

TaXavvy

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Monitoring deliberate tax defaulters

The Inland Revenue Board (IRB) has implemented the Monitoring Deliberate Tax Defaulters (MDTD) programme from 1 January 2014 to increase voluntary tax compliance and enhance the effectiveness of tax audits.

Under the MDTD programme, non-compliant taxpayers are identified through tax audits for the year of assessment (YA) 2012 onwards which are completed from 1 January 2014 onwards. Those taxpayers will be informed by the IRB in writing upon their listing in the MDTD list.

The identified taxpayers will be monitored by IRB on a yearly basis until no repeated or new offences are committed. They are then removed from the list of non-compliant taxpayers.

Changes to tax return form C for YA 2014

The IRB has made some changes to the tax return form C for YA 2014. Special attention should be paid on the following changes:

1) Transfer pricing documentation

As set out in the issue 3/2014 of *TaXavvy* dated 8 May 2014, taxpayers are required to mark “x” in the relevant box (R4) to confirm that contemporaneous transfer pricing documentation has been prepared.

2) Compliance with public rulings

Taxpayers are no longer required to indicate in the tax return form C whether they have complied with the IRB’s public rulings. Notwithstanding this, the IRB will apply the public rulings in reviewing a taxpayer’s file as public rulings set out IRB’s interpretation of tax laws. As such, any differing tax positions adopted by taxpayers must be supported by technical grounds.



IRB’s clarifications

The IRB has vide its announcement on 19 March 2014 clarified on the deeming of interest on loans or advances to directors and the requirement to submit tax return forms based on audited accounts:

Deemed interest on loans or advances to directors

With effect from YA 2014, a company is deemed to have derived gross interest income from loans and advances given to its directors without interest or at interest below arm’s length rate under section 140B of the Income Tax Act 1967 (ITA). The IRB has provided the following clarifications:

- Where the company’s basis period for the YA 2014 commenced in 2013, deemed interest income is to be computed based on outstanding loans and advances from 1 January 2014.
- The average lending rate published monthly by Bank Negara Malaysia in its website is to be used in computing the deemed interest income.

IRB's clarifications

Submission of tax return forms based on audited accounts

Section 77A(4) of the ITA requires all companies to submit tax returns based on audited accounts with effect from YA 2014. The IRB has clarified that section 77A(4) would not apply where a company is not required to submit audited accounts to the Companies Commission of Malaysia, as provided under the Companies Act 1965. The tax return must then be submitted based on information in the final accounts.

Other announcements by the IRB:

Relocation of IRB Kuala Lumpur Bandar Branch

The IRB Kuala Lumpur Bandar Branch at Jalan Kampung Attap has moved to the following new location, effective from 5 May 2014.

Lembaga Hasil Dalam Negeri Malaysia
Cawangan Kuala Lumpur Bandar
Tingkat 3, 4, 6, 7, 10, 15 and 17, Menara Olympia
No.8, Jalan Raja Chulan
50200 Kuala Lumpur
Tel: 03-20593600

The operations of the branch is now carried out at this new location, including:

- Stamp Duty Service Counter
- e-Filing and Taxation Service Counter



Public rulings and guidelines

The IRB has issued public ruling (PR) 2/2014 - Taxation of investors on income from foreign fund management company and PR 3/2014 - Taxation of limited liability partnership on 28 April 2014 and 9 May 2014 respectively:

Public Ruling 2/2014 – Taxation of investors on income from foreign fund management company

This PR explains the tax treatment of income received by foreign and local investors that engage the services of a foreign fund management company and the tax exemptions available on income received by investors.

A foreign fund management company is a Malaysian incorporated company, licensed to perform fund management activities under the Capital Markets and Services Act 2007.

Public rulings and guidelines

Public Ruling 3/2014 – Taxation of limited liability partnership

This PR explains the tax treatment of a limited liability partnership (LLP) as well as the partners of the LLP. Please take note of the deduction claim in respect of incorporation expenses.

In general, specific incentives provided to a “company” would not apply to an LLP. Therefore an LLP would not qualify for incentives given to a “company incorporated under the Companies Act 1965” or a “company incorporated in Malaysia”.

