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Highlights of Budget 2021 - Part II

Finance Bill 2020

Tax Espresso (Special Edition)

19 November 2020

International Tax Review
Asia Tax Awards 2020
Malaysia Tax Firm & Transfer Pricing Firm of the Year

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Budget 2021: Part ll covers changes proposed in the Finance Bill 2020 which were not announced in the Budget Speech, and not covered in our '[Highlights of Budget 2021: Part l](#)'

(Other proposals in the Finance Bill 2020 not specifically highlighted are minor or inconsequential in nature)

Corporate Tax

Change in penalty for non-compliance with Transfer Pricing regulations

Existing

[Section 113(2) of the ITA read with TP audit framework]

- Additional tax arising from TP adjustment in audit
AND
- Non-filing *or* delay in filing *or* poor quality of TP documentation

= Penalty @ 30-50% of tax undercharged

Proposed

Section 113B of the ITA – Failure to furnish contemporaneous TP documentation

- On conviction, fine of RM20,000 to RM100,000 or imprisonment up to 6 months or both
- Burden of proof on taxpayer in case of prosecution
- On conviction, the court may further order to furnish TP documentation within 30 days or such other period as it deems fit
- If no prosecution is instituted, the DGIR may impose a penalty of RM20,000 to RM100,000
- Taxpayer may appeal to SCIT against any order of penalty

Section 140A (3C) & (3D) of the ITA – TP adjustment in audit

- Surcharge of not more than 5% of increase in income, or reduction in deduction or loss; and
- Surcharge will be collected as if it was tax payable for the purpose of collection and recovery of tax under Sections 103 to 106 of the ITA

Effective: 1 January 2021

Our commentary:

- *With the proposed Section 113B of the Income Tax Act 1967 ("ITA"), the Director General of Inland Revenue ("DGIR") reinforced its position that taxpayers should prepare contemporaneous Transfer Pricing ("TP") documentation and furnish it upon request within the given timeframe. However, clarity is required whether the implications under the proposed Section 113B of the ITA will apply separately to each year of non-compliance.*

- *In the absence of the definition of "contemporaneous" under the ITA, reference can be made to the TP Rules, wherein TP documentation is defined as "contemporaneous" if it is prepared before entering into a controlled transaction and is updated prior to return filing due date for the relevant year of assessment. Further, according to FAQs released by the Inland Revenue Board ("IRB") dated 1 November 2018, the date of the comparable search must be stated in the TP documentation.*

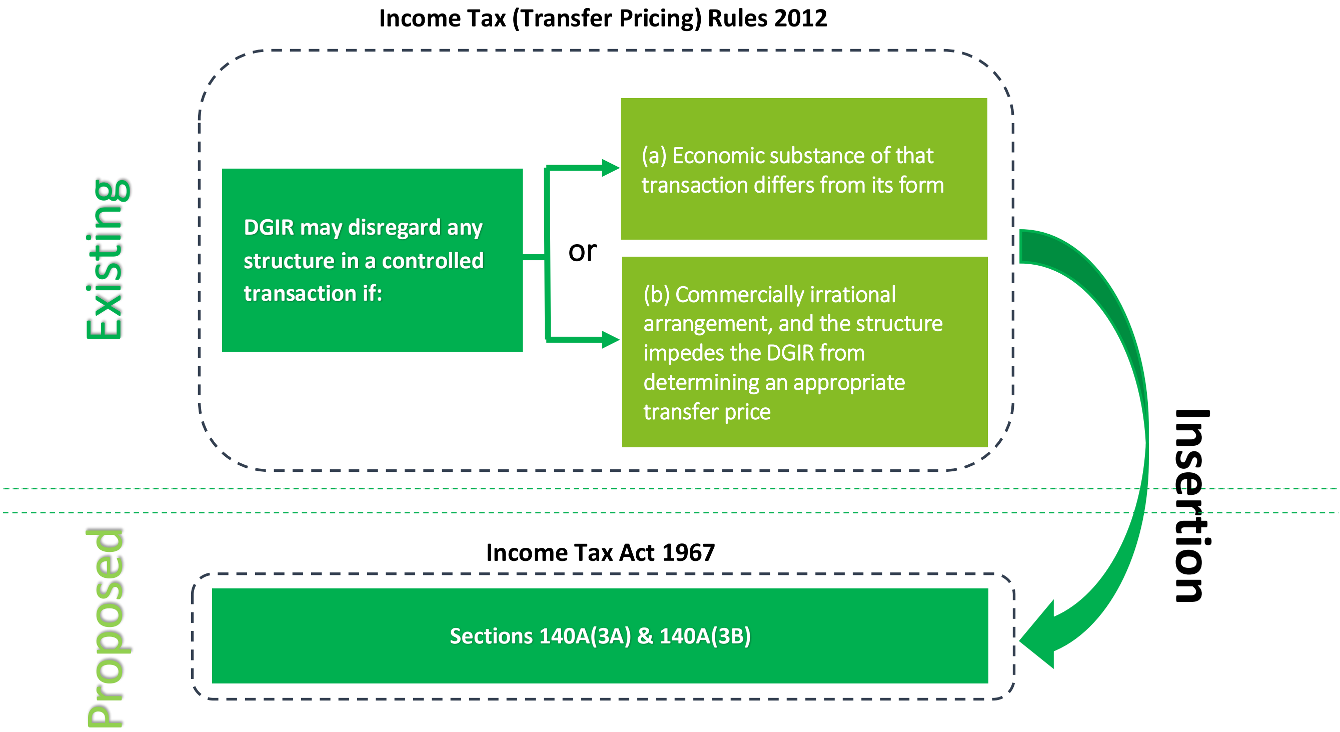
- *The proposed surcharge under Section 140A of the ITA will be applicable to all taxpayers with controlled transactions, irrespective of whether or not they have any tax attributes (e.g. incentives, capital allowances, business losses, etc.).*

