

TAX BULLETIN



2010 BUDGET HIGHLIGHTS

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FOREWORD

On Friday, 23 October 2009, our Prime Minister, YAB Dato' Sri Mohd. Najib B. Tun Abdul Razak, presented his maiden budget as the First Finance Minister. With the theme "1Malaysia, Together We Prosper", the 2010 Budget will focus on three main specific strategies:

- (1) Driving the Nation towards a High-Income Economy;
- (2) Ensuring Holistic and Sustainable Development; and
- (3) Focusing on Well-being of the *Rakyat*.

Some of the notable tax measures as proposed in this Budget 2010 are as follows:

- Increase of exemption of statutory income from 50% to 100% of increase in value of exports of health care services subject to 70% of statutory income.
- Allowing registration of patents and trademark expenses in the country by SMEs as a deduction for the years of assessment 2010 to 2014.
- Tax exemption on profits and income remitted by banking institutions of newly established branches overseas for 5 years be extended to insurance and takaful companies for applications received not later than 31 December 2015.
- To continue initiatives to promote Malaysia as an Islamic financial centre various new incentives are introduced while some existing incentive periods have been extended.
- For individuals the following are some of the package of goodies
 - A further reduction in the individual's maximum tax rate from 27% to 26%
 - An increase in the personal relief from RM8,000 to RM9,000
 - An increase in the personal relief for EPF and life insurance or deferred annuity schemes to RM7,000
 - Tax relief of up to RM500 on broadband subscription fee expended by an individual from 2010 to 2012
- Special tax rate of 15% on employment income of Malaysian and foreign knowledge workers for the period between 24 October 2009 to 31 December 2015.
- Income tax exemption on cost incurred by the owners and stamp duty exemption for buyers of buildings awarded with the Green Building Index (GBI) certificates.

- The re-imposition of Real Property Gains Tax (RPGT) with effect from 1 January 2010 with a flat tax rate of 5% on gains irrespective of holding period and owners.
- The streamlining of tax assessment system for petroleum upstream companies where the preceding year formal assessment system be changed to current year assessment system.
- The imposition of service tax on the principal credit cards and charge cards holders of RM50 per year and supplementary card holders of RM25 per year with effect from 1 January 2010.

Despite much anticipation that the Government would announce the implementation of the Goods and Services Tax (GST), Budget 2010 did not provide any date for the new tax. However, the Government is currently at the final stage of completing the study on such implementation and it is expected that the rate of tax to be imposed will be lower than the current sales tax and service tax rates.

Overall apart from the added incentives to encourage knowledge and intellectual property development and the financial and general services sectors on top of the myriad of existing incentives, the budget has not introduced anything that can be described as really burdensome on businesses as well as individuals despite the rumbles on RPGT and credit card charges.

IMPORTANT NOTE

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TAX SYSTEMS AND ADMINISTRATION

1.1 Returns by Employers

Present

Under Section 83(1) of the Income Tax Act (“ITA”) 1967, the Director General of Inland Revenue (DG) may by statutory order require every employer to prepare and deliver for any year specified in the order and within a time so specified a return in the prescribed form containing:

- (i) the names and places of residence of such classes of persons employed by the employer as may be indicated in the order; and
- (ii) the full amount of the gross income falling within Section 13 paid, payable or provided by or on behalf of the employer to those persons in respect of their employment.

Proposed

The existing Section 83(1) will be amended whereby every employer shall, for each year, furnish to the DG a return in the prescribed form not later than 31 March in the year immediately following the first-mentioned year containing:

- (i) the number of employees employed in the first-mentioned year;
- (ii) the number of employees subject to deductions under the Income Tax (Deduction From Remuneration) Rules 1994 [*P.U. (A) 507/1994*] for the first-mentioned year;
- (iii) the number of new employees employed in the first-mentioned year;
- (iv) the number of employees who have resigned in the first-mentioned year;
- (v) the number of employees who have resigned and left Malaysia in the first-mentioned year; and
- (vi) such other particulars as may be required by the DG; and

A new provision Section 83(1A) will be introduced whereby every employer shall, for each year, prepare and render to his employee a statement of remuneration of that employee on or before the last day of February in the year immediately following the first-mentioned year containing the following information:

- (i) the relevant particulars of the employee;
- (ii) the full amount of the gross income falling within Section 13 paid, payable or provided by or on behalf of the employer to that employee in respect of the employment;

TAX SYSTEMS AND ADMINISTRATION

1.1 Returns by Employers (*Cont'd*)

- (iii) pension, annuity or periodical payment falling under paragraph (4)(e);
- (iv) total deductions under the Income Tax (Deduction From Remuneration) Rules 1994 paid to the DG in the first-mentioned year;
- (v) the compulsory contributions made by the employees to the Pension Fund or Employees' Provident Fund, or any approved fund pursuant to Section 150;
- (vi) details relating to the payment of arrears and others for the years prior to the first-mentioned year;
- (vii) tax exempt allowances, perquisites, gifts and benefits for the first-mentioned year; and
- (viii) such other particulars as may be required by the DG.

Any person who without reasonable excuse fails to comply with the amended Section 83(1) and new Section 83(1A), shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than RM200 and not more than RM2,000 or to imprisonment for a term not exceeding 6 months or to both.

Effective

For the year ending 31 December 2009 and subsequent years.

1.2 Deduction of Tax from Emoluments and Pensions

Present

Under the ITA 1967, an employer is responsible for the following:

- (i) Section 83(2): To notify the DG of the employment of an individual who is or is likely to be chargeable to tax within one month from the date of commencement of the employment;
- (ii) Section 83(3): To notify the DG of the cessation of employment of an individual who is or is likely to be chargeable to tax within one month from the expected date of cessation;
- (iii) Section 83(4): To notify the DG of an employee's departure from Malaysia for a period exceeding 3 months who is or is likely to be chargeable to tax within one month before the expected date of departure;

TAX SYSTEMS AND ADMINISTRATION

1.2 Deduction of Tax from Emoluments and Pensions (*Cont'd*)

- (iv) Section 83(5): In the case of cessation of employment or an employee who is about to leave Malaysia for a period of more than 3 months with no intention of returning, to withhold money payable to that employee for 90 days or until tax clearance is received, whichever is earlier;
- (v) Section 107: To deduct tax from any pension, annuity or periodical payment payable to an employee.

