland Revenue Board in the future.

The Institutes would like to suggest that the authority accept other methods (e.g. weighted average method) in determining the cost of acquisition of the treasury shares rather than that just the first-in-first-out (FIFO) method as such transactions are closely monitored by other regulatory authorities such as Securities Commission and Bursa Malaysia and Companies Commission of Malaysia.

Reply by IRB

FIFO is the most accurate method to determine the cost of acquiring the shares to the tax payer / company. This is especially so with the computerized tracking and monitoring system which is used by the company.

(e) Payment of treasury shares to holding company.

Where, pursuant to the proposed Section 34D(7)(b), a holding company receives payments on the treasury shares from its subsidiaries, will the receipts constitute capital receipts not subject to income tax?

Reply by IRB

The receipts constitute capital receipts except where the business of the holding company is that of dealing in shares.

(f) Restriction on application of the incentives

It appears that this deduction is not available to private companies and public companies not listed on Bursa Malaysia. It is also not available to companies having no business source of income, such as investment holding companies not listed on Bursa Malaysia and multinationals.

The Institutes would like to suggest that the authority look into the impact of such a restriction with a view to benefitting the majority of the business community.

Reply by IRB

IRB agrees with the statement. IRB wishes to stress again that section 34D is only for treasury shares as there is no actual cost incurred for ordinary shares. Hence, this deduction is not meant for the other parties mentioned above.

4. Appeal By The Person Deducting And Remitting Withholding Tax (WHT) – [New Section 109H, ITA 1967]

Where a person responsible for deducting and remitting WHT (under Section 109, 109B or 109F of the Act) is of the opinion that such a payment is not subjected to WHT, he may now lodge an appeal to the Special Commissioner within thirty days from the date the potential WHT amount is due to be made to the Director General under New Section 109H, introduced under Clause 30 of the FB as follows:

"109H Appeal by the payer

(1) A payer referred to in sections 109, 109B or 109F may, within thirty days (or any period extended by the Director General) from the date an amount is due to be made to the Director General under that section, appeal to the Special Commissioners by reason that such amount is not liable to be paid under this Act and the provision of this Act relating to appeals shall apply accordingly with any necessary modification.

(2) Where an amount is due from the payer to a non-resident person, this section shall not apply or cease to apply if—

(a) an appeal has been filed to the Special Commissioners by the non-resident person to whom the payer was liable to pay the amount of interest or royalty, or payment under section 4A or paragraph 4(f), of which the amount due under subsection (1) relates;

(b) such payment to the non-resident made by the payer is disallowed as deduction under section 39 in arriving at the adjusted income of the payer; or

(c) the amount due under subsection (1) has not been made to the Director General by the payer."

Comments:

(i) Undue burden on the WHT payer to pay the amount (due under subsection 109H(1))

The WHT payer is merely a collector of Malaysian tax on behalf of the Malaysian Government from non-resident taxpayers who derived income from Malaysia. Where a Malaysian payer genuinely believes that WHT is not payable based on some technical ground, he would not have deducted the WHT. When such stand is disputed by the IRB officer in a tax audit exercise later, the Malaysian payer would have to account for the WHT and the late payment penalty, both of which are not likely to be recoverable from the non-resident recipient.

The Institutes welcome the move to grant an additional appeal channel to the Malaysian resident payer so that the applicability of WHT on a payment can be ascertained beforehand. This will help the local payers in lowering their costs of doing business in Malaysia.

If such is indeed the intention of the Government, the requirement to deduct and pay the WHT before an appeal is made under Section 109H(2)(c) will defeat the objective of this provision. This is because the WHT payer still has to pay the full sum to the non-resident recipient and account for the WHT first. Even if the resident WHT payer wins the case in the Malaysian Court, the money would rightly go to the non-resident recipient's tax accounts instead of the WHT payer's account. The Malaysian payer will not likely obtain a refund from the non-resident recipient of the WHT refunded.

The Institutes would suggest that the restriction be removed to facilitate the appeal process.

Reply by IRB

WHT is a tax on non-residents (NR) and it is a mechanism to collect tax on NR. As such the Malaysian payer must ensure tax is paid to DGIR before the Malaysian taxpayer can appeal under the new section 109H. The law will be maintained.

(ii) The principle upon which Section 109H(2) has been drafted appears to unfairly favour the IRB.

It appears that Section 109H(2)(b) would restrict the right of a WHT payer, who is of the view that the payment to a non-resident is not subject to WHT, to appeal to the Special Commissioner if the relevant expenses have been disallowed under Section 39 of the ITA, 1967. It is unjust to disqualify an aggrieved party (who has already suffered a non-deductibility of a payment – paragraph 109H(2)(b)) from making an appeal. In addition, it is unfair to require the aggrieved party to make the payment when that amount itself is the matter in dispute.

The Institutes are of the view that a taxpayer should not be denied his right to appeal. We would like to suggest that the restriction be removed.

Reply by IRB

Currently, the right to appeal is given under section 99 by way of Form Q or alternatively by filing a judicial review to set aside WHT. The taxpayer has to pay the WHT before making such application to court.

With this new provision, no penalty under section 113 will be imposed as there is no adjustment to tax computation. In addition, there is the benefit of cost saving as filing of a judicial review involves high costs.

(iii) The Operation of Section 109H

The FB proposes that the provision come into operation from 1.1.2013. It is unclear how the provision will operate. Section 109H is applicable to WHT due on or after 1.1.2013, or WHT paid on or after the 1.1.2013? For example, where WHT is due on 15 December 2012, and the payer deducts the WHT and remits it to the IRB within 30 days, say on 10 January 2013, is Section 109H applicable to the WHT?

Reply by IRB

The company still has to pay the WHT. However, the new provision is not applicable in this case as WHT is due on 15.12.2012 which is before the coming into effect of the provision on 1.1.2013.

5. Change In Tax Treatment Of Interest Income [New Section 4B, ITA 1967]

Clause 5 of FB introduces a New Section 4B, which would have effect for the year of assessment 2013 and the subsequent years of assessment, as follows：

"(4B) Non-business income

For the purpose of Section 4, gains or profit from a business shall not include any interest that first becomes receivable by a person in the basis period for a year of assessment other than interest where subsection 24(5) applies"

Clause 10 of the FB further amends Section 24(5) as follows:

"24. Basis period to which gross income from a business is related

(5) Subject to section 3, where in the relevant period any gross interest first becomes receivable by the relevant person, then, if the debenture, mortgage or other source to which the interest relates forms or has formed in or before the relevant period part of the stock in trade of a business carried on by or on behalf of the relevant person, or if the interest is in respect of a loan granted in or before the relevant period in the course of

carrying on the business of lending of money and the business is one which is licensed under any written law —

(a) *the interest shall be treated as gross income of the relevant person from the business for the relevant period if the business is carried on at any time in the relevant period; and*

(b) *subsection (1) shall not apply to a debt owing to the relevant person in respect of any such interest.*

Clause 40 of FB provides the transitional treatment of allowances and adjusted loss of a person in respect of interest income as follows:

"40. Balance of allowances and adjusted loss of a person in respect of interest income

(1) *The amount of adjusted loss of a person in respect of interest from a source consisting of a business for year of assessment 2012 as ascertained under subsection 44(4) or (5) prior to the coming into operation of sections 5 and 10 of this Act—*

(a) *shall for the year of assessment 2013 be deducted in accordance with subsection 43(2) of the principal Act against the aggregate statutory income of that person from a source consisting of a business; or*

(b) *where there is no aggregate statutory income from that source consisting of a business for the year of assessment 2013, the amount shall be deducted against the adjusted income of that person from a source other than a source consisting of a business for the year of assessment 2013 and subsequent years of assessment until the amount is fully deducted.*

(2) *The amount of allowance in respect of interest from a source consisting of a business which has not been so made to a person for year of assessment 2012 as ascertained under paragraph 75 of Schedule 3 to the principal Act prior to the coming into operation of sections 5 and 10 of this Act—*

(a) *shall for the year of assessment 2013 be made to that person for the purposes of the Schedule and section 42 of the principal Act from any source consisting of a business of that person; or*

(b) *where the person has no source consisting of a business for a year of assessment 2013, the amount of allowance shall be deducted against the adjusted income of that person from a source other than a source from a business for the year of assessment 2013 until the amount is fully deducted."*

Comments:

The Institutes are of the view that the new section 4B goes against the fundamental tax principle of "badges of trade", and fails to recognise the facts of individual cases. The amendment tends to complicate the law, if the basic principle of taxation is disregarded.

