

2017 Budget Highlights

It's hot ! Fresh from the oven !

With the release of Finance Bill 2016, we would like to update you further on the changes made for 2017 Budget via our Tax Flash – October 2016 (Special Edition No. 2).

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. Petroleum Income Tax
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Legend

DGIR	=	Director General of Inland Revenue
DGRMC	=	Director General of Royal Malaysian Customs
GST	=	Goods and Services Tax
GST Act 2014	=	Goods and Services Tax Act 2014
ITA 1967	=	Income Tax Act 1967
LBATA 1990	=	Labuan Business Activity Tax Act 1990
LLP	=	Limited Liability Partnership
MITI	=	Ministry of International Trade and Industry
PITA 1967	=	Petroleum (Income Tax) Act 1967
RMCD	=	Royal Malaysian Customs Department
RPGT	=	Real Property Gains Tax
RPGT Act 1976	=	Real Property Gains Tax Act 1976
SC	=	Securities Commission
SCIT	=	Special Commissioners of Income Tax
SCPIT	=	Special Commissioners of Petroleum Income Tax
SME	=	Small and Medium Enterprise
WT	=	Withholding Tax
YA	=	Year of Assessment

A. Income Tax – Changes Affecting Individuals

1. Relief for Lifestyle

- Relief for purchase of reading materials, computer and sports equipment be combined into a new relief known as “Lifestyle Relief” with a limit of up to RM2,500
- The scope of this relief be expanded to include:-
 - purchase of printed daily newspaper;
 - purchase of smartphone or tablet;
 - internet subscription; and
 - gymnasium membership fee
- Effective YA 2017

2. Relief for Fees Paid to Child Care Centres and Kindergartens

- Relief of up to RM1,000 be given to either parent of a child on fees paid to child care centres and kindergartens
- Eligibility criteria:-
 - child aged 6 years and below; and
 - child care centres registered with the Director General of Social Welfare under the Child Care Centre Act 1984 or kindergartens registered under the Education Act 1996
- Effective YA 2017

3. Relief for Purchase of Breastfeeding Equipment

- Relief of up to RM1,000 be given to female taxpayers with children aged 2 years and below
- Relief is claimable once in every 2 years
- Effective YA 2017

4. Review of Employment Income Subject to Tax

- Output tax paid under the GST Act 2014 which is borne by the employer shall form part of the gross income of the employee from employment
- Effective YA 2015

5. Review of Scope of Deduction for Contribution in Money

- Please refer to B9 below

6. Review of Relief for Taxpayer Whose Spouse has Foreign Source Income

- No spouse relief is claimable for taxpayer whose spouse (not a disabled person) derives income from sources outside Malaysia exceeding RM4,000
- Effective YA 2017

7. Deemed Notification of Non-Chargeability and Avenues for Appeal

- Please refer to B12 below

8. Rights to Apply for Relief other than in respect of Error or Mistake

- Please refer to B17 below

9. Deductions in relation to Exempt Dividend

- Please refer to B20 below

10. Review of Exemption of Income Received by Approved Institution/Organisation

- Please refer to B21 below

B. Income Tax – Changes Affecting Companies and Unincorporated Businesses

1. Reduction in Tax Rate for SME and LLP

- Tax rate be reduced from 19% to 18% 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
- Effective YA 2017

2. Reduction in Tax Rates Based on Percentage of Increase in Chargeable Income for Companies, LLP, Trust Bodies, etc

- Currently, the tax rate of 24% is applicable to the following entities:-
 - a company with paid-up capital of more than RM2.5 million;
 - a LLP with total contribution of capital more than RM2.5 million;
 - a company with paid-up capital of up to RM2.5 million on the chargeable income exceeding RM500,000;
 - a LLP with total contribution of capital up to RM2.5 million on the chargeable income exceeding RM500,000;
 - a trust body;
 - an executor of an estate of an individual who was domiciled outside Malaysia at the time of his death; and
 - a receiver appointed by the court
- It is proposed that the tax rate for the above entities be reduced based on the percentage of increase in chargeable income as compared to the immediate preceding year of assessment
- Depending on the percentage of increase in chargeable income, the reduced tax rates applicable to the incremental chargeable income are as shown below:-

Percentage of Increase in Chargeable Income as Compared to the Immediate Preceding Year of Assessment (%)	Percentage Point Reduction	Reduced Tax Rate Applicable to the Incremental Chargeable Income (%)
Less than 5.00	NIL	24
5.00 – 9.99	1	23
10.00 – 14.99	2	22
15.00 – 19.99	3	21
20.00 and above	4	20

- Applicable to YA 2017 and YA 2018

3. Increase in the Limit of Tax Deduction for Sponsoring Arts, Cultural and Heritage Activities

- Tax deduction for sponsoring arts, cultural and heritage activities, approved by the Ministry of Tourism and Culture, be increased to RM700,000 per year where the maximum limit allowed for sponsoring foreign arts, cultural and heritage activities be increased to RM300,000 per year
- Effective YA 2017

