



MALAYSIAN INSTITUTE OF ACCOUNTANTS



JOINT MEMORANDUM ON ISSUES ARISING FROM 2020 BUDGET SPEECH & FINANCE BILL 2019

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Prepared by:

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JOINT MEMORANDUM ON ISSUES ARISING FROM 2020 BUDGET SPEECH & FINANCE BILL 2019

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A. Finance Bill 2019 & 2020 Budget Speech and Appendices

1. Proposed Amendments to the Income Tax Act 1967

1.1 Tax rebate for departure levy imposed on outbound air passenger performing *Umrah* and Pilgrimage to holy places (with effect from YA 2019)

Section 6A. Tax rebate.

(2A) A rebate shall be granted for a year of assessment in respect of departure levy which is charged and levied under the Departure Levy Act 2019 [Act 813] on any person who leaves Malaysia by air for the purpose of performing umrah or other religious pilgrimage and shall be evidenced by the boarding pass and – ...

Comments:

Example:

Adam and Azura had paid departure levy of RM20 each for *umrah* purposes in 2019. They will opt for a joint assessment for the year of assessment (YA) 2019 where the individual tax return will be filed in Adam's name.

Please advise us which of the following will be applicable to Adam:

- (a) Adam can claim a tax rebate of RM40 in his tax return; or
- (b) Adam can only claim a tax rebate of RM20 in his tax return.

IRBM's Comment:

Adam can only claim a tax rebate of RM20 in his tax return.

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1.2 Tax Deduction on Expenditure Incurred for Maintenance of Historical Building (with effect from YA 2020)

Section 34. Special provisions applicable to adjusted income from a business.

(6) There may be deducted from the relevant gross income—

(h) an amount equal to the expenditure incurred by the relevant person in the relevant period on the provision of services, public amenities and contributions to a charity or community project pertaining to education, health, housing, conservation or preservation of environment, enhancement of income of the poor, ~~infrastructure and information and communication technology~~ infrastructure, information and communication technology or maintenance of a building designated as a heritage site by the Commissioner of Heritage under the National Heritage Act 2005 [Act 645], approved by the Minister:

Provided that where a deduction has been made under this paragraph, no further deduction of the same amount shall be allowed under subsection 44(6);

Comments:

We would request the IRB to confirm that the MOF's guidelines on Section 34(6)(h) will be updated to incorporate the above amendment and to clarify when the updated guidelines will be issued for certainty and effective implementation.

MOF's Comment:

MOF is working closely with MOTAC and IRB to update the guideline for tax deduction under section 34(6)(h) of the ITA to include matters relating to the maintenance of historical buildings.

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1.3 Review of Tax Treatment on Donation for Charitable and Sports Activities and Projects of National Interest (with effect from YA 2020)

Section 44. Total income.

(11D) There shall be deducted pursuant to this subsection from the aggregate income of a relevant person for the relevant year reduced by any deduction falling to be made for that year in accordance with subsection (1) an amount equal to any gift of money in the form of—

(a) wakaf made by him in the basis period for that year to any appropriate religious authority established under any written law, body established by that appropriate religious authority or public university allowed by that appropriate religious authority to receive wakaf; or

(b) endowment made by him in the basis period for that year to a public university:

Provided that—

(a) the wakaf or endowment is made for the purpose of achieving the objective of establishment of the appropriate religious authority, body or public university;

(b) the appropriate religious authority, body or public university is approved by the Director General for the purposes of this section on the application of the appropriate religious authority, body or public university concerned; and

(c) the amount to be deducted pursuant to this subsection shall not exceed the difference between the amount of ten per cent of the aggregate income of that person in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6), (11b) and (11C).

SCHEDULE 6: Exemption from tax. PART I INCOME WHICH IS EXEMPT

13. (1) The income of—

(c) an appropriate religious authority or a body or a public university approved for the purposes of subsection 44(11D) in respect of any wakaf or endowment received including the income derived therefrom in the basis period for a year of assessment, so long as the approval remains in force.

Comments:

- a. With the above proposed expansion of the scope, will guidelines be issued to enable taxpayers to understand how this works?

IRBM's Comment:

IRBM will issue a guideline to explain the tax treatment in relation to subsection 44(11D) of the ITA.

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- b. It is noted that in the proposed paragraph 13(1)(c) of Schedule 6 of the ITA, such wakaf/endowment received would be exempted from tax. We hold the view that the wakaf/endowment does not constitute income within Section 4(a) to (f) of the ITA and hence is not taxable as it is a gift/donation which is made voluntarily and is solely intended for use by the religious bodies or public universities in the advancement/furtherance of religion and education, both of which are non-profit activities. We seek your confirmation on this.

IRBM's Comment:

Whether any contribution received constitutes an income and subject to tax or not, depends on the facts of the case. Therefore, the proposed paragraph 13(1)(c) of Schedule 6 of the ITA is to provide clarity that for the purpose of wakaf and endowment received, the recipient is not subject to tax.

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1.4 Expansion of the scope of income tax relief for medical expenses (with effect from YA 2020)

Section 46. Deduction for individual and Hindu joint family.

