



TaXavvy Budget 2017 Edition (Part II) 24 October 2016

Welcome to our **TaXavvy Budget 2017 Edition**
which brings to you the key tax proposals of Budget
2017



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This edition is prepared based on the Finance Bill 2016.



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Corporate tax



Reduction of corporate income tax for increase in chargeable income *

It is proposed that the incremental portion of chargeable income will enjoy stages of tax reduction below the existing headline corporate income tax rate of 24% in YAs 2017 and 2018 as follows:

% of increase in chargeable income compared to the immediate preceding YA	% point reduction	Income tax rate applicable for incremental portion of chargeable income (%)
Less than 5.00	NIL	24
5.00 – 9.99	1	23
10.00 – 14.99	2	22
15.00 – 19.99	3	21
20.00 and above	4	20

The above can be illustrated as follows:

YA	Chargeable income	% of increase in chargeable income	Tax rate
2016	RM 10 million	-	24%
2017	RM 12 million	20%	24% for the first RM10 million; and 20% for the incremental portion of RM2 million

The reduced tax rates are applicable to the following persons:

- Companies
- Limited liability partnerships (LLP)
- Trust bodies
- Executor of estate of an individual domiciled outside Malaysia at the time of death
- Receiver appointed by the court

(Effective for YA 2017 and YA 2018)

* The proposed changes are not featured in the Finance Bill. The changes will likely be enacted by way of issuance of gazette order.

Reduction in corporate income tax rate for SMEs

It is proposed that SMEs* will be taxed as follows:

Chargeable income	Income tax rate (%)
Up to RM500,000	18
Exceeding RM500,000	24 [^]

* SMEs refers to companies with paid-up capital in respect of ordinary shares of not more than RM2.5 million and LLPs with total contribution of capital of not more than RM2.5 million

[^] Pending the issuance of the gazette order, it is assumed that the reduction of the tax rate for increase in chargeable income shall similarly apply to incremental portions of chargeable income in excess of RM500,000

(Effective from YA 2017)

Corporate tax

Widening of scope for withholding tax (WHT) on special classes of income

It is proposed that the income of a non-resident person from the following special classes of income shall be deemed to be derived from Malaysia and subject to WHT irrespective of whether the services are performed in Malaysia or outside Malaysia:

- (i) Services rendered by non-resident person or his employee in connection with the use of property or rights belonging to him, or the installation or operation of any plant, machinery or other apparatus purchased from him; and
- (ii) Technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture or scheme.

(Effective upon coming into operation of the Finance Act)

Definition of Public Entertainer for WHT purposes

The definition of Public Entertainer shall be expanded to include:

- a) a compere, model, circus performer, lecturer, speaker, sportsperson, an artiste or individual exercising any profession, vocation or employment of a similar nature; or

- b) an individual who uses his intellectual, artistic, musical, personal or physical skill or character in,

carrying out any activity in connection with any purpose through live, print, electronic, satellite, cable, fibre optic or other medium, for film or tape, or for television or radio broadcast, as the case may be.

(Effective upon coming into operation of the Finance Act)

Definition of royalty

The definition of royalty is expanded to include any sums paid as consideration for, or derived from:

- (i) the use of, or the right to use software;
- (ii) the reception of, or right to receive, visual images or sounds, or both, transmitted to the public by satellite or cable, fibre optic or similar technology;
- (iii) the use of, or the right to use, visual images or sounds, or both, in connection with television or radio broadcasting transmitted by satellite or cable, fibre optic or similar technology;
- (iv) the use of, or the right to use radiofrequency spectrum specified in relevant licence; and
- (v) total or partial forbearance in respect of the use of, reception of, or the granting of the right to use/receive any such property or rights or any such items that are covered in the definition of royalty.

(Effective upon coming into operation of the Finance Act)

Corporate tax

Changes to the scope of donations for charitable activities

Presently, companies which contribute cash donations to approved institutions or organizations, and contributions made for sports activities are eligible for tax deduction of up to the prescribed percentage of their aggregate income under Sections 44(6) and 44(11B) of the Income Tax Act, 1967 (the Act).

