



# **JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023**

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# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

## Contents

<b>Issues</b>	<b>Page No.</b>
<b>A Finance (No. 2) Bill 2023 &amp; 2024 Budget Speech and Appendices</b>	
1. Gains or profits from the disposal of capital assets	3
2. Global Minimum Tax	34
3. Other Proposed Amendments to the Income Tax Act 1967	48
4. Other Proposed Amendments to the Real Property Gains Tax Act 1976	63
5. Proposed Amendments to the Stamp Act 1949	66
6. 2024 Budget Speech and Appendices	68
<b>B Outstanding Gazette Orders – 2014 to 2023 Budgets</b>	<b>77</b>

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## A. Finance (No. 2) Bill 2023 & 2024 Budget Speech and Appendices

### 1. Gains or profits from the disposal of capital assets

#### 1.1 Scope of charge of capital assets

##### Amendment of section 2

4. The Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in subsection 2(1)—

(a) by inserting after the definition of “business trust” the following definition:

“capital asset” means movable or immovable property including any rights or interests thereof;”

##### Amendment of section 4

5. Section 4 of the principal Act is amended by inserting after paragraph (a) the following paragraph:

“(aa) gains or profits from the disposal of capital asset;”.

### Gains or profits from the disposal of capital asset

#### New Section 65E(5) & 65E(6)

(5) The amount of adjusted loss of a company, limited liability partnership, trust body or co-operative society as ascertained in accordance with paragraph (4)(b) shall be allowed only as a deduction to reduce the adjusted income of a company, limited liability partnership, trust body or co-operative society in the subsequent disposal of capital asset in the same basis period for a year of assessment in which the disposal was made.

(6) Where by reason of an insufficiency or absence of adjusted income in subsequent disposal of capital asset in the same basis period for a year of assessment in which the adjusted loss arose, effect cannot be given or cannot be given in full to subsection (5), the amount of adjusted loss which has not been so allowed (or so much thereof as has not been so allowed for that year) shall be allowed as a deduction to reduce the adjusted income of a company, limited liability partnership, trust body or co-operative society from the disposal of capital asset for a period of ten consecutive years of assessment and that period commences immediately following the relevant year of assessment and any amount or balance of the amount which is not deductible at the end of that period shall be disregarded for the purposes of this Act.

##### Amendment of Schedule 6

33. Schedule 6 to the principal Act is amended—

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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(b) by inserting after paragraph 37 the following paragraph:

“38. (1) Gains or profits from the disposal of a capital asset situated in Malaysia.

(2) The exemption under subparagraph (1) shall not apply to—

(a) disposal of shares of a company incorporated in Malaysia not listed on the stock exchange; and

(b) disposal of shares under section 15c.”.

## Comments:

a. Property is not defined in the ITA 1967 or the Real Property Gains Tax Act (RPGTA) 1976. It is not clear from the reading of the proposed definition of capital asset, it would cover cryptocurrency, online tokens or items that are intangible but can be accessed online, etc.

Please clarify whether the definition of capital assets covers intangible assets such as cryptocurrency, online tokens or other items that are intangible but can be accessed online, etc.

### Maklum balas LHDNM:

Ya.

b. Based on the draft law, the scope of charge is widely cast as gains or profits from the disposal of capital assets. This scope of capital assets subject to income tax is narrowed by the operation of the exemption provided under the new Paragraph 38 of Schedule 6. However, Paragraph 38 does not spell out whether the exemption is provided at gross or net (chargeable income) level.

**Issue:** Please confirm that capital assets that are not within the current scope of capital gains tax (CGT) (unlisted shares of companies incorporated in Malaysia and shares deemed derived from Malaysia under Section 15C) are to be excluded from the operation of the new:

- Chapter 9
- Section 77(1B)
- Section 103(12)(aa)

### Maklum balas LHDNM:

Pengecualian di bawah perenggan 38 Jadual 6 ACP diberikan di peringkat kasar (*gross level*). Oleh itu, peruntukan di bawah Bab 9, subseksyen 77A(1B) dan perenggan 103(12)(aa) ACP tidak terpakai.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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### c. Capital assets situated outside Malaysia

We noted that the scope of taxable assets includes all types of capital assets situated outside Malaysia.

For foreign source income (FSI) relating to gains from the disposal of capital assets situated outside Malaysia, we would like to seek clarification on the following:

- i. Please confirm that CGT would apply to the gain or profit from the following disposal:
  - Disposal of a Malaysian company's (Sdn Bhd) investment in shares of DBS Bank (Singapore listed company), only upon remittance of the disposal proceeds back to Malaysia.

#### **Maklum balas LHDNM:**

CKM akan dikenakan atas keuntungan daripada pelupusan saham oleh syarikat Malaysia dalam DBS Bank apabila keuntungan tersebut diterima di Malaysia.

- ii. Please confirm the meaning of "received in Malaysia" in IRB's Guidelines On Tax Treatment In Relation To Income Received From Abroad will also apply to CGT.

#### **Maklum balas LHDNM:**

Ya, maksud "Diterima di Malaysia" iaitu "dipindah atau dibawa masuk ke dalam Malaysia, sama ada dalam bentuk tunai atau melalui pindahan dana elektronik atau kedua-duanya" sepertimana yang dinyatakan di dalam Garis Panduan Layanan Cukai Berhubung Pendapatan Yang Diterima Dari Luar Negara (Pindaan) turut terpakai bagi tujuan CKM.

- iii. Whether the exemption proposed for taxpayers who meet Economic Substance Requirements (ESR) will be provided under a subsidiary legislation? We would urge IRB to provide further guidance on this on an urgent basis in view of the 1 January 2024 implementation date.

#### **Maklum balas LHDNM:**

Ya, pengecualian *FSI* CGT bagi pembayar cukai yang mematuhi syarat substantif ekonomi akan dimasukkan di bawah perundangan subsidiari dan diperjelaskan di dalam Garis Panduan.

- iv. Taxpayers would appreciate greater certainty in terms of meeting the ESR. Would IRB consider providing a written confirmation (via application for Advance Ruling, like Hong Kong) for taxpayers who wish to make such applications? This would help taxpayers better plan their tax obligations and business decisions.

#### **Maklum balas LHDNM:**

Pengesahan bertulis bagi pematuhan syarat substantif ekonomi boleh dikeluarkan atas permohonan yang dikemukakan.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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- v. Whether IRB would consider certain transitional rules (e.g. similar to a concessionary tax rate of 3% in the case of FSI received for the first 6 months from January to June 2022)?

**Maklum balas MOF:**

Tiada tempoh transisi memandangkan pengecualian ke atas FSI CGT yang memenuhi ESR akan diberikan melalui perundangan subsidiari baharu yang akan dikeluarkan oleh MOF.

- vi. Kindly confirm that based on the provisions of Section 4(aa) and Section 65D, remittance that takes place after 1 January 2024 for foreign capital assets with date of disposal prior to 1 January 2024 are not within the scope of tax.

**Maklum balas LHDNM:**

Pelupusan aset modal yang berlaku di luar Malaysia sebelum 1 Januari 2024 dan keuntungan daripada pelupusan tersebut diterima di Malaysia mulai 1 Januari 2024 adalah tidak tertakluk kepada pengenaan cukai di Malaysia.

## 1.2 Derivation of gains or profits from the disposal of capital assets deriving value from real property in Malaysia – New Section 15C

### New Section 15C(1)

**15c.** (1) Subject to subsection (2), gains or profits accruing to a person in a year of assessment on the disposal of capital asset which is a share of a controlled company (hereinafter referred to as the “relevant company”) incorporated outside Malaysia shall be deemed to be derived from Malaysia where the relevant company owns real property situated in Malaysia or shares of another controlled company or both.

### New Section 15C(2)

(2) Subsection (1) shall apply where at the date of acquisition of the shares of the relevant company—

(a) the defined value of the real property situated in Malaysia (including any right or interest thereof) owned by the relevant company is not less than seventy-five per cent of the value of its total tangible asset;

(b) the defined value of shares of another controlled company **owned** by the relevant company is not less than seventy-five per cent of the value of its total tangible asset:

Provided that the defined value of the real property situated in Malaysia (including any right or interest thereof) **owned** by another controlled company, is not less than seventy-five per cent of the value of its total tangible asset; or

(c) the defined value of real property situated in Malaysia and shares of another controlled company referred to in paragraphs (a) and (b) **owned** by the relevant company is not less than seventy-five per cent of the value of its total tangible asset:

Provided that subsection (1) shall continue to apply notwithstanding that at the time of disposal of shares of the relevant company the defined value referred to in paragraph (a), (b) or (c) is less than seventy-five per cent of the value of its total tangible asset.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## New Section 15C(3)(a)

(3) The shares of the relevant company in this section shall be deemed to be acquired—

- (a) on the date the defined value of real property or shares or both owned by the relevant company *is in accordance with subsection (2)*; or
- (b) on the date of acquisition of the shares of the relevant company.

### Comments:

- a. Section 15C(1) uses the term 'a person'. Kindly confirm the CGT would apply to scenarios prescribed under Section 15C only if the disposer is a company, limited liability partnership, trust body or co-operative society.

#### Maklum balas LHDNM:

Ya.

- b. Currently, a real property company (RPC) under the RPGTA 1976 is defined as ...”a controlled company to which... **acquires** real property or shares or both whereby the defined value of real property or shares or both owned at that date is not less than seventy-five per cent of the value of its total tangible assets” (**emphasis**)”.

Based on Paragraph 34A(2)(a) of Schedule 2 of the RPGTA 1976, a person who buys a share in a controlled company that is not yet an RPC will subsequently be deemed to have acquired shares in an RPC should that controlled company **acquires** real property or shares or both and becomes an RPC as a result of that acquisition. In other words, the deemed acquisition test is triggered when the subject company “acquires’ ’ real property or shares in another RPC.

The proposed new Section 15C(3)(a) is a similar deemed acquisition date provision. However, the event to trigger the test is not clearly expressed in the words “**is in accordance with subsection (2)**” under Section 15C(2). Although Section 15C(2) focuses on the composition of assets “owned” by another controlled company **on the date of acquisition of the relevant company**, this should not be the purpose of Section 15C(3)(a) as that is already covered by Section 15C(3)(b).

Questions:

- i. Confirmation sought on the deemed acquisition date under the proposed new Section 15C(3)(a)

#### Example

In Year 1, Company A acquired shares in a *controlled company incorporated outside Malaysia* (“Company B”). The defined value of real property situated in Malaysia owned by Company B is less than 75% of its total tangible assets.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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In Year 2, Company B acquired shares in *another controlled company* (“Company C”) which owns a piece of real property situated in Malaysia. The defined value of real property situated in Malaysia owned by Company C is less than 75% of the value of its total tangible assets.

In Year 3, the defined value of real property situated in Malaysia owned by Company C increased. No new acquisition was made by Company C. The increase in value is due to market condition which increases the defined value of real property situated in Malaysia owned by Company C in Year 3 to more than 75% of its total tangible assets.

In Year 6, Company C acquired its second piece of real property situated in Malaysia following which its defined value of real property situated in Malaysia is more than 75% of its total tangible assets.

Please confirm that the computation of the defined value of real property situated in Malaysia should only be done at these points in time for the purposes of determining when the shares of Company B is deemed to be acquired by Company A for the purposes of Section 15C(3):

- when Company A acquired shares in Company B in Year 1 [Section 15C(3)(b)];

**Maklum balas LHDNM:**

Ya.

- when Company B acquired shares in Company C in Year 2 [to determine the deemed acquisition date under Section 15C(3)(a)]; and

**Maklum balas LHDNM:**

Ya.

- when Company C acquires real property situated in Malaysia, for example, in Year 6 or in any other future year(s) [to determine the deemed acquisition date under Section 15C(3)(a)].

**Maklum balas LHDNM:**

Ya.

Pengiraan nilai tertentu hendaklah dikira dalam setiap senario di atas bagi tujuan untuk menentukan sama ada pemegang saham iaitu syarikat A dianggap memperolehi saham syarikat relevan (syarikat B) menurut subseksyen 15C(2).

- ii. On the basis that the computation on the defined value in Item (b)(i) above is to be performed upon “Acquisition”, please confirm that an arm’s length purchase price can be adopted as the market value and a valuer’s valuation report of the value of the



## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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real property situated in Malaysia is only required when the real property is acquired from connected persons.

**Maklum balas LHDNM:**

Penentuan harga pemerolehan hendaklah menggunakan nilai pasaran harta tanah pada masa syarikat memperoleh harta tanah tersebut. Keperluan laporan penilaian bergantung kepada fakta kes dan tidak terhad kepada transaksi antara orang yang berkaitan sahaja.

c. [Proviso to Section 15C\(2\)](#)

We would request that the proviso to Section 15C(2) be reconsidered so that Section 15C(1) applies provided that at the time of the disposal of shares of the relevant company, the defined value referred to in Sections 15C(2)(a), 15C(2)(b) or 15C(2)(c) is **not** less than seventy-five per cent of the value of its total tangible asset.

**Maklum balas LHDNM:**

Pihak LHDNM ambil maklum cadangan ini.

d. Kindly confirm that scenarios prescribed in Section 15C are considered gains or profits from the disposal of a capital asset situated in Malaysia and are eligible for the 2% tax rate in Paragraph (a)(ii) in Part XXI of Schedule 1 of the ITA 1967 if the asset was acquired before 1 January 2024.

**Maklum balas LHDNM:**

Ya, sekiranya syarikat menjadi *relevant company* sebelum 1 Januari 2024.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 1.3 Disposal

### New Section 65C

“disposal” means to sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law and includes a reduction of share capital and purchase by a company of its own shares;

#### Comments:

Please confirm the purchase by a listed company of its own shares (i.e. treasury shares) does not fall within the definition of disposal.

#### Maklum balas LHDNM:

Ya.

### New Section 65F(6)

(6) Notwithstanding any other provisions of this Act—

- (a) if a capital asset acquired or held by a company, limited liability partnership, trust body or co-operative society is taken into the trading stock of the company, limited liability partnership, trust body or co-operative society, there shall be deemed to be a disposal of the capital asset on the date that capital asset is taken into the trading stock; and
- (b) the amount or value of the consideration in money or money's worth of the capital asset shall be equal to the market value on the date the capital asset is taken into the trading stock.

#### Comments:

The provisions of Section 65F(6) indicate that the reclassification of capital assets into inventory is deemed to be a disposal and triggers CGT. We object to this treatment as the reclassification is not a disposal and we request for a policy reconsideration.

