

# ▶▶ Tax Flash



March 2013

## PR No. 1/2013 – Deductions for Promotion of Exports

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 1/2013 – Deductions for Promotion of Exports. This PR provides clarification on the tax treatment of expenditure eligible to a company as deduction for promotion of exports.

Salient points of the abovementioned PR include:-

- i. Qualifying Company and Qualifying Product / Activity
  - A resident company in Malaysia involved in manufacturing, trading and agricultural activities for a basis year for a year of assessment is eligible to claim a deduction for promotion of exports.
  - Expenses incurred by a company on or after 1<sup>st</sup> January 1986 in its business primarily and principally for the purposes of seeking opportunities or in creating or increasing demand for the export of goods or agricultural produce manufactured, produced, assembled, processed, packed and graded or sorted in Malaysia.
- ii. Types of Deduction
  - Single Deduction
    - To promote exports, the following expenses incurred by a company are allowed as single deductions in accordance with:-
      - Income Tax (Promotion of Exports) Rules (No.2) 2002 (expired in year of assessment ["YA"] 2005)
        - Registration of patents, trademarks and product licensing overseas
      - Income Tax (Promotion of Exports) Rules (No.3) 2002
        - Bringing potential importers to Malaysia as a follow-up to trade or investment missions
  - Further Deduction
    - Certain expenses that are allowable under Section 33(1) of the Income Tax Act 1967 ["the Act"] are given further deduction in accordance with:-
      - Section 41 of the Promotion of Investments Act 1986
        - a. Publicity and advertisement;
        - b. Provision of samples;
        - c. Export market research / export market information;
        - d. Tender for the supply of goods;
        - e. Negotiating or concluding contracts;
        - f. Participation in approved trade fairs or trade / industrial exhibitions;

### Hyperlinks

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- g. Provision of exhibits for participation in approved trade fairs or trade / industrial exhibitions;
- h. Expenses directly incurred for participation in approved trade fairs or trade / industrial exhibitions held outside Malaysia and approved by MATRADE [other than (e), (f) and (g)];
- i. Provision of technical information;
- j. Public relations;
- k. Maintaining sales office overseas.
- Income Tax (Promotion of Exports) Rules (Amendments) 2001 (effective 1<sup>st</sup> January 2001)
  - Professional fees incurred on packaging design
- Income Tax (Promotion of Exports) Rules 2002 (effective YA 2002)
  - a. Participation in a trade portal;
  - b. Virtual trade show expenses, i.e. participating in internet commerce;
  - c. Cost of maintaining warehouse overseas.
- Double Deduction
  - The following expenses which previously qualified for single deduction is given a double deduction in accordance with:-
    - Income Tax (Promoting Exports) Rules 2007 (effective YA 2006)
      - Registration of patents, trademarks or product licensing overseas

Examples of the various expenses eligible for the single, further and double deductions are given in the PR.

- iii. Special Provision for Pioneer Company / Company Exempt under Income Tax Exemption Order
  - Under the Income Tax (Promotion of Exports) Rules 1986 and Income Tax (Promotion of Exports) (Amendments) Rules 2001, pioneer companies are eligible to claim a deduction for promotion of export. However, the amount of expenses allowed as a deduction under these Rules during pioneer period will be accumulated and deducted from business adjusted income during the post pioneer period.
  - A tax exempt company is also eligible to claim a tax deduction for export promotion expenses under these Rules if there are special provisions that allow the expenses to be claimed after the exemption period.
- iv. Claim Procedure
  - Companies are required to complete and keep the relevant prescribed forms together with the supporting documents for audit purposes.

### Tax Incentive Relating to Tun Razak Exchange

Following the 2012 Budget announcement, several incentives were proposed for the development of Tun Razak Exchange ["TRX"] (previously known as the Kuala Lumpur International Financial District). The Ministerial Orders relating to the following incentives available to companies involved in the TRX project have recently been gazetted:-

#### i. **Tax Exemption for Approved Developer**

- Pursuant to the Income Tax (Exemption) (No. 4) Order 2013, a resident company which is approved by the Minister of Finance and undertakes development within the TRX in accordance with the TRX approved master plan is exempted from payment of income tax in respect of 70% of the statutory income derived from:-
  - the disposal of any building or rights over any building or part of a building up to the YA 2022, subject to a maximum of 5 consecutive years of assessment commencing from the first year of assessment in which the statutory income from such disposal is derived; and
  - the rental of a building or part of a building up to the YA 2027, subject to a maximum of 5 consecutive years of assessment commencing from the first year of assessment in which the statutory income from such rental activity is derived.
- The above Order shall have effect from the YA 2013.

