

## 2019 Budget Highlights

Subsequent to the release of the Finance Bill 2018, amendments to the Finance Bill 2018 have been made. In this respect, we provide you with the updates on the further amendments made to the Finance Bill 2018 besides those announced in the 2019 Budget Speech, Finance Bill 2018, Income Tax (Amendment) Bill 2018 and Labuan Business Activity Tax (Amendment) Bill 2018 as provided in our November (Special Edition No. 1 and No. 2) issues.

The updated key amendments are outlined broadly into the following 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. Stamp Duty
- F. Sales and Service Tax and Indirect Taxes
- G. Others

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**Legend**

DGIR	=	Director General of Inland Revenue
DGRMC	=	Director General of Royal Malaysian Customs
IRB	=	Inland Revenue Board
ITA	=	Investment Tax Allowance
ITA 1967	=	Income Tax Act 1967
LBATA 1990	=	Labuan Business Activity Tax Act 1990
LLP	=	Limited Liability Partnership
MIDA	=	Malaysian Investment Development Authority
MITI	=	Ministry of International Trade and Industries
PIA 1986	=	Promotion of Investments Act 1986
PS	=	Pioneer Status
PTPTN	=	<i>Perbadanan Tabung Pendidikan Tinggi Nasional</i>
R&D	=	Research and development
RA	=	Reinvestment Allowance
RPGT	=	Real Property Gains Tax
RPGT Act	=	Real Property Gains Tax Act 1976
SA 1949	=	Stamp Act 1949
SC	=	Securities Commission
SME	=	Small and Medium Enterprise
YA	=	Year of Assessment

## A. Income Tax – Changes Affecting Individuals

### 1. Increase in Tax Relief for Net Savings in the Account of *Skim Simpanan Pendidikan Nasional*

- Relief on net annual savings deposited into *Skim Simpanan Pendidikan Nasional* established under the *Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997* by a resident individual for his or her child be increased from RM6,000 to RM8,000
- Applicable to YA 2019 and YA 2020

### 2. Increase in Tax Relief for Contribution to an Approved Provident Fund or *Takaful* or Payment for Life Insurance Premiums

- Relief of up to RM4,000 be given to a resident individual on contribution made to an approved provident fund
- Relief of up to RM3,000 be given to a resident individual on contribution made to *Takaful* or payment for life insurance premiums
- Relief of up to RM4,000 be given to a resident individual on contribution made under any written law relating to widow, widower and orphan's pension or under any approved scheme within the meaning of any such law
- The combined limit for all the above reliefs is RM7,000. The same combined limit applies to taxpayers electing for joint assessment
- Relief of up to RM7,000 be given to a public servant under the pension scheme on contribution made to *Takaful* or payment for life insurance premiums provided that no claim is made on:-
  - contribution to an approved provident fund; or
  - contribution to widow, widower and orphan's pension or any approved scheme
- Effective YA 2019

### 3. Reduction of Penalty for Voluntary Disclosure

- Please refer to Part B28 below

### 4. Tax Deduction for Contribution Made to Social Enterprise

- Please refer to Part B29 below

## B. Income Tax – Changes Affecting Companies and Unincorporated Businesses

### 1. New Definition of R&D

- "R&D" be defined under Section 2 of the ITA 1967 as any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devices, products, produce, or processes, but does not include:-
  - quality control or routine testing of materials, devices or products;
  - research in the social sciences or the humanities;
  - routine data collection;
  - efficiency surveys or management studies;
  - market research or sales promotion;
  - routine modifications or changes to materials, devices, products, processes or production methods; or
  - cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods
- In line with the above proposal, the words "scientific research" and "research" contained in Sections 34(7), 34A and Schedule 3 Paragraphs 37B and 37D of the ITA 1967 be replaced by the words "R&D"

- Effective upon coming into operation of the Finance Act 2018 for amendments made to Sections 2, 34(7) and 34A of ITA 1967 and effective YA 2019 for amendments made to Schedule 3 Paragraphs 37B and 37D of the ITA 1967

## 2. Review of Special Classes of Income Paid to Non-resident

- The special classes of income under Section 4A(ii) of the ITA 1967 has been amended as follows:-
  - amounts paid in consideration of any advice given, or assistance or services rendered in connection with any scientific, industrial or commercial undertaking, venture, project or scheme
- Consequently, all services performed in Malaysia by non-resident will be subject to withholding tax under Section 109B of the ITA 1967 irrespective of whether the services are technical or non-technical in nature
- In line with the above, similar amendments shall be made under the provisions of Sections 15A and 109B of the ITA 1967
- Effective upon coming into operation of the Finance Act 2018

## 3. Expansion of Derivation of Business Income

- A new Section 12(3) of the ITA 1967 be introduced to provide that the income of a person from a business that is attributable to a place of business in Malaysia be deemed to be the gross income of that person derived from Malaysia from the business
- “A place of business” includes:-
  - a place of management;
  - a branch;
  - an office;
  - a factory;
  - a workshop;
  - a warehouse;
  - a building site, or a construction, an installation or an assembly project;
  - a farm or plantation; and
  - a mine, an oil or gas well, a quarry or any other place of extraction of natural resources
- A person shall be deemed to have a place of business in Malaysia if that person:-
  - carries on supervisory activities in connection with a building or work site, or a construction, an installation or an assembly project; or
  - has another person acting on his behalf who:-
    - habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification;
    - habitually maintains a stock of goods or merchandise in that place of business from which such person delivers goods or merchandise; or
    - regularly fills orders on his behalf
- Effective upon coming into operation of the Finance Act 2018

