



Tax Espresso (Special Edition – Finance Bill 2016)

A snappy delight

Greetings from Deloitte Malaysia Tax Services

The Prime Minister and Minister of Finance, Y.A.B. Dato' Seri Mohd. Najib Tun Razak, unveiled the Budget 2017 on 21 October 2016. As a follow-up to the Budget 2017 Speech, the Finance Bill 2016 was released on 26 October 2016.

One of the most significant changes is the re-imposition of withholding tax on offshore services which may give rise to uncertainty in the case of double tax agreement that does not have an article on technical fee. The non-resident may face challenge in obtaining foreign tax

Quick links:

Deloitte Malaysia

Inland Revenue Board

Takeaways:

Highlights in Finance Bill 2016

Upcoming events

[Deloitte TaxMax – The 42nd Series One World Hotel 8 November 2016](#)

Important deadlines:

Due date for 2017 tax estimates for companies with November year-end (31 October 2016)

6th month revision of tax estimates for companies with April year-end (31 October 2016)

credit. The widening of the scope of royalty, amongst others, to include the payment for the use of or the right to use software, may alleviate the uncertainties as to whether such payment to the non-resident is subject to withholding tax.

Nevertheless, the proposed change may not necessarily be in line with the international tax position adopted by various advanced countries and technical position in the double tax agreements. The inclusion of lecturer in the definition of public entertainer is unexpected. At most, the services rendered by the lecturer should be regarded as technical services under Section 4A of the Income Tax Act 1967 which attracts withholding tax at 10% as opposed to 15%. It is also noteworthy that the Country-by-Country Reporting requirement would also form part of the tax legislation once the Bill is gazetted.

We highlight some of the key amendments / issues in the Finance Bill 2016 and the Budget 2017 Appendices as shown below:

9th month revision of tax estimates for companies with January year-end
(31 October 2016)

Statutory filing of 2016 tax returns for companies with March year-end
(31 October 2016)



Corporate Tax

Proposals	Description
Increase in the limit of tax deduction for sponsoring arts,	The deduction limit for expenditure incurred by a company in a basis period to sponsor arts, cultural or heritage activities approved by the Ministry of Tourism and Culture is to

<p>cultural and heritage activities</p>	<p>be increased from RM500,000 to RM700,000. Out of the RM700,000, the deduction limit for sponsorship of foreign arts, cultural or heritage activities is capped at RM300,000 (an increase from RM200,000).</p> <p>Effective: Year of assessment 2017</p>
<p>Amendments to Sections 60(11), 60AA, 109C and 110C; and Paragraph 33 of Schedule 6</p>	<p>Amendments in the form of deletion of certain definition of terms; substitution of words, paragraphs and definitions; and insertion of new definition of terms have been proposed as a consequence to the repeal of the Insurance Act 1996, the Banking and Financial Institutions Act 1989 ("BAFIA") and the Islamic Banking Act 1983 ("IBA") and the enactment of the Financial Services Act 2013 ("FSA") and the Islamic Financial Services Act 2013 ("IFSA").</p> <p>Effective: Deemed to have come into operation on 30 June 2013</p>
<p>Reducing the scope of REIT and PTF that qualifies for tax exemption under Section 61A</p>	<p>a) The definition of unit trust for the purpose of Section 61A(2) is amended to mean a unit trust which is approved by the Securities Commission ("SC") as a Real Estate Investment Trust ("REIT") or Property Trust Fund ("PTF") and listed on Bursa Malaysia. With such changes, only REITs/PTFs that are listed on Bursa Malaysia shall enjoy exemption from tax in respect of the total income of the REITs/PTFs under Section 61A(1) (i.e. where 90% or more of the total income has been distributed to the unit holder(s) of the REITs/PTFs for a year of assessment).</p> <p>b) The rest of the amendments made to Sections 63A(6), 63B(3) and 63C(5) on the corresponding references made to unit trust retains the original intention of the aforesaid sections.</p>

Effective: Year of assessment 2017

Amendments to the exemption of certain interest income under Schedule 6

- a) Paragraph 33A of Schedule 6 is amended where the exemption on interest paid or credited to any company not resident in Malaysia (other than such interest accruing to a place of business in Malaysia of such company) in respect of sukuk or debenture issued in Ringgit Malaysia (other than convertible loan stock), approved or authorized by, or lodged with, the Securities Commission ("SC") shall no longer apply in respect of interest paid or credited to a company in the same group.
- b) The exemption under Paragraph 33B(1) of Schedule 6 on interest paid or credited to any person in respect of sukuk originating from Malaysia (other than convertible loan stock) issued in any currency other than Ringgit; and approved or authorized by, or lodged with, the SC, or approved by the Labuan Financial Services Authority shall not apply to:
- a) interest paid or credited to a company in the same group;
- b) interest paid or credited to:
- (i) a bank licensed under the Financial Services Act 2013 ("FSA")
 - (ii) an Islamic bank licensed under the Islamic Financial Services Act 2013 ("IFSA"); or
 - (iii) a development financial institution prescribed under the Development Financial Institutions Act 2002 ("DFIA").
- c) Paragraph 35A of Schedule 6 is amended as a consequence to the repeal of the

