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Finance Act 2015

The Finance Act 2015 [Act 773] has been gazetted on 30 December 2015. The material changes as compared to the Finance Bill 2015 are as follows:

Finance Act 2015	Changes
Section 16 (on e-Filing of Employer's Return by Companies)	The effective date for the amendment of Section 83 of the Income Tax Act 1967 has been changed to "for the year ending 31 December 2016 and subsequent years" from "for the year of assessment 2016 and subsequent years of assessment".
Section 18 (on e-Filing of estimate and revised estimate of tax payable)	The effective date for the amendment of Section 107C of the Income Tax Act 1967 has been changed to "for the year of assessment 2018 and subsequent years of assessment" from "for the year of assessment 2016 and subsequent years of assessment".
Section 31 (on Saving and Transitional Provisions in relation to Section 108 Balance)	Deletion of the words denoted in strikethrough as follows: ... "the 108 balance of the company, shall on the day the tax is discharged, remitted or refunded, be reduced by such amount of tax discharged, remitted or refunded (hereinafter referred to as the "revised 108 balance")."
Section 32(1) (on Saving and Transitional Provisions in relation to Section 108 Balance)	The words denoted in underline replace the words denoted in strikethrough as follows: "Where the amount of the revised 108 balance <u>tax discharged, remitted or refunded under Section 31</u> exceeds the 108 balance, or revised 108 balance as at 31 December 2013, the Director General shall serve on the company a written requisition in the prescribed form..."
Section 32(2) (on Saving and Transitional Provisions in relation to Section 108 Balance)	The subsection in the words below (denoted in underline) has been renumbered as subsection (1) from subsection (3) "Where any excess due and payable by a company has not been paid within thirty days after the service of the requisition referred to under <u>subsection (1)</u> , so much of the amount of excess..."

The Finance Act 2015 is available on the e-Federal Gazette Portal <http://www.federalgazette.agc.gov.my> (Home > Principal Act > ACT 773).

The Finance Bill 2015 is available on Inland Revenue Board's (IRB) website www.hasil.gov.my (Sitemap > Message from CEO > Budget).

Deferment of the Income Tax (Thin Capitalisation) Rules

The Ministry of Finance has extended the deferral of implementation of the said Rules until 31 December 2017.

Guidelines on Tax Incentives for Green Industries

The Malaysian Investment Development Authority (MIDA) has recently issued Guidelines on Tax Incentives for Green Industry. Salient points set out in the Guidelines are as follows:

Category	Qualifying activities	Tax incentive	Eligibility criteria
Project based	Undertaking the following green activities for <u>own consumption/use</u> : <ol style="list-style-type: none"> 1. Renewable Energy 2. Energy Efficiency 3. Green Building 4. Green Data Centre 5. Waste Management 	Investment Tax Allowance (ITA) of 100% of Qualifying Capital Expenditure (QCE) incurred from the year of assessment (YA) 2013 (not earlier than 25 October 2013) to YA 2020 available to be offset against up to 70% of Statutory Income (SI)	<ol style="list-style-type: none"> 1. Company (new or existing) must be incorporated and resident in Malaysia 2. Must achieve specified green results
Service based	<u>Provision of green technology services</u> related to the following: <ol style="list-style-type: none"> 1. Renewable Energy 2. Energy Efficiency 3. Electric Vehicle 4. Green Building 5. Green Data Centre 6. Green Certification and Verification 7. Green Township 	Income tax exemption of 100% of SI from YA2013 to YA 2020	<ol style="list-style-type: none"> 1. Company (new or existing) must be incorporated and resident in Malaysia. 2. At least one competent/qualified personnel in green technology 3. Must have a green policy 4. 100% income must be derived from green technology services
Purchase of Green Technology Asset listed in MyHijau Directory*	Not applicable	As per Project based	As per Project based

The MyHijau Directory is available on <http://greendirectory.my/>.

Guidelines on Tax Incentives for Green Industries (cont'd)

MIDA has also set out some details on tax incentives for Waste Eco Parks (WEP) on its website. Salient points are as follows:

Category	Qualifying activities	Tax incentive
WEP Developers	Rental and fees from the following located in WEP: <ol style="list-style-type: none"> 1. Rental of building 2. Solid waste collection and separation facility 3. Waste water treatment facility 	70% income tax exemption from qualifying activities effective from YA 2016 to YA 2025
WEP Managers	Management, maintenance, supervision and marketing of WEP	70% income tax exemption from qualifying activities effective from YA 2016 to YA 2025
WEP Operators	Waste treatment, recovery and/or recycling in WEP	100% income tax exemption from qualifying activities within WEP for 5 years or 100% ITA on QCE incurred within 5 years available to be offset against up to 70% of SI