Proposed

The employer shall be liable to the Government as a debt due for the tax due from the employee for failure to comply with Sections 83(2), (3), (4) or (5) and for amount of tax which the employer has failed to deduct under Section 107 of the ITA 1967.

Effective

Upon the coming into operation of the Finance Act (No 2) 2009.

1.3 Submission of Prescribed Forms via Electronic Medium

Present

Taxpayers are allowed to authorise tax agents to furnish a return on their behalf through electronic medium.

Proposed

Such authorisation be extended to include submission of any prescribed forms under the ITA 1967.

Effective

Upon the coming into operation of the Finance Act (No 2) 2009.

1.4 Penalty on Additional Tax for Failure to Furnish Return

Present

Section 112(3) of the ITA 1967 empowers the Director General to impose a penalty equal to treble the amount of tax payable for the year of assessment where no prosecution is instituted against a taxpayer for failure to submit tax return or give notice of chargeability within the stipulated deadline.

Proposed

A new Section 112(4) be introduced to empower the Director General to impose an additional penalty if there is additional tax payable for cases where the tax return is not submitted within the stipulated deadline.

Effective

Upon the coming into operation of the Finance Act (No 2) 2009.

TAX SYSTEMS AND ADMINISTRATION

1.5 Standardisation of Tax Assessment System for Upstream Petroleum Companies

Present

Upstream petroleum companies are subject to income tax under the Petroleum (Income Tax) Act 1967 which is based on preceding year assessment system and official assessment by the Inland Revenue Board, whilst the downstream petroleum companies are subject to tax under the ITA 1967.

However, the assessment system under the ITA 1967 was changed from the preceding year assessment system to current year assessment system with effect from the year of assessment 2000. In addition, the official assessment system was changed to self assessment system for companies from the year of assessment 2001 and for entities other than companies from the year of assessment 2004.

Proposed

The assessment system on income derived by upstream petroleum companies under the Petroleum (Income Tax) Act 1967 be changed to the current year assessment system and self assessment system.

In addition, the income tax for the year of assessment 2010 that is based on income received in 2009 be allowed to be paid by instalments over 5 years to ease the burden of paying 2 years' taxes in 1 year.

Effective

Year of assessment 2010.

1.6 Fund for Tax Refund Extended to Offshore Companies

Present

Refund of excess payment of tax under the ITA 1967 is made out of Fund for Tax Refund established under Section 111B and administered by the Accountant General of Malaysia. There is no provision for refund of excess tax payment made by offshore companies out of the Fund for Tax Refund.

Proposed

Excess tax paid by an offshore company shall be refunded from the Fund for Tax Refund.

Effective

1 January 2010.

TAXATION – INDIVIDUALS

2.1 Review of Tax Rates for Resident Individuals

The tax rates for resident individuals be revised as follows:

Chargeable income (RM)	Current tax rates (%)	Proposed tax rates (%)
1 – 2,500	0	0
2,500 – 5,000	1	1
5,001 – 20,000	3	3
20,001 – 35,000	7	7
35,001 – 50,000	12	12
50,001 – 70,000	19	19
70,001 – 100,000	24	24
>100,000	27	26

Effective

Year of assessment 2010.

2.2 Review of Tax Rate for Non-Residents

Present

Non-resident individuals are taxed at a fixed rate of 27%.

Proposed

Tax rate for non-resident individuals be reduced from 27% to 26%.

Effective

Year of assessment 2010.

2.3 Tax Exemption on certain Interest and Discounts

Present

Interest or discount paid or credited to an individual, unit trust and listed closed-end fund in respect of the following is exempt from tax:

- (i) Securities or bonds issued or guaranteed by the Government;
- (ii) Debentures, other than convertible loan stock, approved by the Securities Commission;
- (iii) Bon Simpanan Malaysia issued by Bank Negara Malaysia.

Proposed

The exemption be extended to Islamic securities approved by the Securities Commission.

Effective

Year of assessment 2010.

2.4 Tax Rate for Knowledge Workers in respect of a Qualified Activity in a Specified Region

Present

There is no incentive given to knowledge workers in 'Iskandar Malaysia'.

Proposed

The employment income derived by an individual who is a resident and knowledge worker in respect of qualifying activities in a specified region (Iskandar Malaysia) shall be taxed at the rate of 15% on his chargeable income.

The qualifying activities are as follows:

- (i) Green technology;
- (ii) Biotechnology;
- (iii) Educational services;
- (iv) Healthcare services;
- (v) Creative industries;
- (vi) Financial advisory and consulting services;
- (vii) Tourism.

The knowledge worker, qualifying activity and specified region shall be determined by the Minister of Finance.

Effective

Year of assessment 2010.

2.5 Tax Relief on Broadband Subscription Fees

Present

Broadband subscription fees paid by employers for their employees are benefits in kind which are exempted from income tax. Such expenses incurred by the employers are given tax deduction.

Proposed

Tax relief of an amount not exceeding RM500 per year be given to an individual taxpayer in respect of expenses expended for the payment of monthly bill for broadband subscription under the individual's name.

Effective

Years of assessment 2010 to 2012.

- 2.6 Tax Exemption on Interest and Discounts from Islamic Securities**
- Present**
Interest paid or credited to any person in respect of non-Ringgit Islamic securities originating from Malaysia and approved by the Securities Commission, other than convertible loan stock, is exempt from tax.
- Proposed**
The exemption be extended to Islamic securities approved by Labuan Offshore Financial Services Authority.
- Effective**
Year of assessment 2010.
- 2.7 Increase in Personal Deduction**
- Present**
A resident individual or a Hindu joint family is eligible for personal deduction of RM8,000 for a year of assessment.
- Proposed**
The personal deduction be increased to RM9,000.
- Effective**
Year of assessment 2010.
- 2.8 Increase in Deduction on Contribution to Employees Provident Fund (EPF) and Life Insurance or Deferred Annuity**
- Present**
A resident individual is eligible for deduction on contribution to Employees Provident Fund (EPF) and life insurance or deferred annuity up to an amount of RM6,000 for a year of assessment.
- Proposed**
Further deduction be allowed on payment of premium for deferred annuity contracted by a resident individual on or after 1 January 2010, provided the total deduction on EPF, insurance and premium for deferred annuity does not exceed RM7,000.
- Effective**
Year of assessment 2010.

TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.1 Review of Tax Rates for Co-operative Society

The tax rates for co-operative society be revised as follows:

Chargeable income (RM)	Current tax rates (%)	Proposed tax rates (%)
1 – 20,000	0	0
20,001 – 30,000	2	2
30,001 – 40,000	6	6
40,001 – 50,000	9	9
50,001 – 75,000	12	12
75,001 – 100,000	16	16
100,001 – 150,000	20	20
150,000 – 250,000	23	23
250,000 – 500,000	26	26
>500,000	27	26

Effective

Year of assessment 2010.

3.2 Small and Medium Enterprise (“SME”) to exclude Companies established for issuance of Asset-backed Securities

Present

Small and Medium Enterprises are eligible to enjoy the following benefits:

- (i) the SME is not required to furnish tax estimate or make instalment payment for the year of assessment in which it commences operations and in the following year of assessment;
- (ii) the first RM500,000 chargeable income of the SME is taxed at 20%;
- (iii) the SME is eligible to claim accelerated capital allowances of 100% on all small value assets.

Proposed

The above benefits shall not be extended to companies established for the issuance of asset-backed securities in a securitisation transaction approved by the Securities Commission.

Effective

Year of assessment 2010.

TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.3 Estimate of Tax Payable (i) Commencement of Operation

Present

Section 107C(4) of the Income Tax Act (“ITA”) 1967 requires a company, trust body or co-operative society that first commences its business operation in a year of assessment to submit an estimate of tax payable within 3 months from the date of commencement.

The estimate of tax payable is to be paid in equal monthly instalments based on the number of months in the basis period and each instalment shall be paid by the due date beginning from the 6th month of the basis period for the year of assessment in respect of which that estimate has been furnished.

Proposed

Section 107C(4) shall apply to a company, trust body or co-operative society that first commences operations in a year of assessment and the basis period for the year of assessment is not less than 6 months.

(ii) Failure to Submit Tax Estimate

Present

Where the final tax payable under an assessment exceeds the estimate of tax payable by 30% of the tax payable under the assessment, the difference exceeding 30% of the tax payable (“excessive difference”) will be subject to a 10% penalty.

There is no specific provision that deals with the excessive difference when there has been no tax estimates submitted by a company, trust body or co-operative society for a year of assessment.

Proposed

A penalty of 10% on the tax payable will be imposed on a company, trust body or co-operative society for non-submission of tax estimate for a year of assessment where:

- (a) No direction is given by the Director General (DG) to make payment by instalment;
- (b) No prosecution has been instituted in relation to the failure to submit such estimate; and
- (c) There is tax payable for that year of assessment.

TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

- 3.3 Estimate of Tax Payable** Such a penalty shall be due and payable upon the submission of tax returns by the company, trust body or co-operative society.
(Cont')

Effective

Year of assessment 2011.

- 3.4 Definition of “Incurred” for Purpose of Investment Allowance claim for Service Sector**

Present

Pursuant to Schedule 7B of the ITA 1967, a resident company which has incurred capital expenditure for the purpose of an approved service project is eligible for Investment Allowance equivalent to 60% of the qualifying capital expenditure and such Investment Allowance is to be utilised to set off against 70% (or any other rate as may be determined by the Minister of Finance) of the statutory income of the approved service project.

The capital expenditure which qualifies for Investment Allowance in relation to an approved service project means capital expenditure incurred on plant, machinery, fixtures, premises, buildings, structures or works of a permanent nature and shall not include capital expenditure incurred on buildings, plant and machinery which are provided wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff.

However, the word “incurred” was not defined in Schedule 7B of the ITA 1967.

Proposed

Definition of “incurred” be included in Schedule 7B of the ITA 1967 and to have the same meaning assigned for capital allowance purposes in paragraphs 46 and 55 of Schedule 3 to the ITA 1967.

Effective

Year of assessment 2010.

4.1 Tax Incentives for Small and Medium Enterprises (“SME”) to register Patents and Trademarks

Present

Expenses for registration of patents and trademarks are viewed as capital expenditure, and hence not allowed for deduction against business income.

However, certain expenses in respect of registration of patents, trademarks and product licensing overseas for the purpose of promoting the exports of goods or agricultural products manufactured, produced, processed, graded or sorted and assembled in Malaysia are given double deduction pursuant to Income Tax (Deduction for Promotion of Exports) Rules 2007.

Proposed

Expenses incurred in the registration of patents and trademarks shall be allowed a deduction in line with the Government’s objective to promote innovation and intellectual development among the small and medium enterprises.

Registration expenses incurred include fees or payments made to Patent and Trademark agents registered under the Patents Act 1983 and the Trade Marks Act 1976.

For the purpose of this incentive, SME are defined as:

- (i) Companies which are defined under paragraphs 2A and 2B of Schedule 1 of the Income Tax Act (“ITA”) 1967;
- (ii) Enterprises in the manufacturing, manufacturing related services industries and agro-based industries, with full-time employees of not exceeding 150 persons, or with annual sales turnover not exceeding RM25 million;
- (iii) Enterprises in the service, primary agriculture and information & communication technology industries with full-time employees of not exceeding 50 persons, or with annual sales turnover not exceeding RM5 million.

Effective

Years of assessment 2010 to 2014.

4.2 Tax Incentives for Buildings with Green Building Index (“GBI”) Certificate

Present

To encourage the usage of green technology, the Government has launched the Green Building Index on 21 May 2009. GBI is a green rating index on environment-friendly buildings.

