



MALAYSIAN INSTITUTE OF ACCOUNTANTS



JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

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Prepared by:

Chartered Tax Institute of Malaysia;

Malaysian Institute of Accountants;

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**The Malaysian Institute of Chartered Secretaries and
Administrators.**

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

Contents

	Issues	Page No.
A	2018 Budget Speech & Finance (No.2) Bill 2017	
	Proposed Amendments to the Income Tax Act 1967	3
	Appendices to the 2018 Budget Speech	7
	Proposed Amendments to the Real Property Gains Tax Act 1976	19
B	Outstanding Gazette Orders – 2014 to 2017 Budgets	21
C	Other Budget Proposals which have not been legislated	24
D	Public Rulings to be updated with 2018 Budget Proposals	25

A. 2018 Budget Speech & Finance (No.2) Bill 2017

Proposed amendments to the Income Tax Act 1967

- 1. New S.21A(3A) - Due date for notification of change in accounting period [w.e.f. year of assessment (YA) 2019 & subsequent YAs]**

New S.112(3A) – Penalty for failure to notify under S.21A(3A) [w.e.f. YA 2019 & subsequent YA]

Proposed:

“(3A) Where a company, limited liability partnership, trust body or co-operative society has made up the accounts of its operations for a period of twelve months ending on a day in a basis year and has failed to make up its accounts ending on the corresponding day in the following basis year (“hereinafter referred to as “the new accounts”), the company, limited liability partnership, trust body or co-operative society shall notify the Director General of such failure in the prescribed form

(a) in the case where the new accounts are made up ending before the corresponding day, thirty days before the end of the new accounts; or

(b) in the case where the new accounts are made up ending after the corresponding day, thirty days before the corresponding day.”

“S.112(3A) Where there is a failure by a company, limited liability partnership, trust body or co-operative society to make up its accounts ending on the corresponding day in the following basis year pursuant to subsection 21A(3) and the company, limited liability partnership, trust body or co-operative society fails to give a notification in accordance with subsection 21A(3A), any penalty that had been imposed under subsection (3) based on the accounting period prior to the new accounts as mentioned in subsection 21A(3A) shall continue to be recoverable under this Act.”

Comments:

- 1.1** The new penalty provisions for failure to notify under S.21A(3A) adds to the burden of more reporting requirements. There could be genuine reasons for the delay in the notification. Where applicable, the existing penalty provisions in relation to an estimate of tax payable or the failure to furnish a tax return should suffice.

Note :

The existing penalties under subsection 107C(9), subsection 107C(10) and subsection 112(3) of the ITA are in respect of :

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

- (i) failure to pay the instalment payment by the due date;
- (ii) where the tax payable exceeds the estimate of tax payable for a year assessment, by an amount of more than 30% of the tax payable under the assessment; and
- (iii) failure to submit or late submission of the Income Tax Return Form (ITAF).

The newly introduced income tax provisions under subsection 107C(11B) and subsection 112(3A) in respect of the penalties imposed under subsection 107C(9), subsection 107C(10) and subsection 112(3A) are tax due and recoverable when there is a failure to notify the change in accounting period under subsection 21A(3A) of the ITA.

Paragraph 120(1)(i) of the ITA was introduced to address the failure to notify the change in accounting period under subsection 21A(3A) of the ITA.

1.2 Clarification sought:

- a. Where the Form CP204B is submitted after the 30 days requirement under S.21A(3A) but before the best judgement Form J is issued, our view is that S.112(3A) should not apply. Please confirm.

IRBM's Comments

Yes. Your understanding of the above is correct.

- b. Does the notification of change in accounting period apply to a company under liquidation under a court order? How can a liquidator inform the IRB 30 days before the close of the old accounting period as they may not have been appointed by the court at that time?

IRBM's Comments

The liquidators are required to notify IRBM once they are appointed.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

1.3 Company, LLP, trust body or co-operative society shall notify the Inland Revenue Board (IRB) of any change in its accounting period within a specified due date:

- a) Less than 12 months - 30 days before the end of the new accounting period;
- b) More than 12 months - 30 days before the end of the old accounting period

In an example elaborating scenario (b) above in slide no. 4 of the Notes of the National Tax Seminar 2017 organised by IROU, the due date was mistakenly indicated to be one month instead of 30 days before the end of the old accounting period i.e. instead of 1 December 2019, it was stated as "notify by 30 November 2019".

According to Paragraph 4.2(iii) of the PR No. 7/2015, examples of known stand, rules and practices of the IRB include "slide presentations given by IRBM officers".

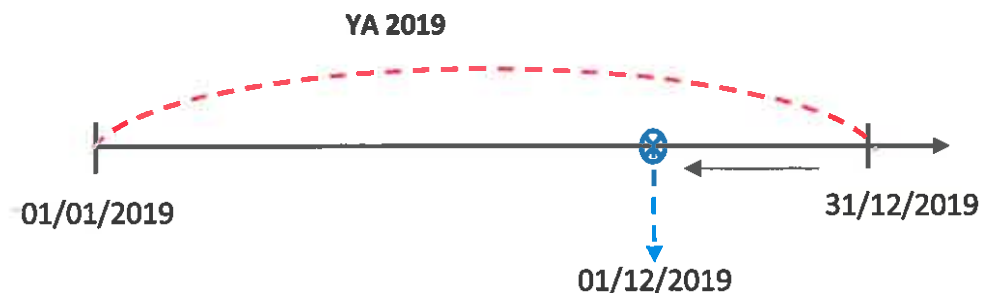
To avoid confusion, we request the IRB to issue a rectification of the error on the due date for the example used in the National Tax Seminar 2017 organised by IROU.

