19 November 2015

By Courier & Fax

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Yang Berbahagia Kolonel (K) Tan Sri,

JOINT MEMORANDUM TO THE INLAND REVENUE BOARD OF MALAYSIA ON ISSUES ARISING FROM THE 2016 BUDGET AND FINANCE BILL 2015

On behalf of the Chartered Tax Institute of Malaysia (CTIM), Malaysian Institute of Accountants (MIA), Malaysian Institute of Certified Public Accountants (MICPA) and Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) ["Institutes"], I am pleased to forward to the Inland Revenue Board of Malaysia (LHDNM) this Joint Memorandum on issues arising from the 2016 Budget and Finance Bill 2015.

The Institutes would like to request for a dialogue on the Joint Memorandum with the LHDNM and Tax Division, Ministry of Finance ("Tax Authorities") to be held on a date which is not later than Friday, 18 December 2015. This is to enable the Institutes to provide meaningful feedback and engage with the Tax Authorities for further discussion on a timely basis prior to the gazette of the Finance Act.

We look forward to your favourable response.

Thank you.

Yours sincerely,
On behalf of the Institutes

Aruljothi Kanagaretnam
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JOINT MEMORANDUM ON ISSUES ARISING FROM 2016 BUDGET AND FINANCE BILL 2015 & OTHER TECHNICAL MATTERS

Date: 19 November 2015

Prepared by:

Chartered Tax Institute of Malaysia

Malaysian Institute of Accountants,

The Malaysian Institute of Certified Public Accountants; and

The Malaysian Institute of Chartered Secretaries and Administrators

JOINT MEMORANDUM ON ISSUES ARISING FROM 2016 BUDGET AND FINANCE BILL 2015 & OTHER TECHNICAL MATTERS

Contents

A. 2016 Budget and Finance Bill 2015 Issues

1. Debts arising from services to be rendered or the use or enjoyment of property to be dealt

Proposals:

Amended Section 24(1)(b) & Section 24(1)(c) and New Section 24(1A)

S.24(1)(b) - *Where in the relevant period a debt owing to the relevant person arises in respect of any services rendered **or to be rendered** at any time in the course of carrying on a business, the amount of the debt shall be treated as gross income of the relevant person from the business for the relevant period.*

S.24(1)(c) - *Where in the relevant period a debt owing to the relevant person arises in respect of the use or enjoyment of any property dealt **or to be dealt** with at any time in the course of carrying on a business, the amount of the debt shall be treated as gross income of the relevant person from the business for the relevant period.*

S.24(1A) - *Except where subsection (1) applies, where in the relevant period, any sum is received by a relevant person in the course of carrying on a business in respect of any services to be rendered or the use or enjoyment of any property to be dealt with in the relevant period or in any following basis period, the sum shall be treated as the gross income of the relevant person from the business for the relevant period the sum is received notwithstanding that no debt is owing to a relevant person in respect of such services or such use or enjoyment.*

Comments:

1.1 The Institutes understand that the above proposals have been prompted by the Court of Appeal decision in the case of Clear Water Sanctuary Golf Management Berhad v KPHDN, where the phrase “services rendered” clearly requires services to have been rendered for there to be a debt owing to the relevant person. Only then, shall the debt be treated as gross income in the relevant period.

The Institutes note with concern the trend in recent years of the authorities amending the law to nullify Court decisions and would like to express our view that such action should not be supported by the Ministry of Finance. Any amendments to the tax legislation which affect the fundamental principles of taxation (e.g. the timing of taxing of income) should be discussed among the stakeholders (the tax authorities, professional bodies, private sector etc.) before the proposals are included in the Finance Bill. This is to ensure that the stakeholders’ concerns on the impact and the implementation of the proposed amendments are adequately addressed. It is also recommended that the implementation of such proposed amendments should be effected after a pre-determined incubation period agreed by the stakeholders instead of immediately.

1.2 The Institutes would like to take this opportunity to express our view that we do not agree with S.24 as a whole and urge the Ministry of Finance (MOF) to review the provision due to the following reasons -

- S.24 deviates from well established tax principles that income is to be taxed when earned, and income is not earned until services are rendered or the use or enjoyment of property is dealt with.

- The operation of S.24 leads to a mismatch between the timing of taxing of income and deductibility of expenses to be incurred in earning the income. This results in significant cash flow strain on businesses as tax is paid upfront on income which has not been earned while expenses are only deductible upon incurrence in future years of assessment.
- S.24 has wide application to businesses from various industries and hence will put such businesses in Malaysia at a disadvantage compared to similar businesses operating in other tax jurisdictions. In tax jurisdictions such as the UK, Australia and other established tax jurisdictions, any sum received before it is earned is not taxed.
- The implication of S.24(1) and S.24(1A) of possibly taxing income on an accrual or receipt basis adds complexity and administrative costs to taxpayers who would need to monitor the timing of taxing income to ensure that the law is complied with and the same income is not taxed twice.

In the event that S.24 is deemed to be relevant to certain industries due to the peculiarity of these industries, consideration could be given to making specific regulations under S.36 of the ITA to address the specific industries, instead of taking a broad brush approach across all industries.

1.3 In relation to the proposed amendments, the Institutes would like to seek the following clarification/confirmation:-

- “Security deposit”, “forfeit deposit” and “return deposit” received are <u>not payments in respect of</u> <u>any services to be rendered or the use or enjoyment of any property to be dealt with</u> but rather are security payments for the safe return of goods on hire or loan, a compensation payment for damages due to non-performance of the contract or for breach of contract and a return of money to the customer due to cancellation of the contract between the supplier and customer respectively.

- Deposits received by a property developer from house buyers should not fall under “any sum” in the proposed S.24(1A) of the ITA as property developers are taxed in accordance with the Income Tax (Property Development) Regulations 2007, until and unless such deposit is forfeited.
- Paragraph 9.2 of the PR No. 4/2011 on Income From Letting Of Real Property states -

  *Where rental income received in advance is assessed in the basis period in which it is received, **any expense incurred in relation to that rental income after that basis period is allowable in the basis period in which the income is assessed**. Therefore amendment has to be done to the assessment for the year of assessment concerned.*

  The Institutes would like to request that the above treatment as set out in PR 4/2011 be extended to other types of business income falling under Section 24. This request was also made at the CTIM 2016 Budget Seminar on 5 November 2015. The Institutes would like to seek confirmation of the IRBM’s agreement to this request and would appreciate if this could be included in the tax legislation and written guidance on this be issued by IRBM urgently.

2. Deduction of interest on money borrowed

Current provision:

Existing Section 33(4) – When sum payable not due to be paid

For the purposes of paragraph (1)(a) and subsection (2), where any sum payable for a basis period for a year of assessment is not due to be paid in that period, the sum shall when it is due to be paid be deducted in arriving at the adjusted income of a person for that period.

Proposal:

New Section 33(5)

For the purpose of subsection (4), where any sum payable for a basis period for a year of assessment is due to be paid in any following year of assessment—

(a) a person shall notify the Director General in writing for deduction in respect of the sum not later than twelve months from the end of the basis period for the year of assessment when the sum is due to be paid; and

(b) upon receipt of the notice, the Director General may reduce the assessment that has been made in respect of such sum.

Comments:

2.1 The Institutes understand that the proposed S.33(5) was intended to address the mechanism for the claiming of deduction for the sum payable when it is due to be paid without the need for the taxpayer to amend its tax return for the prior years as a result of S.33(4). However, this objective does not appear to be achieved based on the proposed new S.33(5).

The requirement for DG's approval for the reduction of assessments would result in greater uncertainty. This new provision would appear to go against the spirit of the Self-Assessment System as the taxpayer would need to notify the IRBM before the prior years' assessments are reduced. Other than specifying the 12-month time frame for notification, there is also a need for clear guidelines on the process the taxpayer should apply to the IRBM; e.g. is the notification to the IRBM to be done by way of a letter or will there be a prescribed form, the timeline for issuance of the reduced assessment should be made known to taxpayers and tax practitioners.

