

To:
Our valued clients, friends and affiliates.

UPDATE ON DIRECT TAXATION

The Finance Act 2018 has been published in the Federal Government Gazette on 27 December 2018. It is an Act to amend the Income Tax Act 1967, Promotion of Investments Act 1986, Stamp Act 1949, Real Property Gains Tax Act 1976, Labuan Business Activity Tax Act 1990, Service Tax Act 2018 and Sales Tax Act 2018.

Income Tax (Amendment) Act 2018 was published in the Federal Government Gazette on 27 December 2018. It is an Act to amend the Income Tax Act 1967. In addition, several exemption orders and regulations have been gazetted.

We summarise and explain herewith amendments to direct taxation as introduced by the Finance Act 2018 and Income Tax (Amendment) Act 2018 as well as the regulations and exemption orders made by the Minister. In addition, we will also highlight other 2019 budget proposals which are yet to be gazetted.

For ease of reference and reading, the summary has been arranged into two sections which are as follows:

SECTION	TOPIC	PAGE
1	UPDATE ON DIRECT TAXATION	
	1.AMENDMENTS TO THE INCOME TAX ACT 1967	1
	2.AMENDMENTS TO THE PROMOTION OF INVESTMENT ACT 1986 ("PIA 1986")	29
	3.AMENDMENT TO THE STAMP ACT 1949 ("SA 1949")	31
	4.AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1975 (RPGT)	45
	5.AMENDMENTS TO THE LABUAN BUSINESS ACTIVITY TAX ACT 1990 (LABATA)	47
2	TAX INFORMATION	54

Disclaimer:

This publication is distributed gratuitously and without liability. AljeffriDean, Chartered Accountants and its associates, partners and employees disclaim all and any liability and responsibility to any person whosoever in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance wholly or partly upon the whole or any part of the contents of this publication

We may be contacted via telephone: 03-23811170 or email at info@aljeffridean.com or consulting@mgj-aljeffri.com.

SECTION 1

UPDATE ON DIRECT TAXATION

1. AMENDMENTS TO THE INCOME TAX ACT 1967

1.1. New definition of “Labuan Company”.

"Labuan company" means a Labuan entity as provided under subsection 2B(1) of the Labuan Business Activity Tax Act 1990;

Law

Section 2 of the Income Tax Act 1967

Effective Date

From 1 January 2019.

History

Definition of “Labuan company” formerly read: “Labuan company’ means a Labuan company incorporated under the Labuan Companies Act 1990 [Act 441] and includes a foreign Labuan company registered under that Act, Labuan limited partnership established and registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 [Act 707], Labuan trust as defined in the Labuan Trusts Act 1996 [Act 554] and a Malaysian bank as defined in the Labuan Financial Services and Securities Act 2010 [Act 704]”

1.2. Definition of “Research and Development”

"research and development" means any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devices, products, produce, or processes, but does not include—

- a) quality control or routine testing of materials, devices or products;
- b) research in the social sciences or the humanities;
- c) routine data collection;
- d) efficiency surveys or management studies
- e) market research or sales promotion;
- f) routine modifications or changes to materials, devices, products, processes or production methods; or
- g) cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods;

Consequent to the above definition, section 34(7) is amended by substituting for the words “scientific research” with the words “research and development” and

section 34A and Schedule 3 Paragraphs 37B and 37D of the Income Tax Act is amended by substituting for the word “research” the words “research and development”

Law

Section 2, 34(7) and 34A and Schedule 3 Paragraphs 37B and 37D of the Income Tax Act 1967

Effective Date

Section 2, 34(7) and 34A – from 28 December 2018.
Schedule 3 Paragraphs 37B and 37D - from assessment year 2019.

History

Previously there is no definition for “Research and Development” in the Income Tax Act 1967

Comment

The amendment provides more certainty to tax payers on what constitutes “research and development”.

1.3. Special class of income received by non-resident

Subsection 4A(ii) is amended by substituting for the words “technical advice” the words “any advice given, or” and substituting for the words “technical management” the word “management”. The new subsection 4A(ii) read “amounts paid in consideration of any advice given, or assistance or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme”

Consequent to the above amendments sections 15A, 109B and Schedule 1 Part V paragraph (ii) are also amended as above.

Law

Section 4A, 15A and 109B of the Income Tax Act 1967
Schedule 1 Part V paragraph (ii) Income Tax Act 1967.

Effective Date

28 December 2018

History

S. 4A(ii) formerly read:

“amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or”

Comment

Prior to the amendment the word “technical” creates ambiguity on whether the word “technical” related only to “advice” or it also related to “assistance and services” rendered by the non-resident. If it related only to “advice” then payment made to non-resident in respect of assistance and services is subject to withholding tax whether or not the assistance and services is technical in nature. If the word “technical” is also related to “assistance and services” then payment made to non-resident is subject to withholding tax only if the assistance and services are technical in nature. If they are not technical in nature then they are not subject to withholding tax.

The amendments make it clear that payment made to non-resident in respect of any advice given, assistance or services rendered by non-resident in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme is subject to withholding tax whether or not the advice, assistance or services are technical in nature.

1.4. Expansion of derivation of business income

Section 3 provides that income tax shall be charged on income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia. Section 12 provides that business income shall be deemed to be derived from Malaysia if the operation of the business is carried out in Malaysia.

Section 12 is amended by inserting subsections (3) and (4). Subsection (3) provides that business income shall be deemed to be derived from Malaysia if the income is attributable to a place of business in Malaysia.

Subsection 12(4) provides that a place of business includes—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse;
- (g) a building site, or a construction, an installation or an assembly project;
- (h) a farm or plantation; and
- (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources,

A person shall be deemed to have a place of business in Malaysia if that person—

- (i) carries on supervisory activities in connection with a building or work site, or a construction, an installation or an assembly project; or
- (ii) has another person acting on his behalf who—

- (A) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification;
- (B) habitually maintains a stock of goods or merchandise in that place of business from which such person delivers goods or merchandise; or
- (C) regularly fills orders on his behalf.

Law

Subsections 12(3) and 12(4) of the Income Tax Act 1967

Effective Date

From 28 December 2018

History

Subsections 12(3) and 12(4) are new subsections.

Comment

The amendments expand the scope of section 12. If a person has a place of business in Malaysia then income attributable to that place shall be deemed to be derived from Malaysia and subject to income tax.

1.5. Deductibility of payment to Labuan Companies

Payments made by a person, who is a resident, to any Labuan company is not deductible in ascertaining the adjusted business income of the payer unless otherwise prescribed by the Finance Minister.

The Minister has prescribed amount not allowed for deduction as follows -

No.	Type of payment	Amount not allowed for deduction
1.	Interest payment	33% of the amount of payment
2.	Lease rental	33% of the amount of payment
3.	Other payments	97% of the amount of payment

Law

Subsection 39(1)(r) of the Income Tax Act 1967
Income Tax (Deductions not allowed for payment made to Labuan Company by resident) Rules 2018 [P.U.(A) 375 of 2018]

Effective date

1 January 2019

History

This is a new subsection. Previously payment made to Labuan Company is allowable if it was incurred wholly and exclusively in the production of income and not disallowed or restricted by any other provision of the Act.

Comment

The amendment will discourage Malaysian tax residents from dealing with Labuan Company.

1.6. Time limit to utilise adjusted business losses

Current year adjusted business losses shall be utilised as a deduction against other income in ascertaining the total income for that year. Any unutilised adjusted business losses shall be carried forward to the immediate following assessment year and be deducted against aggregate business income of that year.

Any unutilised adjusted business losses as at the end of the 2018 assessment year shall be carried forward until assessment year 2025 unless fully utilised earlier. Any unutilised losses as at the end of assessment year 2025 shall be disregarded.

Unutilised adjusted business losses for assessment year 2019 and onwards shall be carried forward for seven consecutive assessment years immediately following that assessment year unless it was fully utilised earlier. Any unutilised adjusted business losses after the seventh assessment year shall be disregarded.

Law

Section 44(5F) and special provision relating to sections 43 and 44 of the Income Tax Act 1967

Effective Date

From assessment year 2019

History

Previously unutilised adjusted business losses are allowed to be carried forward indefinitely.

Comment

The amendment is intended to curb revenue loss to the Government.

1.7. Group Relief

A company (hereinafter referred to as a “surrendering company”) may, for the basis period for three consecutive years of assessment, surrender not more than 70% of its adjusted loss in the basis period of a year of assessment to one or more related companies (referred to in this section as a “claimant company”) provided that the surrendering and claimant company is resident in the basis year for that year of assessment and incorporated in Malaysia.

The basis period for three consecutive years of assessment commences—

- (a) immediately following the basis period for a year of assessment the surrendering company first commences operation, provided that the basis period consists of a period of twelve months; or
- (b) immediately following the second basis period the surrendering company first commences operation (in this paragraph referred to as the “second basis period”), if the basis period for a year of assessment the surrendering company first commences operation is less or more than twelve months and the second basis period consists of a period of twelve months.

Notwithstanding the above, if the surrendering company first commences its operation in the-

- (a) assessment year 2015 it may surrender its adjusted loss for the basis period for a year of assessment 2019
- (b) assessment year 2016 it may surrender its adjusted loss for assessment years 2019 and 2020
- (c) assessment year 2017 it may surrender its adjusted loss for the assessment years 2019, 2020 and 2021

Conditions

- (a) the surrendering company and the claimant company-
 - i. are related companies throughout the basis period for that year of assessment and the twelve months period immediately preceding that basis period;
 - ii. have paid-up capital in respect of ordinary share of more than RM2,500,000 at the beginning of the basis period for that year of assessment;
 - iii. have twelve months basis period ending on the same day;
 - iv. make an irrevocable election to surrender or claim an amount of adjusted loss in the return furnished for that year of assessment under section 77A; and

- v. are subject to tax at the appropriate rate as specified in paragraph 2 of Part I of Schedule 1; and
- vi. the claimant company has a defined aggregate income for that year of assessment.

A surrendering company and claimant company are related companies if at least-

- (a) 70% of the paid-up capital in respect of ordinary shares of the surrendering company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the claimant company;
- (b) 70% of the paid-up capital in respect of ordinary shares of the claimant company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the surrendering company; or
- (c) 70% of the paid-up capital in respect of ordinary shares of the surrendering company and the claimant company are directly or indirectly owned by another company resident and incorporated in Malaysia.

Notwithstanding that a company owns at least 70% of the paid-up capital in the other company, the companies shall not be treated as “related companies” unless additionally in the year of assessment the first mentioned company is beneficially entitled to at least 70% of—

- (a) any residual profits of the other company, available for distribution to that other company’s equity holders; and
- (b) any residual assets of the other company, available for distribution to that other company’s equity holders on a winding up.

Any amount of adjusted loss surrendered under this section for any year of assessment shall be allowed to a claimant company as a deduction in ascertaining the total income of the claimant company.

Non-application

Group relief shall not apply to a company for a basis period for a year of assessment where the period during which that company-

- (a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investments Act 1986;
- (b) has unutilized investment tax allowance or adjusted loss from a pioneer business under the Promotion of Investments Act 1986;
- (c) is exempt from tax under sections 54A, paragraph 127(3)(b) or subsection 127(3A)
- (d) has made a claim for a reinvestment allowance under Schedule 7A

- (e) has made a claim for deduction in respect of an approved food production project under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006;
- (f) has made a claim for deduction under the Income Tax (Deduction For Cost of Acquisition of Proprietary Rights) Rules 2002;
- (g) has been granted a deduction under the Income Tax (Deduction For Cost of Acquisition of a Foreign Owned Company) Rules 2003; or
- (h) has made a claim for deduction under any rules made under section 154 and those rules provide that this section shall not apply to that company.

