# MINUTES OF THE DIALOGUE ON JOINT MEMORANDUM ON ISSUES ARISING FROM 2015 BUDGET & FINANCE BILL (NO.2) 2014 & OTHER TECHNICAL MATTERS

**DATE: 04 FEBRUARI 2015**

**MINIT DIALOG ISU – ISU BAJET 2015**
**DAN RANG UNDANG UNDANG KEWANGAN (BIL.2) 2014**
**DI ANTARA LHDNM DENGAN PERSATUAN AKAUNTAN DAN PENGAMAL PERCUKAIAN – BIL. 1/2015**

Tarikh : 04 Februari 2015 (Rabu)

Masa : 10.30 pagi

Tempat : Bilik Mesyuarat Bendahara, Aras 1, Menara Hasil, Cyberjaya.

Kehadiran:

| **A. WAKIL LHDNM** | | |
|---|---|---|
| BIL | NAMA | JAB/ BAH/CAW |
| 1 | Pn. Noor Azian bt Abdul Hamid | Timbalan Ketua Pengarah Eksekutif (Dasar)<br>**Pengerusi** |
| 2 | Pn. Nor'aini bt Ja'afar | Pengarah Jab. Dasar Percukaian (JDP) |
| 3 | Pn. Salmah bt Kasim | Pengarah Jan. Undang - Undang (JUU) |
| 4 | Cik Puteh Mariah bt Harun | Pengarah Cawangan Pembayar Cukai Besar (CPCB) |
| 5 | Pn. Noraini bt Ismail | Timb. Pengarah JDP /<br>Pengarah Bah. Konsultasi Galakan Cukai JDP |
| 6 | Pn. Lim Hong Eng | Pengarah Bah. Ketetapan JDP |
| 7 | Pn. Normah bt Md Zain | Pengarah Bah. Konsultasi Dasar JDP |
| 8 | Pn. Gan Lee Choo | Pengarah Bah. Keutuhan Teknikal JDP |
| 9 | En. Yaacob b Othman | Pengarah Bah. Kelulusan dan Pemantauan JDP |
| 10 | Ybhg. Datin Subkiah Jamaludin | Pengarah Bah. Duti / CKHT / Petroleum JDP |
| 11 | Pn. Mardziah bt Musir | Pengarah Bah. CKHT / Petroleum JDP |
| 12 | Pn. Umi Kalsom bt Harun | Pengarah Bah. Dasar & Operasi Pungutan JDP |
| 13 | Pn. Koh Sai Tian | PPN Wilayah Putrajaya |

| | | |
|---|---|---|
| 14 | En. Nazri Bin Ismail | Pengarah Bah Penyelarasan Pejabat Pengarah WPKL |
| 15 | En. Romli b A. Hamid | PPN Selangor |
| 16 | En.Marsidi Zelika | Pengarah Bah. Penyelidikan Korporat |
| 17 | En. Bacho Abdul Karim | Ketua Pen. Pengarah (JGSUU) |
| 18 | Pn. Rosnita Ahmad | Ketua Pen. Pengarah (JDP) |
| 19 | Pn. Rusidah Abdul Rahim | Pen. Pengarah (JDP) |
| 20 | En. Baharuddin Abdul Kadir | Pen. Pengarah (JDP) |
| 21 | Pn. Norlina Naem | Pen. Pengarah (JDP) / Urusetia |
| 22 | Pn. Nazrin Nordin | Pen. Pengarah (JDP) / Urusetia |

| **B. WAKIL KEMENTERIAN KEWANGAN MALAYSIA** | | |
|---|---|---|
| BIL | NAMA | JAB/ BAH |
| 1 | Pn. Khodijah Abdullah | Timb. Setiausaha Bahagian Cukai (Cukai Langsung dan Antarabangsa) |
| 2 | Pn. Syakirah Md Nor | Ketua Penolong Setiausaha Bahagian Cukai (Cukai Langsung ) |
| 3 | En. Mohd Khairul Annuar Osman | Ketua Penolong Setiausaha Bahagian Cukai (Cukai Langsung ) |
| 4 | En. Mohamad Azizal Abd Aziz | Ketua Penolong Setiausaha Bahagian Cukai (Galakan ) |

| **C. WAKIL PERSATUAN AKAUNTAN & PENGAMAL PERCUKAIAN** | | |
|---|---|---|
| BIL | NAMA | ORGANISASI |
| 1 | En. Aruljothi Kanagaretnam | Chartered Tax Institute of Malaysia (CTIM) |
| 2 | En. Poon Yew Hoe | CTIM |
| 3 | Cik Phan Wai Kuan | CTIM |
| 4 | Cik Renuka Bhupalan | CTIM |
| 5 | Cik Seah Siew Yun | CTIM |

| | | |
|---|---|---|
| 6 | En. Thong Vee Kean | CTIM (Secretariat) |
| 8 | En. Beh Tok Koay | The Malaysian Institute of Certified Public Accountant (MICPA) |
| 9 | Cik Theresa Goh | MICPA |
| 10 | Cik Woon Yoke Lee | MICPA |
| 11 | Cik Tan Yu Yin | MICPA (Secretariat) |
| 12 | Dr Veerinderjeet Singh | Malaysian Institute of Accountants (MIA) |
| 13 | Ybhg Datin Pauline Tam Poh Lin | MIA |
| 14 | En. Chong Chen Kian | MIA |
| 15 | Pn. Azlina Zakaria | MIA (Secretariat) |
| 16 | En.Ong Whee Tiong | Chartered Secretaries Malaysia (MAICSA) |
| 17 | En. Peter Lim Thiam Kee | MAICSA |
| 18 | En. Eric Yong Siew Meng | MAICSA |
| 19 | En. Jagdev Singh | CPA Australia |
| 20 | En Kok Lee Wing | MACS |
| 21 | En Mohd Salimi bin Ahamad | MACS |
| 22 | Pn. Noorshamsiah Bt. Ahmad | MATA |
| 23 | Pn. Fatimah Bt. Ariffin | MATA |
| 24 | Ybhg. Datuk Harpal S Dhillon | Bekas Pegawai Hasil |

Tidak Hadir Dengan Maaf:

| **A. WAKIL LHDNM** | | |
|---|---|---|
| BIL | NAMA | JAB/ BAH/CAW |
| 1 | Pn. Hazlina Hussain | Pengarah Bah. Nasihat Perundangan |
| 2 | Pn. Salamatunnajan bt Besah | Pengarah Bah. Dasar & Pematuhan JPCA |
| 3 | Pn. Neng Juliana Ismail | Pengarah Bah. Gubalan, Jab. Gubalan dan Semakan Undang - Undang (JGSUU) |
| 4 | Pn. Faizah Aman | Ketua Pen. Pengarah (JDP) |

| | | |
|---|---|---|
| 5 | En. Mohamad Harzani Tahir | Ketua Pen. Pengarah (JGSUU) |
| 6 | Pn. Naimah Abd Satar | Ketua Pen. Pengarah (JGSUU) |
| 7 | Pn. Hanani Idris | Pen. Pengarah (JGSUU) |
| 8 | Pn. Nur Farahida Kamarudein | Pen. Pengarah (JGSUU) |

| **C. WAKIL PERSATUAN AKAUNTAN & PENGAMAL PERCUKAIAN** | | |
|---|---|---|
| BIL | NAMA | ORGANISASI |
| 1 | En. Ng Chai Yee | Malaysian Institute of Accountants (MIA) |

**1. <u>UCAPAN PENDAHULUAN PENGERUSI</u>**

Pengerusi memulakan mesyuarat dengan mengucapkan salam sejahtera serta memohon maaf ke atas kelewatan beliau memandangkan terdapat mesyuarat segera yang perlu dihadiri oleh beliau. Pengerusi turut mengalu-alukan kehadiran semua ahli mesyuarat yang dapat menghadiri mesyuarat yang diadakan pada pagi ini serta memohon agar semua ahli mesyuarat dapat memperkenalkan diri masing – masing serta memaklumkan jabatan / bahagian / organisasi yang diwakili.