## 4. Deduction not Allowed for Payment made to Labuan Company

- A new Section 39(1)(r) of the ITA 1967 be introduced to provide that subject to any rules as may be prescribed by the Minister of Finance, any amount in respect of payment made by a resident person to any Labuan company is not allowed for tax deduction
- Effective 1<sup>st</sup> January 2019

## 5. Review of Tax Treatment on Unabsorbed Business Losses and Unutilised Capital Allowances

- Currently, the unabsorbed business losses is allowed to be carried forward indefinitely until fully absorbed
- It is proposed that:-
  - the tax losses ascertained in a year of assessment be allowed to be carried forward up to a maximum 7 consecutive years of assessment; and
  - any unabsorbed tax losses at the end of the 7 years of assessment shall be disregarded

- The earlier proposed to limit the carry forward of the unutilised capital allowances up to a maximum of 7 consecutive years of assessment has been removed
- Effective YA 2019

#### 6. Review of Income Tax Treatment on Group Relief

- Currently, the surrendering company under group relief:-
  - can be existing and newly commenced operation company
  - no limitation of the number of years adjusted loss can be surrendered
- It is proposed that:-
  - the surrendering company be restricted to a company which newly commenced operation; and
  - the adjusted loss surrendered be limited to 3 consecutive years of assessment
- The 3 consecutive years of assessment commences:-
  - immediately following the basis period the surrendering company first commences operation (i.e. second year of assessment) if the basis period for the first year of assessment consists of a period of 12 months; or
  - immediately following the second basis period the surrendering company first commences operation (i.e. third year of assessment) if the basis period for the first year of assessment does not made up of 12 months and the basis period for the second year of assessment consists of a period of 12 months
- As a transitional provision:-
  - a surrendering company which first commences its operation in the YA 2015 is allowed to surrender its adjusted loss for the YA 2019;
  - a surrendering company which first commences its operation in the YA 2016 is allowed to surrender its adjusted loss for the YA 2019 and YA 2020; and
  - a surrendering company which first commences its operation in the YA 2017 is allowed to surrender its adjusted loss for the YA 2019, YA 2020 and YA 2021
- Additional non-application provision be introduced to disallow the claimant company to claim group relief if the claimant company has unutilised ITA or unabsorbed pioneer losses upon the expiry of its ITA or PS incentives
- Effective YA 2019

#### 7. Review of Taxation of Reinsurance, Inward Reinsurance and Inward Re-Takaful Business

- Currently, under the provisions of the ITA 1967:-
  - the corporate income tax rate for reinsurance business is 24%
  - inward reinsurance and inward re-takaful is taxed at a preferential tax rate of 5%
  - reinsurance business and general business are considered as one source of business income whilst inward reinsurance is a separate source of business
- It is proposed that:-
  - the preferential tax rate for inward reinsurance and inward re-takaful be abolished and the tax rate for reinsurance business and re-takaful business be standardised at a rate of 8%
  - reinsurance or re-takaful be treated as a separate source of business from the general business
- Effective YA 2019

#### 8. Taxation of Offshore Insurance and Offshore Takaful Business

- Currently, the chargeable income tax for offshore insurance and offshore takaful business is taxed at a preferential tax rate of 5%
- It is proposed that the preferential tax rate of 5% for offshore insurance and offshore takaful be abolished
- Effective YA 2019

#### 9. Taxation of Foreign Fund Management Company

- Currently, the chargeable income of a foreign fund management company providing fund management services to foreign investors is taxed at a preferential rate of 10%

- It is proposed that preferential tax rate of 10% for foreign fund management company be abolished
- Effective YA 2021

#### **10. Review of Person Responsible to Act for LLP**

- Currently, the responsibility for doing all acts and things required to be done by or on behalf of a LLP under Section 75B of the ITA 1967 shall lie jointly or severally with:-
  - the compliance officer appointed from amongst the partners of the LLP; or
  - if no compliance officer is appointed, any one or all of the partners thereof
- It is proposed to extend the application of Section 75B of the ITA 1967 to allow a company secretary under the Companies Act 2016 who is a citizen or permanent resident of Malaysia and ordinarily resides in Malaysia to assume such responsibility
- Effective upon coming into operation of the Income Tax (Amendment) Act 2018

#### **11. Amendment to the Requirement for Furnishing of Tax Return**

- Currently, the tax return furnished must be based on accounts audited by a professional accountant together with a report made by that accountant
- It is proposed that an amendment be made to Section 77A(4) of the ITA 1967 where the tax return furnished must be based on financial statements made in accordance with the requirements of the Companies Act 2016
- With the above proposed amendment, tax return can be furnished based on unaudited financial statements if it is exempted by the Companies Act 2016
- Effective YA 2019

#### **12. Furnishing of Accounts by a Person**

- Currently, the DGIR may request for production of accounts audited by a professional accountant together with a report made by that accountant upon issuance of a notice under Section 82(5) of the ITA 1967
- It is proposed that the request of audited accounts be replaced with the financial statements made in accordance with the requirements of the Companies Act 2016 to cater for audit exemption of financial statements in certain cases
- Effective YA 2019

#### **13. Review of the Scope of Right of Appeal on Deemed Assessment**

- Currently, a person who is aggrieved by the provisional assessment raised by the DGIR under Section 90(3) of the ITA 1967 for non-filing of tax return is given the right to file an appeal to the Special Commissioners of Income Tax via submission of Form Q to the DGIR within thirty (30) days from the issuance date of the said assessment under Section 99(1) of the ITA 1967
- A new Section 99(1A) of the ITA 1967 be introduced to require company to file the tax return together with the Form Q within thirty (30) days from the issuance date of the said assessment
- Effective YA 2019

