



Finance (No. 2) Bill 2023 Highlights

2024 Budget

November 2023

KPMG in Malaysia



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Business Tax





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Key Message

“Equitable and consistent treatment is always one of the main drivers to ensure tax compliance. This can be seen from the Malaysian Government’s move to align the conditions on MSME to enjoy the preferential income tax rate, 2 YAs exemption from filing of ETP and special allowance for small value assets without restriction.

The Malaysian Government has also heard the voice of the Business in improving tax compliance from an administrative perspective. An additional revision of ETP will be allowed in the 11th month of the basis period for a YA. Additionally, relaxation is now given to a director to appoint employees of the organisation to fill and furnish any prescribed forms under the ITA electronically.”

Income Tax

1 Condition for tax treatments of MSME

It is proposed that a new condition be imposed on companies in order to be eligible to enjoy the concessional tax treatments as stated below:

Concessional Tax Treatment	Condition (Current)	New Condition (Proposed)
Exemption from filing of ETP for the first 2 YAs upon commencement of operations.	Paid-up capital in respect of ordinary shares of RM2.5 million and less at the beginning of the basis period for a YA*.	20% or less of the paid-up capital in respect of ordinary shares at the beginning of the basis period for a YA is directly or indirectly owned by a company or companies incorporated outside Malaysia or an individual or individuals who are not Malaysian citizen.
Special allowance for small value assets (i.e. value of each asset is not more than RM2,000) without restriction up to a maximum of RM20,000 per YA.	<p>(a) Paid-up capital in respect of ordinary shares of RM2.5 million and less at the beginning of the basis period for a YA*; and</p> <p>(b) Has gross income from source or sources consisting of a business not exceeding RM50 million for the basis period for that YA.</p>	

*Subject to the related parties proviso (Sections 107C(4B) and 107C(4C) / Paragraphs 19A(4) and (5), Schedule 3 of the ITA refer).

The above proposal is effective from YA 2024.

2 Conditions for approved institutions, organisations or funds under Section 44(6) of the ITA

Institutions, organisations or funds approved under Section 44(6) of the ITA must comply with certain conditions to maintain the approval status which in turn, makes them eligible for income tax exemption.

Current

Amongst others, one of the conditions that must be complied with by approved institutions, organisations or funds which have been granted approval under Section 44(6) of the ITA is as follows:

- The institutions, organisations or funds are allowed to participate in business activities provided that not more than 25% of the accumulated funds on the first day of the YA is utilised for business purposes.

In the event of a breach of any of the approval conditions stated in the guidelines or the ITA, the DGIR may at his own discretion revoke the approval granted under Section 44(6) of the ITA.

Proposed

It is proposed that the limit of the utilisation of accumulated funds for participation in business activities of 25% be increased to 35%.

Further, it is also proposed that the income of the approved institutions / organisations / funds under Section 44(6) of the ITA for a YA is exempted from income tax as long as the approval conditions set are being complied with for that YA.

Effective Date

The above proposal is effective from YA 2024.

Commentary

With this proposal on the increase of the limit of the utilisation of accumulated funds for business activities purpose, the approved institutions / organisations / funds are given more flexibility in carrying out business activities to generate more income which can be used to support or achieve their charitable objectives.

It was however indicated in the 2024 Budget Appendices that, for those who wish to apply the increased limit of 35%, it comes with a higher threshold of annual charitable activity expenditures of at least 60%. It remains to be seen if the IRB will incorporate these changes into its guidelines.

It should be noted that approved institutions, organisations or funds would be taxable for a YA if they fail to meet the approval conditions set in that particular YA. However, the IRB has assured that donors who have made donations to these institutions, organisations or funds would still be eligible for a tax deduction as long as the institutions, organisations or funds still hold their Section 44(6) status.

3 Redefinition of foreign tax and foreign income



Where a foreign income is subject to tax in both Malaysia and the foreign country, tax credit in the form of bilateral relief under a DTA, or unilateral relief under the domestic law (if there is no available DTA or if a limited DTA does not contain such relief article), may be given on such income to eliminate / minimise double taxation.

Currently, “foreign income” for the purpose of double taxation relief refers to income derived from outside Malaysia or in the case of bilateral credit, includes income derived from Malaysia which has been subjected to foreign tax. Therefore, a Malaysian source income which suffers double taxation may qualify for bilateral

relief but not unilateral relief. For clarity on the application of tax relief on foreign income, it is proposed that the definition of “foreign income” for unilateral relief purposes be refined to expressly exclude income derived from Malaysia which has been subjected to foreign tax.

It is also proposed that “foreign tax” be redefined as any tax on foreign income chargeable or imposed by the originating jurisdiction.

The proposed changes provide greater clarity on the taxation of foreign sourced income.

The changes are effective from YA 2024.

Administrative Matters

1 Mandatory submission of the required information and documents through the MITRS

The MITRS was rolled out by the IRB several years ago to serve as an online platform for the submission of Tax Working Sheets and financial information electronically. It can be accessed by both taxpayers and tax agents.

Current

The use of MITRS is implemented in stages starting with the category of companies under audit or investigation from 1 September 2020. The companies will be informed by the IRB audit officer in writing to upload the required information through the MITRS.

Proposed

A new Section 82B will be inserted in the ITA to mandate a person to provide information and furnish documents as may be determined by the DGIR for the purpose of ascertaining his chargeable income electronically within 30 days after the submission due date of the tax return for a YA.

Failure to comply shall, on conviction, be liable to a fine of not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding 6 months, or both.

Mechanism

Based on the 2024 Budget Announcement, the submission would be made through the MITRS.

Effective Date

From YA 2025.

Commentary

The current tax return is comprehensive and already contains substantial information and working sheets which may be required to be submitted under the MITRS. With the mandated use of MITRS which may likely require taxpayers to upload tax computations, audited accounts and other relevant documents, it is anticipated that future tax returns may be simplified to reduce and remove duplication of information required.

2 Allow revision of ETP in the 11th month (CP204A)



Currently, a company, LLP, trust body or co-operative society may revise its tax estimate in the 6th month and/or the 9th month of the basis period for a YA. Any underestimation of tax payable in excess of 30% of the tax payable under the deemed assessment would attract penalties.

It is proposed that an additional revision of ETP for a YA be allowed in the 11th month of the basis period for that YA. With this, it is likely that the IRB may no longer allow any special revision of ETP for a YA to be made after the 11th month.

The initial ETP for a YA shall not be less than 85% of the initial ETP or the last revised ETP of the immediately preceding YA. Further, the deadline for submission of the 11th month revision for the current YA and the initial ETP for the following YA would fall in the same month. Therefore, it should be noted that any revision of the ETP made in the 11th month of the basis period for a YA will have an effect on the 85% threshold of the initial ETP for the following YA.

