MALAYSIAN INSTITUTE OF TAXATION (225750 T)
(Institut Percukaian Malaysia)

30 July 2008

URGENT ATTENTION REQUIRED

BY HAND & FAX
(Fax No. : 03-6201 4617)

Dr. Siti Mariam Bt Che Ayub
Timbalan Ketua Pengarah (Teknikal)
Lembaga Hasil Dalam Negeri, Malaysia
Tingkat 15, Blok 9
Kompleks Bangunan Kerajaan
Jalan Duta, Peti Surat 11833
50758 Kuala Lumpur
Malaysia

Dear Dr Siti Mariam,

RE: PARALLEL EXISTENCE OF THE SINGLE TIER SYSTEM AND THE IMPUTATION SYSTEM

With regard to the above-mentioned subject, it is noted that Section 40 of the Finance Act 2007 (Act 683) provides that a company could continue to distribute franked dividends to its ordinary shareholders during the transitional period if it still has Section 108 credits and the dividend is paid in cash. However, the position is unclear for dividends paid under the following two circumstances:-

- Dividends paid to non-ordinary shareholders irrespective of whether the dividend is paid in cash or in specie; and
- Dividends in specie (or kind) paid to ordinary shareholders.

In the Post-Budget 2008 Dialogue held on 14 December 2007, it was clarified by the LHDNM and minuted in item 15(x) of the minutes of the Dialogue at page 26 and 27 as follows:

"The LHDNM confirmed that the MOF has given concession that a company may declare dividends in kind (specie) during the transitional period, such dividends would also be treated in the same manner as dividends for non-ordinary shares i.e. the single tier exempt dividends. The LHDNM thus confirmed that there can be a parallel existence of the imputation (franked dividends to ordinary shareholders) and single-tier systems (exempt dividend to preference shareholders and dividend in kind).

There will not be a parallel existence of the imputation system and the single tier system in respect of ordinary shares."

The last paragraph above was not clear in its meaning but it was generally taken to mean that there cannot be a parallel existence for cash dividends on ordinary shareholders.

In the minutes of the subsequent Operations Dialogue held on 25 February 2008, in response to item 2.1.1, the LHDNM further clarified as follows:

"Sekiranya dividen yang dibayar adalah berkenaan dengan pemegangan syer selain daripada syer biasa misalnya syer keutamaan ('preference shareholding'), ia dianggap sebagai dividen 'single tier' dan boleh dibayar walaupun syarikat masih mempunyai baki 108 yang belum digunakan sepenuhnya atau belum diabaikan."

Following from the above, it was clear that the single tier system could exist in parallel with the imputation system where the following types of dividends would be treated as single-tier dividends, i.e.

- Dividends in kind on ordinary shares; and
- Dividends on preference shares (irrespective of whether such dividends are in cash or otherwise).

This was also the understanding adopted by tax practititoners.

Based on the above understanding, some companies have paid dividends to preference shareholders or dividends in kind without electing to move to the single tier system and thus continuing to use the imputation credits in paying cash dividends on ordinary shares.

However, at the MAICSA Conference held on 7 & 8 July 2008, Cik Halijah bt Bulat of the LHDNM made a presentation on the single tier system where she informed the audience that **the only concession whereby a single-tier system can be allowed to exist in parallel with the imputation system is where dividends in kind are paid on preference shares.** This effectively means that if there is to be a dividend in kind on ordinary shares or cash dividends on preference shares, a company will have to switch to the single tier system and forgo any imputation credits it may have before it can pay such dividends. In practice, preference shareholders are not paid dividends in kind. Hence the concession granted to allow the parallel existence of the single tier system with the imputation system only in the situation where dividends in kind are paid to preference shareholders is meaningless and impractical.

Alternatively, does it mean that where a company maintains its Section 108 balance, any dividends paid in kind to ordinary shareholders or any cash dividends paid to preference shareholders would actually be treated as being taxable on the recipient of such dividends? This would certainly cause a drastic impact on the recipient of such dividends.

Another view expressed is that the new paragraph 12B, Schedule 6 of the Income Tax Act 1967 would apply to such dividends thereby exempting the recipient from any income tax on such dividends. This view would, of course, solve whatever predicament a taxpayer may face as mentioned above. However, a proper reading of the law may not allow such an interpretation.