4. Extension of Double Deduction on Expenses Incurred by Anchor Companies under VDP

- Double deduction currently given on expenses incurred by anchor companies under the Vendor Development Programme ["VDP"] to develop local vendors be extended for another 4 years
- Qualifying expenses:-
 - Cost of product development, research and development, innovation and quality improvement;
 - Cost of obtaining ISO/Kaizen/5S certifications, evaluation programme and business process reengineering exercises for the purpose of increasing vendor capabilities; and
 - Cost of vendor skills training, capacity building, lean management systems and financial management systems
- Conditions:-
 - Anchor companies are required to sign a Memorandum of Understanding ["MOU"] with the MITI on VDP;
 - Qualifying expenses must be certified by MITI prior to the claim for deduction;
 - Qualifying expenses eligible for deduction is restricted to RM300,000 per year; and
 - Double deduction is given for 3 years of assessment
- Effective for MOUs signed by anchor companies with MITI between 1st January 2017 to 31st December 2020

5. Extension and Expansion of Scope of Double Deduction on Expenses Incurred on SIP

- Double deduction currently given on qualifying expenses incurred by companies that participate in the Structured Internship Programme ["SIP"] implemented by the Ministry of Higher Education in collaboration with Talent Corporation Malaysia Berhad on the development of specific knowledge or skills be extended for another 3 years
- In addition, the scope of double deduction for SIP be expanded to SIP for students pursuing full-time vocational courses (Malaysian Skills Certificate Level 3). Currently, this incentive is only applicable to degree and diploma courses as well as the equivalent vocational courses (Malaysian Skills Certificate Level 4 and 5)
- Effective until YA 2019

6. Redefinition of "Public Entertainer"

- The meaning of "public entertainer" has been re-defined to include:-
 - a compere, model, circus performer, lecturer, speaker, sportsman, an artiste or individual exercising any profession, vocation or employment of a similar nature; or
 - an individual who uses his intellectual, artistic, musical, personal or physical skill or character in, carrying out any activity in connection with any purpose through live, print, electronic, satellite, cable, fibre optic or other medium, for film or tape, or for television or radio broadcast, as the case may be
- With the above amendments, payments made to non-resident persons falling under the above categories of public entertainer be subject to WT under Section 109A of the ITA 1967
- Effective upon coming into operation of the Finance Act 2016

7. Redefinition of "Royalty"

- The definition of "royalty" has been widened to include the following:-
 - the use of, or the right to use in respect of software or other like property or rights;
 - the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:-
 - satellite; or
 - cable, fibre optic or similar technology
 - the use of, or the right to use, visual images or sounds, or both, in connection with television broadcasting or radio broadcasting, transmitted by:-
 - satellite; or
 - cable, fibre optic or similar technology

- the use of, or the right to use, some or all of the part of the radiofrequency spectrum specified in a relevant licence; and
- a total or partial forbearance in respect of the use of, or the granting of the right to use, any of the above
- With the above amendments, payments made to non-residents in respect of the above be subject to WT under Section 109 of the ITA 1967
- Effective upon coming into operation of the Finance Act 2016

8. Review of Derivation of Special Classes of Income and in Certain Cases

- The scope of derivation of special classes of income and in certain cases as gross income derived from Malaysia has been extended to include the following irrespective of whether the services were performed in Malaysia or outside Malaysia:-
 - i. amounts paid in consideration of services rendered by a person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;
 - ii. amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project of scheme
- Consequently, all the above payments made to non-residents will be subject to WT under Section 109B of the ITA 1967, including those relating to services performed outside Malaysia which were previously exempted from WT
- Effective upon coming into operation of the Finance Act 2016

9. Review of Scope of Deduction for Contribution in Money

- Deduction against aggregate income given to a person in respect of any gift of money made to the Government, a State Government, a local authority or an institution or organisation approved by the DGIR under Section 44(6) of the ITA 1967 be extended to include such contribution made to a fund administered and augmented by an institution or organisation, and approved by the DGIR
- Section 44(11B) of the ITA 1967 be amended to restrict the scope of contribution for gift of money made to any sports activity approved by the Minister of Finance as deductible against the aggregate income. Contribution in kind no longer qualify for deduction
- Effective YA 2017

10. Takaful Business

- With the repeal of the Takaful Act 1984 and the enactment of the Islamic Financial Services Act 2013, certain definitions and terminologies under Sections 60AA, 110C and Part XII, Schedule 1 of the ITA 1967 shall be amended/replaced

11. Redefinition of “Unit Trust”

- The definition of “unit trust” under Section 61A(2) of the ITA 1967 be amended to mean a unit trust which is approved by the SC as Real Estate Investment Trust [“REIT”] or Property Trust Fund [“PTF”] and listed on Bursa Malaysia
- With this amendment, the exemption from tax in respect of total income of the unit trust (i.e. REIT or PTF) where 90% or more of the total income is distributed to the unit holder in the basis period of a year of assessment will only be granted to REIT or PTF listed on Bursa Malaysia
- Effective YA 2017