The Guidelines is available on MIDA's website www.mida.gov.my (Forms > Tax Incentives for Green Industry)

Public Ruling 10/2015 – Investment Holding Company

The IRB has issued Public Ruling 10/2015 – Investment Holding Company (PR 10/2015). PR 10/2015 replaces Public Ruling 3/2011 (PR 3/2011) on the same subject matter. It is issued mainly to update the contents of PR 3/2011 due to amendments made via Finance (No. 2) Act 2014 to the following:

- Section 60F(1) of the Income Tax Act 1967 (Act) on component 'C' of the formula for the fraction of deductible permitted expenses
- Paragraph 12B of Schedule 6 of the Act on the disregarding of expenses relating to single-tier dividend

PR10/2015 is available on IRB's website www.hasil.gov.my (Laws and Regulations > Public Ruling).

Public Ruling 11/2015 – Tax Incentive for Angel Investor

The IRB has issued Public Ruling 11/2015 - Tax Incentive for Angel Investor (PR 11/2015) to explain the tax incentive offered to angel investors. Salient points are:

1. PR 11/2015 includes information and guidelines issued by Cradle Fund Sdn Bhd and Malaysia Business Angel Network such as the following:
 - The amount of tax exemption given is restricted to the lower of actual amount of investment made or RM500,000 per annum
 - Approved activities of the investee company
2. The incentive is not restricted to one time investment only. Multiple investments in the same investee company are also allowed the same tax exemption. See Example 5.
3. The IRB has also set out in comparison between Venture Capitalist and Angel Investor mainly from a tax perspective.

PR11/2015 is available on IRB's website www.hasil.gov.my (Laws and Regulations > Public Ruling).

Public Ruling 12/2015 – Recovery from Persons Leaving Malaysia

The IRB has issued Public Ruling 12/2015 - Recovery from Persons Leaving Malaysia (PR 12/2015). PR 12/2015 sets out the circumstances and procedures for recovering taxes and debts due from persons leaving Malaysia, including:

1. Procedure in preventing an individual or company director from leaving
2. Conditions to be satisfied for an individual (not a foreign national) to be able to leave the country when his tax liability and debts are not fully settled
3. Methods of payment of outstanding taxes and debts
4. Consequences of leaving the country without settlement of taxes and debts.

PR 12/2015 is available on IRB's website www.hasil.gov.my (Laws and Regulations > Public Ruling).

Deduction for Expenditure on Issuance of Sukuk (Ijarah and Wakalah)

The Income Tax (Deduction for Expenditure on Issuance of Sukuk) Rules 2015 has been gazetted. Salient points of the Rules are:

Item	Salient points
Incentive	<p>Deduction against gross income from a business for expenditure incurred on issuance of the following Sukuk:</p> <ul style="list-style-type: none"> • Sukuk structured pursuant to the principle of Ijarah; or • Sukuk structured pursuant to the principle of Wakalah, comprising a mixed component of asset and debt.
Qualifying person	<p>Company resident in Malaysia and incorporated under:</p> <ul style="list-style-type: none"> • The Companies Act 1965; or • Labuan Companies Act 1990.
Key conditions	<p>The Sukuk must be:</p> <ul style="list-style-type: none"> • Approved or authorized by, or lodged with, the Securities Commission under the Capital Markets and Services Act 2007; or • Approved by the Labuan Financial Services Authority established under the Labuan Financial Services Authority Act 1996.

Remission of Stamp Duty for Financing (Shariah) the Purchase of Residential Properties

Following the proposal made in Budget 2016, the Stamp Duty (Remission) Order 2015 has been gazetted. Salient points of the Order are:

Item	Salient points
Incentive	<ul style="list-style-type: none"> • Remission of 20% of stamp duty on the primary or principal instrument of financing for the purchase of residential property under subitem 27(a) of the First Schedule to the Stamp Act 1949.
Key conditions	<ul style="list-style-type: none"> • Instrument of financing is in accordance with the principles of Shariah as approved by the Shariah Advisory Council on Islamic Finance established under the Central Bank of Malaysia Act 2009. • Residential property is purchased or obtained solely to be used as a dwelling house.

