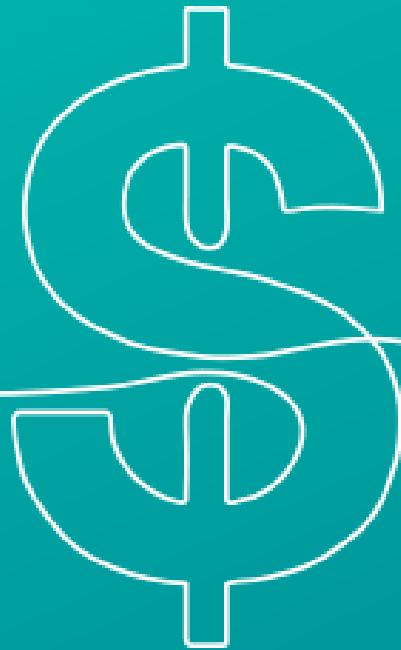




Highlights of Budget 2024
Tax Espresso (Special Edition)

10 November 2023





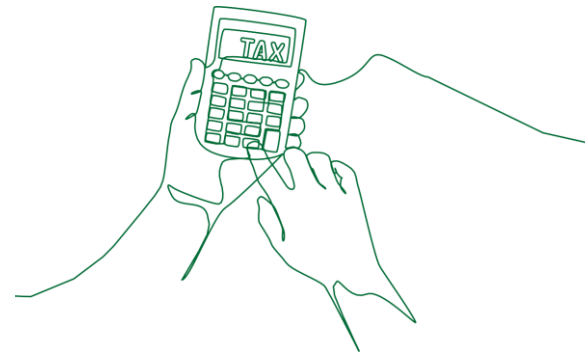
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International Tax Review—Asia Pacific Tax Awards 2023

Recognised as Malaysia Tax Firm of the Year for the fifth consecutive year, and Transfer Pricing Firm of the Year



Capital Gains Tax



Capital Gains Tax on Profits from Disposal of Capital Assets

Under the current legislation, there is no CGT in Malaysia except for RPGT charged on any gain arising from the disposal of real property and shares of an RPC.

It was announced in the Budget 2024 that CGT will be imposed on gains or profits from disposal of unlisted shares from **1 March 2024**.

Proposal

The release of the Finance (No. 2) Bill 2023 has revealed the effective date of **1 January 2024** for implementation of CGT in Malaysia on gains on profits from the disposal of capital assets. The effective date appears to have been brought forward from 1 March 2024 (as announced in Budget 2024) to 1 January 2024.

New Chapter 9 (with new Sections 65C, 65D, 65E and 65F) is to be introduced in Part III of the Act and the relevant provisions are to be amended in light of the implementation of CGT.

Effective: 1 January 2024

Scope of tax

Gains or profits from the disposal of a capital asset by a company, limited liability partnership, trust body or co-operative society are taxable under the Act.

Interpretation of relevant terms

Terms	Definition
Capital asset	Movable or immovable property including any rights or interest thereof.
Consideration	Consideration in money or money's worth.
Disposal	To sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law and includes a reduction of share capital and purchase by a company of its own shares
Shares	a) stock and shares in a company; b) loan stock and debentures issued by a company or any other corporate body incorporated in Malaysia; c) a member's interest in a company not limited by shares whether or not it has a share capital; d) any option or other right in, over or relating to shares as defined in paragraphs (a) to (c).

Source of Income

Gains or profits from the disposal of capital asset in the basis period for a YA shall be:

- ascertained by reference to each disposal separately; and
- treated as a separate source of gains or profits, from the disposal of capital asset for that YA.

Exemption

Gains or profits from the disposal of a capital asset situated in Malaysia is exempted from income tax. The exemption does not apply to:

- disposal of unlisted shares of a company incorporated in Malaysia; and
- disposal of shares under Section 15C (i.e., shares of a controlled company incorporated outside Malaysia which owns real property situated in Malaysia or shares of another controlled company).

Applicable tax rates

The Finance (No. 2) Bill 2023 seeks to introduce a new Part XXI into Schedule 1 of the Act to provide the tax rates applicable for disposal of capital asset as below. It is clarified in the explanatory statement to the Finance (No. 2) Bill 2023 that the income tax rate for income received in Malaysia from outside Malaysia for the disposal of capital asset is subject to the prevailing tax rates.

Type of capital asset	Tax rate
Capital asset situated in Malaysia* acquired <u>before</u> 1 January 2024	10% on chargeable income or 2% of gross disposal price
Capital asset situated in Malaysia* acquired on or <u>after</u> 1 January 2024	10% on chargeable income
Capital asset other than the above	Prevailing rate for the company, limited liability partnership, trust body or co-operative society

*Note:

For capital assets situated in Malaysia, only the gains or profits from disposal of unlisted shares of Malaysian companies and shares of foreign controlled companies holding real property situated in Malaysia or shares of another controlled company are taxable.

Capital Gains Tax

Computation of adjusted income under new Section 65E

The adjusted income from a source consisting of gains or profits from the disposal of capital asset shall be ascertained based on the following:

- Amount or value of consideration for the disposal of capital asset reduced by:
 - i. amount of expenditure wholly and exclusively incurred on the capital asset at any time after its acquisition for the purpose of enhancing or preserving the value of the capital asset, being expenditure reflected in the state or nature of the capital asset at the time of the disposal;
 - ii. amount of expenditure wholly and exclusively incurred at any time after the acquisition of the capital asset in establishing, preserving or defending its title to, or to a right over, the capital asset; and
 - iii. incidental costs of making the disposal.
- Thereafter, by deducting the amount or value of the consideration for the acquisition of the capital asset (together with the incidental costs), and less:
 - i. compensation received for damage, injury, destruction, dissipation or depreciation of the asset;
 - ii. any sum under a policy of insurance for any kind of damage or injury to or the loss, destruction or depreciation of the asset; and
 - iii. any sum forfeited as a deposit made in connection with an intended transfer of the capital asset.

Incidental costs refer to the following expenditure that are wholly and exclusively incurred by the disposer for the purposes of the acquisition or disposal:

- fees, commission or remuneration paid for the professional services of any valuer, accountant, agent or legal adviser;
- costs of transfer (including stamp duty);
- in the case of an acquisition, the cost of advertising to find a seller; and
- in the case of a disposal, the cost of advertising to find a buyer and costs reasonably incurred for the purposes of this Act in making any valuation or in ascertaining market value.

Adjusted income computed above shall be treated as chargeable income.

Certain transactions deemed to be at market value

The consideration for the acquisition or disposal of a capital asset shall be deemed to be equal to the market value of the capital asset at the time of the disposal where:

- i. the taxpayer acquires or disposes of the capital asset otherwise than by way of a bargain made at arm's length and in particular where the taxpayer acquires or disposes of it by way of gift;
- ii. the taxpayer acquires or disposes of the capital asset wholly or partly for a consideration that cannot be valued;
- iii. the taxpayer acquires a capital asset as trustee for the creditors of any person in full or part satisfaction of any debt due from that person or where the taxpayer transfers a capital asset as trustee for the creditors of any person to the creditors in full or part satisfaction of any debt due to the creditors;
- iv. the taxpayer acquires or disposes of a capital asset in a transaction for the transfer of a business for a lump sum consideration;
- v. the disposal of the capital asset is a transaction between connected persons; or
- vi. the capital asset is disposed of by being exchanged for another asset (whether chargeable or not).

Market value

The market value of a capital asset is ascertained by the DGIR in the following circumstances:

- i. the parties to the disposal of a capital asset are unable to agree on its market value;
- ii. there is only one party to the disposal of a capital asset; or
- iii. the DGIR is of the opinion that the market value of the capital asset as agreed on by the parties to the disposal is incorrect.

In a case where a capital asset is disposed of by being exchanged for another asset with no market value, the DGIR may take the market value of the capital asset disposed of as the consideration.

Adjusted loss

- Adjusted loss can be utilised to reduce the adjusted income for subsequent disposal of capital assets.
- Any unutilised adjusted loss can be carried forward for a period of 10 consecutive YAs.

Capital Gains Tax

Date of disposal or acquisition of capital asset under new Section 65F

- Disposal of capital asset is deemed to take place on the date of the agreement where there is a written agreement. In the absence of a written agreement, the disposal is deemed to take place on the date of completion of the disposal.
- The date of completion shall be taken as the earlier of full payment of the purchase consideration or on the date when all things which are necessary for the transfer of ownership of the capital asset has been done.
- Where the contract for disposal of a capital asset is conditional and the acquisition or disposal requires the approval by the Government or a State Government, the date of disposal shall be the date such approval is obtained or if the approval is conditional, the date when the last condition is satisfied.
- The date of acquisition of the capital asset by the acquirer shall be deemed to coincide with the date of disposal of the capital asset by the disposer.

Acquisition of capital assets through syariah-compliant financing facility

- Where a capital asset is acquired with financing facility provided by an Islamic bank in accordance with the *syariah*, the acquisition price of the capital asset shall be:
 - the amount or value of the consideration given by or on behalf of the acquirer to the disposer (other than the Islamic bank); or
 - in the case where the capital asset is owned by such bank, the consideration given to the bank for the acquisition of the capital asset (together with incidental costs) less the sum referred to in Section 65E(2)(b)(i), (ii) or (iii) received or forfeited, as the case may be.

Capital asset taken into trading stock

- If a capital asset acquired or held is taken into trading stock, this shall be deemed to be a disposal on the date that capital asset is taken into trading stock.
- The consideration of the capital asset shall be equal to the market value on the date such asset is taken into trading stock.

Part disposal

Where at any time the owner of a capital asset disposes of a part of that capital asset, the amount or value of consideration for acquisition of the capital asset shall be apportioned between that part of the capital asset and the remainder thereof on whatever basis is most appropriate.

Submission of tax returns under Section 77A(1B)

There is no requirement to submit an estimate of tax payable or make instalment payments on gains or profits from the disposal of a capital asset.

A return in the prescribed form for the disposal of capital asset shall be submitted to the DGIR (together with the tax payment) within 60 days from the date of the disposal. A person is also allowed to furnish amended return for the disposal of capital asset under Section 77B of the Act.

The return should be submitted by way of e-filing.

It is noteworthy that where market value of the asset is used for purpose of the return, the market value shall be based on the valuation made by valuer.

