



**Budget 2019 – Finance Bill 2018, Income Tax (Amendment) Bill 2018 and
Labuan Business Activity Tax (Amendment) Bill 2018**

Tax Espresso (Special Edition)

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Corporate Tax

Review of corporate income tax rate for small and medium enterprise ("SME")

It is proposed that the income tax rate on first RM500,000 of chargeable income of SME be reduced from 18% to 17%.

SME refers to:

1. A resident company incorporated in Malaysia with an ordinary paid-up share capital of RM2.5 million and below; or
2. A Limited Liability Partnership ("LLP") resident in Malaysia with a total capital contribution (in cash or in kind) of RM2.5 million and below.
3. Such company or LLP must not be related to another company or LLP with ordinary paid-up share capital / capital contribution of more than RM2.5 million.

Effective: Year of assessment 2019

Change of tax treatment for group relief

It is proposed that:-

- (a) the surrender of losses will apply to new companies only.
- (b) the surrender of losses is restricted to 3 consecutive years of assessment starting:
 - (i) immediately after the basis period of the 1st year of assessment the company is in operation provided the period is a 12-month period, or
 - (ii) immediately after the year of assessment for the 2nd basis period of a 12-month period, if the basis period for the 1st year of assessment of the company is other than a 12-month period.
- (c) the provision of group relief shall not apply to a company that has unutilised investment tax allowances or unutilised pioneer losses upon the expiry of its investment tax allowance or pioneer status incentive.

Transitional provision

1 st year of assessment a company commences operation	Years of assessment group relief can be surrendered
2015	2019
2016	2019 and 2020
2017	2019, 2020 and 2021

Effective: Year of assessment 2019

Review of tax treatment on unutilised losses and allowances

Currently, there is no time limit for carrying forward of unutilised losses and allowances. It is proposed that a time limit will be imposed as follows:-

Losses / Allowances	Proposal
1. Unutilised business losses	To be carried forward for a maximum of 7 consecutive years of assessment.
2. Unutilised capital allowances	
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	
5. Unutilised investment tax allowance	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	

Transitional provision:-

Any accumulated losses and allowances brought forward from year of assessment 2018 can be carried forward for another 7 years consecutive years of assessment (i.e. from year of assessments 2019 to 2025).

Effective: Year of assessment 2019

Our commentary:

The unutilised business losses and capital allowances of dormant companies with substantial change in shareholdings are not allowed to be carried forward. The above proposal in items 1 and 2 would not be applicable to the unutilised business losses and capital allowances of dormant companies with substantial change in shareholdings.

Cessation of tax exemption for income received by companies from wholesale money market funds

Interest income received by a wholesale money market fund from licensed banks, Islamic banks and development financial institutions is exempted from income tax if it complies with the criteria in the guidelines issued by the Securities Commission Malaysia.

Unit holders of a unit trust shall not be assessed and charged to tax in respect of any amount distributed by the unit trust out of income exempt from tax.

It is proposed that a unit holder who is a company shall no longer be exempted from tax in respect of the amount distributed by a wholesale money market fund out of interest income paid or credited by licensed banks, Islamic banks and development financial institutions.

Effective: 1 January 2019

Our commentary:

The Bill seeks to amend Paragraph 35A in Schedule 6 of the Income Tax Act 1967 to incorporate the above proposed change. Paragraph 35A in Schedule 6 is meant for tax treatment at the unit trust level whereas the proposed amendment is intended for the tax treatment of unit holder who is a company. It is anticipated that the Finance Bill will be reviewed to reflect the above proposed amendment in another provision of the Income Tax Act 1967.