IRBM's Comments

Noted.

Amendment is as follows :

(b) More than 12 months –30 days before the end of old accounting period



JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

2. Paragraph 22, Schedule 6 – 60 days exemption rule (w.e.f. operation of the Finance Act)

Proposed:

Paragraph 22 –

Paragraph 21 shall not apply to the income of an individual from an employment —

(a) if that individual has income derived from Malaysia from that employment for a period or periods amounting in all to more than sixty days in the basis year referred to in that paragraph or in the period consisting of the basis years so referred to; or

(b) if the income is income from an employment exercised by a public entertainer ~~(that is to say, any professional entertainer, artiste, athlete or other individual who entertains whether in public or private for profit on stage, radio or television, at a stadium or sports ground, or otherwise)~~ and no part of that income is paid out of the public funds of the government of a country outside Malaysia.

Comments:

Given the wide definition of public entertainer, the interaction between Section 109A and employment income as per the examples below need clarification.

Example

Mr. X is a lecturer under full time employment A Ltd, a company tax resident in Singapore (no Malaysian permanent establishment).

B Sdn Bhd (a subsidiary of A Ltd) organizes a public lecture in Kuala Lumpur (participants are required to pay to attend the lecture).

Pursuant to an agreement between A Ltd and B Sdn Bhd, A Ltd instructs Mr X to speak in the public seminar organized by B Sdn Bhd. For this, A Ltd invoices B Sdn Bhd.

Mr X spends only two days in Malaysia during the calendar year.

Assumption 1: No additional payment to Mr. X:

Would the payment from B Sdn Bhd to A Ltd be subject to withholding tax under Section 109A or 109B?

IRBM's Comments

Section 109A is applicable to A Ltd .

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

Would part of Mr. X's monthly remuneration paid by A Ltd in Singapore be subjected to tax in Malaysia given that the employment is exercised in Malaysia? (previously it would have been exempt under the 60-days rule in paragraph 21, Schedule 6)

IRBM's Comments

1. The rule on taxation of entertainer's income under the DTA between Malaysia and Singapore is found in Article 17 (Artistes and sportsmen). It states:

Art 17(1). Notwithstanding the provisions of Articles 14 and 15 income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

Art 17(2). Where income in respect of or in connection with personal activities exercised by an entertainer or a sportsman accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

2. There is no definition of entertainer in the DTA. Article 17 gives a few examples of 'entertainers'. The OECD Commentary states that the list of example is not meant to be exhaustive. In addition, where a term is not defined in the DTA, Article 3(2) of the DTA allows reference to domestic law:

Art 3(2). As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

On that basis, IRBM is of the view that the term 'entertainer' under Article 17 may have the meaning under the ITA 1967.

3. IRBM is of the view although there are 2 ways to tax public entertainers' income under the DTA between Malaysia and Singapore i.e., taxing the income in the hands of the entertainer (paragraph 1)) or in the hands of the company (paragraph 2), Malaysia's right is limited i.e it can only tax the income in the hands of the entertainer as per section 109A since ITA 1967 is the charging law and not the DTA.
4. As Mr.X receives a salary rather than the amount paid by B Sdn Bhd to A Ltd, a reasonable portion of Mr.X salary will be subject to Section 109A. (mechanism issue).

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

Assumption 2: B Sdn Bhd pays an allowance to Mr X (in addition to the monthly remuneration paid by A Ltd):

Would the allowance be subjected to withholding tax – or personal income tax?

IRBM's Comments

The allowance (related to the exercising of the lecturing activity in Malaysia), will be subjected to withholding tax under Section 109A Income Tax Act 1967.

Would part of Mr. X's monthly remuneration be still subjected to personal taxation?

IRBM's Comments

1. Mr X receives employment income from his employer in Singapore.
2. Although Mr X is an employee of A Ltd in Singapore and receives employment income, the amount of income attributable to the performance of his duty as a lecturer in Malaysia (which falls under the definition a public entertainer) would be subjected to withholding tax under Section 109A and not taxed as employment income in Malaysia.

Additional Comments from CTIM/MIA/MICPA/MAICSA:

We will engage the IRB to discuss on its responses to the issues raised in item 2 on page 6 to 8 of this Joint Memorandum and the additional scenario for item 2 of this Joint Memorandum, separately.

IRBM's Comments

IRBM takes note of the Institutes' comments.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

Appendices to the 2018 Budget Speech

3. Appendix 2 of the 2018 Budget Speech - Tax exemption on rental income from residential homes received by Malaysian resident individuals

Current Position

Rental income from residential home received by a resident individual is subject to income tax under the Section 4(d) of the Income Tax Act 1967 based on progressive rate ranging from 0% to 28%.

