



## Tax Espresso A snappy delight

## Greetings from Deloitte Malaysia Tax Services

### Finance Act 2015

The Finance Bill 2015 has been gazetted as the Finance Act 2015 (Act 773) on 30 December 2015. There are two material changes as highlighted in the table below. There

#### Quick links:

[Deloitte Malaysia](#)

[Inland Revenue Board](#)

#### Takeaways:

[Finance Act 2015](#)

[Deferment of Implementation of Income Tax \(Thin Capitalisation\) Rules to 31 December 2017](#)

[Loans Guarantee \(Bodies Corporate\) \(Remission of Tax and Stamp Duty\) \(No. 4\) Order 2015 \[P.U.\(A\) 278/2015\]](#)

are also minor changes in the wording of a few proposals mainly on grammar.

<b>Budget Proposal</b>	<b>Finance Bill 2015</b>	<b>Finance Act 2015</b>
Submission of Form E by way of an electronic medium or electronic transmission	Effective: Year of Assessment (YA) 2016	Effective: For the year ending 31 December 2016 and subsequent years
Submission of Forms CP204 and CP204A by way of an electronic medium or electronic transmission	Effective: YA 2016	Effective: YA 2018 and subsequent YAs

## **Deferment of Implementation of Income Tax (Thin Capitalisation) Rules to 31 December 2017**

The Ministry of Finance (MOF) has recently issued a letter to inform that the implementation of the Income Tax (Thin Capitalisation) Rules is further deferred until 31 December 2017 and will be effective from 1 January 2018.

Previously, it was due to be implemented on 1 January 2016.

Tax Collection Framework (Amendment 1/2015)

Public Ruling (PR) No. 8/2015: Loan or Advances to Director by a Company

PR No. 9/2015: Deduction of Interest Expense and Recognition of Interest Income for Loan Transactions between Related Persons

PR No. 10/2015: Investment Holding Company

Events:

Breakfast Talk  
Price Control & Anti-Profiteering Regulations 2014 – Practical Issues and Practical Solutions  
Date: 14 January 2016  
Venue: Menara LGB  
Kuala Lumpur

2015 Employer's Income Tax Reporting

Date	Venue
19 Jan 2016	Penang
21 Jan 2016	Kuala Lumpur
21 Jan 2016	Ipoh

GST Return Compliance Workshop  
Date: 21 January 2016  
Venue: Menara LGB  
Kuala Lumpur

Oil & Gas Industry GST Forum  
Date: 27 January 2016  
Venue: Menara LGB  
Kuala Lumpur

## Gazette Order

### Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 4) Order 2015 [P.U.(A) 278/2015]

P.U.(A) 278/2015 provides that any tax and stamp duty payable under the Income Tax Act 1967 (ITA) and Stamp Act 1949 respectively shall be remitted in full in respect of any agreement, note, instrument or document in relation to the Sukuk Murabahah Programme (i.e. Islamic Medium Term Notes Programme of RM5 billion in nominal value), Sukuk Murabahah issued by the Prasarana Malaysia Berhad or in relation to the guarantee provided or to be provided by the Government.

#### Important deadlines:

Due date for 2017 tax estimates for companies with February year-end  
(30 January 2016)

6th month revision of tax estimates for companies with July year-end  
(31 January 2016)

9th month revision of tax estimates for companies with April year-end  
(31 January 2016)

Statutory filing of 2015 tax returns for companies with June year-end  
(31 January 2016)

## Tax Collection Framework (Amendment 1/2015)

The Inland Revenue Board (IRB) has recently uploaded the Tax Collection Framework (Amendment 1/2015) on its website. Three amendments have been made as highlighted below:

Reference	Remarks
Paragraph 2.3.2(d)	<p><u>Before amendment:</u></p> <p>A company with paid-up capital not exceeding RM2.5 million in the first year of commencement of operation is not required to submit CP204 in the first year, but it is required to state the tax estimate within two years from the date of commencement of operation.</p> <p><u>After amendment:</u></p> <p>A company with paid-up capital not exceeding RM2.5 million in the first year of commencement of operation is required to submit CP204, but it is not required to state the tax estimates for the first two years from the date of commencement of operation.</p>

