



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

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**Prepared by:**

**Chartered Tax Institute of Malaysia**

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**The Malaysian Institute of Chartered Secretaries and  
Administrators**

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

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

## 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.

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- 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.

- 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.
- 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.

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## (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.

- 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.

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## (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?

### 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.

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## 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
	<u>2,000,000</u>

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 <sup>(1)</sup>	106,250 <sup>(1)</sup>	18,750 <sup>(1)</sup>
RA (Additional plantation land)	30,000 <sup>(2)</sup>			
RA (New machines)	300,000 <sup>(3) &amp; (5)</sup>			
Qualifying RA (restricted to 70% of statutory income)		74,444 <sup>(6)</sup> Limited 87,500 <sup>(6)</sup>	255,556 <sup>(6)</sup> Limited 74,375 <sup>(6)</sup>	-
Chargeable income	101,181	50,556	31,875	18,750

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- (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:

$$\begin{aligned}\text{Statutory Income from manufacturing of} &= \frac{1,000,000}{2,000,000} \times 250,000 \\ \text{pineapple from own plantation} &= 125,000\end{aligned}$$

$$\begin{aligned}\text{Statutory Income from manufacturing of} &= \frac{850,000}{2,000,000} \times 250,000 \\ \text{pineapple and coconut purchased} &= 106,250\end{aligned}$$

$$\begin{aligned}\text{Statutory Income from trading of imported} &= \frac{150,000}{2,000,000} \times 250,000 \\ \text{canned lychee} &= 18,750\end{aligned}$$

- (2) Asset qualified for RA (additional plantation land) = 50,000

$$\text{Amount qualified for RA} = 50,000 \times 60\% = 30,000$$

- (3) Asset qualified for RA (new machines for manufacture of canned pineapple) = 100,000

$$\text{Amount qualified for RA} = 100,000 \times 60\% = 60,000$$

- (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:

$$\begin{aligned}\text{Integrated Project (Agricultural and} &= \frac{1,000,000}{1,350,000} \times 60,000^{(3)} \\ \text{Manufacturing of Pineapple from Own} & \\ \text{Plantation)} &= 44,444\end{aligned}$$

$$\begin{aligned}\text{Manufacturing Activity of Purchased} &= \frac{350,000}{1,350,000} \times 60,000^{(3)} \\ \text{Pineapple} &= 15,556\end{aligned}$$

- (5) Asset qualified for RA (new machines for manufacture of canned coconut) = 400,000

$$\text{Amount qualified for RA} = 400,000 \times 60\% = 240,000$$

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### (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 <sup>(2)</sup>	Not eligible
RA (New machines for manufacture of canned pineapple)	44,444 <sup>(4)</sup>	15,556 <sup>(4)</sup>
RA (New machines for manufacture of canned coconut)	<u>Not eligible</u>	<u>240,000</u> <sup>(5)</sup>
Total qualified for RA	74,444	255,556
RA restricted to 70% of statutory income <sup>(1)</sup>	87,500 (70% x 125,000) RA c/f = Nil	74,375 (70% x 106,250) 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.

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

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## **(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."

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## 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.

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## **(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.

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### (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.

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### (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.

- ii. 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 10<sup>th</sup> day of the calendar month".
- iii. We would also suggest that the extension of the instalment payment date from the 10<sup>th</sup> day of the calendar month to the 15<sup>th</sup> 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].

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### (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.

### (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.

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

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## **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.

#### **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.

#### **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.

#### **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.

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

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- Providers of industrial design services to be given pioneer status with income tax exemption of 70% of statutory income for 5 years.
- Income tax exemption of 100% of statutory income for 10 years for Tun Razak Exchange Marquee Status Companies.

### **2014 Budget**

- The expenses incurred for GST related training in accounting and ICT be granted double deduction for years of assessment 2014 and 2015.
- 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.
- Tax deduction for secretarial fees up to RM5,000 and tax filing fees up to RM10,000 from year of assessment 2015.
- Incentives in relation to the Green Lane Policy Programme be extended to applications received by the MOF on or before 31 December 2017.
- Pioneer status or ITA for new four and five star hotels be extended to applications received by MIDA until 31 December 2016.
- ITA for purchase of green technology equipment and tax exemption on the use of green technology system and services be granted.
- 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.

