



TaXavvy

Budget 2019 Edition - Part 3

11 December 2018

Welcome to our ***TaXavvy Budget Edition*** which brings you the key tax proposals of Budget 2019

This TaXavvy edition is prepared based on the amendments made to the Finance Bill 2018 which was passed by Dewan Rakyat on 10 December 2018 (hereinafter referred to as “Amended Finance Bill 2018”).

Please note that the Dewan Rakyat has also passed the following Bills without any amendment:

- Income Tax (Amendment) Bill 2018
- Labuan Business Activity Tax (Amendment) Bill 2018
- Sales Tax (Amendment) Bill 2018
- Service Tax (Amendment) Bill 2018
- Customs (Amendment) (No. 2) Bill 2018
- Excise (Amendment) Bill 2018

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Corporate Tax

7-year time limit on carry forward of losses and allowances

Finance Bill 2018	Amended Finance Bill 2018
<p>It is proposed that a time limit be placed on the carrying forward of the following losses and allowances:</p> <ul style="list-style-type: none">• Unabsorbed business losses and unabsorbed capital allowances (CA) arising from a year of assessment (YA) - 7 consecutive YAs from that YA;• Unutilised RA and IASS - 7 consecutive YAs upon expiry of qualifying period;• Unutilised pioneer losses and investment tax allowance (ITA) - 7 consecutive YAs upon expiry of pioneer/ITA period. <p>(Effective from YA 2019)</p> <p><u>Transitional provision</u></p> <p>The following shall be allowed to be utilised for another 7 consecutive YAs, i.e. from YA 2019 to YA 2025:</p> <ul style="list-style-type: none">• Accumulated unabsorbed business losses and unabsorbed CA brought forward (b/f) from YA 2018;• Accumulated unabsorbed RA and IASS b/f from YA 2018 arising from a qualifying period which has expired as at YA 2018;• Accumulated unabsorbed pioneer losses and ITA b/f from YA 2018; <p>Any amount which remains unutilised by YA 2025 shall be disregarded from YA 2026.</p> <p>(Effective from YA 2019)</p>	<p>Unabsorbed CA and unabsorbed ITA shall be spared from the proposed time limit and therefore retain their current treatment of indefinite carry forward for utilisation in future YAs.</p> <p>Transitional provisions in relation to unabsorbed CA and unabsorbed ITA shall be removed in line with the removal of the proposed time limit.</p> <p>Amendment to the proposed law is made to provide greater clarity that accumulated unabsorbed business losses b/f from YA 2018 shall:</p> <ul style="list-style-type: none">• Be allowed to be utilised for another 7 consecutive YAs, i.e. from YA 2019 to YA 2025; and• Any amount which remains unutilised by YA 2025 shall be disregarded from YA 2026.

Corporate Tax

Amendment to the scope of special classes of income under Section 4A(ii) of the Income Tax Act 1967 (Act)

Finance Bill 2018	Amended Finance Bill 2018
<p>The scope of special classes of income for non-residents under Section 4A(ii) of the Act is to be amended as follows (words with strikethrough denote words to be deleted from the existing scope):</p> <p>“amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme”</p> <p>(Effective from coming into operation of the Finance Act)</p>	<p>The requirement to be in connection with “management or administration” is to be restored. Therefore the amendment to Section 4A(ii) shall only be confined to the removal of the word “technical” as follows:</p> <p>“amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme”</p> <p>Consequential amendments are proposed to align the following provisions to the proposed amended scope of Section 4A(ii):</p> <ul style="list-style-type: none">• Deemed derivation provision under Section 15A of the Act• Withholding tax provision and rate under Section 109B and Part V of Schedule 1 of the Act respectively

PwC's comments

With the restoration of the words “management or administration”, Section 4A(ii) should not wield a catch-all power for all services but must remain to be in connection with “management or administration”. The words restored by Parliament must be given meaning.

Corporate Tax

Tax treatment in relation to Labuan IBFC

Finance Bill 2018	Amended Finance Bill 2018
1. Imposition of new conditions: a) A Labuan entity shall have an adequate number of full-time employees and annual operating expenditure “ in Malaysia ”. The substantive requirements shall be based on regulations to be made by the Minister of Finance (MoF). b) Resident who transacts with a Labuan entity is entitled for tax deduction on expenditure incurred, limited to 3% of the allowable expenditure	a) The adequate number of full-time employees and annual operating expenditure shall be “ in Labuan ” b) The limitation on tax deduction to 3% has been removed. In its place, the limitation shall be based on an amount to be prescribed under Rules by the MoF.
(Effective from 1 January 2019)	

Reinsurance business

Finance Bill 2018	Amended Finance Bill 2018
The tax rate for reinsurance business is proposed to be changed from 24% to 8%.	Revision is proposed to treat the following as separate general businesses: <ul style="list-style-type: none">• Reinsurance business• Other general business
(Effective from YA 2019)	

Tax incentives

Finance Bill 2018	Amended Finance Bill 2018
Wholesale money market fund	
Currently, interest income (as stated in Paragraph 35A of Schedule 6 of the Act) derived from licensed banks, Islamic banks and development financial institution by a wholesale money market fund which complies with the criteria as set out in the SC's Guidelines is exempted from tax.	The current tax exemption on interest (as stated in Paragraph 35A of Schedule 6 of the Act) derived from Malaysia by a wholesale money market fund shall be withdrawn.
It appears from the proposal that the above exemption shall not flow through to corporate unit holders.	
(Effective from 1 January 2019)	

Real property gains tax

Finance Bill 2018

Acquisition price of real property acquired prior to 1 January 2000

The real property gains tax (RPGT) rates for disposals of real properties or shares in the real property company **after the fifth year** is proposed to be revised as follows:

- Company, non-citizen, and non-permanent resident individual - increased from 5% to 10%.
- Malaysian citizen or permanent resident - increased from 0% to 5%. However, the increased tax rate does not apply to the disposal of low cost, medium low and affordable residential homes at valued below RM200,000, by Malaysian citizens.

(effective from 1 January 2019)

Amended Finance Bill 2018

Additional provision is proposed to “reset” the acquisition price of a real property acquired prior to 1 January 2000 for the purposes of computing gain or loss on disposal. The acquisition price of such property shall be taken as its market value as at 1 January 2000.

This proposal applies only to disposals made by citizens and permanent residents of Malaysia.

PwC's comments

The proposed “reset” of acquisition price of real properties acquired prior to 1 January 2000 would have implications on shares in real property companies (“RPC shares”).

Current treatment

New proposal in the Amended Finance Bill 2018

Treatment of real property transferred by way of gift

Assets disposed by way of gift where the donor and recipient are:

- Husband and wife;
- Parent and child; or
- Grandparent and grandchild

shall be accorded the following tax treatment:

- The donor is deemed to receive no gain no loss from the disposal; and
- The recipient's acquisition price shall be deemed as the original acquisition paid by the donor plus permitted expenses provided that the gift is made **within 5 years after the date of acquisition by the donor.**
- The recipient shall assume the donor's original acquisition price whether or not the gift is made within 5 years after the date of acquisition.

PwC's comments

Currently, where the gift is made after 5 years from the date of acquisition by the donor, the recipient shall assume the market price at the date of the gift (either date of agreement or date of completion of the transfer of ownership as defined) as its acquisition price for the purposes of computing gain or loss on subsequent disposal. With the proposal, the gain on subsequent disposal is likely to be higher as a result of adoption of the donor's original acquisition price.

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