**2. <u>PERBINCANGAN ISU-ISU BERBANGKIT</u>**

**(Sila rujuk Lampiran-Lampiran)**

**2.1.** CTIM Joint Memorandum to IRBM on Issues Arising From 2015 Budget and Finance Bill (No.2) 2014 & Other Technical Matters.

**– 12 issues (Lampiran 1)**

Surat bertarikh 2 Februari 2015 telah dikeluarkan kepada pihak CTIM berhubung dengan isu yang dibangkitkan di bawah Bahagian B Perkara 2 - *Other technical matters raised by the Institutes which have not been resolved* di dalam CTIM Joint Memorandum to IRBM on Issues Arising From 2015 Budget. (Lampiran A)

**2.2.** CTIM Memorandum on Additional Technical Issues. **– 5 issues** (**Lampiran 2)**

**2.3.** Additional Issues to be Raised. **– 2 issues (Lampiran 3)**

## 3. HAL-HAL LAIN

### 3.1 Isu pengemukaan Borang CP 15C berkenaan Relief di bawah Seksyen 131(1) Akta Cukai Pendapatan (ACP) 1967

Pihak CTIM dan MIA membangkitkan isu samada peruntukan seksyan 131(1) berhubung kesilapan dan khilaf boleh digunakan bagi rayuan kes insentif dalam keadaan di mana Perintah / Peraturan Cukai Pendapatan digazetkan lewat selepas tarikh penghantaran borang retan serta samada rayuan tersebut di boleh dibuat melalui surat dan bukan Borang 15C.

Mesyuarat dimaklumkan bahawa rayuan tersebut boleh dibuat dibawah seksyen ini. Namun rayuan di bawah seksyen ini masih tertakluk kepada fakta kes dan syarat – syarat seperti yang diperuntukan di bawah seksyen tersebut.

Mesyuarat turut dimaklumkan bahawa Jabatan Resolusi Pertikaian (JRP) telah mengesahkan bahawa surat adalah memadai (*appropriate)* bagi tujuan rayuan di bawah Seksyen 131(1) ACP melainkan sekiranya kes atau rayuan hendak di bawah ke peringkat Suruhanjaya Khas.

***Untuk makluman***

### 3.2 Memohon pertimbangan terhadap kesan Seksyen 4B Akta Cukai Pendapatan 1967 terhadap International Procurement Centre Company dan Perintah Cukai Pendapatan (Pengecualian) (No.42) 2005

Pihak CTIM mencadangkan agar LHDNM dan pihak berkenaan mempertimbangkan pengecualian pemakaian Seksyen 4B ACP ke atas mana – mana IPC yang telah wujud atau ditubuhkan pada TT 2012 dan TT sebelumnya.

LHDNM mengambil maklum berhubung perkara ini namun bergitu pemakaian Seksyen 4B ACP adalah secara menyeluruh dan terpakai ke atas IPC.

Pihak CTIM memohon agar Perintah Cukai Pendapatan (Pengecualian) (No.42) 2005 dapat dipinda bagi menjelaskan berhubungan pemakaian ini.

***Tindakan JDP***

**3.3 Perkongsian Maklumat Berhubung dengan Pemakaian Kes – kes Perundangan**

Pihak MIA memohon agar ringkasan terhadap kes – kes perundangan baru serta keputusan pemakaiannya dapat dikongsikan atau dimaklumkan kepada umum atau pembayar cukai melalui Laman Sesawang Lembaga Hasil Dalam Negeri Malaysia. Ini kerana, buat masa ini, Laman Sesawang LHDNM mempunyai ringkasan beberapa kes cukai yang dikeluarkan sehingga April 2012 sahaja. Ini bagi membantu pembayar cukai mahupun badan pengamal percukaian memahami prinsip serta pendirian sesuatu kes serta rasional disebalik keputusannya untuk dijadikan rujukan.

LHDNM mengambil maklum perkara ini dan akan memanjangkan permohonan ini kepada Jabatan Resolusi Pertikaian. LHDNM juga memohon agar pihak persatuan dapat membangkitkan isu ini ke pihak pentadbiran mahkamah kerana ada sesetengah keputusan kes tidak ditulis (*unwritten decision)* menyebabkan sukar untuk pihak LHDNM memutuskan berhubung dengan pemakaian sesuatu kes.

***Tindakan JRP***

**3.4 Cukai individu - isu samada potongan pembelian buku, jurnal, majalah dan seumpamanya di bawah subseksyen 46(1)(i) adalah termasuk Cukai Barangan dan Perkhidmatan (CBP).**

Isu ini melibatkan keputusan polisi dan LHDNM masih menunggu keputusan Kementerian Kewangan. LHDNM berpandangan bahawa kos CBP boleh

diambilkira sebagai sebahagian daripada kos buku, jurnal, majalah dan seumpamanya.

***Tindakan JDP***

### 3.5 Pengesahan Minit Dialog

Pihak MIA mencadangkan agar setiap Minit Dialog Antara LHDNM dengan Persatuan Akauntan dan pengamal Percukaian ini dapat ditandatangani oleh wakil kedua – dua pihak sebelum diedarkan kepada ahli. Ini bagi meningkatkan tahap bolehpercayaan (*reliability)* dan sah (*validity)* untuk digunapakai.

LHDNM ambil maklum dan berterima kasih atas saranan tersebut.

***Tindakan Urusetia***

## 4. PENUTUP

Pengerusi mengucapkan ribuan terima kasih kepada semua yang menghadiri dialog buat kali ini. Mesyuarat ditamatkan pada jam 12.30 tengah hari

**04 Februari 2015**

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2015 BUDGET & FINANCE BILL (NO.2) 2014 & OTHER TECHNICAL MATTERS

## Contents

# A. 2015 Budget & Finance Bill (No. 2) 2014 Issues

## (1) Section 29(4) - Basis period in which income obtainable on demand is related. This covers employment, rental and other passive sources of income, except interest, from related parties

### Proposals:

### New Section 29(4)

"29 (4) Subject to subsection (3) and for the purposes of this section where a relevant person is entitled to any gross income –

(a) Accruing in or derived from Malaysia to which section 25, section 27 other than Section 27(1A) or section 28 applies;

(b) The amount of which relates to any transactions –

(i) Between persons one of whom has control over the other;

(ii) Between individuals who are relatives of each other;

(iii) Between persons both of whom are controlled by some other persons; and

(c) The amount of which first becomes receivable to the relevant person in the relevant period,

The relevant person is deemed to be able to obtain on demand the receipt of such amount in the basis period immediately following the relevant period."

