Malaysiaku Gemilang

55 TAHUN PERBENDAHARAAN 1952 - 2007
Menerajui Kemakmuran Negara

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CR(8.09)248/40/7-299 (SJ.1)(SK.7)(27)

29 Januari 2008

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Tuan,

**Layanan Cukai Pendapatan Bagi Transaksi Pinjam-Meminjam Sekuriti (*Securities Borrowing and Lending* (SBL))**

Dengan hormatnya saya diarah merujuk kepada perkara tersebut di atas.

2. Bersama-sama ini disertakan garis panduan mengenai layanan cukai pendapatan bagi transaksi pinjam-meminjam sekuriti yang telah diluluskan oleh YB Menteri Kewangan. Sukacita sekiranya pihak tuan dapat mengambil tindakan sewajarnya untuk memaklumkannya kepada pihak-pihak yang terlibat.

Sekian, terima kasih.

**"BERKHIDMAT UNTUK NEGARA"**

Saya yang menurut perintah,

**(Yong Bun Fou)**
Bahagian Analisa Cukai
b.p. Ketua Setiausaha Perbendaharaan

s.k

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## TAX GUIDELINES ON SECURITIES BORROWING & LENDING (SBL)

### Interpretation of the Exemption Orders

1. **Income Tax (Exemption) (No. 30) Order 1995 – Revised 2008**

   **The above Order exempts any income (other than dividends, manufactured payments, lending fees and interest earned on collateral) arising from loan of securities listed under Bursa Malaysia Securities Bhd ("Bursa Securities") and, the return of the same or equivalent securities and, the corresponding exchange of collateral under a Securities Borrowing and Lending ("SBL") transaction under a SBL Agreement.**

   a. ***Transfer of securities from the Lender to the Borrower and subsequent return of securities, and transfer of securities from Borrower to the Lender as collateral for securities borrowed and subsequent return of securities.***

   Any gain that may arise from each of the transfer of securities between the Lender and the Borrower are exempted from income tax. It accords the treatment as if the transfers of securities had not been made, i.e. the transferor held the securities at all times. The rationale for the exemption is that although the legal and beneficial ownership have been transferred, the economic ownership of the securities, i.e., the entitlement to dividends, rights issues and bonus issues, remains with the transferor. Tax neutrality is achieved by the exemption being granted.

   b. ***Manufactured payments***

   A manufactured payment is a payment made during the borrowing period by the Borrower to the Lender in place of any distribution of dividend or interest in respect of the borrowed securities (including debt securities).

   This is in line with the principle of Lender being considered as the economic owner of the loaned securities under a SBL transaction. Where a distribution is paid on the underlying securities the Borrower will have to compensate the Lender based on the underlying distribution in the form of dividend or interest which would have been received by the Lender had the Lender held on to the borrowed securities (including debt securities) during the borrowing period.

*Tax treatment in cases where Borrower receives an actual distribution for borrowed securities*

i. Where the Borrower receives a distribution on the underlying securities in respect of which the Borrower is required to pass on to the Lender, the Lender (or the ultimate Lender in a chain) will be regarded as the recipient of the distribution passed on. In other words, the receipt and subsequent passing on of the distribution by the Borrower are ignored for income tax purposes.

ii. In line with the above treatment, the tax credit in respect of franked dividend paid by issuer of securities listed under Bursa Securities will be treated as belonging to the Lender (or the ultimate Lender in a chain) and not the Borrower. However under the single tier system dividend distributed to shareholders will be exempted from tax whereby tax credits on dividend income would no longer be available.

iii. Appropriate penalties will be imposed on those Borrowers who have claimed the tax credit from franked dividend and / or have onward declared distribution of dividend to their own shareholders.

*Tax treatment in cases where Borrower does not receive the actual distribution*

iv. In most situations, the Borrower will not receive the actual distribution as they would not continue to hold the borrowed securities, but would utilise the borrowed securities for trade settlement. As the Borrower no longer holds the borrowed securities, the Borrower would manufacture the payment of an amount equivalent to the gross dividend or interest (based on the distribution of dividend or interest) in order to transfer the benefits of dividends or interest to the Lender.

v. In this case, the manufactured payment made by the Borrower are deductible for tax purposes if the Borrower's business is that of a share trading or if the Borrower is actively involved in SBL activities. On the other hand, the manufactured payment would be taxed in the hands of the Lender.

