PART I
TAX
REVIEW

1

IRB (INLAND REVENUE BOARD) GUIDELINES AND RULINGS

A

Public Ruling No. 1/2003 Tax Treatment of Leave Passage

1.0 This Ruling explains the tax treatment of:

(i) leave passage provided for the employee by or on behalf of his employer as a benefit or amenity taxable under gains or profits from an employment; and

(ii) expenditure incurred on leave passage provided to the employee by the employer in ascertaining the adjusted income of the employer.

2.0 The related provisions are subparagraph 13(1)(b)(ii) and paragraph 39(1)(m) of the Income Tax Act, 1967 [hereinafter referred to as the Act].

3.0 The words used in this Ruling have the following meanings:

3.1 "Members of his immediate family" means his wife or wives and his children or her husband and her children.

3.2 "Child" means a legitimate child or step-child of an individual or his wife or a child proved to the satisfaction of the Director General to have been adopted by the individual or his wife in accordance with any law.

3.3 "Leave passage cost" means cost of fares.

3.4 "Employer", in relation to an employment, means-

(a) where the relationship of master and servant subsists, the master;

(b) where that relationship does not subsist, the person who pays or is responsible for paying any remuneration to the employee who has the employment, notwithstanding that that person and the employee may be the same person acting in different capacities.

3.5 "Employee", in relation to an employment, means-

(a) where the relationship of master and servant subsists, the servant;

(b) where that relationship does not subsist, the holder of the appointment or office which constitutes the employment.

3.6 "Employment" means-

(a) employment in which the relationship of master and servant subsists;

(b) any appointment or office, whether public or not and whether or nor that relationship subsists, for which remuneration is payable.

3.7 "Leave passage" means travelling during a period of absence or vacation from duty or employment.

3.8 "Local leave passage" means travelling within Malaysia.

3.9 "Overseas leave passage" means travelling between Malaysia and any place outside Malaysia.

4.0 Generally, any benefit or amenity provided for the employee by or on behalf of his employer would be subject to tax as gains or profits from an employment.

5.0 Subparagraph 13(1)(b)(ii) of the Act provides that not all benefits in the form of leave passage will be included as assessable income of the employee.

6.0 Any expenditure incurred by an employer in the provision of a benefit or amenity for his employee consisting of a leave passage within or outside Malaysia is not allowed as a deduction in ascertaining his adjusted income [paragraph 39(1)(m) of the Act].

7.0 This Ruling gives general guidelines on:

7.1 conditions where a benefit or amenity in the form of leave passage does not constitute assessable employment income;

7.2 situations or circumstances where a benefit or amenity in the form of leave passage can be treated as gains or profits from an employment and charged to income tax under paragraph 13(1)(b) of the Act; and

7.3 the treatment of leave passage expenditure whether within or outside Malaysia incurred by the employer for the benefit of his employee as a non-allowable deduction under the provisions of the Act.

8.0 Leave passage benefit not assessable as an employment income

A benefit in the form of leave passage is not assessable as an employment income under the following conditions:

(i) leave passages for travel within Malaysia not exceeding three times in any calendar year; or

(ii) one leave passage for travel between Malaysia and any place outside Malaysia in any calendar year, limited to a maximum value of three thousand ringgit.

The leave passage benefit, however, is confined only to the employee and members of his immediate family.

Example 1

Encik Abdullah is entitled to a yearly leave passage benefit amounting to RM5,000.00 under the terms of his employment agreement. In January 2003, he travelled to Mauritius and the total leave passage cost claimed by Encik Abdullah was RM2,500.00.

Encik Abdullah is exempted from tax on leave passage benefit amounting to RM2,500.00 *in the year* 2003 *for the year of assessment* 2003.

Example 2

Encik Ng is entitled to a yearly leave passage benefit of RM5,000.00 from his employer. He made use of that benefit to go on a trip to Pulau Pinang with his wife and two young children during the festive season school holidays in January 2003. The whole family also went on a holiday to Singapore in March 2003. His employer paid him a total local leave passage cost of RM500.00 and overseas leave passage cost of RM1,500.00 for the trips.

Encik Ng is exempted from tax for both the local and overseas leave passage benefit amounting to RM2,000.00 *in the year* 2003 *for the year of assessment* 2003 .

Example 3

Puan Salmah is entitled to a yearly local leave passage benefit of RM6,000.00 according to the terms of her employment agreement. In the year 2003, Puan Salmah went on three separate holiday trips with her husband and six children to Kuching, Kota Kinabalu and Melaka and she claimed local leave passage cost of RM5,500.00 from her employer.

Puan Salmah is exempted from tax for the three local leave passage benefit amounting to RM5,500.00 *in the year* 2003 *for the year of assessment* 2003.

9.0 Leave passage benefit assessable as an employment income

Leave passage benefit, received by the employee from the employer, which does not fall within paragraph 8 above is subject to tax under paragraph 13(1)(b) of the Act as gains or profits from an employment.

Example 4

Using the above Example 1 in paragraph 8, Encik Abdullah and his wife went on another overseas holiday trip in the year 2003 to Indonesia for which he made a claim for leave passage cost of RM1,500.00 from his employer.

Encik Abdullah is assessable to tax on overseas leave passage cost amounting to RM1,500.00 *in the year* 2003 *for the year of assessment* 2003. (*Note: If there are two or more overseas leave passages in the same year, then the higher cost of the leave passage is exempted limited to a maximum value of* RM3,000.00).

Example 5

Encik Chelliah is entitled to a yearly overseas leave passage benefit of RM4,000.00 from his employer. He made use of that benefit to go on holiday to Australia accompanied by his father in the year 2003. His overseas leave passage cost amounted to RM2,000.00 per person and his employer paid him a total overseas leave passage cost of RM4,000.00 for the trip.

Encik Chelliah is exempted from tax on overseas leave passage benefit amounting to RM2,000.00 *expended on himself in the year* 2003 *for the year of assessment* 2003. *He would however be taxed on the remaining leave passage benefit expended on his father.*

Example 6

Puan Rina is entitled to a yearly overseas leave passage benefit of RM10,000.00 and local leave passage benefit of RM5,000.00 according to the terms of her employment agreement. In the year 2003, Puan Rina went on an overseas holiday trip with her husband to Italy and made a claim for overseas leave passage cost of RM7,500.00. She also went on four local holiday trips to Pulau Langkawi, Pulau Tioman, Pulau Pangkor and Pulau Redang with her husband and three children in the year 2003 and made a claim for local leave passage cost of RM500.00 for each trip.

Puan Rina is exempted from tax on the overseas leave passage benefit of RM3,000.00 *in the year* 2003 *for the year of assessment* 2003 *but would be taxed on the remaining amount of* RM4,500.00. *She is also exempted from tax for up to three local leave passage benefit amounting to* RM1,500.00 *in the year* 2003 *for the year of assessment* 2003 *but would be taxed on the remaining local leave passage benefit.* (*Note: If there are four or more local leave passages in the same year, then the three most expensive passages are exempt*).

10.0 Leave passage expenditure incurred by the employer for his employee

10.1 Any expenditure incurred in the provision of a benefit or amenity by the employer to his employee consisting of a leave passage within or outside Malaysia is not deductible in arriving at the adjusted income of his business as it is specifically disallowed under paragraph 39(1)(m) of the Act.

10.2 Where leave passage cost given by the employer to the employee includes cost of food, accomodation or other incidental expenses, only the amount relating to fares is treated as leave passage cost.

10.3 The cost of food and accomodation is deductible as entertainment expenses in arriving at the adjusted income of the employer's business. The amount deductible is restricted to the amount spent on his employees only.

Example 7

Encik Robin's employer paid him an overseas leave passage cost for travel to Australia under a packaged tour in the year 2003. The air fare for the trip amounted to RM2,000.00 whereas accomodation amounted to RM1,000.00.

Encik Robin's employer is not allowed any deduction on the cost of air fare amounting to RM2,000.00 *but is allowed a deduction for the accomodation cost of* RM1,000.00 *for the year of assessment* 2003. *Encik Robin, on the other hand, is exempted from tax on the overseas leave passage cost of* RM2,000.00.

11.0 Leave passage benefit where provided to partners or sole proprietors will not qualify for tax exemption. The condition whereby the leave passage benefit is confined to the employee is not fulfilled since the relationship between a partner and the partnership or a sole proprietor to himself is unlike the employer and employee relationship.

12.0 In the case of a partnership or a sole proprietorship, the expenditure incurred on leave passage cost to the partner or to the sole proprietor will not qualify for deduction being regarded to be private in nature. Thus, no part of the expenditure claimed is allowed in computing the partner's share of the partnership income or the sole proprietor's adjusted income of his business.

13.0 This Ruling is effective for year of assessment 2003 and subsequent years of assessment.

(*Issu Date*: *August* 5, 2003)

B Public Ruling No. 2/2003 "Key-Man" Insurance

1.0 This Ruling explains:

(i) the deductibility of premium expense paid for a "key-man" insurance policy; and

(ii) the taxability of insurance proceeds received on "Key-man" insurance.

2.0 The related provisions for the deductibility of premium expense and the taxability of insurance proceeds are sections 33 and 22 of the Income Tax Act, 1967 (the Act).

3.0 The words used in this Ruling have the following meanings:

3.1 "Controlled company" has the same meaning as in section 139 of the Act.

3.2 "Whole life", "endowment", "term life" and "accident" policy in relation to insurance have the same meanings as in th e insurance business.

4.0 "Key-man" insurance

4.1 Generally, a premium paid on an insurance, which is intended wholly and exclusively to recover moneys that would replace loss of profits on the happening of the event insured against, would be allowable as a deduction against the gross income of a business.

4.2 Death, critical illness, sickness, accident or injury of an employee or adirector may result in a loss of business income for the employer or company.

Insurance may be taken on the life of an employee or a director who is a "key" person to cover the risk of loss of business income. This type of insurance is known as "key-man" or "key-person" insurance.

4.3 The right to the insurance proceeds of a "key-man" insurance must remain with the employer or company and the proceeds must not be payable to the "key-person" or his family.

5.0 Deductibility of premium expense

5.1 The premium on the policy is allowable if the insurance has no element of investment and the insurance is taken on the life of a "key-person" whose absence would result in a reduction in the profits of the employer or the company.

5.2 Policies that have no element of investment are term life and accident policies. These policies expire at the end of the insured period and there is no return on the premium paid if the insured person lives or is not injured. The premium payable on a term life policy or an accident policy of a "key-man" insurance is allowable as a deduction against gross income from a business.

5.3 A whole life policy and an endowment policy have elements of investment and are therefore regarded as capital assets of a company. Both policies have cash values that can be redeemed after being in force for several years. For an endowment policy there is a lump sum payable upon maturity of the policy. The premium payable on a whole life or an endowment policy is not allowable in arriving at the adjusted income from a business of a company.

Example 1

A company purchased a "key-man" endowment policy on the life of the managing director with the company as the beneficiary. The annual premium payable is RM20,000 and the sum assured is RM500,000. Under the direction of the managing director, the company's profits have increased 20% each year for the last five years.

Although the company is the beneficiary of the insurance policy and the managing director is a "key-person" in the company, the annual premium payable is not allowable as the company has acquired an asset. On maturity of the policy, the company will receive RM500,000 *plus bonuses declared by the insurance company.*

6.0 Taxability of insurance proceeds

The proceeds receivable on a term life policy or an accident policy is taxable on the employer or the company as the sum is receivable in respect of an insurance premium that has been allowed previously. On the other hand, the proceeds receivable in connection with a whole life or an endowment policy is not taxable as the insurance premium has not been allowed.

Example 2

A company acquired a "key-man" term life policy on the life of the managing director with an annual premium payable of RM30,000. It also acquired a "key-man" whole life policy on the life of the sales manager with an annual premium payable of RM20,000. The premium of RM30,000 had been allowed and the premium of RM20,000 had been disallowed in the tax computation. Both the managing director and the sales manager were killed in an accident and the company received cash payments of RM2,000,000 and RM500,000 in respect of the term life and whole life policies.

The sum of RM2,000,000 received by the company is taxable on the company as it is received in respect of a policy where the premium had been allowed previously while the sum of RM500,000 will not be taxable as the premium had not been allowed previously.

7.0 In the case of a controlled company, premium paid for a "key-man" insurance policy on the life of a director or an employee who owns shares in the company is not an allowable deduction as there are other motives for the purchase of the insurance policy. Other than providing a cover for the risk of loss of business income, it is also for the advantage of the director or employee in their capacity as shareholders of the company. Similarly, premium paid on "key-man" insurance policy on the life of a partner or sole-proprietor is not allowable.

8.0 This Ruling shall be effective for the year of assessment 2004 and subsequent years of assessment.

(*Issue Date: December* 30, 2003)

C

Public Ruling No. 1/2002
Deduction for Bad & Doubtful Debts and Treatment of Recoveries

1.0 TAX LAW

This Ruling applies in respect of the deduction for bad and doubtful debts under section 34 and the treatment of recoveries under section 30 of the **Income Tax Act 1967**. It is effective for year of assessment 2002 and subsequent years of assessment.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers:

2.1 the deduction for bad debts [*see paragraph* 4.1];

2.2 the deduction for doubtful debts [*see paragraphs* 4.2 & 4.3];

2.3 the taxation of any recoveries [*see paragraph* 4.4] arising from bad debts which have been given a tax deduction in an earlier year; and

2.4 other related matters.

3.0 HOW THE TAX LAW APPLIES

3.1 Bad Debts

3.1.1 ***General***

Trade debts written off as bad are generally allowable as a deduction against gross income in computing the adjusted income of a business for the basis period for a year of assessment [Y/A].

3.1.2 ***Basis for writing off a debt as bad***

The writing off of a trade debt as bad requires judgement on the part of the person [see paragraphs 4.5] carrying on the business. All circumstances of the debt as to the likelihood and cost of its recovery should be considered before a decision is taken to write off the debt.

3.1.3 ***Action taken to recover the debt***

A. All reasonable steps based on sound commercial considerations [*see paragraph* 4.6] should be taken to recover the debt. To support a claim for deduction of a bad debt written off for tax purposes, there should be sufficient evidence of such steps taken, including one or more of the following:

a. issuing reminder notices;

b. debt restructuring scheme;

c. rescheduling of debt settlement;

d. negotiation or arbitration of a disputed debt; and

e. legal action (filing of civil suit, obtaining of judgement from the court and execution of the judgement).

B. The steps that should be taken depend on the size of the debt and / or the anticipated cost effectiveness of each action. If a decision is made not to take any further action to pursue a debt, the reasons should be documented.

C. To support a claim for deduction for tax purposes, the decision should be based upon valid commercial considerations and not personal, private or other reasons. It should be considered a reasonable basis if it can be shown that the anticipated cost of any legal action is prohibitive in relation to the amount of the debt.

D. To qualify for deduction for tax purposes, there should also be evidence to show:

a. that each debt has been evaluated separately;

b. when and by whom this was done; and

c. what specific information was used in arriving at that evaluation.

