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Tax Flash

December 2012

PR No. 7/2012 – Taxation of Unit Holders of REIT / PTF

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 7/2012 – Taxation of Unit Holders of Real Estate Investment Trusts ["REIT"] / Property Trust Funds ["PTF"] to provide guidance on the tax treatment of distribution of income from REIT / PTF to its unit holders.

Salient points of the abovementioned PR include:-

i. Tax at Unit Holders' Level

- REIT / PTF unit holders are taxed in the year of assessment the distribution income is received.
- If 90% or more of the total income of REIT / PTF in the basis year for a year of assessment is distributed to unit holders, REIT / PTF are exempted from tax for that year of assessment. However, unit holders are liable to tax on the distribution of income based on the prevailing tax rates summarised below.
- Unit holders who receive income distribution which has been subjected to tax at the REIT / PTF level would not be liable 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 their tax payable.
- Tax exempt income received by REIT / PTF and subsequently distributed to unit holders will also be tax exempt in the hands of the unit holders.
- The prevailing tax rates applicable to various categories of unit holders are summarised below:-

Chargeable Person		Types of Tax	Rate
Company	– resident	Corporate	25%
	– non- resident	WT (final tax)	25%
Foreign institutional investor		WT (final tax)	10%
Individual	– resident	WT (final tax)	10%
	– non-resident	WT (final tax)	10%
Others	– resident	WT (final tax)	10%
	– non-resident	WT (final tax)	10%

Hyperlinks

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ii. Filing of Income Tax Return Form ["ITRF"]

- The income from REIT / PTF received by unit holders need not to be included in the ITRF if the tax withheld is a final tax under Section 109D of the Income Tax Act 1967 ["the Act"].

- However, income from REIT / PTF has to be reported in the following circumstances:-

    - o In the case of resident corporate unit holders where the withholding tax ["WT"] provision under Section 109D of the Act is not applicable.

    - o where the REIT / PTF are not exempted from tax, i.e. in cases where the distribution is less than 90% of its total income for that year; and

    - o where REIT / PTF distribute income which carries tax credit proportionate to each unit of the taxable income in respect of the tax paid by the REIT / PTF.

  The unit holders should declare the REIT / PTF distribution as income in their ITRF and claim a set-off under Section 110(9A) of the Act.

PR No. 8/2012 – REIT / PTF – An Overview

PR No. 8/2012

The IRB has recently issued the PR No. 8/2012 – REIT / PTF – An Overview. This PR provides an overview *inter alia* regulatory framework, key features, structure of the conventional REIT / PTF and Islamic REIT and investment activities.

Tax Exemption of Income Derived by a New Private School

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

Following the 2012 Budget announcement, the Income Tax (Exemption) (No. 7) Order 2012 has been gazetted to provide tax incentive in respect of qualifying capital expenditure incurred by new private schools.

Pursuant to this Order, a society (established prior to 8th October 2011) or a company resident in Malaysia undertaking a new private school business registered with the Ministry of Education Malaysia ["MOE"] is exempted from payment of income tax in respect of 70% of statutory income, equivalent to 100% of the qualifying capital expenditure incurred within a period of 5 years on:-

- building, plant or machinery used in Malaysia for the purposes of activities relating to teaching and training in a private school, excluding:-
    - o building used as living accommodation,
    - o plant and machinery acquired wholly or partly for the use of a director or any member of management, administrative or clerical staff.

"Private school" means a school which is not a government school that provides private / private religious / private Chinese primary or secondary education or both, together with the provision of private pre-school education therein (if any), that comply with the requirements of the National Curriculum or examinations prescribed under the Education Act 1996 or guidelines issued by the MOE but excluding a school that provides solely pre-school education.

In the absence or insufficiency of statutory income for a year of assessment such that the exemption cannot be given or given in full, the amount which cannot be exempted or exempted in full for that year of assessment shall be allowed in the subsequent years of assessment until the whole of the amount to be exempted is allowed.