Definition on "Control"

It is proposed to insert a new Section 140A(5A) in the Income Tax Act 1967 to expand the meaning of "control" under Section 139 for the purpose of transfer pricing. The new section seeks to also include the situations that describe the existence of control where the share capital held by a person or a third person is 20% or more along with satisfaction of either of the following economic control conditions:

- a) The business operations of a person depends on the proprietary rights, such as patents, non-patented technological know-how, trademarks, or copyrights, provided by the other person or a third person; or
- b) The business activities, such as purchases, sales, receipt of services, provision of services, of a person are specified by the other person, and the prices and other conditions relating to the supply are influenced by such other person or a third person; or

- c) One or more of the directors or members of the board of directors of a person are appointed by the other person or a third person.

Effective: 1 January 2019

Earnings Stripping Rules

In line with the OECD recommendations for base erosion and profit shifting, it is proposed to introduce a new Section 140C in the Income Tax Act 1967 to impose restrictions on deductibility of interest payment. The provision will apply on payment of excess **interest expense** in connection with any **financial assistance** in a **controlled transaction**.

The key definitions proposed under Section 140C are as follows:

- **Control:** The same expanded definition of control as prescribed in Section 140A(5A) will be applicable;
- **Controlled transaction:** Financial assistance between persons one of whom has control over the other or both are controlled by third person;
- **Financial assistance:** Includes loan, interest bearing trade credit, advances, debt or the provision of any security or guarantee;
- **Interest expense:** Interest on all forms of debts or payments economically equivalent to interest (excluding expenses incurred in connection with the raising of finance).

This section shall apply without prejudice to Section 140 or 140A and subject to any rules made under this Income Tax Act 1967.

The final rules with regard to deductibility of interest payment will be issued in due course.

Effective: 1 January 2019

Review of income tax rates for inward reinsurance & inward retakaful

It is proposed that the income tax rate of all reinsurance and retakaful business should be standardised at a single rate of 8% regardless of location of risks.

	Current tax rate (%)	Proposed tax rate (%)
General reinsurance	24	8
Inward reinsurance	5	8
Inward retakaful	5	8

The above proposed tax rate of 8% shall only apply to an insurer who has fulfilled the substantive requirements of:

- (a) adequate number of full time employees, and
- (b) adequate amount of annual operating expenditure incurred in Malaysia,

as prescribed by the Minister of Finance.

Effective: Year of assessment 2019

Requirement of audited accounts under the Income Tax Act, 1967 (“the Act”)

Currently, a return furnished by a company under Section 77A of the Act shall be based on accounts audited by a professional accountant.

It is proposed that an income tax return may be furnished based on:

- (a) audited accounts; or
- (b) unaudited accounts, if there is no requirement on the part of the company to submit audited accounts to the Companies Commission of Malaysia.

Effective: Year of assessment 2019

Taxation for Offshore Insurance

Presently, an insurer who carries on offshore insurance business is taxed at preferential rate of 5%.

It is proposed that the preferential tax rate for offshore insurance business be removed and general insurance (other than reinsurance) be subject to tax at the prevailing corporate income tax rate.

Effective: Year of assessment 2019

Taxation for Foreign Fund Management

Presently, income of a Foreign Fund Management company in respect of the fund management services provided to foreign investors is taxed at preferential rate of 10%.

It is proposed that the preferential income tax rate of 10% will continue to apply for years of assessment 2019 and 2020. The above income will be taxed at prevailing corporate income tax rate with effect from year of assessment 2021.

Effective: Year of assessment 2019



Tax Incentives

Definition of research and development

Currently, the term “research and development” (R&D) is not defined in the Income Tax Act, 1967 (ITA). In practice, we are aware that definition of “research” that is similar to the definition of R&D provided in the Promotion of Investments Act, 1986 (PIA) is adopted. The same definition is used for the purpose of the Public Ruling No. 5/2004 “Double Deduction Incentive on Research Expenditure”.

“Research” means any systematic or intensive study undertaken in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes.

It is proposed that the term “R&D” be defined in both the ITA and PIA, as follows:

“Research and development” means any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devices, products, produce, or processes, but does not include –

- (a) quality control or routine testing of materials, devices or products;
- (b) research in the social sciences or the humanities;
- (c) routine data collection;
- (d) efficiency surveys or management studies;
- (e) market research or sales promotion;
- (f) routine modifications or changes to materials, devices, products, processes or production methods; or
- (g) cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods.

