TaXavvy

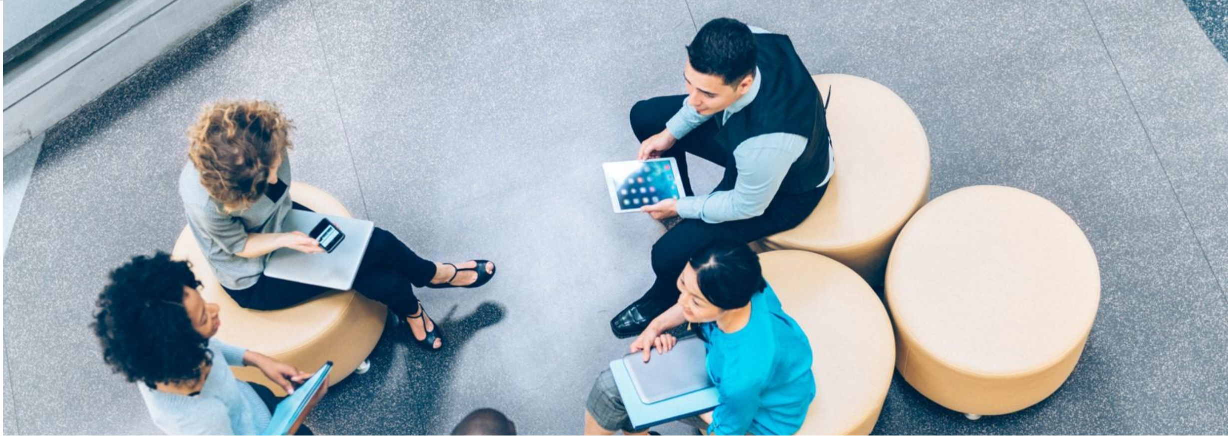
Budget 2020 Edition - Part 2

16 October 2019

Welcome to our **TaXavvy Budget Edition** which brings you the key tax proposals of Budget 2020

This TaXavvy edition is prepared based on the Finance Bill 2019.

This edition is a continuation of our Budget 2020 Edition (Part 1) and highlights key tax proposals based on the Finance Bill 2019 which are not covered in Budget 2020 Edition (Part 1).



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Review of increase on unpaid taxes

The rates of increase to be imposed on outstanding tax payable are to be reviewed as follows:

Date of tax payment	Current rate of increase	Proposed Rate of increase rate
After due date for payment	10% on balance of unpaid tax ("10% Sum")	10% on balance of unpaid tax - no change
60 days after due date for payment	A further 5% on the aggregate of: (i) balance of unpaid tax; and (ii) the 10% Sum	Removed - no further increase

(Effective from 1 January 2020)

Review of increased sum arising from self-amended tax returns

A taxpayer who has understated its tax payable in its tax return may submit a self-amended return to make good the tax understated under Section 77B of the Income Tax Act 1967. The amount of tax understated is subject to an increased sum based on prescribed rates. These rates are to be reviewed as follows:

Date of submission of self-amended return	Current rate of increase	Proposed Rate of increase rate
Within 60 days after the due date of the original tax return	10% on the understated tax ("10% Sum")	10% on the tax understated - no change
After 60 days but not later than 6 months from the due date of the original tax return	A further 5% on the aggregate of: (i) understated tax; and (ii) the 10% Sum	Removed - no further increase

(Effective from 1 January 2020)

Deadline for application for extension of time for tax appeals

A taxpayer who is aggrieved by an assessment raised by the Inland Revenue Board (IRB) can appeal against the assessment to the Special Commissioners of Income Tax (SCIT). The appeal must be filed within 30 days after the service of the notice of the assessment by the IRB. Taxpayers who missed the period of 30 days ("30-day period") may apply for an extension of time. Currently, the application for extension of time is not subject to any deadline.

It is proposed that the application for extension of time for tax appeal to the SCIT be subject to a deadline of 7 years after the 30-day period.

(Effective from YA 2020)

Time bar to be lifted for assessments in relation to Mutual Agreement Procedure (MAP)

The IRB is currently subject to a time bar of 5 years (7 years in transfer pricing cases) to raise assessments or additional assessments. However, assessments or additional assessments raised on grounds of fraud, wilful default or negligence are not subject to any time bar.

It is proposed that assessments in relation to cases under MAPs are also not subject to any time bar.

Under a MAP which is a relief under a Double Tax Agreement (DTA), a Malaysian resident which believes it has or will be aggrieved by taxes imposed by a country which has a DTA with Malaysia, can present his case to the IRB. Upon satisfaction that the case is justified, the IRB will endeavour to resolve the dispute with the tax authorities of such country. The disputes include withholding tax, permanent establishment, transfer pricing, etc. Applications for Advance Pricing Arrangements are also covered under MAP.

