



Deloitte TaxMax – the 41st series

Corporate tax and other highlights

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One World Hotel

Bandar Utama, Petaling Jaya



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Corporate Income Tax

Key Changes

Polling

Question 1



Timing of Taxability of Business Income in respect of Services and Use or Enjoyment of Property

Current

Sec. 24(1) - Where in the relevant period a **debt owing** to the relevant person arises in respect of

(b) any **services rendered** at any time in the course of carrying on a business; or

(c) the use or enjoyment of any property dealt with at any time in the course of carrying on a business;

the amount of the debt shall be treated as gross income of the relevant person from the business for the relevant period.

- Where a payment is **received** in respect of service **to be rendered** or property for use or enjoyment **to be dealt with** and the payment is **refundable**, the deferred income recognised for the advance payment received should not be subject to income tax (unless and until the service has been rendered or the property for use or enjoyment has been dealt with) - *Clear Water Sanctuary Golf Management Berhad v Ketua Pengarah Hasil Dalam Negeri*

Timing of Taxability of Business Income in respect of Services and Use or Enjoyment of Property



Timing of Taxability of Business Income in respect of Services and Use or Enjoyment of Property

Proposed

Amendment to Section 24(1)(b) and (c)	Debt arises in respect of: <ul style="list-style-type: none">• Any services rendered or to be rendered at any time• use or enjoyment of any property dealt with or to be dealt with treated as gross income from the business for the relevant period
New subsection 24(1A)	Any sum received in respect of services to be rendered or use or enjoyment of property to be dealt with in the relevant period or following period shall be treated as gross income for the relevant period the sum is received notwithstanding that no debt is owing in respect of such services...
New subsection 34(7A)	Where the sum received is subsequently refunded in the basis period, the amount refunded shall be allowed as a deduction from the gross income in the year of assessment in which the amount was refunded.

Effective Date

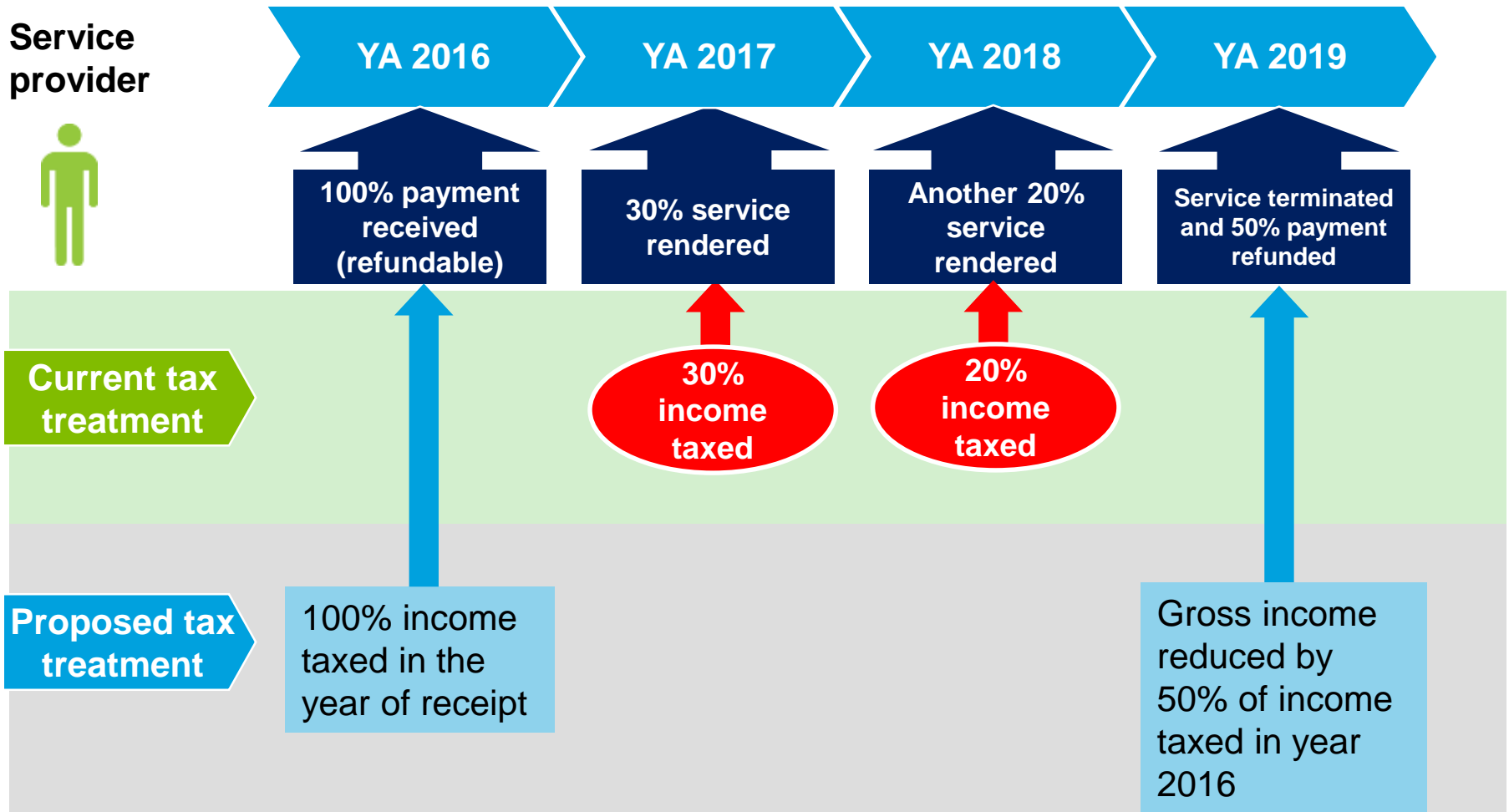
- Year of assessment 2016 onwards

Timing of Taxability of Business Income in respect of Services and Use or Enjoyment of Property

Examples

- Fastest Sdn Bhd (“FSB”) is involved in the business of providing consultancy services and has financial year end of 31 December.
- In November 2016, FSB is contracted by a new client to render consultancy service from 1 January 2017 onwards.
- The billing arrangement is such that FSB will issue an invoice on 31 December of each year based on the percentage of service rendered in that financial year.
- However, in December 2016, the client remits 100% of the service fee in advance to FSB prior to the commencement of service.
- FSB commenced work on 1 January 2017 and by 31 December 2017, 30% of the service was completed by FSB. By 31 December 2018, another 20% of the service was completed.
- The client, being not satisfied with the service performed by FSB, terminates the service on 1 January 2019 and FSB refunded 50% of the payment received to the client on 15 January 2019.

Timing of Taxability of Business Income in respect of Services and Use or Enjoyment of Property



Timing of Taxability of Business Income in respect of Services and Use or Enjoyment of Property

Food for thought

A) Contract signed with customer but as of the end of the financial year, services has not been rendered and no payment made by customer.

YA 2016

31.12.2016 Elite Sdn Bhd enters into a service contract with a client. The service fee agreed in the service contract is RM100,000.

YA 2017

03.03.2017 Elite Sdn Bhd issues invoice for RM100,000 to the client.

05.03.2017 Elite Sdn Bhd commences the service.

YA 2018

31.01.2018 Elite Sdn Bhd completes the service.

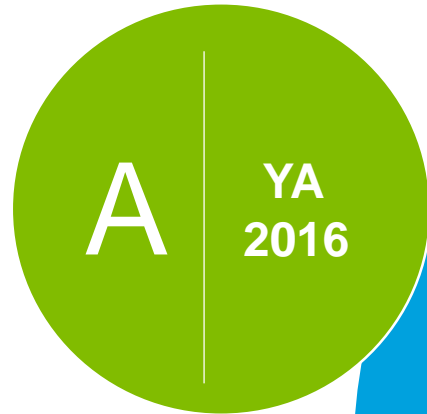
YA 2019

1.3.2019 Client makes payment of RM100,000 to Elite Sdn Bhd.

Question: When is the service fee of RM100,000 taxable?