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## (2) Technical matters raised by the Institutes which have not been resolved

No.	Subject Matter	Date	Matters pending
<b>PUBLIC RULINGS (PR)</b>			
(2.1)	JPRWG's comments on draft PR – Exemption of Income from Employment on Board a Ship dated 12 August 2013 • CTIM email to IRB Rulings Division	12 August 2013	Pending IRB's reply.
(2.2)	JPRWG's comments on draft PR – Private Retirement Scheme dated 16 May 2014 • CTIM email to IRB Rulings Division	16 May 2014	Pending IRB's reply.
(2.3)	JPRWG's comments on draft PR – Appeal against an assessment and application for relief dated 22 July 2014 • CTIM email to IRB Rulings Division	22 July 2014	Pending IRB's reply.
(2.4)	JPRWG's comments on: PR No. 1/2014 – Withholding Tax On Special Classes Of Income; and PR No. 5/2014 – Ownership and Use Of Asset For The Purpose Of Claiming	8 August 2014	Pending IRB's reply.

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

No.	Subject Matter	Date	Matters pending
	<b>Capital Allowances</b> <ul style="list-style-type: none"> <li>CTIM email to IRB Rulings Division</li> </ul>		
<b>(2.5)</b>	<b>JPRWG's comments on draft PR – Basis period of a company, limited liability partnership, trust body and co-operative society dated 25 August 2014</b> <ul style="list-style-type: none"> <li>CTIM email to IRB Rulings Division</li> </ul>	25 August 2014 & 16 October 2014	Pending IRB's reply.
<b>(2.6)</b>	<b>IRB's reply to the JPRWG's comments on the draft PR – Qualifying Plant And Machinery For Claiming Capital Allowances dated 2 April 2014</b> <ul style="list-style-type: none"> <li>IRB Rulings Division's email to CTIM</li> </ul>	4 September 2014	The revised draft PR issued to the JPRWG together with IRB's reply on 4 September 2014 did not address the JPRWG's comments on the note in example 10.
<b>(2.7)</b>	<b>JPRWG's comments on draft PR – Special Allowances for Small Assets dated 23 September 2014</b> <ul style="list-style-type: none"> <li>CTIM email to IRB Rulings Division</li> </ul>	23 September 2014	Pending IRB's reply.
<b>(2.8)</b>	<b>JPRWG's comments on draft PR – Forest Allowances And Expenses Relating To Timber Extraction dated 23 September 2014</b>	23 September 2014	Pending IRB's reply.

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No.	Subject Matter	Date	Matters pending
	<ul style="list-style-type: none"> <li>CTIM email to IRB Rulings Division</li> </ul>		
(2.9)	<p>JPRWG's comments on draft PR - Taxation Of Real Estate Investment Trusts / Property Trust Funds (second edition) dated 1 October 2014</p> <ul style="list-style-type: none"> <li>CTIM email to IRB Rulings Division</li> </ul>	2 October 2014	Pending IRB's reply.
<b>OTHER MATTERS</b>			
(2.10)	<p>Income Tax (Deduction for Cost of Acquisition of Foreign Owned Company) Rules 2013 [P.U.(A) 218 of 2013]</p> <ul style="list-style-type: none"> <li>CTIM letter to IRB Tax Policy Department</li> </ul>	12 July 2013	Pending clarification from IRB on the definition of "Minister" in respect of the said Rules.
(2.11)	<p>Clarification required on the interpretation of Sub-Rule 7(d) of the Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2014 [P.U.(A) 217/2014]</p> <ul style="list-style-type: none"> <li>CTIM letter to IRB Tax Policy</li> </ul>	8 October 2014	Pending action from the authorities.

