



Tax Flash



October 2010

2011 Budget Highlights

Executive Summary

As always, October is a much awaited month of the year. You and I will always hope for tax and other financial goodies. On 15th October 2010, the 2011 Budget was tabled before the Parliament by our Prime Minister cum Minister of Finance, Y.A.B. Dato' Sri Mohd Najib Tun Abdul Razak. This time around, the emphasis is on transforming Malaysia into a high-income nation and this is evidenced by the budget theme "*Transformation Towards a Developed and High-Income Nation*". The four key strategies to achieve the objectives are as follows:-

- 1) Reinvigorating Private Investment;
- 2) Intensifying Human Capital Development;
- 3) Enhancing Quality of Life of the *Rakyat*; and
- 4) Strengthening Public Service Delivery

It is interesting to note that even before the tabling of the 2011 Budget, the Government has announced that the implementation of the Goods and Services Tax ["GST"] would be deferred to enable the Government to engage inclusively all segments of the people on the imposition of the GST. Under the proposed GST regime, the present sales and service tax will be abolished all together. On the premise that GST will be implemented eventually, perhaps it is least expected that there will be any increase in the service tax rate. In the 2011 Budget, it was proposed that the rate of service tax on all taxable services be increased from 5% to 6% effective 1st January 2011. All these leave us with a question – will GST ever reach the Malaysian shore? Only time will tell.

From the environmental perspective, no doubt, Malaysia is committed to making the earth sustainable and tax can be a vital tool to achieve this. It was proposed that the current tax incentive application period for the generation of energy from renewable resources and energy conservation be extended. Also, an extension to the tax exemption period on the income from sales of Certified Emission Reductions was proposed.

Hyperlinks

Advent Consulting Group
Inland Revenue Board

References

2011 Budget Speech
Appendices to Budget
Speech
Finance (No. 2) Bill 2010

Event

2011 Budget Seminar



Given the strong competition from other Islamic financial hubs like the United Kingdom, Malaysia has to ensure that it stays ahead of the pack, in particular, in the *sukuk* market. The Malaysian Government has established the world's first *Syariah*-compliant commodity trading platform, namely Bursa *Suq al-Sila*. In this regard, tax deduction for the expenses incurred on the issuance of Islamic securities would now be extended to those issued under the principles of *Murabahah* and *Bai' Bithaman Ajil* based on *tawarruq*. *Tawarruq* is also known as *Reverse Murabahah*. Double deduction would also be given to payment of insurance premium for export credit based on *takaful* concept.

In terms of information and communication technology, some tax goodies would also be available. The application period for tax incentives for companies that invest in last mile infrastructure would be extended for another 2 years. Also, ordinary mobile phones would now be exempted from sales tax.

From the social aspect, the Government is ever determined to enhance the well-being of the *rakyat*. There is no point of being a developed and high-income nation when the quality of life is compromised. In this instance, it was proposed that the tax relief on medical expenses incurred for parents be extended to include expenses on treatment and care for parents such as medical expenses incurred in licensed medical stores and expenses spent on day care centre, cost incurred to employ caretakers for parents, etc. As everyone should have an opportunity to own a home, stamp duty exemption of 50% would also be given to first-time house buyers for home costing not more than RM350,000, loan instruments inclusive. For the disabled, a full exemption of excise duty on the purchase of national cars would be given.

In an effort to strengthen the nation's financial position, it is also noted in the 2011 Budget that the Government intends to improve on its scope of collecting penalties for incorrect tax return, particularly, on the non-compliance of withholding tax obligations. Moreover, there would also be effort to improve the collection of penalties for non-compliance with the estimation of tax requirement. In addition, the controversial issue of whether a taxpayer could claim reinvestment allowance on the same product in the same basis period where the tax incentive period under the Promotion of Investments Act 1986 expires, is now cleared.

