

**Tax alert**

# **Highlights of Budget 2018**

**(Part II)**

15 November 2017



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## Highlights

- ▶ Thin capitalization subsection deleted in anticipation of the introduction of "earnings stripping rules"
- ▶ Scope of deductible management expenses enhanced for the *takaful* business
- ▶ No Self Assessment Systems (SAS) provisions introduced for RPGT

**T**his Tax Alert discusses the three Bills that were released and tabled in the *Dewan Rakyat* on 31 October 2017 for their first reading: The Finance (No. 2) Bill 2017 (Finance Bill), the Income Tax (Amendment) Bill 2017 (Income Tax Bill) and the Labuan Business Activity Tax (Amendment) (No. 2) Bill 2017 (LBATA Bill).

The Finance Bill proposes 11 amendments to the Income Tax Act 1967 (ITA), three amendments to the Real Property Gains Tax Act 1976 (RPGTA), four amendments to the Goods and Services Tax Act 2014 (GSTA) and one amendment to the Finance Act 2013. As highlighted in our *Budget Tax Alert: Highlights of Budget 2018 (Part I)* dated 29 October 2017, the Government has proposed that "thin capitalization" be replaced with "earnings stripping rules". The Finance Bill has therefore deleted Section 140A(4) of the ITA on the Director General's power to limit interest deduction on financial assistance between associated persons. The deletion of Section 140A(4) takes effect on 1 January 2018. However, no "earnings stripping" subsection has been proposed to replace Section 140A(4). Further legislative developments are expected on this point. The Finance Bill also amends Schedule 1 of the ITA to effect the two percentage point reduction in the personal income tax rates of resident individuals in respect of three chargeable income bands, in line with the proposal in the Budget Speech. The amendment to the Finance Act 2013 effects the RM6,000 deduction for resident individuals up to the year of assessment (YA) 2020 for deposits into the *Skim Simpanan Pendidikan Nasional* account, as also mentioned in the Budget Speech.

The Government also introduced amendments to Section 60AA of the ITA that relates to the *takaful* business. This change was not mentioned in the Budget Speech and is a favorable proposal which has long been lobbied for by the industry. Essentially, the scope of management expenses which are deductible by an insurance business, has been extended. The other amendments proposed in the Finance Bill to the ITA that were not mentioned in the Budget Speech are discussed in the "Tax administrative changes" and "Corporate income tax changes" sections of this alert. With respect to real property gains tax (RPGT), you may recall that Budget 2015 had proposed that the SAS be implemented with effect from the year 2016. However, to-date, no SAS provisions have been introduced into the RPGTA and the Finance Bill similarly did not include any provisions to implement this. Details of the amendments proposed in the RPGTA, which primarily affect individuals who are not citizens or permanent residents of Malaysia, are set out in the "Real property gains tax" section. Proposals to amend the GSTA are highlighted in the "Goods and Services Tax" section. The Income Tax and LBATA Bills essentially propose changes that reflect the Government's commitment to the implementation of the Organisation for Economic Cooperation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) initiative, as well as the exchange of information between jurisdictions. The three amendments in the Income Tax Bill and the one amendment in the Labuan Bill are discussed in the "Other tax changes" section.

# Tax administrative changes

## Highlights

- ▶ Notification of change in accounting period and consequences for non-compliance

### Notification of change in accounting period and consequences for non-compliance

The Finance Bill has introduced Section 21A(3A) into the ITA. The proposed Section 21A(3A) essentially legislates the requirements laid out in the Inland Revenue Board's (IRB's) 2011 Public Ruling with respect to notification of a change in the accounting period (see Public Ruling No. 7/2011: Notification of Change in accounting period of a company/trust body/co-operative society). Section 21A(3A) provides that if a company, limited liability partnership (LLP), trust body or co-operative society changes its accounting year-end, the IRB is to be notified via a prescribed Form, i.e. Form CP 204B, and the Form CP 204B has to be submitted to the IRB no later than:

- ▶ 30 days before the date of commencement of the new accounting period, if the accounting period is shortened; or
- ▶ 30 days before the closing date of the original accounting period, if the accounting period is extended

This subsection takes effect for YA 2019 and subsequent YAs. As stated above, the requirement to notify the IRB on any change in accounting period is already clarified in the IRB's 2011 Public Ruling. However, with the introduction of Section 21A(3A), penalties will now apply for non-compliance. The potential penalties for non-compliance with the new Section 21A(3A) are as follows:

- i) Sections 107C(11B) and Section 112(3A) have been introduced to provide that if a company, LLP, trust body or co-operative society fails to notify the IRB about a change in its accounting

period, any penalty imposed on late instalment payments or for failure to furnish a return that is based on the original accounting period, will be recoverable as tax due and payable to the Government. The IRB has also suggested that any underestimation penalties which would have been imposed based on the original accounting period can also continue to be imposed, though it is not yet clear how the IRB will implement this latter point. These provisions take effect from YA 2019.