#### **14. Penalty for Breach of Confidence**

- Currently, the penalty for breach of confidence is only applicable to any classified person who communicate classified material to another person or allow another person to have access to classified material
- The scope of the breach of confidence be expanded to include:-
  - any person receiving the classified material, knowing or having reasonable ground to believe at the time when he receives it that such classified material is communicated or disclosed to him in contravention of Section 138 of the ITA 1967; and
  - uses, produces or discloses the classified material to any other person
- Effective upon coming into operation of the Income Tax (Amendment) Act 2018

**15. Review of Double Taxation Arrangements**

- A new Section 132(1A) of the ITA 1967 be introduced to include the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting or any other arrangement which modify any present arrangement between the Government of Malaysia with the government of any territory outside Malaysia
- Effective upon coming into operation of the Income Tax (Amendment) Act 2018

**16. Review of Mutual Administrative Assistance Arrangement**

- A new Section 132B(1A) of the ITA 1967 be introduced to clarify that any arrangement between the Government of Malaysia with the government of any territory outside Malaysia in respect of mutual administrative assistance shall not prevent the disclosure of classified information under Section 138 of the ITA 1967 to a duly authorised servant or agent of the government with which the arrangements have been made
- Effective upon coming into operation of the Income Tax (Amendment) Act 2018

**17. International Obligations**

- A new Section 132C of the ITA 1967 on international obligations be introduced to provide a new avenue for any bilateral or multilateral arrangement made by the Government of Malaysia with a view to give effect to Malaysia's international obligations in relation to tax under the ITA 1967 or any other written law
- Where any arrangements have effect by virtue of this section, Section 138 of the ITA 1967 shall not prevent the disclosure to a duly authorised servant or agent of the government with which the arrangements have been made of such information as is required to be disclosed under the arrangements
- Effective upon coming into operation of the Income Tax (Amendment) Act 2018.

**18. Expansion of Definition of Control for the Purpose of Transfer Pricing**

- The meaning of "control" for the purpose of transfer pricing provisions under Section 140A of the ITA 1967 be referred to persons one of whom owns shares of the other person, or a third person who owns shares of both persons, where the percentage of the share capital held in either situation is 20% or more and:-
  - the business operations of that person depends on the proprietary rights, such as patents, non-patented technological know-how, trademarks or copyrights, provided by the other person or a third person;
  - the business activities, such as purchases, sales, receipt of services, provision of services, of that person are specified by the other person, and the prices and other conditions relating to the supply are influenced by such other person or a third person; or
  - where one or more of the directors or members of the board of directors of a person are appointed by the other person or a third person.
- Effective 1<sup>st</sup> January 2019

**19. Implementation of Earning Stripping Rules to Restrict Deduction of Interest**

- A new Section 140C of the ITA 1967 be introduced to provide for the restriction on deductibility of interest in line with the proposal made in the 2018 Budget on Earning Stripping Rules
- This new section provides that a person is not allowed to make a deduction from gross income from the sources that consist of a business in respect of any interest expense in connection with or on any financial assistance in a controlled transaction granted directly or indirectly to such person which is in excess of the maximum amount of interest as determined under the rules made under the ITA 1967
- Effective 1<sup>st</sup> January 2019

**20. Reduction in Tax Rate for SME and LLP**

- Tax rate be reduced from 18% to 17% on chargeable income up to RM500,000 for the following entities:-
  - a SME [i.e. a company resident and incorporated in Malaysia with paid-up capital of not more than RM2.5 million and none of its related companies within the group (related by way of shareholding of more than 50%) is having paid-up capital exceeding RM2.5 million]
  - a LLP resident in Malaysia with total contribution of capital (whether in cash or in kind) of not more than RM2.5 million and it is not related to any company [by way of contribution of capital (whether in cash or in kind) or shareholding of more than 50%] having paid-up capital exceeding RM2.5 million
- Effective YA 2019

**21. Review of Tax Exemption of Interest Received by a Unit Trust**

- Currently, tax exemption is granted on interest income derived by a unit trust from Malaysia and paid or credited by any bank licensed under the Financial Services Act 2013 or an Islamic bank licensed under the Islamic Financial Services Act 2013 or any development financial institution regulated under the Development Financial Institutions Act 2002 through a wholesale fund which is a money market fund that complies with the criteria as set out in the relevant guidelines of the SC
- It is proposed that the exemption be ceased to be given
- Effective 1<sup>st</sup> January 2019

**22. Extension of Deduction for Expenditure on Issuance of *Sukuk***

- The existing deduction for expenditure on issuance of *sukuk* based on *Ijarah* and *Wakalah* principles be extended for another 2 years
- Effective up to YA 2020

**23. Extension of Double Deduction for Additional Costs Incurred on Issuance of Retail Bonds and Retail *Sukuk***

- Double deduction for additional expenses incurred on issuance of retail bonds and *sukuk* under the principles of *Mudharabah*, *Musarakah*, *Istisna'*, *Murabahah* and *Bai' Bithaman Ajil* based on *tawarruq* be extended for another 2 years
- The deductible additional expenses are:-
  - professional fee relating to due diligence, drafting and preparation of prospectus;
  - printing cost of prospectus;
  - advertisement cost of prospectus;
  - SC prospectus registration fee;
  - Bursa Malaysia processing fee and initial listing fee;
  - Bursa Malaysia new issue crediting fee; and
  - primary distribution fee
- Effective up to YA 2020