An exception made to the general rule above is for an LLP with a capital contribution not exceeding RM2.5 million to be eligible to deduct certain incorporation expenses under the Income Tax (Deduction for Incorporation expenses) Rules 2003 and Income Tax (Deduction for Incorporation expenses) (Amendment) Rules 2005 . Under both the Rules, the deduction is given to a “company incorporated in Malaysia”.

The public rulings are available for download on IRB’s website at www.hasil.gov.my (Laws and Regulations > Public Ruling).

Other guidelines issued or revised:

Guidelines for incentive application for upstream petroleum industry

The Ministry of Finance has issued a guideline for application of the following incentives available to the upstream petroleum industry:

1. Incentives for marginal fields:

- Petroleum income tax at the effective tax rate of 25%
- Accelerated capital allowance to be claimed over 5 years of assessment
- Export duty exemption

2. Investment allowance incentive for one or more projects in respect of:

- High pressure high temperature
- High carbon dioxide gas
- Enhanced oil recovery
- Deep water projects

The application guideline and form are available on the Ministry of Finance website (www.treasury.gov.my > Main Page > Announcement > Upstream Petroleum Industry). However, the guidelines for the incentives under the Petroleum (Income Tax) Act 1967 and Customs Act 1967 are currently not available.

Public rulings and guidelines

Amendments to the venture capital tax incentives guidelines

The revised guideline issued by the Securities Commission (SC) removed the 5 year income tax exemption on statutory income arising from all sources of income (excluding interest income from savings or fixed deposits and profits from syariah-based deposits) following the expiry of the incentive on 31 December 2013. This exemption was applicable to a Venture Capital Company (VCC) which invests at least 30% of its invested funds in the form of seed capital, start-up, early stage financing or its combination in a Venture Company (VC).



Tax cases

Tax case recently decided by the High Court

Case	Issue(s)	Decision/ Status
<i>Ketua Pengarah Hasil Dalam Negeri v Bedford Damansara Heights Development Sdn Bhd</i>	<p>The taxpayer was involved in leasing of property or real estate for rental income. It had undertaken loan facilities to finance the acquisition cost of the building which was rented out.</p> <p>Issues deliberated by the Court:</p> <ol style="list-style-type: none"> Whether expenses incurred (underwriting guarantee fee, agency fee, annual review fee, annual management fee, and surveillance fee) to secure the loan facilities were deductible under section 33(1) of the ITA. Whether the assessments raised by the IRB for YA 2000 and 2001 were time barred. Whether the penalties imposed were correct. 	<p><i>IRB's appeal allowed in part</i></p> <ol style="list-style-type: none"> The expenses incurred in securing the loans were capital expenditure and not deductible. The assessments for YA 2000 and 2001 were time barred. The penalties applied to the non-time barred years of assessment. <p><i>Special Commissioners of Income Tax: In favour of taxpayer.</i></p>



GST and Customs developments

Goods and Services Tax

- The GST Bill 2014 was passed by the Senate on 5 May 2014. The Bill will become law when it receives the Royal Assent and is gazetted.
- The Royal Malaysian Customs Department has announced that a taxable person can register for a GST identification number starting from 1 June 2014

GST and Customs developments

Self-declaration mechanism for import duty and/or sales tax exemption on specified items

In an effort to simplify the mechanism for granting import duty and / or sales tax exemption on machinery, equipment, spare parts, consumables, prime movers and container trailers through the Customs Duties (Exemption) Order 2013 and Sales Tax (Exemption) Order 2013, the following companies can now claim the exemption through a self-declaration process with effect from 2 May 2014:

- Manufacturers in the Principal Customs Area (PCA)
- Companies engaged in hotel business
- Haulage operators

To obtain permission to claim the exemption under this new mechanism, the company is required to submit the following to the Royal Malaysian Customs Department prior to importation or purchase:

- A confirmation letter issued by the Malaysian Investment Development Authority (MIDA); and
- List of machinery, equipment, spare parts, consumables, prime movers and container trailers to be imported or purchased.

The permission would be granted within a period of two (2) weeks from the date of complete submission.

The guidelines, forms and online application facility are available on MIDA's website at www.mida.gov.my (e-Application)

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