- *It appears the proposed surcharge under Section 140A of the ITA will not be considered as tax for claiming any offsetting under MAP or TP Rules.*

- *The proposals do not clarify whether they replace the existing penalties in the TP Audit Framework 2019 [read with Section 113(2) of the ITA] or their implications for voluntary disclosure cases. Further guidance from the IRB on these can be expected.*

- *Preparation of robust contemporaneous TP documentation for all open years of assessment would help mitigate risk of fine/penalty and surcharge. Further, taxpayers should ensure TP documentation is ready by return filing due date and is submitted to the IRB upon request.*

Re-characterisation of controlled transactions



Effective: 1 January 2021

Our commentary:

- *Through this insertion, the proposal fortifies the power of the DGIR to disregard the structure in a controlled transaction, as well as make adjustments to that structure as he deems fit.*

- *This proposal may lead to increased scrutiny of controlled transactions involving, among others, intragroup interest-free financial assistance arrangements and aggressive tax planning structures.*

- *To mitigate the risk of re-characterisation, taxpayers should ensure that their controlled transactions are accurately delineated through contemporaneous TP documentation, and the actual conduct is aligned with inter-company agreements.*

Review of restriction on payment by a Malaysian resident to a Labuan Company

Currently, a portion of payments (depending on the nature of the payment) made by a Malaysian resident to a Labuan Company is non-deductible as follows:

No	Type of payments	Non-deductibility rates	
		Current (#)	**Revised (*)**
1.	Interest payments	33%	25% (Including all payments relating to financing, e.g. commission, facility and upfront fees)
2.	Lease rental payments	33%	25%
3.	Other payments	97%	97% (status quo)

Non-deductibility rules pursuant to the Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 [P.U.(A) 375/2018].

***** The Labuan Financial Services Authority ("LFSA") has issued a circular on the revision to non-deductibility rules. The revised rates are effective 1 January 2019, subject to the final release of the rules to amend P.U.(A) 375/2018.

"Labuan Company" is defined in the ITA to mean "a Labuan entity as provided under Section 2B(1) of the Labuan Business Activity Tax Act 1990 ("LBATA")". Under Section 2B(1) of the LBATA, the Labuan entities -

(a) shall be as specified in the Schedule; and
(b) shall, for the purpose of the Labuan business activity, have:
 (i) an adequate number of full time employees in Labuan; and
 (ii) an adequate amount of annual operating expenditure in Labuan,

 as prescribed by the Minister by regulations made under this Act.

Based on the above, one may take the view that the non-deductibility rules only apply to Labuan companies that fulfill the substance requirements.

Review of restriction on payment by a Malaysian resident to a Labuan Company (cont'd)

Proposal
It is proposed that the legislation would be amended to clarify that the non-deductibility rules would apply to all Labuan entities referred to in Section 2B(1)(a) of the LBATA, regardless of whether they comply with the substance requirements.

The list of Labuan entities (e.g. Labuan Company, Labuan Foundation, Labuan Trust etc.) is provided in the Schedule of the LBATA.

Effective: 1 January 2021

Definition of "plant"

"Plant" is currently not defined for the purpose of claiming capital allowances under Schedule 3 of the ITA.

Proposal
It is proposed that "plant" be defined in Schedule 3 of the ITA 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."

Effective: Year of assessment 2021

Special reinvestment allowance

Proposal
As announced under PENJANA, to encourage reinvestment by companies which have exhausted their eligibility to qualify for reinvestment allowance (“RA”), special RA will be made available to these companies which incur capital expenditure for qualifying projects in the years of assessment 2020 to 2022.

YA in which the companies have exhausted their eligibility to qualify for RA	YA in which the capital expenditure is incurred that qualifies for special RA claim
2019 or prior years of assessment	2020, 2021 and 2022
2020	2021 and 2022
2021	2022

Effective: Years of assessment 2020 to 2022

Review of group relief – Determination of related companies

For the purpose of qualifying for group relief to share current year business losses, the surrendering company and claimant company must be related companies. One of the tests in determining if they are related companies is that at least 70% of the paid-up capital in respect of ordinary shares of the surrendering company and the claimant company are directly or indirectly owned by another company resident and incorporated in Malaysia.