Other considerations or tax administrative procedures

- Currently, Section 61(1)(b) of the Act provides that gains from realisation of investment by a unit trust will not be subject to tax in Malaysia.

It is proposed that in the case of a unit trust, gains arising from the realisation of investments shall be treated as income of the trust body of the trust as gains or profits from the disposal of a capital asset, provided that such gains are not related to real property as defined under the RPGA Act.
- Where a person fails to furnish a return for the disposal of capital asset, the DGIR and that person may come to an agreement in writing as to the payment by that person of a sum of money as provided under Section 96A(1)(a)(i) and (ii) of the Act.
- The DGIR is allowed to issue a notification of non-chargeability when a person has furnished a return for the disposal of a capital asset.
- A person who has failed to furnish a return for the disposal of a capital asset may appeal against the assessment raised by the DGIR under Section 90(3) of the Act by furnishing a return for that basis period for that YA together with the written notice of appeal within the stipulated period.
- The offences and penalties for failure to furnish a return or give notice of chargeability under Section 112 of the Act is expanded to cover a person who fails to furnish a return for the disposal of a capital asset.
- The right to appeal for relief under Section 131A of the Act is expanded to cover assessments related to the disposal of a capital asset.

Capital Gains Tax

Derivation of gains or profits from the disposal of capital assets deriving value from real property in Malaysia

A new Section 15C of the Act will be introduced to deem the gains or profits arising from the sale of shares in a controlled company incorporated outside Malaysia (i.e., the relevant company) to be derived from Malaysia if that company owns real property situated in Malaysia or shares in another controlled company.

When should one apply the deemed derivation rule

Section 15C(2) provides that the above deemed derivation rule under Section 15C(1) of the Act applies at the date of acquisition of shares of the relevant company if:

- a) the defined value of the real property situated in Malaysia (including any right or interest thereof) owned by the relevant company accounts for at least 75% of the value of its total tangible assets;
- b) the defined value of shares in another controlled company owned by the relevant company make up at least 75% of the value of its total tangible asset value, provided that the real property (including any right or interest thereof) owned by this other controlled company in Malaysia is also not less than 75% of the value of its total tangible assets; or
- c) the combined defined value of real property located in Malaysia and shares in another controlled company referred to in paragraphs (a) and (b) owned by the relevant company is at least 75% of the value of its total tangible assets.

The rule applies notwithstanding that at the time of disposal of shares of the relevant company, the defined value mentioned above drops below the 75% threshold by the time the shares are sold.

Date of acquisition of shares of the relevant company

Pursuant to Section 15C(3) of the Act, shares are deemed to be acquired either:

- a) when they meet the criteria listed under Section 15C(2) of the Act; or
- b) on the date of acquisition of the shares of the relevant company.

Determining the acquisition price

The acquisition price of shares of the relevant company shall:

- a) where Section 15C(3)(a) of the Act applies, be determined as follows:

$$A / B \times C$$

"A" is the number of shares in the relevant company;
"B" is the total number of issued shares in the company at the date of acquisition of the shares of the relevant company; and
"C" is the defined value of real property or shares owned by the relevant company at the time of acquisition of the shares of the relevant company.

- b) where Section 15C(3)(b) applies, be determined in accordance with Section 65E(2)(b) or Section 65E(8) of the Act.

"Defined value" means the market value of real property or the acquisition price of shares of another controlled company.

"Value of its total tangible assets" means the aggregate of the defined value of real property (including any right or interest thereof) or shares of another controlled company or both and the value of other tangible assets.

Commentary

Jurisdictions with ongoing Foreign Sourced Income Exemption (FSIE) reforms, including Malaysia, are requested by the EU to further amend their tax treatments of foreign-sourced disposal gains in compliance with the updated FSIE Guidance by the end of 2023.

The proposed exemption for fulfilling economic substance requirements in relation to the disposal of foreign capital asset (as announced in Budget 2024 Touchpoints) is expected to be covered under subsidiary legislation. The proposed exemption would certainly help to maintain the attractiveness of Malaysia to the investors.

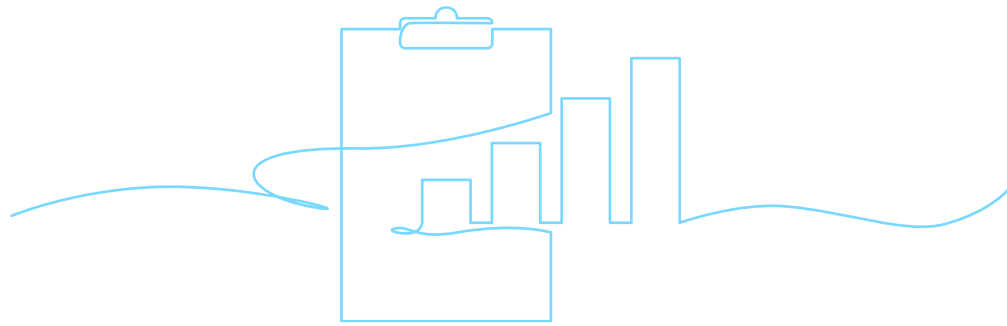
Malaysia is one of the remaining countries in Asia that has not implemented a comprehensive CGT regime. By proposing CGT legislation that is wider in scope compared to the existing RPGT, yet at this juncture limited to the disposal of unlisted shares of Malaysia incorporated companies, shares of foreign controlled companies with substantial real property holdings in Malaysia, and other foreign capital assets, the Government appears to be balancing the need to reduce the country's budget deficit with the need to continue to attract foreign investments into Malaysia.

It was announced in the Budget 2024 that further exemptions may be available for the disposal of shares for the purposes of initial public offerings on Bursa Malaysia and internal group restructuring. It is expected that such exemptions may be introduced by way of subsidiary legislation.

Where CGT applies, foreign taxpayers need to assess whether exemption under relevant Double Taxation Agreement would be applicable. On the other hand, where Malaysian resident vendors suffer CGT in Malaysia as well as foreign tax, foreign tax credit may be available.



e-Invoicing



Mandatory Implementation of e-Invoice

Proposal

The Government has proposed to implement electronic invoice (e-Invoice) in stages in an effort to support the growth of the digital economy and enhance the efficiency of Malaysia's tax administration and management. e-Invoice applies to all taxpayers undertaking commercial activities in Malaysia. All individuals and legal entities are required to comply with the e-Invoice requirements.

Effective: 1 January 2024

Mandatory e-Invoice implementation timeline

Targeted taxpayer	Implementation date
Taxpayers with an annual turnover or revenue of more than RM100 million*	1 August 2024
Taxpayers with an annual turnover or revenue of more than RM25 million* and up to RM100 million*	1 January 2025
All other taxpayers	1 July 2025

* *Turnover or revenue stated in the statement of comprehensive income in the audited financial statements for the financial year 2022.*

Definition of "electronic invoice"

The definition of "electronic invoice" is proposed to be introduced in the Act, PITA and LBATA to mean "an invoice or any document approved by the DGIR, issued by a person in respect of goods sold or services performed".

Disclosure of information

The classified material in relation to e-Invoice can be produced or disclosed to the Director General of Customs and Excise to the extent as necessary or expedient for the exercise of his functions.

Definition of "classified person"

Under the Act and PITA, every classified person shall regard and deal with classified material as confidential. With the introduction of e-Invoice, the definition of "classified person" in the Act and PITA is expanded to cover any person who, for any reason, has by any means access to any information on an e-Invoice.

Duty to issue e-Invoice

The issuance of an e-Invoice is required for each transaction in respect of any goods sold or services performed by the person for that YA. The said e-Invoice shall be transmitted electronically to and validated by the DGIR, via MyInvois portal hosted by the IRB or Application Programming Interface (API) developed by the taxpayers or third-party providers.

The e-Invoices issued must contain particulars prescribed by the Minister of Finance and the conditions and specifications of the e-Invoice shall be as determined by the DGIR in the relevant guidelines issued. A person can rectify any error or mistake and issue a substitute e-Invoice within three days from the date of issuance of the defective e-Invoice.

Subject to conditions to be imposed by the DGIR, certain transactions by a person that involve acquisition of goods or services (e.g. acquisition from foreign suppliers) would require the person to issue a self-billed invoice.

In addition, the DGIR may determine the persons to transmit consolidated transaction invoices (e.g. transactions where the buyers do not require e-Invoices) within a specified time.

The above self-billed invoice as well as consolidated transaction invoice* shall constitute an e-Invoice.

* *consolidated transaction invoice is not applicable to the PITA*

Commentary

The DGIR has issued the e-Invoice Guideline and e-Invoice Specific Guideline to-date, whereas the Software Development Kit which will stipulate the API configuration is expected to be issued in the last quarter of 2023.

Offences relating to issuance of e-Invoice

Failure to issue e-Invoice will be an offence and shall, on conviction, be liable to a fine of not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding 6 months, or to both.



Corporate Tax



Global Minimum Tax (GMT)

Proposal

It is proposed that Malaysia would implement the Domestic Top-Up Tax and Multinational Top-Up Tax (i.e., the Income Inclusion Rule) in the year 2025. At this juncture, there is no indication in the draft legislation as to when the Under-taxed Profits Rule would be implemented. The objective of the GMT rules is to ensure that large MNE Groups would be subject to minimum effective tax rate of 15% in every country in which they operate.

The GMT legislation will be incorporated as Part XI of the Act. The provisions are largely based on the OECD GloBE Model Rules released on 20 December 2021.

Who will be impacted?

The regime will apply to Constituent Entities that are members of an MNE Group with an annual global revenue of at least EUR750 million in at least two of the four consecutive financial years immediately preceding the tested financial year. In the case where the MNE Group undertakes merger or demerger exercise, additional tests would need to be performed to determine whether the MNE Group is in-scope.

In general, an entity would be regarded as a Constituent Entity if its accounts are consolidated into the UPE's consolidated financial statements on a line-by-line basis. However, certain entities (i.e., excluded entities such as pension funds and governmental entities) would not be regarded as Constituent Entities, and hence would not be subject to the GMT rules.

De minimis exclusion

MNE Groups may make an election to deem the Multinational Top-Up Tax for a jurisdiction as zero for a financial year if the average GloBE revenue of such jurisdiction is less than EUR10 million and the average GloBE income or loss of such jurisdiction is a loss or is less than EUR1 million for such financial year.

