

Malaysia Budget 2021

This Budget Adviser provides insights to the tax measures that were announced in the Budget 2021 speech on 6 November 2020 as well as updates on the key tax proposals from the Finance Bill 2020 released on 16 November 2020.

16 November 2020 (Version 2.0)



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Updates on Budget 2021

Individual Tax

1. Reduction of income tax rate for resident individual

To increase the disposable income of individual taxpayer and especially to assist the taxpayers in the middle income group affected by the current economic situation, it is proposed that the income tax rate for resident individuals will be reduced by 1 percentage point for the chargeable income band of RM50,001 to RM70,000.

The current individual tax rate and the tax savings resulting from the reduction of tax rate are as follows:

Chargeable Income (RM)	Current		Proposal		Tax Savings (RM)
	Tax Rate (%)	Tax Payable (RM)	Tax Rate (%)	Tax Payable (RM)	
0 - 5,000	0	-	-	-	0
5,001 - 20,000	1	0*	1	0*	0
20,001 - 35,000	3	200*	3	200*	0
35,001 - 50,000	8	1,800	8	1,800	0
50,001 - 70,000	14	4,600	13	4,400	200
70,001 - 100,000	21	10,900	21	10,700	200
100,001 - 250,000	24	46,900	24	46,700	200
250,001 - 400,000	24.5	83,650	24.5	83,450	200
400,001 - 600,000	25	133,650	25	133,450	200
600,001 - 1,000,000	26	237,450	26	237,250	200
1,000,001 - 2,000,000	28	517,450	28	517,250	200
2,000,001 and above	30		30		

*After rebate of RM400 for chargeable income up to RM35,000

Effective date : From year of assessment 2021

Individual Tax

2. Individual income tax relief for medical treatment, special needs and parental care for parents

Currently, income tax relief of up to RM5,000 is eligible to be claimed by individual taxpayer on medical and parental care for parents which are limited to the following expenses:

- i. treatment in clinics and hospitals;
- ii. treatment at nursing homes;
- iii. dental treatment not including cosmetics dental treatment; and
- iv. treatment and care at home, day care centres and home care centres.

To alleviate the cost incurred on treatment and care for parents, it is proposed that the income tax relief limit on expenses for medical treatment, special needs and parental care will be increased from RM5,000 to RM8,000.

Effective date : From year of assessment 2021



Individual Tax

3. Individual income tax relief for medical treatment expenses for self, spouse and child

Currently, income tax relief of up to RM6,000 is to be claimed by individual taxpayer on medical expenses for serious diseases for taxpayer, spouse and child and fertility treatment for taxpayer and spouse. The claim of tax relief must be proved by receipts and certification issued by medical practitioners registered with the Malaysian Medical Council confirming that the treatment is given to the taxpayer, spouse and child. The relief includes an amount of up to RM500 for full medical check-up expenses.

To alleviate the cost of medical treatment of taxpayer, spouse and child, and to encourage more Malaysians to be vaccinated, it is proposed that:

- i. the limit of tax relief on medical expenses for serious diseases for taxpayer, spouse and child and fertility treatment for taxpayer and spouse will be increased from RM6,000 to RM8,000;
- ii. the limit of tax relief for full medical check-up expenses will be increased from RM500 to RM1,000; and
- iii. the scope of tax relief for medical treatment expenses will be expanded to include vaccination expenses up to RM1,000 for taxpayer, spouse and child. The vaccines eligible for the tax relief are as follows:
 - a. Pneumococcal;
 - b. Human Papillomavirus (HPV);
 - c. Influenza;
 - d. Rotavirus;
 - e. Varicella;
 - f. Meningococcal;
 - g. Combination of tetanus-diphtheria-acellular pertussis (Tdap); and
 - h. Covid-19 (subject to the availability of the vaccine).

Effective date : From year of assessment 2021

4. Individual income tax relief for disabled spouse

Currently, an additional tax relief of RM3,500 is given to an individual taxpayer with a disabled spouse.

To further assist an individual taxpayer with a disabled spouse, it is proposed that the additional tax relief limit for a disabled spouse will be increased from RM3,500 to RM5,000.

Effective date : From year of assessment 2021

Individual Tax

5. Individual income tax relief on contribution to Private Retirement Scheme (PRS)

Currently, income tax relief of up to RM3,000 on contribution to Private Retirement Scheme (PRS) can be claimed annually by individual taxpayers from year of assessment 2012 to year of assessment 2021.

It is proposed that income tax relief of up to RM3,000 on contribution to PRS will be extended for another 4 years.

Effective date : From year of assessment 2022 to year of assessment 2025

6. Individual income tax relief for lifestyle

Currently, income tax relief for lifestyle of up to RM2,500 is provided to an individual taxpayer on the purchase of reading materials (including e-book and printed daily newspapers), computers, smartphones/tablets, internet subscriptions, sport equipment and gymnasium membership fees from the year of assessment 2017.

To enhance the current income tax relief for lifestyle, it is proposed that:

- i. The income tax relief limit for lifestyle will be increased from RM2,500 to RM3,000, in which an additional amount of up to RM500 is allocated for the cost of purchasing sports equipment, entry/rental fees for sports facilities and **registration** fees in sports competitions; and
- ii. The scope of relief for daily newspapers be expanded to include subscription for electronic newspapers.

Effective date: From year of assessment 2021

7. Individual income tax relief on net annual savings in the National Education Savings Scheme

Currently, income tax relief of up to RM8,000 is given to an individual taxpayer for net annual savings in the National Education Savings Scheme (Skim Simpanan Pendidikan Nasional - SSPN) effective from year of assessment 2019 until year of assessment 2020.

To further encourage savings among parents for financing tertiary education of their children, it is proposed that the tax relief of up to RM8,000 on net annual savings in the SSPN be extended for another 2 years.

Effective date : From year of assessment 2021 to year of assessment 2022

Individual Tax

8. Individual income tax relief for expenses on study fees

Currently, an individual taxpayer who pursues any course of study in selected fields of study, or Master or Doctorate in any field offered by institutions or professional bodies in Malaysia recognised by the Government of Malaysia or approved by the Minister of Finance are eligible to claim tax relief on the study fees. The relief is up to a maximum amount of RM7,000 a year and the eligible fields of study are as follows:

Level of study	Field of study
Certificate/Diploma/Bachelor	Legal, accounting, Islamic financing, vocational, technical, industrial, scientific and technological skills
Master/Doctorate	Any qualification or skills

To encourage resident individuals affected by the Covid-19 pandemic to enroll for up-skilling, re-skilling or acquiring new skill, it is proposed that the scope of relief of RM7,000 a year be expanded to cover fees for attending up-skilling and self-enhancement courses in any field of skills recognised by the Department of Skills Development under the National Skills Development Act 2006. The relief is limited to RM1,000 for each year of assessment.

Effective date : From year of assessment 2021 to year of assessment 2022



Individual Tax

9. Increase in income tax exemption on compensation for loss of employment

Currently, Section 13(1)(e) of the Income Tax Act (ITA) 1967 provides that compensation received for loss of employment is a gross income from employment and subject to income tax. However, the employee will be given income tax exemption under Paragraph 15(1) of Schedule 6 of the ITA 1967 under the following circumstances:

- i. Full exemption on income tax on compensation for loss of employment if the Director General is satisfied that the compensation is received due to ill health; or
- ii. Exemption on income tax of RM10,000 for each completed year of service with the same employer or companies within the same group.

To assist taxpayers who lost their jobs due to the current economic condition arising from the Covid-19 pandemic, it is proposed that the income tax exemption limit for compensation for loss of employment with the same employer or companies within the same group be increased from RM10,000 to RM20,000 for each completed year of service.

Effective date : From year of assessment 2020 to year of assessment 2021



Corporate Tax

1. Income tax exemption on the green sustainable and responsible investments sukuk grant

Currently, the Securities Commission Malaysia (SC) through the statutory fund of the Capital Market Development Fund has provided Green Sustainable and Responsible Investments (SRI) sukuk grant amounting up to RM6 million.

