2020

Issue. 6

TRICOR INSIGHTS

Budget Edition

FINANCE BILL 2020

Following the 2021 Budget Proposals which were announced by the Malaysian Finance Minister on 6 November 2020, the Finance Bill 2020 was tabled in Parliament on 16 November 2020.

This Issue of Tricor Insights highlights ONLY the changes proposed in the Finance Bill 2020 which were not mentioned in the Budget Speech on 6 November 2020, and not covered in our Tricor Insights: Issue 5 (2020) on the 2021 Budget. Please note that to appreciate all the tax proposals in the 2021 Budget, you must read Tricor Insights No. 5 & 6 together.

Key Proposals in the Finance Bill 2020

Corporate Tax

Tax Rebate for New Small & Medium Entities (SMEs) and Limited Liability Partnerships (LLPs)

- Income tax rebate for new SMEs and LLPs equivalent to capital or operating expenditure incurred, limited to a maximum of RM20,000 per year of assessment (YA) for the first 3 consecutive YAs
- Unutilised rebate is not refundable and is not allowed to be set off against tax payable of current and subsequent years of assessment (YAs).
- Conditions:
  i. Resident and incorporated in Malaysia;
  ii. Paid-up ordinary share capital / capital contribution ≤ RM2.5 million;
  iii. Gross business income ≤ RM50 million;
  iv. Commence business operations between 1 July 2020 and 31 December 2021; and
  v. Other conditions (expected to be specified in a Statutory Order).

Effective: YA 2021

Extension of Reinvestment Allowance (RA)

- RA claim is extended for another 3 years for companies which have claimed RA for a period of 15 consecutive YAs previously

Effective: YA 2020 to YA 2022

Special Deduction on Research & Development (R&D) Expenditure

- Special deduction under Section 34(7) (single deduction) for business-related R&D expenditure is only available to Malaysian tax residents
- Special deduction under Section 34A (double deduction) for in-house R&D expenditure is only available to Malaysian tax residents. New conditions are proposed for R&D expenditure incurred <u>outside</u> Malaysia as follows:
  i. ≤ 30% - Double deduction
  ii. > 30% - Single deduction

Corporate Tax

- Special deduction under Section 34B (double deduction) for contribution to an approved research institute or payment for use of services of an approved research institute or company is only available to Malaysian tax residents

Effective: Upon coming into operation of the Finance Act 2020

Restriction on Tax Deduction for Payment Made to Labuan Entities

- Restriction on tax deduction applies to the following payments which are made to all Labuan entities regardless of whether they are in compliance with the substance requirements (i.e. minimum number of full-time employees and minimum amount of annual operating expenditure in Labuan) as required under the Labuan tax legislation or not:

  - Interest payment & lease rental – 25%* of amount not allowed for deduction
  - Other payments – 97% of amount not allowed for deduction

  [*Note: The rate of 25%, which is reduced from the rate of 33%, was announced by the Labuan Financial Services Authority via a Circular on 23 December 2019. The reduced rate has yet to be legislated. The Circular also exempts taxpayers from complying with the restrictions above (both the 25% and 97%) under certain circumstances.]

Effective: 1 January 2021

Withholding Tax on Distribution of Real Estate Investment Trust (REIT) Income as a Final Tax

- Currently, withholding tax on distribution of REIT income to unitholders is not a final tax. It is proposed that such withholding tax be regarded as final tax for all unitholders, other than resident companies.

Effective: YA 2021

Definition of Plant

- For the purposes of capital allowance, it is proposed that the term “plant” be defined as:

  “an apparatus used by a person for carrying on his business, but does not include building, intangible asset or any other asset used and functions as a place within which a business is carried on”

- It is noted that the definition is intended to be restrictive and has been most likely introduced to override a Court of Appeal decision that decided that the term “plant” includes core deposit and credit card customer databases, which is a form of intangible asset.

