JOINT MEMORANDUM ON ISSUES ARISING FROM 2021 BUDGET SPEECH & FINANCE BILL 2020

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Prepared by:

Chartered Tax Institute of Malaysia;

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A. General Comments

1. Alignment between accounting and tax treatment

The Chartered Tax Institute of Malaysia, Malaysian Institute of Accountants and The Malaysian Institute of Certified Public Accountants ("Institutes") through the Joint Tax Working Group on Malaysian Financial Reporting Standards ("JTWG-MFRS") have submitted several discussion papers to the Ministry of Finance ("MOF") and the Inland Revenue Board ("IRB") ["the tax authorities"] to propose for greater alignment between the tax treatment and the accounting treatment under the Malaysian Financial Reporting Standards ("MFRS") where appropriate.

The Institutes acknowledge the tax authorities' efforts in reviewing the discussion papers submitted by the JTWG-MFRS, in issuing guidelines and introducing specific legislative provisions in the Income Tax Act 1967 (ITA 1967) in relation to tax implications/treatment related to the implementation of MFRS. The Institutes note that convergence between tax treatment and accounting treatment do not seem to be progressing well. As such, the Institutes would urge the tax authorities to consider that there may be particular areas of tax treatment where greater alignment with accounting treatment can be implemented to reduce compliance costs and improve certainty in tax administrative matters, without distorting tax policy objectives. The Institutes, like the policy makers, believe that simplification is essential in our drive to enhance tax compliance.

2. Increase in tax revenue

According to the 2021 Federal Budget, the main source of government revenue for the fiscal year 2021 would come from an estimated direct tax revenue of RM131.9 billion (i.e. 40.9% of the estimated total government revenue) compared to an estimated direct tax revenue of RM115.1 billion in fiscal year 2020.

As in the past years, the increase in estimated direct tax revenue would partly come from tax audit and investigation activities carried out by the IRB. A fair, transparent and equitable tax administration system will enhance taxpayers' confidence in the tax system and enhance voluntary tax compliance by taxpayers.

We would urge that tax audits should not be driven by tax revenue targets as this will diminish confidence of the taxpayers towards the IRB. We fully support the tax audit and investigation activities of the IRB but we hope that the IRB's personnel will carry out their tasks in line with the existing tax audit and investigation frameworks and in line with professional standards.

3. Tax Administrative Changes

Various tax administrative changes have been suggested by the Institutes in their respective submissions. These were aimed at simplification as well as in line with good business practices. However, it is regretable that none of the proposals have been considered to date. We hope that, as part of the tax reform agenda, these enhancement of the tax administrative provisions will be seriously considered by the MOF.

4. Investment Climate and Investor Confidence

Under the current pandemic situation, it is more important than ever to maintain the investment climate and boost investor confidence. In this regard, we would like to highlight that the following will not encourage investments but may dampen it instead: -

- Proposed S.113B provision which requires tax to be paid irrespective of legal proceedings instituted, will limit the discretion of the judiciary and the rights of taxpayers.

- Surcharge of up to 5% under the proposed amendments to S.140A, will also affect tax exempt companies and create new uncertainties.

- Any new source of tax revenue which the Government is considering (e.g. introduction of Capital Gains Tax or reintroduction of Goods and Services Tax), may send the wrong signal to businesses and investors if it is not properly implemented or burdensome. Such initiatives should involve public consultation prior to implementation. It is imperative that the professional bodies be consulted to provide input and that the business and investor's perspective is taken into account before any changes are made. The professional bodies would be pleased to offer assistance to the authorities on this matter.

We request for the above-mentioned matters to be re-evaluated, particularly in relation to the timing of their implementation, in order to maintain the investment and business climate in Malaysia.

B. Finance Bill 2020 & 2021 Budget Speech and Appendices

1. Proposed Amendments to the Income Tax Act 1967

1.1 Tax rebate for start-up company / limited liability partnership - new S.6D (w.e.f. YA 2021)

6D. (1) A rebate may be granted for a period of three consecutive years from the year of assessment in which a company or limited liability partnership first commences operation, in an amount equivalent to its operating or capital expenditure which it has incurred limited to a maximum amount of twenty thousand ringgit for each year of assessment.

(2) Where the total amount of the rebate under subsection (1) 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.

(3) The company or limited liability partnership referred to in subsection (1) shall be a company or limited liability partnership resident and incorporated or registered in Malaysia—

(a) which has a paid-up capital in respect of ordinary shares or contribution of capital (whether in cash or in kind) of two million and five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment;

(b) which has a gross income from source or sources consisting of a business not exceeding fifty million ringgit for the basis period for that year of assessment; and

(c) which has commenced operation on or after 1 July 2020 but not later than 31 December 2021.

(4) The Minister may, by statutory order, impose such conditions as he thinks fit to give effect to or for carrying out the purposes of this section.

(5) Where in a year of assessment the company or limited liability partnership fails to fulfil the conditions specified in subsection (3) or (4), the amount of rebate under subsection (1) shall not be granted for that year of assessment in which the failure occurs and in the subsequent years of assessment.

(6) The statutory order made under subsection (4) shall be laid before the Dewan Rakyat.".

Comments:

a. We welcome this initiative to encourage new businesses to start-up at this crucial time. We hope the same proposal can also be applied to sole proprietorships and partnerships.

MOF's Feedback:

We take note of this suggestion. Currently, this provision only applies to a company / limited liability partnership.

b. It would appear that an application for the rebate to be granted is not needed. Therefore, we would request that the phrase "rebate may be granted" be re-worded to "rebate shall be granted" to be consistent with other parts of the Income Tax Act ("ITA") 1967 e.g. tax rebate for an individual whose chargeable income does not exceed RM35,000 [S.6A(2)], tax rebate for departure levy [S.6A(2A)] and tax rebate for zakat or fitrah [S.6A(3)].

IRBM's Feedback:

The phrase "rebate may be granted" is preferred as unlike tax rebate for an individual whose chargeable income does not exceed RM35,000 [S.6A(2)], tax rebate for departure levy [S.6A(2A)] and tax rebate for zakat or fitrah [S.6A(3)], the rebate under the new section 6D can only be granted if the company/ limited liability partnership (LLP) fulfils the conditions under subsection 6D(3) and the conditions stated in the statutory order to be made under subsection 6D(4).

c. Commencement of operations – kindly confirm whether the definition in S.21A(8) is applicable to the new S.6D as well.

IRBM's Feedback:

Yes, the definition of "operations" in subsection 21A(8) is applicable.

d. Kindly confirm that companies with paid-up capital below RM2.5 million but wholly owned by a parent company with paid-up capital exceeding RM2.5 million may qualify for this rebate.

IRBM's Feedback:

The companies are not eligible for the rebate. Other than paid-up capital below RM2.5 million and annual sales of not more than RM50 million, companies would have to fulfil the condition of not being owned directly or indirectly by:

i. Company that has paid-up capital of more than RM2.5 million
ii. Multinational companies; or
iii. Government Linked Companies.

Additional conditions with regard to this rebate will be detailed out in the relevant statutory order.

e. Effective period

The proposed S.6D(3)(c) stipulates that the commencement of operations is on or after 1 July 2020 but not later than 31 December 2021. However, the proposed rebate is to be effective from the year of assessment ("YA") 2021. In the case of a company which commenced its operations on 1 July 2020 and closes its first set of accounts on 31 December 2020, its first YA would be YA 2020 with a basis period of 1 July 2020 to 31 December 2020. Such company would qualify for only 2 years of rebate, rather than 3 years.

Given that this initiative was first proposed in the tax measures under PENJANA on 5 June 2020, we propose that the effective date for this proposal be amended to YA 2020, so that companies that commence operations between 1 July 2020 to 31 Dec 2020 qualify for 3 years of rebate regardless of accounting dates and basis periods.

IRBM's Feedback:

As the law takes effect from YA 2021, the company which commenced its operations on 1 July 2020 and closes its first set of accounts on 31 December 2020, is only eligible to claim the rebate for YA 2021 and YA 2022. Thus, the company is not eligible to claim rebate in the first year of assessment (YA 2020).

f. Other conditions

What are the other conditions to be gazetted via statutory order? SMEs would need the certainty of being able to meet all qualifying conditions early.

IRBM's Feedback:

Additional conditions among others are:

i. The newly established entity must operate in a different premise than that of its related company (if applicable);
ii. The new entity must use a different plant, equipment and facility than that of any related company and the plant, equipment and facility are not transferred from any related company (if applicable);
iii. All employees (not including key personnel) must be different employees that that of any related company (if applicable);
iv. Partnership or company that changes into Limited Liability Partnership or vice versa is not eligible.

The finalized conditions are to be detailed out in the statutory order.

Can businesses take this rebate into account for CP204 purposes or should they wait for the statutory order to be gazetted?

IRBM's Feedback:

Companies that are eligible for this rebate are not required to furnish estimates of tax payable (CP204) for the first and second years of assessment after they have commenced operation as provided under subsection 107C(4A). Therefore, there is no necessity to take this rebate into account for CP204.

However, the eligible companies can take this rebate into account in the third year in submitting CP204.

g. Kindly confirm that any expenditure incurred from the relevant date should qualify for the rebate of up to RM20,000 regardless of the tax treatment of such expenditure. We recommend that reference to "operating" and "capital" in S.6D be removed for avoidance of doubt.

IRBM's Feedback:

Yes, generally it covers any capital expenditure and operating expenditure that have been expended by the SMEs. The tax treatment of such expenditure is not material.

h. For example, Company A incurred operating expenditure of RM8,000 and capital expenditure of RM15,000 in YA 2021 (i.e. YA in which it first commences operations). Hence, the income tax rebate available for Company A for YA 2021 should be RM20,000. Kindly confirm.

IRBM's Feedback:

Yes, your understanding is correct.

1.2 Special deduction for research and development expenditure – amended S.34A (w.e.f. coming into operation of Finance Act)

34A. (1) Subject to this section, in ascertaining the adjusted income of a person **resident in Malaysia** from a business for the basis period for a year of assessment, a deduction shall be made, as specified in subsection (4), from the gross income from the business for that period in respect of expenditure, not being capital expenditure incurred on plant, machinery, fixtures, land, premises, buildings, structures or works of a permanent nature or on alterations, additions or extensions thereof or in the acquisition of any rights in or over any property, incurred by that person during that period on research and development approved by the Minister **and the amount of expenses on research and development incurred during that period outside Malaysia shall not be more than thirty per cent of the total expenses on research and development incurred by that person**.

(4) The amount of deduction to be made under subsection (1) shall be twice the amount of expenditure, not being capital expenditure, referred to in that subsection:

~~Provided that where subsection (4A) applies, the amount of deduction to be made shall be the amount of expenditure incurred.~~ **Provided that the amount of deduction to be made shall be the amount of expenditure incurred—**

(a) where the amount of expenses on research and development incurred for the basis period for a year of assessment outside Malaysia is more than thirty per cent of the total expenses on research and development incurred by that person; or

(b) where subsection (4A) applies.

(4A) A pioneer company **resident in Malaysia** may, in a return of income for the year of assessment in which the expenditure referred to in subsection (1) had been incurred, elect that the amount of that expenditure be deducted in the first basis period in respect of its post-pioneer business for a year of assessment.

Comments:

a. The wordings “expenditure” and “expenses” are used together in S.34A above. Either wording should be used consistently throughout S.34A instead of both words to avoid the possibility of different interpretations arising thereof. Therefore, we propose that the wording “expenses” be replaced by “expenditure”.

IRBM’s Feedback:

The word “expenses” and “expenditure” do not create any different interpretation.

b. For the purpose of computing whether the amount of expenses on research and development ("R&D") incurred during the period outside Malaysia is more than 30% of the total expenses on R&D incurred, please advise us whether "total expenses" refer to –

i. total expenses incurred on R&D in that basis period; or

ii. total expenses incurred on R&D for that approved project.

IRBM's Feedback:

"Total expenses" refers to total expenses incurred on R&D in that basis period.

c. We recommend that the wording "in that basis period" be added into S.34A to provide clarity as follows: -

i. S.34A(1) - *"…. shall not be more than thirty per cent of the total expenses on research and development incurred in that basis period by that person."*; and

ii. S.34A(4)(a) – *"…. is more than thirty per cent of the total expenses on research and development incurred in that basis period by that person; or"*.

