

TAX BULLETIN

2014 BUDGET HIGHLIGHTS



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Key statistics for the year to September 2012

Number of member firms	212
Number of offices worldwide	386
Number of partners	1,188
Number of other professional staff	7,601
Number of support staff	1,782
Total staff (including partners)	10,571
Fee income (US\$)	\$1,1Bn



FOREWORD

The Budget proposals for 2014 were tabled in Parliament on 25 October 2013 by YAB Dato' Sri Mohd Najib Tun Haji Abdul Razak, the Prime Minister and Minister of Finance of Malaysia.

With the theme “Strengthening Economic Resilience, Accelerating Transformation And Fulfilling Promises”, the 2014 Budget outlines 5 main thrusts :-

1. Invigorating Economic Activity;
2. Strengthening Fiscal Management;
3. Inculcating Excellence in Human Capital;
4. Intensifying Urban and Rural Development; and
5. Ensuring Well-Being of the Rakyat.

The 2014 Budget is formulated to ensure that the economy continues to expand at a strong pace, and to reduce the fiscal deficit, with the overall objective of prospering the nation and promoting the well-being of the Rakyat.

Some of the notable tax measures as proposed in the 2014 Budget are as follows :-

❖ Goods and Services Tax

The long awaited implementation of the Goods and Services Tax (GST) has finally been announced. It is proposed that sales tax and service tax be abolished and these two taxes will be replaced by a single tax known as GST. The Government believes that this is the best time to implement GST as the inflation rate which is currently at 2% is low and contained.

The GST rate is fixed at 6% and to be effective from 1 April 2015. A list of essential goods and services such as food, public transport and education are categorised as zero-rated or exempt supply so that the lower income groups will be protected and not burdened by taxes on essential items.

Businesses should take immediate measures to plan and implement systems to ensure the ability to comply with GST requirements within the next 17 months.

❖ Reduction in Corporate and Individual Tax Rate

With the implementation of GST, the following have been proposed:-

▪ Corporate tax rate

The corporate income tax rate shall be reduced by 1% from 25% to 24% and the tax rate for chargeable income up to RM500,000 of small and medium companies will be reduced by 1% from 20% to 19% with effect from the year of assessment 2016.

▪ Individual tax rate

In respect of resident individuals the maximum rate of tax shall be reduced from 26% to 25% and the chargeable income bands have been increased and restructured with the rate at each band being reduced by 1% to 3% to further reduce the tax payable by individuals with effect from the year of assessment 2015.

❖ Monthly Tax Deduction as Final Tax

Taxpayers who derive income solely from employment source for a full year and who are paying tax under the Monthly Tax Deduction (MTD) scheme need not submit tax returns and MTD paid will be considered as final tax.

❖ Revision of Real Property Gains Tax

As a measure to stabilise house prices and control excessive speculative activities, it is proposed that Real Property Gains Tax (“RPGT”) shall be increased to 30% for gains on real properties disposed within 3 years from the date of acquisition, and 20% and 15% for disposals made within the 4th and 5th years respectively. In respect of non-citizens and non-permanent residents, the tax rate for disposals within the first 5 years shall be 30%.

Gains on disposals made in the 6th and subsequent years will not be taxed except for disposals by companies, non-citizens and non-permanent residents where the rate shall be 5%.

❖ Tax System and Administration

The authorities have been further empowered with the addition of Section 132B on the mutual administrative assistance arrangement, Section 39(1A) on failure to furnish information on a timely basis, and Section 99(4) on the right of appeal.

Amendments relating to interest on loans and advances between related parties and to directors will have serious tax consequences as many corporations will have such loans and advances, while the amendments relating to directors’ liability for income tax and RPGT deserve serious attention.

IMPORTANT NOTE

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ABBREVIATIONS

Act	Income Tax Act 1967
ACA	Accelerated Capital Allowance
DG	Director General
DTA	Double Taxation Arrangement/ Double Tax Agreement
EPF	Employees Provident Fund
FWA	Flexible Work Arrangements
GBI	Green Building Index
GST	Goods and Services Tax
IRB	Inland Revenue Board
ICT	Information and Communication Technology
ITA	Investment Tax Allowance
LLP	Limited Liability Partnerships
MAP	Mutual Agreement Procedure
MIDA	Malaysian Investment Development Authority
MITI	Ministry of International Trade and Industry
MOF	Ministry of Finance
MTD	Monthly Tax Deduction
MoU	Memorandum of Understanding
PRS	Private Retirement Scheme
PS	Pioneer Status
R&D	Research and Development
RPGT	Real Property Gains Tax
SA	Stamp Act 1949
SC	Special Commissioners
SME	Small and Medium Enterprise
VDP	Vendor Development Programme
WHT	Withholding Tax

DEFINITION (FOR TAX PURPOSES)