#### Maklum balas LHDNM:

Pengelasan semula aset (*reclassification of assets*) dengan memindah aset modal kepada inventori merupakan suatu pelupusan dan harga pelupusan akan menggunakan nilai pasaran.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 1.4 Definition of “shares” – New Section 65C

*“Chapter 9 – Gains or profits from the disposal of capital asset*

### Interpretation of Chapter 9

**65c.** In this Chapter, unless the context otherwise requires—

“consideration” means consideration in money or money’s worth;

“disposal” means to sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law and includes a reduction of share capital and purchase by a company of its own shares;

“shares” means all or any of the following:

- (a) stock and shares in a company;
- (b) loan stock and debentures issued by a company or any other corporate body incorporated in Malaysia;
- (c) a member’s interest in a company not limited by shares whether or not it has a share capital;
- (d) any option or other right in, over or relating to shares as defined in paragraphs (a) to (c).

### New Paragraph 38 of Schedule 6 of ITA 1967

“38. (1) Gains or profits from the disposal of a capital asset situated in Malaysia.

(2) The exemption under subparagraph (1) shall not apply to—

- (a) disposal of shares of a company incorporated in Malaysia not listed on the stock exchange; and
- (b) disposal of shares under section 15c.”.

### Existing definition of “share” under Section 2 of ITA 1967

“share”, in relation to a company, includes stock other than debenture stock;

#### Comments:

- a. It is noted that the definition of shares in Section 65C differs from the definition of shares in Section 2. Please confirm that the definition of shares in Section 2 applies to Paragraph 38 of Schedule 6.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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### **Maklum balas MOF:**

Definisi saham di bawah Seksyen 2 adalah tidak terpakai kepada layanan CKM. Ini kerana di bawah layanan CKM, definisi saham diperuntukkan di bawah Seksyen 65C baharu yang diadaptasi daripada definisi saham di bawah ACKHT. Walau bagaimanapun, CKM hanya dikenakan ke atas saham berbentuk ekuiti sahaja.

- b. Paragraph 38 of Schedule 6 exempts gains or profits from the disposal of capital asset situated in Malaysia from income tax. However, the exemption **does not apply to the disposal of shares not listed on the stock exchange and the disposal of shares by a company outside Malaysia that owns real property in Malaysia.**

Please confirm the policy intent whether the disposal of any unlisted debentures/ sukuk issued by a Malaysian company or any other corporate body incorporated in Malaysia will be subject to CGT.

### **Maklum balas LHDNM:**

Ya, sekiranya debentur atau sukuk tersebut mempunyai ciri-ciri ekuiti.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

## 1.5 Effective date – New Section 65D(1)

### New Section 65D(1)

65D. (1) This Chapter shall apply for ascertaining the chargeable income of a company, limited liability partnership, trust body or co-operative society which receives gains or profits from the disposal of capital asset on or after 1 January 2024.

### 2024 Budget Speech – Appendix 9

#### Proposal

In line with Budget 2023 announcement to implement Capital Gains Tax (CGT) on the disposal of unlisted shares for companies, it is proposed CGT rate be imposed as follows:

Shares Acquisition Date	CGT Rate
Before 1 March 2024	The taxpayers may choose: i. 10% on the net gain of the disposal of shares; or ii. 2% on the gross sales value.
From 1 March 2024	10% on the net gain of the disposal of shares

To ensure the smooth implementation of CGT and reduce the cost of doing business, it is proposed CGT exemption be given on the disposal of shares related to the following activities:

- i. Initial Public Offering (IPO) approved by Bursa Malaysia; and
- ii. Restructuring of shares within the same group.

#### Effective Date

From 1 March 2024.

### New Paragraph 34A(5A) of Schedule 2 of RPGTA 1976

“(5A) This paragraph shall not apply to an acquisition or a disposal of any shares by a company, limited liability partnership, trust body or co-operative society, other than a Labuan entity as provided under section 2B of the Labuan Business Activity Tax Act 1990, on or after 1 January 2024.”.

#### Comments:

- a. We refer to MOF’s letter dated 17 November 2023 to CTIM on the effective date of CGT imposition. Please confirm that the CGT exemption from 1 January 2024 to 29 February 2024 through subsidiary legislation mentioned in MOF’s letter would cover the following:
  - i. All domestic CGT (including deemed domestically derived under Section 15C) on all chargeable persons;

#### Maklum balas LHDNM:

Pengecualian CKM bagi tempoh 1 Januari 2024 – 29 Februari 2024 adalah merangkumi semua pelupusan aset modal (saham tidak tersenarai syarikat yang diperbadankan di Malaysia dan saham di bawah Seksyen 15C) bagi kategori pembayar cukai syarikat, PLT, badan amanah dan koperasi sahaja.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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Pengecualian bagi keuntungan daripada pelupusan saham tidak tersenarai syarikat yang diperbadankan di Malaysia telah diwartakan melalui Perintah Cukai Pendapatan (Pengecualian) (No.7) 2023 [P.U.(A) 410/2023] manakala pengecualian bagi keuntungan daripada pelupusan saham di bawah seksyen 15C akan diwartakan kelak.

- ii. [Automatic CGT exemption i.e. no application for approval is required;](#)

**Maklum balas LHDNM:**

Ya.

- iii. [Exemption from the requirement to file CGT returns under Section 77A\(1B\); and](#)

**Maklum balas LHDNM:**

Tiada keperluan pengemukaan Borang Nyata CKM dalam tempoh pengecualian.

- iv. [The 2% CGT on the gross disposal price in Paragraph \(a\)\(ii\) of Part XXI of Schedule 1 of the ITA 1967 for disposals of capital assets situated in Malaysia that were acquired before 1 March 2024.](#)

**Maklum balas LHDNM:**

Tidak, pilihan kadar cukai 2% atas nilai jualan kasar bagi aset yang diperolehi sebelum 1 Januari 2024 adalah dikekalkan.

- b. [Please clarify whether the proposed new Paragraph 34A\(5A\) of Schedule 2 of the RPGTA 1976 would apply on or after 1 March 2024 instead of on or after 1 January 2024.](#)

**Maklum balas LHDNM:**

Cadangan ini akan berkuat kuasa mulai 1 Januari 2024. Cadangan ini adalah bertujuan untuk mengeluarkan skop pengenaan cukai keuntungan harta tanah bagi pelupusan saham harta tanah untuk 4 kategori pembayar cukai iaitu syarikat, PLT, badan amanah dan koperasi manakala bagi pelupusan saham harta tanah bagi syarikat Labuan masih tertakluk di bawah S34A ACKHT.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 1.6 Market value – New Sections 65E(8), 65E(11) & 65E(14)

(8) Notwithstanding subsection (2), the consideration for the acquisition or disposal of a capital asset shall be deemed to be equal to the market value of the capital asset at the time of the disposal—

- (a) where a company, limited liability partnership, trust body or co-operative society acquires or disposes of the capital asset otherwise than by way of a bargain made at arm's length and, in particular, where the company, limited liability partnership, trust body or co-operative society acquires or disposes of it by way of gift;
- (b) where a company, limited liability partnership, trust body or co-operative society acquires or disposes of the capital asset wholly or partly for a consideration that cannot be valued;
- (c) where a company, limited liability partnership, trust body or co-operative society acquires a capital asset as trustee for the creditors of any person in full or part satisfaction of any debt due from that person or where the company, limited liability partnership, trust body or co-operative society transfers a capital asset as trustee for the creditors of any person to the creditors in full or part satisfaction of any debt due to the creditors;
- (d) where a company, limited liability partnership, trust body or co-operative society acquires or disposes of a capital asset in a transaction for the transfer of a business for a lump sum consideration; or
- (e) where the disposal of the capital asset is a transaction between connected persons.

(11) Notwithstanding any other provision of this Act, the market value shall be determined by the Director General in the following circumstances where—

- (a) the parties to the disposal of a capital asset are unable to agree on its market value;
- (b) there is only one party to the disposal of a capital asset; or
- (c) the Director General is of the opinion that the market value of a capital asset as agreed on by the parties to its disposal is incorrect.

(14) Where an asset is disposed of by being exchanged for another asset (whether chargeable or not) the market value of the asset received by the disposer shall be taken as the consideration for the disposal:

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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Provided that, if the asset received by the disposer has no market value, the Director General may take the market value of the asset disposed of as the consideration for the disposal.

### Comments:

In various 2024 Budget seminars, it has been verbally indicated by MOF / IRB that the “net tangible asset” method is an acceptable method in determining the market value of unlisted shares. Consideration should also be given to allow the valuation methods listed in IRB’s Guidelines on Stamp Duty on Share Transfers of Companies not listed on Bursa Malaysia to be adopted as an alternative.

We would appreciate it if MOF / IRB could confirm this. If possible, kindly indicate such in the law or CGT guidelines.

### Maklum balas LHDNM:

Garis Panduan akan dikeluarkan bagi menjelaskan kaedah penentuan nilai pasaran saham.

### 1.7 Separate source of gains or profits from disposal of capital asset – New Section 65E(1)(b)

**65E.** (1) For the purposes of this Act and subject to this section, the gains or profits from the disposal of capital asset in the basis period for a year of assessment shall be—

(a) ascertained by reference to each disposal separately;  
and

(b) treated as a separate source of gains or profits, from the disposal of capital asset for that year of assessment.

### Comments:

Please confirm all capital assets are taken as a single source regardless of the category of capital assets from which the gains arise.

### Maklum balas LHDNM:

Setiap pelupusan aset modal dianggap sebagai punca keuntungan yang berasingan.

Contoh :

Syarikat Y SB membuat pelupusan berikut dalam tahun taksiran 2024 -  
Pelupusan pada 5.5.2024 : saham syarikat XYZ SB



# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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Pelupusan pada 8.8.2024 : saham syarikat ABC SB

Pelupusan saham syarikat XYZ SB dan syarikat ABC SB merupakan dua keuntungan pelupusan saham yang berasingan bagi syarikat Y SB bagi tahun taksiran 2024.

## 1.8 Capital loss – New Sections 65E(4), 65E(5) & 65E(6)

### New Section 65E(4)

(4) Where—

(a) the amount ascertained under paragraph (2)(a) exceeds the amount ascertained under paragraph (2)(b), there is an adjusted income; and

(b) the amount ascertained under paragraph (2)(a) is less than the amount ascertained under paragraph (2)(b), there is an adjusted loss.

### New Sections 65E(5) & 65E(6)

(5) The amount of adjusted loss of a company, limited liability partnership, trust body or co-operative society as ascertained in accordance with paragraph (4)(b) shall be allowed only as a deduction to reduce the adjusted income of a company, limited liability partnership, trust body or co-operative society in the subsequent disposal of capital asset in the same basis period for a year of assessment in which the disposal was made.

(6) Where by reason of an insufficiency or absence of adjusted income in subsequent disposal of capital asset in the same basis period for a year of assessment in which the adjusted loss arose, effect cannot be given or cannot be given in full to subsection (5), the amount of adjusted loss which has not been so allowed (or so much thereof as has not been so allowed for that year) shall be allowed as a deduction to reduce the adjusted income of a company, limited liability partnership, trust body or co-operative society from the disposal of capital asset for a period of ten consecutive years of assessment and that period commences immediately following the relevant year of assessment and any amount or balance of the amount which is not deductible at the end of that period shall be disregarded for the purposes of this Act.

### Comments:

#### a. [Example](#)

In Year 1, Malaysian Company A disposed of foreign capital assets at RM80 and incurred a loss of RM20.

In Year 3, the disposal proceeds of RM80 are remitted to Malaysia.

In Year 5, Malaysian Company A disposed of unlisted shares in Malaysia. The adjusted income from the disposal is RM100.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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### Questions:

In relation to the loss on disposal of foreign capital asset of RM20, please clarify the following:

- i. Is it deemed to be incurred in Year 1 or Year 3?
- ii. Is it allowed to be carried forward for up to 10 consecutive YAs immediately following Year 1 or Year 3?
- iii. Is it allowed to be set-off against the adjusted income from the disposal of unlisted shares in Malaysia in Year 5?

### **Maklum balas LHDNM:**

Cukai dikenakan bagi keuntungan yang terbit dari sumber luar negara apabila keuntungan tersebut diterima di Malaysia sepertimana diperuntukkan di bawah Seksyen 4 ACP 1967 dan kadar cukai adalah mengikut kategori pembayar cukai (Bahagian XXI, Jadual 1 ACP). Oleh itu, peruntukan kerugian di bawah subseksyen 65E(5) dan 65E(6) adalah tidak terpakai dan soalan i hingga iii adalah tidak berkaitan.

- b. As it may not be common to have several disposal of capital asset within a period of 10 years, we would appreciate it if MOF / IRB could consider giving the flexibility to carry back allowable loss.

A shareholder may dispose of multiple assets held in the same year. Hence, it is important for any losses being incurred to be allowed to set-off any profits in the same year notwithstanding whether the disposal of a loss making asset took place later than a profitable disposal in the same year. The RPGTA 1976 acknowledges this concept well in Section 7(4)(a) and Section 14(1)(c). A similar mechanism is a vital feature for CGT too. As such, it is proposed that the word "subsequent" be deleted from Sections 65E(5) & 65E(6).

### **Maklum balas LHDNM:**

Cadangan diambil maklum.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## New Section 65E(7)

(7) The amount of adjusted income of a company, limited liability partnership, trust body or co-operative society as ascertained in accordance with the foregoing subsections shall be treated as the chargeable income of the company, limited liability partnership, trust body or co-operative society from the source of gains or profits from the disposal of capital asset for a year of assessment.

### Comments:

Where a company has foreign source capital gains received in Malaysia during the basis period for a year of assessment, can items such as current year business loss and donations be offset against the foreign source capital gains despite the provision of Section 65E(7)?

### Maklum balas LHDNM:

Kerugian perniagaan dalam tahun semasa dan derma yang diluluskan boleh ditolak dari pendapatan agregat yang termasuk keuntungan daripada pelupusan luar negara yang diterima di Malaysia.

## 1.9 Acquisition price - New Sections 15C(4) & 65E(2)(b)

### New Section 15C(4)

For the purposes of this section, the **acquisition price** of shares of the relevant company shall—

### New Section 65E(2)(b)

thereafter, by deducting therefrom the amount or value of the **consideration for the acquisition** of the capital asset (together with the incidental costs to the company, limited liability partnership, trust body or co-operative society of the acquisition) less—

### Comments:

We seek confirmation that the term “acquisition price” used in Section 15C(4) would carry the same meaning as the term “consideration for the acquisition” used in Section 65E(2)(b).