GloBE Safe Harbour

If an MNE Group qualifies for the GloBE Safe Harbour, it may make an election to deem the Multinational Top-up Tax for a jurisdiction as zero for a financial year. The conditions for the GloBE Safe Harbour are dealt with in the GloBE Implementation Framework issued by the OECD.

Deadline for submission of returns and top-up tax payment

The in-scope MNE Groups are required to submit an information return and a top-up tax return, both of which are due within 15 months from the end of the reported financial year. An amended top-up tax return may be furnished within 6 months from the due date.

Similarly, top-up tax payable, if any, must be paid within 15 months from the end of the reported financial year. Failure to do so would result in a 10% penalty being imposed on the unpaid top-up tax amount.

Whilst the Malaysian Government has deferred the implementation of the GMT rules, MNE Groups should be aware that there could be filing obligations and top-up tax liability in other countries if such countries implement the GMT rules earlier (i.e., in year 2024).

Retention of Documents

Sufficient documents related to the furnished returns must be kept for a period of 7 years from the end of the reported financial year.

Penalties

Various penalties have also been prescribed for offences such as furnishing incorrect returns, failure to furnish returns, willful evasion of top-up tax, etc.

Effective: 1 January 2025

Commentary

The deferment to year 2025 is a welcomed move to provide taxpayers with more time to prepare. However, this is not necessary in the case of MNE Groups that operate in countries implementing GMT in 2024, given that filing obligations and top-up tax liability in respect of Malaysian entities could still arise in those countries.

Review of preferential tax treatment for MSME

Currently, a company (resident and incorporated in Malaysia) having a paid-up share capital of not exceeding RM2.5 million at the beginning of the basis period (i.e. an MSME) enjoys the following preferential tax treatment:

	Tax treatment
The MSME first commences operations in a YA	The MSME is not required to furnish an estimate of tax payable or make instalment payments for a period of 2 YAs beginning from the YA in which the MSME commences operations
The MSME (with a gross income from source or sources consisting of a business not exceeding RM50 million for the basis period for a YA) incurs qualifying expenditure on assets with individual value not exceeding RM2,000 (small value assets) in the basis period for a YA	The MSME qualifies for 100% capital allowance on the qualifying expenditure incurred in respect of such small value assets without maximum limit of total qualifying expenditure for each YA

However, the above shall not apply to the MSME if more than:

- 50% of the paid-up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;
- 50% of the paid-up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first mentioned company; or
- 50% of the paid-up capital in respect of ordinary shares of the first mentioned company and the related company is directly or indirectly owned by another company.

In this regard, "related company" means a company which has a paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for a YA.

Proposal

It is proposed that the above preferential tax treatment shall not be applicable to an MSME, if more than 20% of the paid-up capital in respect of ordinary shares of the MSME 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.

Effective: YA 2024

Capital allowance on ICT equipment and customised computer software

Currently, capital expenditures incurred by a resident person in Malaysia for the purchase of ICT and customised computer software are entitled to capital allowance based on the following rates:

- Initial allowance of 20%; and
- Annual allowance of 20%

Proposal

It is proposed that the initial allowance rate for ICT equipment and customised computer software be revised to 40% on capital expenditures incurred by companies. The annual allowance remains unchanged (i.e. 20%).

Effective: YA 2024

Commentary

The above proposal applies to companies only. It is hoped that the authorities could extend the above proposal to all resident persons in Malaysia.

Extension of tax incentive for rental of non-commercial EVs

It was proposed in Budget 2023 to allow companies that rent non-commercial EVs tax deductions of up to RM300,000 effective from YA 2023 to YA 2025.

Proposal

The tax deductions on the rental of non-commercial EVs (up to RM300,000) be extended for another 2 years.

Effective: YA 2026 and YA 2027

Corporate Tax

Further Tax Deduction for Voluntary Carbon Market

Currently, expenditure related to development of carbon projects incurred by carbon credit trading companies is allowed for tax deduction.

Proposal

It is proposed that further tax deduction of up to RM300,000 be given to companies for costs incurred on the Development and Measurement, Reporting and Verification (MRV) related to the development of carbon projects. The further deduction is deductible against the carbon credits income traded on Bursa Carbon Exchange.

The development of carbon projects must be registered with an international standards body recognised by Bursa Malaysia and expenditure on development of carbon projects must be certified by the Malaysia Green Technology and Climate Change Corporation.

Effective: For applications received by the Malaysia Green Technology and Climate Change Corporation from 1 January 2024 until 31 December 2026

Tax deduction on ESG related expenditures

Currently, ESG related expenditures do not qualify for tax deduction. As a result, this would increase the cost of doing business in Malaysia.

Proposal

To encourage more companies to comply with ESG standards, it is proposed that a tax deduction of up to RM50,000 for each YA be given to expenditures incurred for:

- Preparation of reports related to tax corporate governance framework by companies
- Preparation of transfer pricing documentation by companies
- Consultation fee for implementing e-Invoicing incurred by MSMEs
- Certain reporting in relation to compliance with ESG standards

The above proposal will be implemented by way of a gazette order.

Effective: YA 2024 to YA 2027

Sustainable and Responsible Investment (SRI) Incentives

Currently,

- A. A tax exemption on management fees income for managing SRI funds is given to companies approved by the SC that provide SRI fund management services to investors, business trust investors or Real Estate Investment Trusts (REITs) investors in Malaysia from YA 2021 to YA 2023;
- B. A tax deduction is given on the issuance cost of SRI sukuk approved or authorised or lodged with the SC from YA 2016 to YA 2023; and
- C. An income tax exemption is given on the grant received by the Green SRI sukuk issuer under the SRI Sukuk Grant and Bond Grant Scheme, previously known as the Green SRI Sukuk Grant, from 1 January 2018 until 31 December 2025.

Proposal

- A. The income tax exemption on management fees income for companies providing SRI fund management services be extended by another 4 YAs.
- B. The tax deduction on issuance costs of SRI sukuk approved, authorised or lodged with the SC be extended by another 4 YAs.
- C. The income tax exemption on the SRI Sukuk Grant and Bond Grant Scheme be expanded to include SRI-Linked Sukuk Grants and bonds issued under the ASEAN Sustainability-Linked Bond Standards (ASEAN SLBS) approved by the SC.

Effective:

- A. YA 2024 until YA 2027
- B. YA 2024 until YA 2027
- C. Applications received by SC from 1 January 2024 to 31 December 2025





Tax Incentives



Green Technology Tax Incentives

As proposed in Budget 2020, companies undertaking qualifying green activities are eligible for the following tax incentives:

- GITA: ITA of 100% on capital expenditure incurred for qualifying green activities for a period of 3 years from the date of first qualifying capital expenditure incurred (to be set-off against up to 70% statutory income)
- GITE (qualifying green service activities): Income tax exemption of 70% of statutory income for a period of 3 years starting from the YA of the first invoice related to green technology services is issued
- GITE (solar leasing activities): Income tax exemption of 70% of statutory income for up to 10 YAs

The above incentives are for applications received by MIDA until 31 December 2023. *[Note: the above proposals have not been gazetted but the relevant guidelines have been issued by MIDA.]*

Proposal

To align with Malaysia's aspiration to become an inclusive, sustainable and carbon-neutral nation by 2050, it is proposed that the application period be extended by another 3 years and that the green technology tax incentives be reviewed as follows:

GITA Project (Business Purposes)

Qualifying Activities	GITA (%)	% of Statutory Income to be Set-Off	Incentive Period
Tier 1 i. Green Hydrogen	100%	100% or 70%	Up to 10 years (5 + 5)
Tier 2 i. Integrated waste management ii. EV charging station	100%	100%	5 years
Tier 3 i. Biomass ii. Biogas iii. Mini hydro iv. Geo thermal v. Solar vi. Wind energy	100%	70%	5 years

GITA Asset (Own Consumption)

Qualifying Activities	GITA (%)	% of Statutory Income to be Set-Off	Incentive Period
Tier 1 i. List of qualifying assets approved by Minister of Finance ii. Battery Energy Storage System iii. Green Building	100%	70%	Qualifying capital expenditure incurred from 1 January 2024 to 31 December 2026 and verified by the Malaysian Green Technology and Climate Change Corporation
Tier 2 i. List of qualifying assets approved by Minister of Finance ii. Renewable Energy System iii. Energy efficiency	60%	70%	

GITE Solar Leasing

Tier	Tax Exemption on Statutory Income	Incentive Period
>3MW - ≤10MW	70%	5 years
>10MW - ≤30MW	70%	10 years

Effective: 1 January 2024 until 31 December 2026

Commentary

GITE for qualifying green service activities is set to phase out by the end of 2023 as proposed in Budget 2020. In its place, a tiered-incentive system will be introduced to incentivise qualifying green activities, with the aim of expediting the realisation of 'Mission 3 - Push for Net Zero' as outlined in the New Industrial Master Plan 2030. Furthermore, this transition seeks to enhance the adoption of renewable energy to help achieve the ambitious target of 70% renewable energy capacity by 2050, as stipulated in the National Energy Transition Roadmap.

Tax Incentives

Incentive for Reinvestment under the New Industrial Master Plan 2030

Currently, manufacturing and agricultural companies embarking on expansion, diversification, automation and modernisation projects are eligible for RA under Schedule 7A of the Act. Eligible companies can claim RA of 60% of the capital expenditure incurred and it can be set-off against up to 70% or 100% of their statutory income for 15 consecutive YAs.

This incentive is still in effect.

Proposal

To encourage existing companies that have exhausted their RA eligibility period to increase capacity and investment in high-value activities under the New Industrial Master Plan 2030, an incentive for reinvestment which is determined by outcome-based approach is given as follows and applications are to be submitted to MIDA:

ITA	Tier 1	Tier 2
Qualifying Capital Expenditure	100%	60%
Statutory Income to be Set-off	100%	70%

Effective: 1 January 2024 until 31 December 2028

Special income tax rates for film production companies, foreign film actors and film crews

Proposal

To invigorate the entry of foreign film production to Malaysia, it is proposed that a special income tax rate of between 0% to 10% be introduced for film production companies, foreign film actors and film crews for filming in Malaysia.