Deferred annuity	Means deferred annuity contracted on or after 1 January 2014 issued by insurers licensed under the Financial Services Act 2013 [Act 758] or takaful operators registered under the Islamic Financial Services Act 2013 [Act 759], and contains the Retirement Saving Standards approved by the Central Bank.
Permanent total disablement	<p>It has the same meaning as in the Employees' Social Security Act 1969 [Act 4] which means such disablement of a permanent nature, as disables an employee for all work which he was capable of performing at the time of the accident resulting in such disablement :</p> <p>Provided that permanent total disablement shall be deemed to result from every injury specified in Part 1 of the Second Schedule or from any combination of injuries specified in Part II of it where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more.</p>
Serious disease	Means acquired immunity deficiency syndrome, Parkinson's disease, cancer, renal failure, leukaemia or other similar diseases.
Small and Medium Enterprise	<p>A SME is defined as a company with a paid-up capital in respect of ordinary shares of RM2.5 million and below at the beginning of the basis period for the relevant year of assessment. However, it excludes a company where :-</p> <ul style="list-style-type: none">(a) 50% of the paid up capital in respect of the company's ordinary shares is directly or indirectly owned by a related company;(b) 50% of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the company; or(c) 50% of the paid up capital in respect of ordinary shares of the company and the related company is directly or indirectly owned by another company. <p>“Related company” in this context is defined as a company which has a paid up capital exceeding RM2.5 million in respect of ordinary shares at the beginning of its basis period for a year of assessment.</p>

1. TAX SYSTEMS AND ADMINISTRATION

- 1.1 *Mutual Administrative Assistance Arrangement***
- Present**
Pursuant to Section 132, the Government of Malaysia may exchange tax information with the government of any territory outside Malaysia under the DTA. Meanwhile, Section 132A was introduced to facilitate the tax information exchange arrangements with non-treaty countries.
- Proposed**
A new Section 132B be introduced to facilitate the mutual administrative assistance in tax matters with the government of any territory outside Malaysia, which includes simultaneous tax examinations, automatic exchange of information or tax administrations abroad to enhance co-operation for the exchange of information.
- Effective**
Upon coming into operation of the Finance (No.2) Act 2013.
- 1.2 *Failure to Furnish Information Within The Time Specified***
- Present**
Pursuant to Section 81, the DG may require any person to give information which may be in the possession of that person, within the time specified in a notice issued by the DG.
- Proposed**
A new Section 39(1A) be introduced where a person fails to furnish the information requested by the DG within the specific time, and that information concerns wholly or in part a deduction claimed by that person, no deduction from the gross income shall be allowed in respect of such claim.
- Effective**
Year of assessment 2014.
- 1.3 *Restriction on Right of Appeal***
- Present**
Section 99(1) states that if a taxpayer is aggrieved by any assessment, he may appeal to the SC within 30 days after the service of notice of assessment.
- Proposed**
A new Section 99(4) be introduced that the right to appeal shall not apply to a deemed assessment made under Section 90(1) or deemed assessment on amended return under Section 91A, except where a person in respect of such assessment is aggrieved by the public ruling made under Section 138A.
- Effective**
Upon coming into operation of the Finance (No.2) Act 2013.

1. TAX SYSTEMS AND ADMINISTRATION

1.4 *Disposal of Appeals*

Present

A taxpayer may file an appeal to the SC and may invoke a MAP under the DTA concurrently.

Proposed

A new Section 102(1A) be introduced, where a person has made an application to invoke a MAP under the DTA with a foreign government and the ground in which the application is made is similar with the appeal filed under this Act :-

- (a) No appeal shall be forwarded to the SC until the determination of the MAP;
- (b) The person may within 30 days from the determination of the MAP request to the DG in writing to forward such appeal to the SC; and
- (c) The DG shall within 3 months after receiving the request and forward the appeal to the SC.

Effective

Upon coming into operation of the Finance (No.2) Act 2013.

1.5 *Power to Require Payment of Withholding Tax*

Present

DG has power to disregard or vary transactions and make adjustments to counter effect of such transactions by issuing assessments or additional assessments. There is no provision for the DG to direct a person to remit the WHT which would be deducted under the Act within a specific timeframe.

Proposed

A new Section 140(2A) be introduced where the DG may require by notice any person to pay him within the time specified the amount of WHT that would be deducted by that person under the Act.

Effective date

Upon coming into operation of the Finance (No.2) Act 2013.

1.6 *Basis Period of a Company, LLP, Trust Body or Co-operative Society*

Present

A. Basis period upon commencement of operation

Pursuant to Section 21A(4), where a company, LLP, trust body or co-operative society commences operations on a day in the basis year and makes up its accounts for a period of 12 months ending on a day other than 31 December, there shall be no basis period in relation to any of its sources of income for the first year. However the Act is silent on the determination of basis period where the accounts are prepared for a period of less than or more than 12 months.

1. TAX SYSTEMS AND ADMINISTRATION

1.6 *Basis Period of a Company, LLP, Trust Body or Co-operative Society (Cont'd)*

B. Basis period upon change of accounting period

If a company, LLP, trust body or co-operative society has made up the accounts of its operation for a period of 12 months ending on a day other than 31 December and there is a failure to make up the accounts ending on the corresponding day in the following basis year, the DG may direct the basis period for the year of assessment in which the failure occurs. The Act is silent on the determination of the basis period where the aforesaid failure is in respect of accounts previously made up to 31 December.