3.1.4 ***Circumstances when a debt can be considered bad***

After reasonable steps for recovery [*see paragraph* 3.1.3 *above*] have been taken, a debt can be considered bad on the occurrence of any one of the following:

A. the debtor has died without leaving any assets from which the debt can be recovered;

B. the debtor is a bankrupt or in liquidation and there are no assets from which the debt can be recovered;

C. the debt is statute-barred;

D. the debtor cannot be traced despite various attempts and there are no known assets from which the debt can be recovered;

E. attempts at negotiation or arbitration of a disputed debt have failed and the anticipated cost of litigation is prohibitive; or

F. any other circumstances where there is no likelihood of cost effective recovery.

3.1.5 ***Debt has been included in gross income***

To qualify for deduction for tax purposes, the debt should be of a kind where the amount of such debt has been included in the gross income of the person for the basis period for the relevant year of assessment or for a prior year of assessment.

Example 1:

Syarikat A Sdn. Bhd., a wholesaler, supplies goods worth a total of RM10,000 on various dates in 2002 to B Mini Market. Various payments totalling RM6,500 are received. It is later discovered that the mini market has closed down and the sole proprietor cannot be contacted. As it is unable to trace the debtor despite visits to his last known business and residential addresses, the company decides to write off this debt in its profit & loss account for the year ended 31.12.2002.

A deduction can be allowed for the bad debt of RM3,500 as the debt has arisen from transactions that have been included in the gross income and all reasonable steps have been taken to recover the debt.

Example 2:

Syarikat C Sdn. Bhd. takes over the retail business of an existing partnership. Among the assets taken over are trade debts amounting to RM30,000. During its first 2 years of operation, the company manages to collect all the debts that had been taken over from the partnership, except for a debt of RM1,000 as the debtor cannot be traced. The company decides to write off this debt in the profit & loss account for the second year.

Although the debt was originally a trade debt in the accounts of the partnership, the amount constitutes a non-trade debt of the company (arising from taking over of the assets of the partnership and not from a transaction included as gross income of the company). Therefore, the amount of RM1,000 *written off as a bad debt* ***cannot*** *be allowed as a deduction in computing the adjusted income. Conversely, the recoveries amounting to* RM29,000 *should not be regarded as taxable.*

3.1.6 ***Exception for loans made in the ordinary course of business***

The condition that the debt should have been included in the gross income of the person prior to it being written off [*see paragraph* 3.1.5] should not be applied in a case where the person habitually makes loans or advances in the ordinary course of his business (for example, a moneylender). In such a case, both the interest (which has been included as gross income from the business) and the loan (granted in the ordinary course of carrying on the business) should be considered as debts which, if written off as bad after taking into consideration all the circumstances, should be allowed as a deduction in arriving at the adjusted income of the business.

3.2 Specific provision for doubtful debts

3.2.1 ***General***

Where there are reasonable grounds (based on valid commercial considerations but not personal, private or other reasons) to believe that a trade debt is doubtful of being recovered, a specific provision can be made at the end of the accounting period for the amount of the debt that is not expected to be recovered. The amount that is reasonably determined to be irrecoverable [*see paragraph* 3.2.3] can be allowed as a deduction against gross income for the relevant basis period.

3.2.2 ***Debt has been included in gross income***

To qualify for deduction for tax purposes, the debt should be of a kind where the amount of such debt has been included in the gross income of the person for the basis period for the relevant year of assessment or for a prior year of assessment. [*See* Example 1 *in paragraph* 3.1.5 *for a clarification of this aspect.*]

3.2.3 ***Making the specific provision***

A. The making of a specific provision for doubtful debts requires the determination of the likelihood of recovery of each debt. This should be done at the end of the particular accounting period (i.e. at or soon after the time of closing the accounts).

B. To qualify for a deduction for tax purposes, there should be evidence to show:

a. that each debt has been evaluated separately;

b. how the extent of its doubtfulness was evaluated;

c. when and by whom this was done; and

d. what specific information was used in arriving at that evaluation.

C. Circumstances for evaluating a debt as doubtful should include:

a. the period over which the debt has been outstanding;

b. the current financial status of the debtor; and

c. the credit record of the debtor.

D. For each doubtful debt, the specific proportion or amount of the debt that is regarded as doubtful should be determined after taking into consideration the following:

a. the person's history of bad debts,

b. the experience for the particular trade/industry; and/or

c. the age-analysis of the debts.

E. Subject to paragraph 3.2.4, the aggregate of the specific provision for each debt constitutes the specific provision for doubtful debts of the business for the year which qualifies for deduction

3.2.4 ***Increase or decrease in the specific provision***

Where a specific provision for doubtful debts has been made for a particular accounting period and the amount has been allowed in the relevant basis period for a particular year of assessment [*see paragraph* 3.2.3], and there is a change in the amount of the specific provision in a subsequent year:

A. a deduction (in the amount of the increase in the specific provision) should be made against the gross income for the subsequent year; or

B. an addition (in the amount of the decrease in the specific provision) should be made to the gross income for the subsequent year.

Example 3:

Syarikat D Sdn. Bhd. makes a specific provision for doubtful debts of RM3,500 for the financial year ending 30.06.2001. For the financial year ending 30.06.2002, the specific provision for doubtful debts is RM4,300. In its profit & loss account, the company shows the specific provision of RM3,500 for the year ending 30.06.2001 and the increase in specific provision of RM800 (RM4,300 - RM3,500) for the year ending 30.06.2002.

Provided that the conditions mentioned in paragraphs 3.2.1, 3.2.2 & 3.2.3 have been met. the specific provisions made in the accounts are allowable for the relevant years and no adjustment is required in the tax computation [see paragraph 4.7].

Example 4:

Syarikat E Sdn. Bhd. makes a specific provision for doubtful debts of RM3,500 for the financial year ending 30.06.2001. For the financial year ending 30.06.2002, the specific provision is reduced to RM2,000 because some payments have been received. The decrease in the specific provision of RM1,500 (RM3,500 - RM2,000) is shown as 'specific provision written back' in the profit & loss account.

No adjustment is required in the tax computation since the decrease in the specific provision of RM1,500 should be taxed.

3.3 Circumstances where write off or provision not allowed as deduction

3.3.1 ***General provision for doubtful debts***

A. A general provision made in respect of doubtful debts (for example, based on a percentage of total sales or of all trade debts) is not allowable for tax purposes, even if there is a legal requirement or an accounting convention for the particular trade or industry to make such a provision.

B. Any increase in the general provision is not allowable and any decrease is not taxable.

C. An adjustment should be made in the tax computation for any such general provision in the profit and loss account.

3.3.2 ***Forgiving or waiving payment of debt***

A decision to forgive or to waive payment of a trade debt (either wholly or in part) should not be regarded as a valid business or commercial consideration for tax purposes. Such an amount should not be allowed as a deduction in the tax computation.

Example 5:

Syarikat F Holdings Sdn. Bhd. is negotiating the take-over of one of its subsidiaries, Syarikat G Sdn. Bhd., by a consortium of businessmen. At the request of the consortium and in order to facilitate the deal, the directors of Syarikat F Holdings Sdn. Bhd. decide to forgive an accumulated debt on account of goods and services supplied amounting to RM100,000 owed by Syarikat G Sdn. Bhd. A letter to that effect (enclosing a copy of the directors' resolution) is issued to Syarikat G Sdn. Bhd., which then proceeds to extinguish the debt in its balance sheet as at 30.09.2002. In its accounts for the year ending 30.09.2002, Syarikat F Holdings Sdn. Bhd. writes off the amount as a bad debt.

In its tax computation for the relevant year of assessment, Syarikat F Holdings Sdn. Bhd. should not be allowed a deduction for the amount written off as the decision is made for reasons other than in the ordinary course of business and on the basis of considerations other than the likelihood of recovery.

In the accounts of Syarikat G Sdn. Bhd., the forgiveness of the debt should, by normal accounting convention, be reflected in its profit & loss account. No adjustment is required in the tax computation since the amount written back is taxable, being a reduction in the cost of goods and services previously charged in full in the profit & loss account.

3.3.3 ***Non-trade debts***

Non-trade debts [*see paragraph* 4.8] that are written off as bad, or specific or general provisions made in respect of non-trade debts that are doubtful, are not deductible in the computation of adjusted income. Similarly, recoveries relating to non-trade debts written off earlier are not taxable. Suitable adjustments should be made in the tax computation if such amounts are included in the profit & loss account.

3.4 Debt due from related or connected person

3.4.1 Any decision to write off (or to extinguish by any other means) or to make a specific provision for a trade debt due from a related or connected person [*see paragraph* 4.9] should be subject to stringent examination before it can be considered for deduction for tax purposes.

3.4.2 In addition to all the conditions mentioned in paragraph 3.1 or 3.2, respectively, there should also be evidence to prove that the decision is made on an arm's length basis [*see paragraph* 4.14] and for valid business or commercial reasons [see paragraph 4.6], rather than private, personal or other non-commercial reasons.

Example 6:

Syarikat H Holdings Sdn. Bhd. provides colour separation and other ancillary services to one of its subsidiaries, Syarikat J Printers Sdn. Bhd.. Based on the draft accounts for the financial year ending 31.10.2002, Syarikat J Printers Sdn. Bhd. is expected to incur a substantial loss in respect of its printing business. To avert adverse publicity, the directors of Syarikat H Holdings Sdn. Bhd. (who are also directors of Syarikat J Printers Sdn. Bhd.) decide to waive payment of an amount of RM20,000 from the total amount owing by the subsidiary company on account of services rendered. Syarikat J Printers Sdn. Bhd. is informed of this by way of a letter and it proceeds to reflect this in its final accounts which show a small net profit. In the profit & loss account of Syarikat H Holdings Sdn. Bhd for the financial year ending 31.10.2002, the amount is written off as a 'trade discount'.

The amount written off should be disallowed in the tax computation of Syarikat H Holdings Sdn. Bhd. for the relevant Y/A since there is no commercial basis for the 'discount' and the decision cannot in any way be regarded as being made at arm's length in view of the relationship of the 2 companies and the status of the directors.

No adjustment is necessary in the tax computation of Syarikat J Printers Sdn. Bhd. since the discount has been correctly treated for both accounting and tax purposes.

Example 7:

Encik K, a sundry goods wholesaler, has been supplying goods on a regular basis to Encik L, a sundry shopkeeper, for the past 25 years. In the course of their long business relationship, they have become good friends. In 1993, Encik L married Encik K's sister. Since 1998, the business of Encik L has been in steady decline (amongst other reasons, due to the opening of a hypermarket in the vicinity) and in 2002, Encik K decides to write off the whole amount of the accumulated debts of Encik L (who is being sued by several of his other creditors).

In view of their relationship as brothers-in-law, the decision by Encik K *to write off the debt of* Encik L *should be regarded as more for personal rather than for valid commercial reasons and should not, therefore, be allowed as a deduction for tax purposes.*

If, however, it could be shown that the financial position of the debtor is the criterion for the decision (for example, Encik L *has already been adjudged a bankrupt at the time the decision is made to write off the debt), then a deduction should be allowed since the write off is based on a valid commercial consideration.*

Example 8:

Syarikat M Bhd. writes off RM15,000 in its profit & loss account for the year ending 31.07.2002, being the trade debt of its subsidiary Syarikat N Sdn Bhd., which has been liquidated and deregistered in the same period.

Since the trade debt is written off due entirely to the financial position of the debtor (the liquidation of Syarikat N Sdn Bhd.*), the amount should be allowed notwithstanding the relationship between the 2 companies.*

3.5 Recoveries

Specific and general provisions do not alter the amount owing in the debtors accounts; on the other hand, a bad debt written off reduces the balance in the relevant debtor's account. Therefore, any recovery of a trade debt previously written off as bad should be shown in the profit and loss account for the period in which it is received. If the recovery is not entered into the profit & loss account but is instead entered into a reserve or other account, an adjustment is required in the tax computation.

Example 9:

Syarikat P Sdn. Bhd. writes off RM2,700 being the trade debt of Encik Q (who has passed away) for the year ending 30.09.2002. During the same financial year, the company receives RM2,000 from Encik R, whose trade debt had been written off and allowed for tax purposes 3 years ago because he could not then be contacted.

The RM2,700 written off as a bad debt is allowable as a deduction and the recovery of RM2,000 is taxable. If both these amounts are shown in the profit & loss account for the year ending 30.09.2002, no adjustment is required in the tax computation.

If the recovery of RM2,000 is not entered into the profit & loss account, an adjustment for that amount should be made in the tax computation.

3.6 Settlement of trade debt with assets

3.6.1 A debt may be settled by the foreclosure of an asset held as security for the debt or by an asset (such as a property or shares in a company) given in exchange for the debt. In such a case, the net proceeds from the sale of the asset or the market value of the asset given in exchange is the value to be taken as settlement for the debt.

3.6.2 Any balance of the debt still outstanding can be claimed as a bad debt if one of the circumstances mentioned in paragraph 3.1.4 is satisfied.

Example 10:

Syarikat S Sdn. Bhd., a construction company, is owed RM300,000 by Syarikat T Development Sdn. Bhd., a property developer which has many unsold houses in its stock. After some negotiation and in view of the severe cashflow problems of the debtor, Syarikat S Sdn. Bhd. agrees to accept a completed shophouse (which Syarikat T Development Sdn. Bhd. normally sells at RM280,000) as full settlement of the debt. However, soon after the agreement is reached, the market for properties sharply weakens. On completion of the transfer, Syarikat S Sdn. Bhd. decides not to sell the shophouse immediately. Instead, the shophouse is let out. In the transfer documents for the property, the consideration is shown as RM280,000 and stamp duty based upon that value is duly assessed and paid. In its profit & loss account, Syarikat S Sdn. Bhd. writes off RM20,000 (RM300,000 - RM280,000) as a bad debt.

The write off amounting to RM20,000 *should be allowed for tax purposes as the market value of the asset accepted in exchange for the debt is* RM280,000, *as evidenced by its acceptance by the* Collector of Stamp Duty.

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 A "bad debt" is a debt that is considered not recoverable after appropriate steps have been taken to recover it.

4.2 A "specific provision for doubtful debts" means a reasonable determination of the amount of particular debts that is doubtful of being recovered.

4.3 A "general provision for doubtful debts" means an estimate of the amount that is doubtful of being recovered, usually made without separate evaluation of each debt and calculated as a percentage of all debts or of total sales or some other general basis.

4.4 "Recoveries" are money or assets received in connection with a trade debt that has been written off as bad in an earlier period.

4.5 A "person" includes a company, a co-operative, an individual, a Hindu joint family, a trust, an estate under administration, a club and an association.

4.6 "Business or commercial considerations" refer to the information, factors and circumstances that any other person in that particular person's business and/or position acting at arm's length [*see paragraph* 4.14] would have taken into consideration in making that business or commercial decision.