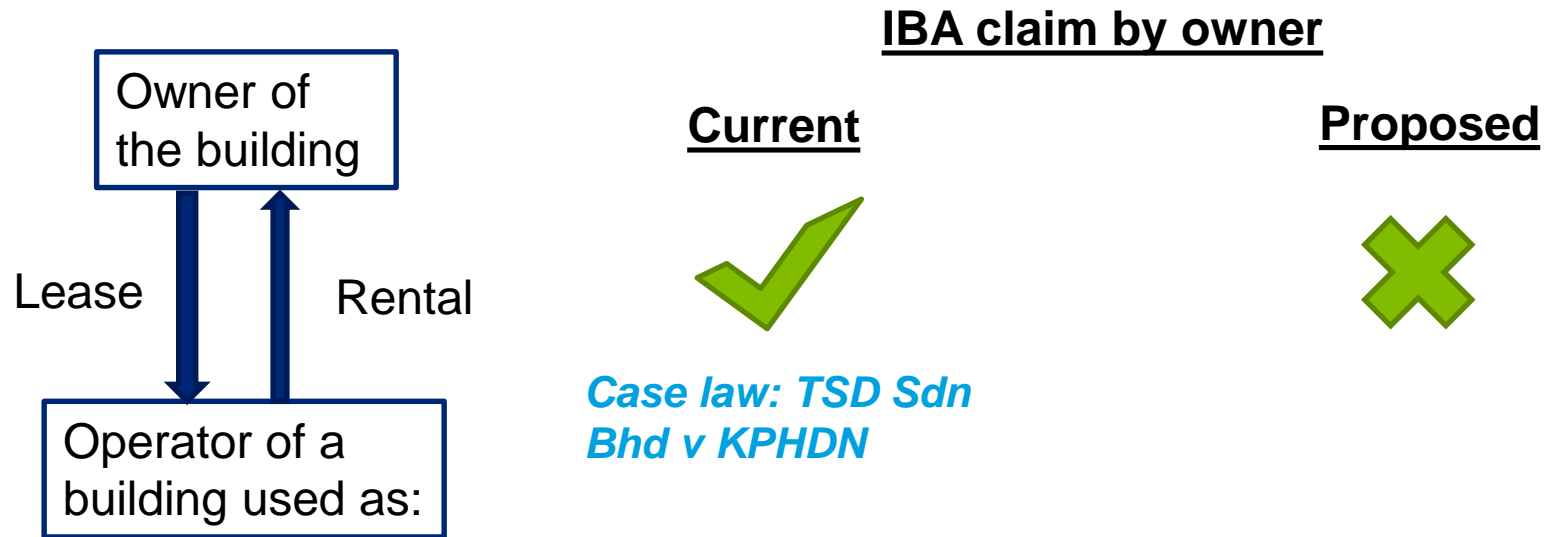
Polling

Question 2



When is the
service fee of
RM100,000
taxable?

Restriction on Claiming of Industrial Building Allowance (“IBA”)



- a) Licensed private hospital, maternity home and nursing home
- b) Building used for research
- c) Warehouse – for storage of goods for export or for the storage of imported goods which are to be processed and distributed or re-exported
- d) Building for approved service project
- e) Hotel
- f) Airport
- g) Motor racing circuit
- h) School or education institution approved by the Minister of Education or Minister of Higher Education or any relevant authority
- i) Living accommodation for staff

Effective date

Year of assessment 2016 onwards

Restriction on Claiming of Industrial Building Allowance (“IBA”)

Industrial buildings that are **not** affected by the above restriction – industrial buildings that are used for the purposes of a business and :

a) for the purposes of industrial, technical or vocational training approved by the Minister	Para 42C, Schedule 3
b) used as a factory; c) used as a dock, wharf, jetty or other similar building; d) used as a warehouse and the business consists or mainly consists of the hire of storage space to the public; e) the business is that of a water or electricity undertaking supplying water or electricity for consumption by the public or is that of a telecommunication undertaking providing telecommunication services to the public; f) it is used in connection with the working of a farm and the business consists or mainly consists of the working of the farm, with or without other farms; and g) it is used in connection with the working of a mine and the business consists or mainly consists of the working of a mine, with or without other mines.	Para 63, Schedule 3

Interest Payable but not due to be paid

Current

- With effect from the year of assessment 2014, interest payable is not deductible for income tax purposes if it is not due to be paid.
- The tax deduction is to be given when interest is due to be paid.