Proposed

Amendment to Section 21A(4) :

A. Basis period upon commencement of operation

Where a company, LLP, trust body or co-operative society commences operation on a day in a basis year for a year of assessment and makes up its account :-

- (a) for a period of less than 12 months ending on a day in that basis year, that period shall constitute the basis period for the first year of assessment;
- (b) for any period of months ending on a day in the immediately following basis year (“second basis year”), that period shall constitute the basis period for the year of assessment (“second year of assessment”) immediately following the first year of assessment, there shall be no basis period in relation to any of its sources of income for the first year of assessment; or
- (c) for a period of more than 12 months ending on a day in the basis year immediately following the second basis year, that period shall constitute the basis period for the year of assessment immediately following the second year of assessment and there shall be no basis period in relation to any of its sources of income for the first year of assessment and the second year of assessment.

The effect of the above is that the first accounting period of the entity, irrespective of the number of months in that period, subject to relevant laws, shall form its first basis period for tax purposes.

B. Basis period upon change of accounting period

Where a company, LLP, trust body or co-operative society makes up the accounts for a period of 12 months ending in a basis year and fails to make up the accounts on the corresponding day in the following basis year, the DG may direct the basis period for the year of assessment in which the failure occurs.

Effective

Year of assessment 2014.

1. TAX SYSTEMS AND ADMINISTRATION

1.7 *Submission of Tax Estimates for Newly Commenced Business*

Present

SMEs are exempted from submitting estimates of tax payable or making instalment payments for a period of 2 years beginning from the year of assessment in which the SMEs commence operations.

Proposed

As a consequence of the proposed amendment under item 1.6, a new Section 107C(4A)(c) be introduced where SMEs who have no basis period for that year of assessment and for the immediate following year of assessment, the SMEs are exempted from submitting estimate of tax payable for that year of assessment and the immediate two following years of assessment.

Effective

Year of assessment 2014.

2. TAXATION - INDIVIDUALS

- 2.1 **Review of Income Tax Rates For Resident Individuals** The income tax rates for resident individuals shall be revised as follows:-

Chargeable income (RM)	Present		Proposed		Tax Savings (RM)
	Tax rate (%)	Tax payable (RM)	Tax rate (%)	Tax payable (RM)	
1 – 5,000	0	0*	0	0*	0
5,001 – 20,000	2	0*	1	0*	0
20,001 – 35,000	6	800*	5	500*	300
35,001 – 50,000	11	2,850	10	2,400	450
50,001 – 70,000	19	6,650	16	5,600	1,050
70,001 – 100,000	24	13,850	21	11,900	1,950
100,001 – 250,000	26	52,850	24	47,900	4,950
250,001 – 400,000	26	91,850	24.5	84,650	7,200
>400,000	26		25		

* after personal tax rebate of RM400 for chargeable income up to RM35,000.

The income tax rates for non-resident individuals shall be reduced by 1% from 26% to 25%.

Effective

Year of assessment 2015 (Appendix 10, budget speech).

- 2.2 **Relief For Middle Income Tax Payers**

Present

Resident individuals are eligible for personal relief of RM9,000 for a year of assessment pursuant to Section 46(1)(a).

Proposed

A special relief of RM2,000 be given to resident individuals with monthly earnings up to RM8,000 (aggregate income up to RM96,000 per year).

Effective

For year of assessment 2013 only (Appendix 7, budget speech).

- 2.3 **Monthly Tax Deduction As Final Tax**

Present

MTD is a mechanism to deduct monthly tax payments on employment income received by employees. Employers are responsible to remit the tax deducted to IRB. The employees are required to file their income tax returns to IRB on or before 30th April in the following year.

Proposed

A new Section 77C be introduced where an individual may elect not to furnish a return for a year of assessment and the tax deducted under MTD shall be the final tax if :-

- the individual only derives employment income other than those benefits provided by employer under Section 13(1)(b) or Section 13(1)(c);
- deductions have been made by the employer in accordance with the Income Tax (Deduction from Remuneration) Rules 1994;
- the individual is employed by the same employer for a period of 12 months in a calendar year;

2. TAXATION - INDIVIDUALS

- 2.3 **Monthly Tax Deduction As Final Tax (Cont'd)**
- (d) such deductions are not borne by the employer for that year of assessment;
 - (e) the spouse of that individual has not made an election for combined assessment under Section 45 of the Act.

The above provisions will not prohibit the DG from making an assessment under Section 90(3) or 91 for any year of assessment.

Effective

Year of assessment 2014.

- 2.4 **Deduction of Tax From Income Derived From Withdrawal of Contribution Made to A Private Retirement Scheme**

Present

Withdrawal of contribution by an individual before the age of 55 (other than by reason of death or permanently leaving Malaysia) from a PRS will be subject to WHT at the rate of 8% on the contribution withdrawn.

Proposed

The amount that is subject to WHT is amended to be the amount received by the individual upon withdrawal.

Further, such WHT provision is extended to include withdrawal from the scheme of deferred annuity.

The exception to the WHT provision on the withdrawal of PRS and deferred annuity are extended to include early withdrawal due to permanent total disablement, serious disease and mental disability.

Effective

Upon coming into operation of the Finance (No.2) Act 2013.

- 2.5 **1Malaysia Pension Scheme**

Present

The Government established the 1Malaysia Pension Scheme (SP1M) for the self-employed without fixed income to contribute voluntarily to the EPF in year 2010. The amount of the individuals' contribution under SP1M is based on affordability and can be as little as RM50 with the Government making a contribution of 5% of the contributed amount, subject to a maximum of RM60 per year.