The following changes have been proposed:

Scope of Donations	Proposed Changes
The donee can be the government, state government, local authority or institution or organization approved by the Director General of Inland Revenue (DGIR)	List of donee is expanded to include fund held by an institution or organization in Malaysia approved by the DGIR
The following contributions (gift of money or in kind) made qualify for deduction:- <ul style="list-style-type: none">Contributions for sports activity approved by the Minister of Finance; andContributions to sports body approved by the Commissioner of Sports appointed under the Sports Development Act 1997	Contributions are restricted to cash contributions made to sports activity approved by the Minister of Finance

(Effective from YA 2017)

Removal of tax exemptions

Exemption for the following income will be removed:

1. Income of non-residents from trading in Malaysia through consignees in rubber, copra, pepper, tin, tin ore, gambier, sago flour or cloves produced outside Malaysia
2. Income of non-residents, in respect of interest derived from Malaysia on an approved loan
3. Interest paid or credited to non-resident companies in the same group in respect of: securities issued by the Government or sukuk or debenture issued in Ringgit Malaysia, other than convertible loan stock, approved or authorised by, or lodged with, the Securities Commission (SC)
4. Interest paid or credited to (i) companies in the same group, (ii) licensed banks, Islamic banks and development financial institutions in respect of: non-ringgit sukuk originating from Malaysia (other than convertible loan stock) and approved or authorised by, or lodged with, the SC, or approved by the Labuan Financial Services Authority
5. Interest income of a unit trust which is a wholesale money market fund which does not comply with the relevant guidelines of the Securities Commission Malaysia.

(Effective from YA 2017)

Corporate tax

Tax transparency accorded to Real Estate Investment Trust (REIT) and Property Trust Fund (PTF) listed on Bursa Malaysia

Currently, where a REIT/ PTF distributes at least 90% of its income to unit holders, full tax transparency is accorded to the REIT/ PTF (i.e. income distributed to unit holders is not taxed at the REIT/ PTF level. Instead, the income is taxed at the unit holders level.)

It is proposed that the tax transparency be accorded only to REITs/ PTFs that are listed on Bursa Malaysia.

(Effective from YA 2017)

Restriction of industrial building allowance (IBA) for special industrial building

Floor area of the whole special industrial building used for the purpose of letting of property	Proposed changes
not more than one-tenth of the floor area of whole building	the whole building qualifies for IBA
more than one-tenth of the floor area of whole building	the IBA will only be allowed on the floor area on the part of the building which is not used for the purpose of letting of property

The special industrial buildings are as follows:

Special industrial building (as specified in paragraph 16B of Schedule 3)	
Existing	<ul style="list-style-type: none">licensed private hospital, maternity home, nursing homebuilding used for researchwarehousebuilding used for approved service projecthotelairportmotor racing circuitsbuilding used as living accommodation of employees of persons carrying on manufacturing, hotel, tourism business or approved service projectapproved school or educational institution
Proposed to include	<ul style="list-style-type: none">building for the purposes of industrial, technical or vocational training approved by the Minister

(Effective from YA 2016)

Expenses in relation to single-tier dividend

Currently expenses incurred in relation to single-tier dividend are disregarded in computing adjusted income. It is proposed that deductions instead of expenses in relation to single-tier dividend shall now be disregarded in arriving at chargeable income.

(Effective from YA 2017)

Tax administration



Revision of tax returns for events arising after submission of tax returns¹

Administrative procedures for revision of tax return as a result of the following events will now be written into the law:

- Tax exemptions, reliefs, remissions, allowances or deductions which is granted or approved only after submission of the tax returns
- Deduction not allowed in respect of payments subject to withholding tax which is not due to be paid under the Act on the day the tax return is submitted

This applies to both situations where there is no chargeable income or excessive assessment.

(Effective from 1 January 2017)

Expansion of scope of revision of tax returns in respect of error or mistake¹

Currently, taxpayers which have made an error or mistake in their tax returns for a YA are entitled to apply to revise their tax return by making an application to the DGIR. However, taxpayers can do so only in cases where the error or mistake:

- Ultimately gave rise to a tax payable position for that YA; and
- The tax payable for that YA has been paid

The scope of the revision shall now be expanded to include error or mistake which does not give rise to a tax payable position for that YA such as errors in computing unabsorbed losses or capital allowances of a loss making business.

(Effective from 1 January 2017)

Deeming of tax returns as notification of non-chargeability (NONC)¹

Currently, taxpayers can only appeal against their own assessment for a YA only if the appeal is against the DGIR's prevailing practice or Public Ruling. In cases where there is no tax payable for the YA to be appealed, taxpayers are required to apply for a NONC before the appeal can be made.

