



Finance Bill 2021 Highlights

10 November 2021

KPMG in Malaysia

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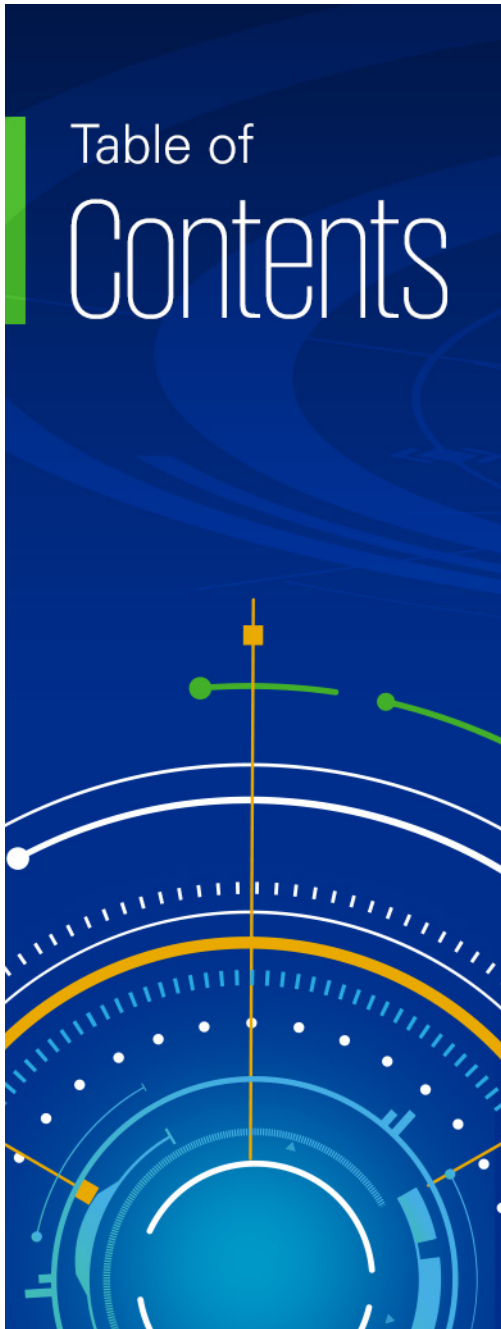
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Business Tax



Tai Lai Kok
Executive Director
Head of Tax and Head of
Corporate Tax

Key Message

“The GoM has made a big move to remove the income tax exemption on foreign source income derived by a Malaysian resident person and received in Malaysia. We believe that this is in response to the European Union’s placing of Malaysia into a grey list and in line with our preparation to implement Base Erosion and Profit Shifting Pillar 2.

Individuals and businesses are all being affected by this change from year 2022. Nevertheless, unilateral and bilateral reliefs are available to eliminate / minimise double taxation issues. Everyone needs to assess the tax impact urgently given the effective date of 1 January 2022.”

Income Tax

1. Repeal of income tax exemption on foreign source income

Under existing law, it is provided that any person who derives and remits foreign source income into Malaysia enjoys exemption from income tax. However, this exemption does not apply to a bank, insurance company, shipping company or airline which is a Malaysian resident.

It is now proposed that foreign source income is to be subject to tax on any Malaysian resident person when such income is received in Malaysia, effective from 1 January 2022. This foreign source income will effectively be added onto the taxpayer’s other sources of income and will be taxed at the prevailing tax rates. A transitional tax rate of 3% is accorded on the gross amount remitted from 1 January 2022 to 30 June 2022.

In view of the above, taxpayers with significant amounts of unremitted foreign source income accrued in earlier YAs should start assessing the tax impact if the said amounts are remitted into Malaysia from 1 January 2022 onwards.

In addition, the proposal effectively covers the taxation of all income, both passively and actively derived. In this respect, taxpayers need to study the relevant DTAs, if any, to ascertain whether Malaysia has the taxing rights over such income as DTAs prevail over the domestic law. Where the same foreign income 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.

It is noteworthy that certain DTAs provide that the tax credit shall take into account the foreign tax payable by the foreign company in respect of its income out of which the dividend is paid ("underlying tax credit"), if the conditions are met. However, this poses practical issues in calculating the underlying tax credit especially on multiple tier dividend paying companies, which we hope the IRB will in the near future provide some guidance.

The above proposal comes into operation on 1 January 2022.

