CHARTERED TAX INSTITUTE OF MALAYSIA

e-CIRCULAR TO MEMBERS

CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

CTIM No.41/2011 **26 September 2011**

TO ALL MEMBERS

TECHNICAL

Direct Tax

1. Update on Penalty on Late Filing of Tax Returns -- Deferment till 30 September 2011

In response to the appeal made by our President on 6 September 2011, the IRB has agreed to defer the implementation of the new penalty rate till 30 September 2011. A copy of the IRB letter on Late Filing Penalty dated 22 September 2011 has been uploaded to the Institute's website at Members Only > Recent Updates.

Members are advised to inform their clients to submit the returns on time to avoid the heavy penalty. For those taxpayers who have been imposed the new penalty rates, an appeal may be made to the respective branches, the information processing department or the tax operation department to have their penalties revised to the old penalty rates.

2. Qualifying expenditure incurred to obtain a Green Building Index Certificate --- Income Tax (Exemption) (No.5) Order 2011 [P.U. (A) 325/2011]

The above gazette order replaces the Income Tax (Exemption) (No. 8) Order 2009 [P.U. (A) 414/2009].

An amount equal to the *qualifying expenditure* (QE) incurred by a resident person (including a resident company incorporated under the Companies Act 1965), for the purpose of obtaining a greenbuildingindex certificate (GBIC) on a building used for the purpose of a business is exempt from payment of income tax on statutory income from that business. Where the exemption cannot be given in full due to insufficiency of statutory income, the unabsorbed portion shall be carried forward until the whole amount is fully exempted.

The Order applies to a person who has obtained his first GBIC issued by the Board of Architects Malaysia between 24 October 2009 and 31 December 2014, (both days inclusive), in respect of

- any building constructed, owned and used by the person for the purpose of his business,
- any building constructed under a privatization project and private financing initiatives approved by the Privatisation/PFI Committee of the Prime Minister's Department
- any building constructed pursuant to an agreement entered into between the person and the Government of Malaysia or a statutory authority on a build-lease-transfer basis, build-lease-maintain-transfer or any other similar arrangement and for which no consideration has been paid by the Government or statutory authority to that person.

The above exemption shall not apply to a person who has claimed in respect of that building, plant or machinery

(a) an investment tax allowance under the Promotion of Investments Act 1986,
(b) re-investment allowance under Schedule 7A to the Income Tax Act 1967 (ITA);
(c) investment allowance for service sector under Schedule 7B to the ITA;
(d) accelerated capital allowance under any rules made under S 154 of the ITA, except for a building prescribed by the Minister as industrial building under Para 80, Sch 3 to the ITA; or
(e) tax exemption under any order made under S 127 of the ITA partly or equivalent to the amount of the expenditure incurred.

Qualifying expenditure means additional expenditure incurred in relation to the construction of a building, alteration, renovation, extension or improvement of an existing building, or plant or machinery for the purpose of obtaining GBIC as certified by the Board of Architects Malaysia. It shall be deemed to have been incurred on the day the GBIC is issued. Where the QE has been incurred prior to the commencement of business, it shall be claimed in the basis period for a year of assessment in which the person commences his business.

Where the person becomes a party to a hire-purchase agreement for the purchase of a plant or machinery for the purpose of his business in relation to a building issued with the GBIC, the amount of exemption to be given in respect of the QE incurred shall be the capital portion of any instalment payments made. The person shall be deemed to be the owner of the asset purchased.

Where the QE is incurred on a building, plant or machinery and such building, plant or machinery is disposed of (as defined in Para 48 and Para 61 of Sch 3, ITA) within two years from the date of acquisition, the exemption given shall be withdrawn in the basis period in which the asset is disposed of. Where the disposal value exceeds the residual expenditure at the date of disposal, as in Para 38, Sch 3, ITA, the acquirer shall be deemed to have incurred QE of an amount equal to the sum of the disposer's residual expenditure on the first day of the disposer's final period.

Capital allowances and industrial building allowances may be claimed on qualifying expenditure if the expenditure is also qualifying capital expenditure under Schedule 3 of the Income Tax Act 1967.