



Tax Flash



October 2009

We are pleased to present you the first edition of *Advent Tax Flash*. The reason for choosing October 2009 to publish our very first edition is non-other than to update you on the major proposals made in the 2010 Budget announced on 23rd October 2009.

Moving forward, we will publish the *Tax Flash* periodically. Though this newsletter is brief, we trust its contents are informative and of interest to busy professionals like you. Happy reading!

2010 Budget Highlights

Executive Summary

Tax and Budget – these two words will not be missed come the last quarter of each year. Amidst the current climate of economic uncertainty where we are still trying to recover from the global financial crisis in getting our economy back on track, the much awaited 2010 Budget was announced by our Prime Minister cum Minister of Finance, Y.A.B. Dato' Sri Mohd Najib Tun Abdul Razak on 23rd October 2009. Like the previous years, this year's Budget has also drawn our nation's attention.

Since assuming the leadership in March 2009, our honourable Prime Minister actively promotes the *1Malaysia concept* that hinges on "People First, Performance Now" motto. With the theme *1Malaysia, Together We Prosper*, the 2010 Budget focuses on three strategies – driving the nation towards a high-income economy, ensuring holistic and sustainable development, and focusing on the well-being of the *rakyat*.

Although little has been mentioned in relation to Goods and Services Tax ["GST"] in the 2010 Budget, the continuation of GST study shows that the government is seriously considering the implementation of the GST in the near future. The government assures the *rakyat* that if GST were to be introduced, it will not burden the *rakyat*.

Some of the significant proposals of the 2010 Budget are highlighted in the ensuing paragraphs.

Hyperlinks

References

Events

Reduction in Tax Rates

The 2010 Budget takes into account the cries for goodies or wish lists proposed by the *rakyat*. The government took note on the sentiments of the *rakyat* on the generally “high” personal income tax rate. The corresponding move is the proposal for a reduction in the tax rate of 1% for resident individuals where the chargeable income exceeding RM100,000 is taxed at 26% instead of 27%. This signifies that the highest tax rate for resident individuals has been capped at 26% with effect from year of assessment [“YA”] 2010.

The above reduced tax rate will also be enjoyed by co-operative societies (on chargeable income exceeding RM500,000) and non-resident individuals.

Extension of Incentives for Islamic Financing

The Islamic financing sector has, without fail, drawn the government’s attention in the recent budgets. In line with the government’s efforts to promote Malaysia as an international hub for Islamic financing, various existing tax incentives (which nearing expiry) will be extended to year 2015. These include, amongst others, the following:-

- Tax deduction on the expenditure incurred for the issuance of Islamic securities approved by the Securities Commission [“SC”]
- Double tax deduction on expenses incurred by a tax resident in Malaysia for the purpose of promoting Malaysia as an International Islamic Financial Centre;
- Tax deduction on the expenditure incurred prior to the commencement of Islamic stock broking companies in respect of applications received by the SC on or before 31st December 2015.

Streamlining Tax Assessment System – Petroleum Income Tax

One of the noteworthy proposals of the 2010 Budget is the move to streamline the tax assessment system for upstream petroleum companies.

It was proposed that the tax assessment system be changed from the preceding year assessment system to current year assessment system with effect from 1st January 2010 and that the official assessment system be changed to the self assessment system with effect from YA 2010 (current year basis).

As a result of the above changes, new and additional tax compliance requirements such as submission of tax estimate, adherence to monthly tax instalment scheme etc will have to be observed by the upstream petroleum companies.



Re-introduction of the Real Property Gains Tax

The Real Property Gains Tax ["RPGT"] will be re-instated with effect from 1st January 2010. This has caught many by surprise as the current RPGT exemption is "short-lived" with a life span of less than 3 years.

The RPGT is payable based on 5% on gains from disposal of chargeable assets regardless of the holding period. For disposers who are individuals, a special tax exemption of RM10,000 (previously RM5,000) or 10% of the chargeable gain, whichever is greater is available.