As mentioned above, the proposal adds greater compliance burden on taxpayers who have such interest expenses to bear and more administrative burden on the IRBM. The Institutes would suggest that the right to revise the assessments be given to the tax payers by allowing them to file amended tax returns for prior years of assessments to claim the deductions. This would obviate the need for tax payers to notify the DG.

The following example also serves to illustrate how S.33(5) may result in additional paper work for both the IRBM and the taxpayer -

> Company A with a 31 December year end obtained a bank loan on 1 November 2015 whereby the company is required to pay interest on a quarterly basis. Under the new S.33(5), the company is required to notify the DG in writing for deduction of the interest (for period 1 November 2015 to 31 December 2015) due to be paid on 31 January 2016 not later than 12 months from 31 December 2016 and the DG may then reduce the assessment for YA 2015.

In the above example, it would be more practical for the company to be allowed to claim the said interest when submitting its return for YA 2015 under the Self-Assessment System instead of having to give the notification as aforesaid.

2.2 The Institutes would like to highlight that for reduction of assessments which extend beyond 5 years, there is a need to address the amendment of a prior year which may exceed the 5-year time bar period.

2.3 In view of the above, the Institutes would request the proposed S.33(5) be dropped. Further, the Institutes would also request that the application of S.33(4) be restricted to only interest paid on loans between related parties. This is to align S.33(4) to the original objective of ensuring that the tax treatment for tax on interest income and deduction between related parties are matched and lessen the compliance burden on taxpayers and administrative burden on the IRBM.

2.4 In respect of S33(5), clarification is sought on the following -

(a) The IRBM clarified at the CTIM 2016 Budget Seminar on 5 November 2015 that if the tax payer missed the 12-month notice period in the proposed new S.33(5), the option under S.131 is still available to the taxpayer. Kindly confirm that our understanding is correct.

(b) Reference is made to Example 25, Appendix 10 of the reading material on the 2016 Budget Proposals for the National Tax Seminar 2015 organised by the IRBM which is reproduced below.

Jasmine Sdn Bhd and Lily Sdn Bhd are related companies. The accounting period for both companies is 31 December every year.

Jasmine Sdn Bhd obtained a loan from Lily Sdn Bhd and the details of the loan agreement is as follows:

Loan date	*Loan amount (RM)*	*Interest rate (%)*	*Loan tenure*	*Date interest is payable*
1.1.2014	*5 million*	*6*	*10 years*	*31.12.2017*

- *Interest deduction of RM300,000 a year is allowable against the business income of Jasmine Sdn Bhd from YA2014 until YA2017 in YA2017 when the interest is due to be paid.*
- *The request for deduction of interest expenses must be submitted to IRBM by Jasmine Sdn Bhd before 1.1.2019 (within 12 months after 31.12.2017).*

Can Jasmine Sdn Bhd claim a deduction for the interest for YA 2017 of RM300,000 in the tax return for YA 2017 which is due for submission after the interest payable date of 31 December 2017, instead of waiting for the Director General to reduce the assessment?

For a company with 30 June year end, if the interest is accrued on 30 June 2015 but only due and payable on 31 August 2015, it would be due after the year end. But when the taxpayer files the income tax return by 31 January 2016, it would already be due and payable and a deduction should be claimed on it in that income tax return. Please indicate whether the IRBM is agreeable to this and confirm that the taxpayer does not need to inform the IRBM for such cases.

3. Tax treatment of GST Input Tax

Proposals:

New Section 39(1)(o) of the Income Tax Act 1967 (ITA) – Deduction not Allowed for Input Tax

Any amount paid or to be paid in respect of goods and services tax as input tax by the person if he is liable to be registered under the Goods and Services Tax Act 2014 and has failed to do so, or if he is entitled under that Act to credit that amount as input tax.

New Section 18(1)(p) of the Petroleum (Income Tax) Act 1967 [PITA]

Any amount paid or to be paid in respect of goods and services as input tax by the chargeable person if he is liable to be registered under the Goods and Services Tax Act 2014 and has failed to do so, or if he is entitled under that Act to credit that amount as input tax.

New paragraph 2E of Schedule 3 of the ITA

For the purposes of paragraph 1, the qualifying expenditure incurred by a person shall not include any amount paid or to be paid in respect of goods and services tax as input tax by the person if he is liable to be registered under the Goods and Services Tax Act 2014 and has failed to do so, or if he is entitled under that Act to credit that amount as input tax.

New paragraph 1D(1) of Schedule 7A of the ITA

For the purposes of paragraphs 1 and 1A, the capital expenditure incurred by a company shall not include any amount paid or to be paid in respect of goods and services tax as input tax by a company if the company is liable to be registered under the Goods and Services Tax Act 2014 and has failed to do so, or if the company is entitled under that Act to credit that amount as input tax.

New paragraph 1A(1) of Schedule 7B of the ITA

For the purposes of paragraph 1, the qualifying expenditure incurred by a company shall not include any amount paid or to be paid in respect of goods and services tax as input tax by a company if the company is liable to be registered under the Goods and Services Tax Act 2014 and has failed to do so, or if the company is entitled under that Act to credit that amount as input tax.

(and other similar proposed amendments to the First and Second Schedule of the PITA and Section 29P of the Promotion of Investments Act 1986)

Comments:

3.1 Based on the proposed amendments to the tax treatment of input tax, the input tax paid or to be paid by the person shall not be allowed a deduction or included in qualifying expenditure or capital expenditure incurred by him –

- If he is *"liable to be registered under the GST Act 2014 and has failed to do so"*; or
- If he is "*entitled under that Act to credit that amount as input tax".*

In view of the above, there are difficulties in the following situations -

(i) The prohibition of claiming the deduction or allowance on input tax based on the entitlement to claim the input tax credit under the GST Act 2014 may be unfair for GST registered persons who choose to forego the claim on input tax credit for commercial reasons e.g. due to high administration costs of maintaining records of claims of input tax on expenses such as parking fees, etc.

(ii) The disallowance of such input tax would result in complications to the configuration of the GST accounting system.

(iii) Input tax credit which is not claimed under the GST Act 2014 is a business cost. The non-deductibility of the input tax or its non-inclusion for the purpose of claiming allowances (because the person was entitled to claim the input tax credit) will increase the income tax and consequently the business cost. This will be an additional burden to businesses, particularly small and medium enterprises, which are facing rising costs and economic uncertainty.

It would be more reasonable if the non-deductibility of the input tax or its non-inclusion for the purpose of claiming allowances is restricted to cases where the person had claimed the input tax credit instead of merely being entitled to claim it. Where the taxpayer has not claimed the input tax as a credit for GST purposes, he would have incurred the GST input tax as a normal business cost. Therefore, the Institutes would suggest that the wording "*entitled under that Act to credit that amount as input tax"* in the proposed amendments for all the relevant new Sections and Paragraphs above, be re-worded to "*entitled under that Act to credit that amount as input tax* ***<u>and has claimed the input tax credit</u>***".

There is no loss of tax revenue to the Government as the suggestion above will result in no input tax credit to be set-off against the output tax to be remitted to the Royal Malaysian Customs Department (RMCD). In fact, the amount of additional output tax collected would exceed the amount of income tax revenue* reduced as a result of allowing a deduction on input tax which is not claimed as input tax credit.

* Equivalent to the tax rate multiplied by the input tax which is not claimed as input tax credit.

3.2 In respect of the new paragraph 6(1)(e) of Schedule 2 of the RPGTA –

Kindly clarify whether the phrase "…not entitled under that Act to credit that amount as input tax" incorporates any adjustments arising from annual adjustment and capital goods adjustment in respect of the real property.