#### ii. **Deduction for Relocation Costs for TRX Marquee Status Company**

- Pursuant to the Income Tax (Deduction for Relocation Costs for TRX Marquee Status Company) Rules 2013, a TRX Marquee status company is allowed a deduction for prescribed relocation costs incurred to relocate the whole or part of its business to the TRX, provided such relocation takes place not later than 31<sup>st</sup> December 2020.
- Relocation costs will be deemed to be incurred in the year of assessment in which the TRX Marquee status company commences to undertake the whole or part of its business in the TRX.
- "Relocation" means the moving of all or part of the business operation of a TRX Marquee status company from outside Malaysia or other parts of Malaysia to the TRX.
- The above Rules shall have effect from the YA 2014.

#### iii. **Deduction of Rental Payments for TRX Marquee Status Company**

- Pursuant to the Income Tax (Deduction for Rental Payments) (TRX Marquee Status Company) Rules 2013, a TRX Marquee status company is allowed an additional deduction of an amount equal to 50% of the rental payments incurred in respect of a rented commercial building used for the purpose of its business in the TRX.
- The above additional deduction shall be given to a TRX Marquee status company for a period of 10 years from the commencement of the whole or part of its business in the TRX, provided the commencement of the business is not later than 31<sup>st</sup> December 2020.
- The above Rules shall have effect from the YA 2014.

Income Tax (Exemption)  
(No. 4) Order 2013

Income Tax (Deduction  
for Relocation Costs for  
TRX Marquee Status  
Company) Rules 2013

Income Tax (Deduction  
for Rental Payments)  
(TRX Marquee Status  
Company) Rules 2013

**iv. Industrial Building Allowance for TRX Marquee Status Company**

- Pursuant to the Income Tax (Industrial Building Allowance) (TRX Marquee Status Company) Rules 2013, a commercial building located in the TRX which is constructed or purchased by a TRX Marquee status company and used for the purpose of its business shall be treated as an industrial building and qualifies for industrial building allowance of 10% annually on the qualifying expenditure, provided such qualifying expenditure is incurred not later than 31<sup>st</sup> December 2020.
- Where the industrial building is leased to other persons for the purpose of the prescribed activities, it is deemed to be carrying on a leasing activity and income from that leasing activity is to be assessed as a separate business source under Section 4(a) of the Act.
- If the building is disposed of within 2 years from the date the qualifying building expenditure was incurred, a balancing charge equivalent to the amount of allowance that has been given previously will be made for the year of assessment in the basis period in which the building was disposed of.
- The above Rules shall have effect from the YA 2014.

**v. Accelerated Capital Allowance for TRX Marquee Status Company**

- Pursuant to the Income Tax (Accelerated Capital Allowance) (TRX Marquee Status Company) Rules 2013, accelerated capital allowance is granted to a TRX Marquee status company in respect of the prescribed renovation costs incurred on a building or part of a building located in the TRX used for the purpose of the company's business.
- The initial allowance and annual allowance at the rates of 20% and 40% respectively shall be granted on the qualifying expenditure.
- The above Rules shall have effect from 1<sup>st</sup> January 2014 until 31<sup>st</sup> December 2020.

**vi. Stamp Duty Exemption on Service Agreement**

- Pursuant to the Stamp Duty (Exemption) Order 2013, any stamp duty payable under Item 22(1)(b) of the First Schedule to the Stamp Act 1949 in respect of any instrument of service agreement executed between a service provider and a TRX Marquee status company is exempted.
- The above exemption applies to instruments executed from 1<sup>st</sup> January 2014 to 31<sup>st</sup> December 2022.