Each Green SRI sukuk issuer needs to apply to the SC for this grant to finance the external review expenses, limited to RM300,000. Grant received by Green SRI sukuk issuers are exempted from income tax for applications received by the SC from 1 January 2018 to 31 December 2020.

To further encourage the issuance of SRI sukuk and bond that meet green, social and sustainability standards in Malaysia, it is proposed that:

- i. the existing income tax exemption on grant for Green SRI sukuk be expanded to all SRI sukuk and bond which meets the ASEAN Green, Social and Sustainability Bond Standards approved by the SC; and
- ii. the income tax exemption on the above grant be given for a period of 5 years.

Effective date : For applications received by the SC from 1 January 2021 to 31 December 2025



Corporate Tax

2. Double deduction for remuneration paid to senior citizens, ex-convicts, parolees, supervised persons and ex-drug dependants

Currently, double deduction on remuneration is given for employers who employ senior citizens, ex-convicts, parolees, supervised persons and ex-drug dependants from year of assessment 2019 until year of assessment 2020.

Allowable tax deduction is subjected to the following conditions:

- i. the employee is employed on a full-time basis;
- ii. the monthly remuneration does not exceed RM4,000;
- iii. the employer and the employee are not the same person; and
- iv. the employer is not a relative of the employee.

To further encourage employers to provide job opportunities for senior citizens, ex-convicts, parolees, supervised persons and ex-drug dependants, it is proposed that the double deduction on remuneration be extended for a period of 5 years.

Effective date : From year of assessment 2021 to year of assessment 2025



Tax Incentives

1. Measures to make Malaysia as a preferred destination for investment and supply chain

A. Review of tax incentives for companies relocating their operations to Malaysia and undertaking new investments

Currently, new and existing companies that relocate their business or manufacturing activities from abroad to Malaysia are eligible for the following tax incentives:

Investment in fixed asset	New companies		Existing companies	
	Tax incentive	Period	Tax incentive	Period
RM300 million to RM500 million	Income tax rate 0%	10 years	Investment Tax Allowance 100%	5 years
Above RM500 million		15 years		

The incentives are made available for eligible companies in manufacturing sector except selected industries and subject to the following conditions:

- i. the company incurring its first capital expenditure within 1 year from the date of the approval of the incentive; and
- ii. the company meeting the investment in fixed asset within 3 years from the first date of the capital expenditure incurred.

For applications received by Malaysian Investment Development Authority (MIDA) from 1 July 2020 until 31 December 2021.

To spur the economic recovery through investment activities and to create multiplier effect to the economy, it is proposed that the tax incentives for companies relocating their operations to Malaysia and making new investment be reviewed as follows:

- i. application period for the tax incentives be extended for another 1 year; and
- ii. the scope of tax incentives be expanded to companies in selected services sector including companies adapting Industrial Revolution 4.0 and digitisation technology with investment that contribute to significant multiplier effect in the following services:
 - a. provision of technology solution, or more typically technology company which develops technology and provides technology solutions based on substantial scientific or engineering challenges;
 - b. provision of infrastructure and technology for cloud computing;
 - c. research and development/design and development activities;
 - d. medical devices testing laboratory and clinical trials; and
 - e. any services or manufacturing related services as determined by the Minister of Finance.

Tax Incentives

1. Measures to make Malaysia as a preferred destination for investment and supply chain (cont'd)

A. Review of tax incentives for companies relocating their operations to Malaysia and undertaking new investments (cont'd)

These tax incentives are given as follows:

- i. new company - income tax rate of 0% to 10% for a period up to 10 years.
- ii. existing company with new services segment - income tax rate of 10% for a period up to 10 years.

Effective date : i. For manufacturing sector, applications received by the Malaysian Investment and Development Authority (MIDA) until 31 December 2022

ii. For selected services sector, applications received by the Malaysian Investment and Development Authority (MIDA) from 7 November 2020 until 31 December 2022

B. Tax incentives for companies manufacturing pharmaceutical products including vaccines

Currently, tax incentives for companies manufacturing pharmaceutical products including vaccines are as follows:

- i. Tax incentives under the Promotion of Investment Act 1986 for Manufacturers of pharmaceutical products

Manufacturers of pharmaceutical products are given tax incentives under the Promotion of Investment Act 1986 in high technology products category. The tax incentives are given as follows:

- a. Pioneer Status - income tax exemption of 100% from the statutory income for a period of 5 years; or
- b. Investment Tax Allowance - Investment Tax Allowance of 60% on qualifying capital expenditure incurred within a period of 5 years. This allowance can be set off against 100% of the statutory income for each year of assessment.

- ii. Tax Incentives for BioNexus Status Companies

BioNexus status companies approved by Malaysian Bioeconomy Development Corporation Sdn Bhd undertaking biotechnology activities related to pharmaceutical including vaccines are given tax incentives as follows:

- a. new companies:
 1. Income tax exemption of 70% on the statutory income for a period of 10 consecutive years from the first statutory income; or
 2. Income tax exemption equivalent to 100% Investment Tax Allowance on qualifying capital expenditure incurred within a period of 5 years. This allowance can be set off against 70% of the statutory income for each year of assessment.

Tax Incentives

1. Measures to make Malaysia as a preferred destination for investment and supply chain (cont'd)

B. Tax incentives for companies manufacturing pharmaceutical products including vaccines (cont'd)

- b. existing companies undertaking expansion projects:
 - 1. Income tax exemption of 70% on the statutory income for a period of 5 consecutive years from the first statutory income; or
 - 2. Income tax exemption equivalent to 100% Investment Tax Allowance on qualifying capital expenditure incurred within a period of 5 years. This allowance can be set off against 70% of the statutory income for each year of assessment.
- c. concessionary income tax rate of 20% on the statutory income received from qualifying activities for a period of 10 years upon the expiry of tax exemption period in (a) and (b);
- d. import duty exemption for equipment and raw materials;
- e. double tax deduction on expenditure incurred on research and development activities; and
- f. Industrial Building Allowance on the building constructed or purchased for research operations;

iii. Tax Incentives for Investor

Tax deduction equivalent to the amount of investment made in the BioNexus status company.

These tax incentives are effective for BioNexus status company and investor applications received by Malaysian Bioeconomy Development Corporation Sdn Bhd from 1 January 2019 until 31 December 2020.

To encourage manufacturers of pharmaceutical products including vaccines especially Covid-19 vaccine to invest in Malaysia, it is proposed that the following tax incentives be given:

- i. income tax rate of 0% up to 10% for the first 10 years; and
- ii. income tax rate of 10% for the subsequent period of 10 years.

Apart from the above tax incentives, strategic investments by such companies may be considered for other facilities including grants, import duty/sales tax exemption for machineries and equipment as well as raw materials.

Effective date : For applications received by Malaysian Investment and Development Authority (MIDA) from 7 November 2020 to 31 December 2022

Tax Incentives

1. Measures to make Malaysia as a preferred destination for investment and supply chain (cont'd)

C. Review and expansion of scope of tax incentive for commercialisation of research and development findings

Currently, tax incentives for commercialisation of research and development (R&D) findings of public research institutions including public higher learning institutions in Malaysia are as follows:

- i. Resource-Based
 - a. for investor company, tax deduction equivalent to the amount of investment made in the subsidiary company that undertakes commercialisation of R&D findings of public research institutions.
 - b. for subsidiary companies that commercialise R&D findings of public research institutions, income tax exemption of 100% of statutory income for 10 years.

The incentive is available for applications received by the Malaysian Investment Development Authority (MIDA) from 11 September 2004.