Extension of Stamp Duty Exemption for Abandoned Housing Projects

The following Orders have been gazetted:

- Stamp Duty (Exemption) (Amendment) Order 2015
- Stamp Duty (Exemption) (Amendment) (No. 2) Order 2015

Both Orders are issued following announcements made in Budget 2016 to extend the existing stamp duty exemption to purchasers of abandoned housing projects and developers which undertake the revival of such projects. Salient points of the Orders are:

Item	Salient points
Existing incentive	<p>Stamp duty exemption for the following instrument executed from 1 January 2013 to 31 December 2015 in relation to abandoned housing projects certified by the Minister of Housing and Local Government:</p> <ul style="list-style-type: none"> • Loan instrument from prescribed financial institutions • Instrument of transfer
Qualifying persons	<ul style="list-style-type: none"> • Original Purchasers • Rescuing Contractors or Developers reviving the abandoned housing project
Extension of period of incentive	For another 2 years; for instruments executed up to 31 December 2017.
Expanded list of prescribed financial institutions	<p>Exemption for loan instruments must be obtained from the following prescribed institutions. With effect from 1 January 2016, the list of prescribed institutions have been expanded. The expanded list (additions denoted in <i>italics</i>) are:</p> <ul style="list-style-type: none"> • A licensed bank under the Financial Services Act 2013 [Act 758]; • A licensed Islamic bank under the Islamic Financial Services Act 2013 [Act 759]; • A development financial institution prescribed under the Development Financial Institutions Act 2002 [Act 618]; • A licensed insurer under the Financial Services Act 2013; • A licensed takaful operator under the Islamic Financial Services Act 2013; • <i>A co-operative society registered under the Co-operative Societies Act 1993 [Act 502];</i> • <i>Any employer who provides an employee housing loan scheme;</i> • <i>The Malaysian Building Society Berhad incorporated under the Companies Act 1965 [Act 125]; or</i> • <i>The Borneo Housing Mortgage Finance Berhad incorporated under the Companies Act 1965.</i>

Incentives for Restructuring Schemes of Insurers and Takaful Operators

The following Orders have been gazetted:

- Real Property Gains Tax (Exemption) Order 2015
- Stamp Duty (Exemption) Order 2015

Salient points of the Orders are:

Item	Salient points
Incentive	<ul style="list-style-type: none"> • Real property gains tax (RPGT) exemption on disposals pursuant to a prescribed restructuring scheme • Stamp duty exemption on instruments executed pursuant to a prescribed restructuring scheme
Incentive period	<ul style="list-style-type: none"> • For disposals made and instruments executed from 1 November 2014 to 30 June 2018 and approved by Bank Negara Malaysia
Conditions	<ul style="list-style-type: none"> • Must be approved by Bank Negara Malaysia • Statutory declaration to be made by the board of directors to confirm that the instruments/disposals are solely for the purpose of the prescribed restructuring schemes
Prescribed restructuring schemes	<ul style="list-style-type: none"> a) A scheme carried out by a licensed insurer, other than a licensed professional reinsurer, for the purpose of complying with subsection 16(1) and section 276 of the Financial Services Act 2013, and such scheme is approved by the Bank Negara Malaysia under subsection 100(6) of that Act; b) A scheme carried out by a licensed takaful operator, other than a licensed professional retakaful operator, for the purpose of complying with subsection 16(1) and section 286 of the Islamic Financial Services Act 2013, and such scheme is approved by the Bank Negara Malaysia under subsection 112(6) of that Act; c) An acquisition or disposal of shares by a licensed insurer or a licensed takaful operator for the purpose of the scheme referred to in paragraph (a) or (b) respectively; d) A process of obtaining a licence under section 10 of the Financial Services Act 2013 or section 10 of the Islamic Financial Services Act 2013, or surrendering a license pursuant to section 22 of the Financial Services Act 2013 or section 19 of the Islamic Financial Services Act 2013, by a licensed insurer or a licensed takaful operator arising from the scheme referred to in paragraph (a) or (b) respectively;

Incentives for Restructuring Schemes of Insurers and Takaful Operators (cont'd)

Item	Salient points
Prescribed restructuring schemes	<p>e) A scheme of transfer of business by a financial holding company to another company, or an acquisition or disposal of shares by a financial holding company or any other company within its financial group, for the purpose of complying with section 114 of the Financial Services Act 2013 or section 126 of the Islamic Financial Services Act 2013, and the Bank Negara Malaysia has indicated in writing that it has no objection to such scheme or transaction; and</p> <p>f) An acquisition or disposal of shares, or establishment of a company, by a financial holding company or any other company within its financial group or corporate group—</p> <ul style="list-style-type: none"> • in connection with an application under section 110 or 111 of the Financial Services Act 2013 and such application is approved by the Bank Negara Malaysia under subsection 112(3) of the Financial Services Act 2013, or as required under subsection 280(2) or (3) of that Act; or • in connection with an application under section 122 or 123 of the Islamic Financial Services Act 2013 and such application is approved by the Bank Negara Malaysia under subsection 124(3) of the Islamic Financial Services Act 2013, or as required under subsection 290(1) of that Act.

The Income Tax (Deduction from Remuneration) (Amendment) Rules 2015

The Rules has been gazetted to account for the changes to employees monthly tax deduction for YA 2016 pursuant to the Budget 2016 measures.

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