### Maklum balas LHDNM:

Tidak, “Acquisition price” di bawah subseksyen 15C(4) yang merujuk kepada perenggan 15C(3)(a) adalah amaun yang diperolehi berdasarkan formula di bawah perenggan 15C(4)(a). Manakala bagi “Consideration for the acquisition” merujuk kepada pemerolehan di bawah perenggan 15C(3)(b) di mana amaun yang diperolehi adalah berdasarkan perenggan 15C(4)(b). Amaun yang diperolehi ini akan ditentukan menurut perenggan 65E(2)(b) atau subseksyen 65E(8).

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 1.10 Filing of CGT returns and payment of CGT

### Amendment of section 77A

13. Section 77A of the principal Act is amended by inserting after subsection (1A) the following subsection:

“(1B) Notwithstanding subsections (1), (3) and (4), every company, limited liability partnership, trust body or co-operative society who disposes of capital asset shall, within sixty days (or such other period the Director General may allow on a written request being made to him) of the date of disposal of that asset, furnish to the Director General a return in the prescribed form on an electronic medium or by way of electronic transmission in accordance with section 152A—

- (a) specifying the chargeable income and the amount of tax payable (if any) on that chargeable income;
- (b) specifying in respect of the capital asset disposed of the acquisition price, the disposal price and the gain or loss on the disposal;
- (c) specifying all information necessary to determine the acquisition price and disposal price of the asset disposed of;
- (d) where the market value of the asset is to be taken for the purposes of this Act, containing the market value based on a valuation made by a valuer; and

### Amendment of section 103

21. Subsection 103(12) of the principal Act is amended—

(b) by inserting after paragraph (a) the following paragraph:

“(aa) in the case of a company, limited liability partnership, trust body or co-operative society referred to in subsection 77A(1B), sixty days from the date of disposal of a capital asset;”.

### Amendment of section 107c

22. Section 107c of the principal Act is amended—

(c) by inserting after subsection (11B) the following subsection:

“(11c) This section shall not apply to gains or profits from the disposal of a capital asset.”.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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### Comments:

- a. Please confirm that Section 77A(1B) is not applicable in the following scenarios:
- i. When a Malaysian company disposes of domestic capital assets which are exempted pursuant to Paragraph 38 of Schedule 6.
  - ii. When a Malaysian company disposes of capital assets situated outside Malaysia that are not deemed to be derived from Malaysia under Section 15C. Hence, the return filing deadline of within 60 days from the disposal does not apply in this case.

#### **Maklum balas LHDNM:**

Pembayar cukai tidak perlu mengemukakan Borang Nyata CKM dalam kedua-dua senario di atas. Walau bagaimanapun, keuntungan daripada pelupusan aset yang diremit dalam senario (ii) di atas perlu dilaporkan sebagai pendapatan punca luar Malaysia yang diterima di Malaysia dalam Borang Nyata Cukai Pendapatan.

- b. Please confirm that Section 77A(1B) applies to a non-resident company that disposes its shares in an unlisted Malaysian company unless the tax treaty overrides.

#### **Maklum balas LHDNM:**

Ya. Peruntukan subseksyen 77A(1B) terpakai.

- c. Please confirm that the requirement for the valuation report by a valuer under Section 77A(1B)(d) is not required where IRB offers the relaxation to use the net tangible asset valuation method or other valuation methods listed in IRB's Guidelines on Stamp Duty on Share Transfers of Companies not listed on Bursa Malaysia as an indication of market value.

#### **Maklum balas LHDNM:**

Pembayar cukai perlu menyediakan laporan penilaian atau kaedah pengiraan dalam menentukan nilai pasaran yang digunakan bagi memastikan nilai pasaran adalah munasabah dan boleh diterima.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 1.11 Exemptions

It was announced in the 2024 Budget Speech – Appendix 9 that certain exemptions would be granted in respect of gains from the disposal of shares under the CGT regime, such as initial public offer exercise approved by Bursa Malaysia, restructuring of shares within same group etc.

### Comments:

- a. Will exemptions be granted / implemented through subsidiary legislation?

**Maklum balas MOF:**

Ya, pengecualian akan diberikan melalui perundangan subsidiari.

- b. Will “Venture Capital Companies” be exempted from CGT?

**Maklum balas MOF:**

Ya.

- c. We request for acquisition of new issued shares to also be exempted from CGT in relation to gains realized by investors in start-up companies or angel investors.

**Maklum balas MOF:**

Cadangan CTIM diambil maklum. Bagi pelabur individu, tidak dikenakan CGT.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 1.12 Others

### Comments:

#### a. Bilateral tax credit relief

- i. Please confirm in the scenario where a Malaysian company disposes shares in a foreign company e.g. an Indonesian company and the gain on disposal is subject to Malaysian and foreign CGT at the same time, the bilateral tax credit relief under Section 132 will be available.
- ii. If the answer to item (a)(i) is yes, how will this be affected if the other country applies CGT only on an annual basis?
- iii. We request for illustrative examples on the application of Schedule 7 on CGT scenarios.

#### **Maklum balas LHDNM:**

- i. Bagi PPPDK yang membenarkan negara mastautin syarikat asing mencukai keuntungan saham di atas, pelepasan kredit bilateral di bawah S132 ACP 1967 boleh dibenarkan.

Namun dalam sebahagian PPPDK, hak mencukai terletak sepenuhnya ke atas negara pemastautin pelupus.

Contohnya di bawah PPPDK Malaysia - Indonesia, hak mencukai menurut Artikel 13(4) terletak sepenuhnya (eksklusif) kepada negara pemastautin pelupus iaitu Malaysia. Oleh itu, Indonesia tidak boleh mencukai dan tiada isu timbul berkenaan pelepasan kredit bilateral di bawah S132 ACP 1967 kerana tiada pencukaaian 2 kali berlaku.

- ii. Pembayar cukai perlu mengemukakan BNCKM dalam tempoh yang ditetapkan dan dibenarkan untuk membuat tuntutan kredit dengan mengemukakan permohonan relif kepada Ketua Pengarah di bawah perenggan 9 Jadual 7 ACP.

#### b. Tax treaty exemption

If the double tax treaty entered into between Malaysia and the overseas country provides that the overseas country has the sole taxing right on capital gains:

- i. Please confirm that as Malaysia takes the view that CGT is part of covered taxes under the tax treaty as defined in Article 2 of the respective tax treaties, the said tax treaty exemption will prevail over domestic laws.
- ii. If tax treaty exemption applies, is the tax treaty exemption to be granted automatically or require notification or application?

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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- iii. In cases where treaty override applies, please confirm that the requirement to file tax returns under Section 77A(1B) would not apply.

**Maklum balas LHDNM:**

- i. Ya
- ii. Pengecualian diberikan secara automatik
- iii. Ya



# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 1.13 Treatment of gains arising from the realization of investments in the case of a unit trust – Amended Section 61(1)(b)

### Amendment of section 61

11. Paragraph 61(1)(b) of the principal Act is amended by substituting for the proviso the following provisos:

“Provided that in the case of a unit trust, gains arising from the realization of investments shall be treated as income of the trust body of the trust under paragraph 4(aa):

Provided further that where such realization of investments relates to real property as defined in the Real Property Gains Tax Act 1976, the gains shall not be treated as income of the trust body of the trust;”.

### Amendment of section 77A

13. Section 77A of the principal Act is amended by inserting after subsection (1A) the following subsection:

“(1B) Notwithstanding subsections (1), (3) and (4), every company, limited liability partnership, trust body or co-operative society who disposes of capital asset shall, within sixty days (or such other period the Director General may allow on a written request being made to him) of the date of disposal of that asset, furnish to the Director General a return in the prescribed form on an electronic medium or by way of electronic transmission in accordance with section 152A—

- (a) specifying the chargeable income and the amount of tax payable (if any) on that chargeable income;
- (b) specifying in respect of the capital asset disposed of the acquisition price, the disposal price and the gain or loss on the disposal;
- (c) specifying all information necessary to determine the acquisition price and disposal price of the asset disposed of;
- (d) where the market value of the asset is to be taken for the purposes of this Act, containing the market value based on a valuation made by a valuer; and

### Amendment of section 107c

22. Section 107c of the principal Act is amended—

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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(c) by inserting after subsection (11B) the following subsection:

“(11c) This section shall not apply to gains or profits from the disposal of a capital asset.”.

## Amendment of section 103



**21.** Subsection 103(12) of the principal Act is amended—

(a) in paragraph (a), by inserting after the words “limited liability partnership” the words “referred to in subsection 77A(1),”; and

(b) by inserting after paragraph (a) the following paragraph:

“(aa) in the case of a company, limited liability partnership, trust body or co-operative society referred to in subsection 77A(1B), sixty days from the date of disposal of a capital asset;”.

## Interpretation of Chapter 9

**65c.** In this Chapter, unless the context otherwise requires—

“consideration” means consideration in money or money’s worth;

“disposal” means to sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law and includes a reduction of share capital and purchase by a company of its own shares;

“shares” means all or any of the following:

- (a) stock and shares in a company;
- (b) loan stock and debentures issued by a company or any other corporate body incorporated in Malaysia;
- (c) a member’s interest in a company not limited by shares whether or not it has a share capital;
- (d) any option or other right in, over or relating to shares as defined in paragraphs (a) to (c).

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## Comments:

Currently, the proviso to Section 61(1)(b) of the ITA 1967 reads:

“Provided that in the case of a unit trust, **gains** arising from the realisation of investments **shall not be treated as income** of the trust body of the trust”

and Section 61(1A) reads:

“Notwithstanding paragraph (1)(c) and (d), a unit holder of a unit trust shall be assessed and charged to tax in respect of income equivalent to an amount ascertained by reference to his **share of the total income of the unit trust** for a year of assessment, **distributed to him by the unit trust** in the basis year for that year of assessment:

Provided that the unit holder **shall not be assessed and charged to tax in respect of any amount distributed by the unit trust out of income exempt from tax**, other than income exempt under Section 61A or paragraph 35A of Schedule 6 on the income of a unit trust in respect of interest derived from Malaysia and paid or credited to a unit trust that is a retail money market fund which is distributed to a unit holder other than an individual, **or the gains referred to in the proviso to paragraph 61(1)(b)**.

The implication of the current proviso to Section 61(1)(b) read together with Section 61(1A) on gains from realisation of investment are:

- 1) There is no tax suffered at the unit trust level
- 2) The unit holder also is not subject to tax

The proposed amendment to the proviso Section 61(1)(b) read together with Section 61(1A) on gains from realisation of investment are:

- 1) There is tax suffered at the unit trust level - at 10% (unlisted) 24% (foreign assets)
- 2) The unit holder remains not subject to tax (the gain that is referred to in the proviso to Section 61(1)(b) is not subject to tax)

However, the tax that is paid at the unit trust level is lost as the unit holder cannot claim a Section 110(9A) set-off since the unit holder is not subject to tax due to the operation of the proviso to Section 61(1A) of the ITA 1967. The proposed amendment effectively erodes the return on investment which is not in line with the Government’s objective of not subjecting individuals to CGT.

**Comment 1:** Unit trusts have a high frequency of transactions and the proposed requirement for tax returns and payments within 60 days of each disposal poses a practical challenge. Please consider allowing unit trusts to include CGT from disposal of shares in the filing of the usual tax returns (once after 7 months from the close of accounts). The issue is further compounded by the wider scope of shares in Section 65C (to be determined separately).

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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**Comment 2:** We understand that most of the unit holders are Malaysian individuals who have invested their savings for retirement and children's education. Please reconsider the above policy to avoid economic taxation on them.

**Comment 3:** It is important to note that unit trust funds are investment vehicles. Unit trust funds do not employ staff or have a physical office in Malaysia. Instead, the investments of unit trust funds are managed by fund managers. It is important to allow unit trust funds to be allowed to meet the ESR (i.e. sufficient number of employees and adequate operating expenses) through the fund managers who manage the funds for unit trust funds. Otherwise, the foreign gains will be taxed at 24% when the gains are brought back into Malaysia, which contradicts the original intention of encouraging individuals to invest through unit trust funds. Individuals who invest overseas and bring back the gains into Malaysia will not be subject to income tax on the foreign gains. This interpretation is in line with the proposed Section 10L of the Singapore Income Tax Act 1947.

It is hoped that the Government will consider providing tax exemption for the fund management industry to preserve its competitiveness. A tax exemption for the individual unit holders on distributions in respect of the realisation of unlisted shares and shares under Section 15C by the unit trust will be in line with the Government's objective of not subjecting individuals to CGT.

**Maklum balas LHDNM:**

Pengecualian cukai ke atas keuntungan daripada pelupusan aset modal oleh unit amanah akan diwartakan melalui perundangan subsidiari.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 1.14 Application of Real Property Gains Tax (RPGT) with the introduction of CGT

In Clause 5 of the Finance Bill, Section 4 of the ITA 1967 is amended by inserting the following paragraph:

(aa) gains or profits from the disposal of capital asset.

In Clause 4 of the Finance Bill, a new definition for “capital asset” is inserted in Section 2(1) of the ITA 1967 as follows:

“capital asset” means moveable or immovable property including any rights or interests thereof.

In Clause 33(b) of the Finance Bill, Paragraph 38 is inserted in Schedule 6 of the ITA 1967 as follows:

“38. (1) Gains or profits from the disposal of a capital asset situated in Malaysia.

(2) The exemption under subparagraph (1) shall not apply to—

(a) disposal of shares of a company incorporated in Malaysia not listed on the stock exchange; and

(b) disposal of shares under section 15c.”.

In Section 2(1) of the RPGTA 1976, “gain” means:

- a. Gain other than gain or profit **chargeable with or exempted from income tax under the income tax law**; or
- b. In the case of a unit trust, gain not treated as income under the income tax law.

### Comments:

The scope of the ITA 1967 is widened to include gains from the disposal of capital asset, which would include real property and any rights or interests thereof. Based on a strict interpretation of “gain” in Section 2(1) of the RPGTA 1976, such gains from the disposal of real property situated in Malaysia would be excluded from gains subjected to RPGT. If this is not the intention, then the relevant provisions of the law may need to be reviewed accordingly.

### Maklum balas LHDNM:

Layanan cukai di bawah Akta CKHT kekal terpakai kepada semua pelupusan yang tertakluk di bawah akta tersebut kecuali pelupusan yang tertakluk kepada CKM di bawah ACP.

