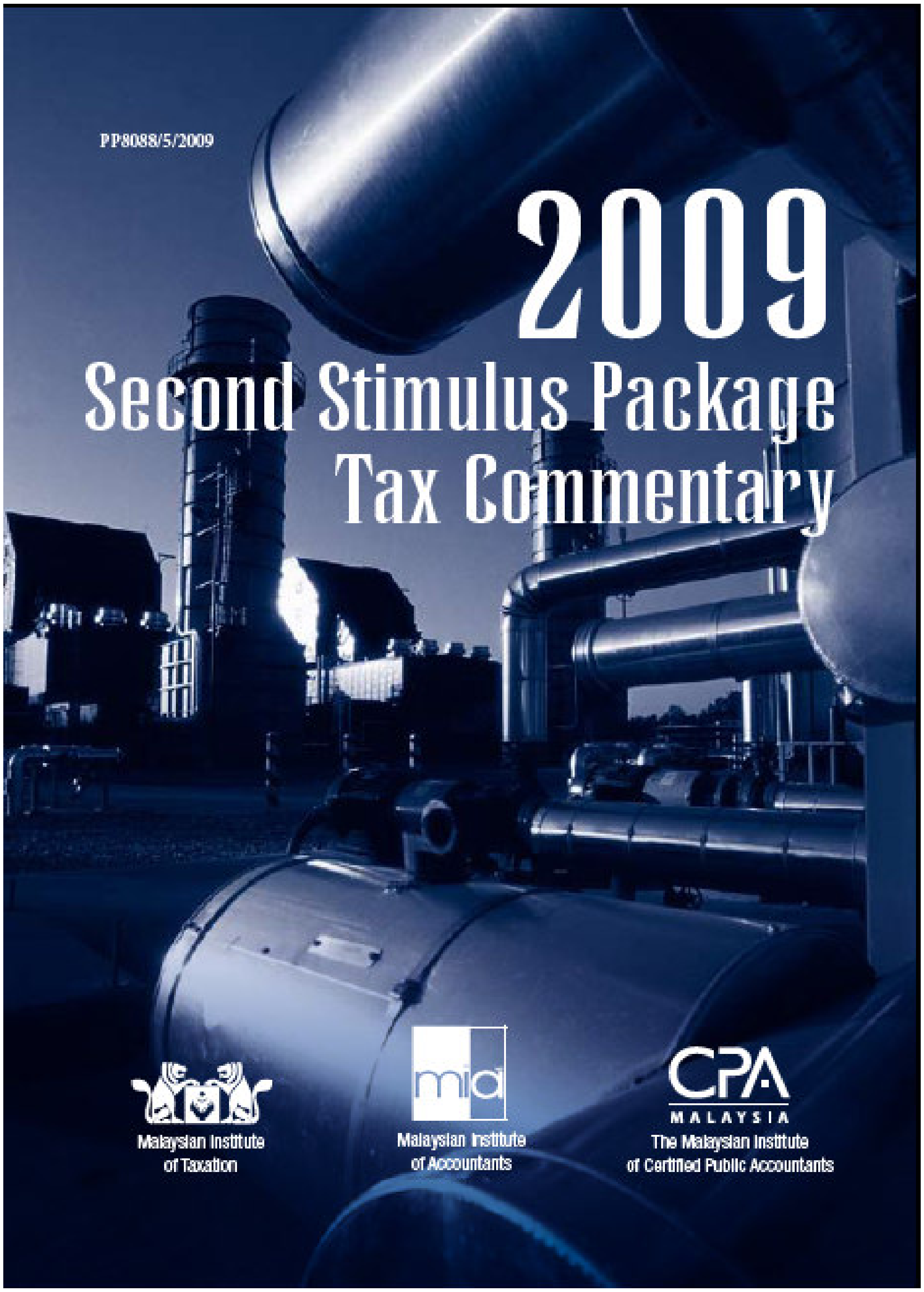

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2009 Second Stimulus Package Tax Commentary

Malaysian Institute of Taxation

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2009

SECOND STIMULUS PACKAGE TAX COMMENTARY

The Malaysian Institute of Taxation
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2009 SECOND STIMULUS PACKAGE
TAX COMMENTARY

CONTENTS

Page

A1 EXECUTIVE SUMMARY……………………………………………………1

A2 INCOME TAX - CHANGES AFFECTING INDIVIDUALS…………….…..5
- A2.1 Tax deduction on housing loan interest ………………….……......5
- A2.2 Tax exemption on compensation received for loss of employment .6
- A2.3 Carry back of current year losses …..………………….……………..7
- A2.4 Promoting investment on plant and machinery ..… …….…………..7
- A2.5 Incentive for renovation and refurbishment of business premises...7

A3 INCOME TAX – CHANGES AFFECTING COMPANIES AND UNINCORPORATED BUSINESS ……………………………………..........8
- A3.1 Incentive for employing local retrenched workers ………...............8
- A3.2 Incentive for banks to defer the repayment of housing loans………9
- A3.3 Carry back of current year losses ……………………………....... 10
- A3.4 Promoting investment on plant and machinery…………….………13
- A3.5 Incentive for renovation and refurbishment of business premises .15

A4 INDIRECT TAXES AND LEVIES ……………………….…………………..18
- A4.1 Incentive for levy on foreign workers .. ..……………………….……...18
- A4.2 Exemption of levy payments to the Human Resource Development Fund (HRDF)......……….. ……………………………18
- A4.3 Increase of threshold for profit levy on oil palm ……………........19

A5 FINANCING ASSISTANCE SCHEMES ……………………….……...20
- A5.1 Working capital guarantee scheme ……………..…………….…….20
- A5.2 Industry restructuring loan guarantee scheme …………………..…20
- A5.3 Salient terms of guarantee schemes………………………………...21

A6 OTHERS - RELAXING OF RULES...……………….…………………… 22
- A6.1 Facilitating access to capital market………………………………… 22
- A6.2 Role of Foreign Investment Committee (FIC) ..……………………. 22

A7 BUDGET ALLOCATIONS…………………………………..…………..23

A1 EXECUTIVE SUMMARY

Introduction

On 10 March 2009, the YAB Dato' Sri Mohd. Najib Tun Abdul Razak unveiled the Second Stimulus Package 2009 of RM60 billion, which is made of RM15 billion for fiscal injection, RM25 billion for Guarantee Funds, RM10 billion for equity investments, RM7 billion for private finance initiative and off-budget projects, and RM3 billion for tax incentives.