Where an asset is disposed of within 2 years from the date of acquisition, the amount of income exempted in respect of that asset shall be withdrawn.

To be eligible for the above incentive, certain other conditions must be observed.

The application for approval must be made to Malaysian Investment Development Authority ["MIDA"] between 8th October 2011 and 31st December 2015 and the private schools must not have commenced business prior to the said application for approval.

Tax Exemption of Income Derived by New Private and International Schools

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

Following the 2012 Budget announcement, the Income Tax (Exemption) (No. 8) Order 2012 has been gazetted to provide tax exemption on income for new private or international schools.

Pursuant to this Order, a society (established prior to 8th October 2011) or a company resident in Malaysia undertaking a new private or international school business registered with the MOE is exempted from payment of income tax in respect of 70% of statutory income of that business for a period of 5 years ["exempt period"].

"International school" means a school which is not a government school that provides pre-school education until pre-university education (i.e. A-Level programme) but excluding a school that provides solely pre-school education.

"Private school" has the same meaning assigned to it as mentioned above.

Additionally, it is noteworthy that:-

- 70% of statutory income for the business of private school or international school eligible for exemption shall be reduced:-
    - first, by current year adjusted loss a business or businesses (other than the business of private school or international school)
    - next, by any unabsorbed business loss brought forward or current year adjusted loss from the business of private school or international school which is exempted under this Order.

- So much of the adjusted losses used to reduce the statutory income for the business of private school or international school as mentioned above shall be disregarded for the purposes of Section 43(2) and Section 44(2) of the Act.

- Any unabsorbed loss or current loss that are not utilised to reduce the statutory income during the exempt period as mentioned above shall be carried forward for utilisation in the years of assessment after the cessation of the exemption period.

- Any statutory income for a year of assessment from the business of private school or international school which is not exempt under this Order i.e. 30% of statutory income shall be deemed to be the total income.

To be eligible for the above incentive, certain other conditions must be observed.

The application for approval must be made to MIDA between 8th October 2011 and 31st December 2015 and the private or international school must not have commenced business prior to the said application for approval.

Tax Exemption of Income Derived by New and Existing International Schools

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

Following the 2012 Budget announcement, the Income Tax (Exemption) (No. 9) Order 2012 has been gazetted to provide tax incentive in respect of qualifying capital expenditure incurred by new and existing international schools.

Pursuant to this Order, a society (established prior to 14th July 2010) or company resident in Malaysia undertaking a new or existing international school business registered with the MOE is exempted from payment of income tax in respect of 70% of statutory income, equivalent to 100% of the qualifying capital expenditure incurred within a period of 5 years as follows:-

- <u>For a new school</u> (which commences business after the application to MIDA for approval is made)

  On a building, plant or machinery used in Malaysia for the purpose of an activity relating to teaching and training in an international school,

- <u>For an existing school</u> (which has commenced business prior to the application to MIDA for approval is made)

  On a building, plant or machinery used in Malaysia for the purpose of an activity relating to teaching and training in an international school for the improvement of the existing school facilities or any new investment in a location other than the existing school,

but, excluding building used as living accommodation, plant and machinery which are provided wholly or partly for the use of a director or any member of management, administrative or clerical staff.

"International school" has the same meaning assigned to it as mentioned above.

In the absence or insufficiency of statutory income for a year of assessment such that the exemption cannot be given or given in full, the amount which cannot be exempted or exempted in full for that year of assessment shall be allowed in the subsequent years of assessment until the whole of the amount to be exempted is allowed.

Where an asset is disposed of within 2 years from the date of acquisition, the amount of income exempted in respect of that asset shall be withdrawn.

To be eligible for the above incentive, certain other conditions must be observed.

The application for approval must be made to MIDA between 14th July 2010 and 31st December 2015 and in respect of qualifying expenditure incurred from year of assessment 2010 onwards.

