

Tax Flash



September 2012 – Special Edition

2013 Budget Highlights

Executive Summary

Although the annual budget may seem to be a regular affair, it can never be predictable. Prior to tabling the 2013 Budget, many quarters were invited to provide suggestions and feedbacks on what the *Rakyat* want and this has led to an overwhelming response of wish lists in the buildup to the budget. Thus, it did not come as a surprise when all eyes were on our honourable Prime Minister cum Minister of Finance, Y.A.B. Dato' Sri Mohd Najib Tun Abdul Razak as he unveiled the 2013 Budget on 28th September 2012.

Faced with a challenging global economy still struggling to recover and the imminent 13th general election within a stone throw away, the 2013 Budget seems to exact the challenge of both pleasing the *Rakyat* and maintaining the integrity of the budget to ensure sustainability and stability of the Malaysian economy. While certain quarters may argue that the budget is an extension of last year's "Election Budget", some see it as a continuation of policies introduced for sustaining growth. For whatever reason it may be, we let you decide.

Themed "*Prospering The Nation, Enhancing Well-Being of the Rakyat : A Promise Fulfilled*", the budget appears to strike a balance of basic human needs approach which focuses on 5 key areas, namely:-

1. Boosting Investment Activity
2. Strengthening Education and Training
3. Inculcating Innovation, Increasing Productivity
4. Fiscal Consolidation and Enhancing the Public Service Delivery
5. Enhancing the Well-Being of the *Rakyat*

Here are some of the highlights of the 2013 Budget.

Hyperlinks

Advent Consulting Group
Inland Revenue Board

References

2013 Budget Speech
Appendices to Budget
Speech
Finance (No. 2) Bill 2012

Event

2013 Budget Seminar



Reduction in Tax Rates

The wish of many individual taxpayers was finally fulfilled this year. With previous budgets focusing more on the rural poor, the 2013 Budget provided candy for the middle-class income earners who have often felt neglected.

Resident individuals with chargeable income between RM2,501 to RM50,000 are able to enjoy reduction in the tax rate of 1% with effect from year of assessment ["YA"] 2013. In addition, co-operative society will also enjoy a reduced tax rate by 1% to 7% on all chargeable income bands.

Revision of Real Property Gains Tax Rates

With limited success from the 2010 and 2011 Budgets in curbing the speculative activities of real properties market and to address the issue of affordable housing for low and middle income earners, the effective Real Property Gains Tax ["RPGT"] rates will now be raised yet again to tax on capital gains from disposal of real properties and shares in real property company. Commencing 1st January 2013, the 2013 Budget has proposed the following amendments to the RPGT rates for disposal of real properties and shares in real property company:-

Holding Period	Proposed RPGT Rates
Within 2 years	15%
Exceeding 2 years but not exceeding 5 years	10%
Exceeding 5 years	0%

Tax Incentives

The Government has proposed that operators of private pre-schools registered with the State Education Department and private child care centres registered with the Social Welfare Department be given income tax exemption of 100% of statutory income for 3 years together with industrial building allowance ["IBA"] to be claimed over 10 years.

In addition, banks and financial institutions, contractors and property developers involved in the revival of abandoned housing projects will be given various tax incentives by the Government.

Review of Tax System

Prior to the announcement of the 2013 Budget, there has been feedback from various stakeholders that Goods and Services Tax ["GST"] shall not be implemented in year 2013. However, it can be seen that the Government is clearing the pathway for the implementation of the GST in the near future.



No better indication than a reduction in tax rates and a more comprehensive tax system can reflect the Government's study in seriously implementing the GST. Ranging from enhancing investment and productivity activities for the well-being of the *rakyat* to the subsidies provided and the shortening of time frame for the Director General of Inland Revenue ["DGIR"] to raise an assessment, it shows that the Government is providing sufficient time for all parties to gradually be more adaptive and confident with the new tax system to be introduced in the future.

Limited Liability Partnership

Like some developed countries such as the United Kingdom, United States of America and Singapore, Malaysia has ventured into a new area of doing business by introducing the Limited Liability Partnership ["LLP"] as an alternative business module.

A hybrid between conventional partnership and private company, a LLP limits the liability while maintaining the flexibility of operations of a partnership. It provides opportunities for professionals and entrepreneurs of small businesses to expand their businesses at a lower cost while increasing competitiveness.

Companies or partnerships which convert to a LLP shall be allowed to carry forward any unabsorbed business losses or unabsorbed capital allowances to be utilised against future income of the LLP. The tax treatment for a LLP is similar to that of a company, trust body or co-operative society.

