MINUTES OF DIALOGUE FOR POST 2010 BUDGET ISSUES

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INLAND REVENUE BOARD OF MALAYSIA

Contents

1. Knowledge workers in Iskandar Malaysia (IM) [Schedule 1, Part XIV of the ITA]

The 2010 Budget proposed that tax shall be charged on the income of an individual who is a resident *knowledge worker* in respect of the specified qualifying activities (namely, green technology, educational services, creative industries, financial advisory and consulting services, logistic services, biotechnology, healthcare services and tourism) in a specified region at the rate of 15% of his chargeable income.

It was indicated that knowledge workers who apply and commence employment in Iskandar Malaysia (IM) between 24 October 2009 and 31 December 2015, will be eligible for this incentive, which is applicable, indefinitely, to income derived from the Year of Assessment (YA) 2010 and subsequent years.

(a) The Institutes would like to seek clarification on the following:

(i) What is the definition of a "knowledge worker"?
(ii) What is the scope of each of the items under "qualifying activities"?

Answer by IRBM:

The definition of "knowledge worker " and "qualifying activities" are to be determined by the Minister via the issuance of Income Tax Rules. The application guidelines will be issued by Iskandar Region Development Authority (IRDA).

(iii) Whether the word 'resident' refers to "residence status for tax purposes" under the Income Tax Act of 1967 (as amended), or the ordinary dictionary meaning of "person residing in a specific area". This is because while Appendix 17 of the Budget refers to "knowledge worker residing in Iskandar Malaysia", the proposed Part XIV refers to "individual who is a resident and knowledge worker".

If it is the latter (i.e. a person staying in the IM), what documentary evidence is required to substantiate the claim that the said individual resided in the area?

Answer by IRBM:

The word 'resident' in the Bill was amended to 'residing' at the Committee Stage. The employer will determine and confirm that the person is residing in a specified region irrespective of whether he is resident or non-resident.

The documentary evidence is:

(a) first year - an approval letter from the Minister through IRDA;

(b) subsequent years - an annual statutory declaration made by employee and confirmed by the employer that he is a knowledge worker and resides in a specified region. The annual statutory declaration must be submitted to IRDA and IRDA will then issue an acknowledgement letter to the employee.

Copies of the approval and acknowledgement letters should be kept by both the employer and employee for audit purpose. IRBM will confirm with IRDA if there is any doubt on the status of the employee.

Under Self Assessment System, an employee need not submit any documentary evidence at the time of submission of his return form.

(iv) Should the said individual reside in IM for a period of less than twelve months in the basis period for a year of assessment, would the income be pro-rated based on the number of days the individual resided in IM in relation to the total number of days in the relevant basis year for the year of assessment?

Answer by IRBM:

The income of the said individual will be pro-rated based on the number of days the individual resided in IM in relation to the total number of days in the relevant basis year for the year of assessment .

(v) Would the authorities consider an option for qualifying individuals to opt to be taxed under scale rates instead of at 15%?

Answer by IRBM:

Qualifying individuals can opt to be taxed at 15% by indicating the option in the return form. Otherwise, the individuals will be taxed at scale rates.

(vi) In the case of a combined assessment, where the spouse is not residing in IM, what rate should be used?

Answer by IRBM:

In the case of combined assessment, income of the spouse not residing in IM will be taxed at scale rates. A formula for the apportionment of chargeable income will be provided in the Income Tax Rules.

(b) The Institutes would like to know when would the Guidelines be available on various matters (including *schedular tax deduction* requirements, etc) relating to the knowledge worker.

Answer by IRBM:

The interpretation of knowledge worker, qualifying activity and specified region will be provided in the Income Tax Rules. Guidelines on procedure of application will be issued by IRDA. The guidelines will only be issued after the Rules is gazetted.

In relation to monthly tax deduction, the existing S*chedular Tax Deduction (*STD) table issued by the IRBM applies.

2. Reduction of personal income tax rates and increase in personal relief

The above amendments have an impact on payroll. The Institutes would like to know when the revised Schedular Tax Deduction (STD) tables will be available, as the payroll software would need to be reconfigured.

Answer by IRBM:

The revised Schedular Tax Deduction was gazetted on 30 December 2009.

3. Relief on broadband subscription fees

It is proposed that resident individual taxpayers be given relief on broadband subscription fees up to RM500 per year.

The Institutes would like to clarify the scope of the incentive, i.e. whether it covers all broadband services offered by the various service providers besides Streamyx, Celcom, Maxis, etc., irrespective of the mode of services being provided.

Answer by IRBM:

Yes, the IRBM confirmed that the scope of the incentive covers all broadband services offered by the various service providers.

In the case of prepaid broadband services, the deduction can be given if the service is registered under the name of the taxpayer and broadband subscription statement is issued by the service provider as a proof.

The taxpayer has to keep both the bill and the payment receipt as a proof. However the date of the bill will be taken for deduction purpose for a year of assessment.

(Note: MOF will confirm whether 'dial-up' services qualify for the deduction).

The Institutes would like to confirm that an employee can still claim relief on broadband subscription fees that have already been reimbursed by the employer.