~~Pindaan perundangan berkaitan dijangka akan dilaksanakan dalam Sidang Parlimen akan datang.~~



# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 2 Global Minimum Tax (GMT)

### 2.1 Legal Status of OECD Developed Rules/Guidance

#### Comments:

The Malaysian tax legislation has generally made reference to tax treaties and international agreements entered into by Malaysia with other jurisdictions. Part XI makes references to the GloBE Model Rules, Commentary, Agreed Administrative Guidance, etc. This is the first time such rules and guidance are being made part of the tax legislation. [*Malaysia is not a member of the OECD but it is noted that Malaysia has signed-up to the Inclusive Framework.*] Previously, Malaysia has looked at the OECD models and commentaries as a guide but does this now mean IRB will defer to the current OECD developed rules/guidance as well as to any future changes when administering Pillar 2? What is the impact of the administration of Pillar 2 disputes that go before the courts?

#### Maklum balas LHDNM:

This is not the first time Malaysia has made guidance or commentaries issued by OECD as part of the tax legislation. We have the Income Tax (Automatic Exchange of Financial Account Information) Rules 2016 [P.U.(A) 355/2016] which incorporates the Common Reporting Standard and its Commentaries into the subsidiary legislation.

Malaysia's GMT legislation, has been drafted by largely adopting the Globe Model Rules (GMR) which incorporates the Commentary and the Agreed Administrative Guidance (AAG) Therefore the Commentary and the AAG has also been incorporated into Malaysia's GMT legislation. This will ensure that Malaysia's GMT legislation will obtain Qualified IIR and Qualified DMTT status. We are aware that Commentary and the AAG are continuously being developed. Once the AAG has stabilised, if necessary the legislation will be further refined either by way amendments or by issuing rules under the new paragraph 154(1)(ee) or guidelines under the new section 134A, of the ITA 1967 giving them force of law. In the context of acceptance of Malaysian courts of the Commentary and AAG, there are instances when the courts referred to the Commentaries of the OECD Model Tax Convention in deciding issues brought by the taxpayers. The Commentaries to the OECD Model Tax Convention have never been incorporated into our tax laws.

### 2.2. Definition of GloBE Rules – New Section 157(1)

#### “Globe Rules” in new Section 157(1)

“GloBE Rules” means—

(a) the GloBE Model Rules;

(b) the GloBE Rules Commentary and any further commentaries published by the Organisation for Economic Co-operation and Development/G20 Inclusive Framework on Base Erosion and Profit Shifting that are relevant to the implementation of the GloBE Rules; and

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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(c) any Agreed Administrative Guidance or any other guidance published by the Organisation for Economic Co-operation and Development/G20 Inclusive Framework on Base Erosion and Profit Shifting that are relevant to the implementation of the GloBE Rules

## Amended Section 3

73. Section 3 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1); and

(b) by inserting after the renumbered subsection (1) the following subsections:

“(2) Notwithstanding any other provisions of this Act and for the purposes of the imposition of Domestic Top-up Tax or Multinational Top-up Tax and the **implementation of the GloBE Rules**, Part XI of the Income Tax Act 1967 shall also apply to a chargeable person who is a Constituent Entity that is a member of a Multinational Enterprise Group that has annual revenue of seven hundred and fifty million euro or more in the Consolidated Financial Statements of the Ultimate Parent Entity in at least two of the four consecutive Financial Years immediately preceding the tested Financial Year.

(3) Where one or more of the Financial Years of the Multinational Enterprise Group taken into account for the purposes of subsection (2) is of a period other than twelve months, for each of those Financial Years the seven hundred and fifty million euro annual revenue is adjusted proportionally to correspond with the length of the relevant Financial Year.

(4) For the purposes of subsections (2) and (3), “Consolidated Financial Statement”, “Constituent Entity”, “Financial Year”, “GloBE Rules”, “Multinational Enterprise Group” and “Ultimate Parent Entity” have the meaning assigned to them in Part XI of the Income Tax Act 1967.”.

### Comments:

Compared to the original definition of GloBE Rules in the OECD GloBE Model Rules (*extracted below*), the definition as per the Finance (No. 2) Bill 2023 has been expanded, which notably includes the Agreed Administrative Guidance (AAG).

Hence, please clarify whether Malaysia will:

- a) implement the GMT updates provided by the OECD via the dynamic reference to the documents released pursuant to the amended Section 3 of the PITA 1967, i.e., Malaysia will not update the GMT legislation to account for the latest updates from the OECD; or
- b) subsequently amend the local law to account for the updates provided by the OECD via documents such as the AAG, amongst others

### Definition of GloBE Rules as per the OECD GloBE Model Rules

GloBE Rules means this set of rules as developed by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting.



# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## **Maklum balas LHDNM:**

This will depend on what are the implications of the updates provided by the OECD and the best options to implement such updates. If necessary the legislation will be further refined either by way of legislative amendments or by issuing rules under the new paragraph 154(1)(ee) or guidelines under the new section 134A, of the ITA 1967.

## **2.3 GloBE Safe Harbour Rules & Provisions**

### **Comments:**

Please confirm that:

- a. Malaysia's GloBE Safe Harbour rules will include both the Qualified Domestic Minimum Top-up Tax (QDMTT) Safe Harbour and the Transitional Country-by-Country Reporting (CbCR) Safe Harbour and to confirm that Malaysia will (1) adopt the OECD's Transitional CbCR Safe Harbour Rules in its entirety and (2) adopt the entirety of the OECD's QDMTT Safe Harbour rules set out in its Agreed Administrative Guidance.

#### **Maklum balas LHDNM:**

Yes, Malaysia will adopt the OECD's Safe Harbour Rules for both the Transitional CbCR and QDMTT, as set out in the Agreed Administrative Guidance.

- b. The GloBE Safe Harbour provisions (in particular the Transitional CbCR Safe Harbour Rules) will apply to both the Multinational Top-up Tax (MTT) and Domestic Top-up Tax (DTT). The DTT is in principle charged "in an amount equal to the MTT", the GloBE Safe Harbour provisions, which results in an MTT for a jurisdiction being deemed to be zero, may also apply to the DTT where conditions are met, but this is not explicit. Further guidance is welcome.

#### **Maklum balas LHDNM:**

Yes, a guidance will be issued.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 2.4 Scope of DTT Rules

### Comments:

Please clarify whether Joint Ventures are intended to be within scope of Malaysia's DTT rules. The current rules do not contain clear provisions that bring Joint Ventures within the scope of DTT.

### Maklum balas LHDNM:

JVs are considered constituent entities (CEs) and fall within the scope of DTT as provided under section 159.

## 2.5 Inclusion of Malaysian Corporate Zakat as Covered Tax - New Section 157(1)

Covered Taxes" means—

(d) taxes levied by reference to retained earnings and corporate equity, including a Tax on multiple components based on income and equity,

### Comments:

Paragraph 33 of the commentary to Article 4.2.1(d) of the OECD GloBE Model Rules specifies some characteristics of taxes levied by reference to retained earnings and corporate equity, including a Tax on multiple components based on income and equity, including several that could be applicable to the Malaysian corporate Zakat, as follows:

- Taxes on corporate equity may be inherently interlinked with the design of the CIT systems.
- For example, it may be possible under the laws of a jurisdiction to credit CIT against a corporate equity tax so that a company is allowed to reduce the corporate equity tax up to the amount of CIT that it pays in that jurisdiction.
- Taxes on corporate equity may also act as a supplement to CIT as part of a jurisdiction's overall approach to the taxation of a corporation's activities in that jurisdiction.

In addition, the commentary mentions the Saudi Arabia Zakat as an example of such a Covered Tax. An extract is as below:

35. An example of a Covered Tax with multiple components is the corporate Zakat levied by the Kingdom of Saudi Arabia. The Zakat operates as a tax on income or equity or both and is therefore properly considered a Covered Tax for the purposes of the GloBE Rules.

In this regard, kindly confirm whether the Malaysian corporate Zakat also qualifies as a Covered Tax.

### Maklum balas LHDNM:

Zakat does not qualify as a covered tax in Malaysia. Business zakat is not a compulsory unrequited payment to the Malaysian federal government and does not meet the definition of "Tax" under section 157.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 2.6 New Section 158(1)

### Section 158(1) reads:

This Part shall apply to Constituent Entities that are members of a Multinational Enterprise Group that has annual revenue of seven hundred and fifty million euro or more as specified in the Consolidated Financial Statements of the Ultimate Parent Entity in at least two of the four consecutive Financial Years immediately preceding the tested Financial Year.

### Comments:

- a. This Section makes reference to revenue threshold of 750 million Euro or more as specified in the Consolidated Financial Statements of the Ultimate Parent Entity.
  - i. Where the Consolidated Financial Statements of the Ultimate Parent Entity uses a currency other than Euro (i.e. MYR for MNE Groups in Malaysia), please clarify whether there is any reference of exchange rates to be used for translation from Euro and whether annual rebasing is required.
  - ii. We also noted that other than Section 158(1), some sections of Part XI also make reference to the Euro. Please indicate whether there is any reference of exchange rate (e.g. rates from Bank Negara Malaysia, etc.) for translation from Euro and whether annual rebasing is required.

### Maklum balas LHDNM:

These questions (i and ii) have been addressed in the Agreed Administrative Guidance on the GloBE Rules (Published 17 July 2023).

For the purpose of exchanges of rate, the European Central Bank (ECB) rate is to be used (December of the calendar year before the commencement of the relevant Fiscal Year). The same foreign currency exchange mechanism applies for any other monetary thresholds in GMT

In Malaysia, where GMT will come into effect for the financial year beginning on or after 1 January 2025, the average foreign exchange rate for December 2024 published by the European Central Bank (ECB) will be referred.

As the thresholds in the Finance Bill are quoted in Euro, annual rebasing is not required.

- b. Currently, the CbCR threshold is RM3 billion while the Pillar 2 threshold is set at 750 million Euro. Irrespective of which exchange rate we use, there is going to be a mismatch vis-a-vis the CbCR threshold as well in the "2 out of 4 preceding years" test for Pillar 2. Would it be possible for the revenue threshold for Pillar 2 to be set for CbCR?

### Maklum balas LHDNM:

The current CbCR threshold, set at RM3 billion, is presently under review.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 2.7 Allocation of Top-up Tax of a Constituent Entity – New Sections 159, 162(1) & 178

### Section 159 reads:

Notwithstanding section 160 and Chapter 4 of this Part, an income tax to be known as Domestic Top-up Tax shall be charged for each Financial Year on a Low-Taxed Constituent Entity located in Malaysia of a Multinational Enterprise Group in an amount equal to the Multinational Top-up Tax of a Constituent Entity as calculated under Chapter 7 of this Part for a Financial Year and for that purpose the provisions of this Part shall apply accordingly with any necessary modifications to determine liability to and to administer Domestic Top-up Tax.

### Section 162(1) reads:

A Parent Entity's Allocable Share of the Multinational Top-up Tax of a Low-Taxed Constituent Entity is an amount equal to the Multinational Top-up Tax of the Low-Taxed Constituent Entity as calculated under Chapter 7 of this Part multiplied by the Parent Entity's Inclusion Ratio for the Low-Taxed Constituent Entity for the Financial Year.

### Section 178 reads:

Except as provided in subsections 181(3) to (5), the Multinational Top-up Tax of a Constituent Entity shall be determined for each Constituent Entity of a jurisdiction that has GloBE Income determined in accordance with Chapter 5 of this Part for the Financial Year included in the computation of Net GloBE Income of that jurisdiction in accordance with the following formula:

$A \times B/C$

### Comments:

We noted from the Section 159, Section 162(1) and Section 178 that the MTT and DTT of a Constituent Entity is allocated to each Constituent Entity in the jurisdiction based on the proportion of GloBE Income in that jurisdiction.

For MTT, the Parent Entity's Allocable Share of the MTT is based on the Parent Entity's Inclusion Ratio of the Low-Taxed Constituent Entity.

However, we noted that no such provision is provided for DTT. Hence we would like to seek clarification on whether for the purpose of DTT, the whole amount of Top-up Tax for the Low-Taxed Constituent Entity will be charged, regardless of inclusion ratio (i.e. there is no limitation to the parent entity's ownership percentage). This interpretation is in line with the QDMTT whereby it is imposed on 100% of the Top-up Tax calculated for the Low-Taxed Constituent Entity.

### Maklum balas LHDNM:

Yes, the whole amount of Domestic Top-up Tax for the Low-Taxed Constituent Entity (LTCE) will be charged to the LTCE, regardless of the inclusion ratio.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 2.8 Accrued pension expense – New Section 165(26)

### “Accrued Pension Expense” in new Section 165(26) reads:

“Accrued Pension Expense” means the difference between the amount of pension liability expense included in the Financial Accounting Net Income or Loss and the amount contributed to a Pension Fund for the Financial Year;

### “Pension Fund” & “Pension Services Entity” in new Section 157(1) reads:

“Pension Fund” means—

(a) an Entity that is established and operated in a jurisdiction exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to persons and regulated as such by that jurisdiction or one of its political subdivisions or local authorities or those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trustor to secure the fulfilment of the corresponding pension obligations against a case of insolvency of the Multinational Enterprise Group; or

(b) a Pension Services Entity;

“Pension Services Entity” means an Entity that is established and operated exclusively or almost exclusively—

(a) to invest funds for the benefit of Entities referred to in paragraph (a) of the definition of “Pension Fund”; or

(b) to carry out activities that are ancillary to those regulated activities carried out by the Entities referred to in paragraph (a) of the definition of “Pension Fund” provided that they are members of the same Group;

### Comments:

Kindly confirm whether the Employee Provident Fund (EPF) in Malaysia qualifies as a Pension Fund and that the accrued pension expense adjustment is applicable in respect of EPF contributions.

### Maklum balas LHDNM:

According to the definition, the most appropriate entity to verify the qualification of the Employees Provident Fund (EPF) as a pension fund is the EPF itself, in accordance with the governing Act. Since there is no specific practice guidance decided on the jurisdiction’s responsibility in providing specific confirmation or verification in determining the status of CEs, HASiL is unable to provide any confirmation on the status of any CE in any particular MNE Group structure. We will provide further guidance on this practice based on the practice guidance from the OECD and other implementing jurisdictions.

## 2.9 Use of local accounting standard in computing excess profit for domestic top-up tax - New Section 176(2)

### Section 176(2) reads:

Notwithstanding subsection (1), for purposes of a Domestic Top-up Tax Excess Profits may be computed based on an Acceptable Financial Accounting Standard permitted by an Authorised Accounting Body or an

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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Authorised Financial Accounting Standard adjusted to prevent any Material Competitive Distortions, rather than the financial accounting standard used in the Consolidated Financial Statements.

## Comments:

The use of the word 'may' in Section 176(2) seems to imply that taxpayers have a choice as to which accounting standard is used for the purpose of DTT computations. In this regard, kindly confirm if there is the option to either use the local accounting standard or the ultimate parent entity's accounting standard.