To date, based on budget speech, about 66,000 contributors have participated in the scheme with total savings exceeding RM240 million.

Proposed

The Government's contribution to increase to 10%, subject to a maximum of RM120.

Effective

1 January 2014 to 31 December 2017 (budget speech).

2. TAXATION - INDIVIDUALS

2.6 *Incentive on Private Retirement Scheme*

Present

A maximum relief of RM3,000 is given for contributions made to a PRS or deferred annuity scheme. The PRS is to be approved by the SC.

There is no other incentive available for contributions made to PRS.

Proposed

Individuals aged between 20 to 30 years old will be given a one-off incentive of RM500 if the individuals participate in the PRS with a minimum cumulative investment of RM1,000 within a year.

Effective

1 January 2014 to 31 December 2018 (budget speech).

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.1 *Review of Income Tax Rates – Companies and Other Entities* The income tax rate for the following entities be revised :

- (a) a company;
- (b) a trust body;
- (c) an executor of an estate of an individual who was domiciled outside Malaysia at the time of his death;
- (d) a receiver appointed by the court; and
- (e) a LLP.

	<u>Income Tax Rate</u>	
	Current	Proposed
(a) Companies with paid-up capital of > RM2.5 million	25%	24%
(b) Trust body		
(c) Executor of an estate of an individual who was domiciled outside Malaysia at the time of his death		
(d) Receiver appointed by the court		
(e) LLP		
Company with paid-up capital ≤ RM2.5 million		
• chargeable income up to RM500,000	20%	19%
• remaining chargeable income	25%	24%

Effective

Year of assessment 2016 (Appendix 11, budget speech).

3.2 *Review of Income Tax Rates For Co-Operative Societies* The income tax rates for co-operative societies be reduced by 1% to 2% for chargeable income exceeding RM150,000 as follows :-

Chargeable Income (RM)	Present		Proposed		Tax Savings (RM)
	Tax Rate (%)	Tax Payable (RM)	Tax Rate (%)	Tax Payable (RM)	
1 – 30,000	0	0	0	0	0
30,001 – 60,000	5	1,500	5	1,500	0
60,001 – 100,000	10	4,000	10	4,000	0
100,001 – 150,000	15	7,500	15	7,500	0
150,001 – 250,000	20	20,000	18	18,000	2,000
250,001 – 500,000	22	55,000	21	52,500	4,500
500,001 – 750,000	24	60,000	23	57,500	7,000
Exceeding 750,000	25		24		

Effective

Year of assessment 2015 (Appendix 12, budget speech).

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.3 *Taxability of Gains or Profits Arising From Stock In Trade* **Present**
There is no specific provision in the Act on gains or profits from a business arising from stock in trade parted with by any element of compulsion.

Proposed

A new Section 4C be introduced where gains or profits from a business under Section 4(a) of the Act shall include an amount receivable arising from stock in trade parted with by any element of compulsion including on requisition or compulsory acquisition or in a similar manner.

Effective

Year of assessment 2014.

3.4 *Basis Period To Which Gross Income From A Business Is Related* **Present**
Pursuant to Section 24(1)(a), a debt owing to a person in a relevant period that arises from any stock in trade sold (or parted with on requisition or compulsory acquisition or in a similar manner) in or before the relevant period in the course of carrying on a business, shall be treated as gross income of the relevant person from the business for that relevant period.

Proposed

A new paragraph (aa) be introduced to affirm that a debt owing to a person in a relevant period which arises from any stock in trade parted with by any element of compulsion including requisition or compulsory acquisition or in a similar manner, in or before the relevant period, be treated as gross income of the relevant person from the business for that relevant period.

Effective

Year of assessment 2014.

3.5 *Interest Income From Loans Between Related Parties* **Present**
Any gross income of a person in respect of employment, interest, discount, rent, royalty, pension, annuity, periodical payment and other gains, accruing in or derived from Malaysia shall be treated as being received by him when he is able to obtain the receipt thereof on demand.

Proposed

A new Section 29(3) be introduced where gross income from a source in Malaysia of the relevant person consists of interest that relates to a loan –

- (a) between persons one of whom has control over the other; or
- (b) between persons both of whom are controlled by some other person,

the relevant person is deemed to be able to obtain on demand the receipt of such interest, when such interest is due to be paid to the relevant person in the relevant period.

Effective

Year of assessment 2014.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.6 *Interest Expense*

Present

Pursuant to Section 33(1)(a) and subject to Section 33(2) on interest restriction, interest payable in the basis period for a year of assessment on money borrowed and employed in the production of gross business income or being laid out on assets used or held for the production of gross income is allowed a deduction in arriving at the adjusted business income for that basis period.

Proposed

A new Section 33(4) be introduced where any sum payable in respect of interest expense for a basis period which is not due to be paid in that period, shall when it is due to be paid be deducted in arriving at the adjusted income of a person for that period.

Effective

Year of assessment 2014.