Answer by IRBM:

IRBM confirmed that an employee is not eligible to claim relief on broadband subscription fees if it is reimbursed by the employer. The amount reimbursed by the employer is a perquisite to the employee which is tax exempt under P.U(A) 152/2009. However, if the employee subscribes another broadband services which is not subsidised by employer, he is entitled to that relief.

4. Codifying the obligations of employers

It is proposed that Section 83(1) be amended to codify the information required in the returns to be furnished by the employer.

The Institutes have annually been urging the authorities to simplify the employer's returns in order to improve efficiency in the tax administration. It has been a tedious task for employers in completing the returns, especially with regard to the 2009 Budget changes relating to the concessions for various allowances to employees. It has increased the costs of compliance. In particular, the Institutes fail to understand why employers are required to provide the details of the exempt income which generate no revenue to the Government, yet it takes up a lot of the employer's time and resources.

By codifying the information required, it will be even more difficult for the authorities to consider suggestions offered for improvement in the

employer's return. The Institutes would like the authorities to consider simplifying the Employer's Return Form E and EA/EC, and remove the need to show details of exempt income received by the employees The Institutes hope that the authorities would continue to collaborate with the profession bodies on such matters.

Answer by IRBM:

Section 83 is amended effective from 2009 with the object of expediting the process of general issuance of form E as it need not be gazetted as in previous years. With the amendment, the employer has ample time to complete and submit form E as the due date for submission has been fixed on 31 March every year.

However, format of form E 2009 (including EA & EC) is the same as form E 2008. Employer is supposed to be ready with this format after relaxation has been given in 2008 when the new format of the form was introduced.

Information in form E is required:

(i) for selection of audit cases

(ii) as a basis for assessment based on best judgment if employee does not submit his income tax return.

(iii) for preparation towards pre-filling of electronic tax return in the coming years.

5. Review of co-operative income tax rate

Clause 14(b) of Finance (No. 2) Bill 2009 seeks to amend Part IV of Schedule I, ITA to align with the maximum tax rate of 26%.
It is noted that, the wording of the amendment is not quite complete. There is also a typographical error in Clause 14(b)(ii) where the figure appearing as "5000,000" should be "500,000".

Answer by IRBM:

Yes, there is a typographical error in the principal Act itself and the IRBM takes note as to whether to amend the principal Act.

6. Enhancing tax incentives for healthcare service providers

The *promotion of export of services* incentive was first mooted by the Government in 1998. The Income Tax (Exemption)(No.2) Order 2001 lists 13 qualifying services eligible for the tax incentive. The qualifying services were extended to 16 via Income Tax (Exemption) (No.9) Order 2002. However, until

today, there are no guidelines or definitions of what constitute such qualifying services.

In connection with this, taxpayers who genuinely think they qualify for such tax incentives, and make claims based on such understanding, risk the claims being rejected by the authorities, with a consequential penalty imposition.

The Institutes would like to seek clarification with regard to the following:

(i) Would *healthcare services* include "slimming centre" services and traditional/ complementary medical services, such as "acupuncture" services?

Answer by IRBM:

IRBM clarifies that healthcare services refers to services provided by hospitals and clinics and does not include "slimming centre" services or traditional/ complementary medical services.

(ii) What documentation is required to substantiate the claim?

Answer by IRBM:

The service provider has to keep a separate list of his qualifying foreign clients (patients). Types of document required to substantiate the claim will be provided in the guidelines.

(iii) In making a claim, how would the hospital authorities prove that a patient does not have a work permit? What documentation is required?

Answer by IRBM:

Details will be provided in the guidelines.

The Institutes are of the view that the absence of clarity in the last 9 years has rendered the incentive ineffective. It is hoped that the implementation itself does not go against the spirit and intention behind the introduction of the tax incentive. The Institutes urge the authorities to issue clear guidelines and definitions of all qualifying services so that taxpayers may avoid being wrongly penalised for making such claims. In this respect, the Exemption Order to be issued should include a definition of the qualifying service so that clarity is there.

Answer by IRBM:

The IRBM has taken note of the issue and will refer the matter to MOF for determining who are the healthcare service providers. Guidelines will be issued.

In addition, in the absence of clear guidelines, the IRB should accept the computation as submitted by the taxpayer so long as it is reasonable to take such a position and NO penalty should be imposed by the IRB where there is a dispute.

Answer by IRBM:

IRBM will issue guidelines on this incentive.

7. Expediting investments for selected industries

It was proposed that application for the incentives, introduced in the 2003 Budget, by

(i) An investor company and its subsidiary undertaking forest plantation activities,
(ii) A person involved in the consolidation of the management of smallholdings and idle land, and
(iii) A strategic knowledge based company will be available up to 31 December 2011.

The Institutes would like to know when the detailed application guidelines and procedures, and the relevant Orders will be issued. Without such details, it is of no surprise that taxpayers did not apply for the above incentives.

