Income Tax Act 1967 – Regulations

Regulations
Income Tax Leasing Regulations 1986
Income Tax (Construction Contracts) Regulations 2007
Income Tax (Property Development) Regulations 2007
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INCOME TAX LEASING REGULATIONS 1986

PU (A) 131

[8 April 1986]

IN exercise of the powers conferred by section 36(1) of the Income Tax Act 1967, the Director General makes the following regulations:

REGULATION 1 CITATION AND COMMENCEMENT

1 These Regulations may be cited as the Income Tax Leasing Regulations 1986 and shall have effect for the year of assessment 1986 and subsequent years of assessment.

REGULATION 2 SEPARATE BUSINESS INCOME

2 In ascertaining the gross income of a person from his business which consists of leasing transactions and other activities, the gross income from the lease transactions shall be deemed to be a separate and distinct business source from other activities of that person:

Provided that this regulation shall not apply to a bank licensed under the Banking Act 1973 or the Islamic Banking Act 1983 or a finance company licensed under the Finance Companies Act 1969, for the years of assessment up to and including the year of assessment 1990.

REGULATION 3 GROSS INCOME OF A LESSOR

3 The total sum of rentals of a lease term receivable in respect of a lease shall be deemed to accrue evenly throughout the period of such lease term and the gross income of the lessor in respect of that lease for the basis period for a year of assessment shall be a portion of the total sum receivable for the lease term, being a portion which bears the same proportion to that total sum receivable as the number of days in the basis period for that year [sic] assessment that falls within the lease term bears to the total number of days of the lease term:

Provided that the full rentals receivable in the basis period for a year of assessment may be treated as the gross income of the lessor for the basis period for that year of assessment where the Director General considers such treatment to be just and reasonable in the circumstances.
REGULATION 4 INTERPRETATION

For the purposes of these Regulations—

“lease” means any kind of agreement or arrangement under which payments are made for the use of an asset:

Provided that a lease agreement or arrangement shall be deemed to be a sale agreement where—

(i) the lessee is given an option to purchase the asset during the lease term or upon expiry;

(ii) the lessee is given the beneficial ownership of the asset;

(iii) the lessee during the lease term or upon expiry of the lease term acquires directly or indirectly the asset otherwise than at its market value at the date of such acquisition;

(iv) the asset is a special purpose asset;

(v) the lessee [sic] has claimed capital allowance in respect of the asset prior to the lease; or

(vi) the lessee is given the right to sell or dispose of the asset and receives the proceeds or a portion of the proceeds from the sale;

“lease term” means—

(i) the period for which the lessee has contracted to lease an asset; or

(ii) where a lease arrangement has been terminated earlier than its expiry the actual period of the lease:

Provided that where the lessee exercises an option to continue to lease the asset such further term shall constitute a new lease term.

“special purpose asset” means a leased asset where no other user can use the same asset without making alterations or dismantling from a structure or land; and such special purpose asset shall be deemed to be a movable property for the purposes of section 36(1) of the Income Tax Act 1967.

REGULATION 5 NON-APPLICATION

These Regulations shall not apply to a lease transaction in relation to an asset-backed securitization transaction authorized by the Securities Commission on or after 1 January 2013.

History

R. 5 inserted by PU (A) 171/2014, r. 2, effective from the year of assessment 2013.
IN THE EXERCISE OF THE POWERS CONFERRED BY SUBSECTION 36(1) OF THE INCOME TAX ACT 1967 [Act 53], THE DIRECTOR GENERAL MAKES THE FOLLOWING REGULATIONS:

REGULATION 1 CITATION AND COMMENCEMENT
1(1) These regulations may be cited as the Income Tax (Construction Contracts) Regulations 2007.
1(2) These Regulations are deemed to have effect from the year of assessment 2006 and subsequent years of assessment.

REGULATION 2 APPLICATION
2 These Regulations shall apply to all construction contractors carrying out the construction contracts business.

REGULATION 3 INTERPRETATION
3 For the purpose of these Regulations—
‘‘construction contracts’’ means the contracts for the performance of construction services specifically negotiated for the construction of an asset or a combination of assets including mechanical engineering, electrical engineering, public utilities projects, project design and consultancy, architectural designing and infrastructural contracts;
‘‘construction contractor’’ means a company, an individual, a partnership, a co-operative society, a body of persons, who or which is engaged in or carries on or undertakes or causes to be undertaken construction contracts;
‘‘progress billings’’ means any amount billed for work performed on a contract (including retention sums) whether or not they have been paid;
‘‘substantially completed’’ means ninety-five per cent (sic) of the total estimated construction costs have been incurred.