Furthermore, providing taxpayers with the choice of accounting standard would cause the DTT of Malaysia to be disqualified for the purpose of the QDMTT safe harbour.

An extract of the AAG July 2023 is as below for your reference:

22. Where a QDMTT jurisdiction adopts the Local Financial Accounting Standard Rule, it shall require the MNE to apply the standard consistently which means that it must require the use of the Local Financial Accounting Standard where the conditions are met. **The QDMTT legislation must not give the option to MNE Groups to choose which standard to use.** This addresses the risk of tax planning where an MNE Group can choose which Financial Accounting Standard provides a better outcome under the QDMTT.

## Maklum balas LHDNM:

Section 176(2) makes references to an Acceptable Financial Accounting Standard permitted by an Authorized Accounting Body or an Authorized Financial Accounting Standard; hence, the use of a Local Accounting Standard is not an option. HASiL seeks further clarification on these comments.

## 2.10 New Section 184(1)

### Section 184(1) reads:

- a. if two or more Groups merge to form a single Group in any of the four Financial Years prior to the tested Financial Year, then the consolidated revenue threshold of the Multinational Enterprise Group for any Financial Year prior to the merger is deemed to be met for that year if the sum of the revenue included in each of their Consolidated Financial Statements for that year is equal to or greater than seven hundred and fifty million euro;
- b. where an Entity that is not a member of any Group (hereinafter referred to as "acquirer") acquires or merges with an Entity or Group (hereinafter referred to as "target") in the tested Financial Year and the target or acquirer does not have Consolidated Financial Statements in any of the four Financial Years prior to the tested Financial Year because it was not a member of any Group in that year, the consolidated revenue threshold of the Multinational Enterprise Group is deemed to be met for that year if the sum of the revenue included in each of their Financial Statements or Consolidated Financial Statements for that year is equal to or greater than seven hundred and fifty million euro;
- c. where a single Multinational Enterprise Group within the scope of this Part demerges into two or more Groups (hereinafter referred to as "demerged Group"), the consolidated revenue threshold is deemed to be met by a demerged Group—

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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- a. with respect to the first tested Financial Year ending after the demerger, if the demerged Group has annual revenues of seven hundred and fifty million euro or more in that year;
- b. with respect to the second to fourth tested Financial Years ending after the demerger, if the demerged Group has annual revenues of seven hundred and fifty million euro or more in at least two of the Financial Years following the year of the demerger.

### **Comments:**

We would like to seek clarification on whether these special rules on merger and demerger would only apply on merger and demerger transactions carried out after the DTT and MTT is effective?

### **Maklum balas LHDNM:**

Yes, for the purpose of section 158, these rules on merger and demerger will only be applicable based on the commencement date of the GMT which is on the financial year beginning on or after 1 January 2025 and subsequent financial years.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 2.11 Information Return & Top-up Tax return - New Sections 201 & 202(1)

### Section 201 reads:

- i. Except as provided in this section, a Constituent Entity of a Multinational Enterprise Group shall for each Reporting Financial Year furnish to the Director General an information return in the prescribed form not later than fifteen months from the last day of the Reporting Financial Year.
- ii. A Constituent Entity located in Malaysia of that Multinational Enterprise Group may elect to appoint a Designated Local Entity to furnish to the Director General the information return referred to in subsection (1), on its behalf.

### Section 202(1) reads:

Every Constituent Entity of a Multinational Enterprise Group shall for each Reporting Financial Year furnish to the Director General a Top-up Tax return in the prescribed form not later than fifteen months from the last day of the Reporting Financial Year.

### Comments:

- a. This section provides that a Constituent Entity of a MNE Group should furnish the information return.

We would like to seek clarification whether the information return is to be filed by only one (1) Constituent Entity of the MNE Group operating in Malaysia for the Group's operation in Malaysia or should this information return be filed by every Constituent Entity of the MNE Group operating in Malaysia (as per the filing of Top-up Tax Return under Section 202 whereby every Constituent Entity of a MNE Group shall for each Reporting Financial Year furnish to the Director General a Top-up Tax return in the prescribed form not later than fifteen months from the last day of the Reporting Financial Year).

#### Maklum balas LHDNM:

In general, as mentioned under section 201(1), the information return should be filed by every CE. However, the CE can appoint a Designated Local Entity (DLE) to furnish the information return on its behalf as provided under section 201(2).

- b. Please clarify whether the first filing due date of the information return and the Top-up Tax return is 18 months or 15 months from the last day of the reporting financial year.

#### Maklum balas LHDNM:

Although the Finance Bill only specifically mentions the 15-month deadline, the 18-month deadline for the transition year (initial filing for the group) will apply. HASiL will confirm this issue in the upcoming guidance.

- c. We noted that Constituent Entities of a Multinational Enterprise Group are required to file 2 separate returns for each Reporting Financial Year, namely:

- i. The information return, and



## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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### ii. The Top-up Tax return

In this respect, we would appreciate some clarification as to the difference between the two. For example, whether:

- The information return is intended to be the implementation of the OECD's GloBE Information Return, and
- The Top-up Tax return is intended to be a return with different or simplified reporting requirements, e.g. to specify tax liability to IRB.

#### **Maklum balas LHDNM:**

##### i. The information return

- refers to the GloBE Information Return (GIR)
- provide details/ information about the group in relation to the Global Minimum Tax (GMT).

##### ii. The Top-up Tax return

- a tax return form
- for CEs to declare their tax liability (MTT and DTT) to HASiL

- d. Please clarify whether Top-up Tax Return filings requirements only arise if a company is assessable and chargeable to either the MTT or DTT. The MTT and DTT rules in their current form do not limit Top-up Tax return filing obligations to Constituent Entities that are assessable and chargeable to either the MTT or the DTT in Malaysia. For avoidance of doubt, please clarify whether Top-up Tax return filing requirements will be imposed on Constituent Entities located outside Malaysia.

#### **Maklum balas LHDNM:**

If the group falls within the scope of GMT, filing the Top-up Tax Return is mandatory, regardless of whether a company is assessable and chargeable to the DTT or MTT. Companies located outside Malaysia (CEs) are exempt from the Top-up Tax return filing requirements in Malaysia.

- e. Please clarify whether Malaysia will allow Malaysian MNEs to file the GloBE Information Return in Malaysia for the financial year ending 2024 (if they have filing requirements in the countries implementing GMT in the financial year beginning 1 January 2024).

#### **Maklum balas LHDNM:**

No.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 2.12 New Section 210

### Section 210 reads:

Every Constituent Entity chargeable to tax who changes his address in Malaysia (being an address furnished by him to the Director General) for another address in Malaysia shall within three months inform the Director General of the change by notice in the prescribed form.

#### Comments:

Currently, a notification can be forwarded to the IRB office which handles the company's tax file.

We would like to clarify whether the same procedure and prescribed form to be used i.e. Change of Address Application Form - CP600B.

#### Maklum balas LHDNM:

LHDNM will confirm whether the same procedure and prescribed form may be used to notify a change of address in accordance with section 210, and will provide additional guidance on this matter.

## 2.13 New Section 220(6)

### Section 220(6) reads:

Where any tax is payable in accordance with subsection (1) or (3), the Director General may allow the tax to be paid by instalments in such amounts and on such dates as he may determine and in the event of default in payment of any one instalment on the date specified for payment the balance of the tax then outstanding shall be due and payable on that date and shall without any further notice being served be increased by a sum equal to ten per cent of that balance, and that sum shall be recoverable as if it were tax due and payable under this Part.

#### Comments:

We would like to seek clarification on the following:

- a. Whether an application in writing is required to be submitted to IRB for payments by instalments and whether the late payment penalty will still be imposed on the instalment payments?

#### Maklum balas LHDNM:

LHDNM will provide further guidance on this issue.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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- b. Is there any application deadline for the payment of top-up tax payable by instalments and if so, when is the application deadline?

**Maklum balas LHDNM:**

LHDNM will provide further guidance on this issue.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 3. Other Proposed Amendments to the Income Tax Act (ITA) 1967

### 3.1 Conditions for approved institutions, organisations or funds – Amended Section 44(7A)

#### Amendment of section 44

9. Subsection 44(7A) of the principal Act is amended by substituting for the words “twenty-five per cent” the words “thirty-five per cent”.

(7A) An institution or organization referred to in subsection (7)—

(a) may apply not more than ~~twenty-five~~ thirty-five per cent of its accumulated funds or that of the fund approved under subsection (6) as at the beginning of the basis period for the year of assessment for the carrying on of, or participation in, a business:

Provided that the profits or income derived therefrom shall be used solely for charitable purposes or for the primary purpose for which the institution, organization or fund was established; or

(b) may carry out charitable activities outside Malaysia with the prior consent of the Minister.

#### 2024 Budget Speech – Paragraph 276

276. To cultivate a well-informed, proficient and sports-talented future generation, the Government has consented to offer tax incentives of up to 10 percent of total income to individuals or businesses that contributes to institutions, organisations, or funds approved under subsection 44(6) of the Income Tax Act 1967, which supports educational programmes, including sports education.

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#### **Comments:**

It was indicated in the 2024 Budget Speech and Appendices that, for those who wish to apply the increased limit of 35%, it comes with a higher threshold of annual charitable activity expenditure of at least 60%. Also, it is proposed to expand the eligible activities to educational programme including sports education in collaboration with the Ministry of Education for Section 44(6) status. We welcome this liberalization of the rules.

Kindly advise if IRB would be issuing an updated guideline to reflect the above.

#### **Maklum balas MOF:**

LHDNM akan mengemaskini syarat-syarat dalam garis panduan bagi kelulusan di bawah Subseksyen 44(6) ACP 1967.

Satu garis panduan baharu akan dikeluarkan bagi menjelaskan program Pendidikan merangkumi pendidikan sukan.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 3.2 Self-Enhancement Courses - Amended Section 46(1)(f)(iii)

### Amended Section 46(1)(f)(iii)

(f) fees expended in that basis year by that individual on himself for—

(iii) any course of study undertaken for the purpose of upskilling or self-enhancement and that course is conducted by a body recognized by the Director General of Skills Development under the National Skills Development Act 2006 [Act 652], for years of assessment ~~2022 and 2023~~, 2024, 2025 and 2026, limited to a maximum amount of two thousand ringgit for each year of assessment,

2024 Budget Speech - Paragraph 116

**116.** To encourage the people to improve their skills and venture new field, tax relief of up to 2,000 ringgit for course fees skill improvement or **self-improvement** extended up to a year assessment 2026.

2024 Budget Speech - Appendix 4

#### Current Position

Individual income tax relief of up to RM2,000 from the total education fees relief of RM7,000 is given on fees paid for attending up-skilling or self-enhancement courses recognised by the Department of Skills Development, Ministry of Human Resources. The tax relief is given for the year of assessment 2022 and year of assessment 2023.

#### Proposal

To further encourage Malaysian citizens to improve and enhance their skills as well as to venture into new areas of income, it is proposed the income tax relief be extended for a period of 3 years.

#### Comments:

- a. The Finance (No. 2) Bill 2023 proposed to replace the words “2022 and 2023” with the words “2023, 2024, 2025 and 2026”. This may give rise to the misconception that the relief previously allowed for YA 2022 will now be disallowed. Under Appendix 4 of the 2024 Budget Speech, the incentive was meant to be extended for another 3 YAs. Please confirm that the amendment should be for “2022, 2023, **2024, 2025 and 2026**”.

#### Maklum balas LHDNM:

Peruntukan sedia ada memberikan pelepasan di bawah subperenggan 46(1)(f)(iii) bagi tahun taksiran 2022 dan 2023 manakala pindaan adalah bertujuan untuk melanjutkan tempoh pemberian pelepasan bagi tiga tahun mulai tahun taksiran 2024 hingga tahun taksiran 2026.

- b. It would be helpful for IRB to include a link for taxpayer to check the list of courses under Section 46(1)(f)(iii) on its website. It is difficult to locate.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## **Maklum balas LHDNM:**

Maklumat berhubung kursus yang yang diiktiraf oleh Ketua Pengarah Pembangunan Kemahiran bagi tujuan pelepasan ini boleh didapati di portal rasmi Jabatan Pembangunan Kemahiran iaitu <https://www.dsd.gov.my>.

### **3.3 Expansion of scope of relief for medical expenses expended on self, spouse and child (wef YA 2024) - New Section 46(1)(g)(iv)**

(g) medical expenses expended or deemed expended under subsection (3) in that basis year by that individual—

“(iv) on himself, his wife or child for dental examination or treatment, or in the case of a wife on herself, her husband or child for dental examination or treatment, an amount limited to a maximum of one thousand ringgit.”; and

#### **Comments:**

We welcome the proposed expansion of scope to cover dental examination and treatment expenses from dental practitioners registered with the Malaysian Dental Council. Please confirm if the scope of dental treatment covers cosmetic dental treatment such as crowning and root canal.

#### **Maklum balas LHDNM:**

Pindaan di bawah peruntukan ini adalah bertujuan untuk membenarkan pelepasan cukai atas pemeriksaan dan rawatan pergigian. Walau bagaimanapun, perbelanjaan pergigian berbentuk kosmetik adalah tidak dibenarkan melainkan perbelanjaan tersebut dibelanjakan untuk tujuan rawatan pergigian.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 3.4 Clarification required on the “fees for sports training” under the new purchase of new sports equipment and activities relief of up to RM1,000 – Amended Section 46(1)(u)

“(u) an amount limited to a maximum of one thousand ringgit expended or deemed expended under subsection (3) in that basis year by that individual—

- (i) for the purchase of sports equipment for any sports activity as defined under the Sports Development Act 1997 [Act 576] (excluding motorized two-wheel bicycles);
- (ii) for the payment of rental or entrance fee to any sports facility;
- (iii) for the payment of registration fee for any sports competition where the organizer is approved and licensed by the Commissioner of Sports under the Sports Development Act 1997; and
- (iv) for the payment of fees for gym membership or sports training for carrying out any sports activity as defined under the Sports Development Act 1997 which is provided by a sports club or societies registered with the Commissioner of Sports or companies incorporated under the Companies Act 2016 [Act 777],

for his own use or under his name or for the use of or under the name of his wife or child, or in the case of a wife, for her own use or under her name or for the use of or under the name of her husband or child as evidenced by receipts issued in respect of the purchase or payment, as the case may be; and”;

### Comments:

- a. Pursuant to the Sports Development Act 1997, “fitness activities” is among the sports activities recognized (covered under item 14A) and is provided by several associations, sports clubs, companies registered with the Sports Commissioner or Companies Commission of Malaysia.

