



This article summarises the key tax developments (excluding case law developments) that have taken place during the period from October 2012 to February 2013. The key developments revolve around the enactment of the Finance Act 2012, the gazetting of several proposals as announced in the recent Budget as well as Public Rulings, the updates on double tax agreements and administrative guidelines.

Several gazette orders issued during this period relate to tax incentives offered to companies carrying on a qualifying activity in RAPID Complex in Southern Johor. Tax incentives proposed for private and international schools, pre-schools as well as kindergartens have also been gazetted. The Inland Revenue Board ("IRB") has also issued several Public Rulings during this period, including rulings on reinvestment allowance, employee share scheme benefits and tax treatment of real estate investment trusts.

Malaysia has finally signed and gazetted the Malaysia-Hong Kong double taxation agreement ("DTA"). Although not ratified yet, it is interesting to note that the reduced withholding tax rates under the DTA are similar to that of the Malaysia - Singapore DTA.

Gazette Orders

Income Tax

Finance Act 2013

The Finance Act 2013 was gazetted on January 10, 2013 to enact the Budget 2013 proposals. There are however no changes between the Finance (No.2) Bill 2012 and the Finance Act 2013.

Income Tax (Deduction for Contribution by Licensed Insurers to the Malaysian Motor Insurance Pool) Rules 2012

The Rules, which are deemed to take effect from the year of assessment 2011 to 2015, provide that a double deduction for contributions made to the Malaysian Motor Insurance Pool is allowed in ascertaining the adjusted income of the general business of an insurer licensed under the Insurance Act 1996.

"Malaysian Motor Insurance Pool" means a high-risk insurance pool established collectively by licensed insurers to

provide insurance for risks in respect of motor vehicles, which are unable to obtain such insurance elsewhere.

Income Tax (Exemption) (No. 7) Order 2012

Income Tax (Exemption) (No. 8) Order 2012

Income Tax (Exemption) (No. 9) Order 2012

These Orders were made on November 14, 2012 to provide tax incentives to private and/or international schools in Malaysia.

Salient points of these Orders are summarised as follows:

| | Income Tax (Exemption) Orders 2012 | | |
|--|--|--|---|
| | No. 7 | No. 8 | No. 9 |
| Qualifying person | <ul style="list-style-type: none"> • Society* or company • Resident in Malaysia • Registered with MOE • Approved by Minister | <ul style="list-style-type: none"> • Society* or company • Resident in Malaysia • Registered with MOE • Approved by Minister | <ul style="list-style-type: none"> • Society** or company • Resident in Malaysia • Registered with MOE • Approved by Minister |
| Date of coming into operation (deemed) [subject to conditions] | 8/10/2011 | 8/10/2011 | 14/7/2010 |
| Application time -frame | 8/10/2011 – 31/12/2015 | 8/10/2011 – 31/12/2015 | 14/7/2010 – 31/12/2015 |
| Qualifying business | New business of a private school (does not include solely pre-school activities) | New business of a private / international school (does not include solely pre-school activities) | New or existing business of an international school (does not include solely pre-school activities) |
| Pre-requisite for the business | Must not have commenced prior to the making the application within the time frame | Must not have commenced prior to the making the application within the time frame | N/A |
| Type of incentive | 100% of QCE against 70% of SI for 5 years | Tax exemption on 70% of SI for 5 years | 100% of QCE against 70% of SI for 5 years |
| Purpose of the QCE – new business | Incurred for purpose of teaching and training in the private school | N/A | Incurred for purpose of teaching and training in the international school |
| Purpose of the QCE – existing business | N/A | N/A | For the improvement of existing school facilities or new investments in new location from the existing school |

Note:

* Society must be established prior to October 8, 2011

** Society must be established prior to July 14, 2010

MOE – Ministry of Education

QCE – Qualifying capital expenditure

SI – Statutory income

Mutual exclusivity and non-application

The abovementioned incentives are mutually exclusive and shall not apply to a qualifying person if:

- A claim has been made for reinvestment allowance or investment allowance;
- Any incentive has been granted under the Promotion of Investments Act 1986;
- An exemption has been granted under Section 127 of the Income Tax Act, 1967 (“ITA”);
- A claim for a deduction under any Rules made under Section 154 of the ITA except where an allowance under Schedule 3 of the ITA has been made; or
- The specified conditions in the Minister’s approval letter are not satisfied.