REGULATION 4 SEPARATE SOURCE OF INCOME
4(1) Subject to subregulation (2) or (3), in ascertaining the gross income of a construction contractor from its construction contract business, each construction contract shall be treated as a separate and distinct source of income of the contractor in respect of the business.
4(2) Where a construction contract is in respect of more than one asset and—
(a) a separate proposal is submitted for each asset;
(b) each asset is subject to a separate negotiation; and
(c) the costs and revenues of each asset may be identified,
the construction of each asset shall be treated as a separate construction contract of the contractor.
4(3) Where two or more construction contracts are—
   (a) negotiated as a package;
   (b) closely interrelated where in effect they are part of a project with an overall profit margin; and
   (c) performed concurrently or in a continuous sequence,
those contracts shall be treated as a construction contract.

REGULATION 5 GROSS INCOME
5 Subject to regulation 12, the gross income of a construction contractor for the basis period for a year of assessment in respect of each construction contract shall be the estimated gross profit of the construction contractor for that period as ascertained under regulation 6.

REGULATION 6 ESTIMATED GROSS PROFIT
6(1) For the purposes of regulation 5, the estimated gross profit of a construction contractor for the basis period for the year of assessment in respect of a construction contract shall be an amount ascertained in accordance with the following formula:

\[
\frac{A}{B} \times C
\]

where
- \( A \) is the sum of progress billings received and receivable in that basis period (the figures shall reflect the actual position prevailing at the balance sheet date);
- \( B \) is the total contract price or amount;
- \( C \) is the total estimated gross profit from the contract:

Provided that in computing the estimated gross profit in accordance with the above formula the contractor shall ensure that it uses fair and reasonable estimates as required for the purpose of such computation.

6(2) The Director General may allow the construction contractor to adopt a formula other than the formula provided for in subregulation (1), for the purpose of ascertaining the estimated gross profit from the construction contract of the contractor for the basis period for a year of assessment:

Provided that the formula adopted shall be in accordance with the accounting standard or practice applicable during the basis period that relates to the contract and in computing the estimated gross profit in accordance with the formula the contractor shall ensure that it uses fair and reasonable estimates as required for the purpose of such computation.

6(3) A construction contractor may in a basis period for a year of assessment revise the estimated gross profit in respect of its construction contract for that basis period or the immediately following basis periods based on the following circumstances:
   (a) there is a variation in construction costs in respect of the contract;
   (b) there is a variation in the contract price or amount; or
   (c) any other commercial reasons as may be approved by the Director General.
6(4) Where the estimated gross profit or revised estimated gross profit of a construction contractor has been ascertained in accordance with the formula as provided for in subregulation (1) or (2), the contractor shall apply the formula throughout the period of its construction contract and whereby the result shall reflect a fair spread of the estimated profit for the applicable periods.

REGULATION 7 ESTIMATED LOSS

7(1) Subject to subregulation (2) and regulation 12, where for a basis period for a year of assessment a construction contractor anticipates that for that basis period there will be an estimated loss from one or more of its construction contracts, the estimated loss or aggregate of estimated loss from those contracts for that basis period shall be allowed to be set off against the aggregate amount of the estimated gross profit from the other construction contracts of the construction contractor for that basis period:

Provided that where the estimated loss or aggregate estimated loss of the construction contractor for that basis period exceeds the aggregate amount of the estimated gross profit from those other contracts, the excess shall be disregarded for the purpose of ascertaining the chargeable income of the contractor for that basis period.

7(2) The estimated loss for the basis period for a year of assessment referred to in subregulation (1) shall be ascertained in accordance with the formulas provided for in regulation 6:

Provided that in applying the formula the total estimated gross profit from the construction contract in that formula shall be substituted with the total estimated loss from that contract.

REGULATION 8 ADJUSTED INCOME

8(1) The adjusted income of a construction contractor from the construction contract business for the basis period for a year of assessment shall be an amount ascertained by deducting from the aggregate amount of gross income of the contractor from each of its sources from that business for that period all expenses (other than any construction expenditure that has been taken into account in ascertaining the estimated gross profit or loss of the construction contractor under regulation 6 or 7) incurred during that period by that contractor in respect of that business.