### Comments:

i. While the new S.29(4) stipulates the timing of the relevant income being received, clarity is required as to when the income will be taxed. Based on the provisions of S.25, S.27 and S.28 of the Income Tax Act 1967 (ITA), we understand that the income would be taxed as follows:

- Employment Income (Other than director's fees or bonus receivable) – Taxed in the relevant period when it first becomes receivable. [S.25(1)]
- Director's fees or bonus receivable – Taxed in the basis period in which the relevant person is deemed to be able to obtain on demand receipt of such amount. [S.25(2A)]
- Rent or royalty or of any pension, annuity or other periodically payment to which S.4(e) applies - Taxed in the relevant period when it first becomes receivable. [S.27(1)]
- Gross Income to which S.24 to S.27 do not apply – Taxed in the basis period in which the relevant person is deemed to be able to obtain on demand receipt of such amount. [S.28]

Kindly confirm that our understanding is in order.

**IRBM reply:**

| Income | Tax treatment |
|---|---|
| Employment Income (other than director's fees or bonus) | Taxed when received for the year assessment when it first becomes receivable. |

| | |
|---|---|
| Director's fees or bonus | Taxed when received for the year of assessment when received. |
| Rent or royalty or of any pension, annuity or other periodically payment to which S.4(e) applies | Taxed when received for the year assessment when it first becomes receivable. |
| Gross Income to which S.24 to S.27 do not apply | Taxed when received for the year assessment of receipt. |
| Income as above from transaction between related parties | Income as above (including director's fees or bonus) taxed in the year of assessment following the year of assessment when it first become receivable, for the year assessment when it first becomes receivable (director's fees or bonus – for the year assessment when deem received.)(subsection 29(4)) |

ii. Following from item (i) above, the relevant person may be required to revise the assessment of the relevant period when the gross income is deemed to be able to obtain on demand in the basis period immediately following the relevant period.

Illustration 1:

Holding Company A and Subsidiary Company B close their accounts on 31 December every year. Holding Company A derives office rental income of RM60,000 from Subsidiary B in year of assessment (YA) 2015. Due to cash flow problems, the rental income will only be received in YA 2017.

Pursuant to the new proposed S.29(4) of the ITA, the unpaid rental income of RM60,000 which should be received in 2015 shall be deemed to be obtainable on demand in 2016. Based on Example 1 in Appendix 2 of IRBM's slides presented at the National Tax Seminar 2014, the assessment on the rental income will be raised in the year 2016 for YA 2015.

We would like to request for clarification on whether in the above Illustration 1, Holding Company A may:

- Bring to tax the rental income in the YA 2015 tax return which is submitted by the due date; or
- Revise the YA 2015 tax return after the due date to bring to tax the rental income.

In the spirit of self-assessment, we would like to suggest that the rental income be assessed in the YA 2016 tax return instead to avoid revising the YA 2015 tax return and consequently reduce the administrative work.

**IRBM reply:**

**Holding Company A must declare the rental income receivable for YA 2015 as "Chargeable income of the preceding year not declared" in YA 2016 tax return.**

**IRB will revise the assessment for the YA 2015 to take into account the rental income.**

iii. Please confirm our understanding that the provisions of S.29(4) is only applicable to gross income accruing or derived from Malaysia under S.25, S.27 (other than S.27(1A)) or S.28 from YA 2015 onwards.

**IRBM reply:**
**Yes.**

iv. We suggest that a Public Ruling be issued to provide clarity and examples on the above and that the professional bodies are given the opportunity to provide feedback on the draft Public Ruling before it is issued.

**IRBM reply:**
**Yes. PR will be issued.**

## (2) Reinvestment Allowance – Schedule 7A

### (2.1) Proposals:

**New Paragraph 2A(2):**

"2A(2). The allowance which is deemed to have not been given under subparagraph (1) shall be part of the person's statutory income in the basis period for the year of assessment in which such asset is disposed of."

**Comments:**

i. It has been proposed that the allowance which is deemed to have not been given under the new paragraph 2A(1) of Schedule 7A i.e. reinvestment allowance (RA) withdrawn shall be treated as part of the statutory income in the basis period for the YA in which the asset is disposed of.

We are of the view that the amount of RA withdrawn which shall be treated as part of the statutory income should be restricted to the amount of RA which has been utilised in the prior years. The unutilised RA would therefore not be available for carry forward purposes. We would like to request that IRBM accept our proposal above as it is equitable and also administratively simple.

**IRBM reply:**

**IRBM confirmed the amount of RA withdrawn shall be equal to the RA which has been allowed in the preceding YA and any unutilized RA will not be available to be carried forward.**

ii. Illustration 2:

RA is claimed on an asset with qualifying capital expenditure (QCE) of RM100,000 in YA 2015. However, the company incurs losses for YAs 2015 and 2016 consecutively. The company decided to sell the asset in YA 2017.

We would like to suggest that since the RA claimed on the asset of RM100,000 has not been utilised in YAs 2015 and 2016 before the asset is sold in YA 2017, the company should not include the total RA of RM100,000 as part of the statutory income in YA 2017 and the said RA should not be available for carry forward purposes. We would like to seek confirmation from IRBM that the treatment is in order.

**IRBM reply:**

**Yes. Your understanding is in order.**

### (2.2) Proposals:

**New Paragraph 4A:**

"4A. Statutory income referred to in paragraphs 3 and 4 shall be construed as the amount of statutory income of a person from a source consisting of a business in respect of a qualifying project referred to in paragraph 8"

**Comments:**

i. Paragraph 4A introduces a new concept of a source consisting of a business in respect of a qualifying project, which was not previously part of the RA regime. As raised by taxpayers at the CTIM 2015 Budget Seminar, does this provision require the segregation of the statutory income between the qualifying project and the business source of which the qualifying project is part and parcel of? We understand that based on the explanation given by IRBM, the provision is intended to quarantine RA claimed to the manufacturing business or the agricultural business and should not be claimed against a trading business. Please confirm our understanding.

Based on Examples 1 & 2 in Appendix 11A to IRBM's slides presented at the National Tax Seminar 2014, the statutory income is apportioned based on the costs of raw material used for each activity instead of requiring the maintenance of separate accounts for each activity. We would like to seek confirmation from IRBM that such treatment is acceptable in complying with the new paragraph 4A. In addition, the issue is the basis that would be acceptable to allocate the statutory income. Which other manner of allocation would be acceptable?

**IRBM reply:**

**IRBM confirmed that such treatment is acceptable in complying with the new paragraph 4A. RA should be quarantined to qualifying project i.e. manufacturing or agricultural activities.**

**IRBM is of the opinion that the cost of raw material is an acceptable basis in determining the portion of statutory income relating to manufacturing of the goods. Any other allocation basis may be used as long as it is consistenly adopted and agreed by LHDNM.**

ii. Illustration 3:

Company B closes its accounts on 31 December every year and has been carrying out the following activities since 2010:

- Integrated project of pineapple plantation;
- Manufacture of canned pineapple; and
- Sale of imported canned lychee.

The company has a 10 acre pineapple plantation. Fresh fruit will be sent from the plantation to the company's three manufacturing plants to produce canned pineapple. To meet market demand for canned pineapple, the company has to purchase fresh fruits from nearby plantations and other small scale growers.

The company also imports canned lychee for sale to retailers in Malaysia.

In 2015, the company has undertaken the following:

Agricultural activity:

- The company has decided to undertake a qualifying project by clearing and preparing an additional 2 acres of land for growing pineapples with a cost of RM50,000.

Manufacturing activity:

- The company purchased new machines for the second manufacturing plant at a cost of RM100,000 to increase production capacity of canned pineapple.
- The company has also decided to diversify into the manufacture of canned coconut at the third manufacturing plant at a cost of RM400,000 for the purchase of new machines. The company has to purchase fresh coconut for the diversified manufacturing activity from elsewhere.