In view of the clarification provided by the LHDNM in the dialogues on 14 December 2007 and 25 February 2008 and the comments made by Cik Halijah Bulat at the MAICSA Conference on 7 & 8 July 2008 (which have created confusion on the issue), the Institute would like to seek written clarification from the LHDNM **on an urgent basis** with regard to the parallel existence of the single tier system and the imputation system. If it is indeed that the MOF's concession has been withdrawn and that it is now the position of the

LHDNM that the single-tier system can only exist in parallel with the imputation system only when dividends in kind are paid on preference shares, this new position must be clearly spelt out and should only take effect on a prospective basis, i.e. from the date of issuance of the written confirmation by the LHDNM. In addition, for the avoidance of doubt, we would also like to have a further elaboration on the tax treatment of dividends paid in cash to preference shareholders and dividends paid in kind to ordinary shareholders while the company is maintaining its Section 108 credits.

Due to the urgency of above matter, we would be grateful if the LHDNM could kindly provide the written clarification as soon as possible.

Thank you.

Yours faithfully,
MALAYSIAN INSTITUTE OF TAXATION

DR VEERINDERJEET SINGH
PRESIDENT

cc **1)** Y Bhg Datuk Aziyah binti Bahauddin
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LHDN MALAYSIA

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Ruj. Tuan:
Ruj. Kami: LHDN 01/35/(S)/42/51 klt 10
Tarikh: 13 Ogos 2008

Pengarah
Malaysia Institute of Taxation
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50450 Kuala Lumpur

Tuan,

Parallel Existence Of The Single Tier System and The Imputation System

Dengan hormatnya saya diarah merujuk kepada surat tuan bertarikh 30 Julai 2008 mengenai perkara di atas.

2. Mengikut Peruntukan Kecualian dan Peralihan ACP 1967:

- Seksyen 40 - Dividen hendaklah dibayar secara tunai berkenaan dengan pemegangan saham biasa.
- Seksyen 49(1) - Sesuatu syarikat tidak layak untuk memotong cukai daripada mana-mana dividen yang telah dibayar kepeda pemegang syernya jika :-

(a) setakat 31 Disember 2007 baki 108 syarikat itu ialah sifar;
(b) setakat mana-mana tarikh dari 1 Januari 2008 hingga 31 Disember 2013 baki 108 atau baki 108 tersemak dikurangkan sehingga menjadi sifar menurut seksyen 47; atau
(c) syarikat itu telah menggunakan opsyen yang tidak boleh dibatalkan di bawah seksyen 50.

3. Peruntukan Kecualian dan Peralihan ACP 1967 tidak memperuntukkan dengan jelas apa terjadi dengan baki akaun seksyen 108 pada 31 Disember 2007 jika :

- Dividen berkenaan pemegangan saham biasa dibayar dalam bentuk 'specie' atau 'in kind'
- Dividen berkenaan pemegangan saham keutamaan dibayar dalam bentuk tunai atau 'specie' atau in kind'.

4. Pendirian Lembaga Hasil Dalam Negeri berkaitan pembayaran dividen selain yang diperuntukkan di bawah seksyen 40 Peruntukan Kecualian dan Peralihan ACP 1967 oleh syarikat yang tidak mengabaikan baki seksyen 108 (tidak dalam 'single tier') pada 31 Disember 2007 :-

(a)	Dividen dari saham biasa	Dalam Bentuk Specie	- Dividen dianggap dividen satu peringkat - baki akaun seksyen108 tidak dipinda
(b)	Dividen dari saham keutamaan	Dalam bentuk tunai atau specie	- Dividen dianggap dividen satu peringkat - baki akaun seksyen 108 tidak dipinda

Adalah diharapkan pihak tuan berpuas hati dengan pengesahan di atas.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"
"MESRA MEMBANTU MEMUASKAN"

Saya yang menurut perintah,

[HALIJAH BT BULAT]
Pengarah
Jabatan Teknikal
b.p. Ketua Pegawai Eksekutif/Ketua Pengarah Hasil Dalam Negeri
Lembaga Hasil Dalam Negeri Malaysia

sk. Pengarah
Bahagian Operasi
Jabatan Pengurusan Hasil
Lembaga Hasil Dalam Negeri Malaysia

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BORANG PENGHANTARAN DOKUMEN TIDAK TERPERINGKAT MELALUI MESIN FAKSIMILI

MAKLUMAT DOKUMEN:

No. Rujukan Tuan	:	
Perkara/Tajuk Dokumen	:	*Parallel Existence Of The Single Tier System and The Imputation System*
Bil. Muka Surat. Dokumen Yang Dihantar	:	*3*
Tarikh Dokumen Dihantar	:	*13 ogos 2008*

MAKLUMAT PENERIMA:

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Nama/Alamat Organisasi	:	*MIT*
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