



Highlights of Budget 2020: Part II

Finance Bill 2019

Tax Espresso (Special Edition)

17 October 2019

Budget 2020: Part II covers changes proposed in the Finance Bill 2019 which were not announced in the Budget Speech, and not covered in our 'Highlights of Budget 2020: Part I'

Income Tax	2
Real Property Gains Tax	5
Labuan Business Activity Tax	6
Petroleum Income Tax	7
Contact Us	8



Income Tax

Review of increase of unpaid tax and balance of unpaid tax

Currently, failure to remit the tax due and payable within the stipulated time will result in a penalty equivalent to 10% of the tax due and payable. Additionally, if the tax due and payable is still not paid after 60 days, a further 5% penalty will be imposed.

It is proposed that where any tax due and payable has not been paid by its due date, the unpaid amount will be increased by a single rate of 10%. The further 5% penalty will not be imposed.

Effective: 1 January 2020

Review on the increase in tax charged upon submission of amended tax return

Currently, the following penalty rate will be imposed on the tax or additional tax payable pursuant to an amended return submitted to the Inland Revenue Board within 6 months after the statutory filing deadline.

Date of submission of the amended tax return	Penalty rate
Within 60 days after the statutory filing deadline	10%
After the 60 days period but not later than 6 months from the statutory filing deadline	10% + further 5%

It is proposed that the penalty rate for an amended return submitted after the 60 days period, be at 10%. The further 5% penalty will not be imposed.

Effective: 1 January 2020

Statute of limitation for cases where mutual agreement procedure (MAP) is invoked

The existing statute of limitation for non-transfer pricing cases and transfer pricing cases is 5 years and 7 years respectively. However, such limitation does not apply to cases that involve fraud, wilful default or negligence.

It is proposed that there will be no statute of limitation for cases where MAP is invoked.

Effective: Upon coming into operation of the Finance Act 2019

7 years for application of extension of time to appeal against an assessment

A person who is aggrieved by an assessment made in respect of him, may appeal to the Special Commissioners against the assessment by giving to the Director General of Inland Revenue (DGIR) a written notice of appeal via Form Q within a prescribed period.

Deadline to appeal via Form Q	
Assessment under Section 90 / Section 91 / Section 91A	Within thirty days after the service of the notice of assessment
Advance assessment under Section 92	Within the first three months of the year of assessment following the year of assessment for which the advance assessment was made

Currently, if the person missed the deadline in appealing against an assessment to the Special Commissioners via Form Q, he may at any time make an application to the DGIR via Form N for an extension of the period to submit Form Q.

It is proposed that the application for extension of time via Form N must be made to the DGIR within 7 years after the expiration of the stipulated period to file Form Q.

Effective: Year of assessment 2020

A director may be prevented from leaving Malaysia for unpaid increase in tax for the company's failure to submit an estimate of tax payable

Currently, a person may be prevented from leaving Malaysia if there is outstanding tax payable or outstanding increase for late payment or non-payment of tax payable, or estimate of tax payable. In the case of a company, the responsibility for payment of taxes and any increase will lie on the directors.

It is proposed that the DGIR may also prevent the director from leaving the country if there is a non-payment of increase in tax arising from the failure to file an estimate of tax payable by a company.

[Note: A director of a company refers to a director/person who is concerned in the management of the company's business, who holds directly/indirectly a minimum of 20% of ordinary share capital].

Effective: Upon coming into operation of the Finance Act 2019

Extension of approved bodies for the purpose of deduction under Section 44 and exemption of donation and income of appropriate religious authority, body or public university

The tax deduction currently allowed for donation/gift to an approved institution, organisation, fund, sports activity and project of national interest under Section 44 of the Income Tax Act 1967 (ITA), will be expanded to include cash endowment to a public university and cash wakaf to any appropriate religious authority or body established by the religious authority or a public university allowed by that religious authority to receive wakaf.

The appropriate religious authority, body or public university which is approved by the DGIR will be exempted from income tax in respect of any wakaf or endowment received including any income derived therefrom.

If the appropriate religious authority, body or public university is aggrieved by the DGIR's decision on its application for approval, it may appeal to the Minister of Finance within 30 days after being informed of that decision.