Proposal
For the above test, it is proposed that the ownership of the surrendering company and claimant company, where indirectly owned, must be through the medium of companies resident and incorporated in Malaysia.

Effective: Year of assessment 2022

Mandatory electronic filing of Income Tax Return Form by Limited Liability Partnership

Currently, an LLP may submit its income tax return form (“ITRF”) either manually or via electronic filing (“e-filing”).

Proposal
It is mandatory for an LLP to file its ITRF via e-filing only.

Effective: Year of assessment 2021

Removal of the word “nominal” under the ITA

Under the Companies Act 2016, all shares issued shall have no par or nominal value.

Proposal
To align with the no par value regime of shares in the Companies Act 2016, it is proposed to delete the word “nominal” from the relevant provisions of the ITA in determining the company's ordinary shareholding and whether the shareholders remain substantially the same for the purpose of establishing if adjusted business losses as well as unabsorbed capital allowances can be carried forward.

Effective: 1 January 2021

Introduction of tax rebate for Companies and Limited Liability Partnerships

The Government has introduced many initiatives under the PENJANA to ease the financial stress on businesses with the objective to stimulate Malaysia's overall economy. Among the initiatives is the income tax rebate of up to RM20,000 per year for the first 3 years of assessment for a small and medium enterprise ("SME") that is incorporated in Malaysia and commences operation between 1 July 2020 and 31 December 2021.

Proposal

It is proposed that the above income tax rebate be extended to a Limited Liability Partnership ("LLP"). Below are the qualifying conditions proposed:-

i. The company or LLP must be a Malaysian tax resident and incorporated / registered in Malaysia;
ii. The company or LLP has commenced operation between the period 1 July 2020 and 31 December 2021;
iii. The company or LLP has paid up capital or capital contribution of RM2.5 million or less at the beginning of the basis period for a year of assessment and its gross income from a source or sources consisting of a business shall not be more than RM50 million for that year of assessment; and
iv. Other conditions imposed by the Minister under the statutory order that will be published in the Gazette.

Any excess of tax rebate is not refundable by the IRB and is not allowed for set-off against subsequent years' tax liability. In other words, the excess of tax rebate will be a permanent loss.

The threshold for the amount of tax rebate that can be deducted against the tax liability of the company or LLP is equivalent to the operating or capital expenditure which it has incurred but limited up to RM20,000 for each year of assessment, for a period of 3 consecutive years from the year of assessment it first commences operation.

Any failure to comply with the above-mentioned conditions in a year of assessment (i.e. year of failure), the company or LLP will not be eligible for a tax rebate for that year of assessment and subsequent years of assessment. An illustration is provided in the table below:-

Year of failure	Year in which company or LLP is eligible for the income tax rebate		
	Year 1	Year 2	Year 3
Year 1	No	No	No
Year 2	Yes	No	No
Year 3	Yes	Yes	No
Year 2, but fulfill in Year 1 & 3	Yes	No	No

Effective: Year of assessment 2021

Tax Incentives

Introduction of new provisions relating to Approved Incentive Scheme

Proposal
The following provisions were introduced under the Finance Bill 2020:

Tax rates [Section 6(1)(m), Part XVII of Schedule 1]	• Chargeable income of a person who carries on business in respect of a qualifying activity under **an incentive scheme approved by the Minister ("AIS")** is subject to income tax at a rate specified under Part XVII of Schedule I, i.e. **not more than 20%.** • The applicable rate, the specified year of assessment and the conditions shall be prescribed by the Minister.
Qualifying activities under an AIS [Section 6(1A)]	• Qualifying activities under an AIS includes - any high technology activity in manufacturing and services sector; and - any other activities which would benefit the economy of Malaysia.
Tax treatment [Section 65B]	• The business consisting of the qualifying activity under an AIS shall be treated as a separate and distinct business and source. • Chargeable income of a source consisting of the qualifying activity under an AIS shall be equal to the statutory income less any unabsorbed losses brought forward from the same qualifying activity. • Any loss for a year of assessment shall be carried forward to the following year of assessment and can only be deducted from the statutory income from the same qualifying activity. • Any unabsorbed losses during the period of an incentive scheme shall only be utilised for a period of seven consecutive years of assessment after the year of assessment in which the incentive scheme ends.
Tax treatment [Section 65B] – cont'd	• The DGIR may make an additional assessment on a person at any time within five years after the expiration of the year of assessment for which the income tax rate for an AIS was applied if the person fails to comply with the conditions prescribed by the Minister for the AIS. • Separate account for the income from the qualifying activity for each year of assessment shall be maintained.