(Effective from the coming into operation of the Finance Act)

Expansion of scope of sums covered under Stoppage Order

The IRB is empowered to issue a Stoppage Order under Section 104 of the Income Tax Act 1967 to prevent a person from leaving Malaysia unless the person settles outstanding taxes which he or she is liable for. This liability includes outstanding taxes owing by companies in which he or she is jointly and severally liable for as a director of the company. The outstanding taxes covered under the Stoppage Order include the penalty for underestimation of tax by companies.

The scope of the penalty for under-estimation of tax by companies to be included in the Stoppage Order is to be reviewed as follows:

	Current	Proposed
The company has submitted an estimate of tax payable [Section 107C(10) of the Income Tax Act 1967]	Included in the Stoppage Order	Included in the Stoppage Order - no change
The Company failed to submit an estimate of tax payable [Section 107C(10A) of the Income Tax Act 1967]	Not included in the Stoppage Order	To be included in the Stoppage Order

(Effective from the coming into operation of the Finance Act)

Power to approve tax agents’ license

The power to approve tax agents’ license under Section 153 of the Income Tax Act 1967 is to be reviewed as follows:

	Purview of	
	Current	Proposed
Approval of license	Minister of Finance	Director General of Inland Revenue
Renewal of license	Minister of Finance	Director General of Inland Revenue
Setting of fees for license approval and renewal	Minister of Finance	Director General of Inland Revenue
Appeal against the Director General of Inland Revenue’s decision on: ● Refusal to grant a renewal of an approval; or ● Revocation of an approval	-	Minister of Finance <u>Note</u> Appeal is to be submitted within one month from the rejection by the Director General of Inland Revenue. The Minister of Finance’s decision on the appeal shall be final.

(Effective from 1 January 2021)

Donation for charitable and sports activities and projects of national interest

It was reported in the Budget Speech that the cap on tax deduction for contributions made by individuals for charitable and sports activities as well as projects of national interest is proposed to be increased from 7 percent to 10 percent of aggregate income to be in line with the 10 percent limit placed on companies.

The scope of the tax deduction is also reported to be expanded to include the following:

- cash wakaf contribution to state religious authority or body established by the state religious authority to administer wakaf;
- cash wakaf contribution to public university approved by the state religious authority to receive wakaf; and
- cash endowment contribution to public university

The Finance Bill 2019 clarifies that the expanded scope applies to contributions made by both individuals and companies.

(Effective from YA 2020)

Tax exemption for religious authorities/bodies and public universities

Further to the proposal that individuals and companies qualify for tax deduction on:

- cash wakaf contribution to state religious authority or body established by the state religious authority to administer wakaf;
- cash wakaf contribution to public university approved by the state religious authority to receive wakaf; and
- cash endowment contribution to public university,

It is proposed that the income of such religious authorities/bodies and public university be exempted from income tax.

(Effective from YA 2020)

Review of RPGT rates for companies incorporated outside of Malaysia and trustees

The current RPGT rates for companies do not make a distinction between companies incorporated in Malaysia or outside Malaysia. There is also no specific RPGT rate(s) that is prescribed for disposals made by a trustee of a trust.

It is proposed that:-
(i) the RPGT rates for companies incorporated outside Malaysia be aligned to the RPGT rates that are currently applicable to individuals who are non-citizens and non-permanent residents of Malaysia; and
(ii) the RPGT rates for companies incorporated in Malaysia shall also be prescribed for trustee of a trust as follows:

<u>Current</u>

Date of disposal	RPGT rates (%)		
	Individuals (citizens and permanent residents)	Individuals* (non-citizens and non-permanent residents)	Companies
Within 3 years after acquisition	30	30	30
In the 4th year after acquisition	20	30	20
In the 5th year after acquisition	15	30	15
In the 6th year after acquisition and beyond	5	10	10

<u>Proposed</u>

Date of disposal	RPGT rates (%)		
	Individuals (citizens and permanent residents)	Individuals* (non-citizens and non-permanent residents) and Companies incorporated outside of Malaysia	Companies incorporated in Malaysia and Trustee of a trust
Within 3 years after acquisition	30	30	30
In the 4th year after acquisition	20	30	20
In the 5th year after acquisition	15	30	15
In the 6th year after acquisition and beyond	5	10	10

** Including executor of the estate of such individuals*

(Effective from the coming into operation of the Finance Act)

Review of sum of money to be retained by acquirers in respect of real properties acquired from companies incorporated outside of Malaysia

Companies which acquire real properties are currently required to retain the lesser of either (i) a specified percentage of the total value of the consideration ("Retention Percentage") or (ii) the whole of the cash consideration. The amount retained shall be paid to the IRB within 60 days after the date of acquisition and will be applied towards the RPGT payable by the disposer.