vi. Conceptually, a manufactured payment is a distinct item of income and should not have the character of the underlying income. However, for the SBL arrangement in Malaysia, the Lender will be taxed on the manufactured payment at the same rate as would be applicable to an underlying distribution. For example, a manufactured payment would be taxed at 27% if the Malaysian-based Lender receiving the manufactured payment is a company or, is based on the individual income tax rates if the Lender is an individual. However, no tax credit would be granted on such a manufactured payment. In the event the underlying dividend or interest is exempt from tax, the manufactured payment received by Lender will also be exempt.

vii. Where a Borrower makes a manufactured payment to a non-resident Lender, the payment is subject to withholding tax in accordance with the provisions of the Income Tax Act, 1967 ("ITA").

viii. Manufactured payments received under a SBL arrangement will be accorded the following tax treatment depending on the residence status of the Lender:

a) Resident Lender– Income will be taxed as business income under Section 4 (a), ie., gains or profits from a business, for whatever period of time carried on; or taxed as non-business income under Section 4 (f), ie., gains or profits not falling under any of the foregoing paragraphs.

b) Non-resident Lender – Income will be regarded as income under Section 4A(iii), ie. rent or other payments made under any agreement or arrangement for use of any movable property, and subject to withholding tax of 10% under Section 109B(1)(c) of ITA.

### *c. Collateral securities*

The provision of collateral is an integral part of the SBL arrangement. The SBL arrangement may involve the transfer of securities from Borrower to the Lender as collateral, with the Borrower retaining the economic ownership of the securities, and the returning of these securities to the Borrower at the end of the borrowing period. As such, the transfers of collateral (i.e. both from and back to Borrower) and the passing on of any distributions in respect of the collateral will be treated for tax purposes in an identical manner as those in relation to the original SBL transaction.

Interest earned on collateral is not exempted from income tax (including withholding tax) when received by the Borrower under the Order. However, interest or profits paid by Bursa Malaysia Securities Clearing Sdn Bhd on cash placed as collateral will be exempt from tax (provided the interest is paid or credited by any person carrying on the business of banking or finance in Malaysia and licensed under the Banking and Financial Institutions Act 1989 or Islamic Banking Act 1983 and other financial institutions approved by the Minister of Finance) when received by non-resident Borrowers (whether individuals or non-individuals) and individual Borrowers who are residents.

### *d. Interest on debt securities*

Interest on debt securities is considered akin to dividends paid on shares. As such, interest on debt securities will have the same tax treatment in the same manners as dividends paid, ie., not exempt.

### *e. Lending fees*

i. Lending fees are not exempt from income tax when received by the Lender.
ii. Lender fees made by the Borrower are deductible for tax purposes if the Borrower's business is that of share trading or if the Borrower is actively involved in SBL activities.

iii. Where a borrower pays lending fees to a non-resident Lender, the payment is subject to withholding tax in accordance with the provisions of the ITA

iv. Lending received under a SBL arrangement will be accorded the following tax treatment depending on the residence status of the Lender:

   a) Resident Lender– Income will be taxed as business income under Section 4 (a), ie., gains or profits from a business, for whatever period of time carried on; or taxed as non-business income under Section 4 (f), ie., gains or profits not falling under any of the foregoing paragraphs.

   b) Non-resident Lender – Income will be regarded as income Section 4A(iii), ie. rent or other payments made under any agreement or arrangement for use of any movable property, and subject to withholding tax of 10% under Section 109B(1)(c) of ITA.

## 2. Stamp Duty (Exemption) (No. 28) Order 1995

The above Order provides for exemption of stamp duty on the instrument of transfer executed in favour of the Borrower and Lender of securities listed on the KLSE and on an instrument of transfer of collateral, in respect of a SBL transaction under a SBL agreement. All securities previously listed under the KLSE are now applicable to securities listed under Bursa Securities.

All securities borrowed and used as collateral are listed securities under Bursa Securities which are required to be transacted under the Central Depository System (CDS). Hence, exemption from stamp duty is also available under the Stamp Duty (Exemption) (No. 12) Order 1996 which provides that all instruments of transfer of shares and stocks in public companies listed on the KLSE executed in favour of Malaysian Central Depository Sdn Bhd (MCD) or transfers of the beneficial interest of such stocks and shares held for the account of the transferor by MCD are exempt from stamp duty.