Answer by IRBM:

No.	***Types of incentive***	***Status***
1	***An investor company and its subsidiary undertaking forest plantation activities.***	• ***Income Tax Exemption Order P.U.(A) 473/2009 and P.U.(A) 474/2009 and Income Tax Rules P.U.(A) 475/2009 have been gazetted on 23 November 2009.*** • ***The Guidelines on application have been issued by the Ministry of Plantation Industries and Commodities.***

2	***A person involved in the consolidation of the management of smallholdings and idle land.***	• ***Income Tax Exemption Order P.U. (A) 415/2009 and Income Tax Rules P.U.(A) 417/2009 have been gazetted on 25 November 2009.*** • ***The Ministry of Plantation Industries and Commodities has confirmed that the guidelines on application will be issued and targeted by June 2010.*** • ***Application for the incentive should be made to the Ministry of Plantation Industries and Commodities.***
3	***A strategic knowledge based company will be available up to 31 December 2011.***	• ***Income Tax Rules P.U.(A) 419/2009 has been gazetted on 25 November 2009.*** • ***This deduction is only applicable to a company which undertakes strategic knowledge based activity under PIA 1986. The Malaysian Industrial Development Authority (MIDA) has confirmed that instead of issuing guidelines, MIDA has issued a description of the characteristics of a company with Strategic Knowledge-based Status which is available in the website of MIDA.***

If the guidelines are issued in 2010, will taxpayers be able to make a claim for the above incentives retrospectively?

Answer by IRBM:

Yes, the taxpayers can apply for the incentives retrospectively as long as the qualifying activities are undertaken within the specified period as provided in the Income Tax Rules/Orders.

8. Incentives for small and medium enterprises to register patents and trademarks

It is proposed that expenses incurred on the registration of patents and trademarks by small and medium enterprises (SMEs) in Malaysia be allowed a deduction against the business income. The registration expenses include fees or payments made to agents for the application for registration under the Patents Act 1983 and the Trade Marks Act, 1967.
The definition of an SME for the tax incentive purposes above are as follows:

(a) Companies as defined under Paragraph 2A and 2B, Schedule 1, Income Tax Act 1967.
- Companies resident in Malaysia with a paid up capital of ordinary shares of RM2.5 million or less at the beginning of the basis period of a year of assessment whereby such company does not control or is not controlled by another company which has a paid up capital of more than RM2.5 million in respect of ordinary shares.

(b) Manufacturing Industries, Manufacturing Related Services Industries and Agro-Based Industries

- Enterprises with full-time employees not exceeding 150 persons, or with annual sales income not exceeding RM25 million.

(c) Services Industries, Primary Agriculture Industries and Information & Communication Technology (ICT Industries)

- Enterprises with full time employees not exceeding 50 persons, or with annual sales turnover not exceeding RM5million.

The Institutes would like to seek clarification with regard to eligibility for the deduction:

(i) whether the applicant should fulfill conditions "a" and "b" or "a" and "c", or any one of these, i.e. "a" or "b" or "c"?

Answer by IRBM:

IRBM clarified that the applicant should fulfill condition either "a" or "b" or "c"under the current Income Tax (Deduction for Expenditure on Registration of Patent and Trade Mark)Rules 2009 [P.U.(A) No. 418/2009].

However, the MOF has decided to review the conditions for qualifying person under these Rules where for a company which falls under "a", it has to fulfill condition either "b" or "c". The relevant

Rules will be amended accordingly and will be effective retrospectively.

(ii) when can the incentive be claimed?

The incentive can be claimed in the year of assessment the certificate is issued.

Examples:

(i) For application made before YA 2010 but the certificate is issued within YA 2010 and 2014, the applicant is eligible for the incentive.

(ii) For application made within YA 2010 and 2014 but the certificate is issued after YA 2014, the applicant is not eligible for the incentive.

9. Tax incentives for buildings awarded Green Building Index (GBI) certificate

(a) It is proposed that owners of buildings awarded the GBI certificate be given tax exemption equivalent to 100% of the additional capital expenditure incurred to obtain the GBI certificate, and this can be set-off against 100% of the statutory income for each YA.

(b) It is proposed that buyers of buildings and residential properties, which have been awarded GBI certificate, bought from real property developers be given stamp duty exemption on instruments of transfer of ownership of such buildings.

The Institutes would like to seek confirmation that the additional capital expenditure incurred to obtain the GBI certificate qualifies for industrial building allowance on the building, as well as the 100% deduction against the statutory income and taxpayers can claim both of these.

Answer by IRBM:

Yes, the tax payer is entitled to claim IBA under Schedule 3 of ITA 1967 and the 100% deduction on the additional capital expenditure incurred to obtain the GBI certificate.

The Institutes would also like to request the IRB to advise when the gazettes/guidelines on this incentive will be issued, as well as whether there will be various examples/scenarios in the guidelines to cover various possible situations. Would additional capital expenditure include capital expenditure incurred to obtain the GBI certificate?

Answer by IRBM:

The Exemption Order P.U.(A) 414/2009 has been issued on 25 November 2009. Guidelines relating to taxation matters will be issued soon by IRBM. Guidelines relating to application will also be issued soon by Ministry of Energy, Green Technology and Water. Both guidelines will be available in the respective website.

Expenditures other than those provided in the Exemption Order will not be included in additional capital expenditure.

Some of the pertinent issues are:

(i) Does the tax exemption give rise to the exempt income account from which tax exempt dividends can be declared?

Answer by IRBM:

Yes. There will be an exempt income account from which tax exempt dividends can be declared Income Tax (Exemption) (No.8) Order 2009 [P.U.(A) 414/2009].

(ii) Whether the unutilised exemption is allowed to be carried forward to set-off statutory income from all sources?