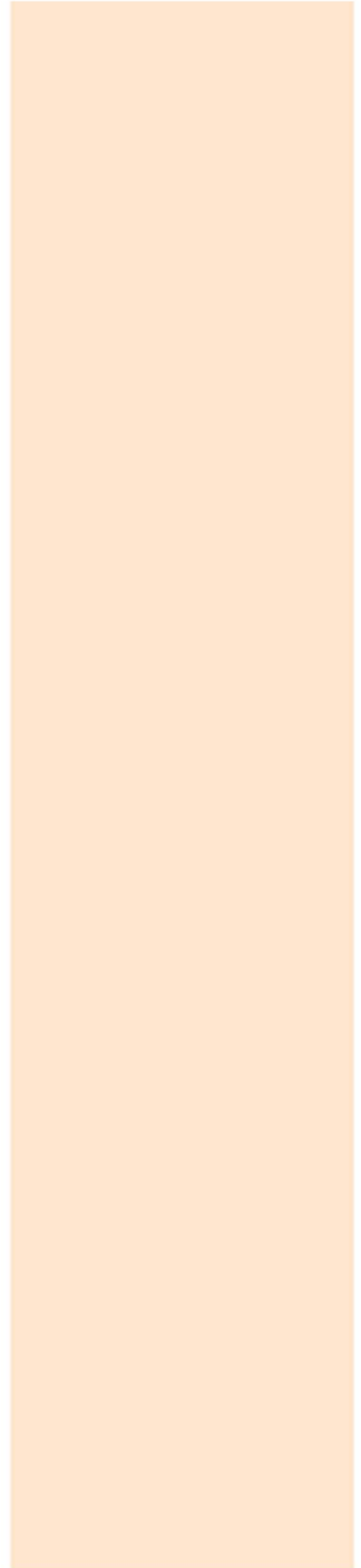
On the international front, Malaysia strives to remain as a "white-list" jurisdiction. It was proposed that our Government, could now, enter into an arrangement with another foreign government, which Malaysia has not entered into a comprehensive tax treaty with, for the purpose of exchange of information on tax matters. Where a comprehensive tax treaty is already in place, the article on Exchange of Information in the comprehensive tax treaty would have dealt with this aspect.



By and large, we believe that the 2011 Budget is a realistic one which will sustain economic growth for many years to come although we were caught by surprise of the increase in the service tax rate. In any case, as our Prime Minister said “We are not dreamers. We are realists. We want to build a nation where every *rakyat* will be able to enjoy the benefits of development”. Clearly, the ability of the Government to collect additional revenue is crucial in the nation building.

We have summarised the key amendments outlined in the 2011 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 Taxes
- H. Others



A. Income Tax – Changes Affecting Individuals

1. Abolishment of Rebate on Fees

- The rebate given in respect of fees paid to the Government for the issuance of employment pass, visit pass or work pass shall be abolished
- Effective year of assessment [“YA”] 2011

2. Tax Treatment on Pensions and Other Periodical Payments Received by Widower

- Pensions and other periodical payments received by a widower from his deceased spouse’s former employer or successor of his former employer be deemed as his gross income and subject to tax
- On the other hand, tax exemption be given on pensions paid under an approved scheme to widower
- Effective YA 2011

3. Expansion of Relief on Medical Treatment and Care for Parents

- Relief of up to RM5,000 on medical expenses for parents be extended to include expenses relating to care and special needs for parents
- Conditions:-
 - The claim must be evidenced by certification of a medical practitioner that the parents require medical treatment, special needs or carer
 - Supported by a receipt on amount expended for medical treatment or special needs, or supported by written certification or receipt from, or work permit of, the carer
 - The carer shall not include the taxpayer claiming the relief, the spouse and the children of the taxpayer
- Effective YA 2011

4. Abolishment of Relief on Annuity Premium Purchased via EPF Annuity Scheme

- Relief of up to RM1,000 in respect of annuity premium paid by a resident individual for the purchase of annuity scheme determined by the Employees Provident Fund Board be abolished
- Effective YA 2011

