

Corporate & Commercial Law Update

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▶ P.U.(A) 152 Income Tax (Exemption) Order 2009

This Order shall have effect from the year of assessment 2008 and subsequent years of assessment (save as expressly disclosed).

An employee is exempted from the payment of income tax in relation to certain benefits or gifts which are received by such employee from his employer, such as traveling, petrol, parking, meal and child care allowances, payment of the monthly bills for subscription of broadband, fixed line telephone, mobile phone and pager registered under the name of employee or employer, and gifts of PDA, telephone, mobile phone and pager, subject to certain annual limits, in ascertaining the gross income from his employment in the basis period for a year of assessment provided that the benefits and gifts are generally provided to all employees.

This exemption does not apply where the employee has control over his employer eg if the employee is a shareholder of the employer company, or where the employee is the employer's partner in a partnership or where the employee and employer is the same person (ie the employer is a sole proprietor)

▶ P.U.(B) 153 Income Tax (Deduction for Benefit and Gift from Employer to Employee) Rules 2009

These Rules shall have effect from the year of assessment 2008 and subsequent years of assessment (save as expressly disclosed).

An employer shall be allowed claim as deductions the benefits and gifts given to employees in the form of expenses for the payment of monthly bills for subscription of broadband, fixed line telephone, mobile phone or pager issued in the name of an employee or in the name of the employer; travelling allowance, petrol card or petrol allowance provided for an employee from home to place of work and from place of work to home (this shall have effect from year of assessment 2008 until the year of assessment 2010); and personal digital assistants, telephones, mobile phones and pagers.

▶ P.U.(A) 128 Capital Markets and Services (Amendment of Schedule 3 and 4) Order 2009

This Order came into operation on 26 March 2009.



Amendments have been made to Schedules 3 and 4 of the Capital Markets and Services Act 2007 (“CMSA”) to the effect that the following person and/or entity does not need a Capital Markets Services Licence to carry on a business of dealing in securities, trading in future contracts, fund management, advising on corporate finance, investment advice or financial planning:

- any person who carries on the regulated activity of dealing in securities for his own account or for his customers through a licensed bank for the purposes of lending of securities under any guidelines issued by the Securities Commission (“SC”)
- a licensed bank, in the activity of lending or facilitating the lending of securities for its own account or for its customers under any guidelines issued by the SC.

► **Liberalization of Equity Ownership in the Services Sub-Sector**

On 22 April 2009, Prime Minister Datuk Seri Najib Razak announced the removal of the 30% bumiputera quota on equity ownership in the following services sub-sectors with immediate effect:

Computer and Related Services

- consultancy services related to the installation of computer software;
- software implementation services - systems and software consulting services; systems analysis services; systems design services; programming services and systems maintenance services;
- data processing services - input preparation services; data processing and tabulation services; time sharing services and other data processing services;
- database services;
- maintenance and repair services of computers;
- other services - data preparation services; training services; data recovery services; and development of creative content;

Health and Social Services

- all veterinary services;
- welfare services delivered through residential institutions to the elderly and the handicapped;
- welfare services delivered through residential institutions to children;
- child day-care services including day-care services for the handicapped;
- vocational rehabilitation services for handicapped.

Tourism Services

- theme park;
- convention and exhibition centre (seating capacity of above 5,000);
- travel agencies and tour operators services (for inbound travel only);
- hotel and restaurant services (for 4 and 5 star hotels only);
- food serving services (for services provided in 4 and 5 star hotels only);
- beverage serving services for consumption on the premises (for services provided in 4 and 5 star hotels only).



Transport Services

- Class C freight transportation (private carrier license).

Sporting and other recreational services

- sporting services (sports event promotion and organisation services).

Business Services

- Regional Distribution Centre;
- International Procurement Centre;
- technical testing and analysis services - composition and purity testing and analysis services, testing and analysis services of physical properties, integrated mechanical and electrical systems, and technical inspection services.
- management consulting services - general, financial, marketing, human resources, production and public relations services.

Rental/leasing services without operators

- rental/leasing services of ships that excludes cabotage and offshore trades.
- rental of cargo vessels without crew (bareboat charter) for international shipping.
- supporting and auxiliary transport services
- maritime agency services;
- vessel salvage and refloating services.

