

## **Classified List of Rulings – Supplementary List 3**

### **Income Tax**

#### **(1). Section 16(2) (b)**

##### **Clarification on exemption on primary process of agricultural produce – Coconut fiber**

The process referred to in subsection (2)(b) in the definition of an **agricultural undertaking** is a primary process in preparation of such produce for the market. If that is converted in to another product, such a conversion cannot be considered as a process in the **preparation of such produce** for the market.

Coconut fiber is not a product made through a primary process as this final product is not the same agricultural produce.

**(Ref Rul / IT/ 2008/10)**

#### **(2). Section 20, section 21 and section 21A - Extension of the last date for the investment**

The last date for the completion of the investment referred to in the above sections has been extended from 31/3/2009 to 31/3/2010 (subject to the formal amendment being made in the Act).

**(Ref 2/2010/2)**

#### **(3). Section 26(1)(r)**

##### **Deductibility of management fees of Plantation Companies**

If the agreement is entered into by the management company with the plantation company in accordance with provisions referred to in clause 5 of the agreement signed by the Secretary to the Ministry of Plantation Industry which provides the following conditions, it may be granted as reasonable and commercially justifiable amount under section 26(1)(r)(2) of the Inland Revenue Act.

The conditions are:

- Fee is based on the turnover, quantity of the production and the profit earned.
- The expertise and professional skills are required.
- The actual amount paid or claimed as management fee or 15% of the earnings whichever is lower, can be taken as the management fee deductible.

(It should also be noted that the management fee has been declared by the company for income tax and VAT purposes and Taxes are paid prior to determining the deductible management fee)

**(Ref ACT 12/1)**

**(4). Section 44**

**Liability on the sale of shares**

The application of concessionary rate of 15% on the profit (including gains) from the sale of any share, in relation to which the share transaction levy is not payable (and sold within 2 years) referred to in section 44 of the Inland Revenue Act, has no application with effect from April 1, 2007 (as per the amendment to the Inland Revenue Act made by the Amendment Act No 10 of 2007).

Accordingly, the profits or income from the sale on or after April 1, 2007, of private company shares, may not be liable to income tax unless such profits could be treated as profits or income from any source referred to in section 3 of the Inland Revenue Act.

**(Ref Rul / IT/ 2008/07)**

**(5). Section 61(1) (b) (iii)**

**Income tax on dividends not distributed**

**(a) Clarification of capital assets for the purposes of calculating distributable profits**

- (i) Plant and machinery can be considered as capital assets, only if such assets form part of the fixed assets of the company. The value of items shipped (goods in transit) does not form part of the fixed assets until such time the assets are physically acquired.

- (ii) A building is a capital asset for this purpose, but only after its completion. The work in progress is not treated as a capital asset for that purposes.
- (iii) The assets given on lease by a finance leasing company can be considered as capital assets of the company, if such assets form part of the fixed assets of the company.
- (iv) A land acquired for business purposes is a capital asset for the purpose of the above section.
- (v) Whether an intangible asset falls within the purposes of the above section depends on its nature and relevant facts.

**(Ref ACT 12/1)**

**(b), Application of Section 61(1)(b)(ii) in relation to Companies entered into agreements under section 17 of the BOI Law (BOI company).**

- (i) Tax refers to in section 61(1)(b)(ii) of the Inland Revenue Act is an income tax imposed on a company. Accordingly, if the BOI Company is exempt from income tax on any profits (or rather, when the provisions of Inland Revenue Act relating to impositions of income tax are not applicable), then the 15% tax specified in section 61(1)(b)(ii) is not applicable in relation to such profits of the company.

**(Ref ACT 2/2006/9)**

**(6). Section 78**

**Taxation of Co- ownership**

The ruling already given on this matter which is included in the List No 2, under the reference of Rul/IT/2006/16-28/2/2007 has been slightly modified. Such amended position is set out below.

The ruling already given states that the co-ownerships are taxed on the same footing as that of partnerships. This position remains unchanged, but as the concept of partnership applies in relation to a business, the said application is made subject to that limitation.

It means that only when there is any business presence, the partnership provisions are applied (covering any other income as well) in relation to co-owned properties.

Accordingly, if the profit of the co-ownership is only a rent income, such income may not be chargeable with 10% partnership tax unless any part of which could be treated as business income.

**(Ref Rul / IT/ 2008/01)**

**(7). Section 78 and Sections 113**

**Set off of withholding tax (WHT) paid against Partnership Tax payable**

WHT paid on Specified Fees (at 5%) is an advance against income tax. The 10% partnership tax is also an income tax and as such, the WHT can be permitted to be set off against Partnership tax payable as well. However, the quantum of 10% partnership tax remained same even though settled or paid through WHT or otherwise. Hence, the partners are not entitled to refunds from such tax distributed among the partners up to the respective shares of partnership tax.