- ii. Non-Resource Based
 - a. for investor company, tax deduction equivalent to the amount of investment made in the subsidiary company that undertakes commercialisation of R&D findings of public research institutions.
 - b. for subsidiary companies that commercialise R&D findings of public research institutions, income tax exemption of 100% of statutory income for 10 years.

Non-resource based activities or products are subject to the list of activities or products under the Promotion of Investment Act 1986. This incentive was available for applications received by the Malaysian Investment Development Authority (MIDA) from 29 September 2012 to 31 December 2017.

To create a competitive R&D ecosystem and to encourage new R&D activities by public research institutions including public higher education institutions as well as to enhance the role of private higher education institutions in producing high quality researchers and quality R&D, it is proposed that:

- i. tax incentive for the commercialisation of non-resource-based R&D findings be reintroduced; and
- ii. tax incentives for the commercialisation of R&D findings by public research institutions including public higher learning institutions be expanded to private higher learning institutions.

Tax Incentives

1. Measures to make Malaysia as a preferred destination for investment and supply chain (cont'd)

C. Review and expansion of scope of tax incentive for commercialisation of research and development findings (cont'd)

The tax incentives for (i) and (ii) are as follows:

- a. for investor company, tax deduction equivalent to the amount of investment made in a subsidiary company that commercialises the R&D findings of public research institutions including public higher learning institutions and private higher learning institutions.
- b. for subsidiary companies that commercialise R&D findings of public research institutions including public higher learning institutions and private higher learning institutions, income tax exemption of 100% of statutory income for 10 years.

Resource based and non-resource based activities or products are subject to the list under the Promotion of Investment Act 1986.

Effective date : For applications received by the Malaysian Investment Development Authority (MIDA) from 7 November 2020 until 31 December 2025

D. Tax incentive for Global Trading Centre

Principal Hub which currently carries out services and trading activities are eligible for special tax rate of 0% or 5% on statutory income on the qualifying activities for a period of up to 10 years. This incentive will expire on 31 December 2020.

As a measure to enhance and simplify tax incentive for trading activities previously covered under the Principal Hub incentives which was subjected to higher eligibility criteria, it is proposed that a new incentive scheme to be introduced as Global Trading Centre and be given 10% income tax rate for a period of 5 years and renewable for another 5 years.

Effective date : For applications received by Malaysian Investment Development Authority (MIDA) from 1 January 2021 until 31 December 2022

Tax Incentives

1. Measures to make Malaysia as a preferred destination for investment and supply chain (cont'd)

E. Special income tax rate treatment for non-resident individuals holding key positions in companies investing in new strategic investments

Currently, the income tax structure for resident individual is based on progressive rates ranging from 0% to 30% on chargeable income. Meanwhile, non-resident individuals are subject to income tax at a flat rate of 30%.

However, income tax treatment at a flat rate of 15% is given to the following individuals:

- i. Malaysian citizens who are categorised as experts and approved under the Returning Expert Program and return to work in Malaysia;
- ii. individual knowledge workers in Iskandar Malaysia; and
- iii. individual knowledge workers in Malaysia-China Kuantan Industrial Park.

In addition, the Government through the Pelan Jana Semula Ekonomi Negara (PENJANA) has announced tax incentive for manufacturing companies that relocate their operations to Malaysia with income tax rate at 0% for a period of up to 15 years.

In addition to the existing tax incentive offered to companies relocating their operations to Malaysia, it is proposed that individual income tax at a flat rate of 15% be given to non-residents holding key positions/C-Suite positions for a period of 5 consecutive years. This tax incentive is limited to 5 non-resident individuals employed in each company that has been granted relocation tax incentive under PENJANA initiative.

Individuals that are taxed at the flat rate of 15% shall be:

- i. receiving a monthly salary of not less than RM25,000; and
- ii. a Malaysian tax resident for each year of assessment throughout the flat rate tax treatment.

Effective date : Applications received by the Malaysian Investment and Development Authority (MIDA) from 7 November 2020 until 31 December 2021

Tax Incentives

2. Tax incentive for principal hub

Currently, companies incorporated in Malaysia who make Malaysia as a centre to conduct business and regional or global operations for the purpose of management, control and support function including risk management, decision making, strategic business activities, commerce, finance, management and human resource management may be granted Principal Hub incentive with concessionary income tax rate as follows:

- i. New Company
 - a. Tier 1: 0% income tax rate for a period of 5 years and eligible for renewal for another 5 years subject to the following criteria:
 - 1. employment of at least 50 high valued workers;
 - 2. employment of at least 5 key posts personnel; and
 - 3. annual operational expenditure of at least RM10 million.
 - b. Tier 2: 5% income tax rate for a period of 5 years and eligible for renewal for another 5 years subject to the following criteria:
 - 1. employment of at least 30 high valued workers;
 - 2. employment of at least 4 key posts personnel; and
 - 3. annual operational expenditure of at least RM5 million.
- ii. Existing Company
 - 10% income tax rate for a period of 5 years subject to the following criteria:
 - 1. employment of at least 30 high valued workers;
 - 2. employment of at least 5 key posts personnel; and
 - 3. annual operational expenditure of at least RM10 million.

This tax incentive is effective for applications received by Malaysian Investment Development Authority (MIDA) from 1 January 2019 to 31 December 2020.

To further encourage more companies establishing their Principal Hub in Malaysia, it is proposed that:

- i. the application period for Principal Hub incentive for companies undertaking qualifying services activities be extended for another 2 years; and
- ii. minimum condition of the number of high value job, annual operating expenditure and the number of key post for renewal of the tax incentive for the second 5 years be relaxed.

Effective date : For applications received by Malaysian Investment Development Authority (MIDA) from 1 January 2021 to 31 December 2022

Tax Incentives

3. Tax incentive for investment in equity crowdfunding

Currently, tax incentives for companies and individuals that make investments in companies are as follows:

i. Investment in Venture Capital (VC)

Companies or individuals with business income from investment in VC are given tax deduction equivalent to the investment amount in VC.

ii. Investment in Venture Capital Company (VCC)

Companies or individuals with business income from investment in VCC funds are given tax deduction equivalent to the investment amount made in VCC, limited to a maximum of RM20 million per year.

iii. Angel Investor

Angel Investor who invests in investee companies is given tax exemption equivalent to the investment amount made.

Alternative financing such as an investment in venture capital, investment by Angel investors and investment in equity crowdfunding is becoming increasingly important to start-up companies. This alternative financing complements bank financing as well as provides access to financing resources to start-up companies to meet their needs for capital injection at various stages of development, which may be considered non-viable or high risk for bank financing.

To encourage more individual investors to invest in equity crowdfunding, it is proposed that individual investors be given income tax exemption on aggregate income equivalent to 50% of the amount of investment made in equity crowdfunding subject to the following:

- i. the eligible amount for tax exemption is limited to RM50,000 for each year of assessment;
- ii. the deductible amount is limited to 10% of the aggregate income for that year of assessment, the excess amount will be disregarded;
- iii. the investor, investee company and amount of investment made must be verified by the Securities Commission Malaysia;
- iv. the investor must not have any family relationship with the investee company;
- v. investment must be made through equity crowdfunding platform approved by the Securities Commission Malaysia; and
- vi. the investment must not be disposed of either in full or in part within 2 years from the date the investment made.

Effective date : For investment made from 1 January 2021 to 31 December 2023

Tax Incentives

4. Tax incentives for export of private healthcare services

Currently, companies that provide private healthcare services are eligible for income tax exemption equivalent to 100% of the value of the increase in exports of services and can be set-off against 70% of the statutory income derived from the export of healthcare services, to foreign patients either in Malaysia or provided from Malaysia subject to the following conditions:

- i. at least 10% of the total number of patients comprised of qualified healthcare travellers for each year of assessment; and
- ii. at least 10% of company's gross income for each year of assessment is derived from qualified healthcare travellers.

To promote the export of private healthcare services in Malaysia as well as to attract high value healthcare travellers, it is proposed that the above tax exemption be extended for another 2 years.