Income Tax (Industrial Building Allowance) (TRX Marquee Status Company) Rules 2013

Income Tax (Accelerated Capital Allowance) (TRX Marquee Status Company) Rules 2013

Stamp Duty (Exemption) Order 2013

**vii. Stamp Duty Exemption on Instrument of Transfer and Loan Agreement for Purchase of Commercial Property**

- Pursuant to the Stamp Duty (Exemption) (No. 2) Order 2013, exemption from stamp duty is granted on the following:-
  - any instrument of transfer for the purchase of commercial property by a TRX Marquee status company;
  - any loan agreement executed between a TRX Marquee status company and a bank or financial institution to finance the purchase of a commercial property; and
  - any lease or agreement for lease of any commercial property entered into by a TRX Marquee status company.
- The above exemptions apply to the sale and purchase agreement for the purchase of commercial property, loan and lease agreements executed from 31<sup>st</sup> January 2013 to 31<sup>st</sup> December 2020 and shall be given to the first owner or lessee of that commercial building.

For the purpose of the above Orders / Rules, “TRX Marquee Status Company” means:-

- a. a licensed institution under the Banking and Financial Institutions Act 1989 carrying on a banking business or a merchant banking business or a related company within the same group;
- b. a company licensed under the Insurance Act 1996 carrying on insurance business or a related company within the same group;
- c. a company licensed under the Islamic Banking Act 1983 carrying on an Islamic banking business or a related company within the same group;
- d. a company registered under the Takaful Act 1984 carrying on takaful business or a related company within the same group;
- e. a company which is a holder of a Capital Markets Service Licence licensed under the Capital Markets and Services Act 2007 [“CMS Act 2007”];
- f. a person, other than an individual, who is a registered person under Section 76 or 76A of the CMS Act 2007; and approved by the Minister of Finance.

**Tax Incentives for RAPID Complex**

Following the Budget 2013 announcement, the Ministerial Orders relating to the following incentives for the Refinery and Petrochemical Integrated Development [“RAPID”] Complex have been gazetted :-

**i. Tax Exemption on Certain Payments Made to a Non-Resident**

- Pursuant to the Income Tax (Exemption) (No. 5) Order 2013, a non-resident person is exempted from tax in respect of the following payments received from a qualifying person in relation to qualifying activity carried out in RAPID Complex:-
  - any payment under Section 4A of the Act;
  - interest;
  - royalty;
  - contract payment under 107A of the Act;
  - other gains or profit falling under Section 4(f) of the Act.
- The above Order shall have effect from 10<sup>th</sup> October 2011 until 31<sup>st</sup> December 2021.

Stamp Duty (Exemption)  
(No. 2) Order 2013

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

**ii. Tax Exemption of Income Derived by a Qualifying Person from a Qualifying Activity**

- Pursuant to the Income Tax (Exemption) (No. 6) Order 2013, a resident qualifying person is exempted from payment of income tax in respect of statutory income derived from a qualifying activity equivalent to 100% of the qualifying capital expenditure ["QCE"] incurred for a period of 10 consecutive years of assessment ["exempt years of assessment"] commencing from the year of assessment where the first QCE is incurred.
- 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 post-exempt years of assessment until the whole amount to be exempted is allowed.
- Where an asset on which QCE was incurred is disposed of within 2 years from the date of acquisition, the amount of income exempted in respect of the allowance of such asset shall be withdrawn.
- Application for the incentive must be submitted to the Malaysian Investment Development Authority ["MIDA"] on or after 10<sup>th</sup> October 2011.
- The above Order shall have effect from the YA 2011.

**iii. Tax Exemption of Income Derived by a Qualifying Person from a Qualifying Activity**

- Pursuant to the Income Tax (Exemption) (No. 7) Order 2013, a resident qualifying person is exempted from payment of income tax in respect of its statutory income derived from a qualifying activity in RAPID Complex for a period of 15 consecutive years of assessment ["exempt years of assessment"] commencing from the first year of assessment in which the statutory income from such qualifying activity is derived.
- Any adjusted loss incurred prior or during the exempt years of assessment shall be carried forward and deducted against the statutory income of the qualifying activity in the post-exempt years of assessment until it is fully utilised.
- Any claim for deductions for promotion of exports under the Promotion of Investments Act 1986, research under Section 34B of the Act and approved training incurred during the exempt years of assessment shall be accumulated and allowed as a deduction in the post-exempt years of assessment.
- Application for the incentive must be submitted to MIDA on or after 10<sup>th</sup> October 2011.
- The above Order shall have effect from the YA 2011.

