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Highlights of Budget 2023

Tax Espresso (Special Edition)

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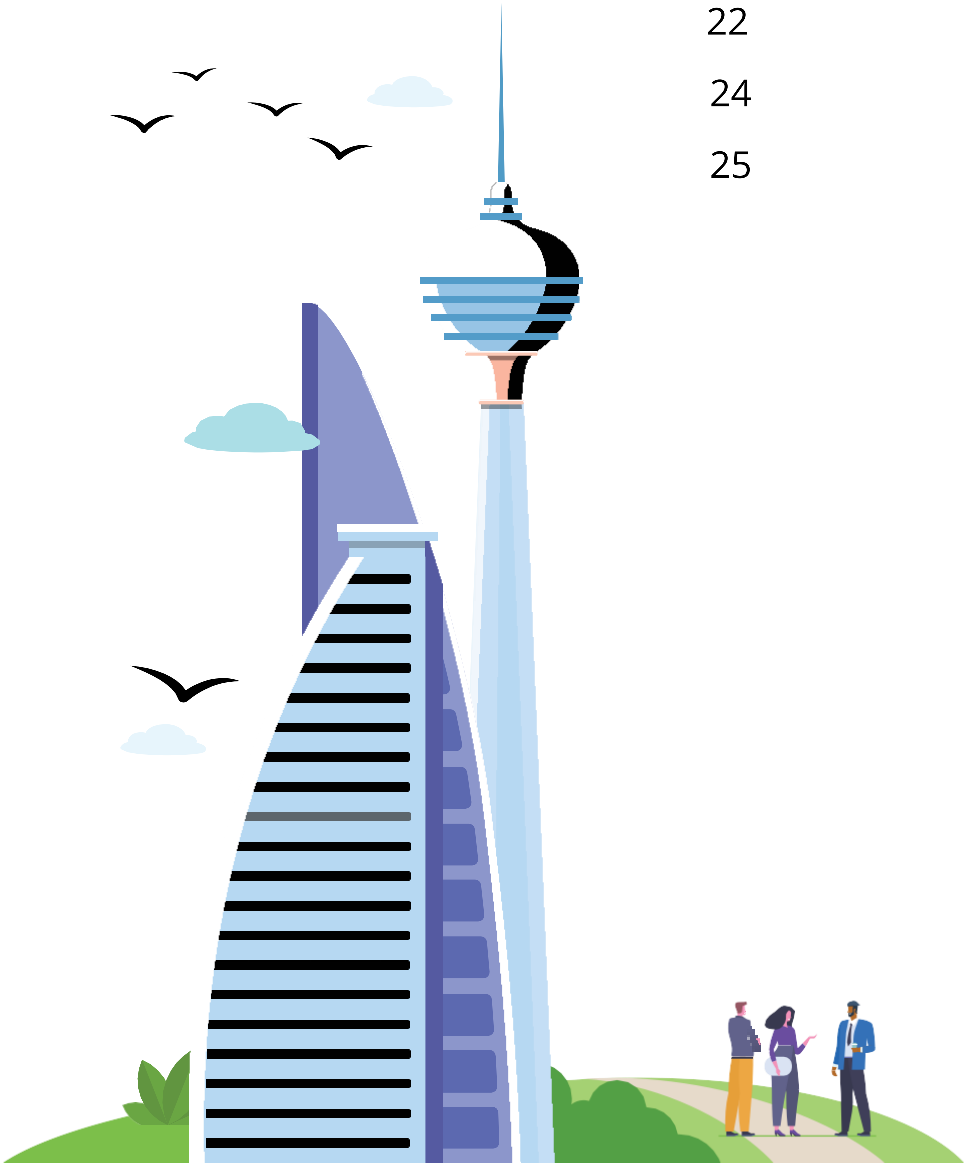
17 March 2023



Corporate Tax

Introduction of capital gains tax for the disposal of unlisted shares by companies in 2024

Currently, there is no CGT in Malaysia save for the RPGT which is imposed on gains arising from the sale of chargeable asset, i.e., real property located in Malaysia, or shares in a real property company. Capital gains arising from the disposal of unlisted shares by companies are not taxed unless these are real property company shares for RPGT purposes.

Proposal
In line with international best practices, the Government will study the introduction of a CGT for the disposal of unlisted shares by companies beginning in the year 2024 at a low rate. Consultations with relevant parties will be held to examine the details of the proposal.

Effective: Year 2024

Commentary
On 14 February 2023, the European Union updated its List of Non-Cooperative Jurisdiction, and Malaysia remained in the Annex II of the list. Annex II, also known as the "European Union Grey List", is meant to cover jurisdictions that have yet to comply with all international tax standards but have committed to reform their tax policies.

Therefore, whilst the proposed introduction of CGT may be seen as a measure by the Government to increase the country's tax revenue, it can also be seen as a commitment by the Government to comply with international best practices.

With regards to the mechanism of the CGT, one may look into the treatment of capital gains by our regional peers for reference. For instance, in Indonesia, capital gains derived by an Indonesian resident company are generally taxed as ordinary income at the standard corporate income tax rate. Meanwhile, in Laos, capital gains on the disposal of unlisted shares are taxed at a lower rate of 2%.

Whilst the Government has indicated that they will consult with relevant parties, further issues to be deliberated should include considerations on how this CGT will interact with the existing RPGT and income tax regime, what is a reasonably low rate, and the calculation mechanism. There is a need for careful consideration and assessment of the potential impact of such measures on various sectors and stakeholders.

Extension of relocation tax incentive and 15% flat tax rate for C-suite non-citizen individuals

Under the existing relocation tax incentive to attract investors to relocate their businesses into Malaysia, companies in manufacturing sector are eligible for the following tax incentives:

- New company
    - 0% tax rate for 10 years for new investment in fixed assets (excluding land) between RM300 million to RM500 million.
    - 0% tax rate for 15 years for new investment in fixed assets (excluding land) above RM500 million.

- Existing company in Malaysia relocating its overseas manufacturing facilities into Malaysia
    - 100% ITA for 5 years for new investment in fixed assets above RM300 million. The allowance can be set-off against 100% of statutory business income for each YA.

The company must incur the first capital expenditure within 1 year from the date of approval and incur the minimum capital expenditure requirement within 3 years from the date of the first capital expenditure incurred.