IRBM's Feedback:

We appreciate the suggestions by CTIM. However, we believe that the proposed amendments by CTIM are not necessary as the changes made by IRBM to the law are clear. Thus, to insert the suggestions by CTIM would make the wordings of the law superfluous.

1.3 Amendment to S.39(1)(r) [w.e.f. 1 January 2021]

39. (1) Subject to any express provision of this Act, in ascertaining the adjusted income of any person from any source for the basis period for a year of assessment no deduction from the gross income from that source for that period shall be allowed in respect of—

(r) subject to any rules as may be prescribed by the Minister, any amount in respect of a payment made by a person, who is a resident, to any ~~Labuan company~~ **Labuan entity referred to in paragraph 2B(1)*(a)* of the Labuan Business Activity Tax Act 1990**.

Comments:

a. We understand that S.39(1)(r) should be read together with –

   i. Income Tax (Deductions Not Allowed for Payment to Labuan Company by Resident) Rules 2018 ("the Rules"); and

   ii. Circular on revisions to non-deductibility ("ND") rules issued by Labuan FSA dated 23 December 2019 ("the Circular").

   The Rules and the Circular set out the rate of restriction of deduction on payments made by a Malaysian resident to Labuan company [rates revised from 33% to 25% for interest payments and lease rental payments] as well as types of transactions exempted from the ND rules.

   Although it is stated in the Circular that the revisions to ND rules has been approved by Ministry of Finance ("MOF"), we wish to highlight the circular has not been legislated as of today. Kindly advise whether the amendment to S.39(1)(r) would affect legislating the reduction of disallowance from 33% to 25%.

IRBM's Feedback:

Please be informed that any circular issued by Labuan FSA will not bind IRBM unless there is a legal provision that applies to the tax treatment provided in the said circular.

For example, the circular on Revisions to Non-Deductibility (ND) Rules issued by Labuan FSA dated 23 December 2019 will only be effective when the respective subsidiary legislation is amended or gazetted.

The Income Tax (Deductions Not Allowed For Payment Made to Labuan Company By Resident) Rules 2018 [P.U.(A) 375/2018] have been amended via P.U.(A) 376/2020 and this P.U.(A) was gazetted on 24th December 2020 which takes effect from 1 January 2019. Thus, the deductible amount for interest and leasing payment made by resident to Labuan Entity (LE) is now increased from 67% to 75% of the payment.

Also, please confirm that S.39(1)(r) is not applicable to payments made to a Labuan entity: -

- Which is subject to tax under the ITA 1967;
- Which is a Labuan International Commodity Trading Company (under the GIFT Programme as approved by MOF);
- Which has made an irrevocable election to be taxed under the ITA 1967;
- Whose income is derived from non-Labuan business activity and hence taxed under the ITA 1967 pursuant to S.2(3)(a) of the Labuan Business Activity Tax Act ("LBATA") 1990;
- Which is subject to 24% tax under the LBATA 1990 (as this would effectively amount to double taxation); or
- Which is a Labuan reinsurer, where the payments are reinsurance premiums paid to it by a resident insurer carrying on general insurance business pursuant to S.60(5)(b)(ii) and S.60(7) of the ITA 1967.

In addition to the above, please confirm that S.39(1)(r) does not apply to transactions between Labuan entities that are paying taxes under the ITA 1967 and Labuan entities that are paying taxes under the LBATA 1990.

IRBM's Feedback:

As of now, any payment made to a LE referred in paragraph 2B(1)(a) of the Labuan Business Activity Tax Act (LBATA) 1990 is subject to the restriction under paragraph 39(1)(r) of the ITA 1967 regardless of whether or not:

a. the LE carries on a Labuan business activity, or
b. the LE complies with the substance requirement in P.U.(A) 392/2018.

The Ministry of Finance (MOF) has decided to give some exceptions on the application of paragraph 39(1)(r) to certain transactions made between a resident and a LE, such as transactions with a LE that chooses to be taxed under the ITA 1967. The exception will be granted through an exemption order and those types of transactions will be detailed out in the exemption order.

Until the respective exemption order is legislated, for the time being IRBM would like to advise the taxpayers to adhere to the non-deductibility application under paragraph 39(1)(r) and P.U.(A) 375/2018 [amended via P.U.(A) 376/2020] and taxpayers may revise their tax return once the exemption order is gazetted.

On the issue of whether payments of premiums paid by resident reinsurer to a LE that carry out reinsurance business will be subjected to the restriction under paragraph 39(1)(r) of the ITA 1967, IRBM would like to reconfirm our feedback in CTIM Memorandum Budget 2019 and Finance Bill 2018, the calculation of the adjusted income for insurance and takaful business activity will be governed by section 60 and 60AA of the ITA 1967. No reference is made to section 39 in either section 60 or 60AA of the ITA 1967. Paragraph 39(1)(r) is therefore not applicable to premium payments referred to in subparagraph 60(5)(b)(ii) and subsection 60(7) of the ITA 1967.

b. Kindly confirm whether the proposed amendment is applicable for expenses incurred before 1 January 2021 (payable to Labuan entity other than Labuan company), and the payment is made after 1 January 2021.

IRBM's Feedback:

Prior to the amendment, paragraph 39(1)(r) is only applicable to payments made by a resident to a LE that carries out a Labuan business activity listed in P.U.(A) 392/2018 and which has fulfilled the substance requirement, regardless of whether it is a Labuan company or not. If the payment is made to a LE that carries out a non-Labuan business activity or that has not complied with the substance requirement under P.U.(A) 392/2018 the restriction under paragraph 39(1)(r) ITA will not be applicable.

The new amendment is to extend the restriction to all LEs that are specified in the Schedule to the LBATA and the effective date of this new amendment refers to expenses incurred/ accrued on and after 1st January 2021.

1.4 Education fees (Self) – amended S.46(1)(f) [w.e.f. YA 2021]

46. (1)(f) fees expended in that basis year by that individual on himself for—

(i) any course of study up to tertiary level, other than a ~~degree at~~ Masters or Doctorate ~~level~~ **degree**, undertaken for the purpose of acquiring ~~law~~ **legal**, accounting, Islamic financing, technical, vocational, industrial, scientific or technological ~~skills or qualifications~~ **qualification or skill, in any institution or professional body in Malaysia recognized by the Government or approved by the Minister**; ~~or~~

(ii) any course of study for a ~~degree at~~ Masters or Doctorate ~~level~~ **degree** undertaken for the purpose of acquiring any ~~skill or qualification~~ **qualification or skill**, in any institution or professional body in Malaysia recognized by the Government or approved by the Minister~~, as the case may be, and the total deduction under this paragraph is subject to a maximum amount of seven thousand ringgit~~; **or**

(iii) any course of study undertaken for the purpose of upskilling or self-enhancement and that course is conducted by a body recognized by the Director General of Skills Development under the National Skills Development Act 2006 [Act 652], for the years of assessment 2021 and 2022, limited to a maximum amount of one thousand ringgit for each year of assessment,

and the total deduction under this paragraph shall be subject to a maximum amount of seven thousand ringgit;

Comments:

With reference to Appendix 8 of the 2021 Budget Speech, we understand that it is proposed that expenses incurred for fees for attending up-skilling or self-enhancement courses may be claimed as a tax relief of up to RM1,000 (as part of the existing RM7,000 tax relief).

a. Please advise if online courses are eligible for tax relief consideration or if it is limited to in-class courses.

IRBM's Feedback:

Yes, online courses conducted by a body recognized by DG of Skills Development under the National Skills Development Act 2006 are eligible for tax relief.

b. Please advise if the fees eligible for tax relief are limited to courses within Malaysia or includes overseas courses.

IRBM's Feedback:

The up-skilling or self-enhancement courses eligible for this relief must be conducted by a body recognized by DG of Skills Development in Malaysia thus, are limited to courses in Malaysia.

1.5 Medical expense for serious diseases – amended S.46(1)(g) & S.46(1)(h) [w.e.f. YA 2021]

46. (1)(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~~.~~ **; or**

(iii) on himself, his wife or child for vaccination, or in the case of a wife, on herself, her husband or child for vaccination an amount limited to a maximum of one thousand ringgit:

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~~ **eight** 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**

(d) for the purposes of subparagraph (iii), the vaccinations which qualify for deduction are for:

(i) pneumococcal;
(ii) human papillomavirus (HPV);
(iii) influenza; (iv) rotavirus;
(v) varicella;
(vi) meningococcal;
(vii) TDAP combination (tetanus-diphtheriaacellular-pertussis); and
(viii) Coronavirus Disease 2019 (COVID-19);

46. (1)(h) an amount limited to a maximum of ~~five hundred~~ **one thousand** ringgit in respect of complete medical examination expenses expended or deemed expended under subsection (3) in that basis year by that individual on himself or on his wife or on his child, or in the case of a wife, on herself or on her husband or on her child, as evidenced by receipts issued by a hospital or a medical practitioner:

Provided that the deduction under this paragraph shall be part of the amount limited to a maximum of ~~six~~ **eight** thousand ringgit in paragraph (g);

Comments:

If the individual has expended on vaccination costs overseas, for example – COVID-19 vaccine, will this expense be eligible for the proposed tax relief or will this be limited to vaccinations obtained from a medical professional registered with the Malaysian Medical Council ("MMC")?

IRBM's Feedback:

For the purpose of the tax relief, expenses on vaccinations are not limited to vaccinations obtained from a medical professional registered with MMC and the claim must be proved by receipt.

1.6 Lifestyle relief – new S.46(1)(t) [YA 2020] & S.46(1)(u) [w.e.f. YA 2021]

46. (1)(t) an amount limited to a maximum of two thousand and five hundred ringgit expended or deemed expended under subsection (3) in that basis year by that individual for the purchase of a personal computer, smartphone or tablet (not being used for the purposes of his own business) for his own use or for the use of his wife or child, or in the case of a wife, for her own use or for the use of her husband or child as evidenced by receipts issued in respect of the purchase and the deduction under this paragraph shall be additional to any deduction under paragraph (p):

Provided that—

(a) the purchase is made on or after 1 June 2020 but not later than 31 December 2020; and

(b) the total amount of deduction under this paragraph shall exclude the amount deducted under paragraph (p); and

46. (1)(u) an amount limited to a maximum of five hundred ringgit expended or deemed expended under subsection (3) in that basis year by that individual—

(i) for the purchase of sports equipment for any sports activity as defined under the Sports Development Act 1997 [Act 576] (excluding motorized two-wheel bicycles);

(ii) for the payment of rental or entrance fee to any sports facility; and

(iii) for the payment of registration fee for any sports competition where the organizer is approved and licensed by the Commissioner of Sports under the Sports Development Act 1997,

for his own use or under his name or for the use of or under the name of his wife or child, or in the case of a wife, for her own use or under her name or for the use of or under the name of her husband or child as evidenced by receipts issued in respect of the purchase or payment, as the case may be, and the deduction under this paragraph shall be additional to any deduction under paragraph (p): Provided that the total amount of deduction under this paragraph shall exclude the amount deducted under paragraph (p).

Comments:

a. S.46(1)(t)

i. Kindly confirm how much lifestyle relief for YA 2020 is a person eligible for if a computer costing RM6,000 was purchased during the period 1 June 2020 to 31 December 2020? Is that person eligible for RM5,000 (RM2,500 under existing S.46(1)(p) and RM2,500 under S.46(1)(t))? Or is such relief restricted to RM2,500 either under S.46(1)(p) / S.46(1)(t) per computer purchased?

IRBM's Feedback:

A taxpayer can claim up to RM2,500 under the existing paragraph 46(1)(*p*) and the remaining RM2,500 under the newly introduced paragraph 46(1)(*t*) for YA2020.

b. S.46(1)(u)

i. Kindly confirm how much lifestyle relief for YA 2021 is a person eligible for if on 30 June 2021 that person bought a golf club set costing RM4,000? Is that person eligible for RM3,000 (RM2,500 under existing S.46(1)(p) and RM500 under S.46(1)(u))? Or is such relief now restricted to RM500 under S.46(1)(u) on sport equipment purchased?

IRBM's Feedback:

A taxpayer can claim up to RM2,500 under the existing paragraph 46(1)(*p*) and the remaining RM500 under the newly introduced paragraph 46(1)(*u*) starting YA2020.

ii. Please advise if there is any criteria or limitations on the type of sports facilities eligible for the lifestyle relief (e.g. futsal courts, badminton courts, swimming pool hire, bowling etc.).