Answer by IRBM:

No. The unutilized amount is allowed to be carried forward to set-off from statutory income of the same business source only. It is clearly stated in paragraph 3 of Income Tax (Exemption) (No.8) Order 2009 [P.U.(A) 414/2009].

Note:if the building is used by more than one business, the amount of additional capital expenditure incurred for the GBI certificate and IBA are apportioned by floor area or any reasonable basis.

For purchased buildings, it is obvious that the additional costs incurred by the developers would have been factored into the selling price of the building. Hence, the purchaser has actually "financed" the additional capital expenditure incurred in incorporating the environment-friendly features.

The Institutes are of the view that to promote the large scale development of environment-friendly buildings, it is more effective if the purchaser of

the building is allowed a deduction on the costs incurred in obtaining the GBI certificate.

Answer by IRBM:

It is a policy decision.

10. Partial exemption of stamp duty on purchasing a building awarded GBI certificate.

It is proposed that buyers of buildings and residential properties (awarded the GBI certificates), from real property developers be given stamp duty exemption on instruments of transfer of ownership of such buildings in respect of additional cost incurred to obtain the GBI certificates.

Based on information from the GBI website, the assessment process involves an assessment at the design stage leading to the award of the provisional GBI rating. The final award is given one year after the building is first occupied.
Under such circumstances,

(i) How would the owner of the building be able obtain the stamp duty exemption if the GBI certificate is given one year later from the date of occupation?

Answer by IRBM:

The IRBM will refund the stamp duty which relates to the capital expenditure stated in the GBI certificate within one month upon submission of that certificate.

(ii) What mechanism is in place to accord the appropriate amount of stamp duty exemption?

Answer by IRBM:

The stamp duty exemption will be calculated based on the amount of additional capital expenditure stated in the GBI certificate.

Method of calculation:

Step 1

Determine amount of stamp duty payable on the green building

Purchase price of green building from developer .

Example:

Purchase price of shop house from developer	***RM200,000***
Duty charged according to Item 32(a)(Conveyance)	
First RM100,000 @ 1%	***RM 1,000***
Balance RM100,000 @ 2%	***RM 2,000***
Duty charged	***RM 3,000***

Step 2

Determine amount of Stamp Duty upon submission of GBI certificate.

Duty on (purchase price from developer – Amount stated in GBI certificate).

Example:

Purchase price of shop house from developer	***RM200,000***
Less:	
Cost of capital expenditure as stated in GBI certificate	***RM 60,000***
Cost of shop house chargeable to stamp duty	***RM140,000***
Duty charged according to Item 32(a)(Conveyance)	
First RM100,000 @ 1%	***RM 1,000***
Balance RM40,000 @ 2%	***RM 800***
Duty charged	***RM 1,800***

Step 3

Amount of stamp duty exempted (step 1 - step 2).

Example:

Duty charged as per step 1	***RM 3,000***
Duty charged as per step 2	***RM 1,800***
Duty exempted	***RM 1,200***

Instructions will be issued to all stamp duty offices and district offices on the mechanism to compute the amount of stamp duty exemption

(iii) What are the types of costs that qualify for the stamp duty exemption? Do consultancy fees incurred in obtaining the GBI certificate qualify for stamp duty exemption?

Answer by IRBM:

The types of cost that qualify for the stamp duty exemption are additional expenditure incurred in relation to construction of a building, alteration, renovation, extension or improvement of an existing building as stated in the GBI certificate as certified by the Board of Architect Malaysia. Consultancy fees is not part of the qualifying cost of Green Building.

11. Service tax on credit cards and charge cards

The Institutes would like to seek clarification on the scope of charge cards.

Currently some credit cards are issued free for life, or for a span of 3-5 years. How would the service tax be levied, i.e. annually, upon renewal or on the expiry of each calendar year?

Answer by MOF:

Briefly, service tax will be imposed on the date a credit card or a charge card is issued or renewed or on completion of twelve months after issuance or renewal of the card. Below are three methods by which service tax will be imposed:

Method 1: A new card is issued for a validity period of one year.

Service tax will be imposed on the date the card is issued.

Example:

A credit card is issued on 10 January 2010. The issuer of the card has to impose service tax in the bill (monthly statement) which covers 10 January 2010.

Method 2: A new card is issued and is valid for a few years.

Service tax has to be imposed on the date the card is issued and on renewal date for each subsequent year.

Example:

A credit card is issued on 8 March 2010 and the validity period is 5 years. The issuer of the card has to impose service tax in the bill (monthly statement) which covers 8 March 2010, 8 March 2011, 8 March 2012, 8 March 2013 and 8 March 2014.

Method 3: A credit card is issued before 1 January 2010 and is valid for a few years.

Service tax has to be imposed on renewal date each year beginning from year 2010.

Example:

A credit card is issued on 18 May 2008 and the validity period is 5 years. The issuer of the card has to impose service tax in the bill (monthly statement) which covers 18 May 2010, 18 May 2011 and 18 May 2012.

Service tax will be charged irrespective of whether or not annual fee is waived by the issuer. It also chargeable to supplementary card.

Service tax is not applicable to debit card.

Guidelines will be made available in the MOF website.

