

TAX BULLETIN

2009 Budget Highlights

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FOREWORD

The Budget 2009 was presented on Friday, 29 August 2008 by the Prime Minister, YAB Dato' Seri Abdullah Ahmad Badawi in his capacity as Finance Minister. With the theme of "A Caring Government" and in line with the five key development policy thrusts of the "National Mission" enunciated under the 9th Malaysian Plan, the 2009 Budget will focus on three specific strategies –

- (1) Ensuring the well being of Malaysians;
- (2) Developing quality human capital; and
- (3) Strengthening the Nation's resilience.

The Budget 2009 is presented against a challenging global environment of unprecedented high prices of oil, essential commodities such as steel and food, subprime financial disasters and consequent impact of slower economic growth, inflationary pressure and a potential recession in the developed economies and which has in turn impacted cost of living and the economy of our country.

The various strategies and measures introduced are aimed at reducing the impact of the higher cost of living particularly among the lower income group, raising capacity for knowledge and innovation, and to provide continuing impetus to sustain economic growth and to move the economy up the value chain against the challenges of the global situation.

Some of the notable tax and revenue proposals in this Budget 2009 are:

- Exemption of tax on interest on deposits
- Exemption on a wide range of benefits to employees
- Increasing group relief from 50% to 70% of current year losses for corporations
- Implementation of Advance Pricing Arrangements (APA)
- Accelerated capital allowances for SMEs to claim plant and machinery expenditure within 1 year
- More restrictive provisions on claims for Reinvestment Allowance
- Self-amendment for additional assessment of income tax
- Greater power for the Director General to combat transfer pricing through price adjustment and disallowance of interest arising from thin capitalization

In general, many of the current incentives for corporations and individuals have also been enhanced to encourage investments and to provide more reliefs to the individual taxpayers.

IMPORTANT NOTE

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1. TAX SYSTEM AND ADMINISTRATION

1.1 Power to substitute price and disallowance of interest

Present

There are no specific provisions under the Income Tax Act 1967 (ITA) to address transfer pricing arrangement and thin capitalization issues except for the general anti-avoidance provisions under section 140 of the ITA which allows the Director General of Inland Revenue Board (DGIRB) to disregard or vary transactions between related companies and make adjustments as he thinks fit.

Proposed

Specific provisions to be established to empower the DGIRB to make adjustment on transactions of goods, services or financial assistance between related persons based on the arm's length principle. Interest or finance charges in respect of financial assistance which is considered as excessive will be disallowed as a deduction.

The laws regulating such transaction are subject to rules to be prescribed by the Minister of Finance (MOF) under section 154 of the ITA.

Effective

1 January 2009.

1.2 Advance pricing arrangement (APA)

Present

Advance pricing arrangement (APA) is a mechanism to predetermine prices of goods and services to be transacted in the future between a company and its related companies for a specific period.

The parties involved in an APA consist of the Tax Authority and :

- (i) a resident company in respect of transactions with its related companies abroad (Unilateral APA);
- (ii) a resident company in respect of transactions with its related companies abroad with Tax Authority of the foreign nation (Bilateral APA);
- (iii) a resident company in respect of transactions with more than one of its related companies and with more than one Tax Authority of the foreign nations (Multilateral APA).

There is no specific legislation governing APA in Malaysia and APA is not included in the scope of advanced ruling under the Income Tax (Advance Ruling) Rules 2007.

Proposed

Application to be made to the DGIRB (in the prescribed form and shall contain particulars as may be required by the DGIRB) to enter into an APA with the DGIRB in order to determine the pricing methodology to be used on transactions between related persons.

The transactions mentioned above is construed as transactions between –

- (i) person one of whom has control over the other;
- (ii) individuals who are relatives of each other; or
- (iii) persons both of whom are controlled by some other person.

The scope and procedure to be applied in relation to APA will be prescribed by the MOF under section 154 of the ITA.

Effective

1 January 2009.

1.3 Power of the Director General of the Inland Revenue Board (DGIRB) to remit withholding tax penalties

Present

Under subsection 107A(1), 109(1), 109B(1), 109D(2) and 109E(3) of the ITA, the DGIRB may –

- (i) give notice in writing to the payer requiring him to deduct and pay tax at any other rate or to credit the payments/ distribute the income without deduction of tax; or
- (ii) under special circumstances, allow extension of time for the amount of tax deducted to be paid over.

However, there is no specific provision under the ITA that allows the DGIRB to remit penalties imposed under subsection 107A(2), 107B(3), 107B(4), 109(2), 109B(2), 109D(3) and 109E(4) of the ITA.

Proposed

It is proposed that –

- (i) the provision as set out in item (i) above be deleted; and
- (ii) the DGIRB be empowered in his discretion for any good cause shown to him remit the whole or any part of the penalties imposed under subsection 107A(2), 107B(3), 107B(4), 109(2), 109B(2), 109D(3) and 109E(4) of the ITA.

Effective

Gazette of the Finance Bill 2008.