In 2015:

| | RM |
|---|---|
| Total production cost of fresh pineapple from its plantation | 1,000,000 |
| Total cost to purchase extra pineapple | 350,000 |
| Total cost to purchase fresh coconut | 500,000 |
| Total cost to purchase canned lychee | 150,000 |
| | 2,000,000 |

We understand that pursuant to the new Paragraph 4A, the company's claim for RA will be as follows:

| Description | RM | Integrated Project (Agricultural and Manufacturing of Pineapple from Own Plantation) RM | Manufacturing Activity of Purchased Pineapple and Coconut RM | Sale of Imported Canned Lychee RM |
|---|---|---|---|---|
| Gross income | 3,500,000 | | | |
| Less: Expenses allowed by S.33 and Sch.3 allowance | 3,250,000 | | | |
| Statutory income | 250,000 | 125,000(1) | 106,250(1) | 18,750(1) |
| RA (Additional plantation land) | 30,000(2) | | | |
| RA (New machines) | 300,000(3) & (5) | | | |
| Qualifying RA (restricted to 70% of statutory income) | | 74,444(6) Limited 87,500(6) | 255,556(6) Limited 74,375(6) | - |
| Chargeable income | 101,181 | 50,556 | 31,875 | 18,750 |

(1) Statutory income is apportioned to the 3 activities above based on cost of pineapple from own plantation, cost of pineapple and coconut purchased and cost of imported canned lychee:

| | | |
|---|---|---|
| Statutory Income from manufacturing of pineapple from own plantation | = | 1,000,000 / 2,000,000 x 250,000 |
| | = | 125,000 |
| Statutory Income from manufacturing of pineapple and coconut purchased | = | 850,000 / 2,000,000 x 250,000 |
| | = | 106,250 |
| Statutory Income from trading of imported canned lychee | = | 150,000 / 2,000,000 x 250,000 |
| | = | 18,750 |

(2) Asset qualified for RA (additional plantation land) = 50,000
Amount qualified for RA = 50,000 x 60% = 30,000

(3) Asset qualified for RA (new machines for manufacture of canned pineapple) = 100,000
Amount qualified for RA = 100,000 x 60% = 60,000

(4) RA on new machines for manufacture of canned pineapple is further apportioned based on cost of pineapple from own plantation and cost of pineapple purchased:

| | | |
|---|---|---|
| Integrated Project (Agricultural and Manufacturing of Pineapple from Own Plantation) | = | 1,000,000 / 1,350,000 x 60,000(3) |
| | = | 44,444 |
| Manufacturing Activity of Purchased Pineapple | = | 350,000 / 1,350,000 x 60,000(3) |
| | = | 15,556 |

(5) Asset qualified for RA (new machines for manufacture of canned coconut) = 400,000
Amount qualified for RA = 400,000 x 60% = 240,000

[6] Utilisation of qualifying RA:

| | Integrated Project (Agricultural and Manufacturing of Pineapple from Own Plantation) | Manufacturing Activity of Purchased Pineapple and Coconut |
|---|---|---|
| RA (Additional plantation land) | 30,000[2] | Not eligible |
| RA (New machines for manufacture of canned pineapple) | 44,444[4] | 15,556 [4] |
| RA (New machines for manufacture of canned coconut) | Not eligible | 240,000 [5] |
| Total qualified for RA | 74,444 | 255,556 |
| RA restricted to 70% of statutory income[1] | 87,500 (70% x 125,000)<br>RA c/f = Nil | 74,375 (70% x 106,250)<br>RA c/f = 181,181 |

We would like to seek clarification on the following:

- Please confirm that our treatment in Illustration 3 above is in order.
- What would be the treatment of RA c/f if the qualifying projects have been completed? Should the apportionment of the statutory income from the qualifying projects continue until the RA c/f is fully utilised?

If our treatment in Illustration 3 above is in order, then we suggest that the wordings in the proposed Paragraph 4A should be amended accordingly so as to ensure that there is clarity.

**IRBM reply:**

- **Confirmed that the treatment in Illustration 3 is in order and the illustration above clearly explains Paragraph 4A.**
- **If the qualifying projects have been completed, RA c/f is allowed to be deducted against the proportion of statutory income from qualifiying project until all RA is fully utilized.**
- **Yes, the apportionments of the statutory income from the qualifying projects continue until the RA c/f is fully utilised.**

iii. We understand that a draft Public Ruling to address the above will be issued to the JPRWG for feedback before it is finalised.

**IRBM reply:**
**Yes.**

**(3) Time Bar For Income Tax Assessment In Relation To Transfer Pricing Adjustments, Section 91(1) ITA Section 39(1) PITA.**

**Existing:**

**Section 91(1) ITA**

"91(1) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax, may in that year or within five years after its expiration make an assessment or additional assessment, as the case may be, in respect of that person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that person ought to have been made for that year."

**Section 39(1) PITA**

"39(1) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a chargeable person chargeable to tax, may in that year or within five years after its expiration make an assessment or additional assessment, as the case may be, in respect of that chargeable person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that chargeable person ought to have been made for that year."

**Proposals:**

**Section 91(5) ITA – New**

"91(5) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax in consequence of the Director General's determination pursuant to subsection 140A(3), may in that year or within seven years after its expiration make an assessment or additional assessment, as the case may be, in respect of that person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that person ought to have been made for that year."

**Section 39(5) PITA - New**

"(5) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a chargeable person chargeable to tax in consequence of the Director General's determination pursuant to subsection 72A(3), may in that year or within seven years after its expiration make an assessment or additional assessment, as the case may be, in respect of that chargeable person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that chargeable person ought to have been made for that year."

**Comments:**

We understand that the rationale for increasing the time bar period for transfer pricing (TP) cases from 5 years to 7 years is because of the complexity of TP cases and the length of time involved in concluding TP cases. We are of the view that this proposal does not seem to be in line with the simplification of the tax system under the self-assessment system.

This proposal would lead to practical issues where the assessment / additional assessment covers both transfer pricing issues (time bar period of 7 years) and non-transfer pricing issues

(time bar period of 5 years). There would be uncertainty on which time bar period would apply to which tax adjustment.

We are of the view that the time bar period of 5 years for TP cases should be maintained in line with the time bar period of 5 years for normal assessments. To address the lengthy time involved in concluding TP audits, the authorities could perhaps look into the allocation of manpower resources to facilitate timely finalisation of TP audits.

**IRBM reply:**

**Effective from 31 December 2014, time bar for TP cases is 7 years.**

## (4) Definition Of Qualifying Forest Expenditure

### Existing:

### Schedule 3 Paragraph 8(1) ITA

"8(1) Subject to this Schedule, qualifying forest expenditure for the purposes of this Schedule is capital expenditure incurred by a person on the construction in a forest of–"

### Proposals:

### Schedule 3 Paragraph 8(1) ITA – Amended

"8(1) Subject to this Schedule, qualifying forest expenditure for the purposes of this Schedule is capital expenditure incurred only by a person who has a concession or licence to extract timber on the construction in a forest of–"

### Comments:

Qualifying forest expenditure is restricted to capital expenditure incurred by the timber concession holder / licensee. In practice, the timber concession holder / licensee outsources timber extraction to logging sub-contractors. With the proposed amendment, logging sub-contractors will be denied claims for forest allowances even though they have incurred the capital expenditure. Effectively, no one would be eligible to claim the forest allowances.