Effective: To be determined via a subsidiary legislation

Extension and expansion of tax incentive for equity crowdfunding

Currently, qualifying individual investors are eligible for tax exemption on an amount equivalent to 50% of investment made in the investee company through an equity crowdfunding platform or through a nominee company, for investment made from 1 January 2021 until 31 December 2023.

The maximum amount of tax exemption for each YA is capped at RM50,000 and the exemption is restricted to 10% of the aggregate income of the qualifying individual. The excess amount which is not deductible will be disregarded.

The tax exemption is subject to the following conditions:

- (i) The qualifying individual obtains an annual certification from the equity crowdfunding operator in relation to the investment and the amount of investment, and that annual certification is verified by the SC;
- (ii) The investment is not wholly or partly disposed of within 2 years from the date of investment; and
- (iii) The qualifying individual does not have any family relationship with other investor who makes any investment in the investee company.

Proposal

To attract more individual investors to invest in investee companies through equity crowdfunding platform, it is proposed that the scope of the tax incentive be expanded to investment made by an individual investor through Limited Liability Partnership nominee company.

Additionally, the tax incentive period will be extended for another 3 years.

Effective: 1 January 2024 until 31 December 2026

Tax Incentives

Expansion of ACA for automation equipment to commodity sector

Currently, manufacturing, services and agricultural companies which incur qualifying capital expenditure on automation equipment including the adaptation of Industry 4.0 elements are given 100% ACA on the first RM10 million of the qualifying capital expenditure incurred. The above companies are also eligible for income tax exemption equivalent to 100% on the same capital expenditure.

The above incentives are applicable for applications received by MIDA and the Ministry of Agriculture and Food Security from 1 January 2023 until 31 December 2027.

Proposal

It is proposed that the above incentives be expanded to include the commodity sector under the Ministry of Plantation and Commodities.

Effective: Applications received by the Ministry of Plantation and Commodities from 14 October 2023 until 31 December 2027

Extension Of Tax Incentive For Angel Investors

Currently, angel investors who invest in tech start-up companies in the form of ordinary shares are entitled to tax exemption at their aggregate income level. The amount of aggregate income exempted is equivalent to the investment made in the tech start-up companies. Where the amount of investment exceeds the aggregate income of an angel investor for the basis period for a YA, the excess amount of investment is disregarded. Applications are to be submitted to the MOF by 31 December 2023.

The tax exemption is subject to the following conditions:

- The investment is not wholly or partly disposed of within 2 years from the date the investment is made; and
- The amount of investment made per annum must not be less than RM5,000 and not more than RM500,000.

Proposal

It is proposed that the application period for the tax incentive for angel investors be extended for another 3 years.

Effective: 1 January 2024 until 31 December 2026

Extension of Income Tax Exemption for Social Enterprises

It was proposed in Budget 2022 that an income tax exemption will be granted on all income of a Social Enterprise up to 3 YAs, subject to the validity period of accreditation by the Ministry of Entrepreneur and Cooperatives Development for applications submitted to the MOF from 1 January 2022 to 31 December 2023. Subsidiary legislation for this proposal has yet to be gazetted.

Proposal

To assist Social Enterprise in raising funds that create a positive social or environmental impact in line with Malaysia MADANI's pillars of sustainability, prosperity and compassion, it is proposed that the application period for tax exemption on all income of a Social Enterprise be extended for another 2 years.

Effective: 1 January 2024 until 31 December 2025

Review of income tax exemptions on syariah-compliant fund management services

Currently, 100% tax exemption are given to approved syariah-compliant fund management services companies in respect of statutory income derived from the business of fund management services as listed below:

Category of Investor	YAs
Foreign investors in Malaysia	2007 - 2023
Local investors	2008 - 2023
Business trust investors or Real Estate Investment Trusts investors in Malaysia	2014 - 2023

Proposal

To bolster the growth of syariah-compliant fund management services, it is proposed that the tax exemption period be extended for another 4 years, up to YA 2027.

However, the rate of income tax exemption on statutory income will be revised to 60%.

Effective: YA 2024 to YA 2027

Tax Incentives

Tax incentive for Global Services Hub

The Government previously introduced the Principal Hub tax incentive with the objective of transforming Malaysia into a global business hub for high-value activities which are managing, controlling, and supporting core business functions such as risk management, decision-making, strategic business, and finance.

The incentive given is by way of preferential income tax rates of 0%, 5% and 10% which are subject to certain conditions such as incurring minimum annual business expenditure and providing full-time high value employment.

Proposal

- To maintain Malaysia's competitiveness as a key player in the global services sector in the region and to establish the country as a high impact strategic services hub, a Global Services Hub tax incentive based on outcome-based approach will be introduced as follows:

	New Company		Existing Company	
	Tier 1	Tier 2	Tier 1	Tier 2
Exemption Years	5 + 5		5	
Tax rate	5%	10%	5% on value-added income	10% on value-added income
Types of income exempted	i. Services income; or ii. Services and trading income.			
Qualifying services and additional services	i. Regional P&L/Business Management Unit; ii. Strategic business planning; iii. Corporate development; AND iv. Any 2 qualifying activities under the services category as follows: a. Strategic services; b. Business services; c. Shared services; or d. Other services.			
Conditions (Outcome-based)	i. Annual operating expenditure; ii. High value full-time employees; iii. C-Suite with a minimum monthly salary of RM35,000; iv. Local ancillary services; v. Collaboration with higher education institution/TVET; vi. Training for Malaysian students/citizen; vii. ESG elements; or viii. Other conditions as determined by the Minister of Finance.			

- The preferential income tax rate applicable to an eligible company for each YA will be determined on success basis i.e., an outcome-based approach.
- In addition, income tax rate of 15% will be given for a period of 3 consecutive YAs limited to 3 non-citizen individuals holding key/C-Suite positions with a monthly salary of at least RM35,000 appointed by a new company approved with Global Services Hub tax incentive.

Effective: For applications received by MIDA from 14 October 2023 until 31 December 2027

Islamic Securities Selling and Buying (ISSB)

Currently, the Government exempts a borrower and a lender from tax on any income (other than dividends, lending fees, interest earned on collateral and rebate) arising from a loan of securities listed on Bursa Malaysia and, the return of the same or equivalent securities and, the corresponding exchange of collateral, in respect of a securities borrowing and lending transaction made under a Securities Borrowing and Lending (SBL) Agreement.

The exemption shall apply to lenders and borrowers who are authorised by the SC and the SBL Agreement must be approved by the SC.

Proposal

To increase the overall volume of securities trading and the liquidity of the *syariah*-compliant stock market through the involvement of more investors and brokers in ISSB transactions, and to ensure equal treatments are given to investors and brokers of conventional SBL and ISSB, it is proposed that tax exemption be granted on income arising from ISSB.

It is expected that the above proposal will be implemented through a subsidiary legislation.

Effective: YA 2024

Tax Incentives

Tax Incentive for Pengerang Integrated Petroleum Complex (PIPC)

Proposal

It is proposed that the following tax incentives, in the form of a special tax rate or ITA, be given to transform PIPC into a hub for the development of the chemical and petrochemical sectors:

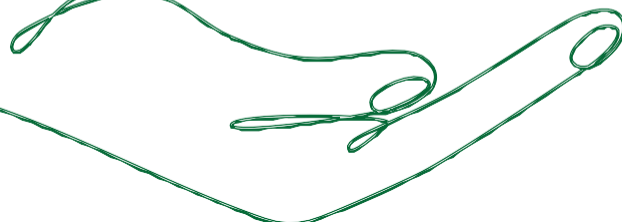
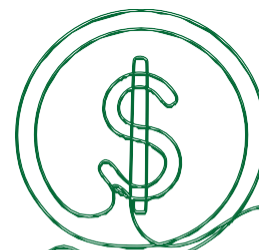
Types of Tax Incentives	Implementing Company	
	New companies with a minimum investment of RM500 million and above in chemical and petrochemical activities	Approved developer for PIPC Industrial Park Development
Income Tax Rate	Tier 1 = 5% Tier 2 = 10%	10% on real estate sales or rental activities for eligible projects for a period of 10 years
ITA	100% of eligible capital expenditure	-
Exemption Year	5 + 5	-
Types of Exempted Income	Income from qualifying chemical and petrochemical product manufacturing activities	-
Other Tax Incentives	<ul style="list-style-type: none"> i. Stamp duty exemption on land/ building transfer agreements or land/ building rental agreements for qualifying projects ii. Exemption from stamp duty on land/building transfer agreements or land/building rental agreements to implement qualifying projects 	Stamp duty exemption on land/building transfer agreements or land/building rental agreements for qualifying projects

Effective: For applications received by MIDA from 14 October 2023 to 31 December 2028





Indirect Tax



Process to amend rate of duty or tax

(affecting Customs Act 1967, Excise Act 1976, Sales Tax Act 2018, Service Tax Act 2018, Departure Levy Act 2019 and Tourism Tax Act 2017)

Currently, the Minister of Finance may, by Order published in the Gazette,

- Legislate customs duties to be levied on goods
- Legislate excise duties to be levied and paid, as well as the method in which the duty shall be levied and paid
- Legislate, vary or amend the rate of sales tax
- Legislate, vary or amend the rate of service tax
- Legislate, vary or amend the rate of departure levy
- Legislate the rate of tourism tax.

These Orders then have to be laid before the *Dewan Rakyat* (House of Representatives) at its next meeting and be approved by way of resolution within 120 days. If the Order is not approved, then the Order shall cease to have effect.

The above requirements are common in principal Acts which authorise the Executive (such as the Minister of Finance) to enact subsidiary legislation to impose duties and taxes, and there have been instances where such subsidiary legislation did not fulfil the above requirements to obtain the approval by resolution of the *Dewan Rakyat* giving rise to refund issues.

Proposal

It is now proposed that, an Order by the Minister of Finance to legislate or amend the rates of duties or taxes, is merely to be laid before the *Dewan Rakyat*. There is no longer any requirement for the Order to be approved by resolution of the *Dewan Rakyat*.

This means that, in the future, there should not be any instance of non-compliance with the requirement to obtain approval by resolution of the *Dewan Rakyat*, as such requirement would no longer exist, in the event the proposed change is enacted into law and becomes operational.