Conclusion

2013 Budget can be considered as an all-rounder. While it strives to reduce the country's Gross Domestic Products deficit amid global uncertainties, the Budget upholds the policies of ensuring and enhancing the well-being of *rakyat* in a number of areas which include more affordable houses, education and training, public safety and transportation, corporate social responsibilities, expansion of businesses and enhancing investments.

However, it does come as a surprise that sin taxes on alcohol and tobacco products remain unchanged. Nevertheless, a platform for the advancement and development of future generations has been mapped.

We have summarised the key amendments outlined in the 2013 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. Others

A. Income Tax – Changes Affecting Individuals

1. Increase in Tax Relief for Amount Deposited into Skim Simpanan Pendidikan Nasional

- Relief on amount deposited into Skim Simpanan Pendidikan Nasional account established under the Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997 by a resident individual for his or her child be increased from RM3,000 to RM6,000
- Effective for YA 2012 to YA 2017

2. Increase in Child Relief

- Child relief in respect of an unmarried child above the age of 18 years and receiving tertiary education be increased from RM4,000 to RM6,000
- Effective YA 2013

3. Reduction in Individual Tax Rates

- Tax rates for resident individuals be reduced by 1% for chargeable income bands from RM2,501 to RM50,000
- A comparison is as shown below:-

Chargeable Income	Current Tax Rates	Proposed Tax Rates
RM2,501 to RM5,000	1%	0%
RM5,001 to RM20,000	3%	2%
RM20,001 to RM35,000	7%	6%
RM35,001 to RM50,000	12%	11%

- Effective YA 2013

4. Taxation of Withdrawals of Contributions Made to PRS

- Withdrawal of contribution from Private Retirement Scheme ["PRS"] by an individual prior to attaining the age of 55 (other than by reason of death or permanent departure from Malaysia) is subject to tax at a rate of 8%
- PRS provider shall deduct tax of 8% from the amount withdrawn by the individual and remit the tax deducted to the DGIR within 1 month after making the payment to the individual
- Failure to remit the tax deducted to the Inland Revenue Board ["IRB"] within the stipulated due date will render the payer liable to 10% penalty on the tax not paid to the IRB
- Effective 1st January 2013

5. Tax Incentive for Angel Investor

- Angel investor be allowed to claim deduction against all his aggregate income on total value of investment made in a venture company ["VC"] but restricted to 80% of the aggregate adjusted income for each year
- Qualifying criteria:-
 - Angel Investor
 - prior to investing, he is not associated to the VC;
 - he is a tax resident with an annual income of not less than RM180,000;
 - he holds 30% or more of the shares in the VC for at least 2 years; and
 - all his shares in the VC are paid in cash
 - VC
 - 51% shares in the VC are owned by Malaysians
 - qualifying activities are approved by the Securities Commission ["SC"]; and
 - accumulated profit does not exceed RM5 million with a track record of less than 3 years (based on the latest financial report at the time of application)
- Effective for applications received by the SC from 1st January 2013 to 31st December 2017

6. Review of Time Bar for Tax Assessment

- The time bar period for raising an assessment or additional assessment by the DGIR be reduced from 6 years to 5 years

7. Review of Time Frame for Claim of Repayment of Tax

- The period for claim of repayment of tax by taxpayers under Section 111(2) be reduced from 6 years to 5 years

8. Review of Time Frame for Rectification of Error or Mistake

- The period for application to the DGIR for relief in respect of error or mistake made in a return or statement under Section 131(1) be reduced from 6 years to 5 years

B. Income Tax – Changes Affecting Companies and Unincorporated Businesses

1. Tax Treatment for LLP

- A LLP registered under the Limited Liability Partnerships Act 2012 ["LLP Act 2012"] is a body corporate which has legal personality separate from that of its partners
- A LLP is excluded from the definition of "partnership" under the ITA 1967. The definition of "person" is amended to include a LLP and thus, a LLP will be treated as an entity chargeable to tax
- The residence status of a LLP in Malaysia is determined based on the management and control of its business or affairs exercised by its partners in Malaysia
- A company or a partnership which converts to a LLP is allowed to carry forward its unabsorbed business losses and capital allowances to be utilised against the future income of the LLP