- ii) Section 120 on "Other Offences" has been amended to include the failure to comply with Section 21A(3A) as an offence. The amendments provide that any person who, without reasonable excuse, fails to notify the IRB of the change in accounting period within the stipulated period, will be fined between RM200 to RM20,000 or subject to imprisonment of not more than 6 months or both, upon conviction. This provision takes effect from the coming into operation of the Finance Act.

# Corporate income tax changes

## Highlights

- ▶ Determination of residual expenditure for assets held-for-sale
- ▶ Standardization of the definition of "public entertainer"

## Determination of residual expenditure for assets held-for-sale (HFS)

Paragraph 61A of Schedule 3 of the ITA was introduced with effect from YA 2013. Paragraph 61A(3) provides that where an asset is classified as an "asset HFS" in accordance with generally accepted accounting principles, for tax purposes such asset shall be deemed disposed in the following basis period, regardless of whether the asset is sold or not sold in the following basis period. Balancing adjustments from the deemed disposal of the "asset HFS" would be computed as the difference between the disposal value and residual expenditure (RE) of the asset. Currently, based on Paragraph 61A(5), the RE of such an asset for that following basis period is prescribed:

$$\text{Residual expenditure} = \text{Total qualifying expenditure} - \text{Notional allowance (for the following basis period)}$$

Paragraph 61A (5) has been amended to revise the definition of RE to be more consistent with Paragraph 68 and to add clarity, such that for the purposes of Paragraph 61A:

$$\text{Residual expenditure} = \text{Total qualifying expenditure} - \text{Initial allowance} - \text{Annual allowance} - \text{Notional allowance (for the basis period in which the asset was classified as HFS)}$$

The changes above shall take effect from the coming into operation of the Finance Act 2018.

## Standardization of the definition of “public entertainer”

Where a public entertainer’s income is paid out of the public funds of the government of a foreign country, the payment to the public entertainer will be exempted from Malaysian tax (Paragraph 22(b) of Schedule 6 of the ITA). “Public entertainer” under Paragraph 22(b) is currently described as “....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”. It is now proposed that this description of a public entertainer in Paragraph 22(b) be removed. Thus, the definition of a “public entertainer” for the purposes of Schedule 6 will follow the definition provided in Section 2 of the ITA. This change shall take effect upon coming into operation of the Finance Act 2018. Note that effective 17 January 2017, the definition of “public entertainer” under Section 2 has been considerably widened to include, for example, lecturers and speakers (see *Tax Alert No. 22/2017*).

# Real property gains tax changes

## Highlights

- ▶ 7% (instead of 3%) of the consideration to be retained by the acquirer if the disposer is not a Malaysian citizen or permanent resident
- ▶ RPGT rates for a non-Malaysian citizen and permanent resident extended to an executor of a deceased person who is not a Malaysian citizen or permanent resident
- ▶ Other proposed changes to the RPGTA

### **7% of (instead of 3%) the consideration to be retained by the acquirer if the disposer is not a Malaysian citizen or permanent resident**

Currently, where consideration for the acquisition of a chargeable asset consists wholly or partly of money, the acquirer must retain the whole monetary amount or a sum of 3% of the total value of the consideration, whichever is lower, and pay this to the Director-General within 60 days after the date of disposal. This money will be applied against the RPGT imposed on the disposer. In line with the fact that the RPGT rates are higher for an individual who is not a citizen and not a permanent resident, the Finance Bill has proposed that the rate of 3% be increased to 7% for a disposer who is not a citizen and not a permanent resident. This amendment is introduced as a new subsection, Section 21B(1A), and takes effect from 1 January 2018.

## RPGT rates for a non-Malaysian citizen and permanent resident extended to an executor of a deceased person who is not a Malaysian citizen and permanent resident

In Part III, Schedule 5 of the RPGTA, the RPGT rates for disposals of chargeable assets by an individual is not a citizen and not a permanent resident are as follows:

Category of disposal	Rate of tax (%)
Disposal within five years after the date of acquisition of the chargeable asset	30
Disposal in the sixth year after the date of acquisition of the chargeable asset or thereafter	5

The Finance Bill extends the ambit of the above RPGT rates to cover not only an individual who is not a citizen and not a permanent resident, but also an executor of the estate of a deceased person who is not a citizen and not a permanent resident. This amendment is effective from 1 January 2018.

## Other proposed changes to the RPGTA

- ▶ The disposal price on the transfer of chargeable assets between spouses or to a company controlled by the spouses is deemed to be equal to the acquisition price of the asset (i.e. a “no gain-no loss” position). The Finance Bill proposes to restrict this rule such that it applies only to Malaysian citizens.
- ▶ Where a contract for the disposal of an asset is conditional and the condition is satisfied by the exercise of a right under an option or otherwise, the acquisition and disposal of the asset is regarded as taking place at the time the contract is made, unless:
  - a) The acquisition or disposal requires the approval of the Government, or a State Government, or an authority or committee appointed by the Government, whereby the date of disposal will be the date of such approval; or
  - b) Where the above approval is conditional, the date of disposal will be the date when the last of all such conditions is satisfied

The Finance Bill proposes that condition (a) above applies to approvals by the Government or a State Government only. It is proposed that the words “authority or committee appointed by the Government” be deleted. The above amendments also take effect from 1 January 2018.