- C-suite non-citizen individuals
    - 15% flat tax rate for a period of 5 consecutive YAs, limited to 5 non-citizen individuals employed in the company with minimum basic monthly salary of RM25,000.
    - The non-citizen individual must be a Malaysian tax resident for each YA throughout the 5 consecutive YAs.

The above incentives are available for applications received from 1 July 2020 to 31 December 2022.

Proposal
It has been proposed that the application period for enjoying the above tax incentives be extended for another 2 years to attract more investors to relocate their businesses into Malaysia. (It is unclear from the proposal in the Budget speech if this extension applies to the electrical & electronic industry only.)

Effective: For applications received by MIDA from 1 January 2023 to 31 December 2024

Review of corporate income tax treatment for small and medium enterprises

Currently,
- a company resident and incorporated in Malaysia which has a paid-up capital in respect of ordinary shares of up to RM2.5 million, or
- an LLP resident in Malaysia which has a capital contribution of up to RM2.5 million,

that is not part of a group containing a company exceeding this capitalisation threshold, and with gross income from source or sources consisting of business not exceeding RM50 million, which is categorised as an SME, is subject to income tax at the rate of 17% on the first RM600,000 of chargeable income. The remaining chargeable income is taxed at 24%.

Chargeable Income	Income Tax Rate (%)
Up to RM600,000	17
Exceeding RM600,000	24

Proposal
It is proposed that the tax rate for an SME on the first chargeable income of RM150,000 be reduced from 17% to 15%.

Chargeable Income	Income Tax Rate (%)
Up to first RM150,000	15
From RM150,001 to RM600,000	17
Exceeding RM600,000	24

Effective: YA 2023

It is also proposed that the above preferential tax rates shall not be applicable to:

- a company, if more than 20% of the paid-up capital in respect of ordinary shares of the company at the beginning of the basis period for a YA is directly or indirectly owned by one or more companies incorporated outside Malaysia or by one or more individuals who are not citizens of Malaysia; or

- an LLP, if more than 20% of the capital contribution (whether in cash or in kind) of the LLP at the beginning of the basis period for a YA is directly or indirectly contributed by one or more companies incorporated outside Malaysia or by one or more individuals who are not citizens of Malaysia. The company or companies incorporated outside Malaysia referred to in this context are not restricted in respect of ordinary share capital at the beginning of the basis period for a YA.

Effective: YA 2024

Commentary
It is noteworthy that the reduced rate of 15% on the first RM150,000 chargeable income is effective YA 2023 while the additional condition on foreign ownership is effective only from YA 2024. Meanwhile, although there is a tax saving of RM3,000 from the above proposal per YA, an existing SME company or LLP should revisit its status as the preferential rates would no longer be applicable to the SME company or LLP with foreign ownership as mentioned above from YA 2024 onwards. In this case, the affected SME company or LLP should be prepared to review its estimate of tax payable for YA 2024.

Extension of tax incentives for new and existing aerospace companies in Malaysia undertaking high value activities

Currently, new and existing aerospace companies in Malaysia undertaking high-value activities such as manufacturing or assembly of systems, devices, parts or components and maintenance, repair and overhaul for aircraft, systems, devices, parts or components and engineering and design/services related would be eligible for tax incentives as follows:

- New company
  - ➢ income tax exemption of 70% to 100% for a period of 5 to 10 years; or
  - ➢ ITA of 60% to 100% for a period of 5 years and can be set-off against 70% to 100% of statutory business income for each YA.

- Existing company
  - ➢ ITA of 60% for a period of 5 years and can be set-off against 70% of statutory business income for each YA.

The above incentives are applicable for applications received by MIDA until 31 December 2022.

Proposal
It has been proposed that the application period for enjoying the above tax incentives be extended for another 3 years.

Effective: For applications received by MIDA from 1 January 2023 to 31 December 2025

Review of tax deduction on cost of listing in Bursa Malaysia

Currently, technology-based companies listing on the Access, Certainty, Efficiency (ACE) Market and the Leading Entrepreneur Accelerator Platform (LEAP) Market can claim a tax deduction of up to RM1.5 million for 3 YAs from 2020 to 2022 for the following expenses:

i) fees to authorities;
ii) professional fees; and
iii) underwriting, placement, and brokerage fees.

Proposal
To encourage more technology-based companies to expand their businesses by raising capital funds through listing in Bursa Malaysia, it is proposed that the above treatment be reviewed as follows:

i) to extend the above available tax deduction for another 3 years; and
ii) to expand the tax deduction to include the cost of listing technology-based companies on the Bursa Main Market.

Effective: YA 2023 to YA 2025

Deadline for remittance of withholding tax on payments made to agents, dealers or distributors

Currently, a company is required to deduct 2% WHT from payments in monetary form made to individual resident agents, dealers, or distributors under Section 107D of the Income Tax Act 1967 and remit the same to the IRB within 30 days after paying or crediting the payment.

Proposal
It is proposed that instead of remitting the WHT due within 30 days after paying or crediting each payment to the agents, dealers, or distributors, the WHT deducted should be accumulated on a monthly basis and remitted to the IRB not later than the last day of the following month.

Effective: 1 January 2023

Commentary
This proposed amendment is in line with the administrative announcement made by the IRB on 9 July 2022.

Expansion of scope for relief other than in respect of error or mistake to include withholding tax payments made to agents, dealers or distributors under Section 107D

Sections 97A(1A) and 131A of the Income Tax Act 1967 allow a taxpayer who has furnished an ITRF in accordance with the provisions of the Income Tax Act 1967 to make an application in writing to the Director General of Inland Revenue for an amendment or relief to that ITRF for reasons other than error or mistake, including where an expense was correctly disallowed in the original ITRF pursuant to Section 39 due to non-payment of WHT and any late payment penalties. Relief under Sections 97A(1A) and 131A is available once the WHT and late payment penalties are duly settled for the following types of payments to non-residents:

- Contract payments (Section 107A)
- Interest and royalty (Section 109)
- Income of a public entertainer (Section 109A)
- Special classes of income (Section 109B)
- Other gains or profits (Section 109F)

Similar to other WHT payments, where a company fails to deduct WHT under Section 107D of the Income Tax Act 1967 or remit any late payment penalties (where applicable) upon the filing of its ITRF, the company will not qualify for a tax deduction pursuant to Section 39(1)(s) of the Income Tax Act 1967 on the underlying payment to the agent, dealer, or distributor. There is no provision in the Income Tax Act 1967 which permits the company to revise its ITRF once the necessary WHT and penalties have been duly settled.