Buildings will be awarded with the GBI rating based on 6 key criteria as follows:

- (i) Energy Efficiency;
- (ii) Indoor Environmental Quality;
- (iii) Sustainable Site Planning and Management;
- (iv) Materials and Resources;
- (v) Water Efficiency;
- (vi) Innovation.

Proposed

Tax incentives are given on the construction of buildings using green technology as follows:

- (i) Tax exemption equivalent to 100% of the additional capital expenditure incurred be given to the owners in constructing new buildings or upgrading of existing buildings to obtain the GBI certificate. The exemption is allowed to be set off against 100% of the statutory income for each year of assessment.

The incentive is given only for the first GBI certificate issued in respect of the building.

- (ii) Stamp duty exemption on instruments of transfer of ownership be given to the buyers of buildings and residential properties awarded with GBI certificates bought from real property developers. The amount of stamp duty exemption is on the additional cost incurred to obtain the GBI certificate.

The incentive is given only once to the first owner of the building.

Effective

Item (i): For buildings awarded with GBI certificates from 24 October 2009 until 31 December 2014

Item (ii): For sales and purchase agreements executed from 24 October 2009 until 31 December 2014

4.3 Enhancing Tax Incentives for Healthcare Service Providers

Present

Healthcare service providers who are providing qualifying services in and from Malaysia to foreign clients are given tax exemption equivalent to 50% on the value of the increased exports but limited to 70% of the statutory income in a year of assessment.

For the purpose of this exemption, foreign clients means:

- (i) a company, a partnership, an organisation or a cooperative society incorporated or registered outside Malaysia; or
- (ii) non-Malaysian citizens who do not hold Malaysian work permits; or
- (iii) Malaysian citizens who are non-residents living abroad.

Proposed

The exemption rate be increased from 50% to 100% on the value of increased export but limited to 70% of the statutory income in a year of assessment.

For the purpose of this exemption, foreign clients exclude:

- (i) a non-Malaysian citizen that participates in *Malaysia My Second Home Programme* and his dependants;
- (ii) a non-Malaysian citizen holding a Malaysian student pass and his dependants;
- (iii) a non-Malaysian citizen holding a Malaysian work permit and his dependants; or
- (iv) a Malaysian citizen who is a non-resident living abroad and his dependants.

However, healthcare services provided to the abovementioned foreign clients will continue to enjoy the existing exemption.

Effective

Years of assessment 2010 to 2014.

4.4 Review of Tax Incentive for Export of Financial Services

Present

Taxation on banking, insurance and *takaful* sectors is based on worldwide income scope. Hence, income derived from its overseas branch or remittance from its subsidiary abroad is taxable in Malaysia.

However, banks are given income tax exemption for 5 years on profits of newly established branches overseas or remittances of profits of new overseas subsidiaries subject to the following conditions:

- (i) Applications to establish new branches or subsidiaries overseas must be submitted and approved by the Bank Negara Malaysia (BNM) from 2 September 2006 to 31 December 2009;
- (ii) The branches or subsidiaries have to commence operations within a period of 2 years from the date of approval by BNM; and
- (iii) The 5-year tax exemption period is given from the commencement of operations of the branches or subsidiaries.

Proposed

To further promote the export of financial services by the banking, insurance and *takaful* sectors, the incentive is to be reviewed as follows:

- (i) The tax incentives given to banks be extended to insurance companies and *takaful* companies; and
- (ii) The commencement of the 5-year tax exemption period be given flexibility to be deferred from the date of commencement to a date not later than the third year of operations.

Effective

For application received by BNM not later than 31 December 2015.

4.5 Extension of Tax Incentive Period to Promote Malaysia as an International Islamic Financial Centre ("MIFC")

Present

A tax resident in Malaysia are given double deduction on the following expenses incurred in relation to its business for promoting Malaysia as an International Islamic Financial Centre:

- (i) expenses on market research and feasibility studies;
- (ii) cost of preparing technical information for a person outside Malaysia relating to type of services offered (excluding expenses for giving technical information to that person after purchase);
- (iii) expenses directly incurred for participating in an event as approved by the MIFC Secretariat to promote MIFC. Expenses include cost of travel to a country outside Malaysia by a representative of a person for the purpose of the event, and the actual expenses are subject to –
 - (a) a maximum deduction of RM300 per day for accommodation; and
 - (b) a maximum deduction of RM150 per day for sustenance,for the whole period commencing with the representative's departure from Malaysia and ending with his return to Malaysia for participating in the event;
- (iv) cost of maintaining sales office overseas provided that the sales office has been approved by the MIFC Secretariat; and
- (v) expenses incurred on publicity and advertisement in any media outside Malaysia.

The incentive is given from year of assessment 2008 until year of assessment 2010 and the relevant expenses are to be verified by the MIFC Secretariat.

Proposed

The double deduction incentive given on expenses to promote Malaysia as MIFC will be extended until the year of assessment 2015.

Effective

Years of assessment 2011 to 2015.

4.6 Extension of Tax Incentive Period on Expenditure to Establish Islamic Stock Broking Companies

Present

Deduction is given on establishment expenditure incurred by an Islamic stock broking company prior to the commencement of its business, provided that the company shall commence the Islamic stock broking business within 2 years from the date of approval by the Bursa Malaysia.

“Establishment expenditure” means consultancy and legal fees, cost of feasibility study, cost of market research, and cost of obtaining licence and business approval for the purpose of establishing an Islamic stock broking business.

It is effective for applications received by Bursa Malaysia from 2 September 2006 until 31 December 2009.

Proposed

The tax deduction incentive be extended until 31 December 2015.

Effective

For applications received by the Securities Commission until 31 December 2015.

4.7 Extension of Tax Incentive on Issuance of Islamic Securities

Present

Tax deduction is allowed for expenditure incurred on the issuance of Islamic securities approved by the Securities Commission. Such incentive is given from the year of assessment 2003 until the year of assessment 2010.

Proposed

- (i) The incentive be extended for another 5 years, until the year of assessment 2015; and
- (ii) The same incentive shall also be extended to all Islamic securities approved by Labuan Offshore Financial Services Authority.

Effective

Item (i): Years of assessment 2011 to 2015.

Item (ii): Years of assessment 2010 to 2015.