	<p>[<b>Note:</b> The above shall not apply to a company that fall within the non-application provision under Section 107C(4B) where its related company is defined to have a paid up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for a year of assessment.]</p>
Paragraph 2.3.2(e)	<p><u>Before amendment:</u></p> <p>A company, trust body, co-operative society or limited liability partnership which first commences operation is required to furnish its tax estimate within three months from the date of commencement of operations.</p> <p><u>After amendment:</u></p> <p>A company, trust body, co-operative society or limited liability partnership, other than a company to which Section 107C(4A) applies, which first commences operation is required to furnish its tax estimate within three months from the date of commencement of operations.</p> <p>[<b>Note:</b> The above shall only apply if the basis period for the YA when it first commences operation is not less than six months.]</p>
Paragraph 9.2.2	<p>Claims for repayment shall be made within five years (instead of six years before the amendment) after the end of the year of assessment to which the claim relates.</p>

## Public Rulings

### Public Ruling (PR) No. 8/2015: Loan or Advances to Director by a Company

PR No. 8/2015 was published by the IRB on 30 November 2015 to explain the tax treatment of:

- i) a company that provides loans or advances to a director of the company without interest or with interest rate lower than the arm's length rate; and
- ii) interest income deemed to be received by the company from the loans or advances to a director of the company.

Among the key points of this PR are:

- i) A company which provides loans or advances to directors which are fully funded from internal funds shall be deemed to have gross income consisting of interest from such loans or advances for that basis period and special provision under Section 140B of the ITA is applicable.
- ii) Section 140B of the ITA is not applicable if the loans or advances are financed from external funds or a third party (e.g. banks or related companies). If the loan from external funds are used partly for business and partly for investment purposes, then interest restriction under Section 33(2) of the ITA is applicable.
- iii) Where loans or advances made by a company to directors are interest-free, the amount of interest income deemed to be received will be determined based on the prescribed formula in Section 140B(2) of the ITA with the average lending rate published by Bank Negara Malaysia in the basis year in which the loans or advances are given.
- iv) Where loans or advances are made by a company to directors with interest charge, the amount of interest income deemed to be received will be determined by comparing the amount of interest calculated based on the formula in Section 140B(2) of the ITA or actual interest charged by the company, whichever is the higher.
- v) If a dormant company made loans or advances to directors, the company will be deemed to have commenced operations. The loans or advances to directors are subject to Section 140B of the ITA and interest income deemed to be received by the company will be assessed under Section 4(c) of the ITA.
- vi) If the loans or advances to directors are subject to special provision under Section 140B of the ITA, Section 29(3) or Section 140A(2) of the ITA is not applicable even though the loans or advances made involved related parties as defined under these subsections.

### **PR No. 9/2015: Deduction of Interest Expense and Recognition of Interest Income for Loan Transactions between Related Persons**

The IRB issued PR 9/2015 on 3 December 2015 to explain the deduction of interest expense and recognition of interest income in relation to a loan transaction between related persons effective from the YA 2014.

Among the key points of this PR are:

#### Interpretation

- i) "Related persons" as defined under Section 29(3) of the ITA includes individuals who are relatives of each other (effective YA 2015).

- ii) “Relative” means a parent, a child (including a stepchild and a child adopted in accordance with any law), a brother, a sister, an uncle, an aunt, a nephew, a niece, a cousin, an ancestor or a lineal descendant.

#### Tax treatment of interest expense

- i) Section 33(4) of the ITA provides that interest expense incurred and payable on monies borrowed for the basis period for a YA is only deductible when the said interest is due to be paid. This section is applicable even to loan agreements signed before YA 2014. For loan agreements that were effective prior to YA 2014, but the date the interest is due to be paid has not occurred, then the interest expense from YA 2014 will only be allowed on the date the interest is due to be paid, whereas the interest incurred which had been allowed as a tax deduction prior to YA 2014 is maintained.

*[Note: Please note that Section 33(4) of the ITA applies to both related party loan as well as non-related party loan.]*