	<p>Banking and Financial Institutions Act 1989 (“BAFIA”) and the Islamic Banking Act 1983 (“IBA”) and the enactment of FSA and IFSA. In addition, in the case of a unit trust which is a money market fund, the exemption under Paragraph 35A of Schedule 6 on income of the unit trust fund in respect of interest derived from Malaysia and paid or credited by a bank licensed under the FSA, an Islamic bank licensed under the IFSA and a development financial institution prescribed under the DFIA shall only apply to a wholesale fund which complies with the relevant guidelines of the SC.</p> <p>Effective: Year of assessment 2017</p> <p><i>Our commentary:</i></p> <p><i>Given that the exemption would no longer apply to intra-group interest, group of companies may need to review their inter-company financing.</i></p>	
<p>Review of corporate income tax rate for Small and Medium Enterprises (“SME”)</p>	<p>The income tax rate of SME (resident and incorporated in Malaysia) and limited liability partnership [with total capital contribution (whether in cash or kind) not exceeding RM2,500,000] on chargeable income up to the first RM500,000 is reduced from 19% to 18%.</p> <p>Effective: Year of assessment 2017</p>	
<p>Reduction of corporate income tax based on the increase in chargeable income</p>	<p>The following companies and entities are taxed at a fixed rate of 24%:</p> <ol style="list-style-type: none"> 1. Company with paid-up capital of more than RM2.5 million or a Limited Liability Partnership (LLP) with total capital contribution of more than RM2.5 million; 2. Company with paid-up capital of up to RM2.5 million or a LLP with total capital contribution of up to RM2.5 million on the chargeable income exceeding RM500,000; 3. Trust body; and 	

4. Executor of an estate of an individual who was domiciled outside Malaysia at a time of his death and receiver appointed by the court.

It is proposed that the incremental portion of the chargeable income compared to the immediate preceding year of assessment enjoys reduced income tax rate as follows:

% of increase in chargeable income as compared to the immediate preceding year of assessment	Percentage point reduction in tax rate	Tax rate after reduction (%)
Less than 5.00	NIL	24
5.00 – 9.99	1	23
10.00 – 14.99	2	22
15.00 – 19.99	3	21
20.00 and above	4	20

For example, if the chargeable income of a company (a non-SME) is increased from RM10 million for year of assessment 2016 to RM12 million for year of assessment 2017 (i.e. 20% of increase), the income tax payable for year of assessment 2017 will be as follows:

Chargeable Income (RM)	Tax rate (%)	Tax Payable (RM)
10 million	24	2,400,000.00
2 million	20	400,000.00
Total		2,800,000.00

Effective: Years of assessment 2017 and 2018



Individual Tax

Proposals	Description
GST output tax paid by employer	<p>New Subsection 13(1A) has been introduced whereby gross income of an employee in respect of gains or profits from an employment will include any amount of output tax under the GST Act which is borne by the employer.</p> <p>For example, where the employer pays the utilities bill on behalf of the employee, the GST output tax included therein shall constitute gross income from employment and shall be taxable on the employee.</p> <p>Effective : Year of assessment 2015</p> <p><i>Our commentary:</i></p> <p><i>Since the tax returns for individuals for Year of assessment 2015 would have been filed by now, it is more sensible for the proposal to be effective prospectively.</i></p>
Review of spouse (husband / wife) tax relief	<p>The existing Sections 45A and 47 have been amended whereby the individual taxpayer with no total income to be aggregated with the spouse would not be able to claim the husband/wife relief of RM4,000 should the spouse (other than a disabled spouse) have any income derived from sources outside Malaysia which is more than the relief to be claimed. Currently, an individual's income derived from sources outside of Malaysia (foreign source income) is tax exempted.</p> <p>Effective : Year of assessment 2017</p>
Tax relief for lifestyle	<p>With the introduction of the new Paragraph 46(1)(p), the existing tax reliefs for the purchase of reading materials, computers and sports equipment are now combined into a new relief known as the lifestyle tax relief which is limited to RM2,500 per year. This relief is extended to include purchase of</p>

	<p>printed newspapers, smartphones and tablets, internet subscriptions as well as gymnasium membership fees.</p> <p>Effective: Year of assessment 2017</p>
<p>Tax relief for the purchase of breastfeeding equipment</p>	<p>New Paragraph 46(1)(q) has been introduced to provide for a new tax relief of up to RM1,000 for the purchase of breastfeeding equipment (complete set or separate parts) which consist of manual or electric breast pump, cooler bag, containers for collection and storage. This relief which can be claimed once in every 2 years is given to women taxpayers with children aged up to 2 years.</p> <p>Effective: Year of assessment 2017</p>
<p>Tax relief for fees paid to child care centres and kindergartens</p>	<p>A new tax relief of up to RM1,000 will be provided to individual taxpayers (claimed by either parent of the children) who enrol their children aged up to 6 years in child care centres or kindergartens registered with the Department of Social Welfare or the Ministry of Education.</p> <p>Effective: Year of assessment 2017</p>



Tax Incentives

Proposals	Description
<p>Extension of tax incentive for anchor companies under the Vendor Development Programme (VDP)</p>	<p>Currently, anchor companies that develop local vendors under the VDP and have signed the Memorandum of Understanding (MoU) with the Ministry of International Trade and Industry (MITI) from 1 January 2014 to 31 December 2016 are given double deduction for the following operating expenses:</p> <p>(a) cost of product development, R&D, innovation and quality improvement;</p>

- (b) cost of obtaining ISO/Kaizen/5S certifications, evaluation programme and business process reengineering for the purpose of increasing vendor capabilities; and
- (c) cost of vendor skills training, capacity building, lean management system and financial management system.

The qualifying criteria for double deduction are as follows:

- (a) the qualifying operating expenses must be certified by MITI before the anchor companies can claim deduction;
- (b) qualifying operating expenses are capped at RM300,000 per year; and
- (c) deduction is given for 3 years of assessment.