As such, it is essential for a company, LLP, trust body or co-operative society to consider whether an 11th month revision of ETP is required for the current YA before submitting the initial ETP for the following YA.

The above proposal is effective from YA 2024.

3 Appointment of employees to fill and submit electronic forms

Currently, individuals of an organisation who fall under Section 75(1) of the ITA may by himself, or appoint a tax agent to furnish any prescribed forms under the ITA electronically on behalf of that organisation.

It is proposed that the abovementioned individuals may also appoint other employees of the organisation to furnish any prescribed forms under the ITA electronically on behalf of that organisation.

Type of organisation	Individuals under Section 75(1) of the ITA
Company	<ul style="list-style-type: none"> • Manager or other principal officer in Malaysia; • Directors; • Secretary; and • Any person (however styled) exercising the functions of any persons mentioned above.
Body of persons	<ul style="list-style-type: none"> • Manager; • Treasurer; • Secretary; and • Members of its controlling authority.

The above proposal is effective on the coming into operation of the Finance Act.

4 Power of DGIR to issue guidelines

Currently, there is no provisions in the ITA for the DGIR to issue any guidelines. However, it has always been the practice of the DGIR to issue guidelines, as and when needed, to provide clarity to the public on the DGIR's interpretation of the existing tax legislation. Nonetheless, these guidelines are only generally binding on the DGIR but not on the taxpayers.

It is now proposed that a new Section 134A be introduced to empower the DGIR to issue, and subsequently revoke, revise or amend, any guidelines as he thinks expedient or necessary to clarify the provisions of the ITA or to facilitate the compliance of the law or any other matter relating to the ITA.



The above proposal comes into operation from 1 January 2024.

Real Property Gains Tax





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Key Message

“In line with the Malaysian Government’s aspiration to modernise the tax system, the implementation of self-assessment system for RPGT will shift the responsibility of computing one’s RPGT liability from the IRB to taxpayers.

The change to self-assessment regime will inculcate a practice of voluntary compliance by taxpayers and allow the IRB to have more time to focus on other high tax risk areas.”

1 Implementation of self-assessment system for RPGT

Currently, taxpayers or their authorised tax agents, advocates and solicitors of the High Courts submit RPGT returns manually or online via MyTax portal. The RPGT returns will then be processed by the IRB after which an assessment notice or a certificate of non chargeability will be issued to the taxpayers.

It is proposed that the RPGTA be amended to include provisions in relation to the implementation of the self-assessment system.

With the implementation of the self-assessment regime for RPGT, the procedures relating to RPGT returns and assessments would be as follows:

- (a) Disposer is required to calculate his own tax in the RPGT return;
- (b) The submitted RPGT return is deemed to be a notice of assessment made by the DGIR and is deemed to have been served on the taxpayer on the day the RPGT return is submitted;
- (c) The deemed assessment can be amended by submitting an amended RPGT return within 6 months from the due date for submission of the RPGT return and the amendment can only be done once;
- (d) The amended return to the DGIR shall include the following information:
 - The additional chargeable gains and the amount of additional tax payable;
 - The amount of tax payable which has or would have been wrongly repaid to the taxpayer;
 - The increased sum equal to 10% of the additional tax payable;
 - Other particulars as may be required by the DGIR.
- (e) The tax or additional tax payable under the deemed assessment shall be due and payable within the period of 60 days from the date of disposal;
- (f) The tax or additional tax payable under the deemed assessment made on the amended return shall be due and payable on the day the amended return is furnished;
- (g) Taxpayer may apply for relief on an assessment within 5 years after the end of the YA within which the assessment was made;
- (h) The DGIR may by notice in writing request the taxpayers to provide all books, accounts, returns, statement of bank accounts and other documents deemed necessary for audit purposes; and
- (i) Documents must be kept for a period of 7 years from the end of the YA of the deemed assessment.

The above proposal comes into operation from 1 January 2025.

2 Disposal of shares in RPC



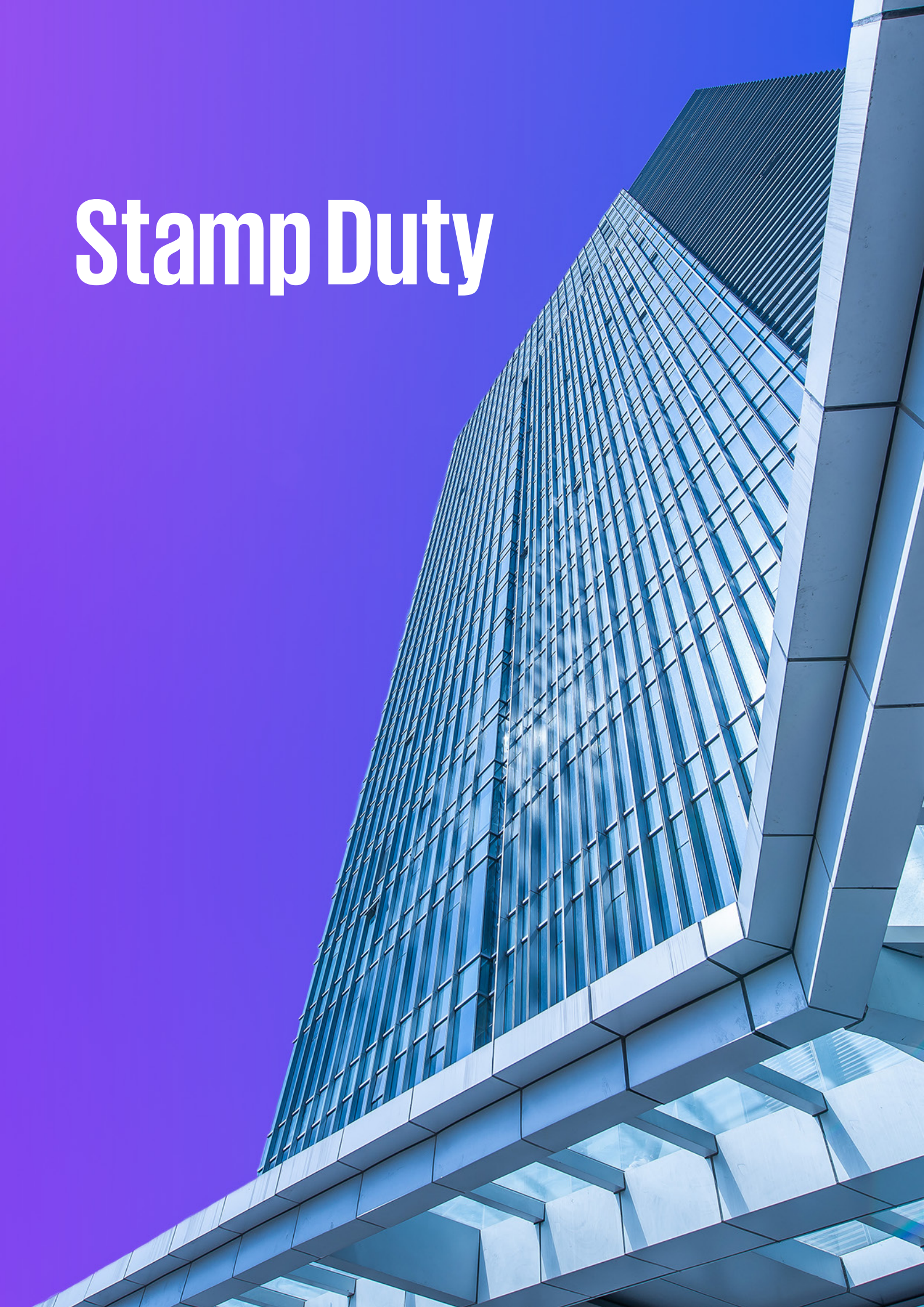
Currently, RPGT is imposed on gains on disposal of shares in RPC.