8(2) In subregulation (1)—

(a) “expenses” means all expenses which are deductible under the Act including any initial expenses in respect of a construction contract of the contractor which are incurred after the commencement of the construction contract business of the contractor; and

(b) “construction expenditure” includes interest paid or payable on loans taken by the construction contractor to finance the works carried out in relation to the construction contract.
REGULATION 9  DATE OF COMMENCEMENT OF A CONSTRUCTION CONTRACT BUSINESS

9  A construction contract business shall commence—

(a) on the date on which the contract is secured, a letter of award is offered, or possession of a construction site is obtained (either in writing or otherwise);

(b) on the commencement of an activity which constitutes part of a series of activities that are actively carried out in the course of a construction contract business; or

(c) on any date as the Director General considers appropriate and reasonable.

REGULATION 10  DATE OF COMPLETION OF A CONSTRUCTION CONTRACT

10  A construction contract shall be deemed to have been completed on a date on which the certificate of practical completion (or any other certification which has a similar effect) is issued by an authorized person or body, or where no such certificate is issued, on the date upon which the contract is substantially completed.

REGULATION 11  DEDUCTIBILITY OF EXPENSES INCURRED IN RESPECT OF WARRANTY OR DEFECTS LIABILITY

11  Where in a basis period for a year of assessment a construction contract is deemed to have been completed, any expenses in respect of a warranty or defects liability of that contract which are incurred in that basis period or any following basis periods—

(a) shall be allowed as a deduction against the gross income of a construction contractor from that contract for that basis period or that following basis period, as the case may be; and

(b) where, by reason of an absence or insufficiency of gross income from that contract for that basis period or that following basis period, effect cannot be given or cannot be given in full to any expenses falling to be deducted under paragraph (a), the expenses which have not been so deducted shall be allowed as a deduction against—

(i) the aggregate amount of gross income from the other construction contracts of the construction contractor for that basis period or that following basis period, as the case may be; or

(ii) the gross income from that contract for the basis period preceding the basis period in which the expenses are incurred and where, by reason of an absence or insufficiency of gross income from that contract for that preceding basis period, effect cannot be given or cannot be given in full to any expenses falling to be deducted pursuant to this subparagraph, the expenses which has not been so deducted shall be allowed as a deduction against the gross income from that contract of the contractor for the next preceding basis period and so on for the duration of the contract:

Provided that the construction contractor shall make an irrevocable election to claim such expenses in the basis period in which the expenses are incurred or in the immediately following basis period.

Reg 9  Commerce Clearing House (Malaysia) Sdn Bhd
REGULATION 12  ACTUAL GROSS PROFIT OR LOSS

12 Where in a basis period for a year of assessment a construction contract is deemed to have been completed, the construction contractor shall ascertain the actual gross profit or loss from the contract and in the event that—

(a) the actual gross profit from the contract is more than the total estimated gross profit which has been taken as gross income of contractor pursuant to regulation 5, the difference shall be treated as part of the gross income of the contractor for that basis period; or

(b) the actual gross profit of the contract is less than the total estimated gross profit which has been taken as gross income of contractor pursuant to regulation 5 or there is an actual loss, the actual gross profit or loss may be apportioned in accordance with the formula provided for in regulation 6 for the purpose of ascertaining the profit or loss of the contract for that basis period and preceding basis periods and any assessment that has been made or will be made under the Act for those periods may be revised or determined in accordance with the ascertainment:

Provided that in applying the formula, the contractor shall use the actual cost, profit or loss, as the case may be, from that contract.
INCOME TAX (PROPERTY DEVELOPMENT) REGULATIONS 2007
PU (A) 277

3 June 2007

IN exercise of the powers conferred by subsection 36(1) of the Income Tax Act 1967 [Act 53], the Director General makes the following regulations:

REGULATION 1 CITATION AND COMMENCEMENT
1(1) These regulations may be cited as the Income Tax (Property Development) Regulations 2007.
1(2) These Regulations are deemed to have effect from the year of assessment 2006 and subsequent years of assessment.

REGULATION 2 APPLICATION
2 These Regulations shall apply to all property developers carrying out the property development business.

REGULATION 3 INTERPRETATION
3 For the purpose of these Regulations—
“development units” means units of residential, commercial or industrial building and vacant lots developed for sale;
“progress payments” means amounts billed for work performed on properties sold in respect of property development activities, whether or not they have been paid;
“project” means a cluster of development units erected within a designated geographical area forming a cost-accumulating centre and includes vacant lots developed for sale, and where a cluster of development units is erected in more than one phase, the development units erected in each phase shall be treated as a separate cluster of development units erected within a designated geographical area;

History
Reg. 3 amended by PU (A) 52/2008, by deleting the comma after the word “designated”.