Law

Section 44A

Effective Date

From assessment year 2019

History

Previously there was no time limit for a company to surrender its adjusted loss. Prior to the amendment the group relief is available to companies with unutilised investment tax allowance or adjusted loss from a pioneer business after the expiry of the pioneer status.

Comment

Now the group relief is only available to start-up companies.

1.8. Relief on savings into Skim Simpanan Pendidikan Nasional

A resident individual is given relief equal to net saving in the Skim Simpanan Pendidikan Nasional account established under the Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997. However, the relief is restricted to RM8,000.00 only.

Law

Seksyen 46(1)(k) Income Tax Act 1967

Effective Date

Assessment year 2019 to 2020

History

Previously the maximum amount is RM6,000.00 only.

Comment

The increase of the relief will encourage savings for children education.

1.9. Relief for contribution to approved fund and life insurance/takaful

An individual who is resident for the basis year for a year of assessment shall be allowed for that year of assessment a deduction—

- (a) not exceeding RM3,000.00 in respect of premium paid by that individual for any life insurance;
- (b) not exceeding RM4,000.00 in respect of contribution to approved scheme (other than a private retirement scheme) made or suffered by that individual who is an employee or a self-employed person within the meaning of the Employees Provident Fund Act 1991 [Act 452]; or
- (c) not exceeding RM4,000.00 in respect of any amount made or suffered by that individual on any contribution under any written law relating to widow, widower and orphan's pension or under any approved scheme within the meaning of any such law.

The total amount of deduction shall not exceed RM7,000.00. In the case of individual who is a pensionable officer within the meaning of section 2 of the Pensions Act 1980 [Act 227] and has not made any claim for contribution to approved scheme mentioned in (b) or (c) above, the amount of deduction for life insurance premium shall not exceed RM7,000.00.

Law

Section 49(1) and 49(1A) of the Income Tax Act 1967

Effective Date

From assessment year 2019

History

Previously the aggregate amount of relief for contribution to approved scheme and life insurance premium and takaful is restricted to RM6,000.00 only. There is no segregation between life insurance and approved scheme.

Comment

After the amendment, relief for life insurance premium is segregated from relief for contribution to approved scheme. Relief for life insurance premium is restricted to RM3,000 and relief for contribution to approved scheme is restricted to RM4,000.

1.10. Tax rate for insurance business.

Type of business	Income Tax Rate (%)	
	w.e.f. YA 2019	Prior to 2019
Re-insurance	8	24
Inward Re-insurance	8	5
Offshore re-insurance	24	5
Re-takaful	8	24
Inward re-takaful	8	5
Off-shore takaful	24	5

Law

Section 60, 60A and 60AA of the Income Tax Act 1967
Section 60B deleted by section 19 Finance Act 2018
Schedule 1 Part 1 Paragraphs 3 and 4, Part VIII and Part XII of the Income Tax Act 1967

Effective Date

From assessment year 2019

Comment

Tax treatment for re-insurance and re-takaful is standardised. Prior to the amendment inward re-insurance and inward re-takaful enjoyed special tax rate at 5% whereas re-insurance business and re-takaful business is taxed at 24%. Special treatment given to offshore insurance and off-shore takaful is also abolished with the deletion of section 60B of the Income Tax Act 1967.

1.11. Person responsible to act for Limited Liability Partnership (LLP)

The responsibility for doing all acts and things required to be done by or on behalf of a LLP for the purposes of this Act shall lie jointly and severally-

- (i) with the compliance officer who is appointed amongst the partners of the LLP or persons qualified to act as secretaries under the Companies Act 2016 who is a citizen or permanent resident of Malaysia and ordinarily resides in Malaysia; or
- (ii) if no compliance officer is appointed as such, any one or all of the partners thereof.

Law

Section 75B(1)(a)(i) of the Income Tax Act 1967

Effective Date

28 December 2018

History

Previously only partners of the LLP could be appointed as the compliance officer of the LLP.

Comment

The LLP can now appoint professional company secretaries to act on its behalf in discharging its responsibility under the Income Tax Act 1967.

1.12. Requirement of audited accounts by the Inland Revenue Board of Malaysia

- a) A company is required to furnish to the Director General of the Inland Revenue (the "DGIR") an income tax return (Form C) and the return shall be based on financial statements made in accordance with the requirements of the Companies Act 2016.
- b) The DGIR, if he is of the opinion that any accounts or records produced by any person to the DGIR for the purpose of ascertaining the income of a person are insufficient or inadequate for that purpose, may by notice under his hand require that person to produce, in respect of any period or periods specified in the notice and within a time so specified (not less than 30 days from the service of the notice), financial statements made in accordance with the requirements of the Companies Act 2016.

Law

Section 77A(4) and section 82(5) of the Income Tax Act 1967

Effective Date

From Assessment Year 2019.

History

Previously the income tax return shall be based on accounts audited by a professional accountant, together with a report made by that accountant which shall contain, in so far as they are relevant, the matters set out in subsections 174(1) and (2) of the Companies Act 1965.

The DGIR may require a company to furnish him with audited accounts.

Comment

If a company is exempted from appointing auditors and having its accounts being audited under the Companies Act 2016 the company may submit its tax return based on unaudited account and may submit the same account if required by the DGIR.

1.13. Appealing against the estimate assessment made by the DGIR

If a person has not furnished the income tax return within time stipulated under section 77A, the DGIR may according to the best of his judgment determine the amount of the chargeable income of that person and make assessment accordingly.

If that person aggrieved by that assessment that person may appeal against the assessment by furnishing a return for that basis period for that year of assessment together with the written notice of appeal (Form Q) within 30 days from the date of the assessment notice.

Law

Section 99(1A) of the Income Tax Act 1967

Effective Date

From assessment year 2019.

History

Previously there is no requirement to furnish the tax return together with the Form Q

Comment

Since the tax return must be made based on accounts, a person who is aggrieved with the assessment could not file an appeal unless their audited accounts or management accounts as the case may be, is available.

1.14. Penalty for breach of confidence

Any person who receives any classified material, knowing or having reasonable ground to believe at the time when he receives it that such classified material is communicated or disclosed to him in contravention of this Act, shall not use the classified material, or produce or disclose the classified material to any other person.

Penalty: Fine not exceeding RM4,000.00 or imprisonment for a term not exceeding one year or both.

Law

Section 117(1A) and 117(1B) of the Income Tax Act 1967

Effective Date

From 28 December 2018

History

Previously only classified person who in contravention of section 138 communicates or disclose classified material to another person will be penalised.

Comment

This amendment will deter any person from disclosing classified material to another person and hence strengthen the protection of the classified materials.

1.15. Double Taxation Arrangement

Where the Government of Malaysia has made arrangements with foreign government with a view of affording relief from double taxation in relation to tax under this Act or other taxes of every kind under any written law and any foreign tax of that territory, the Minister of Finance shall declare that arrangement by way of statutory order and so long as the order remains in force, those arrangements shall have effect notwithstanding anything in any written law.

New subsection 132(1A) is inserted which read “For the purposes of this section, arrangements made with a view to affording relief from double taxation include any arrangements which modify the effect of arrangements so made.”

Law

Section 132(1A) of the Income Tax Act 1967

Effective Date

From 28 December 2018

History

This is a new subsection

Comment

This amendment seeks to include the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting or any other arrangements which modify any present arrangement between the Government of Malaysia with foreign government. With this amendment double taxation arrangements made by the Government may be modified by Multilateral Instruments.

1.16. Mutual administrative assistance arrangement

Where Government of Malaysia has made arrangements with foreign government with regard to mutual administrative assistance in tax matters which includes simultaneous tax examinations, automatic exchange of information or tax administrations abroad, section 138 shall not prevent the disclosure to a duly

authorized servant or agent of the government with which the arrangements have been made of such information as is required to be disclosed under the arrangements.

Section 154(1)(c) is amended by inserting the word “132B” so as to empower the Finance Minister to make rules on the above arrangement.

Law

Section 132B(1A) and 154(1)(c) of the Income Tax Act 1967

Effective Date

From 28 December 2018

History

This is a new subsection

Comment

This amendment clarifies that section 138 shall not prevent the disclosure of classified information to a duly authorised servant or agent of the government with which the arrangements have been made.

1.17. International Obligations

If the Minister by statutory order declares that arrangements specified in the order have been made by the Government to give effect to Malaysia’s international obligations in relation to tax under this Act or other taxes of every kind under any written law and it is expedient that those arrangements should have effect, then, so long as the order remains in force, notwithstanding anything in any written law, those arrangements shall have effect in relation to tax under this Act or other taxes of every kind under written law.

Section 138 shall not prevent the disclosure to a duly authorized servant or agent of the government with which the arrangements have been made of such information as is required to be disclosed under the arrangements.

Any order made shall be laid before the Dewan Rakyat.

Section 154(1)(c) is amended by inserting the word “132C” so as to empower the Finance Minister to make rules on the above arrangement.

Law

Section 132C and 154(1)(c) of the Income Tax Act 1967.

Effective Date

From 28 December 2018

History

This is a new section.

Comment

The new section provides a new avenue for any bilateral or multilateral arrangement made by the Government of Malaysia with a view to give effect to Malaysia's international obligations in relation to tax under the Act or any written law.

1.18. Expansion of definition of “control” for transfer pricing rules

Where a person enters into a transaction with an associated person for the acquisition or supply of property or services, then, that person shall determine and apply the arm's length price for such acquisition or supply.

Transactions mentioned above refer to transaction between—

- (a) persons one of whom has control over the other;
- (b) individuals who are relatives of each other; or
- (c) persons both of whom are controlled by a third person.

“Control” refers to persons one of whom owns shares of the other person, or a third person who owns shares of both persons, where the percentage of the share capital held in either situation is 20% or more and—

- (a) the business operations of that person depends on the proprietary rights, such as patents, non-patented technological know-how, trademarks, or copyrights, provided by the other person or a third person;
- (b) the business activities, such as purchases, sales, receipt of services, provision of services, of that person are specified by the other person, and the prices and other conditions relating to the supply are influenced by such other person or a third person; or
- (c) where one or more of the directors or members of the board of directors of a person are appointed by the other person or a third person.

Law

Section 140A(5)(c) and 140A(5A) of the Income Tax Act 1967

Effective Date

From 1 January 2019.

History

Subsection 140A(5A) is a new subsection. Previously definition of “control” is given by section 139 was used for transfer pricing rules.

Comment

The new subsection 140A(5A) has expanded the meaning of “control” under section 139. Under Section 139 a person is said to have control over a company if that person owned at least 50% shares in that company. Now a person is said to have control over a company if the person has at least 20% shares in the company and that person is able to control the business operation of the company

1.19. Restriction on deductibility of interest expense on financial assistance in controlled transaction

In ascertaining the adjusted business income no deduction shall be allowed in respect of any interest expense in connection with or on any financial assistance in a controlled transaction granted directly or indirectly to that person which is in excess of the maximum amount of interest as determined under any rules made under this Act.

"controlled transaction" shall be construed as a financial assistance between persons one of whom has control over the other or between persons both of whom are controlled by a third person.

"financial assistance" includes loan, interest bearing trade credit, advances, debt or the provision of any security or guarantee.