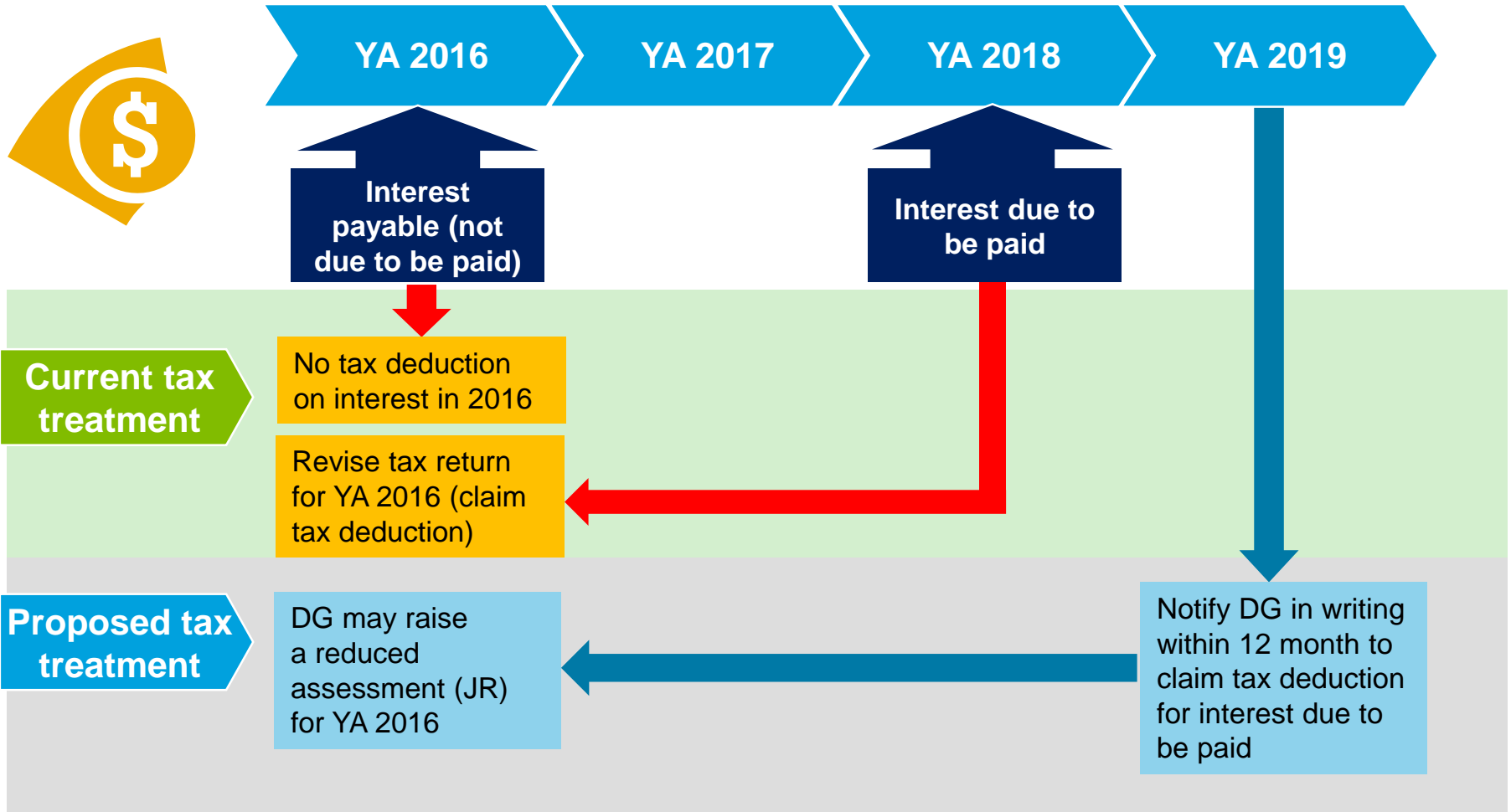
Proposed

- Where interest payable becomes due to be paid in the basis period for a future year of assessment, the Director General shall be notified in writing for the claim of tax deduction not later than **12 months** from the end of that basis period.
- On receipt of the notice, the Director General may reduce the assessment which has been made.

Effective Date

Year of assessment 2016 onwards

Interest Payable but not due to be paid



Replacement of part of an asset

Description	Proposal	Implications
If part of the asset ceases to be used due to it has been replaced with a new part	Deemed disposal	To determine the qualifying expenditure of the part of the asset disposed according to GAAP and compute the balancing adjustments
If the new part is depreciated separately based on the general acceptable accounting principles	The cost incurred for the new part of the asset is regarded as qualifying expenditure.	To claim capital allowance on the qualifying expenditure incurred

Effective date

Year of assessment 2016 onwards.

Replacement of part of an asset

Example

Richman Sdn Bhd purchased a generator in year 2016 with a consideration of RM1 million. In year 2019, the engine is replaced with a new one with a cost of RM800,000 while the old engine is disposed of for RM200,000. The new engine is recognised as “Property, Plant & Equipment” in the company’s balance sheet and depreciated separately in accordance with GAAP.

YA	Description	Qualifying expenditure (RM)	Addition / Residual expenditure b/f (RM)	Initial allowance (20%) (RM)	Annual Allowance (20%) (RM)	Residual expenditure c/f (RM)
2016	Generator	1,000,000	1,000,000	200,000	200,000	600,000
2017	Generator	1,000,000	600,000	-	200,000	400,000
2018	Generator	1,000,000	400,000	-	200,000	200,000
2019	Generator	300,000 (Note 1)	60,000 (Note 2)	-	60,000	-

Note 1: Assuming the value of the old engine is RM700,000 based on the GAAP. QE for 2019 = RM1,000,000 – RM700,000 = RM300,000

Note 2: RE = RM200,000 x 300,000 / 1,000,000 = RM60,000

Replacement of part of an asset

Example (cont'd)

Disposal of old engine in 2019:

YA	Description	Qualifying expenditure (RM)	Addition / Residual expenditure b/f (RM)	Initial allowance (20%) (RM)	Annual Allowance (20%) (RM)	Residual expenditure c/f (RM)
2016	Old engine	700,000	700,000	140,000	140,000	420,000
2017	Old engine	700,000	420,000	-	140,000	280,000
2018	Old engine	700,000	280,000	-	140,000	140,000

Computation of balancing charge / (balancing allowance)

= Disposal price – residual expenditure

= RM200,000 – RM140,000

= RM60,000

Replacement of part of an asset

Example (cont'd)

Capital allowance computation for the new engine

YA	Description	Qualifying expenditure (RM)	Residual expenditure b/f (RM)	Initial allowance (20%) (RM)	Annual Allowance (20%) (RM)	Residual expenditure c/f (RM)
2019	New engine	800,000	800,000	160,000	160,000	480,000
2020	New engine	800,000	480,000	-	160,000	320,000
2021	New engine	800,000	320,000	-	160,000	160,000
2022	New engine	800,000	160,000	-	160,000	-

Assets held for sale

Current

- Where an asset is classified as “asset held for sale” according to the GAAP, such an asset shall be deemed to have ceased to be in use for capital allowance purpose.

Proposed

- For RA purpose, the definition of “ceased to be used” in relation to an asset includes an asset classified as held for sale.
- In addition, the definition of “disposed of” is to be amended to include the words “ceased to be used”.

Effective date

Year of assessment 2016 onwards.

Assets held for sale

Example

Company A incurred RM500,000 capital expenditure in YA 2014 for the purpose of qualifying project for RA purpose. Due to the economy downturn in YA 2016, the company has decided to cease operation and all the assets are classified as “assets held for sale” in the accounts for year 2016.

	RM
Reinvestment allowance claimed in YA 2014 (RM500,000 x 60%)	300,000

Given that the assets are “disposed off” within 5 years, the reinvestment allowance claimed in YA2014 should be clawed back and shall form part of the statutory income for YA 2016.

Corporate Income Tax

Issues in relation to GST Implementation

Polling

Question 3

The Malaysian GST system has been implemented on 1 April 2015. In this past 7 months, have you experienced any of the following situations?

1. Forgot to claim input tax
2. The clients request you to bear the GST / don't charge them GST
3. The Customs rejects the claim of input tax because of late registration

A Yes

B No, I am fully compliant!

Non-allowable Expenses - GST Costs

Current

- Presently, it is unclear as to whether the input tax incurred but not claimable for GST purposes and whether output tax borne by the taxpayer is allowable for income tax deduction purposes.

Proposed

New Sub-Section	Non-allowable expenses
39(1)(o)	<ul style="list-style-type: none">• Input tax paid or to be paid<ul style="list-style-type: none">— where the person is liable to register for GST but fails to do so; or— If the person is entitled to claim the said amount as input tax credit
39(1)(p)	<ul style="list-style-type: none">• Output tax paid or to be paid which is borne by the person if he is registered or liable to be register for GST

Effective date

Year of assessment 2015 onwards.

Non-allowable Expenses - GST Costs

Input Tax Incurred

Scenario	GST Claimable?	Income tax deductible?
Company is registered for GST		
Blocked input tax on medical expenses for staff	X	✓
Input tax attributable to exempt supplies	X	✓
Input tax attributable to taxable supplies	✓	X
Input tax attributable to taxable supplies but company erroneously treated input tax as blocked input tax	X	X
Below Threshold to Register for GST		
Input tax incurred for all purchases (incurred for business purpose)	X	✓
Reached Threshold but Does Not Register for GST		
Input tax incurred for all purchases (incurred for business purpose)	X	X

Non-allowable Expenses - GST Costs

Output Tax Borne

Scenario	GST Claimable?	Income tax deductible?
Company is registered for GST		
Output tax borne by company	X	X
Deemed output tax – e.g. free gifts RM500 and above	X	X

Assessments for adjustments made on input tax

Proposed

New subsection 91(6)

- The Director General (DG) may **at any time**, make an assessment or a reduced assessment for the year of assessment to which the input tax adjustment relates to, or if the year of assessment to which the adjustment relates cannot be ascertained, the assessment can be made for the year of assessment in which the DG discovers the adjustment.