(1) In the case of an individual or a Hindu joint family resident for the basis year for a year of assessment, there shall be allowed for that year of assessment personal deductions of—

~~*(g) an amount limited to a maximum of six thousand ringgit in respect of medical expenses expended or deemed expended under subsection (3) in that basis year by that individual on himself if he is suffering from a serious disease or on his wife or child who is suffering from a serious disease, or in the case of a wife, on herself if she is suffering from a serious disease or on her husband or child who is suffering from a serious disease:*~~

~~*Provided that the claim is evidenced by a receipt and certification issued by a medical practitioner that treatment was provided to the individual, spouse or child for that disease;*~~

~~*(g) medical expenses expended or deemed expended under subsection (3) in that basis year by that individual –*~~

~~*(i) on himself if he is undergoing treatment for a serious disease or on his wife or child who is undergoing treatment for a serious disease, or in the case of a wife, on herself if she is undergoing treatment for a serious disease or on her husband or child who is undergoing treatment for a serious disease; or*~~

~~*(ii) on himself if he is undergoing fertility treatment or on his wife who is undergoing fertility treatment, or in the case of a wife, on herself if she is undergoing fertility treatment or on her husband who is undergoing fertility treatment:*~~

~~*Provided that—*~~

~~*(a) the claim is evidenced by a receipt and certification issued by a medical practitioner registered with the Malaysian Medical Council that the serious disease treatment was provided to that individual, spouse or child, or that fertility treatment was provided to that individual or the spouse;*~~

~~*(b) the total amount of deduction under this paragraph is subject to a maximum amount of six thousand ringgit; and*~~

~~*(c) for the purpose of subparagraph (ii)—*~~

~~*(A) the individual is married; and*~~

~~*(B) “fertility treatment” means intrauterine insemination or in vitro fertilization treatment or any other fertility treatment;”; and*~~

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Comments:

The following example is modified from Example 1 as illustrated in the slide #11 of the National Tax Seminar 2019. Adam and Azura had undergone IVF at Specialist Hospital in the year 2020 and incurred RM16,000 for the treatment. The payment was made in the following manner:

	Amount (RM)	Receipt is issued in the name of -
Deposits (50%)	8,000	Adam
Balance (50%)	8,000	Azura

Adam and Azura will file their respective individual tax returns for the YA 2020 (i.e. under separate assessments). Please confirm that Adam and Azura are eligible to claim a tax deduction of a maximum of RM6,000 each in YA 2020 on the basis that the receipts are issued in their respective names.

IRBM's Comment:

Yes, your understanding of the above is correct.

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1.5 Review of Penalty for Furnishing an Amended Return (with effect from 1 January 2020)

Section 77B. Amendment of return.

~~(4) The tax or additional tax payable under subsection (1) shall—~~

~~(a) if the amended return is furnished within a period of sixty days after the due date for the furnishing of the return in accordance with subsection 77(1) or 77A(1), be increased by a sum equal to ten per cent of the amount of such tax or additional tax; or~~

~~(b) if the amended return is furnished after the period of sixty days from the due date for the furnishing of the return in accordance with subsection 77(1) or 77A(1) but not later than six months from that date, be increased by a sum which shall be determined in accordance with the following formula:~~

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

~~where A is the amount of such tax payable or additional tax payable; and~~

~~— B is ten per cent of the amount of such tax payable or additional tax payable;~~

~~and the amount of the increased sum shall constitute part of the amount of tax or additional tax payable under subsection (1).~~

(4) The tax or additional tax payable under subsection (1) shall be increased by a sum equal to ten per cent of the amount of such tax or additional tax.

Comments:

In line with this proposal, we propose to the Inland Revenue Board (IRB) to update Paragraph 10.3 of the Tax Audit Framework on the penalty rate for voluntary disclosure as follows:

Jadual 1

Tempoh membuat pengakuan secara sukarela	Kadar
<i>Dalam tempoh 6 bulan dari tarikh dibenarkan pengemukaan Borang Nyata Cukai Pendapatan</i>	10%

IRBM's Comment:

IRBM takes note and will review accordingly.

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1.6 Time Limit to Apply for Extension of Time to Appeal Against an Assessment (with effect from YA 2020)

Section 100. Extension of time for appeal.

~~(1) A person seeking to appeal against an assessment may at any time make to the Director General a written application in the prescribed form for an extension of the period within which notice of appeal against the assessment may be given under subsection 99(1).~~

(1) A person seeking to appeal against an assessment after the expiration of the period to make an appeal under subsection 99(1), may within seven years after the end of that period, make to the Director General a written application in the prescribed form for an extension of that period within which a notice of appeal against that assessment may be given under that subsection.

Comments:

We would like to seek clarification on whether this amendment applies to appeals for **YA 2020** and subsequent years of assessment only, as illustrated in the example below.

Example:

Company A was served notices of assessment for YA 2019 and YA 2020 on 31 October 2021 but did not submit an appeal against the assessments by the 30 November 2021 deadline. For the appeal against the YA 2019 assessment, there is no time limit for Company A to file the Form N. However, for the appeal against the YA 2020 assessment, Company A must file the Form N by or before 30 November 2028 i.e. within seven years after 30 November 2021.

IRBM's Comment:

It is clarified that the amendment to section 100 of the ITA 1967 applies to application for an extension of time starting from YA 2020 onwards. Therefore, application for an extension of time prior to the amendment would not have any limitation period.

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1.7 Amendment to Section 153 – Restriction on persons holding themselves out as tax agents, tax consultants, etc

Section 153 of the ITA is amended –

(a) in subsections (3), (4), (5) and (6), by substituting for the word “Minister” the words “Director General”; and

(b) by inserting after subsection (6) the following subsection:

“(6A) Any person aggrieved by the decision of the Director General in respect of – (a) refusal to grant a renewal of an approval; or (b) revocation of an approval, may, within one month from the date on which such decision is notified to him, make an appeal in writing to Minister, whose decision shall be final.”.

Comments:

The primary role of a tax agent is to assist clients to understand and comply with the Malaysian tax laws. The duties performed by a tax agent, amongst others, are to act as a representative for taxpayers before the Special Commissioners of Income Tax (SCIT) and to liaise with the IRB in respect of the clients’ tax matters.

With the proposed amendment whereby the DGIR will be approving new applications for / renewal of the tax agent licence, we believe that **serious conflicts** will be created such as those envisaged below.