Income Tax (Exemption) (No. 10) Order 2012

The Order, which is deemed to take effect on April 24, 2012, exempts the ASEAN Infrastructure Fund Limited (“AIFL”) from all provisions of the ITA and a non-resident employee from the payment of income tax on all gains or profits derived from his employment with the AIFL.

The AIFL was set up in Malaysia by the Asian Development Bank and nine other ASEAN countries in order to fund the ASEAN region’s infrastructure needs.

Income Tax (Exemption) (No. 11) Order 2012

The Order, effective from the years of assessment 2013 to 2015, exempts a company resident in Malaysia which is licensed under the Tourism Industry Act 1992 to carry on a tour operating business from the payment of income tax in respect of the statutory income derived from domestic tours. The exemption only applies if the total number of local tourists on domestic tours is 1500 or more.

“Domestic tour” means a tour package for travel within Malaysia undertaken by local tourists, including transportation by air, land or sea and accommodation.

Income Tax (Deduction from Remuneration) (Amendment) (No. 2) Rules 2012

The Rules came into effect on January 1, 2013 and provide a Schedule intended to assist employers in making the correct Monthly Tax Deductions. The said Schedule replaces that provided under the Income Tax (Deduction from Remuneration) Rules 1994.

Income Tax (Industrial Building Allowance) (Kindergarten) Rules 2013

The Rules, which is effective from the year of assessment 2013, grant an industrial building allowance of 10% annually to a person who owns a building, which is used by him for the purpose of a business relating to the provision and maintenance of a kindergarten approved by the Ministry of Education.

Income Tax (Industrial Building Allowance) (Child Care Centre) Rules 2013

The Rules, which is effective from the year of assessment 2013, grant an industrial building allowance of 10% annually to a person who owns a building which is used by him for the purpose of carrying on a business of a child care centre registered with the Department of Social Welfare under the Child Care Centre Act 1984.

Income Tax (Exemption) Order 2013

This Order, which takes effect from the year of assessment 2013, provides that statutory income derived from the business of the provision and maintenance of a child-care centre is exempt from tax for 5 years commencing:

- For an existing business – from the year of assessment 2013
- For a new business – from the first invoice date where the child care centre commences its business from the year of assessment 2013

The child-care centre must be registered with the Department of Social Welfare.

Income Tax (Accelerated Capital Allowance) (Security Control Equipment and Monitoring Equipment) Rules 2013

These Rules extend the Accelerated Capital Allowance incentive provided for security control and surveillance equipment for another 3 years from the year of assessment 2013 to 2015.

The Rules shall not apply in respect of an individual or company if the individual or company:

- (a) has been granted any incentive under the Promotion of Investments Act 1986;
- (b) has been granted reinvestment allowance under Schedule 7A of the ITA;

- (c) has been granted any exemption under section 127 of the ITA;
or
(d) qualifies for an allowance at a higher fraction under the ITA or any rules made under section 154 of the ITA.

Income Tax (Exemption) (No. 2) Order 2013

This Order which is effective from the years of assessment 2013 to 2015 provides 100% tax exemption on statutory income to a Malaysian resident company carrying on a tour operating business with respect to group inclusive tours involving not less than 750 inbound foreign tourists per year.

“Group inclusive tour” means a tour package to or of Malaysia or any place within Malaysia undertaken by tourists from outside Malaysia, including transportation by air, land or sea and accommodation.

Income Tax (Exemption) (No. 3) Order 2013

This Order, which has effect from the year of assessment 2013, provides that statutory income derived from the business of the provision and maintenance of a kindergarten is exempt from tax for 5 years commencing:

- For an existing business – from the year of assessment 2013
- For a new business – from the first invoice date where the kindergarten commences its business from the year of assessment 2013

The kindergarten must be registered with the Ministry of Education Malaysia.

Income Tax (Deduction for the Provision of Child Care Centre) Rules 2013

With effect from the year of assessment 2013, an employer who provides a child-care centre (registered with the Department of Social Welfare) for the benefit of his employees is eligible for a double deduction for:

- expenses incurred in the provision and maintenance of a child care centre; and
- child-care allowances given to the employees of the business.

However, the deduction shall not exceed the amount, which in the Director General’s view would reasonably be expected to be incurred in the ordinary course of business, and the excessive amount shall be disallowed as a deduction.