Question: Is there a time bar ?

Assessments for adjustments made on input tax

Example 1

Carelas Sdn Bhd closes its accounts on 31 December every year. In the basis period for the year of assessment (YA) 2016, the company paid for the flight ticket and hotel accommodation charges incurred by its managing director for business purposes.

In the tax computation for the YA 2016, a tax deduction was claimed only for the GST exclusive amount of the flight and hotel accommodation expense. This is on the basis that the company was entitled to and had claimed the GST portion as input tax credit.

In 2019, the Customs Authority conducted an audit and found out that the company was not entitled to claim input tax credit because the tax invoice for the flight and hotel accommodation was issued in the name of the managing director (and not in the name of the company).

Question: Can Carelas Sdn Bhd claim a tax deduction on the GST paid for the hotel lodging?

Assessments for adjustments made on input tax

Answer – Yes!

As the company was not entitled to claim input tax credit on GST incurred for the flight and hotel accommodation, the Director General of the Inland Revenue may issue a reduced assessment for the YA 2016 to take into account the tax deduction that should have been claimed.

However, any GST penalty imposed by the Customs Authority on the erroneous claim for input tax credit is not deductible for income tax purposes.

Capital allowance claim on input tax

Current

- Presently, it is unclear as to whether the input tax incurred but not claimable for GST purposes can be included as part of qualifying capital expenditure for purposes of capital allowance claim.

Proposed

New paragraph under Schedule 3	Situations where input tax incurred cannot be considered as part of qualifying capital expenditure
Paragraph 2E	<ul style="list-style-type: none">• Input tax paid or to be paid<ul style="list-style-type: none">— where the person is liable to register for GST but fails to do so; or— If the person is entitled to claim the said amount as input tax credit

Effective date

Year of assessment 2015 onwards.

Capital allowance claim on input tax

Scenario	GST Claimable?	Part of qualifying expenditure for CA claim?
Company is registered for GST		
Blocked input tax on passenger car used for business purposes	X	✓
Input tax incurred on office equipment used wholly for taxable supply	✓	X
Input tax incurred on office equipment used wholly for taxable supply and company erroneously treated the input tax as blocked input tax	X	X
Below Threshold to Register for GST		
Input tax incurred on office equipment used wholly for taxable supply	X	✓
Reached Threshold but Does Not Register for GST		
Input tax incurred on office equipment used wholly for taxable supply	X	X

Adjustment to qualifying capital expenditure and residual expenditure arising from GST adjustments on input tax credit

Current

- Presently, it is unclear as to whether a company is required to make an adjustment to the capital allowance, investment tax allowance and reinvestment allowance claimed as result of adjustments made on input tax for GST purpose (mixed supply).

Proposed

- An adjustment needs to be made on the qualifying capital expenditure (QCE) and residual expenditure (RE) in the YA in which the period of adjustment relating to the assets under the GST Act ends:

Input tax claimed reduced	Input tax claimed increased
<ul style="list-style-type: none">• Increase QE and RE	<ul style="list-style-type: none">• Reduce QE and RE• If the adjustment amount exceeds the residual expenditure, the excess amount will form part of the statutory income of the business.

- In the case of disposal, the adjustment needs to be made in the YA in which the disposal is made.

Effective date

Year of assessment 2015 onwards.

Adjustment to qualifying capital expenditure and residual expenditure arising from GST adjustments on input tax credit

Example 1

Company A, a GST registrant, acquired a machine with a consideration of RM1,060,000 (inclusive of 6% GST) in year 2016. It is a property developer and making mixed supplies. Hence, it would only be able to claim a portion of the GST charged by the seller as input tax credit.

Description	RM
Total taxable supply made in 2016	2,000,000
Exempt supply made in 2016	2,000,000
Total taxable supply made in 2017	3,000,000
Exempt supply made in 2017	2,000,000
Total taxable supply made in 2018	2,000,000
Exempt supply made in 2018	3,000,000
Total taxable supply made in 2019	1,500,000
Exempt supply made in 2019	3,500,000
Total taxable supply made in 2020	1,000,000
Exempt supply made in 2020	1,500,000

Year	Residual input tax recovery rate	%
2016	$2,000,000 / (2,000,000 + 2,000,000) \times 100\%$	50%
2017	$3,000,000 / (3,000,000 + 2,000,000) \times 100\%$	60%
2018	$2,000,000 / (2,000,000 + 3,000,000) \times 100\%$	40%
2019	$1,500,000 / (1,500,000 + 3,500,000) \times 100\%$	30%
2020	$1,000,000 / (1,000,000 + 1,500,000) \times 100\%$	40%

Adjustment to qualifying capital expenditure and residual expenditure arising from GST adjustments on input tax credit

Example 1 (cont'd)

Interval (tax year)	% of annual taxable use	Adjustment %	Capital Goods Adjustment	Input tax		Qualifying expenditure
				Claimable	Not claimable	
1 st Interval (2016)	50% (Baseline)	No CGA adjustment is required in the 1 st interval	ITC = RM 30,000 (RM 60,000 x 50%)	30,000	30,000	1,030,000
2 nd Interval (2017)	60%	60% - 50% = 10%	$\frac{\text{RM } 60,000}{5} \times 10\% = 1,200$	31,200	28,800	1,028,800
3 rd Interval (2018)	40%	40% - 50% = -10%	$\frac{\text{RM } 60,000}{5} \times (-10\%) = (1,200)$	30,000	30,000	1,030,000
4 th Interval (2019)	30%	30% - 50% = -20%	$\frac{\text{RM } 60,000}{5} \times (-20\%) = (2,400)$	27,600	32,400	1,032,400
5 th Interval / Final Interval (2020)	40%	40% - 50% = -10%	$\frac{\text{RM } 60,000}{5} \times (-10\%) = (1,200)$	26,400	33,600	1,033,600

Adjustment to qualifying capital expenditure and residual expenditure arising from GST adjustments on input tax credit

Example 1 (cont'd)

Year of assessment	Qualifying plant expenditure (RM)	Residual expenditure b/f (RM)	Initial allowance (20%) (RM)	Annual allowance (14%) (RM)	Residual Expenditure c/f (RM)
2016	1,030,000	1,030,000	$1,030,000 \times 20\% = 206,000$	$1,030,000 \times 14\% = 144,200$	679,800
2017	1,030,000	679,800	-	$1,030,000 \times 14\% = 144,200$	535,600
2018	1,030,000	535,600	-	$1,030,000 \times 14\% = 144,200$	391,400
2019	1,030,000	391,400	-	$1,030,000 \times 14\% = 144,200$	247,200
2020	1,033,600 Note 1	250,800 Note 2	RM3,600 x 20% = RM720	1,033,600 x 14% = 144,704	105,376

Note 1: Qualifying plant expenditure in the last year (Year 2020) in which final adjustment is made

Note 2: Residual expenditure = RM247,200 + (RM1,033,600 – RM1,030,000) = RM250,800

Adjustment to qualifying capital expenditure and residual expenditure arising from GST adjustments on input tax credit

Example 2

The facts are the same as in Example 1 above except that the asset is disposed of at the price of RM500,000 in Year 2019 .