- A compliance officer appointed by the partners of the LLP is responsible for doing all acts and things under the ITA 1967. If no compliance officer is appointed, the partners of the LLP shall be jointly and severally liable
- Any remuneration or similar payment paid to a partner by a LLP is not tax deductible if it is not provided in the agreement made in accordance with the LLP Act 2012
- The similarities in the tax treatment of a LLP and a company, trust body or co-operative society are as follows:-
 - determination of basis period
 - due date for filing of tax return and settlement of balance of tax liability
 - furnishing an estimate of tax payable and payment of tax instalment
 - taxed at corporate tax rate (including preferential tax rate of 20% on the first RM500,000 of chargeable income, if applicable)
 - applicability of control transfer provisions
 - profits paid, credited or distributed to partners of a LLP are exempted from tax
- Effective upon coming into operation of the LLP Act 2012 i.e. 9th February 2012

2. Tax Treatment for BT

- Business Trust ["BT"] is a new business structure introduced under the Capital Markets and Services Act 2007 and adopts the unit-trust structure as a basis for its business
- BT's business operations are conducted by the trustee manager ["TM"] who acts as a trustee on behalf of BT and the unit holders
- The definition of "company" under the ITA 1967 is amended to include a BT and hence accorded with the same treatments as a company
- However, a BT will not enjoy the following preferential tax treatments accorded to a Small and Medium Enterprise:-
 - exemption from filing estimated tax payable or make instalment payments in the first 2 years of assessment of operations;
 - preferential tax rate of 20% on the first RM500,000 of chargeable income; and
 - non-applicability of RM10,000 limit on special allowances for small value assets (i.e. cost not exceeding RM1,000 each)
- Tax residence status of a BT is determined based on the residence status of its TM. The TM is resident in Malaysia if it carries on the business of the BT in Malaysia and the management and control of its business are exercised in Malaysia
- The TM is responsible for doing all acts and things under the ITA 1967 on behalf of a BT
- The control transfer provisions under the ITA 1967 have been extended to include BT. Control for the purposes of a BT constitutes the right to not less than 50% of residual profits of the BT available for distribution, or not less than 50% of any residual assets of the BT available for distribution on a winding up
- Effective upon coming into operation of the Capital Markets and Services (Amendment) Act 2012



3. Taxability of Interest Income as a Business Source Income

- Only the following types of interest income are treated as business source income under Section 4(a) of the ITA 1967:-
 - interest income derived from debenture, mortgage or other source which forms part of the stock in trade of a business
 - interest income receivable from the business of lending money and that business is licensed under any written law
- Any unabsorbed business losses and unabsorbed capital allowances for the YA 2012 in respect of the interest from a business source prior to the introduction of this new provision shall be carried forward and to be deducted against the statutory income and the adjusted income in the YA 2013 and subsequent years of assessment until the amounts are fully deducted
- Effective YA 2013

4. Review of Time Bar for Income Tax Assessment

- The time bar period for raising an assessment or additional assessment by the DGIR be reduced from 6 years to 5 years
- Consequential proposals:-
 - The period for raising an assessment or additional assessment under Section 25 in respect of employment income received that relates to a time bar period be reduced from 5 immediately preceding years of assessment to 4 immediately preceding years of assessment
 - The period for raising an assessment or additional assessment under Section 27 in respect of interest, discounts, rent or royalty or of any pension, annuity or other periodical payment received that relates to a time bar period be reduced from 5 immediately preceding years of assessment to 4 immediately preceding years of assessment
 - The period for raising an assessment or additional assessment under Section 44A(9)(a) in respect of adjusted loss under Group Relief wrongly claimed by the claimant company be reduced from 6 years to 5 years
 - The period for raising an assessment or additional assessment under Paragraph 6, Schedule 7A in respect of income ought not to have been exempted in relation to Reinvestment Allowance claimed be reduced from 6 years to 5 years
 - The period for claim of repayment of tax by taxpayers under Section 111(2) be reduced from 6 years to 5 years
 - The period for application to the DGIR for relief in respect of error or mistake made in a return or statement under Section 131(1) be reduced from 6 years to 5 years
 - The period for recomputation of deduction in respect of capital expenditure from the cessation of working of a mine under Paragraph 15(a), Schedule 2 be reduced from 5 immediately preceding years of assessment to 4 immediately preceding years of assessment
 - The computation of agriculture charge in the event of disposal of an asset under Paragraph 27, Schedule 3 be reduced from 6 years to 5 years
 - Adjustment in the ascertainment of the prospector's total income for any year of assessment under Paragraph 15(b), Schedule 4 be reduced from 6 years to 5 years
- Effective 1st January 2014