Effective: Upon coming into operation of the Finance (No. 2) Act 2023

Change relating to prescribed forms and manner of submission of applications, etc

(affecting Sales Tax Act 2018, Service Tax Act 2018 and Tourism Tax Act 2017)

Currently, there are various applications, etc. that have to be made by way of prescribed forms, which are set out in the sales tax, service tax and tourism tax regulations. These include:

- Application for registration (including registration of foreign service provider of digital service)
- Filing of returns (including returns by foreign service provider of digital service)
- Application for refund of tax
- Application for customs ruling
- Letter of authorisation to transact business with Customs on behalf of a taxable person
- Application for review of a decision by the Director General of Customs

Generally, any change to these prescribed forms has to be made by the Minister of Finance, by going through the process of gazetting into the relevant subsidiary legislation.

Proposal

It is proposed for the Director General of Customs to determine the form and manner in which such applications, returns, etc. are to be made. This change would allow the Director General of Customs the flexibility to amend the related forms. Similar changes were recently made to forms relating to the laws on customs, excise, windfall profit levy and free zones.

Effective: 1 January 2024

Indirect Tax

Restriction on deduction of service tax refunded to customers

(affecting Service Tax Act 2018)

Currently, a registered person may, subject to the approval of the Director General of Customs, deduct the amount of service tax which has been paid to Customs but subsequently refunded to his customer for various reasons, including cancellation of service or termination of service. This is a different provision from the mandatory provision, i.e. not subject to approval of the Director General of Customs, for the registered person to make a deduction of service tax in his service tax return due to issuance of credit note, which reduces the service tax amount charged to any customer, because of adjustments in the registered person's course of business, amongst others.

Proposal

It is proposed that the service tax deduction that is subject to the approval of the Director General of Customs would only be allowed, where the registered person's customers are not doing a business. This means that, if a registered person gives a refund of service tax to a customer who is still carrying on a business, the registered person would not be eligible to apply and obtain the approval of the Director General of Customs for such service tax deduction. Hence, in this circumstance, the amount of service tax refunded to a customer in business would have to be absorbed by the registered person.

Effective: 1 January 2024

Changes relating to service tax on digital services

(affecting Service Tax Act 2018)

The following changes have been proposed in respect of service tax on digital services provided by foreign service providers:

- Taxable period for accounting for service tax – currently, the Director General of Customs may allow a foreign service provider to vary the taxable period for accounting of service tax. It is proposed that the Director General of Customs may, if he deems fit, re-determine the taxable period which he had earlier approved.
- Currently, a foreign registered person who ceases to be liable to be registered shall furnish a return to the Director General of Customs. It is proposed that such return shall be deemed furnished when the Director General of Customs receives the said return.

Effective: 1 January 2024

Changes relating to particulars of credit notes or debit notes

(affecting Sales Tax Act 2018)

Currently, where a registered manufacturer conducts the sale of taxable goods, and this transaction necessitates the issuance and receipt of credit notes or debit notes, the registered manufacturer would have to make the necessary deductions or additions of sales tax in their respective returns. Additionally, it is essential that the credit notes and debit notes adhere to the prescribed particulars as set out in the applicable regulations.

Proposal

It is proposed that a registered manufacturer has the option to submit a request to the Director General of Customs for the removal of any prescribed particulars from the credit note or debit note to be issued. This provides more flexibility for businesses in relation to the particulars to be stated on credit or debit notes, subject to the approval of the Director General of Customs.

Effective: 1 January 2024

Changes relating to sales tax on Low Value Goods (LVG)

(affecting Sales Tax Act 2018)

Change in definition of "seller" for LVG

The current definition of "seller" for the purposes of sales of LVG, means a person, whether in or outside Malaysia, who sells LVG on an online marketplace (OMP) or operates an OMP for the sales and purchase of LVG.

The above definition of "seller" for the purposes of sales of LVG, is proposed to be amended to essentially replace the first mention of OMP with "online platform", so that the definition would read: a person, whether in or outside Malaysia, who sells LVG on an online platform or operates an OMP for the sales and purchase of LVG.

This change is intended to include sellers who sell LVG via their own online platforms and not just via online 'marketplaces' that would be operated by other parties.

Credit notes or debit notes for LVG

The sales tax legislation currently excludes the seller from being allowed to issue a credit note or debit note to adjust any sales tax previously charged on the sale of LVG.

It is now proposed that this exclusion be removed to allow a seller to issue credit notes or debit notes to their buyers to adjust any previous sales tax charged on the sale of LVG.

Exemption and refund of sales tax to be considered for LVG

Current sales tax legislation specifically excludes the power of the Minister of Finance to exempt any goods, class of goods or person from sales tax on LVG, and to direct the payment of a refund of sales tax on LVG.

It is now proposed that this exclusion be removed and therefore, grants the Minister of Finance the power to exempt or refund sales tax on LVG.

Indirect Tax

Changes relating to sales tax on Low Value Goods (LVG) (cont'd) (affecting Sales Tax Act 2018)

Preventing double taxation of sales tax on import of LVG

There are currently no specific provisions in the sales tax legislation to prevent existing sales tax (on taxable goods) being charged at the point of import of LVG (that fall within the class of "taxable goods"), where sales tax had already been charged at the point of sale of the LVG by the registered LVG seller.

A specific provision has now been proposed so that no sales tax shall be levied on the LVG at the point of import, if it is proven to the proper officer of sales tax that sales tax has been charged by the registered seller and being paid on the LVG. This is to remove a potential scenario of sales tax being charged twice on the same goods, both at the point of sale of LVG and point of import (as taxable goods).

Change to first taxable period for LVG

The provision to determine the first taxable period of a registered seller has been amended to begin from the date the taxable person should have been registered and end on the last day of the following two months and not the following month, as currently provided. This is to align the taxable periods for accounting for sales tax on LVG, which is a period of 3 months (quarterly).

However, we note that the manner in which the amendment has been proposed, would inadvertently remove the existing provision that enacts each subsequent taxable period as a period of 3 months (quarterly). This omission would hopefully be addressed during the passage of the Finance (No. 2) Bill 2023.

Effective: Upon coming into operation of the Finance (No. 2) Act 2023

Particulars of invoice, receipt or other documents on tourism tax (affecting Tourism Tax Act 2017)

Currently, there is no provision under the Tourism Tax Act 2017 to allow a registered operator (i.e. accommodation service provider) to request for any prescribed particulars to be removed from the invoice, receipt, or other documents.

Proposal

It is proposed that the Director General of Customs be granted the authority to approve any application made by the registered operator to remove one or more of the prescribed particulars from the invoice, receipt, or other documents, by inserting a new Section 14(1A). However, this new subsection does not apply to digital platform service providers (DPSP). Thus, for DPSP, all prescribed particulars must be included in an invoice, receipt or other documents.

Effective: 1 January 2024

Public ruling on tourism tax (affecting Tourism Tax Act 2017)

Currently, there is no provision under the Tourism Tax Act 2017 to allow the Director General of Customs to issue a public ruling.

Proposal

It is proposed for the Director General of Customs to be granted the authority to make a public ruling on tourism tax, by inserting a new Section 31A.

Effective: 1 January 2024

Process to amend regulations on entertainments duty (affecting Entertainments Duty Act 1953)

Currently, the regulations made under the Entertainments Duty Act 1953 need to be laid before the *Dewan Rakyat*, which may pass a resolution within 3 months thereafter to annul any regulation from a specified date. Any such annulment of a regulation is without prejudice to the validity of any act done under any regulation before such annulment or to any new regulation that may be enacted.

Proposal

It is proposed that any amendment requires the regulations to be merely laid before the *Dewan Rakyat*, without any further provision for the regulations to be annulled by resolution of the *Dewan Rakyat*.

Effective: Upon coming into operation of the Finance (No. 2) Act 2023



Individual Tax



Extension of personal reliefs / incentive / exemption

Personal relief / incentive / exemption	Proposal	Effective
Up-skilling and self-enhancement course fees (up to RM2,000)	Extended for a period of 3 years	YA 2024 - 2026
Expenses incurred for payment of installation, rental, purchase including hire purchase of equipment or subscription for the use of EV charging facilities (up to RM2,500)	Extended for a period of 4 years	YA 2024 - 2027
Tax incentive for women returning to workforce where women who were on career break and returned to work are eligible for income tax exemption on employment income up to 12 consecutive months	Extended for another 4 years	For applications received by Talent Corporation Malaysia Berhad on or before 31 December 2027
Tax exemption for the Returning Expert Program where successful applicants shall enjoy a fixed income tax rate of 15% on employment income for 5 consecutive YAs	Extended for another 4 years	For applications received by the Talent Corporation Malaysia Berhad from 1 January 2024 until 31 December 2027

Expansion of scope of relief for medical treatment, special needs and carer expenses incurred for parents

Currently, income tax relief of up to RM8,000 is given on:

- Treatment in clinics and hospitals;
- Treatment at nursing homes;
- Dental treatment not including cosmetic dental treatment (concession given under Public Ruling No. 5/2021); and
- Treatment and home care nursing, day-care centres and residential care centres.

Proposal

The abovementioned scope shall be expanded to include parent's full medication examination, limited up to RM1,000.

Additionally, the concession currently given for dental treatment incurred for parents will be legislated.

Effective: YA 2024

Increase in tax exemption amount for childcare allowance

Currently, employees are entitled to an exemption of up to RM2,400 in respect of childcare allowance or childcare fees paid directly by employer to childcare centres.

Proposal

The abovementioned exemption shall be increased from RM2,400 to RM3,000.

Effective: YA 2024

Individual Tax

Review of Lifestyle Relief

Currently, an individual taxpayer is eligible for an income tax relief of up to RM2,500 incurred for lifestyle-related expenses. This includes:

- Purchase of reading materials including e-book, printed/electronic daily newspapers;
- Purchase of personal computer, smartphone or tablet;
- Subscription for broadband internet;
- Purchase of sports equipment; and
- Gymnasium membership fees.

Proposal

The abovementioned scope shall be amended as follows:

- Removal of the purchase of sports equipment and gymnasium membership fees; and
- Inclusion of any course of study undertaken, other than the course of study falling under upskilling or self-enhancement conducted by a body recognized by the Director General of Skills Development under the National Skills Development Act 2006.

