

# FINANCIAL RISKS



SUBJECT	TAX PROPOSALS
<b>CORPORATE TAX</b>	
<b><i>Non-Deductibility of Goods and Services Tax (GST)</i></b>	<p>It has been proposed under both the Income Tax Act 1967 (ITA) and Petroleum (Income Tax) Act 1967 (PITA) that no tax deductions shall be allowed for:-</p> <ol style="list-style-type: none"> <li>i. any amount of GST input tax paid or to be paid by a person if he is liable to be registered for GST but has failed to do so, or by a person who is entitled to input tax credits under the GST Act 2014 (GSTA); or</li> <li>ii. any amount of GST output tax paid or to be paid which is borne by a person who is registered or liable to be registered for GST.</li> </ol> <p>The proposals are effective from Year of Assessment (YA) 2015.</p>
<b><i>Tax Assessment for GST Adjustments</i></b>	<p>It is proposed under both the ITA and PITA that the Director General of the Inland Revenue Board (DGIR) be empowered to make assessment or reduced assessment at any time for adjustments made in respect of input tax paid or to be paid under the GSTA. The assessment is to be made in the YA to which the adjustment relates or if the YA cannot be ascertained, the YA in which the adjustment is discovered by the DGIR.</p> <p>The proposal is effective from YA 2015.</p>
<b><i>Adjustments to Qualifying Expenditure for GST Adjustments</i></b>	<p>It has been proposed that for the purposes of claiming capital allowance, reinvestment allowance and investment allowance for approved service project under Schedules 3, 7A and 7B of the ITA, investment tax allowance under the Promotions of Investment Act 1986 (PIA), and deductions for capital expenditure on exploration and capital allowance under the First and Second Schedules of the PITA respectively:-</p> <ol style="list-style-type: none"> <li>i. qualifying expenditure does not include any amount of GST input tax paid or to be paid by a person who is liable to be registered for GST but has failed to do so, or by a person who is entitled to input tax credits under the GSTA;</li> <li>ii. where qualifying expenditure has been incurred on an asset and the GST input tax on the asset is subject to any adjustment made under the GSTA:-             <ol style="list-style-type: none"> <li>a. the qualifying expenditure incurred and residual expenditure shall be adjusted accordingly. If the amount of allowance made or ought to have been made exceeds the residual expenditure, the excess (limited to the amount of allowances given) shall be regarded as statutory income of the person from a source consisting of a business in the basis period the adjustment is made;</li> </ol> </li> </ol>

	<p>b. the adjustment shall be made in the basis period for a YA in which the period of adjustment relating to the asset as provided under the GSTA ends (except in the case of a disposal of the asset, whereby the adjustment shall be made in the basis period for the YA in which the disposal is made, subject to controlled transfer provisions, where applicable).</p> <p>The proposals are effective from YA 2015.</p>																
<p><b>Reinvestment Allowance</b></p>	<p>In order to be eligible for reinvestment allowance claim, a manufacturing company which is engaged in a qualifying project must undertake to automate, diversify, expand or modernise its existing business.</p> <p>The following definitions have been proposed to be included in Paragraph 9 of Schedule 7A of ITA:</p> <table border="0"> <thead> <tr> <th style="text-align: left;"><u>Term</u></th> <th style="text-align: left;"><u>Definition</u></th> </tr> </thead> <tbody> <tr> <td>Automating</td> <td>A process whereby manual operations are substituted by mechanical operations with minimal or reduced human intervention</td> </tr> <tr> <td>Diversifying</td> <td>Enlarge or vary the range of product of a company related to the same industry</td> </tr> <tr> <td>Expanding</td> <td>An increase of a product capacity or expansion of factory area</td> </tr> <tr> <td>Modernising</td> <td>An upgrading of manufacturing equipment and process</td> </tr> <tr> <td>Machinery</td> <td>A device or apparatus consisting of fixed and moving parts, that work together to perform function in respect of a manufacturing activity, which is directly used in carrying out that activity in a factory</td> </tr> <tr> <td>Plant</td> <td>An apparatus used in respect of a manufacturing activity which is directly used in carrying out that activity in a factory</td> </tr> <tr> <td>Simple</td> <td>An activity which does not need special skills/machines/apparatus or equipment especially produced or installed for carrying out that activity</td> </tr> </tbody> </table> <p>It would appear that the definition for machinery and plant would now restrict the claim of RA to only machinery and plant which are directly used in carrying out the manufacturing activity.</p> <p>In addition, the disposal for RA purpose has been extended to include asset</p>	<u>Term</u>	<u>Definition</u>	Automating	A process whereby manual operations are substituted by mechanical operations with minimal or reduced human intervention	Diversifying	Enlarge or vary the range of product of a company related to the same industry	Expanding	An increase of a product capacity or expansion of factory area	Modernising	An upgrading of manufacturing equipment and process	Machinery	A device or apparatus consisting of fixed and moving parts, that work together to perform function in respect of a manufacturing activity, which is directly used in carrying out that activity in a factory	Plant	An apparatus used in respect of a manufacturing activity which is directly used in carrying out that activity in a factory	Simple	An activity which does not need special skills/machines/apparatus or equipment especially produced or installed for carrying out that activity
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	<p>which ceased to be used including those classified as held for sale under generally accepted accounting principles.</p> <p>The proposal is effective from YA 2016.</p>
<p><b><i>Taxing of Business Income in respect of Services and Use or Enjoyment of Property</i></b></p>	<p>It is proposed that the business income in respect of services shall be taxable when a debt owing in respect of the services arises, notwithstanding if the services have been rendered or are to be rendered. Similarly, the above treatment also applies to a debt owing to person arisen in respect of the use or enjoyment of any property dealt with or to be dealt with in the course of carrying on a business.</p> <p>Even where no debt is owing in respect of the services or property any sum received in the basis period for any services to be rendered or the use or enjoyment of any property to be dealt with in the relevant basis period or subsequent to that relevant period shall be taxable in that basis period.</p> <p>However, where the above sum received which has been subjected to tax is refunded in a basis period for a YA, the amount refunded shall be deducted from the relevant gross income in the basis period for that YA.</p> <p>The proposal is effective from YA 2016.</p>
<p><b><i>Restriction of Industrial Building Allowance Claim</i></b></p>	<p>It is proposed that no industrial building allowance (“IBA”) can be claimed for a YA in respect of expenditure incurred in relation to the following buildings or part of the buildings used by the person for letting purpose including the business of letting:-</p> <ol style="list-style-type: none"> <li>i. licensed private approved hospital, maternity home and nursing home;</li> <li>ii. approved building used for research;</li> <li>iii. building used for warehouse solely for storage of goods for export or for storage of imported goods to be processed and distributed or re-exported;</li> <li>iv. building used for approved service project;</li> <li>v. building used for hotel;</li> <li>vi. airport;</li> <li>vii. approved motor racing circuit;</li> <li>viii. building used as living accommodation for individuals employed by the a person carrying on manufacturing, hotel or tourism business or an approved service project; and</li> <li>ix. approved building for school or an educational institution.</li> </ol> <p>The proposal is effective from YA 2016.</p>