Interval (tax year)	% of annual taxable use	Adjustment %	Capital Goods Adjustment	Input tax		Qualifying expenditure
				Claimable	Not claimable	
1 st Interval (2016)	50% (Baseline)	No CGA adjustment is required in the 1 st interval	ITC = RM 30,000 (RM 60,000 x 50%)	30,000	30,000	1,030,000
2 nd Interval (2017)	60%	60% - 50% = 10%	$\frac{\text{RM } 60,000}{5} \times 10\% = 1,200$	31,200	28,800	1,028,800
3 rd Interval (2018)	40%	40% - 50% = -10%	$\frac{\text{RM } 60,000}{5} \times (-10\%) = (1,200)$	30,000	30,000	1,030,000
4 th Interval (2019)	30%	30% - 50% = -20%	$\frac{\text{RM } 60,000}{5} \times (-20\%) = (2,400)$	27,600	32,400	1,032,400

Adjustment to qualifying capital expenditure and residual expenditure arising from GST adjustments on input tax credit

Example 2 (cont'd)

Year of assessment	Qualifying plant expenditure (RM)	Residual expenditure b/f (RM)	Initial allowance (20%) (RM)	Annual allowance (14%) (RM)	Residual Expenditure c/f (RM)
2016	1,030,000	1,030,000	1,030,000 x 20% = 206,000	1,030,000 x 14% = 144,200	679,800
2017	1,030,000	679,800	-	1,030,000 x 14% = 144,200	535,600
2018	1,030,000	535,600	-	1,030,000 x 14% = 144,200	391,400

Computation of balancing charge / (balancing allowance) in YA 2019

$$\begin{aligned}
 &\text{Disposal price} - [\text{Residual expenditure} + (\text{RM}1,032,400 - \text{RM}1,030,000)] \\
 &= \text{RM}500,000 - (\text{RM}391,400 + 2,400) \\
 &= \text{RM}500,000 - \text{RM}393,800 \\
 &= \text{RM}106,200
 \end{aligned}$$

Adjustment to qualifying capital expenditure and residual expenditure arising from GST adjustments on input tax credit

Example 3

Company XYZ, a GST registrant, acquired a computer equipment with a consideration of RM1,060,000 (inclusive of 6% GST) in year 2016. It is a property developer and making mixed supplies. Hence, it would only be able to claim a portion of the GST charged by the seller as input tax credit.

Interval (tax year)	% of annual taxable use	Adjustment %	Capital Goods Adjustment	Input tax		Qualifying expenditure
				Claimable	Not claimable	
1 st Interval (2016)	50% (Baseline)	No CGA adjustment is required in the 1 st interval	ITC = RM 30,000 (RM 60,000 x 50%)	30,000	30,000	1,030,000
2 nd Interval (2017)	40%	40% - 50% = -10%	$\frac{\text{RM } 60,000}{5} \times (-10\%) = (1,200)$	28,800	31,200	1,031,200
3 rd Interval (2018)	55%	55% - 50% = 5%	$\frac{\text{RM } 60,000}{5} \times 5\% = 600$	29,400	30,600	1,030,600
4 th Interval (2019)	60%	60% - 50% = 10%	$\frac{\text{RM } 60,000}{5} \times 10\% = 1,200$	30,600	29,400	1,029,400
5 th Interval / Final Interval (2020)	70%	70% - 50% = 20%	$\frac{\text{RM } 60,000}{5} \times 20\% = 2,400$	33,000	27,000	1,027,000

Adjustment to qualifying capital expenditure and residual expenditure arising from GST adjustments on input tax credit

Example 3 (cont'd)

Year of assessment	Qualifying plant expenditure (RM)	Residual expenditure b/f (RM)	IA (20%) (RM)	AA (14%) (RM)	Residual Expenditure c/f (RM)
2016	1,030,000	1,030,000	$1,030,000 \times 20\% = 206,000$	$1,030,000 \times 80\% = 824,000$	-
2017	1,030,000	-	-	-	-
2018	1,030,000	-	-	-	-
2019	1,030,000	-	-	-	-
2020	1,027,000	-	-	-	-

YA 2020

The difference between RM1,027,000 and RM1,030,000 (RM3,000) will form part of statutory business income of Company XYZ for YA 2020

Corporate Income Tax

Tax Incentives

Special Reinvestment Allowance

Current

- A company can claim reinvestment allowance (“RA”) for 15 consecutive years of assessment (YA) from the YA the RA is first claimed for undertaking qualifying projects.

Proposed

- A company can claim special reinvestment allowance up to YA 2018 even if the 15 years period has expired.

YA in which the Existing 15 Consecutive YA Incentive Period Ended	YA in which the capital expenditure is incurred that qualifies for special RA claim
YA 2015 or prior year of assessments	YA 2016 to YA 2018
YA 2016	YA 2017 and YA 2018
YA 2017	YA 2018
After YA 2017	None

Effective date

Years of assessment 2016, 2017 and 2018.

Automatic Double Deduction for R&D Projects

Current	Proposed
<ul style="list-style-type: none">• A company which carries out R&D projects is entitled to claim a double deduction on R&D project expenditure incurred for R&D project approved by the Inland Revenue Board (IRB) – Section 34A• An application (Form 1) must be submitted to the IRB 6 months before the financial year end of the business.	<ul style="list-style-type: none">• A company with paid-up share capital not exceeding RM2.5 million would be allowed to claim automatic double deduction for R&D project expenditure of up to RM50,000 per year of assessment.• However, required to submit R & D project application to the IRB

Effective Date

Years of assessments 2016 to 2018

Issues

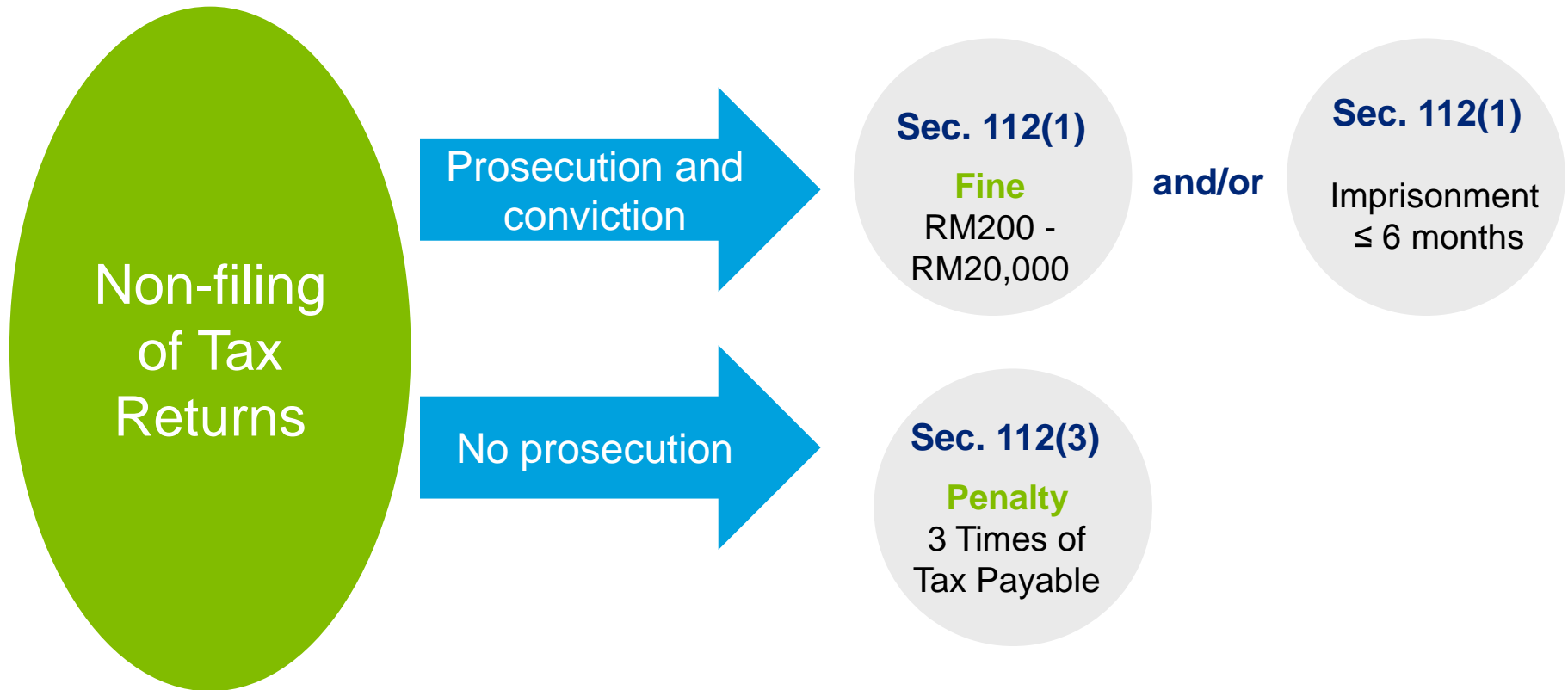
- Why the need to submit R & D project application to IRB when it is an automatic double deduction?
- What if the company incurred RM100,000 of R & D expenses for a R & D project?
- Does the existing definition on SME apply?