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

No.	Subject Matter	Date	Matters pending
	Department		
<b>MEMORANDUM</b>			
(2.12)	<p>IRB's reply to CTIM Memorandum on Technical Issues dated 11 September 2013</p> <ul style="list-style-type: none"> <li>IRB letter to the Institutes</li> </ul>	24 October 2013	<p>(a) The following in the CTIM Memorandum on Technical Issues dated 11 September 2013 are pending the outcome of IRB's review:</p> <ul style="list-style-type: none"> <li>No.2 – IBA claim on hotel building by REIT which is not the operator of the hotel.</li> <li>No.3 – Apportionment of actual loss from a property development/construction project.</li> <li>No.4(ii) – PR No. 1/2013 -- Deduction for Promotion of Export: Paragraph 6.2.1(c).</li> </ul> <p>(b) Pending a draft PR to be issued to the JPRWG on the following in the CTIM Memorandum on Technical Issues dated 11 September 2013:</p> <ul style="list-style-type: none"> <li>No.13 – Eligibility of Group Relief: <ul style="list-style-type: none"> <li>Guidance on the computation of "residual profits" and "residual assets".</li> </ul> </li> </ul>
(2.13)	IRB's reply to Memorandum for Discussion on Issues Arising from 2013 Budget & Finance (No.2) Bill 2012 dated 16 November 2012	28 October 2013	<p>Pending the IRB's review of the relevant PRs in respect of the following in the Memorandum for Discussion on Issues Arising from 2013 Budget &amp; Finance (No.2) Bill 2012 dated 16 November 2012:</p> <ul style="list-style-type: none"> <li>No. 5(b) – Interest incidental to a business: <ul style="list-style-type: none"> <li>Whether interest in relation to a trade debt e.g. interest derived</li> </ul> </li> </ul>

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

No.	Subject Matter	Date	Matters pending
<ul style="list-style-type: none"> <li>IRB reply to the Institutes</li> </ul>			<p>from the Housing Development Account should be assessed under S.4(a) of the ITA.</p>
(2.14)	<p>IRB's reply to Supplementary Technical Issues for Dialogue with the IRB dated 17 February 2014</p> <ul style="list-style-type: none"> <li>IRB reply to the Institutes</li> </ul>	21 March 2014	<p>(a) Pending a draft PR to be issued to the JPRWG on the following in the Supplementary Technical Issues for Dialogue with the IRB dated 17 February 2014:</p> <ul style="list-style-type: none"> <li>No. 1 – S.140B -- Special Provision Applicable to Loan or Advances to Director:</li> <li>b) Meaning of "Internal funds".</li> <li>d) Mixed funds.</li> <li>g) Meaning of loans and advances.</li> </ul> <p>(b) Pending legal advice sought by the IRB on the following issue in the Supplementary Technical Issues for Dialogue with the IRB dated 17 February 2014:</p> <ul style="list-style-type: none"> <li>No. 1 – S.140B -- Special Provision Applicable to Loan or Advances to Director:</li> <li>c) Interaction with other laws:</li> </ul> <p>Whether the provisions of the Moneylenders Act 1951 were taken into consideration in coming up with S.140B of the ITA as it would not be equitable if a company is forbidden by law to charge interest but is deemed to earn interest income for tax purposes.</p> <p>(c) Pending amendment to S.49(3) as commented in the following in</p>

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

No.	Subject Matter	Date	Matters pending
			<p>the Supplementary Technical Issues for Dialogue with the IRB dated 17 February 2014:-</p> <ul style="list-style-type: none"> <li>No. 2 – Tax Treatment for Relief on Contribution to Deferred Annuity.</li> </ul>
(2.15)	<p>Joint Memorandum to Ministry of Finance on issues arising from 2014 Budget &amp; Finance Bill (No. 2) 2013</p> <ul style="list-style-type: none"> <li>CTIM letter to Tax Analysis Division, MOF</li> </ul>	9 April 2014	<p>Pending action from IRB on the following:</p> <ul style="list-style-type: none"> <li>No. 2 – S.39(1A) -- Disallowance of Expense Due to Failure to Furnish Information on Time: <ul style="list-style-type: none"> <li>Written confirmation from IRB that such disallowance will be restricted to cases where the taxpayer deliberately withholds information.</li> </ul> </li> <li>No. 3 – S.77A(4) – Filing of Corporate Tax Returns Based on Audited Accounts: <ul style="list-style-type: none"> <li>Written confirmation from IRB that Section 77A(4) would not apply to companies under liquidation or receivership.</li> </ul> </li> <li>No. 5 – S.33(4) <ul style="list-style-type: none"> <li>Pending a draft PR on the application of S.33(4) on the timing of deductibility of interest expense to be issued by IRBM.</li> </ul> </li> </ul>

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

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## **(3) 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.

### **(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 :-

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*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.

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- (4) 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.

- 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,

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

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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.