Effective: YA 2024

Increase in tax relief limit and expansion of scope for sports equipment and activities relief

Currently, an individual taxpayer is eligible for an income tax relief of up to RM500 incurred on sports-related expenses. This includes:

- Purchase of sports equipment;
- Payment of rental/entrance fees to sports facilities; and
- Payment of registration fees for participating in sports competitions.

Proposal

The abovementioned tax relief shall be amended as follows:

- The tax relief limit shall be increased to RM1,000; and
- The scope of relief shall be expanded to include gymnasium membership fees or sports training fees imposed by registered sports clubs/societies/companies for carrying out sports activities defined under the Sports Development Act 1997.

Effective: YA 2024

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

Currently, an individual taxpayer is eligible for income tax relief of up to RM10,000 for medical expenses incurred for serious diseases and fertility treatment. This includes:

- Serious illness for taxpayer, husband/wife or child;
- Fertility treatment for taxpayer or husband/wife;
- Vaccination for taxpayer, husband/wife or child limited to RM1,000;
- Full medical check-up, mental health examination and COVID-19 detection test including the purchase of self-test kit for taxpayer, husband/wife or child limited to RM1,000; and
- Diagnostic and rehabilitation treatment for children with learning disabilities such as autism, down syndrome and specific learning disability limited to RM4,000.

Proposal

The abovementioned scope shall be expanded to include expenses incurred for dental examination or treatment by dental practitioners registered with the Malaysian Dental Council limited to RM1,000.

Effective: YA 2024



Stamp Duty

Definition of “writing” or “written”

Stamp duty is imposed on instrument/certain documents in writing that are listed in the First Schedule of the SA. Currently, “instrument” is defined to include “every written documents”. The said definition does not clarify on whether electronic instruments meet the interpretation of “instrument”.

Proposal

A definition of “writing” or “written” will be inserted for clarity. The term “writing” or “written” includes “any handwriting, typewriting, printing, electronic record or transmission which is in an electronically readable form”.

Effective: 1 January 2024

Evidence for instruments executed outside of Malaysia and received in Malaysia via electronic medium

Currently, a copy of the post office stamp or the airway bill is required as proof of date an instrument executed outside of Malaysia was first received in Malaysia.

Proposal

It has been proposed that a copy or print out of the electronic transmission shall be provided as an evidence of when the instrument is received via electronic transmission.

Effective: 1 January 2024

Stamp duty for conventional loan agreements and instrument for syariah-compliant financing in non-RM currency

Currently, instrument for foreign currency loan or syariah-compliant financing in non-RM is subject to stamp duty at the rate of 0.5% but capped at RM2,000.

Proposal

It has been proposed that the above instrument shall be subject to stamp duty at the rate of 0.5% without any capped amount.

Effective: 1 January 2024

Stamp duty for instrument for transfer of any property to a foreign company or a non-Malaysian citizen / permanent resident

Currently, instrument for transfer of property in Malaysia is subject to ad-valorem stamp duty of 1% to 4%.

Proposal

It has been proposed that the instrument for transfer of any property to a foreign company or a person who is non-Malaysian citizen / permanent resident shall be subject to stamp duty at a flat rate of 4% based on the consideration or market value of the property, whichever is higher.

Effective: 1 January 2024

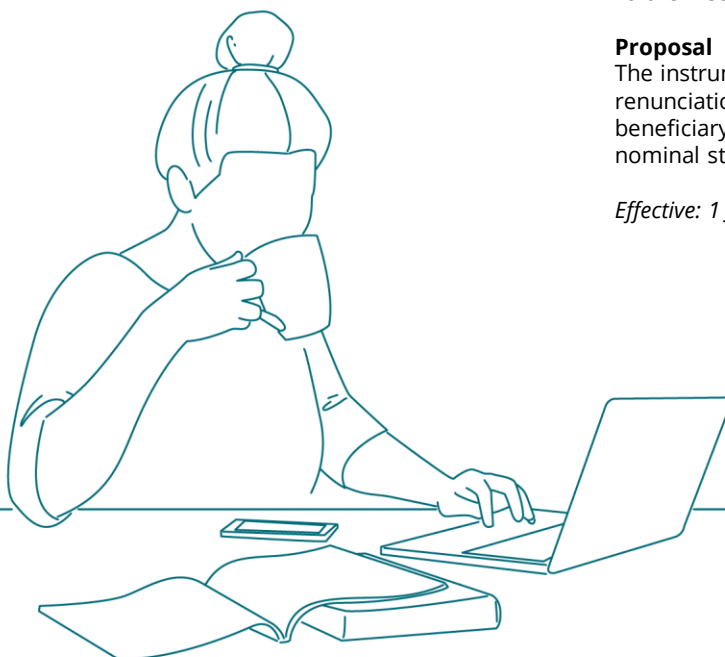
Transfer of any property involving the renunciation of rights to another eligible beneficiary

Currently, an eligible beneficiary renounces his/her rights to another eligible beneficiary or non-beneficiary is subject to ad-valorem stamp duty of 1% to 4%.

Proposal

The instrument for transfer of any property by way of release or renunciation by an eligible beneficiary to another eligible beneficiary entitled under the same estate shall be subject to a nominal stamp duty of RM10.

Effective: 1 January 2024



Stamp Duty

Hearing of stamp duty appeals in original jurisdiction

Under Section 39 of the SA, any person who is dissatisfied with the decision of the Collector of Stamp Duty may file a notice of appeal against the decision to the High Court. It is not clear as to whether the High Court heard the stamp duty appeal in its original jurisdiction or appellate jurisdiction.

Proposal

Section 39 will be amended to clarify that the High Court exercises its original jurisdiction when hearing an appeal against the decision of the Collector of Stamp Duty under Section 38A of the SA.

Effective: 1 January 2024

Commentary

With the proposed amendment, the right of appeal for a stamp duty case is exhausted at the level of the Federal Court and not the Court of Appeal.

Amendments due to discontinuation of usage of adhesive stamp, digital franking machine and postal franking machine for impressed stamp

The usage of digital franking machine was discontinued on 30 June 2021.

It was announced in the Budget 2023 on 7 October 2022 that all adjudications of instrument and stamp duty payments have to be done online via Stamp Assessment and Payment System (STAMP). Consequentially, the stamping using adhesive stamp and postal franking will be discontinued from 1 January 2024 onwards.

Proposal

The relevant provisions in the SA will be amended or deleted to legislate the discontinuation of the usage of adhesive stamp, digital franking machine and postal franking machine for impressed stamp.

Effective: 1 January 2024





Real Property Gains Tax



Proposed implementation of Self-Assessment System (SAS)

Currently, an official assessment system is in place for RPGT, under which the IRB will make an assessment on the RPGT returns submitted and issue a notice of assessment or a certificate of non-chargeability to the taxpayer.

Proposal

It is proposed that SAS will be implemented for RPGT effective 1 January 2025. The following provisions in the RPGT Act will be amended in light of the implementation of the SAS.

Definition of “business trust” and amendment of the definition of “company” to include business trust

Section 2(1) of the RPGT Act is amended to introduce the definition of “business trust” and to include business trust in the definition of “company”.

Amendment to provisions on RPGT return

In line with the implementation of the SAS, it is proposed that Section 13(1)(c) be amended to provide that the market value shall be based on the valuation made by a valuer if the market value of the asset is to be taken for the purpose of RPGT return.

Under the SAS, the disposer is required to calculate his own tax in the RPGT return form. New Sections 13(1)(d) and (e) provide that a return must specify the chargeable gain and the amount of tax payable (if any) and contain any particulars as may be required by the DGIR.

RPGT return submitted is deemed as an assessment

Under the SAS, the DGIR is deemed to have made an assessment in respect of that person on the day the RPGT return is furnished, in the amount of tax on the chargeable income as specified in the RPGT return.

The submitted RPGT return is deemed to be a notice of assessment and is deemed to have been served on that person on the day on which the DGIR is deemed to have made the assessment.

Amended return and deemed assessment on the amended return

A new Section 13A will be introduced to provide that the RPGT return submitted in accordance with Section 13 can be amended by submitting an amended RPGT return as prescribed by the DGIR not later than 6 months from the due date of filing of the RPGT return.

Amendment can only made once.

No amendment is allowed if the RPGT return has been submitted and the DGIR has made an additional assessment for that YA.

The tax or additional tax payable pursuant to an amended return will be increased by 10% of the amount of such tax or additional tax.

Under the proposed new Section 15A, the DGIR is deemed to have made an assessment or additional assessment in respect of that person on the day the amended RPGT return is furnished.

The submitted amended RPGT return is deemed to be a notice of assessment or additional assessment and is deemed to have been served on that person on the day the amended RPGT return is furnished.

Power to make an assessment for amount of tax repaid by mistake of fact or law

The DGIR will be empowered to make an assessment for the amount of tax repaid to a person by mistake of fact or law.

Such assessment shall not be made if the repayment was made based on the general prevailing practice of the DGIR at the time repayment was made or 5 years have lapsed after the tax has been repaid.

Power to make an assessment in the case of fraud, wilful default or negligence

The DGIR will be empowered to make an assessment in respect of a person chargeable with the tax if that person has been guilty of any form of fraud, wilful default or negligence for the purpose of making good any loss of the tax attributable to such fraud, wilful default or negligence.

Discharge of double assessments

Under the proposed new Section 16A, where two or more assessments have been made on a person in respect of the same gain on the same chargeable asset for a YA, the DGIR may discharge such of those assessments to ensure that the gain is charged to tax only once for that year.

Notice of assessment

In line with the implementation of SAS, it is proposed that Section 17 be amended for the DGIR to raise assessment on cases other than deemed notice of assessment where the RPGT return is submitted more than 60 days from the date of disposal.

Relief in respect of error or mistake

It is proposed that Section 19 be replaced to provide that a person who has paid RPGT for a YA can apply to the DGIR for relief by reason of error or mistake made in a return or statement for any YA within 5 years after the end of the YA.

Where the applicant is aggrieved with the decision of the DGIR, the applicant may apply within 6 months after being informed of the decision, in the prescribed form, for the DGIR to forward the application to the Special Commissioners.