- 1.4 Recovery from persons leaving Malaysia
- Present**
The DGIRB may prevent ‘a person’ from leaving Malaysia where he is of the opinion that the person is about or likely to leave Malaysia without paying all taxes payable by him.
- Proposed**
It is proposed that ‘a person’ includes a person who –
- (i) is a director as defined under section 75A of the ITA;
 - (ii) fails to pay the increased sum under subsection 109F(2) of the ITA; and
 - (iii) fails to pay the debts payable under subsection 103(1A), 107B(4), 107C(10) of the ITA.
- Effective**
Gazette of the Finance Bill 2008.
- 1.5 Widening scope of appeal to Special Commissioner of Income Tax (SCIT)
- Present**
Taxpayer is allowed to file an appeal only when a notice of assessment involving income tax liability is issued by the DGIRB. There is no provision for appeal by taxpayer with no income tax liability.
- Proposed**
The scope of appeal to the Special Commissioner of Income Tax (SCIT) be widened by allowing a taxpayer with no income tax liability (as notified by the DGIRB through a notification of non-chargeability which is deemed to be a notice of assessment) to file an appeal within 30 days from the date of such notification. The appeal is to be filed through the DGIRB using Form Q.
- Effective**
1 January 2009.
- 1.6 Self amendment for additional assessment
- Present**
Under the self assessment system, the tax return submitted to the DGIRB is deemed to be a notice of assessment on the day the tax return is submitted.
- There is no specific provision under the ITA that allows a taxpayer to make amendment to his tax return.
- Proposed**
(A) A new provision be introduced in the ITA to allow a taxpayer to make amendments to his tax return. The procedures and conditions provided are as follows:

- (a) the amended return will be made in the prescribed form after the due date for furnishing of tax returns but not later than 6 months from that date;
- (b) the amendment is only allowed to be made once for each year of assessment; and
- (c) no amendment of return is allowed to be made if the Director General has issued an assessment or additional assessment on the return that has been filed within the due date.

The amended return shall:

- (i) specify the amount or additional amount of chargeable income and the amount of tax or additional tax payable on that chargeable income;
- (ii) specify the amount of tax payable on the tax which has or would have been wrongly repaid to him;
- (iii) specify the increased sum as ascertained below:

- For amended return submitted within 60 days after the due date for submission of tax return, a penalty equivalent to 10% of the amount of tax or additional tax will be imposed on the taxpayer;
- For amended return submitted after 60 days but not later than 6 months from the due date for submission of tax return, the taxpayer will be subject to a penalty as computed below.

$$B + [(A + B) \times 5\%]$$

Where A= the amount of tax payable or additional tax payable; and

B= 10% of the amount of tax payable or additional tax payable.

- (iv) contain such particulars as may be required by the DGIRB.

- (B) Where a person has submitted an amended return to the DGIRB, an assessment or additional assessment shall be deemed to be made on the day on which the amended return is submitted.

Any tax or additional tax payable arising from the amended return shall be due and payable on the day on which the amended return is submitted.

Where the amended return is submitted within 60 days after the due date for submission of tax return and the tax or additional tax payable is not paid within 60 days from the due date, a penalty of 5% will be imposed on the unpaid tax or additional tax. In addition, in any civil proceeding pursued by the Government of Malaysia to recover the tax and penalties due under the deemed assessment from the amended return submitted, the court shall not entertain any plea that the amount of the aforesaid penalties sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased.

Effective
Year of assessment 2009.

2. TAXATION – INDIVIDUALS

2.1 Review of tax rates for resident individuals

The tax rates for resident individuals be reviewed as follows:-

Chargeable income (RM)	Current tax rates (%)	Proposed tax rates (%)
1 – 2,500	0	0
2,501 – 5,000	1	1
5,001 – 20,000	3	3
20,001 – 35,000	7	7
35,001 – 50,000	13	12
50,001 – 70,000	19	19
70,001 – 100,000	24	24
100,001 – 250,000	27	27
>250,000	28	27

Effective
Year of assessment 2009.

2.2 Review of tax rate for non-residents

Present
Non-resident individuals are taxed at a fixed rate of 28%.

Proposed
Tax rate for non-resident individuals be reduced by one percentage point from 28% to 27%.

Effective
Year of assessment 2009.

2.3 Increasing tax rebate

Present

Resident individual taxpayers with chargeable income not exceeding RM35,000 are eligible for a tax rebate of RM350. Under the combined assessment, where the combined chargeable income does not exceed RM35,000, a further rebate of RM350 is given.

Proposed

The tax rebate is to be increased to RM400. An additional RM400 is given under the combined assessment, where the combined chargeable income does not exceed RM35,000.

Effective

Year of assessment 2009.

2.4 Review of tax treatment on allowances, benefits-in-kind and perquisites

Present

Allowances, benefits-in-kind (BIK) and perquisites received by employees are subject to income tax except for the following BIK provided by the employer which are given tax exemption:

- (i) medical and dental care;
- (ii) childcare benefits in childcare centre provided by employers;
- (iii) the value of employer's own products or services received by employees of up to RM200 per year;
- (iv) mobile phones and telephone bills exceeding RM300 respectively;
- (v) broadband subscription fee;
- (vi) free transport from certain pick-up points or from between the home and work place;
- (vii) meals and drinks provided free of charge;
- (viii) group insurance premiums to cover workers in the event of an accident; and
- (ix) leave passage including food and accommodation for travel within Malaysia not exceeding 3 times in a calendar year or leave passage for overseas travel once in a calendar year not exceeding RM3,000.

Proposed

Employees be given further income tax exemption on the following allowances, BIK and perquisites received from the employer:

- (i) petrol card or petrol allowance or travel allowance between the home and work place up to RM2,400 a year;
- (ii) petrol card or petrol allowance or travel allowance and toll card for official duties up to RM6,000 a year;
- (iii) allowance or parking fees;

- (iv) meal allowance;
- (v) allowance or subsidies for childcare of up to RM2,400 a year;
- (vi) telephone, mobile phone, telephone bills, pager, personal data assistant (PDA) and internet subscription;
- (vii) employers' own goods provided free of charge or at discounted value where the value of the discount does not exceed RM1,000 a year;
- (viii) employers' own services provided free or at discount provided such benefits are not transferable;
- (ix) subsidies on interest on loans (existing and new loans) not exceeding RM300,000 for housing, passenger motor vehicles and education; and
- (x) medical benefits on expenses incurred on maternity and traditional medicines such as ayurvedic and acupuncture.

The above exemptions are not extended to directors of controlled companies, sole proprietors and partnerships.

Effective

Proposal (i) : Years of assessment 2008 to 2010.