- ii) If interest is not paid by the borrower on the date the interest is due to be paid, the interest expense can still be claimed and allowed as a deduction under Section 33(1)(a) of the ITA as the liability to pay the interest arises on the due date. However, if payment is made before the date the interest is due to be paid, then the interest payment will be allowed as a deduction in the YA the interest is paid.
- iii) A taxpayer is required to inform the IRB branch office that handles the taxpayer’s file by way of a letter and submit it together with the amended tax computations in respect of the interest expense payable for each YA in order to claim for a deduction on the interest expense when it is due to be paid. After a review, the IRB would amend the assessment for each YA to allow the claims for tax deduction of the relevant interest expense that is payable for each of the YAs concerned.
- iv) The interest expense can be claimed as a tax deduction for a particular YA if the interest expense is due to be paid before the filing deadline for the YA. For example, if the interest payable for a ten-year loan (from 1 June 2014 to 31 May 2024) is due to be paid on 31 May 2024, which is before the filing deadline of a December year-end company’s income tax return form (ITRF) for YA 2023 (i.e. 31 July 2024) and YA 2024 (i.e. 31 July 2025), the interest expense for YA 2023 and YA 2024 should be claimed in the company’s ITRF for YA 2023 and YA 2024 respectively.
- v) If a loan that is obtained is not used wholly for the purpose of a business, the interest expense can still be allowed after taking into account interest restriction as determined according to Section 33(2) of the ITA when the interest is due to be paid. The interest which is not allowed in the computation of the company’s adjusted income from its business source, is allowable as a deduction against the

investment income such as rental income for the relevant YAs once the interest expense is due to be paid.

### Recognition of interest income

- i) Pursuant to Section 27 of the ITA, interest income is the gross income of a person when it is received and will be assessed in the relevant YA in which the interest is receivable.
- ii) If gross interest income is receivable for a period that overlaps two or more periods and part or whole of an overlapping period in respect of the interest income elapsed more than four years before the day on which the receipt of that interest income first became known to the DGIR, proviso (b) or (c) respectively of Section 27(2) of the ITA would be applicable.
- iii) Section 29(3) of the ITA was introduced to provide that interest income from a loan transaction between related persons is deemed obtainable on demand by the lender when the interest is due to be paid by the borrower notwithstanding that the interest income has not been received. This section shall not apply if the interest income is received before it is due to be paid.
- iv) The interest income related to YAs in which interest is receivable has to be disclosed in the ITRF for the YA in which the interest is received or deemed received under the part for income of preceding years not declared. With reference to Example 8 of the PR9/2015, please take note that the revised tax computations in respect of the interest income for YAs in which interest is receivable have to be submitted to the IRB branch office for a review of the assessments.

### **PR No. 10/2015: Investment Holding Company**

The IRB issued PR 10/2015 on 16 December 2015 to replace the PR No. 3/2011 dated 10 March 2011.

The contents of PR 10/2015 are essentially the same as the previous PR with some changes as follows:

Reference in PR 10/2015	Remarks
8.2	<p>Paragraph 8.2.3 is amended mainly to explain the amendment introduced by Finance Act 2014 in the formula for calculating permitted expenses under Section 60F of the ITA effective from YA 2014. The wordings used for “<b>C</b>” (the aggregate gross income) as shown in the formula below had been changed from “<i>dividend (whether exempt or not), interest</i>” to “<i>dividend and interest (whether such dividend or interest is exempt or not)</i>”.</p> $A \times \frac{B}{4C}$

	<p>Where</p> <p>A is the total of the permitted expenses incurred for that basis period reduced by any receipt of a similar kind;</p> <p>B is the gross income consisting of dividend, interest and rent chargeable to tax for that basis period;</p> <p>C is the aggregate of the gross income consisting of <b>dividend and interest (whether such dividend or interest is exempt or not)</b> and rent, and gains made from the realisation of investments for that basis period.</p> <p>The relevant Example 10 of the previous PR had been amended accordingly.</p>
8.3	<p>Example 11 in the previous PR is amended to provide further clarification to the amendment introduced by the Finance Act 2014. In the amended Example 11, the permitted expenses does not exclude the portion of the permitted expenses that relate to single tier dividend and “C” in the formula for calculating permitted expenses includes the income from single tier dividend.</p> <p>Example 12 in the previous PR is deleted.</p>
9	<p>Examples 13 and 14 in the previous PR are renumbered as Examples 12 and 13 respectively in this new PR and are amended in accordance to the amendment introduced by the Finance Act 2014.</p> <p>Example 15 in the previous PR is renumbered as Example 14 in the new PR. Paragraph 9.5 and Examples 16, 17 and 18 in the previous PR are deleted.</p> <p>Paragraph 9.6 and Examples 19 and 20 in the previous PR are renumbered as Paragraph 9.5 and Examples 15 and 16 respectively in this new PR.</p>

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<http://www2.deloitte.com/my/en/services/tax.html>

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