4. Tax treatment of GST Output Tax

Proposals:

Section 39 of the Income Tax Act 1967 (ITA) – Deductions Not Allowed

Section 18 of the Petroleum (Income Tax) Act 1967 [PITA] – Deductions Not Allowed

Paragraph 7 of Schedule 2 of the Real Property Gains Tax Act 1976 [RPGTA]

The relevant legislations **[Deductions Not Allowed]** are amended by inserting the following subsection:

"any amount of output tax paid or to be paid under the Goods and Services Tax Act 2014 which is borne by the person if he is registered or liable to be registered under that Act;"

Comments:

The new proposed tax treatment on GST Output Tax under the ITA, PITA and RPGTA go against the fundamental principles of running a business by regarding GST Output Tax borne by the business which is not collectible from customers, as not part of the cost of doing business. Businesses are required to collect and remit GST Output Taxes to the RMCD whether or not they are able to collect it from their customers; failure to do so will result in penalties. In such circumstances, the GST Output Tax is a necessary cost of doing business and should be allowed a deduction under the ITA or be taken into account under the RPGTA. Doing otherwise would further increase the costs of doing business because, in addition to being out of pocket on the GST Output Tax, no deduction is allowed to reduce taxable income.

This proposed disallowance of an income tax deduction for output tax borne by a trader while the trader still submits a GST return and reports the output tax and pays the amount due to the RMCD is inherently unfair as there is compliance with the GST law and payment of the tax due. The fact that a GST registered business decides to keep its price low (by not asking a customer to pay the 6% GST) is part and parcel of a marketing/business strategy and a way of doing business which actually assists the people in the context of keeping prices low. Such a strategy should not be subjected to a penalty by disallowing a deduction of the output tax (that was borne by the business). The output tax is a cost of operating the business and must be allowed as a deduction for income tax purposes.

The Institutes wish to suggest that the proposed new subsection shall not include the following GST paid / payable as they are clearly the cost of doing business:-

i. Output tax incurred as a result of marketing/business strategy;

ii. Output tax incurred as a result of the transitional provision as provided under S.183 of the GST Act 2014;

iii. Output tax incurred on supply of imported services; and

iv. Output tax incurred under “deemed” supply of the GST Act 2014 such as gift *.

   * Where gifts are given free to employees and customers, the taxable person is required to account for output tax on those items given away free of charge if the total value given in a year to the same person exceeds RM500 i.e. deemed output tax is applicable in compliance with the GST gift rule.

   Deemed output tax as mentioned above shouldn’t be viewed as the same as those output tax on taxable supply by the taxable person but borne by him with the main objective of attracting customers and increasing sales.

   We are of the view that those deemed output tax applicable on gifts given free to employees and customers that is borne by the taxable person should not be subject to non-deduction provision under S.39(1)(p) of the ITA.

5. Adjustments made on GST Input Tax

Proposals:

New Section 91(6) of the Income Tax Act 1967 (ITA)

(and the similar proposed New Section 39(6) of the Petroleum (Income Tax) Act 1967 [PITA])

Notwithstanding the provisions of this Act, where in a basis period for a year of assessment, an adjustment is made in respect of the input tax paid or to be paid under the Goods and Services Tax Act 2014, the Director General may at any time, as may be necessary to give effect to such adjustment, make an assessment or a reduced assessment for the year of assessment to which the adjustment relates, or if the year of assessment to which the adjustment relates cannot be ascertained, for the year of assessment in which the Director General discovers the adjustment.

New paragraph 67D of Schedule 3 of the ITA - Income tax adjustments in respect of GST adjustments to the cost base of a tax- depreciable asset

(and similar proposed amendments to Schedule 7A and 7B of the ITA, First and Second Schedule of the PITA and Section 29Q of the Promotion of Investments Act 1986 [PIA])

(1) Where in the basis period for a year of assessment a person has incurred qualifying plant expenditure, qualifying building expenditure, qualifying agriculture expenditure or qualifying forest expenditure, in relation to an asset and the input tax on the asset is subject to any adjustment made under the Goods and Services Tax Act 2014, the amount of such qualifying expenditure in relation to that asset shall be adjusted in the basis period for a year of assessment in which the period of adjustment relating to the asset as provided under the Goods and Services Tax Act 2014 ends.

(2) In the event the adjustment of the amount of the qualifying expenditure made under subparagraph (1) results in—

(a) an additional amount, such amount shall be deemed to be part of the qualifying expenditure incurred, and the residual expenditure under paragraph 68 in relation to the asset shall include that additional amount; or

(b) a reduced amount, the qualifying expenditure incurred and the residual expenditure under paragraph 68 shall be reduced by such amount, and if the amount of the allowance made or ought to have been made under this Schedule exceeds the residual expenditure, the excess shall be part of the statutory income of that person from a source consisting of a business in the basis period the adjustment is made.

(3) The excess amount referred to in subsubparagraph (2)(b) shall not exceed the total amount of allowances given under this Schedule.

(4) Notwithstanding subparagraph (1), where a person has incurred the qualifying plant expenditure, qualifying building expenditure, qualifying agriculture expenditure or qualifying forest expenditure in relation to an asset, and the asset is disposed of at any time during the period of adjustment specified under the Goods and Services Tax Act 2014, the adjustment to such qualifying expenditure shall be made in the basis period for the year of assessment in which the disposal is made.

(5) Paragraphs 39 and 40 shall apply for the purpose of the adjustment referred to in subparagraph (4).

Comments:

5.1 In respect of the new S.91(6) of the ITA and S.39(6) of the PITA,

(a) Under the proposed amendment, the DG is empowered to raise assessment or reduced assessment at any time for the year of assessment to which the adjustment made on input tax paid or to be paid under the GST Act relates, notwithstanding any provision of the principal act. This proposal seems to overwrite the existing 5-year statutory limitation rule provided under S.91(1) of the ITA. Please confirm that there is no time bar for assessments and reduced assessments raised under these proposed amendments.

The Institutes would request for the period for the DG to raise an assessment or a reduced assessment to be within 2 years of assessment after the end of the basis period for the year of assessment in which the final adjustment is made by the Royal Malaysian Customs Department on input tax paid or to be paid under the GST Act.

The Institutes would also request that the tax payers be allowed to file amended tax returns for prior years of assessments to give effect to adjustments made in respect of the input tax paid or to be paid under the GST Act 2014 which includes Capital Goods Adjustments for periods of 5-years and 10-years.

(b) In the event the assessment issued by the DG is for additional taxes, will there be penalties?

We are of the opinion that these adjustments mentioned above are not foreseen or within the control of the taxpayer. Imposing penalties for additional taxes that arise from these adjustments would be unfair. The Institutes would therefore request that relevant provisions in the ITA be included/amended accordingly to provide assurance to taxpayers that penalties shall not be imposed as a result of any assessments made by the DG under the new sections above.

5.2 In respect of the new paragraph 67D of Schedule 3 (and similar proposed amendments to Schedule 7A and 7B of the ITA, First and Second Schedule of the PITA and Section 29Q of the PIA) –

- There are tax returns for year of assessment 2015 which will be furnished to the IRBM pending the gazette of the proposed amendment (for example, companies with financial year ended 30 April 2015 and 31 May 2015 would be filing their tax returns by 30 November 2015 and 31 December 2015 respectively).

  We are of the view that any revision of tax return for the year of assessment 2015 to comply with the proposed amendment upon gazette of the Finance Act should not be regarded as incorrect return and penalty under S.113 of the ITA should not be imposed. Kindly confirm.

  We are also of the view that for any original tax estimate (Form CP204) or revised tax estimate (Form CP204A) submitted prior to the gazette of the Finance Act, any underestimation of the tax estimate as a result of giving effect to the adjustments made in respect of the input tax paid or to be paid under the GST Act 2014 in the income tax return in accordance with the Finance Act, should not be subject to penalties. Kindly confirm.