Effective date : From year of assessment 2021 to year of assessment 2022



Tax Incentives

5. Tax incentive for manufacturers of industrialised building system components

Currently, manufacturers of industrialised building system (IBS) components producing IBS basic components such as columns, beams, slabs, walls and roof trusses and producing IBS systems such as precast concrete system, formwork system, steel framing system, block work system, timber framing system, innovative system, and modular system/components are provided with the following tax incentives:

- i. Category 1: Companies producing at least 3 basic components of IBS or IBS system that use at least 3 basic IBS components
 - a. Income tax exemption of 70% of statutory income for a period of 5 years; or
 - b. Investment Tax Allowance of 60% on qualifying capital expenditure incurred within 5 years. This allowance can be set off against 70% of statutory income.
- ii. Category 2: Companies producing at least 4 or more basic components of IBS or IBS system that use at least 4 basic IBS components
 - a. Income tax exemption of 100% of statutory income for a period of 5 years; or
 - b. Investment Tax Allowance of 60% on qualifying capital expenditure incurred within 5 years. This allowance can be set off against 100% of statutory income

The tax incentives is effective for application received by Malaysian Investment Development Authority (MIDA) from 10 September 2015 until 31 December 2020.

To further improve technology adaptation in the construction sector through usage of IBS, it is proposed that the IBS tax incentive be extended for a period of 5 years and Category 1 and 2 to be merged where companies are only required to produce at least 3 basic components of IBS or IBS system that use at least 3 basic IBS components be given Investment Tax Allowance of 60% on qualifying capital expenditure incurred within 5 years. This allowance can be set off against 70% of statutory income for each year of assessment.

Effective date : For applications received by Malaysian Investment Development Authority (MIDA) from 1 January 2021 to 31 December 2025

Tax Incentives

6. Extension of East Coast Economic Region (ECER), Iskandar Malaysia and Sabah Development Corridor (SDC) tax incentives

ECER is an economic development region based on the east coast of Peninsular Malaysia, which covers the states of Kelantan, Terengganu, Pahang and the district of Mersing in northeast Johor. Exclusive incentives are available for targeted economic activities promoted by ECER which covers investments in the manufacturing, agribusiness, education, tourism (including hotels) and approved services sectors.

Iskandar Malaysia is the main southern development corridor in Johor. The incentives available for Iskandar Malaysia include the Iskandar Malaysia Incentive Support Package (ISP) for Medini, targeted to six promoted sectors i.e. Education, Healthcare, Logistics, Creative, Tourism and Global Business Services.

As for the SDC, it is an initiative by the Malaysian Government to accelerate economic growth and elevate income levels in the state of Sabah. There are six designated Strategic Development Areas, i.e. Bio-Triangle, Agro Marine Belt, Interior Food Valley, Kinabalu Gold Coast Enclave, Brunei Bay Integrated Development Area and Oil & Gas Clusters which offer various tax incentive packages.

To encourage more investments, both from international and domestic investors, the existing tax incentives for the above will be extended until year 2022.

Effective date : Extended until year 2022



Sales Tax & Service tax

1. Measures to make Malaysia as a preferred destination for investment and supply chain

Increase of sales limit for value-added and additional activities carried out in the Free Industrial Zone and Licensed Manufacturing Warehouse

Starting from 1 April 2020, all application and approval processes for value-added and additional activities in the Free Industrial Zone and Licensed Manufacturing Warehouse are processed at the Zone or State Customs Office for the following activities:

- i. Research and Development;
- ii. Product Design;
- iii. Marketing, for company with International Procurement Centre status only;
- iv. Distribution, for company with Regional Distribution Centre status only;
- v. Quality Control;
- vi. Testing and Commissioning including Calibration and Configuration;
- vii. Labelling, Packaging and Re-Packaging;
- viii. Remanufacturing, Repairing and Servicing; and
- ix. Supply Chain Management, Strategic Procurement Operation and Total Support Solutions.

Approval for the value-added and additional activities is subject to the condition of the sales value from these activities should not exceed 10% of the company's annual sales value.

To further enhance the company's competitiveness and to meet the global trade dynamics, it is proposed that the 10% limit on the sales value from value-added and additional activities be increased to not exceed 40% of the company's annual sales value.

Effective date : For new applications and applications to increase the sales value limit received by the Royal Malaysian Customs Department (RMCD) from 7 November 2020

2. Sales tax exemption on the purchase of locally assembled bus

Currently, locally assembled bus is exempted from sales tax.

It is proposed that sales tax exemption for the purchase of locally assembled bus be extended for a period of two years to reduce the burden of bus operators.

Effective date : From 1 January 2021 to 31 December 2022

Stamp Duty & Others

1. Stamp duty exemption for the purchase of first residential home

Currently, the Government has provided 100% stamp duty exemption on instruments of transfer and loan agreements for the purchase of first residential homes priced up to RM300,000 by Malaysian citizens. This exemption is effective for sale and purchase agreements executed from 1 January 2019 to 31 December 2020.

For the purchase of first home priced exceeding RM300,000 up to RM500,000, stamp duty on instruments of transfer and loan agreements is fully exempted, limited to the first RM300,000 of the value of the property. The remaining balance of the home value is subject to the prevailing rate of stamp duty. This exemption is effective for sale and purchase agreements executed from 1 July 2019 to 31 December 2020.

It is proposed that the 100% stamp duty exemption limit for the first home be increased from RM300,000 to RM500,000 to enhance the ownership of first residential home by Malaysian citizens who have yet to own a house. The period of stamp duty exemption of 100% that is given on the instruments of transfer and loan agreements for the purchase of first residential home be extended for another 5 years.

Effective date : For sale and purchase agreements executed from 1 January 2021 to 31 December 2025



Stamp Duty & Others

2. Stamp duty exemption to revive abandoned housing projects

Currently, to support efforts in reviving abandoned housing projects, stamp duty exemption is given on the following instruments:

- i. Rescuing contractor/developer
 - a. Loan agreements to finance the revival of the abandoned housing projects; and
 - b. Instruments of transfer of titles for land and houses in abandoned housing projects.

These exemptions are given on instruments executed from 1 January 2013 to 31 December 2020.

- ii. Original house purchaser of the abandoned project
 - a. Loan agreements for additional financing; and
 - b. Instruments of transfer of the houses.

These exemptions are given on instruments executed from 1 January 2013 to 31 December 2020.

The eligible abandoned housing projects must be certified by the Ministry of Housing and Local Government.

It is proposed that the existing stamp duty exemptions be extended for another 5 years to further alleviate the financial burden borne by the original house purchasers and to encourage the involvement of rescuing contractors/developers to revive the abandoned housing projects.

Effective date : Loan agreements and instruments of transfer executed from 1 January 2021 to 31 December 2025 for abandoned housing projects certified by the Ministry of Housing and Local Government

Stamp Duty & Others

3. Stamp duty exemption for Perlindungan Tenang products

Currently, stamp duty exemption is given on the purchase of insurance policies and takaful certificates for Perlindungan Tenang products covering life, fire and flood insurance with an annual premium or contribution value not exceeding RM100. This exemption is granted for policies and certificates issued from 1 January 2019 to 31 December 2020.

It is proposed that the stamp duty exemption period on the purchase of Perlindungan Tenang products be extended for another 5 years to further encourage more low-income groups to have insurance and takaful coverage.