However, nowadays there are several special packages offered to the public that is of separate charges from the usual gymnasium membership fees, including:-

- Personal trainer
- Class pass (i.e. purchase of a pass under a fitness centre and the individual can participate in a series of fitness activities offered under the centre within a period of time).
- Specialized classes (e.g. Pilates classes)

Please confirm if all of the above are covered under the “fees for sports training” in the amended sports equipment and activities relief.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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### **Maklum balas LHDNM:**

Amaun yang dibelanjakan bagi yuran keahlian gimnasium layak dibenarkan sebagai pelepasan di bawah peruntukan ini.

Bagi pakej yang meliputi yuran untuk pelatih persendirian atau kelas bagi aktiviti kecergasan (fitness activities), yuran boleh dibenarkan sebagai pelepasan sekiranya pelatih persendirian atau kelas bagi aktiviti kecergasan disediakan oleh persatuan/ kelab sukan/ syarikat yang berdaftar dengan Pesuruhjaya Sukan atau diperbadankan di bawah Akta Syarikat 2016. Aktiviti yang dijalankan hendaklah merupakan aktiviti sukan yang disenaraikan di bawah Akta Pembangunan Sukan 1997.

Bayaran bagi *class pass* adalah termasuk dalam pelepasan ini sekiranya aktiviti kecergasan yang ditawarkan disediakan oleh persatuan/ kelab sukan/ syarikat yang berdaftar dengan Pesuruhjaya Sukan atau diperbadankan di bawah Akta Syarikat 2016 dan merupakan aktiviti sukan yang disenaraikan di bawah Akta Pembangunan Sukan 1997.

- b. [It would be helpful for IRB to provide guidance on how to search for registered sports club or societies.](#)

### **Maklum balas LHDNM:**

Maklumat berhubung aktiviti sukan yang disenaraikan di bawah Akta Pembangunan Sukan 1997 dan senarai persatuan/ kelab sukan/ syarikat yang berdaftar dengan Pesuruhjaya Sukan boleh dirujuk di portal rasmi Kementerian Belia dan Sukan manakala maklumat berhubung persatuan/ kelab sukan/ syarikat yang diperbadankan boleh didapati di portal rasmi Suruhanjaya Syarikat Malaysia (SSM).

- c. [Are membership from gym operated under sole proprietors, partnerships, limited liability partnerships excluded from this relief?](#)

### **Maklum balas LHDNM:**

Ya.



# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 3.5 Extension of Individual Income Tax Relief for Electric Vehicle Charging Facilities – Amended Section 46(1)(v)

### Amended Section 46(1)(v)

(v) an amount limited to a maximum of two thousand and five hundred ringgit expended for each basis year for the years of assessment ~~2022 and~~ 2023, **2024, 2025, 2026 and 2027** by that individual for the payment of installation, rental, purchase including hire-purchase of equipment or subscription for use of electric vehicle charging facility for his own vehicle and not being used for the purposes of his own business as evidenced by receipts issued in respect of the payment on the amount expended.

### Appendix 5

#### Proposal

To further support the development of the local EV industry and in-line with the New Industrial Master Plan 2030, it is proposed individual income tax relief on expenses related to installation, rental, purchasing including hire-purchase equipment or subscription fees for EV charging facilities be extended for a period of 4 years.

#### Effective Date

From the year of assessment 2024 until the year of assessment 2027.

#### Comments:

The Finance (No. 2) Bill 2023 proposed to replace the words “2022 and 2023” with the words “2023, 2024, 2025, 2026 and 2027”. This may give rise to the misconception that the relief previously allowed for YA 2022 will now be disallowed. Under Appendix 5 of the 2024 Budget Speech, the incentive was meant to be extended for another 4 YAs. Please confirm that the amendment should be for “2022, 2023, **2024, 2025, 2026 and 2027**”.

#### Maklum balas LHDNM:

Pindaan yang menggantikan perkataan “2022 and 2023” dengan perkataan “2023, 2024, 2025, 2026 and 2027” berkuat kuasa bagi tahun taksiran 2024 hingga 2027. Pindaan ini tidak menjejaskan tuntutan relif bagi tahun taksiran 2022 kerana peruntukan asal sebelum pindaan ini masih berkuat kuasa bagi tahun taksiran 2022.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 3.6 Cessation of employment – Amended Section 83(3)

(3) Where an employer is about to cease to employ an individual who is or is likely to be chargeable to tax in respect of income in respect of gains or profits from the employment or where an individual under his employment dies, the employer shall, not less than thirty days before the cessation of the employment, or in respect of cessation by reason of death not more than thirty days after being informed of the death of the individual, give notice in the prescribed form to the Director General of the cessation of the employment:

Provided that, where he is satisfied that it is reasonable to do so in the circumstances, the Director General may accept for the purposes of this subsection a notice in the prescribed form given less than thirty days before the cessation of the employment, or a notice in the prescribed form given on or after the cessation, or in respect of cessation by reason of death a notice in the prescribed form given more than thirty days after being informed of the death of the individual:

Provided further that an employer shall not be required to give the notice in the prescribed form to the Director General under this subsection in respect of an individual—

- (a) where the income from the employment of that individual is subject to deduction under any rules made pursuant to paragraph 154(1)(a); or
- (b) where the total monthly remuneration from the employment of that individual is below the minimum amount of income that is subject to deduction under any rules made pursuant to paragraph 154(1)(a),

~~and where it is known to him that the individual is not retiring from any employment.~~

### Comments:

With this amendment, the employer does not need to know whether the employee will continue to be employed or obtain a signed confirmation from the employee that the individual intends to continue being employed in case of an audit (as set-out in the DESIRE Dialogue No.1/2022 on 27 September 2022). So long as the employee has been subject to monthly tax deductions or his/her remuneration is below the taxable thresholds, the employer is exempted from notifying IRB at the time of cessation of employment. Please confirm.

### Maklum balas LHDNM:

Majikan tidak dikehendaki untuk memaklumkan pemberhentian pekerja kepada LHDNM dalam keadaan pendapatan bulanan pekerja tidak layak dikenakan Potongan Cukai Berjadual (PCB) atau pendapatan telah tertakluk kepada PCB, walaupun pekerja masih meneruskan pengajian selepas pemberhentian.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

## 3.7 Allow revision of Estimate of Tax Payable in the 11<sup>th</sup> month (CP204A) – Amended Section 107C(7)

### Paragraph 22(b) of the Finance (No 2) Bill 2023

*(b) in subsection (7), by substituting for the words “the sixth month or the ninth month, or in both months” the words “the sixth month, the ninth month or the eleventh month, or in all three months”; and*

*Paragraph 22(b) seeks to amend subsection 107c(7) of Act 53 to provide that a company, limited liability partnership, trust body or cooperative society may, in the sixth month, the ninth month or the eleventh month, or in all three months of the basis period for a year of assessment, furnish to the Director General a revised estimate of its tax payable for that year in the prescribed form.*

This amendment has effect for the year of assessment 2024 and subsequent years of assessment.

#### Comments:

- a. Would the Form CP204A / 11<sup>th</sup> month for year 1 that is filed after the Form CP204 for year 2 trigger IRB's system to issue a revised instalment schedule pursuant to Section 107C(8)?

#### Maklum balas LHDNM:

Jika pembayar cukai mengemukakan anggaran cukai bagi tahun taksiran berikutnya kurang 85% daripada amaun pindaan terkini tahun taksiran sebelum, sistem e-CP204A akan memaparkan mesej di bawah dan memaklumkan pengeluaran pindaan anggaran. Contoh paparan mesej adalah seperti berikut:

Amaun e-CP204 TT 2025 adalah kurang daripada 85% amaun e-CP204A ke-11 TT 2024. Sila ambil maklum CP205 TT 2025 akan dikeluarkan.

LHDNM akan mengeluarkan pindaan Bayaran Ansuran (CP205) untuk tahun taksiran berikutnya setelah mengambil kira amaun pindaan terkini (bulan ke-11) yang dikemukakan kemudian.

- b. We noted there is no corresponding proposal to amend the definition of "revised estimate" under Section 107C(12). The term "revised estimate" for the purpose of Section 107C is currently defined in Section 107C(12) to mean “a revised estimate made in the ninth month of the basis period or if there is no revised estimate made in the ninth month of the basis period, the revised estimate made in the sixth month of the basis period”.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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(12) For the purposes of this section—

"due date" means the fifteenth<sup>19</sup> day of a calendar month;

"revised estimate" means a revised estimate made in the ninth month of the basis period or if there is no revised estimate made in the ninth month of the basis period, the revised estimate made in the sixth month of the basis period.

Unlike the provisions under Section 107C(7A) "submission of revised estimate by way of electronic transmission" and Section 107C(10) "determination of underestimation of tax payable (i.e. 30% threshold)" which specifically made reference to the revised estimate under subsection (7), the provision in Sections 107C(3) only made reference to the term "revised estimate", which technically carry the meaning provided under Section 107C(12) that has not been amended correspondingly to include the 11<sup>th</sup> month revision.

Please confirm if the discrepancy above is deliberate.

### **Maklum balas LHDNM:**

Takrifan "*revised estimate*" / "anggaran disemak" akan dipinda untuk memasukkan semakan pada bulan ke-11.

- c. We would like to propose a policy consideration for a simpler system to go on an automatic tax estimate of 85% of the revised tax estimate of the immediately preceding YA or if there is no revised tax estimate, 85% of the tax estimate of the immediately preceding YA, similar to the Form CP500. Hence, Section 107C(10) penalty would apply only to taxpayers who revise the automatic tax estimate downwards. This system is administratively simpler, no cash flow disadvantage for the Government and saves prudent taxpayers from the challenges of making a reliable tax estimate.

### **Maklum balas LHDNM:**

LHDNM mengambil maklum cadangan ini.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 3.8 Review of preferential tax treatment for Micro, Small and Medium Enterprise (MSME) – New Section 107C(4B)(d) & Paragraph 19A(4)(d) of Schedule 3

### Amendment of section 107c

22. Section 107c of the principal Act is amended—

(a) in subsection (4B)—

- (i) in paragraph (b), by deleting the word “or” at the end of the paragraph;
- (ii) in paragraph (c), by substituting for the full stop at the end of the paragraph the words “; or”; and
- (iii) by inserting after paragraph (c) the following paragraph:

“(d) twenty per cent of the paid-up capital in respect of ordinary shares of the company at the beginning of the basis period for a year of assessment is directly or indirectly owned by one or more companies incorporated outside Malaysia or by one or more individuals who are not citizens of Malaysia.”;

### Amendment of Schedule 3

32. Subparagraph 19A(4) of Schedule 3 to the principal Act is amended—

- (a) in subparagraph (b), by deleting the word “or” at the end of the subparagraph;
- (b) in subparagraph (c), by substituting for the full stop at the end of the subparagraph the words “; or”; and
- (c) by inserting after subparagraph (c) the following subparagraph:

“(d) twenty per cent of the paid-up capital in respect of ordinary shares of the company at the beginning of the basis period for a year of assessment is directly or indirectly owned by one or more companies incorporated outside Malaysia or by one or more individuals who are not citizens of Malaysia.”.

### Comments:

With the proposed amendments which are effective from YA 2024, a company, with more than 20% of the paid-up capital in respect of ordinary shares of the company at the beginning of the basis period for a YA is directly or indirectly owned by one or more companies

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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incorporated outside Malaysia or by one or more individuals who are not citizens of Malaysia, is not eligible for:

- a. An exemption from submission of CP204 for 2 YAs pursuant to Section 107C(4A); and
- b. Special allowances for small value assets.

We wish to seek IRB's confirmation that once the MSME is eligible in YA 2023 for an exemption from submission of CP204 for 2 YAs pursuant to Section 107C(4A), exemption under Section 107C(4A) would continue to apply to YA 2024 or and 2025 (if applicable), even though it may have ceased to be an MSME for the purpose of Section 107C(4A) following the new definition that takes effect from YA 2024.

**Maklum balas LHDNM:**

Tidak dibenarkan untuk menikmati pengecualian subseksyen 107C(4A) bagi tahun taksiran 2024 dan 2025.

**3.9 Power of Director General to issue guidelines – New Section 134A**

**“Power of Director General to issue guidelines**

**134A.** (1) The Director General may issue guidelines as the Director General thinks expedient or necessary to clarify the provisions of this Act or to facilitate the compliance of the law or any other matter relating to this Act.

(2) The Director General may revoke, revise or amend the whole or any part of any guidelines issued under this section.”.

**Comments:**

- a. Similar to draft public rulings provided to JPRWG for feedback/comments prior to issuance, guidelines to be issued under this provision should be made after consultation with the professional bodies and the public. Please confirm that positions taken in guidelines are binding on the Director General of Inland Revenue.

**Maklum balas LHDNM:**

Garis Panduan adalah mengikat KPHDN dan pembayar cukai.

- b. Consistent with the effective date of 1 January 2024 for the substantive provision, i.e. Section 134A of the ITA 1967, the guidelines issued under Section 134A should have a prospective effective date.

**Maklum balas LHDNM:**

Pemahaman adalah tepat. Garis panduan di bawah seksyen 134A yang baharu mempunyai tarikh kuat kuasa prospektif.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 4. Other Proposed Amendments to the Real Property Gains Tax Act (RPGTA) 1976

### 4.1 Payment of Real Property Gains Tax (RPGT) – Amended Section 21

Under clause 47 of the Finance Bill, Section 21 of the RPGTA 1976 is amended to require the disposer to pay the RPGT that is deemed to be assessed:

- a. where a RPGT return is submitted, within 60 days from the date of disposal; or
- b. where an amended RPGT return is submitted, on the day the amended RPGT return is submitted.

The above amendment will come into operation on 1 January 2025.

#### **Comments:**

- a. As the disposer is required to pay the RPGT within 60 days from the date of disposal, there will be duplication of payment if the acquirer is also required to withhold and remit part of the consideration within 60 days from the date of disposal in accordance with Section 21B of the RPGTA 1976. This would represent a significant cash flow burden, especially since disposers may not even have collected sales proceeds in many cases within 60 days of the agreement being signed, due to the requirement for conditions precedent to be satisfied.

Hence, it is proposed that Section 21B of the RPGTA 1976 be deleted as part of the introduction of the self-assessment system for RPGT. Consequently Sections 13(6) and 13(7), Sections 14(5), 14(5A) and 14(6), Sections 15(4), 15(4A) and 15(5), Section 22(1)(c) and Section 24(7)(a) should also be deleted.

#### **Maklum balas LHDNM:**

Cadangan diambil maklum, walau bagaimanapun, tertakluk kepada pengesahan polisi oleh JDP/MOF, pada masa ini tiada hasrat bagi memotong peruntukan seksyen 21B berikutan ianya masih merupakan peruntukan yang berkesan bagi pematuhan pembayaran cukai atau sebahagian cukai yang dikenakan.