6. Other tax issues arising from the implementation of GST

Comments:

We noted that the proposed amendments in the Finance Bill 2015 did not address the following issues which were raised in the CTIM Memorandum on Income Tax Issues Arising From The Implementation Of GST dated 6 March 2015 which had been submitted to the MOF and IRBM:–

- Item 4 – Additional GST output tax imposed during a Customs audit.
- Item 5 – Effects of GST on the quantum of withholding tax.
- Item 6 – Interaction of GST with Stamp Duty.
- Item 8 – Deduction on cost incurred for filing of GST returns.
- Item 9 – Deduction on expense incurred on audit fee for special refund of sales tax for goods held on hand.

We would appreciate the IRBM's urgent response to the above issues to provide clarity to taxpayers in view that GST has been implemented in April 2015.

7. Furnishing of estimate or revised estimate of tax payable by companies

Current provision:

Existing Section 107C(3) – Estimate for current assessment

The estimate of tax payable for a year of assessment shall not be less than eighty-five per cent of the revised estimate of tax payable for the immediately preceding year of assessment or if no revised estimate is furnished, shall not be less than eighty-five per cent of the estimate of tax payable for the immediately preceding year of assessment.

Proposal:

New Section 107C(7A)

For the purposes of subsections (1) and (7), a company shall furnish the estimate or revised estimate of its tax payable on an electronic medium or by way of electronic transmission in accordance with section 152A.

Comments:

7.1 For estimate of tax payable for the current year of assessment (YA) which is less than 85% of the estimate of tax payable (or revised estimate of tax payable, if applicable) for the immediately preceding YA, taxpayers are required to submit a manual Form CP204 together with the grounds for the lower estimate for the IRBM's consideration.

In view of the new S.107C(7A), the Institutes would like to seek clarification on the appropriate mechanism for submission of an estimate of tax payable which is less than 85% of the estimate / revised tax payable for the immediate preceding year. Kindly provide guidance on this matter on an urgent basis as the submission of Form CP204 for YA 2016 has commenced.

7.2 The Institutes are of the view that the proposal should only apply to cases where the submission deadline of the estimate / revised tax estimate falls after the amendment of the law is gazetted. Hence, so that companies / employers are not required to resubmit the tax estimate or revised tax estimate filed prior to the amendment of the law. Please indicate IRBM's concurrence with the Institutes' view.

7.3 The Institutes also understand that taxpayers who have already submitted or will soon be submitting the Form CP204 for YA 2016 manually prior to the coming into operation of the new S.107C(7A) will not be penalised for making the said manual submission. Kindly confirm the Institutes' understanding.

Alternatively, the Institutes would suggest that the effective date of the new S.107C(7A) be changed from YA 2016 to 1 January 2016 onwards so that all taxpayers are able to comply with the requirement.

8. Additional penalty for not furnishing tax return

Proposal:

Amended Section 112(1)

Any person who makes default in furnishing a return in accordance with subsection 77(1) or 77A(1) ***in respect of any one year of assessment*** *or in giving a notice in accordance with subsection 77(3) shall, if he does so without reasonable excuse, be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.*

New Section 112(1A)

Any person who makes default in furnishing a return in accordance with subsection 77(1) or 77A(1) in respect of any year of assessment for two years or more shall, if he does so without reasonable excuse, be guilty of an offence and shall, on conviction, be liable to—

(a) a fine of not less than one thousand ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both; and

(b) a special penalty equal to treble the amount which the Director General may, according to the best of his judgment, determine as the tax charged on the chargeable income of that person for those years of assessment.

Comments:

8.1 Under the new S.112(1A), any person who makes default in furnishing a return in accordance with S.77(1) or 77A(1) in respect of **any year of assessment (YA) for two years or more** shall, if he does so without reasonable excuse, be guilty of an offence and shall, …"

The wordings in the above proposed provision is not clear as highlighted in **bold**. The words "two years or more" could mean two consecutive years of assessment or more. For example if a taxpayer fails to furnish a return for two consecutive years of assessment or more, S.112(1A) will apply. Would the new S.112(1A) also apply where a taxpayer fails to furnish a return in year 1 and year 3 but submits year 2 on time? The Institutes would request that the intention be clearly reflected in the proposed S.112(1A).

We are also of the view that the failure to furnish tax returns in respect of 2 YAs (for the purpose of imposing the special penalty) is too short for taxpayers who are struggling to submit their returns. A longer period of say 3 YAs may be more reasonable.

In view of the above, we would appeal to amend the wording in the new S.112(1A) from "*.. in respect of any year of assessment for two years or more ..*" to "*.. in respect of any* ***three years of assessment*** *or more ..*".

8.2 Since the proposed amendment is effective upon coming into operation of Finance Act 2015, we are of the view that this proposal should apply to default in furnishing tax returns that are due after the effective date of this proposed amendment. Please confirm our understanding.

8.3 It would be appreciated if the IRBM could update the Operations Guidelines No. 1/2015 on the Imposition Of Penalty Under S.112(3) Income Tax Act 1967 to include the amended S.112(1) and the new S.112(1A) as well as the clarification sought in item 8.2 above.

9. Penalty for not providing correct particulars

Proposal:

New Section 120(1)(h)

*Any person who without reasonable excuse fails to furnish the **correct particulars** as required by the Director General under paragraph 77(4)(b) or 77A(3)(b), shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.*

Comments:

9.1 Section 113(2) already provides for penalties on taxpayers who make an incorrect return by omitting or understating income or give incorrect information which affects their chargeability to tax. The proposed S.120(1)(h) is clearly meant to address incorrect particulars which are not addressed in S.113(2). As such, the proposed S.120(1)(h) is a wide ranging provision as when one refers to particulars in a tax return, it can cover items such as the business code, address, business registration number and even the bank account number, etc which do not directly impact the actual computation of the income tax liability. At the same time, this amendment is also intended to discourage taxpayers from furnishing incorrect particulars such as incorrectly declaring the existence of transfer pricing documentation without having the said documentation in place.

While the penalties under the new S.120(1)(h) may be intended to act as a deterrent against taxpayers who intentionally provide incorrect particulars in income tax return forms, the provision as drafted does not distinguish between intentional and unintentional errors. Hence the provision is excessively punitive and unfair to taxpayers who have made genuine mistakes. By giving it a wide application, the proposed S.120(1)(h) gives the authority to impose punitive penalties even for mistakes such as “typo” errors notwithstanding assurances on fairness and reasonableness. With the Rakyat struggling with the rising costs of living, the prospect of paying substantial penalties for making such errors and mistakes in the tax return would cause a lot of concern.

The Institutes are of the view that there is no real need for such a provision and would request that the proposed S.120(1)(h) be dropped. There are other constructive ways in which compliance can be improved such as continuous education and raising the awareness of taxpayers. Moreover, as the income tax return form is a statutory declaration by the taxpayer, there is already a provision in the Statutory Declaration Act 1960 which provides that false declarations are punishable under the Penal Code.

9.2 Based on Slide 24 of the session on 2016 Budget Proposals presented by the IRBM at the National Tax Seminar 2015 held on 29 October 2015, examples of correct particulars include business codes, registration number (ROC number) and business address. As the IRBM would appreciate, the description of business activity for some codes is very close / similar and hence, it is possible that taxpayers may miss out the precise code.

9.3 Kindly confirm that this section does not apply to fields in the income tax return form which are not mandatory; e.g. date of commencement of operation.

10. New paragraph 16B of Schedule 3 for industrial building allowance

Proposal:

New paragraph 16B of Schedule 3

Notwithstanding any other provision of this Schedule, no allowance shall be made to a person under paragraphs 12 and 16 for a year of assessment in respect of any expenditure incurred in relation to paragraphs 37A, 37B, 37C, 37E, 37F, 37G, 37H, 42A and 42B of this Schedule relating to industrial building where the building or part thereof is used by that person for the purpose of letting of property including the business of letting of such property.