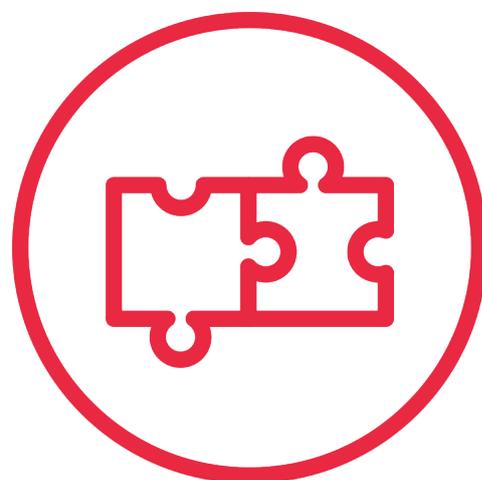
Effective date : For insurance policies and takaful certificates issued from 1 January 2021 to 31 December 2025

4. Stamp duty exemption for Exchange Traded Fund

Currently, stamp duty exemption is given on contract notes for trading of Exchange Traded Fund (ETF) from 1 January 2018 to 31 December 2020.

It is proposed that the stamp duty exemption on contract notes for trading of ETF be extended for another 5 years.

Effective date : For the trading of ETF executed from 1 January 2021 to 31 December 2025.



Stamp Duty & Others

5. Tax incentive for Returning Expert Programme

Tax incentives are granted for the Returning Expert Programme (REP) as follows:

Year	Tax Incentives
2001 – 2010	Duty/tax exemption for the purchase of 2 locally assembled vehicles (Completely Knocked-Down –CKD) or imported vehicles (Completely Built-Up - CBU)
2011 – 2014	i. Flat income tax rate of 15% on employment income for a period of 5 consecutive years of assessment; and ii. Duty/tax exemption for the purchase of 2 CKD vehicles.
2014 – 2020	i. Flat income tax rate of 15% on employment income for a period of 5 consecutive years of assessment; and ii. Exemption on import duty and excise duty for the purchase of a CBU vehicle or excise duty exemption for the purchase of a CKD vehicle subject to the total duty exemption limited up to RM150,000.

It is proposed that the application period for REP incentive be extended for another 3 years to further encourage skilled Malaysian citizens working abroad to return and work in Malaysia. The incentive is proposed to be revised as follows:

- i. Flat income tax rate of 15% for a period of 5 consecutive years of assessment; and
- ii. Exemption on import duty and excise duty for the purchase of a CBU vehicle or excise duty exemption for the purchase of a CKD vehicle subject to the total duty exemption limited up to RM100,000.

Effective date : For applications received by Talent Corporation Malaysia Berhad from 1 January 2021 to 31 December 2023

Stamp Duty & Others

6. Excise duty on electronic cigarette

Currently, cigarettes and tobacco products are subject to excise duty as follows:

Tariff Code	Description	Excise Duty Rate
2402.10.0000	Cigars, cheroots and cigarillos, containing tobacco	RM400.00/kilogram
2402.20.1000	Beedies	5% and RM7.50/kilogram
2402.20.2000	Clove Cigarettes	RM0.40/stick
2402.20.9000	Other	RM0.40/stick
2402.90.1000	Cigars, cheroots and cigarillos of tobacco substitutes	RM400.00/kilogram
2402.90.2000	Cigarettes of tobacco substitutes	RM400.00/kilogram
2403.11.0010	Water pipe tobacco	5% and RM27.50/kilogram
2403.99.9000	Other	RM778.00/kilogram

Electronic cigarettes including vape are not subject to excise duty as opposed to cigarettes and other tobacco products regulated under the Control of Tobacco Product Regulations 2004.

The following is proposed to ensure equal tax treatment on all types of cigarettes and other tobacco products:

- Excise duty at the rate of 10% ad valorem for all types of electronic and non-electronic cigarette devices including vape; and
- Excise duty at the rate of RM0.40 per milliliter for liquid or gel used for electronic cigarettes including vape.

Effective date : From 1 January 2021

Stamp Duty & Others

7. Imposition of tax on the importation of cigarettes

The following measures will be proposed to improve the revenue collection strategies including addressing smuggling of high duty goods:

- i. Freezing the issuance of new import license for cigarette;
- ii. Tightening the renewal of import license for cigarette through review of license conditions including the imposition of import quota;
- iii. Limiting transshipment of cigarette to dedicated ports only;
- iv. Imposition of tax on the importation of cigarettes with drawback facilities for re-export;
- v. Disallow transshipment and re-export of cigarettes by small boats including kumpit and instead be allowed only in ISO containers; and
- vi. Making cigarettes and tobacco products as taxable goods in all Duty-Free Islands and any free zones that have been permitted retail sale of duty free cigarettes.

Effective date : From 1 January 2021



Stamp Duty & Others

8. Tourism tax on accommodation booked through online platform

Currently, tourism tax is imposed on tourists staying in accommodation premises registered under the Tourism Tax Act 2017 at a flat rate of RM10/room/night. Malaysian tourists and permanent residents are exempted from the imposition of tourism tax.

Operators who operate and provide accommodation premises to tourists are required to be registered under the Tourism Tax Act 2017 for the purpose of collecting tourism tax from tourists, accounting for, declaring and paying tourism tax collected, to the Royal Malaysian Customs Department. However, the operators of the following accommodation premises are exempted from registration under the Tourism Tax Act 2017:

- i. homestay operators registered with the Ministry of Tourism and Culture Malaysia;
- ii. kampungstay operators registered with the Ministry of Tourism and Culture Malaysia;
- iii. accommodation premises operated by the Federal Government, State Governments or statutory bodies, local authorities or private higher education institutions;
- iv. private educational institutions that provide accommodation facilities to foreign students registered with the institutions;
- v. the employer who operates the accommodation premises as a facility for his employees;
- vi. religious bodies or charitable bodies that operate accommodation premises for religious purposes and non-commercial purposes; and
- vii. operators of accommodation premises having 4 or less accommodation rooms.

The imposition of tourism tax has been exempted from 1 July 2020 until 30 June 2021 to support economic recovery for tourism sector affected by Covid-19 pandemic.

It is proposed that the imposition of tourism tax be expanded to accommodation premises booked through online platform providers to ensure equal treatment between tourists who make their reservations for accommodations directly with the registered accommodation premises operators and through online platform providers.

Effective date : From 1 July 2021

Stamp Duty & Others

9. Withdrawal from Employees Provident Fund (EPF) Account 1 to ease financial burden

As announced in the earlier economic stimulus package, EPF members can apply for the i-Lestari Account 2 Withdrawal Scheme to ease their financial burden and help to meet their basic monthly financial needs during the Covid-19 pandemic. The withdrawal is effective from 1 April 2020 and the EPF members can withdraw a maximum of RM500 per month from their EPF Account 2 for a period of 12 months.

It is proposed that the withdrawal facility be extended to EPF Account 1 on a targeted basis. The withdrawal amount allowed will be RM500 a month with a total of up to RM6,000 over a period of 12 months. This withdrawal will assist members who have lost their jobs and are expected to lighten the financial burden of approximately 600,000 affected contributors. Eligible EPF contributors can apply for the withdrawal beginning from January 2021.

Effective date : January 2021

10. Extension of Wage Subsidy Programme (WSP) to employers in the tourism sector

The WSP is extended for a further 3 months for the tourism sector, which includes the retail sector. The subsidy amount is at a rate of RM600 per month for every employee who earns monthly salary of RM4,000 and below.

The number of employees limited under the WSP will be increased from 200 employees per company to 500 employees per company.



Stamp Duty & Others

11. Reduction of statutory EPF contribution rate by employees

To increase the take-home pay of employees, it is proposed that the minimum employee EPF contribution rate is reduced from 11 to 9 percent for a period of 12 months.

Effective date : From 1 January 2021 to 31 December 2021

12. Exemption from levy contribution to Human Resource Development Fund (HRDF)

Under the earlier Economic Stimulus Package, hotels and travel related companies are exempted from contributing levies to HRDF and this exemption was extended to all industries for 6 months from April to September 2020.

To help reduce the cash flow burden of companies that are still affected by the Covid-19 pandemic, an exemption from the HRDF levies will be given for 6 months effective from 1 January 2021. This exemption will cover the tourism sector and companies affected by the Covid-19 crisis.