The Retention Percentage does not differentiate between real properties acquired from companies incorporated in and outside of Malaysia. It is now proposed that the Retention Percentage for real properties acquired from companies incorporated outside of Malaysia be aligned to the percentage which is currently applicable to real properties acquired from individuals who are non-citizens and non-permanent residents.

Disposer of real property	Current Retention Percentage by acquirer	Proposed Retention Percentage by acquirer
Company incorporated in Malaysia	3%	3% - no change
Company incorporated outside of Malaysia	3%	**7%** - to be aligned with the rate that is currently applicable to individuals who are non-citizens and non-permanent residents.

(Effective from the coming into operation of the Finance Act)

Petroleum Income Tax (PITA)

The following proposals are to align the provisions in the Petroleum (Income Tax) Act 1967 to the Income Tax Act 1967.

Time bar to be lifted for assessments in relation to Mutual Agreement Procedure (MAP)

It is proposed to not subject assessments in relation to cases under MAPs to any time bar.

(Effective from coming into operation of the Finance Act)

Deadline for application for extension of time for tax appeals

Currently, no time limit is stated in the PITA for a taxpayer to apply to the Director General of Inland Revenue for an extension of time to appeal against a notice of assessment.

It is proposed that a taxpayer who is aggrieved by an assessment be given a period of 7 years after the 30-day period* to make an application of extension of time to submit an appeal.

*Refers to the period of 30 days after service of the notice of assessment.

(Effective from YA 2020)

Implementation of BEPS minimum standards

Malaysia has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI") under the OECD's Base Erosion Profit Shifting (BEPS) project. The MLI will enable treaty related measures arising from the BEPS project to be simultaneously incorporated into the existing Malaysian tax treaties.

Amendments are proposed to include provisions into the PITA to:
(i) ensure that changes made by the MLI to existing Malaysian tax treaties will prevail over Malaysian domestic law.
(ii) facilitate the ratification of the MLI under the PITA.

(Deemed effective from 28 December 2018)

Clarification of effective date: Removal of option to be taxed at RM20,000 under the Labuan Business Activity Tax Act 1990 (LBATA)

Labuan Entities which carry out labuan trading activities are subject to tax under the LBATA at 3% of their net audited profits. Previously, such Labuan Entities were also given an option to elect to be taxed at RM20,000. The Government has in pursuing its commitment as a member of the Inclusive Framework on the BEPS project, removed the option to be taxed at RM20,000. The intended effective date is for accounting periods beginning on or after 1 January 2019, i.e. from the year of assessment (YA) 2020. However, the amendments made to the LBATA via the Finance Act 2018 will operate to remove the option to be taxed at RM20,000 for accounting periods ending up to 31 December 2018, i.e. up to YA 2019.

Amendments are now proposed to align the respective provisions under the LBATA to the Government's intention, i.e. Labuan Entities will cease to have the option to be taxed at RM20,000 for accounting periods commencing from 1 January 2019, i.e. YA 2020 onwards.

PwC Budget 2020 Seminar

Kuala Lumpur

Date:	21 October 2019
Time:	8.30 am to 5.00 pm
Venue:	Mandarin Oriental, Kuala Lumpur
Contact:	Fazlina Jaafar / Fiona Ren (03) 2173 3830 / (03) 2173 1313
Email:	events.info@my.pwc.com

Online registration:
http://bit.ly/PwCBudget2020Seminar

Johor Bahru

Date:	23 October 2019
Time:	8.30 am to 5.00 pm
Venue:	DoubleTree by Hilton, Johor Bahru
Contact:	Jasmine Law / Hanisah Azman (07) 218 6186 / (07) 218 6199
Email:	jasmine.yx.law@pwc.com hanisah.azman@pwc.com

Kuching

Date:	24 October 2019
Time:	8.15 am to 12.30 pm
Venue:	Hilton, Kuching
Contact:	Bryan Chen / Claira Simba Jasmy (082) 527 218
Email:	bryan.chen@pwc.com claira.simba.jasmy@pwc.com

Penang

Date:	30 October 2019
Time:	8.30 am to 5.00 pm
Venue:	Eastern & Oriental Hotel, Penang
Contact:	Ann Yew / Ong Bee Ling (04) 238 9291 / (04) 238 9170
Email:	siew.lay.yew@pwc.com bee.ling.ong@pwc.com

Melaka

Date:	31 October 2019
Time:	8.30 am to 5.00 pm
Venue:	Ramada Plaza, Melaka
Contact:	Lydia Chue / Roslena Yaakup (06) 283 6169
Email:	lydia.s.chue@pwc.com roslena.yaakup@pwc.com

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