To further encourage the participation of anchor companies in developing more competitive local vendors, it is proposed that the incentive for anchor companies that implement VDP be extended for another 4 years.

Effective: For MoUs signed with MITI from 1 January 2017 to 31 December 2020.

Extension of the period and expansion of scope of double deduction incentive for the Structured Internship Programme (SIP)

Currently, companies that participate in SIP approved by TalentCorp are eligible for double deduction on expenses incurred in implementing the programme. This programme is made available for Malaysian students pursuing full-time degree and diploma courses in institutions of higher learning (IHL) that are registered with the Ministry of Higher Education or for equivalent vocational level (Malaysian Skills Certificate Level 4 and 5) as recognized by Malaysian Qualifications Agency or Department of Skills Development as follows:

- (a) Degree level – from years of assessment 2012 to 2016; and
- (b) Diploma and vocational level – from years of assessments 2015 to 2016.

To encourage more companies to participate in SIP and contribute towards the employability of local graduates through an early exposure to the working environment, it is proposed that the current incentive be extended for a period of 3 years. It is also proposed that this programme be expanded to include Malaysian students pursuing full-time vocational level (Malaysian Skills Certificate Level 3).

Effective: Years of assessment 2017 to 2019.

Extension of tax incentives for new 4 and 5 star hotels

The following tax incentives available to companies undertaking investments in new 4 and 5 star hotels and for applications received by the Malaysian Investment Development Authority by 31 December 2016 will be extended for another 2 years:

Location	Incentives
Peninsular Malaysia	<ul style="list-style-type: none"> (a) Pioneer status: 70% exemption on statutory income for a period of 5 years; or (b) Investment tax allowance: Allowance of 60% on the qualifying capital expenditure incurred within a period of 5 years to be set-off against statutory income of up to 70%.
Sabah and Sarawak	<ul style="list-style-type: none"> (a) Pioneer status: 100% exemption on statutory income for a period of 5 years; or (b) Investment tax allowance: Allowance of 100% on the

	<p>qualifying capital expenditure incurred within a period of 5 years to be set-off against statutory income of up to 100%.</p> <p>Effective: For applications received by Malaysian Investment Development Authority from 1 January 2017 to 31 December 2018</p>
<p>Expansion of the scope of halal products eligible for tax incentive</p>	<p>The existing tax incentives of income tax exemption, import duty exemption on raw materials and double deduction on expenses incurred in obtaining international quality standards certification are to be extended to Halal Industry Players operating in Halal Parks and involved in the production of nutraceutical and probiotic products.</p> <p>Effective: For applications received by Halal Industry Development Corporation from 22 October 2016</p>
<p>Extension of Income Tax and Stamp Duty Exemptions for Islamic Banking and Takaful Businesses</p>	<p>a) The tax exemption on statutory income received by Islamic banks licensed under Islamic Financial Services Act 2013 and financial institutions licensed under the Financial Services Act 2013 operating Islamic banking business transacted in foreign currencies including transactions with Malaysian residents which is effective from year of assessment 2007 until year of assessment 2016 is extended for another 4 years.</p> <p>Effective: Years of assessment 2017 to 2020</p> <p>b) The tax exemption on statutory income received by takaful companies and takaful unit licensed under the Islamic Financial Services Act 2013 and Financial Services</p>

Act 2013 operating takaful business transacted in foreign currencies including transactions with Malaysian residents which is effective from year of assessment 2007 until year of assessment 2016 is extended for another 4 years.

Effective: Years of assessment 2017 to 2020

- c) The stamp duty exemption on all instruments executed until 31 December 2016 pertaining to Islamic banking and takaful activities transacted in foreign currencies is extended for another 4 years.

Effective: For instruments executed from 1 January 2017 to 31 December 2020



Others

Proposals	Description
<p>Expansion of the scope of “royalty”</p>	<p>The existing definition of “royalty” under Section 2 is amended by substituting with the following new definition:</p> <p>“royalty” includes any sums paid as consideration for, or derived from—</p> <p>(a) the use of, or the right to use in respect of any copyrights, software, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks or other like property or rights;</p> <p>(b) the use of, or the right to use tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or</p>

reproduced in Malaysia or other like property or rights;

(c) the use of, or the right to use know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(d) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by—

(i) satellite; or

(ii) cable, fibre optic or similar technology;

(e) the use of, or the right to use, visual images or sounds, or both, in connection with television broadcasting or radio broadcasting, transmitted by—

(i) satellite; or

(ii) cable, fibre optic or similar technology

(f) the use of, or the right to use, some or all of the part of the radiofrequency spectrum specified in a relevant licence;

(g) a total or partial forbearance in respect of—

(i) the use of, or the granting of the right to use, any such property or right as is mentioned in paragraph (a) or (b) or any such knowledge, experience or skill as is mentioned in paragraph (c);

(ii) the reception of, or the granting of the right to receive, any such visual images or sounds as are mentioned in paragraph (d);

(iii) the use of, or the granting of the right to use, any such visual images or sounds as are mentioned in paragraph (e); or

(iv) the use of, or the granting of the right to use, some or all such part of the spectrum specified in a spectrum