Effective date: From 1 January 2021 to 30 June 2021



Updates from Finance Bill 2020

Corporate Tax

1. Income tax rebate for newly established business

To encourage the establishment of new businesses and transactions such as mergers and acquisitions, it is proposed that financial relief be provided in the form of income tax rebate of up to RM20,000 for a year of assessment incurred on capital expenditure or operational expenditure for that year of assessment for the first 3 years of assessment for newly established SME between 1 July 2020 to 31 December 2021.

If the total amount of income tax rebate exceeds the income tax charged (before any such rebate) for any year of assessment, the excess shall not be paid to the company or limited liability partnership or be available as credit to set off the tax liability of the company or limited liability partnership for that year of assessment or any subsequent year.

The income tax rebate is subject to the following conditions:

- i. The SME shall be a company or limited liability partnership resident and incorporated or registered in Malaysia;
- ii. The SME has paid up capital in respect of ordinary shares or contribution of capital (whether in cash or in kind) of RM2.5 million and less at the beginning of the basis period for a year of assessment;
- iii. The SME has a gross income from source or sources consisting of a business not exceeding RM50 million for the basis period for that year of assessment;
- iv. The SME which has commenced operation on or after 1 July 2020 but not later than 31 December 2021; and
- v. Other conditions under Statutory Order.

Where in a year of assessment the company or limited liability partnership fails to fulfil the above conditions, the amount of rebate up to RM20,000 shall not be granted for that year of assessment in which the failure occurs and in the subsequent years of assessment as illustrated in the table below:

Year of failure	Year 1	Year 2	Year 3
Year 1	X	X	X
Year 2	√	X	X
Year 3	√	√	X
Year 2, but fulfill in Year 1 & 3	√	X	X

Effective date : From year of assessment 2021

Corporate Tax

2. Review of research and development (R&D) expenditure deduction under Section 34(7), 34A & 34B

Section	Tax treatment	Current	Proposed
34(7)	Deduction for R&D expenditure	Applicable to relevant person	Applicable to person resident in Malaysia
34A	Deduction for R&D expenditure	Applicable to a person	Applicable to a person resident in Malaysia
		No condition on R&D expenditure incurred whether in or outside Malaysia	If R&D expenditure incurred outside Malaysia <ul style="list-style-type: none"> • ≤30% - double deduction is given • >30% - single deduction is given
34(4A)	Deduction in respect of post-pioneer business	Applicable to pioneer company	Applicable to pioneer company resident in Malaysia
34B(1)	Special deduction for contribution to an Approved Research Institute or payment for use of services of an Approved Research Institute or company	Applicable to a person	Applicable to a person resident in Malaysia

Effective date : Upon coming into operation of the Finance Act



Corporate Tax

3. Restriction on tax deduction on payments made to be extended to all types of Labuan entities

Section 39(1)(r) of the Income Tax Act 1967 was introduced with effect from 1 January 2019 to restrict the tax deduction on payments by Malaysian residents to any Labuan entity which carries on a Labuan business activity and taxed at 3% tax rate under the Labuan Business Activity Tax Act (LBATA) 1990 (i.e. fulfills the substantial activity requirements). The restriction on tax deduction are for the following payments:

Type of payment	% of non-deductibility
Interest expense	25%
Lease rental	25%
Other payments	97%

It is proposed that the tax restriction on the above payments be extended to a Labuan entity referred to in Paragraph 2B(1A) of the LBATA 1990 which fails to comply with the substantial activity requirements and is taxed at 24% on its chargeable profits.

Effective date : From 1 January 2021

4. Alignment of “ordinary share” definition in the Income Tax Act (ITA) 1967 with the Companies Act 2016

Currently, “ordinary share” under Section 44(5B)(a)(ii), Section 44(5C)(a) and Paragraph 75B(1)(a)(ii) of Schedule 3 of the ITA 1967 is defined as any share other than a share which carries only a right to any dividend which is of:

- (a) a fixed amount or at a fixed rate per cent of the *nominal* value of the shares; or
- (b) a fixed rate percent of the profits of the company.

To align the ITA 1967 with the Companies Act 2016, it is proposed that the word “nominal” in the above sections of the ITA 1967 be deleted.

Effective date : From 1 January 2021

Corporate Tax

5. Group Relief : Determination of Related Companies

Group relief is available to all locally incorporated resident companies subject to the terms and conditions provided under Section 44A of the Income Tax Act 1967. The provision of group relief allows a company in a group to surrender (referred to as a surrendering company) not more than 70% of its adjusted loss in the basis period for a year of assessment to one or more related companies (referred to as a claimant company) within the same group.

Currently, one of the conditions requires a surrendering company and claimant company are related companies if at least seventy percent (70%) of paid-up capital in respect of ordinary shares :

- i. of the surrendering company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the claimant company or vice versa; or
- ii. of the surrendering company and the claimant company are directly or indirectly owned by another company resident and incorporated in Malaysia.

It is proposed that the condition to fulfill as related companies to be extended to seventy percent of the paid up capital in respect of ordinary shares of the surrendering company and claimant company are directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by another company resident and incorporated in Malaysia.

Effective date : From year of assessment 2022



Corporate Tax

6. Submission of tax return by a Limited Liability Partnership (LLP)

Currently, the submission of tax return by a LLP can be made manually or by electronic medium or electronic transmission.

It is proposed that the submission of tax return for LLP by way of an electronic medium or electronic transmission to be made mandatory.

Effective date : From year of assessment 2021

7. Notification from employer of death of employee under Section 83

Currently, an employer is required to notify the Director General when the following events occur:

- (a) A new employee who is or is likely to be chargeable to tax in respect of gains or profits from employment. A written notice stating the full name and address of the employee and the terms and date of commencement of the employment has to be submitted not less than one month after the employment has commenced;
- (b) Where the employer is about to cease to employ that employee who is or is likely to be chargeable to tax in respect of gains or profits from employment except where the income of the employee is subject to deduction under any rules made pursuant to Section 154(1)(a) of the Income Tax Act 1967 or the total monthly remuneration of the employee is below the minimum amount of income that is subject to the deduction, and where that employee is not retiring from his employment. A written notice stating the full name and address of the employee and the expected date of cessation of the employment has to be submitted not less than one month before the cessation of the employment; and
- (c) The employer has knowledge that an employee who is chargeable to tax in respect of gains or profits from employment, is about to leave or intending to leave Malaysia for a period exceeding three months. A written notice has to be submitted not less than one month before the expected date of the employee's departure.

It is proposed that the employer is now required to notify the Director General of the death of an employee in a Prescribed Form within 30 days after being informed of the death. The notification to the Director General on the occurrence of any of the above events under (a), (b) and (c) has to be in the Prescribed Form instead of a written notice and the due date to notify the Director General shall not be later than 30 days instead of not less than one month.

Effective date : From 1 January 2021

Corporate Tax

8. Removal of Director General's discretion to remit tax or additional tax payable upon furnishing of an amended return

Currently, the Director General may in his discretion remit the whole or part of the tax or additional tax payable under Section 103(1A) of the Income Tax Act (ITA) 1967 or penalties under Sections 103(3), 13(5) or 103(7) of the ITA 1967. Where the amount remitted has been paid, the Director General shall repay that amount to the taxpayer.

It is proposed that the Director General's discretion to remit the tax or additional tax payable for an amended return under Section 103(1A) of the ITA 1967 be removed.

Effective date : From 1 January 2020

9. Obligation of taxpayer to make payment of tax notwithstanding institution of proceeding under any law

Currently, as provided under Section 103 of the Income Tax Act (ITA) 1967, all assessed tax shall be due and payable on the due date of the assessment, regardless whether the taxpayer appeals against the assessment. However, it is not clear whether legal proceedings against the government or the Director General falls under the scope of "appeal".