IRBM's Feedback:

Under paragraph 46(1)(*u*), a taxpayer can claim entrance fees to any sports facilities (excluding club membership fee that provides gymnasium facilites and any training fees).

iii. Please advise if there is any criteria or limitations on the type of sports competitions eligible for the lifestyle relief (e.g. marathon registration and entry fees, e-Sports competition fees, bodybuilding championship fees etc.).

IRBM's Feedback:

Sports competitions' registration refered to in paragraph 46(1)(*u*) are limited to sport competitions where the organizers are approved and licensed by the Sport Commisioner under the Sports Development Act 1997.

iv. Will the type of sports activity for facility entry/ rent or competition fees allowed under this tax relief be based on the Sports Development Act 1997?

IRBM's Feedback:

Yes.

i. Will fitness related equipment, such as yoga ball, yoga mat etc. be recognized as part of the purchases for sports equipment and the limitation of RM500 since 'fitness' activity is regarded as sports for the purposes of the Sports Development Act 1997?

IRBM's Feedback:

Yes, purchases of sports equipments including equipments that have a short life span, such as a yoga ball or a yoga mat, would be eligible for relief both under the existing paragraph 46(1)(*p*) and new paragraph 46(1)(*u*).

1.7 Incentive Scheme – new S.65B (w.e.f. YA 2021)

65B. (1) Where a person referred to in paragraph 6(1)*(m)* carries on a business in Malaysia in respect of a source consisting of a qualifying activity under an incentive scheme approved by the Minister, the business shall be treated as a separate and distinct business and source of that person.

(2) The chargeable income of a person in respect of the source consisting of the qualifying activity referred to in subsection (1), for a year of assessment shall be the statutory income from that source reduced by any amount of deduction falling to be made pursuant to subsection 43(2) relating to that source and so much of the amount which has not been deducted from that statutory income for the year of assessment the incentive scheme ends shall only be deductible in accordance with subsection 43(2) for a period of seven consecutive years of assessment.

(3) For the purposes of subsection (2), the period of seven consecutive years of assessment shall commence immediately following that year of assessment the incentive scheme ends and any amount of balance of the amount referred to in that subsection which is not deductible at the end of that period shall be disregarded for the purposes of this Act.

(4) The chargeable income of a person in respect of the source or sources other than the source consisting of the qualifying activity referred to in subsection (1) for a year of assessment shall be the statutory income from that source or the aggregate of the statutory income from each of those sources, as the case may be, reduced by any deduction falling to be made pursuant to subsections 43(2) and 44(1):

Provided that in so making the deductions under subsections 43(2) and 44(1), no regard shall be had to the adjusted loss, if any, from the source consisting of such qualifying activity.

(5) Where the person referred to in subsection (1) fails to comply with the conditions prescribed by the Minister under Part XVII of Schedule 1, the Director General may at any time within five years after the expiration of the year of assessment for which the rate prescribed by the Minister under Part XVII of Schedule 1 was applied, make such additional assessments upon that person as appears to the Director General to be necessary in order to counteract any benefit obtained under Part XVII of Schedule 1.

(6) The person who carries on a business in respect of the source consisting of a qualifying activity referred to in subsection (1) shall maintain a separate account for the income derived from such qualifying activity for the basis period for each year of assessment.".

Comments:

a. Kindly confirm that the loss making source consisting of a qualifying activity may be offset against aggregate income (if any) for the same year, and ring-fencing the utilisation of losses to the same source is applicable only from the following year.

IRBM's Feedback:

Any current year losses incurred from the qualifying activity under an incentive scheme approved by the Minister cannot be set off against the aggregate income from sources other than the qualifying activity during the incentive period. The offsetting must be ring fenced against the same source until the end of the incentive period. Please refer to the proviso in subsection 65B(4) ITA.

Details on the eligibility criteria, activities and conditions that need to be fulfilled by the company to benefit from this incentive will be provided in the income tax rules that will be issued accordingly.

b. In addition, item no. 14 of the Explanatory Statement for Clause 16 to the Finance Bill 2020 states that a person who will carry out the qualifying activities needs to comply with the conditions prescribed by the Minister.

Kindly specify the criteria that would be applicable for a person to qualify, type of qualifying activities and will the list of qualifying activities be gazetted or published at the MOF's website.

IRBM's Feedback:

All approved schemes will be gazetted. The qualifying criteria will be detailed out in MIDA guidelines.

1.8 Tax Payable Notwithstanding Institution Of Proceedings Under Any Other Written Law – new S.103B of ITA 1967, S.21C of RPGTA 1976, S.48A of PITA 1967 and S.13B of LBATA 1990 ("proposed legislations") [w.e.f. 1 January 2021]

103B. The institution of any proceedings under any other written law against the Government or the Director General shall not relieve any person from liability for the payment of any tax, debt or other sum for which he is or may be liable to pay under this Part.

21C. The institution of any proceedings under any other written law against the Government or the Director General shall not relieve any person from liability to pay any tax, debt or other sum for which he is liable to pay under this Part.

48A. The institution of any proceedings under any other written law against the Government or the Director General shall not relieve any person from liability for the payment of any tax, debt or other sum for which he is or may be liable to pay under this Part.

13B. The institution of any proceedings under any other written law against the Government or the Director General shall not relieve any person from the liability to pay any tax, debt or other sum under this Part.

Comments:

a. Given the negative impact of the movement control order, COVID-19 and economic downturn on the cash flow and operations of businesses, we are concerned that the above proposal will burden taxpayers further as tax payments which may be of a significant amount have to be made upfront even though assessments / additional assessments are under appeal.

   We request that the Government adopts an industry friendly approach during this unpreceded time, rather than strengthening rules that compel tax payment on technical adjustments notwithstanding proceedings.

IRBM's Feedback:

The amendment is in line with well-established tax principles that tax is to be paid within 30 days from the service of the notice of assessment. This principle has been confirmed by various landmark court decisions on recovery of taxes.

b. This proposal seems to say that any application for a stay of proceedings will not prevent the Inland Revenue Board ("IRB") from collecting the outstanding taxes and penalties raised in the assessment.

During a tax audit, the parties (the IRB and the taxpayers) usually have different opinions to a subject matter. If the differences can be resolved amicably, then there is no further appeal. The IRB would raise the assessments and taxpayers would pay up the taxes raised in the assessment.

However, there will be situations where the IRB and the taxpayers may have different opinions and both parties are not able to resolve the matter. In this situation, the IRB may proceed to raise the assessments.

Once the assessments have been raised, the Collection Branch will be activated to collect outstanding taxes and penalties from the taxpayers.

Meanwhile, the taxpayers will file an appeal via the Form Q or Judicial Review, as the case may be. The legal team of the IRB will handle the tax appeal matter. However, given the number of cases being appealed to the Special Commissioners Of Income Tax ("SCIT") or High Court, there will be a delay for the cases to be heard on the merits of the case. It could take years in most cases.

In the interim, the Collection Branch will continue with its recovery process of outstanding taxes and penalties. In most cases, the recovery process may proceed faster than the actual cases on the merits to be heard at the courts. Even if the taxpayers apply for tax instalments to pay the outstanding taxes and penalties, the instalment scheme may be approved for a certain period e.g. 12 months with a percentage to be paid upfront (as a condition to approve the tax instalments scheme). If the assessments raised are of a very high amount, taxpayers may face severe financial hardship to carry on the business operations.

In the event taxpayers are unable to pay up the outstanding taxes either upfront or via instalment payments, civil proceedings may be instituted. Once the civil proceedings have been instituted, the Courts will hear the case and eventually a decision will be issued to recover the outstanding taxes.

In certain cases, taxpayers will apply to the High Court for stay of proceedings including payment of outstanding taxes pending the hearing on the merits of the case. If the Court grants such stay, taxpayers do not need to pay the outstanding taxes until the finalization of the case.

If taxes are to be paid up notwithstanding the application of a stay of proceedings, taxpayers may have difficulty in paying up the taxes. In an unfortunate situation, if taxpayers are unable to pay the outstanding taxes, taxpayers may be placed under bankruptcy or wound up even before the merits of the case have been heard at the court. Placing taxpayers under bankruptcy or winding up may have irreparable

consequences even if the taxpayers may win on the tax appeal eventually. In fact, bankruptcy / winding up actions may also deprive the taxpayers of the financial resources that are very much needed to pursue to the appeal. This is a situation we would like to avoid. We hope this proposal will be reconsidered.

IRBM's Feedback:

The grant of a stay depends on the facts and circumstances of each case. A taxpayer's duty to pay tax upon the service of the notice of assessment is a factor to be considered. There should be equal treatment to all taxpayers regardless of whether they appeal on an assessment or challenge it by way of judicial review. Should there be a valid reason, a taxpayer may request for the tax due to be paid by way of instalments.

c. We would request for consideration on the following: -

i. Under the Self-Assessment System ("SAS"), income tax is paid on an instalment basis with the balance of tax paid by the due date of submission of the tax return for that YA. However, additional assessments raised following a tax audit is for past YAs which can be up to 5 YAs. Consequently, the tax payable amount can be considerable to the extent that the taxpayer is unable to pay it within the 30-day deadline. As court cases are technical in nature involving disputes on tax treatment, some latitude should be given to taxpayers in settling the tax payable under appeal.

In this respect, we propose for the tax payable under appeal to be paid on a staggered basis e.g. 10% before the case is taken to court and the balance to be paid in stages as the case progresses to its conclusion.

IRBM's Feedback:

Subsection 103(7) ITA caters to the above scenario as it provides that the DG may allow for tax to be paid by instalments.

ii. Assessments which have been agreed by the IRB in the past e.g. real property gains tax ("RPGT") official assessments on chargeable gains from disposals of real property assets should not be re-opened unless it is found that the information provided by the taxpayer is improper or there is previously unknown information that is relevant to the case. It has been observed that these cases have been re-opened in recent times, not because of the aforementioned reasons but because the IRB has changed their position years later to assess the gains from disposals under income tax instead of RPGT. This change of position is inequitable as the

RPGT assessments had been agreed earlier based on proper information provided by the taxpayer. The tax payable under the subsequent income tax assessment should only be made upon resolution of the dispute on the tax treatment at the highest court. Hence, the proposed provisions should not be applied to such cases that are under appeal.

IRBM's Feedback:

Where an assessment has been raised under RPGTA, the DG has the power to raise an assessment under the ITA [based on subsection 91(1) or (3)] where the facts and circumstances warrants such measure.

On service of that notice of assessment, the current section 103 applies whereby tax is due and payable even though a taxpayer appeals against the notice of assessment.

Where the tax on the RPGT assessment has been paid, the taxpayer is only required to pay the balance of the amount assessed under the ITA. The principle under section 103B will apply to such balance notwithstanding that the disposal is now subject to the ITA. The determination of whether proceeds of a disposal is subject to ITA or RPGTA are based on the facts found during an audit or investigation.

d. Should the proposed provisions be enacted, we would also request for consideration on the following: -

i. Amendment of Schedule 5 of the ITA 1967 (and its equivalent provision in the RPGTA 1976, PITA 1967 and LBATA 1990) to include a time limit for the SCIT to hear the case after it has been received.

IRBM's Feedback:

The suggestion to limit the time for the SCIT to hear a case may reduce the time for a case to be settled. However, this issue has to be discussed with various other stakeholders such as the SCIT.

ii. The Government to increase the resources of the SCIT to expedite the hearing of cases as we understand a case submitted to the SCIT presently may take up to three years to be heard due to the backlog of cases at the SCIT.

IRBM's Feedback:

With the proposed establishment of a tax tribunal which comprises of the SCIT and customs tribunal, it is expected that the disposal of appeals would be expedited. IRBM will support any initiative to increase the numbers of SCITs.

iii. S.101(1B) allows the Minister to grant the IRB an extension of up to six months to review the assessment under appeal on receipt of the IRB's application for extension under S.101(1A). It is requested that a remedy provision be included in the ITA 1967 in the event the IRB does not write to the Minister for extension under S.101(1A). It is also requested that the IRB make transparent the circumstances for the extension to the appellant/taxpayer.