We would request that the authorities review the purpose of Schedule 3 Paragraph 8(1) in light of the business practice in the logging industry.

**IRBM reply:**

**It is policy decision to allow Qualifying Forest Expenditure only for timber concession holder or licensee.**

## (5) Amendment of right of appeal on deemed assessment under Section 99(4) ITA

### Existing:

### Section 99(4)

The right of appeal to the SCIT against a deemed assessment is only applicable if it is as a result of complying with the PR.

### Proposed:

### Amended Section 99(4)

It has been proposed that the right of appeal is extended to include deemed assessment aggrieved by any prevailing practice of the DG at the time when the assessment is made.

**Comments:**

We would like to thank IRBM for widening the scope for the taxpayer to appeal against deemed assessments under S.99 of the ITA.

In practice, it is difficult to establish what IRBM's prevailing practice is. Currently IRBM may convey the DG's prevailing practices to taxpayers in ways such as (but not limited to) the following:

- Minutes of dialogue with IRBM.
- Slides presented by IRBM officers at any public seminar.
- Confirmation in writing of oral comments made by IRBM officers. This includes the taxpayer / tax practitioner writing to the IRBM documenting what was discussed with the IRBM officer.
- Decisions made by IRBM during audits.
- Advance and private rulings issued by IRBM.
- General tax treatment adopted by IRBM as set-out in writing such as in the guidebook for preparing income tax returns, guidelines, announcements, letters, faxes, emails or memorandums.

We would appreciate it if the authorities could confirm our understanding above and provide any additional points to enhance our understanding of the ways which the DG's prevailing practices are conveyed to the taxpayers.

**IRBM reply:**
**Further clarification will be provided in PR.**

## (6) Amendment of due date for payment by instalments of estimate of tax payable for companies under Section 107C ITA

### Existing:

### Section 107C(12)

For the purposes of Section 107C, "due date" means the tenth day of a calendar month.

### Proposed:

### Amended Section 107C(12)

It has been proposed that the due date for payment of instalments of the estimate of tax payable is extended by 5 days to the fifteenth day instead of the tenth day of the month with effect from 1 January 2015.

**Comments:**

i. Since the proposed amendment is effective 1 January 2015, we are of the view that this budget proposal applies to all instalment payments of the estimated tax payable which are due on or after 1 January 2015 including the December 2014 instalment which is due in 10 January 2015.

We would like to seek confirmation of our understanding above.

**IRBM reply:**
**Yes. IRBM confirmed your understanding is in order.**

We would also like to seek a confirmation from the IRBM that the proposed extended due date will also be applicable to those Notices of Instalment Scheme ["Forms CP205"] issued by the IRBM prior to the 2015 budget announcement where part of the tax instalment payment scheme for a year of assessment overlaps year 2015, i.e. in respect of those payments which fall in the month of January 2015 and thereafter where the due dates as stated in the aforesaid Forms CP205 issued remain as "By 10th day of the calendar month".

**IRBM reply:**
**Yes. It is applicable to those Notices of Instalment Scheme ["Forms CP205"] issued by the IRBM prior to the 2015 budget announcement where part of the tax instalment payment scheme for a year of assessment overlaps year 2015.**

ii. We would also suggest that the extension of the instalment payment date from the 10th day of the calendar month to the 15th day of the calendar month be extended to *potongan cukai bulanan* (PCB) payments under the Income Tax (Deduction From Remuneration) Rules 1994 [P.U. (A) 507/1994].

**IRBM reply:**
**Yes. It is extended to Monthly Tax Deduction (MTD) for January 2015 which is due on 15 February 2015. MTD for 2015 onwards, please refer P.U (A) 362/2014.**

## (7) Increase in penalty under Sections 112, 115 and 120 ITA

### Existing:

### Sections 112(1), 115(1) and 120(1) ITA

The penalty for failure to comply with the provisions of the ITA stated therein include being liable to a fine of no less than RM200 and not more than RM2,000.

### Proposed:

### Amended Sections 112(1), 115(1) and 120(1) ITA

Sections 112(1), 115(1) and 120(1) of the ITA are amended by substituting the words "two thousand" with the words "twenty thousand". The amendment is effective upon the coming into operation of the Finance (No. 2) Act 2014.

**Comments:**

The Institutes support the above proposal to increase the penalty from RM2,000 to RM20,000. We think that this proposal is timely.

**IRBM reply:**

**Your comment is appreciated.**

**(8) Selected Tax Incentives**

| | |
|---|---|
| **(8.1)** | **Incentives for Industries Area Management Operator (Paragraph 48 of 2015 Budget Speech)** |
| **(8.2)** | **Additional Capital Allowance for Automation in Manufacturing (Paragraph 49 of 2015 Budget Speech)** |
| **(8.3)** | **High quality and focused investment (Paragraph 50 of 2015 Budget Speech)** |
| **(8.4)** | **Establishment of Principal Hub (Paragraph 54 of 2015 Budget Speech)** |
| **(8.5)** | **Extension of Tax Incentive for Medical Tourism (Appendix 3 of 2015 Budget Speech)** |
| **(8.6)** | **Tax Incentive for Training– Further Deduction on Training Expenses Incurred for Employees (Appendix 6 of 2015 Budget Speech)** |

**Comments:**

i. We would like to request for clarification on the mechanism and conditions of the above tax incentives.

**IRBM reply:**

**All the above are still under discussion among policy makers.**

ii. We would appreciate it if the authorities could indicate when the Order for the above tax incentives will be gazetted.

**IRBM reply:**

**IRBM is not in position to confirm the exact date since the process of the gazette involves several ministries.**

iii. In respect of item 8.1 above, we would like to request for clarification on the effective date of the tax incentives.

iv. In respect of item 8.2 above, will the mechanism and conditions for claiming the additional capital allowance be similar to the conditions applicable for initial allowance and annual allowance on plant and machinery prevailing in Schedule 3 of the ITA?

v. In respect of item 8.3 above, we would like to request for clarification on the type of specialised incentive package that is to be given.

vi. In respect of item 8.4 above:

- Currently, there are incentives for operational headquarters (OHQ), regional development centre (RDC) and international procurement centre (IPC). We would like to request for clarification on whether these incentives will be given for the Principal Hubs.
- We would like to request for clarification on the types of customised incentives that is given.

vii. In respect of item 8.6 above:

- We would like to request for further clarification on the various industry recognised certifications and professional qualifications which would be eligible.
- As many professional bodies do not allow their members to conduct professional practice through corporations, we propose that this incentive for training be extended to various non-corporate organisations (e.g. sole proprietorship, partnership, LLP) as well.
- The Institutes are of the view that the field of accounting includes taxation and as such the professional qualification to become a tax professional should also be included. We would like to request that this be clarified in the Order.
- In view of the shortage of tax professionals, we would like to request that CTIM's professional examination be recognised as one of the professional qualifications & CTIM be considered as the approving agency for tax training programmes.

**IRBM reply:**
**Items number iii – vii are still under discussion among policy makers.**

# B. Other Technical Matters

## (1) Gazetting of 2003 to 2014 Budget proposals

As of the 2015 Budget Commentary date, most of the 2003 to 2014 Budget proposals announced by the Honourable Finance Minister in previous Budget Speeches have been gazetted either by way of changes to the existing legislation or by issue of statutory orders with the exception of the following:

2003 Budget

- A wholly owned subsidiary company undertaking the consolidation of management of smallholdings or idle land to be exempted from service tax.