"interest expense" means interest on all forms of debt or payments economically equivalent to interest (excluding expenses incurred in connection with the raising of finance).

Section 154(1)(ed) is amended by substituting for the words “section 140A” with the words “sections 140A and 140C” so as to empower the Minister of Finance to make rules governing the implementation of the above restriction.

Law

Section 140C and subsection 154(1)(ed) of the Income Tax Act 1967

Effective Date

From 1 January 2019

History

This new section is introduced to replace subsection 140A(4) which was previously deleted by Finance (No. 2) Act 2017. Pursuance to the deleted subsection 140A(4) where the Director General of Inland Revenue is of the opinion that the value of financial assistance granted by a person to an associated person who is resident, is excessive in relation to the fixed capital of the associated person then any interest, finance charge or other consideration payable on that financial assistance shall, to the extent to which it relates to the

amount which is excessive, be disallowed as deduction in ascertaining the adjusted business income.

Comment

This amendment will deter one enterprise from providing excessive financial assistance to another enterprise within the group with a view to shift the profit of that enterprise by way of interest payment to the financial assistance provider and thus reduce the tax liability of the group.

1.20. Reduction of income tax rate for companies and limited liability partnership

Income tax rate for companies and limited liability partnership with paid-up capital or capital contribution not more than RM2.5 million are as follows-

Chargeable income	Income Tax Rate	
	w.e.f YA 2019	Prior to YA 2019
For every ringgit of the first RM500,000	17%	18%
For every ringgit exceeding RM500,000	24%	24%

Law

Paragraph 2A and 2D Part I Schedule 1 of the Income Tax Act 1967

Effective Date

From Assessment Year 2019

Comment

The reduced income tax rate will increase the disposable income that could be used to increase the competitiveness of the small and medium companies and limited liability partnership.

1.21. Revision of income tax rate for Foreign Fund Management Company

Foreign Fund Management Company means a company incorporated in Malaysia and licensed under the Capital Markets and Services Act 2007. Foreign investor means individuals who are not resident and not citizen of Malaysia, a company which the entire issue share capital is beneficially owned by a person who are not resident and not citizen of Malaysia and in relation to trust fund, the trust fund created outside Malaysia, the trustees are not resident and not citizen of Malaysia and the entire interest in the fund is beneficially held by foreign investor.

Chargeable income of a foreign fund management company derive from the provision of fund management services to foreign investors is taxed at 10% for assessment years 2019 and 2020 and 24% for the subsequent assessment years.

Law

Part IX, Schedule 1 of the Income Tax Act 1967

Effective Date

From assessment year 2021

History

Previously the tax rate is 10%.

Comment

The preferential tax rate of 10% will be abolished effective from assessment year 2021. The amendment was made to fulfil the requirement of the Forum for Harmful Tax Practice. The new tax rate of 24% that will be imposed effective from assessment year 2021 will definitely increase the cost of doing business of the foreign fund management company.

1.22. Withdrawal of income tax exemption for interest paid by unit trust

Income tax exemption is given to a unit trust in respect of interest derived from Malaysia and paid or credited by-

- (a) a bank licensed under the Financial Services Act 2013;
- (b) an Islamic bank licensed under the Islamic Financial Services Act 2013; or
- (c) a development financial institution prescribed under the Development Financial Institutions Act 2002:

Provided that the exemption shall not apply to the interest paid or credited to a unit trust that is a wholesale fund which is a money market fund.

Law

Paragraph 35A Schedule 6 of the Income Tax Act 1967

Effective Date

From 1 January 2019

History

Previously in the case of a wholesale fund which is a money market fund, the exemption shall only apply to a wholesale fund which complies with criteria as set out in the relevant guidelines of the Securities Commission Malaysia.

Comment

The amendment withdraws exemption previously given on interest paid or credited to a unit trust that is a wholesale fund which is a money market fund.

1.23. Restriction on time frame to utilise unabsorbed reinvestment allowance

A company which is resident in Malaysia and has incurred in the basis period for a year of assessment capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project is eligible to claim reinvestment allowance of an amount equal to 60% of that expenditure. The allowance shall be given in the basis periods for fifteen consecutive years of assessment (hereinafter referred to as “the qualifying period”) beginning from the assessment year in which the claim was first made. The allowance shall be utilised as a deduction against statutory income from that business but the deduction is restricted to 70% of the statutory income from that business.

If the allowance cannot be given in full due to the restriction of the allowance to 70% of the statutory income or due to insufficiency or absence of statutory income from that business for that assessment year the unutilised allowance shall be carried forward to the subsequent assessment years.

Any unutilised allowance at the end of the qualifying period shall be carried forward to the next 7 consecutive assessment years which commences immediately after the end of the qualifying period. Any unutilised allowance at the end of 7 consecutive assessment years after the expiry of the qualifying period shall be disregarded.

If the qualifying period ended in assessment year 2018 any accumulated unutilised allowance as at the end of the assessment year 2018 shall be carried forward to the next 7 consecutive assessment years after the assessment year 2018 or until fully utilised whichever is the earlier. Any unutilised allowance at the end of the 7 consecutive assessment years shall be disregarded.

Law

Paragraph 4B Schedule 7A of the Income Tax Act 1967

Effective Date

From assessment year 2019

History

Previously the unutilised allowance can be carried forward indefinitely until it is fully utilised.

Comment

The company has only 7 years to utilise the unabsorbed allowance after the expiry of the qualifying period.

1.24. Restriction on time frame to utilise unabsorbed investment allowance for service sector

A company which is resident in Malaysia and has incurred in the basis period for a year of assessment capital expenditure for the purpose of an approved service project is eligible to claim an investment allowance of an amount approved by the Minister (not less than 60% of that expenditure). The allowance shall be given in respect of expenditure incurred within 5 years from the date from which the approval is to take effect (hereinafter referred as “the qualifying period”). The allowance shall be utilised as a set-off against the statutory business income from the approved service project but restricted to 70% (or any other rate as the Minister may determine) of the statutory income of that business for that assessment year.

Any unutilised allowance due to the absence or insufficiency of statutory income from that business for the basis period for a year of assessment shall be carried forward to the subsequent assessment year.

Any unutilised allowance at the expiry of the qualifying period shall be carried forward to next 7 consecutive assessment years or until fully utilised whichever is the earlier. Any unutilised allowance at the end of that 7 consecutive assessment years shall be disregarded.

If the qualifying period ended in assessment year 2018 any accumulated unutilised allowance at the end of the assessment year 2018 shall be carried forward to next 7 consecutive assessment years following the assessment year 2018. Any unutilised allowance at the end of that 7 consecutive years shall be disregard.

Law

Paragraph 5A of Schedule 7B of the Income Tax Act 1967.

Effective Date

From assessment year 2019.

History

Previously the unutilised allowance can be carried forward indefinitely until fully utilised.

Comment

The above restriction will encourage companies to increase efficiency so as to generate more income to enable them to fully utilise the allowance.

1.25. Deduction for expenditure on issuance of Sukuk Ijarah and Wakalah

Expenses incurred by a company on issuance of sukuk are deductible for the purpose of ascertaining the adjusted business income if the sukuk is approved or authorised by or lodged with the Securities Commission Malaysia under the Capital Markets and Services Act 2007 or approved by the Labuan Financial Services Authority established under the Labuan Financial Services Authority Act 1996.

“Sukuk” means-

- a) Sukuk structured pursuant to the principle of Ijarah; or
- b) Sukuk structured pursuant to the principle of Wakalah comprising a mixed component of asset and debt.

“Company” means a company resident in Malaysia and incorporated under the Companies Act 2016 or the Labuan Companies Act 1990

Law

Income Tax (Deduction for expenditure on issuance of Sukuk) Rules 2019 P.U.(A) 118/2019)

Effective Date

For the years of assessment 2019 and 2020.

Comment

To promote the issuance of sukuk under the principles of Ijarah and Wakalah.

1.26. Deduction for expenditure incurred on issuance of retail debenture and retail sukuk

- (1) For the purposes of ascertaining the adjusted business income of a company resident in Malaysia there shall be allowed as a deduction in respect of additional expenses incurred by the company on the issuance of-
- (a) a retail debenture approved or authorized by the Securities Commission Malaysia under the Capital Markets and Services Act 2007 [Act 671];
 - (b) a retail sukuk structured pursuant to the principle of Murabahah or Bai' Bithaman Ajil (based on the concept of Tawarruq), Mudharabah, Musyarakah, Istisna' or any Shariah principle other than Ijarah or Wakalah, approved or authorized by the Securities Commission Malaysia under the Capital Markets and Services Act 2007; and
 - (c) a retail sukuk structured pursuant to the principle of Ijarah, or Wakalah comprising a mixed component of asset and debt, approved or

authorized by the Securities Commission Malaysia under the Capital Markets and Services Act 2007.

- (2) The additional expenses that qualify for deductions are-
- (a) professional fee relating to due diligence, drafting and preparation of prospectus;
 - (b) printing cost of prospectus;
 - (c) advertisement cost of prospectus;
 - (d) the Securities Commission Malaysia prospectus registration fee;
 - (e) the Bursa Malaysia processing fee and initial listing fee;
 - (f) the Bursa Malaysia new issue crediting fee; and
 - (g) the primary distribution fee.
- (3) The retail debenture referred to in paragraph (1)(a) shall be any debenture that is issued or offered to a retail investor and includes a debenture where an invitation to subscribe or purchase the debenture is issued to the retail investor.
- (4) The retail sukuk referred to in paragraphs (1)(b) and (c) shall be any sukuk that is issued or offered to a retail investor and includes a sukuk where an invitation to subscribe or purchase the sukuk is issued to the retail investor.
- (5) The retail investor referred to in paragraph (3) and (4) shall be any person other than-
- (a) the Central Bank of Malaysia;
 - (b) a person to whom an excluded offer or excluded invitation is made as specified in Part I of Schedule 6 to the Capital Markets and Services Act 2007; and
 - (c) a person to whom an excluded issue is made as specified in Part I of Schedule 7 to the Capital Markets and Services Act 2007.
- (6) Total amount of deduction allowed under paragraph (1)(a) or (b) shall be equivalent to twice the amount of additional expenses allowed under these Rules.
- (7) Total amount of deduction allowed under paragraph (1)(c) shall be equivalent to the amount of additional expenses allowed under these Rules.

“retail debenture” has the meaning assigned to the definition of “debenture” in the Capital Markets and Services Act 2007;

“retail sukuk” has the meaning as provided in the guidelines relating to retail sukuk issued by the Securities Commission Malaysia under section 377 of the Capital Markets and Services Act 2007.

Law

Income Tax (Deduction for expenditure on issuance of retail debenture and retail sukuk) Rules 2019 [P.U.(A) 117/2019].

Effective Date

For assessment years 2019 and 2020.

Comment

To further encourage investment in capital market.

1.27. Tax Incentives for industry4wrđ

Present

The Industry4WRD Policy has been introduced as a national policy for the period between 2018 and 2025 which consists of 3 visions for the manufacturing sector and the manufacturing-related services sector which is targeted for Malaysia to become:

- i. strategic partners for smart manufacturing and manufacturing-related services in Asia Pacific
- ii. the preferred destination for high-tech industry investment; and
- iii. the total solution provider for advanced technology.

The Industry4WRD Policy is formulated based on 3 key principles, namely to attract stakeholders towards the application of Industry4.0 (I4.0) technology, creating a comprehensive ecosystem for I4.0 application process by the industry and transforming the manufacturing sector holistically.