**24. New Tax Incentives for Industry4WRD**

- Deduction for expenses incurred on Industry4.0 ["I4.0"] Readiness Assessment
  - Companies undertaking I4.0 Readiness Assessment be given deduction on expenses incurred of up to RM27,000 paid to the Malaysian Productivity Corporation
  - Effective YA 2019 to YA 2021
- Double deduction for expenses incurred in implementing Industry4WRD Vendor Development Programme
  - Anchor companies developing local vendors in I4.0 be given double deduction on operating expenditure in respect of costs of product development, upgrading capabilities of vendors and training of skills of vendors, as verified by MITI
  - The qualifying operating expenditure is restricted to RM1 million per year and eligible to be claimed for 3 consecutive years of assessment

- Effective for memorandum of understanding signed between anchor companies and MITI from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2021
- Double deduction for scholarships
  - Double deduction be given to companies providing scholarships to students pursuing studies at technical and vocational levels, diplomas and degrees in the fields of engineering and technology
  - The students receiving scholarship must fulfill the following criteria:-
    - a Malaysian and resident in Malaysia;
    - receives full-time course of study;
    - has no means on his own; and
    - whose parents or guardian have total monthly income not exceeding RM8,000 per month
  - Effective YA 2019 to YA 2021
- Deduction for expenses incurred by companies participating in the National Dual Training System Training Scheme
  - Deduction be given on expenses incurred by companies participating in the National Dual Training System Training Scheme for the I4.0 programme approved by the Ministry of Human Resources
  - Effective for programmes implemented from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2019
- Deduction for expenses incurred in respect of development of new I4.0 technology and engineering courses
  - Private higher education institutions be given deduction on expenses incurred for development of new I4.0 technology and engineering courses verified by the Ministry of Education
  - Effective YA 2019 to YA 2021
- Double deduction for expenditure incurred in upgrading and developing employees' technical skills
  - Companies participating in the Readiness Assessment Intervention Plan be given double deduction on expenditure incurred in upgrading and developing its employees' technical skills in I4.0 technology for training programmes approved by MIDA
  - Effective for participation from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2019
- Double deduction for expenditure incurred in conducting internship programme
  - Double deduction be given on expenditure incurred by a company in conducting internship programme approved by the Ministry of Human Resources for undergraduate students in fields of engineering and technology
  - Effective YA 2019 to YA 2021
- Deduction for contribution of equipment and machinery
  - Deduction be given to companies contributing equipment and machinery to Skills Development Centres, Polytechnics or Vocational Colleges certified by the Ministry of Human Resources or the Ministry of Education
  - Effective for contributions made from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2021

## **25. Double Deduction for Remuneration Paid to Senior Citizens and Ex-Convicts**

- Double deduction be given to employers on the remuneration paid to their employees who are senior citizens above 60 years of age or ex-convicts
- Eligibility criteria:-
  - must be full-time employee; and
  - total monthly remuneration of the senior citizens or ex-convicts does not exceed RM4,000 for each employee
- Effective YA 2019 to YA 2020

## **26. Tax Deduction for Employers on Loan Amount Paid to PTPTN on Behalf of Their Employees**

- Income tax deduction be given to employers who have made repayments of PTPTN loans on behalf of their full-time employees, provided that the employees shall not be required to make any payment to the employers in return for the repayment of the PTPTN loans
- Effective for payment made between 1<sup>st</sup> January 2019 and 31<sup>st</sup> December 2019

## 27. Extension of Period for Application on Venture Capital Tax Incentives

- The current tax incentives given to the following for applications received by the SC until 31<sup>st</sup> December 2018 be extended for another year until 31<sup>st</sup> December 2019:-
  - a venture capital management corporation ["VCMC"];
  - a venture capital company ["VCC"] investing in a venture company ["VC"]; and
  - tax deduction for a company or an individual with business income investing in a VC or VCC funds created by VCMC

## 28. Reduction of Penalty for Voluntary Disclosure

- Following the budget announcement to offer to taxpayers reduced penalty rates for voluntary disclosure in reporting their income under the Special Program for Voluntary Disclosure, the IRB has on the same day issued a media release and the Operational Guidelines No. 1/2018 on the subject matter
- The reduction of penalty at specific rate is offered to all categories of taxpayers who opt for voluntary disclosure in respect of the following cases:-
  - income not previously declared / under declared, expenses over claimed / not allowed and reliefs/deductions/rebates over claimed;
  - gains on disposal of assets (real properties and shares in real property companies); and
  - stamping of instruments not previously stamped
- The reduction of penalty rates under this Special Program for Voluntary Disclosure are summarised below:-

Categories of Voluntary Disclosure	Period of Voluntary Disclosure and Rates of Penalty		Penalty Rates After the Special Program
	03.11.2018 - 31.03.2019	01.04.2019 - 30.06.2019	
Taxpayers who are not registered with IRB	10% (Payment to be made on or before 01.04.2019)	15% (Payment to be made on or before 01.07.2019)	80% to 300%
Taxpayers who are registered with IRB but have not submitted the Income Tax Return Form ["ITRF"] / Petroleum Return Form ["PRF"] / Real Property Gains Tax Return Form ["RPGTRF"] for any year of assessment			
Taxpayers who have submitted the ITRF / PRF / RPGTRF but have not reported the correct income / gains on disposal of assets for any year of assessment			80% to 100%
Persons who present an instrument for stamping exceeding 6 months from the stamping period (30 days from the date of the instrument's execution)	10% or a minimum of RM50	15% or a minimum of RM100	20%

- This Special Program also applies to the transfer pricing issues. However, the penalty rate is in accordance with the existing Transfer Pricing Audit Framework
- Voluntary disclosure can be made from 3<sup>rd</sup> November 2018 until 30<sup>th</sup> June 2019