The Second Stimulus Package, which will be implemented over two years, i.e. 2009 and 2010, comprises the four following thrusts:

1. Reducing unemployment and increasing employment opportunities;
2. Easing the burden of the Rakyat;
3. Assisting the private sector in facing the crisis; and
4. Building capacity for the future.

The Government is expecting the original 2009 Budget with an allocation of RM206 billion as well as the First Stimulus Package of RM7 billion (presented on 4 November 2008) and the Second Stimulus Package of RM60 billion to contribute towards mitigating the impact of global contraction on the domestic economy.

Reducing unemployment and increasing employment opportunities

As a result of the global economic environment, many have been retrenched and graduates remained unemployed. In the effort to allay their difficulties, the Government has announced various measures to reduce unemployment and increase employment opportunities. The measures include:

- Implementation of training programmes through various Government agencies, including government-linked companies and the private sector.
- Establishing 22 JobsMalaysia Centres and upgrading 109 existing centres to facilitate access for workers and employers to obtain job placements, career counselling and information on training opportunities.
- Recruitment of 63,000 staff by the Government to fill vacancies and serve as contract officers in various Government agencies.
- Double tax deduction to be given to employers on the amount of remuneration paid for retrenched workers who have been hired by them during the period from 10 March 2009 to 31 December 2010. This is applicable to workers who have been retrenched from 1 July 2008.
- To encourage more Malaysians to pursue Masters and PHD courses, the Government will finance the tuition fees and research grants of up to RM20,000 for every student pursuing

PHDs locally. Provision of up to RM10,000 per student is given for those in the Masters programme.

- Doubling of the levy on foreign workers for all sectors except construction, plantation and for domestic maids to reduce the dependence on foreign workers. In cases where the services of the foreign workers are prematurely terminated, the levy will be refunded on a pro-rated basis to the employers and the employers' bank guarantees will be returned.
- The issuance of licences to foreign labour recruitment agencies will be frozen and the conditions for recruitment of foreign workers by existing agencies will be tightened.

Easing the burden of the Rakyat

To ease the burden of the Rakyat, the Government will continue with its efforts to increase household disposable income. Some of the measures that have been introduced are:

- A sum of RM674 million in subsidies will be allocated to avert the price increases of necessities, such as sugar, bread and wheat flour.
- A sum of RM480 million will be provided by the Government to ensure that toll rates are not increased.
- To stimulate the housing market, house buyers will be given tax relief on interest paid on housing loans up to RM10,000 a year for 3 years. This is applicable for one residential house purchased between 10 March 2009 and 31 December 2010.
- The Government will enhance public infrastructure by accelerating implementation of projects under the 9th Malaysian Plan.
- An allocation of RM200 million will be provided to repair and maintain drains, roads and public flats. An additional sum of RM150 million will allocated for the renovation, maintenance and repair of welfare homes, fire and rescue stations and quarters, public toilets in mosques, surau and tourist spots.
- Issuance of syariah-compliant Savings Bonds amounting to RM5 billion, with a maturity of 3 years and an annual return of 5%.
- To provide a more conducive learning environment, the Government will provide an allocation of RM1.95 billion to build and improve facilities in 752 schools in rural areas, Sabah and Sarawak. A sum of RM300 million from this allocation will be used to improve facilities in government-aided religious schools, national-type Chinese and Tamil schools and mission schools.
- An allocation totalling RM580 million will be provided to improve the basic amenities, such as widening the coverage of electricity and water, and construction of roads, in rural areas, Sabah and Sarawak.
- For Sabah and Sarawak, the Government will continue to focus on providing infrastructure and increasing economic activities. For this, a sum of RM1.2 billion will be allocated.
- A sum of RM300 million is provided for the microcredit programme under AgroBank to assist farmers and agro-based businesses in rural areas, and another sum of RM50 million is provided for the microcredit programme by TEKUN.
- To assist fishermen affected by disasters at sea, the Government will establish a Fishermen's Welfare Fund with an initial allocation of RM2 million.

- In assisting the less fortunate, the Government will provide an additional allocation of RM20 million to improve the facilities of day care centres for the elderly, strengthen the management of women shelter homes and increase facilities for childcare centres.
- The existing tax exemption of RM6,000 given on retrenchment benefits be increased to RM10,000 for each completed year of service.
- Deferment of repayment of housing loans by banks for retrenched workers for one year. As for the banks, the interest income relating to the deferment of housing loan repayments will be taxed only when the interest is received.

Assisting the private sector in facing the crisis

In order to assist private companies to withstand the economic crisis, the Government will implement measures to enhance foreign and domestic investors' confidence in the Malaysian economy. The measures include:

- Establishing the Working Capital Guarantee Scheme totalling RM5 billion to help viable medium sized companies to gain access to working capital financing to sustain their operations during the current challenging economic environment.
- Establishing the Industry Restructuring Guarantee Fund Scheme totalling RM5 billion to assist viable medium and large enterprises to secure financing to modernise and upgrade business operations, particularly in the area of greater automation, increased productivity, energy efficiency and green technology.
- The Government has exempted levy payments to the Human Resource Development Fund (HRDF) for a period of 6 months for employers in the textile and electrical and electronics industries with effect from 1 February 2009.
- To assist and facilitate companies with investment grade ratings to access the bond market, the Government will set up a Financial Guarantee Institution to provide credit enhancement to companies that intend to raise funds from the bond market.
- As an additional measure to enable companies to raise funds in the capital market in a more efficient and cost-effective manner, rights issues by listed companies will no longer need the approval of the Securities Commission (SC). Issuance and offerings of equity securities by unlisted public companies will also be exempted from seeking SC's approval.
- To facilitate companies in undertaking restructurings as well as take-overs and mergers, the Code on Take-Overs and Mergers 1998 will no longer apply to private limited companies.
- As a measure to attract high-net-worth and skilled individuals, the Government will consider giving permanent residence status to highly skilled foreign professionals and high-net-worth individuals bringing more than USD2 million for investments or savings in Malaysia.
- Reduction of HRDF levy payment rate from 1% to 0.5% for all employers for a period of 2 years effective 1 April 2009.
- To enable companies in the automotive sector to continue operations, the Government will provide an additional allocation of RM200 million to the Automotive Development Fund to continue supporting the development of the automotive industry and vendors and establishing the Automotive Institute of Malaysia.

