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Post-budget 2023 Q & A

Deloitte's Panel of Partners - Top Row (From left to right): *Vrushang Sheth, Transfer Pricing Executive Director; Mohd Fariz Mohd Faruk, Business Tax Executive Director; Philip Yeoh Keng Jin, Transfer Pricing Executive Director; Tan Eng Yew, Indirect Tax Leader; Toh Hong Peir, Oil, Gas and Chemicals Sector Leader.*
Bottom Row (From left to right): *Thin Siew Chi, Business Tax Executive Director; Tham Lih Jiun, Government Grants & Incentives Leader; Chee Ying Cheng, Global Employer Services Executive Director; Tan Hooi Beng, Deputy Tax Leader.*

01 The targeted implementation of Global Minimum Tax (GMT), including a Qualified Domestic Minimum Top Up Tax (QDMTT) in 2024 is not announced in the Budget Speech, nor is it in the Appendices, but it is published in the Touchpoints of Budget 2023. What does this mean for Malaysia?

The Budget 2023 Touchpoints is one of the official documents published on the Ministry of Finance's dedicated website for Budget 2023. GMT is thus still forthcoming. However, there remains a lingering question on the timing, that is: 2024 or 2025? One wonders if Malaysia will emulate Hong Kong and Singapore in choosing 2025 as a starting year. Herein lies the balancing act of managing the cost of ceding taxing rights to early adopters and providing more time to taxpayers to navigate this new tax regime. Owing to the novelty and complexity of the rules, MNCs will need to consider the multi-faceted impact of GMT on its operations and prepare for a smooth and steady transition.

02 What are your thoughts on the proposed implementation of Capital Gains Tax (CGT)?

At present, capital gains arising from the disposal of unlisted shares by companies are not taxed unless these are shares of a real property company for Real Property Gains Tax (RPGT) purposes. The imposition of CGT would increase tax costs for corporate restructuring of unlisted companies and impact the mergers and acquisition (M&A) activities in Malaysia. In Thailand and Indonesia, capital gains are taxed as part of corporate income tax at prevailing rates. If a similar stance is adopted, the prevailing corporate tax rate of 24% may discourage corporate investors from investing into private Malaysian companies.

While the Government has indicated that they will consult with relevant parties, further issues to be deliberated should include considerations on how this CGT will interact with the existing RPGT and income tax regime, what is a reasonably low rate and the calculation mechanism.

It is envisaged that once the above proposal is implemented, this could indicate Malaysia's position in moving towards the gradual adoption of a CGT regime.

Deloitte was recognised as the Malaysia Tax Firm of the Year 2022 by the International Tax Review. Join us at the 48th Deloitte TaxMax on 16 March where we will unpack the 2023 National Budget and more. Scan to find out more.

03 The Special Voluntary Disclosure Program (SVDP) is making a comeback. Please share more details.

The SVDP offers an avenue for taxpayers to voluntarily declare any unreported or underdeclared taxes from 1 June 2023 to 31 May 2024. This time, the SVDP will be available for both direct and indirect taxes. Unlike the previous programs, a 100% waiver of penalty will be available to those that come forward and declare unreported or underdeclared income.

We see the SVDP as part of the cooperative tax compliance initiative to enhance tax collection as an alternative to new taxes. The SVDP may also help to widen the taxpayer base by encouraging unregistered taxpayers to register and make good their taxes. SVDP can be seen as a more progressive approach to plug the tax revenue leakages arising from tax evasion and the shadow economy.

04 Budget 2023 proposed a tax hike on the T20 income group. Is this enough to compensate for the loss of government revenue from the tax cut for M40?

Based on the Budget speech, the overall impact is a net revenue loss of RM900 million. This is expected because the tax cut for M40 benefits 2.4 million taxpayers while the tax hike on T20 affects only 150,000 taxpayers. However, the government is still projecting an increase in individual income tax collection by RM1.5 billion compared to 2022. This could be due to the upcoming SVDP and better income prospects arising from stronger economic recovery.

05 How would the luxury goods tax work?

No details were provided in the Budget speech. One possibility may be to impose sales tax at a higher rate than the current 10% on certain items deemed as luxury goods. Another possibility may be to impose the luxury tax collected at retail level, as practiced in South Korea and Thailand. This tax generally ranges between 10% to 20%, and is imposed on goods considered expensive, unnecessary and non-essential, for example, private jets, yachts and jewellery.

06 Transfer of properties by way of love and affection will enjoy stamp duty exemptions. Please elaborate.

This relates to transfer of properties by way of love and affection between parents and children, grandparents and grandchildren. It is proposed that stamp duty on the instrument of transfer of property be fully exempted on the first RM1 million of the property's value. This translates into stamp duty savings of RM24,000. The remaining balance of the property's value is subject to ad valorem stamp duty rates with a 50% remission. This applies only to recipients who are Malaysian citizens for instrument of transfer of property executed from 1 April 2023.

07 While the M40 group enjoy a 2% reduction in personal income tax rate, the T20 group will be subject to higher taxes. Is this a trend that we are seeing in the region?

Malaysia is not the only country that has raised taxes on the higher income groups. In Singapore's Budget 2022, similar measures were announced to tax the high income earners, where there will be a 1% increase in tax rate for individuals earning more than S$500,000 beginning from year of assessment 2024. Taxing the higher income groups is understandably a measure that does not hurt the public at large. However, it should not be used as a long term revenue raising tool that may make Malaysia less attractive to top talents.

08 With a possible introduction of CGT on disposal of unlisted shares, would transfer pricing be relevant as well?

Transfer pricing requirements are provided under Section 140A of the Income Tax Act 1967 ("the Act"). If CGT provisions are introduced under the Act, taxpayers would then need to substantiate that the transfer of unlisted shares between related companies, during any business restructuring or otherwise, is carried out at an arm's length price. If CGT is introduced via a separate legislation, this legislation would need to contain similar requirements for transfer pricing.

09 Would taxpayers be able to opt for the proposed SVDP for transfer pricing matters? Would there be a full relief from surcharge?

We would need to obtain clarification from the IRBM. In the previous SVDP, voluntary disclosure for transfer pricing matters was permitted on a selective basis. In our view, relief from surcharge should be given as surcharge is punitive in nature, similar to penalties.

10 Will there be a big shift on the tax incentive landscape in Malaysia?

Based on Budget 2023 speech, investment incentives will be restructured towards tiered tax rates, taking into account the achievement of certain outcomes such as creating high value jobs, embedding local firms into the supply chains and creating new industrial clusters. This is a more equitable and progressive approach. It is also in response to changing global tax landscape, in particular, the 15% Global Minimum Tax that may impact the value of tax incentives to multinational companies.

We look forward to the launch of the New Industrial Masterplan 2030 in the third quarter of 2023 which will chart the future direction of industrial development and prioritise high quality activities and employment of local talent.