12. Deemed Notification of Non-Chargeability and Avenues for Appeal

- It is proposed that where a person has furnished a tax return for a year of assessment in accordance with Section 77(1) or 77A(1) of the ITA 1967 and there is no chargeable income for that year of assessment and that person:-
 - is aggrieved by the public ruling made under Section 138A of the ITA 1967 or any practice of the DGIR generally prevailing at the time the return is furnished, that return shall be deemed to be a notification made by the DGIR on the day the return is furnished and that person shall be deemed to have been notified by the DGIR on the said day
 - alleges that:-
 - i. there is an error or mistake made by him in that return, he may make an application in writing to the DGIR for an amendment to be made in respect of that return. The application has to be made within 6 months from the date the return is furnished
 - ii. the amount that have been computed in the return is inaccurate by reason of:-
 - (aa) any exemption, relief, remission, allowance or deduction granted for that year of assessment under the ITA 1967 or any other written law published in the Gazette after the year of assessment in which the return is furnished
 - (bb) the approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the return is furnished; or
 - (cc) a deduction not allowed in respect of any payments from which WT is applicable but not due to be paid on the day the return is furnished
 The application for relief shall be made:-
 - in respect of (aa) and (bb) above, within 5 years after the end of the year the exemption, relief, remission, allowance or deduction is published in the Gazette or the approval is granted, whichever is the later; or
 - in respect of (cc) above, within 1 year after the end of the year the WT is paid
- No appeal shall be allowed by the DGIR if the alleged error or mistake was in fact made on the basis of or in accordance with the public ruling made under Section 138A of the ITA 1967 or any practice of the DGIR generally prevailing at the time the return is made
- The application for error, mistake or relief shall be made as nearly as may be in the same form as a notice of appeal under Section 99 of the ITA 1967 (i.e. Form Q)
- The following provisions shall be applied in the event that the applicant aggrieved by the decision made by the DGIR on the application made:-
 - the applicant may within 6 months after being informed of the decision, request the DGIR in writing to forward the application to the SCIT;
 - the DGIR shall forward the application to the SCIT within 3 months from the receipt of such request; and
 - the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly
- Effective 1st January 2017

13. Furnishing of Estimate or Revised Estimate of Tax Payable Electronically by LLP, Trust Body or Co-operative Society

- Besides a company, the estimate or revised estimate of tax payable of a limited liability partnership, trust body or co-operative society shall also be furnished on an electronic medium or by way of electronic transmission
- Effective YA 2019

14. Penalty for Failure to Furnish Country-by-Country Report

- A new Section 112A of the ITA 1967 be introduced to provide that where a person fails to furnish a country-by-country report in accordance with the relevant rules made under Section 154(1)(c) of the ITA 1967 shall, on conviction, be liable to a fine of RM20,000 to RM100,000 or to imprisonment for a term not exceeding 6 months or to both

- Upon conviction of the offence, the court may make further order that the person who fails to comply the abovementioned rules must within 30 days or other period as the court deems fit to comply with the relevant provision of the rules under which the offence has been committed
- Effective upon coming into operation of the Finance Act 2016

15. Penalty for Failure to Furnish Correct Returns, Information or Reports

- A new Section 113A of the ITA 1967 be introduced to provide that where a person makes an incorrect return, information return or report by omitting the information required to be provided, or gives any incorrect information in relation to any information to be provided in accordance with the relevant rules made under Section 154(1)(c) of the ITA 1967 shall, on conviction, be liable to a fine of RM20,000 to RM100,000 or to imprisonment for a term not exceeding 6 months or to both
- Effective upon coming into operation of the Finance Act 2016

16. Penalty for Failure to Comply with Rules Made by the Minister on Mutual Administrative Assistance

- A new Section 119B of the ITA 1967 be introduced to provide that where a person fails to comply with the rules on mutual administrative assistance as required under Section 154(1)(c) of the ITA 1967 shall, on conviction, be liable to a fine of RM20,000 to RM100,000 or to imprisonment for a term not exceeding 6 months or to both
- Upon conviction of the offence, the court may make further order that the person who fails to comply the abovementioned rules must within 30 days or other period as the court deems fit to comply with the relevant provisions of the rules under which the offence has been committed
- Effective upon coming into operation of the Finance Act 2016

