



Highlights of Budget 2022 - Part II

Finance Bill 2021

Tax Espresso (Special Edition)

12 November 2021



Budget 2022: Part II covers changes proposed in the Finance Bill 2021 which were not announced in the Budget Speech, and not covered in our ‘Highlights of Budget 2022: Part I’. Part II should be read together with Part I.

With the proposed imposition of *Cukai Makmur* at 33% on chargeable income exceeding RM100 million and the proposed removal of tax exemption on foreign income received in Malaysia by resident taxpayers as well as other relevant changes, taxpayers will need to re-evaluate their estimate of tax payable for the year of assessment 2022 to avoid any potential penalty for under-estimation of tax.

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Special Commentary on the Removal of the Exemption on Foreign Source Income

Tax on foreign sourced income (FSI) received in Malaysia

Currently, Malaysia adopts a territorial based taxation system where only income accruing in or derived from Malaysia would be subject to Malaysian income tax. Income derived from sources outside Malaysia and received in Malaysia is exempted from tax. The exceptions are resident companies in the business of banking, insurance or sea or air transport which are taxed on worldwide income.

Proposal

It is proposed that the tax exemption on FSI would only be restricted to non-Malaysian residents.

As a transition, it is proposed that the FSI received in Malaysia from 1 January 2022 until 30 June 2022 will be taxed at 3% on a gross basis. The FSI received in Malaysia from 1 July 2022 onwards would be subject to tax, based on the prevailing income tax rate.

Effective: 1 January 2022

Our commentary:

Given the recent inclusion of Malaysia in the European Union (EU) grey list where Malaysia's territorial sourced tax regime is considered harmful, this proposal in Budget 2022 is not a total surprise. However, since EU is concerned only where such regimes create situations of double non-taxation, income such as dividend would not be a concern as it would not rank for a deduction. That being said, the Finance Bill 2021 seems to cover all kinds of FSI, including foreign dividends received in Malaysia.

Impact on companies

Dividends received in Malaysia by Malaysian resident companies from foreign subsidiaries would be taxed in Malaysia with effect from 1 January 2022. Foreign dividend withholding tax suffered would be creditable against Malaysian tax payable. Certain tax treaties allow foreign tax paid by subsidiary companies in respect of their income out of which dividends are paid to be part of the credit. Another common situation would be the interest from money lent to borrowers outside Malaysia, including intra-group lending, would also be taxed upon remittance moving forward. Remittance of profits of operations outside Malaysia, notably branch profits, would also be subject to Malaysian tax after taking into account the foreign tax paid. All-in-all, additional top-up tax would occur where Malaysian tax is higher than the foreign taxes.

Impact on the man-on-the-street

One common situation would be the rental income earned by a Malaysian tax resident from a real property located outside of Malaysia – in this scenario, say Singapore. This income is an FSI and would not be taxed in Malaysia presently. From 1 January 2022 next year, income remitted to Malaysia would be taxed. In this case, both countries have the right to tax. To avoid double taxation on the same rental, Malaysia, being the country of residence would grant a foreign tax credit based on a prescribed formula that takes into account the taxes paid in Singapore, against the Malaysian tax payable. However, the Malaysian resident landlord would still need to pay the net tax to the Malaysian Government.

Another common situation would be a Malaysian who lives in Johor Bahru and commutes daily to Singapore for work. He draws a salary from his Singaporean employer. Under the tie-breaker rule, he would be a Malaysian tax resident given that his permanent home is in Johor Bahru. Before 1 January 2022, he can remit his salary into Malaysia without paying Malaysian tax. Under the new rule, his remittance would be subject to Malaysian tax. The Singapore tax paid can be used as a set off. However, he would need to top up the net additional tax and pay the Malaysian tax authorities. In short, there would be an incremental tax.

The meaning of “received”

What does the word “received” mean? FSI that is not received in Malaysia will not be taxed. While a guidance is expected to be issued, generally FSI would be considered to be received in Malaysia when the income is remitted to, transmitted to, or brought into Malaysia. If the relevant funds are transferred to a Malaysian bank account or brought into Malaysia in the form of a cheque, money order or cash, it would satisfy this criterion.

Plan ahead

An immediate course of action would be to identify any FSI (which may not have been given much attention before this), timing of their receipt and the quantum of any incremental tax liability after factoring in the availability of any tax credits. This is especially important for companies with a December 31 financial year end since the deadline for submitting their estimate of tax payable for year of assessment 2022 is close. Moving forward, businesses would also have to consider the potential tax impact when planning the timing of repatriation of their FSI to meet their commercial requirements locally.

Points for consideration

We remain hopeful that certain income such as foreign-sourced dividends, foreign branch profits and foreign-sourced service income would continue to be exempt. Many countries do not tax inbound dividends under their participation exemption rules. If alignment with best international practice is key, focus should be placed on passive income that creates tax arbitrage such as interest and royalty. On the enhancement of tax collection, a wide inclusion of all types of FSI may work in the short-run, but the long-term implication on Malaysia’s competitiveness needs to be considered.





Corporate Tax

Extension of reinvestment allowance incentive under PENJANA

Currently, a special reinvestment allowance (RA) is provided under PENJANA which allows a company for whom the 15-year RA entitlement period has ended in the year of assessment 2019 or 2020 or will lapse in year of assessment 2021, to continue to claim RA until year of assessment 2022.

Proposal

It is proposed that the special RA for the years of assessment 2020 to 2022 under PENJANA be extended for another 2 years, until the year of assessment 2024 for existing companies in Malaysia, for whom the special RA period has expired.

It is also proposed that companies which have exhausted their eligibility to qualify for RA in the year of assessment 2022 or 2023 be entitled to claim RA until the year of assessment 2024.

YA in which the companies have exhausted their eligibility to qualify for RA	YA in which the capital expenditure incurred qualifies for special RA claim
2019 or prior years of assessment	2020, 2021, 2022, 2023 and 2024
2020	2021, 2022, 2023 and 2024
2021	2022, 2023 and 2024
2022	2023 and 2024
2023	2024

Effective: Year of assessment 2022

Time limit for carrying forward unutilised special RA under PENJANA

Proposal

It is proposed that the special RA under PENJANA (year of assessment 2020 to year of assessment 2024) which has not been utilised by the year of assessment 2024, can only be carried forward for a maximum period of 7 consecutive years of assessment.

Hence, a company whose special RA entitlement period under PENJANA has lapsed in the year of assessment 2024 will be allowed to carry forward its unutilised RA from year of assessment 2025 to year of assessment 2031.

Any unabsorbed RA after the year of assessment 2031 will be disregarded.

