Shearn Delamore &Co.

Dear valued clients and business partners,

We are pleased to highlight the following legal update.

TAX AND REVENUE

2019 Budget — A Quick Glance

In the wake of the 1MDB scandal, the new government's 2019 Budget proposed increases in tax rates and a tightening of tax incentives and relief, with a Fiscal Responsibility Act to be tabled by 2021 to avoid reckless mega expenditure and to eradicate the nation's mega debts. Some of the budget proposals are set out below and unless otherwise stated, will take effect from 1 January 2019 if passed in Parliament.

- **Administrative and Enforcement Measures**

The Programme for Special Voluntary Disclosure will be implemented from 3 November 2018 to 30 June 2019. Aimed at incentivising taxpayers to disclose unreported income, the programme covers income tax, petroleum income tax, real property gains tax and stamp duty. The following measures have been proposed:

a. 10% penalty on the tax payable for disclosures made from 3 November 2018 to 31 March 2019;
b. 15% penalty on the tax payable for disclosures made from 1 April 2019 to 30 June 2019;
c. 80% to 300% penalty for the period thereafter.

Ostentatious consumption may also trigger tax investigations by the Revenue, particularly any unexplained extraordinary wealth displayed through possession of luxury goods, jewellery, handbags or property.

- **Service Tax on Imported Services**

Currently, taxable services imported into Malaysia ("**imported services**") are not subject to service tax. To level the playing field between local and foreign service providers, imported services will be subject to service tax with effect from 1 January 2019 for B2B transactions. If the services are imported by a business (i.e. B2B), the recipient must account for and pay service tax to Customs.

- **Service Tax on Digital Products and Services**

The widely-anticipated "*digital tax*" will be implemented with effect from 1 January 2020. Foreign service providers providing digital products and services to consumers in Malaysia in B2C transactions will be required to register with Customs and charge and account for service tax on the same. This would include but is not limited to downloads of software, music, videos and digital advertising. Further clarification is needed on the applicable threshold and mechanisms for administering and enforcing the tax.

- **Exemptions & Relief for Sales and Service Tax ("SST")**

To reduce the cost of doing business and prevent the cascading effect of SST, exemptions will be granted to specific businesses, which are registered for service tax purposes, on their B2B transactions. It is unclear at this juncture as to which services or businesses would be exempted.

Small manufacturers may benefit from a credit system by way of sales tax deduction on the importation of taxable goods into Malaysia.

- **Soda Tax**

Nicknamed "*soda tax*", excise duty of RM0.40 per litre will be imposed from 1 April 2019 on specified beverages which exceed the specified limit on sugar content, ostensibly to curb diabetes. Fruit or vegetable juices would be subject to the said duty if they exceed the sugar limit of 12 grammes per 100 millilitres. For other beverages, including carbonated drinks and other non-alcoholic beverage, the limit is five grammes per 100 millilitres.

- **Downsizing Losses and Allowances**

Unabsorbed business losses, unabsorbed pioneer losses after the end of the pioneer period, unutilised capital allowances and unabsorbed investment tax allowance after the end of the investment tax allowance period — all of which presently can be carried forward indefinitely until they are fully absorbed/utilised — can be carried forward for a maximum period of seven consecutive years of assessment only, with effect from the year of assessment 2019.

Similarly, unutilised reinvestment allowance and investment allowance for the services sector can be carried forward for a maximum period of seven consecutive years of assessment only upon expiry of the qualifying period of the reinvestment allowance/investment allowance.

- **Revision of Income Tax, Stamp Duty and Real Property Gains Tax Rates**

Income Tax

From the year of assessment 2019, SMEs, i.e. companies which are tax resident and incorporated in Malaysia with a paid-up ordinary share capital of RM2.5 million or less for the relevant period, will enjoy a reduced corporate income tax rate of 17% (currently 18%) on chargeable income of up to RM500,000, with the excess to be taxed at the prevailing corporate tax rate of 24%.

Stamp Duty

On the sale or transfer of property, stamp duty is currently levied at rates of:

a. 1% (on the first RM100,000 of the value of transfer);

b. 2% (on the value of transfer of more than RM100,000 but not more than RM500,000); and
c. 3% (on the value of transfer of more than RM500,000) respectively.

The rate of 3% above will be revised for the transfers of real property so that stamp duty at the rate of 4% will be levied on the value in excess of RM1 million and at 3% on the value of more than RM500,000 and less than RM1 million.

Real Property Gains Tax ("RPGT")

RPGT is imposed on capital gains accruing on the disposal of real property or shares in a real property company ("**chargeable assets**"), and RPGT rates would gradually decline the longer the period of holding of the asset.

The following rates have been proposed for chargeable gains arising on disposals made in the 6th year and subsequent years after the acquisition date of the chargeable asset:

a. 5% (currently 0%) if the seller is a Malaysian citizen or a Malaysian permanent resident;
b. tax-exempt if the seller is a Malaysian citizen disposing of low cost, low-medium cost or affordable housing at a price of RM200,000 and below; and
c. 10% (currently 5%) if the seller is a company or an individual who is neither a Malaysian citizen nor a Malaysian permanent resident.

- **Review of the Labuan International Business Financial Centre**

Labuan entities carrying on Labuan trading activities will no longer have the option of electing to pay a flat tax of RM20,000 (regardless of its income level) instead of a 3% tax on its chargeable profits.The flat tax will be abolished but the 3% tax rate will be maintained.

Restrictions on transacting in Ringgit and on transactions conducted between Labuan entities and residents of Malaysia would also be abolished. Other proposals include taxing the income arising from intellectual property assets held by a Labuan entity under the **Income Tax Act 1967** rather than the **Labuan Business Activity Tax Act 1990**.

- <u>**Stamp Duty & Property Market**</u>

To further boost the property market and encourage home ownership, the following measures have been proposed:

a. 100% stamp duty exemption on the instrument of transfer and loan agreement for the purchase of the first residential home, provided that it is priced at not more than RM300,000 and the sale and purchase agreement is executed between 1 January 2019 and 31 December 2020;

b. 100% stamp duty exemption on the instrument of transfer for the purchase of the first residential home, provided that it is purchased from a housing developer at a price between RM300,001 and RM1 million and the sale and purchase agreement is executed between 1 January 2019 and 30 June 2019;

c. 100% stamp duty exemption (on the first RM300,000 of the price of the home only, the balance being subject to the prevailing rate of stamp duty) on the instrument of transfer and loan agreement for the purchase of the first residential home, provided that it is priced between RM300,001 and RM500,000 and the sale and purchase agreement is executed between 1 July 2019 and 31 December 2020.

To find out more, join us at our Budget Event on 26 November 2018 at the Renaissance Hotel.

For further information regarding tax and revenue matters, please contact our Tax and Revenue Practice Group.

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