- b. For RPGT returns that require the market value of the chargeable asset to be determined by the Government (JPPH) and the taxpayer is being unable to determine the chargeable gain and tax payable in the RPGT tax return, what is the operational procedure for payment of RPGT in this situation?

#### **Maklum balas LHDNM:**

Peruntukan Subseksyen 13(1)(c) ACKHT 1976 menjelaskan sekiranya nilai pasaran aset perlu diambil bagi maksud ACKHT 1976, pelupus atau pemeroleh hendaklah mengemukakan satu penilaian aset secara bertulis oleh seorang penilai.



## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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Seksyen 2 ACKHT 1976 menjelaskan penilai adalah seseorang yang menjalankan perniagaan penilaian harta tanah yang sah di sisi undang-undang.

Berdasarkan penjelasan seperti di atas, penilaian aset boleh dinilai oleh mana-mana penilai yang sah di sisi undang-undang dan tidak terhad kepada JPPH bagi menentukan keuntungan yang boleh dikenakan cukai dalam mengemukakan Borang Nyata CKHT.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 4.2 RPGT Assessments – Amended Section 14(1) & New Section 14(1A)

Currently, Section 14(1) of the RPGTA is as follows:

- a. Where a person makes a return under subsection 13(1), the Director General may –
  - (a) Accept the return and make an assessment accordingly;
  - (b) make an assessment after making such adjustments as he considers necessary; or
  - (c) **reduce an assessment made for the year of assessment for which the return was made, in giving effect to paragraph 7(4)(a).**

In clause 39 of the Finance Bill, Section 14(1) is substituted by the following:

- (a) Where a person has furnished a return in accordance with section 13, the Director General shall be deemed to have made, on the day on which the return is furnished, an assessment in respect of that person in the amount of tax on the chargeable gains being the respective amounts as specified in the return.

In addition, a new Section 14(1A) is inserted as follows:

(1A) For the purposes of this Act, where the Director General is deemed to have made an assessment under subsection (1) –

- (1) The return referred to in that subsection shall be deemed to be a notice of assessment; and
- (2) The deemed notice of assessment shall be deemed to have been served on the person on the day on which the Director General is deemed to have made the assessment.

### **Comments:**

Section 7(4)(a) of the RPGTA 1976 relates to allowing an allowable loss in respect of a disposal as a deduction to reduce the total chargeable gain of a person for a year of assessment in which the disposal was made. The allowable loss may also be carried back to be set-off against the chargeable gain arising from a disposal occurring before the disposal giving rise to the allowable loss, provided that both disposals occur in the same year of assessment.

It appears that Section 14(1)(c) of the RPGTA 1976 is removed by the Finance Bill without any specific provision to replace it. Kindly confirm whether a taxpayer would now have to apply Section 19 (relief in respect of error or mistake) of the RPGTA 1976 in such circumstances.

We would request that the decision to remove the provisions of Section 14(1)(c) of the RPGTA 1976 without similar provisions to replace it be reconsidered and revisited.

### **Maklum balas LHDNM:**

Dengan pengenalan sistem taksiran sendiri CKHT, pelupus perlu membuat pengiraan cukai sendiri dalam borang yang ditetapkan. Sekiranya terdapat apa-apa kerugian dalam tahun taksiran yang sama, pelupus boleh memohon suatu relif di bawah seksyen 19 ACKHT.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 5. Proposed Amendments to the Stamp Act 1949

### 5.1 Date of receipt of instrument received by way of electronic transmission – New Section 42(2A)

#### Amendment of section 42

57. Section 42 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) For the purposes of subsection (2), where the instrument is received by way of electronic transmission, the date of receipt thereof shall be verified by the production of a copy or print out of the electronic transmission.”.

#### Comments:

- a. Currently, Section 42(1) of the Stamp Act 1949 provides that “Every instrument chargeable with duty executed only out of Malaysia, and not being a cheque or promissory note, may be stamped within 30 days after it has first been received in Malaysia.” While Section 42(2) of the Stamp Act 1949 provides that the date of receipt thereof must be verified by production of the envelope in which the same was received or of any accompanying letter.

It is proposed that for the purpose of Section 42(2) of the Stamp Act 1949, where an instrument executed outside Malaysia concerning any matter in Malaysia is received via electronic medium, the acceptance may be verified via a copy or print out of the electronic transmission.

#### Maklum balas LHDNM:

Instrumen dianggap diterima (*acceptance*) di Malaysia pada tarikh emel tersebut boleh diterima (*receivable*) tanpa mengira di mana ianya diterima. Tarikh emel tersebut boleh diterima (*receivable*) adalah pada tarikh transmisi secara elektronik dibuat.

- b. The term “electronic transmission” is not defined in the Stamp Act 1949. Please provide clarification on the meaning of “electronic transmission”.

#### Maklum balas LHDNM:

Perkataan “electronic transmission” sedia ada dalam subseksyen 74A(1A) Akta Setem 1949 dan tidak diberi takrif tertentu. Keadaan yang sama terdapat bagi Akta Cukai Pendapatan 1967 dan Akta Cukai Keuntungan Harta Tanah 1976. Oleh itu, maksud umum adalah terpakai.

- c. Please clarify on the date of stamping in the following scenarios:

Scenario 1: The duly executed agreement is sent to Mr A’s office email on 5 January 2024. Mr A happens to be in the UK from December 2023 to March 2024 and only

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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returns to Malaysia in April 2024. At which point of time Mr A is required to perform online stamping? 30 days from the date of receipt of email in his inbox when he was not in Malaysia or 30 days from his returning to Malaysia and retrieving the documents from his email account? If the latter, would Mr A be required to submit documentary evidence that he was outside Malaysia when the email was received?

**Maklum balas LHDNM:**

Tempoh 30 hari bermula pada tarikh transmisi secara elektronik dibuat iaitu pada tarikh emel boleh diterima (*receivable*).

Scenario 2: Company A has a cloud system based in UK and staff in Malaysia can access the agreement duly executed outside Malaysia via (1) access to the cloud portal to sight the signed agreement online without the need to email the agreement or (2) download the signed agreement duly executed outside Malaysia into his laptop. Would IRB consider both (1) and (2) as acceptance via electronic transmission? If so, which date is considered acceptance via electronic transmission? In both manners, there is no proof of acceptance.

**Maklum balas LHDNM:**

Instrumen dianggap diterima di Malaysia pada tarikh instrumen tersebut boleh diterima (*receivable*) secara elektronik atau pada tarikh instrumen dimuatnaik di *cloud* tanpa mengira di mana ianya diterima.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 6. 2024 Budget Speech and Appendices

### 6.1 Special tax rates for film production companies, actors and film crews filming in Malaysia – Paragraph 132

**132.** I evaluated the inputs received during the *Jelajah Belanjawan MADANI* in the State of Johor, especially in relation to the Government's approach in attracting foreign film productions to Malaysia and in competing against incentives offered by other countries. The Government therefore proposes to set a preferential income tax rate of between 0% to 10% on foreign film production companies, actors and crews filming in Malaysia.

#### **Comments:**

There is an existing exemption granted under P.U.(A) 321/1999, whereby non-resident film companies, actors and film crews who are in Malaysia are exempted from the payment of income tax in respect of income derived from filming activities commencing on or after 31 March 1999 which has been approved by the Jawatankuasa Filem Asing, Ministry of Home Affairs, Malaysia.

Is the intention of this proposed special tax rate to cater for cases without relevant approval from the Jawatankuasa Filem Asing, Ministry of Home Affairs, Malaysia?

#### **Maklum balas MOF:**

Tidak, permohonan kadar cukai istimewa ini perlu dikemukakan dan dipertimbangkan oleh Jawatankuasa Agensi Permohonan Penggambaran Filem Asing dan Persembahan Artis Luar Negara (PUSPAL). Perincian mekanisme permohonan masih diperhalusi bersama agensi berkaitan.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

## 6.2 Tax deduction up to RM50,000 for each YA be given on Environmental, Social And Governance (ESG) related expenditure – Appendix 10

To encourage more corporate participation in complying with ESG standards towards sustainable and inclusive development in line with Ekonomi MADANI as well as enhancing the governance in tax administration system, it is proposed tax deduction up to RM50,000 for each year of assessment be given on ESG related expenditure as follows:

ESG Related Expenditure	Description
Enhance Sustainability Reporting Framework	ESG reporting by companies listed on the Bursa Malaysia stock exchange
Climate Risk Management and Scenario Analysis	ESG reporting by financial institutions regulated by the Bank Negara Malaysia
Tax Corporate Governance Framework (TCGF) of Lembaga Hasil Dalam Negeri Malaysia (LHDNM)	Preparation of reports related to TCGF by companies
Transfer Pricing Documentation	Preparation of transfer pricing documentation by companies
E-Invoicing implementation	Consultation fee for implementing e-invoicing incurred by Micro, Small and Medium Enterprises (MSME)
Any reporting requirement related to ESG	ESG reporting by companies to approved regulator by the Ministry of Finance

### Effective Date

From the year of assessment 2024 until the year of assessment 2027.

### **Comments:**

- a. Are the types of ESG related expenditure restricted to only cover ESG reporting/compliance expenses required by specific regulators i.e. Bursa Malaysia, Bank Negara, IRB and approved regulators by MOF?

#### **Maklum balas MOF:**

Ya.

- b. Does it also cover expenses relating to actual ESG activities such as expenses incurred to reduce carbon footprint, expenses incurred to reduce electricity usage etc.?

#### **Maklum balas MOF:**

Tidak. Hanya melibatkan kos pelaporan berkaitan ESG.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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- c. Would the RM50,000 threshold be applicable to each of the identified ESG related expenditure or refer to the total ESG related expenditure for all categories as a whole?

**Maklum balas MOF:**

RM50,000 adalah atas jumlah keseluruhan perbelanjaan berkenaan.

- d. Will there be any further conditions imposed and who are the approved regulators by MOF?

**Maklum balas MOF:**

Akan diperjelaskan di dalam perundangan subsidiari yang akan dikeluarkan kelak.

- e. Whether any guidelines will be issued to provide clarity?

**Maklum balas MOF:**

Maklum balas LHDNM.

**Final:**

Garis panduan akan dikeluarkan oleh LHDNM.

- f. The deduction on expenses incurred for e-invoicing implementation should be given to all persons, instead of limiting it to MSME.

Also, such implementation costs may highly likely to be incurred by non-MSME as MSME may be using MyInvoice.

**Maklum balas MOF:**

Tumpuan kerajaan adalah untuk memberi bantuan kepada MSME beralih kepada penggunaan e-invois.

- g. Given that so many expenses are covered under this proposed deduction, a higher threshold for the deduction should be considered for these legitimate business expenses which are also in line with the Government's policies.

**Maklum balas MOF:**

Nilai ambang sebanyak RM 50,000 adalah memadai

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

## 6.3 Review of capital allowance on ICT equipment and customised computer software – Appendix 11

<b>APPENDIX 11</b>		
<b>REVIEW OF CAPITAL ALLOWANCE ON INFORMATION AND COMMUNICATION TECHNOLOGY EQUIPMENT AND COMPUTER SOFTWARE</b>		
<b>Current Position</b>		
<p>Capital expenditure incurred by companies on purchase of information and communication technology (ICT) equipment and computer software are allowed to claim capital allowance as follows:</p>		
<b>Qualifying Expenditure</b>	<b>Effective Date</b>	<b>Capital Allowance Rates</b>
Purchase of ICT equipment and computer software packages	From the year of assessment 2017	Initial Allowance: 20% Annual Allowance: 20%
Consultation, licensing and incidental fees related to customised computer software development	From the year of assessment 2018	
<b>Proposal</b>		
<p>To assist companies to remain competitive in tandem with the current technological advancement, it is proposed capital allowances rates be revised as follows:</p>		
<b>Qualifying Expenditure</b>	<b>Capital Allowance Rates</b>	
Purchase of ICT equipment and computer software packages	Initial Allowance: 40%	
Consultation, licensing and incidental fees related to customised computer software development	Annual Allowance: 20%	
<p>With the revised rate, the capital allowance claim period be reduced from 4 years to 3 years.</p>		
<b>Effective Date</b>		
From the year of assessment 2024.		

### Comments:

Based on Appendix 11 of the 2024 Budget Speech, the proposed revision to capital allowances rates applies to companies only. It is hoped that the authorities could extend the above proposal to all resident persons in Malaysia.

### Maklum balas MOF:

Akan diambil kira dalam penyediaan perundangan subsidiari.



# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

## 6.4 Incentive for reinvestment in the form of a tiered system – Appendix 19

### Proposal

To encourage existing companies that have exhausted their RA eligibility period and to increase capacity and investment in high-value activities under the New Industrial Master Plan 2030, it is proposed tax incentives be given as follows:

Investment Tax Allowance	Tier 1	Tier 2
Qualifying Capital Expenditure	100%	60%
Statutory Income to be Set-Off	100%	70%

The eligible investment tax allowance rate will be determined by outcome-based approach.

### Effective Date

For applications received by the Malaysian Investment Development Authority from 1 January 2024 until 31 December 2028.

### Comments:

Further clarifications are required on the following:

- a. The criteria required for a company to qualify for the incentive.

**Maklum balas MOF:**

Draf cadangan telah dikemukakan oleh MIDA dan akan diperhalusi bersama agensi berkaitan.

- b. The main criteria for the general RA based on ITA 1967 is for company to undertake expansion / modernisation / automation / diversification project. Does this also apply to the above new investment tax allowance (ITA) incentive as MIDA generally do not use this as the set of criteria for incentive qualification.

**Maklum balas MOF:**

Perkara ini akan diperhalusi bersama agensi berkaitan.

- c. Period for the new ITA incentive.

**Maklum balas MOF:**

Perkara ini akan dimaklumkan kemudian.

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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- d. The 'outcome-based approach' conditions / criteria for the new ITA incentive.

**Maklum balas MOF:**

Perkara ini akan diperhalusi bersama agensi berkaitan.

- e. The level of commitment for the "outcome-based approach", in order to determine the investor's tiering category.