2. Cukai Makmur (Prosperity Tax)

A special one-off tax termed as Cukai Makmur (loosely translated as Prosperity Tax) has been proposed for companies other than SMEs where a 33% corporate income tax rate will be levied on chargeable income exceeding RM100 million as follows:-

Chargeable Income	Tax Rate
First RM100 million	24%
Remaining balance	33%

An SME refers to a company resident and incorporated in Malaysia which:-

- (i) has 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 [subject to proviso on non-SME related parties]; and
- (ii) has a gross income from source or sources consisting of a business not exceeding RM50 million for the basis period for that YA.

The above proposal is effective for YA 2022 only.

3. Time limit for carrying forward unabsorbed business losses



Effective from YA 2019, a 7-years limitation rule was introduced to restrict any unabsorbed business losses to be carried forward for more than 7 consecutive YAs. There is a transitional provision which allows any accumulated unabsorbed business losses up to YA 2018 to be carried forward for another 7 YAs from YA 2019 until YA 2025.

In order to support the recovery of businesses that suffered losses due to the COVID-19 pandemic, it is proposed that the period of carry forward of business losses be extended from 7 years to 10 years.

This proposal will definitely benefit many businesses, especially those that are greatly affected by the COVID-19 pandemic as well as those businesses with long gestation period with payback period beyond 7 years.

The above proposal is deemed to have effect from YA 2019.

4. Special RA and time limit to carry forward unutilised RA

Generally, RA is available for 15 consecutive YAs for existing companies engaged in manufacturing and selected agricultural activities that reinvest for the purposes of expansion, automation, modernisation or diversification, subject to meeting the prescribed conditions.

In order to encourage reinvestment by companies whose RA incentive period has expired, the GoM had earlier introduced special RA for the period from YA 2016 to YA 2018 and from YA 2020 to YA 2022.

It is proposed that the special RA be extended for another 2 YAs until YA 2024 in the following manner:-

YA in which the existing RA incentive period ended	YA in which capital expenditure incurred qualifies for the special RA
YA 2019 and before	YA 2020 to YA 2024
YA 2020	YA 2021 to YA 2024
YA 2021	YA 2022 to YA 2024
YA 2022	YA 2023 and YA 2024
YA 2023	YA 2024

Similar to unabsorbed business losses, the 7-years limitation rule also applies to the unutilised RA but it commences immediately after the expiry of the 15-years qualifying period. Any unutilised balance after the 7-years period shall be disregarded. A transitional provision has been provided to allow the accumulated unutilised RA from the 15-years qualifying period or special RA period which ends in YA 2018 and prior YAs, to be carried forward for another 7 YAs from YA 2019 until YA 2025.

However, the existing law is silent on the application of the 7-years limitation rule in respect of unutilised RA arising during the special RA period from YA 2020 to YA 2022 (which is now to be extended to YA 2024). It is now proposed that a new Paragraph 4C in Schedule 7A of the ITA be introduced to allow the accumulated unutilised RA arising during the said special RA period to be carried forward for 7 YAs from YA 2025 until YA 2031.

The above proposals are effective from YA 2022.

5. Extension of tax rebate for SMEs and LLPs

Effective YA 2021, Section 6D of the ITA provides an annual income tax rebate of up to RM20,000 for 3 consecutive years from the YA in which the qualifying SME or LLP commences its operations, provided all other prescribed conditions are met. The rebate given is equivalent to the operating and capital expenditure incurred, but restricted to RM20,000 for each YA. Where the tax rebate exceeds the income tax charged for a YA, the excess shall be disregarded and is permanently lost. For the purpose of this rebate, the definition of “operations” in Subsection 21A(8) of the ITA would apply.

Current	The rebate may be granted to a resident SME or LLP which commences operations between 1 July 2020 and 31 December 2021.
Proposed	The qualifying period in which the SME or LLP commences its operations is to be extended for another 1 year, until 31 December 2022.
Effective Date	1 January 2022.
Commentary	<p>It is provided in the ITA that the MOF may impose conditions for the rebate. However, as at the date of release of the Finance Bill, no statutory order has been gazetted. It also remains to be seen whether any conditions that may be imposed would be applied retrospectively and render some of the new start-up businesses losing the opportunity to enjoy the rebate due to an unintended non-compliance with any conditions set.</p> <p>Many new start-up businesses may suffer business losses especially due to the impact of COVID-19 and most would expect no or minimal chargeable income in the next 1 year or so. This creates the question of the effectiveness of this proposal as any excess tax rebate which is not utilised cannot be carried forward.</p>

6. Unit trust – distribution from RMMF to unit holders and its withholding tax mechanism

Currently, interest income of a unit trust that is a RMMF derived from Malaysia and paid or credited by a licensed bank, Islamic bank or development financial institution is exempted from tax under Section 35A of Schedule 6 of the ITA. The distribution of such income from the RMMF is also tax exempted in the hands of all unit holders.