1. Representation at SCIT

When the tax agent appears before the Special Commissioners to represent their client, it would be difficult for the tax agent to be seen as independent when they are licensed by the “Respondent” in the appeal i.e. the DGIR.

2. Managing tax audits & investigations

In the event that there is a difference in opinion with the IRB in the course of a tax audit/investigation of a taxpayer represented by the tax agent, it will be challenging for the business owners/foreign investor to be confident that they will be receiving fair representation if the tax agent is licensed by the DGIR. This is an issue of independence as well as of perception (i.e. negative perception).

3. Technical development

If the tax agent is licensed by the IRB, it will be difficult for the tax profession to be able to debate technical issues openly without fear or favour. The possibility that technical development could be stunted cannot be downplayed.

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We also believe that enabling the DGIR to have the power of approving/revoking a tax agent's licence is akin to giving a party the right to be the complainant, enforcer/prosecutor and judge in matters concerning representing taxpayers in dealing with the DGIR. It would be difficult for the tax agent to be expected to represent the taxpayer without fear or favour and take independent and differing views from that of the authorities when the renewal of the tax licence rests with that party.

Furthermore, the possible introduction of courses and examinations for tax agents would mean that the IRB, in addition to implementing tax laws, will train tax agents, decide who should be granted the tax licence and have the power to censure the agents.

The proposed appeal to the Ministry of Finance (MOF) is only with respect to the refusal to grant a renewal or revocation of an approval. This does not resolve the conflicts. The IRB's control over the tax profession would become all encompassing.

As a conclusion, the role of approving new applications / renewal of a tax agent's licence should be continued to be maintained with the MOF. **As such, we wish to recommend that the proposed amendments to Section 153 in the Finance Bill 2019 be reconsidered and request for a meeting to discuss our proposal.** We also wish to propose that we would be pleased to engage with the MOF and IRB in dialogues on matters relating to the tax agent licensing framework and the regulation of the tax profession as well as ways in which the professional bodies could self-regulate its members.

IRBM's Comment:

There will be no issue regarding this proposed amendment since the current provision remains.

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1.8 Additional criteria for SME to be eligible for the preferential tax rate (with effect from YA 2020)

SCHEDULE 1 PART I: Rates of Tax

2A. Subject to paragraphs 2B, 2C and 3, income tax shall be charged for a year of assessment on the chargeable income of a company resident and incorporated in Malaysia which has a paid-up capital in respect of ordinary shares of two million five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment and gross income from source or sources consisting of a business not exceeding fifty million ringgit for the basis period for that year of assessment at the following rates:

<i>Chargeable income</i>	<i>RM</i>	<i>Rate of income tax</i>
<i>For every ringgit of the first</i>	<i>500,000</i>	<i>17 per cent</i>
	<i>600,000</i>	
<i>For every ringgit exceeding</i>	<i>500,000</i>	<i>25 per cent for the year of</i>
	<i>600,000</i>	<i>assessment 2015 and 24 per</i>
		<i>cent for the subsequent</i>
		<i>years of assessment</i>

2D. Subject to paragraphs 2E, 2F and 3, income tax shall be charged for a year of assessment on the chargeable income of a limited liability partnership resident in Malaysia which has a total contribution of capital (whether in cash or in kind) of two million five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment and gross income from source or sources consisting of a business not exceeding fifty million ringgit for the basis period for that year of assessment at the following rates:

<i>Chargeable income</i>	<i>RM</i>	<i>Rate of income tax</i>
<i>For every ringgit of the first</i>	<i>500,000</i>	<i>17 per cent</i>
	<i>600,000</i>	
<i>For every ringgit exceeding</i>	<i>500,000</i>	<i>25 per cent for the year of</i>
	<i>600,000</i>	<i>assessment 2015 and 24 per</i>
		<i>cent for the subsequent</i>
		<i>years of assessment</i>

Comments:

- a. Please note that the Companies Act 2016 (CA 2016) uses the term “issued share capital” instead of the term “paid-up capital”. As such, the provisions of paragraph 2A and other parts of the Income Tax Act 1967 which use the term “paid-up capital” should be reviewed and amended accordingly.

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IRBM's Comment:

IRBM is of the view that there is no issue in using the term "paid-up capital". The term "issued share capital" refers to share capital which is fully paid or not fully paid. The term "paid-up capital" means issued share capital which is fully paid. However, this issue may be considered in future amendment.

- b. We would request the tax authorities to provide clarity on the determination of issued share capital which should exclude those paid-up capital merged by virtue of Section 618(8) of the CA 2016 resulting from the implementation of the no par value regime. "paid-up capital".

IRBM's Comment:

Under Subsection 618(3) and (4) of the CA 2016, companies are given twenty four months transitional period to utilise the share premium before the share premium become part of the company's share capital. Therefore, IRBM is of the view that the unutilised share premium shall be part of paid-up capital after the given period.

- c. As the proposal is effective from YA 2020, companies that may not qualify as a small medium enterprise (SME) (e.g. January year-end) may be subject to under-estimation penalties. We request that penalties should not be imposed in such cases.

IRBM's Comment:

IRBM will look into the matter on case-to-case basis.

- d. As there are a number of gazette orders that are applicable to SME, we would like to seek confirmation that the above proposal will also affect the various gazette orders.

MOF's Comment:

The above proposal will only be applicable to SME in determining the preferential tax rate (17%) for the first RM600,000 chargeable income, which are subjected to conditions of paid up capital RM2.5 million and gross income from source or sources consisting of a business not exceeding fifty million ringgit.

Thus, this proposal will not affect the existing gazette orders that are applicable to SME.

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2. Proposed Amendments to the Real Property Gains Tax Act 1976

2.1 Review of real property gain tax treatment (deemed to have come into operation on 12 October 2019)

SCHEDULE 2. Chargeable gains and allowable losses.

