

Tax Highlights of Finance Bill 2019

1 November 2019

By the Tax and Revenue Practice Group

Following the tabling of the 2020 Malaysian Budget by the Minister of Finance (“MOF”) on 11 October 2019, the Finance Bill 2019 was tabled for a first reading in Parliament on 15 October 2019. This article highlights the key amendments to tax legislation set out in the Finance Bill 2019.

• Personal Income Tax Rates

It is proposed that with effect from year of assessment (“YA”) 2020, a new chargeable income band exceeding RM2,000,000 be introduced and resident individuals with chargeable income of more than RM2,000,000 be taxed at 30% compared to the previous rate of 28%. For non-resident individuals, the fixed income tax rate is also proposed to be increased to 30% from the previous rate of 28%.

• Threshold for Lower Corporate Tax Rate for Small and Medium Enterprises (“SMEs”)

Presently, SMEs (companies that are tax residents and incorporated in Malaysia, and have a paid-up capital in respect of ordinary shares of up to RM2,500,000 at the beginning of the basis period for a YA and subject to the proviso on related company) are taxed at a lower rate of 17% on the first RM500,000 of their chargeable income and for every ringgit exceeding the first RM500,000 the normal corporate tax rate of 24% would apply.

It is proposed that with effect from YA 2020, the threshold of chargeable income upon which SMEs enjoy the lower rate of 17% be increased from RM500,000 to RM600,000. Further, it has also been proposed that another criteria be added such that SMEs must also have a gross income not exceeding RM50,000,000 in a basis period for a YA from all business sources in order to enjoy the lower tax rate.

• Withdrawals from Deferred Annuity or Private Retirement Scheme

Presently, withdrawals by an individual from a deferred annuity or a private retirement scheme before the individual reaches the age of 55 are taxed at 8%. However, the amount withdrawn would not be subject to tax if the withdrawals are due to permanent total disablement, serious disease, mental disability, death or permanently leaving Malaysia.

It is proposed that Section 109G(1) of the Income Tax Act 1967 (“ITA”) be amended so that with effect from 1 January 2020, withdrawals for reasons of healthcare or housing would also not be subject to tax provided that such withdrawals are in compliance with the relevant Securities Commission guidelines.

• Gift of Money or Contribution In Kind

It is proposed that Section 44 of the ITA be amended so that with effect from YA 2020, the tax deduction presently available to a person (other than a company) in respect of the following be increased from 7% to 10% of the aggregate income of that person in the relevant year:

- gift of money to approved institutions, organizations or funds
- gift of money for approved sports activities
- gift of money or cost of contribution in kind for approved projects of national interest

• Tax Relief for Medical Expenses

It is proposed that Section 46(1)(g) of the ITA be amended so that with effect from YA 2020, the tax deduction of up to RM6,000 presently available to individuals in respect of medical expenses expended or deemed expended by the individual on himself/herself or his/her spouse or child be extended to also cover medical expenses for fertility treatment, provided that such individual is married. In this connection, “fertility treatment” means intrauterine insemination or in vitro fertilization treatment or any other fertility treatment.

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- **Special Allowance for Small Value Assets**

It is proposed that Paragraph 19A of Schedule 3 to the ITA be amended so that with effect from YA 2020:

- (i) the value of small value assets on which special allowance can be claimed by SMEs and non-SMEs be increased from RM1,300 to RM2,000; and
- (ii) the limit of qualifying plant expenditure in respect of small value assets on which such allowance can be claimed by non-SMEs be increased from RM13,000 to RM20,000.

Whilst there is no limit on the amount of qualifying plant expenditure for SMEs, for consistency purposes, Paragraph 19A is to be amended to reflect the additional criteria that SMEs must have a gross income not exceeding RM50,000,000 in a basis period for a YA from all business sources.

- **Increase in Tax for Amended Tax Return**

It is proposed that Section 77B(4) of the ITA be amended so that with effect from 1 January 2020, where a person makes an amendment to a tax return, any amount of tax or additional tax payable by that person pursuant to the amended return shall only be increased by 10% of the amount of such tax or additional tax payable. The additional tax increase of 5% imposed in respect of an amended return which is furnished after 60 days from the due date for the furnishing of the tax return will be abolished.