3.7 *Takaful Business – Amendment to Section 60AA*

Present

There is no provision for tax deduction in respect of takaful business on the following expenses :

- (a) management expenses incurred by a resident and non-resident operator in arriving at the adjusted income of general fund; and
- (b) commission payable and discount allowed by a resident and non-resident operator in arriving at the adjusted income of shareholders' fund.

Proposed

Management expenses, commission payable and discount allowed shall be allowed as deductions in arriving at the adjusted income of the respective funds.

Effective

Year of assessment 2014.

3.8 *Submission of Tax Returns – Amendment to Section 77A*

Present

A company may submit its tax return either by way of manual filing or electronic filing. There is no provision for the tax return to be based on audited accounts.

Proposed

Section 77A(1A) be introduced where a company shall furnish to the DG a return in the prescribed form on an electronic medium or by way of electronic transmission in accordance with Section 152A.

The return furnished by a company under this section shall be based on audited accounts.

Effective

Year of assessment 2014.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.9 *Loans or Advances To Director* **Present**

There is no specific provision under the Act relating to interest on loans or advances to director.

Proposed

A new Section 140B be introduced in respect of interest on loans or advances to director as follows :

- (1) Where in a basis period for a year of assessment, a company makes any loans or advances of any money from the Company's internal funds to a director of that company, the Company shall be deemed to have a gross income consisting of interest from such loans or advances for that basis period.
- (2) For the purposes of item (1) above, the interest for the basis period for that year of assessment shall be the aggregate sum of interest for all calendar months in the basis period and the sum of interest for each calendar month shall be determined in accordance with the following formula :

$$\frac{1}{12} \times A \times B$$

where

A : is the total amount of loan or advances outstanding at the end of the calendar month; and

B : is the average lending rate of commercial banks published by the Central Bank at the end of the calendar month or where there is no such average lending rate, such other reference lending rate as may be prescribed by the DG.

- (3) Where in respect of a loan or advances referred to in item (1) above, interest is charged by the company and the total amount of interest charged and payable by the director to that company for the basis period for a year of assessment –
 - (a) is more than the aggregate sum of interest under item (2) above for that basis period, this section shall cease to apply; or
 - (b) is less than the aggregate sum of interest under item (2) above for that basis period, this section shall apply and the total amount of interest which is charged and payable to the company for that basis period shall be disregarded.
- (4) For the purposes of the Act, “director” has the same meaning assigned to it under Section 75A(2) [Refer to item 3.11 below].

Effective

Year of assessment 2014.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.10 *Definition of Entertainment*

Present

Pursuant to Section 18, entertainment is defined to include :-

- (a) the provision of food, drink, recreation or hospitality of any kind; or
- (b) the provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in paragraph (a),

by a person or an employee of his in connection with a trade or business carried on by that person.

Generally, 50% of the expenses incurred in the provision of entertainment will not be allowed for tax deduction except for those expenses incurred as provided under the proviso of Section 39(1)(l)(i) to (viii).

Proposed

The definition of entertainment be amended to clarify that the expenses incurred by a person for the purpose of promoting his business with or without any consideration paid whether in cash or in kind, fall within the definition of “entertainment”.

Effective

Year of assessment 2014.

3.11 *Director’s Liability*

Present

A director shall be jointly and severally liable for the tax due and payable by a company. Director means any person who is occupying the position of director (by whatsoever name called), including any other person who is concerned with the management of the company’s business, and holds, either directly or indirectly or through the medium of other companies or by any other indirect means to control, more than 50% of the ordinary share capital.

Proposed

The percentage of shares held has been amended from 50% to 20%.

Effective

Upon coming into operation of the Finance (No.2) Act 2013.

3.12 *Transfer of Assets on Conversion to LLP*

Present

The existing controlled transfer provisions under Paragraph 38, 39 and 40, Schedule 3 of the Act, do not specifically provide for the treatment of assets transferred to LLP arising from conversion of a partnership or a company into a LLP pursuant to Section 29 or 30 of the LLP Act 2012.

Proposed

Controlled transfer provisions be applied in respect of assets transferred by the converting partnership or company to LLP where :

- (a) the conversion is in accordance with the LLP Act 2012;
- (b) initial allowance or annual allowance has been made, or would have been made by the partnership or the company.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

- 3.12** *Transfer of Assets on Conversion to LLP (Cont'd)* For the assets transferred from the partnership or the company to LLP in a particular year of assessment, no claim of capital allowance shall be made by the LLP in that year of assessment if the partners of the partnership or a company has made the claim of the capital allowance on the assets in the said year of assessment.

Effective

Upon coming into operation of the Finance (No.2) Act 2013.

- 3.13** *Expansion of Scope on Donation to Approved Organisation* **Present** Tax deduction is allowed in respect of donation made to an organisation established and maintained exclusively to administer and augment a fund established and held solely for the construction, improvement or maintenance of a building in Malaysia which –

- (a) is intended to be used (and, when constructed, is used) exclusively for the purposes of religious worship or the advancement of religion; and
- (b) is intended to be open (and, when constructed, is used) to any member of the public for those purposes.

Proposed

The above be extended to include fund established and held for the purpose of purchase of building.

Effective

Year of assessment 2014.