Income Tax (Exemption) (No. 5) Order 2013

This Order which is deemed to have come into operation from October 10, 2011 until December 31, 2021 grants withholding tax exemption to a non-resident person in respect of (a) any payment under Section 4A of the ITA; (b) interest; (c) royalty; (d) contract payment under Section 107A of the ITA; and other gains or profit falling under Section 4(f) of the ITA; received from a qualifying person in relation to a qualifying activity carried out in Refinery and Petrochemical Integrated Development (“RAPID”) Complex.

Qualifying activity means any of the following activity carried out by a qualifying person in RAPID Complex:

- blending, processing or cracking of crude, condensates, feedstock or intermediate feedstock;
- production, manufacturing or product development of petroleum, petrochemical, chemicals, intermediate, final products or its related by-products;
- storing, formulating, blending, distributing or marketing of petroleum, petrochemical, chemicals, intermediate, final products or its related by-products;
- re-gasification of LNG to gas and relevant distribution; or
- generation, distribution or sales of all forms of utilities including but not limited to electricity, water, steam, gases, hydrogen, air or waste treatment.

A qualifying person is defined as follows:

- Petroliaam Nasional Berhad (PETRONAS);
- any other company incorporated under the Companies Act,

1965, where PETRONAS holds a majority of at least 51% paid up capital in respect of ordinary shares; or

- any other company incorporated under the Companies Act, 1965 which carries out qualifying activity within RAPID Complex where PETRONAS holds, either directly or indirectly, ordinary shares in that company.

Income Tax (Exemption) (No. 6) Order 2013

This Order which has effect from the year of assessment 2011 provides that 100% statutory income derived from a qualifying activity carried out in RAPID Complex by a qualifying person which is equivalent to 100% of qualifying capital expenditure incurred is exempt from tax for 10 consecutive years of assessment.

The Order is not applicable to a qualifying person who for each exempt year of assessment:

- has made a claim for reinvestment allowance under Schedule 7A or investment allowance under Schedule 7B of the ITA;
- has been granted any incentive under the Promotion of Investment Act 1986 except under section 41 of the said Act;
- has been granted any other exemption under section 127 of the ITA (including Income Tax (Exemption) (No. 7) Order 2013), except for Income Tax (Exemption) (No. 5) Order 2013.

The terms qualifying activity and qualifying person have the same meaning as that provided for under Income Tax (Exemption) (No. 5) Order 2013.

Income Tax (Exemption) (No. 7) Order 2013

This Order, which has effect from the year of assessment 2011, provides that statutory income derived from a qualifying activity in RAPID Complex by a qualifying person is exempt from tax for 15 consecutive years of assessment.

The Order is not applicable to a qualifying person who for each exempt year of assessment:

- has made a claim for reinvestment allowance under Schedule 7A or investment allowance under Schedule 7B of the ITA;
- has been granted any incentive under the Promotion of Investment Act 1986 except under section 41 of the said Act;
- has been granted any other exemption under section 127 of the ITA (including Income Tax (Exemption) (No. 6) Order 2013), except for Income Tax (Exemption) (No. 5) Order 2013.

The terms qualifying activity and qualifying person have the same meaning as that provided for under Income Tax (Exemption) (No. 5) Order 2013.

Income Tax (Deduction for Pre-Commencement Expenses in relation to Refinery and Petrochemical Integrated Development) Rules 2013

These Rules came into operation from the year of assessment 2010 and grant a deduction for pre-commencement expenses to a qualifying person undertaking a qualifying activity in RAPID Complex. The expenses are listed in the Schedule attached to the Rules and include manpower costs, travelling costs, staff training and feasibility studies.

The terms *qualifying activity* and *qualifying person* have the same meaning as that provided for under Income Tax (Exemption) (No. 5) Order 2013.

Income Tax (Exemption) (No. 8) Order 2013

This Order which takes effect from the year of assessment 2011 grants a qualifying person who carries on a qualifying activity in RAPID Complex a second round of the tax exemption provided for under Income Tax (Exemption) (No. 6) Order 2013 for 5 consecutive years of assessment.

An application in writing must be made to MIDA within 90 days before the expiration of the exemption period under Income Tax (Exemption) (No. 6) Order 2013.

Income Tax (Deduction for Investment In A Project Of Commercialisation of Research And Development Findings) Rules 2013

These Rules take effect from September 29, 2012 and grant a deduction equivalent to the value of investment made for the sole purpose of financing a project on commercialisation of research and development findings in a related company.