17. Rights to Apply for Relief other than in respect of Error or Mistake

- Currently, if a taxpayer who has paid tax for a year of assessment alleges that an assessment relating to that year of assessment is excessive due to error or mistake in the return made by him and the return is furnished by him to the DGIR prior to the assessment becoming final and conclusive, he may within 5 years after the end of that year of assessment, apply to the DGIR for relief via Form CP.15C
- It is proposed that the right to apply for such relief be expanded to cover the following circumstances:-
 - i. any exemption, relief, remission, allowance or deduction granted for that year of assessment under the ITA 1967 or any other written law that is published in the Gazette after the year of assessment in which the return is furnished;
 - ii. the approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the return is furnished; or
 - iii. a deduction not allowed in respect of any payments from which WT is applicable but not due to be paid on the day the return is furnished
- The application for relief shall be made:-
 - in respect of (i) and (ii) above, within 5 years after the end of the year the exemption, relief, remission, allowance or deduction is published in the Gazette or the approval is granted, whichever is the later; or
 - in respect of (iii) above, within 1 year after the end of the year the WT is paid
- Effective 1st January 2017

18. Fees to be Charged for Advance Pricing Arrangement

- The Minister of Finance may make rules to prescribe fees to be charged in relation to application made by taxpayers for advance pricing arrangement
- Effective upon coming into operation of the Finance Act 2016

19. Review of Claim of IBA on Certain Buildings

- A person who owns the following buildings and used for the purpose of his business as an industrial building, is entitled to claim industrial building allowance ["IBA"] in respect of any expenditure incurred in relation to the whole building provided that part of the building let out is not more than one-tenth of the floor area of the whole building:-
 - Licensed private hospital, maternity home and nursing home
 - Building used for research
 - Building used for warehouse
 - Building used for approved service project
 - Building used for hotel
 - Airport
 - Motor racing circuit
 - Building used for living accommodation for employees employed by the person carrying on a business of manufacturing, hotel or tourism business or approved service project
 - Building used for provision of child care facilities for individuals employed by the person for his business
 - Building used for a school or an educational institution approved by the Minister of Education or Minister of Higher Education or any relevant authority
 - Building used for industrial, technical or vocational training approved by the Minister of Finance
- If part of the building which is used for letting of property is more than one-tenth of the floor area of the whole building, such part will not be treated as industrial building, and thus not eligible for IBA
- Effective YA 2016

20. Deductions in relation to Exempt Dividend

- Paragraph 12B, Schedule 6 of the ITA 1967 be amended whereby:-
 - In the case where a person deriving exempt dividend and non-exempt income has made donation to approved institutions/organisations, the exempt dividend shall be included as part of the aggregate income in ascertaining the amount of approved donation deductible against the aggregate income
 - The amount of deductible approved donation be apportioned to the exempt dividend and non-exempt income respectively
 - The portion of approved donation attributable to the exempt dividend shall not be deductible against the aggregate income in arriving at the chargeable income
- Effective YA 2017

21. Review of Exemption of Income Received by Approved Institution/Organisation

- Exemption of tax is extended to income received by a fund approved by the DGIR for the purposes of Section 44(6) of the ITA 1967
- Exemption of tax be restricted to any contribution received by a religious institution or organisation not operated or conducted primarily for profit purposes and established in Malaysia exclusively for the purpose of religious worship or the advancement of religion
- Effective YA 2017

22. Withdrawal of Tax Exemption of Income Derived by Non-Resident from Trading in Malaysia through Consignees

- Tax exemption of income derived by non-resident from trading in Malaysia through consignees in any of the commodity (rubber, copra, pepper, tin, tin ore, gambier, sago flour or cloves) produced outside Malaysia be withdrawn
- Effective YA 2017

23. Withdrawal of Tax Exemption of Interest Income of Non-Resident Derived from Malaysia on Approved Loan

- Tax exemption of interest income of non-resident derived from Malaysia on an approved loan be withdrawn
- Effective YA 2017

24. Review of Income Tax Exemption on Interest Paid or Credited to a Non-Resident Company

- Tax exemption given in respect of interest paid or credited to a company not resident in Malaysia, other than such interest accruing to a place of business in Malaysia of such company in respect of:-
 - Securities issued by the Government; or
 - *Sukuk* or debenture issued in Ringgit Malaysia (other than convertible loan stock), approved or authorised by, or lodged with, the SC
 shall not include interest paid or credited to a company within the same group
- Effective YA 2017

25. Review of Tax Exemption of Income from *Sukuk*

- Tax exemption given in respect of interest paid or credited to any person in respect of *sukuk* originating from Malaysia (other than convertible loan stock), issued in foreign currency and approved or authorised by, or lodged with the SC, or approved by the Labuan Financial Services Authority shall not include the following:-
 - interest paid or credited to a company in the same group of company;
 - interest paid or credited to:-
 - a bank licensed under the Financial Services Act 2013;
 - an Islamic bank licensed under the Islamic Financial Services Act 2013; or
 - a development financial institution prescribed under the Development Financial Institutions Act 2002
- Effective YA 2017

26. Review of Tax Exemption of Interest Received by a Unit Trust

- Income derived by a unit trust in respect of interest derived from Malaysia and paid or credited by any bank or financial institution licensed under the Islamic 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 shall be exempted from income tax with the exception of a unit trust which is a money market fund, the exemption shall only apply to a wholesale fund which complies with the relevant guidelines of the SC
- Effective YA 2017