“property developer” means a company, an individual, a partnership, a cooperative society, a body of persons, who or which engaged in or carries on or undertakes or causes to be under taken a property development;
“property development” means the activity of acquiring land for the purposes of developing, constructing or causing to be constructed thereon and selling completed residential, commercial or industrial buildings, whether as a whole or by parcels therein, and development and sale of vacant lots for the construction of such buildings thereon including homesteads, hobby farms, orchards or for other similar purposes.

Reg 1(1) Commerce Clearing House (Malaysia) Sdn Bhd
REGULATION 4 SEPARATE SOURCE OF INCOME

4 In ascertaining the gross income of a property developer from its property development business, each property development project shall be treated as a separate and distinct source of income of the developer in respect of the business.

REGULATION 5 GROSS INCOME

5 Subject to regulation 12, the gross income of a property developer for the basis period for a year of assessment in respect of each property development project shall be the estimated gross profit of the property developer for that period as ascertained under regulation 6.

REGULATION 6 ESTIMATED GROSS PROFIT

6(1) For the purposes of regulation 5, the estimated gross profit of a property developer for the basis period for a year of assessment in respect of a property development project shall be an amount ascertained in accordance with the following formula:

\[
\frac{A}{B} \times C
\]

where

- A is the sum of progress payments in respect of the project received and receivable in that basis period (the figures shall reflect the actual position prevailing at the balance sheet date);
- B is the total estimated sale value of the project;
- C is the total estimated gross profit from the project.

Provided that in computing the estimated gross profit in accordance with the above formula the developer shall ensure that it uses fair and reasonable estimates as required for the purpose of such computation.

6(2) The Director General may allow a property developer to apply a formula, other than a formula provided for in subregulation (1), for the purpose of ascertaining the estimated gross profit from the property development project of the developer for the basis period for a year of assessment:

Provided that the formula adopted shall be in accordance with the accounting standard or practice applicable during the basis period that relates to the project and in computing the estimated gross profit in accordance with the formula, the developer shall ensure that it uses fair and reasonable estimates as required for the purpose of such computation.

6(3) A property developer may in a basis period for a year of assessment revise the estimated gross profit in respect of its property development project for that basis period or the immediately following basis periods based on the following circumstances:

(a) there is a variation in the development cost of the project;
(b) there is a variation in this selling price of the development unit of the project; or
(c) any commercial reasons as may be approved by the Director General.

Thornton’s Malaysian Tax Commentaries Reg 6(3)
6(4) Where the estimated gross profit or revised estimated gross profit of a property developer has been ascertained in accordance with the formula provided for in subregulation (1) or (2), the developer shall apply the formula throughout the period of its property development project and whereby the result shall reflect a fair spread of the estimated gross profit for the applicable periods.

REGULATION 7 ESTIMATED LOSS

7(1) Subject to subregulation (2) and regulation 12, where for a basis period for a year of assessment a property developer anticipates that for that basis period there will be an estimated loss from one or more of its property development projects, the estimated loss or aggregate of estimated loss from those projects for that basis period shall be allowed to be set off against the aggregate of the estimated gross profit from the other property development projects of the property developer for that basis period:

Provided that where the estimated loss or aggregate estimated loss of the property developer for that basis period exceeds the aggregate estimated gross profit from those other projects, the excess shall be disregarded for the purposes of ascertaining the chargeable income of the developer for that basis period.

7(2) The estimated loss for the basis period for a year of assessment referred to in subregulation (1) shall be ascertained in accordance with the formulas provided for in regulation 6:

Provided that in applying the formula the total estimated gross profit provided for in that formula shall be substituted with the total estimated loss from the property development project.

REGULATION 8 ADJUSTED INCOME

8(1) The adjusted income of a property developer from a property development business for the basis period for a year of assessment shall be an amount ascertained by deducting from the aggregate amount of gross income of the developer from each of its sources from that business for that period all expenses (other than any development expenditure that has been taken into account in ascertaining the estimated gross profit or loss of the property developer under regulation 6 or 7) incurred during that period by that developer in respect of that business.

8(2) In subregulation (1)—

(a) “expenses” means all expenses which are deductible under the Act including any initial expenses in respect of a property development project of the developer which are incurred after the commencement of the property development business of the developer; and

(b) “development expenditure” includes—

(i) interest paid or payable on loans taken by the property developer to finance the purchase of land or development works of its property development project; and

History
Reg. 8(2)(b)(i) amended by PU (A) 52/2008, by substituting the word “works”’ for the word “walks”.