4.8 Standardising Tax Treatment for Special Purpose Vehicle (“SPV”) for Islamic Financing

Present

SPV established under the Companies Act 1965 solely for the purpose of issuance of Islamic securities is accorded the following tax treatment:

- (i) The SPV is not subject to income tax and is not required to comply with the administrative requirements under the ITA 1967; and
- (ii) Income received and the cost incurred in the issuance of Islamic securities by the SPV are deemed as income and cost of the company establishing the SPV.

Currently, a similar SPV established under the Offshore Companies Act 1990 which elects to be taxed under the ITA 1967 is not accorded the above treatment.

Proposed

Tax treatment accorded to SPV established under the Companies Act 1965 be extended to SPV established under the Offshore Companies Act 1990 which elects to be taxed under the ITA 1967.

Effective

Year of assessment 2010.

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

Present

Tax exemption on income derived from the following regulated activities in relation to non-Ringgit *Sukuk* that originates from Malaysia and issued or guaranteed by the Government of Malaysia or approved by the Securities Commission under the Capital Markets and Services Act 2007:

- (i) Business of dealing in non-Ringgit *Sukuk*; and
- (ii) Advising on corporate finance relating to the arranging, underwriting and distributing of non-Ringgit *Sukuk*.

Proposed

The tax exemption on income derived from the issuance of *Sukuk* be extended to include non-Ringgit *Sukuk* approved by the Labuan Offshore Financial Services Authority.

Effective

Year of assessment 2010.

4.10 Expediting Investment for Selected Activities

Present

Tax incentives are given on the following activities:

(A) Forest Plantation

(i) Investor company

- (a) the company which invests in its subsidiary company engaged in forest plantation activities is granted tax deduction equivalent to the amount of investment made in that subsidiary; or
- (b) the company which invests in its subsidiary company engaged in forest plantation activities is granted group relief on losses incurred by its subsidiary company before it records any profit.

(ii) Subsidiary company

undertaking forest plantation activities

- (a) The subsidiary company undertaking forest plantation activities is granted income tax exemption of 100% on its statutory income for 10 years commencing from the first year the company derives profits;
- (b) An existing forest plantation company that reinvest for purposes of expansion of the forest plantation project is granted income tax exemption of 100% on its statutory income for 5 years commencing from the first year the company derives profits.

Effective for applications received from 21 May 2003.

(B) Consolidation of the Management of Smallholdings and Idle Land

- (i) a company or individual or partnership or a cooperative society that invests in a wholly owned subsidiary company involved in the consolidation of the management of smallholdings and idle land is allowed a deduction equivalent to the amount of investment;

4.10 Expediting Investment for Selected Activities (Cont'd)

- (ii) a company or individual or partnership or a cooperative society undertaking the consolidation of the management of smallholdings and idle land is given tax exemption of 100% of statutory income for a period of 5 years; and
- (iii) a wholly owned subsidiary company undertaking the consolidation of the management of smallholdings and idle land is exempted from service tax.

Incentives (i) and (ii) are given for applications received from 21 September 2002. Incentive (iii) is effective from 1 January 2003.

(C) Knowledge Based Economy

- (i) Companies participating in a strategic knowledge intensive activity is granted 'strategic knowledge based company' status and eligible for the following incentives:
 - (a) Pioneer Status with income tax exemption of 100% of statutory income within a period of 5 years; or
 - (b) Investment Tax Allowance of 60% on the qualifying capital expenditure incurred within a period of 5 years. The allowance to be set-off against 100% of statutory income for each year of assessment.
- (ii) Expenditure incurred by a company for drafting the individual corporate knowledge based master plan is allowed as a deduction in the computation of income tax. The deduction is claimed when the company begins to implement the corporate knowledge based master plan.

Incentive (i) is given for application received from 21 September 2002. Incentive (ii) is effective from year of assessment 2003.

Proposed

It is proposed that incentives (A), (B) and (C) be imposed an effective period. To qualify for the incentives, the applications must be received not later than 31 December 2011.

REAL PROPERTY GAINS TAX

5.1 Tax on Disposal of Chargeable Assets

Present

Gains from the disposal of real property are subject to tax under the Real Property Gains Tax Act 1976.

However, effective from 1 April 2007, the Minister exempts all persons from the provisions of Real Property Gains Tax Act 1976 in respect of disposal of chargeable assets.

Proposed

The real property gains tax (“RPGT”) will be re-instated with certain amendments.

Effective

1 January 2010.

5.2 Rate of Real Property Gains Tax (“RPGT”)

Present

The applicable rate for RPGT ranges from 0% to 30% based on the holding period of the chargeable asset. For individual (other than non citizen and not a permanent resident), there will be no RPGT imposed on the gain on disposal of the chargeable asset if the holding period is more than 5 years.

Proposed

The RPGT is computed based on an effective tax rate of 5% on the chargeable gain regardless of the holding period of the chargeable asset.

Effective

1 January 2010.

5.3 Filing of RPGT Return

Present

The acquirer and disposer must furnish the RPGT return to the Director General (“DG”) within 1 month of the date of the disposal or transfer.

Proposed

The acquirer and disposer must furnish the RPGT return to the DG within sixty days of the date of the disposal or transfer.

Effective

1 January 2010.

5.4 Allowable Loss

Present

Where there is an allowable loss arising from a disposal of real property, a tax relief (computed based on the appropriate rate of tax charge applicable to such allowable loss) shall be allowed to reduce any tax assessed on chargeable gain in a year of assessment.

Any unutilised tax relief shall be allowed to be carried forward to reduce any tax assessed on chargeable gain for subsequent years of assessment until it is fully utilised.

Proposed

The allowable loss arising from a disposal of real property shall be allowed as a deduction to reduce any chargeable gain in a year of assessment.

Any unutilised allowable loss shall be allowed to be carried forward to reduce any chargeable gain for subsequent years of assessment until it is fully utilised.

However, if there is any tax relief on allowable loss which has not been utilised prior to 1 April 2007, it shall be allowed as a deduction from total tax assessed in year assessment 2010 and subsequent years of assessment until it is fully utilised.

