

Our Ref: TC-DT/Ltr to IRBM.ITRF Dormant Coys 2

3 September 2014

BY Fax and Email

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Dato,

FILING OF INCOME TAX RETURNS FORM BY DORMANT COMPANIES

We refer to the Inland Revenue Board Malaysia's (IRBM) letter dated 18 August 2014 on the above matter. We would like to thank you for considering our request as set out in our letter dated 3 July 2014, to file the income tax return form (ITRF) for dormant companies prospectively from the year of assessment (YA) 2014.

Further to your letter, we would like to seek clarification on the following matters.

1. Meaning of "case-by-case basis"

It is noted that the IRBM had stated in paragraph 3.1 of the said IRBM letter that the ITRFs for companies, limited liability partnerships, trust bodies or co-operative societies that are dormant, have ceased operations, have not commenced business operations or have received letters issued by the IRBM branches to exempt the filing of the ITRF, are to be filed on a prospective basis from the year of assessment 2014 (according to consideration on a "case-by-case" basis.).

- Clarification sought

To facilitate our understanding of paragraph 3.1, we would like to seek clarification on the intention for inclusion of the words "case-by-case basis". Does this mean that the taxpayers involved are to obtain prior approval from the IRBM and if so, under what circumstances is prior approval required?

2. Clarification sought on the IRBM's requirement for companies, limited liability partnerships, trust bodies or co-operative societies that are dormant to submit the Form CP204

It is noted in paragraph 3.2 of the said IRBM letter that, subject to section 107C(4) and section 107C(4A) of the Income Tax Act 1967 (the Act), companies, limited liability

partnerships, trust bodies or co-operative societies that are dormant are required to submit the Form CP204 prospectively from YA 2016 onwards.

- Clarification sought

As section 107C(4) and section 107C(4A) only apply to cases where operations have commenced, we understand that the IRBM's requirement to submit the Form CP204 does not apply to companies, limited liability partnerships, trust bodies or co-operative societies that have not commenced operations as defined in section 21A(8) of the Act. Kindly confirm that our understanding is correct.

3. Companies, limited liability partnerships, trust bodies or co-operatives registered with SSM that have never commenced operations

We are of the view that cases where operations have never commenced as defined in section 21A(8) are excluded from the provisions of section 77A(1).

Our rationale for the above view is set out below:-

Section 77A(1) provides that the ITRFs are to be filed "... *within seven months from the date following the close of the accounting period which constitutes the basis period for the year of assessment.*" "Basis period" is defined in section 2 as "*.. in relation to a person, a source of his and a year of assessment, means such basis period, if any, as is ascertained in accordance with section 21 or 21A;*". Sections 21A(4) and 21A(5) specifically provide for the determination of basis period when a company, limited liability partnership, trust body or co-operative society commences operations. Based on section 21A, the basis period for the first year of assessment is only determined where operations have commenced. Based on the above analysis of section 77A(1) read together with Section 21A, unless a basis period for a year of assessment is determinable, there is no requirement to file an ITRF under section 77A(1).

- Clarification sought

In view of the above provisions we would like to seek the IRBM's confirmation that the above taxpayers which have never commenced operations are not required to file ITRFs under section 77A. ("Operations" is defined on section 21A(8) and further explanation given in paragraphs 2 and 4.5 of the Public Ruling No. 7/2001).

We would like to thank you for your kind consideration of the matters raised above and we look forward to your early response, in view that the tax computations for the above taxpayers with basis period for the year of assessment 2014 which ended on 31 January 2014 are due for submission to the IRBM by 30 September 2014.

Yours sincerely,



Aruljothi A/L Kanagarethnam
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