It is proposed that the distribution of interest income from RMMF exempted under Section 35A of Schedule 6 to non-individual unit holders will be subject to tax and the following new withholding tax mechanism will apply:-

Type of Non-individual Unit Holders	Resident	Non-resident
Withholding tax rate	24%	
Withholding tax mechanism	Income distribution carries a tax credit, which can be utilised to set off against the tax payable by the unit holders.	Withholding tax deducted will be regarded as a final tax.
Due date and penalty	<ul style="list-style-type: none"> The withholding tax is to be remitted to the DGIR within one month of the distribution of interest income. 10% penalty will be imposed on the late payment of withholding tax. 	

Under existing tax regulations, unit holders benefit from the tax exemption granted on the distribution of the exempt interest income derived by RMMF. This proposed amendment will affect a significant number of unit holders, particularly corporate unit holders, and consideration needs to be made on the impact of their tax position. With the removal of the tax exemption, this will remove the tax disparity in the tax treatment between corporate investors which invest directly in deposits with licensed financial institutions and indirectly via the retail money market unit trust fund.

The above proposal comes into operation on 1 January 2022.

7. Non-application of tax exemption on interest pursuant to the issuance of asset-backed securities

Currently, the following tax exemptions on interest income shall not apply to interest paid or credited to a company in the same group:-

- (i) Interest paid or credited to any company not resident in Malaysia, other than such interest accruing to a place of business in Malaysia of such company –
 - a) in respect of securities issued by the GoM; or

- b) in respect of sukuk or debenture issued in RM, other than convertible loan stock, approved or authorized by, or lodged with, the SC.
- (ii) Interest paid or credited to any person in respect of sukuk originating from Malaysia, other than convertible loan stock –
 - a) issued in any currency other than RM; and
 - b) approved or authorized by, or lodged with, the SC, or approved by LFSA.

It is proposed that the above non-application of tax exemption for interest income be extended to interest paid or credited by a SPV to a company pursuant to the issuance of asset-backed securities lodged with the SC or approved by the LFSA from 1 January 2022 where the company and the person who established the SPV solely for the issuance of the asset-backed securities are in the same group.

A SPV refers to a company incorporated under the Companies Act 2016 or a company incorporated under the Labuan Companies Act 1990 which has made an irrevocable election under section 3A of the LBATA to be taxed under the ITA and established solely for the purpose of issuance of sukuk or debenture for asset-backed securities in a securitization transaction lodged with the SC or approved by the LFSA.

The above proposal comes into operation on 1 January 2022.

8. Withholding tax on payment made to agent, dealer or distributor

It is proposed that payments made by a company in monetary form to its agent, dealer or distributor arising from sales, transactions or schemes carried out by the agent, dealer or distributor be subjected to 2% withholding tax.

This will only be applicable where the payments are made to the company's authorised agent, dealer or distributor who is an individual and who has received payments of more than RM100,000 whether in monetary form or otherwise from the same company in the preceding YA.

The 2% withholding tax shall be remitted to DGIR within 30 days after paying or crediting the payments to the agent, dealer or distributor. A 10% penalty will be imposed if the company fails to remit the withholding tax to DGIR within the stipulated time frame.

The withholding tax deducted can be set off against the tax payable by the agent, dealer and distributor.

The above proposal comes into operation on 1 January 2022.

It is also proposed that no tax deduction shall be allowed on the expenses if the withholding tax and the 10% penalty (if applicable) have not been remitted to DGIR before the due date of submission of the income tax return for that YA.

The above proposal is effective from YA 2022.

9. Adjusted income of the shareholders' fund of a takaful operator

Currently, *wakalah* fees or any other fees receivable by the shareholders' fund in relation to the family takaful fund are not included in the amount of gross income for the basis period of a YA in ascertaining the adjusted income of the shareholders' fund of a takaful operator. In line with this, the following expenses are not tax deductible:-

- (i) management expenses incurred by a takaful operator in connection with *wakalah* fees or any other fees receivable in relation to the family takaful fund; and
- (ii) commission payable and discounts allowed by a takaful operator in connection with the family business which is carried out in accordance with the principle of *wakalah*.

It is proposed that the abovementioned tax treatments be amended to take into account the following changes:-

- (i) *Wakalah* fees or any other fees receivable by the shareholders' fund in relation to the family takaful fund are to be included in the amount of gross income for the basis period of a YA in ascertaining the adjusted income of the shareholders' fund of a takaful operator; and
- (ii) A tax deduction is allowed on the following expenses:-
 - a) management expenses incurred by a takaful operator in connection with *wakalah* fees or any other fees receivable in relation to the family takaful fund; and
 - b) commission payable and discounts allowed by a takaful operator in connection with the family business which is carried out in accordance with the principle of *wakalah*.