- In addition, under the auto-scrapping scheme, a discount of RM5,000 will be given to car owners, who trade in their cars, which are at least 10 years old, for the purchase of new Proton or Perodua cars.
- To encourage more airlines to operate from Malaysia, a rebate of 50% on landing charges will be given for a period of 2 years effective 1 April 2009 to all airlines that operate from Malaysia.
- Accelerated capital allowances (ACA) will be allowed within 2 years on plant and machinery purchased between 10 March 2009 and 31 December 2010.
- ACA will be allowed within 2 years on renovation and refurbishment expenditure of up to RM100,000 incurred between 10 March 2009 and 31 December 2010.
- Current year business losses of up to RM100,000 be allowed to be carried back to the immediately preceding year for YA 2009 and 2010.
- The threshold for price of crude palm oil attracting the windfall profit levy on oil palm will be increased from RM2,000 per tonne to RM2,500 per tonne for Peninsular and to RM3,000 per tonne for Sabah and Sarawak.
- To further enhance the tourism industry, the Government will allocate RM200 million to upgrade infrastructure in tourist spots, diversify tourism products, organise more international conferences and exhibitions in Malaysia, etc.

Building capacity for the future

Measures have also been introduced by the Government to strengthen and expand the nation's capacity to ensure that the economy is well placed to optimise opportunities when the global economy recovers. Some of these are:

- Promoting domestic private investments, especially by Khazanah Nasional Berhad which will be provided with an additional RM10 billion investment funds.
- Implementing investment projects on off-budget basis, such as the building of a new LCCT at KLIA, the expansion of Pulau Pinang Airport, the improvement of telecommunication infrastructure, and the construction of sky bridges and covered walkways between buildings particularly in the Golden Triangle area of Kuala Lumpur.
- Assisting the implementation of projects through private finance initiative and public-private partnerships to further boost private investment activities by providing funds amounting to RM2 billion. Examples of such projects are the provision of infrastructure at Tanjung Agas and the improvement of traffic infrastructure around KL Sentral.
- Redefining the role of the Foreign Investment Committee (FIC) to take a more liberal approach.

Conclusion

The Government is confident that the strategies and measures outlined in the Stimulus Package are comprehensive to prevent the country's economy from slipping into deep recession. The Speech ended with a call for all parties and every Malaysian to work together to build a better Malaysia.

A2 INCOME TAX — CHANGES AFFECTING INDIVIDUALS

A2.1 TAX DEDUCTION ON HOUSING LOAN INTEREST

Existing Legislation

Interest on a housing loan paid by an individual taxpayer is allowed as a deduction for the purpose of income tax if the taxpayer receives rental income from the house. For houses which do not generate any income including owner occupied houses, interest on such housing loans are not allowed as deductions.

Proposed Legislation

It is proposed that tax deduction up to RM10,000 per year be given on housing loan interest for a house purchased from a developer or third party subject to the following conditions:

i. the taxpayer is a Malaysian citizen and a resident;

ii. limited to one residential property including a house, flat, apartment or condominium;

iii. the sale and purchase agreement is executed between 10 March 2009 and 31 December 2010; and

iv. the individual has not derived any income in respect of that residential property.

The tax deduction is given for 3 consecutive years from the first year the housing loan interest is paid.

In the case of joint ownership of the same property, the deduction eligible for each individual is apportioned between these individuals based on the interest expended by that individual as a proportion of the total interest expended by all individuals in accordance with the following formula:

$$A \times \frac{B}{C}$$

where A is the total amount of interest deduction allowed for that relevant year (maximum RM10,000);

B is the total interest expended in the basis year for that relevant year by that individual; and

C is the total interest expended in the basis year for that relevant year by all such individuals.

Example

Loan Interest		Elly	Hilman	Total
Year of Assessment 2010	Interest paid	RM20,000	RM40,000	RM60,000
	Interest allowed for deduction	$10{,}000 \times \frac{20{,}000}{60{,}000}$ = RM3,333	$10{,}000 \times \frac{40{,}000}{60{,}000}$ = RM6,667	RM10,000

In the case of husband and wife, the husband is allowed to claim the interest expenses incurred by the wife (and vice versa):

i. if the wife elects that her total income be aggregated with that of the husband's; or

ii. if the wife has no total income.

Reference

Section 46B of the Income Tax Act 1967

Effective Date

Year of assessment 2009

Likely Tax Effects and Implications

The change is only applicable to houses purchased after 10 March 2009 and not to houses purchased before that date. Houses under construction should also benefit from this deduction.

A similar deduction was allowed previously for the years of assessment 2003, 2004 and 2005 up to a maximum of RM5,000, RM3,000 and RM2,000 respectively during the Stimulus Package announced on 21 May 2003.

A2.2 TAX EXEMPTION ON COMPENSATION RECEIVED FOR LOSS OF EMPLOYMENT

Existing Legislation

Compensation received for loss of employment (including Voluntary Separation Scheme) is exempted from tax up to RM6,000 for each completed year of service with the same employer or with companies in the same group.