The treatment of overdue interest on trade debt is an example. Trade debts are financed by working capital and businesses charge overdue interest to reduce financing costs. With the introduction of Section 4B, there will be a mismatch. While interest expense incurred in financing the trade debts is a business expense, the overdue interest income on trade debt is not a business income and has no corresponding costs to offset. This will be detrimental to a company having huge unutilised capital allowances or unabsorbed business losses.

The amendment also appears to give preferential tax treatment to foreign groups of companies compared to the local conglomerates, whose treasury activities are not recognised as business activities, whereas those of the multinationals are (via OHQ or TMC).

The proposed changes may, perhaps, have been prompted by the need for the IRB to ensure consistent action/treatment by the IRB officers when handling such cases. However, such an approach may not contribute to the further development of a business-friendly environment. With technological advancement and globalisation of markets, businesses are forging towards integration of their activities and services to improve their competitiveness. In this connection, the proposed measures may hamper the efforts being made by local companies towards integration for competition.

The Institutes strongly suggest that the proposed introduction of Section 4B and amendment to Section 24(5) be removed to enhance the business friendly environment.

Reply by IRB

The comment is noted.

Meanwhile, the Institutes would like to seek clarification on the following issues arising from the treatment under the new Section 4B and amendment under Section 24(5):

(a) Financing arm for a group of companies

Where a local company is engaged in providing treasury services within a group of local companies, such as monitoring cash flow and funding requirements, making financial arrangements, making loans to subsidiaries, etc., would the interest income received be considered as business income falling under Section 4(a)?

Reply by IRB

No. It is income under section 4(c).

(b) Interest incidental to a business

Whether interest in relation to a trade debt, and interest such as that derived by a Housing Developer Account (HDA) should be regarded as a business source.

Reply by IRB

It is income under section 4(c). The relevant PRs will be reviewed.

(c) Treatment of unabsorbed business losses and unutilised capital allowances

Clause 40 of the FB only deals with adjusted losses and capital allowances not claimed for the year of assessment 2012.

Reply by IRB

The above statement is wrong. Clause 40 deal with adjusted losses and capital allowances unabsorbed for the year of assessment 2012 and prior year of assessment.

With regard to the unabsorbed capital allowances brought forward in relation to the interest previously treated as a business income, can it be carried forward and utilised against the income from other businesses in the year of assessment 2013 and subsequent years of assessment until the amount is fully utilised?

What about the residual expenditure for which capital allowances have not been claimed?

Reply by IRB

The law only provides for the treatment of unabsorbed capital allowance. The residual expenditure for which capital allowances have not been claimed will be disregarded. However, in the case where the asset is continued to be used in another business carrying on by that person, then that person is eligible to claim the remaining capital allowance of that asset.

While the IRB has confirmed in the recent National Tax Seminar 2012 its intention to allow taxpayers to swiftly utilise all the unabsorbed business loss and unabsorbed capital allowances in respect of interest from a business source for the YA 2012, the Institutes are of the view that the Savings and Transitional provisions may be inadequate:-

(i) The provisions do not benefit taxpayers who solely or mainly derive business income in the YA 2014 and subsequent years of assessment. Under such circumstance, the unabsorbed business loss and unabsorbed capital allowances brought forward from the YA 2013 may not be fully utilised as such taxpayers will not have any or sufficient non-business source of income.

We would like to confirm that the unabsorbed business loss and unabsorbed capital allowances (CA) can be utilized against any future business source.

Reply by IRB

Losses and CA can be carried forward and deducted against EITHER business income or non-business income or both for YA 2013 and subsequent years of assessment. However, the order of priority of deduction is as follows:

(1) Unabsorbed losses and CA should be deducted first before deducting current year losses and CA; and

(2) Unabsorbed losses and CA should be deducted against business source first before deducting against non-business sources.

(ii) Based on the proposed amendments made in Clause 40(1)(b), the unabsorbed business loss can only be utilised against the adjusted income of any non-business source if there is no aggregate statutory business income in the YA 2013. In other words, in the event that the aggregate statutory business income for the YA 2013 is not sufficient to be absorbed, the remaining unabsorbed business loss cannot be used to be utilised against the adjusted income of any non-business source for the YA 2013.

(iii) The exclusion condition under Clause 40(2)(b) is even wider. Based on the proposed amendments, it appears that for the YA 2013, a person who has a business source will not be able to utilise the unabsorbed capital allowance against the adjusted income of any non-business source even though there is no adjusted income from the business source.

Reply by IRB

The loss and capital allowance carried forward can be deducted until it is fully utilized against business source as well as non-business source.

In this respect, CTIM suggests that the proposed amendments be fine tuned to overcome the above shortcomings.

(d) Priority of set-off of adjusted business loss

Where there is an adjusted business loss from the interest source and adjusted loss from other businesses, it is unclear which loss should be given priority for the purposes of set-off.

Reply by IRB

Adjusted loss from other businesses can only be deducted against a business source. Whereas adjusted loss from interest source can be deducted against business and non-business sources. Therefore priority is given to the loss from business source.

6. Tax Treatment For "Assets Held For Sale (AHFS)" [Para. 61A, Sch. 3, ITA 1967]

Clause 35(e) of FB proposes to insert a New Paragraph 61A to Schedule 3 of the ITA as follows:

*"**61A***

(1) Notwithstanding paragraphs 48 or 61, as the case may be, but subject to this paragraph, where in the basis period for a year of assessment an asset for which qualifying capital expenditure has been incurred is classified as asset held for sale in accordance with generally accepted accounting principles, such asset shall be deemed to have ceased to be used for the purposes of that paragraph.

(2) Where subparagraph (1) applies and the asset is sold in the basis period the asset is classified as asset held for sale, the disposal value of the asset for the purposes of this Schedule shall be an amount equal to its market value at the date it was classified as asset held for sale or the net proceeds of the sale, whichever is greater.

(3) Where in the basis period for a year of assessment an asset for which qualifying capital expenditure has been incurred is classified as asset held for sale in accordance with generally accepted accounting principles, such asset shall be deemed to have ceased to be used for the purposes of paragraph 48 or 61, as the case maybe, in the following basis period—

(a) where the asset is sold in the following basis period; or

(b) where the asset is not sold after the end of the following basis period.

(4) For the purpose of subsection (3) the disposal value of the asset shall be—

(a) in the case where the asset is sold in the following basis period, an amount equal to its market value at the end of the basis period such asset is held for sale or the net proceeds of the sale, whichever is greater;

(b) in the case where the asset is not sold in the following basis period, the market value of the asset at the end of that following basis period.