Reg 6(4) Commerce Clearing House (Malaysia) Sdn Bhd
(ii) the proportion of the common infrastructure cost that relates to the project of which proportion shall be ascertained consistently in accordance with—

(A) the area (acreage) of the project method;
(B) the relative sales value method; or
(C) any method which is acceptable by the Director General.

REGULATION 9 DATE OF COMMENCEMENT OF PROPERTY DEVELOPMENT BUSINESS

9 A property development business shall commence on a date when some significant activities or essential preliminaries to the normal operations of property development are undertaken or on any other date as the Director General considers appropriate and reasonable.

REGULATION 10 DATE OF COMPLETION OF A PROPERTY DEVELOPMENT PROJECT

10 A property development project shall be deemed to have been completed on a date the temporary certificate or the certificate of fitness for occupation (or any other certification which has a similar effect), which ever is earlier, in respect of the project is issued by an authorised person or body.

History
Reg. 10 amended by PU (A) 52/2008, by deleting the symbol ‘‘)’’ appearing after the words ‘‘or any’’.

REGULATION 11 DEDUCTIBILITY OF EXPENSES INCURRED IN RESPECT OF WARRANTY OR DEFECTS LIABILITY

11 Where in a basis period for a year of assessment a property development project is deemed to have been completed, any expenses in respect of a warranty or defects liability of that project which are incurred in that basis period or any following basis periods—

(a) shall be allowed as a deduction against the gross income of a property developer from that project for that basis period or that following basis period, as the case may be; and

(b) where, by reason of an absence or insufficiency of gross income from that project for that basis period or that following basis period, effect cannot be given or cannot be given in full to any expenses falling to be deducted under paragraph (a), the expenses which have not been so deducted shall be allowed as a deduction against—

(i) the aggregate amount of gross income from the other property development projects of the property developer for that basis period or that following basis period, as the case may be; or

(ii) the gross income from that project or the basis period preceding the basis period in which the expenses are incurred and where, by reason of an absence or insufficiency of gross income from that project for that preceding basis period, effect cannot be given or cannot be given in full to any expenses falling to be deducted pursuant to this subparagraph, the expenses
which have not been so deducted shall be allowed as a deduction against the gross income from that project of the developer for the next preceding basis period and so on for the duration of the project:

Provided that the property developer shall make an irrevocable election to claim such expenses in the basis period in which the expenses are incurred or in the immediately following basis period.

REGULATION 12 ACTUAL GROSS PROFIT OR LOSS

12 Where in a basis period for a year of assessment a property development project is deemed to have been completed, the property developer shall ascertain the actual gross profit or loss from the project and in the event that—

(a) the actual gross profit from the project is more than the total estimated gross profit which has been taken as gross income of the developer pursuant to regulation 5, the difference shall be treated as part of the gross income of the developer for that basis period; or

(b) the actual gross profit of the project is less than the total estimated gross profit which has been taken as gross income of the developer pursuant to regulation 5 or there is an actual loss, the actual gross profit or loss may be apportioned in accordance with the formula provided for in regulation 6 for the purpose of ascertaining the profit or loss of the project for that basis period and preceding basis periods and any assessment that has been made or will be made under the Act for those periods may be revised or determined in accordance with the ascertainment:

Provided that in applying the formula the developer shall use the actual sales, cost, profit or loss, as the case may be, from that project.
IN exercise of the powers conferred by subsection 36(1) of the Income Tax Act 1967 [Act 53], the Director General makes the following regulations:

REGULATION 1 CITATION AND COMMENCEMENT
1(1) These regulations may be cited as the Income Tax (Special Treatment on Interest on Housing Loan) Regulations 2009.
1(2) These Regulations have effect for the year of assessment 2009 and subsequent years of assessment.

REGULATION 2 APPLICATION
2(1) These Regulations apply to the following banks and financial institutions:
   (a) a bank or finance company licensed or deemed to be licensed under the Banking and Financial Institutions Act 1989 [Act 372];
   (b) a bank licensed under the Islamic Banking Act 1983 [Act 276]; and
   (c) a development financial institution prescribed under the Development Financial Institutions Act 2002 [Act 618].
2(2) Notwithstanding subregulation (1), the Minister may approve any other institutions to which these Regulations may apply.
2(3) Any reference to a bank or financial institution in these Regulations shall include a reference to any other institution approved by the Minister under subregulation (2).

