THE MALAYSIAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS (MICPA)

CHARTERED TAX INSTITUTE OF MALAYSIA (CTIM)

JOINT MEMORANDUM ON PROPOSED TAX TREATMENT FOR LLPs IN MALAYSIA

PREAMBLE

In response to the invitation by the Companies Commission of Malaysia (SSM), The Malaysian Institute of Certified Public Accountants (MICPA) and Chartered Tax Institute of Malaysia (CTIM) are pleased to submit this Joint Memorandum on Proposed Tax Treatment for LLPs in Malaysia for the SSM's consideration. We hope that our joint memorandum will contribute towards the preparation of the tax legislation for LLPs in Malaysia.

In this Memorandum, the Institutes have identified and analysed the tax treatment of LLPs in Malaysia for several proposed alternative perspectives. Each proposed tax treatment may require various amendments to the current tax legislation. We propose that the LLP legislation should be introduced together with the relevant changes in tax legislation to ensure smooth implementation.

ANALYSIS

Our analysis of the various tax treatments which may apply to LLPs in Malaysia is set out as follows:-

		A	B	C	D	E
		Treat as partnership (current partnership treatment)	**Treat as company**	**Treat as flow through corporate entity (hybrid)**	**Treat as club**	**Treat as a special entity with tax incentives**
1.	Taxation of an LLP	Partnership not taxable	Partnership taxable as a company	Partnership taxable as a company but the tax paid is treated as a tax credit for the partners	Partnership taxable but at individual tax rates. Not a flow through vehicle.	Partnership taxed at scale rates. Not a flow through vehicle.
	a) Tax rate	Not Applicable (N/A)	Corporate tax rate	Corporate tax rate	Individual scale rates	Co-operative society rates or special rate eg 15%
	b) Tax incentives	Yes for double deductions, reinvestment allowance and Allowance for Increased Exports	Yes	Yes	No	Yes (Subject to MOF's policy decision)
2.	Taxation of the partners	Partners are taxable on their share of profits less capital allowances from the partnership.	Partners are not taxable	Partners are taxable on a share of their profits from the partnership but receive a credit for the tax paid	Partners are not taxable	Partners are not taxable

		A	B	C	D	E
		Treat as partnership (current partnership treatment)	**Treat as company**	**Treat as flow through corporate entity (hybrid)**	**Treat as club**	**Treat as a special entity with tax incentives**
		Partners enjoy individual rates and personal relief		by the partnership		
3.	Taxation of profit distributions	N/A	Not taxable	Taxable (see item 2 above)	Not taxable	Not taxable
4.	RPGT, Income tax and stamp duty on conversion from existing partnership to LLP	Control transfer – no income tax implications. Stamp duty on transfer of receivables, etc. RPGT on transfer of real property.	Control transfer – no income tax implications. Stamp duty on transfer of receivables, etc. RPGT on transfer of real property.	Control transfer – no income tax implications. Stamp duty on transfer of receivables, etc. RPGT on transfer of real property.	Control transfer – no income tax implications. Stamp duty on transfer of receivables, etc. RPGT on transfer of real property.	Control transfer – no income tax implications. Stamp duty on transfer of receivables, etc. RPGT on transfer of real property.
5.	Basis period	Calendar year	Probably 12 months financial period	Probably 12 months financial period	Calendar year	Probably 12 months financial period
6.	Is this method tax neutral?	Yes	No – taxed as a company	Yes except that LLP pays tax in advance	No, but may be more advantageous and administratively efficient	No, but may be more advantageous and administratively efficient

		A	B	C	D	E
		Treat as partnership (current partnership treatment)	**Treat as company**	**Treat as flow through corporate entity (hybrid)**	**Treat as club**	**Treat as a special entity with tax incentives**
7.	Advantages	Many other countries adopt this method. Good vehicle for high risk investments as losses incurred may be eligible for tax deduction in partner’s home country	Simple administration	Caters to many different types of partnerships and tax neutral	Simple to administer and has some benefits to small partnerships	Simple to administer and has some benefits to small partnerships. Use as special vehicle to stimulate business
8.	Disadvantages	Nil – mere change from a normal partnership to a partnership with limited liability	Not commonly adopted in other countries. Partners cannot get deduction of interest expense incurred to acquire a stake in the partnership.	Complicated to administer	Not tax neutral. Partners cannot get deduction of interest expense incurred to acquire a stake in the partnership. Partners cannot enjoy personal reliefs on the partnership	Not tax neutral. Partners cannot get deduction of interest expense incurred to acquire a stake in the partnership. Partners cannot enjoy personal reliefs on the partnership income.

		A	B	C	D	E
		Treat as partnership (current partnership treatment)	**Treat as company**	**Treat as flow through corporate entity (hybrid)**	**Treat as club**	**Treat as a special entity with tax incentives**
			Partners cannot enjoy personal reliefs on the partnership income. How will the partners' salaries be treated – as employee? Will there be tax deduction for EPF on partners' salaries?		income. How will the partners' salaries be treated – as employee? Will there be tax deduction for EPF on partners' salaries?	How will the partners' salaries be treated – as employee? Will there be tax deduction for EPF on partners' salaries?
9.	Who will most benefit from this tax treatment	Small partnerships, high risk investments eg film industry.	Large partnerships, IRB	Both small and large partnerships but cumbersome	IRB and small partnerships	All LLPs

PROPOSAL

The Institutes propose that an LLP be treated as a partnership (Method A above) or treated as a company (Method B above). The Institutes further propose that an LLP be given an option to elect the most suitable tax treatment for itself i.e. either as a partnership or as a company at the incorporation or conversion to an LLP. This election should be irrevocable unless allowed by the IRB on good business grounds.

A summary of the Institutes' additional suggestions in relation to the above is provided in the table below:

The Institutes' suggestions	A. Treat as partnership (current partnership treatment)	B. Treat as company
a) To be taxed at SME tax rate of 20% for the first RM500,000 chargeable income.	N/A	Yes
b) Existing tax incentives for partnerships to be extended to LLPs.	Yes	Yes
c) Allow election for partnership or company tax treatment. However, election is irrevocable unless allowed by the IRB on good business grounds。	Yes	Yes
d) Partners be treated as employees	No	Yes
e) Deduction for EPF of partners by the LLP	No	Yes
f) RPGT, income tax, stamp duty and indirect tax neutrality / exemption on conversion to LLP.	Yes	Yes
g) All unutilised allowances, losses and tax benefits of the transferor should be transferred to the LLP.	Yes	Yes

The Institutes' suggestions	A. Treat as partnership (current partnership treatment)	B. Treat as company
h) Profit distributions are not taxable	N/A	Yes
i) Basis period should follow companies and not restricted to calendar year	Yes	Yes

CONCLUSION

We wish to thank the SSM for inviting the Institutes to submit our proposed tax treatments for LLPs in Malaysia. We hope that the SSM will give due consideration to our proposals.

Submitted to SSM on 9 September 2011