- 3.14** *Amendment to Sections 60F, 60H, 63B* **Present** Formula for determination of allowable permitted expenses (subject to further criteria set out in respective section) in arriving at the total income of the following entities is as follows:

$$A \times \frac{B}{4C}$$

- (I) Investment holding company (section 60F)

The items consist:

- A : is the total of the permitted expenses incurred for that basis period reduced by any receipt of a similar kind;
- B : is the gross income consisting of dividend, interest and rent chargeable to tax for that basis period; and
- C : is the aggregate of the gross income consisting of *dividend (whether exempt or not), interest* and rent, and gains made from the realisation of investments for that basis period.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.14 *Amendment to Sections 60F, 60H, 63B (Cont'd)*

(II) Closed-end fund (section 60H)

The items consist:

- A : is the total of the permitted expenses incurred for that basis period;
- B : is the gross income consisting of dividend and interest chargeable to tax for that basis period; and
- C : is the aggregate of the gross income consisting of *dividend and interest (whether exempt or not)*, and gains made from the realisation of investments (whether chargeable to tax or not) for that basis period.

(III) Unit trust (section 63B)

The items consist:

- A : is the total of the permitted expenses incurred for that basis period;
- B : is the gross income consisting of dividend, interest and rent chargeable to tax for that basis period; and
- C : is the aggregate of the gross income consisting of *dividend (whether exempt or not), interest* and rent, and gains made from the realisation of investments (whether chargeable to tax or not) for that basis period.

Proposed

To standardise the words used for C in the formula for calculating permitted expenses for section 60F, 60H and 63B, it is proposed that the words in the existing legislation (in italics) be substituted with “*dividend and interest (whether such dividend or interest is exempt or not)*”.

Effective

Year of assessment 2014.

4. TAX INCENTIVES

4.1 *Extension of Tax Incentive For New 4 and 5 Star Hotels In Malaysia*

Present

Hotel operators undertaking new investments in 4 and 5 star hotels in Malaysia are given the following tax incentives:-

A. Peninsular Malaysia

- (i) PS with income tax exemption of 70% of statutory income for 5 years; or
- (ii) ITA of 60% on the qualifying capital expenditure incurred within a period of 5 years and to be set off against 70% of the statutory income for each year of assessment.

For application received by the MIDA from 8 October 2011 to 31 December 2013.

B. Sabah and Sarawak

- (i) PS with income tax exemption of 100% of statutory income for 5 years; or
- (ii) ITA of 100% on the qualifying capital expenditure incurred within a period of 5 years and to be set off against 100% of the statutory income for each year of assessment.

For application received by the MIDA from 30 August 2008 to 31 December 2013.

Proposed

The application period of the tax incentives in items (A) and (B) above be extended for another 3 years.

Effective

For application received by MIDA from 1 January 2014 to 31 December 2016 (Appendix 1, budget speech).

4.2 *Flexible Work Arrangements*

Proposed

Employers can implement FWA as follows :

A. Flexible working hours

Employees can opt and arrange the number of hours to work in a day as long as they fulfill the prescribed period of working hours in a week;

B. Telecommuting

Employees can work from home or from any location other than the office;

C. Compressed work week

Employees are allowed to shorten the number of working days in a week by working longer hours in a day;

D. School holidays work arrangements

Employees who have school going children are allowed to work from home during school holidays; and

4. TAX INCENTIVES

4.2 *Flexible Work Arrangements (Cont'd)*

E. Employees choice of days off

Employees are given the option to plan their work schedule and off-days.

Double deduction will be given to employer on expenses incurred in implementing FWA in respect of :

- (a) consultancy fees to design an appropriate FWA; and
- (b) training of employees, supervisors and managers in:
 - optimising a work- life balance;
 - technology orientation;
 - managing a flexible workforce; and
 - helping managers embrace flexible work alternatives.

The incentive is given for a period of 3 years of assessment and subject to the companies obtaining FWA status from Talent Corporation Malaysia Berhad.

Effective

For FWA status application received by Talent Corporation Malaysia Berhad from 1 January 2014 to 31 December 2016 (Appendix 4, budget speech).

4.3 *Anchor Companies Under Vendor Development Programme*

Present

There is no tax deduction given to the anchor companies under VDP which incur high operating and development expenses.

Proposed

It is proposed that the qualifying operating expenses incurred by the anchor companies in implementing VDP, be given double deduction on the followings:-

- (a) Cost of product development, research & development, innovation and quality improvement;
- (b) Cost of obtaining ISO/ Kaizen/ 5S certifications, evaluation programme and business process reengineering for the purpose of increasing vendor capabilities; and
- (c) Cost of vendor skills training, capacity building, lean management system and financial management system.

Criteria to qualify for double deduction are as follows:-

- (i) The anchor companies are required to sign MoU with the MITI under VDP;
- (ii) The qualifying operating expenses must be certified by MITI before the anchor companies can claim the deduction;
- (iii) The qualifying operating expenses are capped at RM300,000 per year; and
- (iv) The deduction is given for 3 years of assessment.

Effective

For MoU signed with MITI from 1 January 2014 to 31 December 2016 (Appendix 5, budget speech).

4. TAX INCENTIVES

4.4 *Implementation of Minimum Wage Policy*

Present

Under the minimum wage policy, all enterprises including professional firms are required to pay minimum wages of RM900 per month in Peninsular Malaysia and RM800 in Sabah, Sarawak and Labuan, to local and foreign employees except those classified under domestic workers.