**29. Tax Deduction for Contribution Made to Social Enterprise**

- It is proposed that contributions made to a social enterprise by a person (donor) be allowed for deduction against the aggregate income of the donor
- The amount to be deducted is restricted to:-
  - in the case of a person other than a company, 7% of the aggregate income; or
  - in the case of a company, 10% of the aggregate income
- A social enterprise is defined as an organisation that has a social cause as its primary mission, such as poverty reduction or preserving the environment, and uses a private sector business model to sustain itself
- Effective date is not known

**30. Tax Deduction on Donation to National Schools, Public Institutions of Higher Learning and Other Schools and Institutions of Higher Learning**

- Deduction will be given for donation made to national schools and public institutions of higher learning's maintenance fund under the Ministry of Education ["MOE"] for the purposes of upgrading infrastructure
- For donation made to other schools and institutions of higher learning registered with MOE, deduction will be evaluated on a case-on-case basis
- Effective 1<sup>st</sup> January 2019

**C. Investment Incentives****1. Review of Tax Treatment on Unutilised RA and IASS**

- RA is eligible to be claimed by manufacturing companies and companies undertaking selected agricultural activities for the purpose of expansion, modernisation or diversification
- A company is entitled to RA for 15 consecutive years of assessment commencing from the year of assessment in which the first RA claim is made
- Special RA has also been introduced to encourage reinvestment by existing companies of which the qualifying period of the RA has expired and applicable to qualifying capital expenditure incurred from YA 2016 to YA 2018
- Investment allowance for service sector ["IASS"] was introduced specifically to intensify investments under the approved service projects scheme for communications, transportation and utilities sectors
- Currently, the unutilised RA and IASS can be carried forward indefinitely until fully set-off against future statutory income
- It is proposed that:-
  - the unutilised RA and IASS be allowed to be carried forward for a maximum of 7 consecutive years of assessment upon expiry of qualifying period of RA and IASS
  - for companies whose qualifying period of RA and IASS expired in YA 2018 or preceding years of assessment, any unutilised RA and IASS are allowed to be carried forward until YA 2025. Any remaining unutilised amount after the end of YA 2025 will be disregarded
- Effective YA 2019

**2. Redefinition of "R&D" under PIA 1986**

- In line with the new definition under Section 2 of the ITA 1967, the meaning of "R&D" under the PIA 1986 has been re-defined as any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devices, products, produce, or processes, but does not include:-
  - quality control or routine testing of materials, devices or products;
  - research in the social sciences or the humanities;
  - routine data collection;
  - efficiency surveys or management studies;
  - market research or sales promotion;

- routine modifications or changes to materials, devices, products, processes or production methods; or
- cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods
- Effective upon coming into operation of the Finance Act 2018

### 3. New Conditions for Grant of Pioneer Status to a Contract R&D Company

- It is proposed that a contract R&D company needs to comply with the following new conditions:-
  - the company has an adequate number of full time employees; and
  - it has incurred adequate amount of annual operating expenditure in Malaysia for an activity relating to R&D.
- However, a special provision provides that:-
  - a contract R&D company which has been granted a PS on or before 16<sup>th</sup> October 2017 will be required to comply with the above new conditions from 1<sup>st</sup> July 2021; and
  - a contract R&D company which has been granted a PS after 16<sup>th</sup> October 2017 will be required to comply with the above new conditions from 1<sup>st</sup> January 2019
- Effective 1<sup>st</sup> January 2019

### 4. Exclusion of Income Derived from an Intellectual Property Right for PS Incentive

- A new Section 21E(2A) of the PIA 1986 be introduced to exclude any income from royalty and other income derived from an intellectual property right as consideration for the commercial exploitation of the right from the income of a PS company
- A new Section 21E(2B) of the PIA 1986 be introduced to provide that the income derived from the above intellectual property right shall be subject to tax under the ITA 1967
- “Intellectual property right” is defined as a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable
- Effective 1<sup>st</sup> January 2019

### 5. Review of Tax Treatment on Unabsorbed Pioneer Losses and ITA

- Currently, the unabsorbed pioneer losses and ITA are allowed to be carried forward indefinitely until fully absorbed even after the expiry of the pioneer period or the period of ITA has ended
- It is proposed that:-
  - the unabsorbed pioneer losses be allowed to be carried forward up to a maximum of 7 consecutive years of assessment after the end of the pioneer period
  - for companies whose pioneer period ended in YA 2018 or preceding years of assessment, any unabsorbed pioneer losses are allowed to be carried forward until YA 2025. Any remaining unabsorbed amount after the end of YA 2025 will be disregarded
  - amendments be made to Section 25 of the PIA 1986 which deals with the treatment of pioneer losses mentioned above
- The earlier proposal to limit the carry forward of unabsorbed ITA up to a maximum of 7 consecutive years of assessment after the end of the ITA period has been removed
- Effective YA 2019

### 6. Amendment of Withdrawal of ITA in Relation to Disposed Asset

- Currently, the ITA for a capital expenditure shall be deemed to have not been given to the company if the asset is disposed of within 2 years from the date of acquisition
- It is proposed that the 2 years disposal period be extended to 5 years for the withdrawal of the ITA
- Effective YA 2019

## 7. Tax Incentive for Principal Hub

- Currently, Principal Hub is given income tax exemption according to 3-tier preferential tax rates of 0%, 5% or 10%
- It is now proposed that a concessionary 10% income tax rate be charged on the overall statutory income related to Principal Hub activities for a period of 5 years
- Effective for application approved by MIDA from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2020

## 8. New Tax Incentives for Environmental-Friendly Investors

- The following tax incentives be given to companies which produce environmental-friendly plastics based on bio-resin and biopolymer:-
  - PS with income tax exemption of 70% of statutory income for a period of 5 years; or
  - ITA of 60% on the qualifying expenditure incurred for a period of 5 years to be set off against 70% of statutory income for each year of assessment
- Effective date of this proposal is unknown, pending the gazette of the relevant legislations