Effective

1 January 2010.

5.5 Certificate of Non-Chargeability

Present

The DG shall issue to both the disposer and acquirer a certificate of clearance upon payment of tax by the disposer or where he is satisfied that no chargeable gain has arisen.

Proposed

The DG shall issue a certificate of non-chargeability to the disposer where he is satisfied that no chargeable gain has arisen.

Effective

1 January 2010.

REAL PROPERTY GAINS TAX

5.6 Duty of Acquirer to retain and pay part of the consideration

Present

The acquirer shall retain a sum not exceeding 5% of the total consideration until he receives certificate of clearance from the DG.

Proposed

The acquirer shall retain a sum not exceeding 2% of the total consideration and shall within 60 days after the date of such disposal remit the sum retained to the DG, where such amount shall be applied towards payment of the tax charge on the disposer.

If the acquirer fails to do so, a penalty equivalent to 10% of the sum to be retained will be imposed and the sum together with the penalty imposed shall be treated as a debt due from the acquirer to the Government and he may be prevented from leaving Malaysia.

Effective

1 January 2010.

5.7 Incident costs

Present

Interest paid on the acquisition of Real Property is allowed as an incidental cost of acquisition for RPGT purposes.

Proposed

Interest paid on the acquisition of Real Property is no longer regarded as an incidental cost.

Effective

1 January 2010.

5.8 Exemption

Present

An exemption of RM5,000 or 10% of the chargeable gain, whichever is greater, is given to an individual from the disposal of Real Property.

Proposed

The exemption be increased from RM5,000 to RM10,000 or 10% of the chargeable gain, whichever is the greater.

Effective

1 January 2010.

5.9 Electronic Medium

Present

There is no specific provision to allow any prescribed form to be furnished to the DG through electronic medium.

Proposed

Any person is allowed to furnish any prescribed form (determined by the DG) through electronic medium or by way of an electronic transmission.

Effective

1 January 2010.

5.10 Admissibility of Electronic Records

Present

There is no specific provision in respect of the admissibility of electronics records as evidence.

Proposed

Electronic records or the copy or print-out of electronic records of prescribed forms furnished, or any other document stored, communicated or received through or by electronic medium be admissible as evidence.

Effective

1 January 2010.

- 6.1 Service Tax on Credit Cards and Charge Cards**
- Present**
From 1 April 2001, credit cards and charge cards are no longer subject to service tax.
- Proposed**
Service tax be imposed on credit cards and charge cards as follows:
- (i) RM50 per year on the principal card; and
 - (ii) RM25 per year on the supplementary card.
- Service tax will be collected on the date the card is issued, upon completion of each year or on date of renewal.
- Effective**
1 January 2010.
- 6.2 Extension of Stamp Duty Exemption on Instruments of Islamic Financing**
- Present**
Islamic financing instruments approved by the *Syariah* Advisory Council of Bank Negara Malaysia or the Securities Commission are given additional stamp duty exemption of 20% for instruments executed between 2 September 2006 and 31 December 2009.
- Proposed**
The additional stamp duty exemption of 20% on instruments of Islamic financing is to be extended until 31 December 2015.
- Effective**
From 1 January 2010 to 31 December 2015.
- 6.3 Stamp Duty Exemption on *Syariah* Financing Instruments**
- Present**
Stamp duty exemption is available on instruments executed pursuant to a scheme of financing which is in accordance with the principles of *Syariah* approved by Bank Negara Malaysia and the Securities Commission.
- Proposed**
The stamp duty exemption be extended to include schemes of financing which are in accordance with the principles of *Syariah* approved by the Labuan Offshore Financial Services Authority.
- Effective**
1 January 2010.

6.4 Penalty relating to the Misuse of Stamp Certificate

Present

There is no provision in Stamp Act 1949 governing the misuse of stamp certificates. A stamp certificate is issued by the stamp office and is attached to an instrument to denote duty paid under the electronic medium.

Proposed

A person shall be guilty of an offence and liable on conviction to a fine not exceeding RM5,000 if the person:

- (i) sells or offers for sale a stamp certificate;
- (ii) fraudulently attaches a stamp certificate to an instrument other than the instrument for which the stamp certificate was issued;
- (iii) fraudulently detaches a stamp certificate or fraudulently causes a stamp certificate to be detached from the instrument;
- (iv) counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp certificate issued by the Collector;
- (v) sells or offers for sale a stamp certificate which he knows or ought reasonably to know to be a counterfeit of any stamp certificate issued by the Collector;
- (vi) has in his possession any certificate which he knows to be a counterfeit of any stamp certificate, intending to use or dispose of it as a genuine stamp certificate in order that it may be used as a genuine stamp certificate; or
- (vii) uses as a genuine stamp certificate knowing it to be a counterfeit of any stamp certificate.

Effective

1 January 2010.

SECOND STIMULUS PACKAGE 2009

7. Introduction

The Second Stimulus Package 2009, or “Mini Budget 2009”, was announced by the Government on 10 March 2009 to help Malaysia weather the global economic crisis. The Package, which comprised RM60 billion, is expected to be implemented over two years, i.e. 2009 and 2010, and is provided in the form of:

- RM15 billion fiscal injection,
- RM25 billion Guarantee Funds,
- RM10 billion equity investments,
- RM7 billion private finance initiative (PFI) and off-budget projects,
- RM3 billion in tax incentives.

The RM60 billion package is aimed at:

- (a) Reducing unemployment and increasing employment opportunities;
- (b) Easing the burden of the Rakyat;
- (c) Assisting the private sector in facing the crisis; and
- (d) Building capacity for the future

The Government is confident that the original 2009 Budget with an allocation of RM206 billion, as well as the First Stimulus Package of RM7 billion and the Second Stimulus Package, will contribute towards mitigating the impact of the global contraction on the domestic economy.

Some of the significant tax measures as outlined during the earlier stimulus package which have been gazetted subsequently are highlighted in the ensuing paragraphs.

7.1 Carry Back of Current Year Losses

Prior to Gazette

Current year business losses are allowed to be carried forward until it is fully absorbed. There is no provision to allow current year business losses to be carried back to preceding years to reduce tax liability.