Proposal
It is proposed that the relief under Sections 97A(1A) and 131A be expanded to include WHT payments under Section 107D. The application for relief shall be made within 1 year after the end of the year the payment of WHT and penalty is made.

Effective: 1 January 2023

Tax Deduction on issuance costs of Sustainable and Responsible Investment (SRI) Linked Sukuk

Currently, a tax deduction is given to a company on the expenses incurred on the issuance or offering of SRI Sukuk that is approved or authorised by, or lodged with, the Securities Commission Malaysia under the Capital Markets and Services Act 2007.

This is pursuant to the Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017 [*P.U.(A) 221/2017*] and extended via the Income Tax (Deduction for Expenditure on Issuance or Offering of SRI Sukuk) (Amendment) Rules 2021 [*P.U.(A) 2/2021*]. The above is effective from YA 2016 until YA 2023.

Proposal
To provide an innovative Shariah-compliant financing and place Malaysia as a regional hub of SRI-linked Sukuk issuance, it is proposed that a similar tax deduction be given on the costs of issuing SRI-linked Sukuk that is approved or authorised by, or lodged with, the Securities Commission Malaysia for a period of 5 years, from YA 2023 until YA 2027.

Effective: YA 2023

Commentary
It appears that this may be an expansion of the existing incentive for SRI Sukuk to SRI-linked Sukuk. We anticipate that this would be clarified with the gazette of the new rules.

Special tax deduction for expenditure on Malaysian-made handicraft

Currently, purchase of qualifying asset is eligible for capital allowances under Schedule 3 of the Income Tax Act 1967. However, asset with expected life span of less than 2 years is to be dealt with on a replacement basis. It is not regarded as qualifying expenditure and not entitled to capital allowances. The cost of replacing such asset is to be allowed as deductible expenditure under Section 33(1)(c) of the Income Tax Act 1967 in determining the adjusted income of the business.

Proposal
It is proposed that special tax deduction up to RM150,000 be given for expenditure incurred on qualifying Malaysian-made handicraft purchased from local handicraft entrepreneurs registered with *Perbadanan Kemajuan Kraftangan Malaysia*. This deduction does not apply to an expenditure that has been claimed under Section 33 or Schedule 3 of the Income Tax Act 1967.

Effective: 1 January 2023 to 31 December 2025

Tax Incentives

New Industrial Master Plan 2030

Proposal
The New Industrial Master Plan 2030 will be announced in the third quarter of 2023 to outline the direction for the development of the industrial sector that is focused on high quality activities and the employment of local talents.

- In line with the Plan, investment incentives will be restructured towards tiered tax rates, taking into account the achievement of certain outcomes such as creating high-value jobs, integrating local firms into the supply chains, and creating new industrial clusters.
- The monitoring of companies that have been granted tax incentives will also be strengthened.

Commentary
The Government's efforts to restructure the various investment incentives is a positive development that can help promote transparency, efficiency, and economic growth, in line with promoting FDI for the country. This is also in response to changing global tax landscape, in particular, the 15% global minimum tax (GMT) that may impact the value of tax incentives to MNCs.

We look forward to the launch of the New Industrial Master Plan 2030 in the third quarter of 2023 which will chart the future direction of industrial development and prioritise high quality activities and employment of local talent.

Expansion of tax incentive for automation in manufacturing and services sector

Currently, manufacturing and services companies which incur QCE on automation equipment are given tax incentives as follows:

- Category 1: Labour-intensive industry (rubber, plastic, wood, and textile products)
  - ACA of 100% on the first RM4 million for QCE incurred
  - Income tax exemption equivalent to 100% on the above ACA, to be set off against 70% of statutory business income

- Category 2: Industries other than Category 1 including the services sector
  - ACA of 100% on the first RM2 million for QCE incurred
  - Income tax exemption equivalent to 100% on the above ACA, to be set off against 70% of statutory business income

The above incentives are applicable for applications received by MIDA until 31 December 2023.

Proposal
It is proposed that the incentive be enhanced as follows:
- Scope of automation to include the adaptation of Industry 4.0 elements;
- Scope of tax incentive be expanded to include agriculture sector; and
- Capital expenditure threshold for categories 1, 2 and agriculture be aligned and increased up to RM10 million.

Effective: Applications received by MIDA and MAFS from 1 January 2023 until 31 December 2027

Extension of tax incentive for ship building and ship repairing industry

Currently, companies undertaking ship building and ship repairing activities are eligible for the following tax incentives:

- New company: Pioneer status with income tax exemption of 70% of statutory income for 5 years; or ITA of 60% on QCE incurred within 5 years (to be set-off against 70% of statutory business income)
- Existing company: ITA of 60% on QCE incurred within 5 years (to be set-off against 70% of statutory business income)

The above incentives are applicable for applications received by MIDA from 1 January 2020 until 31 December 2022.

Proposal
It is proposed that the application period for enjoying the above tax incentives be extended for another 5 years.

Effective: Ship building and ship repairing applications received by MIDA from 1 January 2023 until 31 December 2027

Tax incentives for chicken rearing in closed house system

Previously, chicken and duck rearers who shifted from opened house system to closed house system were eligible for Reinvestment Allowance until YA 2010.

Proposal
It is proposed that ACA of 100% on the QCE incurred and income tax exemption of 100% equivalent to the QCE incurred be given to encourage more chicken rearers to adopt environmental-friendly closed house system and to increase productivity.

Effective: YA 2023 to YA 2025

Review of tax incentives for food production project

Currently, tax incentives for food production projects are given as follows:

- a company investing in a subsidiary company engaging in new food production project is given tax deduction on investment made; and
- a company engaging in food production project is given income tax exemption of 100% on statutory business income for 10 YAs for new project and income tax exemption of 100% on statutory business income for 5 YAs for expansion project.

The above incentives are applicable for applications received by the MAFS from 1 January 2021 until 31 December 2022.

Proposal
It is proposed that the application period for enjoying the above tax incentives be extended for another 3 years, and the scope of the tax incentive be expanded to include agricultural projects based on Controlled Environment Agriculture.

Effective: Applications received by MAFS from 1 January 2023 until 31 December 2025

Incentivise manufacturers of electric vehicle charging equipment

Proposal
Manufacturers of EV charging equipment may opt for the following incentives (choice of tax holiday or tax allowance):

- Income tax exemption of 100% on statutory business income up to YA 2032. Companies that invest earlier may be able to enjoy tax holiday up to 10 years. Companies who invest later will be eligible for the tax holiday for the remaining YAs up to YA 2032; or
- ITA of 100% for 5 years and can be set-off against 100% of the statutory business income for each YA. Any unutilised allowances may be carried forward to subsequent years until fully utilised.