Effective: Year of assessment 2022

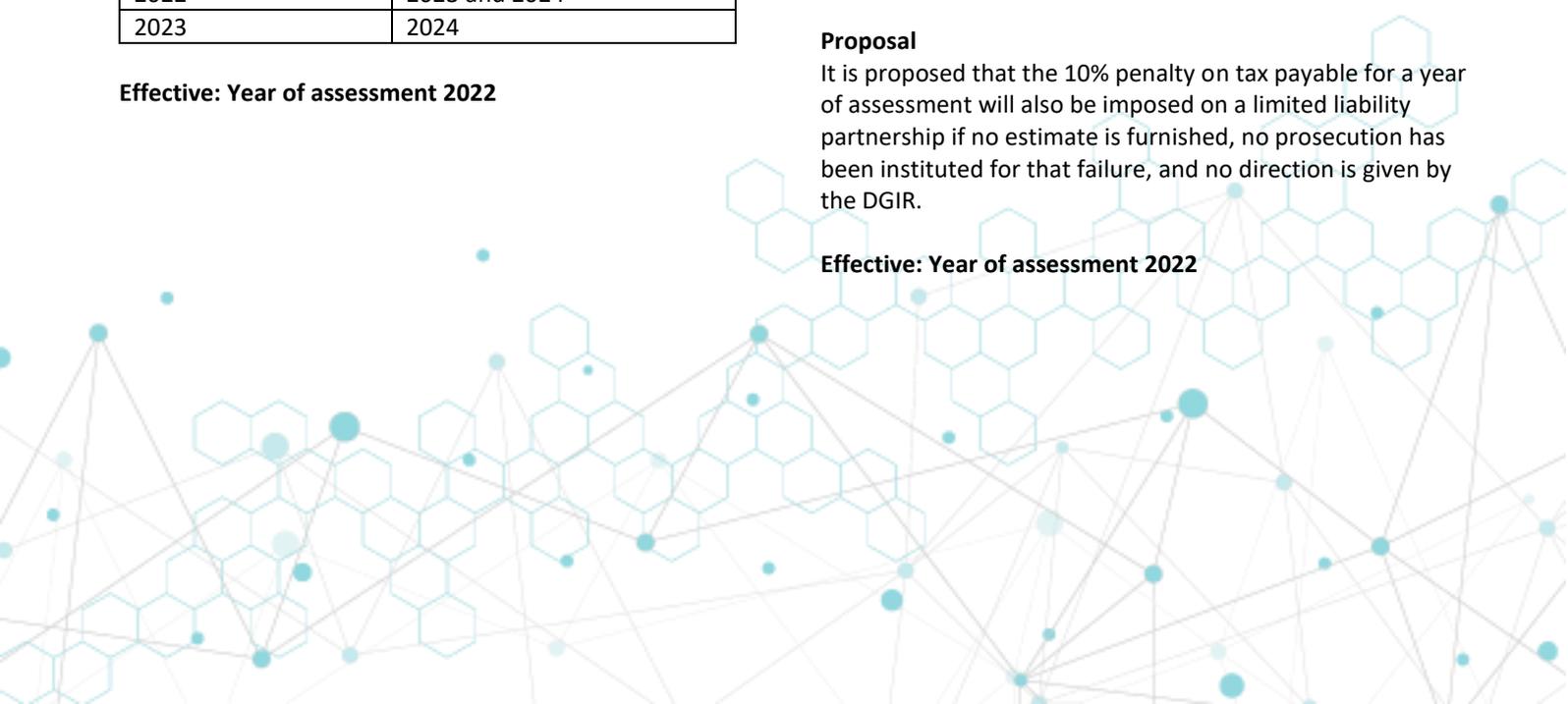
Failure to furnish estimate of tax payable by a limited liability partnership

Currently, a 10% penalty on tax payable for a year of assessment will be imposed on a company, trust body, co-operative society if no estimate is furnished, no prosecution has been instituted for that failure, and no direction for instalment payments has been given by the Director General of Inland Revenue (DGIR).

Proposal

It is proposed that the 10% penalty on tax payable for a year of assessment will also be imposed on a limited liability partnership if no estimate is furnished, no prosecution has been instituted for that failure, and no direction is given by the DGIR.

Effective: Year of assessment 2022



Takaful business: adjusted income of shareholders' fund

Currently, the *wakalah* fee received by shareholders' fund in relation to a family takaful business are not taxable income to the shareholders' fund. Correspondingly, expenses incurred to produce the *wakalah* fees in relation to the family takaful fund are not allowed for a tax deduction.

Proposal

It has been proposed that the *wakalah* fee received by the shareholders' fund in relation to the family takaful business will be taxable income to the shareholders' fund. Management expenses, commission payable and discounts allowed by the family takaful business will be allowed as a tax deduction to the extent that these expenses were incurred in relation to the *wakalah* fee subject to tax.

Effective: Year of assessment 2022

Our commentary:

This is a significant change in the way the family takaful business' shareholders' fund will be subject to tax. It is a departure from the conventional life insurance tax treatment of the shareholders' fund. From a business perspective, it does acknowledge that the shareholders' fund in a wakalah model is effectively operating a business to manage the family fund's business and should be taxed as such.

Family takaful companies will need to reevaluate their tax estimates and tax provisioning to take this change into account. They should not assume that the wakalah fee will get a full set-off against the management expenses, as the deductibility of the management expenses will still be subject to regular tax deduction principles of being incurred and in the production of gross business income.

Takaful business: capital allowances of shareholders' fund

Currently, capital allowances (CA) under Schedule 3 of the Income Tax Act 1967 is not allowed for deduction to arrive at statutory income (SI) of shareholders' fund. This presented an issue to the takaful business model because the shareholders' fund is the owner and operator of the takaful business' assets, unlike the conventional insurance companies where the assets (i.e. property, plant and equipment) are owned and utilized by the life fund and general fund businesses.

Proposal

It has been proposed that the shareholders' fund of a takaful company would be eligible to claim CA in arriving at statutory income of the business.

Scope of CA:

- For new assets (on or after 1 January 2022):
CA allowed only under shareholders' fund.
- For existing assets:
Current and carried forward CA are only allowed for deductions under family and general takaful funds. CA of existing assets that has not been claimed in the previous years of assessment is allowed to be claimed under family and general takaful funds only.

Effective: Year of assessment 2022

Our commentary:

This is a welcome change to the takaful industry as it would provide the industry with tax relief on capital expenditure for assets used in the business of the company. This change will finally address the anomaly in the tax legislation that deprived takaful companies of their capital allowance ever since Section 60AA was introduced in the Income Tax Act 1967.



Exemption on Interest from Securities, Sukuk and Debenture

Paragraph 33A of Schedule 6 exempts interest paid or credited to any company not resident in Malaysia (other than such interest accruing to a place of business in Malaysia) from income tax provided the interest is in relation to securities issued by the Government or sukuk or debenture issued in Ringgit Malaysia (other than convertible loan stock) approved or authorised by or lodged with the Securities Commission (SC).

Paragraph 33B of Schedule 6 exempts interest paid or credited to any person in respect of sukuk originated from Malaysia (other than convertible loan stock), provided the sukuk is issued in a currency other than Ringgit Malaysia and is approved, authorised by, or lodged with the SC, or approved by the Labuan Financial Services Authority (LFSA).

The above exemption shall not apply in respect of interest paid or credited to a company in the same group as defined under Section 2(4) of the Income Tax Act 1967.

Proposal

Both the above paragraphs are being amended to further exclude from exemption any interest paid or credited by a Special Purpose Vehicle (SPV) to a company pursuant to the issuance of asset-backed securities lodged with the SC or approved by the LFSA, where the company receiving the interest and the person who established the SPV are in the same group.