Effective: Upon coming into operation of the Finance Act 2018

Definition of research and development

Our commentary:

Clarification is required on the new elements of the proposed definition of research and development, namely (i) systematic, investigative and experimental study (ii) novelty or technical risk and (iii) objective of study.

Correspondingly, the scope of research and development expenditure that qualify for deductions, capital allowance and industrial building allowance claims on research and development will be narrowed.

Contract R&D Companies - Pioneer Status Incentive

The following new conditions have been proposed for contract research and development (R&D) companies that have been granted or are applying for pioneer status (PS):-

(a) Introduction of substantive requirement

Companies applying for PS shall fulfil the following substantive requirement to be eligible for PS incentives:

- (i) Have incurred adequate amount of annual operating expenditure in Malaysia; and
- (ii) Have adequate number of full-time employees in Malaysia.

Contract R&D Companies - Pioneer Status Incentive

(b) Taxation of royalty and other income derived from commercial exploitation of intellectual property right (IPR) received by a pioneer contract R&D company

Such income derived from IPR shall be subject to corporate income tax at the prevailing rate. IPR means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographic indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable.

Effective: 1 January 2019. However, grandfathering provisions described below apply to substantive requirement for existing companies which have been granted PS:

- (a) for PS granted on or before 16 October 2017, the above substantive requirement shall apply on 1 July 2021 and thereafter; and
- (b) for PS granted after 16 October 2017, the above substantive requirement shall apply on 1 January 2019 and thereafter.

Our commentary:

These proposals reflect the Government's commitment to align some of Malaysia's incentive regimes to Base Erosion Profit Shifting (BEPS) Action 5 on Harmful Tax Practices. Moving forward, we expect new compliance and monitoring measures to be introduced with the potential for intensified tax audits. Hence, taxpayers are strongly recommended to review its business models and conduct health checks.

Clawback of Investment Tax Allowance ("ITA")

Currently, where capital expenditure is incurred on acquisition of any asset and such asset is disposed of at any time within a period of 2 years from the date of acquisition, the ITA for such capital expenditure shall be deemed to have not been given to the Company to which it would otherwise be entitled.

It is proposed that the clawback period be extended to disposals made within 5 years from the date of acquisition.

Effective: Year of assessment 2019





Individual Tax

Review of resident income tax relief on contributions to an approved provident fund or takaful or life insurance premiums

Currently, a resident individual taxpayer is eligible to claim income tax relief on contributions made to approved provident funds such as the Employees Provident Fund (EPF) and payment for life insurance premiums or takaful contributions up to RM6,000 per year of assessment.

It is proposed that the tax relief on contributions to approved provident funds or takaful or payment for life insurance premiums be increased to RM7,000 and be separated as follows:

- i. income tax relief on contributions to approved provident funds up to RM4,000; and
- ii. income tax relief on takaful contributions and payment for life insurance premiums up to RM3,000.

For public servants under the pension scheme, the income tax relief on takaful contributions and payment for life insurance premiums is given up to RM7,000.

Effective: Year of assessment 2019

Increase in the resident individual income tax relief on net annual savings in SSPN

Tax relief on net annual savings in the National Education Savings Scheme (SSPN) will be increased from RM6,000 to RM8,000.

Effective: Years of assessment 2019 and 2020





Others

Derivation of business income that is attributable to a place of business in Malaysia

It is proposed that a person's income would be deemed to be derived from Malaysia if the income is attributable to a place of business in Malaysia.