Proposal

To encourage Malaysian resident individuals to rent out residential homes at reasonable charges, it is proposed that 50% income tax exemption be given on rental income received by Malaysian resident individuals subject to the following conditions:

- i. rental income received not exceeding RM2,000 per month for each residential home;*
- ii. the residential home must be rented under a legal tenancy agreement between the owner and the tenant; and*
- iii. tax exemption is given for a maximum period of 3 consecutive years of assessment.*

Effective Date

From year of assessment 2018 until year of assessment 2020.

Comments:

- 3.1 The Ministry of Finance (MOF) has mentioned at the IRB's National Tax Seminar 2017 that they will issue guidelines on the tax exemption of the rental income. The guidelines and gazette order should be issued early in relation to this proposal as well as the other relevant 2018 Budget proposals.

IRBM's Comments

Noted.

3.2 Clarification is sought on the following:-

- a. We interpret the words "rental income received" to mean gross rental income received. In a case where the gross rental income per month received by the resident individual is RM2,000, he/she will be given a 50% income tax exemption on RM2,000. In short, his/her gross monthly rental income subject to tax is RM1,000.

Please confirm that our interpretation / understanding of the proposed amendment is correct.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET, SPEECH & FINANCE (NO. 2) BILL 2017

IRBM's Comments

This is pending decision from MOF.

- b. Does the exemption apply to rental income taxed under both Sections 4(a) and 4(d)?

IRBM's Comments

Applies to rental income taxed under paragraph 4(d).

- c. What is the definition of "residential homes"? Does it include small office home office (SOHO) units under commercial units which are used as residential property, individual rooms (as opposed to the entire house or apartment) rented out to different tenants under different tenancy agreements?

IRBM's Comments

Pending policy letter from MOF. Proposal is not to include SOHO.

- d. Does the exemption apply to rental income received from residential property under joint names (i.e. more than one individual landlord)? How should the exemption be calculated for such cases?

IRBM's Comments

Pending policy letter from MOF. If the property is under joint names similar treatment to apportion based on the percentage of ownership.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

4. Appendix 6 of the 2018 Budget Speech - Capital allowance for Information and Communication Technology (ICT) Equipment and Software

Current Position

Expenditure incurred on the purchase of ICT equipment and software package is eligible for Accelerated Capital Allowance (ACA) until year of assessment 2016.

Expenditure incurred on consultation fee, licensing fee and incidental fee for the development of customised software is not eligible for capital allowance or deduction for income tax purpose.

Proposal

To assist companies to remain competitive in the digital era and adopt latest technology, it is proposed that companies be allowed to claim capital allowances on qualifying expenditure as follows:

Proposals	Qualifying Expenditure	Capital Allowance
1	<i>Expenditure incurred on the purchase of ICT equipment and computer software packages.</i>	<i>Initial allowance: 20% Annual allowance: 20%</i>
2	<i>Expenditure incurred on the development of customised software comprising of consultation fee, licensing fee and incidental fee related to software development.</i>	

Effective dates

Proposal 1: From year of assessment 2017.

Proposal 2: From year of assessment 2018.

Comments:

- 4.1 We request the relevant law to be published in the gazette urgently as the ACA for purchase of ICT equipment and software is effective from YA 2017. For companies with early financial year-ends e.g. 31st March, the tax return is due on 30th November (extended deadline).

IRBM's Comments

Noted

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET, SPEECH & FINANCE (NO. 2) BILL 2017

4.2 Clarification sought:

- a. Will cost incurred in modifying existing software qualify for capital allowances?

IRBM's/MOF Comments

Qualify under proposal 2 . Pending policy letter from MOF.

- b. Does the definition of software include mobile applications (apps) in mobile phones?

IRBM's/MOF Comments

No. Proposal is not to include mobile apps.

- 4.3 The gazette order to be issued for both proposals should not have mutual exclusion provisions as both proposals refer to normal capital allowances and not accelerated capital allowances.

IRBM's/MOF Comments

Noted. Pending policy letter from MOF.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

5. Appendix 9 of the 2018 Budget Speech – Forum on Harmful Tax Practices (FHTP) Criteria

Malaysia is committed to adhere to internationally agreed on exchange of information for tax purposes standards to ensure the tax system is competitive, while maintaining taxing rights. Among the initiatives undertaken by Malaysia include:

- i.
- ii.
- iii. *streamline tax incentives to be in line with FHTP criteria. Amendment to the relevant legislations will be gazetted before 1 January 2019.*

Comments:

It is noted that other than the Principal Hub Incentive, the following incentives will be reviewed to ensure adherence to the criteria of the FHTP:

- Biotechnology Industry
- Multimedia Super Corridor Malaysia
- Pioneer Status
- Labuan Leasing
- Inward Re-Insurance and Offshore Insurance Regime
- Labuan Financial Services
- Special Economic Regions

For incentives which will be modified, clarification is sought on the following:

- a. How will the above incentives be modified?

IRBM's/MOF Comments

Those incentives will be modified based on the FHTP criteria.