Proposed Legislation

It is proposed that the amount of compensation exempted from tax be increased from RM6,000 to RM10,000 for each completed year of service with the same employer or with companies in the same group. This proposal is applicable to those individuals who have ceased employment on or after 1 July 2008.

Workers eligible for the exemption include those retrenched under a Voluntary Separation Scheme or a Mutual Separation Scheme.

Reference

Schedule 6 Paragraph 15(1)(b) of the Income Tax Act 1967

Effective Date

1 July 2008

Likely Tax Effects and Implications

This measure is to increase the disposable income of the retrenched workers. It would appear that employees who lost their employment prior to 1 July 2008 will not benefit from the increased exemption.

A2.3 CARRY BACK OF CURRENT YEAR LOSSES

Please refer to Section A3.3. The carry back of current year losses is applicable to all businesses including sole proprietors and partnerships.

A2.4 PROMOTING INVESTMENT ON PLANT AND MACHINERY

Please refer to Section A3.4. This incentive is applicable to all businesses including sole proprietors and partnerships.

A2.5 INCENTIVE FOR RENOVATION AND REFURBISHMENT OF BUSINESS PREMISES

Please refer to Section A3.5. This incentive is applicable to all businesses including sole proprietors and partnerships.

A3 INCOME TAX — CHANGES AFFECTING COMPANIES AND UNINCORPORATED BUSINESS

A3.1 INCENTIVE FOR EMPLOYING LOCAL RETRENCHED WORKERS

Existing Legislation

Expenses on employees' remuneration are given single deduction for purpose of income tax. Double deduction is allowed for remuneration of disabled employees incurred by all businesses.

Proposed Legislation

To encourage companies to employ retrenched workers, it is proposed that employers who employ these workers be given double deduction on remuneration expenses incurred subject to the following conditions:

i. workers employed must be Malaysian citizens and residents retrenched from 1 July 2008;

ii. the termination of employment has been registered with the Director General of Labour, Ministry of Human Resources. Retrenched workers include those terminated under a Voluntary Separation Scheme or Mutual Separation Scheme;

iii. the employment is on a full time basis;

iv. the remuneration expenses eligible for double deduction do not exceed RM10,000 per month for each worker and limited to a maximum period of 12 consecutive months commencing from the first month the employee is employed. Remuneration includes wages, salaries and allowances; and

v. the deduction is available for any worker appointed between 10 March 2009 and 31 December 2010.

However, this incentive is not applicable in the following situations:

i. the worker is employed by the employer to replace a former employee of the employer for the purpose of carrying out the same or similar function of the former employee;

ii. the former employer and the present employer are associates as defined in Section 139 of the Income Tax Act;

iii. the former employer and the present employer are such that one has control over the other; or

iv. the former employer and the present employer are both controlled by another person.

For the above purpose, associates and control mean:

a. "Associate" means, in relation to a person, husband or wife, parent or remoter forebear, child or remoter issue, brother, sister and partner.

b. A person has control if:

   i. the person has the power to exercise or is able to exercise or is entitled to acquire, control (whether direct or indirect) over the affairs of another;

   ii. the person has the power to possess or acquire the greater part of the share capital or voting power in another; or

   iii. in relation to a partnership, where the person has the right to a share of more than 50% of the assets of the partnership, or to more than 50% of the divisible profits of the partnership.

Reference

Income Tax (Deduction For Expenses Relating To Remuneration Of Employee) Rules 2009

Effective Date

Year of assessment 2009

Likely Tax Effects and Implications

It would appear that the remuneration excludes bonuses, EPF, Socso and benefits-in-kind. At the corporate tax rate of 25% for the year of assessment 2009 onwards, the double deduction has the effect of reducing the effective remuneration cost by 25% due to the tax saving. In addition, this incentive seems to only benefit persons who are expanding their workforce and not those replacing their resigned workers with retrenched workers.

A3.2 INCENTIVE FOR BANKS TO DEFER THE REPAYMENT OF HOUSING LOANS

Existing Legislation

Interest income from housing loans received by banking and financial institutions is taxed on an accrual basis including for loans with deferred repayment terms. This implies that such interest income is taxed even though it is not received yet.

Proposed Legislation

To support the initiatives of banking and financial institutions which defer the repayment of housing loans of retrenched individual borrowers to finance the purchase of residential property, it is proposed that the deferred interest income be taxed when such interest income is received by the banking and financial institutions.

The incentive is subject to the following conditions:

i. the banking and financial institutions are institutions licensed under the Banking and Financial Institutions Act 1989, Islamic Banking Act 1983, Development Financial Institutions Act 2002 and any other institutions approved by the Minister of Finance;

ii. the individual who undertakes the housing loan is a Malaysian citizen and the employment has been terminated pursuant to a separation scheme or retrenchment from 1 July 2008 where such termination is registered with the Director General of Labour, Ministry of Human Resources;

iii. the housing loan was granted prior to the termination of the employment of the individual; and

iv. the deferment or moratorium on the repayment of the housing loan is for a period of up to 12 months and the application for the moratorium is approved by the banking and financial institutions between 10 March 2009 and 9 March 2010.

Reference

Income Tax (Special Treatment On Interest On Housing Loan) Regulations 2009

Effective Date

Year of assessment 2009

Likely Tax Effects and Implications

The Government's move to tax the deferred interest income on receipt basis instead of accrual basis will improve the cash flow of the banking and financial institutions.

A3.3 CARRY BACK OF CURRENT YEAR LOSSES

Existing Legislation

There is no provision to allow current year business losses to be carried back to preceding years to reduce a taxpayer's tax liability. However, current year business losses are allowed to be carried forward until it is fully absorbed.

Proposed Legislation

It is proposed that current year losses of up to RM100,000 be allowed to be carried back to the immediately preceding year of assessment. The carry back is for the year of assessment 2009 and 2010 only. Hence, the current year losses for the year of assessment 2009 may be carried back to the year of assessment 2008; and the current year losses for the year of assessment 2010 may be carried back to the year of assessment 2009. The tax treatment is applicable to all businesses including sole proprietors, partnerships and companies.