**Maklum balas MOF:**

Perkara ini masih dalam penelitian.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

## 6.5 Tax incentive for Global Services Hub - Appendix 20

### Proposal

To maintain Malaysia's competitiveness as a key player in the global services sector in the region and to establish the country as a high-impact strategic services hub, it is proposed Global Services Hub tax incentive based on outcome-based approach be introduced as follows:

	New Company		Existing Company	
	Tier 1	Tier 2	Tier 1	Tier 2
<b>Exemption Years</b>	5 + 5		5	
<b>Tax Incentive</b>	Tax Rate 5%	Tax Rate 10%	Tax Rate at 5% on the value-added income	Tax Rate at 10% on the value-added income
<b>Types of Income Exempted</b>	i. Services income; or ii. Services and trading income.			
<b>Qualifying Services &amp; Additional Services</b>	Undertake the following activities: i. Regional P&L/Business Management Unit; ii. Strategic business planning; iii. Corporate development;  AND Any 2 qualifying activities under the services category as follows: i. Strategic services; ii. Business services; iii. Shared services; or iv. Other services.			
<b>Conditions (Outcome-based)</b>	i. Annual operating expenditure; ii. High value full-time employees; iii. C-Suite with a minimum monthly salary of RM35,000; iv. Local ancillary services; v. Collaboration with higher education institution/TVET; vi. Training for Malaysian students/citizen; vii. Environmental, Social and Governance (ESG) elements; or viii. Other conditions as determined by the Minister of Finance.			

### Comments:

Further clarifications are required on the following:

- a. Level of commitment for the "outcome-based approach", in order to determine the investor's tiering category.

### Maklum balas MOF:

Perkara ini masih dalam penelitian.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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- b. The calculation/formula for "value-added income" for an existing company.

**Maklum balas MOF:**

Perkara ini masih dalam penelitian.

## 6.6 Expansion of tax incentive for automation – Appendix 21

### Proposal

To increase agricultural productivity and minimise dependency on foreign labour, it is proposed the scope of ACA be expanded to include the commodity sector under the Ministry of Plantation and Commodities (KPK).

### Effective Date

For applications received by KPK from 14 October 2023 until 31 December 2027.

### Comments:

- a. Besides ACA, the tax incentive for automation also includes a tax exemption equivalent to 100% of the same capital expenditure as well.

Please confirm whether companies in the commodity sector will also be able to enjoy this income tax exemption.

**Maklum balas MOF:**

Ya.

- b. What is the scope of the commodity sector covered by the incentive - is it Biofuel, Timber, Tobacco and Kenaf, Cocoa and Pepper, Palm Oil and Sago, and Rubber per KPK site?

**Maklum balas MOF:**

Perkara ini sedang diperhalusi bersama agensi berkaitan.

- c. What are the conditions - are there certification requirements for the equipment?

**Maklum balas MOF:**

Ya.

- d. Currently the non-application rules under P.U. (A) 252/2017 - Income Tax (Accelerated Capital Allowance) (Automation Equipment) Rules 2017 and P.U. (A) 253/2017 - Income Tax (Exemption) (No. 8) Order 2017 imposes the mutual exclusivity based at the company level. The mutual exclusion should be on an asset basis in order to benefit

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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the sector on a wider basis and achieve the objective to increase agricultural productivity and minimise dependency on foreign labour.

**Maklum balas MOF:**

Perkara ini memerlukan kajian lanjut.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## B. Outstanding Gazette Orders – 2014 to 2023 Budgets

The Institutes note with concern that several gazette orders pertaining to proposals announced in the 2014 to 2023 Budgets are still outstanding to date. We would request for your urgent attention and update on the status of the relevant gazette orders.

As professional bodies, the Institutes would urge the tax authorities to ensure that all gazette orders / guidelines in respect of Budget proposals be issued in a timely manner, preferably within the first quarter following the Budget announcement, so that taxpayers are able to apply specific incentives and it creates certainty for investors.

It would be appreciated if future gazette orders could be issued and published on a timely basis. Otherwise, the incentives may not fulfil their objective of incentivising businesses or investment planning decisions.

### 2014 Budget

1. Investment tax allowance for purchase of green technology equipment and tax exemption on the use of green technology system be granted.

#### **Maklum balas LHDNM (7 July 2023):**

Suatu perbincangan telah diadakan pada 18 April 2023 antara MOF, AGC dan LHDNM bagi membincangkan isu dan pertanyaan yang dibangkitkan oleh AGC bagi draf GITA Asset. Draf perintah pengecualian sedang dalam proses pewartaan dengan AGC.

#### **Maklum balas MOF (7 July 2023):**

Draf perintah pengecualian kini sedang disemak oleh pelbagai pihak teknikal dan undang-undang, iaitu MOF, AGC, LHDNM, MGTC.

#### **Comments:**

[Please provide an update on the status of the above.](#)

#### **Maklum balas MOF:**

Sedang dimuktamadkan di peringkat AGC.

### 2019 Budget

1. Extension of list of qualifying assets from nine assets to forty assets in the MyHIJAU directory for green investment tax allowance ("GITA").

#### **Maklum balas LHDNM (7 July 2023):**

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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Suatu perbincangan telah diadakan pada 18 April 2023 antara MOF, AGC dan LHDNM bagi membincangkan isu dan pertanyaan yang dibangkitkan oleh AGC bagi draf GITA Asset. Draf perintah pengecualian sedang dalam proses pewartaan dengan AGC.

**Maklum balas MOF (7 July 2023):**

Draf perintah pengecualian kini sedang disemak oleh pelbagai pihak teknikal dan undang-undang iaitu MOF, AGC, LHDNM dan MGTC

**Comments:**

[Please provide an update on the status of the above.](#)

**Maklum balas MOF:**

Sedang dimuktamadkan di peringkat AGC.

### 2020 Budget

1. Tax deduction on expenses incurred by companies for contributions towards Digital Social Responsibility (DSR) initiatives.

**Maklum balas MOF (7 July 2023):**

MDEC akan mengemukakan pengesahan mengenai inisiatif ini memandangkan cadangan polisi terperinci masih di peringkat agensi berkenaan untuk penilaian dan pertimbangan MOF.

**Comments:**

[Please provide an update on the status of the above.](#)

**Maklum balas MOF:**

Sedang mendapatkan maklumat terkini berkenaan pelaksanaan inisiatif ini daripada agensi berkaitan.

2. Tax exemption of 100% up to 10 years on qualifying intellectual property income derived from patent and copyright software of qualifying activities.

**Maklum balas LHDNM (7 July 2023):**

Pihak LHDNM, MOF, MIDA, MDEC dan Bioeconomy Corporation sedang menyemak semula draf perundangan subsidiari agar selaras dengan surat polisi bertarikh 20 Februari 2023 dan 23 Februari 2023.

**Comments:**

[Please provide an update on the status of the above.](#)

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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**Maklum balas MOF:**

Draf dalam semakan agensi berkaitan susulan mesyuarat yang diadakan pada 30 Januari 2024.

3. Green Investment Tax Allowance (“GITA”)

- Extension of 100% Investment Tax Allowance to YA 2023 on qualifying capital expenditure incurred for green technology activities.

**Maklum balas LHDNM (7 July 2023):**

Draf perintah pengecualian kini sedang disemak oleh pelbagai pihak teknikal dan undang-undang, iaitu MOF, AGC, LHDNM, MGTC, MIDA.

Suatu perbincangan telah diadakan pada 18 April 2023 antara MOF, AGC dan LHDNM bagi membincangkan isu dan pertanyaan yang dibangkitkan oleh AGC bagi draf GITA Asset. Draf GITA Asset, GITA Project dan GITA Green Building kini dalam proses pewartaan dengan AGC.

**Comments:**

Please provide an update on the status of the above.

**Maklum balas MOF:**

Sedang dimuktamadkan di peringkat AGC.

4. Green Income Tax Exemption (“GITE”)

- Extension of income tax exemption of 70% of statutory income for qualifying green technology services to YA 2023; and

**Maklum balas LHDNM (7 July 2023):**

Draf perintah pengecualian kini dalam proses pewartaan dengan AGC.

**Comments:**

Please provide an update on the status of the above.

**Maklum balas MOF:**

Sedang dimuktamadkan di peringkat AGC.

- Income tax exemption of 70% of statutory income up to 10 years of assessment for solar leasing companies certified by the Sustainable Energy Development Authority (“SEDA”).



# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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**Maklum balas LHDNM (7 July 2023):**

Draf perintah pengecualian kini dalam proses pewartaan dengan AGC.

**Comments:**

Please provide an update on the status of the above.

**Maklum balas MOF:**

Sedang dimuktamadkan di peringkat AGC.

5. Expansion of the scope of tax incentives for automation equipment for Category 2: Other Industries to the services sector for applications received by MIDA between 1 January 2020 and 31 December 2023.

**Maklum balas MOF (7 July 2023):**

Dalam semakan pihak AGC.

**Comments:**

Please provide an update on the status of the above.

**Maklum balas MOF:**

Sedang dimuktamadkan di peringkat AGC.

## 2022 Budget

1. Rainwater Harvesting Systems (“RHS”) be included within the scope of qualifying green services and green assets. Where RHS projects are approved by the Malaysian Green Technology Corporation, the following incentives will now be available:
  - GITA of 100% on capital expenditure for qualifying RHS activities — the allowance will be available to be set off against 70% of statutory income
  - GITE which will provide tax exemption on 70% of statutory income from qualifying RHS activities.

**Maklum balas MOF (7 July 2023):**

Draf perintah pengecualian kini sedang disemak di peringkat akhir oleh AGC.

**Comments:**

Please provide an update on the status of the above.

**Maklum balas MOF:**

Sedang dimuktamadkan di peringkat AGC.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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## 2. Tax incentives for the Digital Ecosystem Acceleration Scheme (DEAS)

- Digital Technology Provider (DTP)

Where the DTP is a new company, an income tax rate of 0% to 10% will be given for a period of up to 10 years. For an existing company that diversifies into new services segments/activities, an income tax rate of 10% will be given for up to 10 years.

- Digital Infrastructure Provider (DIP)

A 100% investment tax allowance will be given for up to 10 years to be set off against 100% of statutory income.

**Maklum balas MOF (7 July 2023):**

Pelaksanaan insentif sedang dimuktamadkan oleh MOF dan MIDA.

**Comments:**

[Please provide an update on the status of the above.](#)

**Maklum balas MOF:**

Insentif ini menggunakan pakai perundangan sedia ada.

## 2023 Budget

1. Tax deduction on issuance cost of Sustainable and Responsible Investment Linked Sukuk that is approved or permitted or deposited with the Securities Commission Malaysia for a period of 5 years. From YA 2023 until YA 2027.

**Maklum balas MOF:**

[Dalam proses semakan draf perundangan subsidiari.](#)

2. Special tax deduction of up to RM150,000 for expenditure on Malaysian-made handicrafts purchased from local handicraft entrepreneurs registered with Perbadanan Kemajuan Kraftangan Malaysia. For qualifying handicraft products expenditure incurred from 1 January 2023 until 31 December 2025.

**Maklum balas MOF:**

[Sedang dalam proses draf di peringkat LHDNM.](#)

3. Expansion of the scope of further tax deduction to include remuneration paid to inmates and ex-inmates of:
  - i. Henry Gurney School under Malaysian Prison Department; and
  - ii. Protection and rehabilitation institutions and non-government care centres registered under the Department of Social Welfare.From YA 2023 to YA 2025.

# JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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**Maklum balas MOF:**

[Sedang dalam proses draf di peringkat LHDNM.](#)

4. Tax deduction for company renting non-commercial electric vehicle on the rental amount up to RM300,000. From YA 2023 to YA 2025.

**Maklum balas MOF:**

[Draf dalam semakan di peringkat LHDNM.](#)

5. Tax incentives for manufacturers of electric vehicle charging equipment: -
- 100% income tax exemption on statutory income for 10 years (YA 2023 to YA 2032). If the investment were to be made after YA 2023, the companies can enjoy the remaining exemption period only, or
  - 100% Investment Tax Allowance for 5 years which can be set-off against 100% statutory income for each YA.

**Maklum balas MOF:**

[Menggunakan pakai perundangan sedia ada.](#)

6. Tax incentives for carbon capture and storage (CCS): -
- (a) Companies undertaking CCS in-house activity: -
- 100% Investment Tax Allowance (ITA) on qualifying capital expenditure (QCE) for 10 years which can be set-off against 100% of statutory business income; and
  - Tax deduction for allowable pre-commencement expenses within 5 years from the date of commencement of operation.
- (b) Companies undertaking CCS services: -
- 100% ITA on QCE for a period of 10 years which can be set-off against 100% statutory income, or
  - 70% tax exemption on statutory business income for 10 years.
- (c) Companies engaging in CSS services: -
- Tax deduction on fees incurred for the use of CCS services.

**Maklum balas MOF:**

[Sedang diperhalusi bersama agensi berkaitan.](#)

7. 100% accelerated capital allowance and 100% income tax exemption on qualifying capital expenditure from YA 2023 to YA 2025 are given to chicken rearers that adopt environmentally-friendly closed house systems verified by the Ministry of Agriculture and Food Security (MAFS).

**Maklum balas MOF:**

[Sedang diperhalusi bersama agensi berkaitan.](#)

## JOINT MEMORANDUM ON ISSUES ARISING FROM 2024 BUDGET SPEECH & FINANCE (NO. 2) BILL 2023

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8. Tax incentives for food production projects: -
- The scope of tax incentives is expanded to include agricultural projects based on Controlled Environment Agriculture; and
  - The application period for tax incentives is extended for 3 years (1 January 2023 until 31 December 2025).

**Maklum balas MOF:**

[Sedang diperhalusi bersama agensi berkaitan.](#)

9. Tax Incentives for BioNexus status company: -
- The income tax exemption on statutory income be increased from 70% to 100%; and
  - The application period for tax incentives is extended for 2 years (1 January 2023 until 31 December 2024).

**Maklum balas MOF:**

[Sedang diperhalusi bersama agensi berkaitan.](#)

10. Accelerated capital allowance for automation equipment: -
- The scope of automation is to include the adaptation of Industry 4.0 elements;
  - The scope of the qualifying project is expanded to include the agriculture sector; and
  - The qualifying capital expenditure threshold for category 1, category 2, and agriculture is increased to RM10 million.

For applications received by MIDA and MAFS from 1 January 2023 until 31 December 2027.

**Maklum balas MOF:**

[Sedang diperhalusi bersama agensi berkaitan.](#)

11. Extension of tax incentive for ship building and ship repairing (SBSR) industry for a period of 5 years. For SBSR applications received by MIDA from 1 January 2023 until 31 December 2027.

**Maklum balas MOF:**

[Menggunakan perundangan sedia ada.](#)

12. Extension of tax incentive for aerospace industry for a period of 3 years. For applications received by MIDA from 1 January 2023 until 31 December 2025.

**Maklum balas MOF:**

[Menggunakan perundangan sedia ada.](#)