The four key factors are :

- a) The regime imposes no or low effective tax rates on income from geographically mobile financial and other services activities.
- b) The regime is ring-fenced from the domestic economy .
- c) The regime lacks transparency (for examples, the details of the regime or its application are not apparent, or there is inadequate regulatory supervision or financial disclosure).
- d) There is no effective exchange of information with respect to the regime.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

The eight other factors are :

- a) An artificial definition of the tax base.
- b) Failure to adhere to international transfer pricing principles.
- c) Foreign source income exempt from residence country taxation.
- d) Negotiable tax rate or tax base.
- e) Existence of secrecy provisions.
- f) Access to wide network of tax treaties.
- g) The regime is promoted as a tax minimization vehicle.
- h) The regime encourages operations or arrangements that are purely tax-driven and involve no substantial activities.

- b. How will applications for incentives which have been approved prior to the modification be impacted?

IRBM's/MOF Comments

The companies will be allowed to continue enjoying the incentives until 31/12/2021 for IP and Non IP Regimes.

- c. Will a person , whose incentive period has not expired as at the time of modification of the affected incentives, continue to enjoy the incentive as before i.e. will the incentive granted to that person be safeguarded?

IRBM's/MOF Comments

As above.

- d. Will there be any transitioning / grandfathering rules?

IRBM's/MOF Comments

Yes

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

6. Appendix 18 of the 2018 Budget Speech - Review of tax incentives for automation

Current Position

A manufacturing company is eligible for Accelerated Capital Allowance (ACA) and Automation Equipment Allowance (AE) on expenses incurred in the purchase of automation equipment as follows:

- i. Category 1 : Labour-Intensive Industry (rubber, plastic, wood and textile products)
ACA of 100% and AE of 100% on the first RM4 million for qualifying capital expenditure incurred during the basis period of year assessment 2015 to 2017.
- ii. Category 2 : Industries Other Than Category 1
ACA of 100% and AE of 100% on the first RM2 million for qualifying capital expenditure incurred during the basis period of year assessment 2015 to 2020.

The tax incentive is effective for applications submitted to Malaysian Investment Development Authority (MIDA) as follows:

- i. Category 1:
1 January 2015 to 31 December 2017
- ii. Category 2:
1 January 2015 to 31 December 2020

Proposal

To further promote automation in the manufacturing sector, particularly in enhancing productivity and efficiency in the labour intensive industries, it is proposed that the incentive period for Category 1 be streamlined with Category 2. Therefore, the period for the incentive be extended for another 3 years. This allowance is fully claimable within 1 year.

Effective Date

For applications received by MIDA from 1 January 2018 to 31 December 2020.

Comments:

- 6.1 According to the MIDA Guidelines and with reference to slide no. 27 of the Notes of the National Tax Seminar 2017 organised by IROU, the qualifying company must have been in operation for at least 36 months to be eligible for the incentives.

However, both the ACA Rules [P.U. (A) 252/2017] and Exemption Order [P.U. (A) 253/2017] state that the qualifying company must fulfil the condition that "it has carried on a qualifying project for a period of 36 months". A "qualifying project " is defined in both the gazette orders to mean "a project undertaken by a qualifying company for modernizing or automating its existing manufacturing activity of a product".

We understand that the 36 months should apply to the "carrying on of operations" rather than the "carrying on of a qualifying project". In view of this, we would

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

appreciate it if you could confirm this in writing and make appropriate amendments to the P.U. (A) 252/2017 and P.U. (A) 253/2017.

IRBM's/MOF Comments

The qualifying project refers to the project of modernizing or automating its existing manufacturing activity of a product which the company must have engaged in the manufacturing of that product at least for 36 months.

P.U.(A) 252/2017 and P.U.(A) 253/2017 will be reviewed to address the issue.

Additional Comments from CTIM/MIA/MICPA/MAICSA:

Please clarify whether the IRB's/MOF comments above means that the qualifying company must fulfil the condition that it has been carrying on a manufacturing activity of a product for at least 36 months before undertaking the qualifying project of modernizing or automating its existing manufacturing activity of that product.

IRBM's Comments

Yes. Your understanding is in order.

6.2 Clarification is sought on the following:

- a. Do the non-application rules under subparagraph 7(b) of the P.U. (A) 252/2017 apply on a company basis or on an asset basis?

IRBM's/MOF Comments

Company basis

- b. It is assumed that the mutual exclusion in respect of the granting of any exemption under S.127 in subparagraph 7(c) of the P.U. (A) 252/2017 and subparagraph 9(c) of the P.U. (A) 253/2017 is solely focused on tailor made incentives such as pre-packaged incentives. Please confirm.

IRBM's Comments

Section 127 mentioned on those paragraphs are only confined to paragraph 127(3)(b) and subsection 127(3A) Income Tax Act 1967.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

Additional Comments from CTIM/MIA/MICPA/MAICSA:

An exemption under S.127(3)(b) is given under a statutory order to any qualifying or eligible person e.g. exemption under P.U. (A) 117/2017. If that qualifying or eligible person chooses not to claim that exemption under P.U. (A) 117/2017, can that person claim the accelerated capital allowance under P.U. (A) 252/2017 and the exemption under P.U. (A) 253/2017? It would be appreciated if the IRB's response on this matter could be incorporated into the IRB's comments above for clarity purposes.