4.7 "Tax computation" means the computation of the adjusted income, statutory income, aggregate income, and/or total income in accordance with the requirements of Chapters 4, 5 and 6 of the Act and, where the context so permits or requires, includes the working sheets, statements, schedules, calculations and other supporting documents forming the basis upon which an income tax return is made.

4.8 "Non-trade debts" mean debts other than those specified in paragraphs 3.1.5 and 3.1.6.

4.9 "Related or connected person" means any person who is in a position to influence or be influenced by the other person in any significant way or to any substantial degree, or to control or be controlled by the other person, and includes:

4.9.1 In the case of an individual: a relative [*see paragraph* 4.10], an asso-ciate [*see paragraph* 4.11] or a person controlled by a relative or associate;

4.9.2 In the case of a company: a director [*see paragraph* 4.12], a related company [*see paragraph* 4.13] or its directors, a relative of a director, or a person who controls or is controlled by the company;

4.9.3 In the case of a partnership: a partner, a relative of a partner, or a person who controls or is controlled by a partner;

4.9.4 In the case of a co-operative society: a member of the board, committee or other governing body of the co-operative society, or a person who controls or is controlled by the co-operative society;

4.9.5 In the case of any other body, association or group of persons: a person having the direction or control of the management of its business or affairs, including an administrator; a beneficiary; a karta; a member of the board, committee, council or other governing body; a trustee; or a person who controls or is controlled by that body, association or group of persons.

4.10 "Relative", in relation to a person, includes

4.10.1 a spouse;

4.10.2 a parent or a grandparent;

4.10.3 a child (including stepchild or adopted child) or a grandchild;

4.10.4 a brother or a sister;

4.10.5 an uncle or an aunt;

4.10.6 a nephew or a niece; and

4.10.7 a cousin

4.11 "Associate", in relation to a person, means:

A. a relative [see paragraph 4.10] of that person;

B. a company of which that person is a director;

C. a person who is a partner of that person; or

D. if that person is a company, a director or subsidiary of that company and a director of that subsidiary.

4.12 "Director" includes a person who occupies the position of a director or a person in accordance with whose directions or instructions the directors or staff of a company are accustomed to act.

4.13 "Related company' means the situation where one company holds not less than 20% of the ordinary shares or preference shares of the other.

4.14 "Arm's length basis" refers to the circumstances, decisions or outcomes that would have been arrived at if unrelated or unconnected persons were to deal with each other wholly independently and out of reach of personal influence.

(*Issue Date*: 02 *April* 2002)

D Public Ruling No. 2/2002 Allowable Pre-operational & Pre-commencement of Business Expenses for Companies

1.0 TAX LAW

This Ruling applies in respect of pre-operational and pre-commencement of business expenses allowable to a company under the following:

1.1 Income Tax (Deduction of Incorporation Expenses) Rules, 1974 [P.U. (A) 134 / 1974];

1.2 Schedule 4B, Income Tax Act 1967 - Qualifying Pre-operational Business Expenditure;

1.3 Income Tax (Deductions for Approved Training) Rules 1992 [P.U.(A) 61 / 1992] - as amended by Income Tax (Deductions for Approved Training) (Amendment) Rules 1995 [P.U.(A) 111 / 1995]; and

1.4 Income Tax (Deduction of Pre-commencement of Business Training Expenses) Rules 1996 [P.U.(A) 160/1996].

2.0 THE APPLICATION OF THIS RULING

This Ruling considers the pre-operational and pre-commencement of business expenses that are allowable, under the specific provisions [hereinafter referred to as the specific provisions] in the Income Tax Act 1967 or the specific Rules [hereinafter referred to as the specific Rules] mentioned in paragraph 1.0 above, to a company when it commences its operations or its business.

3.0 HOW THE TAX LAW APPLIES

3.1 Generally, expenses incurred by a company prior to the commencement of its operations or its business [see paragraphs 4.1 and 4.2] would not be allowable as a deduction against the gross income of its business as they are not considered wholly and exclusively incurred in the production of the income.

3.2 Schedule 4B of the Income Tax Act 1967 [hereinafter referred to as the Act] and the specific Rules allow for the deduction of certain expenses that are incurred prior to the commencement of operations or business.

3.3 This Ruling gives general guidelines on the pre-operational and pre-commencement of business expenses that are allowable to a company as a deduction against:

3.3.1 the gross income in arriving at the adjusted income of the business; or

3.3.2 the aggregate income in arriving at the total income; of the company [see paragraph 4.3].

3.4 Incorporation expenses
[Income Tax (Deduction of Incorporation Expenses) Rules, 1974]

3.4.1 For a company incorporated in Malaysia on or after 1 January 1973 with an authorized capital not exceeding RM250,000, the following expenses of incorporation are allowed as a deduction against the gross income from its business:

A. the cost of preparing and printing the Memorandum, the Articles of Association and the Prospectus, and of circulating and advertising the Prospectus;

B. the cost of registering the company and the statutory documents, together with fees and stamp duties payable;

C. the cost of drawing up the preliminary contracts and stamp duty thereon;

D. the cost of printing and stamping debentures (if any) and of share certificates and letters of allotment;

E. the cost of the seal of the company; and

F. underwriting commission.

3.4.2 The said incorporation expenses should be allowed as a deduction against gross income in ascertaining the adjusted income in respect of the business source of the company for the basis period for the year of assessment [Y/A] in which it commenced that business.

3.4.3 The deduction is to be made in the tax computation for the Y/A indicated in paragraph 3.4.2 above, whether or not the said incorporation expenses have been capitalised in the company's balance sheet or have been written off in the profit & loss account of the company for the relevant accounting period.

Example 1

Company A is incorporated in Malaysia on 11.02.2002 with an authorized capital of RM250,000. It commences a retail business dealing in hardware on 01.08.2002 and closes its accounts on 31.07.2003. The following incorporation expenses have been capitalised in its first balance sheet as at 31.07.2003:

Details of expenses	Amount [RM]
Preparation & printing Memorandum & Articles of Association	500
Registration of company (including stamp duty)	3,500
Company seal	200

The incorporation expenses amounting to RM4,200 can be deducted against the gross income of the company for the basis period 01.08.2002 - 31.07.2003. [For details of the determination of the basis period, see Public Ruling No. 7/2001.]

Example 2

Company B is incorporated in Malaysia on 01.03.2002 with an authorized capital of RM300,000 and an issued capital of RM150,000. Incorporation expenses (similar to those in Example 1 above) amount to RM4,200.

The incorporation expenses cannot be allowed as a deduction against the gross income of the company as its authorized capital exceeds RM250,000.

3.5 Pre-operational business expenditure incurred outside Malaysia [Schedule 4B, Income Tax Act 1967]

3.5.1 Certain pre-operational business expenditure in relation to a proposal to undertake investment in a business venture in a country outside Malaysia can be claimed if:

A. the company is resident in Malaysia; and

B. the business venture has been approved by the Minister of Finance

3.5.2 The pre-operational business expenses in connection with an approved business venture which qualify for deduction are:

A. expenses which are directly attributable to the conduct of feasibility studies, including the cost of employing consultants;

B. expenses which are directly attributable to the carrying out of market research or survey or the obtaining of marketing information, including the cost of employing consultants;

C. expenses incurred on fares for travel to a country outside Malaysia by a representative of the company for purposes of conducting feasibility study or market survey; and

D. actual expenses not exceeding RM400 per day for accommodation and sustenance for the whole period commencing with the representative's departure from Malaysia and ending with his return to Malaysia.

Example

ABC Sdn. Bhd., a company resident in Malaysia, produces household electrical equipment. It proposes to build a factory in Mongolia. Before embarking on this venture, the company sends its marketing director to Mongolia to conduct a survey. The following expenses are incurred:

Details of expenses		**Amount [RM]**
Market research (by a Mongolian consultant)		5,000
Travel & other expenses:		
Air fare	2,000	
Hotel (RM200 x 10 days)	2,000	
Food allowance (RM100 x 10 days)	1,000	5,000
Total		10,000

While the expenses are incurred overseas and appear to be within the prescribed limits, deduction cannot be allowed under these provisions unless the venture has been approved by the Minister of Finance

3.5.3 Qualifying pre-operational business expenses should be allowed as a deduction against aggregate income in the manner provided for in Schedule 4B of the Act. Any unabsorbed qualifying pre-operational business expenditure can be carried forward to the following Y/A.

Example

ABC Sdn. Bhd. has incurred qualifying pre-operational business expenses [see the Example in paragraph 3.5.2 above] for a business venture which has been approved by the Minister of Finance. It has the following position for Y/A 2002:

Details	**Amount [RM]**
Statutory income of business #2 (electrical equipment)	20,000
Adjusted loss of business #1 (retail)	5,000
Adjusted loss of business #1 (brought forward)	2,000
Qualifying pre-operational business expenses	10,000

The computation should be as follows:	RM
Statutory income of business #2	20,000
Statutory income of business #1	Nil
Aggregate of statutory income from business	20,000
Deduct: Business adjusted loss brought forward	2,000
Aggregate income	18,000
Deduct: Current year business adjusted loss	5,000
	13,000
Deduct: Qualifying pre-operational business expenses	10,000
Total income	**3,000**

3.6 Pre-commencement of business expenditure on approved training [Income Tax (Deduction for Approved Training) Rules 1992]

3.6.1 A manufacturing company can be allowed a double deduction for pre-commencement of business expenditure on approved training in computing its adjusted income if it satisfies the following conditions:

A. it has incurred the said expenditure during the period of pre- commencement of its business;

B. the expenditure is in respect of training its employees for the acquisition of craft, supervisory or technical skills which will contribute directly to the future production of its products;

C. the training is provided under a training programme approved by the Malaysian Industrial Development Authority (MIDA) or a training programme conducted by a training institution approved by the Minister of Finance; and

D. the said employees are Malaysian citizens.

3.6.2 The expenditure qualifying for the deduction is the amount paid by the company to the training institution in respect of the said training programme. The claim must be supported by the letter of approval from MIDA or a letter from the approved training institution certifying details of the training programme (including the amount paid) and that the employees of the company have attended the training programme.

Example

A company which intends to produce condensers for automobile air conditioners commences operations on 01.08.2002. Before commencement of production, the company recruits 30 employees, all of whom are Malaysians. 20 of them are sent for training on machining at Institut Kemahiran MARA [IKM], a training institution approved by the Minister of Finance, and the other 10 are sent to study machining and assembly of condensers at the factory of its associate company in Japan. The following expenditure is incurred:

Details of expenditure	In Malaysia [RM]	In Japan [RM]
Travelling allowance (paid to the recruits)	4,000	-
Course fees (including food & lodging)	40,000	-
Food & accommodation	-	50,000
Air fare	-	25,000
Total	44,000	75,000

A letter from IKM is submitted to confirm that the amount paid by the company for the training programme is RM40,000 and that the employees of the company have attended it.

The company commences production on 01.01.2003 and the first accounts are prepared for the period 01.08.2002 to 31.07.2003.

The company can be allowed a double deduction under these Rules for the expenditure of RM40,000 incurred on the training programme in Malaysia in ascertaining its adjusted income for the basis period 01.08.2002 - 31.07.2003 [for details of the determination of the basis period, see Public Ruling No. 7/2001]. The travelling allowance (RM4,000) cannot be allowed as only the amount paid to the training institution (IKM) in respect of the programme qualifies for deduction.

The expenditure on training in Japan cannot be allowed under these Rules as the associate company is not a training institution approved by the Minister of Finance [see, however, paragraph 3.7.1 below].

3.6.3 These Rules have effect from Y/A 1992 and subsequent years of assessment.

3.6.4 With effect from 01.07.1993, companies that contribute to the Human Resource Development Fund [HRDF] do not qualify for the deduction under these Rules.

3.7 Pre-commencement of business training expenses [Income Tax (Deduction of Pre-commencement of Business Training Expenses) Rules 1996]

3.7.1 A company which provides training to its employees prior to the commencement of its business can be allowed a single deduction on such training expenses in ascertaining its adjusted income from the business if:

A. the training is to impart basic skills to enable the company to commence its business;

B. the training expenses are incurred within one year prior to the commencement of the business; and

C. the training expenses are of the kind that is allowable under section 33 of the Act.

Example

[See the Example in paragraph 3.6.2 above.]

The expenses incurred in training the employees in Japan prior to commencement of business amounting to RM75,000 can be allowed as a single deduction under these Rules in ascertaining the company's adjusted income for the basis period 01.08.2002 - 31.07.2003.

3.7.2 The following do not qualify for a deduction under these Rules:

A. a company receiving training grants from the Government; and

B. a company claiming double deduction of training expenses under the Income Tax (Deduction for Approved Training) Rules 1992 [see paragraph 3.6 above].

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 "Pre-operational" has the meaning as defined in the specific provisions [see paragraphs 3.5.2 above] and any reference to "preoperational" or "prior to the commencement of operations" should be interpreted subject to the conditions imposed under the specific provisions.

4.2 "Pre-commencement of business" has the meaning as defined in the specific Rules [see paragraphs 3.4, 3.6 and 3.7 above]. The determination of the date of commencement of a business requires a consideration of all the circumstances and facts of each case. Generally, commencement of business means the commencement of activities undertaken in the course of business or activities that are part of the income-producing process as distinguished from activities that are preparatory to the carrying on of a business. Subject to the specific circumstances and facts of the case, the following examples may be indicative of the commencement of business if the act or activity constitutes part of a series of acts or activities that are actively carried out or undertaken in the course of the business:

4.2.1 the purchase of raw materials in the case of manufacturing;

4.2.2 the purchase of goods for resale in the case of retailing;

4.2.3 the first planting in the case of agriculture;

4.2.4 the levelling of land in the case of construction; or

4.2.5 the purchase of land in the case of property development.

However, any reference to "pre-commencement" or "prior to the commencement" of business may only be so interpreted if it is consistent with the relevant conditions imposed under the specific Rules.

4.3 "Adjusted income", "statutory income", "aggregate income" and "total income" refer to income as determined under Chapters 4, 5 and 6 of the Act.

(*Issue Date*: 8 *July* 2002)

E

Public Ruling No. 1/2001
Ownership of Plant and Machinery for the Purpose of Claiming Capital Allowances

1.0 TAX LAW

This Ruling applies in respect of ownership of plant and machinery for the purpose of claiming initial and annual allowances under paragraphs 10 & 15, Schedule 3 to the Income Tax Act, 1967. It is effective from the year of assessment 2000 (current year basis) and subsequent years of assessment.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers the ownership of plant and machinery and its effect on whether a person qualifies to claim capital allowances in respect of that plant and machinery in determining the statutory income from a business of his.

3.0 HOW THE TAX LAW APPLIES

3.1 Deduction for capital allowances

In computing the statutory income from a business, capital allowances under Schedule 3 of the Income Tax Act 1967 [hereinafter referred to as capital allowances and the Act, respectively] are deductible from the adjusted income of that source.