IRBM's Feedback:

Under the current provision, IRBM is allowed to apply to the Minister for an extension of up to six months to review the assessment under appeal on receipt of the IRBM's application. However, the actual applications are very minimal and are normally to facilitate in reaching a settlement with the taxpayer. From the year 2016 to 2020, only four applications were made by IRBM to the Minister for extension under S.101(1A).

iv. The Government to provide in the law that, in cases where the assessment is set aside or reduced but payment was already made by taxpayer, the taxpayer is compensated with an interest/compensation to compensate the commercial loss arising from the funds being tied up with the Government while the matter was being disputed/resolved.

IRBM's Feedback:

IRBM takes note of this suggestion and will look further into this issue.

1.9 Failure to furnish contemporaneous transfer pricing documentation - new S.113B (w.e.f. 1 January 2021)

113B. (1) Any person who makes default in furnishing contemporaneous transfer pricing documentation in respect of any year of assessment, in accordance with any rules made under paragraph 154(1)*(ed)* to implement and facilitate the operation of section 140A, shall be guilty of an offence and shall, on conviction, be liable to a fine not less than twenty thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) In any prosecution under subsection (1), the burden of proving that contemporaneous transfer pricing documentation has been furnished shall be upon the accused person.

(3) Where a person has been convicted of an offence under subsection (1), the court may make a further order that the person shall comply with the relevant provisions of the rules under which the offence has been committed within thirty days, or such other period as the court deems fit, from the date the order is made.

(4) Where in relation to any year of assessment a person makes default in furnishing contemporaneous transfer pricing documentation in accordance with any rules made under paragraph 154(1)*(ed)* to implement and facilitate the operation of section 140A, and no prosecution under subsection (1) has been instituted in respect of the default in furnishing contemporaneous transfer pricing documentation, the Director General may by notice in writing or in the notice of assessment require that person to pay a penalty

of not less than twenty thousand ringgit and not more than one hundred thousand ringgit and, if that person pays that penalty, or where the penalty is abated or remitted under subsection 124(3), so much, if any, of the penalty as has not been abated or remitted, he shall not be liable to be charged on the same facts with an offence under subsection (1).

(5) The person served with a notice in writing referred to in subsection (4) may appeal to the Special Commissioners within thirty days as if the notice were a notice of assessment and the provisions of this Act relating to appeals shall apply accordingly with any necessary modifications.".

Comments:

a. The updates to the said sections in relation to transfer pricing ("TP") take effect from 1 January 2021. Kindly clarify whether they will be applied retrospectively to the following cases: -

i. TP audit commenced post 1 January 2021 for the YAs covering prior to financial year 2021.

IRBM's Feedback:

Section 113B is applicable to years of assessment prior to YA 2021.

ii. On-going TP audit initiated prior to 1 January 2021 for YA 2020 and prior YAs but concluded on and after 1 January 2021.

IRBM's Feedback:

If the request for the TP documentation is made after 1 January 2021, then section 113B is applicable.

iii. The IRB's request for TP documentation made in 2020 but due to be provided after 1 January 2021.

IRBM's Feedback:

Since the request for the TP documentation is made before 1 January 2021, section 113B is not applicable.

b. TP Guidelines 2012 prescribe the following thresholds to ease the compliance burden on businesses with regard to TP documentation: -

- Gross income exceeding RM25 million and the total amount of related party transactions exceeding RM15 million; and/or
- Financial assistance exceeding RM50 million.

Since S.113B applies to any business with related party transactions, those below the thresholds prescribed in TP Guidelines 2012 should be given time up to 90 days to prepare and submit TP documentation upon request, failing which, the penalty under S.113B may be imposed. For any business exceeding the thresholds prescribed in TP Guidelines 2012, the existing time frame of 30 days may be maintained.

IRBM's Feedback:

Taxpayers who are involved in controlled transactions are required to maintain a contemporaneous transfer pricing documentation (TPD). The definition of a contemporaneous TPD is provided under subrule 4(3) of Income Tax (Transfer Pricing) Rules 2012 (TP Rules 2012) as follows:

> *"contemporaneous transfer pricing documentation" means transfer pricing documentation which is brought into existence—*
>
> *(a) when a person is developing or implementing any controlled transaction; and*
>
> *(b) where in a basis period for a year of assessment the controlled transaction is reviewed and there are material changes, the documentation shall be updated prior to the due date for furnishing a return for that basis period for that year of assessment.*

Therefore, a taxpayer should have prepared the TPD at the latest, before the due date of submitting a tax return. The taxpayer also has to declare whether he has prepared a TPD in the tax return. Hence, when IRBM requests for a TPD to be furnished, the taxpayer should be able to furnish the TPD within 14 days. An extension of time may be given on a case to case basis.

c. The word "contemporaneous" is now used in the principal Act for the first time, but not defined therein. The word "contemporaneous" is defined in the Income Tax (Transfer Pricing) Rules 2012 ("TP Rules 2012") and the TP Guidelines 2012, but is not mentioned in the TP Audit Framework 2019 ("TPAF"). Instead, TPAF focuses on failure to submit documentation within 30 days upon request. Hence, there could be some ambiguity in the application of S.113B. Please confirm that the requirement of S.113B would be met as long as the TP documentation is provided within the time frame required for purposes of S.113B and no penalty would be imposed in such case. It would help if "contemporaneous" is defined in the principal Act.

IRBM's Feedback:

The definition of "contemporaneous transfer pricing documentation" has been provided in the TP rules. Section 113B also makes reference to the TP rules. Hence, there is no need to insert the definition of "contemporaneous" in section 113B.

d. S.113B provides for penalty where there is default in furnishing TP documentation in accordance with TP Rules 2012. It is our understanding that the TP Rules 2012 does not require TP documentation to be "furnished". Instead, the TP Guidelines 2012 require the TP documentation to be made available within 30 days upon request by the IRB. In this context, we require the term 'furnished' in the context of S.113B to be clarified.

IRBM's Feedback:

A TP documentation is required to be furnished to the IRB upon request. The IRB will issue a request for documentation and information letter which will specify the time in which the TP documentation must be furnished. The IRB will also issue an updated version of the Malaysia Transfer Pricing Guidelines and Transfer Pricing Audit Framework in due course which will further explain this. The Income Tax (Transfer Pricing) Rules 2012 [*P.U. (A) 132/2012*] are also currently under review and amendments will be made to address this.

Consider an example where corporate tax audit is conducted by a branch (say, Large Taxpayer Unit) in March 2021 for which TP documentation for, say, YA 2018 was requested and given to the IRB within the time frame provided. Subsequently the Multinational Tax Branch makes a separate request in November 2021 for YA 2018's TP documentation. If any IRB branch had requested for the TP documentation and it has been submitted within the requested period, then for purposes of S.113B, the TP documentation shall be considered as furnished. Hence, a penalty cannot be imposed under S.113B if another IRB branch subsequently requests for the same TP documentation to be submitted. Kindly confirm our understanding.

IRBM's Feedback:

No penalty will be imposed provided the taxpayer can provide evidence that the TPD has been submitted earlier.

e. The TP Guidelines require the TP documentation to be made available within 30 days but we noticed in recent times that other IRB branches have been requesting for the TP documentation (as part of the corporate tax audits) within a period of 14 days. We request for this to be synchronized to 30 days in light of the new S.113B.

IRBM's Feedback:

Para 11.2.3 of MTPGL 2012 (the web version) will be amended to reflect such changes. Necessary amendments will be made to align the required time frame to furnish TPD.

f. Will the taxpayer be penalized under S.113B(4), if an extension of time is granted by the IRB officer in charge to furnish the TP documents during an audit?

IRBM's Feedback:

The time frame for submission of a TPD extension of time (if any) will be provided in the TP rules. The general principle is that penalty will only be imposed if the TPD is not furnished in accordance with the TP rules However, the DG may, on valid reasons, remit such penalty under subsection 124(3) of the ITA.

g. The introduction of the new S.113B could pose a compliance burden to some taxpayers. For instance, many taxpayers may have minimal controlled transactions which may not relate to their core business activity (e.g. inter-company rental charges, cost recharges, etc.) or which may constitute an insignificant portion of their overall operations. It would be beneficial for taxpayers if the IRB can introduce some safe harbours on the covered intercompany transactions in operationalizing the new TP provisions.

IRBM's Feedback:

IRBM will take this suggestion into consideration in reviewing the MTPGL.

h. Please confirm our understanding that the penalty of RM20,000 to RM100,000 under S.113B is to be applied to each YA even though the request for more than one YA is made at the same time.

IRBM's Feedback:

Yes. The penalty structure will be further detailed out in the new Transfer Pricing Audit Framework expected to be published by the end of March.

If so, we believe that this would be rather punitive. If the request is for several YAs at the same time, the failure to furnish contemporaneous TP documentation should be treated as one offence. Therefore, we would ask that the penalty of RM20,000 to RM100,000 be applied to each request instead of each YA.

IRBM's Feedback:

The obligation to prepare a contemporaneous TPD is based on each year of assessment. Every year, a taxpayer should demonstrate that its controlled transactions are done according to the arm's length principles. Therefore the suggestion above is not agreed upon.

i. We would request that a set of simplified TP guidelines be issued for domestic transactions so that compliance with TP laws is not too much of a burden and circumstances where domestic transactions would not be subject to TP requirements are clearly spelt out.

IRBM's Feedback:

A Taxpayer with domestic controlled transactions may opt to comply with minimum TPD as provided under para 1.3.2 of MTPGL 2012 if they fall outside the scope of para 1.3.1. Such taxpayer is allowed to apply any method other than the five methods described in the Guidelines provided it results in, or best approximates arm's length outcomes. Hence it is not necessary to have another set of simplified TP guidelines for domestic controlled transactions.

We also noted that the IRB is in the process of revamping the TP Guidelines. The professional bodies would be happy to provide our views and comments to the IRB in relation to the effectiveness and appropriateness of this matter. We can also discuss the specifics of this further with the IRB.

IRBM's Feedback:

IRBM takes note of this suggestion and will consider consulting the professional bodies before issuing the new TP Guidelines.

j. Conducting TP study and preparing TP documentation are tedious exercises and time consuming with substantial amount of fees being incurred for these professional services. Therefore we propose that the fee incurred for the preparation of TP documentation should be treated as a fully deductible expense under the ITA 1967 in addition to the current tax deduction of up to RM10,000 on tax filing fees.

IRBM's Feedback:

IRBM takes note of this suggestion. However, this is a policy decision.

1.10 New S.140A(3A), S.140A(3B), S.140A(3C) and S.140A(3D) [w.e.f. 1 January 2021]

"(3A) The Director General may disregard any structure adopted by a person in entering into a transaction if—

(a) the economic substance of that transaction differs from its form; or

(b) the form and substance of that transaction are the same but the arrangement made in relation to the transaction, viewed in totality, differs from those which would have been adopted by independent persons behaving in a commercially rational manner and the actual structure impedes the Director General from determining an appropriate transfer price.

(3B) Where the Director General disregards any structure adopted by a person entering into a transaction under subsection (3A), the Director General shall make adjustments to the structure of that transaction as he thinks fit to reflect the structure that would have been adopted by an independent person dealing at arm's length having regard to the economic and commercial reality.

(3C) Where this section and any rules made under paragraph 154(1)*(ed)* apply, the Director General may by notice in writing require that person to pay a surcharge of not more than five per cent of the amount of increase of any income generally, or reduction of any deduction or loss, as the case may be, as a consequence of exercising his powers to substitute the price in respect of a transaction entered into by a person to reflect an arm's length price for that transaction or to disregard any structure adopted by a person in entering into a transaction.

(3D) Any surcharge required to be paid by a person under subsection (3C) shall be collected by the Director General as if it were tax payable by that person, but shall not be treated as tax so payable for the purposes of any provision of this Act other than sections 103 to 106.": and

Comments:

a. We seek clarification on the rationale for imposing a surcharge on loss cases or tax exempt cases as there is no loss of tax revenue in such cases.

IRBM's Feedback:

A surcharge is imposed on a TP adjustment made under section 140A which results in an increase of income or reduction of any deduction or loss. When any taxpayer does not comply with the arm's length principles, the surcharge will be imposed on that adjustment regardless of whether the taxpayer is a loss or a tax exempt company.

This provision ensures an equal tax treatment for taxpayers that fail to comply with the arm's length principle under section 140A of the ITA 1967 and to encourage compliance of the TP Regulation.