The term SPV is defined for the purpose of this amendment as “a company incorporated under the Companies Act 2016 or a company incorporated under the Labuan Companies Act 1990 which has made an election under Section 3A of the LBATA and established solely for the purpose of issuance of sukuk or debenture for asset-backed securities in a securitisation transaction lodged with the SC or approved by LFSA”.

Effective: Lodgment to SC or approval from LFSA dated 1 January 2022 onwards

Our commentary:

The proposed amendment is in line with insertions from prior years to exclude companies within the same group from enjoying the exemption under Paragraphs 33A and 33B. Given the nature of SPVs in an asset-backed securitization not being part of the same group as the Originator, this insertion is intended to close a potential loophole in the earlier insertions.

Withholding tax on payment made by a company to an agent, dealer or distributor who is a resident individual

Proposal

(a) Withholding tax requirement

Where a company is liable to make payments in monetary form to a resident individual arising from sales, transactions or schemes carried out by that individual as the authorised agent, dealer or a distributor of the company, the company shall upon paying or crediting such payments withhold tax at the rate of 2% on the gross amount.

The 2% withholding tax on monetary payments shall apply if the total sum of payments (whether monetary or otherwise) received by that individual from the company in the immediate preceding year of assessment exceeds RM100,000.

The company shall deduct and remit the withholding tax to the DGIR within 30 days after paying or crediting such payments to that individual. If the company fails to deduct and remit the withholding tax to the DGIR, a penalty of 10% will be imposed on the unpaid tax.

Meanwhile, the 2% withholding tax deducted and remitted to the DGIR can be used to set off against the tax payable of that individual for any year of assessment.

(b) Non-compliance with withholding tax

In addition to the 10% penalty, the company will not be allowed to claim a tax deduction on the amount paid to that individual unless it makes good the payment of withholding tax due that should have been paid and the late payment penalty that is imposed by the DGIR. Notwithstanding the above, the company is still liable to pay the withholding tax plus the penalty as a debt due to the Government. Where a tax deduction is claimed but the withholding tax and penalty are paid after the due date for submission of the tax return, the DGIR may impose a further penalty under Section 113(2) of the Income Tax Act 1967 for filing an incorrect return or furnishing incorrect information.

Effective: (a) 1 January 2022

(b) Year of assessment 2022

Our commentary:

We expect the Inland Revenue Board (IRB) to issue further clarifications on compliance enforcement and likely a new prescribed form for the withholding tax payment. However, it is unclear how easy would it be for the individual to use the withholding tax suffered to set off against their tax payable e.g. whether a formal application subject to the approval of the IRB is required, or whether the individual ITRF would be updated to allow direct input of the amount in the computation of tax payable.



Tax Incentives

Definitions of “research and development company” and “contract research and development company”

Currently, the definitions of “research and development company” and “contract research and development company” under Section 2 of the Promotion of Investments Act 1986 do not state that approval as a research and development status company from the Minister of International Trade and Industry is required.

Proposal

The above definitions will be amended to include the requirement to be approved as a research and development status company by the Minister of International Trade and Industry.

An existing “research and development company” or “contract research and development company” which falls within the definition prior to the abovementioned amendments will continue to be a “research and development company” or “contract research and development company” for a grace period of 6 months i.e. from 1 January 2022 to 30 June 2022.

If the company intends to be a “research and development company” or “contract research and development company” under the new definition after the grace period, the company shall make a notification for the consideration of the Minister stating the intention of the company.

On the expiry of the grace period and the company fails to submit a notification to the Minister, the company shall immediately cease to fall within the definition.

Effective: 1 January 2022

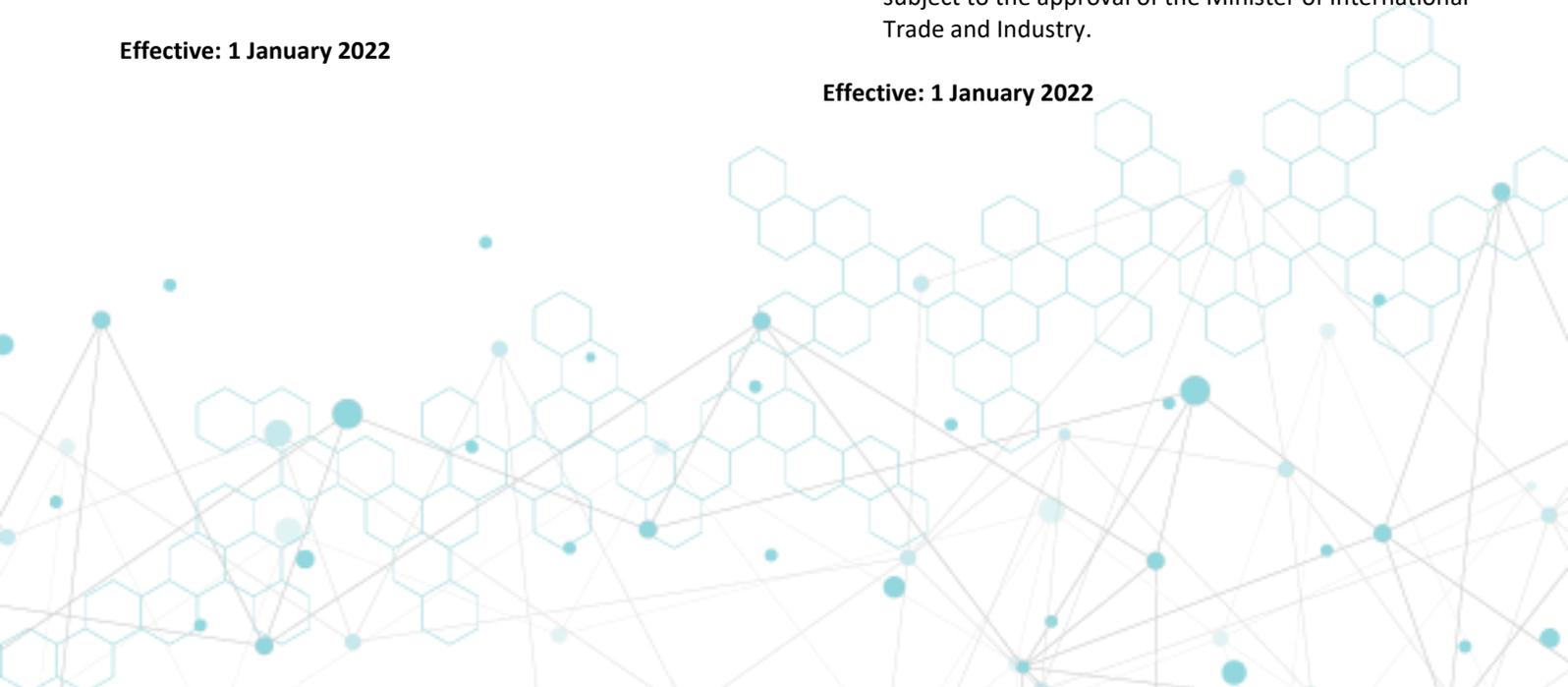
Application for approval as a research and development status company

Proposal

In line with the proposed requirement for a “research and development company” or “contract research and development company” to be approved as a research and development status company by the Minister of International Trade and Industry, new provisions will be inserted to the Promotion of Investments Act 1986 to effect the following:

- A company must apply in writing to the Minister of International Trade and Industry to be a research and development status company, subject to meeting any pre-conditions imposed by the Minister for the application.
- Research and development status will be given for a period of 5 consecutive years. The period may be extended for another 5 years with the approval of the Minister of International Trade and Industry.
- The Minister of International Trade and Industry together with the Minister of Finance may impose and vary the conditions to the approval.
- If a company fails to comply with the approval conditions, the Minister of International Trade and Industry shall by written notice require the company to remedy the failure or prove that the cause of the failure is beyond its control within 30 days. Failure to comply with the notice may result in withdrawal of the approval.
- A company may apply to surrender its research and development status with the reason for the surrender, subject to the approval of the Minister of International Trade and Industry.