5. Time Barred from Raising Assessment or Additional Assessment on Executor

- The Director General of Inland Revenue [“DGIR”] be empowered to raise assessment or additional assessment not later than the end of the third YA following the YA in the basis year in which the DGIR is informed by the executor of the death of the individual via a prescribed form
- Effective upon coming into operation of the Finance (No. 2) Act 2010



6. Recovery from Persons Leaving Malaysia

- Please refer to B4 below

7. Utilisation of Tax Paid in Excess

- Please refer to B6 below

8. Exchange of Tax Information

- Please refer to B7 below

B. Income Tax – Changes Affecting Companies and Unincorporated Businesses

1. Review of Tax Treatment for Discount or Premium Expenses on Bond

- The discount or premium expenditure incurred by a company (non-financial institution) in the issuance of bond that could not be deducted in full against gross income from a source consisting of discount or premium shall be allowed as deduction in arriving at the adjusted income of that company from any source or sources consisting of business
- Conditions:-
 - Proceeds from issuance of the bond are utilised wholly for the production of gross income from that business source(s)
 - The bond issued or subscribed is not stock in trade of a business of the company
- Effective YA 2011

2. Penalty on Incorrect Returns for Failure to Remit Outstanding WT Due

- The DGIR be empowered to impose penalty for incorrect returns under Section 113(2) of the Income Tax Act 1967 ["ITA 1967"] if a deduction on the payments made to non-residents which attract withholding tax ["WT"] under Sections 107A, 109, 109B or 109F is claimed and the outstanding WT due is not paid by the due date for submission of the tax return that relates to such claim
- Effective 1st January 2011 for YA 2011 and subsequent YA

3. Deductible Permitted Expenses of Investment Holding Companies, Close-End Fund Companies and Unit Trusts

- Income distributed by a unit trust (which includes Real Estate Investment Trust) is deemed to be dividend income for the purposes of computing the amount of deductible permitted expenses of investment holding companies, close-end fund companies and unit trusts
- Effective YA 2011

4. Recovery from Persons Leaving Malaysia

- The DGIR be empowered to issue a certificate to restrain a person from leaving Malaysia if he fails to pay the penalty for late payment of tax instalments under Section 107B and Section 107C of the ITA 1967
- Effective upon coming into operation of the Finance (No. 2) Act 2010

5. Estimate of Tax Payable

- The empowerment given to the DGIR to direct companies, trust bodies and co-operative societies to make payment by instalments for a YA be extended from before the 6th month of the basis period for the YA to any time during the basis period for the YA
- The amount directed by the DGIR is deemed to be the revised estimate for the purposes of determining the penalty for under-estimation of tax
- Where the direction is made before the 9th month of the basis period, revision of estimate of tax payable in the 6th month and/or 9th month of the basis period may be furnished
- Effective YA 2012

6. Utilisation of Tax Paid in Excess

- The DGIR may utilise any excess of tax paid by a person under the ITA 1967 for payment of any other debt due and payable by that person (including any amount of instalments which are due and payable) under the ITA 1967, the Petroleum (Income Tax) Act 1967 ["PITA"] or the Real Property Gains Tax Act 1976 ["RPGT Act"]
- Likewise, any excess of tax paid by the person under the PITA or the RPGT Act may be utilised for payment of tax which is due and payable under the ITA 1967, RPGT Act and PITA
- Effective upon coming into operation of the Finance (No. 2) Act 2010

7. Exchange of Tax Information

- The existing Section 132 of the ITA 1967 on double taxation arrangements will be widened to cover tax information exchange arrangements with tax treaty countries on other taxes of every kind under any written law
- A new Section 132A of the ITA 1967 be introduced to provide for tax information exchange arrangements with non-treaty countries
- Effective upon coming into operation of the Finance (No. 2) Act 2010