	<p>licence as is mentioned in paragraph (f); or</p> <p>(h) the alienation of any property, know-how or information mentioned in paragraph (a), (b) or (c) of this definition.</p> <p>Effective : Upon coming into operation of the Finance Act 2016</p> <p><i>Our commentary:</i></p> <p><i>The widening of the scope of royalty, amongst others, to include the payment for the use of or the right to use software, is a significant change. In a way, it alleviates the uncertainties as to whether such payment to the non-resident is subject to withholding tax. Nevertheless, the proposed change may not necessarily be in line with the international tax position adopted by various advanced countries and technical position in the double tax agreements.</i></p>	
<p>Review of derivation of special classes of income</p>	<p>Currently, pursuant to Section 15A, income of a non-resident in respect of :-</p> <p>(a) amounts paid in consideration of services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;</p> <p>(b) amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;</p> <p>(c) rent or other payments made under any agreement or arrangement for the use of any moveable property-</p> <p>shall be deemed derived from Malaysia if :-</p> <p>(i) responsibility for payment of the above or other payments lies with the Government, a State Government or a local authority;</p>	

- (ii) responsibility for the payment of the above or other payments lies with a person who is a resident for that basis year; or
- (iii) the payment of the above or other payments is charged as an outgoing or expense in the accounts of a business carried on in Malaysia,

provided such income in respect of (a) and (b) above is attributable to services which are performed in Malaysia.

The proviso in Section 15A is removed and income derived by a non-resident under Section 15A(a) and (b) shall be deemed to be derived from Malaysia regardless of whether the services are performed in Malaysia or outside Malaysia. In other words, with the amendment, payment to non-residents for onshore as well as offshore services would be subject to withholding tax under Section 109B.

Effective: Upon the coming into operation of the Finance Act 2016

Our commentary:

The re-imposition of the withholding tax on offshore services also caught many by surprise. Some uncertainties would arise as to whether the payment for offshore service to a non-resident would still be subject to withholding tax given that the non-resident would not have a permanent establishment in Malaysia.

**Redefinition of
"Malaysia"**

The term "Malaysia" is redefined as the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, *and the airspace above such areas*, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been

or may hereafter be designated under the laws of Malaysia as an area over which Malaysia has sovereign rights *or jurisdiction* for the purposes of exploring and exploiting the natural resources, whether living or non-living.

Effective: Upon coming into operation of the Finance Act 2016

**Redefinition of
“public
entertainer”**

Currently “public entertainer” is defined as a stage, radio or television artiste, a musician, sportsperson or an individual exercising any profession, vocation or employment of a similar nature.

It is proposed that “public entertainer” be redefined as:

“public entertainer” includes –

- (a) a compere, model, circus performer, lecturer, speaker, sportsperson, an artiste or individual exercising any profession, vocation or employment of a similar nature; or
- (b) an individual who uses his intellectual, artistic, musical, personal or physical skill or character in,

carrying out any activity in connection with any purpose through live, print, electronic, satellite, cable, fibre optic or other medium, for film or tape, or for television or radio broadcast, as the case may be.

The above redefinition has widen the scope of withholding tax application on the remuneration or other income in respect of services rendered / performed in Malaysia by a non-resident public entertainer. The prevailing withholding tax rate is 15% which is a final tax.

Effective: Upon coming into operation of the Finance Act 2016

	<p><i>Our commentary:</i></p> <p><i>The inclusion of "lecturer" in the definition of public entertainer is unexpected. At most, the services rendered by the lecturer should be regarded as technical services under Section 4A of the Act which attracts withholding tax at 10% as opposed to 15%.</i></p>
<p>Deductibility of contribution in money to a fund</p>	<p>Currently, Section 44(6) provides that a deduction will be made from a person's aggregate income for any contribution in money to the Government, a State Government, local authority or any institution or organization approved by the Director General.</p> <p>The word "fund" is inserted to Subsections 44(6) and 44(7), and paragraphs 44(7A)(a), 44(7B)(a) and 44(7B)(b) to clarify that a deduction is also allowed for a person who makes a contribution in money to a fund approved by the Director General. "Fund" means a fund administered and augmented by an institution or organization in Malaysia for the sole purpose of carrying out the objectives for which the fund is established or held and that fund is not established or held primarily for profit.</p> <p>In addition, Subsection 44(11B) is amended to restrict the claim for deduction for a gift of money made to any sports activity approved by the Minister of Finance, contribution in kind will no longer be allowed. Further and any gift of money or contribution in kind made to any sports body approved by the Commissioner of Sports appointed under the Sports Development Act 1997 will no longer qualify for deduction.</p> <p>Effective: Year of assessment 2017</p>
<p>Streamline appeal procedure in the</p>	<p>New Subsection 97A(1A) is introduced to allow those taxpayers who have furnished returns</p>

case of non-chargeability to tax

for that year of assessment to apply for relief. The tax return that has been furnished will be deemed as notification of non-chargeability made by the Director General. Failure to appeal against the deemed notification within 30 days or any extended period thereof, it will render the assessment to be final and conclusive.

New Subsections are introduced to allow the taxpayer who has no chargeable income for that year of assessment to make an application in writing to the Director General for an amendment or relief in respect of the return submitted under the following reasons:

- a) There is an error or a mistake made by him in that return; or
- b) The amount that has been computed in the return is inaccurate due to:
 - i) any exemption, relief, remission, allowance or deduction is approved or granted for that year of assessment under the Act or any other written law published in the Gazette after the year of assessment in which the return is furnished; or
 - ii) a deduction not allowed in respect of withholding tax (WT) on payment not due to be paid under Subsections 107A(2) or 109(2), Section 109A, or Subsection 109B(2) or 109F(2) on the day a return is furnished.

The application for amendment or relief may be made in writing within a specified timeline :

Reasons:	Timeline for submitting application to the Director General:
a) Error or mistake in the return	Within 6 months from the date the return is submitted

b) (i) Inaccurate return due to the late approval or, the amended Act or other written law is published in the Gazette after the return is submitted	Within 5 years after the end of the year the exemption, relief, remission, allowance or deduction is published in the Gazette or approval is granted, whichever is the later
b) (ii) WT on payment not due to be paid on the day return is furnished	Within 1 year after the end of the year the payment is made

The Director General may grant such relief which appears to him to be just and reasonable.