In a case where there is no TP adjustment made in any year of assessment which is audited, no surcharge under subsection 140A(3C) will be imposed for that year of assessment.

b. The proposed S.140A(3A), S.140A(3B), S.140A(3C) and S.140A(3D) are meant to take effect from 1 January 2021. Kindly clarify whether they will be applied retrospectively to the following cases: -

i. TP audit commenced post 1 January 2021 for the YAs covering prior to financial year 2021.

IRBM's Feedback:

Subsections 140A(3A), 140A(3B), 140A(3C) and 140A(3D) will be applicable for TP audit cases that commence on or after 1.1.2021 regardless of the YAs .

ii. On-going TP audit initiated prior to 1 January 2021 for YA 2020 and prior YAs but concluded on or after 1 January 2021.

IRBM's Feedback:

Subsections 140A(3A), 140A(3B), 140A(3C) and 140A(3D) will not be applicable for on-going TP audit initiated prior to 1 January 2021 for YA 2020 and prior YAs but concluded on or after 1 January 2021.

c. In the event there is a tax undercharged arising from a TP adjustment, please confirm whether the surcharge is **mutually exclusive** with the penalty under S.113(2). If yes, specific provisions should be introduced into the ITA 1967 to ensure that where a surcharge is imposed, a S.113(2) penalty cannot be imposed. S113(2) in the ITA 1967 should be amended accordingly: -

- Such that it excludes a person from being liable to a penalty arising from the tax which has been undercharged in consequence of the incorrect return or incorrect information where a surcharge has been imposed on such person pursuant to S.140A(3C).

IRBM's Feedback:

IRBM confirms that the surcharge is mutually exclusive with the penalty under subsection 113(2). However, IRBM will only impose surcharge on any TP adjustments made under section 140A.

- Penalty rate under S.113(2) for TP audit cases as set out in the TPAF dated 15 December 2019 should be updated accordingly.

IRBM's Feedback:

An amended TP Audit Framework 2021 (TPAF) will be uploaded on the IRBM's website by the end of March.

d. Is S.140A(3C) applicable to companies with 100% tax exemption? If applicable, investments in zero tax regime (even if compliant with BEPS Action 5 on Harmful Tax Practices) would be exposed to the risk of surcharge arising from TP adjustments, and this may adversely affect investor confidence.

IRBM's Feedback:

When any taxpayer does not comply with the arm's length principles, the surcharge will be imposed on that adjustment regardless of whether the taxpayer is a loss or a tax-exempt company. Hence, subsection 140A(3C) is enacted to ensure compliance and equal treatment for non-compliance of the arm's length principle. Malaysia is not the only country that adopts this approach on the treatment of surcharge.

e. Based on S.140A(3C) and S.140A(3D), the Director General ("DG") may by notice in writing require that person to pay a surcharge of not more than 5% of the amount of increase of any income or reduction of any deduction or loss as a result of TP adjustments and such surcharge shall not be treated as tax payable for the purposes of any provision of this Act other than S.103 to S.106.

In this regard, a person who is aggrieved by any surcharge made under S.140(3C) in respect of him, **does not have an avenue to appeal** to the Special Commissioners against the surcharge pursuant to S.99. Under such circumstances, it is unfair to taxpayers as they will lose their right to appeal against the surcharge notwithstanding that the appeal lodged against an additional assessment made pursuant to the TP audit may eventually be allowed by the Special Commissioner / the Court. Currently the avenue that is available for taxpayers is to seek remission from the DG under S.124(3) on the surcharge or penalty imposed, which is subject to the discretion of the DG.

There seems to be a **clear infringement** on the rights of taxpayers. This proposed amendment has effectively denied the rights of the taxpayer to appeal on the surcharge which is akin to a tax. This goes against natural justice and is not in line with the international norms. The avenue to seek remission from the DG under S.124(3) is not an appropriate approach.

We strongly recommend that this proposal be amended to allow taxpayers to appeal against the surcharge pursuant to S.99 so that the rights of the taxpayers are preserved at all times.

IRBM's Feedback:

Tax payers still have the avenue to appeal on the adjustment made by the DG under section 99 and subsection 97A(2). Where a taxpayer succeeds in its appeal, the amount of adjustment would also affect the amount of surcharge. The DG also has the power to abate or remit any surcharge imposed under subsection 124(3) on a case to case basis.

f. Kindly illustrate on how surcharge will be calculated in the following 3 scenarios: -

i. Taxpayer is taxable and there is TP adjustment.

ii. Taxpayer is in an unabsorbed business loss position but there is TP adjustment.

iii. Taxpayer is in tax exempt position but there is TP adjustment.

IRBM's Feedback:

The illustration on the calculation of surcharge will be provided in the FAQ to be uploaded on the IRBM's website.

g. Please provide guidance on how the scale of surcharge of up to 5% under S.140A(3C) will be determined. We suggest that the criteria to be considered include comprehensiveness and completeness of TP documentation and the degree of deviation from the arm's length range.

IRBM's Feedback:

The rate for the surcharge is 5% on any amount of TP adjustment made under section 140A. There will be no scale of surcharge. Further details will be incorporated in the amended TPAF.

h. Please confirm that the surcharge will be adjusted in line with any adjustment under a Mutual Agreement Procedure ("MAP").

IRBM's Feedback:

Yes.

i. If the surcharge is mutually exclusive (with reference to item (c) above): -

- In the spirit of encouraging taxpayers to come forward and pay taxes, we propose that the surcharge under S.140A(3C) and penalty under S.113(2) should not be imposed on voluntary disclosure cases.

IRBM's Feedback:

This issue will be addressed in the amended TP Audit Framework 2021 (TPAF) and will be uploaded on the IRBM's website by the end of March.

- Kindly confirm that the surcharge applies regardless of which IRB branch is conducting the tax audit. There are cases where IRB branch refuses to follow TP Guidelines because it is not a TP Branch but nevertheless the IRB branch makes TP adjustments.

IRBM's Feedback:

Surcharge will be imposed on TP adjustments made under section 140A. All IRBM branches should follow the guidance provided in the MTPGL before making such adjustment.

j. Paragraph 1.3.3 of the updated TP Guidelines grants a broad exemption from preparation of TP documentation in cases where any adjustment would not affect the total tax payable by both parties. S.140A(3D) deems the surcharge as tax and hence may effectively make paragraph 1.3.3 redundant, and the taxpayers prone to the penalty under S.113B.

Kindly clarify whether paragraph 1.3.3 would be revised to exclude the surcharge from the definition of 'total tax payable'.

IRBM's Feedback:

This issue will be addressed in the amended MTPGL.

k. With the introduction of the new S.113B, S.140A(3A), S.140A(3B), S.140A(3C), S.140A(3D) and S.124(3), the TP Rules 2012, the TP Guidelines and the TPAF should be amended to provide certainty and guidance to taxpayers so that they can meet their compliance obligations from a TP perspective. The professional bodies are prepared to provide assistance to the IRB by giving feedback/comments on the amendments to the TP Guidelines and the TPAF.

IRBM's Feedback:

IRBM takes note of this suggestion and will consider consulting the professional bodies before issuing the new TP Guidelines and TPAF.

1.11 Definition of "Plant" – new Schedule 3, paragraph 70A (w.e.f. YA 2021)

"70A. In this Schedule, "plant" means 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."; and

Comments:

a. Capital allowance is granted in lieu of accounting depreciation as an established mechanism to ensure that legitimate capital costs of businesses are granted a deduction and hence ensure that every taxpayer pays the right amount of tax. Since the inception of the ITA 1967 more than 50 years ago, the term 'plant' was never defined, and hence allowing us to recognise the following: -

- A plant for a business may not be a plant for another business;
- There is a need to take into account how each business operates and utilizes the assets; and
- Principles established by case laws (including the wealth of Commonwealth cases) where the general two tests were discussed (business use or functional test and premise test).

The proposed amendment is a deviation from an existing long standing practice, and the approach of categorically denying capital allowances on certain items is insensitive to the ways different industries or businesses use these assets.

By enacting a statutory definition of 'plant', Malaysia would set itself apart from the international norm (see item d. below) and hence the proposal needs to be reconsidered as this may discourage foreign direct investment ("FDI") due to specific rules on this matter that creates denial of, or at least uncertainty over, allowance on part of the capital investment they made in Malaysia.

For the reasons set forth above, we hereby set out that there is no necessity to introduce a statutory definition of 'plant' and request the proposed paragraph 70A to be dropped in its entirety.

IRBM's Feedback:

The new definition of 'plant' is indeed consistent with the principles of determining eligibility of capital allowance i.e. the apparatus and premises test enunciated by various case laws. The amendment is to clearly exclude buildings, intangible assets and places of business as plant. This exclusion is consistent with the existing practice of IRBM with regard to those assets.

b. Should a definition nevertheless be enacted for some reason, we would like to express that the wordings used in the definition for the exclusion are rather broad terms and have sweeping effects which may be unintended. This is further elaborated below.

i. Exclusion of building and place within which a business is carried on

An airliner or a cruise ship which functions as a place for carrying on a business may potentially be excluded from the statutory definition of 'plant'. Similar uncertainty in treatment apply in respect of 'test rooms' in R&D activities.

IRBM's Feedback:

Under the new provision, plant means any apparatus used by the person in carrying on his business but excludes building, intangible assets or any assets used and functions as place of business.

Whether or not an asset functions as a place within which a business is carried out is a question of fact. The business premise test is an established principle laid out in many tax cases. Parties will therefore need to adduce evidence in support of their argument.

ii. Exclusion of intangible asset

The term 'intangible asset' is not defined. In today's digitalised world often tangible assets are embodied or integrated with intangible assets, and hence in many cases there could be practical challenges to distinguish intangible assets from tangible assets.

Excluding all kinds of intangible assets from the scope of capital allowance is not in line with Government's digital incentives and is not reflective of the current business environment.

Digital transformation of businesses is fast gaining pace globally. The effective use of technology and data is a key business process in a digital world. As technology and data has become an essential tool for businesses, it is counterproductive to exclude intangible assets and data from assets that qualify for capital allowances.

It should be noted that in jurisdictions such as Ireland, the tax authorities treat intangible assets as plant and machinery for capital allowances purposes. (click on the underlined wording to access the details.)

Hence we request that, in the event paragraph 70A is enacted, the provision is enacted only after an amendment so that the exclusion deals with specific items rather than broad terms such as 'intangible asset' and 'place within which business is carried on'.

Of course, even for such specific items, initial and annual allowances should be considered at rates which are in line with their expected life span / depreciation instead of an outright denial of capital allowance as these are legitimate business costs.

IRBM's Feedback:

The object and purpose of the amendment is to give certainty to taxpayers and clarity in the law that an intangible asset is not a plant within the context of Schedule 3. We take note of the suggestion to exclude certain intangible assets from this provision and will look further into this issue.

b. Should paragraph 70A be enacted, all buildings (including renovation costs) are denied from capital allowance. Hence, we reiterate the requests in the 2019, 2020 and 2021 Budget proposal submissions by the professional bodies to grant allowance on cost of all buildings, not just industrial buildings.

MOF's feedback:

The tax treatment regarding capital allowance which can be claimed on qualifying capital expenditure that has been incurred is provided for under Schedule 3, ITA 1967. This includes the special provision on qualifying industrial building which may enjoy the industrial building allowance (IBA). The IBA is only granted to specific industrial building as stipulated under Schedule 3, ITA 1967.

At the moment, the Government does not plan to expand the scope of the existing provision on IBA.

d. The proposed inclusion of paragraph 70A in the ITA 1967 gives rise to the question of whether Malaysia is alone in legislating the definition of 'plant'. If not, is 'plant' also defined narrowly in jurisdictions where it is legislated? Given the limited time available, we have gathered information on the definition of 'plant' from selected Commonwealth jurisdictions which have similar tax provisions as Malaysia as follows: -

Jurisdiction	**Legislated**	**Based on case law / guidelines**	**Remarks/Reference**
Hong Kong	No	Yes	Hong Kong mainly relies on tax cases by the courts in Hong Kong and other common law jurisdictions for defining a machinery or plant for depreciation allowance purpose. Based on the principles established in case precedents, the Hong Kong Inland Revenue Department also issued a practice note to express its view on which certain items will be considered as "machinery or plant" and which ones will not be so considered.
Singapore	No	Yes	The determination of whether an asset qualifies as plant would be based on decided cases and based on IRAS e-Tax Guide on Machinery and plant: Section 19/19A of the Income Tax Act, this is predicated on the following tests: - • Is the item stock in trade? • Is the item used for the carrying on the business?; and Is the item the business premises or part of the business premise?
United Kingdom	No	Yes	The capital allowance legislation does not define 'plant' or 'machinery'. The starting point is that these terms take their common law meaning (sometimes referred to as the 'case law meaning'). However, some assets are excluded from plant and machinery allowances, regardless of whether they function as plant in common law; and some assets are treated as if they were plant, regardless of their function.