5. Deduction for Expenditure on Treasury Shares

- Tax deduction be given to a company having business source income on cost incurred in acquiring treasury shares to fulfill its obligations under its employees' equity-based remuneration scheme
- "Treasury share" is defined as a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by the company and not cancelled
- The amount of deduction is equivalent to the cost of acquiring the treasury shares which are transferred to the employee less any amount payable by the employee for the treasury shares
- The deduction shall be made in the basis period for a year of assessment where the employee exercises his rights to acquire the treasury shares
- The cost of acquiring the treasury shares which are transferred to the employee shall be determined on the basis that the treasury shares acquired by the company at an earlier point in time are to be transferred first, i.e. first-in-first-out basis
- No deduction is allowed to the company if the amount payable by the employee exceeds the cost of the treasury shares incurred by the company. The surplus will be credited into an account for the purpose of applying the surplus to reduce the cost of the treasury shares which will be transferred to its employees in future
- Transfer of treasury shares is effected when the employee acquires the legal and beneficial interest in the treasury shares
- No deduction on cost incurred in acquiring the treasury shares is allowed for holding company that transfers its treasury shares to the employee of its subsidiary companies
- In the event that the holding company recovers the cost of acquiring the treasury shares from its subsidiary company for the transfer of the treasury shares, the subsidiary company will be entitled to deduction for the amount paid/payable to its holding company or an amount equal to the cost of the treasury shares incurred by the holding company in respect of the treasury shares transferred (reduced by any amount payable by the employee of the subsidiary company), whichever is lesser
- The deduction will be granted to the subsidiary company on the date of transfer of the treasury shares to the employees or on the date of payment to the holding company, whichever is the later
- Effective YA 2013

6. Business Loss Relating to Family Fund of a *Takaful* Operator

- A new Section 60AA(15A) of the ITA 1967 be introduced to provide that in arriving at the total income of a *takaful* business, the current year adjusted loss from the business (other than family fund for a *takaful* business) for the a year of assessment shall be available as deduction against the aggregate statutory income (excluding the statutory income of a family fund)
- Any unabsorbed business loss from sources other than the business of a family fund for the relevant year of assessment is not allowed to be deducted against the statutory income of the family fund of that *takaful* business for subsequent years of assessment
- Effective YA 2012

7. Deduction on Sum Transferred or Paid to Co-operative Development Trust Fund

- Any sum transferred or paid to a Co-operative Development Trust Fund be allowed a deduction from the total income of a co-operative society
- Effective upon coming into operation of the Finance (No. 2) Act 2012

8. Appeal Against WT

- A new Section 109H of the ITA 1967 be introduced to allow a payer (who makes a payment to a non-resident in respect of an amount that in his opinion may not fall under Sections 109, 109B or 109F of the ITA 1967) to appeal to the Special Commissioners of Income Tax ["SCIT"] within 30 days from the date the potential withholding tax ["WT"] is due to be made to the DGIR
- No appeal shall be made if:-
 - an appeal has been filed with the SCIT by the non-resident person to whom the payer was liable to pay the amount of interest or royalty, or payment under Section 4A or Section 4(f) of the ITA 1967 to which the appeal relates;
 - the payment made to the non-resident by the payer is disallowed as a deduction under Section 39 of the ITA 1967 in arriving at the adjusted income of the payer; or
 - the WT due has not been made to the DGIR by the payer
- Effective 1st January 2013

9. Reduction in Tax Rates for Co-operative Society

- Tax rates for co-operative society on all chargeable income bands be reduced by 1% to 7%
- A comparison is as shown below:-

Chargeable Income RM	Current Tax Rates %	Proposed Tax Rates %
1 – 20,000	0	0
20,001 – 30,000	2	0
30,001 – 40,000	6	5
40,001 – 50,000	9	5
50,001 – 60,000	12	5
60,001 – 75,000	12	10
75,001 – 100,000	16	10
100,001 – 150,000	20	15
150,001 – 250,000	23	20
250,001 – 500,000	26	22
500,001 – 750,000	26	24
750,001 and above	26	25

- Effective YA 2013



10. Elimination of Agriculture Charge

- Paragraph 26, Schedule 3 of the ITA 1967 be deleted to eliminate agriculture charge in respect of a grant received by a person from the Government, State Government or statutory authority to relieve him of any capital expenditure incurred by him for the purpose of working of a farm
- Effective upon coming into operation of the Finance (No. 2) Act 2012

11. Transfer of Industrial Buildings to REIT or PTF

- Control transfer provisions will apply to disposal of industrial buildings by a company to a Real Estate Investment Trust ["REIT"] or Property Trust Fund ["PTF"] if the company holds not less than 50% of the residual profits of the REIT or PTF available for distribution or not less than 50% of the residual assets of the REIT or PTF available for distribution on a winding up
- Effective YA 2013