Based on the Budget proposal, the acquirer is required to withhold up to 2% of the total value of the consideration and pay the sum withheld to the Inland Revenue Board ["IRB"] within 60 days from the date of disposal. This sum will be treated as the payment towards settlement of the RPGT payable (or part thereof) by the disposer. A penalty equal to 10% of that sum will be imposed on the acquirer for late payment.

Conclusion

All in all, we believe that the 2010 Budget signifies a people-oriented budget which upholds the *1Malaysia concept*. Besides, the 2010 Budget will lay the foundation for the development of the new economic model which will bring Malaysia towards a developed nation in a near future.

We have summarised the key amendments outlined in the 2010 Budget into the following broad categories:-

- A. Income Tax – Changes Affecting Individuals
- B. Income Tax – Changes Affecting Companies and Unincorporated Businesses
- C. Investment Incentives
- D. Real Property Gains Tax
- E. Petroleum Income Tax
- F. Stamp Duty
- G. Indirect Tax
- H. Others

A. Income Tax – Changes Affecting Individuals

1. Increase in Personal Relief

- Personal relief be increased from RM8,000 to RM9,000
- Effective from YA 2010

2. New Relief on Broadband Subscription Fees

- Relief of up to RM500 per year be given for broadband subscription fees
- The amount claimed has to be substantiated with the payment receipt and bill under the individual's name
- Effective from YA 2010 to YA 2012

3. Increase in EPF Contribution and Life Insurance Premium Relief

- EPF contribution and life insurance relief be increased from RM6,000 to RM7,000. The increase of RM1,000 relief is given on:-
 - deferred premiums paid on annuity scheme contracted with insurance companies on or after 1st January 2010
 - additional premiums paid on existing annuity scheme commencing from 1st January 2010
- Effective from YA 2010

4. Reduction in Individual Tax Rates

- Tax rate for resident individual on chargeable income exceeding RM100,000 be reduced from 27% to 26%
- Non-resident individual tax rate be reduced from 27% to 26%
- Effective from YA 2010

5. Tax Incentive for Knowledge Workers in Iskandar Malaysia

- Employment income of Malaysian and foreign knowledge workers be taxed at a flat rate of 15%
- Conditions:-
 - Must be working in Iskandar Malaysia
 - Must be a tax resident
 - Must be engaged in the following qualified activities approved by the Minister of Finance ["MOF"]:-
 - green technology
 - biotechnology
 - educational services
 - healthcare services
 - creative industries
 - financial advisory and consulting services
 - logistics services
 - tourism
 - Must apply and commence employment between 24th October 2009 to 31st December 2015
- The MOF will issue rules to define the terms "knowledge workers" and "qualified activities"
- Effective from YA 2010



6. Penalty on Additional Tax for Late Filing

- Please refer to B7 below

7. Tax Exemption on Certain Interest and Discounts

- Please refer to B9 and B10 below

B. Income Tax – Changes Affecting Companies and Unincorporated Businesses

1. Exclusion of Companies Issuing Asset-Backed Securities as SME

- Companies established solely for the purpose of issuance of asset-backed securities in a securitisation transaction approved by the SC will not be considered as Small and Medium Enterprises [“SME”] regardless of their paid-up share capital
- Effective from YA 2010

2. Employer’s Returns

- The requirements for employers to prepare and furnish the prescribed forms previously gazetted by way of statutory order are now governed under Section 83(1) of the Income Tax Act 1967 where:-
 - Form EA in respect of the remuneration of a particular year be furnished to employees on or before the last day of February of the following year;
 - Form E in respect of the remuneration of a particular year be submitted on or before 31st March of the following year
 - Effective from the remuneration for year ending 31st December 2009

