

eNewsletter 05/2022

On 18 May 2022, the Inland Revenue Board (“IRB”) has provided responses to the Chartered Tax Institute of Malaysia (“CTIM”) on clarifications sought by CTIM arising from certain tax treatments as specified in the following gazette orders:

Income Tax (Accelerated Capital Allowance) (Machinery and Equipment Including Information and Communication Technology Equipment) Rules 2021 [P.U. (A) 268/2021]

Income Tax (Deduction for Expenses in relation to the Cost of Detection Test of Coronavirus Disease 2019 (COVID-19) for Employees) Rules 2021 [P.U. (A) 404/2021]

Inside this eNewsletter, we will cover the said IRB’s clarifications sought by CTIM in relation to the above gazette orders.

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Tax Updates

Income Tax (Accelerated Capital Allowance) (Machinery and Equipment Including Information and Communication Technology Equipment) Rules 2021 [P.U. (A) 268/2021] (“the Rules”) – Hire Purchase Agreement

Background

The Rules were gazetted by the Government on 15 June 2021. To recap, the Rules being effective from Year of Assessment (“YA”) 2020, are applicable to a person who has incurred qualifying plant expenditure (“QPE”) on machinery and equipment including information and communication technology (ICT) equipment in the basis period for a YA from 1 March 2020 until 31 December 2021 and used for the purpose of his business subject to the prescribed conditions (refer to our [eNewsletters 10/2021](#) and [eNewsletters 16/2021](#) for more details).

Updates

IRB has provided clarification on the period of entitlement for those qualifying assets under the deeming provision relating to Hire Purchase (“HP”) Agreement of the Rules, as extracted below:-

“4. Where the person referred to in rule 3 incurs QPE under a HP agreement for the purchase of machinery and equipment including ICT for the purposes of his business:-

- (a) such person shall be treated to be the owner of such machinery and equipment including ICT; and*
- (b) the QPE incurred by such person in the basis period for a YA shall be taken to be the capital portion of any installment payment or, where there is more than one such payment, of the aggregate of those payments made by such person under such HP agreement in that basis period.”*

Based on IRB’s response, it appears that **ONLY** the capital portion of instalments which commence on 1 March 2020 and end on 31 December 2021 would qualify for the accelerated capital allowance (“ACA”) rate of 40%.

In addition, the IRB has indicated that the timing of execution of the HP agreement may affect a taxpayer’s eligibility of the said ACA.

For instance, where the HP instalments commenced on 1 March 2020 **but not ended on 31 December 2021** (e.g. 31 March 2022), the taxpayer would not qualify for the ACA rate of 40% on the capital portion paid on qualifying asset acquired via HP (including the HP instalment payments paid from 1 March 2020 until 31 December 2021) as the IRB views that such HP agreement was not executed during the **basis period** from 1 March 2020 to 31 December 2021.

Accordingly, where the above conditions are not satisfied, taxpayers should instead claim the normal capital allowance rate.

RSM comment



It is worthy to note that pursuant to Schedule 3, Paragraph 46 of the Income Tax Act 1967 (“ITA”), the key word for determining the QPE on an asset acquired via a HP agreement for the purposes of Schedule 3 is “incurred”. In addition, the above Rules did not specify that only assets acquired via HP where the instalments commenced and end during the period from 1 March 2020 until 31 December 2021 will qualify for the ACA.

Where applicable, taxpayers should take note of the IRB’s above position to avoid potential dispute with the IRB in the event of a tax audit.

Income Tax (Deduction for Expenses in relation to the Cost of Detection Test of Coronavirus Disease 2019 (COVID-19) for Employees) Rules 2021 [P.U. (A) 404/2021] (“the Rules”)

Background

The Rules were gazetted by the Government on 20 October 2021. To recap, the Rules being effective from YA 2021, are applicable to an employer who is resident in Malaysia who has incurred expenses in respect of cost of detection test of COVID-19 for its employees within the period from 1 January 2021 until 31 December 2021 and used for the purpose of his business.

The amount of deduction is in addition to any deduction allowable under Section 33 of the ITA.

An employer claiming for deduction under the Rules shall retain the receipt and certification issued by a medical practitioner registered with the Malaysian Medical Council or a medical practitioner registered outside Malaysia that the detection test of Covid-19 has been provided to its employees.

Updates

IRB has provided clarifications on whether the above tax deduction is applicable to employer for COVID-19 test results issued by private laboratories or where the name of a registered medical practitioner is not stated in the COVID-19 test results.

Rule 2(3) of the Rules read as follows:-

“2(3) An employer claiming for deduction under these Rules shall produce receipt and certification issued by a medical practitioner registered with the Malaysian Medical Council or a medical practitioner registered outside Malaysia that the detection test of Coronavirus Disease 2019 (COVID-19) has been provided to its employees.”

For the purpose of Rule 2(3), the IRB has clarified that the “certification issued” generally refers to the signature of a medical practitioner (who is registered with the Malaysian Medical Council) where such registered medical practitioner has certified (in the COVID-19 test results / report) that the COVID-19 test has been conducted on the employer’s employee.

In the absence of the above, employers may not be able to claim further deduction under the above Rules.



RSM comment

Where applicable, taxpayers who do not fulfil the above conditions should consider to claim single tax deduction (instead of double deduction) on the costs incurred in order to avoid potential dispute with the IRB in the event of a tax audit.

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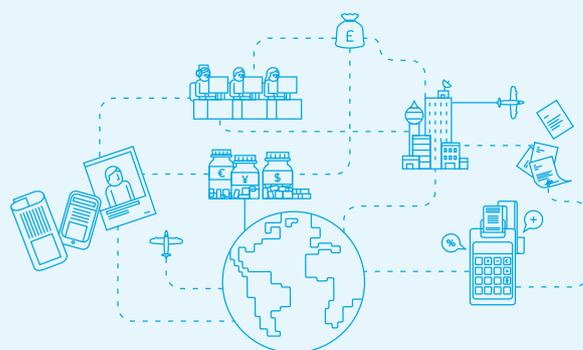


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