Effective: For applications received by MIDA from 25 February 2023 to 31 December 2025

Commentary
This is in line with the Government's initiative to encourage the development of charging infrastructure and public charging facilities, contributing to developing the EV ecosystem in Malaysia as a whole to attract investments in EV to Malaysia.

Extension of existing tax incentives for childcare

With effect from YA 2013, pursuant to the Income Tax (Deduction for the Provision of Child Care Centre) Rules 2013, a further deduction is granted to an employer (who is a Malaysian resident) on expenditure incurred for the provision and maintenance of a childcare centre (registered with the Department of Social Welfare) for the benefit of the employees or childcare allowance given to the employees.

Proposal
The Government is proposing to extend the tax incentive for childcare centre fees. Employers are also encouraged to utilise the existing tax incentive on the cost of providing childcare centres in offices. If the response is lacklustre, the Government will examine the need to mandate the establishment of such facilities to support working mothers.

Commentary
It is unclear at this juncture what extension of tax incentive the Government is looking to introduce as Income Tax (Deduction for the Provision of Child Care Centre) Rules 2013 is still in force and does not have an expiry date. Further guidance will need to be provided on this matter.

Review of tax incentives for company with BioNexus status

Currently, BioNexus status companies that engage in the business of life sciences are eligible for the following incentives:

- New business - 70% income tax exemption on statutory business income for 10 YAs.
- Expansion project of an existing business - 70% income tax exemption on statutory business income for a period of 5 YAs.
- Concessionary tax rate of 20% on income from qualifying activities for 10 years upon the expiry of the tax exemption period.
- Double tax deduction on research & development expenditure.
- Industrial Building Allowance on building for biotechnology research activities.
- Import duty exemption on raw materials/components and machinery/equipment.

The incentives are available for applications received by the Malaysian Bioeconomy Development Corporation from 1 January 2021 to 31 December 2022.

Proposal
It has been proposed that the application period for enjoying the above tax incentives be extended for another 2 years.

Additionally, the income tax exemption on statutory business income will be increased from 70% to 100% for both new business and expansion project of an existing business.

Effective: For applications received by Malaysian Bioeconomy Development Corporation from 1 January 2023 to 31 December 2024

Incentivise companies undertaking carbon capture and storage

To align with the Low Carbon Nation Aspiration by year 2040, the Government has proposed to curb the emission of carbon dioxide using CCS technology.

Proposal
The 3 categories of companies that undertake CCS activity in achieving net zero greenhouse gas emission would be eligible for tax incentives as follows:

- Companies undertaking CCS in-house activity be given:
  - ITA of 100% of QCE for 10 years and can be set-off against 100% of statutory business income;
  - Full import duty and sales tax exemption on equipment used for CCS technology from 1 January 2023 until 31 December 2027; and
  - Tax deduction for allowable pre-commencement expenses within 5 years from the date of commencement of operation.

- Companies undertaking CCS services be given:
  - ITA of 100% of QCE for 10 years and can be set off against 100% of statutory business income; or
  - Income tax exemption of 70% on statutory business income for 10 years; and
  - Full import duty and sales tax exemption on equipment for CCS technology from 1 January 2023 until 31 December 2027.

- Companies using CCS services be given:
  - Tax deduction on fees incurred for use of CCS services.

Effective:
- **For applications received by MOF from 25 February 2023 to 31 December 2027**
- **Tax deduction on fees can be claimed through the ITRF from YA 2023 to YA 2027**

Commentary
This is also an initiative by the Government to recognise CCS activities as a new source of economic growth and in achieving net-zero greenhouse gas emission. However, the relevant tax authorities have yet to release any guidance or details with respect to this incentive.

Tax deduction for rental of non-commercial electric vehicle

Currently, where a person (not restricted to companies) incurs rental expenses for a non-commercial motor vehicle (including EV), the maximum aggregate tax deduction in that YA and subsequent Yas in respect of that motor vehicle is restricted as follows:

- RM100,000 for a new motor vehicle and where the total cost of that motor vehicle does not exceed RM150,000; or
- RM50,000 for a used motor vehicle or where the cost of a new motor vehicle exceeds RM150,000.

Correspondingly, there is a restriction on the capital allowances that can be claimed in respect of qualifying plant expenditure incurred on a non-commercial motor vehicle to a maximum limit of RM50,000/RM100,000 (for a new motor vehicle costing not more than RM150,000).

Proposal
It is proposed that the maximum aggregate tax deduction granted to companies in respect of the rental for non-commercial EV be increased to RM300,000. This will be implemented by way of a gazette order.

Effective: YA 2023 to YA 2025

Commentary
It should be noted that this increase in tax deduction is granted solely to companies. The maximum deduction is 200% - 500% more than the deduction available for other non-commercial motor vehicles to encourage the use of EV.

No corresponding increase has been granted in respect of capital allowances for qualifying plant expenditure incurred in respect of Evs acquired by companies.

Expansion of scope for further tax deduction in relation to the employment of inmate and ex-inmate

Currently, further tax deduction is given to employers who employ senior citizens, ex-convict, ex-drug dependents, and convicts who are categorised as parolees and supervised persons upon fulfilling the following conditions:

i) The employer has a source of income consisting of business;
ii) The employment is on a full-time basis;
iii) The monthly remuneration does not exceed RM4,000;
iv) The employer and the employee are not the same person; and
v) The employer is not a relative of the employee.

The further tax deduction is given until YA 2025.

Proposal
It is proposed that the scope of further tax deduction be expanded to include remuneration paid to inmate and ex-inmate of:

- Henry Gurney School under the Malaysian Prison Department; and
- protection and rehabilitation institution and non-Government care centres registered under the Social Welfare Department.

Effective: YA 2023 to YA 2025

Tax deduction for sponsorship of Smart Artificial Intelligence-Driven Reverse Vending Machine

Currently, tax deduction under Section 34(6)(h) of the Income Tax Act 1967 can be given to any relevant person who carries out community projects that provide significant benefits to the public in Malaysia related to the fields of education, health, housing, infrastructure, information and communication technology or maintenance of a building designated as a heritage site, projects to increase the income of the poor as well as environmental preservation/conservation projects.