The NONC will now be automatically deemed to be made upon submission of tax returns in accordance with the Act.

(Effective from 1 January 2017)

- 1 *The existing equivalent provisions under the Petroleum (Income Tax) Act 1967 shall be aligned to those under the Income Tax Act 1967.*

Punitive provisions for failure to comply with Mutual Administrative Assistance Arrangement (MAAA) procedures including Country-by-Country Reporting

Failure to comply shall now attract the following:

Non-compliance	Upon conviction
Late or non-filing of returns or reports	<ul style="list-style-type: none">• Fine of RM20,000 to RM100,000; or• Imprisonment of ≤ 6 months; or• Both the above fine and imprisonment
Filing of incorrect returns or reports	<ul style="list-style-type: none">• Fine of RM20,000 to RM100,000; or• Imprisonment of ≤ 6 months; or• Both the above fine and imprisonment

(Effective upon coming into operation of the Finance Act)

Tax administration

Fees for advance pricing arrangement

The Minister shall be empowered to make Rules to prescribe fees for application for Advance Pricing Arrangements.

(Effective upon coming into operation of the Finance Act)

Electronic submission of tax estimates

The electronic submission of estimate of tax payable and revised estimate of tax payable for companies which is to be effective from YA 2018 shall now similarly apply to limited liability partnerships, trust bodies and co-operative societies.

(Effective from YA 2019)

Personal Tax



Gross employment income

The taxable value of employment income shall include the output tax paid by the employer under the Goods and Services Tax (GST) Act 2014, in connection with the gross income borne by the employer.

(Effective from YA 2015)

Deduction for spouse (husband, wife or former wife)

An individual is not entitled for deduction for spouse (other than a disabled spouse) if the spouse has income that is derived from sources outside Malaysia and the spouse's gross income from those sources for a year of assessment is more than the amount of deduction allowed for a spouse.

Currently, the deduction allowed for a spouse is RM4,000.

(Effective from YA 2017)

Goods and Services Tax



Penalties for non-payment of tax

Amendments made to Sections 41 and 42 of the Goods and Services Tax Act (“GST Act”) seek to clarify that the penalty will now only apply on the **amount of tax unpaid**. The incremental penalties have been increased as follows:-

1 to 30 days	10%
31 to 60 days	Additional 15%
61 to 90 days	Additional 15%

The theoretical maximum of 25% has been removed from the legislation.

The same provisions have been incorporated into Section 42 which applies to persons other than taxable person.

(Effective from 1 January 2017)

Time of supply for imported services

To align the accounting for output tax and claiming of input tax, the time of supply for imported services has been amended to be at the earlier of **receipt** of invoice or payment made.

(Effective from 1 January 2017)

Warehousing Scheme

The GST Act now specifically states under Section 70 that goods deposited into a warehouse must be approved by the Royal Malaysian Customs Department (“RMCD”). The warehousing scheme shall not apply to certain goods as may be prescribed.

The scheme now allows that, subject to conditions as the Director General (“DG”) may deem fit, no tax shall apply on goods removed from a warehouse for:-

- Re-export;
- Removal to a designated area; or
- Removal to a free zone.

(Effective from 1 January 2017)

Liability to be GST registered

Supplies to be excluded for the purposes of assessing taxable turnover in excess of the prescribed threshold of RM500,000 has been updated as follows:-

- a) The sale of capital assets will only be excluded from the computation of taxable turnover if the sale is **in respect of the cessation of business**.
- b) Supplies of goods made within or between free zones will not contribute towards the taxable turnover threshold unless the supplies are supplies specifically directed as taxable supplies under Section 163(1).

(Effective from 1 January 2017)

Goods and Services Tax

GST treatment in Free Zones

The Bill introduces a definition of “Free Zone” in Section 2 of GST Act to follow the definition in the Free Zones Act 1990.

Free Industrial Zones and Free Commercial Zones are no longer differentiated for GST purposes and any reference made to these zones in the GST Act are now referred to as Free Zones.

The newly introduced Section 162A(1) provides that goods removed from a Free Zone to Malaysia will be taxable, even if these goods are in transit to another Free Zone.

However, unless otherwise directed by the Minister, the following movement of goods from a Free Zone through Malaysia will be suspended under Section 162A(2):-

- To another free zone;
- To a designated area; or
- To a warehouse under section 70.

Further, the new section 162B prescribes that companies with their principal place of business in a Free Zone should charge tax on any supply of goods or services made within Malaysia.