12. Assets Classified as Asset Held for Sale

- Where an asset is classified as an asset held for sale in accordance with generally accepted accounting principles, it shall be deemed to have ceased to be used for the purposes of a business
- Where an asset is sold in the basis period in which it was classified as an asset held for sale (i.e. Year 1), the balancing charge or allowance shall be computed in Year 1 and based on the difference between the following:-
 - the disposal value of the asset determined based on the greater of:-
 - the market value at the date it was classified as asset held for sale; and
 - net sales proceed
 - the residual expenditure of the asset
- Where an asset is sold in the following basis period after it was classified as an asset held for sale (i.e. Year 2), the balancing charge or allowance shall be computed in Year 2 and based on the difference between the following:-
 - the disposal value of the asset determined based on the greater of:-
 - the market value at the end of Year 1; and
 - net sales proceed
 - the residual expenditure of the asset, after deducting notional allowance of the asset in Year 2
- Where the asset is not sold at the end of the following basis period (i.e. not sold in Year 2), it shall be deemed to be disposed of in Year 2 and the balancing charge or allowance to be computed in Year 2 shall be based on the difference between the following:-
 - the disposal value of the asset determined based on the market value at the end of Year 2
 - the residual expenditure of the asset, after deducting notional allowance of the asset in Year 2



- If the asset that was not sold in Year 2 is subsequently brought into use for business after Year 2, the qualifying expenditure for such asset shall be the market value at the date it is brought into use for the business. However, no initial allowance shall be claimed on the asset
- Where the asset is an industrial building, the market value shall be the value determined by the Valuation and Property Services Department
- Effective YA 2013

13. Tax Exemption on Annuity Fund

- Tax exemption be given on income received from deferred annuity scheme
- Conditions:-
 - The deferred annuity scheme must be established in accordance with the Retirement Savings Standards approved by BNM by a life insurer or *takaful* operator
 - The deferred annuity funds must be maintained in accounts separately from the life funds or *takaful* family funds
- Effective YA 2012

14. Tax Incentives for Child Care Centres

- The following tax incentives be given to promote provision of child care centres:-
 - Tax deduction for employers
 - Double deduction on expenses incurred for the provision and maintenance of child care centres for employees; and
 - Double deduction for child care allowance paid to employees
 - New tax incentives for operators of new and existing private child care centres registered with the Social Welfare Department
 - Tax exemption of statutory income for a period of 5 years; and
 - IBA at an annual rate of 10% on qualifying expenditure on buildings used as child care centres
- Effective YA 2013

15. New Tax Incentives for Private Pre-School Operators

- The following tax incentives be given to new and existing private pre-schools registered with the State Education Department:-
 - Tax exemption for a period of 5 years; and
 - IBA at an annual rate of 10% on qualifying expenditure incurred on pre-school buildings
- Effective YA 2013

16. Double Deduction on Expenses Incurred on Issuance of Agro-Sukuk

- Double deduction be given on expenses incurred on issuance of Agro-Sukuk approved by the SC or the Labuan Financial Services Authority
- Effective YA 2013 to YA 2015



17. Double Deduction on Additional Expenses Incurred on Issuance of Retail Bonds and Retail *Sukuk*

- Double deduction be given on additional expenses (e.g. rating rationale fee, underwriting and placement fees, facility agency fee, advertising cost and cost of printing prospectus) incurred on issuance of retail bonds and retail *sukuk*
- Effective YA 2012 to YA 2015

18. New Tax Incentives for Reviving Abandoned Housing Projects

- Banking and financial institutions be given tax exemption on interest income received on loans granted to rescuing contractor or developer for the purpose of reviving the abandoned housing projects
- Double deduction be given to the rescuing contractor or developer on the interest expense and all costs incurred in obtaining loans to revive the abandoned housing projects
- Condition:-
 - The abandoned housing projects eligible for the above tax incentives must be approved by the Ministry of Housing and Local Government
- Effective for loans approved during the period from 1st January 2013 to 31st December 2015 and applicable for 3 consecutive years of assessment from the year the loans are approved

19. Review of Accelerated Capital Allowance for Security Control and Surveillance Equipment

- The existing accelerated capital allowance [“ACA”] of 100% claimable on qualifying expenditure incurred on security control and surveillance equipment be extended for another 3 years to YA 2015
- The existing ACA be enhanced as follows:-
 - it is extended to companies that install security control and surveillance equipment in residential areas
 - it applies to equipment such as safety mirrors and panic buttons
- Effective YA 2013 to YA 2015