**IRBM reply:**
**This is not income tax issues.**

2003 Economic Stimulus Package

- Hypermarkets and direct selling companies that export locally produced goods will be given income tax exemption on statutory income equivalent to 20% of their increased export value.

**IRBM reply:**
**The draft Order has been submitted to MOF and a meeting was supposed to be held in Attorney General Chamber's Office but it was postponed. LHDNM has highlighted this matter to Legal Divison in MOF in February 2015.**

2008 Budget

- Recipients of the Export Excellence Award (Services) and Brand Excellence Award be given a 100% tax exemption on the value of increased exports.

**IRBM reply:**
**The draft Order has been submitted to MOF and the last discussion with MOF was on 7/12/2012. MOF is aware of these issues and will resolve soon.**

2009 Budget

- Pioneer status or investment tax allowance (ITA) incentives be extended to hotel operators undertaking new investments in "4" and "5"-star hotels in Sabah and Sarawak.

**IRBM reply:**
**No specific Orders to be gazetted.**

**New investments in "4" and "5"-star hotels in Sabah and Sarawak is a promoted activity under (Promoted Activities and Promoted Products) Order 2012. [P.U.(A)62/2012]**

2012 Budget

- Pioneer status (with income tax exemption of 70% of statutory income for 5 years) or ITA incentive (ITA of 60% on the qualifying capital expenditure incurred within 5 years and to be set-off against 70% of the statutory income for each year of assessment) be extended to investors undertaking new investments in “4” and “5”-star hotels in Peninsular Malaysia.

  **IRBM reply:**
  **No specific Orders to be gazetted.**

  **New investments in “4” and “5”-star hotels in Peninsular Malaysia is a promoted activity under (Promoted Activities and Promoted Products) Order 2012. [P.U.(A)62/2012]**

- Import duty and sales tax exemption on importation of educational equipment by profit oriented private schools and international schools.

  **IRBM reply:**
  **Not income tax issue.**

- Providers of industrial design services to be given pioneer status with income tax exemption of 70% of statutory income for 5 years.

  **IRBM reply:**
  **Industrial design services is a promoted activity under [P.U.(A)62/2012] effective 02/03/2012.**

- Income tax exemption of 100% of statutory income for 10 years for Tun Razak Exchange Marquee Status Companies.

  **IRBM reply:**
  **Policy maker decided to defer this incentive.**

2014 Budget

- The expenses incurred for GST related training in accounting and ICT be granted double deduction for years of assessment 2014 and 2015.

  **IRBM reply:**
  **Please refer P.U (A) 334/2014.**

- Expenses incurred by employers in training of employees and consultancy fees incurred in relation to implementation of flexible work arrangements be granted double deduction from 1 January 2014 to 31 December 2016.

  **IRBM reply:**

  **The draft Rules is with the Legal Division in MOF.**

- Tax deduction for secretarial fees up to RM5,000 and tax filing fees up to RM10,000 from year of assessment 2015.

  **IRBM reply:**
  **Please refer P.U (A) 336/2014.**

- Incentives in relation to the Green Lane Policy Programme be extended to applications received by the MOF on or before 31 December 2017.

  **IRBM reply:**

  **The draft Rules is with MOF and has been submitted to Attorney General Chamber's Office in January 2015.**

- Pioneer status or ITA for new four and five star hotels be extended to applications received by MIDA until 31 December 2016.

  **IRBM reply:**
  **New "4" and "5"-star hotels business is a promoted activity under (Promoted Activities and Promoted Products) Order 2012. [P.U.(A)62/2012]**

- ITA for purchase of green technology equipment and tax exemption on the use of green technology system and services be granted.

  **IRBM reply:**

  **The draft Order is with MOF and there are some technical issues to be resolved with Malaysian Green Technology Corporation.**

- Applications for research and development projects of bioeconomy which are viewed as viable and received from 1 January 2014 to 31 December 2018 by the Malaysian Biotechnology Corporation Sdn Bhd be granted tax deductions on acquisition of technology platform, exemption on import duty on R&D equipment, as well as special incentive to companies in respect of Centre of Excellence for R&D.

  **IRBM reply:**
  **The draft Rules is with MOF and at a stage to resolve technical issues with Malaysian Biotechnology Corporation Sdn Bhd.**

## (2) Other technical matters

## (3.1) Tax treatment of interest income under Section 4B ITA

The Institutes have highlighted in item 5 of the 2013 Joint Memorandum for Discussion for Issues Arising from 2013 Budget and Finance (No. 2) Bill 2012 dated 16 November 2012 in respect of the above subject matter and wish to follow-up with the IRB for a reply.

Briefly, it had been highlighted that the introduction of S.4B of the ITA would result in a mismatch, for example, in the case on the treatment of overdue interest on trade debt where the interest expense incurred in financing the trade debt cannot be offset against the overdue interest income arising from trade debt.

We welcome IRBM's prompt reply such that the correct tax computations can be carried out by businesses moving forward.

**IRBM reply:**

**This is a policy decision where interest income received by a person other than interest where subsection 24(5) applies, is treated as non business income.**

Professional bodies' response to IRBM's reply:
The professional bodies did not agree with IRBM's reply above. The overdue interest on trade debt should be treated as a business income because it arises from a business transaction i.e. the outstanding trade debt.

## (3.2) International Procurement Centre Company - Income Tax (Exemption) (No. 42) Order 2005

The Income Tax (Exemption)(No. 42) Order 2005 ("the Exemption Order") exempts an international procurement centre company ("IPC") from the payment of income tax in respect of the statutory income from its business for a period of ten years of assessment.

Under Paragraph 3(2) of the Exemption Order, the statutory income exempted as referred to above shall be on:

**(a) all income from the qualifying activities in respect of its direct export sales;**

**(b) a part of the income from the qualifying activities in relation to its drop shipment export sales to be determined in accordance with the following formula ……; and**

**(c) a part of the income from the qualifying activities in relation to its local sales to be determined in accordance with the following formula ……..**

Qualifying activities undertaken by an IPC is defined as activities undertaken by the said company in respect of procurement and sale of raw materials, components and finished products from related and unrelated companies to related and unrelated companies within or outside Malaysia.

In the course of carrying out "qualifying activities", an IPC will derive income from sales of raw materials, components and finished products and also interest income on overdue trade receivable from such sales.

The Exemption Order was made by the Minister of Finance in exercise of the powers conferred by S.127(3)(b) of the ITA which provides that :-

> *The Minister may by statutory order exempt any class of persons from all or any of the provisions of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.*

S.24(5) of the ITA has been amended with effect from YA 2013 whereby interest receivable by a person shall be treated as gross business income of the person if the debenture, mortgage or other source to which the interest relates forms part of the stock in trade of a business carried on by the person or if the interest is derived from a business of lending money and that business is one which is licensed under any written law. S.4B of the ITA further provides that interest received shall not be treated as business income other than interest where S.24(5) applies.

It appears from S.127(3)(b) that the exemption granted by an exemption order issued thereunder shall apply notwithstanding any other provisions of the ITA generally.

In view of the above, we would like to seek confirmation that the term "income from the qualifying activities" stated in the Exemption Order includes interest income on overdue trade receivables (with related and unrelated parties) which arose in the course of the qualifying activities of an IPC and that such interest income is exempted from tax pursuant to the Exemption Order notwithstanding the amendments made to S.24(5) and S.4B of the ITA.