Corporate Income Tax

Tax Administrative Matters

Non-Filing of Tax Returns

Current



Non-Filing of Tax Returns

Proposed

Non-filing
of Tax
Returns
(for
≥ 2
years)

Prosecution
and
conviction

Sec. 112(1A)

Fine
RM1,000 -
RM20,000

and/or

Sec. 112(1A)

Imprisonment
≤ 6 months

and

Sec. 112(1A)

**Special
Penalty:
3 Times
of Tax
Payable**

No
prosecution

Sec. 112(3)

Penalty
3 Times of
Tax Payable

Effective Date

Upon coming into operation Finance Act 2015

Non-Filing of Tax Returns

Example

Risk Taker Sdn Bhd does not have any chargeable income in YAs 2016 and 2017. Therefore, the company does not submit any tax return to the IRB for these 2 YAs.

However, due to whistleblowing from an employee of Risk Taker Sdn Bhd, the IRB discovers the non-filing.

What is the penalty that will be imposed on Risk Taker Sdn Bhd?

- (A) Special Penalty of 3 Times Tax Payable
- (B) Fine of RM200 – RM20,000 and/or Imprisonment
- (C) Fine of RM1,000 – RM20,000 and/or Imprisonment

Polling

Question 4

A

Special
Penalty
of 3
Times
Tax
Payable

What is the penalty
that will be imposed
on Risk Taker Sdn
Bhd?

B

Fine of RM200
– RM20,000
and/or
Imprisonment

C

Fine of
RM1,000 –
RM20,000
and/or
Imprisonment

Failure to Furnish Correct Particulars

Current

- There is no specific provision to penalize taxpayers for furnishing of incorrect particulars other than chargeable income and tax payable.

Proposed

- Any person who fails to furnish the correct particulars as required by the Director General in the tax return shall be guilty of an offence and shall on conviction, be liable to a fine from RM200 to RM20,000 or to imprisonment for a term up to 6 months, or to both.

Definition of “Particulars”?

Effective date

Upon coming into operation of the Finance Act 2015

Section 108 account



- If the revised Section 108 account balance after the adjustment above **exceeds** the Section 108 account balance as at 31 December 2013, the Director General will issue a notice of requisition to the company to recover the excess amount.
- The excess amount has to be paid within 30 days from the date of the notice. An additional 10% penalty will be imposed if the company fails to settle the payment within the stipulated deadline.

Section 108 account

Example

ABC Sdn Bhd has submitted the Form R for the year of assessment 2013 with a Section 108 balance of RM5,000.

In year 2016, the company receives a Notice of Reduced Assessment for year of assessment 2007 from IRB. As a result, the revised income tax payable for year of assessment 2007 is reduced by RM50,000.

Computation of revised Section 108 balance for YA 2016

	<u>RM</u>
Section 108 balance b/f	5,000
Less:	
Tax paid in excess due to reduced assessment issued for YA 2007	(50,000)
Revised balance	(45,000)

Payable to IRB within 30 days from date of notice issued by IRB

Mandatory electronic filings

Current

- A company may furnish the return of employer (Form E), tax estimate (Form CP204) and revised tax estimate (Form CP204A) in manual forms or electronically.

Proposed

- A company shall furnish the Form E, Form CP204 and Form CP204A on an electronic medium or by way of electronic transmission.

Effective date

Year of assessment 2016 onwards

Real Property Gains Tax ("RPGT")

GST Cost

Current

- Presently, it is unclear as to whether the input tax incurred but not claimable for GST purposes as well as output tax borne are allowable for RPGT purposes.

Proposed

New Paragraph	Expenses that should be included as incidental cost
Para 6(1)(e)	<ul style="list-style-type: none">• Input tax paid or to be paid where the disposer is not liable to register for GST or if he is registered but not entitled to input tax credit.

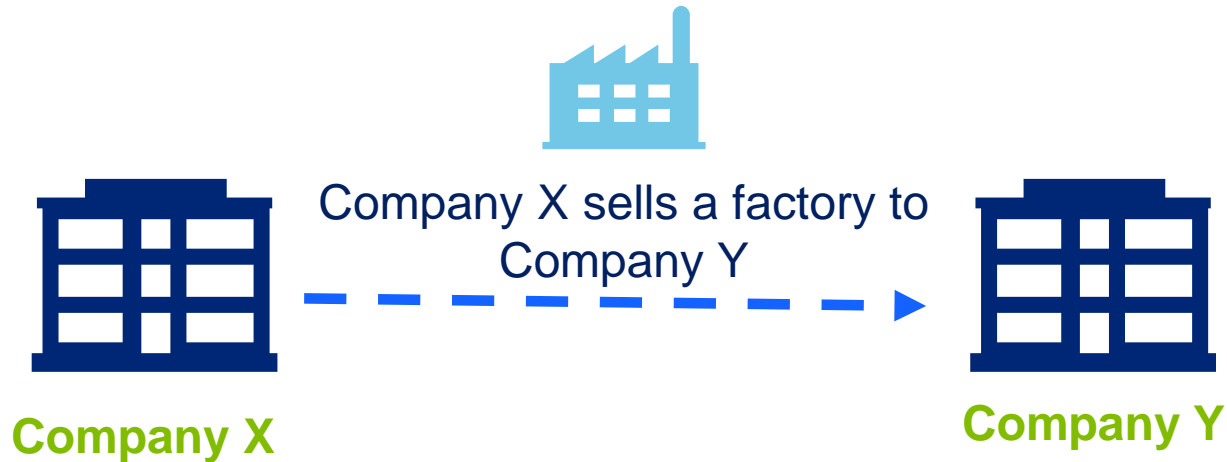
New Paragraph	Expenses that should NOT be included in computing acquisition price / disposal price
Para 7(d) and 7(e)	<ul style="list-style-type: none">• Input tax paid or to be paid where the disposer is liable to register for GST but fails to do so.• Input tax paid but choose not to claim input tax credit• Output tax is borne by the GST registrant.

Effective date

Year of assessment 2015 onwards

GST Cost

Example



Company X disposes of a factory at the price of RM1,000,000 (excluding GST) to Company Y in year 2017. The factory was acquired in year 2016 at the price of RM848,000 (RM800,000 + 6% GST).