REGULATION 3 INTERPRETATION
3 In these Regulations, “housing loan” means any loan granted by a bank or financial institution to finance the purchase of a residential property.

REGULATION 4 GROSS INCOME OF BANK OR FINANCIAL INSTITUTION
4(1) Subject to this regulation, where in respect of any amount of interest due and payable by an individual on a housing loan granted by a bank or financial institution in the basis period for a year of assessment, a moratorium on such interest is approved by the bank or financial institution, such interest shall not constitute the gross income of that bank or financial institution for that basis period for a year of assessment.
4(2) The interest referred to in subregulation (1) is interest which is due and payable for a period of twelve consecutive months beginning from the month where the moratorium is approved by the bank or financial institution.
4(3) Notwithstanding subregulation (1), where any amount of interest referred to in subregulations (1) and (2) is received by the bank or financial institution in the basis period for a year of assessment, such interest shall be treated as the gross income of the bank or financial institution for the basis period for that year of assessment.

REGULATION 5 CONDITIONS RELATING TO INDIVIDUAL TO WHOM HOUSING LOAN WAS GRANTED, HOUSING LOAN AND MORATORIUM

5 For the purposes of these Regulations, the following conditions shall apply:

(a) relating to an individual to whom a housing loan was granted—

(i) that the individual is a citizen;

(ii) where the individual is carrying on a business, that he is a sole proprietor or a partner in a partnership;

(iii) in the case of an individual under an employment—

(A) that his monthly income has been reduced due to a salary cut or the number of his working days in a month has been shortened, from 1 July 2008; or

(B) that the employment of that individual or, in the case of a joint loan, the employment of the individual’s spouse, has been terminated pursuant to a separation scheme or retrenchment, on or after 1 July 2008;

(b) relating to an individual who is a guarantor under a housing loan and who is the primary source for the repayment of such loan, where the guarantor is under an employment, that his employment has been terminated pursuant to a separation scheme or retrenchment on or after 1 July 2008;

(c) relating to the individual mentioned in subsubparagraph (a)(iii)(B) and paragraph (b), that the termination of the employment of the individual is registered with the Director General of Labour, Ministry of Human Resources;

History
Reg 5(a) amended by PU (A) 288/2010, para. 2, effective for the year of assessment 2009 and subsequent years of assessment. Reg 5(a) formerly read: 

“(a) relating to the individual to whom the housing loan was granted—

(i) that the individual is a citizen;

(ii) where the individual is carrying on a business, that he is a sole proprietor or a partner in a partnership;

(iii) in the case of an individual under an employment—

(A) that his monthly income has been reduced due to a salary cut or the number of his working days in a month has been shortened, from 1 July 2008; or

(B) that the employment of that individual has been terminated pursuant to a separation scheme or retrenchment, on or after 1 July 2008; and

(ii) that the employment of the individual has been terminated pursuant to a separation scheme or retrenchment, on or after 1 July 2008; and

(iii) that the termination of the employment of the individual is registered with the Director General of Labour, Ministry of Human Resources;”

Reg 5(b) amended by PU (A) 288/2010, para. 2, effective for the year of assessment 2009 and subsequent years of assessment. Reg 5(b) formerly read:

“(b) relating to the housing loan, that the housing loan was granted prior to the termination of the employment of the individual; and”

Reg 5(c) inserted by PU (A) 288/2010, para. 2, effective for the year of assessment 2009 and subsequent years of assessment.
(d) relating to a housing loan, that the housing loan was granted to—

(i) an individual under an employment, prior to the termination of the employment of the individual; or

(ii) an individual who is a sole proprietor or a partner of a partnership, before 10 March 2009; and

History

Reg 5(d) inserted by PU (A) 288/2010, para. 2, effective for the year of assessment 2009 and subsequent years of assessment.

(e) relating to the moratorium, that the application for the moratorium shall be made by the individual to a bank or financial institution on or after 10 March 2009 but not later than 9 March 2010.

History

Reg 5(e) amended by PU (A) 288/2010, para. 2, effective for the year of assessment 2009 and subsequent years of assessment, by renumbering 5(c) as paragraph 5(e).
# INCOME TAX (ASSET-BACKED SECURITIZATION) REGULATIONS 2014

PU (A) 170

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INCOME TAX (ASSET-BACKED SECURITIZATION) REGULATIONS 2014

PU (A) 170

[2 June 2014]

IN exercise of the powers conferred by subparagraph 36(1)(a)(v) and paragraph 36(1)(b) of the Income Tax Act 1967 [Act 53], the Director General makes the following regulations:

PART I — PRELIMINARY

REGULATION 1 CITATION AND COMMENCEMENT

1(1) These regulations may be cited as the Income Tax (Asset-Backed Securitization) Regulations 2014.