C. Investment Incentives

1. Extension of Income Tax and Stamp Duty Exemptions for Islamic Banking and *Takaful* Operator

- Currently, the following exemptions are given to Islamic banks and *Takaful* operators for a period of 10 years:-
 - 100% income tax exemption on income received by Islamic banks licensed under the Islamic Financial Services Act 2013 and financial institutions licensed under the Financial Services Act 2013 operating Islamic banking business transacted in foreign currencies including transactions with Malaysian residents;
 - 100% income tax exemption on income received by *Takaful* companies and *Takaful* units licensed under the Islamic Financial Services Act 2013 and Financial Services Act 2013 operating *takaful* business transacted in foreign currencies including transactions with Malaysian residents; and
 - 100% stamp duty exemption on instruments executed relating to Islamic banking and *takaful* activities transacted in foreign currencies
- The above income tax exemption be extended for another 4 years until YA 2020
- The above stamp duty exemption be extended for another 4 years until 31st December 2020

2. Extension of Tax Incentives for New 4 and 5-Star Hotels in Peninsular Malaysia, Sabah and Sarawak

- The following tax incentives currently given to investors undertaking new investments in 4 and 5-star hotels be extended for another 2 years until 31st December 2018:-
 - Peninsular Malaysia
 - Pioneer Status ["PS"] with income tax exemption of 70% of statutory income for a period of 5 years; or
 - Investment Tax Allowance ["ITA"] of 60% on the qualifying expenditure incurred within a period of 5 years to be set off against 70% of statutory income for each year of assessment
 - Sabah and Sarawak
 - PS with income tax exemption of 100% of statutory income for a period of 5 years; or
 - ITA of 100% on the qualifying expenditure incurred within a period of 5 years to be set off against 100% of statutory income for each year of assessment
- Effective for applications received by Malaysian Investment Development Authority on or before 31st December 2018

3. Expansion of the Scope of *Halal* Products Eligible for Incentives for *Halal* Industry Players

- The following tax incentives are currently given to *Halal* Industry Players operating in Halal Parks:-
 - 100% income tax exemption on qualifying capital expenditure for a period of 10 years; or income tax exemption on increase of export sales for a period of 5 years;
 - import duty exemption on raw materials used for the development and production of promoted *halal* products; and
 - double deduction on expenses incurred in obtaining international quality standards certification such as HACCP, GMP Codex Alimentarius (food standard guidelines of FAO and WHO), Sanitation Standard Operating Procedures and regulations for compliance for export markets such Food and Traceability from farm to fork
- The qualifying *halal* products are as follows:-
 - specialty processed food;
 - pharmaceuticals, cosmetics and personal care;
 - livestock and meat products; and
 - *halal* ingredients
- The qualifying *halal* products be expanded to include the following:-
 - production of nutraceutical; and
 - probiotic products
- Effective for application received by Halal Industry Development Corporation from 22nd October 2016

D. Real Property Gains Tax

1. Adjustment to Incidental Cost and Excluded Expenditure of a Chargeable Asset Arising from Input Tax Adjustment Made under the GST Act 2014

- Where a disposer has incurred expenditure for the purposes of the acquisition or the disposal of an asset and the input tax on the asset is subject to any adjustment made under the GST Act 2014, the expenditure of that asset shall be adjusted in the year of assessment in which the disposal is made or the year of assessment in which the period of adjustment relating to that asset as provided under the GST Act 2014 ends, whichever is the earlier
- If the adjustment made under the GST Act 2014 results in:-
 - an additional amount, such amount shall be deemed to be part of the expenditure incurred; or
 - a reduced amount, the expenditure incurred shall be reduced by such an amount
- Effective YA 2015

2. Disposal of a Chargeable Asset by way of Gift

- Paragraph 12(2), Schedule 2 of the RPGT Act 1976 be amended to provide that the donor shall be deemed to have received no gain and suffered no loss on the disposal where the donor disposes an asset by way of a gift to a recipient, provided that the donor is a citizen
- The donor and recipient referred to in the above are husband and wife, parent and child or grandparent and grandchild
- Effective 1st January 2017

E. Petroleum Income Tax

1. Widening the Scope of Notification of Non-Chargeability

- To mirror the changes made under the ITA 1967, Section 41A(1) of the PITA 1967 be amended to provide that the DGIR may issue a notification in writing in cases where:-
 - no assessment is made on the person by reason of exemption granted under the PITA 1967; or
 - assessment has been made in respect of a person but that person has no statutory income from a business source
 and provide a computation with regard to it
- The notification be deemed as a notice of assessment for purposes of making an appeal to the SCPIT
- Effective 1st January 2017