Proposed

The following income tax incentives are proposed-

A. Income Tax Incentive for the I4.0 Readiness Assessment (I4.0-RA)

A comprehensive assessment process will be undertaken to assess the readiness of the company and its current capability as well as its potential to shift to I4.0 technology. Amount paid to the Malaysian Productivity Corporation for the readiness assessment is eligible for tax deduction up to RM27,000.

B. Income Tax Incentive for Industry4WRD Vendor Development Program

Anchor company that develop local vendors in I4.0 is eligible to claim double deduction on expenses incurred in implementing the Industry4WRD Vendor Development Program as follows:

- i. operating expenditure on costs of product development, upgrading capabilities of vendors and skill training of vendors, as verified by the Ministry of International Trade and Industries (MITI) and
- ii. the qualifying operating expenditure are capped up to RM1 million per year and eligible to be claimed for 3 consecutive years of assessment.

C. Income Tax Incentive for Human Capital Development

In enhancing skills of existing workforce and talent development to be in line with the I4.0 requirement, the following incentives are proposed-

- i. companies that provides scholarship to Malaysian students pursuing studies at technical and vocational levels, diplomas and degrees in the fields of engineering and technology are eligible to claim for double deduction on the scholarship provided that the students-
 - a) is a Malaysian and resident in Malaysia;
 - b) receives full time course of study;
 - c) has no means on his own; and
 - d) whose parents or guardian have total monthly income not exceeding RM8,000 per month
- ii. expenses incurred by companies participating in the National Dual Training System Training Scheme for the I4.0 program approved by the Ministry of Human Resources eligible for deduction.
- iii. expenses for development of new I4.0 technology and engineering courses by Private Higher Education Institutions eligible for deduction. The new courses must be verified by the Ministry of Education;
- iv. expenditure incurred by a company in upgrading and developing its employees' technical skills in I4.0 technology for training programmes approved by the Malaysian Investment Development Authority (MIDA) is eligible for double deduction;
- v. double deduction on expenditure incurred by a company in conducting internship programme approved by the Ministry of Human Resources for undergraduate students in fields of engineering and technology; and
- vi. tax deduction on equipment and machinery contributed by companies to Skills Development Centres, Polytechnics or Vocational Colleges certified by the Ministry of Human Resources or the Ministry of Education.

Law

Not yet gazetted

Comment

The incentives will encourage the development of local companies in I4.0 and enhancing their employees' skill so as to achieve the government Industry4WRD policy.

Effective Date

The respective effective dates for the above incentives as follow-

- A. From year of assessment 2019 to 2021.
- B. For MOU signed between company and MITI from 1 January 2019 to 31 December 2021.
- C. i. From assessment year 2019 to 2021;
 - ii. For program programmes implemented from 1 January 2019 to 31 December 2019
 - iii. From assessment year 2019 to 2021
 - iv. For companies participating in the Readiness Assessment Invention Plan from 1 January 2019 to 31 December 2019
 - v. From assessment year 2019 to 2021
 - vi. For contributions made from 1 January 2019 to 31 December 2021

1.28. Tax incentives for employer to employs senior citizens, ex-convicts, parolee, supervised person and ex- drug dependant

Deduction

For the purpose of ascertaining the adjusted income of an employer for the basis period for a year of assessment, there shall allowed as a deduction the remuneration of the kind allowable under section 33 of the Act payable by him o his employee, who is a citizen of Malaysia and resident in Malaysia, from amongst the following:

- a) Senior citizen aged 60 years and above;
- b) An ex-convict who is a person who had been convicted for any offence by a court and had served his sentence of imprisonment;
- c) A parolee as defined in the Prison Act 1995 (Act 537);
- d) A supervised person who is a prisoner directed by an Officer in Charge to work at such labour under subparagraph 47(1)(b)(iii) of the Prison Act 1995; or

- e) An ex-drug dependant who-
 - i) Had undergone treatment and rehabilitation pursuant to the Drug Dependants (Treatment and Rehabilitation) Act 1983 (Act 283);
 - ii) had undergone supervision pursuant to paragraph 6(1)(b) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 or subsection 38B(1) of the Dangerous Drugs Act 1953 (Act 234); or
 - iii) had been placed under supervision pursuant to paragraph 8(3)(b) of the Drug Dependants (Treatment and Rehabilitation) Act 1983,and is registered with the National Anti-Drugs Agency (My AADK system).

The deduction allowed is subject to the following conditions:

- a) The employee is employed on a full-time basis;
- b) The remuneration paid by th employer does exceed RM4,000;
- c) The employer and the employee are not the same person; or
- d) The employer is not a relative of the employee (spouse, parent (including step parent or parent in law), child (including step or a adopted child), brother, sister (including step brother or sister) grandparent, grandchildren, including step grandparent or step grandchildren).

An employer who claiming the deduction shall produce a written confirmation from the Malaysian Prison Department and the National Anti-Drugs Agency.

The amount of deduction allowed under these Rules shall be in addition to any deduction under section 33 of the Act.

History

Remuneration paid by employers to their employees is eligible for single deduction.

Law

Income Tax (Deduction For Employment of Senior Citizen, Ex- Convict, Parolee, Supervised Person and Ex- Drug Dependant) Rules 2019 (P.U. (A) 164/2019).

Comment

These incentives will encourage employers to employ senior citizens who are above 60 years old or ex-convicts as a full-time employee.

Effective Date

From year of assessment 2019 to 2020.

1.29. Income tax deduction to employer for repayment of employees' PTPTN loan

Present

No deduction

Proposed

Deduction is given to employer who paid their full-time employees' PTPTN loan provided that the employees is not required to repay the employer.

Law

Not yet gazetted.

Comment

To improve the PTPTN's loans repayment performance.

Effective Date

For payment made between 1 January 2019 and 31 December 2019.

1.30. Extension of period for application on venture capital tax incentive

Present

Effective from 1 January 2018, venture capital tax incentives are as follows-

i. Venture Capital Management Corporation (VCMC)

Income tax exemption on management fees, performance fees and income from profit sharing received on investment made by venture capital companies (VCC).

ii. Venture Capital Company (VCC)

- i. income tax exemption on statutory income from all sources of income except interest income from savings or fixed deposits and profits from Shariah-compliant deposits; and
- ii. exemption be given for a period of 5 years from the year of assessment 2018 until 2022 for investments made in the Venture Company (VC). The VCC must be registered with the SC. VCC needs to invest at least 50% of funds in the early stage, seed and start up and the remaining 50% is allowed for other levels of investment. VCC and VC are not related companies.

iii. Investment in VCC

Companies or individuals with business income investing into VCC funds created by VCMC are given tax deduction equivalent to the amount of investment made in VCC and limited to a maximum of RM20 million per year for each company or individual.

iv. Investment in VC

Companies or individuals with business income investing in VC are given tax deductions equivalent to the amount of investment made in VC at the adjusted income level.

The above incentives are given for application received by the Securities Commission Malaysia from 1 January 2018 to 31 December 2018.

Proposed

The application period be extended for another 1 year.

Law

Not yet gazetted.

Comments

To encourage the growth of the venture capital activities.

Effective Date

For applications received by the Securities Commission Malaysia until 31 December 2019.

2. AMENDMENTS TO THE PROMOTION OF INVESTMENTS ACT 1986 (“PIA 1986”)

2.1. New definition of “Research and Development”

Please refer to Paragraph 1.2 above.

2.2. Additional condition in granting pioneer status for contract research and development company (“contract R&D company”)

The Minister may grant pioneer status to a contract R&D company provided that the contract R&D at the time of application has an adequate number of fulltime employees and incurred adequate amount of annual operating expenditure in Malaysia for an activity relating to research and development.

Where a contract R&D company has been granted a pioneer status on or before 16 October 2017, the new conditions is applicable effective on 1 July 2021 and if the pioneer status was granted after 16 October 2017, the new conditions is applicable effective from 1 January 2019.

Law

Subsection 6(1AC) of the PIA 1986

Effective Date

1 January 2019

History

This is a new proviso. Previously there was no condition on adequate number of fulltime employees and amount of annual expenditure relating to R& D activities.

Comment

The additional conditions are in line with the Forum of Harmful Tax Practices requirements by the OECD

2.3. Tax treatment on income from intellectual property received by contract R&D company with pioneer status

Income of a pioneer company from royalty and other income derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right is subject to tax under the Income Tax Act 1967. “intellectual property right” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable.

Law

Subsections 21E(2A), 21E(2B) and 21E(2C) of the PIA 1986

Effective Date

1 January 2019

History

The above are new subsections

Comment

Previously there was no provision in the Act that clarifies tax treatment on income derived from intellectual property right. Now it is clear that income received by contract R&D company with pioneer status from intellectual property right is subject to income tax at 24%.

2.4. Time frame to utilise pioneer losses

Losses from pioneer business shall be deducted from any statutory income from the pioneer business. If deduction cannot be given or be given in full due to insufficiency or absence of statutory income from the pioneer business for a year of assessment, the losses shall be carried forward to the post pioneer period and deducted from the aggregate income of that year or any subsequent year of assessment. Any unutilised pioneer losses at the end of the pioneer period shall be carried forward for a period of seven consecutive years of assessment and any unutilised losses at the end of that 7th. year shall be disregarded.

Any unutilised pioneer losses at the end of the assessment year 2018 shall be carried forward for a period of seven consecutive years of assessment commencing immediately following the year of assessment 2018 and any amount of unutilised losses at the end of that 7th year shall be disregarded.

Law

Subsection 25(5) of the PIA 1986.

Effective Date

Assessment year 2019

History

Previously the unutilised losses can be carried forward indefinitely until fully utilised.

Comment

The company has to increase its efficiency so as to generate sufficient income so that they could fully utilise the losses.

2.5. Withdrawal of Investment Tax Allowance in relation to disposed asset

Where investment tax allowance has been given on qualifying asset and that asset is disposed of within 5 years from the date of acquisition, investment tax allowance which has been given on such asset shall be withdrawn.

Law

Section 30A of the PIA 1986

Effective Date

Assessment year 2019

History

Previously the investment tax allowance will be withdrawn if the asset is disposed of within 2 years from the acquisition date.

Comment

With the amendment the company has to use the asset for a period of more than 5 years. Otherwise investment tax allowance that has been given will be withdrawn.

3. AMENDMENTS TO THE STAMP ACT 1949 (“SA 1949”)

3.1. New definition of “Banker”

"banker" means any person licensed under the-

- a) Financial Services Act 2013 [Act 758] to carry on a banking business in Malaysia;
- b) Islamic Financial Services Act 2013 [Act 759] to carry on an Islamic banking business in Malaysia; or
- c) a development financial institution prescribed under the Development Financial Institutions Act 2002 [Act 618];

Law

Section 2 of the SA 1949

Effective Date

28 December 2018

History

Previously “banker” is defined as “any person licensed under the Islamic Banking Act 1983 or the Banking and Financial Institutions Act 1989 to carry on the business of banking in Malaysia”

Comment

The new definition is made due to the repeal of the Islamic Banking Act 1983 and the Banking and Financial Institutions Act 1989. The new definition also includes development financial institutions prescribed under the Development Financial Institution Act 2002 as a banker.