Effective: 1 January 2022





Individual Tax

Extension of scope of tax relief on medical treatment expenses

Currently, a resident individual taxpayer is eligible to claim up to RM1,000 for expenses incurred on complete medical examination. This relief forms part of the RM8,000 tax relief for medical treatment expenses incurred.

Proposal

It is proposed that the scope of qualifying expenses for medical examination up to RM1,000 be expanded to include expenses incurred for:

- (a) Coronavirus Disease 2019 (COVID-19) detection tests performed at a hospital or by a medical practitioner registered with the Malaysian Medical Council, or purchases of COVID-19 self-detection test kit and evidenced by receipts of the same; and
- (b) mental health related examinations or consultation services from:
 - (i) psychiatrists registered with the Malaysian Medical Council under the Mental Health Act 2001 (Act 615); or
 - (ii) clinical psychologists registered with the Malaysian Allied Health Professions Council under the Allied Health Professions Act 2016 (Act 774); or
 - (iii) counsellors registered with the Malaysian Board of Counsellors under the Counsellors Act 1998 (Act 580).

**Effective: (a) Year of assessment 2021
(b) Year of assessment 2022**

Extension of special individual income tax relief for purchase of mobile phones, computers and tablets

A resident individual taxpayer is eligible to claim a special individual tax relief up to RM2,500 for the purchase of personal computer, smartphone or tablet for personal use of the taxpayer, spouse and child for purchases made between 1 June 2020 to 31 December 2020. This relief is in addition to the lifestyle relief of up to RM2,500 which already provides for the purchase of a personal computer, smartphone or tablet among other purchases or payments.

Proposal

This special tax relief will be extended to purchases made from 1 January 2021 to 31 December 2022.

Effective: Years of assessment 2021 and 2022



Individual income tax relief in relation to installation, rental, purchase or subscription of charging facilities of local electric vehicle (EV)

Proposal

To support the development of local electrical vehicle (EV) industry, a resident individual taxpayer is eligible to claim RM2,500 income tax relief for the following expenses incurred for his own vehicle:

- a) Installation of charging facility of EV;
- b) Rental of charging facility of EV;
- c) Cost of purchase of charging facility of EV, including hire purchase; or
- d) Subscription for use of EV charging facility.

The EV must not be used for business purpose.

Effective: Years of assessment 2022 and 2023

Extension of scope of tax relief on Employees Provident Fund (EPF) contributions

Currently, a resident individual taxpayer is eligible to claim income tax relief on their mandatory contributions made to approved funds such as the Employees Provident Fund (EPF), takaful contributions or life insurance premiums as shown below:

Type of contributions	Total relief
Payment of life insurance premium or takaful contributions	Up to RM3,000
Contributions to approved pension schemes (excluding private retirement schemes) or contributions under any written law	Up to RM4,000
Total	Up to RM7,000

For civil servants who are pensionable officers with no mandatory contribution to EPF, they are eligible to claim tax relief up to RM7,000 on their takaful contributions or life insurance premium payments.

Proposal

The scope of tax relief for EPF will be expanded to cover the following contributions:

- (i) Voluntary contribution by self-employed individuals within the meaning of the Employees Provident Fund Act 1991; and
- (ii) Voluntary contribution by pensionable officer within the meaning of Section 2 of the Pensions Act 1980

Effective: Year of assessment 2022





Real Property Gains Tax

Review of acquirer's retention sum obligations

Currently, where the disposer of the chargeable asset is a company incorporated in Malaysia or a trustee of a trust or society registered under the Societies Act 1966*, and the consideration consists wholly or partly of money, the acquirer shall, unless a notice of non-chargeability is provided by the disposer within 60 days after the date of disposal, retain the whole of that money or a sum not exceeding 3% of the total value of the consideration whichever is the lower (i.e. retention sum). Such amount must be paid to the DGIR within 60 days after the date of disposal.

* Note:

“Society registered under the Societies Act 1966” will be replaced by “body of persons registered under any written law in Malaysia” effective 1 January 2022.

Proposal

Where the disposer belongs to the above categories and the disposal is within a period of three years after the acquisition date, it is proposed that the percentage of the total value of the consideration be increased from 3% to 5% (i.e. the retention sum shall be the whole of that money or a sum not exceeding 5% of the total value of the consideration, whichever is the lower).

Effective: 1 January 2022

Our commentary:

The RPGT rate applicable to the disposal of chargeable asset within three years after the acquisition date is at the highest at 30% of the chargeable gain. The proposed 2% increase (i.e. 5% - 3%) of the retention sum may be due to the low retention sum as compared to the tax payable by the disposer under the existing provision.

However, this increase in retention sum may lead to a possible refund situation given that the gain on disposal for chargeable asset (e.g. real property) acquired three years ago, which is subject to 30% tax rate, could be very minimal especially in the prolonged COVID-19 pandemic period whilst 5% is applied on the total value of consideration.

Expansion of scope of certain losses not to be allowable

Currently, a loss suffered in respect of a disposal of shares in a real property company as determined under paragraph 34A of Schedule 2 to Real Property Gains Tax Act 1976 shall not be allowable for deduction to reduce the total chargeable gain of a person for the year of assessment in which the disposal was made.

Proposal

It is proposed that the scope of non-allowable losses be expanded to include losses suffered by the disposer on the disposal of shares which were previously acquired by the disposer in consideration of chargeable asset transferred by the disposer to a company under paragraph (3)(1)(b) of Schedule 2 to the Real Property Gains Tax Act 1976 (i.e. transaction in which disposal price is deemed equal to acquisition price).

Effective: 1 January 2022

Our commentary:

The rationale of this amendment is to provide a consistent treatment of losses arising from the disposal of shares acquired under paragraph 34 (transfer of assets to controlled companies) and paragraph 34A (acquisition and disposal of shares in real property companies), Schedule 2 of the Real Property Gains Tax Act 1976.

Expansion of scope of transactions in which disposal price is deemed equal to acquisition price

Currently, the disposal price of the chargeable asset shall be deemed to be equal to its acquisition price (i.e. no RPGT gain or loss) in a transaction involving the transfer of chargeable assets owned by:

- i) an individual;
- ii) his wife; or
- iii) an individual jointly with his wife or with a connected person;

to a company resident in Malaysia or not, controlled by:

- i) the individual;
- ii) his wife; or
- iii) the individual jointly with his wife or with a connected person;

for a consideration consisting of shares in the company, or substantially of shares in the company and the balance of a money payment.