The IRB has indicated in the 2020 National Tax Seminar that the approved schemes* would include the following incentives that were announced in the Budget 2021 speech and under PENJANA initiatives:

i. Global Trading Centre
ii. Companies relocating to Malaysia
iii. Companies manufacturing pharmaceutical products
iv. Principal Hub

**Please refer to Tax Espresso (Special Edition) - Highlights of Budget 2021: Part I for more details of the above incentives.*

Effective: Year of Assessment 2021

Our Commentary:
Previously, the tax rate applicable for specific tax incentives was not provided in the ITA. The proposed amendments provide for special tax rate applicable (not more than 20%) for AIS and the tax treatment on income received by any person in respect of qualifying activities under AIS.

Expenses incurred for research & development

Single deduction provided under Section 34(7) of the ITA

Currently, any person who incurs revenue expenditure for Research & Development ("R&D") in relation to its business would be entitled for a deduction.

Proposal
It is proposed that the above deduction is to be made available to a Malaysian resident only.

Effective: Upon coming into operation of the Finance Act 2020

Deduction for in-house R&D expenses provided under Section 34A of the ITA

Currently, any person who incurs revenue expenditure for in-house R&D approved by the Minister may be entitled for a double deduction.

For a company that is enjoying pioneer status tax incentive, the company may elect to claim a single deduction in the first basis period of its post-pioneer business.

Proposal
It is proposed that the above deduction is to be made available to a Malaysian resident only. Additionally, in the case of a non-pioneer company, only a single deduction would be given if the R&D expenditure incurred for the basis period for a year of assessment outside Malaysia exceeds 30% of the total R&D expenditure incurred.

For instance, where the total expenditure incurred by the company on an approved qualifying R&D activity is RM1,000,000 out of which RM350,000 is payment for related R&D services outside Malaysia, the total expenditure of RM1,000,000 only qualifies for a single deduction as the payment for R&D services outside Malaysia exceeds RM300,000.

Effective: Upon coming into operation of the Finance Act 2020

Special deduction provided under Section 34B of the ITA

Currently, a special deduction is given to a person who incurs the following:-

i. contribution in cash to an approved research institute;
ii. payment for the use of the services of an approved research institute or approved research company; or
iii. payment for the use of the services of a R&D company or a contract R&D company.

Proposal
It is proposed that the above special deduction is to be made available to a Malaysian resident only.

Effective: Upon coming into operation of the Finance Act 2020

Our Commentary:
The above proposed changes may have an impact to a branch of a foreign company, which is generally not regarded as a Malaysian resident. In any case, the IRB has made its official position known in its public rulings that the above deductions are only applicable to a Malaysian resident.

Individual Tax

Increase in relief for child care fees

Currently, a resident individual taxpayer who enrols his/her children aged up to six years old in child-care centers registered with Director General of Social Welfare under the Child Care Centre Act 1984 or kindergartens registered under the Education Act 1996 is eligible to claim income tax relief of up to RM2,000 on child care fees.

Proposal
It is proposed that the relief be increased from RM2,000 to RM3,000.

This proposal was first announced in June 2020 as part of the PENJANA initiatives.

Effective: Years of assessment 2020 and 2021

Income tax relief for domestic tourism expenses

This relief was initially proposed under the Economic Stimulus Plan in February 2020 and PENJANA initiatives in June 2020.

Proposal
An income tax relief of up to RM1,000 will be granted to resident individual taxpayers in respect of expenses incurred on domestic travel between 1 March 2020 to 31 December 2021.

Expenses are limited to:

i. accommodation expenses at premises registered with the Commissioner of Tourism under the Tourism Industry Act 1992; and
ii. entrance fees to tourist attractions.

Effective: Years of assessment 2020 and 2021

Additional relief for purchase of personal computer, smartphone or tablet

Proposal
It is proposed that a relief of up to RM2,500 be granted to a resident individual taxpayer in respect of purchase of a personal computer, smartphone or tablet for personal use of the taxpayer, spouse or child.

This relief is in addition to the lifestyle relief which already provides for the purchase of a personal computer, smartphone or tablet among other purchases or payment.

This relief is only applicable in respect of purchases made between 1 June 2020 and 31 December 2020. This relief was first announced in June 2020 as part of the PENJANA initiatives.

Effective: Year of assessment 2020 only

Real Property Gains Tax

Review of rate of retention by an acquirer where the disposer is an executor of the estate of a deceased person who is not a citizen and not a permanent resident

Currently, where the consideration of a disposal by an executor of the estate of a deceased person who is not a citizen and not a permanent resident consists wholly or partly of money, the acquirer shall retain the whole sum or 3% of the total value of the consideration (whichever is lesser). Such amount shall be remitted to the DGIR within 60 days from the date of acquisition.

Proposal
It is proposed that the rate of retention by the acquirer in the case where the disposer is an executor of the estate of a deceased person who is not a citizen and not a permanent resident be increased from 3% to 7% to be aligned with the rate currently applicable where the disposer is not a citizen, a permanent resident or a company incorporated in Malaysia.

Effective: 1 January 2021

DGIR's power to remit a sum imposed

Currently, there is no avenue for the DGIR to remit penalty imposed on the disposer arising from the acquirer's failure to retain and remit the stipulated sum required under Section 21B of the Real Property Gains Tax Act 1976 ("RPGTA") due to incorrect or wrong notification furnished to the acquirer.