The taxpayer is to make an irrevocable election in its tax return if it opts to carry back the losses.

However, the above tax treatment is not applicable to a taxpayer if during the basis period for a year of assessment 2009 or 2010 and the basis period for a year of assessment immediately preceding the year of assessment 2009 or 2010, that taxpayer –

(a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investments Act 1986;

(b) is exempt from tax on its income under Section 54A [shipping income], Paragraph 127(3)(b) or Subsection 127(3A) [Ministerial exemption], or tax paid or payable by that person for that year of assessment is remitted under Section 129 [by the Director General of Inland Revenue or the Minister of Finance];

(c) has made a claim for a reinvestment allowance under Schedule 7A;

(d) has made a claim for deduction in respect of an approved food production project under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006 [P.U. (A) 55/2006];

(e) has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of Proprietary Rights) Rules 2002 [P.U. (A) 2002];

(f) has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of a Foreign Owned Company) Rules 2003 [P.U. (A) 310/2003];

(g) has made a claim for deduction under any rules made under Section 154 [Ministerial rules], other than the rules specified in Paragraphs (d), (e) and (f), and those rules made under Section 154 provide that this section shall not apply to that taxpayer;

(h) is a public listed investment holding company under Section 60FA;

(i) carries on an insurance business under Section 60, inward re-insurance business under Section 60A or offshore insurance business under Section 60B;

(j) carries on a takaful business under Section 60AA; or

(k) in the case of an individual, has no source consisting of a business.

The following example illustrates the application of the tax treatment for carry back of losses:

Example:
Adjusted loss for ABC Sdn Bhd in YA 2009 = RM180,000
Aggregate income of ABC Sdn Bhd in YA 2008 = RM260,000

The tax losses of ABC Sdn Bhd for YA 2009 of RM 180,000 are to be restricted to RM100,000 against the income of YA 2008. The original and revised tax payable calculations are as follows:

	Original computation	Revised computation
YA 2008	RM	RM
Aggregate income	260,000	260,000
Less: Carry-back of losses (restricted to RM100,000)	-	(100,000)
Total income/chargeable income	260,000	160,000
Tax payable @ 26%	67,600	41,600

Tax refund for YA 2008 = RM26,000 (67,600 – 41,600)

Reference

Section 44B of the Income Tax Act 1967; Inland Revenue Board's Guidelines on 2009 Mini Budget

Effective Date

Years of assessment 2008 to 2010

Likely Tax Effects and Implications

(a) The carry back is allowed only if the basis period of the taxpayer for the year of assessment 2009 or 2010 and the basis period for the year of assessment immediately preceding the year of assessment 2009 or 2010 have the same year end dates.

(b) This change will only benefit a taxpayer if he has a current year loss in one year and chargeable income in an earlier year. Due to the numerous conditions for eligibility, it will be difficult for a taxpayer to take advantage of this provision. In addition, the loss carry back is only for one year (the immediately preceding year) thus restricting the opportunity for the taxpayer to carry back the losses. It is preferable if the carry back can be for at least 3 years.

(c) The loss carry back of RM100,000 is limited to the defined aggregate income of the taxpayer in the immediately preceding year. Defined aggregate income in this context means the aggregate income reduced by any deduction made pursuant to Section 44 (1) of the Income Tax Act paragraphs (a) [current year loss], (b) [prospecting expenditure and pre-operational business expenditure], (c) [approved donations under Section 44(6) and gifts of artefacts, manuscripts and paintings to the Government], (d) [miscellaneous gifts and zakat] and (e) [loss claim under group relief].

(d) If the Inland Revenue Board discovers that the loss carry back has been wrongly claimed, it may make an assessment for the tax undercharged and impose a penalty equal to the tax undercharged. However, according to the IRB's guidelines, the penalty to be imposed will be based on the field audit penalty guidelines. The assessment may be made in the year that the loss was carried back to or within 6 years from the expiration of that year.

(e) The Section 108 balance of the taxpayer will not be affected by any tax refunded as a consequence of any deduction allowed due to the carry back of losses under Section 44B.

(f) The change is noteworthy and innovative. However, for some countries, the carry back of losses is a permanent feature of their tax system.

A3.4 PROMOTING INVESTMENT ON PLANT AND MACHINERY

Existing Legislation

Expenses incurred on plant and machinery are given capital allowances as follows:

Category	Claim Period
Plant and machinery (general)	6 years
Heavy machinery and motor vehicles	4 years
Others such as office equipment, furniture and fittings	8 years

However, as an incentive, expenses incurred on some plant and machinery including small value assets and specific equipment are given Accelerated Capital Allowances (ACA) as follows:

i. expenses on small value assets (of value less than RM1,000 each) are given ACA to be fully claimed within 1 year subject to the total value of small value assets not exceeding RM10,000. Small and medium enterprises are not subjected to the limitation of total value of assets;

ii. expenses on plant and machinery incurred by small and medium enterprises in years of assessment 2009 and 2010 are given ACA to be fully claimed within 1 year; and

iii. expenses incurred on the following equipment are given ACA as follows:

Equipment	Claim Period
Security control	1 year
Information and communication technology (ICT)	1 year
Environmental protection	3 years

Proposed Legislation

In addition to the existing incentives, it is proposed that ACA be given to all resident taxpayers including sole proprietors, partnerships and companies as follows:

i. qualifying expenditure incurred on new acquisition of plant and machinery between 10 March 2009 and 31 December 2010 to be claimed within 2 years, i.e. initial allowance of 20% in the first year and annual allowance of 40% in the first and second years.

ii. for plant and machinery acquired via hire purchase, only the principal portion of any instalment payments made between 10 March 2009 and 31 December 2010 are allowed for ACA.

iii. the ACA claimed will be clawed back if the plant and machinery is disposed of within two years from the date of acquisition.