Proposal
It is proposed that tax deduction under Section 34(6)(h) of the Income Tax Act 1967 be given to companies and other than companies (individuals, partnerships, trusts and cooperatives that have business income) that make donations or sponsorships of Smart Artificial Intelligence-Driven Reverse Vending Machine as a community project.

This is to support the recycling of plastic waste ecosystem and to ensure the collected-for-recycling rate be increased through effective and organised plastic waste collection programs.

Effective: For contributions / sponsorship and applications received by MOF from 1 April 2023 until 31 December 2024

Indirect Tax

Goods and Services Tax

At present, the Government is not planning to implement GST in view of the current backdrop of low wages, rising cost of living, and inflationary pressures. It will be reviewed at a more appropriate time.

Commentary
The general pre-budget message coming from the Government was that it was not the right time to bring GST back, so the final Budget announcement was consistent and not unexpected.

The Minister of Finance and the Deputy Minister of Finance have since reaffirmed in Parliament that GST will not be implemented this year due to such concerns as the low levels of income of the rakyat, however the possibility of re-considering its implementation remains.

The introduction of GST or a similar broad-based consumption tax to replace the current SST, will continue to be a topic of discussion, balancing between the economic need for tax revenue for the country and the impact of the tax on the cost of living for the lower and middle classes.

Introduction of luxury goods tax

Proposal
It is proposed that luxury goods tax be imposed on certain type of luxury goods (e.g., luxury branded watches and branded fashion goods).

Effective: Year 2023 (implementation date yet to be confirmed)

Commentary
This is part of the Government's efforts to widen the tax base by primarily targeting high-income earners. It is proposed to commence in 2023, although no specific implementation date was mentioned. Nevertheless, it is noted during the winding-up speech by the MOF for the 2023 Supply Bill that the MOF is still reviewing various aspects of the luxury goods tax including which goods to be involved, when to implement the tax and the tax amount to be imposed. It is expected that there will be an announcement on this matter by June 2023.

S

Imposition of excise duty on liquid or gel products containing nicotine

Proposal
The Minister of Finance has proposed to impose excise duty on liquid or gel products containing nicotine.

Effective: To be determined

Commentary
There is currently an excise duty of 40cents/ml generally on chemicals used for smoking through electronic cigarettes and electric vaporising devices in the form of liquid or gel.

Therefore, this new proposal could signal an increase in the excise duty on such products. It is unclear at this juncture at what rate the proposed excise duty would be imposed and when would be the effective date. Further details from the MOF on these matters would likely be forthcoming.

Import duty and sales tax exemption on nicotine replacement therapy products

Currently, Nicotine Replacement Therapy is used as one of the medical treatment options for the cessation of smoking. The Government has granted sales tax and import duty exemption for 2 Nicotine Replacement Therapy products in the market in support of the mQuit Program of the Government's smoking cessation campaign.

Proposal
To further support the mQuit Program and encourage the use of Nicotine Replacement Therapy as an option for the cessation of smoking, the MOF has proposed that import duty and sales tax exemption be granted to the dutiable/taxable Nicotine Replacement Therapy products indicated in the table below, based on applications received by the MOF during the effective period of this proposal.

Product	Tariff Code	Import duty	Sales tax
Nicotine Gum	2404.91.1000	15%	5%
Nicotine Patch	2404.91.1000	0%	10%

Effective: 1 April 2023 until 31 March 2026

Import duty and sales tax exemption on studio and filming production equipment

The Malaysian National Creative Industry Policies have been introduced to holistically empower the creative industry based on creativity and innovation through production of high-quality products as well as being able to uphold Malaysia's art and cultural heritage.

It was recognised that the availability of high-tech infrastructure and a conducive ecosystem were among the main catalysts needed to promote growth and increase the competitiveness of the local creative industry, allowing the industry to take advantage of new technologies to produce creative works of international standards.

Currently, the importation of special equipment for use by the creative industry such as cameras and broadcasting equipment, audio and video systems, studio equipment and visual production equipment are subject to import duties between 5% to 30% and sales tax at 10%.

Proposal
To spur creativity among industry players to create high value creative content in the domestic and international markets as well as attracting foreign film producers to carry out filming activities in Malaysia, it is proposed that an import duty and sales tax exemption on studio and filming production equipment be given to providers of studio equipment, production and post-production services for a period of 3 years.

Effective: Applications received by the MOF from 1 April 2023 until 31 March 2026

Extension of import duty, excise duty, and sales tax exemption in relation to electric vehicle

Currently, exemptions are provided to support the development of the EV industry and encourage domestic demand as follows:

- 100% import duty exemption on components for locally assembled EV from 1 January 2022 to 31 December 2025.
- 100% excise duty and sales tax exemption on locally assembled Completely Knocked-Down EV from 1 January 2022 to 31 December 2025.
- 100% import duty and excise duty exemption on imported Completely Built-Up EV from 1 January 2022 to 31 December 2023.

Proposal
It is proposed that the above exemptions be extended for 2 years as follows:

- 100% import duty exemption on components for locally assembled EV to be extended until 31 December 2027.
- 100% excise duty and sales tax exemption on locally assembled Completely Knocked-Down EV to be extended until 31 December 2027.
- 100% import duty and excise duty exemption on imported Completely Built-Up EV to be extended until 31 December 2025.

Effective: 1 January 2022

Commentary
The proposal is welcomed and will help make the adoption of EVs more affordable whilst spurring its growth in the Malaysian market. This is in line with the country's Low Carbon Mobility Blueprint, EV Roadmap, and National Automotive Policy 2020.

Excise duty and sales tax exemption for disposal of individually owned taxis and hired cars

At present, excise duty and sales tax exemptions were given on the sale/transfer/private use/disposal of budget taxis and hired cars, subject to the following conditions:

- Limited to individually owned budget taxis and hired cars only; and
- Age of vehicle must exceed 7 years from the date of registration.

Proposal

It is proposed that excise duty and sales tax exemption on the sale/transfer/private use/disposal of individually owned taxis and hired cars be expanded and reviewed as follows:

- Exemption granted based on these licenses and services:

    i) Taxis (budget taxis, executive taxis, and TEKS1M);
    ii) Airport taxis (budget and family); and
    iii) Hire cars.

- Vehicle age condition is relaxed to at least 5 years from the date of registration.