8. Dividend Paid in Excess of 108 Balance or Revised 108 Balance

- Where a company:
 - pays a dividend in excess of the 108 balance or the revised 108 balance, the excess together with any late payment penalty of 10% shall be a debt due to the Government; or
 - which is not entitled to deduct tax, issues a dividend certificate showing tax has been deducted or deemed deducted from a dividend payment, that amount purportedly deducted shall be increased further by an amount of up to 100%, and the total amount shall be a debt due to the Government
- The above debt due to the Government be recoverable as if it were tax due and payable under the ITA 1967
- Effective YA 2008



9. Recovery of Amount in Excess of 108 Balance or Revised 108 Balance

- Where a company:
 - fails to render a statement, i.e. Form R for YA 2008 to YA 2014 (if applicable) and the DGIR computes and serves a written requisition in the prescribed form showing the amount of excess (please refer to B8 above), that amount of excess shall be increased further by an amount of up to 100%, and the total amount shall be a debt due to the Government; or
 - receives an amount of tax discharged, remitted or refunded by the IRB exceeding its 108 balance or revised 108 balance, the excess together with any late payment penalty of 10% shall be a debt due to the Government
- The above debt due to the Government be recoverable as if it were tax due and payable under the ITA 1967
- Effective 9th January 2009

10. Deduction for Expenditure on Issuance of Islamic Securities

- Tax deduction be given on expenses incurred for issuance of Islamic securities which adopt the principles of *Murabahah* and *Bai' Bithaman Ajil* based on *tawarruq*
- Issuance of such *sukuk* must be approved by the Securities Commission or Labuan Financial Services Authority
- Effective YA 2011 to YA 2015

C. Investment Incentives

1. New Tax Incentive on Export Credit Insurance Premium Based on *Takaful* Concept

- Double tax deduction currently given on conventional insurance premium incurred for export credit insurance be extended to cover *takaful* contributions made to *takaful* operators approved by the Minister of Finance ["MOF"] in respect of export credit *takaful*
- Effective YA 2011

2. Extension of Application Period for Tax Incentives for the Generation of Energy from Renewable Sources and Energy Conservation

- The application period for the tax incentives in respect of the following promoted activities be extended until 31st December 2015:-
 - Companies as well as its related companies generating energy from renewable sources
 - Pioneer status ["PS"] with income tax exemption of 100% of statutory income for 10 years; or
 - Investment tax allowance ["ITA"] of 100% on the qualifying expenditure incurred within a period of 5 years to set-off against 100% of statutory income;
- And



- Exemption of import duty and sales tax on imported equipment (not produced locally) used to generate energy and exemption of sales tax on equipment purchased from local manufacturers
- Companies generating renewable energy for own consumption
 - ITA of 100% on the qualifying expenditure incurred within a period of 5 years to set-off against 100% of statutory income; and
 - Exemption of import duty and sales tax on imported equipment (not produced locally) used to generate energy and exemption of sales tax on equipment purchased from local manufacturers
- Companies providing energy conservation services
 - PS with income tax exemption of 100% of statutory income for 10 years; or
 - ITA of 100% on the qualifying expenditure incurred within a period of 5 years to set-off against 100% of statutory income;
And
 - Exemption of import duty and sales tax on imported energy conservation equipment (not produced locally) and exemption of sales tax on equipment purchased from local manufacturers
- Companies which incur capital expenditure for energy conservation for own consumption
 - ITA of 100% on the qualifying expenditure incurred within a period of 5 years to set-off against 100% of statutory income; and
 - Exemption of import duty and sales tax on imported energy conservation equipment (not produced locally) and exemption of sales tax on equipment purchased from local manufacturers
- The application period for the import duty and sales tax exemptions in respect of the following promoted activities be extended until 31st December 2012:-
 - Non-energy generating companies which import or purchase equipment to generate energy from renewable sources for consumption of third parties
 - Exemption of import duty and sales tax on solar photovoltaic system equipment to importers including photovoltaic service providers approved by the Energy Commission; and
 - Exemption of sales tax on solar heating system equipment purchased from local manufacturers
 - Companies which import or purchase energy efficiency ["EE"] equipment for third party consumption
 - Exemption of import duty and sales tax on EE equipment such as high efficiency motors and insulation materials to importers including authorised agents approved by the Energy Commission; and
 - Exemption of sales tax on EE consumer goods such as refrigerator, air conditioner, lightings, fan and television purchased from local manufacturers