Effective: Year of assessment 2020

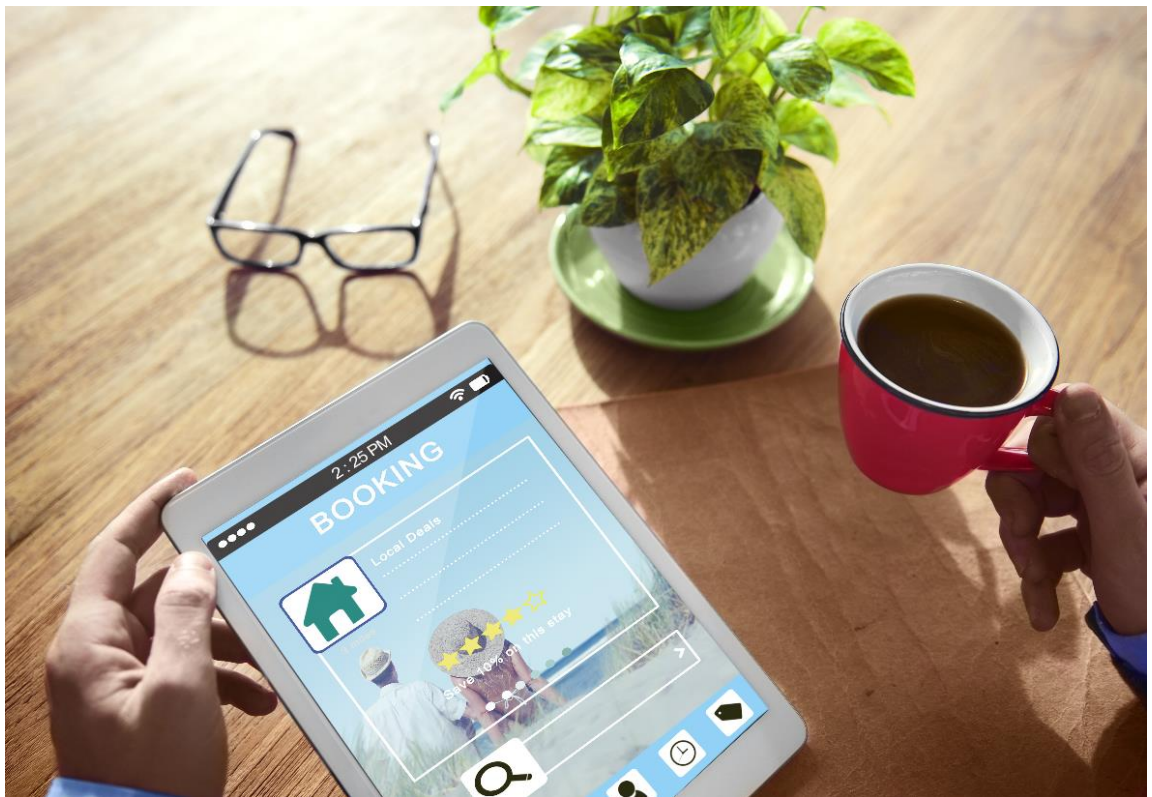
Power to Approve the Application of the Tax Agent Licence

Currently, the application and renewal of the tax agent licence and the fee charged for application and renewal of tax agent licence are approved/determined by the Minister of Finance.

With the proposed changes, application and renewal of the tax agent licence and the fee charged for application and renewal of tax agent licence are approved/determined by the DGIR.

In addition, if the person is aggrieved by the decision of the DGIR in refusing to renew an approval or revoking an approval, he may within one month from the date of notification, appeal to the Minister of Finance against the decision.

Effective: 1 January 2021





Real Property Gains Tax

Review of RPGT rates and retention sum requirement for disposal of chargeable assets by company not incorporated in Malaysia

It is proposed that the RPGT rates under Part II of Schedule 5 to the Real Property Gains Tax Act 1976 (RPGTA) be applied to only a company incorporated in Malaysia or a trustee of a trust. A company not incorporated in Malaysia will now be subject to the RPGT rates under Part III of Schedule 5 of the RPGTA, which currently apply to an individual who is not a citizen and not a permanent resident (PR) or an executor of the estate of a deceased person who is a non-citizen and non-PR. The application of RPGT rates to the different categories of disposers can be summarised as follows:

Disposal	RPGT rates (Schedule 5)		
	Part I	Part II	Part III
	Individual – citizen, PR and others	Company incorporated in Malaysia or trustee of a trust	Individual - non-citizen and non-PR or an executor of the estate of such deceased person, or company not incorporated in Malaysia
Within 3 years	30%	30%	30%
In the 4th year	20%	20%	30%
In the 5th year	15%	15%	30%
In the 6th and subsequent years	5%	10%	10%

The 7% retention sum relating to the disposal of a chargeable asset under Section 21B(1A) is proposed to be extended to cases where the disposer is a company not incorporated in Malaysia.