To qualify for the above, the claimant company must be a Malaysian incorporated company and an application must be submitted to MIDA between September 29, 2012 and December 31, 2017. The project of commercialisation is required to commence within one year from the date of approval issued by the MIDA.

Real Property Gains Tax

Real Property Gains Tax (Exemption) Order 2012

With effect from January 1, 2013, RPGT rates have been revised as follows:

| Date of disposal | RPGT rates |
|---|------------|
| Within 2 years from the date of acquisition | 15% |
| Between 2 and 5 years | 10% |
| After 5 years | 0% |

The revised rates are applicable to chargeable gains arising from the disposal of chargeable assets on or after January 1, 2012 and apply to companies, individuals, partnerships, bodies of persons and corporation sole.

With the issuance of this Order, the Real Property Gains Tax (Exemption) Order 2011 is revoked.

Stamp Duty

Stamp Duty (Remission) (No. 3) Order 2012

The Order, which comes into operation on January 1, 2013, grants remission of 50% of stamp duty chargeable on any loan agreement executed by a purchaser which is a Malaysian citizen and the following to finance the purchase of only one unit of residential property costing not more than RM400,000:

- A bank or finance company licensed or deemed to be licensed under the Banking and Financial Institutions Act 1989;
- A bank licensed under the Islamic Banking Act 1983
- A development financial institution prescribed under the Development Financial Institutions Act 2002
- An insurance business registered under the Insurance Act 1996
- A co-operative society registered under the Co-operative Societies Act 1993
- An employee under an employee housing loan scheme

The Sale and Purchase Agreement for the purchase of the residential property must be made between January 1, 2013 and December 31, 2014 and the purchaser must not own any other residential property on the date of execution of the Sale and Purchase Agreement.

Stamp Duty (Remission) (No. 4) Order 2012

This Order, which comes into operation on January 1, 2013, grants remission of 50% of stamp duty chargeable on any instrument of transfer for the purchase of only one unit of residential property costing not more than RM400,000 by an individual Malaysian citizen.

The Sale and Purchase Agreement for the purchase of the residential property must be made between January 1, 2013 and

December 31, 2014 and the purchaser must not own any other residential property on the date of execution of the Sale and Purchase Agreement.

Stamp Duty (Exemption) (No. 5) Order 2013

This Order which is deemed to have come into effect on April 24, 2012 exempts all instruments executed by the AIFL where the stamp duty due under the Stamp Act 1949 would ordinarily be payable.

Stamp Duty (Exemption) (No. 3) Order 2013

This Order which is deemed to have come into operation from October 10, 2011 until December 31, 2021 grants stamp duty exemption to all instruments chargeable with ad valorem duty executed by a qualifying person with respect to qualifying activity carried on in RAPID Complex between October 10, 2011 to December 31, 2021 where stamp duty due would ordinarily be payable by that qualifying person.

The terms *qualifying activity* and *qualifying person* have the same meaning as that provided for under Income Tax (Exemption) (No. 5) Order 2013.

Stamp Duty (Exemption) (No. 3) Order 2013

This Order exempts from stamp duty an instrument relating to the sale and purchase of retail debenture and retail sukuk as approved by the Securities Commission under the Capital Market Services Act 2007 ("CMSA"). Retail debenture has the same meaning as that provided under CMSA while retail sukuk has the same meaning as that provided in the guidelines issued by the Securities Commission under CMSA.

This exemption applies to instruments executed by a retail investor who is an individual between October 1, 2012 and December 31, 2015.





Public Rulings

Public Rulings 6/2012 (PR6/2012) – Reinvestment Allowance

This PR was issued on October 12, 2012 to replace PR No. 2/2008 on Reinvestment Allowance (“RA”) issued on April 3, 2008. Essentially, it highlights the new RA provisions introduced in the 2009, 2011 and 2012 Budgets. The following are some of the salient changes made to PR 2/2008:

- With effect from the year of assessment 2009, a company or a person has to be in operation for not less than 36 months (instead of 12 months) to be eligible for RA;
- With effect from the year of assessment 2012, RA for projects located in the promoted area¹ can only be deducted against 70% of statutory income (instead of 100%);
- With effect from the year of assessment 2009, the definition of “qualifying project” as provided for under paragraph 8, Schedule 7A of the ITA has been amended as follows: *“a project undertaken by a company, in expanding, modernizing or automating its existing business in respect of manufacturing of a product or any related product within the same industry or in diversifying its existing business into any related product within the same industry”*²

The term “manufacturing” for the purpose of RA is defined as:-

- transformation by manual or mechanical means of organic or inorganic materials into a new product by altering the

size, shape, composition, nature or quality of such materials;

- assembly of parts into a piece of machinery or products; or
- mixing of materials by a chemical reaction process including biochemical process that changes the structure of a molecule by the breaking of the intra molecular bonds.