A place of business includes—

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a warehouse;
- g) a building site, or a construction, an installation or an assembly project;
- h) a farm or plantation; and
- i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources,

and without prejudice to the generality of the foregoing, a person shall be deemed to have a place of business in Malaysia if that person—

- (i) carries on supervisory activities in connection with a building or work site, or a construction, an installation or an assembly project; or
- (ii) has another person acting on his behalf who –
 - habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification;
 - habitually maintains a stock of goods or merchandise in that place of business from which such person delivers goods or merchandise; or
 - regularly fills orders on his behalf.

Effective: Upon coming into operation of the Finance Act 2018

Derivation of business income that is attributable to a place of business in Malaysia

Our commentary:

Whilst the proposed amendments above are similar to the concept of permanent establishment in the Organisation for Economic Co-operation and Development ("OECD")/United Nation ("UN") Model Tax Convention, it is important to note that the exceptions as provided in Article 5(4) and Article 5(6) (i.e. activities which are regarded to be preparatory and auxiliary in nature and the concept of independent agent) of the OECD/UN Model Tax Convention are not included in the proposed amendments.

Special classes of income under Section 4A(ii)

It is proposed that Section 4A(ii) be amended as below:-

Notwithstanding the provisions of section 4 and subject to this Act, the income of a person not resident in Malaysia for the basis year for a year of assessment in respect of-

- i. ...;
- ii. amounts paid in consideration of any advice given, or assistance or services rendered in connection with any scientific, industrial or commercial undertaking, venture, project or scheme; or
- iii.

which is derived from Malaysia is chargeable to tax under this Act.

Effective: Upon the coming into operation of the Finance Act 2018

Our commentary:

Previously, there were arguments whereby a service payment would only fall under the ambit of Section 4A(ii) if:

- a) The payment is for **technical** advice, **technical** assistance and **technical** services; and

Special classes of income under Section 4A(ii)

b) The service has to be in connection with **technical management or administration** of any scientific, industrial or commercial undertaking, venture, project or scheme.

However, the Inland Revenue Board of Malaysia's ("IRBM") official position is that Section 4A(ii) covers payment for non-technical assistance as well as non-technical service. In addition, the issue of whether the service is in connection with **technical management or administration** is not relevant. The IRBM's view was endorsed by the Special Commissioner of Income Tax and High Court in various tax cases.

It appears that the proposed change in Section 4A(ii) above is meant to clarify and widen the scope of Section 4A(ii) as interpreted by IRBM and the Courts.

It is also interesting to note that the derivation section of special classes of income i.e. Section 15A was not amended. We expect this to be amended in due course.

Notice of appeal

Currently, a person aggrieved by a best judgement assessment made in respect of him may appeal against the assessment by submitting Form Q to the Inland Revenue Board of Malaysia (IRBM) within 30 days after the notice of assessment has been served. Income Tax Return Form (ITRF) is not required.

It is proposed that for appeal against best judgement assessment, ITRF is required to be submitted together with Form Q to the IRBM.

Effective: Year of assessment 2019

Duty to keep records and give receipts

Currently, if the Director General is of the opinion that any accounts or records produced by any person for the purpose of ascertaining the income of a person are insufficient or inadequate, he may by notice require that person to produce, in respect of any period or periods specified in the notice and within a time so specified (that time not being less than thirty days from the service of the notice), accounts audited by a professional accountant, together with a report made by that accountant which shall contain, in so far as they are relevant, the matters set out in subsections 174(1) and (2) of the Companies Act 1965.

Duty to keep records and give receipts

It is proposed that "*accounts audited by a professional accountant, together with a report made by that accountant which shall contain, in so far as they are relevant, the matters set out in subsections 174(1) and (2) of the Companies Act 1965*" to be substituted by "*financial statements made in accordance with the requirements of the Companies Act 2016*".

Effective: Year of assessment 2019

Our commentary:

1. If the Companies Act 2016 accepts the submission of unaudited financial statements to the Companies Commission of Malaysia, such unaudited financial statements will be accepted under the Income Tax Act 1967.
2. Similar amendments as above have also been made in Section 77A - Return of income by every company, limited liability partnership, trust body or co-operative society.