The above proposals are effective from YA 2022.

10. Capital allowances of the shareholders' fund of a takaful operator

Currently, capital allowances are not available for a deduction against adjusted income of the shareholders' fund of a takaful operator.

It is proposed that new Sections 60AA(17A), (17B), (17C) and (17D) be introduced to the ITA to provide for the following:-

New Section of the ITA	Proposed Provision
Section 60AA(17A)	<ul style="list-style-type: none"> (i) Capital allowances shall only be set off against the adjusted income of the shareholders' fund; and (ii) Any unutilised capital allowances cannot be set off against the adjusted income of the family fund or general fund.

Section 60AA(17B)	Capital allowances under Section 60AA(17A) are for any assets acquired under shareholders' fund on or after 1 January 2022.
Section 60AA(17C)	Unabsorbed capital allowances of the shareholders' fund shall only be set off against the adjusted income in respect of the shareholders' fund.
Section 60AA(17D)	For asset acquired prior to 1 January 2020, any capital allowances which have been claimed or ought to have been claimed as a deduction against the adjusted income of the family fund or general fund of the takaful operator shall be set off against the adjusted income of the family fund or general fund of the takaful operator until the whole capital allowances are claimed.

The above proposals are effective from YA 2022.

11. Contract R&D company and R&D company

Currently, a company that provides R&D services is not required to obtain any governmental approval to be considered as a contract R&D company or R&D company under the PIA.

New sections have been proposed to be included in the PIA to require contract R&D companies and R&D companies to obtain approval from MITI as an R&D status company.

To obtain approved R&D status, a company will be subject to the following requirements:-

- The company must apply in writing to MITI to be approved as an R&D status company.
- MITI may impose any pre-conditions for the application.
- MITI together with MOF may impose and vary the conditions in granting the approval.
- MITI would serve a notice in writing where a R&D status company fails to comply with the conditions set out by MITI/MOF and the company would be required to remedy the non-compliance or establish to the satisfaction of MITI that the failure was beyond the control of the company within 30 days from the date of the notice.
- The R&D status may be withdrawn by MITI by way of notice in writing if the company fails to comply with the conditions of approval or contravened any provisions of the PIA.
- A company may surrender the R&D status by giving a notice in writing together with the reason of the surrender.



The R&D status is granted for a period of 5 consecutive years from the date of the grant of approval or any date as may be determined by MITI. The R&D status may be extended for a period of 5 years from the end of the existing R&D status with the approval from MITI.

An existing contract R&D company or R&D company which falls within the current definition a R&D status company prior to the proposal will continue to be a contract R&D company or R&D company for a grace period of 6 months (i.e. from 1 January 2022 to 30 June 2022). If the company intends to continue to be a contract R&D company or R&D company after the expiry of the grace period, the company must give notification of its intention to MITI.

The above proposals come into operation on 1 January 2022.



Regina Lau
Executive Director
Corporate Tax

Key Message

"The proposed amendments are largely to provide clarification to the notable changes made to the Labuan tax regime in 2020."

Labuan Tax

1. Chargeability of IP income under the ITA



With effect from YA 2020, a Labuan entity carrying on a Labuan business activity listed in the Labuan Regulations which fails to comply with the prescribed SAR would be taxed at the rate of 24% upon its chargeable profits.

Currently, "chargeable profits" for the purpose of a Labuan entity which fails to comply with the prescribed SAR is defined under Section 2B(1B)(a) of the LBATA as the "net profits as reflected in the audited accounts in respect of such Labuan business activity of the Labuan entity for the basis period for that YA".

It is proposed that the definition of "chargeable profits" for the purpose of taxing the Labuan entity which fails to comply with the prescribed SAR shall exclude any income derived from royalty and other income derived from an IP right* where such income is receivable as consideration for the commercial exploitation of that right. Income derived from IP right* will be subject to tax under the ITA.

The above proposal is deemed to have come into operation on 1 January 2019.

*Note *: IP right is defined under the LBATA as "a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of plant variety, and other like rights, whether or not registered or registrable".*

2. Duty to file return of profits ("Form LE1"): non-trading activity



a) Duty to file return of profits

Currently, a Labuan entity carrying on non-trading activities is only required to file a statutory declaration ("Form LE5").

It is proposed that a Labuan entity carrying on non-trading activities be required to file a return of its profits in the prescribed form (i.e. Form LE1) together with Form LE5.