Acquisition and disposal generally

2A. For the purposes of this Schedule, where a disposal is subject to tax under Part I of Schedule 5, references to 1 January 1970 shall be construed as references to 1 January ~~2000~~ 2013.

SCHEDULE 3. Private residences

13.(2) Where the acquisition by the disposer referred to in subparagraphs (1)(a) and (b) was made prior to 1 January ~~2000~~ 2013, in applying the formula specified in subparagraphs (1)(a) and (b) there shall be substituted for the acquisition price of the total area of the land referred to in subparagraph (1)(a) and the acquisition price of the land with the residence referred to in subparagraph (1)(b) the market value of the land as at 1 January ~~2000~~ 2013.

Comments:

- a. The market value as at 1 January 2013 could be lower than the acquisition price of the property acquired prior to 1 January 2013 due to damage to the property e.g. damage caused by a landslide etc., as illustrated in the example below.

Example:

A residential property located on a hillside was acquired for RM1 million in 2010. There was a landslide in December 2012 which damaged the residential property. Consequently, the market value of the residential property had dropped to RM800,000 as at 1 January 2013. The residential property was sold in November 2019 for RM1.1 million.

Based on the above-mentioned proposed amendments in the Finance Bill 2019, there is no option to adopt the actual acquisition price of RM1 million for the purpose of computing the real property gains tax (RPGT) in the above example, resulting in the taxpayer being unfairly penalised. **As such, we would request that an amendment be made to Paragraph 4(3), Schedule 2 of the RPGTA to allow for the adoption of the actual acquisition price or the market value as at 1 January 2013, whichever is higher, for the purpose of computing the RPGT.**

IRBM's Comment:

This is a policy decision for MOF to consider.

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Please clarify whether the incidental costs of the acquisition (Paragraph 4(1), Schedule 2 of the RPGTA) in the case of the above example would be claimable for RPGT purposes. If it is claimable, then **we would also request for a further amendment to be made to remove the words “and incidental costs of the kind” from Paragraph 4(3)(a), Schedule 2 of the RPGTA to enable the incidental costs of the acquisition prior to 1 January 2013 to be claimed.**

IRBM’s Comment:

The incidental costs of the acquisition prior to 1 January 2013 is not allowed. However, any expenditure incurred on the asset after its acquisition (after 1 January 2013) by or on behalf of the disposer will be allowed as the disposal price under paragraph 5, Schedule 2 of the RPGTA.

- b. Please clarify if the above-mentioned proposed amendments to Paragraph 2A of Schedule 2 also apply to the disposal of shares in a real property company (RPC)? Based on the current reading of the RPGTA, an acquirer of shares in an existing RPC is required to determine the acquisition price of the RPC shares in accordance with paragraph 34A(3)(b) of Schedule 2. Paragraph 34A(3)(b) in turn points to the provisions of Paragraph 4 of Schedule 2. Paragraph 4(3) of Schedule 2 (read together with paragraph 2A of Schedule 2) requires the market value of the asset (in this case, the RPC shares) as at 1 January 2000 (proposed to be amended to 1 January 2013) to substitute the actual consideration for the RPC shares if such shares are acquired prior to 1 January 2000 (proposed to be amended to 1 January 2013).

IRBM’s Comment:

IRBM confirmed that the proposed amendments to Paragraph 2A of Schedule 2 shall not apply to the disposal of shares in a real property company (RPC).

- c. We hope that the Jabatan Penilaian dan Perkhidmatan Harta Malaysia (JPPH) will be forthcoming in determining the market price of the real property as at 1 January 2013 within 30 days of the request for valuation so that RPGT cases can be finalised as soon as possible.

IRBM’s Comment:

IRBM takes note and suggest that MOF will bring up this matter to JPPH.

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3. Proposed Amendments to the Labuan Business Activity Tax Act 1990

3.1 Amended subsection 2B(1) on Labuan Entity (with effect from 1 January 2019)

According to Clause 41 of the Finance Bill 2019, the coming into operation on 1 January 2019 for section 74 of the Finance Act 2018 on the amendment of subsection 2B(1) of the Labuan Business Activity Tax Act 1990 (LBATA) in relation to Labuan entity is maintained.

Note: The amended subsection 2B(1) of the LBATA is as follows:

Section 2B. Labuan entity.

(1) The Labuan entities—

(a) shall be as specified in the Schedule; and

(b) shall, for the purpose of the Labuan business activity, have—

(i) an adequate number of full time employees in Labuan; and

(ii) an adequate amount of annual operating expenditure in Labuan,

as prescribed by the Minister by regulations made under this Act.

Comments:

We understand from the IRB that a Labuan entity which does not satisfy the requirement in Section 2(B)(1)(b) of the LBATA will be taxed under the ITA. Please clarify whether this would mean that such a Labuan entity with say a financial year ended 31 March 2019 will be required to file a tax return under the LBATA for the period 1 April 2018 to 31 December 2018 and a tax return under the ITA for the period 1 January 2019 to 31 March 2019.

IRBM's Comment:

Under the proposed new subsection 2B(1A), the Labuan entities will file its return under LBATA 1990.

Labuan entity is not allowed to apportion their basis period. Therefore to ease the administration of taxation for Labuan entity under LBATA 1990, the respective provision is proposed to be amended to tax those Labuan entities who do not comply with the regulation on the substance requirement, will be taxed at 24% in LBATA 1990 instead of the ITA.

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3.2 Deleted Section 7 on Election (with effect from YA 2020)

Clause 41 of the Finance Bill 2019 seeks to amend Section 71 of the Finance Act 2018 to clarify that the commencement date for the deletion of Section 7 of the LBATA in relation to the election to be taxed at twenty thousand ringgit is for the year of assessment 2020 and subsequent years of assessment.