3.2 Conditions for capital allowances

3.2.1 To qualify for initial allowance in respect of plant or machinery for a year of assessment, a person has to satisfy all the following conditions:

A he was carrying on a business during the basis period;

B he has incurred qualifying plant expenditure in respect of that asset during the basis period;

C that asset was used for the purpose of the business; and

D at the end of the basis period (or, if the asset was disposed of, at the time of disposal), he was the owner of the asset.

3.2.2 To qualify for annual allowance in respect of plant or machinery for a year of assessment, a person has to satisfy all the following conditions:

A. he was carrying on a business during the basis period;

B. he had incurred qualifying plant expenditure in respect of that asset;

C. that asset was used for the purpose of the business; and

D. at the end of the basis period, he was the owner of the asset and the asset was in use.

3.3 Ownership of the asset

3.3.1 "Ownership" of an asset refers to either legal or beneficial ownership.

3.3.2 While it is normal for an asset to be owned and used by the same person in a business of his, it is also possible that:

A. the asset is registered in the name of one person (the legal owner) [see paragraph 4.4 below] although the qualifying plant expenditure has been incurred by another person (the beneficial owner) [see paragraph 4.3 below]; or

B. the asset is registered in the name of one person (the legal owner) although the qualifying plant expenditure has been incurred jointly by the legal owner and another person; and

C the asset is used for the purpose of the business of the legal owner or the business of the beneficial owner.

3.4 Asset owned by and used for the purpose of the business of the same person

A person who is both the beneficial and legal owner of an asset and uses that asset for the purpose of his business is entitled to claim the capital allowances in respect of that asset.

Example:

Encik Salleh purchases a van on 21.06.2000 and registers it in his own name. He uses the van in his grocery business, for which accounts are prepared to 31 December every year. As at 31.12.2000, the van is still in use.

In computing the statutory income from his grocery business for year of assessment 2000, Encik Salleh qualifies for capital allowances on the van as he has fulfilled the prescribed conditions [see paragraph 3.2 above]:

A. he was carrying on a business during the basis period;

B. he has incurred qualifying plant expenditure for the purpose of his business;

C. the asset was used for the purpose of his business during the basis period; and

D. at the end of the basis period, he was the owner of the asset and the asset was in use for the purpose of his business.

3.5 Asset used for the purpose of the business of a person but registered in the name of another person

3.5.1 Asset used for the purpose of the business of the beneficial owner but registered in the name of another person

Where a person has:

A. incurred the qualifying plant expenditure on asset; and

B. that asset is used for the purpose of a business of his during the basis period; and

C. the asset was still in use at the end of the basis period; that person (the beneficial owner) is entitled to claim both the initial and annual allowances in respect of that asset, even though he is not the registered owner of the asset.

Example:

Encik Azmi purchases a lorry in basis year 2001 and registers it in the name of Encik Musa.The lorry is used by Encik Azmi in carrying on his transportation business. In computing the statutory income from the business of Encik Azmi for year of assessment 2001, initial and annual allowances may be claimed by him as he has fulfilled the prescribed conditions. Encik Musa is not entitled to claim any of the allowances as he has not incurred the qualifying plant expenditure.

3.5.2 Asset registered in the name of a person and used for the purpose of the business of more than one beneficial owner

Where:

A. more than one person has incurred qualifying plant expenditure on an asset;

B. that asset is used for the purpose of a business of each of them during the basis period;

C. the asset was still in use at the end of the basis period; and

D. the asset is registered in the name of only one of the beneficial owners or in the name of some other person;

each of the beneficial owners of the asset is entitled to claim the capital allowances in respect of that asset in the appropriate proportion as determined by his respective share of the qualifying plant expenditure incurred. [In such a situation, a statement to the effect that more than one person is claiming the capital allowances in respect of the same asset (together with details of the apportionment) must be made in their respective tax computations.]

Note: The above does not apply to a similar situation which involves a partnership, for which there are specific rules: see the Income Tax (*Capital Allowances and Charges*) Rules 1969 [P.U.(A) 96/1969].

Example:

Brothers Ahmad and Ali, each operating his own restaurant business, together purchase a van costing RM56,000 on 01.09.2001. Ahmad pays RM30,000 and Ali pays RM26,000. The van is registered in Ahmad's name. The van is used in both Ahmad's and Ali's businesses in the basis period for the year of assessment. The accounts of both businesses are closed on 31 December.

Initial and annual allowance should be computed as follows:

Year of assessment 2001	Ahmad		Ali	
Qualifying expenditure		30,000		26,000
Initial allowance (20%)	6,000		5,200	
Annual allowance (20%)	6,000	12,000	5,200	10,400
Residual expenditure 1		8,000		15,600

For year of assessment 2001, Ahmad can claim capital allowances amounting to RM12,000 and Ali can claim RM10,400 in respect of the van.

3.5.3 Asset registered in the name of, and used for the purpose of the business of, the legal owner but qualifying plant expenditure incurred by another person

Where the qualifying plant expenditure in respect of an asset is incurred by a person (the beneficial owner) but it is registered and used for the purpose of the business of another person (the legal owner), neither the beneficial nor the legal owner is entitled to claim the capital allowances since neither has fulfilled all the prescribed conditions.

Example:

Syarikat X Bhd. purchases a lorry and registers it in the name of its subsidiary company, Syarikat Y Sdn. Bhd. The lorry is used by Syarikat Y Sdn. Bhd. in carrying on its business.

Neither company qualifies for the capital allowances in respect of the lorry, since:

A. although it has incurred capital expenditure, Syarikat X Bhd. did not incur it for the purpose of its business, nor did it use the asset for the purpose of its business; and

B. although it used the asset for the purpose of its business, Syarikat Y Sdn. Bhd. has not incurred qualifying plant expenditure.

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 "Asset" means plant or machinery used for the purpose of the business on which qualifying plant expenditure has been incurred.

4.2 "Person" includes a company, a co-operative, a club, an association, a Hindu joint family, a trust, an estate under administration, a partnership and an individual.

4.3 "Beneficial owner" means the person who has actually incurre the qualifying plant expenditure on, or who has paid for, the asset and is able to prove such a claim by documentary or other evidence [example: relevant entries made in the books of account of a business, supported by documents such as invoices, vouchers and receipts].

4.4 "Legal owner" means the person in whose name the asset is registered or otherwise recorded [examples: certificate of registration for a motor vehicle; warranty certificate for a machine; etc.].

4.5 "Tax computation" means the working sheets, statements, schedules, calculations and other supporting documents forming the basis upon which an income tax return is made that are required to be submitted together with the return or maintained by the person making the return.

4.6 "Qualifying plant expenditure" means capital expenditure incurred on the provision, construction or purchase of plant or machinery used for the purpose of a business.

4.7 Any reference to "owner" may also be construed as a reference to "owners" where the context so permits or requires.

4.8 Where a person incurs capital expenditure under a hire purchase agreement on the provision of plant or machinery for the purpose of a business of his, he is regarded as the owner of that plant or machinery

4.9 An asset is "disposed of" if it is sold, discarded or destroyed or it ceased to be used for the prposes of the business.

(*Date of Issue*: 18 *January* 2001)

F

Public Ruling No. 2/2001
Computation of Initial & Annual Allowances in Respect of Plant & Machinery

1.0 TAX LAW

This Ruling applies in respect of the computation of annual allowances for plant and machinery under paragraph 15, Schedule 3, Income Tax Act 1967 and the Income Tax (Qualifying Plant Annual Allowances) Rules 2000 [P.U.(A) 52/2000]. This Ruling is effective for year of assessment 2000 (current year basis) and subsequent years of assessment.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers:

2.1 The implications of the reclassifying of plant and machinery into the 3 main categories under the Income Tax (Qualifying Plant Annual Allowances) Rules 2000 [hereinafter referred to as the new Rules] with effect from year of assessment 2000 (current year basis) [hereinafter referred to as Y/A 2000 (CY)]; and

2.2 The computation of initial allowances [IA] and annual allowances [AA] for new assets and annual allowances for existing assets for Y/A 2000 (CY) and subsequent years of assessment.

3.0 HOW THE TAX LAW APPLIES

3.1 Classification of Assets

3.1.1 3 main categories

Under the new Rules, assets that qualify for annual allowances under paragraph 15, Schedule 3 of the Income Tax Act [the Act] are classified into 3 main categories with effect from Y/A 2000 (CY). The main categories and the prescribed rates of AA for them are as follows:

Assets	**Rates**
Heavy machinery, motor vehicles	20 %
Plant and machinery	14 %
Others	10 %

For the year of assessment [Y/A] in which qualifying plant expenditure [QE] is incurred, IA at the rate of 20% of the QE (unless otherwise specified: see paragraph 3.1.3) is also to be allowed in addition to AA.

3.1.2 New assets

The prescribed rates in paragraph 3.1.1 above [hereinafter referred to as the new rates] are to be applied to any asset [other than an asset to which paragraph 3.1.3 applies] acquired in the basis period for the Y/A 2000 (CY) and subsequent years of assessment [hereinafter referred to as a new asset], irrespective of the type of industry or the nature of the business in which the asset is used.

3.1.3 Assets for which special Rules or special rates apply

For a new asset that is to be dealt with under any of the following Rules [hereinafter referred to as the special Rules] or an existing asset already so dealt with in a prior Y/A, the person making the claim must ensure that the asset is dealt with (or continues to be dealt with) under the relevant special Rules and the rates of IA and / or AA as set out under those special Rules [hereinafter referred to as the special rates] are applied instead of the new rates under paragraph 3.1.1:

A. Income Tax (Qualifying Plant Allowances) (Scheduled Wastes) Rules 1995 [P.U.(A) 339/1995];

B. Income Tax (Qualifying Plant Allowances) Rules 1997 [P.U.(A) 265/1997];

C. Income Tax (Qualifying Plant Allowances) (No. 2) Rules 1997 [P.U.(A) 474/1997];

D. Income Tax (Qualifying Plant Allowances) (Computers and Information Technology Equipment) Rules 1998 [P.U.(A) 187/1998];

E. Income Tax (Qualifying Plant InitialAllowances) Rules 1998 [P.U.(A) 294/1998];

F. Income Tax (Qualifying Plant Allowances) (Control Equipment) Rules 1998 [P.U.(A) 295/1998]; or

G. Income Tax (Qualifying Plant Allowances) (Cost of Provision of Computer Software) Rules 1999 [P.U.(A) 272/1999].

3.1.4 Classifying or reclassifying an asset

In classifying or reclassifying an asset, the following should be noted:

A. "Motor vehicles" generally include all forms of transport which use motors to operate. [Examples: motorcycle; aircraft; ship; motorized bicycle, etc.]

B. "Heavy machinery" is determined generally by the nature of its usage. [Examples: bulldozer; crane; ditcher; excavator; grader; loader; ripper; roller; rooter; scraper; shovel; tractor; vibrator; wagon; etc.] [Note: for imported heavy machinery used in the following industries, i.e. building & construction, plantation, mining and timber, see paragraph 3.1.3.C above];

C. "Plant and machinery" include general plant and machinery not falling under the category "heavy machinery, motor vehicles". [Examples: air conditioners; compressors; elevators; medical and laboratory equipment; ovens; etc.]

D. "Others" refer to office equipment and furniture & fittings.

3.1.5 Assets with life span not exceeding 2 years: replacement basis

Expenditure on assets that have an expected life span of not more than 2 years (implements, utensils and articles) is to be dealt with on a replacement basis. This means that no IA or AA is to be allowed, as the cost of purchase of such assets is not regarded as QE. However, the cost of replacing such assets is to be allowed as deductible expenditure under section 33(1)(c) of the Act in determining the adjusted income of the business. Any amount recovered from the disposal of the replaced assets will be treated as income of the business.

Example:

[Examples: bedding & linen; crockery & glassware; cutlery & cooking utensils (other than stainless steel or silver); loose tools; accessories.]

[See also Example 1 in paragraph 3.3.1 below.]

3.2 Claims for initial and annual allowances

3.2.1 Claims to be made in the return and in writing

A. Claims for IA and AA must be made in writing in the return for the Y/A. The details of the claim should be shown in a certified statement in the tax computation.

B. After one of the alternative approaches under paragraph 3.3.2.B has been applied, review or reconsideration of that decision (except in cases of mistakes or errors) should be avoided.

3.2.2 Conditions to be satisfied

To qualify for IA and/or AA for a Y/A in respect of an asset, the person making the claim must satisfy all the following conditions:

A. he was carrying on a business during the basis period;

B. in respect of that asset, he has incurred QE in that basis period (to qualify for IA), or has incurred QE in that basis period and / or a previous basis period (to qualify for AA);

C. that asset was in use for the purpose of the business; and

D. at the end of that basis period, he was the owner of the asset and the asset was in use.

[These conditions and other considerations in respect of the ownership of the asset are discussed in detail in Public Ruling No. 1/2001.]

3.3 Computation of capital allowances for y/a 2000 (CY) & subsequent Y/A

3.3.1 New assets

The amount of AA is a percentage of the QE incurred on the asset, calculated according to the rates prescribed in the new Rules.

***Example* 1:**

A company (which has been in business for a number of years) purchases a refrigerator for RM5,000 on 12.04.2000 and uses it in its restaurant business. 200 pieces of dinner plates are purchased for RM2,000 on 15.07.2000 to replace some of the existing crockery that is chipped, cracked or discoloured (disposed of for RM200). The assets are included in the balance sheet of the business, for which accounts are prepared for the financial year ended 30.09.2000.

For Y/A 2000 (CY), IA and AA can be claimed as follows:

Asset	QE	IA [20%]	AA	Total
Refrigerator	5,000	1,000	700 [14%]	1,700

[Capital allowances cannot be claimed in respect of the dinner plates as the expenditure of RM2,000 is not regarded as QE; however, it can be deducted for tax purposes as cost of replacement of crockery. The RM200 received from the disposal of the replaced crockery is to be included as gross income. These adjustments should be made in the tax computation.]

Example 2:

A businessman installs a telephone system (inclusive of a fax machine) in the office of his stationery retail business, incurring expenditure of RM4,000 on 30.06.2000. A secondhand van is later acquired in July 2000 for RM25,000. The assets are included in the balance sheet of the business in the accounts prepared for the year ended 31.12.2000.

For Y/A 2000 (CY), IA and AA can be claimed as follows:

Asset	QE	IA [20%]	AA	Total
Telephone system	4,000	800	400 [10%]	1,200
Van	25,000	5,000	5,000 [20%]	10,000

3.3.2 Existing assets

A. Assets for which special Rules / special rates have been applied

For assets acquired before the basis period for Y/A 2000 (CY) [i.e. in the basis period for Y/A 2000 (preceding year basis) and prior years of assessment] for which both IA and AA have been allowed according to the special rates under any of the special Rules mentioned in paragraph 3.1.3 above, the new Rules and the new rates are not to be applied, and the relevant special Rules and special rates must continue to be applied for Y/A 2000 (CY) and subsequent years of assessment until all the remaining balance of the QE [i.e., the residual expenditure or RE] in respect of each asset has been completely absorbed.