Jurisdiction	Legislated	Based on case law / guidelines	Remarks/Reference
			Please refer to https://www.gov.uk/hmrc-internal-manuals/capital-allowances-manual/ca21010.

In taking the route of legislating the definition of 'plant' instead of relying on case law / guidelines, Malaysia needs to carefully consider its implications (see items a. and b. above) on businesses as the engine of the economy and on competing with other countries for FDI, particularly in the current economic downturn.

IRBM's Feedback:

IRBM is of the view that the new provision will not give any impact on the economy especially on potential foreign investment in Malaysia. As mentioned earlier, the stand of the IRBM with regard to this issue is a well known fact based on public rulings and decided cases. The amendment is to reaffirm IRBM's stand with regard to those assets. Furthermore, IRBM believes that the current tax incentives offered are very wide and are already tailored to the needs of the investors.

e. Should paragraph 70A be enacted as proposed, we also request for consideration on the following aspects: -

i. The impact of including the definition of 'plant' in the ITA 1967 on all tax incentives on qualifying capital expenditure e.g. how will this affect the claim of qualifying capital expenditure for the reinvestment allowance or investment tax allowance, as there is a definition of plant in paragraph 9, Schedule 7A of the ITA 1967 and there is a definition of capital expenditure in S.29(7) of the Promotion of Investments Act 1986 respectively, which differ from paragraph 70A?

IRBM's Feedback:

Any qualifying capital expenditure for the purpose of qualifying activities under Schedule 3, 7A of the ITA or PIA must follow the definition of qualifying capital expenditure in the respective provisions.

ii. Kindly confirm the capital allowance for software under P.U. (A) 156/2018 and P.U. (A) 274/2019 will continue to be effective despite the exclusion of intangible asset from definition of plant effective from YA 2021. If paragraph 70A is implemented, we request that for clarity a proviso is included to allow the Minister to prescribe items as being eligible for capital allowance notwithstanding the definition of plant.

IRBM's Feedback:

Yes, capital allowance for software under the abovementioned P.U.(A)s will continue to be effective. The provision will not be amended to include such a proviso as the P.U.(A)s are sufficent.

iii. Please confirm our understanding that assets acquired prior to YA 2021 (which do not meet the new statutory definition of "plant") will not be affected by this proposal and capital allowances can still be claimed on such assets until it is fully claimed.

IRBM's Feedback:

Prior to YA 2021, any asset which qualifies for capital allowances must be determined based on the existing tests enunciated in case laws.

iv. **Scenario:** Prior to YA 2021, Company A has been claiming capital allowance on the car park building as the car park building is a plant.

In YA 2021, Company A has incurred renovation costs of RM1 million on the car park building.

Can Company A claim capital allowance on the renovation costs incurred in YA 2021 since it is on the same building and it was determined that the building is a plant prior to the definition of plant?

IRBM's Feedback:

Basically, there are no legal provisions to allow capital allowance on renovation cost.

Furthermore, IRBM has never allowed renovation cost on a plant even before this provision came into effect. Thus, capital allowance on renovation cost of a plant, mentioned in the given example, is not allowed.

ii. We recommend that, for the purposes of clarity, the wording *"…. or any asset used and that functions as a place within which a business is carried on."* be amended to *"…. or any asset used that functions as a place within which a business is carried on."*.

IRBM's Feedback:

The word "and" in the phrase *"…. or any asset used and that functions as a place within which a business is carried on."* lays emphasis on the asset used which also functions as a place of business.

vi. The definition of 'plant' in paragraph 70A excludes 'building', which in turn is defined in S.2 of the ITA 1967 as *"includes any structure erected on land (not being plant or machinery)*". Hence, there is a circular reference between the terms 'building' and 'plant' in paragraph 70A and S.2. We request for this circular reference to be avoided for ease of application.

IRBM's Feedback:

IRBM is of the opinion that the definition of 'plant' in section 70A is necessary to clarify that 'plant' does not include building and the abovementioned circular reference does not contradict and further strengthens IRBM's decision.

vii. It would be good if the IRB can give examples of any asset used and that functions as a place within which a business is carried on. Would assets such as silo, tank, etc. for feed milling business that meet the business test and premise test qualify as plant?

IRBM's Feedback:

Whether or not an asset functions as a place within which a business is carried out is a question of fact. The business premise test is an established principle laid out in many tax cases. Parties will therefore need to adduce evidence in support of their argument.

viii. Under the new definition of plant, would the IRB consider the following as plant? As you may note from the picture below, the structure is erected on the land. It is very common to have such structure in an oil refinery or a chemical plant.

IRBM's Feedback:

Whether or not an asset functions as a place within which a business is carried out is a question of fact. The business premise test is an established principle laid out in many tax cases. Parties will therefore need to adduce evidence in support of their argument.

1.12 Compensation for loss of employment – amended proviso to Schedule 6, paragraph 15(1)(b) [YA 2020 and 2021]

15. (1) A payment (other than a payment by a controlled company to a director of the company who is not a whole-time service director) made by an employer to an employee of his as compensation for loss of employment or in consideration of any covenant entered into by the employee restricting his right to take up other employment of the same or a similar kind—

(a) if the Director General is satisfied that the payment is made on account of loss of employment due to ill-health; or

(b) in the case of a payment made in connection with a period of employment with the same employer or with companies in the same group, in respect of so much of the payments as does not exceed an amount ascertained by multiplying the sum of ten thousand ringgit by the number of completed years of service with that employer or those companies:

Provided that—

(a) this subsubparagraph shall apply to the payment made in respect of an individual who has ceased employment on or after 1 July 2008~~.~~ **; and**

(b) a further sum of ten thousand ringgit is allowed to be multiplied by the number of completed years of service in respect of an individual who has ceased employment on or after 1 January 2020 but not later than 31 December 2021.

Comments:

a. How does the individual taxpayer retrospectively adjust the exemption amount for each completed year of service for those who have already filed for tax clearance during the year 2020? Will a revision need to be filed or will this be automatically adjusted by the IRB?

IRBM's Feedback:

For those tax payers who have already filed for tax clearance during the year 2020 and temporary assessment has been raised, they can declare in their tax return form for YA 2020 the exemption of RM20,000 for each completed year of service.

If advance assessment has been issued in 2020, tax payers can submit an appeal to their respective branch to revise the assessment.

b. Will the increased tax exemption of RM20,000 for each completed year of service be applicable for all years of completed service as long as the individual has lost employment during the calendar year 2020 or 2021? If not, is there a specific period where the RM20,000 tax exemption may be applied for completed years of service (i.e. only for 2 completed years of service during the years 2020 and 2021)?

IRBM's Feedback:

This provision is applicable for all years of completed service as long as the individual has lost his employment on or after 1.1.2020 but not later than 31.12.2021.

1.13 Period for Reinvestment Allowance ("RA") claim extended – amended Schedule 7A, paragraph 2B (YA 2020, 2021 and 2022)

2B. Subject to this Schedule and notwithstanding paragraph 2, where a company has first made a claim for an allowance under this Schedule in the return of its income and the period for fifteen consecutive years of assessment referred to in paragraph 2—

(a) ended in the year of assessment ~~2015~~ **2019** or in any other preceding year of assessment, an allowance under paragraph 1 or 1A shall be given in respect of capital expenditure incurred by the company in the basis period for the years of assessment ~~2016, 2017 and 2018~~ **2020, 2021 and 2022**;

(b) ends in the year of assessment ~~2016~~ **2020**, an allowance under paragraph 1 or 1A shall be given in respect of capital expenditure incurred by the company in the basis period for the years of assessment ~~2017 and 2018~~ **2021 and 2022**; or

(c) ends in the year of assessment ~~2017~~ **2021**, an allowance under paragraph 1 or 1A shall be given in respect of capital expenditure incurred by the company in the basis period for the year of assessment ~~2018~~ **2022**.

Comments:

a. Based on past experiences, the Finance Act 2020 will only receive Royal Assent and be published sometime between end of December 2020 and January 2021.

   A taxpayer is required to submit an amended tax return to claim the special reinvestment allowance ("RA") and expecting a notice of reduced assessment, for the tax return to be submitted before the enactment of the proposal.

   In order to reduce the taxpayer's as well as the IRB's administrative burden, can a taxpayer, say, whose financial year ended on 31 March 2020, claim the special RA upon submitting the YA 2020 Tax Return (concession submission deadline is 31 December 2020)?

IRBM's Feedback:

Tax payer can submit an amended tax return to claim the special reinvestment allowance under section 131A.

b. Since the 15 year limit came to end in YA 2015, we had extensions for YA 2016-18 and now YA 2020-22. Kindly confirm it is intentional that YA 2019 is not covered.

MOF's Feedback:

Yes. The special RA is introduced for the year of assessment 2020 until 2022 to reflect the economic condition due to pandemic and to encourage reinvestment among existing companies in Malaysia.

c. Is the special RA subject to the seven years restriction on carry forward of unutilized RA? If yes, what would be the relevant paragraph in Schedule 7A to legislate this?

Note: The special provision relating to paragraph 4B of Schedule 7A refers to the special RA that expired in YA 2018.

IRBM's Feedback:

Yes. The restriction is applicable. IRBM will review the relevant provision.

2. Proposed Amendments to the Real Property Gains Tax ("RPGT") Act 1976

2.1 Company rates for society registered under Societies Act 1966 – amended Part II, Schedule 5 (w.e.f. 1 January 2021)

PART II

In the case where the disposer is a company incorporated in Malaysia or a trustee of a trust **or society registered under the Societies Act 1966 [Act 335]** the following rates of tax shall apply:

Category of disposal	Rate of tax
Disposal within three years after the date of acquisition of the chargeable asset	30 per cent
Disposal in the fourth year after the date of acquisition of the chargeable asset	20 per cent
Disposal in the fifth year after the date of acquisition of the chargeable asset	15 per cent
Disposal in the sixth year after the date of acquisition of the chargeable asset or thereafter	10 per cent

Comments:

a. Equating societies registered under the Societies Act 1966 to the same rates of RPGT as companies is not appropriate. This is because companies are registered under the Companies Act and most likely the objective of companies are to make profit. Whereas societies are usually registered not to make profit but to serve the members. All political parties or some religious organisations are registered under the Societies Act 1966.

Kindly clarify the rationale for equating societies with companies with the same RPGT rates when the objectives of setting up societies and companies are different?

IRBM's Feedback:

The IRBM's stand has always been that the tax rate for association is subject to Part II of Schedule 5. The amendment is made to reaffirm this. In addition, the definition of "company" under the RPGT Act includes body of persons established outside Malaysia. Thus, the inclusion of other body of persons such as societies is in line with the intent and purpose of Part II, Schedule 5.

d. The RPGT Act was introduced in 1976 to curb speculation. However, societies include charitable organisations, religious organisations, welfare organisations, organisations for uplifting the poor and underprivileged, etc. which do not carry out profit making or speculative activities. The landed property held by these organisations may have been donated to them by well-wishers or acquired by them from the federal/state government many years ago for the purpose of undertaking their activities. As such, we object to the above proposal to impose RPGT at company rates on disposal of landed property by these organisations.

As these organisations have been exempted from payment of income tax under Schedule 6 paragraph 13, P.U. (A) 52/2017 or P.U. (A) 139/2020, we are of the view that, to be fair and equitable, they should also be exempted from RPGT on disposal of landed property.

IRBM's Feedback:

IRBM's stand is that Part I should only be applicable to individuals. As such, other entities should be taxed in accordance with Part II. Furthermore, RPGT is based on the chargeable gain from the disposal of property and not based on any other profit making activity of the entity.

