

ITEMS	QUESTION	ANSWER
Limited Liability Partnership (LLP)	<p>1. Para 39(1)(n) – Partner’s remuneration not deductible if not provided in LLP agreement – Why?</p> <p>It is customary for partner’s remuneration to be determined annually by the Board of Directors and not by the LLP agreement. Please clarify whether annual decision is permitted.</p>	<p>Under LLP Act 2012 (paragraph 5 Second Schedule) remuneration to partners is prohibited unless it is stated in an LLP agreement. Tax treatment has be to in line with section 9 of LLP Act to ensure no abuse or manipulation for tax purposes. It is provided for in the LLP agreement, all terms and conditions should be documented in the agreement which represents evidence for the basis of payment.</p> <p>Besides remuneration, other provisions have also been introduced where the LLP agreement forms the basis for tax treatment. For example, in the determination of entitlement for preferential tax rate of 20%, the amount of RM2.5 mil, is based on the amount of capital contribution stated in the agreement.</p> <p>As LLP is now recognized as a legal entity, the LLP agreement is a substitute for Directors Resolution. Therefore, the agreement is the utmost important and it is also used to distinguish an LLP from a normal partnership.</p> <p>For an LLP there is no Board of Directors. As mentioned above, LLP agreement is a substitution for Directors’ Resolution. Therefore, IRB will not accept annual decision.</p>
	<p>2. Will the partner be taxed on remuneration not allowed?</p>	<p>Yes</p>
	<p>3. Does a limited liability partnership require to submit audited documents to the SSM?</p>	<p>No.</p>

ITEMS	QUESTION	ANSWER
	4. Any special label to denote on entity is a LLP? Example for a company its Sdn. Bhd.	Yes. An LLP carries the word “Perkongsian Liabiliti Terhad” or abbreviation “PLT” at the end of the name of a LLP.
	5. Will LHDN accept unaudited account for submission of tax return, (under LLP)?	Yes.
	6. Clause 14 – paragraph 39(l)(n) – Any remuneration paid to a partner by LLP is not deductible unless provided in Agreement. Remuneration included EPF/SOCSSO/ insurance/ share of profits etc.?	EPF/SOCSSO/ insurance is not included as part of remuneration. With the introduction of this new law, LLP is an entity is liable to tax. Since, the tax is imposed on the LLP, the share of profits is no longer taxable in the hand of partners.
	7. Can unabsorbed tax loss be carried forward from conventional partnership to LLP even changes more than 50% in capital? i.e. substantial changes in capital.	Conversion from conventional partnership to LLP – Section 29 of the LLP Act 2012 requires conventional partnership to maintain capital contribution. Suruhanjaya Syarikat Malaysia (SSM) does not approve the conversion from conventional partnership to LLP if there is a substantial change in capital.
	8. Transfer from conventional partnership to LLP would it be any controlled transfer issue?	No. As long as the provision under sec 29 LLP Act is complied. It is considered as continuous business.
	9. If A Sdn. Bhd. is converted to LLP does it mean the Sdn. Bhd. Is automatic wind-up or have to incur a winding up cost.	Yes, as provided under paragraph 33(1)(c) of the LLP Act 2012.

ITEMS	QUESTION	ANSWER
	<p>10. An LLP need is not required to prepare audited account?</p> <p>If so, a Sdn. Bhd. can save cost and to get tax clearance for the Sdn. Bhd.</p>	<p>Yes.</p> <p>Yes. LLP can save cost in term of preparation of account since the account need not be audited.</p> <p>Under subparagraph 31(2)(a)(iv) of the LLP Act 2012, before the company is allowed to convert to LLP, all outstanding statutory fees or any amount owing to any government agency has to be settled (including income tax). IRB will issue tax clearance which has to be submitted to SSM.</p>
	11. Any guideline to be issued for LLP?	Yes.
	12. What is the different in term of tax between company and LLP?	LLP enjoy the same tax treatment as a company under ITA 1967 except special incentive given exclusively to a company. For example, under the PIA 1986, only company is eligible to enjoy incentive under the Act.
	13. What is the reason a company convert into a LLP?	As informed by CCM, the compliance cost will be reduced as compared to a company incorporated under Companies Act 1965.
Treasury Share	<p>1. a) Amount paid by subsidiary company to Holding</p> <p>b) Company is deductible under Section 33(1) ITA 1967?</p>	<p>No.</p> <p>Cost of acquiring treasury shares is not incurred in the production of the subsidiary's gross income. Even though from the</p>

ITEMS	QUESTION	ANSWER
		<p>perspective of accounting (FRS 2), the cost of acquiring treasury shares are classified as staff costs, the cost incurred are meant to retain certain employees in the respective companies. Treasury shares differ from salary payment as without such payments or other remunerations, the operation of the company will cease and no further income will be generated.</p> <p>The new provision of section 34D provide clearly the cost, time and computation method in which a company can claim the deduction.</p>
	2. ESOS by special purpose vehicle as a trust	Section 34D is not applicable on treasury share acquired by special purpose vehicle as a trust. However, employee will be taxed on the perquisite arising from the scheme.
	3. The method used : Average cost and Weighted Average Cost	IRB only accept FIFO method. FIFO is the most accurate method to determine the cost of acquiring the share to the tax payer / company. This is especially so with the computerized tracking and monitoring system which is used by the company.
	4. Deduction for expenditure on treasury shares. If cost of acquiring treasury share less amount payable by the employee will be credited into an account separately. The credited amount will be used to reduce the cost of acquiring TS in future-	