It is proposed that gains from the disposal of shares in RPC by a company, LLP, trust body or co-operative society would no longer be subject to RPGT. This is in line with bringing all capital gains from the disposal of unlisted shares to CGT, as opposed to RPGT which currently only captures the disposal of shares in RPC.

However, a Labuan entity carrying on a business activity under Section 2B of the LBATA would continue to be subject to RPGT on gains from the disposal of shares in RPC.

The above proposal comes into operation from 1 January 2024.

Stamp Duty





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Key Message

“Changes proposed for the stamp duty regime largely echo the Malaysian Government’s initiative to progressively broaden its tax base – particularly where instruments executed by foreign-owned companies and non-Malaysian citizens are concerned.

This is evident through the expanded definitions for instruments of transfer, as well as abolishing the duty cap on loans denominated in foreign currency and changes to the stamp duty rates for property transfers by foreign-owned companies and non-Malaysian citizens.”

1 Definition of writing or written to include electronic instruments

Currently, there are references to “writing” and “written” throughout the SA. However, there is no specific definition of these terms under Section 2 of the SA.

It is proposed that the definition of “writing” and “written” be included in Section 2 of the SA and that such definition will include “any handwriting, typewriting, printing, electronic record or transmission which is in an electronically readable form”.

The above proposal comes into operation from 1 January 2024.

2 Instruments executed outside Malaysia to be deemed accepted in Malaysia via first receipt of email as evidence



Currently, Section 42(2) of the SA provides that instruments executed outside Malaysia concerning any matter in Malaysia that has been brought to the Collector for stamping may require the date of receipt to be verified by:

- Production of the envelope in which the instrument was received;
- Any accompanying letter; or
- By statutory declaration (unless the date of the instrument shows that it must have been received within 30 days).

A new Section 42(2A) is proposed to provide that instruments executed outside Malaysia received

by way of electronic transmission shall be deemed accepted in Malaysia from the first receipt of email as evidence. In this respect, the instruments must be stamped within 30 days from the first receipt of email. The date of receipt shall be verified by the production of a copy or print out of the electronic transmission.

The above proposal is effective from 1 January 2024.

3 Stamp duty for conventional loan agreements and Shariah-compliant financing in foreign currency

Currently, Item 27(a)(ii) in the First Schedule of the SA provides that conventional loan agreements and Shariah-compliant financing in foreign currency are subject to ad valorem stamp duty at a rate of RM5 for every RM1,000, or part thereof, of the loan amount. However, the total stamp duty payable is capped at a maximum of RM2,000.

It is proposed for the maximum cap of RM2,000 to be removed.

The above proposal comes into operation for instruments executed from 1 January 2024.

4 Stamp duty on transfer of property ownership relating to a deceased estate by renunciation of rights

Currently, the transfer of property ownership involving inheritance property is subject to stamp duty as follows:

Item in First Schedule of SA	Type of Property Ownership Transfer	Stamp Duty Rate
32(i)	If the ownership is transferred from the administrator to an eligible beneficiary in accordance with a will/faraid or the Distribution Act 1958	Fixed rate of RM10
66(c)	If an eligible beneficiary renounces his/her right to another eligible beneficiary or non-beneficiary	Ad valorem rate of 1% to 4%

A fixed stamp duty of RM10 is proposed to be applicable for the transfer of property ownership relating to a deceased estate under the amended Item 32(h) in the First Schedule of the SA where the eligible beneficiary renounces his/her right to another eligible beneficiary entitled under the same estate.

The above proposal is applicable for instruments of property ownership transfer executed from 1 January 2024.

5 Stamp duty on instrument of property ownership transfer for foreign-owned companies and non-citizens

Currently, foreign-owned companies and non-citizen individuals are allowed to own properties in Malaysia and are subject to the same ad valorem stamp duty rates on property ownership transfers as Malaysian companies and citizens, as follows:

Sales Price / Market Value of Property (whichever is higher)	Stamp Duty Rate
First RM100,000	1%
RM100,001 to RM500,000	2%
RM500,001 to RM1,000,000	3%
RM1,000,001 and above	4%

It is proposed for a flat stamp duty rate of 4% to be imposed on property ownership transfers executed by foreign-owned companies and non-citizen individuals (except Malaysian permanent residents) involving properties in Malaysia. This proposal will be in the form of a new Item 32(aa) in the First Schedule of the SA.

The above proposal applies to instruments of property ownership transfer executed from 1 January 2024.

6 Termination of use of digital franking machines, postal franking machines, adhesive stamps and impressed stamps

Currently, the SA has provisions relating to stamping through the use of digital franking machines, postal franking machines, adhesive stamps and impressed stamps.

It is proposed that the use of the abovementioned machines and stamps be discontinued by deleting the related provisions in the SA.

Consequently, to replace the stamping of cheques by affixing adhesive stamps, it is proposed that Sections 43 and 45(1) of the SA be amended as follows:

Section	Proposal
Section 43	A duty payer may bring a cheque or promissory note drawn or made out of Malaysia to the Collector for assessment of duty in accordance with Section 36 of the SA, within 30 days after it has been first received in Malaysia.
Section 45(1)	The recipient of any unstamped cheques may bring the cheques to the Collector for assessment of duty in accordance with Section 36 of the SA.