Proposal
It is proposed that the DGIR be empowered to remit the whole or any part of the penalty imposed in relation to the above based on his discretion for any good cause shown. Where the penalty imposed has been paid, the DGIR shall repay the same.

Effective: 1 January 2021

Revision of Real Property Gains Tax rates for societies registered under the Societies Act 1966

Proposal
The Real Property Gains Tax ("RPGT") rates for societies registered under the Societies Act 1966 will be revised and, the current RPGT rates for a company incorporated in Malaysia or a trustee of a trust as appended in the table below shall apply to societies.

Disposal	RPGT rate
Within 3 years	30%
In the 4th year	20%
In the 5th year	15%
In the 6th and subsequent year	10% (*)

* The existing RPGT rate is 5% for disposal in the 6th and subsequent year by a society registered under the Societies Act 1966.

Effective: 1 January 2021

Submission of RPGT forms via electronic medium by an authorised tax agent, advocate or solicitor

Proposal
The proposed amendments to Section 57A of the RPGTA allow taxpayers to authorise a tax agent, an advocate or a solicitor to furnish RPGT forms via electronic medium on their behalf.

Effective: 1 January 2021

Stamp Duty

Definition of duly stamped

Currently, an instrument is considered duly stamped when it bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force, provided that a stamp certificate or official receipt for the proper amount may be attached or affixed to any instrument.

Proposal
Duly stamped as applied to an instrument will be redefined to include digital stamping. Duly stamped as applied to an instrument means:

i. the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force;
ii. an official receipt is affixed to the instrument;
iii. a stamp certificate is attached to the instrument if the instrument is stamped through an electronic medium; or
iv. the instrument is stamped by means of digital stamping.

Effective: 1 January 2021

Mode of paying and denoting duty

Currently, the mode of paying and denoting duty is indicated on an instrument by an adhesive stamp, an official receipt or a stamp certificate.

Proposal
It is proposed to include the mode of paying and denoting duty by way of:

i. an impressed stamp; or
ii. digital stamping

Effective: 1 January 2021

Duplicate and counterparts

Currently, the duplicate or counterpart of an instrument shall not be deemed to be duly stamped unless:

i. it is stamped as an original instrument;
ii. it appears by a certificate indorsed by the Collector of Stamp Duties ("the Collector"); or
iii. it is denoted on the stamp certificate.

Proposal
It is proposed to include digital stamping as one of the methods of denoting duty and that duplicate and counterparts to the original instrument (duplicate and counterparts) will not be deemed to have been properly stamped unless it has been denoted by means of digital stamping.

Effective: 1 January 2021

Denoting penalty

Currently, payment of penalty shall be denoted on an instrument concerned by:

i. a stamp duly cancelled;
ii. an impressed stamp;
iii. affixing an official receipt; or
iv. attaching a stamp certificate,

and shall be certified by the Collector.

Proposal
It is proposed to include denoting of penalty on an instrument by way of digital stamping.

Effective: 1 January 2021

Minister's power to prescribe means of digital stamping

Proposal
The Minister of Finance ("MOF") is empowered to make rules to prescribe the means of digital stamping to be used for payment of stamp duty, to provide for matters relating to the issuance and validity of the digital stamping.

Effective: 1 January 2021

Penalty, how recoverable

The existing Stamp Act 1949 (“SA”) provides that the procedure for collection of all duties, penalties and other sum required to be paid under the SA are in accordance to any current method used to collect debts due to the Government.

Proposal
To strengthen the existing provision, the following amendments have been proposed:

i. The Collector and any employee of the IRB authorized by the Collector deemed to be a public officers authorized by the Minister may collect / recover all duties, penalties and other amounts required to be paid under the SA through civil proceedings.
ii. In a suit, the certificate signed by the Collector giving the name and address of the defendant and the amount of duty or penalty due from him shall be sufficient evidence of the amount so due and authority for the court to give judgment for that amount due.

Effective: 1 January 2021

Clarification on the Minister’s power to exempt, reduce or remit duties

Proposal
The Finance Bill 2020 proposed an amendment to clarify that the MOF has the power to exempt, reduce or remit duties on any instrument executed by a person, not limited to instruments in relation to a scheme.

Effective: 1 January 2021

Empowering Collector of Stamp Duties to remit duties on grounds of poverty

Currently, only the MOF has the power to exempt, reduce or remit duties on any instrument under the SA.

Proposal
The power to wholly or partially remit duties paid or payable by a person on an instrument will be extended to the Collector provided the duties remitted is made on the grounds of poverty.

The Collector shall refund the amount of duty remitted if the duty has already been paid.

Effective: 1 January 2021

Our commentary:
The above amendment re-aligns the power of the Collector with the DGIR. The DGIR is empowered under the ITA and the RPGTA to remit the tax paid or payable by any person, wholly or partially on grounds of poverty.