(5) Where paragraph (4) applies, in determining the residual expenditure of such asset for that following basis period, the total qualifying expenditure incurred by that person shall be reduced by an amount of annual allowance which would have been made to him for that following basis period as if the asset had been in use in that following basis period for the purpose of business of his.

(6) Where an asset deemed ceased to be used in accordance with subparagraph (3)(b) is brought into use by the person in a business of his in a basis period for any year of assessment after the basis period the asset is deemed ceased to be used—

(a) that person shall be deemed to have incurred qualifying capital expenditure for that asset equal to its market value at the date it is brought into use for the purpose of that business; and

(b) no initial allowance shall be made to that person in relation to an asset under subparagraph (a).

(7) In this paragraph, "market value" in the case of an industrial building, means the market value as determined by a valuation officer employed by the Government.";

Comments:

The Institutes are of the view that the provisions are complicated and confusing. For simplicity, the Institutes would like to suggest that the proposed Paragraph 61A(5) be removed. The normal rule for computing balancing charge or balancing allowance will apply when the AHFS is disposed of or deemed disposed of at the end of the following basis period immediately after it is classified as AHFS. Whether the AHFS is entitled to claim the annual allowance will depend on whether it is in use for the business as at the end of the relevant basis period.

Reply by IRB

The provisions are not complicated or confusing. They are consistent with accounting treatment under MFRS.

The following are issues arising from the proposed Paragraph 61A on which the Institutes would like to seek clarification:

Based on the new Paragraph 61A, Schedule 3 of the ITA, where an asset is classified as an asset held for sale in accordance with generally accepted accounting principles in the basis period for a year of assessment (hereinafter referred to as "Year 1"), it shall be deemed to have ceased to be used for the purposes of a business.

Scenario A(i) [Para. 61A(2)]

Where an asset is sold in Year 1, the balancing charge or allowance to be computed in Year 1 shall be based on the difference between the following:-

a. the disposal value of the asset determined based on the greater of:-
   - the market value at the date it was classified as asset held for sale; and
   - the net sales proceed

   and;

b. the residual expenditure of the asset.

Scenario A(ii) [Para 61A(3)(a) and (4)(a)]

Where an asset is sold in the following basis period after it was classified as an asset held for sale (i.e. sold in Year 2), the balancing charge or allowance to be computed in Year 2 shall be based on the difference between the following:-

c. the disposal value of the asset determined based on the greater of:-
   - the market value at the end of Year 1; and
   - the net sales proceed

   and;

d. the residual expenditure of the asset.

Scenario A(iii) [Para. 61A(3)(b) and (4)(b)]

Where the asset is not sold at the end of the following basis period (i.e. not sold in Year 2), it shall be deemed to be disposed of in Year 2 and the balancing charge or allowance to be computed in Year 2 shall be based on the difference between the following:-

e. the disposal value of the asset determined based on the market value at the end of Year 2

   and;

f. the residual expenditure of the asset, after deducting notional allowance of the asset in Year 2

<u>Scenario A(iv) [Para 61A(6)]</u>

If the asset that was not sold in Year 2 is subsequently brought into use for business after Year 2, the qualifying expenditure for such asset shall be the market value at the date it is brought into use for the business. However, no initial allowance shall be claimed on the asset.

<u>Scenario A(v)</u>

When the asset held for sale is an industrial building, the market value shall be the value determined by the Valuation and Property Services Department.

The Institutes note that the law is very complex, and would like to seek clarification on the following:-

(a) Reference to "qualifying capital expenditure"

Under Schedule 3, allowances are given for the following 4 types of expenditure, namely:

(i) Qualifying Plant Expenditure
(ii) Qualifying Building Expenditure
(iii) Qualifying Agriculture Expenditure
(iv) Qualifying Forest Expenditure

Pursuant to Paragraph 1 of Schedule 3, the first two items ((i) and (ii)) are collectively referred to as "qualifying expenditure" and all 5 terms are used throughout Schedule 3.

The proposed Paragraph 61A uses the term *"qualifying capital expenditure"* which is not used anywhere else in Schedule 3. We are of the view that unless that term is intended to have a meaning different from "qualifying expenditure", for purpose of clarity, we propose that the term "qualifying expenditure" be used in the proposed Para 61A.

<u>Reply by IRB</u>

Noted. There is no tax implication. Qualifying capital expenditure refers to qualifying expenditure of property, plant and equipment whichever is relevant.

(b) Paragraph 61A(3)(b)

Wordings in the proposed Paragraph 61A(3)(b):

"*where the asset is not sold <u>after</u> the end of the following basis period.*"

To make it clear that this paragraph may also apply to an asset sold after Year 2, the institute is of the view that the correct wordings should be:

"*where the asset is not sold <u>at</u> the end of the following basis period*."

Reply by IRB

Please take note. The wording is correct. The 'following basis period' refers to the basis period subsequent to the basis period in which the asset is classified as "held for sale". If the asset is sold in that following basis period or in any subsequent basis periods, the asset is deemed to have ceased to be used in that following basis period and balancing charge or balancing allowance shall be computed.

IRB will issue guidelines with examples to clarify the provision.

With regard to the IRB's interpretation of paragraph 61A(3)(b), we would like to know whether an asset would "be deemed to have ceased to be used" in the following scenario: the basis period ends on 31 December; the asset is sold on 1st January.

Reply by IRB

The policy is applicable.

(c) Market Value

The valuation by the Valuation and Property Services Department (VAPSD) would take time. In practice, the valuation would take a year to 3 years. Meanwhile, the taxpayer has to know the valuation for his accounting and tax purposes. The VAPSD valuation may be too late for the taxpayer's income tax computation purposes.

It is difficult and impractical to determine so many different types of market value to be used under the various scenarios for the purpose of computing balancing charge or allowance and annual allowance. In addition to that, it is also costly to have the industrial building valued by the Valuation and Property Services Department solely for the above purpose.

In this respect, the Institutes would suggest that the disposal value of the asset be determined based on:-

(i) the net sales proceed from the sale of the asset in scenarios A(i) and A(ii) above; and

(ii) the listed selling price (i.e. the price at which the asset is marketed for sale) by the taxpayer in scenarios A(iii) and A(iv) above.

Reply by IRB

For buildings, the most reliable valuation is from JPPH. To facilitate the taxpayer to get the valuation from JPPH, IRB will provide a standard form on IRB's official website. The taxpayer has to fill up the form and return it to IRB so that IRB can proceed to obtain valuation from JPPH.

Taxpayer has to submit the form within 2 month from the date the building is classified as HFS.

(d) Para 61A(5) of Schedule 3, ITA

In a situation where Paragraph 61A(4) applies, e.g. an asset is classified as held for sale in the basis period for year of assessment (referred to as Year 1) 2013 but the asset is not sold at any time during that basis period or the following basis period, even if "*the asset had been in use in that following basis period*", the taxpayer did not own the asset at the end of the basis period and therefore is not entitled to any annual allowance. Hence, the implication of Paragraph 61A(5) is rather unclear i.e. how can notional allowance be calculated for Year 2?

Reply by IRB

The intention of Paragraph 61A(5) is to provide for notional allowance in the year of assessment the asset is classified as HFS and the sale only takes place in the subsequent year of assessment.

In addition, the proposed sub-paragraph (5) dictates the (apparently notional) annual allowance for year of assessment (Year 2) 2014, but no specific provision has been made in relation to the annual allowance for the year of assessment (Year 1) 2013.

If the company only disposed the asset in the 3rd year after reclassification (referred to as year 3) and the proceeds is more than the market value (MV) of the asset at the end of the basis period for the following YA (referred to as Year 2), the Institutes would like to seek confirmation that the excess is capital gains not subjected to income tax.