Effective: YA 2021

Corporate Tax

Determination of Related Companies for Group Relief

- Currently, the surrendering company and claimant company are regarded as "related" if:
  - at least 70% of the paid-up ordinary share capital (PUC) of the surrendering company is directly or indirectly (through the medium of other companies' resident and incorporated in Malaysia) owned by the claimant company, or
  - at least 70% of the PUC of the claimant company is directly or indirectly (through the medium of other companies' resident and incorporated in Malaysia) owned by the surrendering company, or
  - at least 70% of the PUC of the surrendering company and claimant company is directly or indirectly owned by another company resident and incorporated in Malaysia.

- It is proposed that for the third condition mentioned above, where the surrendering company and claimant company are indirectly owned by another company resident and incorporated in Malaysia, it must be through a medium of companies also resident and incorporated in Malaysia.

Effective: YA 2022

Approved Incentive Scheme ("AIS")

It is noted that the AIS has been introduced to cover the following incentive schemes:
- Global Trading Centre
- Companies relocating to Malaysia
- Companies manufacturing pharmaceutical products
- Principal Hub

Amendments to the Income Tax Act (ITA) have been proposed to introduce the following in respect of the AIS:
- Special tax rate of ≤20% for qualified activities
- Special tax rate of ≤ 15% for qualified individuals employed in companies under the AIS
- Tax treatment of the income of companies under the AIS

Effective: YA2021

Others

Other key amendments proposed include:

- Mandatory submission of tax returns through e-filing for LLPs [Effective: YA 2021]

- Employers are required to notify the Director General (DG) of the death of an employee, 30 days after being informed of the death [Effective: 1 January 2021]

- Any institution of proceedings against the Government or DG under any other written law shall not relieve a person from the payment of any tax, debt or other sum for which he is or may be liable to pay [Effective: 1 January 2021]

- Notification of the certificate made to the Commissioner of Police and Director of Immigration Department on travel restrictions may be issued electronically [Effective: 1 January 2021]

Transfer Pricing

It is proposed that additional penalties specific to transfer pricing (TP) be introduced, in addition to the penalties on additional tax payable arising from TP adjustments:

Penalty on Failure to Furnish Contemporaneous TP Documentation (TPD) on Time

- Fine of RM20,000 to RM100,000 and/or imprisonment of up to 6 months, upon conviction. The TPD is to be furnished within 30 days or as decided by the Court. If no prosecution has been instituted, a penalty of RM20,000 to RM100,000 may be imposed.

Surcharge on TP Adjustments

- Imposition of surcharge of not more than 5% of total TP adjustments on all cases (whether taxable or non-taxable). The DG is empowered to abate or remit the said surcharge.

Effective: 1 January 2021

Power to Disregard Structure in a Controlled Transaction

- The DG is empowered to disregard and re-characterise a structure in a controlled transaction, if the economic substance of that transaction differs from its form.

[Note: This provision is currently contained in the subsidiary legislation, Income Tax (Transfer Pricing) Rules 2012]

Effective: 1 January 2021

Personal Tax

Tax relief on child care fees

- Tax relief on payment of child care fees (for children aged 6 and below) to a child care centre or kindergarten registered with relevant authorities is increased from RM2,000 to RM3,000.

Effective: YA2020 and 2021

Tax relief on domestic tourism

- Introduction of tax relief on payments for accommodation at premises registered with the Commissioner of Tourism Malaysia and entrance fee to tourist attraction centres. Tax relief of up to RM1,000 is available for payments made between 1 March 2020 and 31 December 2021.

Effective: YA2020 and 2021

Stamp Duty

Digital Stamping

- Amendments to various provisions of the Stamp Act have been proposed to recognise digital stamping as one of the methods of stamping in respect of the following:
  - Stamping of instruments
  - Mode of paying and denoting duty
  - Deeming duplicate or counterpart of an instrument to be duly stamped
  - Denoting penalty

Others

Other key amendments proposed include:

- The Minister is empowered to exempt duty on any instruments (regardless of whether such instrument is in relation to a scheme)

- The Collector of Stamp Duty is empowered to remit duty paid or payable on the grounds of poverty

Effective: 1 January 2021

Real Property Gains Tax (RPGT)

Remission of Sum Imposed Due to Non-Retention of Tax

- Where the consideration consists wholly or partly of money, the acquirer is required to retain the whole of that money or a sum not exceeding 3% (7% for non-citizens, non-permanent residents and foreign companies) of the total value of the consideration whichever is the less, and pay that amount to the Inland Revenue Board (IRB) within 60 days after the disposal date (also referred to as the retention sum).