12. Petroleum income tax

12.1 Self-amendment of tax return

In line with the introduction of self-assessment, Clause 24 of Finance (No.2) Bill 2009 proposes the introduction of a new Section 30B to the Petroleum (Income Tax) Act 1967 (PITA) to allow petroleum companies to make amendment within 6 months after the due date of filing the original return. However, a 10% penalty will be imposed on the additional tax payable as a result of the self-amendment.

The Institutes are of the view that the imposition of 10% penalty on additional tax payable is inconsistent with the spirit of encouraging self-compliance and should be removed. Taxpayers should be encouraged to voluntarily make amendment within 6 months rather than face being penalised. In this respect, the Institutes propose that the IRB allow self-amendment within 6 months from the date of submission of returns without imposition of penalty. The concession is to be allowed only once.

Answer by IRBM:

The issue was raised in a discussion held between E&P (Exploration & Production) companies/MOF/LHDN on 3 December 2009. The issue will be addressed in the guidelines.

12.2. Estimate of tax payable and payment by instalments

In line with the implementation of the *current year* basis of assessment, Clause 31 of Finance (No.2) Bill 2009 seeks to introduce a new Section 49A to PITA requiring petroleum companies to furnish the estimated tax payable (ETP) not later than 30 days before the beginning of the basis period for that year of assessment.

The ETP shall not be lower than the tax payable in the immediately preceding year of assessment. Further, if the ETP furnished is lower by more than 30% of the actual tax payable for that year of assessment, a penalty will be imposed on the excess.

Due to the inherent volatility of oil prices, it is envisaged that the Production Sharing Contractor (PSC) companies would face practical difficulties in furnishing the ETP, although there are provisions for revision in the sixth and ninth months of the basis period for a year of assessment. As such, the Institutes propose that such companies be allowed to furnish a third revision of ETP in the 12th month of the basis period for a year of assessment, to allow a close estimate to be submitted when the accounts are being finalised to avoid any penalties. Besides, the restriction on *not less than 85% of prior year estimated tax payable* should be replaced with a more realistic method.

Answer by IRBM:

The issue was raised in a discussion held between E&P (Exploration & Production) companies/MOF/LHDN on 3 December 2009. The issue will be addressed in the guidelines.

13. Real property gains tax

The Real Property Gains Tax Act 1976 (Act 169) (RPGTA) was introduced to curb speculative activities in the property market. The Institutes are of the view that the intention of the RPGTA should not be compromised.

Traditionally, the revenue collected from RPGT has been insignificant and it is doubtful, with the increase in costs for RPGT administration and the decrease in the rate of tax that the reinstatement of RPGT will be cost effective in generating revenue.

If it is indeed the Government's intention to broaden the tax base, the Institutes suggest that the well tested RPGT system before 1 April 2007 be re-introduced in full, rather than the introduction of the new provisions which result in many issues detailed below.

13.1. RPGT on disposal by individuals after 5 years [Part 1, Schedule 5 to RPGTA]

The RPGTA was introduced to counter speculative activities in the real property market.

It was mentioned in Appendix 15 of the 2010 Budget Speech that the RPGTA is to curb speculative activities in the property market. The introduction of Real Property Gains Tax (Exemption) Order 2009 effectively taxes gains on all real property transactions at 5% flat rate, thereby going against the spirit of the Act to curb speculative activities.

Further, this change in policy may not be fair to those investors who entered the property market during the period 2007-2009. The Institutes are of the view that this would not augur well with the investors as it is a testament to the tendency of the Government flip-flopping in its policies.

The Institutes are of the opinion that disposal of properties held by individuals for more than 5 years is not speculative. Hence, the imposition of the proposed 5% tax on such disposals would be inequitable when compared to the pre-April 2007 position. It should also be noted that such individuals would not have benefited from the April 2007 waiver.

The Institutes are of the view that the intention of the RPGTA should not be compromised, and that the pre-April 2007 position, of 0% tax for disposals by individuals in the 6th year and thereafter, should be retained. As an alternative, for properties acquired before 24 October 2009 and held for more than 5 years before disposal, the authority should consider giving an exemption of RPGT on disposal.

Answer by IRBM:

The P.U.(A) 376/2009 has been replaced by P.U.(A) 486/2009 where the disposal of an asset by any person after 5 years from the date of acquisition is not subject to RPGT.

13.2. Interest excluded in RPGT computation

It was proposed in the Finance Bill that Interest paid on capital employed to acquire an asset will no longer be regarded as an incidental cost of acquisition or disposal of the asset. (Clause 54 of the Finance Bill (ref: subparagraph 6(1)(c) of Schedule 2 of RPGTA)

The Institutes take cognizance of the fact that the law has all this while allowed interest expended as part of the cost of the property. It is a fact that interest directly relates to the holding cost, and appreciation in value

of the real property. Therefore, the proposal for the exclusion of interest is not equitable.

Answer by IRBM:

It is a policy decision and the Institutes are advised to refer the matter to MOF if intend to pursue further.

13.3. Remittance of 2% of total consideration retained by the acquirer to the IRB.

The proposed Section 21B of the RPGTA stipulates that "where on a disposal to which Section 13 applies, the consideration consists of wholly or partly of money, the acquirer shall retain the whole of that money or a sum not exceeding 2% of total value of the consideration, whichever is the less (RPGTA Sec 21B amount) and he shall within sixty days after the date of such disposal pay that amount to the Director General of IRB (DGIR)."