# Other tax changes

## Highlights

- ▶ Offences relating to the Mutual Administrative Assistance Arrangements (MAAAs) (Section 132B) extended to include Double Tax Arrangements (DTAs) (Section 132) and Tax Information Exchange Agreements (TIEAs) (Section 132A)
- ▶ LBATA amended to empower the Minister to make regulations on DTAs and TIEAs

## Offences relating to the MAAAs extended to include DTAs and TIEAs

Section 112A on “Failure to furnish country-by-country reporting”, Section 113A on “Incorrect returns, information returns or reports” and Section 119B on “Failure to comply with rules made under Paragraph 154(1)(c) on mutual administrative assistance” all specifically refer to Section 132B of the ITA, which is on mutual administrative assistance arrangements. To extend the ambit of these offences to also include DTAs and TIEAs, the Income Tax Bill proposes to substitute “132B” wherever it appears, with “132,132A or 132B”.

The Bill does not specify when these amendments take effect, but it is likely to come into effect on the date of the coming into operation of this Act.

## **LBATA amended to empower the Minister to make regulations on DTAs and TIEAs**

It is proposed that Paragraph 21(1)(b) of the LBATA be amended in order to enable the Minister to not only make regulations relating to MAAAs but to also make regulations relating to DTAs and TIEAs.

The Bill similarly does not specify when this amendment takes effect, but it is likely that the amendment will come into effect on the date of the coming into operation of this Act.

# Goods and Services Tax (GST)



## Highlights

- ▶ Supplies excluded in determining the taxable supplies for cessation of liability to be registered
- ▶ Expansion of Director General's power to assess
- ▶ PSMB levy is not considered as a supply

### Supplies excluded in determining the taxable supplies for cessation of liability to be registered

It is proposed to exclude from the value of taxable supplies for purposes of GST de-registration, the supply of goods that are capital assets of the business to be supplied due to cessation of business.

### Expansion of Director General's power to assess

The Director General's power to assess the amount of tax and penalty due is expanded to cover any person other than a taxable person who fails to furnish a declaration or furnishes a declaration which to the Director General appears incomplete or incorrect.

The covered persons include, among others, the following:

- ▶ A person other than a taxable person who is a recipient of supply of imported services
- ▶ A person who ceases to be a taxable person on account of claim for bad debt relief
- ▶ An auctioneer who is not a registered person to the extent of his taxable supply

- ▶ Any person who is not a taxable person who sells goods in satisfaction of any debt owed by a taxable person

The assessment shall be made within six years from the date the tax is due or the refund is made, as the case may be, except for any form of fraud or willful default committed by or on behalf of any person where the Director General may make an assessment at any time.

## **PSMB levy is not considered as a supply**

Currently, any contribution made to a pension, provident or social security fund under any written law is treated as neither a supply of goods nor a supply of service.

It is proposed to expand the scope to include any levy under the Pembangunan Sumber Manusia Berhad (PSMB) Act of 2001 which shall also be treated as not a supply.

# EY 2018 Budget and Tax Conference

How will the 2018 Malaysian Budget affect your company and business? Are there new incentives that your organization can take advantage of? Are there new taxes or regulations that you need to be mindful of? What are the latest developments in the tax arena that will impact how you manage tax risks? EY's senior tax professionals are ready to help answer these questions for you. They can explain and guide you through the salient issues of the 2018 Malaysian Budget and share practical insights on the latest tax developments. Participants at our Budget and Tax Conferences will be provided a copy of the 2018 Budget commentary, as well as opportunities for questions and answers.

Mark these dates down for an insightful session on the 2018 Malaysian Budget and more!

## Peninsular Malaysia

	Date	Venue	Time	Contact
Johor Bahru	17 November 2017	Renaissance Hotel	9:00a.m.-5:00 p.m.	Roslina Md Salleh/Lili Nazirah Abdul Hamid : +607-3341740
Melaka	20 November 2017	Hatten Hotel	9:00a.m.-5:00 p.m.	Chan Lay Khim/ Michelle Tan Pau Choo: +606-2882399

\* Kuala Lumpur, Kuantan, Ipoh and Penang seminars have taken place.

## Sarawak

\* Kuching, Sibul, Bintulu and Miri seminars have taken place.

## Japanese seminar

\* Kuala Lumpur, Johor Bahru and Penang seminars have taken place.

## Sabah

	Date	Venue	Time	Contact
Sandakan	20 November 2017	Four Point, Sheraton	8.30am -1.00pm	Stephanie Au/Jean Marlene Lee: +6089-217266

\* Kota Kinabalu and Tawau seminars have taken place.

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