The above proposals are effective from 1 January 2024.

7 Hearing of stamp duty appeals in original jurisdiction



Currently, stamp duty appeals under Section 39 of the SA do not factor an appeal of the same made in its original jurisdiction.

It is proposed for a new Section 39(6) be included to address the rules of court relating to stamp duty appeals made in the original jurisdiction.

The above proposal is effective from 1 January 2024.

Personal Tax





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Key Message

“One of the key thrusts in *2024 Budget* is to elevate the wellbeing of the Rakyat.

Several initiatives are implemented to support and raise the Rakyat's standard of living and to improve Rakyat's quality of life. With the expansion and extension of tax reliefs, taxpayers can leverage on such reliefs to achieve some tax savings.”

Income Tax

1 Expansion of scope or increase in limit of the existing tax reliefs

It is proposed that the following existing reliefs and relief limits be expanded or increased:

Type of Tax Relief	Tax Relief Amount (Current) RM	Tax Relief Amount (Proposed) RM	Proposed Changes and Effective Period
Medical treatment, special needs or carer expenses for parents.	8,000		It is expanded to include : <ul style="list-style-type: none"> dental treatment complete medical examination (limited to RM1,000) (Effective from YA 2024)
Medical expenses for taxpayer, spouse and children on: <ul style="list-style-type: none"> (a) Treatment of serious diseases; (b) Fertility treatment; (c) Vaccination; (d) Full medical check-up, COVID-19 detection test / purchase of self-detection test kit or mental health examination / consultation; and (e) Assessment for the purpose of diagnosis of learning disability and early intervention programme or rehabilitation treatment for learning disability. 	10,000		It is expanded to include dental examination or treatment expenses up to RM1,000 by dental practitioners registered with the Malaysian Dental Council. (Effective from YA 2024)
		[Restricted to RM1,000 each for items (c) and (d)]	
		[Restricted to RM4,000 for item (e)]	

Type of Tax Relief	Tax Relief Amount (Current) RM	Tax Relief Amount (Proposed) RM	Proposed Changes and Effective Period
<p>Expenses for taxpayer, spouse and children on lifestyle:</p> <ul style="list-style-type: none"> • Purchase / subscription of books, journals, magazines, newspapers and other similar publications; • Purchase of personal computer, smartphone or tablet; • Purchase of sports equipment for sports activity as defined under the Sports Development Act 1997 and gym membership fees; and • Internet subscription. 	2,500		<p>It is expanded to include fees of any course other than up-skilling and self-enhancement courses conducted by a body recognised by the Director General of Skills Development under the National Skills Development Act 2006.</p> <p>The purchase of sports equipment and gym membership fees are excluded.</p> <p>(Effective from YA 2024)</p>
<p>Additional expenses for taxpayer, spouse and children on lifestyle:</p> <ul style="list-style-type: none"> • Purchase of sports equipment for sports activity defined under the Sports Development Act 1997; • Rental or entrance fee to any sports facilities; and • Registration fee for any sports competition where the organizer is by approved and licensed by the Commissioner of Sports under the Sports Development Act 1997. 	500	1,000	<p>The maximum relief has been increased by RM500 and the scope is expanded to include payment of fees for gym membership or sports training for carrying out sports activities as defined under the Sports Development Act 1997 provided by sports clubs / societies registered with the Commissioner of Sports or companies incorporated under the Companies Act 2016.</p> <p>(Effective from YA 2024)</p>

2 Extension of period for tax reliefs

It is proposed that the eligible period of claiming the following tax reliefs be extended:

Type of Tax Relief	Tax Relief Amount (Current) RM	Period for Tax Relief (Current)	Period for Tax Relief (Proposed)
Self-education fees – up-skilling and self-enhancement course fees and the course is conducted by a body recognised by the Director General of Skills Development under the National Skills Development Act 2006.	2,000	Up to YA 2023	Extended to YA 2026
[Paragraph 46(1)(f)(iii)]			
Payment for installation, rental, purchase including hire-purchase of equipment or subscription for use of electric vehicle charging facility for taxpayer's own vehicle and not for business use.	2,500	Up to YA 2023	Extended to YA 2027

Administrative Matters

1 Submission of Form E / CP21 / CP22 / CP22A / CP22B electronically

Currently, it is not mandatory for employers to submit Form E (except for employers which are companies and Labuan companies) / CP21 / CP22 / CP22A / CP22B electronically to the IRB.

It is proposed that all categories of employers are required to submit Form E / CP21 / CP22 / CP22A / CP22B through electronic medium.

The above proposal has effect for the year ending 31 December 2023 and subsequent years for Form E and comes into operation from 1 January 2024 for Form CP21 / CP22 / CP22A / CP22B.

2 Relaxation of condition for submission of Form CP22A / CP22B



Currently, employers are not required to notify the IRB via Form CP22A / CP22B on the cessation of employment of the employee where:

- (a) the employee's employment income is subject to MTD or the employee's total monthly remuneration from the employment is below the minimum amount of income that is subject to MTD; and
- (b) it is known to the employer that the employee is not retiring from employment.

It is proposed that the latter condition [item (b)] to be removed.

The above proposal comes into operation from 1 January 2024.

Indirect Tax





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Key Message

“The Finance (No. 2) Bill 2023 covers the proposed amendments to several indirect tax legislations. Set out below are some of the key highlights in the Bill. It should be noted that the proposals in the 2024 Budget are not covered in the Bill - it is expected to be included in the subsidiary legislations or separate bills in time to come.”

Sales Tax

1 Definition of “seller”

It is proposed that the definition of “seller” be amended to mean a person, whether in or outside of Malaysia, who sells LVG on an **online platform** or operates an online marketplace for the sales and purchases of LVG. This implies that the coverage of LVG would now be widened to include online sellers who are not operating through a marketplace.

The above proposal is effective on the coming into operation of the Finance Act.

2 Credit notes or debit notes

It is proposed that registered sellers of LVG be allowed to issue credit notes or debit notes, and also required to make deduction or addition of Sales Tax in his returns where it involves the issuance and receipt of credit notes or debit notes under the prescribed circumstances and conditions, and the credit notes or debit notes shall contain the prescribed particulars.

It is also proposed that the DGRMCD be empowered to approve application in writing from the registered manufacturer to not contain one or more of the prescribed particulars of a credit note or debit note.

The above proposals are effective on the coming into operation of the Finance Act.

3 Power of Minister to exempt and refund

It is proposed that the powers of FM be extended to cover LVG matters, specifically to exempt any LVG from Sales Tax or any person from payment of Sales Tax on LVG or any registered seller from charging and collecting Sales Tax on LVG, and to refund Sales Tax on LVG, subject to meeting conditions.