► **Liberalization of the Financial Services Sector**

On 27 April 2009, Prime Minister Datuk Seri Najib Razak announced the following liberalization measures in respect of the financial services sector which will take effect immediately (save as expressly disclosed):

Banking Sector

- foreign equity ownership restriction of local Islamic banks is increased to 70% subject to the bank having a minimum capital of USD1 billion;
- foreign equity ownership restriction of investment banks is increased to 70%;
- locally incorporated foreign commercial banks can open up to 10 micro-finance branches;
- locally incorporated foreign commercial banks can open up to 4 new branches from 2010;
- offshore banking institutions licensed by Labuan Offshore Financial Services Authority (“LOFSA”) can be present onshore from 2010;
- up to 2 new Islamic banking licences may be issued to foreigners this year to set up Islamic banks with at least USD 1 billion in capital;
- up to 2 new commercial banking licences may be issued this year to foreign players with special expertise
- up to 3 new commercial banking licences may be issued in 2011 to world class banks

Insurance and Takaful Sector

- foreign equity ownership restriction of insurance companies and/or Takaful operators is increased to 70%;
- foreigners can own more than 70% of the shares of an insurance company and/or Takaful operator on a case-by-case basis;
- locally incorporated insurers and Takaful operators can open branches nationwide without restriction;



- no restriction for locally incorporated foreign insurance companies and Takaful operators to enter into bancassurance/bankatakaful tie-ups;
- offshore insurance companies licensed by LOFSA can be present onshore from 2011;
- up to 2 new family takaful licences may be issued this year.

► **New Securities Commission's Guidelines**

SC and Bursa Malaysia Securities Berhad (Bursa Malaysia) jointly launched a new framework for listings and equity fund-raising on 8 May 2009.

The new framework entails the merging of Bursa Malaysia's Main Board and Second Board into a single board for established corporations. In addition, it involves transforming the current MESDAQ Market into an alternative market open to companies of all sizes and from all economic sectors.

The merged Main Board and Second Board will be known as the "Main Market" while the new alternative market will be known as the "ACE Market". The two new Markets will come on-stream on 3 August 2009.

Further to the above, SC's approval under section 212 of the CMSA will only be required for the following substantive corporate proposals in the Main Market:

- Initial Public Offerings (IPOs);
- Acquisitions resulting in a significant change in business direction or policy of a listed corporation (reverse take-overs and back-door listings);
- Secondary listings and cross listings; and
- Transfer of listings from the ACE Market to the Main Market.

All other equity-based corporate proposals such as acquisitions (other than reverse take-overs and back-door listings), disposals, placements of securities, rights offerings and issuance of warrants will no longer require SC's approval. The SC will continue to vet and register prospectuses to ensure adequate and meaningful disclosures to investors, while Bursa Malaysia will take on a more active role as the frontline regulator for secondary equity fund-raising.

A total of five guidelines have been published to give effect to the new regulatory approach. They are the Equity Guidelines, Principal Adviser Guidelines, Prospectus Guidelines, Asset Valuation Guidelines; and Structured Warrants Guidelines. In conjunction with this, Bursa Malaysia has also revamped its listing requirements for the Main Market and ACE Market.

Except for the Structured Warrants Guidelines and the related structured warrant prospectus requirements which take effect immediately, the new guidelines and the revamped listing requirements will take effect on 3 August 2009.



► Establishment of Danajamin Nasional Berhad (“Danajamin”)

On 15 May 2009, Bank Negara Malaysia (“BNM”) announced the establishment of Danajamin, the national financial guarantee institution. Licensed as an insurance company, Danajamin will be regulated and supervised by BNM and will provide financial guarantee insurance to issues of private debt and Islamic securities. The insurance (or “wrap”) will be available for securities issued by investment grade companies (defined as rated BBB or higher by a Malaysian rating agency). Issuers will pay a premium to Danajamin in return for the wrap and premiums will be priced based on the standalone credit rating and risk of each respective issue. An issue insured by Danajamin will enjoy a AAA-rating.

Wholly-owned by the government, Danajamin has an initial paid up capital of RM1 billion and is expected to be able to underwrite guarantees of up to RM15 billion in bonds. It has been rated AAA by RAM Rating Services Berhad and Malaysian Rating Corporation Berhad.

Danajamin is expected to enhance the vibrancy and robustness of the bond market to continue to support the requirements of the economy.