IRBM's Comments

Yes. Your understanding is in order. If that qualifying or eligible person chooses not to claim that exemption under P.U. (A) 117/2017, that person can claim the accelerated capital allowance under P.U. (A) 252/2017 and the exemption under P.U. (A) 253/2017

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

6. Appendix 27 of the 2018 Budget Speech - Review of tax Incentives for Venture Capital

Current Position

Tax incentives for venture capital are as follows:

i. Venture Capital Management Corporation (VCMC)

Exemption of income tax on statutory income derived from share of profits received on investment made by VCC.

ii. Venture Capital Company (VCC)

- a. exemption of income tax on statutory income derived from all sources of income except interest income from savings or fixed deposits and profits from Shariah-compliant deposits; and*
- b. the exemption is given for a period of 10 years or according to the life of the fund established for investment in the Venture Company (VC), whichever is shorter. The VCC must be registered with SC, invests at least 70% of seed, start-up and early stage fund in VC OR at least 50% in the form of seed capital. The VCC and VC are not related companies.*

iii. Investment in a VC

Companies or individual with business income that make an investment in a VC are given a tax deduction equivalent to the amount of investment made in the VC at the adjusted income level.

Proposal

The following tax treatment is proposed to:

i. Venture Capital Management Corporation (VCMC)

Income which is exempted from tax be expanded to include income received from management fees and performance fees in managing VCC funds.

ii. Venture Capital Company (VCC)

- a. the investment limit in VC at the seed, start-up and early stage be reduced from 70% to 50% and the 50% balance is allowed for other investments; and*
- b. companies or individuals with business income investing into the VCC funds created by VCMC be given tax deduction equivalent to the amount of investment made and restricted to a maximum of RM20 million per year for each company or individual.*

Tax exemption be given for the period of 5 years from the year of assessment 2018 until year of assessment 2022.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

Effective Date

For applications received by the Securities Commission Malaysia from 1 January 2018 until 31 December 2018.

Comments:

Currently, a VCC is given an income tax exemption for 10 years or according to the life of the fund whichever is shorter. It has been proposed that the investment limit of a VC at the seed, startup and early stages of 70% be reduced to 50%.

Please confirm that the income tax exemption period is still maintained at 10 years but the proposal for the investment limit to be reduced to 50% is only effective for a 5-year period, i.e. from YA 2018 to YA 2022.

IRBM's Comments

Transitional provision will be included in the new gazette order to allow those VCC exempted to continue enjoying the balance of the tax exemption 10 years or according to the life of the fund whichever is shorter.

Yes, the investment of 50% will take effect from YA 2018 to YA 2022.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

7. Appendix 29 of the 2018 Budget Speech - Tax incentive for women returning to work after career break

Current Position

Chargeable income for resident individuals is subject to a progressive personal income tax rates between 0% and 28%.

Proposal

To encourage women who have been on a career break to return to the workforce, it is proposed that their employment income up to maximum of 12 consecutive months be given individual income tax exemption. The incentive is available for women who return to the workforce after being on a career break for at least 2 years on 27 October 2017. The treatment of income tax exemption is eligible to be claimed in year of assessment 2018 to year of assessment 2020.

Effective Date

For applications submitted to Talent Corporation Malaysia Berhad from 1 January 2018 to 31 December 2019.

Comments:

With reference to Appendix 29 of the 2018 Budget Speech, an application must be submitted to Talent Corporation Malaysia Berhad (TCMB) from 1 January 2018 to 31 December 2019.

The Guidelines should include explanations on the timing for submission of the application to TCMB (i.e. before or after returning to the workforce after a career break?), the computation of 12 consecutive months employment income, the manner of claiming the tax exemption, eligibility requirement as well as what is considered as a career break (e.g. switch from being self-employed for at least 2 years to being employed by others?).

In view that eligible applicants may submit an application to TCMB commencing 1 January 2018, we hope the MOF/IRB could issue the relevant guidelines not later than the end of 2017.

IRBM's Comments

The guidelines will be issued by TCMB.

8. Appendix 30 of the 2018 Budget Speech - Implementation of Earning Stripping Rules (ESR) to replace Thin Capitalisation Rules

Current Position

Malaysia has been participating in various initiatives of the Organisation for Economic Cooperation and Development (OECD) to curb aggressive tax plannings between related companies, including the implementation of the Thin Capitalisation Rules (TCR). TCR was introduced during the 2009 Budget in ensuring the deduction on interest payment for loans between related companies does not exceed the threshold as specified under the TCR. The enforcement of TCR has been deferred until 31 December 2017 to provide taxpayers with adequate timeline for its implementation.

With continuous improvements on measures to prevent tax evasion and avoidance as well as profit shifting at international levels, the OECD has introduced a new method, namely the Earning Stripping Rules (ESR), in order to control excessive deductibility of interest expense on loans between related parties. Under the ESR, the interest deduction on loans between related companies within the same group will be limited to a ratio as determined by a country's tax authority, ranging from 10% to 30% of the company's profit before tax either using the Earning Before Interest and Taxes (EBIT) or the Earning Before Interest, Tax, Depreciation, and Amortisation (EBITDA).