- **Increase on Unpaid Tax After Payment Due Date**

It is proposed that Section 103 of the ITA be amended so that with effect from 1 January 2020, if any tax that is due and payable has not been paid by its payment due date, the unpaid tax shall only be increased by a single rate of 10%. The additional tax increase of 5% imposed after 60 days from the due date will be abolished.

- **Recovery from Persons Leaving Malaysia**

It is proposed that Section 104(1)(b) of the ITA be amended so that a person could also be prevented from leaving Malaysia if the increase in tax under Section 107C(10A) of the ITA for failure by a company to furnish a tax estimate, has not been paid. Such persons would include a director of the company who holds directly or indirectly a minimum of 20% of the ordinary share capital of the company.

This proposed amendment, if passed by Parliament, would be effective on the coming into operation of the Finance Act 2019/2020.

- **Licensing of Tax Agents**

Presently, the power to approve applications, renewal and determine fees charged for tax agent licences lies with the MOF. It is proposed that Section 153 of the ITA be amended so that with effect from 1 January 2021, such powers be exercised by the Director General of Inland Revenue ("DGIR") instead.

Further, it has also been proposed that any person who is aggrieved by the DGIR's decision in refusing to renew an approval or revoking an approval may, within 1 month from the date on which such decision is notified to him, appeal to the MOF against that decision.

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- **Ratification of Multilateral Instrument under Petroleum (Income Tax) Act 1967 (“PITA”)**

If there is any conflict between the provisions of a Double Tax Agreement (“DTA”) and the provisions of the PITA, Section 65A of the PITA stipulates that the DTA shall prevail.

It is proposed that a new subsection 65A(1A) be inserted into the PITA so that the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing (MLI) or any other arrangements which modify any existing DTA would also prevail over the PITA. This proposed amendment, if passed by Parliament, would be deemed to have come into operation on 28 December 2018.

- **International Obligations**

It is also proposed that a new Section 65AA be inserted into the PITA to empower the MOF to declare by way of statutory order that certain arrangements as specified in the order shall have effect in relation to tax under the PITA as well as any other taxes of every kind under any written law. This proposed amendment, if passed by Parliament, would be deemed to have come into operation on 28 December 2018.

- **Extension of Time to Appeal against Assessments under ITA and PITA**

Presently, any taxpayer who wishes to appeal against an assessment under the ITA or PITA after the expiration of the prescribed period to file an appeal may at any time make an application for extension of time via Form N to the DGIR.

It is proposed that Section 100(1) of the ITA and Section 44(1) of the PITA be amended so that with effect from YA 2020, such applications for extension of time can only be made to the DGIR within 7 years after the expiration of the prescribed period to file an appeal.

- **Assessments or Additional Assessments Raised under ITA or PITA in Consequence of Mutual Agreement Procedure in DTAs**

It is proposed that Section 91 of the ITA and Section 39 of the PITA be amended to empower the DGIR to raise assessments or additional assessments at any time in consequence of a mutual agreement procedure in DTAs.

These proposed amendments, if passed by Parliament, would be effective on the coming into operation of the Finance Act 2019/2020.

- **Tax Appeal Tribunal**

The MOF has announced in his Budget Speech that the Special Commissioners of Income Tax (“SCIT”) and the Customs Appeal Tribunal (“CAT”) will be merged into a new Tax Appeal Tribunal (“TAT”). Although it is indicated that taxpayers who are dissatisfied with the decision of the DGIR or the Director General of Customs may submit their appeals under all applicable tax legislation to the TAT beginning 2021, no amendments have been proposed in the Finance Bill 2019 to remove the provisions relating to the SCIT and CAT from the applicable tax legislation and to replace the same with a new set of provisions for the TAT.

- **Stamp Duty on Foreign Currency Loan Agreements**

It is proposed that with effect from 1 January 2020, the maximum amount of stamp duty payable on foreign currency loan agreements under Item 27(a)(ii) of the First Schedule to the Stamp Act 1949 be increased from RM500 to RM2,000.