No amendment shall be allowed in respect of an error or a mistake if the non-chargeability of the taxpayer in the return submitted was in fact made on the basis of or in accordance with the public ruling or any practice of the Director General generally prevailing at the time when the return is made.

Effective: 1 January 2017

Mandatory to e-file Form CP204 and CP204A by a limited liability partnership, trust body or co-operative society

A limited liability partnership, trust body or co-operative society must file its estimate or revised estimate of its tax payable for each year of assessment on an electronic medium or by way of electronic transmission.

This manner of filing is consistent with the electronic filing of estimate or revised estimate of tax payable that is enforced on companies by the Director General with effect from year of assessment 2018.

Effective: Year of assessment 2019

Penalties for non-compliance with CbCR requirements

In line with the OECD recommendation on transfer pricing documentation to be prepared by multinational enterprises (MNEs), Malaysia is set to introduce Rules/Guidelines on preparation and submission of Country-by-Country Report (CbCR) for financial years commencing on or after 1 January 2017, with due date for first submission being 31 December 2018.

Failure to furnish CbCR

New Section 112A provides for a fine of not less than RM20,000 and not more than RM100,000, or imprisonment for a term not exceeding six months, or both, in the event of failure to furnish CbCR. In case of any prosecution the burden of proof shall be upon the accused person, and the court may require the convicted person to comply with the requirement within 30 days or such other specified period.

Furnishing an incorrect return, information return or report

New Section 113A provides for a similar fine of not less than RM20,000 and not more than RM100,000, or imprisonment for a term not exceeding six months, or both, in the event of furnishing an incorrect return, information return or report (by omitting information) or giving any incorrect information, on behalf of the taxpayer himself or another person. If the taxpayer can satisfy the court that the incorrect return, information return or report, or the incorrect information was provided in good faith, he may not be held guilty of an offence.

Effective: Upon coming into operation of the Finance Act 2016

New Section 119B to address on the implication of

Any person who fails to comply with any rules made to implement or facilitate the operation of a tax administrative assistance

failure to comply with rules on mutual administrative assistance

arrangement shall be, on conviction, liable to a fine of not less than RM20,000 and not more than RM100,000 or to imprisonment for a term not exceeding 6 months or both. In any prosecution, the burden of proving that any rules made to implement or facilitate the operation of a tax administrative assistance arrangement has been complied with shall be upon the accused person. Where a person has been convicted of an offence, the court may make a further order that the person shall comply with the relevant provision of the rules under which the offence has been committed within 30 days or such other period as the court deems fit, from the date the order is made.

Effective : Upon coming into operation of the Finance Act 2016

Relief other than in respect of error or mistake

Currently, only taxpayer who has paid tax can apply for relief by reason of error or mistake in a return. A new Section 131A has been introduced to allow a taxpayer who has furnished a tax return according to the Act and paid tax for that year of assessment to make an application in writing to the Director General for relief, if the assessment for that year of assessment is excessive by reason of :

- i) any exemption, relief, remission, allowance or deduction is approved or granted for that year of assessment under the Act or any other written law published in the Gazette after the year of assessment in which the return is furnished; or
- ii) a deduction not allowed in respect of withholding tax (WT) on payment not due to be paid under Subsections 107A(2) or 109(2), Section 109A, or Subsection 109B(2) or 109F(2) on the day a return is furnished.

The application for amendment or relief may be made in writing within a specified timeline :

Reasons	Timeline for submitting application to the Director General
(i) Inaccurate return due to the late approval or the amended Act or other written law is published in the Gazette after the return is submitted	Within 5 years after the end of the year the exemption, relief, remission, allowance or deduction is published in the Gazette or approval is granted, whichever is the later
(ii) WT on payment not due to be paid on the day return is furnished	Within 1 year after the end of the year the payment is made

The Director General may grant such relief which appears to him to be just and reasonable.

Effective: 1 January 2017

Fees for Advance Pricing Arrangement

An Advance Pricing Arrangement (APA) is a contract, usually for multiple years between a taxpayer and at least one tax authority, specifying the pricing method that the taxpayer will apply to its related party transaction. An APA helps taxpayers voluntarily resolve actual or potential transfer pricing disputes in a proactive and cooperative manner as an alternative to the traditional examination processes.

Section 154(1)(ec) is amended to extend the power of the Minister to make rules prescribing fees charged in relation to any APA made under Section 138C. Currently fees are not charged in relation to any APA.

	<p>This is indicative of potential amendments to APA Rules and/or Guidelines at a future date to introduce fees for APA application.</p> <p>Effective: Upon coming into operation of the Finance Act 2016</p>
<p>Extension of the application of Paragraph 16B of Schedule 3 of the Income Tax Act 1967</p>	<p>Currently, pursuant to Paragraph 16B of Schedule 3 of the Income Tax Act 1967, a person who owns and wholly uses the following buildings for the purpose of letting of property (including business of letting of property) would not be entitled to industrial building allowance even if the building that is let out is used as an industrial building:</p> <ul style="list-style-type: none"> (a) Licensed private hospital, maternity home and nursing home; (b) Building used for research; (c) Warehouse; (d) Building used for approved service project; (e) Hotel; (f) Airport; (g) Motor racing circuit; (h) Building for the provision of living accommodation for employees employed in the business of manufacturing, hotel or tourism project, approved service project; child care facilities for employee; or (i) School / educational institution. <p>The application of Paragraph 16B of Schedule 3 mentioned above has been extended to include building used for industrial, technical or vocational training approved by the Minister.</p> <p>Effective: Year of assessment 2016</p>
<p>Clarification for the claim of industrial building allowance for</p>	<p>New Subparagraphs have been introduced to clarify the claim for industrial building allowance for the buildings [items (a) to (i) including building used for industrial, technical</p>

buildings used for purpose of letting of property

or vocational training mentioned above] used for the purpose of letting of property as follows:

Floor area of the building used for the purpose of letting	Expenditure that qualifies as industrial building
Less than 1/10 of the floor area of the whole building	The whole building qualifies as industrial building
More than 1/10 of the floor area of the whole building	The expenditure incurred on the floor area which is not used for the purpose of letting of property qualifies for industrial building allowance

Effective: Year of assessment 2016

Deductions in relation to exempt dividend income

Any deductions (previously "expenses incurred") in relation to a dividend income exempted under Paragraph 12B of Schedule 6 will be disregarded for the purpose of ascertaining the chargeable income (previously "adjusted income") of the person.

With these amendments, any claim for capital allowances, approved donation, etc that is attributable to an exempt dividend is to be disregarded. The Inland Revenue Board may expect the apportionment of the above deductions to be based on gross income of each source. Thereafter, the portion of deductions attributable to the exempt dividend shall not be deducted in arriving at the chargeable income.

Effective: Year of assessment 2017

Exemption of income of a fund approved under Subsection 44(6)

Currently, the income of an institution or organization approved for the purposes of Subsection 44(6) is tax exempt so long as the approval remains in force.

	<p>It is proposed that the above exemption be extended to income received by a fund which has been approved by the Director General under Subsection 44(6).</p> <p>Effective: Year of assessment 2017</p>
<p>Exemption for contribution received by a religious institution or organization</p>	<p>Currently, the income of a religious institution or organization which is not operated or conducted primarily for profit and which is established in Malaysia exclusively for the purposes of religious worship or the advancement of religion is exempted from income tax.</p> <p>It is proposed that the above exemption be restricted to any contribution received by the above religious institution or organization solely for charitable purposes. Other income such as interest or rent received by a religious institution or organization will now be subject to tax.</p> <p>Effective: Year of assessment 2017</p>
<p>Establishment of the Collection Intelligence Arrangement</p>	<p>The establishment of the Collection Intelligence Arrangement under the Ministry of Finance will involve the Malaysian Inland Revenue Board, the Royal Malaysian Customs Department and the Companies Commission of Malaysia. Under this arrangement, these agencies will share data to enhance efficiency in tax collection and compliance.</p>



Petroleum Income Tax

Proposals	Description
Redefinition of "secondary recovery"	<p>It is proposed that the definition of "secondary recovery" be amended to clarify that an "earlier recovery process" is required to be undertaken first before "secondary recovery" can be undertaken.</p> <p>The term "secondary recovery" is redefined as a project which has as its object the production of quantities of hydrocarbons by the application of external energy to the underground reservoir for the purpose of additional and accelerated recovery of those hydrocarbons which is carried out subsequent to the earlier recovery process.</p> <p>Effective: Year of assessment 2017</p>
Other proposed amendments	<p>Similar amendments in the Income Tax Act 1967 in relation to the definition of "Malaysia", notification of non-chargeability and relief other than in respect of error or mistake have also been proposed for the Petroleum (Income Tax) Act 1967.</p>



RPGT

Proposals	Description
Amendment to Real Property Gains Tax (RPGT) Act 1976	<p>a) The proviso of Section 13(4) is amended to clarify that a nominee shall make a return to any of the offices of the Director General of Inland Revenue in Malaysia where the nominee has no place of</p>

business or abode in Malaysia (currently restricted to the office of the Director General in Kuala Lumpur only).

Effective: Upon coming into operation of the Finance Act 2016

- b) The definition of "Islamic bank" in Schedule 2 has been amended following the repeal of the Islamic Banking Act 1983 and the enactment of the Islamic Financial Services Act 2013. "Islamic bank" means a licensed Islamic bank under the Islamic Financial Services Act 2013.

Effective: 30 June 2013

- c) Where the input tax relates to the incidental cost or excluded expenditure for the acquisition or disposal of a chargeable asset which is subject to any adjustment made under the Goods and Services Tax Act 2014 (GST Act), the corresponding amount shall be determined in accordance with the amount of adjustment made to such input tax in the year of assessment (YA) the disposal is made or at the end of the adjustment period as allowed under the GST Act, whichever is the earlier.

Effective: Year of Assessment 2015

- d) The no gain no loss (NGNL) provisions applicable to disposal by way of gift between husband and wife, parent and child or grandparent and grandchild is now restricted to a donor who is a citizen. The donor who is a citizen will be deemed to have received no gain and no loss 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.