## 9. Tax Incentives for Green Technology

- Currently, ITA of 100% of qualifying capital expenditure on green assets (9 assets) is given for set off against 70% of statutory income for each year of assessment from YA 2013 (date on which the first qualifying capital expenditure incurred is not earlier than 25<sup>th</sup> October 2013) until YA 2020 to encourage companies to develop of green technology
- This incentive is applicable for companies that acquire any of the 9 qualifying green technology assets listed under the MyHIJAU Directory and approved by the MOF. The 9 qualifying green technology assets are:-
  - Energy efficient transformer (up to 33kV)
  - Solar air-conditioning equipment/system
  - Thermal energy storage equipment/system
  - Variable air volume (VAV) equipment/system
  - Variable-refrigerant-volume (VRV) equipment/system
  - Electric motorcycle/scooter
  - Electric bus
  - Electric MPV/truck
  - Electric vehicle (EV) charging equipment/system
- It is now proposed that the 9 qualifying green technology assets be expanded to 40 assets. The types of additional assets are currently unknown
- Effective for application received by MIDA until 31<sup>st</sup> December 2020

## D. RPGT

### 1. Review of RPGT Rates

- It is proposed that the following amendments be made to the RPGT rates:-

Disposal	RPGT Rates					
	Companies		Individuals (Non-Citizens and Non-Permanent Residents)		Others (such as Citizens and Permanent Residents)	
	Existing	Proposed	Existing	Proposed	Existing	Proposed
After 5 years from the date of acquisition	5%	10%	5%	10%	NIL	5% / Exemption*

\*RPGT exemption is given to Malaysian citizens for the disposal of residential homes at the price of RM200,000 and below

- Effective for disposal from 1<sup>st</sup> January 2019

## 2. Determination of Acquisition Price

- Currently, the cut-off date for the determination of acquisition price for a chargeable asset acquired by the disposer is 1<sup>st</sup> January 1970
- It is proposed that the cut-off date be changed to 1<sup>st</sup> January 2000
- Effective 1<sup>st</sup> January 2019

## 3. Transactions in Which Disposal Price is Deemed Equal to Acquisition Price

- Currently, the disposal price is deemed equal to acquisition price for transfer of chargeable assets between spouses, parent and child, or grandparent and grandchild within 5 years from the date of acquisition
- It is proposed that the restriction on transfer of chargeable assets within 5 years from the date of acquisition be removed
- Effective 1<sup>st</sup> January 2019

## E. Stamp Duty

### 1. Expansion of the Definition of Banker

- The definition of “banker” be expanded to include a development financial institution prescribed under the Development Financial Institutions Act 2002
- Effective upon coming into operation of the Finance Act 2018

### 2. Review of the Definition of SME

- Currently, for the purpose of stamp duty, “SME” means:-
  - Manufacturing, manufacturing related services and agro-based industries sectors
    - an enterprise with full-time employees not exceeding 150 people or annual turnover not exceeding RM25 million
  - Services, primary agriculture, and information and communication technology sectors
    - an enterprise with full-time employees not exceeding 50 people or annual turnover not exceeding RM5 million
- It is proposed that the above definition be replaced by the following:-
  - Manufacturing activities
    - an enterprise with full-time employees not exceeding 200 people or sales turnover not exceeding RM50 million
  - Services and other sectors
    - an enterprise with full-time employees not exceeding 75 people or sales turnover not exceeding RM20 million
- Effective upon coming into operation of the Finance Act 2018

### 3. Review of Relief from Stamp Duty in the case of Reconstructions or Amalgamations of Companies

- Currently, relief from stamp duty in the case of reconstructions or amalgamations of companies granted under Section 15 of the SA 1949 shall be withdrawn if:-
  - it is found that any declaration or other evidence furnished in support of the claim of the said relief from stamp duty is untrue in any material particular or that the conditions specified under Section 15(1) of the SA 1949 are not fulfilled in the reconstruction or amalgamation as actually carried out;
  - the existing company ceased to be the beneficial owner of the shares of the transferee company which were issued to the existing company as consideration for the acquisition of the undertaking within a period of 2 years; or
  - the transferee company ceased to be the beneficial owner of the shares of the existing company acquired by the transferee company within a period of 2 years
- The transferor and transferee companies involved in the acquisition of undertaking/shares concerned are not required to notify the Collector (i.e. the IRB) on the occurrence of the events mentioned above

- It is proposed that the minimum holding period of shares of the transferee company or the existing company mentioned above (as the case may be) be increased from 2 years to 3 years
- It is also proposed that each company which was a party to the instrument shall notify the Collector of the circumstances of the occurrence of the events mentioned above within 30 days from the date of the occurrence
- Effective upon coming into operation of the Finance Act 2018