**IRBM reply:**

**The interest income stated above is a non business income which falls under Section 4B of the ITA. Thus it is not exempted under Income Tax (Exemption) (No. 42) Order 2005.**

Professional bodies' response to IRBM's reply:
The professional bodies did not agree with IRBM's reply above. The term "income from the qualifying activities" stated in the Exemption Order should include interest income on overdue trade receivables (with related and unrelated parties) which arose in the course of the qualifying activities of an IPC and that such interest income should be exempted from tax pursuant to the Exemption Order notwithstanding the amendments made to S.24 (5) and S.4B of the ITA.

**(3) Extract of Joint MIA-MICPA Memorandum For Budget Consultation 2015 on income tax issues arising from GST implementation submitted to Fiscal & Economy Division of Ministry of Finance on 16 May 2014**

## MEMORANDUM FOR BUDGET CONSULTATION 2015

### A) FAIRNESS AND BROADER REVENUE BASE

#### 1. Goods and Services Tax (GST)

The Institutes appreciate the issuance of numerous GST draft guides for public comments so as to ensure transparency and clarity in the application of the GST provisions. The Institutes hope that any future proposed regulations or rules on GST will be made available for public consultation before they come into force. It is essential that the general public, in particular businesses and traders, are adequately informed about the features of the GST and the procedural requirements before the GST legislation is effective. This is necessary to ensure a full understanding and smooth implementation of GST.

a) Businesses are required to take all the steps necessary to be GST ready by 1 April 2015, the effective date for GST implementation. Under the GST legislation, businesses effectively act as the collector of GST for the Royal Malaysian Customs and are required to account for the net GST applicable to the Government.

***Proposal:***

The Institutes propose that expenses incurred by businesses from 2013 to 2015 to change or establish business processes, invoicing and accounting systems, etc in order to fulfill their obligations under the GST legislation be given a tax deduction. Such expenses include fees paid for advisory services on GST impact study, compliance and implementation and modification to information technology system etc.

**IRBM reply:**

**Your comment is appreciated.**

**It is a policy decision to determine the expenses allowed as deduction for the purpose of GST. Currently, the deduction allowed is only as per stated under P.U (A) 334/2014. Please refer to GST Division in MOF for any suggestion.**

b) Under the GST legislation, businesses will incur applicable GST input taxes on their purchase of goods and services. Some or all of such input taxes may not be recoverable by the businesses and thus become part of their cost of business (i.e.

revenue expense), for example, where the businesses are financial institutions, small enterprises whose annual turnovers do not exceed RM500,000 or enterprises involve in exempt supply of goods and services.

***Proposal:***

The Institutes propose that GST input taxes which cannot be claimed by businesses be given a deduction under the Income Tax Act.

**IRBM reply:**

**Noted. Proposal of tax treatment on GST input taxes has been forwarded to MOF for further action.**

# Memorandum on Additional Technical Issues

## Contents

1. Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [P.U. (A) 336/2014] gazetted on 17 December 2014

According to Paragraph 2(1)(a) and Paragraph 2(1)(b) of the P.U. (A) 336/2014, secretarial fee and tax filing fee are to be claimed when they are **incurred and paid** by the person **in the basis period for that year of assessment**.

### Request:

In view of the above, CTIM would like to seek clarification on the following in the case where the person was invoiced for secretarial fee and tax filing fee in year 1 but made payment in year 2:

**a) Does it mean that the person is not eligible for the deduction under PU(A) 336/2014 since the person did not incur and pay the secretarial fee and tax fee in the same year, i.e. year 1?**

**b) When the person makes payment in year 2, can the person claim the deduction by revising the tax return for year 1?**

As the Rules in P.U. (A) 336/2014 are made pursuant to paragraph 154(1)(b) read together with paragraph 33(1)(d) of the Income Tax Act 1967 (ITA), CTIM is of the view that the deduction should be allowed on an incurred basis pursuant to the provisions of Section 33(1) of the ITA.

**IRBM reply:**

**a) Yes the person is not eligible for the deduction in year 1 as he did not pay the secretarial fees in year 1.**

**b) No revision of tax return in year 1. Claim for deduction should be made in the year 2.**

**Incurred basis still applies in these Rules and that the deduction will be given to the person in year the fee is paid.**

2. Income Tax (Deduction for Cost relating to Training for Employees for the Implementation of Goods and Services Tax) Rules 2014 [P.U. (A) 334/2014] gazetted on 17 December 2014

According to Rule 2(1) of the P.U. (A) 334/2014, a deduction is allowed on expenditure incurred by the qualifying person in training its employees under an **accounting or information and communication technology training ("ICT") programme** which is conducted in Malaysia for the purposes of the implementation of the Goods and Services Act (GST) Act 2014 **as verified by the Director General of Customs and Excise**.

### Request:

CTIM would like to seek clarification on the following:

a) What is considered to be an "accounting or information and communication technology training programme"? Training programmes conducted in the implementation of GST generally cover the mechanics of GST, the law, specific rules, regulations and the application of the law to specific businesses; and not merely accounting (i.e. double entries) for GST transactions or ICT. CTIM is of the view that the deduction provided under PU(A) 334/2014 should be given to costs incurred in training employees in the implementation of GST and should not be restricted to accounting or ICT training programmes.

b) The PU Order seems to suggest that the training programme is to be verified by the Director General of Customs and Excise. What is the process of obtaining such verification?

c) Would LHDNM / MOF/ RMCD be issuing any guidelines in relation to P.U. (A) 334/2014, in particular to clarify on the types of qualifying training programme as well as the process of verification of the training programme by the Director General of Customs and Excise?

d) Would any directly related incidental expenditure in relation to the training programme (such as food and drink) also qualify for the additional deduction?

**IRBM reply:**

**a) It is a policy decision to limit the qualifying training programme on accounting and ICT training program.**

**b) Please refer to GST Division in MOF for the verification process.**

**c) MOF/RMCD is responsible in issuing guidelines in relation to GST training programme.**

**d) Incidental expenditure such as food and drink would qualify for the additional deduction if it is charged as parts of training cost.**

## 3. Income Tax (Deduction for Expenditure in relation to Minimum Wages) Rules 2014 [P.U.(A) 206/2014] gazetted on 14 July 2014

We refer to the Income Tax (Deduction for Expenditure in relation to Minimum Wages) Rules 2014 [P.U.(A) 206/2014], which was gazetted on 14 July 2014. The Rules apply in determining the adjusted income of a qualifying small and medium enterprise (SME), co-operative society or society resident in Malaysia (qualifying person) by providing a deduction between the months of January 2014 until December 2014 on the difference between the minimum wage paid by the qualifying person to his employee in January 2014 and the wages paid to the same employee for the month of December 2013 (incremental amount).

### Request:

CTIM would like to seek clarification on Rule 4(b) that states that a qualifying employee refers to:

*"an employee whose contract of service with a qualifying person commences prior to 1 January 2014 and the employee works for the qualifying person between the period of 1 January 2014 until 31 December 2014"*

We seek your confirmation that the above condition does not literally mean that the employee must be in employment for the entire 12 month duration but simply means that the deduction on the incremental amount is made for the months the employee is employed between the period of 1 January 2014 and 31 December 2014.

To illustrate (actual scenario 1):

Company A, a qualifying SME closes its accounts on 31 March each year.

Company A has 3 qualifying employees who were remunerated at RM700 in December 2013 and as from 1 January 2014, in compliance with the Minimum Wage Order 2012, are remunerated at RM900.