It specifically excludes various activities which do not need special skills, machines, apparatus or equipment specially produced for carrying out these activities such as installation, simple packaging operations, simple fixing, simple assembly of parts and simple mixing of any products.

- With effect from the year of assessment 2012, a “factory” means “portion of the floor areas of a building or an extension of a building used for the purpose of a qualifying project to place or install plant and machinery or to store any raw materials or goods or materials manufactured prior to sale”. The storage area cannot exceed 10% of the total floor area of the building or extension. A factory does not include the areas used for research and development, canteen, nursery, living accommodation, sports and recreation.
- With effect from the year of assessment 2009, RA is withdrawn if an asset is disposed within 5 years (instead of 2 years) from the date of acquisition of the asset.

Public Ruling 7/2012 (PR7/2012) – Taxation of Unit Holders of Real Estate Investment Trusts/ Property Trust Funds

This PR was issued on October 29, 2012 and explains the tax treatment of distribution of income from real estate investment trusts (REITs)/ property trust funds (PTFs) in Malaysia to its unit holders. The PR states the following:

- *Distribution of income, which is tax exempt at REIT/PTF level* - REITs/PTFs are exempt from tax if 90% or more of their total income for a year of assessment is distributed to unit holders. However, unit holders are liable to tax on this distribution of income.
- *Distribution of income, which has been taxed at REIT/PTF level* - Unit holders who receive income distribution, which has been subject to tax at the REIT/PTF level, would not be subject to any further taxes upon the distribution. The income distribution would carry with it a tax credit, which can be utilised by the unit holders to offset against the tax payable by them.

1 The promoted area comprises the states of Sabah, Sarawak, the Federal Territory of Labuan, Kelantan, Terengganu, Pahang, Perlis and the district of Mersing in the State of Johor

2 Prior to the year of assessment 2009, the definition includes both manufacturing and processing activities.

3 Withholding tax

- *Distribution of tax-exempt income received by REIT/PTF* – Such income which is distributed to unit holders will continue to be tax exempt in the hands of the unit holders.
- The relevant tax rates which are applicable to the unit holders are summarised below:

| Chargeable person | YA2009 to YA2016 | |
|---------------------------------------|------------------|------|
| | Type of tax | Rate |
| Company (resident) | Corporate | 25% |
| Company (non-resident) | WHT (final tax) | 25% |
| Foreign institutional investor | WHT (final tax) | 10% |
| Individual (resident or non-resident) | WHT (final tax) | 10% |
| Others (resident or non-resident) | WHT (final tax) | 10% |

- If a unit holder has income from sources other than REITs/PTFs, an income tax return form has to be filed. However, the income from REITs/PTFs need not be included in the tax return form as the tax withheld is a final tax.

Public Ruling 8/2012 (PR8/2012) – Real Estate Investment Trusts/ Property Trust Funds – An Overview

This PR was issued on November 2, 2012 to provide an overview of REITs/PTFs and Islamic REITs in Malaysia. The salient points of PR are as follows:

- REITs in Malaysia are launched in 2005 as a rebranding of PTFs and they represent funds that invest primarily in real estate. Islamic REITs are similar to conventional REITs except that their investments are made through Syariah-compliant capital market instruments. The operation of both conventional and Islamic REITs is governed by the Securities Commission.
- A key feature of the REITs/PTFs concept is the tax transparency status provided under the Malaysian tax system whereby the income of REITs/PTFs is only taxed at the unit holders' level. This is provided that the REITs/PTFs distribute 90% or more of its total income to unit holders.
- Conventional REITs/PTFs and Islamic REITs share similar characteristics such as valuation, trustees, management companies and property manager. However, Islamic REITs are required to have a Syariah committee / adviser to perform certain professional functions as specified in the Islamic REITs Guidelines such as to review, monitor and approve investments made by the Islamic REITs.

- Based on the guidelines on REITs and Islamic REITs issued by the Securities Commission ("SC Guidelines"), both conventional REITs/PTFs and Islamic REITs are only authorised to make the certain prescribed investments.
- In both conventional REITs/PTFs and Islamic REITs, returns to unit holders will be from the income generated through the use of real estates (such as rental income) and capital gains (such as gains from sale of investments). Based on the SC Guidelines, the funds can only be charged with certain expenses including management fees, costs of maintaining real estates, fees for valuation of investments, etc.