3. SPV for Issuance of Islamic Securities

- The current tax treatments and relaxation of compliance requirements accorded to Special Purpose Vehicle [“SPV”] established under the Companies Act 1965 solely for the purpose of issuing Islamic securities approved by the SC be extended to SPV established under the Offshore Companies Act 1990 that elects to be taxed under the Income Tax Act 1967
- Effective from YA 2010

4. Employer’s Responsibilities for Tax of Employees

- The amount due from employers to the IRB for failure to comply with the following provisions shall now be a debt due to the Government which can be recovered by way of civil proceeding:-
 - **Section 83(2)**
 - Notifying the IRB on the commencement of employment of an individual within 1 month from the date of commencement

- **Section 83(3)**
 - Notifying the IRB on the cessation of employment of an individual within 1 month from the expected date of cessation
- **Section 83(4)**
 - Notifying the IRB of an employee's departure from Malaysia for a period exceeding 3 months within 1 month from the expected date of departure
- **Section 83(5)**
 - Withholding money payable to an employee who has ceased or about to cease to be employed, or is about to leave Malaysia for a period exceeding 3 months, for at least 90 days from the date of notification under Section 83(3) or Section 83(4)
- **Section 107**
 - Deduction of tax from employment income, pension, annuity or periodical payment payable to an individual
- Effective from the date of coming into operation of the Finance (No. 2) Act 2009

5. Penalty on Late and Non-Submission of Tax Estimate

- Penalty of 10% on tax payable be imposed for late or non-submission of tax estimate where:-
 - no direction is given by the Director General of Inland Revenue ["DGIR"] to make payment by instalment under Section 107C(8);
 - no prosecution under Section 120 has been instituted in relation to the failure to furnish estimate; and
 - there is tax payable for that YA
- Effective from YA 2011

6. Exemption from Submission of Tax Estimate

- Companies, trust bodies and co-operative societies which first commence operation are not required to furnish estimate of tax payable for the first YA if the basis period for that YA is less than 6 months
- The tax payable for the first YA will be settled upon submission of the tax return
- Effective from YA 2011

7. Penalty on Additional Tax for Late Filing

- For cases where the tax return is not furnished within the stipulated deadline, the DGIR be empowered to impose additional penalty if there is additional tax payable
- Effective from the date of coming into operation of the Finance (No. 2) Act 2009

8. Reduction in Co-operative Tax Rate

- Tax rate for co-operative society on chargeable income exceeding RM500,000 be reduced from 27% to 26%
- Effective from YA 2010



9. Tax Exemption on Interest Income on Islamic Securities Approved by LOFSA

- Tax exemption on interest income from Islamic securities originating from Malaysia (excluding convertible loan stock) that are issued in any currency other than Ringgit and approved by the SC be extended to those approved by the Labuan Offshore Financial Services Authority ["LOFSA"]
- Effective from YA 2010

10. Tax Exemption on Interest Income on Islamic Securities Approved by SC

- Tax exemption on interest or discount paid or credited to any individual, unit trust and listed closed-end fund in respect of debentures (excluding convertible loan stock) approved by the SC be extended to Islamic securities approved by the SC
- Effective from YA 2010

11. Tax Incentive for SME to Register Patents and Trademarks

- Expenses incurred on the registration of patents and trademarks by SME in Malaysia be allowed for tax deduction
- For the purpose of the above incentive, SME include:-
 - SME as defined under the Income Tax Act 1967
 - Enterprises in the manufacturing industries, manufacturing related services industries and agro-based industries with full time employees not exceeding 150 persons or with annual sales turnover not exceeding RM25 million
 - Enterprises in the services industries, primary agriculture and information and communication technology ["ICT"] with full time employees not exceeding 50 persons or with annual sales turnover not exceeding RM5 million
- Effective from YA 2010 to YA 2014

12. Extending Tax Incentive on Expenditure to Establish Islamic Stock Broking Companies

- Tax deduction on the expenditure incurred prior to commencement of Islamic stock broking companies for applications received by the SC from 2nd September 2006 until 31st December 2009 be extended to applications received by the SC until 31st December 2015