1(2) These Regulations are deemed to have come into operation from the year of assessment 2013.

REGULATION 2 THESE REGULATIONS AND CAPITAL MARKETS AND SERVICES ACT 2007 [ACT 671] TO BE READ TOGETHER

2 These Regulations shall be read together with the Capital Markets and Services Act 2007 including the guidelines issued by the Securities Commission under the said Act relating to asset-backed securities.

REGULATION 3 APPLICATION

3 These Regulations apply to an originator and a special purpose vehicle in an asset-backed securitization transaction authorized by the Securities Commission on or after 1 January 2013.

REGULATION 4 INTERPRETATION

4(1) In these Regulations—

“disposal” means sale, conveyance, assignment, settlement, alienation or transfer of any legal interest or right;

“property development” means an activity of acquiring land for the purposes of—

(a) construction of completed residential, commercial or industrial buildings on such land, whether as a whole or by parcels, and the sale of such residential, commercial or industrial buildings; or

(b) development and sale of vacant lots for the construction of completed residential, commercial or industrial buildings on such vacant lots, including homesteads, hobby farms, orchards or for other similar purposes.

Thornton’s Malaysian Tax Commentaries Reg 4(1)
The following terms and expressions used in these Regulations have the same meaning assigned to it in the guidelines referred to in regulation 2:

(a) asset;  
(b) originator;  
(c) asset-backed securities;  
(d) special purpose vehicle; and  
(e) securitization transaction.

PART II — ORIGINATOR

REGULATION 5 PROCEEDS OR GAINS FROM DISPOSAL OF TRADE RECEIVABLES OR STOCK IN TRADE

5(1) In ascertaining the gross income of the originator in respect of a source consisting of a business—

(a) any proceeds from the disposal of any trade receivables or stock in trade of the originator in respect of that source pursuant to a securitization transaction; or  
(b) where the trade receivables or stock in trade in respect of that source has been recognized in the accounts of the originator, any gains from the disposal of such receivables or stock in trade,

shall be deemed to have been accrued throughout the period of the securitization transaction and shall constitute the gross income of the originator from that source in the basis period for a year of assessment that relates to the period of the securitization transaction.

5(2) The amount of gross income of the originator in the basis period for a year of assessment shall be determined in accordance with the following formula:

\[
\frac{A}{B} \times C
\]

where

A is the number of days in the basis period for that year of assessment that falls within the period of the securitization transaction;  
B is the total number of days in the period of the securitization transaction; and  
C is the total proceeds or gains from the disposal of trade receivables or stock in trade of the originator.

REGULATION 6 LOSS FROM DISPOSAL OF TRADE RECEIVABLES OR STOCK IN TRADE

6(1) Where trade receivables or stock in trade of the originator in respect of a source consisting of a business has been recognized in the account of the originator, any loss from the disposal of such trade receivables or stock in trade pursuant to a securitization transaction shall be deemed to have been incurred throughout the period of the
securitization transaction and shall be allowed as a deduction in arriving at the adjusted income of the originator from that source in the basis period for a year of assessment that relates to the period of the securitization transaction.

6(2) The amount of loss from the disposal of the trade receivables or stock in trade pursuant to a securitization transaction to be allowed as deduction in the basis period for a year of assessment shall be determined in accordance with the following formula:

\[
\frac{D}{E} \times F
\]

where
- \(D\) is the number of days in the basis period for the year of assessment that falls within the period of the securitization transaction;
- \(E\) is the total number of days in the period of the securitization transaction; and
- \(F\) is the amount of loss from the disposal of trade receivables or stock in trade of the originator.

REGULATION 7 CALL OPTION TO BUY BACK

7 Notwithstanding regulations 5 and 6, in the case of a property development business, where any stock in trade in respect of that business is disposed of by the originator pursuant to a securitization transaction and the originator has a call option to buy back such stock in trade—

(a) the proceeds or gains from the disposal of such stock in trade shall be treated as a gross income; and

(b) the loss from the disposal of such stock in trade shall be allowed as a deduction in arriving at the adjusted income of the originator,

from that business in any basis period for a year of assessment in which the call option expires.