Proposal

It is proposed that the scope of the abovementioned transaction be expanded to include the transfer of assets owned by a nominee or trustee for:

- i) the individual;
- ii) the wife of the individual or;
- iii) both;

to a company resident in Malaysia or not, controlled by:

- i) the individual;
- ii) the wife of the individual;
- iii) the individual jointly with his wife or with a connected person;
- iv) the nominee or trustee for the individual, for the wife of the individual or for both;

for a consideration consisting of shares or substantially of shares in the company and the balance of a money payment.

Effective: 1 January 2022

Our commentary:

The proposed amendment expands the scope of transactions in which the disposal price is deemed to be equal to the acquisition price to include the transactions involving the disposal of chargeable assets by a nominee or trustee of an individual, the wife of the individual or both to a company controlled by the nominee or trustee for the individual, for the wife of the individual or for both.

Real Property Gains Tax (RPGT) rate for body of persons

Currently, where a disposer is a company incorporated in Malaysia, or a trustee of a trust or society registered under the Societies Act 1966, the following RPGT rates under Part II of Schedule 5 of the Real Property Gains Tax Act 1976 would apply to the gain on disposal of a chargeable asset:

Disposal	Rate
Within three years	30%
In the fourth year	20%
In the fifth year	15%
In the sixth year or thereafter	10%

Proposal

It is proposed that the words “society registered under the Societies Act 1966” be substituted with “body of persons registered under any written law in Malaysia”. A body of persons is defined as an unincorporated body of persons (not being a company) including a Hindu joint family but excluding a partnership.

Effective: 1 January 2022

Our commentary:

The proposed amendment seeks to expand Part II of Schedule 5 to cover any body of persons such as club, association and trade union, which imposes RPGT at 10% for disposals in the sixth year or thereafter.

Such persons would otherwise have been subject to RPGT rates under Part I of Schedule 5, whereby it has been proposed under Finance Bill 2021 that the RPGT rate for disposals in the sixth year or thereafter is at 0% (instead of the current RPGT rate of 5%) with effect from 1 January 2022.

Leaving Malaysia without payment of RPGT and penalty

Currently, any person who voluntarily leaves or attempts to leave Malaysia without paying all RPGT payable by him shall be guilty of an offence and on conviction be liable to:

- imprisonment for a term not exceeding 2 years; or
- a fine not exceeding RM5,000; or
- both.

Proposal

The scope of this offence will be extended to include failure to pay a sum of money or debt due and payable under the Real Property Gains Tax Act 1976 before leaving Malaysia.

It is also proposed that the maximum fine be increased from RM5,000 to RM20,000 to realign with the fine imposed under Income Tax Act 1967 for a similar offense.

Effective: 1 January 2022

Our commentary:

This extension of scope will include:

- a) *failure to pay penalties for late payment of RPGT;*
- b) *failure to pay amounts withheld as an acquirer;*
- c) *failure to pay penalties for late payment of amounts withheld as an acquirer.*

Formula to determine exemption for partial disposal of shares by an individual

Currently, an individual is granted an exemption equal to RM10,000 or 10% of the chargeable gain, whichever is greater upon disposal of a chargeable asset. Where the chargeable asset is partly disposed, the amount of exemption to be allowed in respect of such disposal is ascertained in accordance with a prescribed formula. However, the formula does not take into account the chargeable gain accruing from a disposal of shares under paragraph 34 (i.e. shares acquired for transfer of assets to controlled companies) or paragraph 34A (i.e. shares in real property companies) of Schedule 2 of the Real Property Gains Tax Act 1976.

Proposal

A new formula has been provided to ascertain the amount of exemption to be granted if shares are partly disposed of, as follows:

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

Where

- A is the number of shares deemed to be a chargeable asset under paragraphs 34 or 34A of Schedule 2 disposed;
- B is the total number of issued shares deemed to be a chargeable asset in relation to shares deemed to be a chargeable asset under paragraph 34 or 34A of Schedule 2;
- C is 10,000;

or 10% of the chargeable gain, whichever is greater.

Effective: 1 January 2022





Stamp Duty

Fee for indorsement of exempt instruments

Currently, no fee is payable when the Collector certifies by indorsement that an instrument is not chargeable with stamp duty.

Proposal

It is proposed that, where the stamp duty exempted on an instrument exceeds RM10, the person bringing such instrument to the Collector shall pay a fee of RM10 for the Collector to certify by indorsement on such instrument that the stamp duty is exempted.

Effective: 1 January 2022

Relief for spoiled or misused stamps

Currently, an application for relief for spoiled or misused stamps must be made within 12 months:

- (a) after the stamp has been spoiled or becomes useless;
- (b) after the date of the executed instrument, or
- (c) after the execution of an undated instrument by the first or only person executing such instrument.

Proposal

It is proposed that the above 12-month period be extended to 24 months.

Effective: 1 January 2022

Refund of stamp duty for erroneous assessments

Currently, if the High Court concludes that the assessment or additional assessment of the Collector is erroneous, any excess stamp duty and fine or penalty paid in conformity with or in consequence of the erroneous assessment shall be ordered by the High Court to be repaid to the appellant.

Proposal

It is proposed that the Collector shall not be compelled to refund the excess stamp duty and fine or penalty paid in conformity with or in consequence of the erroneous assessment unless the assessment has become “final and conclusive”. An assessment is “final and conclusive” where:

- (a) no valid notice of appeal against the assessment has been filed with the High Court within 21 days from the date of the written notification of the Collector’s decision;
- (b) the assessment has been determined on appeal and there is no right of further appeal; or
- (c) a valid notice of appeal against the assessment has been given but the appellant dies before the hearing of the appeal by the High Court is commenced or completed and no personal representative of the estate of the deceased appellant applies to the High Court within 2 years after his death to proceed with or complete the hearing.

Effective: 1 January 2022

Our commentary:

The amendment seeks to make clear that stamp duty refund is only available if the appeal is conclusively decided in favour of the taxpayer after all avenues for further appeal have been exhausted. This takes into consideration the possibility that the Collector may appeal to the Court of Appeal and the Federal Court if he disagrees with the judgment of the lower courts.

Application for review and refund through electronic medium

Currently, the Collector may, by an electronic medium allow a registered person, without the need for the instrument to be presented to the Collector to:

- (a) obtain an assessment of stamp duty and any penalty, if any, on an instrument;
- (b) pay stamp duty and any penalty, if any, on an instrument by electronic funds transfer or otherwise, in accordance with the assessment;
- (c) obtain a stamp certificate in relation to the assessment; or
- (d) obtain an indorsement of stamp duty.

Proposal

It is proposed that the electronic medium be expanded to allow a registered person to:

- (a) obtain a review of an assessment from the Collector (by making a notice of objection);
- (b) obtain a refund of stamp duty paid in cases of:
 - spoiled or misused stamps;
 - remission on grounds of poverty by the Collector;
 - rescinded, annulled or unperformed contracts or agreements;
 - court ordered refunds; or
 - exemption, reduction or remission by ministerial order.