#### 4. Review of Relief from Stamp Duty in the case of Transfer of Property Between Associated Companies

- The following requirements be added for the purpose of relief from stamp duty in the case of transfer of property between associated companies under Section 15A of the SA 1949:-
  - Eligibility
    - The transfer of the property of the associated companies is to achieve greater efficiency in operation
    - The transferee company is incorporated in Malaysia
  - Conditions of applicability [Section 15A(4)]
    - The relief from stamp duty will not be applicable if:-
      - the transferor company and transferee company ceased to be associated within the meaning and reasons of Section 15A of the SA 1949 within a period of 3 years from the date of conveyance or transfer of the property
      - the transferee company disposes of the property that it has acquired within 3 years from the date of conveyance or transfer of the property
    - Each company which was a party to the instrument shall notify the Collector in writing of the circumstances of the occurrence of the events provided under Section 15A(4) of the SA 1949 within 30 days from the date of the occurrence
  - If it is found that any declaration or other evidence furnished in support of the claim of the said relief from stamp duty is untrue:-
    - the relief from stamp duty granted shall be revoked
    - the appropriate stamp duty shall be chargeable together with interest at the rate of 6% per annum (computed from the date on which the stamp duty was ought to be stamped with the proper amount of stamp duty)
  - Where a claim for relief from stamp duty is made, the Collector may require the submission of a statutory declaration made by an advocate and solicitor or an advocate of the High Court (in the case of Sabah and Sarawak) and of such further evidence
- Effective upon coming into operation of the Finance Act 2018

#### 5. Stamp Duty on Constitution of a Company

- Stamp duty of RM200 be charged on constitution of a company
- The above replaces articles of association and memorandum of association of a company which are no longer applicable
- Effective upon coming into operation of the Finance Act 2018

#### 6. Review of Stamp Duty on Transfer of Real Property

- Stamp duty on instruments of transfer of real property on amount exceeding RM1 million be increased from 3% to 4%
- Effective 1<sup>st</sup> January 2019

#### 7. Stamp Duty Exemption on Insurance Policies and *Takaful* Certificates under *Perlindungan Tenang* Products

- Stamp duty exemption be given on insurance policies and *Takaful* certificates issued for *Perlindungan Tenang* Products with an annual premium or contribution not exceeding RM100
- Effective for policies or certificates issued from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2020

## 8. Extension of Stamp Duty Exemption for the Purchase of First Residential Property by Malaysian Citizens

- First residential property priced up to RM300,000
  - Stamp duty exemption be given on instrument of transfer and loan agreement for the purchase of first residential property with a price not exceeding RM300,000
  - Effective for sales and purchase agreements executed from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2020
- First residential property priced exceeding RM300,000 up to RM1 million
  - Stamp duty exemption be given on instrument of transfer for the purchase of first residential property priced between RM300,001 to RM1 million from any housing developer
  - Effective for sales and purchase agreements executed from 1<sup>st</sup> January 2019 to 30<sup>th</sup> June 2019
- First residential property priced exceeding RM300,000 up to RM500,000
  - For acquisition of first residential property exceeding RM300,000 up to RM500,000, stamp duty exemption be given on instrument of transfer and loan agreement but limited to the first RM300,000 of the value of property with the remaining value subject to the prevailing rate of stamp duty
  - Effective for sales and purchase agreements executed from 1<sup>st</sup> July 2019 to 31<sup>st</sup> December 2020

## F. Sales and Service Tax and Indirect Taxes

### 1. Treatment of Service Tax on Imported Services

- It is proposed that service tax on prescribed taxable services imported into Malaysia be imposed in phases, as follows:-
  - for services imported by businesses ["B2B"] – service tax be imposed on importation of services effective 1<sup>st</sup> January 2019
  - for services imported by consumers ["B2C"] – service tax be imposed on importation of services effective 1<sup>st</sup> January 2020
- "Imported taxable service" is defined as any taxable service acquired by any person in Malaysia from any person who is outside Malaysia
- It is further proposed that the service tax on imported taxable service shall be due at the time when the payment is made or invoice is received for the service (whichever is the earlier) and shall be accounted for by the following persons:-
  - B2B transactions - be accounted for by the recipients of the services
  - B2C (such as importation of digital products and services) - be charged or accounted for by the foreign suppliers who are required to be registered under the Service Tax Act 2018

### 2. Duty to Keep Records

- A new subsection 24(1)(aa) and a new subsection 24(5A) be introduced to require every taxable person and any person other than a taxable person who, in carrying on his business, acquires any imported taxable service to keep all records relating to imported taxable service for a period of 7 years
- Effective 1<sup>st</sup> January 2019

### 3. Furnishing of Service Tax Declaration and Payment of Service Tax by Any Person Other Than a Taxable Person

- It is proposed that any person other than a taxable person who, in carrying on his business, acquires any imported taxable service shall furnish a prescribed declaration and pay the service tax to the DGRMC not later than the last day of the month following the end of the month in which the payment for the service has been made by him or the invoice is received by him, whichever is the earlier
- Any person other than a taxable person who contravenes the above or furnishes an incorrect declaration commits an offence and shall, on conviction, be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 3 years or to both
- Effective 1<sup>st</sup> January 2019

#### 4. Late Payment of Service Tax by Any Person Other Than a Taxable Person

- It is proposed that the following penalty rates for late payment be imposed on a person, other than a taxable person, who fails to make payment for any service tax due within the stipulated time frame in which no prosecution is instituted:-

Period of Default from Payment Due Date	Rate of Penalty
≤ 30 days	10% on unpaid service tax
> 30 days but ≤ 60 days	25% on unpaid service tax
> 60 days	40% on unpaid service tax

- In the event that the DGRMC instituted legal actions for recovery of the service tax due, such person shall, on conviction, be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 3 years or to both
- Effective 1<sup>st</sup> January 2019

#### 5. Power to Assess on Any Person Other Than a Taxable Person

- A new Section 27(1)(b) of the Service Tax Act 2018 be introduced to empower the DGRMC to raise an assessment based on his best judgement on a person (other than a taxable person) who:-
  - fails to furnish a declaration; or
  - furnishes an incomplete or incorrect declaration
- Notwithstanding any appeal, the service tax and penalty payable by a person other than a taxable person shall be paid to the DGRMC except for any amounts in relation to an assessment which has been withdrawn or reduced by the DGRMC
- Effective 1<sup>st</sup> January 2019

