



## **Tax Espresso – Special Alert** Finance Bill 2018 (Amendment in Committee)

Further to our tax publications which summarised the highlights and points in Budget 2019, below,:

- [\*Tax Espresso \(Special Edition\) – Highlights in Budget 2019;\*](#)  
[\*and\*](#)
- [\*Tax Espresso \(Special Edition\) – Budget 2019: Finance Bill 2018, the Income Tax \(Amendment\) Bill 2018 and the Labuan Business Activity Tax \(Amendment\) Bill 2018\*](#)

several amendments have been made to the Finance Bill 2018 since. The Finance Bill 2018 (Amendment in Committee) has

been tabled for the second reading and passed by the House of Representatives (Dewan Rakyat) on 10 December 2018.

Below are the key proposed changes in the Finance Bill 2018 (Amendment in Committee):

**1) Limitation of the carry forward period for certain unutilised losses and allowances**

The earlier proposal to restrict the carry forward of unutilised losses and allowances to 7 consecutive years of assessment has been further reviewed and amended as follows:

<b>Losses/Allowances</b>	<b>Proposal</b>
1. Unutilised business losses	To be carried forward for a maximum of 7 consecutive years of assessment.
<del>2. Unutilised capital allowances</del>	
3. Unutilised reinvestment allowance	To be carried forward for a maximum of 7 consecutive years of assessment after the expiry of the qualifying period.
4. Unutilised investment allowance for service sector	
<del>5. Unutilised investment tax allowance</del>	To be carried forward for a maximum of 7 consecutive years of assessment after the end of the investment tax allowance/pioneer period.
6. Unutilised pioneer losses	

The earlier proposal in relation to the limitation of carry forward period for unutilised capital allowances and unutilised investment tax allowance has now been deleted. With the deletion, the existing tax law pertaining to the utilisation of unutilised capital allowances and unutilised investment tax allowance indefinitely until it is fully absorbed shall remain unchanged.

**2) Special classes of income under Section 4A(ii) – restoration of the words “the management and administration”**

Further amendment to Section 4A(ii) is proposed to provide clarification that any advice given, or assistance or services rendered by a non-resident will fall within the scope of Special Classes of Income under Section 4A if the advice given, or assistance or services rendered is in connection with **the management and administration of** any scientific, industrial or commercial undertaking, venture, project or scheme.

Proposed amendments to be made to the existing provisions as follows are consequential to the amendment to Section 4A(ii):

- Section 15A - *Derivation of Special Classes of Income and in Certain Cases*; and
- Section 109B - *Deduction of Tax from Special Classes of Income and in Certain Cases Derived from Malaysia*.
- Part V(ii) of Schedule 1 - *Income tax rate upon the income of a person charged under Section 4A*

### **3) Tax Treatment for Labuan Entities**

It was proposed in the Finance Bill 2018 that effective 1 January 2019, Labuan entity is required to fulfil the requirements of having an adequate number of full time employees and adequate amount of annual operating expenditure in *Malaysia*, as prescribed under the regulations to be made by the Minister of Finance.

An amendment to the above proposal has been made to provide clarification that the above substantive requirements of adequate number of full time employees and adequate amount of annual operating expenditure shall be in Labuan, not *Malaysia*.

### **4) Disallowance of expenses incurred in respect of any payment made by a resident to a Labuan Company**

With the further amendment to Section 39(1)(r), any expenditure incurred by a resident of Malaysia in respect of payment made to any Labuan company is disallowed as a deduction, unless otherwise allowed under the rules prescribed by the Minister of Finance. This means that a

certain percentage of deduction may still be available depending on the said rules.

**5) Repeal of the tax exemption for interest income received by wholesale money market funds**

With the proposed amendment to the Finance Bill 2018, any interest income received by a wholesale money market fund from licensed banks, Islamic banks and development financial institutions will cease to be exempted with effect from 1 January 2019.

As a consequence, all unit holders of a wholesale money market fund shall no longer be exempted from tax in respect of the amount distributed by the wholesale money market fund out of interest income paid or credited by licensed banks, Islamic banks and development financial institutions.

**6) Review of Acquisition Price of Real Properties acquired prior to 1 January 2000**

Further to the proposal in the Finance Bill 2018 to revise upwards the Real Property Gains Tax (RPGT) rates for disposal of real property and shares in real property companies in the 6th year onwards, a new proposal has been made to deem the acquisition price of a chargeable asset acquired prior to 1 January 2000 to be its market value as at 1 January 2000 for the purpose of computing chargeable gains or losses on the disposal of such real property.

The above new proposal shall apply to disposals by Malaysian citizens and permanent residents only.

**7) Review of NGNL RPGT treatment on asset disposed of by way of a gift**

Currently, under the no gain no loss (NGNL) provision that is applicable to disposal by way of a gift between husband and wife, parent and child or grandparent and grandchild, where the donor is a citizen:

- the donor shall be deemed to have received NGNL on the disposal; and
- where the gift is made within five years after the date of acquisition by the donor, the recipient shall be deemed to acquire the asset at an acquisition price equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor; and
- where the gift is made after five years from the date of acquisition by the donor, the recipient shall be deemed to have received the gift at its market value.

It has been proposed to remove the “period of five years” condition in the current provision. As a consequence, the recipient who received a gift from a donor who is a citizen shall be deemed to acquire the asset at an acquisition price equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor, whether or not the disposal takes place after five years.

Other amendments not specifically highlighted are minor or consequential in nature.



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