- Scenario 1** – Company X is not a GST registrant (e.g. annual sales turnover is less than RM500,000).
- Scenario 2** – Company X is not a GST registrant although it is supposed to be registered.
- Scenario 3** – Company X and Company Y are GST registrants since 1 April 2015.
- Scenario 4** – Company X is a GST registrant since 1 April 2015 but Company Y is not a GST registrant. In this regard, Company X opts to absorb the output GST.

GST Costs

Example (Cont'd)

	Scenario 1 X – Not registered (RM)	Scenario 2 X – Not registered but supposed to be registered (RM)	Scenario 3 X – Registered Y - Registered (RM)	Scenario 4 X – Registered but X chooses to absorb the output GST Y – Not registered (RM)
Disposal price				
Total amount charged by Company X	1,000,000	1,000,000	1,000,000	1,000,000
Incidental cost	-	-	-	Note 1
Total	1,000,000	1,000,000	1,000,000	1,000,000
<u>Acquisition price</u>				
Building cost	800,000	800,000	800,000	800,000
Incidental cost	48,000	Note 2	-	-
Total	848,000	800,000	800,000	800,000
Chargeable gain	152,000	200,000	200,000	200,000

Note 1 - Output GST absorbed by Company X cannot be claimed as incidental cost for RPGT purpose.

Note 2 - The GST charged by the seller cannot be claimed as incidental cost as Company X is required to be registered but failed to do so.

Penalty on additional tax payable for non-submission or late submission

Current

The IRB may impose a late filing penalty up to 3 times of the RPGT payable if a person fails to submit the returns within the stipulated deadline.

Proposed

Penalty mentioned above will also be imposed in respect of the additional tax payable for the case where the taxpayer fails to submit the returns within the stipulated deadline.

Effective Date

Coming into operation of Finance Act 2015

RPGT Exemption for Individual

Currently, an individual who disposes of a real property is entitled to claim an exemption of RM10,000 or 10 percent of the chargeable gain, whichever is greater.

In the case of partial disposal, the exemption is to be calculated based on the formula below:-

Current formula:-

$$\frac{A}{B} \times C$$

Where

A is part of the area of the chargeable asset disposed;

B is the total area of the chargeable asset;

C is RM10,000 **or 10% of the chargeable gain whichever is greater.**

Proposed formula:-

$$\frac{A}{B} \times C$$

Where

A is part of the area of the chargeable asset disposed;

B is the total area of the chargeable asset;

C is RM10,000

OR ten percent of the chargeable gain whichever is greater.

RPGT Exemption for Individual

Example 1

Wong sold 4 acres out of 8 acres of his land in Damansara for RM1.2million which he bought at RM500,000 4 years ago. The exemption computation based on the proposed formula is as follows:-

$$\text{Chargeable gain} = \text{RM1,200,000} - \text{RM500,000} = \text{RM700,000}$$

The amount of RPGT exemption that Wong is entitled to would be the higher of the following:-

$$\frac{4 \text{ acres}}{8 \text{ acres}} \times \text{RM10,000} = \text{RM5,000} \text{ or}$$

$$10\% \text{ of RM700,000} = \text{RM70,000}$$

Hence, Wong is entitled to an exemption of RM 70,000.

Appendix

Other Issues

Corporate tax

Restriction on claim of capital allowance in respect of small value assets

Description	Current	Proposed
Capital allowance claim in respect of small value assets - Value of each asset not more than RM1,300 and total value must not be more than RM13,000	The restriction does not apply to a resident company that has a paid up capital in respect of ordinary shares of RM2.5 million and less at the beginning of the basis period for a year of assessment	The restriction is extended to resident company that is not incorporated in Malaysia

Effective Date

Year of assessment 2016 onwards

Non-allowable Expenses

Remuneration Paid for Public Entertainers

Current

- There is no provision to disallow remuneration paid for services performed or rendered by public entertainers in Malaysia if withholding tax under Section 109A has not been remitted accordingly.

Proposed

- A new sub-section 39(1)(q) is introduced.
- No deduction for remuneration paid for services performed by public entertainers in Malaysia **unless withholding tax and late payment penalty (if any) has been remitted to the IRB.**
- If a tax deduction for such remuneration is made in the tax return and the withholding tax and late payment penalty are paid after the due date for furnishing of the tax return, penalty for tax undercharged under Section 113(2) may be imposed.

Effective Date

1 January 2016

Tax Incentive for the Establishment of Independent Conformity Assessment Bodies (“ICAB”)

Current

- ICAB is a company that offers independent conformity assessment services to its clients to test their products, materials, systems or services for conformance to international specifications or safety standards and other conformities.
- Currently, there is no tax incentive for ICABs.