Comments:

10.1 This proposal is also driven by the decision of the Courts which did not favour the IRBM. The Institutes would reiterate that the Court has made a decision based on its interpretation of the wordings of the relevant provision of Schedule 3 which have been around for a number of years. The business logic wherein the owners of capital and the party which can provide labour to operate the special building are, in most situations, different seems to have been missed by the tax authorities together with the fact that some of these activities involve private public-private financing initiatives where the owner and operator are distinctly different. Once again, such a change has an impact on business models which had factored in the eligibility for an industrial building allowance. Under the proposed amendment, if a special building is now constructed by one party and then operated by another as an industrial building, no one will qualify for an industrial building allowance.

The Institutes are of the view that any amendments to the tax legislation which affect the fundamental principles of taxation (in this case, entitlement to industrial building allowance claim) should be discussed between the stakeholders (the tax authorities, professional bodies, private sector etc.) before it is included in the Finance Bill.

At the CTIM 2016 Budget Seminar on 5 November 2015, the tax authorities clarified that it has been their understanding from the beginning that the intention for the special buildings to be treated as industrial buildings is due to requests in the past from persons to be allowed to claim industrial building allowances on their buildings which were constructed at significant cost for use in their business, as the prevailing provisions at that time did not allow them to do so. The Institutes do not agree with the tax authorities' interpretation that this only applies to a person who is the owner and operator of the building. Such interpretation when implemented, would go against the Government's efforts to sustain economic development through assisting businesses (regardless of their business model such as in item 10.2 below) as engines of the economy to remain viable and competitive in an increasingly challenging environment which we believe was the intention for treating the special buildings as industrial buildings in the first place.

10.2 We would appeal to the Ministry of Finance to drop this proposal due to the following reasons:-

- The proposal does not take into account the current business model adopted where the owner and operator of the building may not be the same person. The separation of building ownership from the operation of the business carried out in the building is brought about by the following factors -
  - Cost of the building is substantial - Operator may not have the financial means to acquire the building.
  - Difference in skill sets between owner and operator and increased efficiency

  - Owner - managing, maintaining and renting out the building.
  - Operator - delivery of services.

  We believe that it is not the Government's policy to force businesses to change their business model of separating the ownership of the building from the operation of the business carried out in the building as mentioned above.

- Wide application and increase in rental - The business model of REITs as well as building owners who manage, maintain and rent out the building but do not operate the business would be affected. The non-availability of industrial building allowance claims on the affected buildings by building owners would lead to increase in rental rates and hence increase in the cost of business which are passed down to consumers such as service charges (e.g. private health care charges and education fees).

- The proposed amendment would discourage foreign investors from investing in the affected buildings. Returns to investors will be affected as the profit after tax of businesses are reduced as a consequence of higher taxes. This may drive potential and existing investors to look for more attractive investments in other tax jurisdictions as there are tax jurisdictions where a person who is an owner of a special building but does not operate it can claim industrial building allowance on it.

10.3 The words "… or part thereof …" in paragraph 16B seems to indicate that the building would not qualify for industrial building allowance if part of the building is being let out even though the owner is also the operator of the business.

Example: A company owns a hospital building and carries on the business activities of a hospital. A small space is rented out to a sandwich shop for the benefit of the staffs and patients.

The IRBM clarified at the CTIM 2016 Budget Seminar on 5 November 2015 that IBA can be claimed on the building provided not more than one-tenth (1/10) of the floor space is rented out. Kindly confirm that our understanding is correct.

Following the above, please clarify the following:-

- the entitlement of the company in the example above to the IBA claim if the space which is rented out exceeds one-tenth of the total floor space of the hospital. Would the treatment similar to that under paragraph 66 of Schedule 3 apply?

- Would part of the hospital premises rented to doctors operating in the hospital be included in determination of the "one-tenth rule" above?

We would request that the provisions of the law be amended accordingly to reflect the tax treatment as clarified by the IRBM.

10.4 Please confirm the following:-

- Effective date of paragraph 16B – The IRBM has mentioned in the CTIM Budget Seminar on 5 November 2015 that the provision applies to new buildings. Please clarify if this means that paragraph 16B would not apply to existing buildings acquired prior to YA 2016, but will only apply to expenditure incurred on new buildings acquired from YA 2016.

- An owner and operator of a hotel who outsources the management of the hotel to another party but still assumes the risks of the hotel business would not be precluded from claiming IBA under paragraph 16B. (We note that the owner and operator of the hotel in this situation is allowed to claim Investment Tax Allowances on the hotel building.)

11. Tax adjustment in respect of any part of an asset

Proposal:

New paragraph 61B of Schedule 3

(1) Notwithstanding any other provision of this Schedule, where any part of an asset of a person from a business ceases to be used for purposes of a business of his in a basis period for a year of assessment due to replacement with a new part and that new part is depreciated separately in accordance with the generally accepted accounting principles, that part of an asset is deemed to have been disposed of in that basis period for that year of assessment.

(2) The qualifying expenditure of the part of the asset disposed shall be taken to be the amount as determined in accordance with the generally accepted accounting principles.

(3) The residual expenditure under paragraph 68 in respect of the part of the asset disposed shall be the qualifying expenditure of the part of an asset disposed reduced by the amount of allowance that have been made or would have been made under this Schedule to that person prior to the disposal of that part of the asset.

(4) The provisions of this Schedule shall apply to the new part of an asset referred to in subparagraphs (1) and (2).

Comments:

11.1 In the Example 26, Appendix 11 of the reading material on the 2016 Budget Proposals for the National Tax Seminar 2015 organised by the IRBM, the value of the part of the asset (in this case, the engine of an aeroplane) which was replaced was determined by applying the discounted value basis/method on the price of the new asset part. Please confirm that the discount rate used by the external auditors to arrive at the value of the part of the asset is acceptable to the IRBM.

11.2 The IRBM informed the participants at the National Tax Seminar 2015 organised by the IRBM on 29 October 2015 that if need be, guidelines on the new paragraph 61B of Schedule 3 will be issued. The Institutes would like to request for the guidelines to be issued to the public soon, taking into account the confirmation sought in item 11.1 above.

12. Schedule 7A Reinvestment allowance - New definitions

Proposal:

Amended paragraph 9 of Schedule 7A

- ***"ceased to be used" in relation to an asset includes an asset classified as held for sale under paragraph 61A of Schedule 3;***

  *"disposed of" means sold, conveyed, transferred, assigned, **ceased to be used** or alienated with or without consideration;*

- New definition to clarify scope of qualifying project for RA –

  "Automation", "Diversifying", 'Expanding", "Machinery", "Modernizing", "Plant"
- Amend definition of –

  "Manufacturing" – delete the words "size, shape"

  "Simple" – amended definition

Comments:

12.1 We would request that the public ruling on reinvestment allowance (RA) be revised soon to take into account the new and amended definitions in paragraph 9 of Schedule 7A and include examples before and after the changes in the definitions.

12.2 In respect of the proposed new/revised definitions, we set out our views and request for clarification below:-

- "Ceased to be used" and "disposed of" -

  Where RA has been clawed back in the basis period the asset was ceased to be used but failed to sell the asset and reclassified back to property, plant and equipment and continue to be used for business purpose, what is the RA treatment (assuming the eligibility period for claiming RA has not expired)? Unlike capital allowances where specific treatment is provided in Schedule 3 of the ITA, Schedule 7A is silent on the tax treatment. We would request that the IRBM clarifies the treatment to be adopted and provide for the treatment in the law.

  The Institutes would like to express their disagreement with the provisions of paragraph 61A of Schedule 3 of the ITA which seek to converge the tax treatment with the accounting treatment for assets classified as assets held for sale (AHFS). Assets classified as AHFS for accounting purposes need not necessarily have ceased to be used and as such the capital allowance claim on the asset should continue. As such, we urge the tax authorities to reconsider the tax treatment in the said provisions in light of this fact.