ITEMS	QUESTION	ANSWER
	<p>i) The amount credited into an account should be based on individual staff or company's staff all?</p> <p>ii) How about one off arrangement?</p> <p>iii) Company required to maintain the account until when?</p>	<p>Based on all the staff who have paid the share price in order to exercise their right to acquire the share.</p> <p>The balance will remain in the account until the next arrangement, if any.</p> <p>Until the amount credited into the account is fully utilized.</p>
Business Trust	<p>Income tax treatment for business trust</p> <p>How it works and who is eligible. Any guidelines?</p>	<p>Business trust (BT) is new business structure and it is not a legal entity. Since it is not legal entity it cannot own asset to carry out business. The sponsor will appoint/form the trustee manager (TM) to carry out business on behalf of BT. The TM must be corporation. TM will be receiving fees from BT.</p> <p>Details of the structure of BT and tax treatment will be spelt out in guideline.</p>
Interest Income (Section 4B – New)	<p>1. Interest income under section 4(a) versus section 4B. Is a company obtained a loan from a bank for working capital purpose and subsequently lend some to its employees with certain percentage of interest, the interest income from the employees will be assessed under section 4(a)?</p> <p>For instance, pursuant to the letting of</p>	<p>No. It will be assessed as section 4(c).</p> <p>No concession will be given.</p>

ITEMS	QUESTION	ANSWER
	<p>properties Public Ruling, rental income received from sub-letting of properties will be considered as business income. Is there any concession will be given to interest income from employees?</p>	
	<p>2. Reference made to section 4B & section 24(5). In the case of OHQ, only income from the business from the provision of qualifying services is exempted from tax. An OHQ need not necessarily require to be licensed for its treasury activities. Does that mean that the interest income received by OHQ would be regarded as section 4(c) income? And cannot qualify for the exemption?</p>	<p>Income Tax (Exemption) (No. 40) Order 2005 [P.U.(A) 307] overruled the provision under section 4B of ITA.</p>
	<p>3. Does the new section 4B (read together with the amended Section 24(5) applies to a “<u>Treasury Management Company</u>” (TMC) since the amended S.24(5) requires the business of money landings which is “licensed under any written law which TMC might not require to be so licensed.</p>	<p>The Exemption Order overruled the provision under section 4B of ITA 1967.</p>
	<p>4. Under the proposed amendment, interest income can only be treated as business source</p>	<p>If license under Moneylenders Act, interest income would be treated as business source under section 4(a).</p>

ITEMS	QUESTION	ANSWER
	<p>if the company is licensed and carry out lending money activities. In the case of group treasury company, under the Moneylenders Act, intra-group lending is exempted from licensing. Can the group treasury company, treat the interest income from intra-group lending as business income?</p>	<p>In the case of group treasury company and intra-group lending will be treated as interest income under section 4(c) unless it is approved as TMC or OHQ 2005 under Income Tax (Exemption) (No. 40) Order 2005 [P.U.(A) 307].</p>
	<p>5. <u>Transitional provision:</u> Unabsorbed current year loss from interest business source (YA2012) can be deducted against: i) YA 2013 aggregate statutory income from business source; or ii) If no aggregate statutory income from business source, can deduct against non-business source in YA 2013 and subsequent years fill fully absorbed.</p> <p><u>Questions:</u> If the loss from interest business source (YA2012) is not fully absorbed in YA 2013 under (i) above:- a) Can it be set-off against aggregate statutory income from business source in YA 2014? b) If the from interest business source (YA</p>	<p>Answer (a) (b) & (c)</p> <p>Yes, until the loss of 2012 in respect of the interest is fully</p>

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	<p>2012) is not fully absorbed in YA 2013 under (ii) above:-</p> <p>c) Can the balance be c/f to YA 2014 and offset with aggregate statutory business income and non-business income in YA 2014.</p>	deducted.
<p>Schedule 3 ITA 1967</p> <p>- Asset Held For Sale (HFS)</p>	<p>1. If an asset is deemed disposed under paragraph 61A but controlled transfer only takes place thereafter. Does it mean that the company would need to compute balancing adjustment in the YA deemed disposed, although actual sale takes place in the following year?</p> <p><u>Example</u></p> <ul style="list-style-type: none"> • Asset reclassified to Asset held for sale (HFS) in year 2013 • Asset sold (actual sale takes place) in YA 2015 to related company (controlled transfer) <p>Based on paragraph 61A of Schedule 3, the asset would be deemed to have ceased to be used in YA 2014. Based on controlled transfer rules, disposal will take place in YA 2015. Does it mean the company would need to compute</p>	Controlled transfer is applicable to asset HFS. In the example given, notional allowance will be computed for YA 2013 to YA 2014. In YA 2015, the related company can continue to claim CA and balance of the residual expenditure will be based on the amount after deducting notional allowance for 2 years.