2. Deemed Notification of Non-Chargeability and Avenues for Appeal

- To mirror the changes made under the ITA 1967, a new Section 41A(1A) of the PITA 1967 be introduced to provide that where a person has furnished a tax return for a year of assessment in accordance with Section 30(1) of the PITA 1967 and there is no chargeable income for that year of assessment and that person:-
 - is aggrieved by any practice of the DGIR generally prevailing at the time the return is furnished, that return shall be deemed to be a notification made by the DGIR on the day the return is furnished and that person shall be deemed to have been notified by the DGIR on the said day
 - alleges that:-
 - i. there is an error or mistake made by him in that return, he may make an application in writing to the DGIR for an amendment to be made in respect of that return. The application has to be made within 6 months from the date the return is furnished
 - ii. the amount that have been computed in the return is inaccurate by reason of:-
 - (aa) any exemption, relief, remission, allowance or deduction granted for that year of assessment under the PITA 1967 or any other written law published in the Gazette after the year of assessment in which the return is furnished
 - (bb) the approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the return is furnished; or
 - (cc) a deduction not allowed in respect of any payments from which WT is applicable but not due to be paid on the day the return is furnished
 The application for relief shall be made:-
 - in respect of (aa) and (bb) above, within 5 years after the end of the year the exemption, relief, remission, allowance or deduction is published in the Gazette or the approval is granted, whichever is the later; or
 - in respect of (cc) above, within 1 year after the end of the year the WT is paid
- No appeal shall be allowed by the DGIR if the alleged error or mistake was in fact made on the basis of or in accordance with any practice of the DGIR generally prevailing at the time the return is made
- The application for error, mistake or relief shall be made as nearly as may be in the same form as a notice of appeal under Section 43 of the PITA 1967 (i.e. Form Q)

- The following provisions shall be applied in the event that the applicant aggrieved by the decision made by the DGIR on the application made:-
 - the applicant may within 6 months after being informed of the decision, request the DGIR in writing to forward the application to the SCPIT;
 - the DGIR shall forward the application to the SCPIT within 3 months from the receipt of such request; and
 - the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly
- Effective 1st January 2017

F. Stamp Duty

1. Extension of Stamp Duty Exemption for the Purchase of First Residential Home

- Stamp duty exemption be given on instrument of transfer of ownership and loan agreement for acquisition of first residential property not exceeding RM300,000
- For acquisition of first residential property exceeding RM300,000 up to RM500,000, stamp duty exemption be given on instrument of transfer of ownership and loan agreement but limited to 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 1st January 2017 to 31st December 2018

2. Review of Stamp Duty on Transfer of Real Estate

- Stamp duty on instruments of transfer of real estate on amount exceeding RM1 million be increased from 3% to 4%
- Effective 1st January 2018

G. Goods and Services Tax

1. GST Relief for Disabled Persons

- It is proposed that GST relief be extended to more disabled persons including non Private Charitable Entities members i.e. valid OKU card holders on the purchase of approved equipment from the suppliers designated by the Social Welfare Department and be expanded to include the following equipment:-
 - Callipers;
 - Artificial prosthetic and orthotic;
 - Motorised wheelchair;
 - Home care / hospital bed;
 - Braille display;
 - Vibrating alarm indicators;
 - Flashing / signalling device;
 - Magnifier;
 - Special lenses;
 - Optical character recognition (OCR) equipment;
 - Medical cushion;
 - Ripple mattress;
 - Walking frame;
 - Crutches and rubber ends;
 - Vehicle wheelchair lift and restraints;
 - Portable ramps;
 - Hand controls for driving;
 - Shower chair;
 - Commode chair; and
 - Teletypewriter
- Effective 1st January 2017

2. Review of GST Treatment in Free Zone

- To streamline the GST treatment in free zone, namely Free Commercial Zone ["FCZ"] and Free Industrial Zone ["FIZ"], it is proposed that the GST treatment be determined as follows:-
 - GST is not chargeable on the supply and removal of goods made within and between FCZ;
 - GST shall not be due and payable on the goods imported into the FIZ;
 - GST is not chargeable on the supply and removal of goods made within and between FIZ;
 - GST is not chargeable on the supply and removal of goods made within FCZ and FIZ, vice versa;
 - GST is suspended on the removal of goods from free zone to Designated Areas ["DA"] i.e. Langkawi, Labuan and Tioman, vice versa; and
 - GST is suspended on the removal of goods from free zone to an approved warehouse under the Warehousing Scheme, vice versa.
- The above shall not apply to the following supplies:-
 - goods as prescribed under the Free Zones (Exemption of Goods and Services) Order 1998;
 - goods and services as prescribed under Goods and Services Tax (Imposition of Tax for Supplies in respect of Designated Areas) Order 2014; and
 - any other goods prescribed by the Minister of Finance
- Effective 1st January 2017