To provide more clarity, it is proposed under the new Section 103B of the ITA 1967, Section 21C of the Real Property Gains Tax Act 1976 and Section 13B of the Labuan Business Activity Tax Act 1990 that a taxpayer shall not be relieved of its obligation make payment of any tax, debt or other sum that he is liable to pay even though the taxpayer has initiated legal proceedings under any law against the government or the Director General.

Effective date : From 1 January 2021

10. Medium of notification certificate to prevent a person from leaving Malaysia

Currently, the Director General may issue a certificate to the Commissioner of Police or Director of Immigration to prevent a taxpayer from leaving Malaysia until he has paid all the tax, sums and debts so payable or furnishes security to the satisfaction of the Director General for the payment. Nevertheless, the medium of the Director General's notification certificate is not specified under subsection 104(1) of the Income Tax Act 1967, subsection 22(1) of the Real Property Gains Tax Act 1976 and subsection 74A(1) of the Stamp Act 1949.

To provide more clarity, it is proposed that the notification certificate may be issued by the Director General on an electronic medium or by way of electronic transmission to the Commissioner of Police or Director of Immigration.

Effective date : From 1 January 2021

Corporate Tax

11. Withholding tax on distribution of Real Estate Investment Trust (REIT) income as final tax to unit holder

Currently, a REIT that is listed on Bursa Malaysia and exempt from tax under Section 61A of the Income Tax Act (ITA) 1967 and distributes income to a unit holder (other than resident companies) is required to deduct tax under Section 109D of the ITA 1967 at the rate applicable to the unit holder. The withholding tax deducted is not a final tax.

It is proposed that the withholding tax on distribution of REIT income be a final tax to the unit holders.

Effective date : From year of assessment 2021

12. Definition of plant for capital allowance claim under Schedule 3 of the Income Tax Act (ITA) 1967

Currently, “plant” is not defined in the ITA 1967 . In general, a “plant” is referred to as “whatever tool or apparatus used by a person for carrying on business but does not include stock in trade”. To determine whether an asset is a “plant”, the function and need of the asset in a business activity have to be determined by the following tests:

- i. Functional test; and
- ii. Premise test

In addition, guidance can be obtained from judgment stated in case laws to determine whether an asset qualifies as a plant and is eligible for capital allowance claim under Schedule 3.

However, the above tests and judgement in case laws are not conclusive in determining whether a “plant” is eligible for capital allowance claim that is specific to the taxpayers’ situation. As a result, this has caused confusion to taxpayers.

To provide clarity, it is proposed that “plant” to be defined as “an apparatus used by a person for carrying on his business but does not include a building, an intangible asset or any asset used and that functions as a place within which a business is carried on”.

Effective date : From year of assessment 2021

Tax Incentives

1. Adjusted loss for approved incentive scheme (AIS)

Any amount of adjusted loss in respect of a business source consisting of the provision of qualifying services or qualifying trading activities under an AIS approved by the Minister, namely Global Trading Centre, companies relocating to Malaysia, companies manufacturing pharmaceutical products and Principal Hub, shall not be allowed to offset against statutory income of other business source in the same year of assessment and subsequent year of assessment and vice-versa.

Any amount of unabsorbed adjusted loss in respect of a business source consisting of the provision of qualifying services or qualifying trading activities under an AIS approved by the Minister, is allowed to be carried forward for a maximum of 7 consecutive years of assessment after the end of the AIS incentive period.

Effective date : From year of assessment 2021

2. Income tax rate for employees of approved incentive scheme (AIS)

Currently, there is no reduction of income tax rate for employees of the company that involve in the qualifying services or qualifying trading activities under an AIS approved by the Minister.

It is proposed that the employees of the company that were involve in the qualifying services or qualifying trading activities under an AIS approved by the Minister be given a special income tax rate of not more than 20% on chargeable income.

Effective date : From year of assessment 2021

Transfer Pricing

1. Failure to furnish contemporaneous Transfer Pricing (TP) documentation to be made as an offence

The Transfer Pricing Rules 2012 and Transfer Pricing Guidelines 2012 state that a taxpayer who has entered into a related party transaction in a year of assessment is required to prepare contemporaneous TP documentation. A documentation is deemed “contemporaneous” if it is prepared:

- (a) At the point when the taxpayer is developing or implementing any arrangement or TP policy with its related party; or
- (b) If there are material changes to these arrangements, the documentation should be updated prior to the furnishing of the tax return form for a year of assessment.

In addition, the taxpayer is required to submit the TP documentation to the IRB within 30 days upon its request in order for the documentation to be deemed as “contemporaneous”. If the taxpayer is unable to submit the TP documentation within 30 days upon IRB’s request, the taxpayer is subject to a 30% penalty on the additional tax payable (if any) arising from TP adjustments after a TP Audit (as stated in the TP Audit Framework 2019).

It is proposed that the failure to furnish contemporaneous TP documentation to the IRB be made as an offence and the taxpayer shall be subject to a penalty of RM20,000 to RM100,000 or imprisonment of up to 6 months or both. The taxpayer would be served with a notice in writing or notice of assessment by the Director General. If the taxpayer is served with a notice in writing, he may appeal to the Special Commissioners within 30 days.

The burden of proving that the contemporaneous TP documentation had been furnished to the IRB falls onto the taxpayer. If the taxpayer is convicted for the above offence, the court may order the taxpayer to prepare and submit the TP documentation to the IRB within 30 days or a period to be decided by the Court.

Effective date : From 1 January 2021



Transfer Pricing

2. Director General's power to disregard a structure in a related party transaction

Currently, the TP Rules 2012 provides the Director General with the power to disregard any structure in a related party transaction if:

- (a) The economic substance of the transaction differs from its form; or
- (b) The form and substance of the transaction is the same, but the arrangements made in relation to the transaction, when viewed in totality, differs from the arrangement which would have been adopted by independent persons in a commercially rational manner and the structure impedes the Director General from determining an appropriate transfer price.

When the structure in a related party transaction is disregarded, the Director General shall make adjustments to the structure of the transaction as he thinks fit. The adjustment shall reflect a structure that would have been adopted by an independent person dealing at arm's length having regard to the economic and commercial reality.

It is proposed that the power of the Director General as mentioned above be incorporated into the new Sections 140A(3A) and (3B) of the Income Tax Act 1967.

Effective date : From 1 January 2021

3. Additional penalty mechanism on TP adjustments

Currently, penalty is imposed under Section 113(2) of the Income Tax Act (ITA) 1967 on tax undercharged due to TP adjustments. Referring to the TP Audit Framework 2019, the following penalties rates are imposed:

- (a) 50% on additional tax payable if the taxpayer did not prepare TP documentation;
- (b) 30% on additional tax payable if the taxpayer prepared TP documentation, but did not fully comply with the requirements of the TP Guidelines 2012; or the taxpayer prepared a comprehensive and good quality TP documentation but failed to submit the documentation within 30 days from the date of IRB's letter; or
- (c) 0% on additional tax payable if the taxpayer prepared a comprehensive and good quality TP documentation in accordance with the TP Guidelines 2012 and submitted the documentation within 30 days from the date of IRB's letter.

It is proposed that an additional penalty mechanism be introduced under a new Section 140A(3C) of the ITA 1967. Under this new section, a surcharge of not more than 5% be imposed on the amount of increase of any income or reduction of any deduction or loss as a result of TP adjustments made by the Director General in respect of a related party transaction that does not reflect an arm's length price or disregard of the structure of the transaction.

Effective date : From 1 January 2021

Transfer Pricing

4. Requirement of a Labuan entity to participate in the automatic exchange of information

Currently, under Section 119B of the Income Tax Act (ITA) 1967, failure of the taxpayer to comply with the mutual administrative assistance requirements under Sections 132, 132A, 132B or 132C that relates to the automatic exchange of information or furnishing of the Country-by-Country Report (CbCR), shall result in the taxpayer being liable to a penalty of between RM20,000 to RM100,000 or imprisonment of up to 6 months or both.