The above proposal is effective from YA 2022.

b) Penalty for failure to comply

The penalty for non-compliance is a fine not exceeding RM1 million or imprisonment for a term not exceeding 2 years or both.

The above proposal comes into operation on 1 January 2022.

3. Payment of tax

Currently, the existing Section 11 of the LBATA does not address payment of tax by a Labuan entity which is subject to tax for a YA from the carrying on of a Labuan non-trading activity that does not comply with the SAR.

It is therefore proposed that the existing Section 11 of the LBATA be expanded to include Labuan entities carrying on Labuan non-trading activities and which do not comply with the SAR, to be liable to tax at the rate of 24% pursuant to Section 2B(1A) of the LBATA.

The above proposal is effective from YA 2022.



4. Liabilities of a director

Currently, there is no provision in the LBATA regarding the liabilities of a company director in respect of the following:-

- (i) any tax that is due and payable by the company; and
- (ii) any tax owing or recoverable from the company.

It is proposed that a new provision in line with Section 75A of the ITA be included in the LBATA.

The new Section 16A of the LBATA provides that a resident director shall be jointly and severally liable for a company's tax that is due and payable. A "director" would refer to any person who:-

- (i) occupies the position of a director, by whatever name called, including any person who is concerned with the management of a company's business, during the period in which the tax is liable to be paid by the company; and
- (ii) either on his own or with one or more associates, has a direct or indirect shareholding of not less than 20% in the company.

An "associate" may refer to, amongst others, husband or wife, trustee of a settlement in relation to the director or any person interested in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person.

The above proposal comes into operation on 1 January 2022.

5. Basis period for Labuan non-trading activity

Currently, the DGIR may direct the basis period for a Labuan trading activity if it does not have a basis period for a YA.

It is proposed that the DGIR's power to direct the basis period be extended to a Labuan non-trading activity, if it does not have a basis period for a YA.

The above proposal is deemed to have effect from YA 2020.

Administrative Matters

1. TIN

Currently, tax file number is assigned to taxpayers who are assessable and chargeable to tax or required under the ITA to furnish a return. There is no specific provision on the use of TIN in the RPGTA and SA.

It is proposed that the provision on the use of TIN be inserted in the ITA, RPGTA and SA as follows:-

Sections of the act	Proposed provision
Section 66A of the ITA	<p>The following persons shall have a TIN:-</p> <ul style="list-style-type: none"> (i) Any person who is assessable and chargeable to tax under the ITA; (ii) Any person who is required under the ITA to furnish a return; or (iii) Any person who is a citizen and aged 18 years old and above. <p>DGIR shall issue a TIN to any person as he may determine.</p> <p>Any person who has been assigned a reference number on or before 1 January 2022 is deemed to be assigned a TIN and the reference number shall be the TIN of that person.</p>
Section 57B of the RPGTA	Every person is required to use the TIN assigned by the DGIR under Section 66A of the ITA for RPGT matters.
Section 77C of the SA	Every person is required to use the TIN assigned by the DGIR under Section 66A of the ITA for stamp duty transactions.

The above proposals come into operation on 1 January 2022.

2. Submission of tax return based on financial statements

Currently, only companies are required to submit its tax return based on financial statements made in accordance with the requirements of the Companies Act 2016.

It is proposed that an LLP, trust body and co-operative society are also required to furnish its tax return based on financial statements made in accordance with the requirement of any written law governing the entity.

The above proposal is effective from YA 2022.

3. Failure to furnish estimated tax payable



Currently, where no prosecution is instituted by the DGIR and no direction is issued by the DGIR for the failure to furnish an estimated tax payable, the final tax payable of a company, trust body or co-operative society for that YA shall without any further notice be increased by 10%.

It is proposed that the 10% tax increase be extended to LLPs.

The above proposal is effective from YA 2022.

4. Minister: power to exempt

It is proposed that the Minister of Finance is empowered to exempt any chargeable person from any income of a particular kind or any class of income of a particular kind under the PITA.

The above proposal comes into operation on 1 January 2022.

5. Power to call for bank account

It is proposed that the DGIR is empowered to require financial institutions to furnish taxpayer's bank account information.

Purpose	To make an application to court for a garnishee order.
Duty of Financial Institutions	<ul style="list-style-type: none"> Provide bank account information to the DGIR; and Not to disclose to any person that the DGIR has requested taxpayer's bank account information from the financial institutions.