Wages paid by employers to their employees are eligible for deduction for the purpose of income tax computation.

Proposed

It is proposed that the difference between the existing salary and the minimum wages paid by SMEs, cooperatives, associations and organisations be given further deduction in order to ensure the smooth implementation of minimum wage policy.

Effective

1 January 2014 to 31 December 2014 (Appendix 2, budget speech).

4.5 *Tax Incentive Package In Line With GST Implementation*

Present

A. Secretarial fee and tax filing fee

Secretarial fee and tax filing fee are not deductible expenses.

B. Expenses related to training in accounting and ICT

Expenses incurred in connection with training of employees in accounting and ICT are deductible under Section 33(1).

Proposed

It is proposed that the following incentives be given in order to support the smooth implementation of GST, enhance tax compliance and reduce the cost of doing business :-

A. Secretarial and tax filing fee

Secretarial and tax filing fee up to RM5,000 and RM10,000 respectively be given tax deduction.

B. Expense for GST related training in accounting and ICT

Expenses incurred in connection with training of employees in accounting and ICT be given further deduction.

Effective (Appendix 13, budget speech)

Item (1) : Year of assessment 2015 onwards

Item (2) : Years of assessment 2014 and 2015

4. TAX INCENTIVES

4.6 *Accelerated Capital Allowance for Information and Communication Technology Equipment and Software*

Present

Effective from years of assessment 2009 until 2013, expenses incurred in purchasing ICT equipment and software are eligible for ACA. The allowance is fully deductible in the year of purchase with initial allowance of 20% and annual allowance of 80%.

Proposed

The eligibility of ACA on expenditure incurred in purchasing of ICT equipment and software be extended for another 3 years of assessment.

Effective

Years of assessment 2014, 2015 and 2016 (Appendix 8, budget speech).

4.7 *Green Lane Policy Programme*

Present

The following incentives under the Green Lane Policy Programme are given to SME to applications submitted to the MOF on or before 31 December 2014.

- (a) Interest subsidy of 2% per year subject to a maximum of RM200,000 per year or accumulated amount of RM1,000,000 for a period of 5 years.
- (b) Stamp duty exemption on loan agreements under the soft loan incentive scheme.
- (c) Deduction for expenses incurred in obtaining first 1-InnoCERT certification.
- (d) Government procurement incentive :-
 - (i) Approved as registered manufacturing company without on-site inspection;
 - (ii) Bonus marks be awarded for technical evaluation;
 - (iii) Priority in participating in procurement exercise by MOF Incorporated Companies.

Proposed

The application period of the incentives be extended to 31 December 2017.

Effective

For application received by MOF on or before 31 December 2017.

4.8 *R&D for The Development of Bioeconomy*

The following tax incentives be given for viable projects to encourage the development of Bioeconomy :-

- (a) Tax deduction for companies that invest to acquire technology platform in bio-based industry
- (b) Import duty exemption on R&D equipment for investment in pilot plants for the purpose of pre-commercialisation in Malaysia
- (c) A special incentive for companies to partially cover the operational cost for human capital development for Centre of Excellence for R&D

Effective

Applications received by Malaysian Biotechnology Corporation Sdn Bhd from 1 January 2014 to 31 December 2018.

4. TAX INCENTIVES

4.9 *Incentive For Use of Green Technology*

Present

The following tax incentives are available for companies carrying out activities relating to environmental management:-

- (a) PS or ITA to companies generating energy from renewable sources, expenditure on energy conservation and recycling of agricultural waste into value added products;
- (b) Import duty and sales tax exemption for equipment used for the generation of energy from renewable resources and energy conservation;
- (c) Tax exemption equivalent to 100% of the additional capital expenditure incurred to obtain the GBI certificate given to the owners of buildings;
- (d) Stamp duty exemption on instruments of transfer of ownership for buyers of buildings and residential properties awarded with the GBI certificate; and
- (e) ACA for environmental protection equipment.

Proposed

The following incentives be given:-

- (a) ITA for purchase of green technology equipment; and
- (b) Tax exemption on the use of green technology services and systems.

Effective

To be determined (budget speech).

5. REAL PROPERTY GAINS TAX

5.1 *Review Of RPGT Rates*

Present

The current effective RPGT rates are between 0% to 15% depending on the holding period of real properties, as follows:-

Disposal	Effective RPGT rates		
	Companies	Individual (Citizen & Permanent Resident)	Individual (Non-citizen)
Within 2 years	15%	15%	15%
Exceeding 2 to 5 years	10%	10%	10%
Exceeding 5 years	0%	0%	0%

Proposed

The RPGT rates on the gains from disposal of real properties are to be revised as follows:-

Disposal	Effective RPGT rates		
	Companies	Individual (Citizen & Permanent Resident)	Individual (Non-citizen)
Within 3 years	30%	30%	30%
In the 4 th year	20%	20%	30%
In the 5 th year	15%	15%	30%
In the 6 th and subsequent years	5%	0%	5%

Effective

Disposal of real properties and shares in real property companies commencing from 1 January 2014.