For YA 2014 (basis period 1 April 2013 – 31 March 2014), Company A submits the year of assessment (YA) tax return as required by 31 October 2014.

Tax treatment:

Even though Company A does not know at the point of filing the tax return whether these 3 qualifying employees will continue to remain with Company A until 31 December 2014, Company A is entitled to claim a deduction of RM1,800 [(RM900-700) x 3 (employees) x 3 months (January – March)] in the year of assessment 2014 tax return filed. This is because P.U.(A) 206/2014 is satisfied as the employees were indeed employed by the company in 2014. Company A is rightfully claiming the incremental amount for the relevant months the qualifying employees are employed during the period of 1 January 2014 and 31 December 2014.

To illustrate (actual scenario 2):

Same facts as in Scenario 1. Employee No. 3 however resigns in March 2014.

Tax treatment (Scenario 2):

Company A is entitled to claim a deduction of RM1,600 [(RM900-700) x 2 employees x 3 month (January – March)) + (RM900-RM700) x 1 employee x 2 months (January – February)] in the year of assessment 2014.

**IRBM reply:**

**IRBM confirmed that the tax treatment for minimum wage in scenario 1 and 2 are in order.**

## 4. Income Tax (Asset-Backed Securitization) Regulations 2014 [P.U.(A)170/2014] - Error in Retrospective Date ?

The Income Tax (Asset-Backed Securitization) Regulations 2014 [P.U.(A)170/2014], ("the Regulations") gazetted on 24 June 2014 states that the Regulations are deemed to come into operation from the year of assessment 2013. This is contrary to the earlier drafts of the Regulations prepared by LHDNM / MOF which stated that the Regulations would come into effect from the year of assessment 2003.

### Request:

**a) Please clarify what is the intended effective date of P.U.(A) 170/2014.**

**b) P.U.(A) 170/2014 states that any income of the special purpose vehicle (SPV) from all sources shall be deemed as business source and this applies to SPV authorized by the Securities Commission (SC) on or after 1 January 2013. This would mean that interest income of a SPV authorized by the SC before 1 January 2013 will be treated as passive source pursuant to Section 4B of the ITA. As Section 4B is effective from the year of assessment 2013, we would request that the IRB allows interest income of these SPVs to be treated as business income from the year of assessment 2013.**

**IRBM reply:**

**The effective date of P.U.(A) 170/2014 is from the year of assessment 2013.**

**Yes. IRBM confirmed that interest income of these SPVs is treated as business income from the year of assessment 2013.**

**5. Deductions for promotion of exports (Public Ruling 1/2013) dated 4 February 2013**

Paragraph 6.2.1 (e) [Negotiating or concluding contracts (Note 2)] of the Public Ruling 1/2013 indicates that

"*Travel fare incurred by a representative of the company to a country outside Malaysia for the purpose of negotiating or concluding contracts for sales of goods or agricultural produce on behalf of the company qualifies for deduction.*

*The expenses allowed as further deduction are:*

*(i) Return air fare for a representative of the company (economy class).*

*(ii) Ground transportation (overseas), and*

*(iii) Hotel accommodation and sustenance. Actual expenses allowed are subject to a maximum of RM200 per day. With effect from year of assessment 2002, the amount has been increased to -*

*Hotel - a maximum of RM300 per day, and*

*Sustenance - a maximum of RM150 per day.*

*Note 2*

*Expenses can be claimed only for representatives of the company who carry out negotiations or signed contracts directly with foreign customers for products to be sold to them. Meetings and discussions with agents or distributors abroad in cooperation to expand markets in the country are not eligible for this double deduction.* "

However, Paragraph 4.2(e) of Schedule to Promotion of Investments Act 1986 stipulates that

"4(2) *The outgoings and expenses referred to in paragraph (1) are–*

……..

(e) *expenses by way of fares in respect of travel to a country outside Malaysia by a representative of the company, being travel necessarily undertaken for the purpose of negotiating or concluding contracts for sales of goods or agricultural produce on behalf of the company or for the purpose of participating in trade fairs or trade or industrial exhibitions approved by the Minister, and actual expenses, subject to a maximum of three hundred ringgit per day, for accommodation and a maximum of one hundred and fifty ringgit per day for sustenance for the whole of the period commencing with the representative's departure from Malaysia and ending with his return to Malaysia;"*

It is clear that the law does not restrict the tax deduction to expenses incurred on negotiation trips which lead to sales or trips to conclude sales. It is applicable to expenses incurred on all negotiation trips and trips for the participation in trade fairs or trade exhibitions.

**Request:**

In LHDNM's tax audit practice, such expenses claimed for double deduction are added back and subjected to penalty, if the taxpayer cannot prove that the negotiation trips incurred can subsequently generate sales.

In some instances, even though the negotiation trips lead to sales, the LHDNM will only allow trips for the signing of contracts.

In light of the above, LHDNM's tax audit practice is not in line with the law.

CTIM would like to seek LHDNM's clarification on the above matter.

**IRBM reply:**

**Negotiation means final stage of discussion on the product, quantity and price to offer to potential customer which subsequently may or may not generate sale.**

Professional bodies' response to IRBM's reply:

The professional bodies did not agree with IRBM's reply above. The phrase "final stage of" should be omitted from the definition of "negotiation" above. The law does not restrict negotiation to the final stage of discussion. As long as the discussion relates to negotiating the contract, it is part and parcel of the negotiation process.

Lampiran 3

| No. | Summary of Issues | Remark/ Feedback |
|---|---|---|
| | **MALAYSIAN INSTITUTE OF ACCOUNTANT (MIA)** | |
| 1. | Income tax (Deduction for Cost Relating to Training for Employees for the Implementation of Goods and Services Tax) Rules 2014 [ P.U (A) 334/2014 | |
| | a) What is the meaning of "verified' by the Director General of Customs and Excise? Are the Rules applicable for a seminar conducted by The Royal Malaysian Customs Department (RMCD) or jointly by the RMCD? In additional, does the seminar conducted by an approved GST Tax Agent also need to be verified by the RMCD. | **All training programme has to have verification from RMCD.** |
| | b) Will any detailed application guidelines and procedures be issued to explain the process to be followed? If yes, when will the guidelines be expected to release? | **Please refer Memorandum Additional Technical Issued Item No.2** |
| | c) Since the Rules were only gazetted on 10 December 2014, can the qualifying person be eligible for double deduction for the year of assessment 2014 if the expenditure incurred on the training programme has yet to be verified by the RMCD? If yes, would the training programme be allowed to be verified retrospectively? | **Please refer RMCD for confirmation.** |
| | d) In additional, the last day for registration was 31 December 2014 and many businesses have sent their employees for GST training prior to this date. As such, will such cost be eligible for the double deduction for the Year of Assessment 2014? | **Please refer RMCD for confirmation** |
| 2. | **CHARTERED SECRETARIES MALAYSIA (MAICSA)** | |
| | For Year of Assessment 2015 onwards, whether it is necessary to file income tax return for organisation that was granted approval under Sub-Section 44(6) of the Income Tax Act 1967 as all income including dividend income received by such organisation are exempted from tax if they are received after 1.1.2014. | **Subject to Section 77A, every company shall for each year of assessment furnish a return to the DG. There is no provision stated in the act to exempt any company from complying to this requirement. Thus every organization which has been granted approval under subsection 44(6) of the ITA must file ITRF.** |