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

3.1 Irrevocable election on chargeability to Income Tax Act 1967 – amended Section 3A(2) (w.e.f. coming into operation of Finance Act)

3A. (1) Notwithstanding any other provision of this Act, a Labuan entity carrying on a Labuan business activity may make an irrevocable election in the prescribed form that any profit of the Labuan entity for any basis period for a year of assessment and subsequent basis period to be charged to tax in accordance with the Income Tax Act 1967 in respect of that Labuan business activity.

(2) The election referred to in subsection (1) shall be made and furnished to the Director General within three months **or any extended period as may be allowed by the Director General** after the beginning of the basis period for a year of assessment:

Provided that for the basis period ending on a day in the year of assessment 2008, the election under this section may be made and furnished before 1 August 2008.

Comments:

a. Will the new provision apply to cases where the due date for submission of Form LE3 (prescribed form for irrevocable election) fell in 2020?

Example 1:
For a Labuan entity with an accounting period / basis period ended on 31 December 2020, the due date for submission of Form LE3 for YA 2021 (YA 2020 under the ITA) was on 31 March 2020*.

Example 2:
For a Labuan entity with an accounting period / basis period ended on 31 January 2021, the due date for submission of Form LE3 for YA 2022 (YA 2021 under the ITA) was on 30 April 2020 *.

* Extension of time ("EOT") has been given until 31 May 2020 due to the Movement Control Order ("MCO").

IRBM's Feedback:

The effective date of amendment for subsection 3A(2) LBATA refers to the date of application of EOT received by the DGIR, from 1st January 2021. The consideration for EOT will be granted by the DGIR on a case to case basis.

b. Please advise whether the above proposed amendment can be applied retrospectively. For example, can a Labuan entity apply to the Director General of Inland Revenue for EOT on irrevocable election for YA 2020 (i.e. financial period ended 2019).

IRBM's Feedback:

The effective date refers to application for EOT received by the DGIR without specifying the year of assessment. A Labuan entity may make an application for EOT to the DGIR for YA 2020 and the consideration for EOT may be granted based on merit of the case provided that the LE has not filed in its tax return under LBATA for that year of assessment.

3.2 Labuan entity – amended S.2B (w.e.f. 1 January 2021)

2B.(1) The Labuan entities—

~~*(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.~~

***(b)* shall, for the purposes of the Labuan business activity—**

(i) in relation to a Labuan trading activity—

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

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

as prescribed by the Minister by regulations made under this Act; and

(ii) in relation to a Labuan non-trading activity—

(A) have an adequate number of full time employees in Labuan;

(B) have an adequate amount of annual operating expenditure in Labuan; and

(C) comply with any condition in relation to control and management in Labuan,

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

Comments:

a. Pursuant to Labuan Business Activity Tax (Exemption) Order 2020 [P.U. (A) 177/2020] ("the Order"), the Minister exempts a Labuan entity carrying on a Labuan business activity related to pure equity holding from the application of S.2B(1)(b)(i) of the Act.

Following the change in S.2B(1)(b), the Order should be amended accordingly.

IRBM's Feedback:

We take note of the comment and the respective P.U.(A) will be amended accordingly.

b. Given the changes proposed in Finance Bill 2020 and various clarifications by Labuan Investment Committee ("LIC"), it is hoped that the authorities could clarify whether a Labuan entity that undertakes non-pure equity holding activities is required to fulfill the additional condition on control and management. Currently, based on the Clarification to LIC Pronouncement 2-2019 issued by Labuan FSA dated 20 December 2019, a Labuan entity that undertakes non-pure equity holding activities is required to have one full time employee and RM20,000 annual operating expenditure.

IRBM's Feedback:

The amendment of P.U.(A) 392/2018 has been gazetted on 24th December 2020 through P.U.(A) 375/2020. Under the revised substance requirement, investment holdings activities other than pure equity holding activities will need to have:

a. a minimum of one full time employee in Labuan; and
b. incurs a minimum annual operating expenditure of RM20,000 in Labuan.

Currently, there is no additional substance requirement imposed in relation to control and management for LE that undertakes investment holding activities other than pure equity holding activities.

Based on the policy decision, the management and control condition will be imposed on LE that carries pure equity holdings activities as substitution for substance requirement for full time employee. The relevant rules will issued to implement this policy decision.

Thus, LE that carries investment holding activities other than pure equity holding activities needs to only comply with the conditions on full time employees and annual operating expenses as prescribed in P.U.(A) 392/20218.

4. 2021 Budget Speech and Appendices

4.1 Appendix 11 – Extension of period of stamp duty exemption to revive abandoned housing projects

Current Position

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 title for land and houses in abandoned housing projects.

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

ii. Original House Purchaser in the Abandoned Project:

a. loan agreements for additional financing; and

b. instruments of transfer of the houses.

These exemptions are given on the above 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.

Proposal

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, it is proposed that the existing stamp duty exemptions be extended for another 5 years.

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.

Comments:

The scope of the exemption should also cover service agreements entered into by rescuing contractors.

MOF's Feedback:

Stamp duty exemption on transfer instruments and loan agreements given to rescue contractors or developers and original buyers of abandoned homes are sufficient to ease their financial burdens.

4.2 Appendix 15 (A). – Review of tax incentives for companies relocating their operations to Malaysia and undertaking new investments

Current Position

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

<table>
<tr><th rowspan="2">INVESTMENT IN FIXED ASSET</th><th colspan="2">NEW COMPANIES</th><th colspan="2">EXISTING COMPANIES</th></tr>
<tr><th>TAX INCENTIVE</th><th>PERIOD</th><th>TAX INCENTIVE</th><th>PERIOD</th></tr>
<tr><td>RM300 million - RM500 million</td><td rowspan="2">Income Tax Rate 0%</td><td>10 years</td><td rowspan="2">Investment Tax Allowance 100%</td><td rowspan="2">5 years</td></tr>
<tr><td>Above RM500 million</td><td>15 years</td></tr>
</table>

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 from 1 July 2020 until 31 December 2021.

Proposal

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 digitilisation 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 substancial scientific or enginering 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.

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 until 31 December 2022.

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

Comments:

a. Please indicate when the proposed tax incentives will be expected to be gazetted and when will the guidelines be issued?

MOF's Comment:

The draft of gazette order is under review. The guideline has been published by MIDA.

b. The proposal would not be beneficial for a new company unless it is profitable from the date of commencement of business onwards, which may not be the case. For businesses with a long gestation period, consideration should be given to allow for the tax incentive to commence in the year when the business starts to make profits. The tax authorities may also need to be flexible when it comes to imposing the 7-year restriction on the carry forward of unabsorbed tax losses on these businesses.

MOF's Comment:

The proposal is noted. The main objective is to attract FDI to relocate its operation to Malaysia.

c. Activities carried out by businesses in the services sector are not capital intensive. The proposal for companies in the services sector should be more focused on incentivising the profitability of the business instead of the investment in fixed asset.

MOF's Comment:

The proposal is noted. MOF is working together with relevant agencies to come up with appropriate conditions.

4.3 Appendix 15 (C). – Review and expansion of the scope of tax incentive for commercialisation of research and development findings

Current Position

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 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 from 29 September 2012 to 31 December 2017.

Proposal

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.

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 from 7 November 2020 until 31 December 2025.

Comments:

a. Whether the same non-resource-based list (under the Income Tax (Exemption) (No. 13) Order 2013 will be adopted or will the list be reviewed?

IRBM's Feedback:

The same list as provided in Income Tax (Exemption) (No.13) Order 2013 [P.U.(A) 294/2013] will be maintained for the reintroduction of this incentive.

b. Resource-based R&D is currently based on activities under the promoted activities and products list. Will this list be updated?

IRBM's Feedback:

For the time being the current promoted list as gazetted in 2012 is still applicable. The list will only be updated once the study on tax incentive framework by the government has been finalised.

4.4 Appendix 15 (D). - Tax incentive for Global Trading Company (GTC)

Current position

Principal Hub which 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.

Proposal

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 from 1 January 2021 until 31 December 2022.

Comments:

a. The proposal on the introduction of new incentives for GTC is unclear. Labuan IBFC also offers a similar tax regime under the name of Labuan International Commodity Trading Company ("LITC"). The LITC offers a preferential tax rate of 3% of the Net Audited Profits (NAP) indefinitely [suggesting that this incentive under the GIFT programme would be more attractive], stamp duty exemptions, withholding tax and tax exemptions for individuals (expiring in YA 2020).

The types of commodities that are permitted under LITC are: -

- Petroleum, Petroleum-Related and Non Petroleum (Minerals, Agriculture, Refined Raw Materials, Chemicals, Base Mineral and Coal).

It would be good if details are provided among others qualifying criteria to avoid overlapping of tax incentives for companies undertaking similar types of activities.

MOF's Feedback:

MOF together with LHDNM and MIDA to finalise the criteria of the GTC.

b. Please confirm that the principal hub ("PH") incentive will not be replaced by the GTC incentive.

IRBM's Feedback:

The introduction of Global Trading Centre (GTC) is intended to streamline all incentives pertaining to trading activities under one package. Other than to segregate the trading activities from PH activities, which focus more on the services activities, it also provides simplicity to the calculation of the amount of tax benefited from this incentive. Since this incentive offers preferential tax rate as compared to exemption of income, it will be subjected to section 65B ITA.

Income Tax Rules will be issued to provide the details on the eligibility criteria, activities and conditions that need to be fulfilled by the company to enjoy this incentive.

Incentive for PH will be maintained for services regimes only and will be given a preferential tax rate instead of exemption of income. Trading income will not be benefiting from PH incentive anymore.

4.5 Appendix 15 (F). - Special income tax rate for non-resident citizen individuals holding key positions in companies investing in new strategic investments

Current Position

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%.

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.

Proposal

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 approved 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 from 7 November 2020 until 31 December 2021.

Comments:

One of the conditions is for the individual to be a Malaysian tax resident for each YA throughout the 15% flat rate treatment. Would this mean that if that individual was not a Malaysian tax resident for any one of those YAs: -

a. The 15% flat rate treatment will not apply for all the YAs in that period of 5 consecutive years?

OR

b. The 15% flat rate treatment will not apply for that YA in which that individual was not a Malaysian tax resident, but will apply for the other YAs in which that individual was a Malaysian tax resident, in that period of 5 consecutive years?

We would request that the clarification on the above be reflected in the relevant exemption order / provision for avoidance of doubt.

IRBM's Feedback:

MOF together with LHDNM and respective agencies to finalise the criteria regarding this incentive and will be detailed out in statutory order.

4.6 Appendix 16 – Review of tax incentive for Principal Hub ("PH")

Current Position

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 are qualified to be considered for 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:

a. employment of at least 30 high valued workers;
b. employment of at least 5 key posts personnel; and
c. annual operational expenditure of at least RM10 million.

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

Proposal

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 Malaysia Investment Development Authority from 1 January 2021 to 31 December 2022.

Comments:

a. Currently, the second 5-year incentive period is only offered to new companies. Will the second 5-year incentive period (where renewal conditions are proposed to be relaxed) be extended to existing companies?

b. Please specify which are the relevant conditions to be relaxed?

c. Please confirm that the PH incentive will not be replaced by the GTC incentive.

IRBM's Feedback:

No. The extension period will only be applicable for new company. For the relaxation of the conditions imposed for the extension of second five consecutive years period, taxpayers are advised to refer to MIDA's guidelines on the details.

Incentive for PH will be specifically provided to services activities. Any trading activities will not be eligible for PH incentive.

4.7 Appendix 20 – Review of tax incentive for manufacturers of industrialised building system components

Current Position

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.

This tax incentives is effective for application received by Malaysian Investment Development Authority from 10 September 2015 until 31 December 2020

Proposal

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 assesment.

Comments:

The above proposal only mentions extension for investment tax allowance. Will the scope of the extension also include the current Income Tax Exemption of 100% of statutory income?

IRBM's Feedback:

No. For applications made from 1 January 2021 to 31 December 2025, the policy decision is to only provide investment tax allowance equivalent to 60% of the qualifying capital expenditure for a period of 5 years to qualifying company. This allowance can be set off against the statutory income up to a maximum of 70% for each year of assessment.

4.8 Appendix 21 – Extension of period of tax deduction for employment of senior citizens, ex-convicts, parolees, supervised persons and ex-drug dependants

Current position

Further tax 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.

Proposal

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

Effective date

From year of assessment 2021 until year of assessment 2025.