However, the above incentives are not applicable to a taxpayer who in the period from 10 March 2009 to 31 December 2010:

(a) has been granted an incentive under the Promotion of Investments Act 1986 such as pioneer status, Investment Tax Allowance, Infrastructure Allowance and double deduction for export promotion expenses;

(b) has made a claim for reinvestment allowance under Schedule 7A of the Income Tax Act 1967;

(c) has been granted an exemption under Paragraph 127(3)(b) or subsection 127(3A) of the Income Tax Act 1967 [Ministerial exemption]; or

(d) qualifies for an allowance at a higher fraction under the Income Tax Act, 1967 or any rules made under Section 154 of the Income Tax Act 1967 [Ministerial Rules].

Reference

Income Tax (Accelerated Capital Allowance) (Plant and Machinery) Rules 2009; Inland Revenue Board's Guidelines on 2009 Mini Budget

Effective Date

Year of assessment 2009

Likely Tax Effects and Implications

To maximise this incentive, taxpayers should avoid buying qualifying assets under hire purchase terms from 10 March 2009 to 31 December 2010.

A3.5 INCENTIVE FOR RENOVATION AND REFURBISHMENT OF BUSINESS PREMISES

Existing Legislation

Expenses incurred on renovation and refurbishment of business premises are not allowed for tax deduction and also not eligible for capital allowances.

Proposed Legislation

It is proposed that expenses incurred on the renovation and refurbishment of business premises between 10 March 2009 and 31 December 2010 be given Accelerated Capital Allowances (ACA) as follows:

(a) the amount of qualifying expenditure is limited to RM100,000 for the period from 10 March 2009 to 31 December 2010 per taxpayer.

(b) the ACA is to be claimed within two years, i.e. 50% for each year of assessment.

(c) the expenses incurred are not eligible for both the renovation or refurbishment allowances if the premises which have been renovated or refurbished are not in use by the taxpayer for the purpose of his business.

(d) if the qualifying expenditure incurred qualifies for both the renovation or refurbishment allowances and the industrial building allowances (IBA), the taxpayers may elect to claim either the renovation or refurbishment allowances or IBA. Alternatively, the taxpayers may claim RM100,000 expenditure incurred under renovation or refurbishment allowances and claim the amount in excess of RM100,000 under IBA.

(e) for expenditure incurred on renovation and refurbishment prior to the date of commencement of the company's operations, the qualifying expenditure is deemed incurred on the first day that the company commences business.

The qualifying expenditure prescribed by the Minister are as follows:

(i) general electrical installation and wiring;
(ii) lighting;
(iii) gas system;
(iv) water system;
(v) kitchen fittings;
(vi) sanitary fittings;
(vii) door, gate, window, grill and roller shutter;
(viii) fixed partitions;
(ix) flooring;

(x) wall covering;
(xi) false ceiling and cornices;
(xii) ornamental features or decorations excluding fine art;
(xiii) canopy or awning;
(xiv) fitting room or changing room;
(xv) children play area;
(xvi) recreational room for employee; and
(xvii) prayer facilities e.g ablution area.

(f) Qualifying renovation or refurbishment expenditure does not include qualifying plant expenditure, qualifying agriculture expenditure, qualifying forest expenditure and qualifying mining expenditure.

(g) According to the IRB's guidelines issued, the following expenses are not allowed for renovation or refurbishment allowances;

(i) design fee or service fee for mechanical and electrical engineering;
(ii) antiques; or
(iii) fine art items including paintings, prints, graphics, mosaic art, sculptures and porcelain art.

(h) The IRB's guidelines have provided the following examples of items that are not renovations but are assets qualifying for capital allowances:

(i) Mirrors fixed in business premises such as hair salons;
(ii) Aquarium used for business purposes; or
(iii) Curtains and carpets.

(i) Example

Date	Qualifying renovation expenditure (RM)
May 2009	80,000
August 2010	50,000

Calculation of renovation or refurbishment allowances:

YA	Allowances (RM)
2009	40,000 (80,000 x 50%)
2010	40,000 (80,000 x 50%) 10,000 (20,000 x 50%)[1] 50,000
2011	10,000 (20,000 x 50%)

[1] Expenditure incurred on August 2010 is restricted to RM20,000 for the purpose of calculating the ACA as the total amount of ACA is limited to RM100,000 within a period of 2 years of assessment

Reference

Schedule 3 Paragraphs 8A, 8B, 32A, 32B, 54 and 71 of the Income Tax Act 1967

Effective Date

Year of assessment 2009

Likely Tax Effects and Implications

This change will be a boon especially to the trading and service businesses which are not generally entitled to a claim for capital allowances on renovation costs incurred except for moveable items such as furniture, moveable partitions and carpets. Prior to this change, refurbishments are only allowed tax deduction if they are in the nature of repairs and renewals.

A4 INDIRECT TAXES AND LEVIES

A4.1 INCENTIVE FOR LEVY ON FOREIGN WORKERS

Proposed Legislation

It is proposed that:

i. Levy on foreign workers be doubled for all sectors except for the construction and plantation sectors and for domestic maids. The levy will be paid by the employers and not by the workers; and

ii. In the event the services of foreign workers are prematurely terminated, the levy will be refunded on a pro-rated basis to the employers. In addition, the employers' bank guarantees will be returned.

Reference

To be gazetted by way of statutory order

Effective Date

To be announced

Likely Tax Effects and Implications

This proposal aims to reduce the country's dependence on foreign workers and to give priority to hiring local workers.

A4.2 EXEMPTION OF LEVY PAYMENTS TO THE HUMAN RESOURCE DEVELOPMENT FUND (HRDF)

Existing Legislation

An employer in the manufacturing sector and certain services sectors employing more than a specific number of employees is subject to HRDF levy payments at the rate of 1% on the salaries and fixed allowances of the employees. The Government has exempted levy payments to the Human Resource Development Fund (HRDF) for a period of 6 months for employers in the textile and electrical and electronics industries with effect from 1 February 2009.

Proposed Legislation

It is proposed that levy payments to the HRDF be reduced from 1% to 0.5% for all other employers for a period of 2 years.

