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CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

CHARTERED TAX INSTITUTE OF MALAYSIA

e-CTIM TECH-DT 17/2016 **23 February 2016**

TO ALL MEMBERS

TECHNICAL

Direct Taxation

PUBLIC RULING NO. 1/2016 ON AGRICULTURE ALLOWANCES – SUMMARY OF CONTENTS

The above Public Ruling (PR) No.1/2016 was published on 20 January 2016 and alerted in our e-CTIM TECH-DT 8/2016 dated 22 January 2016.

Objective
A person who has incurred qualifying agriculture expenditure for the purposes of a (agriculture) business of his will be entitled to claim agriculture allowance (AA) that can be deducted against the adjusted income from that business to arrive at the statutory income. This PR explains the types of expenditure that qualify as agriculture expenditure (QAE), the computation of AA and agriculture charges (AC), and the tax treatment on receipt of a grant or subsidy**.**

Important Definitions
The following are among the terms defined:

Term	Meaning
control	Has the same meaning as defined in para. 38(2) of Schedule 3 of the Income Tax Act 1967 (ITA).
farm	Any land used for the purpose of agriculture.
replanting	The replacement of the crop of any produce on any area of land by taking such action as is calculated to produce on the same area a crop of the same product and includes reafforestation of timber.
agriculture	Any form of cultivation of crops, animal farming, aquaculture, inland fishing and any other agricultural or pastoral pursuit including the reafforestation of timber.
crops	Includes any form of vegetable produce.

The following table summarizes the contents of the PR:

Para No.	Subject Matter & Summary
5 - 6	*AA and QAE* • Expenditure incurred on the following constitutes QAE (Rate of AA is shown in brackets): a) Clearing and preparation of land for the purpose of agriculture (include terracing of land); (50%) b) Planting (but not replanting) of crops, i.e. “new planting” only; (50%) (Refer to Examples 4 & 5 for examples of new planting.) c) Construction on a farm of the following: i. a road or a bridge, or a drain; (50%) ii. a building used for the purpose of the business of working that farm, e.g. estate office, mills and godowns; (10%)

	iii. a building which is provided for the welfare of persons or as living accommodation for a person employed in the working of that farm, e.g. labour quarters, places of worship, community hall. (20%) (Such a building is likely to be of little or no value to any person on cessation of the business except in connection with the working of another farm.) (Refer to Examples 1, 2 & 3 for examples of QAE. Refer to Example 12 for computation of AA.) • For the type of building under item c (iii) above, the claimant may elect to treat it as an industrial building (IB) under the proviso to para. 42(1) of Sched. 3 of the ITA, but it would not qualify for IBA if it was provided for an employee who is a director, an individual who has *control* of the business, or is a member of the management, administration or clerical staff of that business. • The following is not regarded as QAE: a) Cost of land; (Example 6) b) Cost of plant and machinery used in the farm (but may qualify for capital allowance); (Example 7) c) Expenditure on a non-qualifying activity, e.g. operating a nursery for oil palm seedlings. (A nursery is not considered as a "farm"); (Examples 8 & 9) • Qualifying expenditure is incurred on the day the expenditure becomes payable, except that expenditure on a constructed building is deemed to be incurred on the day on which the building is completed • A person is eligible to claim AA if he has incurred QAE for a year of assessment (YA), and he is the owner of the asset at the end of the basis period and the asset is in use in the business of a farm or plantation. If he is eligible to claim AA, he will not be entitled to any other allowances under the ITA in respect of the same expenditure. • Replanting expenditure (non-QAE) may be allowed to be deducted under S34(6)(d) of the ITA when incurred in relation to the replacement of a crop by a crop of the <u>same</u> product. But the replacement of a vegetable by a vegetable of a different kind (under certain circumstances) also qualifies as replanting. (Examples 10 & 11) A diagrammatic "Summary of Qualifying Agriculture Expenditure" is provided in the Appendix 1 of the PR.
7	*Apportionment of AA upon Sale or transfer of an asset* The apportionment of AA upon sale or transfer of an asset is summarized as follows: • *Transmitter* – Entitled to claim AA up to the date of disposal if the asset was in use 1 month before disposal. AA is apportioned using the following formula: $\frac{\text{Days owned before transfer}}{\text{365 days}} \times \text{Agriculture Allowance}$ • *Recipient* – Entitled to claim the remaining AA that would have been made to the transmitter if the asset had not been transferred. (Examples 13, 14, & 15.) Apportionment of AA is only applicable between the transmitter and recipient for the same YA. If the transfer or transmission of an asset takes place on a date that falls in the basis period of different YAs of both the transmitter and the recipient, only the transmitter will be entitled to the apportioned AA, computed up to the date of transfer or sale of the asset. The remaining balance of AA is disregarded and cannot be claimed by anyone.

8	*Agriculture Charge (AC)* • An AC arises when an asset on which AA has been claimed is disposed of within 5 years from the date the expenditure was incurred. The AC is equal to the aggregate of all the AA that has been made to the claimant for all the YA. (Proceeds from disposal of the asset are not relevant in computing AC.) (Examples 16 and 17) • Previously, when a claimant of AA receives a grant or other payment by a government, state government or statutory authority (intended to relieve him of capital expenditure on his farm), an AC is imposed on him in the basis period for the YA in which the sum first becomes payable, under para. 26 of Sched. 3. With the **deletion of para 26** (effective on 11.1.2013) and the gazette of Income Tax (Exemption) (No.22) Order 2006 [P.U.(A) No. 207/2006] which exempts any person from the payment of income tax in respect of income relating to a grant or a subsidy, **no AC shall be made** in respect of the grant or subsidy. Expenses financed from the grant are not eligible for any tax deduction or any allowances under Schedule 3 of the ITA.*(Refer to the LHDNM's Technical Guidelines for Information on Tax Treatment of Grants and Subsidies.)* • If an asset is disposed of after the end of the basis period for a YA in which the business ceased permanently, the disposal is deemed to be made in the basis period in which the business ceased. (Example 18) • In a "controlled situation" (listed under subpara. 38(1)(a) to 38(1)(e) of Sched. 3 of the ITA) where control transfer provisions apply to the disposal or transfer of an asset, the following is the treatment: - The disposal is deemed to have taken place on the first day of the transferor's final period. The disposal value is the residual expenditure (RE) of the asset on the aforementioned day. (Meaning of "transferor's… final period" is explained in para 8.5(b) of the PR.) - The QAE of the recipient for the purpose of computing AA is equal to the RE of the asset (balance of transferor's QAE after deducting all AA made to him). (Example 20)
9	*Election to spread AA* • The person charged with an AC may elect to spread that charge equally over the number of YA over which AA has been made to him. (Example 20)

Members may read the PR in full at the websites of the Institute and the LHDNM.

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the PR so that we may raise them to the LHDNM.