The above proposal is effective on the coming into operation of the Finance Act.

4 Sales Tax on importation is not applicable on LVG

A new Section 11E of the Sales Tax Act 2018 is proposed to provide that no Sales Tax shall be levied on the importation of LVG if it is proven that Sales Tax has been charged by the registered seller and paid. This proposal is in place to alleviate the risk of double taxation on the same goods.

The above proposal is effective on the coming into operation of the Finance Act.

5 Taxable period

It is proposed that amendment be made to prescribe the first taxable of every taxable person for LVG purposes to begin from the date he should have been registered and end on the last day of the **following 2 months** (i.e. 3 months).

The above proposal is effective on the coming into operation of the Finance Act.

6 Power of DGRMCD

It is proposed that the DGRMCD be given powers to determine the form and manner regarding the following matters for Sale Tax, amongst others:

- (a) application for registration;
- (b) application for voluntary registration;
- (c) furnishing of returns and payment of Sales Tax;
- (d) refund of Sales Tax, etc., overpaid or erroneously paid;
- (e) application for customs ruling;
- (f) information to a Session Court Judge in relation to the seized of goods;
- (g) refund, remission, exemption or any other matters as may be approved by the DGRMCD on behalf of taxable person; and
- (h) application for review.

The above proposals are effective 1 January 2024.

Service Tax

1 Deduction from return of refunded Service Tax

Currently, a registered person may apply to the DGRMCD to deduct from the Service Tax return, the Service Tax paid but subsequently refunded to his customer due to the following reasons:

- (a) Cancellation of taxable service;
- (b) Termination of taxable service; or
- (c) Such other reasons as maybe approved by the DGRMCD.

It is proposed that the abovementioned provision be amended, where the words “who is not doing business” be inserted after “his customer”. This implies that the provision would now only be applicable to cases where it involves an end customer/ end consumer (i.e. B2C transactions).

The above proposal is effective 1 January 2024.

2 Power of DGRMCD

It is proposed that the DGRMCD be given powers to determine the form and manner regarding the following matters for Service Tax, amongst others:

- (a) application for registration;
- (b) furnishing of returns and payment of Service Tax;
- (c) furnishing of declaration and payment of Service Tax;
- (d) refund of Service Tax, etc., overpaid or erroneously paid;
- (e) application for Customs Ruling;
- (f) refund, remission, exemption or any other matters as may be approved by the Director General on behalf of taxable person; and
- (g) review and appeal.

The above proposals are effective 1 January 2024.

Tourism Tax

1 Prescribed particulars in an invoice

Currently, all operators shall issue an invoice, receipt or other document to a tourist in respect of the accommodation provided and shall contain the prescribed particulars such as the rate and amount of Tourism Tax payable separate from the charges for the accommodation as well as the number of accommodation and nights for each accommodation provided.

It is proposed that operators can request in writing, and subject to the DGRMCD's approval, for one or more of the prescribed particulars to be excluded from the invoice.

The above proposal is effective 1 January 2024.

This is in line with the current practice for Service Tax, but it remains to be seen if this relaxation will also be given to digital platform service providers for Tourism Tax.

2 Power to make public ruling

A new Section 31A of the Tourism Tax Act 2017 is proposed to empower the DGRMCD to make a public ruling on the application of any provision of the Tourism Tax Act 2017 to any person or class of persons or to any type of business activities.

The above proposal is effective 1 January 2024.

3 Power of DGRMCD

It is proposed that the DGRMCD be given powers to determine the form and manner regarding the following matters for Tourism Tax, amongst others:

- (a) application for registration;
- (b) furnishing of returns and payment of Tourism Tax;
- (c) refund of Tourism Tax, etc., overpaid or erroneously paid; and
- (d) refund, remission, exemption or any other matters as may be approved by the DGRMCD on behalf of operator or digital platform service provider.

The above proposals are effective 1 January 2024.

Capital Gains Tax





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Key Message

“In October of this year Malaysia announced a new CGT regime to be imposed from 1 March 2024 onwards on sales of shares in Malaysian companies by companies and other legal entities. In addition, gains derived by Malaysian taxpayers on sales of assets located outside Malaysia would also be subject to tax if the income from such gains is received in Malaysia.

Now, with the release of the Finance (No. 2) Bill 2023 on 7 November, the effective date has been moved up to 1 January 2024. Further, the Bill has now made clear that CGT includes in its scope foreign corporate entities selling Malaysian company shares and adaptation to the taxation of real property transfers (direct and indirect) while removing corporate sellers from the RPGTA.

It is very much hoped that a concession will be granted to defer the implementation of CGT to 1 March 2024 as announced previously.”

1 Tax on disposal of all types of capital assets

Currently, Malaysia does not have a CGT regime, with the exception of RPGT, which only applies to gains arising from the disposal of real property located in Malaysia or shares in a RPC (as defined) at prescribed rates ranging from 0% - 30%.

However, as proposed in the Finance (No. 2) Bill 2023, from 1 January 2024 Malaysia will introduce a tax on capital gains arising from the disposal by companies, LLPs, co-operatives society and trust body of capital assets, i.e., moveable or immovable property including any rights or interest.

While capital gains on all types of assets are now theoretically subject to income tax under the ITA, a further section of the ITA then exempts taxation on gains of all capital assets situated in Malaysia. However, the exemption does not apply to the disposals of shares of a company incorporated in Malaysia not listed on the stock exchange and disposal of shares by a Company outside Malaysia that owns real property in Malaysia, or shares, or both, subject to meeting the prescribed conditions.

Despite the exemption for gains on disposals of assets situated in Malaysia, the taxing of gains arising from disposals of capital assets derived from foreign sources (i.e. assets situated outside of Malaysia) remains ambiguous.

This is due to the fact that under Section 3 of the ITA, foreign source income is taxed upon remittance / receipt in Malaysia. However, under the newly introduced Section 77A(1B) of the ITA, the CGT return is to be filed within 60 days of the date of the disposal of the capital asset and under the amended Section 103(12)(aa), the payment due date of the CGT is within 60 days from the disposal of the capital asset.

It remains to be seen whether further clarifications in addressing the timing at which such gains are to be taxed (i.e. at the point of remittance / receipt in Malaysia or within 60 days from the date of disposal).

In addition, taxpayers need to study the relevant DTAs, if any, to ascertain whether Malaysia has the taxing rights over such gains as DTAs prevail over the domestic law. Where the same gain is being taxed in both Malaysia and the foreign country, tax credit in the form of bilateral relief under a DTA or unilateral relief under the domestic law (if there is no available DTA or a limited DTA does not contain such relief article) may be given on such income to eliminate / minimise double taxation.