Real Property Gains Tax

Proposed implementation of SAS (cont'd)

Relief other than in respect of error or mistake

A new Section 19A will be introduced to allow a taxpayer who has furnished an RPGT return according to the RPGT Act and paid tax for that disposal to make an application in writing to the DGIR for relief, if the assessment for that YA is excessive by reason of:

- i) any exemption, relief, remission, allowance or deduction is approved or granted for that YA under the RPGT Act or any other written law published in the Gazette after the YA in which the return is furnished; or
- ii) the approval for any exemption, relief, remission, allowance or deduction is granted after the YA in which the RPGT return is furnished.

The application shall be made within 5 years after the end of the year the exemption, relief, remission, allowance or deduction is published in the Gazette or the approval is granted, whichever is later.

Where the applicant is aggrieved with the decision of the DGIR, the applicant may apply within 6 months after being informed of the decision, in the prescribed form, for the DGIR to forward the application to the Special Commissioners.

Amendment to provision on finality of assessment

Section 20 of the RPGT Act is proposed to be amended to standardise the circumstances where an assessment becomes final and conclusive under the RPGT Act due to the introduction of SAS for the disposal of a chargeable asset.

Payment of tax

Under the SAS, the tax or additional tax payable shall be due and payable within 60 days from the date of disposal under the new Section 21(1A).

In respect of assessment on an amended RPGT return, the tax or additional tax payable shall be due and payable on the day the amended return is furnished under the new Section 21(1B).

Submission of RPGT return in an electronic medium or by way of electronic transmission be extended to nominee

Section 57A(3) is to be amended to extend the category of person authorised in writing to furnish the RPGT prescribed form in an electronic medium or by way of electronic transmission on behalf of a person to include a nominee.

Effective: 1 January 2025

Power to call for specific returns and production of books, statement of bank accounts, etc.

Proposal

The proposed new Sections 28A and 28B provide power to the DGIR to call for specific returns and production of books and to call for bank account statement by way of a notice.

Effective: 1 January 2025

Duty to keep documents for ascertaining chargeable gain and tax payable

Proposal

The proposed new Section 28C of the RPGT Act seeks to require every person to keep records for a period of 7 years from the end of the YA the person is required to furnish a return.

If the person fails to furnish a return as required under the RPGT Act for a YA, he shall keep records for a period of 7 years after the end of the year in which the return is furnished for the purpose of ascertaining his chargeable gain and tax payable.

Effective: 1 January 2025

Amendments due to Implementation of CGT

Currently, an acquisition of shares in an RPC will be deemed as an acquisition of a chargeable asset under Paragraph 34A, Schedule 2 of the RPGT Act. Any chargeable again arising from the disposal of such shares would attract RPGT.

Proposal

The following provisions will be amended to be aligned with the imposition of CGT on gains or profits from disposal of shares by a company, limited liability partnership, trust body or co-operative society under the Act.

Definition of "co-operative society" and "trust body"

Definition of "co-operative society" and "trust body" is to be introduced.

Non-application of Paragraph 34A of Schedule 2 of the RPGT Act

It is proposed that a new Paragraph 34A(5A) be inserted in Schedule 2 of the RPGT Act to provide that Paragraph 34A shall not apply to an acquisition or disposal of any RPC shares on or after 1 January 2024 by a company, limited liability partnership, trust body or co-operative society. However, a Labuan entity carrying on a business activity as defined in Section 2B of the LBATA will still be subject to RPGT on disposal of shares in an RPC.

Effective: 1 January 2024

Commentary

The abovementioned amendments provide clarity on the interaction between CGT and RPGT where the disposal of shares by a company, limited liability partnership, trust body or co-operative society will only be subject to CGT.



Income tax exemption for Islamic financial-related trading activities under Labuan International Business and Financial Centre (IBFC)

Currently, a Labuan entity that undertakes trading activities such as banking, insurance and trust companies and fulfills substance requirements as prescribed by the Minister of Finance in the regulations is taxed at a fixed rate of 3% on audited net profits under the LBATA.

Proposal

It is proposed that full income tax exemption for 5 years be given to a Labuan entity that undertakes Islamic financial-related trading activities such as Islamic digital banking, Islamic digital bourses, *ummah*-related companies and Islamic digital token issuers. This will be implemented by way of a gazette order.

Effective: YA 2024 to YA 2028

Current year basis tax assessment

Currently, a Labuan entity is taxed on a preceding year basis tax assessment under the LBATA.

Proposal

It is proposed that the income tax assessment system under the LBATA be amended from preceding year basis tax assessment to current year basis tax assessment.

Effective: YA 2025

Commentary

This proposal is highlighted in the Budget 2024 Touchpoints shared by the MOF but it is not included in the Finance (No. 2) Bill 2023. This proposal, if enacted, would align the LBATA tax system with the mainstream tax system under the Act on a current year basis tax assessment.

Implementation of Domestic Top-Up Tax and Multinational Top-Up Tax

Currently, pursuant to Section 3 of the LBATA, a Labuan entity carrying on a Labuan business activity shall be charged to tax in accordance with the LBATA for each YA in respect of that Labuan business activity.

Proposal

In line with the proposed implementation of Domestic Top-Up Tax and Multinational Top-Up Tax, the LBATA will be amended to provide that the provisions on implementation of Domestic Top-Up Tax and Multinational Top-Up Tax under the Act shall also apply to a Labuan entity which is a Constituent Entity that is a member of an MNE Group with an annual global revenue of at least EUR750 million in at least 2 of the 4 consecutive financial years immediately preceding the tested financial year.

Effective: Financial year beginning on 1 January 2025

Admissibility of electronic record

Currently, there is no provision in the LBATA that allows for admission of electronic record as evidence.

Proposal

It is proposed that a new provision be introduced to provide that an electronic record or a copy or print-out of an electronic record of any document stored or received by or communicated on an electronic medium or by way of an electronic transmission, is admissible as evidence subject to the conditions imposed.

For this purpose, electronic medium includes a data, text, an image or any other information stored, received or communicated by means of electronic, magnetic, optical, imaging or any other data processing device.

Effective: 1 January 2024



Petroleum Tax

Review of tax incentives for CCS and Hydrogen Sulphide projects under the PITA

In order to ensure the PITA continues to remain relevant with the latest developments and needs of the upstream oil and gas industry as well as to increase the interest of the foreign investors to continue to invest in Malaysia, the PITA Review Committee which comprises of the MOF, IRB and PETRONAS is currently studying and designing tax incentives for CCS and Hydrogen Sulphide projects. The study is expected to be completed by the end of 2023.

Redefinition of "Secondary Recovery"

Secondary recovery is currently defined under Section 2(1) of the PITA as a project which has as its object the production of quantities of hydrocarbons by the application of external energy to the underground reservoir for the purpose of additional and accelerated recovery of those hydrocarbons which is carried out subsequent to the earlier recovery process.

Proposal

Secondary recovery is proposed to be redefined as follows:

"A method or process which has as its object the production of quantities of hydrocarbons by the application of external energy to the underground reservoir which is carried out—

(a) subsequent to the earlier recovery process for the purposes of additional and accelerated recovery of those hydrocarbons; or

(b) for the initial recovery or extraction of those hydrocarbons;"

Effective: YA 2024

Determination of Contiguous Agreement Areas

Currently, a partnership that carries on petroleum operations under two or more petroleum agreements in contiguous areas are treated as being carried out under one petroleum agreement under Section 2(4)(a)(i) of the PITA. It is not entirely clear whether "partnership" as provided under Section 2(4)(a)(i) of the PITA refers to original parties to the petroleum agreements.

Proposal

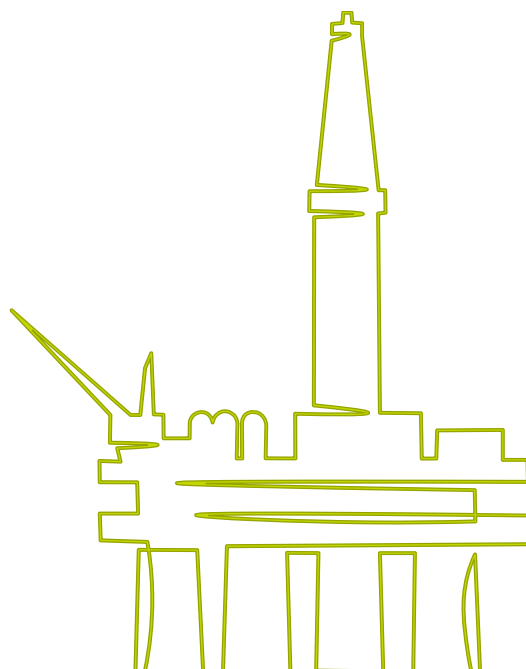
It is proposed that to be eligible for Section 2(4) treatment, all the members of the partnership must be the same original parties to the petroleum agreements and approved by the DGIR.

Effective: YA 2024

GMT

The Malaysian Government intends to implement the Multinational Top-Up Tax and the Domestic Top-Up Tax based on GloBE Rules and this will be implemented in the PITA as well effective from financial year beginning on 1 January 2025. The provisions on "Implementation of Domestic Top-Up Tax and Multinational Top-Up Tax" under the Act shall apply to the PITA. GMT will apply to Constituent Entity of a member of an MNE Group with an annual global revenue of at least EUR750 million in at least 2 of the 4 consecutive financial years immediately preceding the tested financial year.

Effective: Financial year beginning on 1 January 2025





Administration and Others



Revision of estimated tax payable in the 11th month of the basis period

Currently, a company, limited liability partnership, trust body or co-operative society may in the 6th and/or 9th month of the basis period for a YA furnish to the DGIR a revised estimate of tax payable under Section 107C(7) of the Act.

Proposal

In addition, a company, limited liability partnership, trust body or co-operative society may furnish a revised estimate of tax payable in the 11th month of the basis period for a YA.

Effective: YA 2024

Appointment of employee to submit prescribed form via electronic medium

Currently, a person may authorise in writing a tax agent to furnish on his behalf any prescribed form via an electronic medium or by way of an electronic transmission under Section 152A of the Act and Section 82A of the PITA.

Proposal

New provisions will be introduced to allow a person (e.g., in the case of a company, the director) referred to under:

- Section 75(1) of the Act; and
- Section 27(2) of the PITA

to authorise in writing an employee to furnish any prescribed form on his behalf via an electronic medium or by way of an electronic transmission.