#### 6. Power to Assess on Any Person Including a Taxable Person

- Section 27(9) of the Sales Tax Act 2018 be amended to empower the DGRMC to raise an assessment based on his best judgement on any person (regardless of whether the person is a taxable person or not) who, among others:-
  - fails to furnish a sales tax return; or
  - furnishes an incomplete or incorrect sales tax return
  - fails to register for sales tax
  - has obtained refund of sales tax which ought not to have been paid to him
  - fails to account for sales tax on taxable goods sold by him, exported, lost or destroyed
  - has been inadequately assessed to sales tax by the DGRMC previously
- Notwithstanding any appeal, the sales tax and penalty payable by such person shall be paid to the DGRMC except for any amounts in relation to an assessment which has been withdrawn or reduced by the DGRMC
- Effective 1<sup>st</sup> January 2019

#### 7. Introduction of Credit System for Sales Tax Deduction

- A credit system for sales tax deduction on taxable goods which are raw materials, components or packaging materials purchased by a registered manufacturer and used solely in the manufacturing of taxable goods be introduced to overcome the problems faced by small manufacturers who purchase products from importers instead of other registered manufacturers
- Effective 1<sup>st</sup> January 2019

#### 8. Improperly Obtaining Deduction of Sales Tax

- A new Section 88A of the Sales Tax Act 2018 be introduced to impose the following fine and penalty on any person who causes or attempts to cause the deduction of sales tax for himself or any other person of any amount in excess of the amount properly so deductible for him or that other person commits an offence and shall, on conviction, be liable:-

- to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 3 years or to both; and
- to a penalty of 2 times the amount deducted in excess of the amount properly so deductible
- Effective 1<sup>st</sup> January 2019

#### **9. Imposition of Excise Duty on Sugar Sweetened Beverages**

- It is proposed that imposition of excise duty at the rate of RM0.40 per litre be charged on sugar sweetened beverages based on the sugar content as follows:-
  - fruit juices and vegetable juices whether or not containing added sugar or other sweetening matter under the tariff heading of 20.09, which contains sugar exceeding 12 grams per 100 milliliters; and
  - beverages including carbonated drink containing added sugar or other sweetening matter or flavoured and other non-alcoholic beverages under the tariff heading of 22.02, which contains sugar exceeding 5 grams per 100 milliliters
- Effective 1<sup>st</sup> April 2019

#### **10. Reduction of Import Duty Rate for Bicycles**

- It is proposed that the import duty rate be reduced from 25% to 15% for bicycles falling under the tariff code 8712.00.30 00 (i.e. other bicycles)
- Effective 1<sup>st</sup> January 2019

#### **11. Exemption from Service Tax in respect of Specific Business-to-Business Transactions**

- It is proposed that exemption from service tax be granted to registered service tax entities in respect of specific business-to-business transactions
- Effective 1<sup>st</sup> January 2019

#### **12. Increased Rate of Duties for Gaming Industry**

- It is proposed that the duties on gaming industry be increased as follows:-
  - Casino duties be increased up to 35% on gross collection
  - Gaming machine duties be increased from 20% to 30%

### **G. Others**

#### **1. Review on Tax Treatment for Labuan Entity**

- Labuan Business Activity
  - “Labuan business activity” under Section 2(1) of the LBATA 1990 has been redefined as a Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan, excluding any activity which is an offence under any written law
  - With this amendment, a Labuan entity is permitted to perform transactions with resident of Malaysia in Ringgit Malaysia
- Substantial Business Activity
  - A new section 2B(1)(b) of LBATA 1990 be introduced to provide that for the purpose of the Labuan business activity, the Labuan entity must have:-
    - an adequate number of full time employees in Labuan; and
    - an adequate amount of annual operating expenditure in Labuan
- Tax at 3% on Chargeable Profits
  - New Section 4(3) and Section 4(4) of LBATA 1990 be introduced to provide that the chargeable profits (i.e. net profits as reflected in the audited accounts) of a Labuan entity which is liable to tax at 3% for a year of assessment shall exclude any income derived from royalty and other income derived from an intellectual property right subject to tax under ITA 1967
  - “Intellectual property” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable

- Abolishment of Election to be Charged to Tax of RM20,000
  - The election for a Labuan entity to be charged to tax of RM20,000 under LBATA 1990 be abolished
- Absence of a Basis Period
  - Where a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity does not have a basis period for a year of assessment, the DGIR may direct the basis period for that year of assessment and subsequent years of assessment
- International Obligations
  - Section 21(1) of LBATA 1990 be amended to empower the Minister of Finance to make regulations for the purpose of implementing or facilitating the operation of an arrangement under the new Section 132C of the ITA 1967 on international obligations
  - Please refer to Part B17 above
- Effective 1<sup>st</sup> January 2019

## 2. Imposition of Departure Levy

- It is proposed that the following departure levy be imposed on all outbound travellers via air routes:-

Destinations	Departure Levy
ASEAN countries	RM20
Other than ASEAN countries	RM40

- Effective 1<sup>st</sup> June 2019

## 3. EPF Contributions for Senior Citizens

- It is proposed that the EPF contributions by employers for the senior citizen employees who are 60 years old and above be reduced from 6% to 4%
- It is also proposed that the EPF contributions by employees who are 60 years old and above be reduced to 0%
- Effective 1<sup>st</sup> January 2019

## 4. Minimum Wages

- Further to the Minimum Wages Order 2018 released on 16<sup>th</sup> October 2018, it is proposed that the minimum wages be revised from RM1,050 per month to RM1,100 per month
- Effective 1<sup>st</sup> January 2019

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