13. Extension and Expansion of Tax Incentives on Issuance of Islamic Securities

- Tax deduction on the expenditure incurred from the YA 2003 until YA 2010 for the issuance of Islamic securities approved by the SC be extended to YA 2015
- The same tax incentive shall also be given to Islamic securities approved by the LOFSA effective from YA 2010 to YA 2015



C. Investment Incentives

1. New Tax Incentives for Buildings Awarded with GBI Certificate

- Tax exemption equivalent to 100% of the additional capital expenditure incurred to obtain Green Building Index ["GBI"] certificate be given to the owners of the buildings to set-off against 100% of the statutory income
- The incentive is applicable for new buildings and upgrading of existing buildings
- The incentive is only given for the first issuance of GBI certificate in respect of the building
- Effective for buildings awarded with GBI certificates from 24th October 2009 to 31st December 2014

2. Enhancing Tax Incentives for Healthcare Service Providers

- Tax exemption on export income derived from provision of healthcare services to foreign clients be increased from 50% to 100% of the value of increased exports but limited to 70% of statutory income
- For the purpose of this enhanced incentive, foreign clients exclude the following:-
 - A non-Malaysian citizen that participates in *Malaysia My Second Home Programme* and his dependants;
 - A non-Malaysian citizen holding a Malaysian student pass and his dependants;
 - A non-Malaysian citizen holding a Malaysian work permit and his dependants; and
 - Malaysian citizen who are non-residents living abroad and his dependants
- Effective from YA 2010 to YA 2014

3. Extension of Tax Incentives for Export of Financial Services

- The existing tax exemption given to banking institutions on the following income (for a period of 5 years from the commencement of operations) be extended to cover insurance and *takaful* companies:-
 - Profits of newly established branches overseas; or
 - Income remitted by new overseas subsidiaries
- The effective period of the 5-year exemption be given flexibility in which it can be deferred from the date of commencement of operations to a date not later than the 3rd year of operations
- Effective for applications to establish new branches or subsidiaries overseas received by Bank Negara Malaysia ["BNM"] on or before 31st December 2015

4. Extension of Tax Incentive Period to Promote Malaysia as an International Islamic Financial Centre

- Double tax deduction on expenses incurred by a tax resident in Malaysia for the purpose of promoting Malaysia as an International Islamic Financial Centre from YA 2008 to YA 2010 be extended to YA 2015



5. Extension of Tax Exemption on Profits from Non-Ringgit *Sukuk*

- Tax exemption on profits derived from issuance of non-Ringgit *sukuk* approved by the SC and issued in Malaysia be extended to cover profits from issuance of non-Ringgit *sukuk* approved by the LOFSA
- Effective from YA 2010

6. Expediting Investments for Selected Activities

• Forest Plantation

- The following tax incentives currently offered to both the investor company and the subsidiary company undertaking forest plantation activities be discontinued for applications received after 31st December 2011:-

- Investor Company

- Tax deduction equivalent to the amount of investment made in the subsidiary company that undertakes forest plantation activities; or
- Group relief on losses incurred by its subsidiary company that undertakes forest plantation activities before it records any profit

- Subsidiary Company

- For new forest plantation activities, income tax exemption of 100% of statutory income for 10 years commencing from the 1st year the company derives profits
- For reinvestment to expand the forest plantation project, income tax exemption of 100% of statutory income for 5 years commencing from the 1st year the company derives profits

• Consolidation of The Management of Smallholdings and Idle Land

- The following tax incentives currently available for consolidation of the management of smallholdings and idle land [“the Services”] be discontinued for applications received after 31st December 2011:-

- Tax exemption of 100% of statutory income for 5 years in respect of a company, individual, partnership or co-operative society undertaking the Services;
- Tax deduction equivalent to the amount of investment in a wholly-owned subsidiary company involved in undertaking the Services; and
- Service tax exemption for the wholly-owned subsidiary company that undertakes the Services