- "Plant' and "machinery" -

  In view of the new definitions for plant and machinery (P&M), we would like to seek confirmation whether it is intended that only P&M used in carrying out manufacturing activity "in a factory" may qualify for RA. Does it mean that P&M used outside a factory (such as lorries and loading trucks etc.) will not qualify even if they are incurred for the purpose of a qualifying project of expansion, diversification, modernization etc.?

  If the above definition is intended to disqualify such P&M as explained above from RA claim, it would go against the intention of granting RA to encourage reinvestment. Further the determination of whether an asset is used "directly" or "indirectly" in carrying out a manufacturing activity can be subjective, leading to further uncertainty. Consequently, investor sentiment on reinvestment in the manufacturing sector could be affected negatively.

  Hence, the Institutes are of the view that the wording "which is directly used in carrying out that activity in a factory" should not be included in the definition of "plant" and "machinery."

- "Simple" -

  The new definition of "simple" seeks to distinguish "simple" from "special". This may lead to unforeseen issues when what is considered "special" today is no longer considered "special" a few years from now as plant and machinery have a tendency to become outdated with improvements in expertise / technology. Even today, what is considered "special" locally may be considered "simple" overseas as local expertise / technology may be considered outdated in comparison. Would this mean that further clarity would be required on the definition of "simple" to keep pace with developments? Such a definition could cause confusion and lead to further subjective interpretation and uncertainty.

  As such, the Institutes do not see the necessity for such definition.

Special reinvestment allowance incentive

Proposal:

New paragraph 2B of Schedule 7A

Subject to this Schedule and notwithstanding paragraph 2, where a company has first made a claim for an allowance under this Schedule in the return of its income and the period for fifteen consecutive years of assessment referred to in paragraph 2—

(a) ended in the year of assessment 2015 or in any other preceding year of assessment, an allowance under paragraph 1 or 1a shall be given in respect of capital expenditure incurred by the company in the basis period for the years of assessment 2016, 2017 and 2018;

(b) ends in the year of assessment 2016, an allowance under paragraph 1 or 1a shall be given in respect of capital expenditure incurred by the company in the basis period for the years of assessment 2017 and 2018; or

(c) ends in the year of assessment 2017, an allowance under paragraph 1 or 1a shall be given in respect of capital expenditure incurred by the company in the basis period for the year of assessment 2018.

Comments:

The Institutes would request that the above-mentioned special reinvestment allowance (RA) incentive also be given for 3 years of assessment (YA) where the period for 15 consecutive YAs for RA claim ends in YA 2016 and YA 2017 to make it more meaningful for investors who have decided to reinvest.

13. Change to basis period to which employment income is related

Proposals:

Amendments to Section 25

(1) Subject to subsection (1A), or (2A) where gross income from an employment—

(a) is not receivable in respect of any particular period; and

(b) first becomes receivable in the relevant period,

it shall when received be treated as gross income of the relevant person for the relevant period.

(1A) The gross income from an employment in respect of any right to acquire shares in a company of the kind to which paragraph 13(1)(a) applies, shall where the right is exercised, assigned, released or acquired in the relevant period be treated as gross income of the relevant person for that relevant period.

[The proposed amendments include the deletion of subsections (2), (2A), (3), (4) and (5)]

(6) Notwithstanding the foregoing subsections, where the Director General is satisfied that—

(a) an employee has left or will be leaving Malaysia in the basis year for the year of assessment to which the relevant period relates (that year of assessment being in this subsection referred to as the relevant year) and will not be resident for the basis year for the following year of assessment;

(b) no pension derived from Malaysia will be receivable by the employee for the basis period for that following year; and

*(c) gross income from the employee's employment will cease to be derived from Malaysia on the expiration of a period of leave following the employee's departure from Malaysia, any gross income from the employment which but for this subsection would by virtue of any of the foregoing subsections be receivable ~~for the basis period for the year of assessment following the relevant year shall be treated as receivable~~ **for the basis period for the relevant year or for the basis period for the year of assessment following the relevant year, shall be treated as deemed to have been received** for the relevant period unless the employee in making his return of income for the relevant year (or within such period after the making of that return as the Director General may allow) makes a written request to the Director General that this subsection shall not apply in relation to his gross income from the employment.*

Comments:

We would like to seek clarification on when the term *"received"* is applied in the following circumstances to avoid administrative confusions –

Say, the cheque for December Year 1 salary is given by the employer on 27 December, banked-in by the employee on 31 December and the salary is credited in 2 January Year 2, which of the three dates would the salary be regarded as received? From a policy and administrative perspective, the *date cheque is made available for collection by employee* appears realistic as the EA form (and the MTD) is made by the employer and this is the one date that the employer should be expected to know. In the case of direct debit, the *date the transaction being initiated* should be used. These issues should ideally be addressed in a public ruling.

Examples are also requested for any cheques that are not honoured ('bounced') and, for the case of direct debit, any failed transactions.

14. Tax relief for parental care

Proposal:

New Section 46(1)(o)

In the case of an individual or a Hindu joint family resident for the basis year for a year of assessment, there shall be allowed for that year of assessment personal deductions of an amount of one thousand five hundred ringgit for each of the parent of that individual—

(i) who is a resident and, at any time in that basis year, aged sixty years and above; and

(ii) whose annual income does not exceed twenty-four thousand ringgit for that year of assessment:

Provided that—

(a) the deduction under this paragraph shall be allowed for a maximum of two parents;

(b) the deduction under this paragraph shall not be allowed for an individual who has made a claim under paragraph 46(1)(c) for the same basis year; and

(c) where two or more individuals are each entitled to claim a deduction for a year of assessment under this paragraph in respect of the same parent, there shall be allowed to each of those individuals, in place of the whole deduction which would otherwise be allowed under this paragraph, an amount of the whole deduction equally apportioned according to the number of the individuals making the claim.

Comments:

14.1 This relief should be in addition to the current relief of RM5,000 for medical treatment rather than being 'mutually exclusive '.

14.2 A senior citizen who is 55 years old can opt to withdraw his EPF in one lump sum or requests for monthly payment for the annual dividend & partial principal withdrawal. Is the monthly instalments from EPF regarded as the parents' annual income?

15. Personal Income Tax Rates

Proposal:

Amended Part I Paragraph 1 of Schedule 1

Currently, the income tax for resident individual taxpayer is calculated based on scale rates ranging from 0% to 25% with the maximum rate of 25% being applicable to the chargeable income band of RM400,000 and above. For a non-resident individual taxpayer, the income tax rate is at 25%. It is proposed that the tax rates be reviewed as follows with effect from the year of assessment 2016:

Chargeable income	Existing rates (%)	Proposed rates (%)	Increase (%)
1 – 5,000	0	0	–
5,001 – 20,000	1	1	–
20,001 – 35,000	5	5	–
35,001 – 50,000	10	10	–

50,001 – 70,000	16	16	–
70,001 – 100,000	21	21	–
100,001 – 250,000	24	24	–
250,001 – 400,000	24.5	24.5	–
400,001 – 600,000	25	25	–
600,001 – 1,000,000	25	26	1
Above 1,000,000	25	28	3

It is also proposed that non-resident individual taxpayers' income tax rate be increased by 3% from 25% to 28%.

Comments:

The decision to increase the personal tax rates of the higher-income group comes immediately after the decrease in personal income tax rates in the 2015 Budget, along with the introduction of GST. The concern about this increase in personal tax rates is whether this reflects a policy change by the Government to increase the personal tax rates on high income individuals. Will this keep increasing in the future? This may have an impact on some foreign investors. No doubt, taxing the rich more will help decrease the nation's income inequality (reflected in the *Gini Coefficient*) but the increase is an unexpected move by the Government. The increase is expected to affect around 17,000 taxpayers out of a total of 2 million registered taxpayers.