- Effective for applications received by the Malaysian Industrial Development Authority ["MIDA"] not later than 31st December 2015 and 31st December 2012 respectively
- 3. Extension of Tax Incentive Period for Reduction of Greenhouse Gas Emission**
- The existing tax exemption period for income received from the sale of certified emission reductions ["CER"] from Clean Development Mechanism projects approved by the Ministry of Natural Resources and Environment from YA 2008 to YA 2010 be extended to YA 2012
- 4. Extension of Application Period for Tax Incentive for AFPP**
- The application period for the following tax incentives in respect of approved food production project ["AFPP"] be extended until 31st December 2015:-
 - Tax deduction is granted to the holding company for the amount of investment made in the subsidiary company undertaking the AFPP; and
 - The subsidiary company undertaking the AFPP is granted tax exemption of 100% on its statutory income for 10 years for a new project or 5 years for an expansion project
 - Effective for applications received by the Ministry of Agriculture and Agro-based Industry not later than 31st December 2015
- 5. Extension of Application Period for Tax Incentive for Last Mile Network Facilities Provider for Broadband**
- The application period for the following tax incentives for companies investing in last mile broadband infrastructure be extended until 31st December 2012:-
 - Income tax exemption equivalent to 100% of qualifying capital expenditure incurred on broadband infrastructure within a period of 5 years with the allowance to set-off against 70% of statutory income; and
 - Exemption of import duty and sales tax on imported broadband equipment and consumer access devices (not produced locally) which are basic in providing the broadband services
 - Effective for applications received by the MOF (for tax exemption) and MIDA (for import duty and sales tax exemption) not later than 31st December 2012
- 6. Clarification on RA Incentive**
- The words "the period" in the definition under Schedule 7A of the ITA 1967 be replaced by the words "the basis period" with the aim to affirm that PS incentive and reinvestment allowance ["RA"] are mutually exclusive in the same basis period on company basis
 - Effective YA 2011



D. Real Property Gains Tax

- 1. Time Barred from Raising Assessment or Additional Assessment on Executor**
 - Please refer to A5 above
- 2. Utilisation of Tax Paid in Excess**
 - Please refer to B6 above
- 3. Date of Disposal under Conditional Contracts**
 - The determination of date of disposal of a chargeable asset in situations where the disposal requires the approval by the Government (or its appointed authority or committee) be expanded to include disposals that require the approval by a State Government (or its appointed authority or committee)
 - Effective YA 2011

E. Petroleum Income Tax

- 1. Utilisation of Tax Paid in Excess**
 - Please refer to B6 above

F. Stamp Duty

- 1. Digital Franking of Instruments**
 - Payment of duty on certain instruments prescribed by the MOF can be made by means of digital franking machine apart from the postal franking machine
 - Effective upon coming into operation of the Finance (No. 2) Act 2010
- 2. Exemption of Stamp Duty on Instruments of Transfer of Ownership of Residential Properties**
 - Stamp duty exemption of 50% be given on instruments of transfer of ownership of a residential property (includes terrace house, condominium, apartment and flat)
 - The price threshold of residential property for the stamp duty exemption of 50% has been increased from RM250,000 to RM350,000
 - The exemption is only given to a Malaysian citizen who purchases the first residential property, i.e. in a situation where an individual does not own any residential property (or does not own a part of a residential property in the case of joint ownership) in his name at the time he applies for the exemption
 - Each Malaysian citizen is only eligible for one exemption
 - Effective for sale and purchase agreements executed from 1st January 2011 to 31st December 2012