20. Double Deduction for 1Malaysia Training Scheme Programme

- Double deduction be given on allowance and training expenses incurred on soft-skills training and on-the-job training provided to unemployed graduates by companies participating in the 1Malaysia Training Scheme Programme [“SL1M”]
- Conditions:-
 - Monthly allowances of not less than RM1,000 for a maximum period of 12 months;
 - Total tax deduction on allowance and training expenses is limited to RM5,000 for each trainee per year; and
 - Training programme must be implemented within 1 year from the date of approval
- Effective for applications made from 1st June 2012 until 31st December 2016

C. Investment Incentives

1. Extension of Tax Incentives for Commercialisation of Public Sector R&D Findings

- The following tax incentives currently given to promote commercialisation of research and development ["R&D"] findings in the resource-based industry wholly owned by public research institutions be extended to cover commercialisation of non-resource based R&D findings:-
 - Investor Company
 - Tax deduction equivalent to the value of investment made in the subsidiary company that undertakes commercialisation of R&D findings wholly owned by public research institutions
 - Subsidiary Company that undertakes Commercialisation of R&D Findings of Public Research Institutions
 - Income tax exemption of 100% of statutory income for 10 years
- Effective for applications received by Malaysian Investment Development Authority ["MIDA"] from 29th September 2012 until 31st December 2017

2. Tax Incentive for Angel Investor

- Please refer to A5 above

3. Reintroduction of Tax Incentives for Tour Operators

- The tax incentives given to tour operators up to YA 2011 are now reintroduced with the following incentives:-
 - Income tax exemption of 100% on statutory income from the business of operating group inclusive tour packages participated by not less than 750 inbound tourists per year (previously 500); and
 - Income tax exemption of 100% on statutory income from the business of operating domestic tour packages participated by not less than 1,500 local tourists per year (previously 1,200)
- Effective YA 2013 to YA 2015

4. Tax Incentives for Child Care Centres

- Please refer to B14 above

5. New Tax Incentives for Private Pre-School Operators

- Please refer to B15 above

6. Tax Deduction for the Acquisition of Foreign Companies

- Previously, a resident company in Malaysia which acquired foreign companies for the purposes of acquiring high technology for production within the country or for acquiring new export markets for local products was granted a tax deduction equivalent to 20% of the acquisition cost of the investment for 5 consecutive years of assessment. This incentive was applicable for applications received by MIDA on or before 31st December 2008
- It is now proposed that this incentive be reintroduced
- The effective date of this proposal is unknown, pending the gazette of the relevant legislation

7. Tax Incentives for Small Malaysian Service Providers to Merge into Larger Entities

- The following tax incentives be given to small Malaysian service providers to merge into larger entities:-
 - Flat tax rate of 20% on all taxable income for a period of 5 years (effective from the date of the merger); and
 - Stamp duty exemption on the merger documents
- Eligibility Criteria:-
 - Merging enterprises must be:-
 - 100% Malaysian owned; and
 - Have annual sales turnover of less than RM5 million or full-time employees of less than 50
 - Sectors eligible for this incentive include:-
 - Professional services (accounting and taxation services, specialised medical and dental practices, architectural services and engineering services);
 - Courier services;
 - Technical and vocational secondary education services (generic and special needs); and
 - Skill training services
- Effective for applications received by the IRB within 3 years from 3rd July 2012

8. Tax Incentive for Investment in Refinery Activities on Petroleum Products

- ITA of 100% on the qualifying expenditure incurred within a period of 10 years be given to qualified companies investing in refinery activities on petroleum products
- The effective date of this proposal is unknown, pending the gazette of the relevant legislation

D. Real Property Gains Tax

1. Review of RPGT Rates

- RPGT rates on the gains from disposal of all chargeable assets (including shares in a real property company) be revised to:-
 - 15% for holding period up to 2 years;
 - 10% for holding period exceeding 2 years but within 5 years
- The existing RPGT exemption for holding period exceeding 5 years remains unchanged
- Effective for disposal from 1st January 2013

2. Inclusion of LLP as a Person Chargeable to RPGT

- The definition of “person” chargeable to RPGT be widened to include LLP registered under the LLP Act 2012
- Effective upon coming into operation of the LLP Act 2012, i.e. 9th February 2012



3. Notification of Non-Chargeability or Exemption from RPGT

- A new provision be introduced to allow a person to furnish a notification in the prescribed form to the IRB within 60 days from the date of disposal for cases where the disposal of the chargeable asset is not subject to RPGT or is exempted from RPGT
- The same notification shall also be served to the acquirer within 60 days from the date of disposal of the chargeable asset so that the 2% of the consideration will not be withheld and paid by the acquirer to the IRB
- Effective upon coming into operation of the Finance (No. 2) Act 2012