Proposals (ii) to (x) : From year of assessment 2008.

2.5 Tax exemption on interest income from placement of deposits

Present

Interest income received from money deposited in all institutions approved to take deposit is subject to withholding tax of 5% except for the following deposits which are exempted from tax:

- (i) Saving account in Lembaga Tabung Haji and Bank Simpanan Nasional (BSN);
- (ii) Fixed deposit account up to RM100,000 or exceeding placement period of 12 months in all banking and financial institutions approved under the Banking and Financial Institutions Act 1989, the Islamic Banking Act 1983, Bank Pertanian Malaysia Berhad, Bank Kerjasama Rakyat Malaysia Berhad, BSN, Borneo Housing Mortgage Finance Berhad and Malaysia Building Society Berhad.

Proposed

Tax on interest income received by resident individuals from money deposited in all approved institutions be fully exempted.

Effective

30 August 2008.

- 2.6 Increase in tax exemption and extension of service awards
- Present**
Tax exemption of RM1,000 per year is given on perquisites consisting long service, past achievement or service excellence award to each employee. Exemption for perquisite on long service award shall only apply after the employee has served for more than 10 years with the same employer.
- Proposed**
Tax exemption be increased to RM2,000 a year on the perquisites in the form of long service, past achievement and excellence awards and such exemption be extended to include award given in relation to innovation and productivity.
- Effective**
Year of assessment 2008.
- 2.7 Tax treatment on bonus and director's fee
- Present**
Income from an employment, when received by a person, is treated as gross income of a person for the relevant period when it is receivable.
- Proposed**
Director's fee and bonus be treated as gross income of a person in the year such income is received.
- Effective**
Year of assessment 2009.
- 2.8 Review of perquisite on Employee Share Option Scheme (ESOS)
- Present**
Perquisite arising from a person's right to acquire shares in a company by reason of his employment is the lower of the following as compared to the amount paid for the shares:
- (i) the market value of the shares where the right shall be exercised, assigned, released or acquired on a specified date or where the right shall be exercised, assigned, released or acquired within a specified period, the first day of that period; or
 - (ii) the market value of the shares on the date of the exercise, assignment, release or acquisition of the right.
- “market value” is defined as –
- (i) in the case of a company listed on Bursa Malaysia, the average price of the shares which is ascertained by averaging the highest and the lowest price of the shares for the day;
 - (ii) in any other case, the net asset value of the shares for the day.

Proposed

The market value of shares in a company listed on any stock exchange be ascertained by averaging the highest and the lowest price of the shares for the day.

Effective

Year of assessment 2009.

2.9 Review on the determination of value of living accommodation

Present

The gross income in respect of any right to acquire shares in a company is included as part of an employee's gross income under section 13(1)(a) of the ITA for the purpose of the determination of the value of BIK on living accommodation provided by the employer. The value of BIK is the lower of the defined value* of the accommodation provided and 30% of the employee's gross employment income under section 13(1)(a) of the ITA.

* Defined value means the market rental or rateable value or economic rent, whichever is applicable.

Proposed

The gross income in respect of any right to acquire shares in a company be excluded from the employee's gross income under section 13(1)(a) of the ITA for purpose of determining the BIK on living accommodation.

Effective

Year of assessment 2009.

2.10 Extending the scope of residence status

Present

A citizen who does not qualify as a tax resident of Malaysia by reason of his employment exercised outside Malaysia in the public services or the services of a statutory authority is entitled to a non-resident citizen relief under section 130 of the ITA.

Proposed

A citizen be deemed to be a tax resident in a basis year if he is employed in the public services or the services of a statutory authority and :

- (i) is not in Malaysia because he is exercising his employment outside Malaysia; or
- (ii) attending any course of study in any institution or professional body outside Malaysia which is fully sponsored by the employer.

Effective

Year of assessment 2009.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.1 Small and Medium Enterprises (SMEs) - redefined

Present

Small and Medium Enterprises (SMEs) is defined as a company resident in Malaysia with a paid up capital of RM2.5 million ordinary shares or less at the beginning of the basis period for a year of assessment. SMEs are able to enjoy a preferential income tax rate of 20% on the first RM500,000 chargeable income and 25% (prevailing corporate tax rate for the year of assessment 2009 and subsequent year of assessment) on the remaining chargeable income.

Proposed

The definition of SMEs is reviewed to exclude a company where:

- (i) 50% of the paid up capital in respect of its ordinary shares is directly or indirectly owned by a related company;
- (ii) 50% of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first mentioned company; or
- (iii) 50% of the paid up capital in respect of ordinary shares of the first mentioned company and the related company is directly or indirectly owned by another company.

“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 the basis period for a year of assessment.

Effective

Year of assessment 2009.

3.2 Enhancing group relief

Present

For purpose of group relief, a surrendering company may surrender not more than 50% of its adjusted loss in the basis period for a year of assessment to the claimant company.

Proposed

The rate of current year loss allowed to be surrendered for purpose of group relief be increased from 50% to 70%.

Effective

Year of assessment 2009.

3.3 Accelerated capital allowance (ACA) for SME – plant and machinery

Present

Except for those assets specifically eligible for accelerated capital allowance (ACA), a person is eligible for claim of capital allowance on qualifying expenditure incurred for purpose of his business at the following standard rate.

Type of asset	Initial allowance	Annual allowance
Heavy machinery and motor vehicle	20%	20%
General plant and machinery	20%	14%
Others	20%	10%
Small value asset*	-	100%

* Asset costs not exceeding RM1,000 each and capped at a total value of RM10,000 for each year of assessment.

Proposed

SMEs (as redefined under 3.1 above) would:

- (i) be given ACA on the expenditure incurred on qualifying plant and machinery acquired in years of assessment 2009 and 2010 where the allowance is to be claimed within 1 year; and
- (ii) not be subject to the maximum limit of RM10,000 for capital allowance on small value assets.