**(Ref ACT 12/1)**

**(8).** As per the policy decision taken (subject to the formal amendment to the Act), the Export Development Rebate paid under such Scheme implemented through Export Development Board or the Department of Commerce is exempt from income tax.

**(Ref ACT 2/2010/2)**

## **Value Added Tax (VAT)**

**(1)** The withholding tax charged by the Western Province Provincial Council, under the provisions of the Western Province Provincial Financial (Amendment) Statue No 02 of 2010, in relation to certain goods sold for resale, will not form part of the value of supply of such goods for VAT purposes.

**(Ref ACT 17/9)**

**(2) Management fee subscriptions etc collected by Management Corporations of condominium properties**

The provision of facilities to its members or others for consideration and payments of subscriptions in a case of a club, association or organization is defined as a taxable activity. Accordingly, management corporations of condominium properties carries on a taxable activity and liable to collect and pay VAT.

**(Ref ACT 17/9)**

**(3) Export Development Rebate granted under Export Development Rebate Scheme implemented through the Export Development Board or the Department of Commerce is exempt from VAT.**

**(Ref ACT 2/2010/2)**

**(4).The following policy decisions taken are implemented with effect from the dates specified subject to the formal amendments to the Act.**

(i). The following new items have been added to the list of exemption under the definition of High Tech Medical Equipment referred to in item (xvii) of paragraph (a) of PART II of the First Schedule of the VAT Act. This exemption is applicable with effect from 8/7/ 2010.

HS Code	Description
9018.13	Magnetic resonance imaging apparatus
9022.12	Computed tomography apparatus

(ii). The exemption of VAT on import or supply of vegetable seeds has been extended by including fruit seeds under HS Code 1209.99.10. This exemption is applicable with effect from 16/8/2010.

(iii). The exemption of VAT on import and supply of light weight electrical and electronic items specified under the following HS code Nos is applicable with effect from 1/7/2010.

HS Heading	HS Code
84.70	8470.10
84.79	8479.89.20
85.04	8504.40, 8504.40.30, 8504.40.90
85.07	8507.30, 8507.40, 8507.80

85.09	8509.40
85.10	8510.10, 20, 30
85.13	8513.10.10, 10.90
85.16	8516.31, 40.10, 40.20, 40.30, 40.90,
85.17	8517.12.10, 12.20
85.18	8518.30
85.19	8519.81.20, 81.90,
85.27	8527.12, 12.10, 12.90, 13, 13.10, 13.90, 21, 29
85.31	8531.80.10
85.43	8543.70.90
90.06	9006.10, 30, 40, 51, 52, 52.10, 52.90, 53, 53.10, 53.20 53.90
91.01	9101.11,19.10, 19.90
91.02	9102.11, 12,19, 21, 29
95.04	9504.10.10 , 9504.10.90

## **Economic Service Charge (ESC)**

### **(i) Clubs or associations referred to in the section 101 of the Inland Revenue Act**

A Ruling given with regard to determining as to whether a club or association carries on a business has been amended.

The interpretation of the word “business” of the ECS Act has the same meaning assigned to it in the Inland Revenue Act. However, with regard to the meaning of **business** in relation to a club or association, a specific meaning is given in section 101 of the Inland Revenue Act. Hence, it should be applicable to ESC as well.

Accordingly, in the case of a club or association, the deeming provisions referred to in the section 101 of the Inland Revenue Act are relevant in deciding whether a business is carried on by for the application of ESC.

**(Ref ACT 2/2004/6)**

### **(ii) Government assisted private schools**

The educational services provided by a Government approved private schools (administrated under a General Manager appointed by the Secretary to the Ministry of Education), do not fall within “the business of providing any services” for the purposes of NBT Act or ESC Act, if the following conditions are fulfilled:

- i. Such schools are not permitted to charge any fee for educational services other than receiving donations to meet the running expenses of the respective schools;
- ii. The salaries of registered approved teachers of those schools are paid by the Government;

In such a case, the receipts of such schools by way of donations are not liable to ESC or NBT, if the running expenses of respective schools ( if any), including salaries of other teachers ( not registered ) , coaches etc and are met out of donations received .

However, the turnover from other activities such as swimming pool charges, halls (hiring) or any other activity is subject to ECS and NBT subject to fulfillment of the other conditions.

**(Ref ACT 12/1)**

- (iii) As per the policy decision taken (subject to the formal amendment to the Act), the Export Development Rebate paid under such Scheme implemented through Export Development Board or the Department of Commerce is exempt from ESC.

**(Ref ACT 2/2010/2)**