B. Assets for which the old Rules or old rates have been applied

For assets acquired before the basis period for Y/A 2000 (CY) for which both IA and AA have been allowed according to the existing rates i.e., the rates prescribed under the Income Tax (Qualifying Plant Annual Allowances) Rules 1968 [L.N. 154/1968] (as amended by the Income Tax (Qualifying Plant Annual Allowances) (Amendment) Rules 1980 [P.U. (A) 346/1980] [hereinafter referred to as the old rates and the old Rules], any one of the following 3 alternative approaches may be adopted:

Alternative 1: New rates applied (all existing assets)

A person can apply the new rates to all existing assets for Y/A 2000 (CY) and subsequent years of assessment until all the RE in respect of each asset has been completely absorbed.

***Example* 1 :**

An individual has the following assets:

Details of assets	Motor van	Office equipment	Furniture
QE	75,000	22,000	10,000
Year incurred	1997	1996	1996
Old rate	20%	12%	8%
New rate	20%	10%	10%

The capital allowance computation should be as follows:

	Motor van		**Office equipment**		**Furniture**	
QE		75,000		22,000		10,000
Y/A 1997						
IA	-		4,400		2,000	
AA	-		2,640	7,040	800	2,800
RE		-		**14,960**		**7,200**
Y/A 1998						
IA	15,000					
AA	15,000	30,000		2,640		800
RE		**45,000**		**12,320**		**6,400**
Y/A 1999						
AA	15,000			2,640		800
RE	**30,000**			**9,680**		**5,600**
Y/A 2000 (preceding year basis)						
AA		15,000		2,640		800
RE		**15,000**		**7,040**		**4,800**
Y/A 2000(CY)						
AA	20%	15,000	10%	2,200	10%	1,000
[new rates]						
RE		**Nil**		**4,840**		**3,800**
YA 2001						
AA		-		2,200		1,000
RE		**-**		**2,640**		**2,800**

***Example* 2**

A company has the following assets:

Details of assets	**Machinery**	**Air conditioners**	**Furniture**
QE	180,000	8,000	10,000
Year incurred	1994	1996	1994
Old rate	10%	12%	8%
New rate	14%	14%	10%

The capital allowance computation should be as follows:

	Machinery		Air conditioners		Furniture	
QE		**180,000**		**8,000**		**10,000**
Y/A 1995						
IA	36,000		-		2,000	
AA	18,000	54,000	-	-	800	2,800
RE		**126,000**		**-**		**7,200**
Y/A 1996						
AA		18,000		-		800
RE		**108,000**		**-**		**6,400**
Y/A 1997						
IA			1,600			
AA		18,000	960	2,560	800	
RE		**90,000**		**5,440**		**5,600**
Y/A 1998						
AA		18,000		960		800
RE		**72,000**		**4,480**		**4,800**
YA 1999						
AA		18,000		960		800
RE		**54,000**		**3,520**		**4,000**
Y/A 2000 (preceding year basis)						
AA		18,000		960		800
RE		**36,000**		**2,560**		**3,200**
Y/A 2000(CY)						
AA [new rates]	14%	25,200	14%	1,120	10%	1,000
RE		**10,800**		**1,440**		**2,200**
YA 2001						
AA		*10,800		1,120		1,000
RE		**Nil**		**320**		**1,200**

*AA 25,200 restricted to the amount of RE

Alternative 2: Old rates applied (all existing assets)

A person can continue to apply the old rates for all existing assets for Y/A 2000 (CY) and subsequent years of assessment until all the RE in respect of each asset has been completely absorbed.

***Example* 3:**

If the company in Example 2 (paragraph 3.3.2.B above) had decided not to apply the new rates but to continue applying the old rates to all its existing assets to avoid complications, then the computation of capital allowances would have been:

[*Computation for* Y/A 1994 *to* 2000 (*preceding year basis*): *as per* Example 2 *above*]

	Machinery		**Air conditioners**		**Furniture**	
RE Y/A 2000(CY)		36,000		2,560		3,200
AA [old rates]	10%	28,000	12%	960	8%	800
RE Y/A 2001		**18,000**		**1,600**		**2,400**
AA		18,000		960		800
RE		**Nil**		**640**		**1,600**

Alternative 3: New rates applied to some existing assets and old rates applied to others

A person can apply the new rates for some of his existing assets (for which the new rates are higher than the old rates) and continue to apply the old rates for the rest of his existing assets (for which the old rates are higher than the new rates) for Y/A 2000 (CY) and subsequent years of assessment.

***Example* 4:**

If the individual in Example 1 (paragraph 3.3.2.B above) had decided to apply the new rates in respect of some assets and to continue applying the old rates in respect of others so as to take advantage of the higher rates in both instances, then the computation of capital allowances would have been:

[*Computation for* Y/A 1997 *to* 1999: *as per* Example 1 *above*]

	Motor van		Office equipment		Furniture	
RE		**30,000**		**9,680**		**5,600**
Y/A 2000 (preceding year basis)						
AA		15,000		2,640		800
RE		**15,000**		**7,040**		**4,800**
Y/A 2000(CY)						
AA	20% [old]	15,000	12% [old]	2,640	10% [new]	1,000
RE		**Nil**		**4,400**		**3,800**
YA 2001						
AA				2,640		1,000
RE				**1,760**		**2,800**
YA 2002						
AA				*1,760		1,000
RE				**Nil**		**1,800**

* AA 2,640 restricted to the amount of RE

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 "Asset" means plant or machinery used for the purpose of the business on which qualifying plant expenditure has been incurred.

4.2 "Person" includes a company, a co-operative society, a partnership, a club, an association, a Hindu joint family, a trust, an estate under administration and an individual, but excludes a unit trust to which section 63A of the Act applies.

4.3 "Qualifying plant expenditure" [QE] means capital expenditure incurred on the provision, construction or purchase of plant or machinery used for the purpose of a business [other than assets that have an expected life span of not more than 2 years (see paragraph 3.1.4 above)].

4.4 "Residual expenditure" [RE] at any date in respect of an asset means the unabsorbed balance of the qualifying expenditure [QE], arrived at by deducting from the total QE incurred before that date, the aggregate amount of:

4.4.1 any initial allowance [IA] made for any Y/A;

4.4.2 any annual allowance [AA] made for any Y/A before that date; and

4.4.3 any notional annual allowance (i.e., annual allowances that would have been made if it had been claimed or could have been claimed) made or should have been made before that date.

4.5 "Tax computation" means the working sheets, statements, schedules, calculations and other supporting documents forming the basis upon which an income tax return is made that are required to be submitted together with the return or maintained by the person making the return.

4.6 Where a person incurs capital expenditure under a hire purchase agreement on the provision of plant or machinery for the purpose of a business of his, the qualifying plant expenditure incurred by him in the basis period for a year of assessment is taken to be the aggregate of the capital portion of the instalment payments and any down payment made by him under that agreement in that period.

(*Date of Issue*: 18 *January* 2001)

G Public Ruling No. 3/2001 Appeal Against an Assessment

1.0 TAX LAW

This Ruling applies in respect of sections 99, 100, 101 and 102 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers:

2.1 the provisions of the Income Tax Act 1967 [hereinafter referred to as the Act] relating to appeals against assessments made or deemed to be made; and

2.2. the requirements to be complied with when making an appeal.

3.0 HOW THE TAX LAW APPLIES

3.1 Right of appeal & time to appeal

3.1.1 A person who is dissatisfied with an assessment that has been made, or is deemed to have been made, on him by the Director General of Inland Revenue [hereinafter referred to as the DG] has a right to appeal against that assessment.

3.1.2 The appeal must be submitted in writing not later than 30 days after he has received the notice of assessment or is deemed to have received the deemed notice of assessment.

Example 1:

An assessment is made on an individual for year of assessment 2001 and notice of assessment is received by him on 15.05.2002.

The appeal should be made not later than 15.06.2002.

Example 2:

A company which normally closes its accounts on 31 March furnishes its return to the DG for year of assessment 2001 on 27.09.2001. Under section 90(1A) of the Act, notice of assessment is deemed to have been served on the company on that same date.

The appeal should be made not later than 27.10.2001.

3.1.3 In the case of an advance assessment, the appeal must be made within the first three months of the year of assessment [the Y/A] following the year of assessment for which the assessment is made.

Example:

An advance assessment is made on 15.08.2001 on an individual for Y/A 2002 as his business (accounts normally closed 31 March) has ceased on 30.06.2001. The final accounts were prepared for the period 01.04.2001 to 30.06.2001.

The Y/A *for which the assessment is made is* 2002; *the* Y/A *following that is* 2003. *The appeal against the assessment should therefore be made not later than* 31.03.2003.

3.1.4 In the case of a deemed assessment where a person, in the course of making a self-assessment, has complied with a ruling with which he does not agree, the notice of appeal should be filed together with the return.

3.2 Late appeal

3.2.1 If an appeal is made after the expiry of the period allowed [see paragraphs 3.1.2 and 3.1.3], the reason(s) for the late appeal must be given. An acceptable reason would be circumstances beyond the control of the person making the appeal [the appellant]: for e.g., hospitalization for a long period because of a serious illness.

3.2.2 If the reasons for the late appeal are not accepted, the appellant will be requested to submit an application for extension of the period for making an appeal (in the prescribed Form N).

3.2.3 Form N should be sent to the branch office of the Inland Revenue Board [the IRB] where the income tax file of the appellant is located.

3.2.4 Form N, together with a statement by the DG as to why the appellant's reasons for the late appeal have not been accepted, will be forwarded to the Special Commissioners of Income Tax [the SCIT]. The appellant will be notified in writing about this, and a copy of that statement will be furnished to him.

3.2.5 Within 21 days of receipt of the notification, the appellant may make written representation to the SCIT in respect of his application and the statement by the DG.

3.2.6 If the application is refused, the appellant will have no further right of appeal. The decision by one of the SCIT is final.

3.3 Appeal to be made in writing

3.3.1 An appeal must be made in writing. A telephone call or an electronic message (e-mail) is not considered sufficient notice of appeal.

3.3.2 The prescribed form (Form Q) should be used for this purpose. The completed Form Q should be sent to the IRB branch office where the income tax file of the appellant is located.

3.3.3 An appeal made by way of a letter is also acceptable, and will be dealt with as if Form Q had been received. If it subsequently becomes necessary to forward the case to the SCIT [see paragraph 3.6 below], the appellant will be requested to complete Form Q accordingly.

3.4 The grounds of appeal

3.4.1 The appeal against an assessment (whether in the form of a letter or Form Q) should state the reasons for or the grounds of the appeal. Statements such as "the tax is excessive" or "the tax is not computed in accordance with the Act" will be regarded as vague or lacking in necessary detail as they provide no assistance in reviewing the assessment.

3.4.2 The grounds of appeal should be specific, referring to particular items in the tax computation or the assessment with which the appellant disagrees and stating the reasons for doing so. Additional information or copies of documents should be provided if necessary.

3.4.3 Where the appeal is made by way of a letter and the grounds of appeal are found to be so vague or so lacking in necessary detail that a review of the assessment is not possible [see paragraph 3.4.1 above], the appellant will be notified in writing to submit, within 30 days, specific grounds of appeal in the prescribed Form Q. If the appellant fails to furnish Form Q (with or without the specific grounds of appeal required) within the period allowed, the appeal would be considered a late appeal [see paragraph 3.2 above].

3.4.4 Where Form Q has been submitted and the grounds of appeal are found to be so vague or so lacking in necessary detail that a review of the assessment is not possible [see paragraph 3.4.1 above], the case will be forwarded to the SCIT without a review of the assessment [see paragraph 3.5 below].

3.5 Review of the assessment

3.5.1 On receipt of the appeal (subject to paragraph 3.4 above), the assessment under appeal will be reviewed.

3.5.2 If necessary, the appellant may be required to provide further information or to produce books of account or records or other documents relevant to the assessment.

3.5.3 The appellant (or any other relevant person) may also be required to attend in person to give evidence (under oath if necessary).

3.5.4 As a result of the review, a proposal may be made to the appellant to settle the appeal by confirming, reducing, increasing or discharging the assessment.

3.5.5 If the proposal referred to in paragraph 3.5.4 is made orally, a written confirmation will be issued to him and he will have 21 days to reject it in writing.

3.5.6 If the proposal referred to in paragraph 3.5.4 is made in writing, he will have 30 days to reject it in writing.

3.5.7 If the proposal (written or oral) is not rejected within the period of time allowed, it will be deemed that there is an agreement in writing, and the assessment will be treated as having been confirmed, reduced, increased or discharged according to the agreement.

3.5.8 Within 30 days after the agreement is deemed to have been come to, the appellant may apply to the SCIT to set aside the deemed agreement. The decision by one of the SCIT is final.

3.6 Where agreement cannot be reached

3.6.1 Where it appears unlikely that an agreement can be reached, the case will be forwarded to the SCIT. If the appeal had been made in the form of a letter [see paragraph 3.3.3 above], the appellant will be requested to complete Form Q accordingly.

3.6.2 The appellant may at any time request the DG in writing to forward the appeal to the SCIT.

3.7 Disposal of appeal

3.7.1 An appeal must be forwarded to the SCIT within 12 months from the date of receipt. If the review [see paragraph 3.5 above] cannot be completed within that period, the DG may apply, not later than 30 days before the expiry of the 12-month period, to the Minister of Finance for an extension of that period. The extension period will not be more than 6 months.

3.7.2 The appellant will be notified in writing when the Form Q is forwarded to the SCIT.

3.7.3 The place and date for hearing of the appeal will be fixed by the Clerk to the SCIT, who will give notice of at least 28 days to the appellant.

3.7.4 At any time before the hearing, the appellant and the DG can still come to an agreement, or the appellant can withdraw the appeal.

3.8 Representation

The appellant can be represented by a lawyer and / or a tax agent at the hearing.

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 "Tax agent" means a legally authorized auditor of companies, a professional accountant approved by the Minister of Finance and any other person approved by the Minister.

4.2 "Person" includes a company, a co-operative society, a partnership, a Hindu joint family, a trust, an estate under administration, a club, an association and an individual.

4.3 "The Special Commissioners of Income Tax" [SCIT] and "the Clerk to the SCIT" refer to the Special Commissioners and the Clerk appointed under section 98 of the Act.

(*Date of Issue*: 18 *January* 2001)

H

Public Ruling No. 4/2001
Basis Period for a Non-Business Source (Individuals & Persons other than Companies)

1.0 TAX LAW

This Ruling applies in respect of sections 20 and 21 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling No. 1/2000 dated 1 March 2000.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers the determination of the basis period for a non-business source of income [see paragraph 4.1] in respect of individuals and persons other than companies [see paragraph 4.2].