This amendment is deemed to have come into operation on 1 January 2019.

Note: The deleted Section 7 of the LBATA is as follows:

Section 7. Election.

(1) Notwithstanding section 4, a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity may, within a period of three months (or any extended period as may be allowed by the Director General) from the commencement of a year of assessment, elect, in the prescribed form, to be charged for that year of assessment to tax of twenty thousand ringgit.

(2) A Labuan entity shall, when exercising an election under subsection (1), file a statutory declaration in the prescribed form with the Director General.

(3) Section 5 shall not apply to a Labuan entity which elects to be charged to tax under subsection (1).

Comments:

Prior to the above proposed amendment, the election to be taxed at RM20,000 was abolished and consequently Labuan entities which carry on a Labuan trading activity will be taxed at the mandatory tax rate of 3% of net audited profits, with effect from 1 January 2019. The IRB had in March 2019 clarified that *“the 3% mandatory tax rate will commence for Labuan entities in YA 2020 and IRBM’s opinion is on those companies whose basis period begin on or after 1 January 2019. This is pending policy decision from the Ministry of Finance.”* (please refer to the IRB’s clarification in item 3.1 on page 12 of the [CTIM Memorandum On Issues Arising From Recent Tax Legislation In Relation To Labuan](#) dated 18 January 2019).

With the above proposed amendment, the 3% mandatory tax rate will commence in YA 2020 i.e. for a basis period that ends in 2019 (preceding year basis). With the exception of a company with financial year ending 31 December 2019, YA 2020 would include a basis period that begins prior to 2019 and ends in 2019. **If the intention of the tax authorities is for the 3% mandatory tax rate to commence for basis period beginning on or after 1 January 2019, then shouldn’t the effective date be for basis period beginning on or after 1 January 2019 rather than YA 2020?**

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IRBM's Comment:

MOF policy decision for the deletion of Section 7 to take effect from YA 2020 instead of commencing from basis period beginning on or after 1 January 2019.

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3.3 Amended Section 8 on Absence of Basis Period (with effect from YA 2020)

Clause 41 of the Finance Bill 2019 also seeks to amend section 71 of the Finance Act 2018 to clarify that the commencement date for the amendment of section 8 of the LBATA in relation to the absence of basis period is for the year of assessment 2020 and subsequent years of assessment.

This amendment is deemed to have come into operation on 1 January 2019.

Note: The amended section 8 of the LBATA is as follows:

Absence of basis period

8. Where a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity does not have a basis period for a year of assessment, the Director General may direct that the basis period for that year of assessment and subsequent years of assessment to include a period or periods (which may be of any period) as specified in the direction.

Comments:

The Director General of Inland Revenue is empowered to direct the basis period for any failure year. However, the IRB has yet to issue any public rulings, directives or guidelines on this. Please indicate when these are expected to be issued.

The above also need to take into consideration that there are various types of Labuan entities in the Labuan IBFC, namely Labuan Company, Labuan Trust, Labuan Foundation and Labuan Partnerships.

IRBM's Comment:

There will be an operational guidelines issued on the absence of basis period.

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3.4 On-going Amendments to Labuan Tax Legislation

Comments:

The on-going amendments to the Labuan tax legislation may cause confusion and uncertainty among taxpayers and hence would require much clarification. As such, we would ask that the tax authorities do not impose penalties on taxpayers as they would have made reasonable attempts to comply with the Labuan tax legislation.

IRBM's Comment:

This will be discussed further. As of now under the LBATA 1990, there is no penalty provision provided for any wrong/false declaration of the chargeable profits.

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4. 2020 Budget Speech and Appendices

4.1 Paragraph 23 of Budget Speech – Tax Incentives to Further Promote High-Value Added Activities in the E&E Industry

23. The Government will also provide tax incentives to further promote high-value added activities in the Electrical and Electronics (E&E) industry to transition into 5G digital economy and Industry 4.0. These incentives include:

First: income tax exemption up to 10 years to E&E companies investing in selected knowledge-based services; and

Second: special Investment Tax Allowance to encourage companies in E&E sector that have exhausted the Reinvestment Allowance to further reinvest in Malaysia.

Note:

Appendix 15 of the Budget Speech states that “To encourage continuous investment in Malaysia, it is proposed that E&E companies that have exhausted the eligibility period of 15 consecutive years to claim RA be given income tax exemption equivalent to Investment Tax Allowance of 50% on qualifying capital expenditure incurred within a period of 5 years. This allowance can be set-off against 50% of statutory income for each year of assessment”.

Its effective date is “For applications received by Malaysian Investment Development Authority from 1 January 2020 until 31 December 2021”.

Comments:

- a. It would be much appreciated if details on eligibility requirements and guidelines on the above are provided.
- b. Please clarify whether the income tax exemption will be applied on income arising from the manufacturing business of the company which invests in selected knowledge-based services.
- c. In respect of the proposal for special Investment Tax Allowance, we understand that there is a possibility of the following: -
 - Seven years limitation rule applying to the carry forward of unutilised special Investment Tax Allowance.
 - Mutual exclusion provisions applying and there is no need to maintain separate accounts.

Please confirm.

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IRBM's Comment:

Details on the policy and mechanism of this incentive is yet to be determined by MOF, MITI and MIDA.

4.2 Paragraph 44 of Budget Speech – Digital Social Responsibility

*To ensure gains arising from successful Digital Companies are shared with the Rakyat, the Government will introduce the concept of **Digital Social Responsibility (DSR)**. DSR is the commitment by businesses, to contribute to digital economic development while improving digital skills of the future workforce with initiatives such as technology scholarships, training and upskilling for digital skills for communities in need. Contributions towards DSR by the companies will be given tax deduction.*

Comments:

- a. We would like to seek confirmation in terms of whether there will be a specific gazette order for the above or whether it will be enacted by way of an amendment to the ITA.