4. Penalty for Incorrect or Wrong Notification of Non-Chargeability or Exemption from RPGT

- A penalty of 10% of the RPGT payable to be imposed on the disposer in the event of incorrect or wrong notification furnished to the acquirer that resulted in failure by the acquirer to retain and remit the 2% of the consideration to the IRB
- Effective upon coming into operation of the Finance (No. 2) Act 2012

5. Review of Time Bar for Income Tax Assessment

- The time bar for the IRB to raise assessments or additional assessments be reduced from 6 years to 5 years. However, the time bar does not apply in cases of fraud or wilful default
- In tandem with the reduction of the time bar period, the period for a person to apply for relief by reason of an error or mistake, and claim for refund of overpayments of RPGT be reduced from 6 years to 5 years
- Effective 1st January 2014

6. Persons Jointly and Severally Liable to RPGT Payable by a Company

- The existing provision that includes manager, principal officer in Malaysia, director or secretary of a company to be jointly and severally liable to the RPGT payable by the company, be narrowed to only cover any director or any person in the management of the company having control directly or indirectly (either on his own or with his associates) more than 50% of the ordinary share capital of the company during the period which the RPGT is liable to be paid
- With the introduction of LLP as a person chargeable to RPGT, the compliance officer of a LLP will also be made jointly and severally liable to the RPGT payable by the LLP
- Effective upon coming into operation of the Finance (No. 2) Act 2012

7. Exemption to Individuals

- The current tax exemption given to individuals of RM10,000 or 10% of chargeable gain, whichever is higher, from disposal of a chargeable asset which is not part of a larger chargeable asset be extended to cover partial disposal of a chargeable asset
- Amount to be exempted shall be computed based on the following prescribed formula:-

$$\frac{A}{B} \times C$$

where A is part of the area of the chargeable asset disposed

B is the total area of the chargeable asset

C is RM10,000 or 10% of the chargeable gain whichever is greater

- Effective upon coming into operation of the Finance (No. 2) Act 2012

8. Exemption for Disposal of Chargeable Assets to BT

- One-off RPGT exemption be given to the disposer for the disposal of real properties or shares in a real property company to BT at the initial stage of the establishment of BT
- Effective for disposal from 1st January 2013

E. Petroleum Income Tax

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

- To mirror the changes made under the ITA 1967, the DGIR be empowered to impose penalty for incorrect returns under Section 52(2) of the PITA if a deduction on interest, royalty, services, technical advice, assistance, rent or other payments made under any agreement or arrangement for the use of moveable property or contract payment to a non-resident contractor which attract WT 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
- The above provision is not applicable to a company in which its income is fully exempted under the Promotion of Investments Act 1986 or Section 65C of the PITA
- Effective upon coming into operation of the Finance (No. 2) Act 2012

2. Review of Time Bar for Income Tax Assessment

- To mirror the changes made under the ITA 1967, the time bar period for raising an assessment or additional assessment by the DGIR be reduced from 6 years to 5 years
- The period for claim of repayment of tax by taxpayers be reduced from 6 years to 5 years



- The period for application to the DGIR for relief in respect of error or mistake made in a return or statement be reduced from 6 years to 5 years
- Effective 1st January 2014

3. Failure to Keep Records

- To mirror the changes made under the ITA 1967, any chargeable person under the PITA who fails to keep records shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than RM300 and not more than RM10,000 or to imprisonment for a term not exceeding 1 year, or both
- Effective upon coming into operation of the Finance (No. 2) Act 2012

4. Implementation of Transfer Pricing Regulations

- To mirror the changes made under the ITA 1967, a new Section 72A be introduced to the PITA to empower the DGIR to make adjustments to related party transactions in particular on the matter pertaining to the determination of arm's length price for goods and services and thin capitalisation for financial assistance
- With the introduction of the specific provision, the DGIR may substitute the price in a related party transaction if the transaction was not made at arm's length or disallow a portion of the borrowing costs (e.g. interest expense, finance charges, etc.) arising from financial assistance by related companies which is excessive in relation to the fixed capital (i.e. thin capitalisation)
- Related party transaction means a transaction between:-
 - companies one of which has control over the other; or
 - companies both of which are controlled by some other person
- Effective upon coming into operation of the Finance (No. 2) Act 2012