Penalty for breach of confidentiality

Currently, any classified person who is in breach of confidentiality i.e. in contravention of Section 138 of the Income Tax Act 1967, shall be guilty of an offence. On conviction, he shall be liable to a fine not exceeding RM4,000 or to imprisonment for a term not exceeding 1 year or to both. Classified person means:

- (a) A person having an official duty under or employed in carrying out the provisions of the Income Tax Act 1967;
- (b) the Auditor-General and public officers under his direction and control;
- (c) any person advising or acting for a person who is or may be chargeable to tax, and any employee of a person so acting or advising if he is an employee who in his capacity as such has access to classified material; or
- (d) any employee of the IRB.

It is proposed that it is also an offence for a person to use, produce or disclose any confidential information communicated to him in contravention of Section 138 of the Income Tax Act, 1967. Hence, on conviction, he shall be liable to a fine not exceeding RM4,000 or to imprisonment for a term not exceeding 1 year or to both.

Effective: Upon coming into operation of the Income Tax (Amendment) Act 2018

<p>Double tax agreements and arrangement made by Malaysia with regards to international obligation</p>	<p>A new Section 132C is proposed to be inserted to give effect to arrangement into which Malaysia has entered to fulfill the international obligation in relation to income tax and other taxes under any written law.</p> <p>In addition, the Minister of Finance will also be empowered to make rules and regulations for the purpose of facilitating or implementing the operation of the arrangement mentioned above.</p> <p>Effective: Upon coming into operation of the Income Tax (Amendment) Act 2018</p> <p>Our commentary: Malaysia has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”) on 24 January 2018.</p> <p>The MLI would need to be ratified and deposited with the OECD before the MLI could enter into force.</p> <p>The proposed amendment would enable the ratification of the MLI. Once the MLI is effective, it will modify the effect of certain double tax agreements that Malaysia has signed previously.</p>	<p>Tax treatment for Labuan entities</p> <p>“Intellectual property right” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable.</p> <p>Effective: 1 January 2019</p> <p>Our commentary: The above changes appear to be in line with Forum on Harmful Tax Practices (FHTP)’s recommendations under Base Erosion and Profit Shifting (BEPS) Action Plan 5 on Harmful Tax Practices.</p> <hr/> <p>Absence of basis period of a Labuan entity</p> <p>In cases where a Labuan entity carrying on a Labuan trading activity does not have a basis period for a year of assessment, the Director General may give direction on the basis period for that year of assessment and subsequent years of assessment.</p> <p>Effective: 1 January 2019</p> <hr/> <p>Disallowance of expenses incurred in respect of any payment made by a resident to a Labuan Company</p> <p>97% of any expenditure incurred by a resident of Malaysia in respect of payment made to any Labuan company is disallowed as a deduction.</p> <p>Effective: 1 January 2019</p>
<p>Mutual administrative assistance arrangement (“MAAA”)</p>	<p>A new Subsection 132B(1A) is proposed to be inserted to clarify that classified materials may be disclosed to a duly authorized servant or officer of the country with which Malaysia has entered into MAAA.</p> <p>Effective: Upon coming into operation of the Income Tax (Amendment) Act 2018</p>	
<p>Tax treatment for Labuan entities</p>	<p>Labuan entities will no longer be entitled to elect to be taxed at RM20,000 under the Labuan Business Activity Tax Act 1990.</p> <p>All Labuan entities will now be allowed to transact as follows:</p> <ul style="list-style-type: none"> (i) Conduct transactions in Ringgit Malaysia (ii) Conduct transactions with residents of Malaysia <p>Labuan entities shall have an adequate number of full time employees and an adequate amount of annual operating expenditure in Malaysia, as prescribed under the regulations to be made by the Minister of Finance.</p> <p>Royalty and other income derived from an intellectual property right (as defined) if receivable as consideration for the commercial exploitation of that right will be subject to tax under the Income Tax Act 1967.</p>	<p>Compliance officer for limited liability partnership</p> <p>Currently, the responsibility for doing all acts and things required to be done by or on behalf of a limited liability partnership (LLP) shall lie jointly and severally:</p> <ul style="list-style-type: none"> (a) with the compliance officer who is appointed amongst the partners of the LLP; or (b) if no compliance officer is appointed as such, any one or all of the partners thereof. <p>It is proposed that the compliance officer may also be appointed amongst persons qualified to act as secretaries under the Companies Act 2016 who is a citizen or permanent resident of Malaysia and ordinarily resides in Malaysia.</p> <p>Effective: Upon coming into operation of the Income Tax (Amendment) Act 2018</p>