Reply by IRB

In accordance with MFRS 5, when an asset is classified as HFS, the asset is deemed to have ceased to be used. Hence, no annual allowance is due. If there is no certainty that the asset would be sold, it should not be classified as HFS.

As far as Schedule 3 is concerned, the computation of BA or BC is final and conclusive. Whether the excess is revenue or capital gain depends on the facts of the case. If it can be established that the disposal constitutes badges of trade, the gain is subjected to income tax. Otherwise it would be subjected to RPGT.

(e) Assets brought into use in the following basis period

Paragraph 61A(6) only covers the situation where the asset held for sale is subsequently brought back into use for business after Year 2. The new Paragraph 61A does not cover situations where the asset held for sale is subsequently brought back into use for business in the same basis period (i.e. Year 1) or the following basis period (i.e. Year 2). The Institutes are of the view that the asset should not be deemed to have ceased to be used for the purpose of a business under such scenarios.

In this respect, the Institutes would suggest that Paragraph 61A, Schedule 3 of the ITA be amended to exclude such asset which is subsequently brought into use for business.

Reply by IRB

In accordance with MFRS 5, when an asset is classified as HFS, the asset is deemed to have ceased to be used. Hence, no annual allowance is due. If there is no certainty that the asset would be sold, it should not be classified as HFS.

(f) Situations where special allowances are claimed

Certain assets are specifically allowed with special rates of allowances under Schedule 3, for example industrial buildings under Paragraphs 37C, 42A(1), 42A(2), 42B and 42C and old folks home are given allowances at the special rate of 10%.

This allowance is neither defined to be an initial nor an annual allowance (it is given in lieu of both actually).

In such a case, we are of the opinion that the notional allowances is the normal "annual allowance" under Schedule 3 (in the case of the above, at the rate of 3%, (which is provided for in Para 16 as the rate for "annual allowance" for industrial buildings, as authorized by Para 14).

Similarly, any annual allowance referred to in Sch 3 Para 68(c) in relation to the abovementioned assets should be based on the rate of 3%. Kindly confirm that our view is correct.

Reply by IRB

Notional allowance is given at the rate of AA. If the building qualifies for special rate of AA, the same rate would be used for the notional allowance.

(g) Assets destroyed or demolished during the following basis period

If a person classifies an asset as held for sale in 2013, but the asset is unfortunately destroyed by fire, flood etc. in the following basis period, what is the tax treatment?

The Institutes are of the view that the normal treatment shall apply, i.e. the asset is disposed of at zero value or if the asset is covered by insurance, at a value equivalent to the insurance proceeds.

Para 61A(3)(b) shall not be applicable. It is not practical to ascertain market value on such a date as the asset does not exist anymore.

Reply by IRB

IRB agrees with the suggestion.

(h) Control Transfers [Para 38-40, Sch 3 of ITA]

(i) *The Institutes would like to seek clarification that the new proposed Paragraph 61A, Schedule 3 of the ITA shall not be applicable in situations where control transfer provisions under Paragraph 38 to Paragraph 40, Schedule 3 of the ITA apply.*

Reply by IRB

Controlled transfer provisions apply to an asset HFS. The transferee shall continue to claim CA with the tax written down value at the end of the basis period in which the asset is classified as HFS by the transferor.

(ii) In Scenario A(iii), computation of balancing allowance or charge will have to be made in Year 2. If the asset is subsequently transferred to a related company i.e. control transfer happened after Year 2, the tax return for Year 2 will need to be revised to reverse the balancing charge or allowance made for the asset deemed disposed of in Year 2 since Paragraph 61A is not applicable for asset under control transfer.

Reply by IRB

For assets under control transfer, there is no issue of BA or BC.

(i) Inconsistency with Paragraph 48, 61 & 62 of the ITA

The proposed paragraphs 61A(2)-(4) deal with the situation of "sale" while an asset which has been classified as AHFS may be "disposed of" by ways other than a sale, for example, by a transfer or assignment. The treatments in such cases have not been specified.

Reply by IRB

The new paragraph 61A has to be read together with other paragraphs in Schedule 3. The definition of disposal under paragraph 62 is applicable here.

7. Business Trust (BT)

Business Trust (BT) is a new investment vehicle in Malaysia established under the amended Capital Market and Services Act 2007 (CMSA). To promote the development and investment in BT, it is proposed that:-

(i) BT be given income tax, stamp duty and real property gains tax treatments similar to those of a company;

(ii) BT be given stamp duty exemption on instruments of transfer of businesses, assets or real properties acquired; and

(iii) The disposer of real properties or shares in real property company (RPC) to BT be given real property gains tax exemption.

The above incentives in (ii) and (iii) are provided on a one-off basis at the initial stage of establishment of BT.

In view that this is a new investment vehicle, the Institutes suggest that full information / guidelines on the requirement and eligibility to form a BT be made available to the public as soon as possible to facilitate the application of the incentive.

Reply by IRB

Full information / guidelines would be issued by SC.

B. OTHER ISSUES

8. Double Deduction Under 1Malaysia Training Scheme Programme

It is proposed that the double deduction be given on training expenses incurred by government-linked companies (GLCs) and private companies that participate in the 1Malaysia Training Scheme Programme, also known as SL1M, to provide soft skills training and on-the-job-training to unemployed graduates. Applications for the approval of the training scheme have to be made to the Ministry of Finance. The double deduction is given for training expenses incurred on the training programme implemented by the GLCs and private companies within 1 year from the date of approval. The types of qualifying training expenditure are as follows:

i. Payment of monthly allowance at a minimum of RM1,000 for each trainee for a maximum period of 12 months;

ii. Expenses incurred to provide soft skills training to the trainees; and

iii. Fees paid to training providers to conduct soft skills programmes to enhance skills and to increase employability of the trainees.

Total training expenses for items (ii) and (iii) that qualify for double deduction are restricted to RM5,000 for each trainee per year of assessment.

The Institutes would like to seek clarification on the following matters:

i. whether the fee paid to a training provider to conduct a soft skills programme is still eligible for double deduction if the trainees of the programme consist of unemployed graduates as well as existing employees of the company;

ii. whether there is any criterion to be met before a private company is eligible to participate in the SL1M.

In this regard, the Institutes would like to know when the detailed application guidelines and procedures, and the relevant Order will be issued.

Reply by IRB

i. Double deduction is given to a company which provides soft skill training and on-the-job-training to unemployed graduates. SL1M is a structured training program for unemployed graduates approved by the EPU under Prime Minister's Department of Malaysia.

Unemployed graduate means an individual -

a. who is a Malaysian citizen;

b. who is registered with JobsMalaysia under Ministry of Human Resource;

c. having at least a bachelor's degree from a local or foreign Higher Education Institution as approved by EPU; and

d. who is unemployed for at least six (6) months after graduation.

No double deduction is given if such training is provided to both unemployed graduates as well as existing employees of the company at the same time.

ii. Yes. Not gazette yet.

9. Double Deduction For Issuance Of Agro-*Sukuk,* Retail *Sukuk* And Retail Bonds

It is proposed that tax incentives be given on the issuance of the following:-

i. Agro-*Sukuk*:

Double deduction on expenses for the issuance of Agro-*Sukuk* approved by the Securities Commission or the Labuan Financial Services Authority.

ii. Retail *sukuk* and retail bonds:

(a) Double deduction on additional expenses for the issuance of retail *sukuk* and retail bonds; and

(b) Stamp duty exemption be given on instruments relating to the subscription of retail *sukuk* and retail bonds executed by individual investors.