Proposal

To address tax leakages due to excessive interest claims on loans made between related companies and to comply with the transfer pricing guidelines, it is proposed that ESR be implemented in replacement of TCR.

Effective Date

From 1 January 2019.

Comments:

8.1 We would request that the draft Rules and Guidelines be released to the professional bodies, industry players and business groups for consultation on an urgent basis by not later than the end of December 2017. Businesses should be given sufficient time to prepare for the implementation of the Rules and restructure their loans after the Rules and Guidelines have been finalised and issued to the public. The Institutes strongly recommend that the industry players and business groups be consulted on the duration of the preparation time required.

8.2 The Rules and Guidelines need to be well thought out and consulted upon as there are many considerations to be made on how to implement it. There is also a need to ensure that the application of the Rules is practical and easy to implement as well as taking into consideration the industry needs. For example, new businesses that incur a high level of debt, or capital intensive industries where its expansion or start-up phase requires borrowings to support business, etc.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

At least the following key matters should be taken into account in the Rules and Guidelines:

- a. The benchmark interest / profit rate has to be determined.
- b. Whether or not the group ratio rule would apply.
- c. The definition of interest for the purpose of ESR.
- d. The choice of EBITDA or EBIT needs to be relooked. Alternatively, tax-based measures such as adjusted income or statutory income prior to any interest deduction could be used to avoid distortions arising from accounting methods etc.
- e. The interaction of ESR with existing provisions on the deductibility of interest expenses [e.g. S.33(2) and S.33(4) of the Income Tax Act 1967 etc.] and transfer pricing (arm's length) provisions.
- f. Clarification on the applicability of ESR on a number of situations is needed e.g. loss making companies.
- g. Availability of carry forward/carry back disallowed interest and/or unused interest capacity.
- i. Potential double taxation impact on interest which may be disallowed under ESR.
- h. Transitional provisions / grandfathering rules.

IRBM's Comments

- Based on an ESR Dialogue Session on 6th February 2018 and comments received from professional bodies and business groups, IRBM has come out with the ESR Draft Rules and MOF has approved the Draft Rules and distributed it to the attendees of the Dialogue Session on 10th April 2018.
- Comments from CTIM has been received on 30th April 2018 and IRBM will look into those comments and addressed it accordingly.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

Proposed amendments to the Real Property Gains Tax Act 1976

9. S.21B – Increase in RPGT retention sum to 7% (w.e.f. 1 January 2018)

Proposed:

(1) ~~Where~~ Subject to subsection (1A), where on a disposal to which section 13 applies, the consideration consists wholly or partly of money, the acquirer shall retain the whole of that money or a sum not exceeding three per cent of the total value of the consideration whichever is the less, and (whether or not that amount is so retained) he shall within sixty days after the date of such disposal pay that amount to the Director General:

[(1) Am. Act 764 of the year 2014]

Provided that the Director General may under special circumstances allow extension of time for that amount to be paid over.

New subsection (1A) –

“(1A) For the purpose of subsection (1), where the disposer in a disposal referred to in that subsection is not a citizen and not a permanent resident, the acquirer shall retain the whole of that money or a sum not exceeding seven per cent of the total value of the consideration whichever is the less, and (whether or not that amount is so retained) he shall within sixty days after the date of such disposal pay that amount to the Director General.”.

Comments:

- 9.1 The proposed sub-section requires the acquirer to retain 7% of the consideration whenever the disposer is not a citizen or permanent resident in Malaysia. The proposed sub-section does not seem to be worded to expressly confine to cases where the disposer is an individual.

We are of the view that this section only applies to individuals as a “citizen / permanent resident” does not apply to a company. As such, disposals by a company (irrespective of whether it is a foreign or local company) is governed under Section 21B(1) of the RPGT Act (i.e. retention amount of 3%).

For avoidance of doubt, we suggest that the word “disposer” in subsection (1A) be changed to “disposer being an individual” to be consistent with other provisions concerning individuals.

IRBM's Comments

Yes. The amendment refers to an ‘individual’. As the interpretation of the amendment is clear, there is no necessity to amend the provision as suggested by CTIM.

- 10.2 Kindly clarify whether this provision would apply to situation where the sale and purchase agreement is signed in December 2017 but the date of disposal is in 2018

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET, SPEECH & FINANCE (NO. 2) BILL 2017

(e.g. due to State Govt. approval) pursuant to paragraph 16, Schedule 2 of the RPGT Act.

IRBM's Comments

Based on the given scenario, there should not be any issue as the condition in respect of the State Government has not changed. Thus, if the agreement was signed in December and the condition is satisfied once the approval is granted, then, the date of disposal is the date when the condition is satisfied.

10. Part III, Schedule 5 – (w.e.f. 1 January 2018)

Proposed:

~~In the case of an individual who is not a citizen and not a permanent resident~~ In the case of a disposer who is not a citizen and not a permanent resident, or an executor of the estate of a deceased person who is not a citizen and not a permanent resident, the following rates of tax shall apply:

<i>Category of disposal</i>	<i>Rate of tax</i>
<i>Disposal within five years after the date of acquisition of the chargeable asset</i>	<i>30 per cent</i>
<i>Disposal in sixth year after the date of acquisition of the chargeable asset or thereafter</i>	<i>5 per cent</i>

Comments:

- 11.1 For consistency with other provisions in the RPGT Act, we would suggest that the word “a disposer” above be changed to “a disposer being an individual”. As such, a trust, limited liability partnership and real estate investment trust should be taxed under Part I.