Indirect Tax

Service Tax on imported services and imported online services

Service tax to be charged on imported taxable services in two stages:

- Business to Business (B2B) transactions: Malaysian recipient customers to account for 6% tax via reverse charge from 1 January 2019; and
- Business to Consumer (B2C) transactions: Foreign providers of digital products and services are required to register and collect 6% service tax from 1 January 2020.
- Imported taxable services mean any taxable service acquired by any person in Malaysia from any person outside Malaysia.
- The value of an imported taxable service will be prescribed by the Director General of Customs and Excise ("the DG").
- The service tax on imported services shall be due at the earlier of the payment date or date of receipt of invoice.
- Non-taxable persons acquiring imported taxable services will need to account for service tax in a declaration to be prescribed by the DG, no later than the last day of the month following the month the payment was made or the invoice received.
- Non-taxable persons failing to furnish the declaration as prescribed, or furnishing an incorrect declaration will be subject to the same penalties as a taxable person.

Effective:

- **Business to Business (B2B) transactions – 1 January 2019**
- **Business to Consumer (B2C) transactions – 1 January 2020**

Our commentary:

The expansion of service tax to cover imported services is intended to provide parity between local suppliers and offshore service providers. Critical details have been released in the Finance Bill but there still remains considerable uncertainty on its application. Many of the concepts from the reverse charge adopted under the GST regime have been replicated including the requirement for the Malaysian business recipient to self-account the tax in the month corresponding to the payment or receipt of invoice and the requirement to file a monthly ad-hoc return to make payment for non-service tax registrants. A notable difference from the GST is the absence of a 'consumption test' i.e. the issue of whether the services are consumed in Malaysia do not seem to be a relevant consideration. Furthermore, the method in which the tax is to be calculated has not been clearly stated. These issues may be addressed in the Regulations.

Credit system for Deduction of Sales Tax

A credit system for Sales Tax will be implemented for the deduction of sales tax on raw materials, components or packaging materials purchased by any registered manufacturer.

The DG will prescribe the necessary conditions for, and the form and manner of claiming such deductions.

Effective: 1 January 2019

Our commentary:

A registered manufacturer is generally eligible for a sales tax exemption on the purchase of raw materials, components and packaging materials. However, sales tax paid goods may go through several levels of a supply chain before it is acquired by the registered manufacturer and in those situations, the registered manufacturer may not be eligible to claim the available exemptions.

The proposed credit or deduction system for sales tax would allow a prescribed fraction of the purchase price to be deducted in such situations, as a further cost relief to manufacturers.

Determination of value for a manufacturer

Currently where a manufacturer who is sales tax-registered, receives taxable goods from any person, which are to be manufactured and subsequently returned to that person, the sale value of those manufactured goods shall, subject to the approval of the DG, be the amount that the manufacturer charges for the work performed.

This treatment for registered manufacturers is now proposed to be expanded to non-registered manufacturers as well.

Effective: 1 January 2019

Our commentary:

This provision is expanded to cover non-registered manufacturers who perform subcontract work, for the purposes of determining their registration threshold to be based on the value of their subcontract work performed (subject to DG's approval). With this amendment, more manufacturers could fall below the RM500,000 annual registration threshold and hence not liable to be registered, if their DG-approved sale value of work performed is below the registration threshold.