Proposals	Description
Amendment to Labuan Business Activity Tax Act 1990	<p>a) The definition of “Labuan non-trading activity” is amended to provide that the holding of investments in properties by a Labuan entity must be in respect of properties situated in Labuan.</p> <p>Effective: Upon coming into operation of the Finance Act 2016</p> <p>b) Proviso (b) in the definition of “Labuan business activity” has been amended to provide that a Labuan entity may only invest in shares (previously “investments”) in a domestic company where such holding may be with residents and in Ringgit Malaysia.</p> <p>Effective: Upon coming into operation of the Finance Act 2016</p> <p>c) Section 21 is amended to empower the Minister of Finance to make regulations to implement or facilitate the operation of an arrangement which has effect under Section 132B [Mutual Administrative Assistance Arrangement] of the Income Tax Act 1967 and to prescribe the penalties for any contravention or non-compliance of the regulations.</p> <p>Effective: 22 October 2016</p>



Goods and Services Tax

(Look out for our GST Special Alert in which we set out our views on these changes in further detail)

Proposals	Description
Imported services: amendment of time of supply in relation to supplier invoice	<p>It is proposed that the time of supply for accounting and reporting of reverse charge on imported services is at the earlier of payment made or invoice "received from" the supplier (not invoice "issued by" the supplier, as per current section 13(4)(b)).</p> <p>Effective: 1 January 2017</p>
Calculation of value of supply to determine liability to be registered	<p>Supplies of capital assets are proposed to be included in computing GST registration threshold except if due to cessation of business.</p> <p>Proposed insertion of new paragraph (f) to section 20 (6) to exclude the supplies made within or between free zones under section 162, in computing GST registration threshold, except supplies prescribed by the Minister of Finance by order made under section 163 (1).</p> <p>Effective: 1 January 2017</p>
Issuance of tax invoice	<p>The proposed amendment to section 33(10) provides that any registered person shall not issue any invoice containing an element of GST for a supply which is not a taxable or zero-rated supply.</p> <p>The proposed insertion of section 33(10A) provides that any unregistered person, except auctioneers under section 65(4) or persons empowered to sell business assets of a taxable person in satisfaction of a debt owed by the taxable person under section 65(5), shall not issue any invoice which purports to be a tax invoice or contains an element of GST.</p>

Effective: 1 January 2017

Prescribed registered person to provide information on supplies made by means of a prescribed device

New section 34A and 34B proposed to be inserted to require any registered person as may be prescribed by Regulations to provide to Customs information through a prescribed device on supplies made and payments received. Customs may approve any person to install and service the prescribed device and the registered person shall allow the approved person to do so.

Failure to comply is proposed to be an offence.

It is also proposed that, persons having access to information on the prescribed device shall not disclose the information unless required or authorized under the GST Act, by any court, or for the performance of duties of powers under the GST Act. Any unauthorized disclosure is proposed to be an offence.

Effective: 1 January 2017

Late payment penalty

The late payment penalty is proposed to be increased, as follows:

First 30 days	10%
31- 60 days	additional 15%
61- 90 days	additional 15%

The maximum penalty proposed is 40%.

The penalty is proposed to be imposed on tax remaining unpaid.

Effective: 1 January 2017

Furnishing of declaration by person other than taxable person

The proposed amendment to section 42 deletes reference to, inter alia, the bad debt relief provision in section 58. Hence, it appears that, a taxable person who has been granted bad debt relief would no longer be

	<p>required to furnish a declaration under section 42 when he subsequently recovers the debt after he has ceased to be a taxable person.</p> <p>Non-taxable persons who have been granted GST relief under section 56 who fail to comply with the conditions of the GST relief or where the GST relief has been revoked, are proposed to be liable to furnish a declaration and pay the tax accordingly.</p> <p>Late payment penalty is proposed to be imposed for failure or delay to furnish the declaration. The late payment penalty is similar to that for taxable persons as per the proposed amendment to section 41(8).</p> <p>Effective: 1 January 2017</p>
<p>Liability for tax and refund of tax for person granted GST relief by the Minister</p>	<p>There is a proposed requirement for a person granted GST relief to account for tax upon revocation of GST relief (section 56(5)).</p> <p>A new provision is also proposed to be inserted for a person granted GST relief to claim the refund of any tax which has been paid in relation to such relief (section 56(7)).</p> <p>The refund facility under section 57 is also proposed to be extended to cases, inter alia, where tax has been paid in relation to such GST relief (in line with the proposed amendment to section 56(7)).</p> <p>Effective: 1 January 2017</p>
<p>Review of GST treatment under the Warehousing Scheme</p>	<p>The proposed amendments to the Warehousing Scheme are as follows:</p> <ul style="list-style-type: none"> a) Not applicable to goods as may be prescribed by Regulations b) Applicable to goods that have been approved by Customs to be deposited in bonded warehouses covered by the Warehousing Scheme ("bonded warehouse") (section 70(1)) (Note: In line

with the 2016 Budget proposal to suspend GST on goods deposited into the bonded warehouse from Principal Customs Area consisting of Licensed Manufacturing Warehouse (LMW) and Excise Warehouse, it is expected the goods that would be approved by Customs under this proposed amendment for deposit into the bonded warehouse would include goods from LMW and Excise Warehouse.)

- c) Allows for suspension of GST on imported goods when such goods are deposited in the bonded warehouse (section 70(1)(a))
- d) Disregards supplies of taxable goods made within or between the bonded warehouses (section 70(1)(b))

The concept of last supply and duty point are proposed to be abolished. GST is proposed to be due and payable on goods removed from the Warehousing Scheme as if the removal were importation into Malaysia (section 70(2)).

The proposed exceptions where GST will not be due and payable are removal from the bonded warehouse with the approval of Customs:

- a) For export;
- b) For deposit to another bonded warehouse;
- c) To a free zone; or
- d) To a designated area (DA).

Effective: 1 January 2017

Supply to or from Designated Area

The concept of goods "supplied" is proposed to be changed to "removal".

Further proposed amendments are:

1. GST is proposed to be due and payable on the removal of goods from DA through Malaysia to another DA as if it is an importation. However, GST on this

movement is proposed to be suspended, unless prescribed otherwise by Minister of Finance under the proposed amendment to section 160.