A prior area of uncertainty was the applicability of this tax to individuals. It is now clear from the Bill that this new CGT regime only applies to companies and other corporate bodies, including for capital gains arising from disposals of foreign sourced assets. Accordingly, individual taxpayers will continue to be exempt from CGT on both Malaysian and foreign assets.

A key aspect missing from the Bill was any mention of the proposed exemptions for initial public offerings, group restructurings and gains by venture capital companies that were referred to in the 2024 Budget Announcement. It is not known if these will be announced at a later date.

We set out below the details to this new CGT regime that have been revealed in the Bill that was released on 7 November 2023 as follows:

Scope of CGT	Proposed Legislation	Summary
Definition of capital assets	Section 2(1)(a) of the ITA	Moveable or immovable property including any rights or interests thereof.
Type of capital assets	Section 65C and Section 15C of the ITA	<p>Capital assets (i.e., both situated in Malaysia and outside Malaysia) including shares of companies incorporated in Malaysia.</p> <p>Shares of a controlled company incorporated outside Malaysia if it meets a 75% threshold condition.</p> <p>The disposal of the above shares shall be deemed to be derived from Malaysia where the controlled company owns a real property in Malaysia or shares of another controlled company or both.</p> <p>The 75% threshold is met where, at the date of acquisition of the shares of the controlled company;</p> <p>(a) The defined value of the real property situated in Malaysia including rights and interest owned by the controlled company is not less than 75% of the value of its total tangible assets;</p> <p>(b) The defined value of shares of another controlled company owned by the controlled company is not less than 75% of the value of its total tangible assets.</p> <p>Provided that the defined value of real property situated in Malaysia including rights or interest owned by another controlled company is not less than 75% of the value of its total tangible assets;</p> <p>OR</p>

Scope of CGT	Proposed Legislation	Summary
Type of capital assets (cont'd)	Section 65C and Section 15C of the ITA (cont'd)	<p>(c) The defined value of real property situated in Malaysia and shares of another controlled company as mentioned in items a and b above owned by the controlled company is not less than 75% of the value of its total tangible assets.</p> <p>In the above context, 'shares' includes:</p> <ul style="list-style-type: none"> • stocks and shares; • loan stock and debentures; • a member's interest in a company not limited by shares; and • any option or right relating to 'shares'.
Definition of disposal	Section 65C and Section 65F(6)(a) of the ITA	<ul style="list-style-type: none"> • Sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law and includes a reduction of share capital and purchase by a company of its own shares. • If a capital asset acquired or held is taken into the trading stock, there shall be deemed to be a disposal of the capital asset.
Category of taxpayer	Section 65D of the ITA	<ul style="list-style-type: none"> • Company (including foreign company) • LLP (including foreign LLP) • Co-operative society (including foreign co-operative society) • Trust body (including foreign trust body)
Tax rate	Part XXI of Schedule 1 of the ITA	<ul style="list-style-type: none"> • Capital asset situated in Malaysia acquired date <u>BEFORE</u> 1 January 2024 The taxpayer may choose between: (a) 10% of the chargeable income from the disposal of the capital asset; OR (b) 2% on gross on the disposal price of the capital asset. • Capital asset situated in Malaysia acquired date <u>FROM</u> 1 January 2024 10% of the chargeable income from the disposal of the capital asset. • Capital asset other than those situated in Malaysia At the prevailing income tax rate for Company, LLP, trust body or co-operative society as prescribed under Part I or IV of Schedule 1.

Scope of CGT	Proposed Legislation	Summary
Date of disposal and acquisition	Section 65F of the ITA	<p>The date is determined as follows:</p> <ul style="list-style-type: none"> On the date of agreement if there is a written agreement; OR On the date of completion of the disposal of the capital asset if there is no written agreement. <p>The date of completion of a disposal means:</p> <ul style="list-style-type: none"> The date the ownership of the capital asset is transferred or deemed transferred (as defined) by the disposer; OR The date on which the whole of the amount or value of the consideration for the transfer has been received by the disposer, <p>whichever is earlier.</p> <p>Further, where the agreement for the disposal is conditional and conditions are satisfied, the date of acquisition and disposal shall be regarded on the date of agreement; except:</p> <ul style="list-style-type: none"> It requires the approval by the Government or a State Government, the date of disposal shall be the date of such approval; OR Where the approval by the Government or a State Government is conditional, the date of disposal shall be the date when the last of all such conditions is satisfied. <p>The date of disposal for capital asset taken into the trading stock is determined as follows:</p> <ul style="list-style-type: none"> on the date that capital asset is taken into the trading stock.
Basis period	Section 6(1)(q) of the ITA	<ul style="list-style-type: none"> YA the disposal takes place and the return is admissible. Reporting must be done for each disposal transaction.
CGT reporting due date	Section 77A(1B) of the ITA	Submission of the prescribed form through e-Filing within 60 days from the date of disposal of capital asset.
CGT payment due date	Section 103(12)(aa) of the ITA	60 days from the date of disposal of capital asset.

Scope of CGT	Proposed Legislation	Summary
Mechanism	Section 65E of the ITA	<p>Determination of adjusted income/(loss) is as follows:</p> <ul style="list-style-type: none"> The amount or value of consideration in money or money's worth for the disposal of the capital asset Less: Allowable expenses <ul style="list-style-type: none"> ➤ Expenditure incurred for the purpose of enhancing or preserving the value of the capital asset, being expenditure reflected at the time of disposal; ➤ Expenditure incurred in establishing, preserving or defending disposer's title to or right over the capital asset; and ➤ Incidental cost of disposal, i.e. professional fees, cost of transfer (including stamp duty), legal fees, advertising, broker fees and commission fees. Less: Consideration in money or money's worth given by or on behalf of the owner for the acquisition of the capital asset. <ul style="list-style-type: none"> ➤ Add: Incidental cost of acquisition ➤ Less: <ul style="list-style-type: none"> ▪ Compensation for any kind of damage to the capital asset or depreciation of capital asset; ▪ Sum received under a policy of insurance for damage to the capital asset or depreciation of capital asset; and ▪ Amount of deposit forfeited to the disposer.
Losses	Section 65E of the ITA	<ul style="list-style-type: none"> Capital losses are allowed for deductions from the same source only. Unabsorbed capital losses can be carried forward for a period of 10 consecutive YAs.
Exemptions	Paragraph 38 of Schedule 6 of the ITA	<p>An exemption from tax is granted for gains derived from the disposal of capital assets situated in Malaysia <u>except for:</u></p> <ul style="list-style-type: none"> Disposals of shares of a Company incorporated in Malaysia not listed on the stock exchange; and Disposals of shares under Section 15C. <p>Meanwhile, the exemptions granted for gains derived from:</p> <ul style="list-style-type: none"> ➤ Disposal of shares related to Initial Public Offerings approved by Bursa Malaysia; ➤ Disposal of shares that are undertaken as part of internal group restructuring; and ➤ Disposal of shares that are derived by Venture Capital Company; <p>which was announced in the tabling of 2024 Budget was not specifically mentioned in the Finance (No. 2) Bill 2023.</p>

Scope of CGT	Proposed Legislation	Summary
Effective date	Section 65D of the ITA	<ul style="list-style-type: none"> From 1 January 2024.