Income Tax (Amendment) Act 2009 gazetted on 23 April 2009 - New Section 44B of ITA 1967

Current year business losses of up to RM100,000 be allowed to be carried back to the immediate preceding year provided that the taxpayer has made an irrevocable election in its tax return (either for YA2009 or 2010) to opt for the carry back of losses.

The tax treatment is applicable to all businesses including sole proprietors, partnerships and companies.

SECOND STIMULUS PACKAGE 2009

7.1 Carry Back of Current Year Losses (Cont'd)

It is however not applicable to a taxpayer if during the basis period for the years of assessment 2009 or 2010 and the basis period for the year of assessment immediately preceding the years of assessment 2009 or 2010, that taxpayer:

- (a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investments Act 1986;
- (b) is exempt from tax on its income under section 54A, paragraph 127(3)(b) or subsection 127(3A), or tax paid or payable by that person for that year of assessment is remitted under section 129 of the Income Tax Act (“ITA”) 1967;
- (c) has made a claim for reinvestment allowance under schedule 7A of the ITA 1967;
- (d) has made a claim for deduction in respect of an approved food production project under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006;
- (e) has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of Proprietary Rights) Rules 2002;
- (f) has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of a Foreign Owned Company) Rules 2003;
- (g) has made a claim for deduction under any rules made under section 154 of the ITA 1967, other than the rules specified in (d),(e) and (f) above, and those rules made under section 154 provide that this section shall not apply to that taxpayer;
- (h) is a public listed investment holding company under section 60FA of the ITA 1967;
- (i) carries on an insurance business under section 60, inward re-insurance business under 60A or offshore insurance business under section 60B of the ITA 1967;
- (j) carries on takaful business under section 60AA of the ITA 1967; or
- (k) in the case of an individual, has no source consisting of a business.

SECOND STIMULUS PACKAGE 2009

7.1 Carry Back of Current Year Losses (Cont'd)

It is noted that the Section 108 balance of the taxpayer will not be affected by any tax refunded as a consequence of deduction allowed due to the carry back of losses under section 44B of the ITA 1967.

Effective

Years of assessment 2009 and 2010.

7.2 Tax deduction on Housing Loan Interest

Prior to Gazette

The interest on housing loan incurred by an individual tax payer is allowed as a deduction for the purpose of income tax only if there is rental income derived from the property. For houses which do not generate any income, the interest on such housing loan would not be allowed as deductions.

Income Tax (Amendment) Act 2009 gazetted on 23 April 2009 - New Section 46B of ITA 1967

A personal deduction up to RM10,000 per year is given on the interest expended by an individual to finance the purchase of a residential property subject to the following conditions:

- (i) the taxpayer is a Malaysian citizen and a resident;
- (ii) the purchase of the residential property is limited to only one unit;
- (iii) the Sale and Purchase Agreement for the purchase is executed between 10 March 2009 and 31 December 2010; and
- (iv) the individual has not derived any income in respect of that residential property.

The deduction is given for three consecutive years from the first year the housing loan interest is paid.

“Residential property” means a house, condominium unit, apartment or flat which is built as a dwelling house.

Effective

Year of assessment 2009.

SECOND STIMULUS PACKAGE 2009

7.3 Incentive for Renovation and Refurbishment of Business Premises

Prior to Gazette

Cost of renovation and refurbishment (R&R) incurred on business premises are not allowed for tax deduction or capital allowance claim.

Income Tax (Amendment) Act 2009 gazetted on 23 April 2009 - New Para 8A & 32A, Schedule 3 of ITA 1967

Accelerated Capital Allowance (ACA) be given to qualifying R&R expenditure incurred on business premises between 10 March 2009 to 31 December 2010 as follows:

- (i) The total amount of qualifying expenditure (QE) is limited to RM100,000;
- (ii) The ACA is to be claimed over 2 years of assessment, i.e. 50% for each year of assessment;
- (iii) The QE incurred is not eligible for R&R allowance if the premises which has been renovated or refurbished are not in use by the taxpayer for the purpose of his business;
- (iv) If the QE incurred qualifies for both R&R allowance and Industrial Building Allowance (IBA), the taxpayer may elect to claim either R&R allowance or IBA;
- (v) The qualifying R&R expenditure as announced to be prescribed by the Minister are as follows:
 - (a) general electrical installation and wiring;
 - (b) lighting;
 - (c) gas system;
 - (d) water system;
 - (e) kitchen fittings;
 - (f) sanitary fittings;
 - (g) door, gate, window, grill and roller shutter;
 - (h) fixed partitions;
 - (i) flooring;
 - (j) wall covering;
 - (k) false ceiling and cornices;
 - (l) ornamental features or decorations excluding fine art;
 - (m) canopy or awning;
 - (n) fitting room or changing room;
 - (o) children play area;
 - (p) recreational room for employee;
 - (q) prayer facilities e.g. ablution area;

SECOND STIMULUS PACKAGE 2009

- 7.3 Incentive for Renovation and Refurbishment of Business Premises**
(Cont'd)
- (vi) The following expenses will not qualify for R&R allowance claim:
 - (a) design fee or service fee for mechanical and electrical engineering;
 - (b) antiques; or
 - (c) fine art items including paintings, prints, graphics, mosaic art, sculptures and porcelain art.
 - (vii) The qualifying R&R expenditure does not include qualifying plant expenditure, qualifying agriculture expenditure, qualifying forest expenditure and qualifying mining expenditure.

Effective

Year of assessment 2009.

- 7.4 Tax Exemption on Compensation for Loss of Employment**

Prior to Gazette

Compensation received for loss of employment (including Voluntary Separation Scheme) is exempted from tax up to RM6,000 for each completed year of service with the same employer or with companies in the same group.

Income Tax (Amendment) Act 2009 gazetted on 23 April 2009
- Amendment to Para 15(1)(b), Schedule 6 of ITA 1967

The amount of compensation to be exempted from tax is increased from RM6,000 to RM10,000 for each completed year of service with the same employer or with companies in the same group.