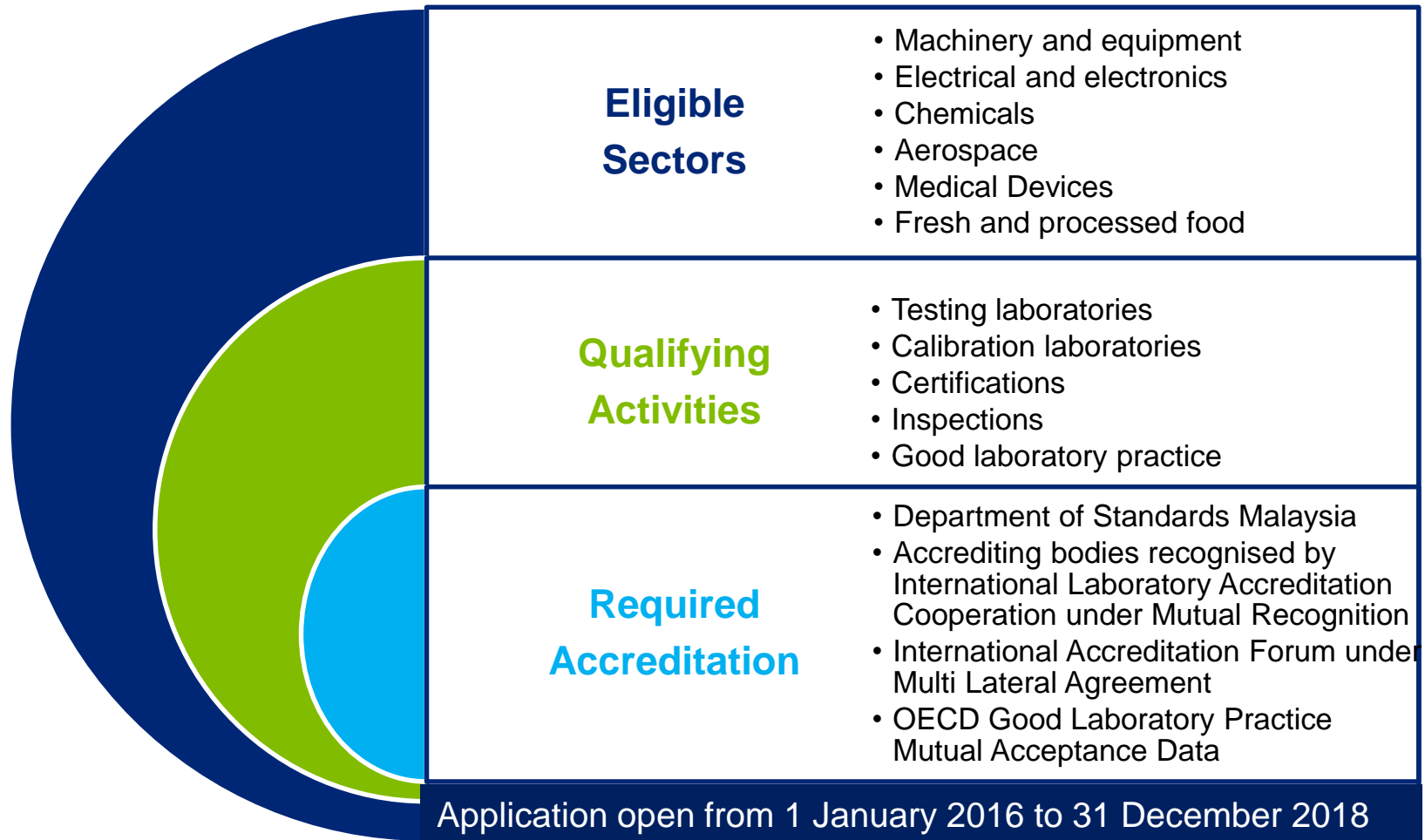
Proposed

Tax incentive	New ICAB	Existing ICAB with additional qualifying activities
Income tax exemption OR	100% of statutory income from qualifying activities for 5 years	N/A
Investment tax allowance	Allowance of 60% on qualifying capital expenditure incurred for 5 years and can be offset against up to 100% statutory income	Allowance of 60% on qualifying capital expenditure incurred for 5 years and can be offset against up to 100% statutory income.

For application received by MIDA from 1 January 2016 to 31 December 2018.

Tax Incentive for the Establishment of Independent Conformity Assessment Bodies (“ICAB”)

Proposed



Extension of Tax Incentive (Approved Food Production Projects)

Current

Qualifying company	Tax incentive
Resident company investing in a subsidiary company (at least 70% shareholding) carrying out a new approved food production project	<p>Tax deduction for the holding company equal to the value of investment (in the form of cash or holding of paid-up share capital in the subsidiary company) which is incurred as expenditure by the subsidiary company (amount and period of deduction as approved by the Minister of Agriculture)</p> <p>If investment is in ordinary share capital and is disposed of within 5 years from the date of the last investment, the consideration for the disposal is taxable when received.</p>
Resident company carrying out a new approved food production project	<p>100% income tax exemption on statutory income for 10 years of assessment commencing from the first year the company derives statutory income</p> <p>Losses incurred before and during exemption period can be carried forward after the exemption period</p>
Resident company carrying out expansion of an existing food production project	<p>100% income tax exemption on statutory income for the expansion of the existing project for 5 years of assessment</p> <p>Losses incurred before and during exemption period can be carried forward after the exemption period</p>

Extension of Tax Incentive (Approved Food Production Projects)

Current

- Food production projects that qualify for the above incentives are:
 - a) Planting of vegetables, fruits, kenaf, herbs or spices
 - b) Rearing of cows, buffaloes, goats or sheep
 - c) Aquaculture or deep sea fishing
- Applications must be made to the Ministry of Agriculture and Agro Based Industry by 31 December 2015

Extension of Tax Incentive (Approved Food Production Projects)

Proposed

- Qualifying food production projects would also be extended to include the following -
 - a) Planting of coconuts, mushrooms and cash crops
 - b) Planting of animal feed crops as approved by the Ministry
 - c) Rearing of deer
 - d) Rearing of bees and kelulut (for honey)
 - e) Cultivation of seaweed

Effective Date

For applications made from 1 January 2016 to 31 December 2020

Extension of Tax Incentives for Tour Operating Companies

Current

Qualifying company	Tax incentive
A company in the business of operating tour packages within Malaysia - at least 1,500 local tourists per year.	100% income tax exemption on statutory income from years of assessment 2013 to 2015.
A company in the business of operating tour packages to Malaysia - at least 750 inbound tourists per year.	100% income tax exemption on statutory income from years of assessment 2013 to 2015.

Proposed

The above incentives to be extended for another 3 years of assessment.

Effective Date

Years of assessment 2016 to 2018

Relaxation of Allowance for Increased Exports Incentive for Small and Medium Enterprises (SME)

Tax incentive in the form of exemption of statutory income equal to:	Current	Proposed (only for SME)
10% of value of increased exports for manufactured goods	Good exported attain at least 30% value added	Goods exported attain at least 20% value added
15% of value of increased exports for manufactured goods	Goods exported attain at least 50% value added	Goods exported attain at least 40% value added
10% of value of increased exports for agricultural produce	N/A	N/A

The above income tax exemption is restricted to 70% of statutory income

Effective Date

Years of assessment 2016 to 2018

Extension of Existing Tax Incentive relating to Islamic financing and income from managing Shariah-compliant funds

Current tax incentive	Proposal
<ul style="list-style-type: none"> • Deduction for the issuance costs of Sustainable and Responsible Investment Sukuk approved by, or authorized by or lodged with the Securities Commission of Malaysia. 	<ul style="list-style-type: none"> • To be extended for another 5 years up to YA 2020.
<ul style="list-style-type: none"> • Double deduction on additional costs for the issuance of retail bonds; • Double deduction on additional costs for the issuance of sukuk under the principles of Mudharabah, Musyarakah, Istisna', Murabahah and Bai' Bithaman Ajil based on tawarruq; and • Further deduction on additional costs for the issuance of sukuk under the principles of Ijarah and Wakalah. 	<ul style="list-style-type: none"> • To be extended for another 3 years up to YA 2018.
<ul style="list-style-type: none"> • Exemption on statutory income derived from business of providing fund management services to foreign investors in Malaysia – YA 2007 to YA 2016 • Exemption on statutory income derived from business of providing fund management services to local investors in Malaysia – YA 2008 to YA 2016 • Exemption on statutory income derived from business of providing fund management services to business trusts or real estate investment trusts in Malaysia – YA 2014 to YA 2016 	<ul style="list-style-type: none"> • To be extended for another 5 years up to YA 2020.

Extension of Existing Tax Incentive for Real Estate Investment Trusts

Tax rate for income received from REITs

Unitholder	Final withholding tax rate (%)			
	YA2007	YA2008	YA2009 - 2015	YA2017 - 2019
Non-resident company	27	26	25	24
Foreign institutional investor	20	20	10	10
Resident individual	15	15	10	10
Non-resident individual	15	15	10	10
Other non-corporate residents	15	15	10	10

Stamp Duty

Extension of Existing Exemption

Current stamp duty exemption	Proposal
<p>Rescuing contractors or developer who is appointed or approved by the Minister of Housing and Local Government to carry on rehabilitation works for an abandoned project</p> <ul style="list-style-type: none"> • 100% stamp duty exemption on instruments of loan agreements to finance the completion of abandoned housing projects; and • 100% stamp duty exemption on instrument of transfer of title for land and houses in abandoned housing projects. 	<ul style="list-style-type: none"> • To be extended for another 2 years to 31 December 2017
<p>Original house purchaser or his beneficiary whose name is stated in the Sale And Purchase Agreement in relation to an abandoned project</p> <ul style="list-style-type: none"> • 100% stamp duty exemption on instruments of loan agreements for additional financing; and • 100% stamp duty exemption on instrument of transfer of the house. 	<ul style="list-style-type: none"> • To be extended for another 2 years to 31 December 2017
<ul style="list-style-type: none"> • 20% stamp duty exemption on the principal or primary instrument of house financing in accordance to the Syariah principles and approved by the Syariah Advisory Council of Bank Negara Malaysia or the Securities Commission, as the case may be. . 	<ul style="list-style-type: none"> • To be extended for another 2 years to 31 December 2017

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