

**JOINT MEMORANDUM ON ISSUES ARISING FROM
2017 BUDGET AND FINANCE BILL 2016**

Clarifications to certain pertinent key 2017 Budget issues extracted from the **Minutes of the Dialogue on the Joint Memorandum** held on 24 Jan 2017 are provided below for your kind attention and reference.

Issues	IRBM's comments
<p>Wider scope of the term “Public Entertainer” <i>(wef 17 Jan 2017)</i></p>	<ul style="list-style-type: none"> • The meaning of “public entertainer” has been redefined to include: <ul style="list-style-type: none"> (a) a compere, model, circus performer, lecturer, speaker, sportsperson, an artiste or individual exercising any profession, vocation or employment of a similar nature; or (b) an individual who uses his intellectual, artistic, musical, personal or physical skill or character in, carrying out any activity in connection with any purpose through live, print, electronic, satellite, cable, fiber optic or other medium, for film or tape, or for television or radio broadcast, as the case may be. • In current Double Tax Agreements (DTA) signed by Malaysia, under the article entitled “ARTISTES AND SPORTSMEN” it uses the phrase “an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman”. • No definition <i>per se</i> was provided. As such, IRBM had the right to withhold the income of a lecturer or speakers under S109A.
<p>Wider Scope of the term “Royalty” <i>(wef 17 Jan 2017)</i></p>	<ul style="list-style-type: none"> • The new definition of “Royalty” includes software. • IRBM advised that the definition of royalty in DTA prevails if the definition differs from that in the Income Tax Act, 1967. • With the new definition, payments for the purchases of software products by software distributors will be subject to withholding tax.
<p>Lifestyle Reliefs (RM1,000) <i>(wef YA2017)</i></p>	<ul style="list-style-type: none"> • Lifestyle Reliefs shall exclude: <ul style="list-style-type: none"> (a) subscription of e-newspapers (b) club membership with gym facilities (c) Subscription of mobile data plan (d) registration fees
<p>Tax Relief (RM1,000) for the Purchase of Breastfeeding Equipment <i>(wef YA2017)</i></p>	<ul style="list-style-type: none"> • This relief shall only be given to working mothers with taxable income

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Tax Relief (RM1,000) for Fees Paid to Child Care Centres and Kindergartens <i>(wef YA2017)</i>	<ul style="list-style-type: none"> This relief is given to a person regardless of how many of that person's children aged ≤ 6 years are sent to child care centres or kindergartens As such, if there is more than one child, the relief given is still restricted to RM1,000
Reduction in Corporate Income Tax based on Increase in Chargeable Income <i>(YA 2017 & YA 2018)</i>	<ul style="list-style-type: none"> A simplified formula for determination of Exempt Income (EI) is provided: $\text{EI} = \frac{\text{Incremental Chargeable Business Income}}{\text{Normal Tax Rate}} \times \text{Reduction in Tax Rate}$
Income from services deemed derived from Malaysia (S15A) and Withholding Tax on Special Classes of Income <i>(wef 17 Jan 2017)</i>	<ul style="list-style-type: none"> The scope of derivation of Special Classes of Income as gross income as derived from Malaysia has been extended to include services performed in both Malaysia and outside Malaysia. Further clarifications on the following situations are also provided: <ol style="list-style-type: none"> <u>Where there is no DTA</u> The normal withholding tax rate will be applicable <u>Where there is no Article on "Technical Fee" in the DTA</u> Reference should then be made to Articles on "Royalty" or "Other Income" where applicable <u>Where there is an Article on "Technical Fee" in the DTA</u> <ul style="list-style-type: none"> Generally, there is no conflict between 'source rule' in the "Technical Fee" section and the amendment to S15A Technical Fee is said to be derived from a country if the payer is a resident of that country <u>DTAs with Singapore, Spain and Australia</u> Where the relevant DTA provides that technical fees would only be subject to tax if the services are rendered in Malaysia, withholding tax should not be applicable if the services are <u>not</u> rendered in Malaysia The following issues will be addressed in a Practice Note to be issued in due course: <ul style="list-style-type: none"> <u>Contracts existing on 21 Oct 16 (2017 Budget Day)</u> Whether withholding tax will be borne by the taxpayer <u>Derivation of Special Classes of Income as gross income as derived from Malaysia</u> Whether inclusion of services performed outside Malaysia will be implemented retrospectively