Effective: 1 January 2022





Labuan Business Activity Tax

Introduction of director's liability for any tax due and payable by a Labuan entity

Currently, the Labuan Business Activity Tax Act 1990 (LBATA) prescribes officers who shall be jointly and severally responsible for doing all acts and matters required to be done by or on behalf of a Labuan entity for the purposes of the LBATA. The LBATA does not impose a personal liability on these officers to pay outstanding taxes of the Labuan entity.

Proposal

In relation to the above existing provision on officers responsible for compliance by a Labuan entity under the LBATA, a new provision will be introduced to provide that any resident director of a Labuan entity shall be jointly and severally liable for any tax that is due and payable by the said entity under the LBATA during the term of the resident director holding the position. Action can also be taken on the resident director for any recovery by civil proceedings of those tax due and payable.

It is also proposed that the term "director" shall be defined to mean any person who –

- (a) is occupying the position of a director, by whatever name called, including any person who is concerned in the management of the company's business; and
- (b) is, either on his own or with one or more associates, the owner of, or able directly or through the medium of other companies or by any other indirect means, to control, not less than 20% of the ordinary share capital of the company.

For the purpose of the above definition, the term "associate" is defined to mean, in relation to a person –

- (a) in any of the following relationships to that person, that is to say, husband or wife, parent or remoter forebear, child or remoter issue, brother, sister and partner;
- (b) the trustee or trustees of a settlement in relation to that person is, or any such relative of his, living or dead, as is mentioned in paragraph (a) of this definition is or was, a settlor;
- (c) where that person is interested in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person, any other person interested therein.

Effective: 1 January 2022

Chargeability of intellectual property right (IPR) income under the Income Tax Act 1967

Currently, any income derived from IPR by a Labuan entity carrying on a Labuan business activity (Labuan trading or Labuan non-trading activity) which complies with the substance requirements prescribed by the Minister by regulations for a basis period for a year of assessment shall be subject to tax under the Income Tax Act 1967.

The LBATA was amended with effect from year of assessment 2020 to provide that a Labuan entity carrying on a Labuan business activity which fails to comply with the substance requirements shall be taxed at the rate of 24% upon its chargeable profits for that year of assessment under the LBATA. However, no corresponding amendment was made to the LBATA to clarify the taxation of income derived from IPR by such a Labuan entity, if any, under the Income Tax Act 1967.

Proposal

It is proposed that any income derived from IPR by a Labuan entity which fails to comply with the substance requirements under the LBATA will also be taxable under the Income Tax Act 1967.

Effective: 1 January 2019

Our commentary:

The above proposed amendment is to take effect retrospectively from 1 January 2019. A Labuan entity which is carrying on a Labuan business activity which fails to comply with substance requirement may need to revisit their income tax return filing requirement under the Income Tax Act 1967 as any income derived from IPR will be carved out from the Labuan return and subject to tax under the Income Tax Act 1967. A revision of their returns filed under LBATA may be required.

Duty to file a return of profits by a Labuan entity carrying on a non-trading activity

Effective year of assessment 2020, a Labuan entity carrying on a Labuan business activity (trading and non-trading activities) which fails to comply with the substance requirements prescribed by the Minister by regulations for a basis period for a year of assessment shall be taxed at the rate of 24% upon its chargeable profits (i.e. net profits as reflected in the audited accounts in respect of such Labuan business activity) for that year of assessment under the LBATA. Such a Labuan entity is required to file a return of profits together with its duly signed audit report for the year of assessment based on the prescribed Form LE1 (CP51A - Pin. 1/2020).

However, under the current legislation, a Labuan entity carrying on a Labuan business activity which is a Labuan non-trading activity is only required to file a statutory declaration (i.e. Form LE5) with the Director General. Any failure to do so will result in a fine not exceeding RM1million or to imprisonment for a term not exceeding two years or to both. The requirement to file Form LE1 by a Labuan entity carrying on a Labuan business activity which fails to comply with the substance requirements is not provided for in the legislation.

Proposal

- (a) In addition to the filing of a statutory declaration (i.e. Form LE5), a Labuan entity carrying on a Labuan business activity which is a Labuan non-trading activity will also be required to file a return of profits (i.e. Form LE1) within a period of three months (or any extended period as may be allowed by the Director General) from the commencement of a year of assessment, irrespective of whether it complies with the substance requirements prescribed by the Minister by regulations for the basis period for a year of assessment.
- (b) Failure to comply with the above will result in a fine not exceeding RM1million or to imprisonment for a term not exceeding two years or to both.

**Effective: (a) Year of assessment 2022
(b) 1 January 2022**

Payment of tax by a Labuan entity carrying on a Labuan non-trading activity

Currently, there is no provision in the LBATA that requires a Labuan entity carrying on a Labuan non-trading activity that does not comply with the substance requirements to make tax payment if the aforesaid entity is subject to tax.

Proposal

In line with the proposed amendment which requires a Labuan entity carrying on a Labuan non-trading activity to file a statutory declaration and a return of profits for a year of assessment, the said Labuan entity will be liable to make full payment on account of tax, if any, for that year of assessment at the time of filing of the statutory declaration and the return of profits.

Effective: Year of assessment 2022

Direction of basis period for a Labuan entity carrying on a non-trading activity

Currently, the DGIR may direct the basis period for a Labuan entity carrying on a Labuan trading activity if it does not have a basis period for a year of assessment.

Proposal

The DGIR's power to direct the basis period for a year of assessment will be extended to a Labuan entity carrying on a Labuan non trading activity if it does not have a basis period for a year of assessment.

Effective: Year of assessment 2020



Petroleum Income Tax

Restrictions for appeal against an assessment

Currently, there is no restriction for a chargeable person to appeal on an assessment deemed to be made under Section 38(1) or Section 39A of the Petroleum (Income Tax) Act 1967.

Proposal

It is proposed that a chargeable person may only appeal on an assessment made under Section 38(1) or Section 39A of the Petroleum (Income Tax) Act 1967 if he is aggrieved by a public ruling made under Section 71B or any practice of the DGIR generally prevailing at the time when the assessment is made.

Effective: 1 January 2022

Minister's power to exempt

Currently, the Minister may, by statutory order, exempt any chargeable person from all or any of the provisions of the Petroleum (Income Tax) Act 1967, either generally or in respect of any income of a particular kind. The statutory order shall be laid before the Dewan Rakyat.

Proposal

It is proposed that a new Section 65C(1A) be introduced to empower the Minister, in any particular case, to exempt any chargeable person from all or any of the provisions of the Petroleum (Income Tax) Act 1967, either generally or in respect of any income of a particular kind or any class of income of a particular kind.

Effective: 1 January 2022





Introduction of Tax Identification Number (TIN)

Proposal

It is proposed that a new Section 66A be introduced under the Income Tax Act 1967 to empower the DGIR to assign a TIN to any person:

- (a) who is assessable and chargeable to tax under the Income Tax Act 1967;
- (b) who is required under the Income Tax Act 1967 to furnish a tax return; or
- (c) who is a citizen and aged 18 years old and above.

Any person who has been assigned with a tax reference number on or before 1 January 2022 is deemed to have been assigned a TIN and such reference number would be the TIN of that person.