<p><b>Replacement with A New Part of An Asset</b></p>	<p>It is proposed that any part of an asset which ceases to be used for purposes of a business due to its replacement with a new part of an asset shall be deemed to have been disposed under Schedule 3 of ITA if the new part is depreciated separately in accordance with generally accepted accounting principles.</p> <p>The proposal is effective from YA 2016.</p>
<p><b>Tax Deduction on Interest</b></p>	<p>Effective YA 2014, a tax deduction is only accorded on interest expense when it is due to be paid. However, the tax deduction would be given in the year the interest is payable.</p> <p>It is proposed that a tax payer would need to notify the DGIR in writing on the interest payable for a basis period for a YA which is due to be paid in any following YA not later than twelve months from the end of the basis period for the YA when the interest is due to be paid for the tax deduction.</p> <p>Upon receipt of the notice, the DGIR may reduce the assessment in respect of that sum.</p> <p>The proposal is effective from YA 2016.</p>
<p><b>Submission of Tax Estimates</b></p>	<p>It is proposed that a company must furnish its estimate or revised estimate of tax payable by way of an electronic medium or electronic transmission.</p> <p>The proposal is effective from YA 2016 onwards.</p>
<p><b>Review of Provision on Tax Offences</b></p>	<p>Under the proposed amendments to the ITA the following provisions have been introduced:</p> <p><i>Failure to furnish income tax return</i></p> <p>i. Any person who fails to furnish a tax return for two years or more without reasonable excuse, shall be guilty of an offence and shall, on conviction, be liable to:-</p> <p>(a) a fine between RM1,000 to RM20,000 or imprisonment for a term not more than 6 months, or both; and</p> <p>(b) a special penalty equal to treble the amount of the tax charged on the chargeable income as determined based on the best judgment of DGIR.</p> <p><i>Failure to furnish correct particulars</i></p> <p>ii. Any person who fails to furnish the correct particulars in the income tax return without reasonable excuse, shall be guilty of an offence and shall, on conviction, be liable to a fine between RM200 to RM20,000 or imprisonment for a term not more than 6 months, or both.</p>