MOF's Comment:

MOF is in the process of updating the guideline for tax deduction under section 34(6)(h) of the ITA to include matters relating to DSR proposed by MDEC.

- b. Would there be any guidelines?

MOF's Comment:

No, as we use existing guideline under section 34(6)(h) of the ITA.

- c. Would the tax deduction on contributions towards DSR be given in the same manner as donations to approved institutions under Section 44(6) of the ITA and whether there is any limit in terms of the amount contributed?

MOF's Comment:

This matters does not arise as we are using section 34(6)(h) of the ITA.

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4.3 Paragraph 91 of Budget Speech – Malaysians@Work

Wage incentive and hiring incentive will be given to employees and employers respectively under certain categories –

Graduates@Work, Women@Work, Locals@Work and Apprentice@Work.

Comments:

We would like to seek confirmation on the tax treatment of employees receiving such wage incentives.

MOF's Comment:

Grant or subsidy given by the Federal Government or State Government is exempted from tax under the Income Tax (Exemption)(No.22) Order 2006. Thus, grant received by the employees and employers under these wage and hiring incentive is exempted from income tax and is subjected to this exemption order.

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4.4 Paragraph 196 of Budget Speech – Tax Appeal Tribunal

196. To improve efficiency of management of taxpayer appeals, the Government will merge the Special Commissioner of Income Tax and Customs Appeal Tribunal into the Tax Appeal Tribunal. Through this merger, taxpayers who are dissatisfied with the decision of the Director General of the IRB or the Director General of the RMCD may submit a tax-related appeal under all applicable tax laws to the Tax Appeal tribunal to be operation in 2021.

Comments:

- a. We are hopeful that with the Tax Appeal Tribunal, all decisions will be made public on the Tax Appeal Tribunal's website for the benefit of taxpayers in the context of dissemination of knowledge and information.

MOF's Comment:

These issues will be discussed further with the relevant stakeholder.

- b. We would like to seek confirmation that tax agents or any other persons appointed by taxpayers can represent them at the Tax Appeal Tribunal in respect of appeals for direct tax and indirect tax cases without any additional requirement.

MOF's Comment:

These issues will be discussed further with the relevant stakeholder.

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4.5 Paragraph 198 of Budget Speech – Tax Identification Number (TIN)

198. Beginning January 2021, Malaysians above the age of 18 and corporate entities will be assigned a **Tax Identification Number or TIN**. In order to implement this initiative, engagement sessions with all stakeholders will commence next year.

Comments:

It is noted from the Budget Speech (Bahasa Malaysia version), that a TIN will be assigned to Malaysians above the age of 18 with income. This is different from the relevant extract of the English language version of the Budget speech as above. We would like to seek clarification that a TIN will be assigned to Malaysians above the age of 18 only if they are earning income.

MOF's Comment:

TIN will be given to all Malaysians upon reaching 18 years old with income.

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4.6 Appendix 4 - Tax Deduction on Cost of Listing in Bursa Malaysia (with effect from YA 2020 to YA 2022)

In assisting technology-based companies and Small and Medium Enterprises to grow their businesses by raising additional capital through listing in ACE Market or LEAP Market, it is proposed that tax deduction of up to RM1.5 million be given on the following listing costs:

- i. fees to authorities;*
- ii. professional fees; and*
- iii. underwriting, placement and brokerage fees.*

Comments:

- a. Please provide an elaboration on what “fees to authorities” entails and what authorities are included.
- b. Please provide details of the professional fees which is claimable.

IRBM’s Comment:

The drafting of the Income Tax Rules pertaining to this incentive is in the process. The details of the expenditure allowed will be provided in the income tax rules.

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4.7 Appendix 25 – Review of Tax Incentives for Automation

Current Position

Manufacturing company which incurs qualifying capital expenditure on automation equipment is given tax incentive as follows:

- i. **Category 1: Labour-intensive Industry (rubber, plastic, wood and textile products)**
Accelerated Capital Allowance (ACA) for automation equipment of 100% on the first RM4 million for qualifying capital expenditure incurred from year of assessment 2015 to year of assessment 2020 and can be utilised within 1 year.*
- ii. **Category 2: Industries other than Category 1**
ACA for automation equipment of 100% on the first RM2 million for qualifying capital expenditure incurred from year of assessment 2015 to year of assessment 2020 and can be utilised within 1 year.*

Companies in both categories are also eligible for income tax exemption equivalent to 100% of the ACA on automation equipment.

Applications must be submitted to Malaysian Investment Development Authority (MIDA) from 1 January 2015 until 31 December 2020.

Proposal

To further promote automation and enhance productivity and efficiency in the labour-intensive industry, it is proposed that:

- i. the incentive period for Category 1 and Category 2 be extended for 3 years until year of assessment 2023; and*
- ii. the scope of incentive for Category 2 be expanded to services sector.*

Effective Date

For item (i) : Applications received by MIDA until 31 December 2023.

For item (ii) : Applications received by MIDA from 1 January 2020 until 31 December 2023.

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Comments:

In respect of the above-mentioned proposal, we would like to seek clarification on the following: -

IRBM's Comment:

MOF has decided to have a separate Income Tax Rules for the extended Automation CA under manufacturing sector and services sector.

Therefore current P.U.(A) 252/2017 and P.U.(A) 253/2017 will be amended to address Budget 2017 and 2020. While new Income Tax Rules will be prepared separately for the Automation CA incentive which is applicable for services sector only.

- What kind of automation equipment would enjoy the ACA under the services sector?