Offence and Penalty	<p>A fine of RM200 to RM20,000 or imprisonment for a term of 6 months or both if:-</p> <ul style="list-style-type: none"> (i) Fail to comply with the notice by DGIR; or (ii) Disclose request made to him by DGIR to any other person.
Effective Date	1 January 2022.

6. Request to forward relief application to SCIT

Currently, a taxpayer may request the DGIR in writing to forward the application for relief under the ITA or PITA to the SCIT in relation to:-

- (i) Relief of non-chargeability case;
- (ii) Relief in respect of error or mistake; or
- (iii) Relief in respect of other than error or mistake.

It is proposed that a taxpayer is required to make the request in a prescribed form for the DGIR to forward the application for relief under the ITA or PITA to the SCIT.

The above proposal comes into operation on 1 January 2022.

Real Property Gains Tax

1. Review of RPGT rates

Currently, gains from disposal of real property and shares in RPC are subject to RPGT at the rates of 5% to 30%, depending on the category of the disposer and the period of ownership: -

Disposal	RPGT Rates		
	Part I	Part II	Part III
	Individual – Citizen and Permanent Resident	Company incorporated in Malaysia or a trustee of a trust or society registered under the Societies Act 1966	Individual who is Non-Citizen and Non-Permanent Resident / Company not incorporated in Malaysia
Within 3 years	30%	30%	30%
In the 4th year	20%	20%	30%
In the 5th year	15%	15%	30%
In the 6th and subsequent years	5%	10%	10%

It is proposed that:-

- (i) The RPGT rates for disposal in the 6th and subsequent years for disposer under Part I be reduced from 5% to 0%; and
- (ii) The category of disposer under Part II be expanded to include body of persons registered under any written law in Malaysia (by replacing "Society registered under the Societies Act 1966").

The above proposal comes into operation on 1 January 2022.

2. Expansion of scope for no gain no loss transactions

Currently, the following transfers (amongst others) yield a no gain no loss effect by deeming the disposal price to be equal to the acquisition price ("no gain no loss transactions"):-

- (i) transfer of assets owned by an individual;
- (ii) transfer of assets owned by his wife;
- (iii) transfer of assets owned by an individual jointly with his wife; or
- (iv) transfer of assets owned by an individual jointly with a connected person,

to a company controlled by the individual, by his wife or by the individual jointly with his wife or with a connect person ("controlled company"), if it is for a consideration consisting of shares in the company, or for a consideration consisting substantially of shares (i.e. not less than 75% of shares) in the company and the balance of a money payment.

It is proposed that the scope of the above transfers be expanded to include:-

- (i) nominee for the individual, nominee for the wife of the individual, or nominee for both; and
- (ii) trustee for the individual, trustee for the wife of the individual, or trustee for both.

The above proposal comes into operation on 1 January 2022.

3. Restriction on losses allowed as deduction



Currently, losses suffered in respect of a disposal of shares in RPC shall not be allowable as deduction for RPGT purposes.

It is proposed that the scope of restriction be expanded in that a loss from disposal of shares which are deemed to be chargeable assets for RPGT purposes under Paragraph 34, Schedule 2 of RPGTA (i.e. shares acquired from transfer of assets to controlled company) shall also not be allowable as deduction.

The above proposal comes into operation on 1 January 2022.

4. Payment of retention sum

Currently, the acquirer of Malaysian real property or shares in RPC is required to retain the lower of the whole amount of money received or 3% of the total value of the purchase consideration and pay it to the IRB, unless the disposer is not a citizen and not a permanent resident or company not incorporated in Malaysia whereby the retention sum shall be the lower of the whole amount of money received or 7% of the total value of the purchase consideration.

It is proposed that the retention sum for disposer who falls under Part II Schedule 5 of the RPGTA (i.e. company incorporated in Malaysia, a trustee of a trust, or body of persons registered under any written law in Malaysia) be increased to 5% where the disposal is within a period of three years after the acquisition date.

The above proposal comes into operation on 1 January 2022.

5. Penalty for non-payment of RPGT for person leaving Malaysia

Currently, any person who voluntarily leaves or attempts to leave Malaysia without paying all the tax payable by him under RPGTA shall be guilty of an offence and on conviction shall be liable to imprisonment for a term not exceeding two (2) years or to a fine not exceeding RM5,000 or to both.

It is proposed that:-

- (i) the scope of offence be extended to include failure to pay a sum or debt payable before leaving Malaysia; and
- (ii) the fine for the offence be amended to RM200 to RM20,000.

The above proposal comes into operation on 1 January 2022.

6. Formula to determine exempt chargeable gains

Currently, where a chargeable asset is partly disposed of, an amount which is ascertained using the prescribed formula is given an exemption. However, the prescribed formula does not cater for cases in relation to disposal of shares.