(i) Administrative Issues.

It is understood that the acquirer will remit the relevant amount, and it will be advance payment of tax in the account of the disposer.

The Institutes would like know whether detailed Guidelines would be available with regard to this matter.

Answer by IRBM:

The guidelines were issued on 2 February 2010.

Situations which are anticipated include:

(a) In the event the disposer in the RPGT transaction has no Income Tax file, how soon will the number be allocated?

Answer by IRBM:

Reference number will be registered on the same day the disposer comes to IRBM branch to submit his return (CKHT 1) provided that the information required is complete.

(b) In instances where the vendor and acquirer have Income Tax files maintained in different branches, what is the appropriate filing procedure / process?

Answer by IRBM:

Please refer to the guidelines.

(ii) Refund of excess

With respect to the "withholding" and remittance of the *RPGTA Sec 21B amount,* it is the desire of all parties concerned that the RPGT transaction be finalised and the matter determined as quickly as possible. However, in practice, the determination of whether a transaction is subject to income tax or RPGT may take a long time.

In this respect, it is important that any refund should be made expeditiously. The IRB needs to provide detailed procedures and timeline on the "refund process".

Answer by IRBM:

Procedure and the time frame for refund are the same as that of income tax provided that the form and information submitted are complete and correct. The details can be obtained from the guidelines.

To reduce the administrative burden, the Institutes propose that the old provision of RPGTA be applied, i.e. both the acquirer and the purchaser need to file the RPGT returns within 30 days and the 5% *retention sum* is to be withheld by the acquirer's lawyers until the disposer has obtained the RPGT clearance/notice of assessment from the IRB.

Answer by IRBM:

The proposed amendment does not allow the lawyers to withhold the 5% retention sum.

Both the disposer and the authority will not be worse off if the IRB is efficient enough to process the RPGT cases within 30 days. In both cases, the IRB will receive the RPGT due within 60 days.

Answer by IRBM:

It is an effective collection mechanism in ensuring the payment of RPGT.

If the above proposals are not agreeable to the authorities, the Institutes would like to know the treatments under following circumstances:

(i) where the disposal results in a *no gain no loss* position as outlined in Schedule 2, or
(ii) where the disposal is a disposal of a private residence under Schedule 3, or
(iii) where the disposer is subjected to income tax rather than the RPGT, or
(iv) where the disposal results in a loss,
(v) where the purchase is from a developer or persons holding the real property as trading stock

The Institutes would like to request the IRB, upon the application by the disposer, to:

(a) waive the collection of the retention amount from the acquirer, or

Answer by IRBM:

For scenarios where the 2% retention sum is not required to be remitted to IRBM – Please refer to guidelines.

(b) grant an extension of time to the acquirer to remit the 2% retention sum until the IRB has determined whether RPGT is applicable.

Answer by IRBM

This is not an issue of extension of time but a request not to be subjected to 2% retention. Extension of time can be granted under special circumstances (example: the acquirer is abroad for the whole period of 60 days after the date of disposal due to unavoidable circumstances).

(c) in the case of (iii), and where the 2% has been remitted, the amount so remitted shall be automatically credited to the disposer's income tax account and the monthly instalments be reduced accordingly.

Answer by IRBM:

The 2% retention amount available in RPGT account of the disposer will be transferred to his income tax account if his chargeable gain is subjected to income tax instead of RPGT upon instruction by the taxpayer or where there is a debit balance in the income tax account, the IRBM will transfer the amount automatically.

Perhaps, the IRB should consider allowing the acquirer withhold a sum equivalent to of 5% of the estimated chargeable gain accruing to the

particular transaction (i.e. disposal price less acquisition price = estimated chargeable gain x 5%) and then remit this amount to the IRB, and not 2% of the total value of the consideration. Then, there is no danger of over-deduction. The actual tax liability can then be determined by the IRB

Answer by IRBM:

The suggestion by the institutes is not feasible as the acquirer will not know the chargeable gain of the disposer.

13.4. Certificate of non-chargeability

The Finance Bill states that the DG shall issue a certificate of non-chargeability to the disposer in the prescribed form where he is satisfied that no chargeable gain has arisen. (Clause 45 of the Finance Bill (ref: Sec 21A of RPGTA)

The Institutes would like to know the detailed process and procedures for the issuance of such a certificate. Is there a time frame for the issuance of such a certificate? For the purpose of clarity and transparency, the Institutes request the IRB to issue guidelines on the matter.

Answer by IRBM:

An assessment will be raised based on form CKHT 1. Certificate of non-chargeability will be issued if the disposer is not liable to tax. The existing procedure for refund of withholding tax applies.

The details can be obtained in the guidelines.

13.5. Real property company (RPC)

As has been mentioned, RPGT was introduced to curb speculative activity in the property market. In view of this, since RPGT is an anti-speculation tool and the RPC provisions are there as an anti-avoidance measure to the RPGTA, then a company which holds only land as stock should not be treated as a RPC.

In the Binastra Holdings case, which the IRB recently won the at the Court of Appeal, the IRB has taken the position that a company is considered a RPC even if the company holds its land as stock; this is inconsistent with the aim of the RPC provisions. It doesn't make sense that a company will not be subject to RPGT on the disposal of real property (by virtue of the transaction, involving stock in trade, falling under the ITA) but at the same time, be subject to RPGT on the sale of its shares.