Stamp Duty Remission on Loan Agreements to Purchase Residential Property

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

Following the 2013 Budget announcement, the Stamp Duty (Remission) (No. 3) Order 2012 has been gazetted to provide 50% stamp duty remission on loan agreement to a Malaysian citizen for the purchase of only 1 residential property (i.e. a house, a condominium unit, an apartment or a flat built as a dwelling house) costing not more than RM400,000. The remission is given on the conditions that:-

- the sale and purchase agreement ["SPA"] is executed between 1st January 2013 and 31st December 2014;
- the purchaser must not own any other residential property or part thereof at the date of execution of that SPA; and
- the application for this remission can only be made once and applicable to co-purchasers.

The above remission applies to loan agreements executed on or after 1st January 2013.

Stamp Duty Remission on Instruments of Transfer of Ownership for Residential Property

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

Following the 2013 Budget announcement, the Stamp Duty (Remission) (No. 4) Order 2012 has been gazetted to provide 50% stamp duty remission on any instrument of transfer to a Malaysian citizen for the purchase of only 1 residential property (i.e. a house, a condominium unit, an apartment or a flat built as a dwelling house) costing not more than RM400,000. This remission is given on the conditions that:-

- the SPA for the purchase of the residential property is executed between 1st January 2013 and 31st December 2014;

- the purchaser must not own any other residential property or part thereof at the date of execution of that SPA; and

- the application for this remission can only be made once and applicable to co-purchasers.

The above remission applies to instruments executed on or after 1st January 2013.

Remission of Income Tax and Stamp Duty on Islamic Medium Term Notes

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 7) Order 2012

Pursuant to the Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 7) Order 2012, any tax payable under the Act and stamp duty payable under the Stamp Act 1949 in respect of any agreement, note, instrument or documents in relation to the Islamic Medium Term Notes issued pursuant to the Islamic Medium Term Note Programme in nominal value of up to RM5.311 billion by Turus Pesawat Sdn Bhd, including the guarantee provided or to be provided by the Government of Malaysia shall be remitted in full.

The above Order comes into operation on 8th November 2012.

Review of RPGT Rates

Real Property Gains Tax (Exemption) Order 2012

With the gazette of Real Property Gains Tax (Exemption) Order 2012 following the 2013 Budget announcement, the Real Property Gains Tax ["RPGT"] rates on chargeable gains from the disposal of chargeable assets on or after 1st January 2013 will be revised to:-

- 15% for holding period up to 2 years;
- 10% for holding period exceeding 2 years but within 5 years;
- 0% for holding period exceeding 5 years.

The above Order comes into operation on 1st January 2013 and the RPGT (Exemption) Order 2011 is revoked.

DTA between Malaysia and Hong Kong

Double Taxation Relief (The Government of the Hong Kong Special Administrative Region of the People's Republic of China) Order 2012

The Double Taxation Agreement ["DTA"] between Malaysia and Hong Kong has recently been gazetted. Salient points of the DTA include:-

i. A building site, a construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment ["PE"] only if such site, project or activities last more than 9 months.

ii. The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose will constitute a PE if the activities of that nature continue (for the same or connected project) for a period or periods of more than 183 days within any 12-month period.

iii. The WT rates applicable on certain payments are as follows:-

   - Dividends – 5% if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 10% of the share capital of the company paying the dividends or 10% in all other cases (*Note*)
   - Interest – 10%
   - Royalties – 8%
   - Technical fees – 5%
   - Section 4(f) income – 10%

The above DTA will enter in force upon ratification.

Note *: Currently, there is no WT on outbound dividends under the Act.*

Protocol to Amend the Article on Exchange of Information - DTA between Malaysia and Bermuda

Exchange of Information (The Government of Bermuda) Order 2012

The protocol signed between Malaysia and Bermuda pertaining to the Article on Exchange of Information ["EOI"] has recently been gazetted. The new Article on EOI is in line with the EOI provision of Article 26 of the Organisation for Economic Co-operation and Development Model Convention with regard to secrecy and disclosure of information received and obligation to supply information by the authorities of one Contracting State to the other Contracting State.

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