Labuan Business Activity Tax

Substance requirement for Labuan entities carrying out Labuan non-trading activities

Current

Under LBATA, a Labuan entity shall have an adequate number of full time employees and an adequate amount of annual operating expenditure in Labuan as prescribed under the regulations made by the Minister for the purpose of the Labuan business activity.

Proposal

It is proposed that the substance requirements for the purpose of the Labuan business activity be segregated into Labuan trading activity and Labuan non-trading activity. In addition, a Labuan entity carrying on Labuan non-trading activities would be required to fulfill an additional condition on control and management in Labuan.

Effective: 1 January 2021

Our commentary:

There are various implementation issues arising from the revised Labuan tax regime and the substance requirement prescribed in the gazette order P.U.(A) 392/2018. Following the LIC's deliberation on the various implementation issues, the Circular on LIC Pronouncement 2-2019 was issued by LFSA to inform the LIC's decisions and changes as approved by the Ministry of Finance, amongst others, the revision to the substance requirements for certain Labuan entities, as shown in the table below. It appears that the above proposed additional condition on control and management is mainly due to the proposed changes to the lower substance requirements on number of full time employees and operating expenditures to be complied by a Labuan pure-equity holding company.

No	Labuan entity carrying on Labuan business activity	P.U.(A) 392/2018[1]		Clarification to LIC Pronouncement 2-2019[2]	
		Minimum number of full time employees in Labuan	Minimum amount of annual operating expenditure in Labuan (RM)	Minimum number of full time employees in Labuan (*)	Minimum amount of annual operating expenditure in Labuan (*) (RM)
1	Labuan entities other than a holding company listed below	Specified substance requirements are prescribed in the Schedule to P.U.(A) 392/2018		Revised substance requirements for certain Labuan entities as provided in the Clarification to LIC Pronouncement 2-2019	
2	Holding company: • Labuan entity that undertakes other than pure equity holding activities	2	50,000	1	20,000
	• Labuan entity that undertakes pure equity holding activities	0 [exempted pursuant to the P.U.(A) 177/2020][3]	50,000	Not required, instead to comply with management and control requirements	20,000

* The revised substance requirements under the Clarification to LIC Pronouncement 2-2019 are subject to the final release of the rules to amend P.U.(A) 392/2018.

Given the changes proposed in Finance Bill 2020 and various clarifications as highlighted, an issue that needs to be addressed by the authorities is whether a Labuan entity that undertakes non-pure equity holding activities is required to fulfill the additional condition on control and management.

[1] Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 [P.U.(A) 392/2018]
[2] Clarification to Labuan Investment Committee ("LIC") Pronouncement 2-2019 issued by Labuan Financial Services Authority dated 20 December 2019
[3] Labuan Business Activity Tax (Exemption) Order 2020 [P.U.(A) 177/2020]

DGIR's power to allow extension of time to make irrevocable election for Labuan business activity to be chargeable under the ITA

Currently, taxpayers may make an irrevocable election to the DGIR within 3 months after the beginning of the basis period for a year of assessment for profits of its Labuan business activity to be chargeable to tax under the ITA.

Proposal
It is proposed that the DGIR shall have the power to grant extension of time to submit the irrevocable election via the prescribed form.

Effective: Upon coming into operation of the Finance Act 2020

Right of Appeal to Special Commissioners of Income Tax ("SCIT") against additional assessment

Currently, the right of appeal only applies to assessment made based on the prescribed Labuan forms.

Proposal
It is proposed that the right of appeal be extended to additional assessments raised by the DGIR.

Effective: Year of assessment 2020

Definition of chargeable profits

Currently, a Labuan entity carrying on a Labuan business activity which fails to comply with substance requirement prescribed under the regulations made by the Minister for a basis period for a year of assessment shall be charged to tax at the rate of 24% on its chargeable profits for that year of assessment. However, the definition of chargeable profits for Labuan business activity which fails to comply with the prescribed substance requirement was not provided.

Proposal
It is proposed to include a specific definition of the term "chargeable profits" which shall apply to a Labuan entity carrying on a Labuan business activity which fails to comply with substance requirement and charged to tax at the rate of 24% under LBATA. The term "chargeable profits" is defined as the net profit as reflected in the audited accounts in respect of the Labuan business activity of the Labuan entity for the basis period for that year of assessment.

Effective: Year of assessment 2020

Our commentary:
Based on this new definition, it appears that foreign sourced income, gains which are capital in nature and unrealised gains including reversal of impairment would also be included as part of chargeable profits.

Insertion of minimum fine and prohibition on use of information

Current Section 20(2) of the LBATA deals with fine to be imposed on an official, on conviction, for disclosing/communicating confidential information (i.e. return of profits, statutory declaration or information) except for purposes of the Act. This fine can be up to RM1 million, however, there is no minimum fine.

Proposal
A minimum fine of RM20,000 is proposed, on conviction, for an offence under Section 20(2). In addition, two new subsections are inserted to:

- *[Section 20(3)]* Prohibit the use, production or disclosure by any person of any return of profits, statutory declaration or information received by such person in contravention of the Act; and

- *[Section 20(4)]* Impose a fine between RM20,000 and RM1 million on, and/or imprison up to 2 years, any person who contravenes the new Section 20(3) and is so convicted (essentially in relation to Country-by-Country Reporting and Common Reporting Standard).