The Institutes are of the view that there is potentially no real benefit in obtaining the double tax deduction in situations where the issuer of the *sukuk* or bonds is a special purpose vehicle (SPV) with no or minimal income.

With effect from year of assessment 2007, a special tax treatment is accorded to the SPV and the company that establishes the SPV as follows:-

i. the SPV is not subject to income tax and not required to adhere to administrative procedures under the Income Tax Act, 1967; and

ii. the company that establishes the SPV is given a deduction on the cost of issuance of the Islamic bonds incurred by the SPV. Income received by the SPV is deemed as income received by the company that establishes the SPV and it will be subject to tax. [Income Tax (Deduction on the Cost of Issuance of the Islamic Securities) Rules 2007]

In view of the above, the Institutes would like to seek clarification whether the company that establishes the SPV would be eligible to enjoy the proposed double deduction incentive.

Reply by IRB

The term "Sukuk" refers to Islamic Securities. Section 60I, ITA 1967 caters for the establishment of SPV by the Sukuk issuer. Whatever expenses incurred by the SPV are deemed incurred by the originator (the company that establishes the SPV). Therefore the company that establishes the SPV would be eligible for the double deduction incentive.

With regards to section 60I, ITA 1967 there is no question of establishing SPV for the purpose of issuing retail bonds because it is only confined to Islamic Securities. However if there is an establishment of SPV for the purpose of issuing retail bonds, section 60I, ITA 1967 is not applicable to that SPV. If the cost of issuance of bonds is incurred by the SPV, then the SPV and not the originator is eligible for double deduction.

Here, the retail Private Debt Securities (bonds) and sukuk refer to sukuk/bonds offered or issued to retail investors over the counter.

Details are available in P.U.(A) 71/2013.

10. Tax Incentives To Revive Abandoned Housing Projects

It is proposed that the following parties involved in the revival of abandoned housing projects be given tax incentives as follows:-

i. Banking and financial institutions:

   Tax exemption on interest income received from the rescuing contractor/ developer.

ii. Rescuing contractor/developer:

   a. Double deduction on interest expense and all direct costs involved in obtaining loans to revive the abandoned project.

   b. Stamp duty exemption on loan agreements to finance the revival of the abandoned housing project; and

   c. Stamp duty exemption on instruments of transfer of land or houses in the abandoned housing project.

iii. Original house purchaser in the abandoned project:

   a. Stamp duty exemption on loan agreements for additional financing; and

   b. Stamp duty exemption on instruments of transfer of the house.

The Institutes welcome the above proposal and would like to seek clarification on the following matters:

(i) Whether the effective period should be based on the sale and purchase agreements or the loan agreements/instruments of transfer for proposals ii(b) and ii(c) and Proposal iii above?

Reply by IRB

Rescuing contractor/developer –

i. For ii(b) - stamp duty exemption is given for loans approved between 1st Jan 2013 and 31st December 2015.

ii. For ii(c) – sales and purchase instruments executed between 1st Jan 2013 and 31st December 2015.

Details are given in P.U (A) 91/2013 and P.U (A) 92/2013.

(ii) Will any guidelines be issued for contractors / developers who wish to undertake a project?

Reply by IRB

As this is under the purview of Ministry of Housing and Local Government, this question should be addressed to them.

(iii) Since the original developer is excluded from this incentive, the Institutes would like to know whether the related companies of the original developer would be eligible to enjoy the above tax incentives?

Reply by IRB

For tax purposes as long as the rescuing contractor is appointed and approved by Ministry of Housing and Local Government, the Rules apply.

To serve as a good incentive to revive the abandoned housing projects, the Institutes are of the view that all interest income received from the rescuing contractor/developer by the banking and financial institutions should be exempted from tax without taking into account the relevant expenses of the banking and financial institutions.

Reply by IRB

Expenses allowable under section 33 are those attributable to the exempt income.

11. Tax Incentive For Child Care Centres

The following tax incentives were proposed for child care centres:

i. Tax incentives for employers be enhanced as follows:

a. Double deduction on expenditure incurred for the provision and maintenance of child care centres; and

b. Double deduction on child care allowance given to employees.

ii. Tax incentives for operators of new and existing private child care centres be given as follows:

a. Tax exemption at the statutory level on all income for a period of 5 years; and

b. Industrial Building Allowance at an annual rate of 10% for buildings used as child care centres.

c. Operators of new and existing private child care centres must be registered with the Social Welfare Department.

The Institutes would like to seek clarification on the following:

(a) If the child care centre is operated by a 100% owned subsidiary that uses property owned by its holding company, is the holding company entitled to claim IBA on the building used as a child care centre?

Reply by IRB

No, the holding company is not entitled to IBA.

These Rules only apply to a person who owns the building and operates the business of child care centre.

Refer P.U (A) 2/2013.

(b) Does paragraph 60 of Schedule 3 of ITA apply where the operator is not the owner of the building?

Reply by IRB

No, he must be both owner and operator of the building.

(c) How will the IBA be computed for an existing operator? Is he entitled to claim the full costs of the building or only on the residual expenditure (full costs less notional allowance)?

Reply by IRB

An existing operator entitled to claim the IBA only on the residual expenditure (full costs less notional allowance).

Refer P.U.(A) 2/2013

(d) Kindly confirm that the IBA will also apply to existing buildings that have been used (say for 3-4 years; i.e. before ten years)?

Reply by IRB

IBA is for new buildings only.

12. Tax Incentive For Pre-School Education

It is proposed that the following tax incentives be given to the operators of pre-schools:

i. Tax exemption at the statutory income level on all income for a period of 5 years; and
ii. Industrial Building Allowance with an annual rate of 10% on buildings used by the pre-school.

New and existing private pre-schools must be registered with the State Education Department.

The Institutes would like to seek clarification whether Paragraph 60 of Schedule 3 of ITA would apply where the operator is not the owner of the building?

Reply by IRB

Refer to the answer in paragraph 11 (a) or (b) above.

13. Reduction In Income Tax Rates For Residents

It is proposed that the tax rates be reduced by 1% for chargeable income bands from RM2,501 to RM50,000.

The Institutes welcome the proposal for the reduction of the income tax rate for residents. The Institutes would like to know when the revised Monthly Tax Deduction (MTD) table will be made available as the payroll software would need to be reconfigured.

Reply by IRB

The revised MTD table is available in the Income Tax Rules [P.U (A) 469/2012].

14. Elimination Of Agriculture Charge -- Deletion Of Paragraph 26 Of Schedule 3, ITA 1967

The Institutes welcome the deletion of Paragraph 26 (Agriculture charges) of Schedule 3, which has been redundant since the year of assessment 2006 as a result of the gazetting of the Income Tax (Exemption) (No. 22) Order 2006.

We would like to seek a confirmation that rule 3(2) of the Order disregards only part of the expenditure that are subsidized by the grant. In other words, if a person has incurred qualifying agriculture expenditure of RM 100,000 and is later given a grant of RM 60,000 in respect of such expenditure, is he entitled to claim agriculture allowance on RM 40,000?

Reply by IRB

Yes, RM40,000 can be claimed under paragraph 7 of Schedule 3, ITA 1967.

15. Petroleum (Income Tax) Act 1967 (PITA)

The Institutes would like to seek clarification whether the existing Transfer Pricing Rules and Guidelines are extended to taxpayers under PITA? If so, when is the effective date of application? Does the extension also include Advance Pricing Arrangement Rules and Guidelines?

Reply by IRB

The existing Transfer Pricing Rules and Advance Pricing Arrangement Rules and Guidelines are not applicable to PITA.