3.0 HOW THE TAX LAW APPLIES

3.1 A person is chargeable to income tax in respect of all his sources of income for a year of assessment.

3.2 The income from a source is determined in relation to the basis period for a year of assessment

3.3 For a non-business source, the basis year for a year of assessment [see paragraphs 4.3 and 4.4] is the basis period for that year of assessment.

> ***Example:***
>
> An individual receives 2 dividends, dated 05.01.2001 and 28.12.2001, on 10.01.2001 and 02.01.2002, respectively.
>
> *The basis year for the year of assessment 2001 is the calendar year 2001. Both the dividends received in respect of the calendar year 2001 should therefore be taxed for the year of assessment 2001.*

3.4 As a concession, a co-operative which has both business and non-business sources may choose that the basis period for its business source be the basis period for all of its non-business sources. If it does so, it should also apply that same treatment consistently thereafter for all its non-business sources.

Example:

A co-operative closes its accounts on 30 June each year. It has income from 2 sources: business and rent.

The basis period for the year of assessment 2001 *for the business source is the accounting year* 01.07.2000 *to* 30.06.2001 [*see* Public Ruling No. 5/2001].

The basis period for the year of assessment 2001 *for the non-business source (rent) is year ending* 31.12.2001 [*see paragraph* 3.3 *above*].

However, the co-operative may choose the basis period of its business source, i.e. 01.07.2000 *to* 30.06.2001, *as the basis period for its non-business source.*

3.5 In the case of a company, the basis period for a year of assessment for its non-business sources should be determined in accordance with section 21A of the Income Tax Act 1967 [see Public Ruling No. 7/2001].

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 "Non-business source" includes employment, pension, dividend, interest, rent and royalties which are not considered as part of a business source.

4.2 "Persons other than companies" include a co-operative, a Hindu joint family, a trust, an estate under administration, a club and an association.

4.3 "Basis year for a year of assessment" means the calendar year coinciding with the year of assessment.

4.4 "Year of assessment" means calendar year.

(*Date of Issue*: 30 *April* 2001)

I Public Ruling No. 5/2001 Basis Period for a Business Source (Co-operatives)

1.0 TAX LAW

This Ruling applies in respect of sections 20 and 21 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling No. 2/2000 dated 1 March 2000 where it relates to co-operatives.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers the determination of the basis period for a co-operative:

2.1 commencing a new business;

2.2 changing the accounting date of its existing business; and

2.3 joining a partnership

3.0 HOW THE TAX LAW APPLIES

3.1 A co-operative is chargeable to income tax in respect of all its sources of income for a year of assessment [hereinafter also referred to as Y/A].

3.2 The income from a source is determined in relation to the basis period for a year of assessment.

3.3 General

For a business source, except where paragraph 3.4 below applies, the basis year for a year of assessment [see paragraphs 4.3 and 4.4] is the basis period for that year of assessment.

Example:

A co-operative prepares its accounts from 01.01.2001 to 31.12.2001.

The basis year ending 31.12.2001 is the basis period for the y/a 2001 for the co-operative's business source.

3.4 Accounts made up for 12 months not ending on 31 December
Where the accounts of the business are made up for 12 months ending on a date other than 31 December in a basis year, that accounting period is the basis period for the year of assessment in which the accounts are closed.

Example:

A co-operative makes up its accounts from 01.07.2000 to 30.06.2001.

The period from 01.07.2000 *to* 30.06.2001 *is the basis period for the y/a* 2001 *for that co-operative's business source.*

3.5 Commencement of business

3.5.1 Accounts prepared for less than or more than 12 months ending on 31 December

Where a co-operative commences business and its first accounts are prepared for less than or more than 12 months ending on 31 December, the basis period for a year of assessment is the period ending on 31 December.

Example 1:

A co-operative commences business on 11.05.2001 and the accounts are closed on 31.12.2001.

The accounting period 11.05.2001 *to* 31.12.2001 *is the basis period for the y/a* 2001.

Example 2:

A co-operative commences business on 01.09.2001 and the first accounts are closed on 31.12.2002.

The period from 01.09.2001 *to* 31.12.2001 *is the basis period for* Y/A 2001.

The period from 01.01.2002 *to* 31.12.2002 *is the basis period for* Y/A 2002.

3.5.2 Accounts prepared for 12 months

Where a co-operative commences business and its first accounts are made up for 12 months, that accounting period is the basis period for the year of assessment in which the accounts are closed.

Example:

A co-operative commences business on 01.07.2001 and its first accounts are prepared for the period 01.07.2001 to 30.06.2002.

The accounting period 01.07.2001 *to* 30.06.2002 *is the basis period for the y/a* 2002. *There is no basis period for the y/a* 2001.

3.5.3 Accounts prepared for less than or more than 12 months and not ending on 31 December Where a co-operative commences business and its first accounts are made up for less than or more than 12 months not ending on 31 December, the basis period for a year of assessment is the year ending on 31 December each year until accounts are made up for a 12-month accounting period.

Example 1:

A co-operative commences a business on 26.06.2001 and its accounts are made up to 30.04.2002 (>10 months), and subsequently to 30.04.2003.

The basis period for the y/a 2001 *is* 26.06.2001 *to* 31.12.2001.

The basis period for the Y/A 2002 *is* 01.01.2002 *to* 31.12.2002.

The basis period for the Y/A 2003 *is* 01.05.2002 *to* 30.04.2003.

Example 2:

A co-operative commences a business on 26.06.2001 and its accounts are made up to 30.09.2002 (>15 months), and subsequently to 30.09.2003.

The basis period for the y/a 2001 *is* 26.06.2001 *to* 31.12.2001.

The basis period for the y/a 2002 *is* 01.01.2002 *to* 31.12.2002.

The basis period for the y/a 2003 *is* 01.10.2002 *to* 30.09.2003.

3.6 Change of accounting date

3.6.1 Normal accounts ending on 31 December

Where accounts are normally closed on 31 December and there is a change of accounting date, the basis period in the year of change is the year ending 31 December. The basis period for the subsequent year of assessment will also be the year ending 31 December unless there is a

12-month accounting period ending in that year, in which case that accounting period will be the basis period. Thereafter, the 12-month accounting period will be the basis period.

Example 1:

A co-operative which normally closes its accounts on 31 December changes its accounting date to 30 September and prepares accounts as follows: 01.01.2001 to 30.09.2001, and subsequently to 30 September each year.

The basis period for the y/a 2001 *is* 01.01.2001 *to* 31.12.2001.

The basis period for the y/a 2002 *is* 01.10.2001 *to* 30.09.2002.

Example 2:

A co-operative which normally closes its accounts on 31 December changes its accounting date to 31 March and prepares accounts as follows: 01.01.2001 to 31.03.2002, and subsequently to 31 March each year.

The basis period for the y/a 2001 *is* 01.01.2001 *to* 31.12.2001.

The basis period for the y/a 2002 *is* 01.01.2002 *to* 31.12.2002.

The basis period for the y/a 2003 *is* 01.04.2002 *to* 31.03.2003.

3.6.2 Normal accounts not ending on 31 December and new accounts prepared for less than 12 months

A) New accounts ending in the following year

The new accounting period is the basis period for the year of assessment in the failure year [see paragraph 4.5]

Example:

A co-operative's accounts are normally prepared ending on 30 September. The co-operative changes its accounting date and the accounts are now closed on 31 March. Accounts are prepared as follows: 01.10.2000 to 30.09.2001, 01.10.2001 to 31.03.2002 (6 months), and to 31 March for subsequent years.

The basis period for the y/a 2002 (*the failure year*) *is* 01.10.2001 *to* 31.03.2002 (6 *months*).

The basis period for the y/a 2003 *is* 01.04.2002 *to* 31.03.2003.

B) New accounts and the last accounts ending in the same year

The period comprising the new accounting period together with the following accounting period is the basis period for the year of assessment in the failure year.

Example:

A co-operative's accounts are normally prepared ending on 30 June. The co-operative changes its accounting date and the accounts are now closed on 31 December. Accounts are prepared as follows: 01.07.2000 to 30.06.2001, 01.07.2001 to 31.12.2001 (6 months), 01.01.2002 to 31.12.2002, and to 31 December for subsequent years.

Since both the new accounting period 01.07.2001 *to* 31.12.2001 *and the last accounting period* 01.07.2000 *to* 30.06.2001 *end in the same basis year*:

The basis period for the y/a 2002 (*the failure year*) *is* 01.07.2001 *to* 31.12.2002 (18 *months*).

The basis period for the y/a 2003 *is* 01.01.2003 *to* 31.12.2003.

3.6.3 Normal accounts not ending on 31 December and new accounts prepared for more than 12 months

A) New accounts ending in the following year

The new accounting period is the basis period for the year of assessment in the failure year.

Example:

A co-operative's accounts are normally prepared ending on 31 July. The co-operative changes its accounting date and accounts are now closed on 31 October. Accounts are prepared as follows: 01.08.2001 to 31.10.2002 (15 months), and to 31 October for subsequent years.

The basis period for the y/a 2002 (*the failure year*) *is* 01.08.2001 *to* 31.10.2002 (15 *months*).

The basis period for the y/a 2003 *is* 01.11.2002 *to* 31.10.2003.

B) New accounts ending in the third year
If the new accounting period spans 3 basis years, it is apportioned into 2 periods, and these 2 periods will be taken to be the basis periods for the first 2 years of assessment commencing in the failure year.

Example:

A co-operative's accounts are normally prepared ending on 30 November. There is failure to close accounts to its normal accounting date and accounts are prepared for a period of more than 12 months from 01.12.2000 to 28.02.2002 (15 months), and to 28 February for subsequent years.

The accounting period 01.12.2000 *to* 28.02.2002 (15 *months*) *is apportioned into* 2 *periods, so that:*

The basis period for the y/a 2001 (*the failure year*) *is the period* 01.12.2000 *to* 31.07.2001 (8 *months*); *and*

The basis period for the y/a 2002 *is the period* 01.08.2001 *to* 28.02.2002 (7 *months*).

[In determining the basis periods for the situations in paragraphs 3.6.2 and 3.6.3 above, no accounting period or year of assessment should be left out and there should be no overlapping of basis periods. Any fraction of a month should be treated as falling into the first period.]

3.7 A co-operative joining a partnership

3.7.1 Joining a new partnership

If a co-operative joins a new partnership, the basis period for the co-operative in respect of the partnership source is determined as in the case of a new business [see paragraphs 3.5.1, 3.5.2 or 3.5.3].

Example:

A co-operative joins a new partnership which commences business on 18.02.2001. The first accounts are prepared to 30.09.2001 and accounts are subsequently prepared to 30 September each year.

The basis periods for the co-operative's partnership source are as follows [see paragraph 3.5.3]:

Y/*a* 2001: 18.02.2001 *to* 31.12.2001

Y/*a* 2002: 01.10.2001 *to* 30.09.2002

3.7.2 Joining an existing partnership and the partnership's normal accounting date is maintained

If a co-operative joins an existing partnership and the partnership accounts continue to be made up to its normal accounting date, the first basis period for the cooperative in respect of its partnership source is from the date the co-operative joins the partnership to the date of closing of the partnership accounts. Thereafter, the basis period will be the partnership accounting period.

Example:

A co-operative joins an existing partnership on 01.02.2001. The accounts of the partnership are normally made up to 31 March. The accounts for the partnership continue to be made up to 31.03.2001.

The basis period for the y/a 2001 *for the co-operative's partnership source is* 01.02.2001 *to* 31.03.2001.

The basis period for the y/a 2002 *is* 01.04.2001 *to* 31.03.2002.

3.7.3 Joining an existing partnership and the partnership's normal accounting date changes

If a co-operative joins an existing partnership and the partnership changes its normal accounting date, for the purpose of determining the basis period for the co-operative, the partnership is treated as if it were a new partnership and the basis period is determined as in the case of a new business [see paragraphs 3.5.1, 3.5.2 or 3.5.3].

***Example* 1:**

A co-operative (whose accounts are closed on 31 December) joins an existing partnership on 01.07.2001. The accounts of the partnership are normally made up to 31 December, but on admission of the new partner, the accounting date is changed to 30 June. The partnership accounts are made up as follows:

01.01.2000 to 31.12.2000 (old partnership)

01.01.2001 to 30.06.2001 (old partnership)

01.07.2001 to 30.06.2002 (new partnership)

01.07.2002 to 30.06.2003 (new partnership)

The basis periods for the partnership source are as follows:

Partner	**Y/A**	**Basics period**
The co-operative (new partner)	2001	None
	2002	01.07.2001 - 30.06.2002
	2003	01.07.2002 - 30.06.2003
Existing partners	2000	01.01.2000 - 31.12 2000
	2001	01.01.2000 - 31.12.2001*
	2002	01.07.2001 - 30.06.2002
	2003	01.07.2002 - 30.06.2003

[*Arising from change of accounting date (see paragraph 3.6.1]

***Example* 2:**

A co-operative (whose accounts are closed on 31 December) joins an existing partnership on 01.04.2001. The accounts of the partnership are normally made up to 30 June, but on admission of the new partner, the accounting date is changed to 31 March. The partnership accounts are made up as follows:

01.07.1999 to 30.06.2000 (old partnership)

01.07.2000 to 31.03.2001 (old partnership)

01.04.2001 to 31.03.2002 (new partnership)

01.04.2002 to 31.03.2003 (new partnership)

The basis periods for the partnership source are as follows:

Partner	Y/A	Basics period
The co-operative (new partner)	2001 2002 2003	None 01.04.2001 - 31.03.2002 01.04.2002 - 31.03.2003
Existing partners	2000 2001 2002 2003	01.07.1999 - 30.o6 2000 01.07.2000 - 31.03.2001* 01.04.2001 - 31.03.2002 01.04.2002 - 31.03.2003

[*Arising from change of accounting date (see paragraph 3.6.2.A)]

3.8 Treatment of adjusted income / adjusted loss in overlapping periods

Where the application of paragraph 3.5.3 or paragraph 3.6.1 results in an overlapping of two basis periods [see Examples 1 & 2 in paragraph 3.5.3 and Examples 1 & 2 in paragraph 3.6.1], the adjusted income or adjusted loss common to both basis periods is ignored in the second basis period.

Example:

The business of a co-operative commences on 01.07.2001 and accounts are prepared as follows: 01.07.2001 to 31.03.2002, 01.04.2002 to 31.03.2003, and subsequently to 31 March.