3.2. New definition of “Small and Medium Enterprise”

"small and medium enterprise" means—

- a) in relation to the manufacturing activities, an enterprise with sales turnover not exceeding RM50 million or full-time employees not exceeding 200 people; or
- b) in relation to the services, and other sectors, an enterprise with sales turnover not exceeding RM20 million or full-time employees not exceeding 75 people;

Law

Section 2 of the SA 1949

Effective Date

28 December 2018

History

Previously “small and medium enterprise” is defined as follows-

- a) in relation to the manufacturing, manufacturing related services and agro-based industries sectors, an enterprise with full-time employees not exceeding 150 people or annual turnover not exceeding RM25,000,000; and
- b) in relation to the services, primary agriculture, and information and communication technology sectors, an enterprise with full-time employees not exceeding 50 people or annual turnover not exceeding RM5,000,000

3.3. Authorised person to compound instruments

The Collector, may by notification in the Gazette, authorize any person including any banker, dealer or insurer, to compound for the payment of duty on unstamped instrument subject to the condition that the instrument be drawn or drawn up and issued on a form to be supplied or adopted by the said person.

Law

Section 9(1) of the SA 1949

Effective Date

From 28 December 2018

History

Previously only the following persons are authorised to compound-

- a) banker, dealer or insurer are authorised to compound for the payment of duty on unstamped cheques, contract notes or policies of insurance drawn or drawn up and issued on forms to be supplied or adopted by the said banker, dealer or insurer;
- b) the Registrar of Companies to compound for the payment of duty on unstamped Articles of Association and Memorandum of Association lodged with the said Registrar; and
- c) the principal officer of Tenaga Nasional Berhad to compound for the payment of duty on the unstamped TNB Electricity Supply Form issued and supplied by the Tenaga Nasional Berhad.

Comment

The amendment empowers the Collector to authorise any person, by notification in the Gazette, to compound for payment of duty on unstamped instruments issued by that person.

3.4. Relief from stamp duty in case of companies reconstructions or amalgamations

Section 15 is amended by substituting for the words “nominal share capital” wherever appearing the words “issued share capital” and deleting subsection 15(2).

Companies planning for reconstructions or amalgamations may apply for stamp duty exemption if conditions specified in section 15(1) are fulfilled. The exemption, if granted, will be withdrawn if the following occurs-

- a) any declaration or other evidence furnished in support of the claim was untrue in any material particular, or that the conditions specified in subsection (1) are not fulfilled in the reconstruction or amalgamation as actually carried out; or
- b) where shares in the transferee company have been issued to the existing company in consideration of the acquisition, the existing company within a period of three years from the date, as the case may be, of the registration or incorporation, or of the authority for the increase of the capital, of the transferee company ceases, otherwise than in consequence of reconstruction, amalgamation, liquidation or in compliance with Government policy on capital participation in industry to be the beneficial owner of the shares so issued to it; or
- c) where any such exemption has been allowed in connection with the acquisition by the transferee company of shares in another company, the transferee company within a period of three years from the date of its registration or incorporation or of the authority for the increase of its capital, as the case may be, ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so acquired.

If the exemption is withdrawn then an amount equal to the duty remitted shall become payable forthwith, and shall be recoverable from the transferee company as a debt due to the Government, together with interest thereon at the rate of 6% per annum, from the date on which the duty would have become chargeable if the exemption is not approved.

Where any of circumstances mentioned in para (a) to (c) above occurs, each company which was a party to the instrument shall notify the Collector of the circumstances of the occurrence within thirty days from the date of the occurrence.

Law

Subsection 15(5) and 15(6A) of the SA 1949

Effective Date

From 28 December 2018

History

Previously the exemption will be withdrawn if the companies which receive the shares ceased to be the beneficial owner of the shares within 2 years from date of acquisition and there is no requirement to notify the Collector on the occurrence of circumstances mentioned in para (a) to (c) above.

Comments

The amendments extended the period in which the companies have to remain as the beneficial owner of the shares from 2 years to 3 years in order to obtain the exemption.

3.5. Additional condition imposed on transfer of property between associated companies

Section 15A provides for stamp duty exemption on instrument of transfer of property from one limited liability company to another limited liability company provided that the following conditions are met-

- (a) both companies are associated companies. Companies are associated if one company is the beneficial owner of not less than 90% of the issued share capital of the other, or that a third company with limited liability is the beneficial owner of not less than 90% of the issued share capital of each of the aforesaid companies;
- (b) the transfer of the property of the associated companies is to achieve greater efficiency in operation;
- (c) the transferee company is incorporated in Malaysia;
- (d) the transferor and the transferee must remain associated for three years from the date of the conveyance or transfer
- (e) the transferee company shall not dispose of the property that it has acquired within three years from the date of the conveyance or transfer of the property.

Subsection 15A(5) provides that the exemption shall be revoked if it is subsequently found that any declaration or other evidence furnished in support of the claim for exemption is untrue and the duty shall be chargeable, together with interest thereon at the rate of 6% per annum from the date on which the duty ought to be stamped.

Subsection 15A(6) provides that where any claim for exemption from duty has been allowed and any of the circumstances specified under subsection (4) occurs, each company which was a party to the instrument shall notify the Collector in writing of the circumstances of the occurrence within thirty days from the date of the occurrence.

Subsection 15A(7) provides that the Collector may require the applicant to deliver to him a statutory declaration in such form as he may direct made by an advocate and solicitor, or, in the case of Sabah and Sarawak, an advocate, of the High Court, and of such further evidence, if any, as he deems necessary.

Law

Section 15A of the SA 1949

Effective Date

From 28 December 2018.

History

Previously the exemption will be revoked if transferor and transferee ceased to be associated. There is no requirement that the transfer is to achieve greater

efficiency and that the transferee must be incorporated in Malaysia. The transferee may dispose the property so transferred.

Subsections 15A(5), (6) and (7) are new subsections which impose additional requirements.

Comment

The amendment imposed additional conditions to companies applying for the exemption and now stamp duty and interest will be charged if it is found that the declaration or evidence furnished in support for the claim for exemption is not true.

3.6. Stamp duty on constitution of company

The amended First Schedule of the Stamp Act is as follows-

Item	Instruments	Duty payable
10	Article of association of a company	Deleted
29A	Constitution of a company	RM200.00
53	Memorandum of Association of a company	Deleted

Law

Item 29A of the First schedule of the SA 1949.
Item 10 and 53 deleted.

Effective Date

From 28 December 2018.

History

Previously stamp duty on Article of Association of a Company is RM100.00 and Memorandum of Association of a company is RM100.00

Comment

The above amendment is a consequence to the repeal of the Companies Act 1965 and the enactment of the Companies Act 2016.

3.7. Clarification on duty on security for a definite period and security for a term of life or indefinite period

BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:

- (1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any sum secured by a duly stamped instrument, nor rent reserved by a lease or tack—
 - (a) for a definite and certain period so that the total amount to be ultimately payable can be ascertained The same *ad valorem duty* as a charge or mortgage for such total amount.
 - (b) for the term of life or any other indefinite period—
 - for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable RM1.00

Law

Item 22(1) First Schedule to the SA 1949

Effective Date

1 January 2019

History

Item 22(1) formerly read:

- (1) (a) being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), for the term of life or any other indefinite period
 - for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable RM1.00
 - (b) for any sum or sums of money, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack. The same *ad valorem duty* as a charge or mortgage for such total amount.

Comment

The amendment seek to clarify the treatment of duty on security for a definite period and security for a term of life or indefinite periods

3.8. Stamp duty on conventional hire purchase agreement

Stamp duty on hire purchase agreement in accordance with conventional hire purchase and syariah principle is RM10.

Law

Item 22(6) of First Schedule of the SA 1949

Effective Date

1 January 2019

History

Previously Item 22(6) does not cover conventional hire purchase agreement.

Comment

Previously there is no provision to charge stamp duty on conventional hire purchase agreement. With the amendment the conventional hire purchase agreement is subject to RM10 stamp duty.

3.9. Restructuring of stamp duty rates for transfer of property

Stamp duty on sale of any property (except stock, share, marketable securities and accounts receivable or book debts of the kind mentioned in paragraph (c)) are as follows-

Consideration / Market Value of property (whichever is higher)	Rates of Stamp Duty
First RM100,000	RM1.00 for every RM100 or fractional part thereof
RM100,001 to RM500,000	RM2.00 for every RM100 or fractional part thereof
RM500,001 to RM1,000,000	RM3.00 for every RM100 or fractional part thereof
RM1,000,001 and above	RM4.00 for every RM100 or fractional part thereof

Law

Subitem 32(a) of the First Schedule of the SA 1948

Effective Date

From 1 January 2019

History

Previously stamp duty rate for sales consideration or market value of RM500,000 and above is RM3.00 for every RM100 or fractional part thereof

Comment

The amendment has increased the rate of stamp duty for property above RM1,000,000 from 3% to 4% and this will increase the Government's revenue

3.10. Stamp duty exemption on Perlindungan Tenang Products

Any insurance policies and takaful certificates for Tenang products issued by a licensed insurer or a licensed takaful operator with an annual premium or takaful contribution not exceeding RM100.00 are exempted from stamp duty provided that the insurance policies and takaful certificates are issued from 1 January 2019 to 31 December 2020.

Perlindungan Tenang products means insurance or takaful products which have been approved by Bank Negara to be offered by a licensed insurer or takaful operator under the "Perlindungan Tenang" initiative.

Law

Stamp Duty (Exemption)(No. 5) Order 2018

Effective Date

From 1 January 2019

History

Insurance policy and takaful certificates are subject to stamp duty of RM10.00. Policies with sum insured not exceeding RM5,000 is exempted from stamp duty.

Comment

The exemption will encourage more people from lower income group to get insurance protection under Perlindungan Tenang products.

3.11. Stamp duty exemption on loan agreement for the purchase of first residential home valued not more than RM300,000

Any loan agreement to finance the purchase of only one unit of residential property the value of which is not more than RM300,000 executed between an individual named in the sale and purchase agreement and—

- (a) a licensed bank under the Financial Services Act 2013;
- (b) a licensed Islamic bank under the Islamic Financial Services Act 2013;
- (c) a development financial institution prescribed under the Development Financial Institutions Act 2002;
- (d) a licensed insurer under the Financial Services Act 2013;
- (e) a licensed takaful operator under the Islamic Financial Services Act 2013;
- (f) a co-operative society registered under the Co-operative Societies Act 1993;
- (g) any employer who provides an employee housing loan scheme;
- (h) the Borneo Housing Mortgage Finance Berhad; or
- (i) the Mutiara Mortgage and Credit Sdn Bhd ,

shall be exempted from stamp duty.

The exemption of the stamp duty shall only apply if—

- (a) the sale and purchase agreement is executed on or after 1 January 2019 but not later than 31 December 2020; and
- (b) the individual has never owned any residential property including a residential property which is obtained by way of inheritance or gift, which is held either individually or jointly.

The application for the exemption of the stamp duty shall be accompanied by a statutory declaration under the Statutory Declarations Act 1960 [Act 783] by the individual purchaser named in the sales and purchase agreement confirming that the individual has never owned any residential property including a residential property which is obtained by way of inheritance or gift, which is held either individually or jointly.

“residential property” means a house, a condominium unit, an apartment or a flat purchased or obtained solely to be used as a dwelling house

“individual” means a purchaser, or co-purchaser, who is a Malaysian citizen.

Law

Stamp Duty (Exemption) (No. 4) Order 2018

Effective Date

1 January 2019

History

Previously the exemption was given for sales and purchase agreement executed from 1 January 2017 to 31 December 2018 to Malaysian citizens who have yet to own a home

Comment

The exemption will increase the sale of residential home.