16. Security Control And Surveillance Equipment

ACA is extended to companies that install security control and surveillance equipment in residential areas.

The Institutes would like to seek clarification on how this incentive would operate as the company (e.g a housing developer) that installs (meaning incurs the capital expenditure in respect of) the equipment may not be the owner of the equipment. The company may also not have the asset "in use" in his business.

Reply by IRB

The incentive applies to a company incorporated under the Companies Act 1965

and resident in Malaysia, in respect of capital expenditure incurred by such company in the basis period for a year of assessment from a source consisting of a business in relation to the installation of any security control equipment and monitoring equipment in residential areas.

If a company incurs capital expenditure under a hire purchase agreement for the installation of any security control equipment and monitoring equipment for the business purposes of the company, the company would be treated as the owner of the equipment, and capital expenditure incurred by the company for such equipment in the basis period for a year of assessment is considered as part of capital installments or, if there is more than one payment, the aggregate of the payments made by the company under a hire purchase agreement within that period.

Refer to P.U (A) 4/2013.

17. Extension Of Incentives For Commercialisation Of Public Sector Research And Development (R&D) Findings

It is proposed in Appendix 5 that the following incentives, currently available to resourced-based R&D findings, be extended to non-resource-based R&D findings:

(i) For investor company, tax deduction equivalent to the value of investment made in the subsidiary company that undertakes commercialisation of R&D findings of public research institutions; and

(ii) For subsidiary company that undertakes commercialisation of R&D findings of public research institutions, income tax exemption of 100% of statutory income for 10 years.

Non-resource-based activities/products are subject to the list of promoted activities /products under Promotion of Investment Act 1986.

The Institutes would like to seek confirmation that where the investor is an investment holding company or does not have sufficient income in the basis period for a year of assessment, can the deduction on cost of investment be carried forward until fully utilized.

Reply by IRB

This incentive is applicable to companies under section 60F or 60 FA ITA 1967. However, the benefit will be minimal:-

a. as a result of dividend which is exempt from tax with effect from YA 2014; and

b. any current year losses cannot be carried forward to subsequent year or years of assessment.

18. Thin Capitalisation Rules

The Institutes understand that the Thin Capitalisation Rules will not be implemented in the near future. In this regard, the Institutes wish to request the IRB/MoF to allow the professional bodies the opportunity to provide feedback on the draft rules before they are finalised. The Institutes also request that sufficient advance notice be given before the implementation of the rules. A company, particularly one in a group of companies, may need years to realign its financial structure

Reply by IRB

The implementation of Thin Capitalization Rules is deferred to end of December, 2015.

19. Partial Exemption Granted On Partial Disposal Of A Chargeable Asset By An Individual [Para 2, Sch 4 Of Real Property Gains Tax Act 1976 (RPGT Act)]

Clause 64 of FB proposes to amend paragraph 2 of Schedule 4, RPGT Act 1976 as follows:

"2. An amount of ten thousand ringgit or ten per cent of the chargeable gain, whichever is greater, in respect of a chargeable gain accruing to an individual on the disposal of a chargeable asset or where the chargeable asset is partly disposed, the amount to be allowed in respect of such disposal shall be ascertained in accordance with the following formula:

$\frac{A}{B} \times C$ where

A is part of the area of the chargeable asset disposed;
B is the total area of the chargeable asset;
C is ten thousand or ten percent of the chargeable gain whichever is greater.*"*

The Institutes welcome the effort by the authority to grant partial exemption to an individual for part disposal of a chargeable asset by the individual. However, the proposed amendment can potentially make the disposer worse off as the amount of exemption given is computed on a proportionate basis. This is because while the proportionate basis is correctly applied to the fixed sum of RM10,000, the same cannot be applied to 10% of the chargeable gain which itself is the proportion to be exempted. The current basis will result in different taxpayer having a different exemption rate depending on the proportion of part disposals.

Example

Scenario A - A chargeable asset is being disposed off in two components - 50% of the chargeable asset in each disposal. The chargeable gain for each disposal is RM500,000.

Scenario B - A chargeable asset is being disposed off in two components - 70% of the chargeable asset in first disposal with chargeable gain of RM300,000. The balance of the chargeable asset in second disposal with chargeable gain of RM700,000.

Scenario C - The full asset is disposed off. The chargeable gain is RM1 million.

Scenario	Proportion of disposal [A]	Chargeable gain [B]	Paragraph 2 Schedule 4 Exemption A x (10% x B) OR (A x RM10,000), whichever is greater	Effective Rate of exemption
A	50%	RM500,000	RM25,000	
	50%	RM500,000	RM25,000	
Total			**RM50,000**	**5.0%**
B	70%	RM300,000	RM21,000	
	30%	RM700,000	RM28,000	
Total			**RM42,000**	**4.2%**

C	100%	RM1,000,000	**RM100,000**	**10.0%**

The disposers in Scenario A and B are made worse off as the total exemption available to them are RM50,000 and RM42,000 respectively whereas if he disposes the full asset, the total exemption available to him is RM100,000.

Further, the effective rate of exemption enjoyed by disposers in Scenario A and B are different due to the difference in chargeable gain.

We would request that the IRB reviews the formula for determining the amount of exemption granted for part disposal as the proposed amendment should be an improvement to the current position and should not result in the taxpayer being "penalised" for undertaking part disposals.

Reply by IRB

Although there are circumstances where taxpayers may be worse off, the taxpayers can enjoy tax exemption under paragraph 2, Schedule 4, ITA earlier instead of waiting for the whole portion to be disposed of.

If the disposal of remaining parts of the chargeable asset take place after 5 years, the tax payer would not enjoy this tax exemption.

The comparison between the amended provision and the existing provision is provided in Appendix A.

C OUTSTANDING MATTERS

Matters, in respect of which, Orders/Gazettes are expected to be issued.

20. Tun Razak Exchange (TRX) (Formerly Known As The Kuala Lumpur International Financial District, KLIFD) [Paragraph 51]

The Institutes would like to seek further clarification on the following:

a. No details have been released since the 2012 budget announcement. We would like to enquire when the details will be released.

b. Will there be exemption of withholding tax on interest payments made to non-residents?

The Institutes suggest that full information to be disclosed as soon as possible to maintain the thrust of the program and ensure successful participation

Reply by IRB

a. Details are available in P.U (A) 27, 29, 30, 31/2013.

b. There is no exemption of withholding tax on interest payments made to non-residents.

21. Global Incentive For Trading (GIFT) Programme

It is proposed that a Labuan International Commodity Trading Company (LITC) set up as a liquefied natural gas (LNG) trading company would be entitled to a 100% income tax exemption on the statutory income for the first 3 years of operation.

Commodity trading approved under GIFT has also been extended to other commodities such as agricultural products, refined new materials, base minerals and chemicals.

In this regard, the Institutes would like to know when the guidelines will be issued.

Reply by IRB

The incentive is not given through guidelines but by way of exemption order. The exemption order has been prepared and is subject to approval by MOF.

22. Incentive To Acquire A Foreign Company

Previously, Malaysian-owned companies which acquired foreign-owned companies for the purposes of acquiring high technology for production within the country or for acquiring new export markets for local products were allowed a deduction equivalent to 20% of the acquisition cost of the investment over 5 consecutive years. This incentive is available for applications submitted to Malaysian Investment Development Authority (MIDA) up to 31 December 2008.

MIDA has reintroduced the incentive by issuance of the guidelines for incentive for acquiring a foreign company for high technology on 3 August 2012. It is available for applications submitted to them from 3 July 2012 until 31 December 2016.