2. GST is proposed to be suspended on goods removed from DA to free zone or to a bonded warehouse under section 70 (Warehousing Scheme), unless prescribed otherwise by Minister of Finance under the proposed amendment to section 160.

Effective: 1 January 2017

Review of GST treatment in Free Zones

Part XV is proposed to be expanded to apply to all free zones i.e. FCZ and FIZ, in line with the 2016 Budget proposal to streamline the GST treatment for all free zones i.e. FCZ and FIZ.

Accordingly, it is proposed as follows:

1. The definition of free zones is proposed to be amended to follow the meaning in section 2(1) of the Free Zones Act, 1990, which basically covers FCZ and FIZ.
2. No GST shall be charged on any supply of "taxable goods" made within or between free zones. The proposed insertion of section 162A(1) is to deem the removal of goods from a free zone to Malaysia or from a free zone to another free zone through Malaysia as an importation into Malaysia, whereby GST is due and payable on the deemed importation.
3. However, the proposed section 162 A (2) suspends the GST on the following removal of the goods from free zone, unless the Minister prescribes otherwise under the proposed amendment to section 163(1):
 - a) To another free zone
 - b) To another designated area
 - c) To a bonded warehouse under section 70 (Warehousing Scheme) (Note: This proposed amendment is in line with the

	<p>2016 Budget proposal to suspend GST on goods from, inter alia, FIZ that are deposited into the bonded warehouse under the Warehousing Scheme.)</p> <p>4. GST shall be charged by a taxable person whose principal place of business is located in a free zone on any taxable supply of goods or services made "within Malaysia".</p> <p>Effective: 1 January 2017</p>	
<p>Supply of land in compliance with requirement of written law, Government or local authority</p>	<p>A new paragraph 8, is proposed to be inserted into the Second Schedule to include any supply of land by a developer or owner of the land to the Federal Government, State Government, Local Authority or any other person in compliance with the requirement of any written law for the purposes of providing public amenities & utilities whether or not for a consideration or a nominal value shall be treated as neither a supply of goods nor a supply of services.</p> <p>With the proposed amendment to treat such supply of land as neither a supply of goods nor a supply of services (i.e. out of scope), it is likely that the existing GST relief in relation to the above supply of land would be repealed.</p> <p>The entitlement to claim input tax credit ("ITC") in relation to the surrender of such land with public amenities like roads, sewerage pipes etc. would be an issue.</p> <p>Effective: 1 January 2017</p>	
<p>Review of GST relief for disabled persons</p>	<p>GST relief for the purchase of equipment specially designed for disabled persons is extended to registered persons with disabilities (OKU card holders) who are not members of Private Charitable Entities (PCE). The approved equipment has to be purchased from suppliers designated by the Social Welfare Department. The list of</p>	

approved equipment has also been widened to include 20 additional items, e.g. Callipers, Braille display, etc.

Effective: 1 January 2017



Stamp duty

Proposals	Description						
Extension of stamp duty exemption for the purchase of first residential home	Currently, the following stamp duty exemptions are available for the purchase of first residential home:						
	<table border="1"> <thead> <tr> <th>Stamp duty exemption</th> <th>Exemption period</th> </tr> </thead> <tbody> <tr> <td>100% stamp duty exemption on loan agreement for the purchase of home priced not exceeding RM300,000 under Perumahan Rakyat 1Malaysia (PR1MA) programme</td> <td>Sale and purchase agreement (S&P) executed from 1 January 2012 to 31 December 2016</td> </tr> <tr> <td>50% stamp duty exemption on instrument of transfer and loan agreement for the purchase of first home priced not exceeding RM500,000</td> <td>S&P executed from 1 January 2015 to 31 December 2016</td> </tr> </tbody> </table>	Stamp duty exemption	Exemption period	100% stamp duty exemption on loan agreement for the purchase of home priced not exceeding RM300,000 under Perumahan Rakyat 1Malaysia (PR1MA) programme	Sale and purchase agreement (S&P) executed from 1 January 2012 to 31 December 2016	50% stamp duty exemption on instrument of transfer and loan agreement for the purchase of first home priced not exceeding RM500,000	S&P executed from 1 January 2015 to 31 December 2016
	Stamp duty exemption	Exemption period					
	100% stamp duty exemption on loan agreement for the purchase of home priced not exceeding RM300,000 under Perumahan Rakyat 1Malaysia (PR1MA) programme	Sale and purchase agreement (S&P) executed from 1 January 2012 to 31 December 2016					
50% stamp duty exemption on instrument of transfer and loan agreement for the purchase of first home priced not exceeding RM500,000	S&P executed from 1 January 2015 to 31 December 2016						
To further reduce the cost of ownership of first home, it is proposed that the stamp duty exemption be given as follows:							
<table border="1"> <thead> <tr> <th>Property price</th> <th>Stamp duty exemption</th> </tr> </thead> <tbody> </tbody> </table>	Property price	Stamp duty exemption					
Property price	Stamp duty exemption						

RM300,000 and below	100% stamp duty exemption on instrument of transfer and loan agreement
RM300,001 to RM500,000	100% stamp duty exemption on instrument of transfer and loan agreement for value of the home up to RM300,000. The remaining value of the home is subject to the prevailing rate of stamp duty.
More than RM500,000	Not applicable

Effective: For S&P executed from 1 January 2017 to 31 December 2018.

Revision in stamp duty rates for transfer of real estate

It is proposed that the stamp duty rate will be increased from 3% to 4% on the instruments of transfer of real estate valued more than RM1 million.

It remains to be seen whether the above increase in the stamp duty rate would also be applicable to other “properties” such as goodwill and debtors.

Effective: 1 January 2018

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