Public Ruling 9/2012 (PR 9/2012) – Taxation of Real Estate Investment Trusts – Property Trust Funds

This PR was issued on November 26, 2012 to explain the tax treatment accorded to approved REITs / PTFs in Malaysia. The key features of this PR are summarised as follows:

- The basis year for a year of assessment or the financial accounting period, which ends on a day other December 31 is the basis period of REITs/PTF for that year of assessment.
- With effect from the year of assessment 2005, a specific provision was introduced in the ITA (Section 63C) for the taxation of REITs/PTFs. Based on the said section, rental income received by REITs/PTFs from its investments in real properties is treated as business income.
- The amount of deductible expenses incurred is restricted to the gross income from the rental source, i.e. any excess expenditure cannot be offset against other sources of income or carried forward to future years of assessment. Similar treatment is accorded in respect of capital allowances allowable under Schedule 3 of the ITA.
- The tax treatment on income of REITs/PTFs is as follows:
 - With effect from year of assessment 2007, REITs/PTFs are fully exempt from tax for a year of assessment if they distribute to their unit holders 90% or more of their total income in the basis period for that year of assessment. Where the distribution is less than 90%, the whole chargeable income will be subject to tax at the prevailing corporate tax rate.
 - Certain interest income earned by REITs/PTFs is exempt from tax, including interest from saving certificates and securities/bonds issued by the Government, debentures (other than convertible loan stock) approved by the Securities Commission and Bon Simpanan Malaysia issued by Bank Negara Malaysia.

4 *Operating a Malaysian ship refers to transporting passengers or cargo by sea on a Malaysian ship or letting out on charter a Malaysian ship owned by the resident person on a voyage or time chartered basis*



- Taxable dividend income forms part of the total income of REITs/PTFs and tax credits attached to the dividends are given to the REITs/PTFs. When the total income of the REITs/PTFs is distributed to the unit holder, the distribution is subject to tax at the unit holder level.
- The tax-exempt income received by REITs/PTFs (e.g. capital gains and certain interest income) is not included in computing the total income of REITs/PTFs.
- Distribution of REITs/PTFs income to unit holders:
 - If REITs/PTFs intend to distribute 90% or more of its total income but has fallen short of 90% at the end of the basis period, REITs/PTFs are given a grace period of 2 months from the closing of the accounts to distribute the balance so as to enjoy the tax exemption at the REITs/PTFs level.
 - Where REITs/PTFs that are tax-exempt distribute income, which is deemed derived from Malaysia to a unit holder, the payer is required to deduct tax at the applicable rates (please see the table above for details).
 - REITs/PTFs are required to prepare distribution vouchers for unit holders based on the share of each unit holder at the time of distribution containing details such as payment date, accounting period, number of units held, taxable income, Malaysian tax, net amount payable, etc.
 - REITs/PTFs are also required to furnish the abovementioned information to the IRB.

Public Ruling 10/2012 (PR10/2012) – Tax Treatment of Malaysian Ship

This Ruling was issued on December 13, 2012 and explains the tax treatment of a Malaysian Ship and the exemption of shipping

income in respect of a person resident in Malaysia prior to the year of assessment 2014. The salient points from the PR are as follows:

- A resident person who operates a Malaysian ship is eligible for tax exemption provided that the qualifying criteria under subsection 54A(1)⁴ of the ITA are satisfied. A “Malaysian Ship” is defined as a sea-going ship registered as such under the Merchant Shipping Ordinance 1952, other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel.
- Based on Section 54(2)(a) of the ITA, gross income of a resident person from the business of transporting passengers or cargo by sea is ascertained by reference to his income from wherever derived or accrued (i.e. on a world income scope basis). To qualify for the abovementioned exemption, the said business has to be carried on by a resident person on a Malaysian Ship.
- Where a person who is resident for a year of assessment carries on the qualifying business of letting out on charter a Malaysian Ship owned by him on a voyage or time charter basis, the statutory income for that year of assessment from that business is exempt from tax. Based on the PR, time charter refers to the chartering of a ship based on a specific period of time for the use of the ship while voyage charter refers to the chartering of a ship based on a particular voyage from one port or place to another.
- Profits derived from letting out Malaysian ship on bareboat charter and the business of operating cruise tours on board a Malaysian Ship do not qualify for tax exemption.
- Where both Malaysian Ships and non-Malaysian Ships are used in the business of a resident person, tax exemption is restricted to the income derived from Malaysian Ships only. Where the business income of a resident person is exempt, capital allowances for every asset owned and used in the



business is deemed to have been claimed and given, effective from the year of assessment 2009. This provision has the effect of reducing the exempt income.