The adjusted income of the co-operative is as follows:

Accounting period	**Adjusted income**
01.07.2001 to 31.03.2002 [A]	RM15,000
01.04.2002 to 31.03.2003 [B]	RM24,000

Applying paragraph 3.5.3, the basis periods for the co-operative are:

Y/A	**Basis periods**
2001	01.07.2001 - 31.12.2001 (6 months)
2002	01.01.2002 - 31.12.2002 (12 months)*
2003	01.04.2002 - 31.03.2003 (12 months)*

[*Overlapping period: 01.04.2002 - 31.12.2002]

The adjusted income should be apportioned as follows:

Y/A & Basis period	Apportionment	Adjusted income
2001 [01.07 2001 - 31.12.2001]	01.07 - 31.12.2001: 6 / 9 x [A] (6 / 9 x RM15,000)	10,000
2002 [01.01.2002 - 31.12.2002]	01.01 - 31.03.2002: 3 / 9 x [A] (3 / 9 x RM15,000) 01.04 - 31.12.2002: 9 / 12 x [B] (9 / 12 x RM24,000)	5,000 18,000 23,000
2003 [01.04.2002 - 31.03.2003]	Adjusted income of overlapping period (01.04.2002 - 31.12.2002) ignored in second basis period: (RM24,000 - RM18,000)	6,000

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 If changes of accounting date are made in two consecutive accounting periods and the determinations in paragraph 3.6 above cannot be applied because a year of assessment or an accounting period will be left out, the Director General will, upon application by the co-operative, give specific directions.

4.2 In the case of apportionment of accounting periods, any fraction of a month is to be treated as falling into the first period [see the Example in paragraph 3.6.3.B].

4.3 "Basis year for a year of assessment" means the calendar year coinciding with the year of assessment.

4.4 "Year of assessment" means calendar year

4.5 "Failure year" means the year in which there is failure to close the accounts to the normal accounting date (where that normal accounting date is not 31 December).

(*Date of Issue*: 30 A*pril* 2001)

J

Public Ruling No. 6/2001
Basis Period for a Business Source (Individuals & Persons other than Companies / Co-operatives)

1.0 TAX LAW

This Ruling applies in respect of sections 20 and 21 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling No. 3/2000 dated 1 March 2000.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers the determination of the basis period for:

2.1 an individual or a person other than a company or a co-operative commencing a new business;

2.2 an individual or a person other than a company or a co-operative changing the accounting date of his/its existing business; and

2.3 an individual joining a partnership.

3.0 HOW THE TAX LAW APPLIES

3.1 An individual or a person other than a company or a co-operative [see paragraph 4.3] is chargeable to income tax in respect of all his sources of income for a year of assessment [hereinafter also referred to as Y/A].

3.2 The income from a source is determined in relation to the basis period for a year of assessment.

3.3 General

> ***Example* :**
>
> An individual prepares his accounts from 01.01.2001 to 31.12.2001.
>
> *The basis year ending* 31.12.2001 *is the basis period for the y/a* 2001 *for the individual's business source.*

3.4 Accounts made up for 12 months not ending on 31 December

Where the accounts of the business are made up for 12 months ending on a date other than 31 December in a basis year, that accounting period is the basis period for the year of assessment in which the accounts are closed.

Example :

An individual makes up his accounts from 01.07.2000 to 30.06.2001.

The period from 01.07.2000 *to* 30.06.2001 *is the basis period for the y/a* 2001 *for that individual's business source.*

3.5 Commencement of business

3.5.1 Accounts prepared for less than or more than 12 months ending on 31 December

Where a business is commenced and its first accounts are prepared for less than or more than 12 months ending on 31 December, the basis period for a year of assessment is the period ending on 31 December.

Example 1:

An individual commences business on 11.05.2001 and the accounts are closed on 31.12.2001.

The accounting period 11.05.2001 *to* 31.12.2001 *is the basis period for the y/a* 2001.

Example 2:

An individual commences business on 01.09.2001 and the accounts are closed on 31.12.2002.

The period from 01.09.2001 *to* 31.12.2001 *is the basis period for* Y/A 2001.

The period from 01.01.2002 *to* 31.12.2002 *is the basis period for* Y/A 2002.

3.5.2 Accounts prepared for 12 months

Where a business is commenced and its first accounts are made up for 12 months, that accounting period is the basis period for the year of assessment in which the accounts are closed.

Example:

An individual commences business on 01.07.2001 and the first accounts are prepared for the period 01.07.2001 to 30.06.2002.

The accounting period 01.07.2001 *to* 30.06.2002 *is the basis period for the y/a* 2002. *There is no basis period for the y/a* 2001.

3.5.3 Accounts prepared for less than or more than 12 months and not ending on 31 December

Where a business is commenced and its first accounts are made up for less than or more than 12 months not ending on 31 December, the basis period for a year of assessment is the year ending on 31 December each year until accounts are made up for a 12-month accounting period.

Example 1:

A business is commenced on 26.06.2001 and its accounts are made up to 30.04.2002 (>10 months), and subsequently to 30.04.2003.

The basis period for the y/a 2001 *is* 26.06.2001 *to* 31.12.2001.

The basis period for the y/a 2002 *is* 01.01.2002 *to* 31.12.2002.

The basis period for the y/a 2003 *is* 01.05.2002 *to* 30.04.2003.

Example 2:

A business is commenced on 26.06.2001 and the accounts are made up to 30.09.2002 (>15 months), and subsequently to 30.09.2003.

The basis period for the y/a 2001 *is* 26.06.2001 *to* 31.12.2001.

The basis period for the y/a 2002 *is* 01.01.2002 *to* 31.12.2002.

The basis period for the y/a 2003 *is* 01.10.2002 *to* 30.09.2003.

3.6 Change of accounting date

3.6.1 Normal accounts ending on 31 December

Where accounts are normally closed on 31 December and there is a change of accounting date, the basis period in the year of change is the year ending 31 December. The basis period for the subsequent year of assessment will also be the year ending 31 December unless there is a

12-month accounting period ending in that year, in which case that accounting period will be the basis period. Thereafter, the 12-month accounting period will be the basis period.

Example 1:

An individual normally prepares his accounts ending on 31 December. He changes his accounting date to 30 September and prepares accounts as follows: 01.01.2001 to 30.09.2001, and subsequently to 30 September each year.

The basis period for the y/a 2001 *is* 01.01.2001 *to* 31.12.2001.

*The basis period for the y/*A 2002 *is* 01.10.2001 *to* 30.09.2002.

Example 2:

An individual normally prepares his accounts ending on 31 December. He changes his accounting date to 31 March and prepares accounts as follows: 01.01.2001 to 31.03.2002, and subsequently to 31 March each year.

The basis period for the y/a 2001 *is* 01.01.2001 *to* 31.12.2001.

The basis period for the y/a 2002 *is* 01.01.2002 *to* 31.12.2002.

The basis period for the y/a 2003 *is* 01.04.2002 *to* 31.03.2003.

3.6.2 Normal accounts not ending on 31 December and new accounts prepared for less than 12 months

A) New accounts ending in the following year

The new accounting period is the basis period for the year of assessment in the failure year [see paragraph 4.6].

Example:

An individual's accounts are normally prepared ending on 30 September. He changes his accounting date and the accounts are now closed on 31 March. Accounts are prepared as follows: 01.10.2000 to 30.09.2001, 01.10.2001 to 31.03.2002 (6 months), and to 31 March for subsequent years.

The basis period for the y/a 2002 (*the failure year*) *is* 01.10.2001 *to* 31.03.2002 (6 *months*).

The basis period for the y/a 2003 *is* 01.04.2002 *to* 31.03.2003.

B) New accounts and the last accounts ending in the same year

The period comprising the new accounting period together with the following accounting period is the basis period for the year of assessment in the failure year.

Example:

An individual's accounts are normally prepared ending on 30 June. He changes his accounting date and the accounts are now closed on 31 December. Accounts are prepared as follows: 01.07.2000 to 30.06.2001, 01.07.2001 to 31.12.2001 (6 months), 01.01.2002 to 31.12.2002, and to 31 December for subsequent years.

Since both the new accounting period 01.07.2001 *to* 31.12.2001 *and the last accounting period* 01.07.2000 *to* 30.06.2001 *end in the same basis year*:

The basis period for the y/a 2002 (*the failure year*) *is* 01.07.2001 *to* 31.12.2002 (18 *months*).

The basis period for the y/a 2003 *is* 01.01.2003 *to* 31.12.2003.

3.6.3 Normal accounts not ending on 31 December and new accounts prepared for more than 12 months

A) New accounts ending in the following year

The new accounting period is the basis period for the year of assessment in the failure year.

Example:

An individual's accounts are normally prepared ending on 31 July. He changes his accounting date and accounts are now closed on 31 October. Accounts are prepared as follows: 01.08.2001 to 31.10.2002 (15 months), and to 31 October for subsequent years.

The basis period for the y/a 2002 (*the failure year*) *is* 01.08.2001 *to* 31.10.2002 (15 *months*).

The basis period for the y/a 2003 *is* 01.11.2002 *to* 31.10.2003.

B) New accounts ending in the third year

If the new accounting period spans 3 basis years, it is apportioned into 2 periods, and these 2 periods will be taken to be the basis periods for the first 2 years of assessment commencing in the failure year.

Example:

An individual's accounts are normally prepared ending on 30 November. There is failure to close accounts to his normal accounting date and accounts are prepared for a period of more than 12 months from 01.12.2000 to 28.02.2002 (15 months), and to 28 February for subsequent years.

The accounting period 01.12.2000 *to* 28.02.2002 (15 *months*) *is apportioned into* 2 *periods, so that*:

The basis period for the y/a 2001 (*the failure year*) *is the period* 01.12.2000 *to* 31.07.2001 (8 *months*); *and*

The basis period for the y/a 2002 *is the period* 01.08.2001 *to* 28.02.2002 (7 *months*).

[In determining the basis periods for the situations in paragraphs 3.6.2 and 3.6.3 above, no accounting period or year of assessment should be left out and there should be no overlapping of basis periods. Any fraction of a month should be treated as falling into the first period.]

3.7 An individual joining a partnership

3.7.1 Joining a new partnership

If an individual joins a new partnership, the basis period for the individual in respect of the partnership source is determined as in the case of a new business [see paragraphs 3.5.1, 3.5.2 or 3.5.3].

Example:

An individual joins a new partnership which commences business on 18.02.2001. The first accounts are prepared to 30.09.2001 and accounts are subsequently prepared to 30 September each year.

The basis periods for the individual's partnership source are [*see paragraph* 3.5.3]:

Y/*a* 2001: 18.02.2001 *to* 31.12.2001

Y/*a* 2002: 01.10.2001 *to* 30.09.2002

3.7.2 Joining an existing partnership and the partnership's normal accounting date is maintained

If an individual joins an existing partnership and the partnership accounts continue to be made up to its normal accounting date, the first basis period for the individual in respect of his partnership source is from the date the individual joins the partnership to the date of closing of the partnership accounts. Thereafter, the basis period will be the partnership accounting period.

Example:

An individual joins an existing partnership on 01.02.2001. The accounts of the partnership are normally made up to 31 March. The accounts for the partnership continue to be made up to 31.03.2001.

The basis period for the y/a 2001 *for the individual's partnership source is* 01.02.2001 *to* 31.03.2001.

*The basis period for the y/*A 2002 *is* 01.04.2001 *to* 31.03.2002.

3.7.3 Joining an existing partnership and the partnership's normal accounting date is changed

If an individual joins an existing partnership and the partnership changes its normal accounting date, for the purpose of determining the basis period for the individual, the partnership is treated as if it were a new partnership and the basis period is determined as in the case of a new business [see paragraphs 3.5.1, 3.5.2 or 3.5.3].

Example 1:

An individual joins an existing partnership on 01.07.2001. The accounts of the partnership are normally made up to 31 December, but on admission of the new partner, the accounting date is changed to 30 June. The partnership accounts are made up as follows:

01.01.2000 to 31.12.2000 (old partnership)

01.01.2001 to 30.06.2001 (old partnership)

01.07.2001 to 30.06.2002 (new partnership)

01.07.2002 to 30.06.2003 (new partnership)

The basis periods for the partnership source are as follows:

Partner	Y/A	Basics period
The individual (new partner)	2001	None
	2002	01.07.2001 - 30.06.2002
	2003	01.07.2002 - 30.06.2003
Existing partners	2000	01.01.2000 - 31.12 2000
	2001	01.01.2000 - 31.12.2001*
	2002	01.07.2001 - 30.06.2002
	2003	01.07.2002 - 30.06.2003

[*Arising from change of accounting date (see paragraph 3.6.1]

Example 2:

An individual joins an existing partnership on 01.04.2001. The accounts of the partnership are normally made up to 30 June, but on admission of the new partner, the accounting date is changed to 31 March. The partnership accounts are made up as follows:

01.07.1999 to 30.06.2000 (old partnership)

01.07.2000 to 31.03.2001 (old partnership)

01.04.2001 to 31.03.2002 (new partnership)

01.04.2002 to 31.03.2003 (new partnership)

The basis periods for the partnership source are as follows:

Partner	Y/A	Basics period
The individual (new partner)	2001	None
	2002	01.04.2001 - 31.03.2002
	2003	01.04.2002 - 31.03.2003
Existing partners	2000	01.07.1999 - 30.06 2000
	2001	01.07.2000 - 31.03.2001*
	2002	01.04.2001 - 31.03.2002
	2003	01.04.2002 - 31.03.2003

[*Arising from change of accounting date (see paragraph 3.6.2.A)]

3.8 Treatment of adjusted income / adjusted loss in overlapping periods

Where the application of paragraph 3.5.3 or paragraph 3.6.1 results in an overlapping of two basis periods [see Examples 1 & 2 in paragraph 3.5.3 and Examples 1 & 2 in paragraph 3.6.1], the adjusted income or adjusted loss common to both basis periods is ignored in the second basis period.

Example:

The business of an individual commences on 01.07.2001 and accounts are prepared as follows: 01.07.2001 to 31.03.2002, 01.04.2002 to 31.03.2003, and subsequently to 31 March.

The adjusted income of the individual is as follows:

Accounting period	**Adjusted income**
01.07.2001 to 31.03.2002 [A]	RM15,000
01.04.2002 to 31.03.2003 [B]	RM24,000

Applying paragraph 3.5.3, the basis periods for the individual are:

Y/A	**Basis periods**
2001	01.07.2001 - 31.12.2001 (6 months)
2002	01.01.2002 - 31.12.2002 (12 months)*
2003	01.04.2002 - 31.03.2003 (12 months)*

[*Overlapping period: 01.04.2002 - 31.12.2002]

The adjusted income should be apportioned as follows:

Y/A & Basis period	**Apportionment**	**Adjusted income**
2001 [01.07 2001 - 31.12.2001]	01.07 - 31.12.2001: 6 / 9 x [A] (6 / 9 x RM15,000)	10,000
2002 [01.01.2002 - 31.12.2002]	01.01 - 31.03.2002: 3 / 9 x [A] (3 / 9 x RM15,000) 01.04 - 31.12.2002: 9 / 12 x [B] (9 / 12 x RM24,000)	5,000 18,000 23,000
2003	Adjusted income of overlapping [01.04.2002 - 31.03.2003] period (01.04.2002 - 31.12.2002) ignored in second basis period: (RM24,000 - RM18,000)	6,000

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 If changes of accounting date are made in two consecutive accounting periods and the determinations in paragraph 3.6 above cannot be applied because a year of assessment or an accounting period will be left out, the Director General will, upon application by the individual or person other than a company or a co-operative, give specific directions.