IRBM's Comment:

All automation equipment must be verified by SIRIM in order for that automation equipment to be qualified under this incentive.

- Which service areas in the services sector does the proposal refer to?

IRBM's Comment:

MOF and MIDA has yet to determine type of services sectors that is eligible for this incentive.

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A. Outstanding Gazette Orders – 2014 to 2019 Budgets

The Institutes note with concern that several gazette orders pertaining to proposals announced in the 2014 to 2019 Budgets are still outstanding to date. We would request for your urgent attention and update on the status of the relevant gazette orders.

As professional bodies, the Institutes would urge the tax authorities to ensure that all gazette orders / guidelines in respect of Budget proposals be issued in a timely manner, preferably within the first quarter following the Budget announcement, so that taxpayers are able to apply specific incentives and it creates certainty for investors.

2014 Budget

1. Investment tax allowance for purchase of green technology equipment and tax exemption on the use of green technology system be granted.

Comments:

Income Tax (Exemption) (No. 9) Order 2018 [P.U. (A) 388/2018] was gazetted on 31 December 2018. Please provide an update on the status of the gazette orders for investment tax allowance on green technology projects and assets respectively.

IRBM's Comment:

The exemption orders for Investment Tax Allowance on Green Incentive for projects and assets are currently under MOF Legal Division review.

2. Applications for research and development projects of bioeconomy which are viewed as viable and received from 1 January 2014 to 31 December 2018 by the Malaysian Biotechnology Corporation Sdn Bhd be granted tax deductions on acquisition of technology platform, exemption on import duty on R&D equipment, as well as special incentive to companies in respect of Centre of Excellence for R&D.

MOF's Comment:

We are reviewing the incentives since there is no takers during the incentives period (2014-2018).

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2015 Budget

1. Double deduction on expenses incurred by companies for scholarships awarded to students pursuing diploma or bachelor's degree at higher education institutions be extended to include scholarships provided to students pursuing studies in the vocational and technical fields for the YA 2014 and YA 2015.

IRBM's Comment:

The draft on the Income Tax Rules is currently reviewed by IRBM.

2. Double deduction on expenses incurred by companies participating in structured internship programmes to recruit students pursuing full-time degree programmes in higher education institutions be extended to include full-time students pursuing courses at the vocational and diploma levels for YA 2015 and YA 2016.

IRBM's Comment:

The order has been gazetted by 31 December 2019 under P.U.(A) 398/2019.

2016 Budget

1. Extension of application period for tax incentive for food production projects until 31 December 2020 and qualifying approved food production projects be extended to include planting of coconuts, mushrooms and cash crops; rearing of deer; cultivation of seaweed; rearing of honey and planting of animal feed crops.

IRBM's Comment:

The draft to extend the existing P.U.(A) 166/2011 and P.U.(A) 167/2011 is currently under MOF's legal division action.

2. Income tax exemption of 100% on statutory income derived from qualifying activities for a period of 5 years or Investment Tax Allowance of 60% on qualifying capital expenditure for a period of 5 years to be offset against 100% of the statutory income for newly established Independent Conformity Assessment Bodies (ICAB), or Investment Tax Allowance of 60% on qualifying capital expenditure for a period of 5 years on additional qualifying activities to be offset against 100% of the statutory income.

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Comments:

We understand from the MOF that the above incentive has expired and a gazette order may not be issued on this. If so, this would be disappointing as this incentive had been announced in the Budget and there would be taxpayers who would want to avail themselves of it.

MOF's Comment:

Currently, only one application is being approved by MIDA under P.U.(A)113/2006. With such development, MOF decided not to pursue with specific gazette order since the take up rate is discouraging.

2017 Budget

1. Double deduction on expenses incurred by companies participating in structured internship programmes approved by Talent Corporation Malaysia Berhad to recruit students pursuing full-time degree and diploma courses in institutions of higher learning be extended for another 3 years to year of assessment 2019 and expanded to include Malaysian students pursuing full-time vocational level.

MOF's Comment:

The order has been gazetted by 31 December 2019 under P.U.(A) 398/2019.

2. Qualifying halal products eligible for the tax incentives for Halal Industry Players operating in Halal Parks promoted by Halal Development Corporation be extended to include production of nutraceutical and probiotic products.

Comments:

We understand from the MOF that the incentives under the Halal Industry Development Corporation (HDC) could not be gazetted as the HDC Act has not been gazetted. Therefore, the extension of this scope could not be included in the subsidiary legislation. Other regulations will be used to process the above proposal. Please confirm.

MOF's Comment:

MOF has decided that any application under this incentive will be considered under P.U.(A)113/2006.

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2018 Budget

1. Accelerated Capital Allowance and Automation Equipment Allowance on the first RM10 million qualifying capital expenditure incurred in the years of assessment 2018 to 2020 by companies in the manufacturing sector and its related services.

MOF's Comment:

MOF is expecting the guideline and policy recommendation from MITI.

2. Extension of application period for tax incentive on Accelerated Capital Allowance of 100% and Automation Equipment Allowance of 100% on the first RM4 million for qualifying capital expenditure incurred by labour intensive industries until 31 December 2020.

MOF's Comment:

The draft of the gazette order has been finalized and in the process of gazetted.

3. Extension of application period with following revised conditions for new companies and existing companies undertaking expansion, modernization or refurbishment of private healthcare facilities until 31 December 2020:-
 - At least 10% of the patients receiving private healthcare services comprised of qualified healthcare travellers per year of assessment; and
 - At least 10% of the Company's gross income is derived from qualified healthcare travellers for each year of assessment.

MOF's Comment:

The draft of the gazette order has been finalized and in the process of gazetted.