F. Stamp Duty

1. Duty of Keeping Records in Connection with the Issuance of Licence

- An authorised person under a licence shall be required to keep records in connection with the issue of the licence for a period of 7 years from the year in which the licence is issued
- The Collector or any person authorised by him in writing, may inspect the records at all reasonable times
- Any authorised person who fails to comply with the conditions of licence issued shall be liable to a fine between RM4,000 to RM10,000
- Effective upon coming into operation of the Finance (No. 2) Act 2012



2. Authorised Person to Compound Instrument

- Besides a banker, dealer or insurer who may be authorised to compound for the payment of stamp duty on unstamped cheques, contract notes or policies of insurance, the authority to compound be extended to:-
 - The Registrar of Companies to compound for the payment of duty on unstamped Articles of Association and Memorandum of Association lodged with the Registrar;
 - The principal officer of Tenaga Nasional Berhad ["TNB"] to compound for the payment of duty on unstamped TNB Electricity Supply Forms issued and supplied by TNB
- Effective upon coming into operation of the Finance (No. 2) Act 2012

3. Penalty for Failure to Frank Documents

- Any authorised person who is required by law to frank any instruments and fails to do so within 30 days from the date the instrument is executed shall be liable to a fine between RM200 and RM2,000
- Effective upon coming into operation of the Finance (No. 2) Act 2012

4. Extension of Instruments Chargeable to Stamp Duty

- The current stamp duty of RM10 chargeable to the security for securing the payment or repayment of money for the purchase of goods in accordance with *Syariah* principle of *Al Bai Bithamin Ajil* be extended to cover those relating to purchase of goods in accordance with any *Syariah* principles
- Effective upon coming into operation of the Finance (No. 2) Act 2012

5. Power of the Registrar of High Court to Cancel Memorandum of Sale

- The authorised persons be empowered to cancel the adhesive stamps under the Second Schedule of the Stamp Act 1949 be extended to the Registrar of High Court in respect of Memorandum of Sale
- Effective upon coming into operation of the Finance (No. 2) Act 2012

6. Exemption of Stamp Duty for BT

- A one-off stamp duty exemption be given to BT on instruments of transfer of businesses, assets and real properties acquired at the initial stage of establishment of BT
- Effective for instruments executed from 1st January 2013



7. Exemption of Stamp Duty for Issuance of Retail *Sukuk* and Retail Bonds

- Stamp duty exemption be given on instruments relating to the subscription of retail *sukuk* and retail bonds executed by individual investors
- Effective for instruments executed from 1st October 2012 to 31st December 2015

8. Extension and Relaxation on Stamp Duty Exemption on Instruments of Transfer and Loan Agreements for Acquisition of First Residential Property

- The stamp duty exemption of 50% given on instruments of transfer of ownership and loan agreements for sale and purchase agreements executed from 1st January 2011 to 31st December 2012 in respect of acquisition of first residential property by Malaysian citizen be extended until 31st December 2014
- The price threshold of residential property eligible for the 50% exemption be increased from RM350,000 to RM400,000
- Effective for sale and purchase agreements executed from 1st January 2013 to 31st December 2014

9. Exemption of Stamp Duty for Revival of Abandoned Housing Projects

- Stamp duty exemption be given to the following parties:-
 - Rescuing contractor / developer
 - Loan agreements to finance the revival of the abandoned housing project
 - Instruments of transfer of land or houses in the abandoned housing project
 - Original house purchaser in the abandoned housing project
 - Loan agreements for additional financing facilities
 - Instruments of transfer of the house
- The abandoned housing projects must be certified by the Ministry of Housing and Local Government
- Effective for sale and purchase agreements (*sic*) executed from 1st January 2013 to 31st December 2015

10. Exemption of Stamp Duty for Small Malaysian Service Providers to Merge into Larger Entities

- Please refer to C7 above

G. Others

1. Labuan International Commodity Trading Company

- Labuan International Commodity Trading Company ["LITC"] is currently given the following tax incentives if it fulfills certain criteria under the Global Incentive for Trading ["GIFT"] Programme:-
 - A flat corporate tax rate of 3% on chargeable income;
 - 100% tax exemption on director fees paid to non-Malaysian citizen director; and
 - 50% tax exemption on gross employment income of non-Malaysian citizen professional traders and others in a managerial capacity of LITC
- The tax incentives under the GIFT Programme be enhanced with the following features:-
 - 100% income tax exemption for the first 3 years of operations for liquefied natural gas trading companies; and
 - Commodity trading approved under the GIFT Programme be extended from the current petroleum-related products and selected commodities such as minerals and carbon credits to other commodities such as agriculture, refined raw materials, base minerals and chemicals

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