(Effective from 1 January 2017)

Land surrendered to Government for prescribed purposes

Subparagraph 8 has been added to the Second Schedule of the GST Act to state that the compulsory acquisition of land for the purposes of providing public amenities and public utilities whether or not for a consideration or at nominal value will be treated as neither a supply of goods nor a supply of services.

(Effective from 1 January 2017)

GST treatment in Designated Areas

Amendment was made to Section 156(a) which saw a focus on the phrase **movement** of the goods rather than the supply of goods.

The newly introduced section 156(aa) allows that GST on goods removed from a designated area through Malaysia to another designated area or to a Free Zone or to a warehouse under Section 70 to be suspended.

(Effective from 1 January 2017)

Introduction of prescribed GST device

The new section 34A is introduced in the Bill to allow the RMCD to prescribe a device to collect information on all supplies made by a registered person and enforce its installation in prescribed premises.

The proposed changes also allow the following:-

- The DG to install, configure and integrate the device;
- The DG to provide maintenance and support for the device; or
- The DG to inspect the device for any sign of interference, destruction, damage manipulation of data stored or obstruction of the lawful use of the prescribed device.

(Effective from 1 January 2017)



Labuan

Tightening the definition of “Labuan business activity” and “non-trading activity”

The following amendments to the definition have been proposed:-

Labuan business activity

It is currently stated in proviso (b) to the definition of “Labuan business activity” in the Labuan Business Activity Tax Act 1990 that a Labuan entity may hold investments in a domestic company with residents in Malaysian currency.

It is proposed that the investments are in the form of shares only.

Labuan non-trading activity

It is proposed that the holding of investments of properties which is included as a Labuan non-trading activity will only include properties which are situated in Labuan.

(Effective upon coming into operation of the Finance Act)

Enhancement of the power of Minister to make regulations

It is proposed that the Minister may make regulations for the purposes of implementing or facilitating the operation of an arrangement having effect under Section 132B of the Income Tax Act, 1967 – Mutual Administrative Assistance Arrangement. The Minister may also prescribe penalties for any contravention or non-compliance with any of the provisions of any regulations made.

(Effective from 22 October 2016)

Real Property Gains Tax (RPGT)

Input tax adjustment on expenditure relating to acquisition or disposal of an asset

Where there is any adjustment made under the GST Act to which the input tax relates to an expenditure incurred on acquisition or disposal of an asset, a corresponding adjustment will need to be made to that expenditure for RPGT purposes. The timing of adjustment will be in the YA in which the disposal is made or YA in which the period of adjustment as provided under the GST Act ends, whichever is earlier.

(Effective from YA 2015)

Disposal by way of a gift

An amendment is made to provide that the disposal by way of gift between donor and recipient is now restricted to a donor who is a citizen. The donor shall be deemed to have received no gain and suffered no loss on the disposal where the gift is made within five years after the date of acquisition by the donor and the donor and recipient are husband and wife, parent and child or grandparent and grandchild.

(Effective from 1 January 2017)

Submission of RPGT returns by a nominee

Currently submission made by a nominee who has no place of business or abode in Malaysia, is to be made to the Inland Revenue Board’s (“IRB”) office in Kuala Lumpur. Such submission can now be made in any IRB office.

(Effective from coming into operation of the Finance Act)

Others

Petroleum Income Tax (PITA)

Definition of “Malaysia”

The definition of “Malaysia” shall include “the airspace above such areas” and “areas over which Malaysia has jurisdiction for the purposes of exploring and exploiting the natural resources”.

(Effective upon coming into operation of the Finance Act)

Definition of “secondary recovery”

The definition of “secondary recovery” is to be amended from “a project for the purpose of additional and/or accelerated recovery of hydrocarbons” to “a project for the purpose of additional and accelerated recovery of hydrocarbons which is carried out subsequent to the earlier recovery process”.

The effect of the change above is that a project cannot be regarded as a “secondary recovery” project for the purposes of PITA unless it is preceded by an earlier recovery process.

(Effective from YA 2017)

Amendments of administrative procedures for revision of tax returns

The existing provisions under the Petroleum (Income Tax) Act 1967 shall be aligned to the existing equivalent provisions and proposed amendments to the Act.

Please refer to the “Tax Administration” section for the equivalent proposed amendments.

(Effective from 1 January 2017)

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Igniting Confidence PwC Budget Seminar 2016

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Let's talk

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