3.12. Stamp duty exemption on instrument of transfer of residential property valued between RM300,000 to RM1,000,000

All instrument of transfer executed in relation to the purchase of only one unit of residential property the value of which is between RM300,000 to RM 1,000,000.00 by an individual shall be exempted from stamp duty.

The exemption shall only be granted if—

- (a) the sale and purchase agreement is executed between 1 January 2019 to 30 June 2019;
- (b) the sale and purchase agreement is between the individual and a property developer; and
- (c) the individual has never owned any residential property including a residential property which is obtained by way of inheritance or gift, which is held either individually or jointly.

The value of the residential property shall be based on the market value.

The application for the exemption shall be accompanied by a statutory declaration under the Statutory Declarations Act 1960 [Act 783] by the individual purchaser confirming that the individual has never owned any residential property including a residential property which is obtained by way of inheritance or gift, which is held either individually or jointly.

“residential property” means a house, a condominium unit, an apartment or a flat purchased or obtained solely to be used as a dwelling house and “individual” means a purchaser or co-purchaser who is a Malaysian citizen.

Law

Stamp Duty (Exemption)(No. 7) Order 2018

Effective Date

1 January 2019

History

Previously exemption was given for property priced up to RM500,000 only but the exemption is limited to the first RM300,000 of the property value. The remaining balance of the home value is subjected to the prevailing rate of stamp duty and the exemption is effective for the sales and purchase agreement executed between 1 January 2017 to 31 December 2018.

Comment

The exemption will increase the sale of residential home and boost the residential property market.

3.13. Stamp duty exemption on instrument of transfer and loan agreement for residential property valued between RM300,001 to RM500,000

Stamp duty exemption on transfer instrument and loan agreement for purchase of the first residential home priced between RM300,001 to RM500,000 is exempted from stamp duty however the exemption is limited to the first RM300,000 of the home price. The remaining balance of the price is subject to the prevailing rate of stamp duty

Law

Not yet gazetted.

Effective Date

For sales and purchase agreement executed from 1 July 2019 to 31 December 2020.

History

Previously the above exemption was given for the sales and purchase agreement executed from 1 January 2017 to 31 December 2018

Comment

To encourage Malaysians to purchase the first home and to increase the sale of residential property.

3.14. Stamp duty exemption on loan agreement for National Home Ownership Campaign 2019

Stamp duty shall be exempted in respect of any loan agreement to finance the purchase of residential property under the National Home Ownership Campaign 2019, the value of which is more than RM300,000 but not more than RM2,500,000, executed between an individual named in the sale and purchase agreement and –

- (a) a licensed bank under the Financial Services Act 2013;
- (b) a licensed Islamic bank under the Islamic Financial Services Act 2013;
- (c) a development financial institution prescribed under the Development Financial Institutions Act 2002;
- (d) a co-operative society registered under Co-operative Societies Act 1993;
- (e) the Borneo Housing Mortgage Finance Berhad;
- (f) the Mutiara Mortgage and Credit Sdn Bhd;
- (g) any employer who provides an employee housing loan scheme;
- (h) a licensed insurer authorized to provide a housing loan under the Financial Services Act 2013; or
- (i) a licensed takaful operator authorized to provide an Islamic housing loan under the Islamic Financial Services Act 2013.

The exemption shall only apply if–

- (a) the sale and purchase agreement is executed on or after 1 January 2019 but not later than 30 June 2019 and is stamped at any branch of the Inland Revenue Board Malaysia;
- (b) the sale and purchase agreement is between an individual and a property developer; and
- (c) the purchase price in the sale and purchase agreement is a price after a discount of ten percent by the property developer except for a residential property which is subject to controlled pricing.

The application for exemption shall be accompanied by a National Home Ownership Campaign 2019 Certification issued by the Real Estate and Housing Developers' Association (REHDA) Malaysia, Sabah Housing and Real Estate Developers Association (SHAREDA) or Sarawak Housing and Real Estate Developers' Association (SHEDA).

“residential property” means a house, a condominium unit, an apartment or a flat, purchased or obtained solely to be used as a dwelling house, and includes a service apartment for which the property developer has obtained an approval for a Developers' License and Advertising and Sales Permit under the Housing Development (Control and Licensing) Act 1966 [Act 118], Housing Development (Control and Licensing) Enactment 1978, Sabah [No. 24 of 1978] or Housing Development (Control and Licensing) Ordinance 2013, Sarawak [Cap. 69];

“individual” means a purchaser who is a Malaysian citizen or co-purchasers who are Malaysian citizens; and

“property developer” means a property developer registered under the Real

Estate and Housing Developers' Association (REHDA) Malaysia, Sabah Housing and Real Estate Developers Association (SHAREDADA) or Sarawak Housing and Real Estate Developers' Association (SHEDA).

Law: Stamp Duty (Exemption)(No. 2) Order 2019 [P.U.(A) 81/2019]

Effective Date: 1 January 2019

3.15. Stamp duty exemption on instrument of transfer for National Home Ownership Campaign 2019

- (1) All instrument of transfer for the purchase of residential property under the National Home Ownership Campaign 2019, the value of which is more than RM300,000 but not more than RM2,500,000, executed by an individual shall be exempted from stamp duty in respect of RM1,000,000 and below of the value of the residential property.
- (2) The exemption shall only be granted if –
 - (a) the sale and purchase agreement is executed on or after 1 January 2019 but not later than 30 June 2019 and is stamped at any branch of the Inland Revenue Board Malaysia;
 - (b) the sale and purchase agreement is between an individual and a property developer; and
 - (c) the purchase price in the sale and purchase agreement is a price after a discount of 10% by the property developer except for a residential property which is subject to controlled pricing.
- (3) For the purpose of paragraph (1)–
 - (a) the value of the residential property shall be based on the market value; and
 - (b) stamp duty of RM3.00 is charged for every RM100.00 of the balance amount of the value of the residential property which is in excess of RM1,000,000.00.

The application for the exemption shall be accompanied by a National Home Ownership Campaign 2019 Certification issued by the Real Estate and Housing Developers' Association (REHDA) Malaysia, Sabah Housing and Real Estate Developers Association (SHAREDADA) or Sarawak Housing and Real Estate Developers' Association (SHEDA).

“residential property” means a house, a condominium unit, an apartment or a flat, purchased or obtained solely to be used as a dwelling house, and includes a service apartment for which the property developer has obtained an approval for a Developers' License and Advertising and Sales Permit under the Housing Development (Control and Licensing) Act 1966 [Act 118], Housing

Development (Control and Licensing) Enactment 1978, Sabah [No. 24 of 1978] or Housing Development (Control and Licensing) Ordinance 2013, Sarawak [Cap. 69];

“individual” means a purchaser who is a Malaysian citizen or co-purchasers who are Malaysian citizens; and

“property developer” means a property developer registered under the Real Estate and Housing Developers’ Association (REHDA) Malaysia, Sabah Housing and Real Estate Developers Association (SHAREDA) or Sarawak Housing and Real Estate Developers’ Association (SHEDA).

Law: Stamp Duty (Exemption)(No. 3) Order 2019 [P.U.(A) 82/2019]

Effective Date: 1 January 2019

4. AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1975 (RPGT)

4.1. Review of the Real Property Gains Tax Rate

Disposal	Real Property Gains Tax Rate (%)		
	Company	Others	Non-citizen & non-permanent resident individual
Within 3 years after acquisition	30	30	30
In the 4 th . Year	20	20	30
In the 5 th year	15	15	30
In the 6 th . & subsequent years	10	5	10

Law: Schedule 5 RPGT Act 1976

Effective Date: 1 January 2019

History

Previously, the tax rate for disposal in the 6th. and subsequent years is 5% for companies, non-citizen and non-permanent resident individual and Nil for others.

Comment

This will increase the Government’s revenues as the tax rate for disposal in or after the 6th. year has been increased by 5%.

4.2. RPGT exemption on disposal of assets in the 6th and subsequent year.

RPGT exemption is given to individual who is a citizen of Malaysia who disposes his chargeable asset, other than shares, on or after 1 January 2019 if the following conditions are met-

- a) The disposal is made in the 6th year after the date of acquisition of the chargeable asset or any year thereafter; and
- b) The consideration for the disposal is not more than RM200,000.

Law:

Real Property Gains Tax (Exemption) Order 2018 [P.U.(A) 360 of 2018]

Effective Date: From 1 January 2019

Comment

Previously individual citizen who disposes his asset in and after the 6th year after acquisition is exempted from the RPGT. However with the amendment to the Schedule 5 of the RPGT Act the disposal is now subject to 5% RPGT. This new exemption order accord RPGT exemption to individual who is citizen of Malaysia who met the above conditions.

4.3. RPGT exemption on disposal of asset in the 6th year and thereafter

RPGT exemption is given to individual who is a citizen or a permanent resident of Malaysia who disposes his chargeable asset, other than shares, on or after 1 January 2019 if the following conditions are met-

- a) The disposal is made in the 6th year after the acquisition or thereafter;
- b) The contract for the disposal of the chargeable asset requires the approval of the Government or a State Government and is executed before 1 January 2019; and
- c) The approval is obtained in the year 2019 or thereafter.

Law:

Real Property Gains Tax (Exemption) (No. 3) Order 2018 [P.U.(A) 372 of 2018]

Effective Date: From 1 January 2019

4.4. Determination of acquisition price

If a disposer acquires chargeable asset before 1 January 2000, the market value as at 1 January 2000 shall be taken as his acquisition price.

Law

Paragraph 2A Schedule 2 and Paragraph 13(2) Schedule 3 of the RPGT Act 1976

Effective Date: 1 January 2019

History

If a disposer acquires chargeable asset before 1 January 1970, the market value as at 1 January 1970 shall be taken as his acquisition price.

Comment:

The amendment technically increases the acquisition price for asset acquired prior to 2000 to market value as at 1 January 2000 and thus reduces the chargeable gain.

5. AMENDMENTS TO THE LABUAN BUSINESS ACTIVITY TAX ACT 1990 (LABATA)

5.1. “Labuan business activity” redefined and definition of “Labuan entity” is deleted

“Labuan business activity” means a Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan, excluding any activity which is an offence under any written law”

Law: Section 2(1) LABATA 1990

Effective Date: 1 January 2019

History

Previously 'Labuan business activity' was defined as a Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan in a currency other than Malaysian currency, by a Labuan entity with non-resident or with another Labuan entity:

Provided that—

- (a) in relation to a Labuan entity carrying on any business under Parts VI and VII of the Labuan Financial Services and Securities Act 2010 and under Parts VI

and VII of the Labuan Islamic Financial Services and Securities Act 2010, such activity may be carried on with residents, and where permitted, may be carried on in the Malaysian currency;

- (b) in relation to the holding of shares by a Labuan entity in a domestic company, such holding may be with residents and in the Malaysian currency;
- (c) subject to paragraph (f), in relation to the holding of debt obligations by a Labuan entity in a domestic company, such holding may be in the Malaysian currency;
- (d) in relation to the shipping operations, the operations may be carried out in Labuan or outside Malaysia;
- (e) subject to paragraph (f), in relation to the carrying on of such activity with the residents under subsection 7(4) of the Labuan Companies Act 1990, such activity may be carried on in the Malaysian currency; and
- (f) in relation to the carrying on of any other transactions, such transactions may be carried on with the residents or in the Malaysian currency as approved by the Minister under section 2A of this Act;

Comments

Now Labuan Entities may conduct business with Malaysian residents and in Ringgit Malaysia.

As consequent to the above amendment, section 2A(2) which authorise the Finance Minister to approve Labuan entities to carry out business with Malaysian residents and in Malaysian currency is abolished.