IRBM's Comments

As the interpretation of the amendment is clear, there is no necessity to amend the provision as suggested by CTIM.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

- 11.2 We would also suggest that the wording “.. an executor of the estate of a deceased person who is not a citizen and not a permanent resident..” be amended to “.. an executor of the estate of a deceased person who was not a citizen and not a permanent resident immediately prior to his demise.” This is to make it clear that it is the deceased person's citizenship or permanent residency which is being referred to and not the executor's.

IRBM's Comments

There no ambiguity on the amendment. Therefore, there is no necessity to amend the provision .

B. Outstanding Gazette Orders – 2014 to 2017 Budgets

The Institutes note with concern that several gazette orders pertaining to proposals announced in the 2014 to 2017 Budgets are still outstanding to date. We would request for your urgent attention and update on the status of the relevant gazette orders.

1. 2014 Budget

- ITA for purchase of green technology equipment and tax exemption on the use of green technology system and services be granted.

IRBM's Comments

Pending policy letter from MOF

- Applications for research and development projects of bio economy which are viewed as viable and received from 1 January 2014 to 31 December 2018 by the Malaysian Biotechnology Corporation Sdn. Bhd. be granted tax deductions on acquisition of technology platform, exemption on import duty on R&D equipment, as well as special incentive to companies in respect of Centre of Excellence for R&D.

IRBM's Comments

Pending policy letter from MOF

2. 2015 Budget

- Double deduction on expenses incurred by companies for scholarships awarded to students pursuing diploma or bachelor's degree at higher education institutions be extended to include scholarships provided to students pursuing studies in the vocational and technical fields for the YA 2014 and YA 2015.

IRBM's Comments

Pending policy letter from MOF

- Double deduction on expenses incurred by companies participating in structured internship programmes to recruit students pursuing full-time degree programmes in

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

higher education institutions be extended to include full-time students pursuing courses at the vocational and diploma levels for ~~YA 2014 and YA 2015~~ **YA 2015 and YA 2016**.

IRBM's Comments

Pending policy from MOF

Additional Comments from CTIM/MIA/MICPA/MAICSA:

We noted that the Income Tax (Deduction For Expenditure Incurred For The Provision Of An Approved Internship Programme) Rules 2012 [P.U. (A) 130/2012] which is effective from the year of assessment (YA) 2012 to 2016, covers the double deduction of specified expenses incurred by an approved person for conducting an approved internship programme for full-time students pursuing a degree programme or its equivalent in a higher educational institution. Would the above 2015 Budget proposal to extend the double deduction on expenses incurred by companies participating in structured internship programmes to include full-time students pursuing courses at the vocational and diploma levels for YA 2015 and YA 2016, be effected through an amendment to the P.U. (A) 130/2012 Order?

MOF's Comments

Yes, an amendment order to the P.U.(A) 130/2012 is being reviewed by legal department and AG Chambers.

- Double deduction for expenses incurred by companies on approved training programmes participated/attended by employees be extended to include obtaining industry certifications and professional qualifications from YA 2015.

IRBM's Comments

Pending policy letter from MOF

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

Additional Comments from CTIM/MIA/MICPA/MAICSA:

During the dialogue on this Joint Memorandum between IRB, MOF and the professional bodies, we understand from the MOF that this proposal will be administered by the Income Tax (Deductions for Approved Training) Rules 1992 [P.U. (A) 61/1992] and no new Gazette Order will be issued. We would appreciate it if you could confirm our understanding.

MOF's Comments

Currently, the scope is covered under the existing order of the Income tax (Deductions for Approved Training) Rules 1992 [P.U.(A) 61/1992].

3. 2016 Budget

- Extension of application period for tax incentive for food production projects until 31 December 2020 and qualifying approved food production projects be extended to include planting of coconuts, mushrooms and cash crops; rearing of deer; cultivation of seaweed; rearing of honey and planting of animal feed crops.

IRBM's Comments

Pending policy letter from MOF

- Tax incentives for increase of exports incentive to Small and Medium Enterprises for YA 2016 to YA 2018:
 - Exemption of statutory income equivalent to 10% of the value of increased exports for manufacturers where goods exported attain at least 20% value added.
 - Exemption of statutory income equivalent to 15% of the value of increased exports for manufacturers where goods exported attain at least 40% value added.

IRBM's Comments

Pending policy letter from MOF

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

- Income tax exemption of 100% on statutory income derived from qualifying activities for a period of 5 years or Investment Tax Allowance of 60% on qualifying capital expenditure for a period of 5 years to be offset against 100% of the statutory income for newly established Independent Conformity Assessment Bodies (ICAB), or Investment Tax Allowance of 60% on qualifying capital expenditure for a period of 5 years on additional qualifying activities to be offset against 100% of the statutory income.