It is also proposed that the TIN assigned by the DGIR should be used for real property gains tax and stamp duty purposes.

Effective: 1 January 2022

Request to forward application for relief to Special Commissioners of Income Tax (SCIT) in prescribed form

Currently, a person who is aggrieved by the decision of the DGIR in relation to the following applications may request the DGIR to forward the applications to SCIT in writing:

- (a) Relief for non-chargeability case.
- (b) Relief in respect of error or mistake.
- (c) Relief other than in respect of error or mistake.

Proposal

It is proposed that such request has to be made by submitting the duly completed prescribed form to the DGIR.

Note:

It is also proposed that similar provisions be inserted in the Petroleum (Income Tax) Act 1967.

Effective: 1 January 2022

Submission of tax return based on financial statements

Currently, only companies are required to furnish tax return based on financial statements prepared in accordance with the requirements of the Companies Act 2016.

Proposal

It is proposed that limited liability partnerships, trust bodies, and co-operative societies are also required to furnish tax return based on financial statements that are made in accordance with any written law.

Effective: Year of assessment 2022

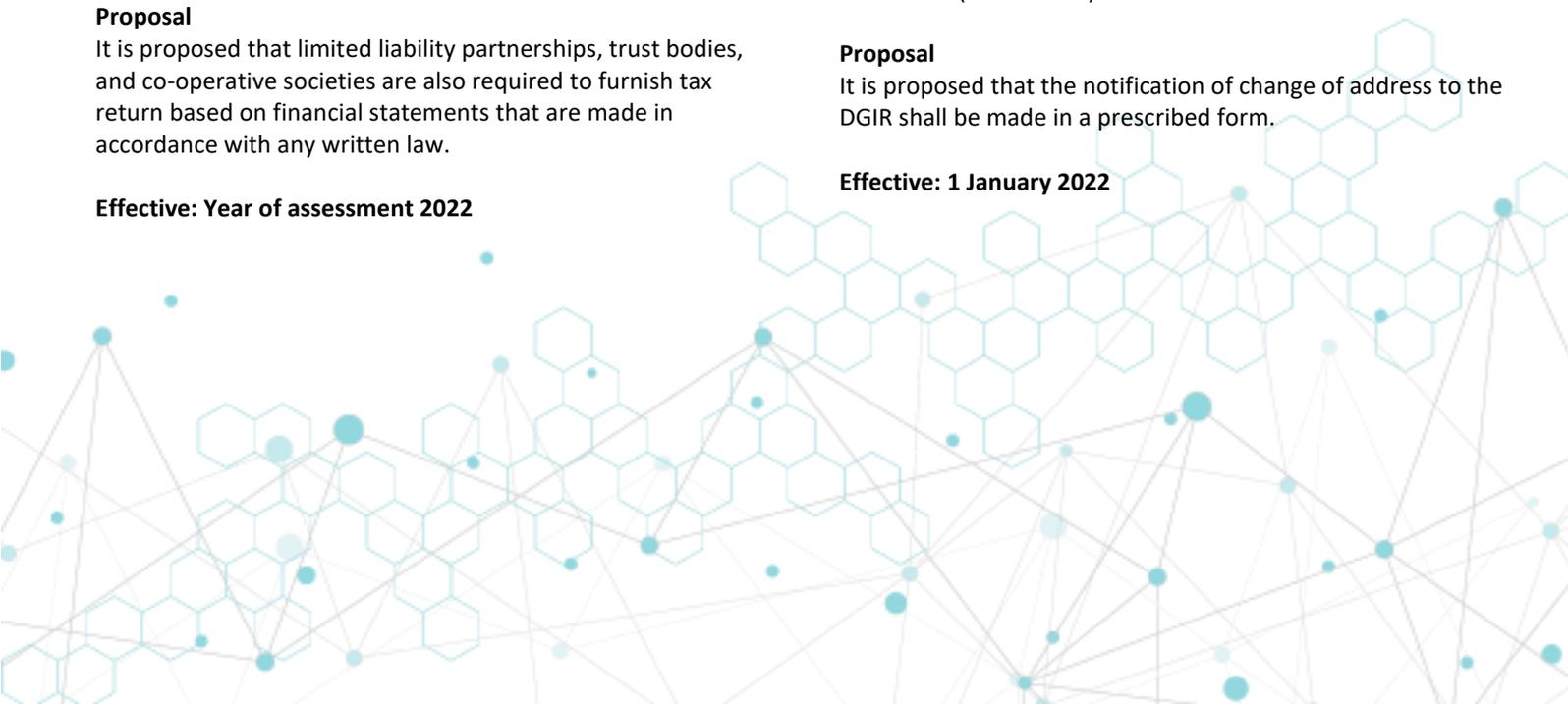
Notification on change of address in prescribed form

Currently, the notification of change of address to the DGIR is by notice in writing within 3 months from the change of address as required under the Income Tax Act 1967 and Petroleum (Income Tax) Act 1967.

Proposal

It is proposed that the notification of change of address to the DGIR shall be made in a prescribed form.

Effective: 1 January 2022



Power to call for bank account information by the DGIR

Currently, the Income Tax Act 1967 allows the Government to recover any tax due and payable through civil proceedings as a debt due to the Government.

Proposal

Section 106A of the Income Tax Act 1967 is introduced to empower the DGIR to require any financial institution to furnish taxpayer's bank account information within a specific timeframe for garnishment application purpose.

The financial institution shall not disclose such request to any person.

If the financial institution fails to furnish the information by the specified timeline or discloses such request to any person, the financial institution shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding 6 months or to both.

Financial institution under this proposed section means:

- (a) any person licensed under the Financial Services Act 2013 to carry on a banking business in Malaysia;
- (b) any person licensed under the Islamic Financial Services Act 2013 to carry on an Islamic banking business in Malaysia; or
- (c) any development financial institution prescribed under the Development Financial Institutions Act 2002.

Effective: 1 January 2022

Review of Tax Exemption on Distribution by Unit Trust to Unit Holder

Section 61(1A) of the Income Tax Act 1967 provides that a unit holder of a unit trust shall be assessed and charged to tax in respect of the unit holder's proportionate share of income distributed by the unit trust in a given year. However, where the income being distributed by the unit trust is from tax exempt income, except in the case of real estate investment trusts and property trusts that have been exempted from tax under Section 61A, the distribution out of tax exempt income is not taxable in the hands of the unit holder.