REGULATION 8 FORMULA UNDER ACCOUNTING STANDARD OR PRACTICE

8(1) The Director General may allow the originator to adopt a formula other than a formula specified in subregulations 5(2) and 6(2) for the purpose of ascertaining the amount of gross income of the originator and the amount of loss to be allowed as deduction.

8(2) The formula to be adopted by the originator as allowed by the Director General shall—

(a) be in accordance with the accounting standard or practice applicable during the basis period that relates to the securitization transaction;

(b) give a fair and reasonable amount of gross income or loss; and

(c) be applied throughout the securitization transaction period.
REGULATION 9 DISPOSAL OF FIXED ASSET

9(1) In ascertaining the statutory income of an originator from the disposal of fixed asset pursuant to a securitization transaction, any balancing charge or allowance under Schedule 3 to the Act arising from such disposal, shall be deemed to have been made to the originator in the basis period for a year of assessment that relates to the period of the securitization transaction.

9(2) The amount of balancing charge or allowance to be made in the basis period for a year of assessment shall be determined in accordance with the following formula:

\[
\frac{G}{H} \times I
\]

where

- \(G\) is the number of days in the basis period for the year of assessment that falls within the period of the securitization transaction;
- \(H\) is the total number of days in the period of the securitization transaction; and
- \(I\) is the amount of balancing charge or allowance from the disposal of fixed asset of the originator.

9(3) The disposal value of fixed asset shall be equal to a fair value based on the valuation report by an independent valuer, as submitted to the Securities Commission in relation to the asset-backed securities.

9(4) Paragraphs 38 and 71 of Schedule 3 to the Act shall not apply to the disposal of fixed asset.

9(5) The independent valuer referred to in subregulation (3) shall be appointed by the originator and approved by the Securities Commission.

PART III — SPECIAL PURPOSE VEHICLE

REGULATION 10 GROSS INCOME OF SPECIAL PURPOSE VEHICLE

10 Any income of the special purpose vehicle from all sources shall be treated as gross income of the special purpose vehicle from a single source consisting of a business in the basis period for a year of assessment.

REGULATION 11 ADJUSTED INCOME OF SPECIAL PURPOSE VEHICLE

11(1) Any expenses incurred by the special purpose vehicle for the acquisition of trade receivables or stock in trade pursuant to a securitization transaction which is deductible under the Act, shall be deemed to have been incurred throughout the period of the securitization transaction and shall be allowed as a deduction in arriving at the adjusted income of the special purpose vehicle in the basis period for a year of assessment that relates to the period of securitization transaction.
11(2) The amount of expenses incurred by the special purpose vehicle to be allowed as a deduction in the basis period for a year of assessment shall be determined in accordance with the following formula:

\[
\frac{J}{K} \times L
\]

where

- \( J \) is the number of days in the basis period for that year of assessment that falls within the period of securitization transaction;
- \( K \) is the total number of days in the period of the securitization transaction; and
- \( L \) is the amount of expenses incurred by the special purpose vehicle for the acquisition of trade receivables or stock in trade which is deductible under the Act.

11(3) Notwithstanding subregulation (1), where the originator has a call option to buy back the stock in trade as provided for in regulation 7, any expenses incurred by the special purpose vehicle for the acquisition of such stock in trade which is deductible under the Act shall be allowed as a deduction in arriving at the adjusted income of the special purpose vehicle in the basis period for that year of assessment in which the call option expires.

11(4) The Director General may allow the special purpose vehicle to adopt a formula, other than the formula specified in subregulation (2).

11(5) The formula to be adopted by the special purpose vehicle as allowed by the Director General shall—

(a) be in accordance with the accounting standard or practice applicable during the basis period that relates to the securitization transaction;
(b) give a fair and reasonable amount of adjusted income; and
(c) be applied throughout the securitization transaction period.

PART IV — MISCELLANEOUS

REGULATION 12 BASIS PERIOD

12 For the purposes of regulations 5, 6, 9 and 11, where the basis period for a year of assessment of an originator or a special purpose vehicle overlaps with the basis period for the preceding year of assessment, the number of days in respect of the basis period referred to in the formulas specified in subregulations 5(2), 6(2), 9(2) and 11(2), shall not include the number of days in the basis period for the year of assessment that overlaps with the basis period for the preceding year of assessment.

REGULATION 13 NON-APPLICATION

13(1) Section 44A of the Act shall not apply to transfer of loss between the originator and the special purpose vehicle.

13(2) Sections 60F and 60FA of the Act shall not apply to the special purpose vehicle.