ITEMS	QUESTION	ANSWER
	balancing adjustment in the YA 2014 (deemed to ceased t be used), which effectively means that company cannot apply controlled transfer rules?	
	<p>2. If the asset is reclassified to HFS in year 2013 and also cease to be used in YA 2013, but the actual sale takes place in YA 2014. Should the company compute balancing adjustments-</p> <p>(a) In YA 2013 – the YA the asset ceased to be use OR</p> <p>(b) In YA 2014 – deemed disposed under the new paragraph 61A</p>	<p>Please refer subparagraph 61A(3),(4) and (5) and 3 subparagraph should be read together.</p> <p>Asset classified HFS is cease to be used and deem to be disposal. So for the issue raise BC will be computed in YA2013 under subparagraph 61A(3)(b),(4)(a) and (5).</p>
	<p>3. Asset HFS,how does this paragraph work? If actual disposal price is higher than market value. (When held for sale) do we need to revise previous tax computation or adjust in current year. It the asset was not eventually sold (or being reverse, do we need to revise previous tax computation or adjust current year.</p>	<p>Please refer to question 2 for tax treatment on actual sale of the asset HFS.</p> <p>The new provision is introduced to avoid revising previous tax computation. Please refer to paragraph 61A(3),(4) and (5).</p> <p>The guideline will be issued.</p>
Paragraph 2 Schedule 4 exemption	Current paragraph 2 Schedule 4 exemption under RPGT Act – if total gains is RM1,000,000 the exemption of 10% is RM100,000.	This provision is to benefit tax payer. Tax payer can enjoy tax exemption under paragraph 2 Schedule 4 earlier instead of waiting for the whole portion to be disposed.

ITEMS	QUESTION	ANSWER
under RPGT Act 1976	<p>Based on example 6, if this sold in 2 equal parts, the total exemption will be half of 50,000 plus half of 50,000 = Total of 100,000.</p> <p>This would mean selling in parts will mean the disposer will lose out on the exemption.</p>	<p>If the disposal of the remaining parts of the chargeable asset takes place after 5 years, the tax payer could not enjoy the exemption.</p>
Accelerated capital allowance (ACA)	<p>Extension of tax incentive for security control and surveillance equipment. The above accelerated capital allowance (ACA) to include security control and surveillance equipment in Residential areas installed by companies (including housing developers)</p> <p>i) How does this work? Does the company need to own these houses?</p> <p>ii) What does this residential areas means? And how it apply for housing developers?</p>	<p>For a person to be entitled to ACA, he must own the security equipment and use it for his the business of his.</p> <p>However, details are still being worked out with MOF. Once finalized, the details will be given in the Rules.</p>
Time barred	<p>Time barred from 6 years to 5 years, do we need to keep our record for 7 years?</p>	<p>Yes. This amendment has no implication on section 82 (Keeping records for 7 years).</p> <p>Where there is a need to apply subsection 91(3), records required by IRB can be more than 5 years.</p>

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Incentive for pre-school	Incentive for Pre-school - How to apply for the tax exemption. Is there any form to fill up? If so, apply from which authority? MOF?	There is no form needed. Pre-school has to be registered with the State Education Department. The details will be given in the Rules.
Acquisition of foreign companies	In page 6 of the budget speech 2012, item 8 states that the government has reintroduced the incentives for the acquisition of foreign companies and a speech tax rate to encourage local service providers to merge into bigger entities. Can you elaborate on the details and where is the above proposal included in the ITA/Rules/Orders?	To be decided by MOF
Global Incentive For Trading (GIFT)	In the Budget Speech, Global Incentive For Trading (GIFT) will be enhanced with 100% income tax exemption on statutory income for the first 3 years of operations for LNG trading companies we would like to know the definition of "first 3 years of operations", is it referring to first 3 years from effective date of GIFT?	To be decided by MOF
Qualified companies in the refinery activities	100% investment Tax Allowance for 10 years 10 years for qualified companies in the refinery activities on petroleum products. Is there any Gazette Order or guideline to be issued on this?	To be decided by MOF

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“Angel” investors	Please explain “Angel” investors, invest in venture company at “start up”, seed capital etc. what type a business.	The details will be given in the Rules.
Incentive for small Malaysian service providers.	<p>The above incentive it is just confine to the sectors as follows-</p> <ul style="list-style-type: none"> • Professional services (Acc & taxation services, specialized medical & dental practices, architectural services and engineering services • Carrier services • Technical and vocational secondary education services ; and • Skill training services. 	To be decided by MOF
Appeal to the special commissioner (SC)	<p>Appeal to the special commissioner (SC) for amount not liable to be paid under sections 109, 109B or 109F of ITA 1967.</p> <p>This proposed shall not apply if an appeal has been file to the SC by the non-resident recipient to whom the payer was liable to pay.</p> <p>- Under which provision, non-resident can file an appeal to SC?</p>	The non-resident recipient can appeal under section 111.