3. Warehousing Scheme

- To streamline the GST treatment between imported goods and goods supplied from Principal Customs Area as well as to facilitate the GST administration under the Warehousing Scheme, it is proposed that no GST shall be charged on the goods supplied from Licensed Manufacturing Warehouse, Excise Warehouse and FIZ that are deposited into and supplied within and between warehouse under the Warehousing Scheme
- It is further proposed that GST will be due and payable upon removal of goods from a warehouse to all intents as if the removal were importation into Malaysia unless the goods are removed for export, for deposit to another warehouse, to a free zone or to a DA with the approval from RMCD officer
- Warehouse in this context means customs warehouse, licensed warehouse, duty free shop and inland clearance depot
- Effective 1st January 2017

4. Amendment of Time of Supply Rule for Imported Services

- It is proposed that an amendment be made to Section 13(4)(b) of the GST Act 2014 that the time of supply for imported services be determined based on the earlier of the following:-
 - date when any payment is made by the recipient; or
 - date when any invoice is received from the overseas supplier or supplier who carries on business outside Malaysia
- Effective 1st January 2017

5. Review of Liability to be Registered

- It is proposed that the following supplies be excluded in determining the threshold for GST registration:-
 - any supply of capital assets made in the course of cessation of business
 - any supply made within or between free zone
- Effective 1st January 2017

6. Issuance of Tax Invoice by GST Registrant and Non-GST Registrant

- It is proposed that no invoice showing an amount which purports to be a tax shall be issued by any GST registrant (previously any person):-
 - on any supply of goods or services which is not a taxable supply; or
 - on any zero-rated supply

- It is proposed that the following shall not be issued by any non-GST registrant, except for agents defined under Sections 65(4) and 65(5) of the GST Act 2014:-
 - invoice showing an amount which purports to be a tax or an amount inclusive of tax; or
 - invoice which purports to be a tax invoice with or without tax
- Any person who contravenes the above commits an offence and shall, on conviction, be liable to a fine not exceeding RM30,000 or to imprisonment for a term not exceeding 2 years or to both and a penalty of 2 times the amount of tax
- Effective 1st January 2017

7. Furnishing Information on Supply Made and Payment Received by GST Registrants

- A new Section 34A be introduced to require any registered person to provide information on all supply made and payment received by him to DGRMC using a device and in the manner as prescribed by the Minister of Finance
- DGRMC may approve any person:-
 - to install, configure and integrate the prescribed device;
 - to provide the services for the support and maintenance of the prescribed device as scheduled or upon being notified of the failure of the prescribed device to function or operate in normal condition; or
 - to carry out an inspection in the case of any sign of interference, destruction, damage, manipulation of data stored or obstruction of the lawful use of the prescribed device
- The registered person shall:-
 - at any time allow any GST officer or any person approved by DGRMC to install the device and to configure, integrate or inspect the device installed at his business premises;
 - ensure that the device, after being supplied and installed, is not moved, manipulated, tampered or interfered with;
 - ensure that the use of the device is not obstructed by any person or any other device; and
 - immediately notify DGRMC of any failure of functionality and operation of the prescribed device in normal condition
- Any person who fails to comply with, hinder or prevent the operation of this section in any respect shall, on conviction, be liable to a fine not exceeding RM30,000 or to imprisonment for a term not exceeding 2 years or to both
- Effective 1st January 2017

8. Confidentiality of Information Contained in the Prescribed Device

- A new Section 34B be introduced to require any person who is authorised to access to any information on the prescribed device to observe the confidentiality of the information contained therein and shall not give, publish or otherwise disclose to any other person such information unless the disclosure is required or authorised:-
 - under the GST Act 2014;
 - by any court; or
 - for the performance of his duties or the exercise of his powers under the GST Act 2014
- Any person who contravenes this section commits an offence shall, on conviction, be liable to a fine not exceeding RM30,000 or to imprisonment for a term not exceeding 2 years or to both
- Effective 1st January 2017

9. Review of Penalty for Late Payment of GST

- It is proposed that late payment penalty on any GST due in which no prosecution is instituted be increased as follows:-

Period from the Due Date of Furnishing GST Return	Old Penalty Rate	New Penalty Rate
Within 30 days	5%	10%
31 to 60 days	15%	25%
61 to 90 days	25%	40%

- It is further proposed that the new penalty rates be imposed on the unpaid GST instead of the whole GST payable for a taxable period
- Effective 1st January 2017

10. Penalties for Late Payment of GST

- A new Section 42(4) of the GST Act 2014 be introduced to impose the following late payment penalties on a person, other than a taxable person, who fails to make payment for any GST due within the stipulated time frame in which no prosecution is instituted:-

Period from the Due Date of Furnishing GST Return	Penalty Rate
Within 30 days	10%
31 to 60 days	25%
61 to 90 days	40%

- It is further proposed that the above penalty rates be imposed on the unpaid GST payment
- No prosecution be taken against the offender who has settled the GST payable and the above late payment penalty within 90 days from the due date of furnishing GST return
- The above penalties shall not be applicable where an instalment payment scheme has been granted by the DGRMC to settle the outstanding GST and the penalty due
- Effective 1st January 2017