• Knowledge Based Company

- The following tax incentives currently offered to strategic knowledge based companies be discontinued for applications received after 31st December 2011:-

- Tax deduction equivalent to the expenditure incurred by a company for drafting the individual corporate knowledge based master plan be discontinued for applications received after 31st December 2011



7. Additional Definition for Investment Allowance for Service Sector

- Definition of “incurred” be inserted into Schedule 7B of the Income Tax Act 1967 to have the same meaning assigned for capital allowance purposes to deal with the following scenarios:-
 - For hire purchase arrangements, only capital portion of any instalment payment shall be taken as capital expenditure incurred in a relevant basis period;
 - The day on which capital expenditure is incurred shall be determined according to the following:-
 - In the case of construction of a building, the day on which capital expenditure is incurred is the day on which the construction of the building is completed;
 - For plant and machinery, the day on which capital expenditure is incurred is the day on which the plant and machinery is capable of being used for the purposes of the business; and
 - In any other case, the day on which capital expenditure is incurred is the day on which the amount of any expenditure becomes payable, provided that, where a person incurs expenditure for the purposes of a business of his which he is about to carry on, the capital expenditure shall be deemed to be incurred when he commences to carry on the business
- Effective from YA 2010

D. Real Property Gains Tax

1. Re-introduction of RPGT

- The RPGT exemption given on disposal of chargeable assets (i.e. real property and shares in a real property company) with effect from 1st April 2007 be revoked
- RPGT be payable based on 5% on gains from disposal of chargeable assets regardless of the holding period
- The submission deadline in respect of the RPGT returns (i.e. Forms CKHT 1 and 2 by the disposer and acquirer respectively) be extended from 1 month to 60 days from the date of disposal of the chargeable assets
- The requirements for the acquirer to retain up to 5% of the total value of the consideration and remit the sum to the IRB upon requisition are no longer necessary
- Instead, the acquirer is required to withhold up to 2% of the total value of the consideration and pay the sum withheld to the IRB within 60 days from the date of disposal. This sum will be treated as the payment towards settlement of the RPGT payable (or part thereof) by the disposer. A penalty equal to 10% of that sum will be imposed on the acquirer for late payment

- For loss on disposal of chargeable assets, the claim of tax relief (i.e. allowable loss multiplied by the applicable rate of RPGT at the time of disposal) against tax assessed be replaced by the claim of allowable loss against chargeable gain. Any unutilised allowable loss can be carried forward to offset against future chargeable gain
- Unutilised tax relief brought forward from disposals made prior to 1st April 2007 is allowed to be utilised against tax assessed from disposals made after 31st December 2009
- Interest paid to finance the acquisition of a chargeable asset will no longer be deductible for RPGT purposes
- Tax exemption for individuals be increased from RM5,000 to RM10,000, or 10% of the chargeable gain, whichever is greater
- Certificate of clearance will no longer be issued for disposal of chargeable assets. However, certificate of non-chargeability will be issued to disposer for cases with no chargeable gain
- RPGT returns may be filed electronically
- Effective from 1st January 2010

E. Petroleum Income Tax

1. Standardisation of Tax Assessment System for Upstream Petroleum Companies

- Existing Taxation System
 - Upstream petroleum companies are currently subject to income tax under the Petroleum (Income Tax) Act 1967 under the following assessment systems:-
 - Preceding year assessment system where tax assessed in the current year is based on income received in the preceding year; and
 - Official assessment system undertaken by the IRB
- Proposed Taxation System
 - It is proposed that the above tax assessment systems be changed to the following:-
 - Current year assessment system with effect from 1st January 2010; and
 - Self assessment system with effect from YA 2010 (current year basis)
 - The above proposed changes will shift the onus of tax assessment to the upstream petroleum companies and thus, placing amongst others, the following new and additional tax compliance obligations associated with the current year assessment and self assessment systems:-
 - Tax return to be submitted to the IRB within 7 months from the end of the basis period for a YA, and the IRB is deemed to have made an assessment on the day the return is furnished;
 - The due date for payment of the tax deemed assessed is the last day of the 7th month from the end of the accounting period;