The increase in the exemption is applicable to individuals who have ceased employment (including those retrenched under a Voluntary Separation Scheme or a Mutual Separation Scheme) on or after 1 July 2008.

Effective

1 July 2008.

- 7.5 Promoting Investment on Plant and Machinery**

Prior to Gazette

ACA is given to qualifying expenditure (QE) incurred on some plant and machinery, including small value assets and specific equipment as follows :-

SECOND STIMULUS PACKAGE 2009

7.5 Promoting Investment on Plant and Machinery (*Cont'd*)

- (i) QE on small value assets (<RM1,000) are given ACA to be fully claimed within 1 year and the total value of claim for such assets is capped at RM10,000 for each year of assessment. Small and medium enterprises (SMEs) are not subject to the maximum limit of RM10,000;
- (ii) QE incurred by SMEs on plant and machinery in years of assessment 2009 and 2010 are given ACA to be fully claimed within 1 year; and
- (iii) QE incurred on the following equipment are given ACA as follows :-

Equipment relating to	ACA
Security control	1 year
Information & communication technology (ICT)	1 year
Environmental protection	3 years

Income Tax (Accelerated Capital Allowance) (Plant and Machinery) Rules 2009 gazetted on 10 March 2009

ACA be given to all resident taxpayers, including sole proprietors, partnerships and companies as follows:

- (i) QE incurred on plant and machinery purchased between 10 March 2009 to 31 December 2010 be given ACA to be claimed within 2 years, i.e. initial allowance of 20% in the first year and annual allowance of 40% in the first and second year; and
- (ii) For plant and machinery purchased under hire purchase agreement, only the capital / principal portion of any instalment payments made between 10 March 2009 to 31 December 2010 are allowed for ACA claim.

However, the above incentives are not applicable to a person who in the period from 10 March 2009 to 31 December 2010:

- (i) has been granted any incentive under the Promotion of Investments Act 1986, i.e. Investment Tax Allowance, Pioneer Status, Infrastructure Allowance, double deduction for export promotion expenses;
- (ii) has made a claim for reinvestment allowance under Schedule 7A of the Act;

SECOND STIMULUS PACKAGE 2009

- 7.5 Promoting Investment on Plant and Machinery (Cont'd)**
- (iii) has been granted any exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act; or
 - (iv) qualifies for an allowance at a higher fraction under the Act or any rules made under Section 154 of the Act.

Effective

Year of assessment 2009.

- 7.6 Incentive for Employing Local Retrenched Workers**

Prior to Gazette

Expenses in respect of employees' remuneration are given single deduction for income tax purposes. However, expenses in the form of remuneration of disabled employees are allowed for a further deduction under Income Tax (Deductions For The Employment Of Disabled Persons) Rules 1982.

Income Tax (Deduction For Expenses Relating To Remuneration Of Employee) Rules 2009 gazetted on 10 March 2009

Expenses in respect of the remuneration paid to retrenched employees are given double deduction subject to the following conditions:

- (i) The employer must be resident in Malaysia who employs a retrenched worker on a full-time basis between 10 March 2009 and 31 December 2010;
- (ii) The employee must be a Malaysian citizen and resident who has been terminated under a separation scheme or retrenchment, on or after 1 July 2008;
- (iii) The termination of employment has been registered with the Director General of Labour, the Ministry of Human Resources; and
- (iv) The amount of remuneration eligible for double deduction shall not exceed RM10,000 for each month in respect of each employee for a maximum period of 12 consecutive months commencing from the first month of employment.

SECOND STIMULUS PACKAGE 2009

7.6 Incentive for Employing Local Retrenched Workers (Cont'd)

However, this incentive is not applicable in the following situations:

- (i) The employee is employed to replace a former employee of the employer in carrying out the same or similar function of that former employee;
- (ii) Both the former and present employers are associates as defined under Section 139 of the Income Tax Act ("ITA") 1967;
- (iii) Both the former and present employers are such that one has control over the other; or
- (iv) Both the former and present employers are controlled by another person.

"Associates" means in relation to a person, husband or wife; parent or remoter forebear; child or remoter issue; brother, sister and partner.

A person has control:

- (i) where the person has the power to exercise or is able to exercise or is entitled to acquire, control (whether direct or indirect) over the affairs of another;
- (ii) where the person has the power to possess or acquire the greater part of the share capital or voting power in another;
- (iii) in relation to a partnership, where the person has the right to a share of more than 50% of the assets of the partnership, or to more than 50% of the divisible profits of the partnership.

Effective

Year of assessment 2009.

7.7 Incentive to Banks for Deferring the Repayment of Housing Loans

Prior to Gazette

Interest income of banking and financial institutions from housing loans is taxed on an accrual basis including those loans with deferred repayment terms.

Income Tax (Special Treatment On Interest On Housing Loan) Regulations 2009 gazetted on 10 March 2009

For a bank or financial institution who has granted deferred repayment terms for the housing loan of a retrenched individual borrower, the deferred interest income will only be taxed when such income is received by the bank or financial institution.

SECOND STIMULUS PACKAGE 2009

**7.7 Incentive to Banks for
Deferring the
Repayment of
Housing Loans**
(*Cont'd*)

The incentive is subject to the following conditions:

- (i) The banks and financial institutions are those institutions licensed or prescribed under the Banking and Financial Institutions Act 1989, Islamic Bank Act 1983, Development Financial Institutions Act 2002 or any other institutions approved by the Ministry of Finance;
- (ii) The individual who has been provided with the housing loan is a Malaysian citizen and the employment has been terminated under a separation scheme or retrenchment on or after 1 July 2008 where such termination is registered with the Director General of Labour, Ministry of Human Resources;
- (iii) The housing loan was obtained to finance the purchase of a residential property and granted prior to the termination of the employment of the individual;
- (iv) The deferred interest income refers to the interest which is due and payable for a period of 12 consecutive months beginning from the month where the deferment or moratorium on the repayment of the housing loan is approved by the bank or financial institution;
- (v) The application for the moratorium shall be made by the individual between 10 March 2009 and 9 March 2010.

Effective

Year of assessment 2009.

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