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

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

**iv. Tax Exemption of Income Derived by a Qualifying Person from a Qualifying Activity**

- After the expiry of the 10 consecutive years of assessment of incentive period provided under the Income Tax (Exemption) (No. 6) Order 2013 mentioned above, a qualifying person may continue to enjoy a further 5 consecutive years of assessment of incentive period under the Income Tax (Exemption) (No. 8) Order 2013 in respect of QCE incurred on a qualifying project in RAPID Complex.
- Pursuant to the Income Tax (Exemption) (No. 8) Order 2013, a resident qualifying person is exempted from payment of income tax in respect of its statutory income derived from a qualifying project equivalent to 100% of the QCE for a period of 5 consecutive years of assessment commencing from the first year of assessment in which the first QCE is incurred.
- “Qualifying project” means project undertaken by a qualifying person, in expanding modernizing, automating or in diversifying its existing qualifying activity which is exempted under the Income Tax (Exemption) (No. 6) Order 2013 within the same industry and carried out by a qualifying person in RAPID Complex for RAPID.
- Application for approval of the qualifying project must be made to MIDA within 90 days before the expiry of the exemption period under the Income Tax (Exemption) (No. 6) Order 2013.
- The above Order shall have effect from the YA 2011.

**v. Deduction for Pre-Commencement Expenses in Relation to RAPID**

- Pursuant to the Income Tax (Deduction for Pre-Commencement Expenses in Relation to RAPID) Rules 2013, a qualifying person is allowed a deduction for certain pre-commencement expenses incurred in respect of the qualifying activity.
- The pre-commencement expenses shall be incurred within 4 years prior to the date of commencement of the qualifying activity and that date shall not be earlier than 1<sup>st</sup> October 2010.
- The above Rules shall have effect from the YA 2010.

**vi. Stamp Duty Exemption on All Instruments Executed by a Qualifying Person**

- Pursuant to the Stamp Duty (Exemption) (No. 3) Order 2013, exemption from stamp duty is granted on all instruments chargeable with *ad valorem* duty executed by a qualifying person in relation to a qualifying activity carried on in RAPID Complex.
- The above exemption applies to instruments executed from 10<sup>th</sup> October 2011 to 31<sup>st</sup> December 2021.

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

Income Tax (Deduction for  
Pre-Commencement  
Expenses in Relation to  
RAPID) 2013

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



For the purposes of the above Orders/Rules:-

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

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

"RAPID Complex" means a complex which consists of liquid cracker plants, refinery plants, petrochemical or chemical production plants and all support and auxiliary facilities including but not limited to LNG, Receiving and Re-gasification Terminal ["RGT"], COGEN power plant, storage facilities or waste disposal facilities, and located in Pengerang, Johor.

"Qualifying person" means:-

- a. Petroliam Nasional Berhad;
- b. any other company incorporated under the Companies Act 1965 where Petroliam Nasional Berhad holds at least 51% paid up capital in respect of ordinary shares; or
- c. any other company incorporated under the Companies Act 1965 which carries out qualifying activity within the RAPID Complex where Petroliam Nasional Berhad holds, either directly or indirectly, ordinary shares in that company.



### **Deduction for Investment in a Project of Commercialisation of R&D Findings**

Following the 2013 Budget announcement, the Income Tax (Deduction for Investment in a Project of Commercialisation of R&D Findings) Rules 2013 have been gazetted to allow tax deduction for the value of investment made by a resident company solely for the purpose of financing a project of commercialisation of research and development ["R&D"] findings in a related company.

The value of investment allowed as a deduction in ascertaining the adjusted income of the investor company shall be an amount equivalent to the expenditure incurred by the related company in the basis period for the same year of assessment for the operation of its commercialisation activity and assets used for the commercialisation project and the investment made in the form of paid-up share capital in respect of ordinary shares in the related company shall not be disposed of within 5 years from the date of the last investment made. Where the investment in shares in the related company is disposed of within 5 years from the date of last investment, the amount of consideration received for disposal of the shares shall be brought to tax in the year of assessment in which it is received, restricted to the total amount of deduction allowed in prior years.

