INLAND REVENUE BOARD OF MALAYSIA

TAX INCENTIVES FOR EMPLOYERS WHO PROVIDE CHILD CARE CENTRES

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out interpretation of the Director General of Inland Revenue in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new ruling.

Director General of Inland Revenue,
Inland Revenue Board of Malaysia.

1. Objective

The objective of this Public Ruling (PR) is to explain the tax treatment on the incentives given to employers who provide child care centre facilities for the benefit of their employees.

2. Relevant Provisions of the Law

2.1 This PR takes into account laws which are in force as at the date this PR is published.

2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are section 33, paragraph 34(6)(i) and subparagraph 42A(2) of Schedule 3.

2.3 The relevant subsidiary law referred to in this PR is Income Tax (Deduction for the Provision of Child Care Centre) Rules 2013 [P.U.(A) 15/2013].

3. Interpretation

The words used in this PR have the following meaning:

3.1 “Employer” in relation to an employment means-

(a) The master, where the relationship of master and servant subsists,

(b) Where the relationship does not subsist, the person who pays or is responsible for paying any remuneration to the employee who has the employment, notwithstanding that the person and the employee may be the same person acting in different capacities

3.2 “Employee” in relation to an employment means-

(a) The servant, where the relationship of servant and master subsists,

(b) Where the relationship of servant and master does not subsist, the holder of the appointment or office which constitutes the employment.

3.3 "Employment" means–

(a) Employment in which the relationship of master and servant subsists,

(b) Any appointment or office, whether public or not and whether or not that relationship subsists, for which the remuneration is payable.

3.4 “Qualifying building expenditure” means capital expenditure incurred on the construction or purchase of a building used as an industrial building for the purpose of the business.

4. Introduction

A childcare centre is where four (4) or more children under the age of four (4) years from more than one household are cared for a fee. The purpose of establishing a child care centre is to help parents take care of their children while they are at work. In order to establish a child care centre, it must be registered with the Department of Social Welfare (DSW) and it is subject to the Child Care Centre Act 1984 (Act 308) under the Ministry of Women, Family and Community Development.

5. Existing Tax Treatment

5.1 The government encourages employers to provide childcare centres for their employees to ensure that children have appropriate care and treatment while their parents are at work, besides providing convenience to the employees with young children.

5.1.1 A special provision under paragraph 34(6)(i) of the ITA allows the expenses incurred by an employer for the provision and maintenance of a child care centre provided for the benefit of the employees in computing the adjusted income from the employer's business. An employer is still eligible for a deduction under this provision even though the child care centre is provided outside of the business premises. However, the capital expenditure incurred on land, premises, buildings, structures or works of a permanent nature or on alterations, additions and extensions is not allowed as tax deduction.

5.1.2 In addition, child care allowances paid by the employer to his employees who have children are also allowable expenses under subsection 33(1) of the ITA in computing the adjusted income from the employer's business. Employees who receive child care allowances from the employer will be subject to tax on such income as part of the gross income from his employment under paragraph 13(1)(a) of the ITA. However, the employees concerned are given a tax exemption of up to RM2,400 a year on the allowances received.

6. Additional Tax Incentives

6.1 In line with the government's desire to encourage more employers to provide quality child care centre for the convenience of their employees, tax incentives for employers are enhanced effective from the year of assessment (YA) 2013. For employers who are resident in Malaysia, an additional deduction for the expenses stated below are given to employers who provide their own child care centres for the benefit of their employees:

(a) Expenses in respect of the provision and maintenance of child care centres; and

(b) Expenses in respect of child care allowances paid to employees.

The total amount of deduction allowable shall be in addition to any deduction made under paragraph 34(6)(i) and subsection 33(1) of the ITA.

6.2 The above tax incentives shall apply only to child care centres registered with the DSW under the above mentioned Act.

Example 1

Dunia Ceria Berhad provides the facility of a child care centre, Little Tots for the benefits of its employees. Little Tots which is managed by Dunia Ceria Berhad is registered with the DSW.

Income and expenses for Dunia Ceria Berhad for the financial year ended 31.12.2015 are as follows:

	RM
Gross income from business	630,000
Allowable expenses	280,000

Included in the allowable expenses are the expenditure on the provision and maintenance of the child care centre managed by Dunia Ceria Berhad as follows:

	RM
Rental of child care centre	16,800
Salaries of caregivers	48,000
Food and beverage (for the centre's workers and employees' children)	25,200
Repainting the walls of child care centre	8,000
	98,000

The computation of adjusted income of Dunia Ceria Berhad for the YA 2015 is as follows:

	RM
Gross income from business	630,000
Less: Allowable expenses	280,000
	350,000
Less: Further deductions on expenses in respect of the provision and maintenance of child care centre	98,000
Adjusted business income	252,000

Additional deduction in respect of the expenditure on the provision and maintenance of the child care centre is allowed in computing the adjusted business income as the child care centre is provided by Dunia Ceria Berhad.

Example 2

Excelcom Sdn. Bhd. is an information technology company in Shah Alam, Selangor. The company does not provide child care facilities for the benefit of its employees but pays child care allowances to employees with young children. In the year 2015, Excelcom Sdn. Bhd. paid RM63,000 for child care allowances to its employees.

Exelcom Sdn. Bhd. is eligible for further deduction on the child care allowances paid to its employees.

Income and expenses for Excelcom Sdn. Bhd. for the financial year ended 31.12.2015 are as follows:

	RM
Gross income from business	580,000
Allowable expenses	350,000

Included in the allowable expenses are child care allowances of RM63,000 paid to the employees.