Effective: Applications received by the RMCD from 1 March 2023

Commentary

This is a positive move to alleviate the burden of individual taxi owners who have been negatively impacted by the COVID-19 pandemic. The guidelines and application form in applying the above exemption are now available on the RMCD website.

Individual Tax

Review of income tax rate for resident individuals

Currently, the income tax structure for resident individuals is based on progressive tax rates ranging from 0% to 30% on chargeable income.

Proposal
The 2023 budget proposes the following changes to the income tax rate for resident individuals:

- 2% reduction in income tax rate for chargeable income band of RM35,001 to RM50,000 (from 8% to 6%), RM50,001 to RM70,000 (from 13% to 11%) and RM70,001 to RM100,000 (from 21% to 19%).
- The chargeable income band of RM100,001 to RM250,000 will be combined with the RM250,001 to RM400,000 income band and be subject to 25% tax rate.
- Income tax rate increased by 1% for chargeable income band of RM400,001 to RM600,000 (from 25% to 26%).
- Income tax rate increased by 2% for chargeable income band of RM600,001 to RM1,000,000 (from 26% to 28%).

Chargeable income (RM)	Current tax rate (%)	Proposed tax rate (%)
0–5,000	0	0
5,001–20,000	1	1
20,001–35,000	3	3
35,001–50,000	8	6
50,001–70,000	13	11
70,001–100,000	21	19
100,001–250,000	24	25
250,001–400,000	24.5	25
400,001–600,000	25	26
600,001–1,000,000	26	28
1,000,001–2,000,000	28	28
Exceeding 2,000,000	30	30

Effective: YA 2023

Extension of tax relief for fees paid to childcare centres and kindergartens

Currently, an individual taxpayer is eligible for an income tax relief for payments made to registered childcare centres and kindergartens. The annual relief is RM3,000 for YAs 2020 to 2023, regardless of whether the individual may have more than 1 child.

Proposal
It is proposed that this tax relief of RM3,000 be extended to YA 2024.

Effective: YA 2024 only

Expansion of scope for life insurance premiums relief to include a voluntary contribution to the EPF

Currently, a resident individual taxpayer is eligible to claim income tax relief on his/her mandatory / voluntary contributions made to approved scheme such as the EPF, takaful contributions or life insurance premiums as shown below:

No	Type of contributions	Total relief
1	Payment of life insurance premium or takaful contributions	Up to RM3,000
2	Mandatory EPF contribution by private sector employees or voluntary EPF contributions by self-employed individuals or pensionable civil servants	Up to RM4,000
	Total	Up to RM7,000

Pensionable civil servants with no contribution to EPF are eligible to claim tax relief up to RM7,000 on their takaful contributions or life insurance premium payments.

Proposal

To further encourage voluntary contribution to increase savings in preparation for old age, it is proposed that:

- The relief under category (1) be expanded to include any voluntary contribution made by an individual to the EPF.
- The relief under category (2) is expanded to include mandatory and voluntary EPF contributions made by private sector employees, self-employed individuals or pensionable civil servants.

The voluntary EPF contribution relief amount under category (1) is in addition to the voluntary EPF contribution relief amount under category (2).

For example, if a self-employed individual makes a voluntary EPF contribution of RM5,000, he may claim a tax relief RM4,000 under category (2). The balance of RM1,000 will be claimable as a tax relief under category (1), assuming that life insurance premium or takaful contributions, if any, does not exceed RM2,000 under category (2).

However, if the self-employed individual makes a voluntary EPF contribution of RM2,500, he may only claim such relief either under category (1) or (2). The relief cannot be claimed under both categories.

Effective: YA 2023

Expansion of scope for medical expenses for self, spouse, and children

Currently, an individual taxpayer is eligible for tax relief of RM8,000 for medical expenses incurred for serious diseases and fertility treatment. This tax relief includes:

- Expenses for a full medical check-up of up to RM1,000. This scope includes:
  - Mental health-related examinations or consultation services; and
  - COVID-19 detection tests conducted by registered hospital/medical practitioners, or the purchase of a self-detection test kit.
- Vaccination expenses of up to RM1,000.

Proposal
It is proposed that the scope and quantum of the above relief be expanded as follows:

- The quantum of the tax relief be increased to RM10,000.
- The scope of tax relief be expanded to include the following expenses incurred by an individual in respect of his child who is 18 years old and below:
  - diagnostic of learning disability assessment certified by a medical practitioner registered with the Malaysian Medical Council; or
  - early intervention program or rehabilitation treatment for learning disability conducted by an allied health practitioner in the field of learning disability registered under the Allied Health Professions Act 2016.

The expanded scope is subject to the following qualifying conditions:

- The expenses on diagnosis assessment, early intervention program and rehabilitation treatment are incurred in respect of the following learning disabilities:
  - autism spectrum disorder;
  - attention deficit hyperactivity disorder;
  - global developmental delay;
  - intellectual disability;
  - down syndrome; and
  - specific learning disability.
- The diagnosis assessment, early intervention program and rehabilitation treatment must be provided in Malaysia.
- The relief is capped at RM4,000 regardless of whether the individual may have more than 1 child.
- The claim must be substantiated with a receipt and a certification issued by a:
  - registered medical practitioner in respect of a diagnostic assessment; or
  - registered allied health practitioner in respect of an early intervention program or rehabilitation treatment.

Effective: YA 2023

Stamp Duty

Stamp duty exemption for first-time home buyers

Proposal
It has been proposed that 75% stamp duty exemption would be granted on instrument of transfer of property and loan agreement for purchase of first home valued between RM500,001 to RM1million.

Effective: To be determined

Transfer of property by way of love and affection

Proposal
It has been proposed that the stamp duty for instrument executed for transfer of property between family members by way of love and affection be revised as follows:

<table>
<tr><th>Parties</th><th>Current</th><th>Proposal</th></tr>
<tr><td>Parents and children</td><td>50% of the stamp duty is remitted</td><td rowspan="2">• First RM1million of the property's value – 100% exemption
• Any amount in excess of RM1million – 50% remission</td></tr>
<tr><td>Grandparents and grandchildren</td><td>Subject to ad-valorem duty of 1% to 4%</td></tr>
</table>

The above stamp duty treatment only applies to acquirers who are Malaysian citizens.

Effective: 1 April 2023

Stamp duty for educational loan / scholarship agreement

Currently, a nominal stamp duty of RM10 is imposed on educational loan / scholarship agreement to pursue higher education in higher educational institutions.