  If the acquirer fails to do so due to incorrect / wrong notification furnished to him, a sum of 10% of the tax payable is imposed. It is proposed that the DG be empowered to remit the sum imposed.

Others

Other key amendments proposed include:

- Retention sum of 7% also applies to an executor of a deceased person who is a non-citizen or non-permanent resident

- RPGT rates which are applicable to Malaysian incorporated companies and a trustee of a trust are also applicable to an association registered under the Societies Act 1966.

- A director, as defined under the RPGT Act can also be barred from leaving Malaysia for any tax charged on the company.

Real Property Gains Tax (RPGT)
• Any institution of proceedings against the Government or DG under any written law shall not relieve a person from the payment of tax due and payable Effective: 1 January 2021

Labuan Entities
Irrevocable Election to be Chargeable to Tax under the ITA • The DG is empowered to grant an extension of time to taxpayers in respect of making an irrevocable election to be chargeable to tax under the ITA (based on existing law, taxpayers must make the said election within 3 months after the beginning of the basis period for a YA). Effective: Upon coming into operation of the Finance Act 2020
Definition of chargeable profit • A Labuan entity carrying on a Labuan business activity which fails to comply with substance requirements for a basis period for a YA is charged to tax at the rate of 24% upon its chargeable profits for that YA. It is proposed that a definition of "chargeable profits" be introduced, being net profit as reflected in the audited accounts. Effective: YA 2020
Tax Payable Notwithstanding Institution of Proceedings • Any institution of proceedings against the Government or DG under any other written law shall not relieve a person from the payment of any tax, debt or other sum for which he is or may be liable to pay. Effective: 1 January 2021

Key takeaway

- **The Malaysian Budget 2021 was announced during unprecedented times, with businesses and individuals facing immense challenges due to the COVID-19 pandemic. From a tax perspective, the Government announced tax measures targeted towards enhancing the well-being of the Rakyat, as well as Malaysia's position as a destination for foreign investments.**

- **Many of the tax measures have been incorporated as legislative amendments in the Finance Bill 2020 with the remaining measures expected to be legislated via Statutory Orders in due course. A number of changes proposed in the Finance Bill represent a tightening of the**

administrative provisions (including transfer pricing) and penalties to enable enforcement of the tax legislation.

- **Readers should take note of the amendment proposed in the Finance Bill 2020 related to the introduction of a surcharge on transfer pricing adjustments even if those adjustments do not result in additional tax payable (potentially affecting loss making companies and companies enjoying tax incentives) and a penalty for the non-submission of relevant documentation. This demonstrates the IRB's continued focus on enhancing the level of compliance in respect of transfer pricing.**

Contact

If you require further information on the above, please contact our team: -

Service Line	Name	Email
Corporate Tax and Advisory	Thang Mee Lee Lim Kah Fan	Mee.Lee.Thang@my.tricorglobal.com Kah.Fan.Lim@my.tricorglobal.com
Transfer Pricing	Leow Mui Lee Vivian New Sarah Chew	Mui.Lee.Leow@my.tricorglobal.com Vivian.New@my.tricorglobal.com Sarah.Chew@my.tricorglobal.com
Individual Tax	Thang Mee Lee	Mee.Lee.Thang@my.tricorglobal.com
Tax Audit and Investigation	Lim Kah Fan Thisha Gunasilan	Kah.Fan.Lim@my.tricorglobal.com Thisha.Gunasilan@my.tricorglobal.com
Knowledge Management	Vivian New Shiranee Niles	Vivian.New@my.tricorglobal.com Shiranee.Niles@my.tricorglobal.com

For other Tricor services, please email to info@my.tricorglobal.com or visit www.tricorglobal.com

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Tricor Taxand Sdn Bhd
200601026227 (745982-X)

Address:
Suite 13A.05, Level 13A, Wisma Goldhill, 67 Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia.
Unit 30-01, Level 30, Tower A, Vertical Business Suite Avenue 3, Bangsar South, No. 8, Jalan Kerinchi, 59200 Kuala Lumpur, Malaysia