As the case has, as yet, not been reported, the exact grounds of the judgement are not known. Suffice it to say that the case will have vast implications, not just on the developers, but, on the business community in the country as a whole, It may also affect hotel and recreational operators, and plantation companies which hold substantial real properties, and are therefore deemed to be real property speculators.

Now that the case has been decided in favour of the IRB, a reasonable inference is that the law has been improperly drafted and needs to be amended. Perhaps, it should be clear that only land (or RPC shares) held as assets should be taken into account for the purpose of determining the RPC status of a company.

In the meantime, while awaiting any change to the relevant legislation, the Institutes would like to request the IRB to issue guidelines to indicate the circumstances in which the IRB would consider the shares of a company to be RPC shares.

Answer by IRBM:

The IRBM upholds the court decision of Binastra Holdings. The existing relevant provision of the law will not be amended and it is applicable to companies that hold real properties as stock in trade. However, the IRBM takes note of the issue.

14. Gazetting of 2003 to 2009 Budget proposals

The following Budget proposals have not been gazetted to date. The Institutes would like to find out when the proposals below will be gazetted.

14.1 2003 Economic Stimulus Package

(a) Group relief will be extended under a pre-packaged scheme to forest plantations, including rubber plantations, and to selected products in the manufacturing sectors such as biotechnology, nanotechnology, optics and photonics.

Answer by IRBM:

No.	***Types of incentive***	***status***
1	***Forest plantation project including rubber plantation.***	***Income Tax (Exemption) (No.10)Order 2009 [P.U.(A) 473/2009] and Income Tax (Exemption)(No.11) Order 2009 [P.U.(A) 474/2009] and***

		Income Tax (Deduction for Investment in an Approved Forest Plantation Project) Rules 2009 [P.U.(A) 475/2009] have been gazetted on 23 November 2009.
2	***Biotechnology.***	***Income Tax (Exemption) (No.17)Order 2007 [P.U.(A)371/2007], Income Tax (Exemption)(No.18) Order 2007 [P.U.(A)372/2007] and Income Tax (Deduction for Investment in a Bionexus Status Company) Rules 2007 [P.U.(A)373/2007], Income Tax (Industrial Building Allowance)(Bio Nexus Status Company) Rules 2007 [P.U.(A) 374/2007] have been gazetted on 12 November 2007. Income Tax (Exemption)(No.2) Order 2009 [P.U.(A) 156/2009] has been gazetted on 23 April 2009.***
3	***Nanotechnology, optics and photonics.***	***The incentive is provided under pre-package incentive; Income Tax (Exemption)(No.11) Order 2006 [P.U.(A) 112/2006] & Income Tax (Exemption)(No.12) Order 2006 [P.U.(A) 113/2006].*** ***Application for the incentive to be made to MIDA.***

(b) 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.

Answer by IRBM:

Draft for the Income Tax Exemption Order has been submitted to MOF.

14.2 2008 Budget

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

Answer by IRBM:

Draft of the Income Tax Exemption Order has been submitted to MOF and is now with the Attorney General (AG) office.

14.3 2009 Budget

a) Enhancing tax incentives for hotels in Sabah and Sarawak

Pioneer status or investment tax allowance incentives be extended to hotel operators undertaking new investments in four- and five-star hotels in Sabah and Sarawak –

b) Transfer pricing rules and guidelines

c) Advance pricing arrangement rules and guidelines

d) Thin capitalisation guidelines

The Rules for the above have not been gazetted and no guidelines have been issued in respect of these areas. The Institutes are of the view that detailed information must be disseminated on a timely basis so that taxpayers have enough time to comply with the requirements.

Answer by IRBM:

a) Enhancing tax incentives for hotels in Sabah and Sarawak

There is no Income Tax Exemption Order or Rules for this incentive. The incentive is provided under the Promotion of Investments Act 1986. Application for the incentive to be made to MIDA.

(b) Transfer pricing rules and guidelines

The draft Income Tax (Transfer Pricing) Rules 2009 is awaiting approval by higher authorities. The revised version of the original (2003) Transfer Pricing Guidelines will be issued when the Rules are gazetted. Taxpayers are reminded that the 2003 Guidelines are still applicable and valid as a guide pending approval of new Guidelines

which still retain the basic principles in the 2003 Guidelines, but expanded to include references to new provisions [S 140A] and more practical examples.

(c) Advance pricing arrangement rules and guidelines

Similarly, the draft Income Tax (Advance Pricing Arrangement) Rules 2009 has also been submitted and awaiting approval. The Advance Pricing Arrangement guidelines will be issued after the Rules are gazetted.

(d) Thin capitalization guidelines

The draft rules were put on hold upon Minister's decision to defer (no time frame given). The Guidelines will depend on decisions made on the Rules, and therefore are still at a preparatory stage.

14.4 Public Ruling on withholding tax on Section 4(f) income

The above Public Ruling has not been issued.

Answer by IRBM:

The said Public Ruling will be issued soon.

15. Other outstanding Public Rulings

The Institutes would like to know the status of public rulings on interest expense and interest restriction, investment holding company, income from letting of real property, cross-border employment, computation of bilateral and unilateral relief, club and association, etc.