Effective: Upon coming into operation of the Finance (No. 2) Act 2023

Tax deduction on contributions for environmental preservation and conservation projects

Currently, special tax deduction under Section 34(6)(h) of the Act are given on expenses incurred for provision of services, public amenities, charity or community projects pertaining to education, health, housing, enhancement of income of the poor, infrastructure, ICT, maintenance of heritage building including environmental preservation or conservation projects.

Proposal

Special tax deduction under Section 34(6)(h) of the Act be given to entities contributing or sponsoring activities related to tree planting projects or environmental preservation and conservation awareness projects carried out and certified by the Forest Research Institute Malaysia. Applications are to be submitted to the MOF.

Effective: 1 January 2024 to 31 December 2026

Change in the definition of “foreign taxes” and “foreign income”

Currently, the term “foreign tax” means any tax on income (or any other tax of a substantially similar character) chargeable or imposed by or under the laws of a territory outside Malaysia and in relation to Section 132(4)(d) or Section 132A of the Act includes other taxes of every kind imposed by or under the laws of that territory.

Meanwhile, “foreign income” is defined under Paragraph 16, Schedule 7 of the Act as income derived from outside Malaysia or in the case of bilateral credit, includes income derived from Malaysia charged to foreign tax.

Proposal

The definition of “foreign tax” is updated on reference to territory outside Malaysia to mean any tax on income (or any other tax of a substantially similar character) chargeable or imposed by or under the laws of a territory outside Malaysia in which the same income arose.

In addition, the definition of “foreign income” is amended as:

- in the case of unilateral credit, the foreign income shall constitute income derived from outside Malaysia charged to foreign tax; and
- in the case of bilateral credit, the foreign income shall constitute income derived from outside Malaysia, and income derived from Malaysia charged to foreign tax.

Effective: YA 2024

Commentary

The proposed amendments enhance the clarity of the definitions of “foreign tax” and “foreign income” under the Act, especially in view of the recent changing tax landscape on foreign sourced income.

Tax deduction for contributions to approved institutions, organisations or funds that implement educational programs including sports education

Proposal

The scope of approved donations eligible for tax deduction of up to 10% of the aggregate income of the donor under Section 44(6) of the Act is expanded to include donations to institutions, organisations or funds that carry out educational programs including approved sports education programs in collaboration with the Ministry of Education.

Effective: YA 2024

Administration and Others

Review of approval conditions for institutions/organisations/funds under Section 44(6) of the Act

Currently, the above entities may apply not more than 25% of its accumulated funds as at the beginning of the basis period for a YA for the participation in a business provided that the profits or income derived therefrom shall be used solely for charitable purposes. Among others, another condition that the entity needs to comply is to spend at least 50% of the income earned in the previous year on charitable activities.

In addition, the income of the above entities is exempted from income tax so long as the approval remains in force.

Proposal

It is proposed that the accumulated funds utilisation limit of not more than 25% for participation in business activities be increased to 35% and the expenditure on charitable activities be increased to at least 60%.

In addition, for any breach of conditions within the approval period, the entities will not be eligible for tax exemption in the basis period for a YA the breach of conditions occurred. However, the approval status for the purposes of Section 44(6) will not be withdrawn to ensure donors remain eligible for tax deductions on contributions made to the above entities.

Effective: YA 2024

Commentary

The proposal for increased participation in business activities aims to generate sources of income for the above entities so that the entities can continue to be sustainable and support the welfare initiatives envisaged by the Government. In addition, it is proposed in the Budget 2024 that the above entities may choose either of the following options to continue qualifying for income tax exemption under Section 44(6) of the Act:

Option	Utilisation of accumulated funds	Threshold of Charitable Activity Expenditure
1	Up to 25%	At least 50%
2	Over 25% and up to 35%	At least 60%

We anticipate that the Guidelines for Approval of DGIR under Section 44(6) of the Act will be revised to provide further details on the above proposed changes.

Industrial Building Allowance (IBA) for private nursing care home for senior citizens

Currently, under Paragraph 37A of Schedule 3 to the Act, qualifying capital expenditure incurred (i.e. cost to construct or purchase the building, including any alteration or renovation costs of rented premises) in relation to a private hospital, maternity home, and nursing home that is licensed under the provisions of any written law shall qualify for the IBA at the following rates:

- Initial allowance – 10%
- Annual allowance – 3%

The above IBA is also extended to private hospitals, maternity homes, and nursing homes that are not licensed under the provisions of any written law, provided approval has been obtained from the DGIR upon consultation with the Director General of Health.

Proposal

Private nursing care home for senior citizens approved by the Ministry of Health will qualify for IBA at the rate of 10% on the cost of construction or purchase of a building, including renovation costs for each YA.

Effective: Qualifying expenditure incurred from 1 January 2024 to 31 December 2026

Relaxation of conditions for submission of Form CP22A and CP22B

Currently, every employer, who is about to cease employing a taxable (chargeable) or a potentially taxable (likely to be chargeable) individual or where an individual under his employment dies, is required to submit a notice in the prescribed form (Form CP22A and CP22B) to the DGIR at least 30 days before the cessation of employment or in respect of cessation because of death not more than 30 days after being informed of the individual's death.

However, employers are not required to submit such notification if the income of an individual employee is subject to Monthly Tax Deduction (MTD) or if the employee's monthly remuneration falls below the minimum amount of income subject to MTD and it is known to the employer that the individual is not retiring from any employment.

Proposal

It is proposed that the qualifying conditions for an exemption from submission of Form CP22A and CP22B be relaxed and the additional condition that the employer has knowledge that the employee is not retiring from any employment is no longer applicable.

Effective: 1 January 2024

Administration and Others

Mandatory Submission of Form E, CP21, CP22, CP22A and CP22B through electronic medium

Currently, only employers who are companies are required to submit Form E through electronic medium. Further, employers who are limited liability partnerships, trust bodies or co-operative societies are required to submit Form E through electronic medium with effect from YA 2024. Meanwhile, Form CP21, CP22, CP22A and CP22B are allowed to be submitted through electronic medium or manually either by post or by hand.

Proposal

All employers are required to submit Form E, Form CP 21, CP 22, CP22A and CP 22B through the electronic medium. Submission of the said prescribed forms manually either by post or by hand will no longer be permitted.

Effective: 1 January 2024

Power of DGIR to issue guidelines

Currently, there is no provision under the Act to empower the DGIR to issue any guidelines. However, in practice, the DGIR has been issuing guidelines to clarify certain provisions of the Act and subsidiary legislations as and when required. These guidelines are generally binding on the DGIR.

Proposal

A new Section 134A will be introduced to empower the DGIR to issue guidelines to clarify the provisions of the Act or to facilitate tax compliance. The DGIR may revoke, revise or amend the guidelines issued.

Effective: 1 January 2024

Duty to provide information and furnish documents for ascertaining chargeable income and tax payable

Currently, under the SAS, taxpayers are not required to submit any supporting documents or information upon filing of tax return to the IRB. Information and documents are only submitted upon request by the IRB, particularly for companies which are under tax audit or investigation. These taxpayers are encouraged to submit requisite documents electronically via the Malaysian Income Tax Reporting System (MITRS). MITRS is an online platform implemented by the IRB for the electronic delivery of documents opened for the use of taxpayers with effect from 1 September 2020.

Proposal

It is proposed that a person who has furnished a statutory return form to the IRB is required to provide information and furnish document as determined by the DGIR for the purposes of ascertaining his chargeable income and tax payable on an electronic medium or by way of electronic transmission within 30 days from the date of submission of return.

Any person who without reasonable excuse fails to comply with the above provision shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding 6 months, or to both.

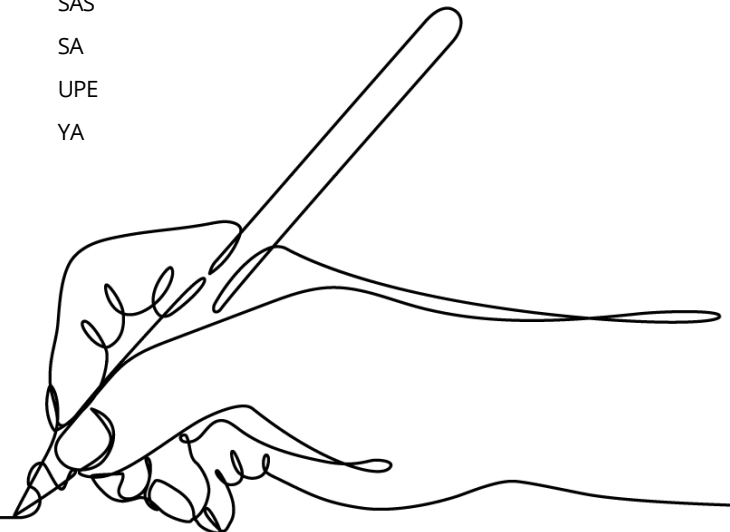
Effective: YA 2025

Commentary

Based on the sharing at the National Tax Seminar 2023 (Budget 2024), we understand that the submission of information and documents is via MITRS which may include tax working sheet and audited financial statements.

Abbreviations and Acronyms

Accelerated Capital Allowance	ACA
Capital Gains Tax	CGT
Carbon Capture and Storage	CCS
Director General of Inland Revenue	DGIR
Environmental, Social and Governance	ESG
Electric Vehicle	EV
Euro	EUR
Green Investment Tax Allowance	GITA
Green Income Tax Exemption	GITE
Global Minimum Tax	GMT
Inland Revenue Board	IRB
Income Tax Act 1967	the Act
Information and Communication Technology	ICT
Investment Tax Allowance	ITA
Labuan Business Activity Tax Act 1990	LBATA
Malaysian Investment Development Authority	MIDA
Micro, Small and Medium Enterprise	MSME
Ministry of Finance	MOF
Multinational Enterprise	MNE
Petroleum (Income Tax) Act 1967	PITA
Real Property Company	RPC
Real Property Gains Tax	RPGT
Real Property Gains Tax Act 1976	RPGT Act
Reinvestment allowance	RA
Ringgit Malaysia	RM
Securities Commission Malaysia	SC
Self-Assessment System	SAS
Stamp Act 1949	SA
Ultimate Parent Entity	UPE
Year of Assessment	YA



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