Comments:

a. We understand that there is a possible interpretation that where wage subsidy has been granted by SOCSO to the employer, the double deduction under P.U. (A) 164/2019 is not granted on the entire remuneration but only on the net amount after deducting the amount of subsidy due the operation of Rule 3(2) of P.U. (A) 207/2006. We request flexibility for taxpayers to opt not to apply the exemption under P.U. (A) 207/2006 and in such a case be allowed to claim double deduction on the entire remuneration.

b. We understand from the IRB that the P.U. (A) 164/2019 is applicable to new and existing employees. Please confirm that the deduction under the above proposal is also applicable to new and existing employees.

IRBM's Feedback :

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Wage subsidy received by the company under the Wage Subsidy Programme is a grant that is tax exempted under P.U.(A) 207/2006. An employer who received fund from the Government under the Wage Subsidy Programme is exempted from tax on the fund received and any deductions in respect of an expenditure incurred out of that fund shall be disregarded as per the P.U.(A) 207/2006. The employer shall maintain a separate record for the fund received under this program.

As there is no exclusion clause in the Wage Subsidy Programme and the P.U.(A) 164/2019, employer is eligible to claim against both incentives, provided all conditions relating to the Wage Subsidy Programme and the P.U.(A) 164/2019 are met. However, the employer is only eligible to claim under P.U.(A) 164/2019 the net amount of salary after deducting the amount of subsidy received, and not the entire remuneration.

4.12 Paragraphs 151 and 209 of the 2021 Budget Speech

151. A comprehensive study of the existing tax incentive structure is underway to provide a competitive, transparent and more attractive tax incentive framework. **To provide space for the study to be completed, the existing tax incentives, due to end this year, will be extended until 2022.** The extension includes tax incentives for MRO activities for aerospace, building and repair of ships, Bionexus status and economic corridor developments.

209. In addition, the existing tax incentives for the East Coast Economic Region Development Corridor, Iskandar Malaysia and Sabah Development Corridor are extended until 2022.

Comments:

a. Are the incentives enumerated under paragraph 151 examples? In the case of incentives for economic corridors mentioned in paragraph 209, no examples are given.

MOF's Feedback:

The current incentive which has ended in year 2020 will be extended until year 2022. This will include the incentive for ECER Corridor, Iskandar Malaysia and also Sabah Development Corridor.

b. To encourage interest in investments into the specific activities/areas, it is desirable that a comprehensive list of specific incentives which are to be extended be provided. In this respect, can we have a definitive list of incentives for which extensions are to be granted?

MOF's Feedback:

The extension list of incentive has been provided to MIDA and also to the corridor authorities. The extension period is from year 2021 up to year 2022.

c. The professional bodies are prepared to assist and give our views and feedback if necessary on the comprehensive study of the tax incentive structure that is underway.

MOF's Feedback:
The proposal is noted.

C. Outstanding Gazette Orders – 2014 to 2020 Budgets

The Institutes note with concern that several gazette orders pertaining to proposals announced in the 2014 to 2020 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.

   MOF's Feedback:

   Green technology projects will be considered under Section 127(3A) whilst green technology assets is in gazeting process.

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 Feedback:

   MOF is in the process to obtain confirmation from bioeconomy whether to proceed with this incentive.

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.

MOF's Feedback:

The draft is currently under the review of MOF's Legal Division.

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 Feedback:

The draft order and rules have been gazetted on 24 December 2020 through P.U.(A) 373/2020 and P.U.(A) 374/2020.

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.

Comments:

We understand that the above proposal has been withdrawn. Please confirm that our understanding is correct.

MOF's Feedback:

MOF is expecting the guidelines from MITI. However, MOF is also seeking confirmation from MITI whether to proceed with the incentive.

2. 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 Feedback:
SC is reviewing the draft order before submitting to MOF's Llegal Ddivision for gazetting process.

2019 Budget

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

MOF's Feedback:
SC is reviewing the draft order before submitting to MOF's Legal Division for gazetting process.

2. Tax incentives for Companies achieving Industry4WRD

   - 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.
   - 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.

MOF's Feedback:

MOF is in the process of finalising the policy.

(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 Feedback:

MOF is in the process of finalising the policy.

(c) 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 Feedback:

MOF is seeking confirmation from MITI whether to proceed with the incentive.

(d) 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 Feedback:

MOF is in the process of finalising the policy.

3. 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 MIDA Guidelines For Application For Principal Hub Incentive dated 15 May 2020. Please provide an update on the status of the gazette order for the above.

IRBM's Feedback:

The draft on the Income Tax Rules is currently under review.

4. 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. Please indicate when the gazette order for the above-mentioned GITA will be issued.

MOF's Feedback:

The draft order will be finalised after obtain the confirmation on the list of assets.

2020 Budget

1. Tax deduction on expenses incurred by companies for contributions towards Digital Social Responsibility (DSR) initiatives.

IRBM's Feedback:

MOF is expecting the guideline from MDEC. However, MOF is also seeking confirmation from MDEC whether to proceed with the incentive.

2. Accelerated capital allowance on expenses incurred by licensed tour operators for the purchase of new locally assembled excursion buses:
   - Initial allowance of 20%; and
   - Annual allowance of 40%.

MOF's Feedback:

Draft order is being reviewed by MOF's Legal Division.

3. Investment Tax Allowance of 50% on qualifying capital expenditure incurred by qualifying electrical and electronic companies within a period of 5 years, which can be set-off against 50% of statutory income for each YA.

MOF's Feedback:

The guidelines have been published by MIDA. Currently, the draft order is being reviewed by the Legal Division of MOF.

4. Income tax exemption for up to 10 years for electrical and electronic companies investing in selected knowledge-based services.

MOF's Feedback:

The incentive will be considered on the merit of each case under the prepackaged incentive.

5. Expansion of 100% tax exemption to any qualifying entities on statutory income derived from promoting international conferences in Malaysia participated by not less than 500 foreign participants for a YA.

MOF's Feedback:

The draft order is being finalised by AGC.

6. Tax exemption of 100% up to 10 years on qualifying intellectual property income derived from patent and copyright software of qualifying activities.

MOF's Feedback:

Draft order is being reviewed by MOF and the guidelines are being finalised by MIDA.

7. Green Investment Tax Allowance (GITA)
   - Extension of 100% Investment Tax Allowance to the YA 2023 on qualifying capital expenditure incurred for green technology activities.

MOF's Feedback:

The policy for the new regime will be finalised and streamlined with relevant agencies before amending the draft order.

8. Green Income Tax Exemption (GITE)
   - Extension of income tax exemption of 70% of statutory income for qualifying green technology services to the YA 2023; and
   - Income tax exemption of 70% of statutory income up to 10 years of assessment for solar leasing companies certified by the Sustainable Energy Development Authority (SEDA).

MOF's Feedback:

The policy for the new regime will be finalised and streamlined with relevant agencies before amending the draft order.

9. Extension of tax deductions on issuance cost of *sukuk* under the principle of *Wakalah* to the YA 2025.

IRBM's Feedback:

The order has been gazetted on 12 January 2021 through P.U.(A) 5/2021.

10. Extension of tax exemptions on income from managing Syariah-compliant funds to the YA 2023.

MOF's Feedback:

The draft is in process.

11. Extension of tax incentives for venture capital to 31 December 2026.

MOF's Feedback:

SC is reviewing the draft order before submitting to MOF's Legal Division for gazetting process.

12. Tax incentives for organizing arts, cultural, sports and recreational activities in Malaysia.

MOF's Feedback:

MOF is in the process of finalising the policy.

13. Expansion of tax incentives for tourism projects.

MOF's Feedback:

MOF is in the process of finalising the policy.

14. Extension of tax incentives for company participating in National Dual Training Scheme for Industry4WRD programmes approved by the Ministry of Human Resources from 1 January 2020 to 31 December 2021.

MOF's Feedback:

MOF is in the process of finalising the policy.

15. Extension of tax deduction on issuance cost for Sustainable and Responsible Investment (SR) *Sukuk* to the YA 2023

IRBM's Feedback:

The order has been gazetted on 6 January 2021 under P.U. (A) 2/2021.

16. Extension of tax exemption on income derived from managing Sustainable and Responsible Investment (SRI) Fund to the YA 2023.

MOF's Feedback:

The draft is currently under review.

17. Expansion of the scope of tax incentives for automation equipment for Category 2: Other Industries to the services sector for applications received by MIDA between 1 January 2020 and 31 December 2023.

IRBM's Feedback:

The draft is currently under review.

D. Tax Measures proposed under Economic Stimulus Packages 2020 which have not been gazetted

We would like to request for an update on the status of the relevant gazette orders in respect of the following tax measures proposed under the Economic Stimulus Packages 2020: -

1. Annual allowance rate for qualifying capital expenditure incurred on machinery and equipment including ICT equipment, is increased to 40% for capital expenditure incurred from 1 March 2020 to 31 December 2020 as announced during the Economic Stimulus Package 2020 ("ESP 2020"). The eligibility for this accelerated capital allowance is extended to 31 December 2021 as announced during the PENJANA.

MOF's Feedback:

MOF is reviewing the draft order before submitting to the Legal Division for gazetting process.

2. Deduction for the renovation and refurbishment expenditure up to a limit of RM300,000 for expenditure incurred from 1 March 2020 to 31 December 2020 as announced during the ESP 2020. The deduction will not be given if the expenditure is claimed as an allowance under Schedule 2 or Schedule 3 of the ITA 1967. The eligibility for deduction is extended to 31 December 2021 as announced during PENJANA.

IRBM's Feedback:

The draft rules have been gazetted on 28 December 2020 through P.U. (A) 381/2020.

3. Double deduction for pre-commencement expenditure incurred by international shipping companies to set-up a regional office in Malaysia for applications received by MIDA between 31 December 2021 as announced during the ESP 2020.

MOF's Feedback:

Proposed to be discontinued. No feedback received from the shipping association on the type of qualifying expenditure.

4. Double deduction on expenses incurred on trainings approved by the Ministry of Tourism, Arts and Culture provided to employees in the tourism section as announced during ESP 2020. No effective date was provided.

IRBM's Feedback:

Based on the ESP speech dated 27 February 2020, this incentive is to be given under the existing P.U. (A) 61/1992 which has effect from year of assessment 1991.

5. Special deduction of reduction of rental given to SME tenants in respect of rental from April to June 2020 as announced during the ESP 2020. The eligibility for deduction is extended to September 2020 as announced during PRIHATIN PLUS.

MOF's Feedback:

The draft order is being reviewed by MOF. However, there is extension of time and expansion of scope announced through PERMAI.

6. Double tax deduction of expenses (e.g. consultancy fees, capacity building for flexible working arrangements including employees training costs; and cost of purchase of virtual working environment software duly certified by Talent Corp) of up to RM500,000 a year for three (3) consecutive years for employers which implement or undertake enhancement to its flexible work arrangements for applications received by Talent Corp Malaysia Sdn Bhd from 1 July 2020 to 31 December 2020 as announced during PENJANA.

MOF's Feedback:

The draft order is being reviewed by Legal division for gazetting process.

7. Individual income tax exemption of up to RM5,000 on provision of ICT equipment (perquisite) (such as handphone, notebook and tablet) by employer arising from flexible working arrangement with effect from YA 2020 as announced during PENJANA.

MOF's Feedback:

The order has been gazetted on 26 January 2021 under P.U. (A) 30/2021 & 31/2021.

8. Stamp Duty Exemption to SMEs on qualifying instruments executed from July 1, 2020 to June 30, 2021 for Merger and Acquisition ("M&A") approved by the Ministry of Entrepreneur Development and Cooperatives as announced during PENJANA.

MOF's Feedback:

The draft is in the process to be gazetted.

9. Tax Incentives for Manufacturing Sector (as announced during PENJANA): -

- Tax incentives for company relocating to Malaysia
  - 0% tax rate for 10 years for new investment in manufacturing sectors with capital investment between RM300 – RM500 million
  - 0% tax rate for 15 years for new investment in manufacturing sectors with capital investment above RM500 million
- Tax incentive for Malaysian companies
  - 100% investment tax allowance for 5 years for existing company in Malaysia relocation overseas facilities into Malaysia with capital investment above RM300 million.

MOF's Feedback:

MOF/ IRBM/ MIDA is in the process of finalising the guidelines.