Effective: 1 January 2021

Power to compound offences

Current Section 24(1) of the LBATA gives power to the DGIR to compound any offence committed by a person under Section 22 (power to call for information) or Section 23 (offences and penalty) of the Act. However, this power does not extend to any offence committed by a person under any regulations made pursuant to Section 21(1) of the Act.

Proposal
To extend the power of the DGIR to compound any offence committed by a person under any regulations made pursuant to Section 21(1) of the Act, essentially in regard to Country-by-Country Reporting and Common Reporting Standard.

Effective: 1 January 2021

Our commentary:
The proposals, i.e. amendments to subsections 20(2) and 24(1) as well as the insertion of subsections 20(3) and 20(4) are meant to re-align the LBATA with the ITA.

Petroleum Income Tax

Recovery by suit

Section 49(3) of the Petroleum (Income Tax) Act 1967 ["PITA"] provides that in any civil proceedings, the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under the following sections:

i. Section 48(4) of the PITA - Increased tax payable equal to 10% of tax unpaid under an assessment.

ii. Section 48(5) of the PITA - Increased tax payable equal to 10% of tax unpaid for more than 30 days after the service of a notice of an assessment, additional assessment or composite assessment by the DGIR.

Proposal
To extend the above to include the penalty under Section 48(6) of the PITA. Section 48(6) refers to increased tax payable equal to 10% of balance of tax payable as a result of the taxpayer failing to pay one of the instalments by the date specified by the DGIR.

Effective: 1 January 2021

DGIR to issue public ruling

Currently, there is no provision in the PITA to allow the DGIR to issue a public ruling.

Proposal
Section 71B of the PITA is introduced to allow the DGIR to make a public ruling on the application of any provision of PITA in relation to any chargeable person or any type of arrangement.

Effective: 1 January 2021

Others

Changes to notification of employee status

Currently, an employer is required to submit a written notification to the DGIR in respect of employees as follows:

Event	Deadline
Commencement of employment	Not later than **one month** from commencement of employment
Cessation of employment	Not less than **one month** before the cessation of employment
Departure exceeding three months / Permanent departure from Malaysia	Not less than **one month** before the expected departure date from Malaysia

Proposal
It is proposed that:

i. the above notifications be made using the prescribed forms;
ii. the existing deadline of one month to submit the notification be revised to 30 days; and
iii. an employer is required to submit a written notification to the DGIR via a prescribed form in respect of the death of an employee.

A summary of the above proposed changes is shown below:

Event	Deadline
Commencement of employment	**Not later than 30 days** after the commencement of employment
Cessation of employment	**Not less than 30 days** before the cessation of employment
Departure exceeding three months / Permanent departure from Malaysia	**Not less than 30 days** before the expected departure date from Malaysia
Death of an employee	**Not more than 30 days** after being informed of such death

Effective: 1 January 2021

Withholding Tax on Income Distributed by Real Estate Investment Trust / Property Trust Fund as Final Tax

Currently, where income distributed by a Real Estate Investment Trust ("REIT") / Property Trust Fund ("PTF") listed on Bursa Malaysia has been exempted from tax at the REIT/PTF level, the income distribution received by unit holders is subject to withholding tax. The withholding tax rates applicable to the unit holders would depend on their residence status as shown below:

Unit holders	Withholding tax rates
Unit holder other than a unit holder which is a resident company	10% of gross income (until year of assessment 2025)
Non-resident company	24% of gross income
Foreign institutional investors (i.e., pension funds, collective investment schemes or such other person approved by the Minister)	10% of gross income (until year of assessment 2025)

The withholding tax attributable to the income distributed by a REIT/PTF listed on Bursa Malaysia is available for set-off against the income tax payable on the chargeable income of the unit holders.

Distribution made to a resident corporate unit holder by a REIT/PTF is not subject to withholding tax. Instead, resident corporate unit holders are subject to tax at the prevailing income tax rates applicable to the company.

Proposal
It is proposed that the withholding tax deducted from the income distribution by a REIT/PTF listed on Bursa Malaysia be treated as the final tax. The unit holders who receive the income distribution where withholding tax has been deducted are not required to declare the distribution as the gross income in the basis period for a year of assessment.

Effective: Year of assessment 2021

Tax payable notwithstanding institution of proceedings under any written law

Currently, Sections 103(1), 103(1A) and 103(2) of the ITA provide that the tax payable under an assessment, including an assessment or additional assessment made on the taxpayer, shall be due and payable on the due date whether or not the taxpayer appeals against the assessment.

Proposal
Section 103B of the ITA is introduced to provide that any institution of proceeding against the Government or the DGIR by the taxpayer under any other written law shall not relieve any person from payment of any tax or any debt or other sum for which he is or may be liable to pay.