2 Impact of CGT to trust body

Currently, Section 61(1)(b) of the ITA provides that gains from realisation of investment by a unit trust will not be subject to tax in Malaysia.

It is proposed that such gains would now fall under the newly introduced Section 4(aa) income, with the exceptions as follows:

- The gains which relate to real property as defined in the RPGTA; and
- The gains from the disposal of a capital asset situated in Malaysia, other than disposal of unlisted shares of a company incorporated in Malaysia and shares under the new Section 15C (as commented above).

Moving forward, unit trust managers are required to keep proper records of the gains from the realisation of their investments for filing of CGT purposes. In addition, they may need to re-evaluate the impact on the net return on investment as well as to relook into prospectuses and information memorandums of the unit trust funds to reflect the latest legislation position.

The above proposal comes into operation from 1 January 2024.

3 Non-application of requirement to submit ETP

Currently, every company, LLP, trust body or co-operative society is required to furnish an ETP to the DGIR for each YA.

It is proposed that the requirement to submit an ETP for a YA shall not apply to gains or profits from the disposal of a capital asset which is subject to CGT.

The amendment comes into operation from 1 January 2024.

Global Minimum Tax





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Key Message

“The key mechanisms of the Global Minimum Tax in Malaysia are largely aligned with the Model GloBE Rules, with some local twists.

With the looming implementation of the Global Minimum Tax coupled with the additional reporting and payment obligations, MNEs can no longer approach Global Minimum Tax with a “wait and see” attitude. Non-compliance would be penalized hence proper planning in advance would be key to ensure a smooth adoption of Global Minimum Tax.”

1 Introduction of provisions relating to DTT and MTT

It is proposed that the DTT and MTT be introduced in the ITA / LBATA / PITA. The DTT and MTT are largely aligned with the Model GloBE Rules, covering the scope, ETR and Top-up Tax calculation, Substance Based Income Exclusion, election for De Minimis Exclusion, etc. The salient points are summarised as follows:

In Scope

Constituent Entities that are members of an MNE with an annual revenue of EUR 750 million or more in at least 2 out of 4 immediately preceding financial years.

Minimum Rate

In scope MNEs are required to compute the ETR for each jurisdiction they are operated in. Top-up tax will be due if the jurisdictional ETR is less than 15%.

MTT

An income tax to be known as MTT to be imposed on the Ultimate Parent Entity located in Malaysia if the ETR for a jurisdiction is less than 15%.

DTT

An income tax to be known as DTT to be imposed on low-taxed Constituent Entities in Malaysia if the jurisdictional ETR in Malaysia is less than 15%.
DTT is computed on broadly the same principles as the MTT.

Allocation of Jurisdictional Top-up Tax

The MTT of a Constituent Entity shall be determined for each Constituent Entity of a jurisdiction that has GloBE Income in accordance with the following formula:

$$A \times B / C$$

Where

A is the jurisdictional Top-up Tax calculated based on MTT or DTT

B is the GloBE Income of the Constituent Entity

C is the aggregate GloBE Income of all Constituent Entities that have GloBE Income

Safe Harbour

Filing Constituent Entity may elect to apply safe harbour such that the MTT for a jurisdiction is deemed to be zero for a Financial Year, provided that the Constituent Entities in the jurisdiction are eligible for GloBE Safe Harbour, pursuant to the conditions provided under the GloBE Implementation Framework and applicable for that Financial Year.

Effective Date of MTT and DTT

It is proposed that the MTT and DTT would take effect for the Financial Year beginning on or after 1 January 2025 and subsequent Financial Years.

Information Return / Top-up Tax Return

Every Constituent Entity of a MNE Group is required to file an information return and a top-up tax return in the prescribed form on an electronic medium or by way of electronic transmission not later than 15 months from the last day of the Reporting Financial Year on a self-assessment basis.

Deadline for remittance of payment of MTT or DTT is by last day of the 15th month from the close of the Reporting Financial Year.

Offences and Penalties

Penalties for late or non-compliance with the requirement for the submission of relevant returns are:

Failure to remit payment of MTT or DTT by due date

- 10% late payment penalty on the amount not paid by the due date

Failure to furnish information return / top-up tax return

- RM20,000 to RM100,000 or imprisonment for a term not exceeding 6 months or both

Incorrect information return

- RM20,000 to RM100,000 or imprisonment for a term not exceeding 6 months or both

Incorrect top-up tax return

- RM20,000 to RM100,000 and a penalty equivalent to 200% of the tax undercharged or 100% of tax undercharged

The above list is not exhaustive.

Retention of Records

Sufficient documents shall be kept for a period of 7 years from the end of that Reporting Financial Year.

e-Invoicing





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Key Message

“Those found guilty of not complying to the e-Invoicing mandates would risk being imposed with fines of between RM200 to RM20,000, or an imprisonment term of not more than 6 months, or both.

Taxpayers would be wise to take into account the proposed amendments to the relevant Acts relating to e-Invoicing which are summarised below.”

1 Proposed legislation changes relating to the implementation of e-Invoicing

Malaysia is gearing up for a major reform as it prepares to fully implement electronic invoice which aims to align with the global trend of digital revolution and propel the country's tax system towards a new milestone.

The proposed changes to ITA, PITA and LBATA have been included in the Finance (No. 2) Bill 2023 to spearhead the implementation of electronic invoice. These include the definition of an “electronic invoice”, the duty to issue receipt / electronic invoice, consequence of failure to issue electronic invoice in accordance with the conditions as determined by the DGIR and the access to as well as disclosure of classified material in relation to electronic invoice.