Proposal

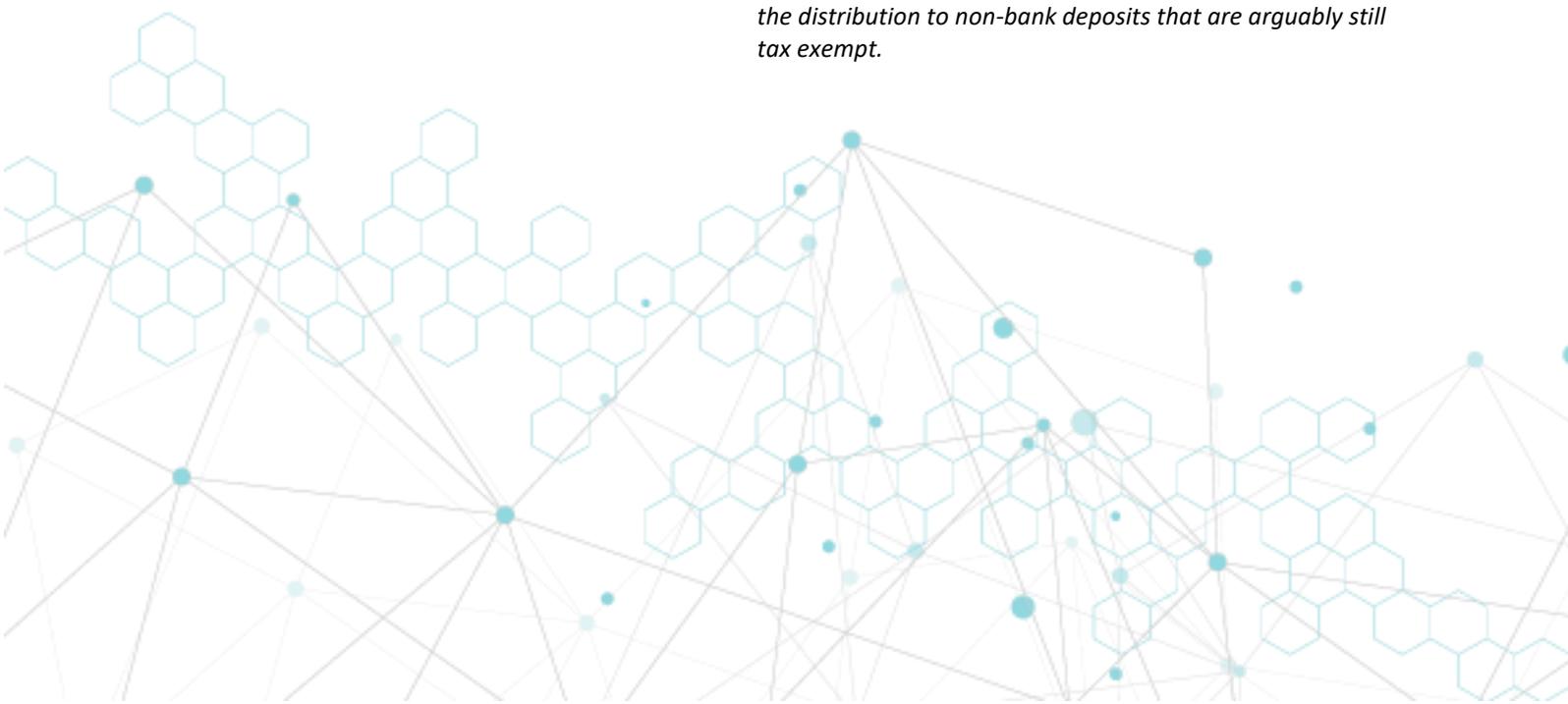
The above exemption from tax shall exclude distributions by a Retail Money Market Fund (RMMF) that are in relation to interest income derived from Malaysia and credited/paid to the RMMF where the unit holder is not an individual.

Effective: 1 January 2022

Our commentary:

The proposed amendment is intended to exclude non-individuals who invest in a RMMF to benefit from the interest income exemption afforded under Paragraph 35A of Schedule 6 of the Income Tax Act 1967 (i.e. interest income of the RMMF from bank deposits). This change is to circumvent potential aggressive tax structuring by corporates and institutional investors who would have otherwise been subject to tax on interest from deposits placed in licensed banks had they not interposed an RMMF in the investment structure.

The effective date of 1 January 2022 is unclear as to whether it applies to the date the interest is earned by the RMMF or the distribution date by the RMMF. Administratively this could pose a challenge to operationalise because the RMMF needs to ringfence the interest from bank deposits so that when the distribution takes place the unit holder is aware of how much of the distribution relates to bank deposits and how much of the distribution to non-bank deposits that are arguably still tax exempt.



Withholding tax on Distribution by RMMF to Unit Holder other than an Individual

Proposal

A new Section 109DA of the Income Tax Act 1967 is being introduced to administer a withholding tax mechanism relating to the unit trust distribution in relation to RMMFs. This withholding tax is applicable only to the portion of the distribution by the RMMF that is relating to interest exempted under Paragraph 35A of Schedule 6 of the Income Tax Act 1967 (i.e. interest income from licensed banks and Islamic banks in Malaysia).

Where the unit holder is not an individual, a withholding tax of 24% is imposed on the portion of the distribution relating to income that is exempted under Paragraph 35A of Schedule 6. This withholding tax is payable to the Inland Revenue Board within one month after the distribution being made to the unit holders. Failure to observe the above provision will result in a late payment penalty at the rate of 10% on the amount of unpaid withholding tax.

If the non-individual unit holder is a tax resident, the unit holder will be eligible to claim a tax credit of the withholding tax against the tax payable of the unit holder. Where the non-individual unit holder is a non-resident, the withholding tax of 24% is a final tax.

Effective: 1 January 2022

Our commentary:

The proposed withholding tax will definitely complicate the administration of the RMMF. Not only must the RMMF segregate the type of interest between interest from Malaysian licensed banks vs other sources, they also need to determine whether the unit holders are individuals or non-individuals. This could present a problem when the units are held via a nominee structure where the beneficiary is not visible to the unit trust.

This amendment also makes the RMMF tax disadvantageous to non-resident investors because had the non-resident placed the deposit directly with the Malaysian licensed bank, the interest income would be tax exempt pursuant to Paragraph 33 of Schedule 6. However, by virtue of placing the investment through an RMMF, the distribution becomes taxable as a result of this new withholding tax mechanism. This amendment will likely cause non-resident investors seeking to make placements with Malaysian licensed banks to avoid using RMMF as an investment entity.



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Deloitte Malaysia makes its mark at the International Tax Review Asia Tax Awards 2021

In the recently announced International Tax Review (ITR) Asia Tax Awards 2021, Deloitte Malaysia has won two ITR awards.

For the fourth time in the last 5 years, we have been named the coveted **Malaysia Tax Firm of the Year**. We were also recognised as the **Malaysia Transfer Pricing Firm of the Year for 2 consecutive years**. These achievements showcase the strengths of Deloitte's long-standing capabilities in the areas of Tax and Transfer Pricing. The standard of excellence consistently attained by our Tax practice is made possible with formidable support of the entire Firm where everyone across all businesses work collaboratively.

The ITR Asia Tax Awards identifies tax professionals and firms who have demonstrated exceptional track record in the Asia-Pacific (APAC) region. Winners undergo a thorough judging process combining input from tax practitioners, who judge based on the firm's best work. These criteria include the level of innovation demonstrated in solving tax issues, project complexity, as well as the overall impact on clients.

We are humbled and grateful to receive such recognition. Thank you for the trust and confidence you place in us as your advisors and partners. We look forward to continuing this partnership with you, especially during this challenging period.

As part of a series of celebration for our recent recognition, we are bringing you a 1.5-day webinar. Tune into our 47th TaxMax and listen in as our experts share insights into Budget 2022, as we discuss how we can bounce back and thrive post pandemic.

To register your interest, please click [here](#) and we look forward to meeting you all virtually.

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