Stamp Duty

Additional conditions imposed on relief from stamp duty for transfer of property between associated companies under Section 15A, Stamp Act 1949

The following additional conditions have been added for the relief from stamp duty for transfer of property (including shares) between associated companies under Section 15A:

- (i) the transfer of the property of the associated companies is to achieve greater efficiency in operation;
- (ii) the transferee company must be incorporated in Malaysia;
- (iii) the transferor and the transferee must not cease to be associated for a period of 3 years from the date of the conveyance or transfer; and
- (iv) the transferee company must not dispose of the property that it has acquired within 3 years from the date of the conveyance or transfer of the property.

In order to standardize the treatment and requirements under Section 15A to Section 15 of the Stamp Act, the following conditions have also been added:

- (i) Where any claim for exemption from duty under this section has been allowed and it is subsequently found that any declaration or other evidence furnished in support of the claim is untrue, the exemption from duty shall be revoked and duty shall be chargeable, together with interest thereon at the rate of 6% per annum, from the date on which the duty which the conveyance or transfer ought to be stamped with the proper amount of duty;
- (ii) Where relief has been granted and there is a change of the circumstances, the companies shall notify the Collector in writing of the circumstances within 30 days from the date of the occurrence; and
- (iii) Where a claim for relief is made, the IRB may require a statutory declaration made by an advocate and solicitor, or, in the case of Sabah and Sarawak, an advocate of the High Court.

Effective: Upon coming into operation of the Finance Act 2018

Additional conditions imposed on relief from stamp duty for transfer of property between associated companies under Section 15A, Stamp Act 1949

Our commentary:

The proposed amendments are in line with the previous Stamp (Amendment) Bill 2017. At this juncture, it is unclear how would one demonstrate "greater efficiency in operation" to the IRBM and whether this should be in the statutory declaration, especially in the case of transfer of shares.

Further, the requirement that the transferee company must be incorporated in Malaysia could increase transaction costs for cross border restructuring.

Having said the above, the overall update to Section 15A supports the Government's intention to increase overall tax compliance and enforcement, and the proposed amendments to stamp duty relief provisions has been on the cards for a while now.

Stamp duty rates on transfer of property

The stamp duty rates on transfer of property exceeding RM500,000 are revised as follows:

Price / market value of property	Proposed rate of stamp duty (%)
First RM100,000	1
RM100,001 to RM500,000	2
RM500,001 to RM1,000,000	3
RM1,000,001 and above	4

Effective: 1 January 2019

Relief from stamp duty in reconstructions or amalgamations of companies

In the case of reconstruction or amalgamation of companies where shares in the transferee have been issued to the transferor in consideration of the acquisition of undertaking, it is proposed under the Bill to extend the period from 2 years to 3 years over which the transferor has to remain as the beneficial owner of the shares.

In the case of reconstruction or amalgamation of companies where shares are acquired by the transferee, the Bill proposes to extend the period from 2 years to 3 years over which transferee has to remain as the beneficial owner of the shares.

Where relief has been granted and there is a change of circumstances, the companies shall notify the Collector of the circumstances within 30 days from the date of the occurrence.

Effective: Upon coming into operation of the Finance Act 2018

Authorized person to compound instrument

It is proposed that the scope of authorized person to compound for the payment of duty on unstamped instruments be expanded as follows:

Current	Proposed
Bankers	Any authorized person by the notification of Gazette
Dealers	
Insurers	
Registrar of Companies	
Principal officer of Tenaga Nasional Berhad	

With the expanded scope, any authorized person by the notification of Gazette may collect payment of duty from duty payers and remit it to the Collector.

Effective: Upon coming into operation of the Finance Act 2018

Substitution of “Nominal Share Capital” with “Issued Share Capital” under Stamp Act 1949

It is proposed to substitute the term “nominal share capital” with “issued share capital” wherever appearing in Section 15 of the Stamp Act 1949, in consequence of the abolishment of par value concept and authorized share capital concept under the Companies Act 2016.