The above deduction shall cease in the basis period for a year of assessment in which the tax exemption period for the related company commences as determined by the Minister of Finance or the Minister of International Trade and Industry, as the case may be.

For the purposes of the above Rules:-

"research and development findings" means R&D findings in the non-resource based activity or products listed below and wholly owned by a public research institute or public institute of higher learning in Malaysia:-

- a. Electrical and electronics;
- b. Medical devices;
- c. Technical or functional textiles;
- d. Machinery and equipment;
- e. Metals; and
- f. Transport equipment.

"commercialisation" means a process of transforming R&D findings into a product or process that has an industrial application or that is marketable;

"related company" means a company incorporated under the Companies Act 1965 where at least 70% of its paid-up share capital in respect of ordinary shares are directly owned by a company that has made an investment in a commercialisation project.

The application for approval for the commercialisation project must be made to the MIDA between 29<sup>th</sup> September 2012 to 31<sup>st</sup> December 2017 and the project must commence within 1 year from the date of approval issued by MIDA.

Income Tax (Deduction for Investment in a Project of Commercialisation of R&D Findings) Rules 2013

### **Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk**

Following the 2013 Budget announcement, the Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail *Sukuk*) Rules 2013 has been gazetted to allow deduction for expenditure incurred by a resident company on the issuance of a retail debenture and a retail *sukuk* approved or authorised by the Securities Commission [“SC”] under the CMS Act 2007.

The deductible additional expenses are:-

- a professional fee relating to due diligence, drafting and preparation of prospectus;
- a printing cost of prospectus;
- an advertisement cost of prospectus;
- the SC prospectus registration fee;
- the Bursa Malaysia processing fee and initial listing fee;
- the Bursa Malaysia new issue crediting fee; and
- a primary distribution fee.

The deduction of additional expenses allowed in respect of a retail debenture and a retail *sukuk* shall be a double deduction and a single deduction respectively.

The above Rules shall have effect from the YA 2012 until YA 2015.

### **Double Deductions for Freight Charges for Export of Rattan and Wood-Based Products**

The Income Tax (Deductions for Freight Charges) (Amendment) Rules 2013 have been gazetted recently to define “freight charges” which qualify for double deduction for exportation of rattan and wood-based products under the Income Tax (Deductions for Freight Charges) Rules 1990.

Under the amendment Rules, “freight charges” means charges for sea or air freight incurred by a person to export rattan and wood-based products (excluding sawn timber and veneer) manufactured by that person from any port or airport in Malaysia to a port or airport in a country of final destination outside Malaysia for the purpose of that exportation, but does not include charges incurred for transportation of the said products from the person’s factory to any port or airport in Malaysia or from any port or airport in a country of final destination outside Malaysia to any destination in that country.

The above amendment Rules shall have effect from the YA 2013.

**Note :** *The Income Tax (Deductions for Freight Charges) Rules 1990 will be revoked effective YA 2016. Kindly refer to our Tax Flash – August 2012 issue.*

Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail *Sukuk*) Rules 2013

Income Tax (Deductions for Freight Charges) (Amendment) Rules 2013

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**Stamp Duty Exemption on Instruments in relation to Sale and Purchase of Retail Debenture and Retail *Sukuk***

Following the 2013 Budget announcement, the Stamp Duty (Exemption) (No. 4) Order 2013 has been gazatted to provide exemption from stamp duty on instruments executed by a retail investor who is an individual relating to the sale and purchase of retail debenture and retail *sukuk* approved by the SC under the CMS Act 2007.

“Retail investor” shall be any person other than:-

- a. the Central Bank of Malaysia established under the Central Bank of Malaysia Act 2009;
- b. a person to whom an excluded offer or excluded invitation is made as specified in Part A, Schedule 6 of the CMS Act 2007; and
- c. a person to whom an excluded issue is made as specified in Part A, Schedule 7 of the CMS Act 2007.

The above exemption applies to instruments executed from 1<sup>st</sup> October 2012 and not later than 31<sup>st</sup> December 2015.

Stamp Duty (Exemption)  
(No. 4) Order 2013

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