- During 'Exploration Period', tax return to be submitted to the IRB within 7 months from the end of the period;
- Submission of estimate of tax payable not later than 30 days before the beginning of the basis period for a YA, and a revised estimate may be submitted in the 6th and 9th months of the basis period for a YA; and
- The estimate of tax payable for a YA shall be paid in 10 equal monthly instalments and each instalment shall be paid on or before the 10th day of a calendar month. The first instalment may be made from the 2nd month of the basis period for that YA and all 10 monthly instalments shall be made before the 2nd month of the basis period immediately following the basis period for that YA.

F. Stamp Duty

1. New Section for Penalty Relating to Stamp Certificates

- A person shall be guilty of an offence and on conviction shall be liable to a fine not exceeding RM5,000 if the person:-
 - sells or offers for sale a stamp certificate;
 - fraudulently attaches a stamp certificate to an instrument other than the instrument for which the stamp certificate was issued;
 - fraudulently detaches a stamp certificate or fraudulently causes a stamp certificate to be detached from the instrument;
 - counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp certificate issued by the Collector;
 - sells or offers for sale any certificate which he knows or ought reasonably to know to be a counterfeit of any stamp certificate issued by the Collector;
 - has in his possession any certificate which he knows to be a counterfeit of any stamp certificate, intending to use or dispose of it as a genuine stamp certificate in order that it may be used as a genuine stamp certificate; or
 - uses as a genuine stamp certificate knowing it to be a counterfeit of any stamp certificate
- Effective from 1st January 2010

2. Extension of Stamp Duty Exemption on *Syariah* Financing Instruments

- The stamp duty exemption currently available on instruments executed pursuant to a scheme of financing which is in accordance with the principles of *Syariah* approved by the BNM or the SC be extended to cover the *Syariah* financing scheme approved by the LOFSA
- Effective from 1st January 2010



3. Cancellation of Adhesive Stamp in respect of Instrument of Articles of Association and Memorandum of Association

- The Registrar of Companies be empowered to cancel the adhesive stamp in respect of the instrument of Articles of Association and Memorandum of Association
- Effective from 1st January 2010

4. Exemption of Stamp Duty on Instruments of Transfer of Ownership of Buildings and Residential Properties Awarded with GBI Certificates

- Stamp duty exemption on the instruments of transfer of ownership of buildings and residential properties awarded with GBI certificates be given to the buyers of such buildings in respect of the additional cost incurred by real property developers in obtaining the GBI certificates
- The exemption is only given once to the first owner of the building bought from the real property developers
- Effective for sales and purchase agreements executed from 24th October 2009 to 31st December 2014

5. Extension of Stamp Duty Exemption on Islamic Financing Instruments

- The stamp duty exemption of 20% given on principal or primary instruments of Islamic financing executed from 2nd September 2006 to 31st December 2009 be extended until 31st December 2015
- Condition: The Islamic financial products have to be approved by *Syariah* Advisory Council of the BNM or the *Syariah* Advisory Council of the SC

G. Indirect Tax

1. Service Tax on Credit Cards and Charge Cards

- Service tax on credit cards and charge cards be re-introduced
- The service tax to be imposed is as follows:-
 - RM50 per year on the principal card; and
 - RM25 per year on the supplementary card
- The collection of the service tax will be on the issuance date, on the completion of each year or on the renewal date
- Effective from 1st January 2010

H. Others

1. Equity Condition for Corporate Finance and Financial Planning Companies

- The current equity condition of at least 30% local shareholding in corporate finance and financial planning companies be relaxed to allow 100% foreign equity participation

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