5.2 *Penalty For Incorrect or Wrong Notification of Non-Chargeability or Exemption From RPGT*

Present

In the event of incorrect or wrong notification furnished to the acquirer that resulted in failure by the acquirer to retain and remit the 2% consideration to the DG, the RPGT payable by the disposer shall be increased by a sum of 10% on the amount of RPGT payable under the assessment.

Proposed

It is clarified that the RPGT payable means the amount of tax charged on the chargeable gain excluding any allowable loss under Section 7(4) of RPGT Act.

Effective

Upon coming into operation of the Finance (No.2) Act 2013.

5. REAL PROPERTY GAINS TAX

5.3 *Penalty For Failure To Notify or Make Returns of Disposal*

Present

The DG may require a person to pay a penalty equal to treble the amount of the RPGT payable if the person fails to notify his chargeability to RPGT on disposal of a chargeable asset.

Proposed

It is clarified that the RPGT payable means the amount of tax charged on the chargeable gain excluding any allowable loss under Section 7(4) of RPGT Act.

Effective

Upon coming into operation of the Finance (No.2) Act 2013.

5.4 *Directors' Liability*

Present

A director shall be jointly and severally liable for the tax due and payable by a company under the RPGT Act 1976. Director means any person who is occupying the position of director (by whatever name called), including any person, who is concerned in the management of the company's business and holds, either directly or indirectly or through the medium of other companies or by any other indirect means to control, more than 50% of the ordinary share capital.

Proposed

The percentage of shares held has been amended from 50% to 20%.

Effective

Upon coming into operation of the Finance (No.2) Act 2013.

6. INDIRECT TAX

6.1 *GOODS AND SERVICES TAX*

Present

Sales tax is governed by the Sales Tax Act 1972. It is a single-tier tax imposed on taxable goods manufactured in Malaysia for domestic consumption and taxable goods imported into Malaysia.

Service tax is governed by the Service Tax Act 1975 and is a single-tier tax applicable on “taxable services” prescribed under the Service Tax Act 1975.

Proposed

The current sales tax and service tax be replaced with a consumption tax based on value added concept known as GST with effect from 1 April 2015.

The GST model to be implemented in Malaysia is as follows :-

A. Scope of tax

- (i) GST is to be charged on goods and services at all levels of the supply chain;
- (ii) GST is to be charged on goods and services supplied within the country or imported into the country;
- (iii) Supplies made by the Federal and State Government departments are not within the scope of GST except for some services prescribed by the MOF;
- (iv) Supplies made by the local authorities and statutory bodies in relation to regulatory and enforcement functions are not within the scope of GST; and
- (v) GST charged on all business inputs such as capital assets and raw materials is known as input tax whilst GST charged on all supplies made (sales) is known as output tax. For eligible businesses, the input tax incurred is fully recoverable from the Government through the input tax credit mechanism.

B. Standard Rated Supply

The standard rate of GST is 6%.

C. Zero-Rated Supply

Zero-rated supply means goods and services sold by businesses are charged GST at zero rate. GST paid on their inputs can be claimed as input credits. Examples of zero-rated supplies include basic food items (such as rice, meat, salt, flour and cooking oils), supply of treated water to domestic consumers and supply of the first 200 units of electricity to a domestic household.

6. INDIRECT TAX

6.1 *GOODS AND SERVICES TAX (Cont'd)*

D. Exempt Supply

Exempt supply means goods and services sold by the businesses are exempted from GST. An exempt supply will not attract output tax and any input tax incurred in making the exempt supply is not claimable as input credits. Examples of exempt supplies include building used for residential purposes, financial services, childcare services, private education services and private healthcare services.

E. Threshold



Businesses with an annual sales value of RM500,000 and above are required to register for GST purposes. Businesses below the threshold may register on a voluntary basis.

Effective

From 1 April 2015 (Appendix 9, budget speech).

7. OTHERS

- 7.1** *Labuan Business Activity Tax Act 1990 (“LBATA”)*
- Prescribed Forms
- Present**
The power to make regulations and to prescribe forms for the purpose of carrying out or giving effect to the provisions of LBATA lies with the Minister.
- Proposed**
The DG may prescribe forms as required by LBATA in connection with the operation of LBATA.
- Effective**
Upon coming into operation of the Finance (No.2) Act 2013.
- 7.2** *Duty of Keeping Books, Records and Documents*
- Present**
Pursuant to Section 9(7) of the SA, the person that has been authorised to compound for the payment of duty on unstamped instrument shall keep and retain the books, records and documents in connection with the issue of Articles of Association and Memorandum of Association for period of seven years for the purpose of inspection by the Collector.
- Proposed**
The following authorized person shall keep and retain the books, records and documents in connection with the issue of such instruments referred to in Section 9(1)(a), (b) or (c) for a period of seven years from the year in which such instruments are issued.
- (a) Any banker, dealer or insurer;
 - (b) The Registrar of Companies; and
 - (c) Tenaga Nasional Berhad.
- Effective**
Upon coming into operation of the Finance (No.2) Act 2013.
- 7.3** *Penalty For Late Stamping*
- Proposed**
Section 47A(2) has been rectified where the Collector may reduce or remit penalty for late stamping or further amount payable by the authorised person under Section 9(1) of the SA.
- Effective**
Upon coming into operation of the Finance (No.2) Act 2013.

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