Given the above, it is proposed that the following formula be applied:-

<p>Relating to disposal of real property</p>	$\frac{A}{B} \times C$ <p>where A is part of the area of the chargeable asset disposed</p> <p>B is the total area of the chargeable asset</p> <p>C is ten thousand (RM10,000)</p> <p>or 10% of the chargeable gain, whichever is greater</p>
<p>Relating to disposal of shares</p>	$\frac{A}{B} \times C$ <p>where A is the number of shares in RPC or shares acquired through transfer of chargeable assets to controlled company disposed</p> <p>B is the total number of issued shares in RPC or shares acquired through transfer of chargeable assets to controlled company;</p> <p>C is ten thousand (RM10,000)</p> <p>or 10% of the chargeable gain, whichever is greater</p>
<p>Effective Date</p>	<p>1 January 2022.</p>

Stamp Duty



Neoh Beng Guan
Executive Director
Corporate Tax

Key Message

“With effect from 1 January 2022, the stamp duty rate on contract note relating to sale of any shares or stocks in companies incorporated in Malaysia or elsewhere will increase to 0.15%.

It was also proposed in the Budget 2022 that the stamp duty cap of RM200 on contract note relating to the sale of any listed shares, stock or marketable securities be abolished.

Whilst investors in general will be happy that capital gains tax is not being announced on share transactions, the overall cost of investments in listed shares will go up quite a bit, especially for larger transactions.”

1. Stamp duty rate for contract note

Currently, contract note relating to the sale of any shares, stock or marketable securities in companies incorporated in Malaysia or elsewhere is subject to stamp duty at the rate of RM1.00 for every RM1,000 (i.e. 0.1%) or any fraction thereof based on the transaction value. This stamp duty is presently capped at a maximum of RM200.

It is proposed that the stamp duty rate be amended to RM1.50 for every RM1,000 (i.e. 0.15%) or any fraction thereof based on the transaction value of the sales of any shares or stock (marketable securities remains at RM1.00 for every RM1,000). It was also proposed in the Budget 2022 that the stamp duty cap of RM200 on contract note relating to the sale of any listed shares, stock or marketable securities be abolished (by way of revocation of existing gazette order).

The above proposal comes into operation on 1 January 2022.

2. Fee for indorsement of exempt instruments

It is proposed that for instruments chargeable with duty which exceeds RM10 and the duty is exempted, a processing fee of RM10 shall be paid to the Collector to certify that duty is exempted by way of indorsement on such instrument.

The above proposal comes into operation on 1 January 2022.

3. Refund of stamp duty

It is proposed that refund of any excess amount of duty shall only be made when the assessment has become final and conclusive. An assessment shall be final and conclusive where:-

- (i) No valid notice of appeal has been filed;
- (ii) The assessment has been determined on appeal and there is no right of further appeal;
- (iii) The appellant dies before the hearing of the appeal and no personal representative of the estate of the deceased appellant applies to the High Court within 2 years after his death to proceed with or complete the hearing.

The above shall not prejudice the application of additional assessment or erroneous assessment.

The above proposal comes into operation on 1 January 2022.

4. Extension of period for application for relief

Currently, an application for relief in respect of spoiled stamps and misused stamps has to be made within 12 months:-

	Within 12 months after
Spoiled stamps	<ul style="list-style-type: none"> (i) the stamp has been spoiled or become useless; (ii) the date of the executed instrument; or (iii) the execution of the instrument if it is not dated.
Misused stamps	<ul style="list-style-type: none"> (i) the date of the instrument; (ii) the execution of the instrument if it is not dated; or (iii) upon the instrument, if liable to duty, being stamped with the proper duty, cancel and allow as spoiled.

It is proposed that the period of application for relief be extended to 24 months.

The above proposal comes into operation on 1 January 2022.

5. Application for appeal and refund

It is proposed that the following application of appeal and refund can be made by way of electronic medium:-

- Appeal against an assessment or additional assessment;
- Relief in respect of spoiled stamps and misused stamps;
- Remittance of stamp duty by Collector on grounds of poverty;
- Refund in respect of contract or agreement rescinded or annulled, or for any other reason not substantially performed or carried into effect;
- Refund of excess duty in respect of erroneous assessment or additional assessment; and
- Exemption, reduction, or remittance of duty granted by the MOF.

The above proposal comes into operation on 1 January 2022.