- Where there is more than one Malaysian Ship in determining the income of a person exempt under section 54A of the ITA, the business income derived from all the Malaysian Ships shall be treated as one source. In determining the income of a person under section 54A, the capital allowance claimed or deemed to have been claimed in respect of any Malaysian Ship is deductible against the income of other Malaysian Ships.
- Based on Section 54A(2)(b) of the ITA, an adjusted loss incurred in respect of the operation of a Malaysian ship can only be deducted against the income exempt under the said section. The balance of such loss is not available as a deduction against other income.

Public Ruling 11/2012 (PR 11/2012) – Employee Share Scheme Benefit

This PR was also issued on December 13, 2012 and explains the tax treatment of benefits arising from employee share schemes. It also explains the determination of the amount of employee share scheme, which is taxable as well as the responsibilities of both employers and employees with respect to employee share schemes.

This PR was published to replace PR No. 4/2004 issued on December 9, 2004. The key changes made are as follows:

- The PR explains the tax treatment of benefit arising from employee share schemes prior to and with effect from the year of assessment 2006. Prior to the year of assessment 2006, the amount of taxable benefit from a share scheme is computed as

the difference between the market value of shares on the date the option was offered and the price offered by the employer.

- With effect from the year of assessment 2006, the method of computing the taxable benefit from a share scheme for employees is provided for under Sections 25(1A) and 32(1A) of the ITA, as follows:

| | RM |
|--|-----|
| Market value of share on the date the scheme is exercisable or Market value of share on the date the scheme is exercised whichever is lower | xxx |
| Less: Price paid for the share (if any) | xxx |
| Perquisite (Taxable benefit to the employee) | xxx |

- The PR also provides more examples on the computation of the value of the share benefit, including that for different types of share schemes such as Employee Share Purchase Plan (ESPP), Share Award Scheme, Share Appreciation Rights Scheme (SARS), Warrant Scheme, Bonus and Rights Issue.

Public Ruling 12/2012 (PR 12/2012) – Share Schemes Benefit for Cross Border Employees

This PR was issued on December 24, 2012 and explains the tax treatment of benefits arising from an employee share scheme received by employees from Malaysia who are seconded to work overseas, and foreign national employees who are seconded to Malaysia. The salient points of the PR are as follows:

- Employees from Malaysia seconded to work overseas –
 - Malaysian tax is still applicable where the share schemes are exercised after the employees stopped working in Malaysia.
 - Bilateral credit relief is available if part of the benefit, which is taxable in Malaysia, is also liable to tax in the overseas country, provided the said country is a treaty country. Where the said country is a non-treaty country, a unilateral credit can be allowed by Malaysia.
- Foreign nationals seconded to work in Malaysia –
 - Generally, if the duties of an overseas employment are exercised in Malaysia such that the employment income is taxable here, then a charge to Malaysian tax is likely to arise on the benefit from the exercise of the share schemes offered by the employer overseas but exercised while in Malaysia.
 - If the foreign national who is offered a share scheme by his overseas employer prior to his secondment to Malaysia



only exercises his right to the share scheme after he returns to his overseas office, a charge to Malaysian tax is also likely to arise.

- Depending on the provisions of the relevant Double Tax Agreement the charge to Malaysian tax upon exercising the share scheme is limited to the proportion of the option gain, which relates to the number of working days in Malaysia.
- Benefits arising from a share scheme is exempt from Malaysian tax under the following circumstances:
 - The schemes are offered to a non-resident whose employment income is not taxable in Malaysia as the employment exercised in Malaysia is less than 60 days; or
 - The share schemes are offered to an individual, who under the terms of a DTA is exempt from Malaysian tax on his employment income for the year in which the gain from the share scheme arises.

Public Ruling 1/2013 (PR 1/2013) – Deductions for Promotion of Exports

This PR was issued on February 4, 2013 to provide clarification on the tax treatment of expenditure eligible to a company as deduction for promotion of export under provisions of the ITA, Promotion of Investments Act 1986 (PIA 1986) and various Income Tax Rules.