The computation of adjusted income of Excelcom Sdn. Bhd. for the YA 2015 is as follows:

	RM
Gross income from business	580,000
Less: Allowable expenses	350,000
	230,000
Less:	
Further deduction on the child care allowances	63,000
Adjusted business income	167,000

Example 3

Bumi Riang Berhad provides a child care centre solely for the benefit of its employees. The centre is situated in the office building owned by the company and is operated by a third party i.e. Bintang Kecil Sdn. Bhd. Bintang Kecil Sdn. Bhd. has to follow all the rules set by Bumi Riang Sdn. Bhd. in managing the child care centre. In the year 2015, Bumi Riang incurred expenses on the child care centre and claimed additional deduction on the expenses.

Income and expenses for Bumi Riang Berhad for the financial year ended 31.12.2015 are as follows:

	RM
Gross income from business	500,000
Allowable expenses	300,000

Included in the allowable expenses are the expenditure on the provision and maintenance of the child care centre incurred by Bumi Riang Berhad as follows:

	RM
Management fees to Bintang Kecil Sdn. Bhd.	72,000
Repairs to ceilings	10,000
Cleaning of glass windows	8,500
	90,500

Note: Management fees are the fees for the employees' children that are sent to the child care centre and are paid by the employer.

The computation of adjusted income of Bumi Riang Berhad for the YA 2015 is as follows:

	RM
Gross income from business	500,000
Less: Allowable expenses	300,000
	200,000
Less: Further deduction on the management fees and expenses in respect of the provision and maintenance of child care centres	90,500
Adjusted business income	109,500

Total additional deduction of RM90,500 on the management fees (RM72,000), expenses on the ceiling repairs of the child care centre (RM10,000) and the cleaning of the glass windows of the child care centre building (RM8,500) is allowed in computing the adjusted income of the employer's business.

6.4 If two basis periods overlap, the period common to both periods shall be deemed to fall in the first basis period only.

Example 4

Bumi Daya Sdn Bhd, a construction company commenced its business on 1.4.2013 and the accounts are closed on 30 September each year. As a benefit to the employees, the company set up a child care centre to provide amenities to its employees with young children.

Bumi Daya Sdn Bhd submitted its accounts as follows:

Accounts	Accounting Period	Period
First	1.04.2013 - 30.09.2013	6 months
Second	1.10.2013 - 30.09.2014	12 months
Third	1.10.2014 - 30.09.2015	12 months

Since the company's first accounts was closed before 1.1.2014, the basis periods for the company are:

YA	Basis Period	Period
2013	1.04.2013 - 31.12.2013	9 months
2014	1.10.2013 - 30.09.2014	12 months
2015	1.10.2014 - 30.09.2015	12 months

Bumi Daya Berhad repaired a leaking water tank in the child care centre at a cost of RM480 on 25.11.2013. The repairs on 25.11.2013 falls within the overlapping period i.e. in the period 1.10.2013 to 31.12.2013 where the said period falls into two basis periods. Therefore, the expense incurred amounting to RM480 in the overlapping period shall be taken as a deductible expense in the first basis period.

Note: Further information regarding the basis period for a company can be referred to in the PR No. 8/2014 entitled "Basis Period of a Company, Limited Liability Partnership, Trust Body and Co-operative Society".

6.5 If the amount of expenses allowed in subparagraph 6.1 exceeds an amount which in the opinion of the Director General of Inland Revenue would reasonably be expected to be incurred in the ordinary course of business, the excess amount shall be disallowed as a deduction.

Example 5

Same facts as in Example 1. Dunia Ceria Berhad incurred an expense of RM8,000 to repaint the walls of the child care centre. When an audit examination was made, it was discovered that the painting job was done by a family member of one of the company's directors. The painting cost that was charged was much higher compared to the cost charged at market rate i.e. RM5,000.

The adjusted income of Dunia Ceria Berhad is recomputed for the YA 2015:

	RM	RM
Gross income from business		630,000
Less: Allowable expenses (280,000-3,000)		277,000
		353,000
Less: Further deduction on expenses in respect of provision and maintenance of child care centre		
Rental of child care centre	16,800	
Salaries of caregivers	48,000	
Food and beverage (for the centre's workers and employees' children)	25,200	
Repainting the walls of child care centre	5,000	95,000
Adjusted business income		258,000

The excess amount of RM3,000 for the repainting of walls cannot be allowed as a deduction in computing the adjusted income of Dunia Ceria Berhad.

7. Claims for Industrial Building Allowance

Subparagraph 42A(2) and paragraph 16B of Schedule 3 of the ITA allow an employer who builds or purchases a building and operates it as a child care centre for the children of his employees to claim industrial building allowance. The rate of industrial building allowance is 10% of the capital expenditure for the YA the building commences to be used as a child care centre and for each of the following nine (9) YAs.

The purchase price of a building shall include legal fee, stamp duty and other incidental expenditure incurred by the purchaser related to the purchase but exclude purchase price attributable to the land.

Example 6

Ulek Mayang Sdn. Bhd. is a cengal wood distributor company in Kuala Terengganu and has commenced its operation on 1.7.2006 and closes its business accounts on

31 December each year. On 1.2.2010, the company purchased a corner lot two-storey terrace house for RM400,000 and operates it as a child care centre where the employees can send their children to the child care centre provided by the company. The child care centre commenced its operation on 1.10.2010.

Ulek Mayang Sdn. Bhd is eligible to claim industrial building allowance on the purchased terrace house which is used as a child care centre for the benefit of its employees.

The computation of industrial building allowance is as follows:

	RM
Qualifying building expenditure (not including land cost)	288,000
YA 2010	
Annual allowance (RM288,000 x 10%)	28,800
Residual expenditure	259,200
YA 2011 - YA 2019	
Annual allowance (RM288,000 x 10%) x 9	259,200
Residual expenditure	Nil

Director General of Inland Revenue,
Inland Revenue Board of Malaysia.