In this regard, the Institutes would like to know when the statutory order will be issued.

Reply by IRB

The introduction of the incentive is not by way of guidelines but by issuance of Rules. The Rules have been drafted and is subject to approval by MOF.

Appendix A

PERBANDINGAN SEBELUM DAN SELEPAS PINDAAN PERENGGAN 2 JADUAL 4, ACKHT 1976

Tujuan Pindaan –

1) Memastikan pengecualian di bawah perenggan 2 dinikmati oleh setiap pembayar cukai pada setiap kali pelupusan aset tanpa menunggu bahagian akhir asset dilupuskan.
2) Memudahkan proses kerja dan pemantauan bagi setiap pelupusan asset.

Berikut diberikan 3 senario pelupusan asset oleh pembayar cukai iaitu –

CONTOH 1: PELUPUSAN ASET SEKALI GUS.

Pada 29.04.2010, A membeli sebidang tanah di Precint 8, Cyberjaya dengan harga RM255,000 Beliau kemudiannya telah melupuskan keseluruhan tanah di Cyberjaya dengan harga RM1,000,000 pada 01.05.2012.

Tanpa pindaan		**Dengan pindaan**	
Tanah di Cyberjaya		**Tanah di Cyberjaya**	
Harga pelupusan (tunai)	1,000,000	Harga pelupusan (tunai)	1,000,000
Tolak : kos sampingan (guaman dan iklan)	5,000	Tolak : kos sampingan (guaman dan iklan)	5,000
Harga pelupusan pada 01.05.2012	995,000	Harga pelupusan pada 01.05.2012	995,000
Tolak : Harga pemerolehan pada 28.04.2010		Tolak : Harga pemerolehan pada 28.04.2010	
Nilai balasan tunai dibayar Tambah : kos pindah milik	255,000 5,000 260,000	Nilai balasan tunai dibayar Tambah : kos pindah milik	255,000 5,000 132,500
Keuntungan daripada pelupusan	862,500	Keuntungan daripada pelupusan	862,500
Tolak : Pengecualian Perenggan 2 Jadual 4	**10% x 862,500 (86,250)**	Tolak : Pengecualian Perenggan 2 Jadual 4	**10% X 862,500 (86,250)**
Keuntungan dikenakan	776,250		776,250
Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-3): [(776,250 x 20%) -(776,250 x 5%)] x 776,250 = (776,250 x 20%)	582,188	Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-3): [(776,250 x 20%) -(776,250 x 5%)] x 776,250 = (776,250 x 20%)	582,188
Keuntungan dikenakan	194,063	Keuntungan dikenakan	194,063
Cukai dikenakan : 194,063 x 20%	**38,812.60**	Cukai dikenakan : 194,063 x 20%	**38,812.60**

Rumusan Contoh 1:

Pindaan tiada kesan sekiranya asset dijual sekali gus.

CONTOH 2 : PELUPUSAN BERPERINGKAT. BAHAGIAN AKHIR ASET DIJUAL DALAM TEMPOH 5 TAHUN PEGANGAN

Pada 29.04.2010, A membeli sebidang tanah di Precint 8, Cyberjaya dengan harga RM255,000 Beliau kemudiannya telah melupuskan 1/3 bahagian tanah di Cyberjaya dengan harga RM1,000,000 pada 05.05.2011. Pada 31.12.2012, pembayar cukai melupuskan 1/3 bahagian tanah di Cyberjaya dengan nilai RM1,200,000. Baki 1/3 bahagian tanah dijual pada 15.7.2013 dengan nilai 1,500,000.

<u>1) Pelupusan pertama</u>

Tanpa pindaan		**Dengan pindaan**	
Tanah di Cyberjaya		**Tanah di Cyberjaya (Pelupusan pertama)**	
Harga pelupusan (tunai)	1,000,000	Harga pelupusan (tunai)	1,000,000
Tolak : kos sampingan (guaman dan iklan)	10,000	Tolak : kos sampingan (guaman dan iklan)	10,000
Harga pelupusan pada 05.05.2011	990,000	Harga pelupusan pada 05.05.2011	990,000
Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 <u>5,000</u> <u>90,000</u>	Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 <u>5,000</u> <u>90,000</u>
Keuntungan daripada pelupusan	900,000	Keuntungan daripada pelupusan	900,000
Tolak : Pengecualian Perenggan 2 Jadual 4	**Tiada** (pelupusan sebahagian tidak layak pengecualian)	Tolak : Pengecualian Perenggan 2 Jadual 4	**⅓ x 90,000 (30,000)**
Keuntungan boleh dikenakan cukai	900,000	Keuntungan boleh dikenakan cukai	870,000
Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-2: <u>[(900,000 x 30%) – (900,000 x 5%)</u> x 900,000 = <u>747,000</u> (900,000 x 30%)		Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-2: <u>[(870,000 x 30%) -(870,000 x 5%)]</u> x 776,250 = <u>722,100</u> (870,000 x 30%)	
Keuntungan dikenakan	153,000	Keuntungan dikenakan	147,900
Cukai dikenakan : 153,000 x 30%	**45,900**	Cukai dikenakan : 147,900 x 30%	**44,370**

2) Pelupusan kedua

Tanpa pindaan		Dengan pindaan	
Tanah di Cyberjaya		**Tanah di Cyberjaya**	
Harga pelupusan (tunai)	1,200,000	Harga pelupusan (tunai)	1,200,000
Tolak : kos sampingan (guaman dan iklan)	10,000	Tolak : kos sampingan (guaman dan iklan)	10,000
Harga pelupusan pada 31.12.2012	1,190,000	Harga pelupusan pada 31.12.2012	1,190,000
Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000	Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000
Keuntungan daripada pelupusan	1,100,000	Keuntungan daripada pelupusan	1,100,000
Tolak : Pengecualian Perenggan 2 Jadual 4	**Tiada** (pelupusan sebahagian tidak layak pengecualian)	Tolak : Pengecualian Perenggan 2 Jadual 4	**⅓ x 110,000 (36,666)**
Keuntungan boleh dikenakan cukai	1,100,000	Keuntungan boleh dikenakan cukai	1,063,333
Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-3: [(1,100,000 x 20%) – (1,100,000 x 5%) x 1,100,000 = 825,000 (1,100,000 x 20%)		Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-3: [(1,063,333 x 20%) -(1,063,333 x 5%)] x 1,063,333 = 797,500 (1,063,333 x 20%)	
Keuntungan dikenakan	275,000	Keuntungan dikenakan	265,833
Cukai dikenakan : 275,000 x 20%	**55,000**	Cukai dikenakan : 265,833 x 20%	**53,166.60**

3) Pelupusan ketiga

Tanpa pindaan		Dengan pindaan	
Tanah di Cyberjaya **(Pelupusan pertama)**		**Tanah di Cyberjaya** **(Pelupusan pertama)**	
Harga pelupusan (tunai)	1,500,000	Harga pelupusan (tunai)	1,500,000
Tolak : kos sampingan (guaman dan iklan)	10,000	Tolak : kos sampingan (guaman dan iklan)	10,000
Harga pelupusan pada 15.7.2013	1,490,000	Harga pelupusan pada 15.7.2013	1,490,000

Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000	Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000
Keuntungan daripada pelupusan	1,400,000	Keuntungan daripada pelupusan	1,400,000
Tolak : Pengecualian Perenggan 2 Jadual 4	**140,000**	Tolak : Pengecualian Perenggan 2 Jadual 4	**⅓ x 140,000 (46,000)**
Keuntungan boleh dikenakan cukai	1,260,000	Keuntungan boleh dikenakan cukai	1,354,000
Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-4: [(1,260,000 x 15%) – (1,260,000 x 5%) x 1,260,000 = 844,200 (1,260,000 x 15%)		Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-4: [(1,354,000 x 15%) -(1,354,000 x 5%)] x 1,354,000= 907,180 (1,354,000 x 15%)	
Keuntungan dikenakan	415,800	Keuntungan dikenakan	446,820
Cukai dikenakan : 415,800 x 15%	**62,370**	Cukai dikenakan : 446,820 x 15%	**67,023**

Rumusan Contoh 2:

Dengan pindaan pembayar cukai menikmati pengecualian cukai di bawah perenggan 2 Jadual 4 ACKHT yang mana kesannya mengurangkan cukai yang perlu dibayar pada setiap pelupusan dibuat. Berbanding jika tiada pindaan. Walau bagaimanapun pada pelupusan ketiga pembayar cukai menikmati pengecualian yang tinggi berbanding pelupusan ketiga dengan pindaan di mana keseluruhan cukai yang perlu dibayar adalah kurang berbanding dengan adanya pindaan.