Expenses incurred on the promotion of exports are expenses incurred primarily for the purpose of seeking opportunities or in creating or increasing demand for the export of goods or agricultural produce manufactured, produced, assembled, processed, packed and graded on sorted in Malaysia.

Deductions for promotion of exports are given in on the following ways:

- Single deduction (allowable as single deduction pursuant to the relevant Income Tax Rules instead of Section 33(1) of the ITA)
- Further deduction (allowable pursuant to the relevant provisions/Income Tax Rules in addition to the deduction granted under Section 33(1) of the ITA)
- Double deduction (deduction equivalent to twice the amount of expenses incurred granted pursuant to the relevant Income Tax Rules)

The PR provides a comprehensive list of the expenses, which qualify for the abovementioned deductions.

Double Tax Agreements (DTAs)

Malaysia – India

A new DTA between Malaysia and India was gazetted on November 17, 2012 but has yet to come into force. The key changes are as follows:

- Changes made to the Permanent Establishment (PE) definition.
- Changes made to the attribution of profits method under Article 7
- The withholding tax rate for dividends has been reduced from 10% to 5%
- Labuan entities are excluded from the provisions of the agreement
- There are two new articles namely Article 14 on Capital Gains and Article 28 on Limitation of Benefits
- New provisions under Article 23 on Other Income and Article 27 on Exchange of Information

Malaysia – Hong Kong

The DTA between Malaysia and Hong Kong was signed on April 25, 2012 and has recently been gazetted in both jurisdictions. The DTA has not been ratified yet.

The withholding tax rates provided for in the DTA are as follows:

| | |
|-----------------------------|-----------|
| Dividends | 5% or 10% |
| Interest | 0% or 10% |
| Royalties | 8% |
| Fees for technical services | 5% |

Malaysia – New Zealand

A new protocol has been signed on November 6, 2012 in respect of the above DTA to amend the exchange of information provisions. It is however not enforced yet.

Free Trade Agreements (FTAs)

Malaysia – Australia FTA

The Customs Duties (Goods under the Free Trade Agreement Malaysia-Australia) Order 2012 was recently gazetted. This relates to the Malaysia-Australia Free Trade Agreement (MAFTA) signed on 22 May 2012. The Agreement entered into force on January 1, 2013.

As a result, 97.6 per cent of Australian goods currently exported to Malaysia are eligible for tariff-free treatment, rising to 99 per cent in 2017. MAFTA aims to reduce trade barriers, increase transparency and provide greater business certainty.

Administrative Guidelines

Filing Programme for Income Tax Return Forms (ITRFs) in the year 2013

The IRB has issued the 2013 Filing Programme. The salient points to note are as follows:

- Where the due date for filing of the ITRF falls during the calendar year 2013, a grace period of 15 days is granted for e-Filing. This grace period also applies to the settlement of tax under subsections 103(1) of the ITA.
- With regard to filing via post, a grace period of 3 working days is granted. However, there is no grace period for filing by hand.



- Any application for an extension of time for filing and for payment of the balance of tax payable must be made to IRB separately at least 15 days before the due date for the submission of the ITRF. The applications should be addressed to the Director of Policy and Operations Division, IRB at Cyberjaya. Where the approval is granted, the ITRF must be submitted by e-Filing, failing which, the approval will be withdrawn and penalty imposed under subsection 112(3) of the ITA.
- A grace period until April 30, 2013 is also granted for e-Filing of Form E for the year 2012.
- For cases where penalty is imposed under subsection 112(3) of the ITA, a reduction of 5% from the rates fixed by the IRB will be given for e-Filing cases.
 - With regard to the assessment under sections 90(2A), 90(3), 91, 92, 96A and 101(2) of the ITA, the tax payable / balance of tax payable must be settled within 30 days from the assessment date. However, a 7-day grace period is given.

Schedule on General Issue and Submission of ITRFs

The IRB has issued the above Schedule showing the date of general issue of ITRFs and the due date for submission of these ITRFs.

Please note that the following new ITRFs will be issued:

- BT – Resident individual (Knowledge Worker/Expert Worker) with business, employment and other income
- MT – Non-resident individual (Knowledge Workers) with business, employment and other income
- PT – Limited Liability Partnership
- TN – Business Trust

Issuance of New Payment Receipts

With effect from February 18, 2013, new payment receipts will be issued at all IRB payment counters.

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