Reference

To be gazetted by way of statutory order

Effective Date

1 April 2009

Likely Tax Effects and Implications

This change has the effect of assisting employers to reduce their cost of doing business.

A4.3 INCREASE OF THRESHOLD FOR PROFIT LEVY ON OIL PALM

Existing Legislation

At present, a windfall profit levy on oil palm is imposed when the price of crude palm oil exceeds RM2,000 per tonne.

Proposed Legislation

It is proposed that the threshold of RM2,000 per tonne be increased to RM2,500 per tonne for Peninsular Malaysia and to RM3,000 per tonne for Sabah and Sarawak.

Reference

Windfall Profit Levy (Oil Palm Fruit) (Amendment) Order 2009

Effective Date

10 March 2009

Likely tax effects and implications

This is to reduce the cost of doing business for palm oil operators.

A5 FINANCING ASSISTANCE SCHEMES

A5.1 WORKING CAPITAL GUARANTEE SCHEME

Currently, the Credit Guarantee Corporation under Bank Negara Malaysia provides *Skim Jaminan Usahawan Kecil* to fund working capital of SMEs with shareholder equity of less than RM3 million.

With the establishment of the Working Capital Guarantee Scheme totalling RM5 billion, the Government aims to provide working capital to Malaysian owned companies with shareholder equity below RM20 million and are not subsidiaries of a company with shareholders' funds of more than RM20 million. The Government will provide guarantee in the ratio of 80:20, that is 80% will be guaranteed by the Government and 20% by the financial institutions to assist companies to gain access to working capital financing. The maximum loan amount will be RM10 million per company with a maximum repayment period of five years. With this fund in place, companies will not be burdened by the inability to get access to funding.

A5.2 INDUSTRY RESTRUCTURING LOAN GUARANTEE SCHEME

The Industry Restructuring Loan Guarantee Scheme with a fund size totalling RM5 billion is created for loans to increase productivity and value-added activities, as well as the application of green technology. Under the Scheme, for companies with shareholder equity less than RM20 million, the Government will provide a guarantee based on the ratio of 80:20, with Government guarantee of 80%, and the remaining 20% by financial institutions. For companies with shareholder equity of RM20 million or more, the guarantee ratio will be 50:50. The maximum loan is RM50 million to be repaid within a period of 10 years.

Apart from strengthening the potential for higher long-term growth, this shift will create opportunities for higher skilled jobs with better income. It will also contribute towards reducing the country's dependence on unskilled foreign labour.

A5.3 SALIENT TERMS OF GUARANTEE SCHEMES

	Working Capital Guarantee Scheme	**Industry Restructuring Loan Guarantee Scheme**
Objective	To assist viable medium sized companies to gain access to working capital financing to sustain their operations during the current challenging economic environment	To assist viable medium and large enterprises to secure financing to modernize and upgrade business operations, particularly in the area of greater automation, increased productivity, energy efficiency and green technology
Fund Size	RM5 billion	RM5 billion
Guarantee Ratio Government: Financial Institution	80:20	Mid sized companies*: 80:20 Large enterprises: 50:50
Guarantee Fee	0.5% p.a. on outstanding amount	0.5% p.a. on outstanding amount
Interest Rate On Loan	Determined by Financial Institutions	Determined by Financial Institutions
Eligibility	- Shareholders' funds less than RM20 million - not subsidiary of company with shareholders' funds more than RM20 million - Malaysian owned companies	Malaysian owned companies
Maximum Loan Tenure	5 years	10 years
Maximum Financing	RM10 million per company	RM50 million per company
Fund Availability	Until 31 Dec 2010 or upon full utilisation of fund	Until 31 Dec 2010 or upon full utilisation of fund
Participating Financial Institutions	- All commercial banks - All Islamic Banks - Bank Pembangunan Malaysia Berhad - SME Bank - Exim Bank - Bank Simpanan Nasional	- All commercial banks - All Islamic Banks - Bank Pembangunan Malaysia Berhad - SME Bank - Bank Simpanan Nasional

* Note: Mid-sized companies are defined as companies with shareholders funds of less than RM20 million

A6 OTHERS – RELAXING OF RULES

A6.1 FACILITATING ACCESS TO CAPITAL MARKET

The Securities Commission will implement additional measures to enable companies to raise funds in the capital market in a more efficient and cost-effective manner, as follows:

1. Rights issues by listed companies will no longer require the approval of the Securities Commission;
2. Issuance and offerings of equity securities by unlisted public companies will be exempted from seeking Securities Commission's approval, as these companies usually have a relatively small number of shareholders;
3. The Code on Take-Overs and Mergers 1998 will no longer be applicable to private limited companies. This is to facilitate companies to undertake restructuring as well as take-overs and mergers;
4. The Securities Commission only needs to be informed of any amendments to the terms and conditions of bonds and *sukuk* issuances, which have already been approved by the bonds and *sukuk* holders;
5. The Securities Commission only needs to be informed of any revisions relating to the terms and conditions of bonds and *sukuk* for listing on Bursa Malaysia; and
6. Convertible and exchangeable bonds will be exempted from mandatory rating requirements.

A6.2 ROLE OF FOREIGN INVESTMENT COMMITTEE (FIC)

In promoting further liberalisation and to make Malaysia a more competitive market, the FIC's new role will be to monitor investments at the macro level. However, at the micro level, the FIC will continue to formulate policy guidelines focusing only on sectors of national interest, such as ports and airports, property, defence, public transportation and telecommunications.

The FIC will adopt a more liberal approach in the future to bring positive changes and to nurture a more investor-friendly environment to attract more investments, including FDIs. The Government is formulating new guidelines to reflect its new role.

A7 BUDGET ALLOCATIONS

The Mini Budget or the Second Stimulus Package is being proposed by the Government to allocate additional budget for expenses not provided for or not fully provided for in the 2009 Budget announced on 29 August 2008.