Effective

Proposal (i) : Years of assessment 2009 and 2010.

Proposal (ii) : From year of assessment 2009.

3.4 ACA – Security control equipment

Present

ACA is given on security control equipment installed in the factory premises of companies licensed under the Industrial Co-Ordination Act 1975. This allowance is eligible to be claimed within one year.

Proposed

ACA on security control equipment be extended to all business premises. Security control equipments eligible for the allowance are:

- (i) anti-theft alarm system
- (ii) infra-red motion detection system
- (iii) siren
- (iv) access control system
- (v) closed circuit television
- (vi) video surveillance system
- (vii) security camera
- (viii) wireless camera transmitter

(ix) time lapse recording and video motion detection equipment.

Effective

Years of assessment 2009 to 2012.

3.5 ACA – Information and communication technology (ICT) equipment

Present

ACA is given on ICT equipment including computer and software which can be claimed over 2 years with initial allowance of 20% and annual allowance of 40%.

Proposed

The period of claim of ACA in respect of expenditure incurred on ICT equipment be accelerated from 2 years to 1 year.

Effective

Years of assessment 2009 to 2013.

3.6 Review of qualifying capital expenditure for capital allowance claim

Present

No deduction is allowed for payments made to non-residents in connection with the installation or operation of plant and machinery if withholding tax provisions have not been complied with. However, failure to comply with withholding tax provisions does not preclude the claim of capital allowance in respect of such payments made to non-residents.

Proposed

Any amounts paid to non-residents for services rendered in connection with the installation or operation of plant and machinery where withholding tax provisions have not been complied with will be excluded as qualifying expenditure for purposes of computing capital allowances unless the withholding tax and the relevant penalties imposed have been settled.

Effective

Gazette of the Finance Bill 2008.

3.7 Tax treatment on cost of dismantling asset and restoration of site

Present

Cost of dismantling and removing the assets as well as restoring the site where an asset was located do not qualify for claim of capital allowance as such expenditure does not form part of the cost of the asset.

Proposed

The costs of dismantling and removing the assets and restoring the site be included in the residual expenditure under paragraph 68, Schedule 3 to the ITA for purpose of computation of balancing adjustment provided that:

- (i) the claimant is obliged to incur such cost pursuant to any written law or agreement;
- (ii) the asset which has been dismantled and removed is not subsequently used for any other business of that person or any other person; and
- (iii) the amount incurred shall not include any amount paid to a non-resident which is subject to withholding tax and where the withholding tax provisions have not been complied with.

Effective

Year of assessment 2009.

3.8 Withholding tax on other income of non-residents

Present

There is no clear provision to determine and collect tax on other income under section 4(f) of the ITA from non-residents.

Other income under section 4(f) of the ITA refers to other gains or profits not covered under section 4(a) to 4(e) of the ITA.

Proposed

Income assessable under section 4(f) of the ITA derived from Malaysia by a non-resident be subject to withholding tax at the rate of 10% of the gross income.

Such income shall be deemed to be derived from Malaysia if:

- (i) responsibility for the payment, gains or profits lies with the Government, a State Government or a local authority;
- (ii) responsibility for the payment, gains or profits lies with a person who is a resident; or
- (iii) the payment is charged as an outgoing or expense in the accounts of a business carried out in Malaysia.

The payer who is liable to make such payment to a non-resident is obliged to deduct the 10% withholding tax and within 1 month from the date of crediting/ payment of such payment, pay the withholding tax to the DGIRB. The DGIRB may under special circumstances allow extension of time for the amount of tax deducted to be paid over.

Failure to comply with the aforesaid provision would render the payer being imposed with a penalty of 10% on the amount which he fails to pay.

Further, a person who fails to comply with the withholding tax provision in respect of the above will not be eligible for deduction of the expenses incurred.

Effective

1 January 2009.

3.9 Extending the scope of derivation rules

Present

Interest, royalty or payments falling to be included under the special classes of income are deemed to be derived from Malaysia if the payment lies with the Government or a State Government.

Proposed

Payments made by local authorities in respect of interest, royalty or payments falling to be included under the special classes of income be deemed to be derived from Malaysia.

Effective

Gazette of the Finance Bill 2008.

3.10 Review of scope of withholding tax on technical fees

Present

Technical fees paid to non-residents for services performed in Malaysia are subjected to income tax at 10% on the gross technical fees.

Reimbursement (e.g. travelling expenses, hotel accommodation, etc) in relation to the provision of technical services is included in the computation of gross technical fees for the purpose of withholding tax computation.

Proposed

Reimbursement relating to hotel accommodation in Malaysia is to be excluded from the computation of gross technical fees for the purpose of withholding tax.

Effective

1 January 2009.

3.11 Review of savings and transitional provisions under Finance Act 2007 – Section 108

Present

There is no specific provision for requisition and increase of tax in connection with failure to submit a statement in the prescribed form to the DGIRB. Where a company pays dividend under section 40 of the Finance Act 2007 in excess of the 108 balance or revised 108 balance and fails to remit the excess to the Government, an amount equal to 10% of the excess shall be payable to the DGIRB.

Proposed

During the period from 1 January 2008 to 31 December 2013, notwithstanding that a company has irrevocably elected to disregard its section 108 credit or has not pay dividend under section 40 of the Finance Act 2007 –

- (i) it is required to furnish the DGIRB a statement in the prescribed form.
- (ii) if a company fails to render a statement, the DGIRB may compute the amount of shortfall and shall serve on the Company a written requisition on the prescribed form calling upon the Company to pay an amount equivalent to the tax credit shortfall and a penalty of 100% thereon.
- (iii) where there is a shortfall in tax credit due to the amount of tax discharged, remitted or refunded in excess of the 108 balance or revised 108 balance, the shortfall shall be a debt due to the Government and if the company fails to remit the shortfall to the Government, an amount equal to 10% of the shortfall shall be payable to the DGIRB.
- (iv) in order for the shareholders to claim tax credits, the dividend must be paid in cash.