4.2 In the case of apportionment of accounting periods, any fraction of a month is to be treated as falling into the first period [see the Example in paragraph3.6.3.B].

4.3 "Person other than a company or a co-operative" includes a Hindu joint family, a trust, an estate under administration, a club and an association.

4.4 "Basis year for a year of assessment" means the calendar year coinciding with the year of assessment.

4.5 "Year of assessment" means calendar year.

4.6 "Failure year" means the year in which there is failure to close the accounts to the normal accounting date (where that normal accounting date is not 31 December).

(*Date of Issue*: 30 A*pril* 2001)

K Public Ruling No. 7/2001 Basis Period for Business & Non-Business Sources (Companies)

1.0 TAX LAW

This Ruling applies in respect of section 21A of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling No. 2/2000 dated 1 March 2000 where it relates to companies.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers the determination of the basis period for a company:

2.1 commencing its operations;

2.2 changing the accounting date of its existing operations; and

2.3 joining a partnership.

3.0 HOW THE TAX LAW APPLIES

3.1 A company is chargeable to income tax in respect of all its sources of income for a year of assessment [hereinafter also referred to as Y/A].

3.2 The income from a source is determined in relation to the basis period for a year of assessment.

3.3 General

Except where paragraph 3.4 below applies, the basis year for a year of assessment [see paragraphs 4.3 and 4.4] is the basis period for that year of assessment in relation to all sources of income of a company.

> ***Example:***
>
> A company which has a business source and a dividend source prepares its accounts from 01.01.2001 to 31.12.2001.
>
> *The basis year ending* 31.12.2001 *is the basis period for the* Y/A 2001 *for all of the company's sources..*

3.4 Accounts made up for 12 months not ending on 31 December

Where the accounts of a company are made up for 12 months ending on a date other than 31 December in a basis year, that accounting period is the basis period for the year of assessment in which the accounts are closed for all its sources of income.

Example:

A company makes up its accounts from 01.07.2001 to 30.06.2002. Its sources of income are business, rental and interest.

The period from 01.07.2001 *to* 30.06.2002 *is the basis period for the* Y/A 2002 *for all its sources of income.*

3.5 Commencement of operations

3.5.1 Accounts prepared for less than or more than 12 months ending on 31 December

Where a company commences operations [see paragraph 4.5] and its first accounts are prepared for less than or more than 12 months ending on 31 December, the basis period for the year of assessment is the period ending on 31 December.

Example 1:

A company commences operations on 11.05.2001 and the first accounts are closed on 31.12.2001.

The accounting period 11.05.2001 *to* 31.12.2001 *is the basis period for the y/a* 2001.

Example 2:

A company commences operations on 01.09.2001 and the first accounts are closed on 31.12.2002.

The period from 01.09.2001 *to* 31.12.2001 *is the basis period for* Y/A 2001.

The period from 01.01.2002 *to* 31.12.2002 *is the basis period for* Y/A 2002.

3.5.2 Accounts prepared for 12 months

Where a company commences operations and its first accounts are made up for 12 months, that accounting period is the basis period for the year of assessment in which the accounts are closed.

Example:

A company commences operations on 01.07.2001 and its first accounts are prepared for the period 01.07.2001 to 30.06.2002.

The accounting period 01.07.2001 *to* 30.06.2002 *is the basis period for the y/a* 2002. *There is no basis period for the y/a* 2001.

3.5.3 Accounts prepared for less than or more than 12 months and not ending on 31 December

Where a company commences operations and its first accounts are made up for less than or more than 12 months not ending on 31 December, the basis period for the year of assessment is the year ending on 31 December each year until accounts are made up for a 12-month accounting period.

Example 1:

A company commences operations on 26.06.2001 and accounts are made up to 30.04.2002 (>10 months), and subsequently to 30.04.2003.

The basis period for the Y/A 2001 *is* 26.06.2001 *to* 31.12.2001.

The basis period for the Y/A 2002 *is* 01.01.2002 *to* 31.12.2002.

The basis period for the Y/A 2003 *is* 01.05.2002 *to* 30.04.2003.

Example 2:

A company commences operations on 26.06.2001 and accounts are made up to 30.09.2002 (>15 months), and subsequently to 30.09.2003.

The basis period for the Y/A 2001 *is* 26.06.2001 *to* 31.12.2001.

The basis period for the Y/A 2002 *is* 01.01.2002 *to* 31.12.2002.

The basis period for the Y/A 2003 *is* 01.10.2002 *to* 30.09.2003.

3.5.4 Company with existing operations commencing new operations

Where a company which is already carrying on one or more operations commences a new operation, the basis period for the existing operations is also the basis period for the new operation.

Example:

A company has been in operation for several years and makes up its accounts ending on 30 September each year. The company starts a new operation on 01.06.2001.

The basis period for its existing operations is the accounting year ending on 30 *September*

The basis period for the new operation for the Y/A 2001 *is therefore* 01.06.2001 *to* 30.09.2001.

3.5.5 Same accounting date as related companies in a group

Where a company commences an operation and makes up accounts to the same day as that of the other related companies in a group, the first basis period for the company is from the date it commences the operation to the date the accounts are closed.

Example:

A company, being a member of a group of companies, commences operations on 15.01.2001 and closes its first accounts on 30.09.2001 to coincide with the financial year ending for the group of companies, and subsequently closes its accounts on 30 September each year.

The basis period for the Y/A 2001 *is* 15.01.2001 *to* 30.09.2001.

The basis period for the Y/A 2002 *is* 01.10.2001 *to* 30.09.2002.

3.5.6 Requirement under law of place of incorporation

Where a company commences operations and the law of the place where it is incorporated requires it to close its accounts on a particular date, the period from the date of commencement to that accounting date is the basis period for the first year of assessment.

Example:

A company commences operations on 21.10.2001 and makes up its first accounts to 30.04.2002 as required by the law of the place of its incorporation.

The basis period for the Y/A 2002 *is* 21.10.2001 *to* 30.04.2002. *There is no basis period for the* Y/A 2001.

3.6 Change of accounting date

3.6.1 Normal accounts ending on 31 December

Where accounts are normally closed on 31 December and there is a change of accounting date, the basis period in the year of change is the year ending 31 December. The basis period for the subsequent year of assessment will also be the year ending 31 December unless there is a 12 month accounting period ending in that year, in which case that accounting period will be the basis period. Thereafter, the 12-month accounting period will be the basis period.

Example 1:

A company which normally closes its accounts on 31 December changes its accounting date to 30 September and prepares accounts as follows: 01.01.2001 to 30.09.2001, and subsequently to 30 September each year.

The basis period for the y/a 2001 *is* 01.01.2001 *to* 31.12.2001.

The basis period for the y/a 2002 *is* 01.10.2001 *to* 30.09.2002.

Example 2:

A company which normally closes its accounts on 31 December changes its accounting date to 31 March and prepares accounts as follows: 01.01.2001 to 31.03.2002, and subsequently to 31 March each year.

The basis period for the y/a 2001 *is* 01.01.2001 *to* 31.12.2001.

The basis period for the y/a 2002 *is* 01.01.2002 *to* 31.12.2002.

The basis period for the y/a 2003 *is* 01.04.2002 *to* 31.03.2003.

3.6.2 Normal accounts not ending on 31 December and new accounts prepared for less than 12 months

A) New accounts ending in the following year

The new accounting period is the basis period for the year of assessment in the failure year [see paragraph 4.6].

Example:

A company's accounts are normally prepared ending on 30 September. The company changes its accounting date and the accounts are now closed on 31 March. Accounts are prepared as follows: 01.10.2000 to 30.09.2001, 01.10.2001 to 31.03.2002 (6 months), and to 31 March for subsequent years.

The basis period for the y/a 2002 (*the failure year*) *is* 01.10.2001 *to* 31.03.2002 (6 *months*).

The basis period for the y/a 2003 *is* 01.04.2002 *to* 31.03.2003.

B) New accounts and the last accounts ending in the same year

The period comprising the new accounting period together with the following accounting period is the basis period for the year of assessment in the failure year.

Example:

A company's accounts are normally prepared ending on 30 June. The company changes its accounting date and the accounts are now closed on 31 December. Accounts are prepared as follows: 01.07.2000 to 30.06.2001, 01.07.2001 to 31.12.2001 (6 months), 01.01.2002 to 31.12.2002, and to 31 December for subsequent years.

Since both the new accounting period 01.07.2001 *to* 31.12.2001 *and the last accounting period* 01.07.2000 *to* 30.06.2001 *end in the same basis year*:

The basis period for the y/a 2002 (*the failure year*) *is* 01.07.2001 *to* 31.12.2002 (18 *months*).

The basis period for the y/a 2003 *is* 01.01.2003 *to* 31.12.2003.

3.6.3 Normal accounts not ending on 31 December and new accounts prepared for more than 12 months

A) New accounts ending in the following year

The new accounting period is the basis period for the year of assessment in the failure year.

Example:

A company's accounts are normally prepared ending on 31 July. The company changes its accounting date and accounts are now closed on 31 October. Accounts are prepared as follows: 01.08.2001 to 31.10.2002 (15 months), and to 31 October for subsequent years.

The basis period for the y/a 2002 (*the failure year*) *is* 01.08.2001 *to* 31.10.2002 (15 *months*).

The basis period for the y/a 2003 *is* 01.11.2002 *to* 31.10.2003.

B) New accounts ending in the third year

If the new accounting period spans 3 basis years, it is apportioned into 2 periods, and these 2 periods will be taken to be the basis periods for the first 2 years of assessment commencing in the failure year.

Example:

A company's accounts are normally prepared ending on 30 November. There is failure to close accounts to its normal accounting date and accounts are prepared for a period of more than 12 months from 01.12.2000 to 28.02.2002 (15 months), and to 28 February for subsequent years.

The accounting period 01.12.2000 *to* 28.02.2002 (15 *months*) *is apportioned into* 2 *periods, so that*:

The basis period for the y/a 2001 (*the failure year*) *is the period* 01.12.2000 *to* 31.07.2001 (8 *months*).

The basis period for the y/a 2002 *is the period* 01.08.2001 *to* 28.02.2002 (7 *months*).

[In determining the basis periods for the situations in paragraphs 3.6.2 and 3.6.3 above, no accounting period or year of assessment should be left out and there should be no overlapping of basis periods. Any fraction of a month should be treated as falling into the first period.]

3.7 Company joining a partnership

If a company joins a partnership, the partnership will be regarded as a new operation of the company. The basis period for its existing operations is, therefore, also the basis period for the partnership source [see paragraph 3.5.4].

Example 1:

A company (whose accounts are closed on 30 June) joins a new partnership which commences business on 18.02.2001. The first accounts of the partner- ship are prepared to 30.09.2001 and accounts are subsequently prepared to 30 September each year.

Notwithstanding the accounting period of the partnership, the basis periods for the company in respect of its partnership source are:

Y/a 2001: 18.02.2001 *to* 30.06.2001

Y/a 2002: 01.07.2001 *to* 30.06.2002

Example 2:

A company (whose accounts are closed on 31 December) joins an existing partnership on 01.02.2001. The accounts of the partnership are normally made up to 31 March. The accounts for the partnership continue to be made up to 31.03.2001, and to 31 March for subsequent years.

Notwithstanding the accounting period of the partnership, the basis period for the company in respect of its partnership source for the y/a 2001 *is* 01.02.2001 *to* 31.12.2001.

Example 3:

X Sdn. Bhd. (whose accounts are closed on 30 June) and Y Sdn. Bhd. (whose accounts are closed on 30 September) start a joint venture. The accounts of the joint venture are made up as follows: 01.04.2001 to 31.12.2001, and to 31 December for subsequent years.

Notwithstanding the accounting period of the partnership, the basis periods in respect of the partnership source are as follows:

Y/A	X Sdn. Bhd.	Y. Sdn. Bhd.
2001	01.04.2001 - 30.06.2001	01.04.2001 - 30.09.2001
2002	01.07.2001 - 30.06.2002	01.10.2001 - 30.09.2002
2003	01.07.2002 - 30.09.2003	01.10.2002 - 30.06.2003

[Note: In all the situations in Examples 1, 2 and 3 above, the adjusted income from the partnership source for the relevant accounting periods should be apportioned accordingly.]

3.8 Treatment of adjusted income / adjusted loss in overlapping periods

Where the application of paragraph 3.5.3 or paragraph 3.6.1 results in an overlapping of two basis periods [see Examples 1 & 2 in paragraph 3.5.3 and Examples 1 & 2 in paragraph 3.6.1], the adjusted income or adjusted loss common to both basis periods is ignored in the second basis period.

Example:

A company commences a business on 01.07.2001 and accounts are prepared as follows: 01.07.2001 to 31.03.2002, 01.04.2002 to 31.03.2003, and subsequently to 31 March.

The adjusted income of the company's business is as follows:

Accounting period	**Adjusted income**
01.07.2001 to 31.03.2002 [A]	RM15,000
01.04.2002 to 31.03.2003 [B]	RM24,000

Applying paragraph 3.5.3, the basis periods for the company are:

Y/A	**Basis periods**
2001	01.07.2001 - 31.12.2001 (6 months)
2002	01.01.2002 - 31.12.2002 (12 months)*
2003	01.04.2002 - 31.03.2003 (12 months)*

[*Overlapping period: 01.04.2002 - 31.12.2002]

The adjusted income should be apportioned as follows:

Y/A & Basis period	Apportionment	Adjusted income
2001 [01.07 2001 - 31.12.2001]	01.07 - 31.12.2001: 6 / 9 x [A] (6 / 9 x RM15,000)	10,000
2002 [01.01.2002 - 31.12.2002]	01.01 - 31.03.2002: 3 / 9 x [A] (3 / 9 x RM15,000) 01.04 - 31.12.2002: 9 / 12 x [B] (9 / 12 x RM24,000)	5,000 18,000 23,000
2003	Adjusted income of overlapping [01.04.2002 - 31.03.2003] period (01.04.2002 - 31.12.2002) ignored in second basis period: (RM24,000 - RM18,000)	6,000

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 If changes of accounting date are made in two consecutive accounting periods and the determinations in paragraph 3.6 above cannot be applied because a year of assessment or an accounting period will be left out, the Director General will, upon application by the company, give specific directions.

4.2 In the case of apportionment of accounting periods, any fraction of a month is to be treated as falling into the first period [see the Example in paragraph 3.6.3.B].

4.3 "Basis year for a year of assessment" means the calendar year coinciding with the year of assessment.

4.4 "Year of assessment" means calendar year.

4.5 "Operations" include an activity which consists of:

4.5.1 the carrying on of a business;

4.5.2 the making of investments;

4.5.3 both the carrying on of a business and the making of investments; or

4.5.4 the making of investments prior to the commencement of a business or after the cessation of a business.

4.6 "Failure year" means the year in which there is failure to close the accounts to the normal accounting date (where that normal accounting date is not 31 December).

(*Date of Issue*: 30 *April* 2001)