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## **PART I - OVERVIEW**

### **1. Introduction**

1.1 Bank Negara Malaysia has established the Working Committee on Tax Neutrality for Islamic Banking and Takaful following the introduction of Section 2(8) of the Income Tax Act 1967 (ITA) where authority has been given for Bank Negara Malaysia to approve a scheme of financing based on Shariah principles as being eligible for tax neutrality treatment. The Working Committee comprises senior officials from Ministry of Finance (MOF) and the Inland Revenue Board in addition to BNM officers. Bank Negara Malaysia is the Secretariat for the Working Committee.

### **2. Applicability**

2.1 This guideline is applicable to the following eligible applicants:-

- (i) Those licensed under the Islamic Banking Act 1983;
- (ii) Institutions licensed under the Banking and Financial Institutions Act 1989 (BAFIA) that participates in the Islamic banking scheme as permitted under Section 124 of BAFIA; and
- (iii) Those licensed under the Takaful Act 1984.

### **3. Objective**

3.1 The objective of this guideline is to provide eligible applicants with the appropriate procedures that they must adhere to in applying for tax neutrality or tax incentive.

### **4. Further Information**

4.1 The eligible applicants may seek clarification through the Secretariat of the Working Committee at Bank Negara Malaysia.

### **5. Implementation Date**

5.1 This guideline has taken effect since 29 August 2006.

## **PART II - PROCEDURES FOR APPLICATION TO THE WORKING COMMITTEE ON TAX NEUTRALITY FOR ISLAMIC BANKING AND TAKAFUL**

### **Scope**

- Eligible issues:

Tax and stamp duty issues concerning or affecting the applicants, or their customers as a result of using Islamic banking and takaful products or service.

### **Section I: Contents of Application for Tax Neutrality under Section 2(8) of Income Tax Act 1967**

The following minimum information must be included in the application:

1. Describe with sufficient details:-
  - (i) the structure of the scheme of financing (please include a diagram);
  - (ii) the applicant institution's role; and
  - (iii) the identity of all the parties including other financier(s) and customer(s) involved.
2. Confirm whether the product has complied with the Guidelines on Introduction of New Products and provide the date when the relevant approval(s) was/were obtained, if applicable.
3. List the transaction instruments which will be executed for the scheme to be implemented and briefly describe each instrument.
4. State the economic effect that the scheme intends to achieve (e.g. structured to have the economic effect of a term loan, project financing or home mortgage).
5. Based on Item 4 above:-
  - (i) Tabulate the transaction documents against conventional financing documents;

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- (ii) State which document(s) are further and in addition to conventional transaction documents;
  - (iii) State what is the applicable stamp duty for each instrument; and
  - (iv) Also state whether the applicant believes there is any existing exemption that the transaction or part of the transaction may qualify for, the reason for the applicant belief and state the exemption order in full.
6. Provide the names, designation, telephone numbers and email addresses of the officers which Bank Negara Malaysia may contact for clarification or further information.

## **Section II: Contents of Application for Any Other Tax Issues Affecting Islamic Banking & Takaful**

The following minimum information must be included in the application:-

1. Describe with sufficient details, the background to the issue, how the issue arose and how the applicant institution is affected by the issue.
2. Recommend the appropriate tax treatment and provide the rationale for such recommendation. The applicant should clearly state whether the applicant would like to apply for tax neutrality or tax incentive and provide strong justification why it should be granted.
3. If there are transaction documents involved, please describe them and if the transaction is intended to have the economic effect of a conventional financing transaction, please state what the conventional equivalent is.
4. Provide the names, designation, telephone numbers and email addresses of the officers which Bank Negara Malaysia may contact for clarification or further information.

### Section III: Application Submission Procedures

1. All applications must have been approved by the applicant and signed by the Chief Executive Officer or a Director of the institution concerned.
2. Submission of completed applications must be made to:-  
Secretariat  
Working Committee on Tax Neutrality in Islamic Banking & Takaful  
c/o Financial Infrastructure Development  
Islamic Banking and Takaful Department  
Bank Negara Malaysia  
Jalan Dato' Onn  
50480 Kuala Lumpur
3. Electronic applications or facsimile applications are not allowed.
4. Depending on availability of the Working Committee members, the Secretariat endeavours to convene a meeting within fourteen (14) working days of receipt of completed information.

### Section IV: Meeting Procedures

1. The Secretariat will review the application and may ask for further information as necessary. Once all outstanding information has been duly received, a Working Committee Meeting will be fixed. In this regard, Bank Negara Malaysia endeavours to give at least three (3) working days advance written notice to the applicant.
2. The Secretariat will inform the institution concerned of the date, time and venue of the meeting by notice in writing where the applicant will be required to:-

- (i) conduct a slide presentation of their application together with printed copies for circulation; and
  - (ii) have their tax advisors or tax personnel present to answer any clarifications which the Working Committee members may need on the application in addition to the presence of the relevant contact personnel.
3. The Working Committee will deliberate on the matter and a decision will be made and communicated to the applicant.
4. If the Working Committee requires further information, the applicant will be asked to provide the same and the decision will be deferred to the next meeting where the matter will be deliberated.
5. The decision of the Working Committee will be communicated in writing to the applicant within seven (7) working days, setting out whether the application is approved, rejected or taken up for appropriate recommendation to the government.
6. If a decision is deferred, the deferment will be notified to the applicant and not be communicated in writing as the matter will be adjourned to another meeting after receipt of additional information.
7. Unless there are subsequent intervening events, all decision will be considered final and no appeals will be entertained.
8. Bank Negara Malaysia reserves the right to publish statistics and general information on the matters deliberated by the Working Committee.