Effective

Gazette of the Finance Bill 2008.

3.12 Furnishing of tax estimate by SMEs

Present

SMEs are exempted from submitting estimate of tax payable or making instalment payments for a period of two years beginning from the year of assessment in which the SME commences operation.

Proposed

The flexibility of a SME not to furnish a tax estimate for a period of 2 years of assessment upon commencement of business will not apply to company that controls or is being controlled directly or indirectly by another company which has a paid up capital of more than RM2.5 million ordinary shares at the beginning of the basis period for a year of assessment.

Effective

Year of assessment 2010.

3.13 Review of provisions under section 107C of the ITA

Present

Under the self-assessment system, every company, trust body or co-operative society shall submit its tax estimates for the relevant year of assessment to the DGIRB not later than 30 days from the beginning of the basis period for the relevant year of assessment.

Should there be failure to submit an estimate of tax within the due date or where the tax estimate provided is lower than 85% of the tax estimate submitted for the previous year of assessment, the DGIRB may direct the amount of tax to be paid under the instalment payment scheme. In practice, no revision is allowed on the amount of tax directed by the DGIRB.

Proposed

The directive issued by the DGIRB on the amount of tax to be paid be deemed to be a tax estimate provided by the company, trust body or co-operative society.

The company, trust body or co-operative society be allowed to revise the tax estimated in the directive and the excessive difference penalty will be computed by comparing the final tax payable with the tax estimated under the directive or the revised tax estimate submitted by the taxpayer.

Effective

Year of assessment 2010.

- 3.14 Extending the scope of tax deduction for community projects

Present

Expenses incurred by businesses on the provision of services, public amenities and contributions to a charitable community project pertaining to education, health, housing, infrastructure and information and communication technology approved by the Minister of Finance are eligible for tax deduction.

Proposed

The scope of charitable community projects is to be extended to include projects related to enhancement of the income of the poor and conservation or preservation of the environment.

Effective

Year of assessment 2009.

- 3.15 Review of restriction on deductibility of approved contributions

Present

Deduction of the following approved contributions made by companies is restricted to 7% of aggregate income of companies :

- (i) cash contributions to approved institutions for charitable activities approved under Section 44(6) of the ITA;
- (ii) contributions made in the form of cash or the cost contributions in the form of goods for sport activities approved by the MOF or Sports Commissioner;

(iii) contributions made in the form of cash or the cost of contributions in form of goods for projects of national interest approved by the MOF.

Proposed

The limit of tax deduction for such contributions is to be increased to 10% of aggregate income of companies.

Effective

Year of assessment 2009.

3.16 Tax deduction on expenses for recruitment of workers

Present

Costs of recruitment of workers are given tax deduction unless such costs are incurred prior to the commencement of business.

Proposed

The tax deduction for recruitment costs including expenses incurred in the participation at job fairs, payments to employment agencies and head-hunters are extended to companies which have not commenced operations.

Effective

Year of assessment 2009.

3.17 Tax deduction on benefits-in-kind and perquisites

Present

Expenses on the allowances, benefits-in-kind and perquisites provided by employers to employees are given full deduction if the provisions of such benefits are stipulated in the service contract with the employees.

Proposed

Full deduction is to be given to an employer even though the provisions of such benefits are not stipulated in the service contract with the employee.

Effective

Year of assessment 2008.

3.18 Review of tax treatment on clubs, associations or similar institutions

Present

There is no specific provision in the ITA relating to the tax treatment on clubs, associations or similar institutions. Clubs, associations or similar institutions are subject to tax based on the general taxation principle as follows :-

- (i) members' fee or income derived from transactions with members is not subject to income tax (based on the principle of mutuality); and
- (ii) income derived from transactions with non-members is subject to income tax.

Proposed

Specific provisions be introduced in the ITA for tax treatment of clubs, associations or similar institutions as follows :-

- (i) income derived from transactions with members would not be subject to income tax while income derived from transactions with non-members be subject to income tax;
- (ii) income from investment and external sources being non-mutual receipts be subject to income tax; and
- (iii) expenses incurred in the production of chargeable income be allowed for tax deduction and restricted to the portion attributable to non members.

Effective

Year of assessment 2009.

3.19 Review of tax treatment on
Malaysian shipping companies

Present

Statutory income of a resident person who carries on the business of transporting passengers or cargo by sea on a Malaysian ship or the letting out on charter a Malaysian ship owned by him on a voyage or time charter basis is exempted from tax. The statutory income is arrived at by deducting allowable expenses and capital allowances from the gross income.

Proposed

In determining the statutory income for tax exemption purposes in respect of a Malaysian ship, the capital allowance on the relevant ship be deemed to have been claimed even if it has not been expressly made by the taxpayers.

Effective

Year of assessment 2009.

3.20 Review of tax treatment on
professional associations

Present

There is no specific provision in the ITA on the tax treatment of professional associations. Professional associations are deemed as trade associations and given the same income tax treatment as trade associations for the purpose of income tax computation.

Proposed

Professional associations be incorporated in the definition of trade associations.

Effective

Year of assessment 2009.

3.21 Review of tax rates for co-operative society

Present

Income tax exemption for 5 years commencing from date of registration is given to all co-operatives. Co-operatives with members' fund less than RM750,000 are given income tax exemption indefinitely. Tax exemption is given on dividends distributed by co-operatives. Income which is not exempted from income tax is taxed at scale rates ranging from 3% to 28%.

Proposed

The income tax rate for co-operative society be reduced as follows:

Chargeable income (RM)	Current tax rates (%)	Proposed tax rates (%)
1 – 20,000	0	0
20,001 – 30,000	3	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
150,001 – 250,000	23	23
250,001 – 500,000	26	26
>500,000	28	27

Effective

Year of assessment 2009.