Ringkasan CKHT kena dibayar -

	Jumlah Cukai Kena Dibayar	
Pelupusan	**Tiada Pindaan (RM)**	**Dengan pindaan (RM)**
Pertama	45,900.00	44,370.00
Kedua	55,000.00	53,166.60
Ketiga	62,370.00	67,023.00
Jumlah	**163,270.00**	**164,559.60**
Beza	**1,289.60**	

CONTOH 3 : PELUPUSAN BERPERINGKAT. BAHAGIAN AKHIR ASET DIJUAL SELEPAS 5 TAHUN PEGANGAN

Fakta kes sama seperti Contoh 2, keculain baki 1/3 bahagian tanah dilupuskan pada 1.7.2015 dengan nilai 2,500,000.

1) Pelupusan pertama

Tanpa pindaan		Dengan pindaan	
Tanah di Cyberjaya		**Tanah di Cyberjaya (Pelupusan pertama)**	
Harga pelupusan (tunai)	1,000,000	Harga pelupusan (tunai)	1,000,000
Tolak : kos sampingan (guaman dan iklan)	10,000	Tolak : kos sampingan (guaman dan iklan)	10,000
Harga pelupusan pada 05.05.2011	990,000	Harga pelupusan pada 05.05.2011	990,000
Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000	Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000
Keuntungan daripada pelupusan	900,000	Keuntungan daripada pelupusan	900,000
Tolak : Pengecualian Perenggan 2 Jadual 4	**Tiada** (pelupusan sebahagian tidak layak pengecualian)	Tolak : Pengecualian Perenggan 2 Jadual 4	**⅓ x 90,000 (30,000)**
Keuntungan boleh dikenakan cukai	900,000	Keuntungan boleh dikenakan cukai	870,000
Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-2: [(900,000 x 30%) – (900,000 x 5%) x 900,000 = (900,000 x 30%)	747,000	Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-2: [(870,000 x 30%) -(870,000 x 5%)] x 776,250 = (870,000 x 30%)	722,100
Keuntungan dikenakan	153,000	Keuntungan dikenakan	147,900
Cukai dikenakan : 153,000 x 30%	**45,900**	Cukai dikenakan : 147,900 x 30%	**44,370**

2) Pelupusan kedua

Tanpa pindaan		Dengan pindaan	
Tanah di Cyberjaya		**Tanah di Cyberjaya**	
Harga pelupusan (tunai)	1,200,000	Harga pelupusan (tunai)	1,200,000
Tolak : kos sampingan (guaman dan iklan)	10,000	Tolak : kos sampingan (guaman dan iklan)	10,000
Harga pelupusan pada 31.12.2012	1,190,000	Harga pelupusan pada 31.12.2012	1,190,000

Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000	Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000
Keuntungan daripada pelupusan	1,100,000	Keuntungan daripada pelupusan	1,100,000
Tolak : Pengecualian Perenggan 2 Jadual 4	**Tiada** (pelupusan sebahagian tidak layak pengecualian)	Tolak : Pengecualian Perenggan 2 Jadual 4	**⅓ x 110,000 (36,666)**
Keuntungan boleh dikenakan cukai	1,100,000	Keuntungan boleh dikenakan cukai	1,063,333
Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-3: [(1,100,000 x 20%) – (1,100,000 x 5%) x 1,100,000 = 825,000 (1,100,000 x 20%)		Tolak: Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-3: [(1,063,333 x 20%) -(1,063,333 x 5%)] x 1,063,333 = 797,500 (1,063,333 x 20%)	
Keuntungan dikenakan	275,000	Keuntungan dikenakan	265,833
Cukai dikenakan : 275,000 x 20%	**55,000**	Cukai dikenakan : 265,833 x 20%	**53,166.60**

3) Pelupusan ketiga

Tanpa pindaan		Dengan pindaan	
Tanah di Cyberjaya (Pelupusan pertama)		**Tanah di Cyberjaya (Pelupusan pertama)**	
Harga pelupusan (tunai)	2,500,000	Harga pelupusan (tunai)	2,500,000
Tolak : kos sampingan (guaman dan iklan)	10,000	Tolak : kos sampingan (guaman dan iklan)	10,000
Harga pelupusan pada 1.7.2015	2,490,000	Harga pelupusan pada 1.7.2015	2,490,000
Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000	Tolak : Harga pemerolehan pada 29.4.2010: Nilai balasan tunai dibayar (255,000 x 1/3) Tambah : kos pindah milik	85,000 5,000 90,000
Keuntungan daripada pelupusan	2,400,000	Keuntungan daripada pelupusan	2,400,000
Tolak : Pengecualian Perenggan 2 Jadual 4	**240,000**	Tolak : Pengecualian Perenggan 2 Jadual 4	**⅓ x 240,000 (80,000)**
Keuntungan boleh dikenakan cukai	2,160,000	Keuntungan boleh dikenakan cukai	2,320,000
Tolak:		Tolak:	

Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-6: **Tidak dikenakan cukai. Tempoh pegangan melebihi 5 tahun.**	Keuntungan dikenakan diberikan Pengecualian (pelupusan tahun ke-6: **Tidak dikenakan cukai. Tempoh pegangan melebihi 5 tahun**

Rumusan Contoh 3:

Dengan pindaan, walaupun pelupusan bahagian tanah dibuat selepas tahun kelima, pembayar cukai telah menikmati pengecualian cukai pada pelupusan pertama dan kedua dimana pengurangan jumlah cukai yang dibayar. Berbanding tanpa pindaan, pembayar cukai tidak menerima sebarang pengecualian sekirannya aset dilupuskan selepas tahun kelima.

Ringkasan CKHT kena dibayar –

	Jumlah Cukai Kena Dibayar	
Pelupusan	**Tiada Pindaan (RM)**	**Dengan pindaan (RM)**
Pertama	45,900.00	44,370.00
Kedua	55,000.00	53,166.60
Ketiga	-	-
Jumlah	**100,900.00**	**97,536.60**
Beza	**3,363.40**	

RUMUSAN KESELURUHAN:

Dengan pindaan pembayar cukai –

1) Menikmati pengecualian setiap pelupusan
2) Jumlah cukai yang dikenakan dapat dikurangkan setiap pelupusan asset.
3) Jumlah pengecualian sebelum pindaan adalah lebih besar berbanding dengan selepas, namun sekiranya bahagian aset hanya dilupuskan selepas tempoh pegangan 5 tahun, pembayar cukai akan mengalami kerugian dimana cukai yang akan dibayar adalah lebih tinggi.