	<p>The above proposals are effective on the coming into operation of the Finance Act.</p>
<p><b>Failure to Furnish Information under The PITA</b></p>	<p>Under the proposed amendment to the PITA, where a person fails to furnish information as requested by the DGIR to justify the person’s claims for deduction in arriving at its adjusted income within the time specified in a notice or such extended time as may be allowed by the DGIR, such claim for deduction shall not be allowed.</p> <p>The proposal is effective form YA 2016.</p>
<p><b>Section 108 Balance</b></p>	<p>With the move to the single-tier company income tax system effective from YA 2008 with a six year transitional period, any unutilised 108 balance as at 31 December 2013 would be disregarded after that date. In this regard, resident companies with a basis period ending on a day other than 31 December were required to furnish to the IRB their last statement of revised 108 balance (Form R) for YA 2014 covering the period up to 31 December 2013. The administrative requirement to maintain the Section 108 account for purposes of paying franked dividends has since ceased to apply.</p> <p>It is proposed that the maintenance of the Section 108 account be reinstated such that the balance as at 31 December 2013 can continue to be adjusted downwards to take into account the following:-</p> <ul style="list-style-type: none"> <li>ii. A tax discharged or remitted in relation to the tax charged on the chargeable income of a company in YA 2000 (Current Year Basis) and prior YAs; or</li> <li>iii. A refund of any amount of tax paid by that company which has been taken into account for the purposes of computing the 108 balance.</li> </ul> <p>The 108 balance shall be reduced on the day the tax is discharged, remitted or refunded and by the amount of tax discharged, remitted or refunded.</p> <p>Where the amount of tax discharged, remitted or refunded exceeds the balance as at 31 December 2013, the amount in excess is payable within 30 days upon the service of a written requisition by the Inland Revenue Board (IRB). A 10% penalty will be imposed for the late payment. Any amount unpaid including the penalty shall be a debt due to the Government.</p> <p>The proposal is effective where the abovementioned tax is discharged, remitted or refunded in the basis period for YA 2016 or any subsequent basis period.</p>

PERSONAL TAX	
<b>Assessment of Employment Income</b>	<p>Currently, gross income from an employment is taxed upon receipt but shall be taxed in the year it is receivable.</p> <p>It is proposed that any gross income from an employment which is receivable in any YA shall be treated as income in the year of receipt and taxed accordingly.</p> <p>The proposal is effective from YA 2016.</p>
<b>Return Form of Employer (Form E)</b>	<p>It is proposed that an employer which is a company must furnish the Form E to the IRB on an electronic medium or by way of electronic transmission.</p> <p>The proposal is effective from YA 2016.</p>
<b>Gratuity</b>	<p>It is proposed that an employee receiving gratuity upon retirement from an employment specified under any written law or termination of a contract of employment (other than when Paragraphs 25, 25A, 25B or 30A of Schedule 6 of the ITA applies) would qualify for an exemption of RM1,000 for each completed year of service.</p> <p>Paragraphs 25, 25A, 25B or 30A of Schedule 6 of the ITA provides full tax exemption on gratuity that falls within the circumstances stated therein.</p> <p>The proposal is effective from YA 2016.</p>
INDIRECT TAX - GST	
<b>Time of Supply of Imported Services</b>	<p>The time of supply of imported services is proposed to be amended to the earlier of the date when any payment is made by the recipient, or the date when any invoice is issued by the supplier who belongs in a country other than Malaysia or who carries on business outside Malaysia.</p> <p>Based on the above proposed amendment, taxpayers would now be required to account for output tax based on the earlier of the two events.</p> <p>The proposal is effective from 1 January 2016.</p>
<b>Warehousing Scheme</b>	<p>Section 70(1) Warehousing Scheme of the GSTA is proposed to be amended as follows:</p> <ul style="list-style-type: none"> <li>i. tax chargeable on the imported goods to be suspended when the imported goods are deposited in the warehouse;</li> <li>ii. supplies of goods made between the warehouses are to be disregarded; and</li> <li>iii. supplies of goods made within the warehouses are to be disregarded</li> </ul>

	<p>except for the last of supplies of goods which are removed before the duty point.</p> <p>The above proposal is to provide clarity on the GST treatment of goods imported and deposited in a warehouse.</p> <p>The proposal is effective from 1 January 2016.</p>
<p><b><i>Penalty for failure to pay tax</i></b></p>	<p>New subsections under Section 41 of the GSTA are proposed to impose penalty, specifically where no prosecution is instituted, relating to failure of tax payments by the due date. The minimum penalty is 5% and up to a maximum of 25% from the amount of tax due and payable based on the number of days late.</p> <p>Where the tax is allowed to be paid by instalments, the abovementioned penalty shall cease to be calculated from the date the Director General of Customs and Excise allows the payment to be made by instalments.</p> <p>The proposal is effective from 1 January 2016.</p>
<p><b>Real Property Gains Tax (RPGT)</b></p>	
<p><b><i>Incidental Costs and Excluded Expenditure</i></b></p>	<p>The following amendments have been proposed for computing the acquisition price and disposal price of a chargeable asset for RPGT purposes:</p> <ol style="list-style-type: none"> <li>i. Any amount paid or to be paid in respect of GST by a disposer who is not liable to be registered under the GSTA or if he is a registered person and is not entitled under the GSTA to credit that amount as input tax shall be part of the incidental costs of the acquisition or disposal of an asset.</li> <li>ii. Any amount paid or to be paid in respect of GST as input tax by a disposer who is liable to be registered under the GSTA and has failed to do so or if he is entitled under the GSTA to credit that amount as input tax shall be excluded in computing the acquisition price or disposal price of an asset.</li> <li>iii. Any amount of output tax paid or to be paid under the GSTA which is borne by a disposer who is registered or liable to be registered under the GSTA shall be excluded in computing the acquisition price or disposal price of an asset.</li> </ol> <p>The proposals are effective from YA 2015.</p>



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