Personal Tax



Long Yen Ping

Executive Director
Head of Global Mobility
Services

Key Message

"Budget 2022 : *Keluarga Malaysia, Makmur Sejahtera* focuses on Rakyat's well-being. Several incentives are introduced to alleviate the burden of the Rakyat from the impact of COVID-19 pandemic. The Rakyat have to remember to adhere to the compliance requirements while enjoying the incentives."

1. Introduction of new tax reliefs, expansion of scope or increase in limit of the existing tax reliefs

In the Finance Bill 2021, the following new tax reliefs have been introduced and some expansion in the scope and increase in claim limit for existing tax reliefs have also been proposed:-

Types of Tax Relief	Tax Relief Amount (Current) RM	Tax Relief Amount (Proposed) RM	Proposed Changes and Effective Period
Expenses on Electric Vehicle charging facilities and equipment	-	2,500	Expenses related to cost of installation, rental, purchase (including hire purchase) or subscription fee for Electric Vehicle charging facilities or equipment. (Effective for YA 2022 and YA 2023)
Self-education fees	7,000 (includes up to RM1,000 per year for attending any recognized up-skilling and self-	7,000	The limit of tax relief for attending any up-skilling and self-enhancement courses recognized by the Department of Skills Development, Ministry of Human Resources is increased to RM2,000. (Effective for YA 2022 and YA 2023)

	enhancement courses)		
Medical expenses for taxpayer, spouse, and children with serious diseases and the cost of fertility treatment including:	8,000 includes: -	8,000 includes: -	The restriction of RM1,000 under Paragraph 46(1)(h) is expanded to include expenses incurred for:-
(i) full medical check-up [Paragraph 46(1)(h)]; and	1,000	1,000	<ul style="list-style-type: none"> COVID-19 detection test by hospital / registered medical practitioner or COVID-19 self-detection test kit
(ii) vaccination expenses	1,000	1,000	<p><i>(Effective from YA 2021)</i></p> <ul style="list-style-type: none"> mental health related check-up or consultation services by: <ul style="list-style-type: none"> i. psychiatrist registered with the Malaysian Medical Council under the Mental Health Act 2001; or ii. clinical psychologist registered with the Malaysian Allied Health Professions Council under the Allied Health Professions Act 2016; or iii. counsellor registered with the Board of Counsellors Malaysia under the Counsellors Act 1998. <p><i>(Effective from YA 2022)</i></p>
Contribution to Social Security Organisation	250	350	<p>The scope is expanded to include contribution to Employment Insurance System and the limit of tax relief is increased to RM350.</p> <p><i>(Effective from YA 2022)</i></p>
Contribution to Employees Provident Fund	4,000	4,000	<p>The scope is expanded to cover voluntary contributors including pensionable civil servants.</p> <p><i>(Effective from YA 2022)</i></p>

Domestic tourism expenses - accommodation and entrance fee	1,000	1,000	<p>Extended to YA 2022.</p> <p>The scope is expanded to include purchase of domestic tour package through a licensed travel agent registered with the Commissioner of Tourism under the Tourism Industry Act 1992.</p> <p><i>(Effective for YA 2021 and YA 2022)</i></p>
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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) MYR	Period for Tax Relief (Current)	Period for Tax Relief (Proposed)
Additional lifestyle relief on purchase of personal computer, smartphone or tablet only	2,500	Up to YA 2020	Extended to YA 2022
Fees paid to registered childcare centres or kindergartens for children aged 6 years and below	3,000	Up to YA 2021	Extended to YA 2023
Deferred annuity premium	3,000 (including contribution to Private Retirement Scheme)	Up to YA 2021	Extended to YA 2025

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

Abbreviation	Reference
DGIR	Director General of Inland Revenue Board
DTA	Double Taxation Agreement
GoM	Government of Malaysia
IP	Intellectual Property
ITA	Income Tax Act 1967
IRB	Inland Revenue Board
LBATA	Labuan Business Activity Tax Act 1990
LFSA	Labuan Financial Services Authority
LLP	Limited Liability Partnership
MITI	Ministry of International Trade and Industry
MOF	Ministry of Finance
PIA	Promotion of Investments Act 1986
PITA	Petroleum (Income Tax) Act 1967
R&D	Research & Development
RA	Reinvestment Allowance
RM	Ringgit Malaysia
RMMF	Retail Money Market Fund
RPC	Real Property Company
RPGT	Real Property Gains Tax
RPGTA	Real Property Gains Tax Act 1976
SA	Stamp Act 1949
SAR	Substantial Activity Requirements
SC	Securities Commission
SCIT	Special Commissioners of Income Tax

SME	Small and Medium Enterprise
SPV	Special Purpose Vehicle
TIN	Tax Identification Number
YA	Year of Assessment

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