IRBM's Comments

Pending policy letter from MOF

4. 2017 Budget

- Extension of tax incentives for hotel operators, the application period for pioneer status and investment tax allowance for investments in new 4-star and 5-star hotels in Peninsular Malaysia, Sabah and Sarawak which will end on 31 December 2016 be extended for another two years until 31 December 2018. For application received from 1 January 2017 to 31 December 2018.

IRBM's Comments

MOF confirmed that this proposal will be administered under the Income Tax (Exemption) (No. 11) Order 2006 [P.U.(A) 112/2006] and Income Tax (Exemption) (No 12) Order 2006 [P.U.(A) 113/2006].

- Double deduction for structured internship programme for YA 2017 to YA 2019. Incentive of double deduction given on expenses incurred in respect of structured internship programmes be extended for another 3 years and be expanded to include Malaysian students pursuing full-time courses at vocational level.

IRBM's Comments

MOF confirmed that this proposal will be administered by the Income Tax (Deductions for Approved Training) Rules 1992 [P.U.(A) 61/1992] and no new Gazette Order will be issued .

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

Additional Comments from CTIM/MIA/MICPA/MAICSA:

We understand that the Income Tax (Deductions for Approved Training) Rules 1992 [P.U. (A) 61/1992] applies to double deduction for expenses incurred by companies on approved training programmes (refer to the 2015 Budget proposal on page 28 of this Joint Memorandum). The above 2017 Budget proposal refers to a structured internship programme which was first given double deduction via the P.U. (A) 130/2012. As such, we would appreciate it if the IRB / MOF could re-look at this.

IRBM's Comments

There was a misunderstanding to the earlier IRBM's comments. Please refer to our answer in paragraph 2 (page 27), whereby the same P.U.(A) 130/2012 will be amended accordingly to reflect the amendments under Budget 2017.

- Expansion of the scope of halal products (nutraceutical and probiotic) eligible for incentives for halal industry players, for applications received by the Halal Development Corporation (HDC) on or after 22 October 2016.

IRBM's Comments

Pending policy letter from MOF

- Extension of income tax exemption for Islamic banking and takaful businesses, it is proposed that the income tax exemption given to Islamic banking and takaful businesses transacted in international currencies which will expire in YA 2016, be extended to YA 2020.

IRBM's Comments

Pending policy letter from MOF

- Extension of stamp duty exemption for the purchase of first residential property, full stamp duty exemption be given on instruments of transfer and loan agreements executed from 1 January 2017 to 31 December 2018 for the purchase of only 1 unit of residential property at a price not exceeding RM300,000.

It is proposed that instruments of transfer and loan agreements executed from 1 January 2017 to 31 December 2018 for the purchase of only 1 unit of residential property at a price of more than RM300,000 but not exceeding RM500,000 be given full stamp duty exemption for the first RM300,000 of the value of the said property. The remaining balance of the value of the said property will be subject to stamp duty

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

at the prevailing rate. For the sale and purchase agreements executed from 1 January 2017 to 31 December 2018

IRBM's Comments

MOF confirmed that these proposal has been effected by the Stamp Duty (Remission) Order 2016 [P.U.(A) 365/2016] and Stamp Duty (remission)(No 2) Order 2016 [P.U.(A) 366/2016].

- Extension of stamp duty exemption for Islamic banking and takaful businesses, for instruments executed from 1 January 2017 to 31 December 2020 between an International Currency Business Unit (ICBU) and a resident or non-resident customer.

IRBM's Comments

MOF confirmed that this proposal has been effected by the Stamp Duty (Exemption)(No 3) Order 2016 [P.U.(A) 367/2016].

C. Other Budget Proposals which have not been legislated

1. 2017 Budget

Increase incentive on Private Pension Fund from 1 January 2017 to 31 December 2018, an incentive of RM1,000 will be given to contributors to the Private Retirement Scheme for a minimum cumulative investment of RM1,000 within 2 years.

IRBM's Comments

MOF confirmed the proposal is a government grant.

JOINT MEMORANDUM ON ISSUES ARISING FROM 2018 BUDGET SPEECH & FINANCE (NO. 2) BILL 2017

D. Public Rulings to be updated with 2018 Budget Proposals

The following Public Rulings (PR) need to be updated:

2018 Budget Proposals	Public Rulings (PR)	PR Reference
Refund of withholding tax on income distributed by real estate investment trusts or property trust funds	PR No. 5/2017: Taxation of Real Estate Investment Trust or Property Trust Fund	Paragraph 12.2 : Deduction of withholding tax <u>IRBM's Comments</u> PR No. 7/2012 Taxation of Unit Holders of Real Estate Investment Trusts / Property Trust Funds
Review of tax incentives for venture capital	PR No. 2/2016: Venture Capital Tax Incentives	Paragraphs 6, 7 and 9 <u>IRBM's Comments</u> Noted
Extension of period for tax incentive for angel investors	PR No. 11/2015: Tax Incentive for Angel Investor	<u>IRBM's Comments</u> Extension of time.
Notification of change of accounting period of a company, limited liability partnership, trust body or co-operative society and consequence for failure to submit the notification	PR No. 7/2011: Notification of Change in Accounting Period of A Company/ Trust Body/ Co-operative Society	<u>IRBM's Comments</u> Noted