With regards to a Labuan entity, although a new Section 17D was introduced in the Labuan Business Activity Tax Act (LBATA) 1990 in relation to a transaction between related parties (i.e. transfer pricing), the requirements for such Labuan entity to participate in such automatic exchange of information is not available.

It is proposed that amendment be made to subsection 24(1) of the LBATA 1990 to require a Labuan entity to participate in similar automatic exchange of information requirements under the Income Tax Act 1967, e.g. furnishing of CbCR and Common Reporting Standard by a financial institution.

Failure of the Labuan entity to comply with the above requirements will result in a penalty.

However, the Finance Bill did not specify whether the penalty will be based on Section 24(1) of LBATA 1990 or Section 119B of ITA .

Effective date : From 1 January 2021



Real Property Gains Tax

1. Power of the Director General to remit penalty imposed on the acquirer

Currently, after the disposal of an asset, the acquirer is required to retain a sum not exceeding 3% of the total value of the consideration for the asset and remits the same to the Director General within 60 days after the disposal date. If the acquirer fails to retain and remit the amount required due to incorrect or wrong notification furnished to him, a 10% penalty will be imposed on the tax payable by the acquirer.

It is proposed that should there be any good cause, the Director General is empowered to remit all or any part of the penalty imposed on the acquirer. If the penalty has been paid, the Director General shall repay the same amount to the acquirer.

Effective date : From 1 January 2021

2. Extension of requirement of retention sum on the disposal of a chargeable assets

Currently, for the disposal of a chargeable asset by a disposer who is not a citizen, not a permanent resident, or not a company incorporated in Malaysia, the acquirer shall retain the whole of that money or a sum not exceeding 7% of the total value of the consideration whichever is the less, and (whether or not the amount is so retained) he shall within sixty days after the date of such disposal pay that amount to the Director General.

It is proposed that the requirement of retention sum of 7% to be extended to include an executor of the estate of a deceased person who is not a citizen and not a permanent resident.

Effective date : From 1 January 2021

Real Property Gains Tax

3. Extension of scope of furnish Real Property Gains Tax (RPGT) form via electronic medium

Currently, there is no specific provision to allow tax agent, an advocate and solicitor of the High Court of Malaya or an advocate of the High Court of Sabah and Sarawak (authorised persons) to furnish the prescribed form via electronic medium on behalf of the taxpayer.

It is proposed that the scope of furnish of RPGT form be extended as follows:

- a. Taxpayer may give an authorisation in writing to the authorised persons in the prescribed form stating:
 - (i) authorised to furnish the form to the IRB on his behalf until the contrary is proved, and that person shall be deemed to be cognizant of its contents; and
 - (ii) the information given for the preparation of form is true and correct.
- b. The authorised persons shall make a declaration in the form stating:
 - (i) the form is prepared pursuant to the information given by the taxpayer; and
 - (ii) he has received the declaration made by the taxpayer who gives the authorisation.
- c. The taxpayer shall keep and retain in safe custody the hardcopy of the signed and submitted form for a period of seven years from the end of the year of assessment in which the form is furnished.
- d. The form is deemed to have been furnished to the IRB by the taxpayer on the date which acknowledgement of receipt of the form transmitted electronically.

Effective date : From 1 January 2021



Real Property Gains Tax

4. RPGT rate applicable to Society registered under the Societies Act 1966

The current categories of disposer under Part II of Schedule 5 of the Real Property Gains Tax (RPGT) Act 1976 are as follows:

Date of disposal	Categories of disposer
	Companies incorporated in Malaysia or a trustee of a trust
Within 3 years from date of acquisition	30%
In the 4 th year	20%
In the 5 th year	15%
In the 6 th year and subsequent year	10%

It is proposed that the categories of disposer be expanded as follows:

Date of disposal	Categories of disposer
	Companies incorporated in Malaysia or a trustee of a trust or society registered under the Societies Act 1966 (Act 335)
Within 3 years from date of acquisition	30%
In the 4 th year	20%
In the 5 th year	15%
In the 6 th year and subsequent year	10%

Effective date : From 1 January 2021

Labuan Business Activity Tax

1. Expansion of definition of Labuan business activity

Currently, a Labuan entity is recognised to have carried on a Labuan business activity if it has:

- (a) An adequate number of full time employees in Labuan; and
- (b) An adequate amount of annual operating expenditure in Labuan.

It is proposed that the definition of a Labuan business activity is expanded to 2 categories as follows:

- (a) In relation to a Labuan trading activity
 - (i) Has adequate number of full time employees in Labuan; and
 - (ii) Has adequate amount of annual operating expenditure in Labuan.
- (b) In relation to a Labuan non-trading activity
 - (i) Has adequate number of full time employees in Labuan;
 - (ii) Has adequate amount of annual operating expenditure in Labuan; and
 - (iii) Complies with any conditions in relation to control and management in Labuan

Effective date : From 1 January 2021

2. Definition of chargeable profit

Currently, a Labuan entity carrying on a Labuan business activity which fails to comply with regulations under Section 2B(1) of the Labuan Business Activity Tax Act (LBATA) 1990 shall be charged to tax at the rate of 24% upon its chargeable profits for that year of assessment. However, the definition of the “chargeable profit” is not provided in the LBATA 1990.

It is proposed that a new Section 2B(1B) be introduced to define “chargeable profit” as the net profit reflected in the audited accounts in respect of such Labuan business activity of the Labuan entity for that year of assessment.

Deemed effective date : From year of assessment 2020

Labuan Business Activity Tax

3. Extension of time for a Labuan entity to make irrevocable election to be chargeable to Income Tax Act (ITA) 1967

Currently, a Labuan entity carrying on a Labuan business activity may make an irrevocable election in a prescribed form that any its profit for any basis period for a year of assessment and subsequent basis period be charged to tax under the ITA 1967 in respect of that Labuan business activity. The election shall be furnished to the Director General within three months after the beginning of the basis period for a year of assessment.

It is proposed that the Director General be empowered to allow an extension of time to the Labuan entity to furnish the irrevocable election.

Effective date : Upon coming into operation of the Finance Act 2020

4. Rights to appeal against additional assessment

Currently, a person aggrieved by an assessment made on him under Labuan Business Activity Tax Act (LBATA) 1990 may appeal to the Special Commissioners against the assessment in the same manner as an appeal against an assessment of income tax made under the Income Tax Act (ITA) 1967, and Sections 99, 100, 101 and 102 of the ITA 1967.

It is proposed that a person aggrieved by an additional assessment under LBATA 1990 may also appeal to the Special Commissioners of the Income Tax.

Deemed effective date : From year of assessment 2020

5. Clarification on the type of assessment

Currently, the assessment raised that results in tax due and payable generally refers to Section 6 of the Labuan Business Activity Tax Act (LBATA) 1990.

It is proposed that the notice of assessment be specifically referred to assessment raised under Section 6(2), (3) and (4) of the LBATA 1990.

Deemed effective date : From year of assessment 2020

Stamp Duty & Others

1. Digital stamping

An instrument is currently stamped by affixing an adhesive or impressed stamp of the amount of stamp duty paid.

It is proposed that an instrument may also be digitally stamped. An official receipt or a stamp certificate will be attached to instruments that are stamped through an electronic medium, to indicate that the instrument has been duly stamped. The Minister may make rules to prescribe the means to be used for the payment of stamp duty, to provide for matters relating to the issuance and validity of the digital stamping.

Effective date : From 1 January 2021

2. Power for Collector to remit duties

Currently, only the Minister of Finance has the power to exempt, reduce or remit penalties.

It is proposed the Director General of Inland Revenue, who is the appointed Collector of stamp duties, may on grounds of poverty:

- remit wholly or in part any stamp duty paid or payable; and
- where the remitted duty has been paid, refund any duty that has been paid.

Effective date : From 1 January 2021



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