Upon the substitution of the term “nominal share capital”, the existing deeming provision under Section 15(2) of the Stamp Act 1949 is no longer relevant and will be removed.

Effective: Upon coming into operation of the Finance Act 2018

Stamp Duty to be Imposed on Hire Purchase Agreement (conventional)

It is proposed to amend Item 22(6), First Schedule of Stamp Act 1949 to charge stamp duty on conventional hire purchase agreement as follows:

*Being the security for securing the payment or repayment of money for the purchase of goods (within the meaning given) under the First Schedule of the Hire Purchase Act 1967) in accordance with **Conventional Hire Purchase** and Syariah Principle.*

The stamp duty is RM10.

Effective: Upon coming into operation of the Finance Act 2018

Amendment to First Schedule of the Stamp Act 1949

Pursuant to the Companies Act 2016, a company incorporated after 31 January 2017 is not required to have memorandum & articles of association (“M&A”) but the company has an option whether to adopt a constitution or otherwise.

In line with the above, it is proposed that First Schedule of the Stamp Act 1949 be amended as follows:

Proposed deletion from First Schedule	Proposed insertion to First Schedule
Item 10 – stamp duty of RM100 on Articles of Association	New Item 29A – stamp duty of RM200 payable on Constitution of a company
Item 53 – stamp duty of RM100 on Memorandum of Association	

Effective: Upon coming into operation of the Finance Act 2018

Clarification of Stamp Duty Treatment for Item 22(1), First Schedule of Stamp Act 1949

The proposed amendment is to clarify the stamp duty treatment for Item 22(1), First Schedule of Stamp Act 1949 as follows:

Description of instrument	Proper stamp duty
(1) being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any sum secured by a duly stamped instrument, nor rent reserved by a lease or tack –	
(a) for definite and certain period so that the total amount to be ultimately payable can be ascertained	The same ad valorem duty as a charge or mortgage for such total amount.
(b) For the term of life or any other indefinite period for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable	RM1.00

Effective: Upon coming into operation of the Finance Act 2018

Amendment to the definition of Banker in Section 2 of the Stamp Act 1949

Amendments in the form of deletion of certain definition of terms and insertion of new definition of terms have been proposed as a consequence to the repeal of the Banking and Financial Institutions Act 1989 (“BAFIA”) and the Islamic Banking Act 1983 (“IBA”).

Effective: Upon coming into operation of the Finance Act 2018

Amendment in the definition of “Small and Medium Enterprise” (SME) in the Stamp Act 1949

It is proposed that the definition of SME be amended to be in line with the definition of SME Corp Malaysia as follows:

Manufacturing activities:

- (a) Sales turnover ≤ RM50 million; or
- (b) Full-time employees ≤ 200 people

Services and other sectors:

- (a) Sales turnover ≤ RM20 million; or
- (b) Full-time employees ≤ 75 people

Effective: Upon coming into operation of the Finance Act 2018





Real Property Gains Tax

Review of Real Property Gains Tax ("RPGT") Rates

The RPGT rates for disposals of real property and shares in real property companies in the 6th year onwards will be revised as follows:-

Period of disposal	Proposed RPGT rates		
	Company	Others	Non-citizen and non-permanent resident
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	10% (↑ 5%)	5% (↑ 5%)	10% (↑ 5%)

However, Malaysian citizens will be exempted from RPGT on gains for the disposal of low cost, medium low and affordable residential homes at the price of RM200,000 and below in the 6th and subsequent years.

Effective: 1 January 2019

We invite you to explore other tax related information at:
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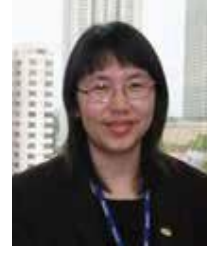
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