Note:
A similar provision has been introduced to the RPGTA [Section 21C], PITA [Section 48A] and LBATA [Section 13B].

Effective: 1 January 2021

Certificate preventing a person from leaving Malaysia

Currently, where the DGIR is of the opinion that any person is about or likely to leave Malaysia without paying all tax, sums and debts payable by that person, may issue to any Commissioner of Police or Director of Immigration a certificate containing particulars of the tax, sums and debts so payable with a request for that person to be prevented from leaving Malaysia unless and until he pays all the tax, sums and debts so payable or furnishes security to the satisfaction of the DGIR for their payment.

A person is defined to include any person who is a director within the meaning of Section 75A of the ITA i.e. if he/she occupies the position of director by whatever name called, or is concerned in the management of the company's business and he/she is, either on his/her own or with one or more associates, the owner of, or able to directly or through the medium of other companies or by any other indirect means to control, not less than 20% of the ordinary share capital of the company.

It is silent on the medium of issuing the certificate to the Commissioner of Police or Director of Immigration.

Proposal
It is proposed that the certificate preventing a person from leaving Malaysia may be issued to the Commissioner of Police or Director of Immigration on an electronic medium or by way of electronic transmission.

Note:
A similar provision has been introduced to the RPGTA [Section 22(1A)] and SA [Section 74A(1A)].

Effective: 1 January 2021

Contact us

Name	Designation	Email	Telephone
Service lines			
Business Tax Compliance & Advisory			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
Tan Hooi Beng	Deputy Managing Director	hooitan@deloitte.com	+603 7610 8843
Business Process Solutions			
Julie Tan	Executive Director	jultan@deloitte.com	+603 7610 8847
Capital Allowances Study			
Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Global Employer Services			
Ang Weina	Executive Director	angweina@deloitte.com	+603 7610 8841
Chee Ying Cheng	Executive Director	yichee@deloitte.com	+603 7610 8827
Government Grants & Incentives			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878
Indirect Tax			
Tan Eng Yew	Executive Director	etan@deloitte.com	+603 7610 8870
Senthuran Elalingam	Executive Director	selalingam@deloitte.com	+603 7610 8879
International Tax & Value Chain Alignment			
Tan Hooi Beng	Deputy Managing Director	hooitan@deloitte.com	+603 7610 8843
Mergers & Acquisitions			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
Private Wealth Services			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862
Tax Audit & Investigation			
Chow Kuo Seng	Executive Director	kuchow@deloitte.com	+603 7610 8836
Stefanie Low	Executive Director	gelow@deloitte.com	+603 7610 8891
Transfer Pricing			
Theresa Goh	Executive Director	tgoh@deloitte.com	+603 7610 8837
Subhabrata Dasgupta	Executive Director	sudasgupta@deloitte.com	+603 7610 8376
Philip Yeoh	Executive Director	phyeoh@deloitte.com	+603 7610 7375

Name	Designation	Email	Telephone
Sectors			
Automotive			
Stefanie Low	Executive Director	gelow@deloitte.com	+603 7610 8891
Consumer Products			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
Financial Services			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862
Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Oil & Gas			
Toh Hong Peir	Executive Director	htoh@deloitte.com	+603 7610 8808
Real Estate			
Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Telecommunications			
Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878

Specialist Groups			
Chinese Services Group			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Japanese Services Group			
Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Korean Services Group			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862

Branches			
Penang			
Ng Lan Kheng	Executive Director	lkng@deloitte.com	+604 218 9268
Ipoh			
Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Melaka			
Julie Tan	Executive Director	jultan@deloitte.com	+603 7610 8847
Johor Bahru			
Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862
Kuching			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Kota Kinabalu			
Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371

Triple recognition at the International Tax Review Asia Tax Awards 2020

In the recently announced International Tax Review ("ITR") Asia Tax Awards 2020, Deloitte Malaysia clinched three awards - two national and one regional.

For the third time in the last four years, we have been named the coveted **Malaysia Tax Firm of the Year**. We were also recognised as the **Transfer Pricing Firm of the Year**, with our Transfer Pricing Partner, Theresa Goh being awarded the prestigious title of **Asia Transfer Pricing Practice Leader of the Year**.

The ITR Asia Tax Awards identifies tax professionals and firms who have demonstrated exceptional track record in the Asia-Pacific ("APAC") region. Winners undergo a thorough judging process combining input from tax practitioners and their clients, who judge based on the firm's best work. These criteria include the level of innovation demonstrated in solving tax issues, project complexity, as well as the overall impact on clients.

We are humbled and grateful to receive such recognition. Thank you for the trust and confidence you place in us as your advisors and partners. We look forward to continuing this partnership with you, especially during this challenging period.

As part of a series of celebration for our recent triple recognition, we are bringing you a 3-day webinar. For the very first time, you will be able to tune in and participate in our TaxMax from anywhere you are. Our experts will provide you with an in-depth analysis of the 2021 National Budget announcement, as well as many other topics to prepare you and your organisation towards the new future with more confidence!

To register your interest, please click here and we look forward to meeting you all virtually.