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• Real Property Gains Tax (“RPGT”) Rates

Presently, RPGT rates under Part II of Schedule 5 to the Real Property Gains Tax Act 1976 (“RPGTA”) apply to any company whereas RPGT rates under Part III of Schedule to the RPGTA apply to an individual who is not a citizen and not a permanent resident or an executor of the estate of a deceased person who is not a citizen and not a permanent resident.

It is proposed that Schedule 5 be amended so that the rates under Part II only apply to a company incorporated in Malaysia and a trustee of a trust and the rates under Part III be extended to also cover a company not incorporated in Malaysia.

For ease of reference and comparison, the proposed amendments are reflected in **red** in the table below:

Disposal	RPGT rates under Schedule 5				
	Part I	Part II		Part III	
	Individual – citizen, permanent resident & others (no change)	Current Company	Proposed Company incorporated in Malaysia & Trustee of a trust	Current Individual – non-citizen, non-permanent resident & executor of the estate of a deceased person who is a non-citizen or non-permanent resident	Proposed Individual – non-citizen, non-permanent resident, executor of the estate of a deceased person who is a non-citizen or non-permanent resident & Company not incorporated in Malaysia
Within 3 years	30%	30%	30%	30%	30%
In the 4 th year	20%	20%	20%	30%	30%
In the 5 th year	15%	15%	15%	30%	30%
In the 6 th & subsequent years	5%	10%	10%	10%	10%

These proposed amendments, if passed by Parliament, would be effective on the coming into operation of the Finance Act 2019/2020.

• Acquisition Price for Real Property Acquired Prior to 1 January 2013

Presently, for real properties which were acquired prior to year 2000, the market value as at 1 January 2000 is used as the acquisition price for the disposal of such real properties by Malaysian citizens and permanent residents.

It is proposed that the RPGTA be amended so that the market value as at 1 January 2013 be used instead as the acquisition price for the disposal of real properties acquired prior to year 2013 by Malaysian citizens and permanent residents.

This proposed amendment, if passed by Parliament, would be deemed to have come into operation on 12 October 2019.

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- **Retention Sum for RPGT**

It is proposed that Section 21B(1A) of the RPGTA be amended so that the requirement for the acquirer to retain and pay to the DGIR either 7% of the total value of consideration or the whole of the cash consideration (whichever is lesser) which is presently confined to disposals of chargeable asset by an individual who is not a Malaysian citizen or permanent resident, be extended to also cover instances where the disposer is a company not incorporated in Malaysia.

This proposed amendment, if passed by Parliament, would be effective on the coming into operation of the Finance Act 2019/2020.

- **Approved Major Exporter Scheme**

It is proposed that Approved Major Exporter Scheme (“Scheme”) be introduced under the Sales Tax Act 2018. Subject to certain prescribed conditions being satisfied, this Scheme allows a trader or manufacturer to be exempted from the whole payment of sales tax on taxable goods that are imported, transported from designated areas or special areas or purchased from a registered manufacturer, provided that:

- (a) the taxable goods shall be exported, or transported to designated areas or special areas; or
- (b) the taxable goods are used as raw materials, packing and packaging materials or components to be manufactured, which subsequently shall be exported, or transported to designated areas or special areas as goods exempted from sales tax pursuant to an order made under the Sales Tax Act 2018.

Any person who has been granted an approval under the Scheme is required to keep a record of the sales tax exempted on the importation, transportation or purchase of the taxable goods in the form and manner as may be determined by the Director General of Customs.

If the approved person fails to comply with any of the prescribed conditions, the sales tax exempted shall become due and payable from the date of the non-compliance.

The proposed introduction of the Scheme, if passed by Parliament, would be effective on a date to be appointed by the MOF by notification in the Gazette.

- **Clarification on the Commencement Date for the Removal of the Election to be Taxed at RM20,000 for Labuan Entities**

Labuan entities which carry on Labuan trading activity are taxed at the rate of 3% under the Labuan Business Activity Tax Act 1990. Previously, such Labuan entities were also given an option to elect to be taxed at a flat sum of RM20,000. However, pursuant to the Finance Act 2018, that option has been removed with effect from 1 January 2019.

It is proposed that the Finance Act 2018 be amended to clarify that the commencement date for the removal of the said option is from YA 2020.

This proposed amendment, if passed by Parliament, would be deemed to have come into operation on 1 January 2019.

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