Proposal
The above nominal stamp duty of RM10 will be expanded and imposed on educational loan / scholarship agreement to pursue any course of study in any institution.

Effective: 1 June 2023

Extended period of stamp duty exemption for restructuring and rescheduling agreement for loan/financing facilities

Proposal
It is proposed that the stamp duty exemption on agreement for restructuring or rescheduling of loan/financing facilities executed during the period 1 July 2021 to 31 December 2022 be extended for another 2 years.

Effective: Agreement executed between the period 1 January 2023 to 31 December 2024

Instrument in relation to discounting invoices, hire purchase receivables or factoring agreements

Currently, a nominal stamp duty of RM10 is imposed on the following instruments:

First Schedule of the Stamp Act 1949	Description of instrument
Item 27(d)	Instrument of a charge, mortgage, or assignment by way of security of accounts receivables to licensed financial institutions pursuant to an agreement for discounting invoices or hire purchase receivables
Item 32(c)	Instrument on the absolute sale of any accounts receivable or book debts to licensed financial institutions, pursuant to a factoring agreement

Proposal
The above nominal stamp duty of RM10 will be expanded and imposed on similar instruments which involve any statutory body, agency of the Government / State Government, or any company in which the Government / State Government has interest, which provides financing to a SME, pursuant to agreement for discounting invoices, hire purchase receivables or factoring agreement.

Effective: Upon coming into operation of the Finance Act 2023

Real Property Gains Tax

Transfer of chargeable assets between former spouses

Currently, the gains arising from transfer of chargeable assets between former spouses are subject to RPGT.

Proposal

It has been proposed that the disposal price for the transfer of chargeable assets between former spouses pursuant to a court order in consequence of the dissolution or annulment of their marriage would be deemed to be equal to the acquisition price (i.e. there would be no gain or loss).

The above treatment shall only apply to assets owned by Malaysian citizens.

Effective: Upon coming into operation of the Finance Act 2023

Transfer of chargeable assets to a company controlled by an individual

Currently, the disposal price of the chargeable asset shall be deemed to be equal to its acquisition price (i.e. no gain or loss) in a transaction involving the transfer of chargeable assets owned by:

i) an individual;
ii) his wife;
iii) an individual jointly with his wife or with a connected person; or
iv) a nominee or a trustee for an individual, his wife or both,

to any company controlled by:

i) the individual;
ii) his wife;
iii) the individual jointly with his wife or with a connected person; or
iv) the nominee or the trustee for the individual, for the wife of the individual or for both,

for a consideration consisting of shares or substantially (75%) of shares in the company and the balance of a money payment.

Proposal

It is proposed that the treatment of no gain or loss would only apply in a situation where the transferee company is a company incorporated in Malaysia.

Effective: Upon coming into operation of the Finance Act 2023

Petroleum Tax

Amended Return on Expenditure During Exploration Period (Form CPE)

Currently, there is no provision in the Petroleum (Income Tax) Act 1967 to allow for the revision of Form CPE.

Proposal
It is proposed that a new provision be introduced to allow a revision of the amount of exploration expenditure incurred during the exploration period.

The Amended Return Form CPE must be submitted to the IRB within 6 months from the due date for submission of Form CPE. The amendment of return shall only be made once.

Effective: YA 2023

Mandatory electronic filing of returns

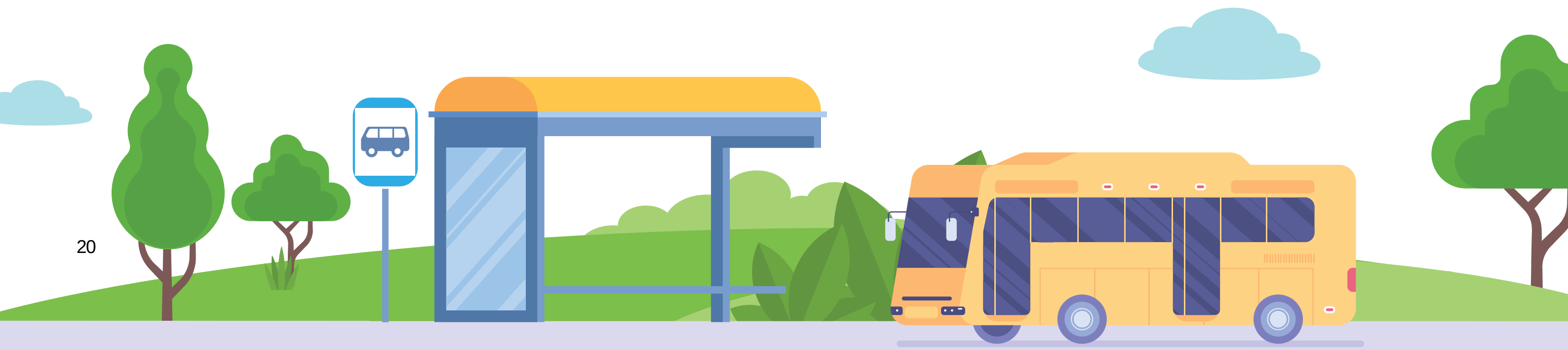
Currently, a chargeable person may submit the following returns either manually or via electronic filing (e-filing):

- Petroleum Income Tax Return Form (Form CPP)
- Return on Expenditure During Exploration Period (Form CPE)

Meanwhile, the Amended Return Form CPP is to be submitted manually.

Proposal
It is mandatory for Form CPP, Form CPE as well as Amended Return Form CPP to be submitted electronically via e-filing only.

Effective: YA 2023



Administration

Mandatory submission of income tax return form, amended income tax return form and employer return form via e-filing

Currently, it is mandatory for a company and LLP to submit an ITRF via e-filing to the IRB. It is also mandatory for a company to submit its employer return via e-filing to the IRB.

Proposal
It is proposed that the mandatory e-filing of returns be expanded to include submission of amended ITRF and extended to the following taxpayer categories:

Types of Return Form	Category of taxpayers
Income tax return form	All categories of taxpayer, including the return by partnership
Amended income tax return form	Company, LLP, trust body and co-operative society
Employer return form	LLP, trust body and co-operative society

Effective: YA 2024

Instalment payments for tax arising from assessment

Currently, the Director General of Inland Revenue is empowered under the Income Tax Act 1967 to allow the tax to be paid by instalments in such amounts and on such dates as the Director General of Inland Revenue may determine for tax arising from an assessment, an additional assessment, an advance assessment and a composite assessment, but not a deemed assessment upon submission of an ITRF or an amended ITRF.