5.2. Additional conditions imposed on Labuan Entities

The Labuan entities shall, for the purpose of the Labuan business activity, have an adequate number of full time employees in Labuan and an adequate amount of annual operating expenditure in Labuan as prescribed the Minister.

Requirements for Labuan business activity

A Labuan entity carrying on a Labuan business activity shall have the number of full time employees and an amount of annual operating expenditure as specified in the Schedule.

SCHEDULE

(1) No.	(2) Labuan entity carrying on a Labuan business activity	(3) Minimum number of full time employees in Labuan	(4) Minimum amount of annual operating expenditure in Labuan (RM)
1.	Labuan insurer, Labuan reinsurer, Labuan takaful operator or Labuan retakaful operator	4	150,000
2.	Labuan underwriting manager or Labuan underwriting takaful manager	4	100,000
3.	Labuan insurance manager or Labuan takaful manager	4	100,000
4.	Labuan insurance broker or Labuan takaful broker	4	100,000
5.	Labuan captive insurer or Labuan captive takaful	4	100,000
6.	Labuan International Commodity Trading Company	3	3,000,000
7.	Labuan bank, Labuan Investment bank, Labuan Islamic bank or Labuan Islamic investment bank	3	180,000
8.	Labuan trust company	3	120,000

(1) No.	(2) Labuan entity carrying on a Labuan business activity	(3) Minimum number of full time employees in Labuan	(4) Minimum amount of annual operating expenditure in Labuan (RM)
9.	Labuan leasing company or Labuan Islamic leasing company	2	100,000
10.	Labuan credit token company or Labuan Islamic credit token company	2	100,000
11.	Labuan development finance company or Labuan Islamic development finance company	2	100,000
12.	Labuan building credit company or Labuan Islamic building credit company	2	100,000
13.	Labuan factoring company or Labuan Islamic factoring company	2	100,000
14.	Labuan money broker or Labuan Islamic money broker	2	100,000
15.	Labuan fund manager	2	100,000
16.	Labuan securities licensee or Labuan Islamic securities licensee	2	100,000
17.	Labuan fund administrator	2	100,000

(1) No.	(2) <i>Labuan entity carrying on a Labuan business activity</i>	(3) <i>Minimum number of full time employees in Labuan</i>	(4) <i>Minimum amount of annual operating expenditure in Labuan (RM)</i>
18.	Labuan company management	2	100,000
19.	Labuan International Financial Exchange	2	120,000
20.	Self-regulatory organisation or Islamic self-regulation organisation	2	120,000
21.	Holding Company	2	50,000

Law:

Section 2B LABATA 1990
 Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 [P.U.(A) 392/2018]

Effective Date: 1 January 2019

History: Previously no such conditions were imposed.

Comments:

With the new amendments, Labuan entity must be entity specified in the Schedule and must also fulfil the new requirements mentioned above.

5.3. Income chargeable under the Income Tax Act 1967

Labuan entity carrying on Labuan business activity which is Labuan trading activity is subject to 3% tax on its net profits as reflected in the audited accounts. The net profits shall not include any income derived from royalty and other income derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right. Such income shall be subject to tax under the Income Tax Act 1967.

“Intellectual property right” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable.

Law: Section 4 LABATA 1990

Effective Date: 1 January 2019

History:

Previously there is no provision in the LABATA that clearly states that income from the exploitation of intellectual property is not subject to LABATA

Comments:

The amendments clarify that income derived from exploitation of intellectual property no longer enjoy 3% tax under LABATA but subject to tax under the Income Tax Act 1967

5.4. Abolishment of option to be charged RM20,000 tax

Section 7 LABATA is deleted.

Law: Section 76 Finance Act 2018

Effective Date: 1 January 2019

History:

Previously Labuan Entity carrying on Labuan business activity which is a Labuan trading activity may elect to be charged to tax of RM20,000.00 instead of 3%.

Comments:

Now Labuan entity no longer has the option to elect to pay tax of RM20,000.00.

Consequent to the above amendment Section 8A is amended by deleting the word “7”.

5.5. Absence of basis period

Where a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity does not have a basis period for a year of assessment, the Director General may direct that the basis period for that year of assessment and subsequent years of assessment to include a period or periods (which may be of any period) as specified in the direction.

Law: Section 8 LABATA 1990

Effective Date: 1 January 2019

History:

Previously if the Labuan entity carrying on a Labuan business activity which is a Labuan trading activity does not have a basis period for an assessment year, that Labuan entity shall be charged to tax of RM20,000.00 for that assessment year

Comment:

With the amendment if the Labuan entity carrying on Labuan trading activity does not have basis period the Director General of Inland Revenue will determine the basis period.

Consequent to the above amendment Section 8A is amended by deleting the word “or 8”.

5.6. Payment of tax

A Labuan entity shall, at the time of filing of the statutory declaration and return of its profits for a year of assessment under section 5, make full payment on account of—

- (a) tax to be charged for that year of assessment; or
- (b) tax to be charged for that year of assessment after reduction of rebate under section 8A.

Law: Section 11 LABATA

Effective Date: 1 January 20019

History:

Previously there is provision that cater for a situation where the Labuan Entity has the option to pay tax of RM20,000.00.

Comments:

With the deletion of section 7 and amendment to section 8 LABATA section 11 need to be amended.

SECTION 2
TAX INFORMATION
1. RESIDENT INDIVIDUAL INCOME TAX RATES

CHARGEABLE INCOME	ASSESSMENT YEAR							
	2013-2014		2015		2016-2017		2018-2019	
RM	%	RM	%	RM	%	RM	%	RM
First 5,000		0		0		0		0
Next 15,000	2	300	1	150	1	150	1	150
First 20,000		300		150		150		150
Next 15,000	6	900	5	750	5	750	3	450
First 35,000		1,200		900		900		600
Next 15,000	11	1,650	10	1,500	10	1,500	8	1,200
First 50,000		2,850		2,400		2,400		1,800
Next 20,000	19	3,800	16	3,200	16	3,200	14	2,800
First 70,000		6,650		5,600		5,600		4,600
Next 30,000	24	7,200	21	6,300	21	6,300	21	6,300
First 100,000		13,850		11,900		11,900		10,900
Next 150,000	26	39,000	24	36,000	24	36,000	24	36,000
First 250,000		52,850		47,900		47,900		46,900
Next 150,000	26	39,000	24.5	36,750	24.5	36,750	24.5	36,750
First 400,000		91,850		84,650		84,650		83,650
Next 200,000	26	52,000	25	50,000	25	50,000	25	50,000
First 600,000		143,850		134,650		134,650		133,650
Next 400,000	26	104,000	25	100,000	26	104,000	26	104,000
First 1,000,000		247,850		234,650		238,650		237,650
Above 1,000,000	26		25		28		28	

2. NON-RESIDENT INDIVIDUAL INCOME TAX RATES

Assessment Year	2009	2010-2014	2015	2016-2019
Tax Rate (%)	27	26	25	28

3. CO-OPERATIVE INCOME TAX RATES

CHARGEABLE INCOME	ASSESSMENT YEAR					
	2010 - 2012		2013-2014		2015-2019	
	RM	%	RM	%	RM	%
First	20,000	0	0	0	0	0
Next	10,000	2	200	0	0	0
On	30,000		200		0	0
Next	10,000	6	600	5	500	5
On	40,000		800		500	500
Next	10,000	9	900	5	500	5
On	50,000		1,700		1,000	1,000
Next	10,000	12	1,200	5	500	5
On	60,000		2,900		1,500	1,500
Next	15,000	12	1,800	10	1,500	10
On	75,000		4,700		3,000	3,000
Next	25,000	16	4,000	10	2,500	10
On	100,000		8,700		5,500	5,500
Next	50,000	20	10,000	15	7,500	15
On	150,000		18,700		13,000	13,000
Next	100,000	23	23,000	20	20,000	18
On	250,000		41,700		33,000	31,000
Next	250,000	26	65,000	22	55,000	21
On	500,000		106,700		88,000	83,500
Next	250,000	26	65,000	24	60,000	23
	<u>750,000</u>		<u>171,700</u>		<u>148,000</u>	
Above	750,000	26		25		24

4. COMPANY INCOME TAX RATES

Assessment Year	2007	2008	2009-2015	2016-2019
Tax Rate (%)	27	26	25	24

Company resident and incorporated in Malaysia with paid-up capital of ordinary shares of RM2.5 million and less at the beginning of the basis period income tax rates are as follows:-

CHARGEABLE INCOME	Tax Rate			
	YA 2009 - 2015	2016	2017-2018	2019
First RM500,000	20%	19%	18%	17%
Above RM500,000	25%	24%	24%	24%

Note:

- Effective from assessment year 2009 the special tax rate for the first RM500,000 chargeable income is not applicable to a company having paid up capital (ordinary share) not more than RM2.5 million if more than-

- 50% of its paid-up capital (ordinary share) is directly or indirectly owned by a related company; or
- 50% of paid capital (ordinary share) of the related company is directly or indirectly owned by the company; or
- 50% of the paid-up capital (ordinary share) of the company and the related company is directly or indirectly owned by another company.

“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 year of assessment.

5. LIMITED LIABILITY PARTNERSHIP (LLP) RESIDENT IN MALAYSIA

Assessment Year	2015 and before	2016-2019
Tax Rate (%)	25	24

Limited Liability Partnership resident in Malaysia with total contribution of capital (cash or in kind) of RM2.5 million and less at the beginning of the basis period income tax rates are as follows:-

CHARGEABLE INCOME	TAX RATE			
	YA 2015 AND BEFORE	2016	2017-2018	2019
First RM500,000	20%	19%	18%	17%
Above RM500,000	25%	24%	24%	24%

Note:

The special rate for first RM500,000 chargeable income is not applicable to the above LLP if more than-

- a) 50% of its capital contribution (in cash or in kind) is directly or indirectly contributed by a company; or
- b) 50% of the paid capital (ordinary shares) of the company is directly or indirectly owned by the LLP; or
- c) 50% of the capital contribution (in cash or in kind) of the LLP and 50% of the paid-up capital (ordinary share) of the company is directly or indirectly owned by another company.

“The company”, other than “another company” referred to in the above paragraph, shall have a paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for a year of assessment.

6. WITHHOLDING TAX

TYPES OF PAYMENT TO NON-RESIDENT	TAX RATE (%)
Interest	15
Royalty	10
Remuneration/fee to public entertainer	15
Advice, assistance or services rendered in Malaysia	10
Installation fee and rental of moveable property	10
Income fall under section 4(f) ITA 1967 (w.e.f. 01.01.2009)	10
Non-resident contractor	10 + 3

Note: If Double Tax Agreement (DTA) between Malaysia and recipient country provides lower rate then rate specified in the DTA prevail.