Effective: Upon coming into operation of the Finance Act 2019



Labuan Business Activity Tax

Clarification of effective date for amendments to the Labuan Business Activity Tax Act 1990 (LBATA) via Finance Act 2018

Below are some of the amendments to the LBATA introduced by the Finance Act 2018 with effect from 1 January 2019:

- Abolishment of the election by Labuan entities to be taxed at RM20,000; and
- In cases where a Labuan entity carrying on a Labuan trading activity does not have a basis period for a year of assessment, the DGIR is empowered to direct the basis period for that year of assessment and subsequent years of assessment.

It is proposed that the effective date of the above amendments to LBATA be effective from the year of assessment 2020 instead of 1 January 2019.

Effective: 1 January 2019

Our Commentary:

Following the above clarification, it is clear now that the abolishment of the election to be taxed at RM20,000, will not affect Labuan filing for year of assessment 2019 (i.e. in respect of basis period ended on or before 31 December 2018) that was due on or before 31 March 2019.





Petroleum Income Tax

International obligations

A new Subsection 65A(1A) is proposed to be inserted to enable the ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) to have an effect on existing double tax agreements that Malaysia has signed.

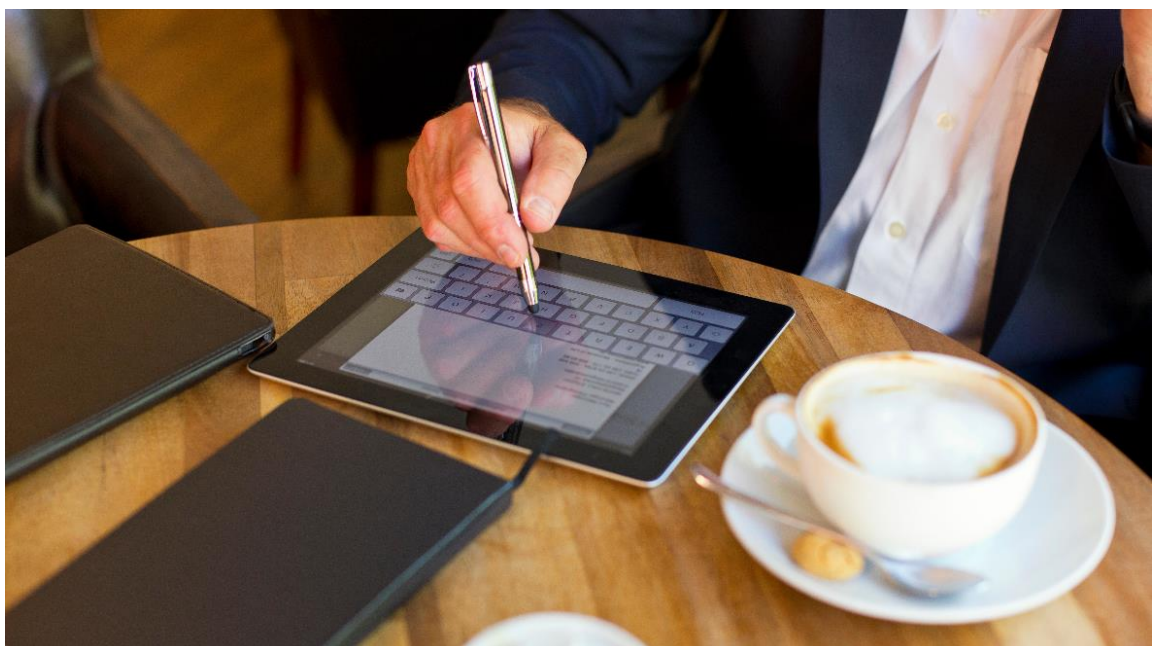
Another new Section 65AA to be inserted is to give effect to any bilateral or multilateral arrangement into which Malaysia has entered to fulfill Malaysia's international obligations in relation to taxation under the Petroleum (Income Tax) Act 1967 or any other written law.

In addition, it is proposed that the Minister of Finance be empowered to make rules and regulations for the purpose of facilitating or implementing the operation of the arrangement mentioned above.

Effective: Deemed to have come into operation on 28 December 2018

Consequential amendments:

1. *Section 39 – Assessment and additional assessment in certain cases (Mutual Agreement Procedures), which is similar to the proposed new Subsection 91(7) of the Income Tax Act, 1967.*
2. *Section 44 – Extension of time for appeal against an assessment, which is similar to the proposed changes to Subsection 100(1) of the Income Tax Act, 1967.*



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