Proposal
It is proposed that the power of the Director General of Inland Revenue to allow instalment payments be expanded to include tax arising from a deemed assessment upon submission of an ITRF or an amended ITRF.

Effective: YA 2023

Allow second revision of tax estimate (CP500)

Currently, every person (other than a company, trust body, co-operative society or limited liability partnership) chargeable to tax for a YA, is allowed to revise the tax estimate not later than 30 June in that YA.

Proposal
To allow application for a first revision not later than 30 June and a second revision not later than 31 October in that YA.

Effective: YA 2023

Others

Special Voluntary Disclosure Program

Proposal

The SVDP will be reintroduced by the IRB and RMCD. Penalties will be fully waived by the IRB and RMCD for voluntary disclosures made from 1 June 2023 to 31 May 2024.

Taxpayers who are under tax audit or tax investigation are not eligible to participate in SVDP.

Effective: 1 June 2023 to 31 May 2024

Commentary

Previously, SVDP was introduced during Budget 2019 and Budget 2022 by IRB and RMCD respectively. No further details have been made available at this juncture and we will need to wait for further details to be released. In particular, there is a question on the taxes covered under the SVDP e.g., does it extend to RPGT, stamp duties, WHT or the surcharge on transfer pricing adjustments.

The previous Special Voluntary Disclosure and Amnesty Program by RMCD ended in September 2022 and covered disclosures of duties and taxes up to 31 October 2021. It is expected that this next edition of voluntary disclosures should at least continue for periods starting from November 2021.

While this is a welcomed move, there have been calls by the private sector to have a more permanent voluntary disclosure program in place. It is hoped that if this SVDP is successful, it leads to the IRB and RMCD implementing a more permanent disclosure mechanism for taxpayers in the future.

That said, it is timely for taxpayers to undertake a review of their tax affairs and take advantage of the upcoming SVDP to rectify their tax positions, where relevant.

Redefinition of "plant"

Plant is currently defined in Paragraph 70A, Schedule 3 of the Income Tax Act 1967 as follows:

"An apparatus used by a person for carrying on his business but does not include a building, an intangible asset, or any asset used and that functions as a place within which a business is carried on."

Proposal

It is proposed to redefine the definition of plant as follows:

"An apparatus used by a person for carrying on his business but does not include a building, or any asset used and that functions as a place within which a business is carried on."

It is also proposed to allow the Minister to prescribe any other assets as assets which are excluded from the definition of "plant".

Effective: YA 2023

Commentary

The deletion of the exclusion of intangible assets in the definition of plant would streamline the Income Tax Act 1967 to tax cases where the court decided that databases were qualifying plant. Nevertheless, the types of asset which could qualify as "plant" may be narrowed since the Minister may now prescribe the assets to be excluded from the definition of "plant".

Tax Deduction relating to Sports Development and National Athletes

Currently, Section 44(11B) of the Income Tax Act 1967 allows a tax deduction of up to 10% to be given to a person in relation to cash contribution made for any sports activities approved by the Minister of Finance.

Proposal

- To bolster the sport development activities in Malaysia, it is proposed that a tax deduction of up to 10% of aggregate income be given to individuals or companies on contributions made to non-profit organisations which undertake sports development at the grassroot level.
- As part of the Government's initiative to maintain and protect the welfare of national athletes, it is proposed that employers who hire former national athletes be given a tax deduction.

Effective: To be determined

Commentary

Generally, remuneration paid by an employer to an employee should be eligible for a single deduction under Section 33(1) of the Income Tax Act 1967. Hence, we anticipate that the proposed tax deduction in relation to the hiring of former national athletes would be in the form of further deduction, additional to the tax deduction under Section 33(1) of the Income Tax Act 1967. The relevant period for the tax deduction has not been announced in the Budget 2023 speech text. We expect further details to be provided by the authorities.

Tax Exemption for Charitable Hospital and Tax Deduction for Donors

Currently, a hospital may enjoy tax exemption under Section 44(6) of the Income Tax Act 1967 if it qualifies as an approved institution / organisation, provided the stipulated conditions are met. Whereas the donors making donations to an approved institution / organisation would be eligible to claim a tax deduction of up to 10% of aggregate income.

Proposal

- As a measure to improve the issue of overcrowding in public health facilities, it is proposed that an income tax exemption equivalent to the expenses incurred for charity purposes be given to charitable hospitals that are registered as Companies Limited by Guarantee.
- It is also proposed that donors who donate to the charitable hospitals would be given a tax deduction up to 10% of aggregate income.

Effective: To be determined

Project with Nasional Interest Approved by the Minister

Taxpayers are eligible to claim a tax deduction of up to 10% of aggregate income on cash donation or cost of contribution in kind, where applicable, made to the following:

- Institutions, organisations or funds approved under subsection 44(6) of the Income Tax Act 1967;
- Sports activity approved under subsection 44(11B) of the Income Tax Act 1967; and/or
- Projects of national interest approved under subsection 44(11C) of the Income Tax Act 1967.

Proposal

It is proposed that *Tabung Komuniti FIlem dan Pembangunan Filem Kenegaraan* under the National Film Development Corporation Malaysia (FINAS) be included as a project of national interest approved by the Minister. Contributions to such fund will qualify for a tax deduction under subsection 44(11C) of the Income Tax Act 1967, restricted to 10% of aggregate income subject to a maximum contribution of RM10 million.

Effective: 1 January 2023

Abbreviations and Acronyms

Accelerated Capital Allowance	ACA
Capital Gains Tax	CGT
Carbon Capture and Storage	CCS
Electric Vehicle	EV
Employees Provident Fund	EPF
Foreign Direct Investment	FDI
Goods and Services Tax	GST
Inland Revenue Board	IRB
Income Tax Return Form	ITRF
Investment Tax Allowance	ITA
Limited Liability Partnership	LLP
Malaysian Investment Development Authority	MIDA
Micro, Small and Medium Enterprises	MSME
Ministry of Agriculture and Food Security	MAFS
Ministry of Finance	MOF
Multinational Company	MNC
Qualifying Capital Expenditure	QCE
Real Property Gains Tax	RPGT
Ringgit Malaysia	RM
Royal Malaysian Customs Department	RMCD
Small and Medium Enterprises	SME
Withholding Tax	WHT
Year of Assessment	YA

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