7. REAL PROPERTY GAINS TAX RATES (W.E.F. 01.01.2014)

DISPOSAL	COMPANY	NON-CITIZEN AND NON-PERMANENT RESIDENT INDIVIDUAL	OTHER
Within 3 years	30%	30%	30%
In the 4 th . Year	20%	30%	20%
In the 5 th . Year	15%	30%	15%
In the 6 th year onwards (w.e.f. 01.01.2019)	10%	10%	5% (Note 1)

Note:

1. RPGT exemption is given to individual Malaysian citizens who disposes his chargeable asset, other than shares, on or after 1 January 2019 if the disposal is made in the 6th year after the date of acquisition or thereafter and the consideration for the disposal is not more than RM200,000

8. INCOME TAX REBATES FOR RESIDENT INDIVIDUALS

REBATES	ASSESSMENT YEAR	
	2007-2008	2009-2019
Resident individual with chargeable income of RM35,000 or less	350	400
Rebate for spouse if the tax payer chargeable income is RM35,000 or less and the spouse has no income or opt for joint assessment	350	400
Zakat	Amount of zakat paid restricted to amount of tax payable	

9. PERSONAL RELIEF FOR RESIDENT INDIVIDUALS

TYPE OF RELIEF	ASSESSMENT YEAR				
	2013-2014	2015	2016	2017-2018	2019
Self	9,000	9,000	9,000	9,000	9,000
Additional relief for disabled tax payer	6,000	6,000	6,000	6,000	6,000
Spouse with no income or opt for joint assessment	3,000	3,000	4,000	4,000	4,000
Additional relief for disabled spouse who has no income or opt for joint assessment	3,500	3,500	3,500	3,500	3,500
Normal child (unmarried and has no income)					
a) age of 18 and below	1,000	1,000	2,000	2,000	2,000
b) age above 18 and study in tertiary education institute Local (diploma and above), Overseas (Degree and above)	6,000	6,000	8,000	8,000	8,000
Disabled child (unmarried and has no income)	5,000	6,000	6,000	6,000	6,000
Age above 18 and studying in tertiary education institute (diploma and above in local education institute or degree and above if study abroad)	11,000	12,000	14,000	14,000	14,000
Life insurance premium on tax payer and/or spouse life and contribution to approved fund other than PRS	6,000	6,000	6,000	6,000	7,000 (Note 6)
SOCSSO	NIL	NIL	250	250	250
Private retirement scheme (PRS)	3,000	3,000	3,000	3,000	3,000
Education and/or medical insurance for tax payer, spouse and children	3,000	3,000	3,000	3,000	3,000
Medical expenses for tax payer, spouse and children with serious diseases	5,000	6,000	6,000	6,000	6,000
Complete medical examination on tax payer, spouse and children. Total deduction for medical expenses and examination is restricted to RM5,000	500	500	500	500	500

TYPE OF RELIEF	ASSESSMENT YEAR				
	2013-2014	2015	2016	2017-2018	2019
Parental care (Note 1)					
a) Father	NIL	NIL	1,500	1,500	1,500
b) Mother	NIL	NIL	1,500	1,500	1,500
Basic supporting equipment for tax payer, spouse, parent or children who is disabled	5,000	6,000	6,000	6,000	6,000
Nett deposit in the National Education Savings Scheme (Note 2)	6,000	6,000	6,000	6,000	8,000
Education fee on qualified course for tax payer (Note 3)	5,000	5,000	7,000	7,000	7,000
Books, journal and magazine	1,000	1,000	1,000	2,500 (Note 4)	2,500 (Note 4)
Personal computer (once in every 3 years)	3,000	3,000	3,000		
Sports and exercise equipment	300	300	300		
Smartphone and tablet	NIL	NIL	NIL		
Internet subscription	NIL	NIL	NIL		
Printed newspaper	NIL	NIL	NIL		
Gymnasium membership fee	NIL	NIL	NIL		
Fees paid to child care centres and kindergartens (Note 5)	NIL	NIL	NIL	1,000	1,000
Purchase of breastfeeding equipment for child aged up to 2 years. Claimable once in 2 years	NIL	NIL	NIL	1,000	1,000

Note:

1. The relief is subject to the following conditions-
 - a) Tax payer does not claim expenses on medical treatment and care of parents;
 - b) Parents are legitimate natural parents and foster parents in accordance to the respective law subject to a maximum of 2 persons;
 - c) Parents aged 60 years and above and reside in Malaysia
 - d) Parents annual income not exceeding RM24,000 for each parent.
2. Effective from assessment years 2012 to 2020
3. **Qualified course** – technical, vocational, industrial, scientific or technological skill or qualification. Accountancy and law courses undertaken at the recognised institution of higher learning (w.e.f YA 2006). Courses in Islamic Finance approved by Bank Negara Malaysia or Securities Commission at local institutions of higher education including at the International Centre for Education in Islamic Finance (w.e.f YA 2007). All field of studies at post graduate level i.e. masters and doctorate (w.e.f YA 2008) .
4. Effective from assessment year 2017 these relief are combined into new relief known as lifestyle relief with a limit of up to RM2,500.

5. The child must be aged up to 6 years, the child care centres or kindergartens registered with the Department of Social Welfare or the Ministry of Education. The relief can only be claimed by either parent.
6. Effective from assessment year 2019, tax relieves for contributions to approved provident funds is restricted to RM4,000 and life insurance premiums/Takaful contribution is RM3,000

For public servants under pension scheme, the income tax relief on takaful contributions or payment for life insurance premiums is restricted to RM7,000.

CAPITAL ALLOWANCE RATES

TYPES OF ASSET	INITIAL ALLOWANCE (%)	ANNUAL ALLOWANCE (%)
Heavy machinery (excluding imported machinery) and motor vehicle:		
• Building & construction industry	30	20
• Timber industry	60	20
• Tin mining industry	60	20
• Imported heavy machinery used in building & construction, mining, plantation and timber industry	10	10
• Other industry	20	20
Plant & Machinery:		
• Building & construction industry	30	14
• Timber industry	60	14
• Tin mining industry	60	14
• Other industry	20	14
Others:		
• Building & construction industry	30	10
• Timber industry	60	10
• Tin mining industry	60	10
• Other industry	20	10
Special plant & equipment:		
• Plant or machinery used by manufacturing company for recycling of wastes (w.e.f. YA 2001)	40	20
• Bus using natural gas	40	20
• Natural gas refuelling equipment used at natural gas refuelling outlet		

CAPITAL ALLOWANCE.....CONTD.

TYPES OF ASSET	INITIAL ALLOWANCE (%)	ANNUAL ALLOWANCE (%)
<ul style="list-style-type: none"> • Plant or machinery used for qualifying project under Schedule 7A (w.e.f YA 2001) • Qualifying machinery and equipment used in agriculture sector including plantation (w.e.f. 2005) • Qualifying equipment used by companies to ensure quality of power supply (w.e.f. 2005) 	40	20
Purchase of mould used in the production of Industrial Building System (IBS) (w.e.f. YA 2006)	40	20
Control equipment used for collecting wastes, limiting environmental pollution and pollution control	40	20

Notes:

1. **“Heavy machinery”** – Bulldozers, cranes, ditchers, Excavators, graders, loaders, rippers, rollers, rooters, scrapers, shovels, tractors, vibrator wagons etc.
2. **“Motor vehicles”** – All types of motorized vehicles such as motorcycles, aeroplanes, ships etc.
3. **“Plant & machinery”** – General plant and machinery not categorized as heavy machinery. Example – air conditioners, compressors, lifts, laboratory and medical equipment, ovens etc.
4. **“Others”** – Office equipment, furniture and fittings

SMALL VALUE ASSET (VALUE NOT EXCEEDING RM1,000 EACH)

Small value asset refer to asset with cost not exceeding RM1,000.00 each. Effective from assessment year 2015 the limit has been increased to RM1,300 per unit.

Effective from YA 2006 the capital allowance is equal to qualifying expenses but is capped at RM10,000. This limit has been increased to RM13,000.00 effective from assessment year 2015.

Effective from YA 2009 the above limit does not apply to company resident in Malaysia which has paid up capital of ordinary share not exceeding RM2,500,000 at the beginning of the basis period. The limit however still apply if more than-

- a) 50% of its paid-up capital (ordinary share) is directly or indirectly owned by a related company; or

- b) 50% of paid capital (ordinary share) of the related company is directly or indirectly owned by the company; or
- c) 50% of the paid-up capital (ordinary share) of the company and the related company is directly or indirectly owned by another company.

“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 year of assessment.

ACCELERATED CAPITAL ALLOWANCE

1. Information and communication technology equipment (ICT Equipment)

Effective: From Assessment year 2017

Qualifying assets:

Busters/decollators, cables and connectors, computer assisted design (CAD), computer assisted manufacturing (CAM), computer assisted engineering (CAE), card readers, computers and components, central processing unit (CPU), storage, screen, printers, scanner/reader, accessories, communications and network and software system or software package.

Conditions

- a) Person resident in Malaysia
- b) Equipment used for business purposes

Disqualified:

A person who for a basis period for a year of assessment is eligible and has claimed in respect of that ICT equipment investment tax allowance under the Promotion of Investment Act 1986 , Reinvestment Allowance under Schedule 7A or investment allowance for service sector under Schedule 7B or accelerated capital allowance under any rules made under Section 154 of the Income Tax Act 1967 or tax exemption under any order made under Section 127 of the Income Tax Act in respect of the statutory income which is equivalent to any part or the whole of the amount of qualifying capital expenditure incurred by that person is not eligible to claim for this accelerated capital allowance.

Allowance:

Initial: 20% Annual: 20%

INDUSTRIAL BUILDING ALLOWANCES (IBA)

TYPE OF BUILDING	INITIAL ALLOWANCE (%)	ANNUAL ALLOWANCE (%)
Factory, dock, wharf, jetty or other similar building, warehouse (with factory)	10	3
Building used in the business of supplying water, electricity and telecommunication services, agriculture and mining		
Canteen, rest-room, recreation room, lavatory, bathhouse, bathroom or wash-room (with industrial building)	10	3
Building for the welfare or living accommodation of persons employed in the working of a farm		
Private hospital, nursing home, maternity home	10	3
Building for the purpose of approved R & D	10	3
Building for the purpose of approved service project under Schedule 7B	10	3
Hotel registered with the Ministry of Tourism	10	3
Public road & ancillary structures on which expenditure is recoverable through toll collection	10	6
Warehouse for purpose of storage of goods for export or imported goods to be processed and distributed or re-exported	NIL	10
Living accommodation for employees employed in manufacturing, hotel, tourism business and approved service project	NIL	10
School and approved educational institution, approved industrial, technical and vocational training	NIL	10
Building constructed for accommodation for employees (with industrial building)	40	3
Building constructed under an approved build-lease-transfer agreement with the Government	10	6
New buildings occupied by MSC status companies in Cyberjaya. (w.e.f YA 2006)	NIL	10

INDUSTRIAL BUILDING ALLOWANCES (IBA).....CONTD

Building acquired/constructed and used by resident BioNexus status company for its new business or expansion projects (w.e.f 02.09.2006)	NIL	10
Child care centre (w.e.f YA 2013)	NIL	10
Pre-school buildings (w.e.f YA 2013)	NIL	10
Old folks care centre	NIL	10
Renovation cost by TRX Marquee status company	NIL	10

BUILDING UNDER PRIVATISATION PROJECT AND PRIVATE FINANCING INITIATIVES [P.U.(A) 119/2010]

Effective from assessment year 2009 a building is deemed as industrial building if constructed-

- a) under a privatisation project and private financing initiatives approved by the Privatisation/PFI Committee, Public Private Partnership Unit, Prime Minister's Department; and
- b) pursuant to an agreement entered into between a person and the Government of Malaysia or statutory body on a build-lease-maintain-transfer basis and for which no consideration has been paid by the Government of Malaysia or statutory body to that person

This rule is applicable to qualifying building expenditure incurred by a person who is a resident in Malaysia and is used for his business.

Initial allowance = 10%; annual allowance = 6%.

Residual value shall be reduced by the amount of any compensation received by such person.

Disposal value at the expiry of the agreement = Zero