4. Income tax exemption increased to 100% of the value of increased export of services to be set off against up to 70% of statutory income with the following conditions:
 - At least 10% of the total number of patients comprised of qualified healthcare travellers per year of assessment; and
 - At least 10% of the Company's gross income is derived from qualified healthcare travellers for respective year of assessment.

MOF's Comment:

The draft of the gazette order has been finalized and in the process of gazetted.

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5. Expansion of tax exemption of income for participants of venture capital industry to include the following:-
- Venture Capital Management Corporation
Exemption for a period of 5 years from the years of assessment 2018 to 2022 of income received from management fees and performance fees in managing Venture Capital Company's fund.
 - Venture Capital Company
The minimum threshold in venture capital in the form of start-up capital or early stage financing reduced to 50% and the balance of 50% is allowed for other investments.
 - Investment in Venture Capital Company's fund created by Venture Capital Management Corporation
Tax deduction up to the amount of investment made for companies or individuals with business income investing into Venture Capital Company's fund created by Venture Capital Management Corporation but restricted to a maximum of RM20 million per year for each company or individual.

MOF's Comment:

LHDNM will submit the final draft of gazette order to MOF for gazetting process.

2019 Budget

1. Income tax exemption on donations for the purpose of upgrading infrastructure to:
- National schools and public institutions of higher learning registered with the Ministry of Education.
 - Other schools and institutions of higher learning registered with the Ministry of Education based on case-by-case basis.

MOF's Comment:

The tax deduction on donations to the National Schools and public institutions of higher learning is given under the Sec. 44(6) of Income Tax Act 1967 and the claim must supported with official government receipt. Thus, no exemption order is required to claim for this deduction.

In the meantime, MOE has established a fund to receive all the contribution for National schools and IPTAs on the 9 September 2019.

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2. Extension of application period for tax incentives for participants of venture capital industry to 31 December 2019.

MOF's Comment:

LHDNM will submit the final draft of gazette order to MOF for gazetting process.

3. Tax incentives for Companies achieving Industry4WRD
- Tax deduction up to RM27,000 given to a company for expenses incurred on Industry 4.0 (I4.0) Readiness Assessment paid to the Malaysian Productivity Corporation.

MOF's Comment:

Drafting stage.

- Double deduction on qualifying operating expenditure on costs of product development, upgrading capabilities of vendors and skill training of vendors incurred by an anchor company in implementing the Industry 4WRD Vendor Development Program, as verified by the Ministry of International Trade and Industries (MITI). The qualifying operating expenditure are capped at RM 1 million per year and eligible to be claimed for 3 consecutive years of assessment.

MOF's Comment:

Drafting stage.

- Incentives for Human Capital Development
 - (a) Double deduction on scholarships provided by companies to Malaysian students pursuing studies at technical and vocational levels, diplomas and degrees in the field of engineering and technology with the following conditions:
 - (i) A Malaysian and resident in Malaysia;
 - (ii) Receives full-time course of study;
 - (iii) Has no means on his own; and
 - (iv) Whose parents or guardian have total monthly income not exceeding RM8,000 per month.
 - (b) Tax deduction on expenses incurred by companies participating in the National Dual Training System Scheme for the I4.0 program approved by the Ministry of Human Resources.

MOF's Comment:

(a)&(b) MOF is finalising the policy consideration for human capital development under industry4wrdr initiative.

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- (c) Tax deduction on expenses incurred by Private Higher Education Institutions for development of new I4.0 technology and engineering courses verified by the Ministry of Education.

MOF's Comment:

Existing P.U.(A)184/2006 is applicable.

- (d) Double deduction on expenditure incurred by companies in upgrading and developing employees technical skills in I4.0 technology for training programs approved by the Malaysian Investment Development Authority (MIDA).

MOF's Comment:

MITI will propose whether to continue with the incentive as currently company which contributed to HRDF are eligible to claim the expenses with regards to the training for its employees and to provide the mechanism for this incentive for MOF consideration.

- (e) Double deduction on expenditure incurred by companies in conducting internship programme approved by the Ministry of Human Resources for undergraduate students in the field of engineering and technology.

MOF's Comment:

The order has been gazetted by 31 December 2019 under P.U.(A) 398/2019.

- (f) Tax deduction on equipment and machinery contributed by companies to Skills Development Centres, Polytechnics or Vocational Colleges certified by the Ministry of Human Resources or the Ministry of Education.

MOF's Comment:

MOF is finalising the policy consideration for human capital development under industry4wrd initiative.

4. Tax incentives for companies producing environmentally-friendly plastics based on bio-resin and biopolymer:
- Tax exemption of up to 70% of statutory income derived from qualifying activities for a period of 5 years; or
 - Investment tax allowance of 60% on qualifying capital expenditure for a period of 5 years.

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Comments:

We understand from the MOF that the company needs to submit an application for the above to MIDA to process under current provisions of the Promotion of Investments Act and as such, there is no need to gazette the above proposal. Please confirm.

MOF's Comment:

Using the current promoted list under Promotion of Investment Act 1986 and company has to apply to MIDA.

5. Concessionary income tax rate of 10% be accorded to the Principal Hub company on the overall statutory income derived from activities related to the Principal Hub for a period of five years.

Comments:

It is noted that the above is included in the updated MIDA Guidelines on Principal Hub Incentive issued in October 2019. Please provide an update on the status of the gazette order for the above.

MOF's Comment:

The final draft has been sent to legal division MOF for gazetting process at AGC.

6. Extension of list of qualifying assets from nine assets to forty assets in the MyHIJAU directory for green investment tax allowance (GITA).

Comments:

It is noted that the [Guidelines on GITA Assets](#) in the MyHIJAU website (www.myhijau.my) has a list of forty qualifying assets as at May 2019. Please indicate when the gazette order for the above-mentioned GITA will be issued.

MOF's Comment:

The final draft has been sent to AGC for gazetting process.