The other point to note is that the tax rates stated above also apply to clubs, trade associations and the estate of a deceased person who died domiciled in Malaysia. It is not clear if the Government also intended the new rates to apply to such categories of taxpayers. It certainly appears that all commentaries and explanations from the Ministry of Finance seem to only focus on the higher tax rates on resident individuals. It is suggested that the relevant paragraph 1 to Schedule 1 of the Income Tax Act 1967 may need to be split so that one applies only to resident individuals and the other applies to the other persons i.e. clubs, trade associations and deceased persons estate.

16. Income tax exemption for gratuity on retirement from employment

Proposal:

New paragraph 25D of Schedule 6

Sums received by way of gratuity on retirement from an employment under any written law or termination of a contract of employment other than when paragraph 25, 25A, 25B or 30A applies:

Provided that the sums shall not exceed an amount ascertained by multiplying the sum of one thousand ringgit by the number of completed year of service of that individual.

Comments:

(a) Under the new paragraph 25D of Schedule 6, any sum received by way of gratuity on retirement from an employment under any written law or termination of a contract of employment other than when paragraphs 25, 25A, 25B or 30A applies shall be exempted from tax, provided that the sums shall not exceed an amount ascertained by multiplying the sum of RM1,000 by the number of completed years of service of the individual.

We understand from the Explanatory Statement that the intention of the above is to extend the exemption to gratuity given to individuals who opt for early retirement or termination of contract, regardless of the individual's age and period of service. If this is the intention and to meet the objective of relieving the tax burden of employees who opt for early retirement, the number of completed years of service should include the total period of employment service with companies in the same group. We would appeal to the MOF to allow similar provision under existing paragraph 25(2) of Schedule 6 to be applied under the new Paragraph 25D of Schedule 6 where :

"For the purposes of this paragraph the Director General may direct that a period of employment in a business with different employers where the control and management of that business substantially remains with the same person or persons or where the employment is with different employers whose businesses are conducted by or through a central agency shall be treated as a period of employment with the same employer."

(b) In view that the termination of an employment contract may be initiated by the resignation of the employee, please confirm that the sums received by way of gratuity upon resignation from employment is eligible for the RM1,000 per year exemption as well.

17. Section 108 Balance

Proposal:

New Part II Saving And Transitional, Finance Bill 2015

Application of this Part

30. *(1) The principal Act shall apply for the purposes of this Part unless otherwise provided.*

(2) For the purposes of this Part, the 108 balance refers to—

(a) the amount of the balance for the credit of a company at the end of the basis period for a year of assessment 2007 ascertained under subsection 108(8) of the principal Act prior to the coming into operation of the Finance Act 2007 [Act 683];

(b) the amount of the balance for the credit of that company ascertained under section 23 of the Income Tax (Amendment) Act 2000 [Act A 1093] as at 31 December 2007; and

(c) where the basis period of the company for the year of assessment 2007 ends—

(i) on a day other than 31 December 2007, any tax paid during the period from the first day of the basis period of that company for the year of assessment 2008 to 31 December 2007; or

(ii) on 31 December 2007, the final instalment paid under section 107C of the principal Act in respect of that basis period.

(3) Where there is any inconsistency between any provision of this Part and any provision of the principal Act, that provision of the principal Act shall be void to the extent of the inconsistency.

108 balance

31. *Where in the basis period for a year of assessment 2016 or any subsequent basis period—*

(a) the tax charged on the chargeable income of a company for the year of assessment 2000 on a current year basis and prior year of assessment is discharged or remitted; or

(b) any amount of tax paid by that company which has been taken into account for the purpose of computing the 108 balance is refunded,

the 108 balance of the company, shall on the day the tax is discharged, remitted or refunded, be reduced by such amount of tax discharged, remitted or refunded (hereinafter referred to as the "revised 108 balance").

Amount in excess of 108 balance

32.*(1) Where the amount of the revised 108 balance exceeds the 108 balance, or revised 108 balance as at 31 December 2013, the Director General shall serve on the company a written requisition in the prescribed form calling upon the company to pay an amount equal to that excess and that amount shall be a debt due from the company to the Government and that debt shall be payable immediately to the Director General upon the service of the requisition.*

(2) Where any excess due and payable by a company has not been paid within thirty days after the service of the requisition referred to under subsection (3), so much of the amount of excess as is unpaid shall without any further notice being served be increased by an amount equal to ten per cent of the excess so unpaid, and the amount unpaid and the increase on the amount unpaid shall be a debt due to the Government and that debt shall be payable immediately to the Director General.

Comments:

17.1 Referring to the definition of "**108 balance**" and "**revised 108 balance**" in the proposed saving and transitional provisions, the wordings in clauses 31 and 32 of the Finance Bill 2015 as highlighted below do not fulfil the intended proposal:

Clause 31 - *"…… the **108 balance** of the company, shall on the day the tax is discharged, remitted or refunded, be reduced by such amount of tax discharged, remitted or refunded (hereinafter referred to as the "**revised 108 balance**")."*

Clause 32(1) - *"Where the amount of the revised **108 balance** exceeds the **108 balance**, or **revised 108 balance** as at 31 December 2013, ……"*

In particular, the excess shall not constitute a charge.

We suggest the following –

(i) It would be more appropriate for Clause 30(2) to refer to the revised 108 balance as at 31 December 2013.

(ii) To amend the wording in Clause 31 as it should be the revised 108 balance as at 31 December 2013 which will be reduced by the tax discharged, remitted or refunded in the year of assessment (YA) 2016 and subsequent YA.

(iii) To amend the wording in Clause 32(1) as it should be referring to the amount of tax discharged, remitted or refunded which exceeds the revised 108 balance as at 31 December 2013.

17.2 The new Clause 31 states *"Where in the basis period for the year of assessment 2016 or any subsequent basis period –"*

We propose to reword to *"Where –"*.

18. Reduction in Withholding Tax rate for distribution from REITs received by a non-resident company

Proposal:

Amended Part X Paragraph 1(b) of Schedule 1

*Notwithstanding Part I and subject to paragraph (c), income tax shall be charged for a year of assessment on the income of a unit holder which is a non-resident company consisting of income distributed to the unit holder referred to in section 109D which is derived from Malaysia at the rate of ~~26% of gross for the year of assessment 2008 and 25% of gross for the subsequent years of assessment~~ **24% of gross for the year of assessment 2016 and subsequent years of assessment**.*

Comments:

We refer to the proposed amendment to Schedule 1 of the Income Tax Act 1967 set out in the Finance Bill 2015, whereby the withholding tax (WHT) rate for a non-resident company receiving profit distribution from REITs will be reduced from 25% to 24% effective from the year of assessment (YA) 2016 and would like to seek clarification on the following:-

(a) Example 1

REIT – Financial Year Ended 30 June 2016 (YA 2016)

Investor (non-resident company) **–** Financial Year Ended 31 December 2015 (YA 2015)

REIT profit distribution on 30 November 2015

Q: Distribution on 30 November 2015 falls in the REIT's **YA 2016.** However, receipt of the distribution by the investor is in **YA 2015**. Therefore, should the REIT deduct WHT at 24% or 25%?

(b) Example 2

REIT - Financial Year Ended 31 December 2015 (YA 2015)

Investor (non-resident company) - Financial Year Ended 31 January 2016 (YA 2016)

REIT profit distribution on 30 November 2015

Q: Distribution on 30 November 2015 falls in the REIT's **YA 2015**. However, receipt of the distribution by the investor is in **YA 2016**. Therefore, should the REIT deduct WHT at 24% or 25%?