4. TAX INCENTIVES

4.1 Review of Reinvestment Allowance (“RA”) incentive

Present

RA is given to companies engaged in :

- manufacturing, processing and selected agricultural activities that reinvest for the purposes of expansion, automation, modernisation or diversification;
- on condition that such companies have been in operation for at least 12 months.

RA given shall be withdrawn in the year of disposal if the relevant asset is disposed off at any time within 2 years from the date of acquisition of that asset.

Proposed

The criteria and conditions for the claim of RA be amended as follows:

- (i) manufacturing activity be given specific and clear definition under Schedule 7A of the ITA;
- (ii) a company must be in operation for at least 36 months;
- (iii) RA given shall be withdrawn in the year of disposal if the relevant asset is disposed off at any time within 5 years from the date of acquisition of that asset;
- (iv) a company purchasing an asset from a related company within the same group where RA has been claimed on that asset is not allowed to claim RA on the same asset;
- (v) no RA is allowed where the asset acquisition is effected in consequence of a scheme of reconstruction or amalgamation of companies.

Effective

Proposals (i) to (iii) : Year of assessment 2009.

Proposals (iv) and (v) : Gazette of the Finance Bill 2008.

4.2 Review of tax rates on income from Real Estate Investment Trust (“REIT”) and Property Trust Fund (“PTF”)

Present

Dividend from Real Estate Investment Trusts (“REITs”) and Property Trust Funds (“PTFs”) listed on the Bursa Malaysia is subject to tax at the following rates for 5 years from year of assessment 2007:

Recipient	Final withholding tax rate
Non-corporate investors (including resident, non-resident individuals and other local entities)	15%
Foreign institutional investors	20%

Proposed

Withholding tax rate on dividend received from REITs and PTFs by non-corporate investors as well as foreign institutional investors be reduced to 10%.

Effective

1 January 2009 to 31 December 2011.

4.3 Review of tax incentive for hotel industries

Present

The following incentives are given to hotels in Sabah and Sarawak:

- (A) New investment in 1 to 3-star hotel:
 - (i) Pioneer Status with tax exemption of 100% of statutory income for a period of 5 years; or
 - (ii) Investment Tax Allowance of 100% on qualifying capital expenditure incurred within 5 years which can be set-off against 100% of

statutory income for each year of assessment.

New investment for 4 and 5 star hotels are not given tax incentives.

- (B) Reinvestment for the purpose of expansion, modernization and renovation of 1 to 5-star hotels is given incentives as in (i) and (ii) above and the incentives are given for 2 rounds.

Proposed

Hotel operators undertaking new investment in 4 and 5-star hotels in Sabah and Sarawak be given Pioneer Status or Investment Tax Allowance incentive as mentioned in (A) and (B) above.

Effective

Application received by the Malaysian Industrial Development Authority (MIDA) from 30 August 2008 to 31 December 2013.

4.4 Tax incentives for bus and taxi operators

Present

- (i) Locally assembled buses, including air-conditioners installed in buses, are subject to 10% sales tax which is borne by the purchaser.
- (ii) Expenditure incurred on acquisition of buses are eligible for capital allowance to be claimed within a period of 4 years. Buses using natural gas are eligible for capital allowance to be claimed over 2 years.
- (iii) Road tax on all types of buses and taxis range from RM25 to RM600.

Proposed

It is proposed that:

- (i) Sales tax exemption be given on the purchase of locally assembled buses including air-conditioners.
- (ii) ACA to be claimed within 1 year on expenditure incurred on the acquisition of new buses.
- (iii) Road tax be reduced to RM20 a year on all types of buses, taxis as well as hired cars including limousines and hire-and-drive vehicles.

Effective

Proposal (i): Application received by Minister of Finance from 30 August 2008 to 31 December 2011.

Proposal (ii): Years of assessment 2009 to 2011.

Proposal (iii): From 1 September 2008.

4.5 Review of tax incentives for rearing of chicken and ducks using closed house system

Present

(A) Chicken and duck rearers operating in promoted areas (Kelantan, Terengganu, Pahang and district of Mersing, Perlis, Labuan, Sabah and Sarawak) who undertake new investments are given the following incentives:-

- (i) Pioneer Status with tax exemption of 100% on statutory income for a period of 5 years; or
- (ii) Investment tax allowance of 60% on qualifying capital expenditure incurred within a period of 5 years which can be set off against 100% of the statutory income for each year of assessment.

(B) Chicken and duck rearers who reinvest to shift from an open house system to a closed house system (as approved by the Ministry of Agriculture and Agro-Based Industry) are given reinvestment allowance (RA) of 60% on the qualifying expenditure for a period of 15 consecutive years commencing from the first year the reinvestment is made.

The RA can be set off against:

- (i) 100% of the statutory income for each year of assessment for project located in the promoted areas; or
- (ii) 70% of the statutory income for each year of assessment for project located outside the promoted areas.

This incentive is given on condition that the minimum rearing capacity of the closed house system is met :-

- (i) 20,000 broiler chickens/ ducks per cycle;
- (ii) 20,000 breeder chickens/ ducks per cycle; or
- (iii) 50,000 layer chickens/ ducks per cycle.

This incentive is effective until year of assessment 2010.

A project undertaken by a person in expanding his existing business of rearing chicken and ducks in a closed house system is not eligible for RA incentives.

Proposed

Chicken and duck rearers who reinvest to expand the closed house system in existing or new locations be given the following incentives:-

- (i) RA of 60% on the qualifying capital expenditure for the project located in the promoted areas which

- can be set off against 100% of the statutory income for each year of assessment; and
- (ii) RA of 60% on the qualifying capital expenditure is given for the project located outside the promoted areas which can be set off against 70% of the statutory income for each year of assessment.