The proposed changes to the ITA, PITA and LBATA are summarised as below:

Subject	Proposed Legislation	Summary of Proposed Changes
Definition of “electronic invoice”	Section 2(1) of the ITA Section 2(1) of the PITA and LBATA	“Electronic invoice” means an invoice or any document approved by the DGIR, issued by a person in respect of goods sold or services performed as provided under Section 82C.
Duty to issue receipt	Subsection 82(2A) of the ITA	<ul style="list-style-type: none"> Under the current legislation of subsection 82(1)(b), businesses with gross takings exceeding RM150,000 for the sale of goods, or RM100,000 from the performance of services shall issue a printed receipt serially numbered for every transaction and is required to retain a duplicate of every receipt issued. With the introduction of subsection 82(2A), the issuance of receipts pursuant to the abovementioned subsection 82(1)(b) may be dispensed with for those issuing electronic invoices.

Subject	Proposed Legislation	Summary of Proposed Changes
Duty to issue receipt (cont'd)	Subsection 82(2B) of the ITA	<ul style="list-style-type: none"> In the event a consolidated transaction invoice is required for submission to the DGIR, a printed receipt shall be issued for every sum received in the YA in respect of goods sold or services performed.
Duty to issue electronic invoice	Section 82C of the ITA Section 34B of the PITA Section 22DA of the LBATA	<ul style="list-style-type: none"> An electronic invoice must be issued for each transaction in respect of any goods sold or services performed for that YA and transmitted electronically to and validated by the DGIR. The FM shall prescribe the persons who shall issue the electronic invoice and the particulars to be included in the electronic invoice. The conditions and specifications under which an electronic invoice is to be issued shall be as determined by the DGIR under the guidelines issued. Where a person is required to issue an invoice under any written law, the electronic invoice issued including any other particulars as may be required shall be construed as an invoice issued under that law. However, in the situation where the particulars of the electronic invoice are inconsistent with the requirements of any other written law, the electronic invoice shall only be valid and enforceable for the purpose of the ITA, PITA and LBATA. The DGIR shall not be held liable for any loss or damage suffered due to any error or omission arising, appearing in an electronic invoice provided such error or omission was made in good faith and in the ordinary course of discharge of the duties of the DGIR or arose as a result of defect or breakdown in service or equipment used for the issuance of the electronic invoice. Subject to the conditions as determined by the DGIR, a self-billed electronic invoice shall be issued by a person who acquires any goods sold or enjoys any services performed in accordance with the conditions as imposed by the DGIR.

Subject	Proposed Legislation	Summary of Proposed Changes
Duty to issue electronic invoice (cont'd)	Section 82C of the ITA (cont'd) Section 34B of the PITA (cont'd) Section 22DA of the LBATA (cont'd)	<ul style="list-style-type: none"> The DGIR may determine a person to issue a consolidated transaction invoice by consolidating the number of transactions and that person shall transmit such invoice to the DGIR within a specified time and in accordance with the conditions as determined by the DGIR to regard it as an electronic invoice issued by the person ^{Note 1}. An error or mistake in the electronic invoice may be rectified by issuing a substitute electronic invoice within 3 days from the date of issuance of the defective electronic invoice. Where a credit note or debit note is involved, an adjustment shall be made in ascertaining the chargeable profits for that YA accordingly. Additional particulars may be added to the electronic invoice in respect of any goods sold or services performed in any YA. The provisions of the Personal Data Protection Act 2010 shall not apply to any personal data processed for electronic invoice issued or transmitted to the DGIR. <p><i>Note 1: Not applicable under Section 34B of the PITA</i></p>
Failure to issue electronic invoice	Subsection 120(1) of the ITA Section 57B of the PITA Section 22EA of the LBATA	<p>A person shall be guilty of an offence if the person without reasonable excuse:</p> <ul style="list-style-type: none"> Fails to issue an electronic invoice for each transaction in respect of any goods sold or services performed; Fails to issue a self-billed electronic invoice for the acquisition of goods sold or enjoyment of any services performed in accordance with the conditions as imposed by the DGIR; or Fails to issue a consolidated transaction invoice and transmit it to the DGIR within a specified time and in accordance with the conditions as determined by the DGIR ^{Note 2}. <p>On conviction, the person shall be liable to a fine of not less than RM200 and not exceeding RM20,000, or to imprisonment for a term not exceeding 6 months, or to both.</p> <p><i>Note 2: Not applicable under Section 57B of the PITA</i></p>

Subject	Proposed Legislation	Summary of Proposed Changes
Disclosure of e-Invoice information to the Director of Customs and Excise	Subsection 138(4)(aa) of the ITA Subsection 71(4)(aa) of the PITA Subsection 22A(1)(aa) of the LBATA	The production or disclosure of classified material in relation to electronic invoice shall be allowed to and for use by the Director General of Customs and Excise (or the public officers under his direction and control) as is necessary or expedient for the exercise of his function.
Material to be treated as confidential by a classified person	Subsection 138(5)(e) of the ITA Subsection 71(5)(e) of the PITA	Based on the current Subsection 138(1) of the ITA and Subsection 71(1) of the PITA, every classified person (as defined) shall regard and deal with classified material as confidential. The definition of a “classified person” is now expanded to include any person who, for any reason, has by any means access to any information on an electronic invoice.

The above proposed amendments come into operation from 1 January 2024.

However, based on e-Invoice Guideline dated 28 October 2023 issued by the IRB, the mandatory implementation date for the first batch of taxpayers with an annual turnover or revenue of more than RM100million only comes into effect on 1 August 2024. It remains to be seen whether further clarification would be issued by the IRB on the implementation date.

The table below sets out the various abbreviations and references used in this publication.

Abbreviation	Reference
B2C	Business-to-consumer
Cont'd	Continued
CGT	Capital Gains Tax
COVID-19	Coronavirus Disease 2019
DGIR	Director General of Inland Revenue Board
DGRMCD	Director General of Royal Malaysian Customs Department
DTA	Double Taxation Agreement
DTT	Domestic Top-up Tax
ETP	Estimate of Tax Payable
ETR	Effective Tax Rate
EUR	Euro Dollar
FM	Finance Minister
GloBE Rules	Global Anti-Base Erosion Rules
ITA	Income Tax Act 1967
IRB	Inland Revenue Board
LBATA	Labuan Business Activity Tax Act 1990
LLP	Limited Liability Partnership
LVG	Low Value Goods
MTT	Multinational Top-up Tax
MITRS	Malaysian Income Tax Reporting System
MNE	Multinational Enterprise
MSME	Micro, Small and Medium Enterprise
MTD	Monthly Tax Deductions
PITA	Petroleum (Income Tax) Act 1967
RM	Ringgit Malaysia
RPC	Real Property Company

RPGT	Real Property Gains Tax
RPGTA	Real Property Gains Tax Act 1976
SA	Stamp Act 1949
YA	Year of Assessment

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