11. Widening the Scope of Restriction of Travel to Facilitate Recovery of Tax

- It is proposed that an amendment be made to Section 49(1)(b) of the GST Act 2014 to expand the scope of travel restriction to cover any person who has not paid the penalty due and payable to RMCD under Sections 41 (refer G8 above) and 42 (refer G9 above) of the GST Act 2014
- Effective 1st January 2017

12. Repayment of GST Due to Revocation of GST Relief Granted

- Any person who has been granted relief shall account for GST on those supplies which have been relieved from GST at the time when the relief granted is revoked
- Effective 1st January 2017

13. Refund of GST on Payment Made in respect of Goods being Relieved from GST

- Any person who has been granted relief shall be entitled to GST refund in respect of the GST paid on which the relief relates, provided that the approval for refund of the GST paid has been granted by the Minister of Finance
- Effective 1st January 2017

14. Refund of Amount Overpaid, Erroneously Paid, Remitted or being the Subject of Relief

- The proposed amendment made to Section 57(1) of the GST Act 2014 allows any person:-
 - i. who has overpaid or erroneously paid any tax, surcharge, penalty, fee or other money
 - ii. who has been granted relief for GST but has made payment of tax to which the relief relates and the approval for refund of the tax paid has been granted by the Minister of Finance
 - iii. who has been granted remission of tax, penalty or surcharge but has paid any of the aforesaid payments
 to make an application to DGRMC for refund of the above amount paid
- The application must be made in a prescribed form within 6 years from the time:-
 - such overpayment or erroneous payment occurred in respect of (i) above
 - such entitlement of the relief or remission occurred in respect of (ii) and (iii) above
- Effective 1st January 2017

15. Removal of Goods from DA or Free Zone to another DA, Free Zone or Warehouse through Malaysia

- It is proposed that GST shall be due and payable upon all goods, including any goods under any lease agreement:-
 - removed from a DA to another DA through Malaysia
 - removed from a free zone to another free zone through Malaysia or from a free zone to Malaysia
- Notwithstanding the above provisions, GST shall be suspended on any goods:-
 - removed from a DA through Malaysia to another DA, to a free zone or to a warehouse under Section 70 of the GST Act 2014
 - removed from a free zone through Malaysia to another free zone, to a DA or to a warehouse under Section 70 of the GST Act 2014
 unless the Minister of Finance otherwise directs in an order under Section 160 or 163 of the GST Act 2014
- A new Section 162B of the GST Act 2014 be introduced to provide that GST be charged by a taxable person whose principal place of business is located in a free zone on any taxable supply of goods or services made within Malaysia
- Effective 1st January 2017

16. GST Treatment on Supply of Land to Government or Local Authority

- A new Paragraph 8, Second Schedule of the GST Act 2014 be introduced to provide that any supply of land by a developer or an owner of the land to the following persons shall be treated as neither a supply of goods nor a supply of services, regardless of whether the supply is for a consideration or at nominal value:-
 - the Federal Government, a State Government, a local authority or any other person in compliance with the requirement of any written law; and
 - the Federal Government, a State Government or a local authority for the purpose of providing public amenities and public utilities
- The words “public amenities and public utilities” mean the amenities and utilities provided in the layout plan for a project which has been approved by the relevant local authority
- Effective 1st January 2017

H. Others**1. Private Retirement Scheme**

- For youth contributors of Private Retirement Scheme [“PRS”] with a minimum cumulative investment of RM1,000 during the period of 2 years, a one-off payment from existing RM500 to RM1,000 incentive be given by the Government in the form of additional units in the PRS with approved PRS providers
- Effective from 1st January 2017 to 31st December 2018

2. Redefinition of “Labuan Non-Trading Activity”

- Currently, “Labuan non-trading activity” means an activity relating to the holding of investments in securities, stock, shares, loans, deposits or any other properties by a Labuan entity on its own behalf
- The above definition be amended to restrict the holding of investments in properties situated in Labuan only
- Effective upon coming into operation of the Finance Act 2016

3. Redefinition of “Labuan Business Activity”

- Currently, “Labuan business activity” includes an activity relating to the holding of investments in a domestic company by a Labuan entity with residents in the Malaysian currency
- It is now proposed that the holding of investments in a domestic company be restricted to holding of shares only to qualify as Labuan business activity
- Effective upon coming into operation of the Finance Act 2016

4. Power of Minister to Make Regulations

- Section 21 of LBATA 1990 be amended to empower the Minister of Finance to:-
 - make regulations to implement or facilitate any arrangement under Section 132B of the ITA 1967 on mutual administrative assistance in tax matters such as simultaneous tax examinations, automatic exchange of information or tax administrations abroad between the Government of Malaysia and the foreign government; and
 - prescribe any penalties for failure to comply with the regulations
- Effective 22nd October 2016

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