These incentives are given to chicken and duck rearers using closed house system approved by the Ministry of Agriculture and Agro-Based Industry.

Effective

Years of assessment 2009 to 2010.

- 4.6 Tax incentives to enhance training in selected fields

Present

Expenses incurred on training of employees are allowable for deduction in arriving at the adjusted income for a year of assessment. Training of employees at approved training institutions such as International Centre for Education in Islamic Finance (INCEIF) and Penang Skills Development Centre (PSDC) are eligible for double deduction.

Proposed

- (A) Double deduction be given on expenses incurred by employers in training their employees in the following fields:
 - (i) post graduate courses in information and communication technology (ICT), electronics and life sciences;
 - (ii) post basic courses in nursing and allied health care; and
 - (iii) aircraft maintenance engineering courses.
- (B) Tax exemption be given to non-resident experts on income received by providing technical training services in the above fields.

Effective

Proposal (A): Years of assessment 2009 to 2012.

Proposal (B): 30 August 2008 to 31 December 2012.

- 4.7 Review of tax incentive for venture capital industry

Present

Venture capital companies (VCCs) that is registered with the Securities Commission (SC) is exempted from income tax in respect of the statutory income on all sources of income (other than interest income arising from savings or fixed deposits and profits from syariah-based deposits) for a period of 10 years of assessment or the years of assessment equivalent to the life of the fund established for the purposes of investing in a venture

company (VC) whichever is lesser (exempt period).

To enjoy the above tax exemption, the VCC is subject to the investment conditions as follows:

- (i) VCCs must invest at least 50% of its fund in seed capital; or
- (ii) VCCs must invest at least 70% of its funds in venture companies in the start-up stage or early-stage financing.

A VCC is allowed to carry forward the loss arising from disposal of shares in VC in the basis period for any year of assessment within the exempt period to the post-exempt period.

Proposed

Income tax exemption of 5 years be given to VCCs which invest at least 30% of its funds in:

- (i) seed capital;
- (ii) venture companies in the start-up stage;
- (iii) early-stage financing.

Effective

Application received by the SC from 30 August 2008 to 31 December 2013.

4.8 Tax exemption on income of Corporate advisers for listing of foreign companies and foreign products in Bursa Malaysia

Present

There is no special tax incentive for corporate advisers to market and attract foreign companies to list their investment products in Bursa Malaysia.

Proposed

Income tax exemption be given on fees received by corporate advisers for primary listing, dual listing or cross listings of:

- (i) corporations with predominantly foreign based operations;
- (ii) Exchange Traded Funds and Real Estate Investment Trusts with foreign based assets;
- (iii) foreign listed securities; and
- (iv) foreign financial instruments.

The proposal is subject to listing conditions approved by the Securities Commission (SC).

Effective

Years of assessment 2009 to 2013.

4.9 Tax exemption on income of Corporate advisers on the issuance & trading of *sukuk*

Present

There are no special tax incentives for institutions undertaking activities in respect of issuance of Ringgit and non-Ringgit *sukuk*.

Proposed

Income tax exemption be given to qualified institutions on:

- (i) fees earned in undertaking activities in relation to the arranging, underwriting and distributing of non-Ringgit *sukuk* issued in Malaysia and distributed outside Malaysia; and
- (ii) profits received from the trading of non-Ringgit *sukuk* issued in Malaysia.

The above incentives are subject to conditions that the *sukuk* and institutions are approved by the Securities Commission (SC).

Effective

Years of assessment 2009 to 2011.

5. OTHERS

5.1 Stamp duty exemption on loan agreements for residential properties

Present

50% of stamp duty exemption is given on instruments of transfer for the purchase of one unit residential property priced up to RM250,000 by an individual in relation to sale and purchase agreement executed between 8 September 2007 to 31 December 2010.

Proposed

50% stamp duty exemption be extended to loan agreement instruments executed for the purchase of one unit residential property priced up to RM250,000 by an individual who is a Malaysian citizen.

Effective

Sale and purchase agreements executed from 30 August 2008 to 31 December 2010.

5.2 Review of stamp duty on loan agreements and service agreements

Present

Stamp duty is imposed on the loan and service agreements at the following rates:

Type of agreement	Rate
(a) Loan/ service with security	Ad valorem RM5 for every RM1,000 or part thereof
(b) Loan/ service without security (i) Instalment payment • without condition • with condition (ii) Lump sum payment • without condition • with condition	Ad valorem RM5 for every RM1,000 or part thereof Fixed at RM10 Ad valorem RM5 for every RM1,000 or part thereof Fixed at RM10
(c) Loans to small and medium enterprises	Ad valorem RM0.50 for every RM1,000 or part thereof
(d) Loans denominated in foreign currency	Ad valorem RM5 for every RM1,000 or part thereof but not exceeding RM500
(e) Education loans	Fixed at RM10

Proposed

It is proposed that all loan agreement and service agreement instruments except for education loans be subject to ad valorem stamp duty of RM5.00 for every RM1,000 or part thereof. Stamp duty rate for education loans remains fixed at RM10.

Effective

1 January 2009

5.3 Introduction of payment of stamp duty through electronic medium

Present

Duty paid instruments are indicated with adhesive stamp on the instrument or an official receipt attached to the instrument.

Proposed

It is proposed that payments made through electronic medium be introduced for stamp duty. Where stamp duty is paid via electronic medium the stamp certificate issued must be attached to the instrument.