19. Amendment to Section 29 of the Real Property Gains Tax Act (RPGTA) 1976 – Failure to notify or make return of disposal

Current provision:

Section 29(1) and 29(3) of the RPGTA 1976

S.29(1) - *Any person who, without reasonable excuse, fails to make a return required by subsection 13(1) or fails to make a declaration under subsection 13(5), shall be guilty of an* *offence and on conviction shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding twelve months or to both.*

S.29(3) - *Where in relation to a year of assessment a person fails to make a return required by subsection 13(1) or fails to make a declaration under subsection 13(5) and no prosecution under subsection (1) has been instituted in relation to that failure—*

(a) the Director General may require that person to pay a penalty equal to treble the amount of the tax which is payable for that year; and

(b) if that person pays that penalty (or, where the penalty is abated or remitted under subsection 40(3) so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

Proposal:

New Section 29(5) of the RPGTA 1976

The Director General may require any person to pay an additional amount of penalty in accordance with subsection (3) in respect of any additional tax which is payable by that person for a year of assessment.

Comments:

Please illustrate in an example on how the new S.29(5) of the RPGTA 1976 is supposed to operate.

20. Proposals on tax incentives and exemptions

20.1	**Tax Incentive on Issuance of Sustainable and Responsible Investments Sukuk (Sri Sukuk) *(Appendix 8 of 2016 Budget Speech)***
20.2	**Tax Incentive for Issuance of Retail Bond and Retail Sukuk *(Appendix 9 of 2016 Budget Speech)***
20.3	**Extension of Tax Exemption on Income from Managing Shariah-Compliant Funds *(Appendix 10 of 2016 Budget Speech)***
20.4	**Extension of Tax Incentive Period for Real Estate Investment Trusts (REITs) *(Appendix 11 of 2016 Budget Speech)***
20.5	**Extension of Stamp Duty Exemption to Revive Abandoned Housing Projects *(Appendix 12 of 2016 Budget Speech)***
20.6	**Extension of Stamp Duty Exemption on Shariah Financing Instruments *(Appendix 13 of 2016 Budget Speech)***
20.7	**Tax Incentives for the Establishment of Independent Conformity Assessment Bodies (ICAB) *(Appendix 21 of 2016 Budget Speech)***
20.8	**Review of Tax Incentive for Food Production Projects *(Appendix 22 of 2016 Budget Speech)***
20.9	**Extension of Tax Incentives for Tour Operating Companies *(Appendix 23 of 2016 Budget Speech)***
20.10	**Automatic Double Deduction for R&D Project *(Appendix 24 of 2016***

	Budget Speech)
20.11	**Allowance for Increased Exports Incentive to Small and Medium Enterprises (SMEs)** ***(Appendix 25 of 2016 Budget Speech)***

Comments:

i. We would appreciate it if the tax authorities could indicate when the PU Orders for each of the above will be gazetted. We would request that the PU Orders be gazetted urgently, especially those tax incentives which are effective from the year of assessment (YA) 2016. This is to enable taxpayers who qualify for the incentives to claim the incentive in the tax return for YA 2016 and avoid the need to revise the tax return in order to claim the tax incentive which would result in a cash flow disadvantage to the taxpayer and increased administrative work for the IRBM, taxpayers and tax practitioners which is not in the spirit of the Self-Assessment System.

ii. In respect of item 20.7 above, we would like to request for clarification on the mechanism and conditions on the tax incentives.

iii. In respect of item 20.10 above, the proposal suggests that eligible company may claim double deduction automatically for R&D project expenditures incurred up to a maximum of RM50,000 for each year of assessment in the respective tax returns.

Clarification is sought on the following -

- Pending the issuance of the relevant PU Order, please confirm if a Small Medium Enterprise (SME) as mentioned in this proposal is a company as defined under Paragraph 2A, 2B and 2C to Schedule 1 of the Income Tax Act 1967 (ITA).
- If the company has incurred RM100,000 of R&D expenses for a R&D project in YA 2016, can the company carry forward the balance of the unclaimed R&D expenses of RM50,000 to YA 2017?
- We would request that Guidelines and Rules be issued on a timely basis so that the SMEs can apply the tax incentive as required. Issues that should be clarified further include addressed in the Guideline include timing of submission of R&D project application to the IRBM, types of R&D expenses which qualify for the deduction and if there is any relaxation to the qualifying criteria in view that this incentive is given to SMEs.
- The IRBM clarified at the CTIM 2016 Budget Seminar on 5 November 2015 that no penalty will be imposed on any understatement of tax as a result of subsequent non-approval of the R&D project by the tax authorities. Kindly confirm that our understanding is correct
- We understand from the IRBM's clarification at the CTIM 2016 Budget Seminar on 5 November 2015 that no prior approval of the R&D project is required for a taxpayer to claim the double deduction in its tax return. However, the taxpayer still needs to submit a R&D project application to the IRBM. As this is an automatic double deduction and in the spirit of self-assessment, we would request that instead of submitting the R&D project application to the IRBM, that it be kept by the tax payer for tax audit purposes similar to the application for reinvestment allowance in order to simplify tax compliance in the spirit of the Self-Assessment System.

iv. In respect of item 20.11 above, pending the issuance of the relevant PU Order, please confirm if a SME as mentioned in this proposal is a company as defined under Paragraph 2A, 2B and 2C to Schedule 1 of the ITA.

v. It was mentioned at the National Tax Seminar 2015 organised by the IRBM on 29 October 2015 that there may be errors in Slides 77 and 78 of the National Tax Seminar 2015 reading material on the 2016 Budget Proposals in respect of items 20.1 and 20.2 above. Kindly provide the amended slides to the Institutes.

B. Outstanding gazette orders – 2013 to 2015 Budgets

The Institutes note with concern that several gazette orders pertaining to proposals announced in the 2003 to 2015 Budgets are still outstanding to date. We would request for your urgent attention and update on the status of the relevant gazette orders.

1. 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.

2. 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.

3. 2012 Budget

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

4. 2014 Budget

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

5. 2015 Budget

- 100% income tax exemption for a period of five years be given to an industrial area management company for managing, maintaining and upgrading industrial estates in less developed areas (70% income tax exemption for managing industrial estates in other areas).
- Automation capital allowance of 200% for increased automation be given to manufacturers in high labour intensive industries (such as rubber products, plastics , wood, furniture and textiles) on the first RM4 million qualifying expenditure incurred from YA 2015 to 2017 and manufacturers in other industries on the first RM2 million qualifying expenditure incurred from YA 2015 to 2020.

- To ensure balanced and inclusive regional growth with continued promotion of investment in less developed areas, the special incentives package provided to Economic Corridors will be enhanced to include more areas that are less developed (Paragraph 47 of the 2015 Budget Speech).

- To promote high quality and focused investment, a more specialised incentive package will be offered for investment projects based on technology, innovation and knowledge, involving highly qualified and knowledgeable employees with high salaries (Paragraph 50 of the 2015 Budget Speech).

- In efforts to further increase the number of multinational companies' global operational centres in Malaysia, customised incentives for Principal Hubs will be introduced (Paragraph 54 of the 2015 Budget Speech).

- Extension of application period for tax incentives in relation to medical tourism until 31 December 2017.

- Income tax exemption be given to individual investors for profits earned through Investment Account Platform (IAP) for a period of 3 consecutive years starting from the first year profit is earned.

- Double deduction on expenses incurred by companies for scholarships awarded to students pursuing diploma or bachelor's degree at higher education institutions be extended to include scholarships provided to students pursuing studies in the vocational and technical fields for the years of assessment 2014 and 2015.

- Double deduction on expenses incurred by companies participating in structured internship programmes to recruit students pursuing full-time degree programmes in higher education institutions be extended to include full-time students pursuing courses at the vocational and diploma levels for years of assessment 2014 and 2015.

- Double deduction for expenses incurred by companies on approved training programmes participated/attended by employees be extended to include obtaining industry certifications and professional qualifications from year of assessment 2015.

- Tax deduction for expenses incurred on the issuance of sukuk under the principles of Wakalah and Ijarah approved by the Securities Commission or the Labuan Financial Services Authority be extended for another 3 years until year of assessment 2018.