Answer by IRBM:

Status of Public Rulings.

Bil.	*Topics of Public Ruling.*	*Status*
1	*Interest Expense and Interest Restriction*	*The draft will be finalized soon.*
2	*Investment Holding Company*	*The draft will be finalized soon.*
3	*Income from Letting of Real Property*	*The draft will be finalized soon.*

4	***Cross-border Employment***	***Comment by JPRWG has been discussed and has been redrafted.***
5	***Computation of Bilateral and unilateral Relief.***	***Comment by JPRWG has been discussed and has been redrafted.***
6	***Club and Association.***	***Comment by JPRWG has been discussed and has been redrafted. However the relevant Income Tax Rules has not been gazetted.***

16. Goods & Services Tax (GST)

It was mentioned in the 2010 Budget that the Government is currently at the final stage of completing the study on the implementation of goods and services tax (GST), particularly to identify the social impact of GST on the rakyat.

The Institutes are of the view that the draft legislation must be passed by the Parliament. Based on recommendations by the International Monetary Fund, it is suggested that a minimum time frame of 12 to 18 months before the implementation be available for the people to fully grasp and understand the tax.

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 avoid unwarranted increases in prices of goods and services. A minimum of 12-18 months lead-in period from the date of announcement of the GST legislation to the effective date of implementation is important for educational campaigns and preparation for computerisation.

In addition, the Institutes hope that guidelines/rulings on specific arrangements /administrative practices be made known to the public on a timely basis to ensure transparency and clarity in the application of the GST provisions.

Answer by MOF:

The GST Bill was tabled for First Reading on 16 December 2009. The Second and Third Reading will be tabled in the next Parliament sitting scheduled to be held in March 2010.

Government is aware that businesses need sufficient time to prepare for the implementation of GST. Therefore, a lead time of 18 to 24 months will be provided adequately for businesses to be GST ready. The Government will determine the actual lead time needed by the businesses and will announce it after the GST Bill is passed by the Parliament.

In order to ensure that the general public, in particular businesses and traders are adequately informed about GST, massive public education and awareness programme will be organized throughout the country. The guidelines and rulings of GST will also made known to the public once the GST Bill is passed by the Parliament.

Supplementary issues related to Income Tax Exemption Order / Rules

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

In the above exemption order, a *Foreign client* is a company / partnership / organization / co-operative society which is incorporated or registered outside Malaysia; or a non-Malaysia citizen individual but excludes the following individuals:

(i) a participant in the *Malaysia My Second Home* programme and his dependents;
(ii) a foreigner holding a Malaysian student pass and his dependents;
(iii) a foreigner holding a Malaysian work permit and his dependents; and
(iv) a non-resident Malaysian citizen living abroad and his dependents.

Issues:

(a) In the case where the income is derived from a company which "qualifies as a foreign client" (on the basis of the place of registration/incorporation), would there be a need to look further into the identity/classification of the persons who actually derived the (benefit of the) healthcare service.

Example:

If a non-resident Malaysian citizen living abroad, and his dependents, receive healthcare services, which are provided for by the company he is working for outside Malaysia, and the company qualifies as a "foreign client", will the income received by the healthcare provider be exempted?

(b) What is the definition of "dependents"?

Answer by IRBM:

It will be addressed in the guidelines.

2. Qualifying expenditure incurred to obtain a green building index certificate Income Tax (Exemption) (No. 8) Order 2009 [P.U. (A) 414/2009]

In this Exemption order, reference is made to a business.
Could confirmation be obtained that it includes a business of 'renting"?

Answer by IRBM:

Yes, the IRBM confirms that it includes business of renting which falls under paragraph 4(a) of ITA .

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

(a) In para 2(b): Clarification is needed for the word "purchase"
(b) There is a typographical error in para 2(c): *"an event as defined in paragraph 7(b) .."*. The phrase "*paragraph 7(b)" should read as "paragraph 7(a)" instead*.

Answer by IRBM:

(a) The IRBM takes note of the issue.
(b) It is a typographical error and will be corrected accordingly.

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

In Para 3(b)(i) the word 'grand' should be 'grant'.

Answer by IRBM:

It is a typographical error and will be corrected accordingly.

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

In para 2(1) it is not clear what is meant by ...*undertaken by other resident...*

Answer by IRBM:

"undertaken by other resident" refers to an individual, a partnership, a corporative society or a company who undertakes the approved consolidated project.

6. Knowledge workers in Iskandar Malaysia (IM) [Schedule 1, Part XIV of the ITA]

The Institutes hope that the IRBM can also clarify the scenarios below:

If the employee is sent overseas for training or on official duty related to his employment in IM, say for 3 months, will he be considered as residing in Malaysia for the three month period? Consequently is it correct that the employment income for the 3 month period will qualify for the 15% preferential rate?

Where the employment income derived during the period of residing in IM is identifiable, can the actual income rather than pro-rated amount be used in calculating his employment income?

Answer by IRBM:

An employee who is sent overseas for training or on official duty related to his employment in IM for a certain period is still considered as residing in IM for that period and will qualify for the 15% preferential rate.

Where the employment income derived during the period of residing in IM is identifiable the actual amount will be used in calculating his employment income.