		<p>Effective 1 January 2009.</p>
5.4	Abolishment of adjudication fee	<p>Present An adjudication fee of RM10 is payable upon submission of an instrument for adjudication.</p> <p>Proposed The adjudication fee be abolished.</p> <p>Effective 1 January 2009.</p>
5.5	Stamping of a replicate of an instrument	<p>Present There is no specific provision in the Stamp Act 1949 which governs stamping of a replicate of an instrument.</p> <p>Proposed The Collector may indorse on a replicate of an instrument that full and proper duty with which the original is chargeable had been paid upon being satisfied that all the facts and circumstances affecting the liability of the original instrument to duty, and the amount of duty chargeable thereon has been paid. A fee of RM100 is payable on each replicate of an instrument.</p> <p>Effective 1 January 2009.</p>
5.6	Allowance made by the Collector for spoiled stamps	<p>Present Allowance shall be made by the Collector for spoiled stamps under a number of circumstances as contained in section 57 of the Stamp Act 1949.</p> <p>Proposed Circumstances for allowances to be made by the Collector be extended to include instruments executed by any party implementing a sale under a duly stamped agreement for sale and purchase but later found to be cancelled, annulled, rescinded or is otherwise not performed.</p> <p>For relief arising from the instrument of transfer that is rejected by the Registrar of Titles, application for relief must be made within 2 months from the date of the rejection.</p> <p>Effective 1 January 2009.</p>

5.7 Review of road tax on private vehicles

Present

Private saloon and non-saloon diesel vehicles owned by individuals and companies are subject to higher road tax as compared to petrol vehicles (except for those vehicles registered in Sarawak).

Proposed

Private saloon and non-saloon diesel vehicles owned by individuals and companies be reduced to the same amount imposed on similar vehicles with petrol engines. The current road tax treatment on green diesel vehicles which is 50% lower than diesel vehicles be withdrawn.

Effective

1 September 2008.

5.8 Import duties and excise duties exemption for hybrid cars

Present

Completely built-up (CBU) including hybrid cars below 2000cc are subject to the following taxes:

Engine capacity (cc)	Import duty		Excise duty	Sales tax
	MFN	CEPT		
< 1800	30%	5%	75%	10%
≥1800 to < 2000	30%	5%	80%	10%

Proposed

Franchise holders of hybrid cars be given 100% exemption on import duty and 50% exemption on excise duty upon importation of new CBU hybrid cars into Malaysia. The exemption is subject to the following conditions:

- (i) the vehicles must comply with the United Nations' definition – “a vehicle with at least 2 different energy converters and 2 different energy storage systems (gasoline and electric) on board the vehicle for the purposes of vehicle propulsion”;
- (ii) limited to new CBU hybrid passenger cars with engine capacity below 2000cc;
- (iii) engine specification of at least Euro 3 technology;
- (iv) the vehicles must be certified by the Road Transport Department to achieve Vehicle Type Approval and certified to have achieved not less than a 50% increase in city-fuel economy or not less than a 25% increase in combined city-highway fuel economy relative to a comparable vehicle that is an internal combustion gasoline fuel; and
- (v) the vehicles has emissions of carbon monoxide of less than 2.3 grams per kilometer.

Effective

Application received by MOF from 30 August 2008 to 31 December 2010.

- 5.9 Enhancing tax incentives for the generation of energy from renewable sources

Present

Tax incentives pertaining to renewable energy are only available for companies generating energy from renewable sources.

Proposed

To widen the usage of energy from renewable sources, the following incentives be introduced:

- (i) import duty and sales tax exemption on solar photovoltaic system equipment for the usage of third parties be given to importers including photovoltaic service providers approved by the Energy Commission; and
- (ii) sales tax exemption on the purchase of solar heating system equipment from local manufacturers.

Effective

Application received by Ministry of Finance (MOF) from 30 August 2008 to 31 December 2010.

- 5.10 Enhancing tax incentives for energy conservation

Present

Tax incentives pertaining to energy conservation activities are given to companies providing energy conservation services to other companies or for their own consumption.

Proposed

To widen the usage of energy efficiency (EE) equipment, the following incentives be introduced:

- (i) import duty and sales tax exemption on EE equipment such as high efficiency motors and insulation materials be given to importers including authorized agents approved by the Energy Commission; and
- (ii) sales tax exemption on the purchase of locally manufactured EE consumer goods such as refrigerator, air conditioner, lightings, fan and television.

Effective

Application received by MOF from 30 August 2008 to 31 December 2010.

5.11 Import liberalisation on selected products

Consistent with Malaysia's commitment to abolish non-tariff barriers, the import prohibition on certain goods such as gantry crane and heavy machinery has been reviewed where import licence is no longer required for the importation of such goods. In addition, it is proposed that import duty on the following goods be reduced or abolished as follows:

Dutiable goods	Current rates	Proposed rates
Food products, e.g. ground nuts, yogurt, butter, cheese, canned fruits, sardines and fruit juices	2% to 25%	Abolished
Food products in airtight container, e.g. vermicelli, biscuits, mixed fruit juices and sweet corn	5% to 20%	Exempted
Electrical goods/ components, e.g. voice recorder, generators and washing machine components	5% to 50%	Abolished
Fertilizers	5%	Abolished
Pesticides	25%	Abolished
Food products, e.g. coffee paste, tomato sauce and monosodium glutamate	10% to 30%	5% to 15%
Electrical goods, e.g. blender, rice cookers, microwave ovens and electrical kettles	15% to 30%	5% to 20%
Petrochemical and polymer industrial goods, e.g. rubber and plastic bottles	10% to 30%	5% to 20%
Port cranes	20%	5%
Textiles e.g. carpets and glassware	25% to 60%	20% to 30%

Effective
4.00pm, 29 August 2008.

5.12 Review of excise duty on cigarettes

The excise duty on cigarettes, cheroots, cigars and cigarillos containing tobacco or tobacco substitutes be increased where applicable as follows:

Present rate	Proposed rate
RM150/kg and 20% or RM0.15/stick and 20%	RM180/kg and 20% or RM0.18/stick and 20%

Effective
4.00pm, 29 August 2008.

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