A total of RM60 billion has been set aside for the 2009 Stimulus Package. The package will be implemented over two years, 2009 and 2010 with the amounts to be used for the following objectives:

1. Fiscal injection of RM15 billion
2. Guarantee Funds of RM25 billion
3. Equity investments of RM10 billion
4. Private finance initiative (PFI) and off-budget projects of RM7 billion
5. Tax incentives of RM3 billion.

Out of the RM15 billion fiscal injection, RM10 billion is allocated for 2009 and RM5 billion for 2010. The RM10 billion for 2009 consists of RM5 billion for operating expenditure and RM5 billion for development expenditure.

The allocation of RM60 billion will be carried out in four Thrusts, as follows.

i. Thrust One: RM2 billion will be used to reduce unemployment and increase employment opportunities.
ii. Thrust Two: RM10 billion will be used to ease the burden of the Rakyat, in particular the vulnerable groups.
iii. Thrust Three: RM29 billion is allocated to assist the private sector in facing the crisis.
iv. Thrust Four: RM19 billion is allocated in building capacity for the future.

Specific allocations proposed in the Mini Budget are as follows:

1. A sum of RM700 million is allocated to implement job placements and provide incentives to employers to recruit and train local workers.
2. In providing subsidies to essential items, a sum of RM674 million will be allocated to avert price increases of necessities, such as sugar, bread and wheat flour and an additional of RM480 million to ensure that toll rates are not increased.
3. For the low income group, an additional RM200 million is allocated to build *rumah mesra rakyat* by Syarikat Perumahan Negara Berhad.
4. To improve public infrastructure, a sum of RM8.4 billion is allocated to accelerate the implementation of projects under the Ninth Malaysia Plan. In addition, RM1.6 billion is allocated for funds to promote investments.

5. An additional allocation of RM200 million is provided to repair and maintain drains and roads. In addition, the surroundings of public flats will be improved to ensure more comfortable living conditions.
6. To undertake renovation, maintenance and repairs of welfare homes, fire and rescue stations and quarters, as well as public toilets in mosque, surau and tourist spots, a sum of RM150 million is provided.
7. To further strengthen human capital development, the Government is allocating a sum of RM1.95 billion to build and improve facilities in 752 schools, particularly in rural areas as well as Sabah and Sarawak. A sum of RM300 million from this allocation will be used to improve facilities in government-aided religious schools, national-type Chinese and Tamil schools as well as mission schools.
8. For continuity of ensuring that the *Rakyat* in rural areas enjoy adequate basic facilities, an allocation of RM230 million is provided to increase the coverage of electricity and water supply in rural areas, particularly in Sabah and Sarawak. Apart from this, an additional allocation of RM350 million will be provided for the construction of rural roads.
9. The Government will also provide an allocation of RM500 million for PIA and PIAS projects, with emphasis on programmes in Sabah and Sarawak.
10. In addition, a sum of RM1.2 billion will be allocated in providing infrastructure and increasing economic activities in Sabah and Sarawak.
11. An additional allocation of RM300 million is provided for the microcredit programme under AgroBank to assist farmers and agro-based businesses in rural areas as well as RM50 million for Tabung Ekonomi Kumpulan Usahasama Nasional (TEKUN).
12. To assist fishermen affected by disasters at sea, the Government will establish a Fishermen's Welfare Fund with an initial allocation of RM2 million, which will be managed by *Lembaga Kemajuan Ikan Malaysia* (LKIM).
13. An additional allocation of RM20 million is provided to improve the facilities of day care centres for the elderly, strengthen the management of women shelter homes and increase facilities for childcare centres.
14. The Government will establish a Working Capital Guarantee Scheme totaling RM5 billion to provide working capital to companies with shareholder equity below RM20 million. This is to ensure financial institutions continue to provide more loans to companies and that they do not restrict credit flows to companies or impose tighter conditions.
15. In addition, the Government will set up an Industry Restructuring Guarantee Fund Scheme totaling RM5 billion for loans to increase productivity and value-added activities, as well as the application of green technology.
16. In order to assist and facilitate companies with investment grade ratings to access the bond market, the Government will establish a Financial Guarantee Institution to provide credit enhancement to companies that intend to raise funds from the bond market. This Government-owned company will have an initial paid-up capital of RM1 billion, which will subsequently be raised to RM2 billion. It is expected that bonds totaling RM15 billion will be raised under this facility.

17. The Government will provide an additional allocation of RM200 million to the Automotive Development Fund in supporting the development of the automotive industry and vendors as well as establish the Automotive Institute of Malaysia.

18. In view of the increased demand by the low cost airlines and the under-capacity of the existing Low Cost Carrier Terminal (LCCT) in Sepang, Malaysia Airports Holdings Berhad will build and operate a new LCCT at Kuala Lumpur International Airport (KLIA) at an estimated cost of RM2 billion, which is expected to be ready in 2011.

19. To further enhance the tourism industry, the Government will allocate RM200 million to upgrade infrastructure in tourist spots, diversify tourism products, organize more international conferences and exhibitions in Malaysia as well as improve the homestay programme.

20. To promote domestic private investments, the investment funds of Khazanah Nasional Berhad will be increased by RM10 billion. The funds will be invested by Khazanah over a two-year period giving priority to domestic investments that have high multiplier effects and create more job opportunities.

21. A sum of RM5 billion is allocated to identified investment projects which will be implemented on off-budget basis. Out of the RM5 billion, an estimate of RM2 billion and RM250 million will be used for LCCT at KLIA and the expansion of Pulau Pinang Airport respectively. In addition, a sum of RM2.4 billion will be used to improve telecommunications infrastructure, including broadband libraries, Broadband Community Centres as well as the provision of basic telephone services in 89 districts in rural areas by the Malaysian Communications and Multimedia Commission. A sum of RM100 million is used to construct sky bridges and covered walkways between buildings, especially in the Golden Triangle, Kuala Lumpur.

22. To further boost private investment activities, the Government will assist the implementation of projects through PFI and public-private partnerships by providing funds amounting to RM2 billion.