3. Exemption of Stamp Duty on Loan Agreements for Residential Properties

- Stamp duty exemption of 50% be given on loan agreement instruments for a residential property (includes terrace house, condominium, apartment and flat)
- The price threshold of residential property for the stamp duty exemption of 50% has been increased from RM250,000 to RM350,000
- The exemption is only given to a Malaysian citizen who purchases the first residential property, i.e. in a situation where an individual does not own any residential property (or does not own a part of a residential property in the case of joint ownership) in his name at the time he applies for the exemption
- Each Malaysian citizen is only eligible for one exemption
- Effective for sale and purchase agreements executed from 1st January 2011 to 31st December 2012

G. Indirect Taxes

1. Increase in Service Tax Rate

- Service tax on all taxable services be increased from 5% to 6%
- Effective 1st January 2011

2. Service Tax on Paid Television Broadcasting Services

- Paid television broadcasting services be included as taxable services
- The relevant subscription fees be subject to 6% service tax
- Effective 1st January 2011

3. New Sales Tax Exemption on Mobile Phones

- Sales tax exemption be given on ordinary mobile phones
- Effective 4.00 p.m. 15th October 2010

4. Abolishment of Import Duty on Tourism Products and Daily-Use Products

- Import duty be abolished on the following items:-
 - Tourism products (with duty of between 5% and 20%):-
 - Handbags, wallets, suitcases, briefcases, apparels, footwear and hats;
 - Jewellery, costume jewellery and ornaments; and
 - Toys such as dolls and small scale recreational models
 - Daily-use products (with duty of between 10% and 20%):-
 - Talcum powder, face powder and shampoo; and
 - Bedspreads, blankets, curtains and table cloth
- Effective 4.00 p.m. 15th October 2010



- 5. Enhancement of Import Duty and Excise Duty Exemption for New CBU Hybrid and Electric Cars and Motorcycles**
 - The import duty and excise duty exemption of 100% and 50% respectively given to franchise holders of new completely-built-up ["CBU"] hybrid cars be increased to full exemption
 - The above 100% exemption of import duty and excise duty be extended to electric cars, hybrid motorcycles and electric motorcycles
 - Effective for applications made to the MOF from 1st January 2011 until 31st December 2011

- 6. Enhancement of Excise Duty Exemption on National Vehicles for Disabled Persons**
 - Excise duty exemption on the purchase of a national vehicle by a disabled person with certain physical disabilities, namely handicapped limbs be increased from 50% to 100%
 - The exemption is further extended to disabled persons who have hearing and speaking disabilities
 - Conditions:-
 - o Applicant must be a registered disabled person and possess a Registration Certificate from the Social Welfare Department
 - o Applicant must have a valid driving licence
 - o Vehicle bought must be from the stock of unpaid duty and tax
 - o Vehicle should not be sold or its ownership transferred until the expiry of 5 years except with a written approval from the MOF
 - o Exemption is given only for one vehicle within a period of 5 years
 - Effective for applications made to the MOF from 18th October 2010

- 7. Extension of Import Duty and Sales Tax Exemption on Equipment Used to Generate Energy**
 - Please refer to C2 above

- 8. Extension of Import Duty and Sales Tax Exemption on Energy Conservation Equipment**
 - Please refer to C2 above

- 9. Extension of Import Duty and Sales Tax Exemption on Broadband Equipment and Consumer Access Devices**
 - Please refer to C5 above

H. Others

1. Private Pension Fund

- The Government will be launching a Private Pension Fund in 2011
- Existing tax relief of up to RM6,000 for an employee's contributions to the EPF be extended to the contributions made to the Private Pension Fund which will benefit the private sector employees and self-employed individuals
- Employers be given tax deduction on contributions made on behalf of their employees, subject to the current restriction of 19% of the employee's remuneration

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