



Taxavvy

3 September 2021 | Issue 24-2021

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2022 Pre-Budget Statement

On 31 August 2021, the Ministry of Finance (MOF) published its inaugural Pre-Budget Statement. The 2022 Pre-Budget Statement is a prelude to Budget 2022 which is to be tabled on 29 October 2021. It provides a preliminary view of the direction, approach and expected proposals of Budget 2022.

The issuance of a Pre-Budget Statement will be an annual practice consistent with international best practices to increase transparency in the drafting of a country's budget. This positive move enhances the governance, transparency and accountability of the country's fiscal management system.

On the tax front, the Government has outlined strategies to increase tax revenue through increased compliance, and strategies to strengthen the Malaysian tax system.

Strategies to increase tax revenue

1. **Special Voluntary Disclosure Programme (SVDP) for indirect tax**

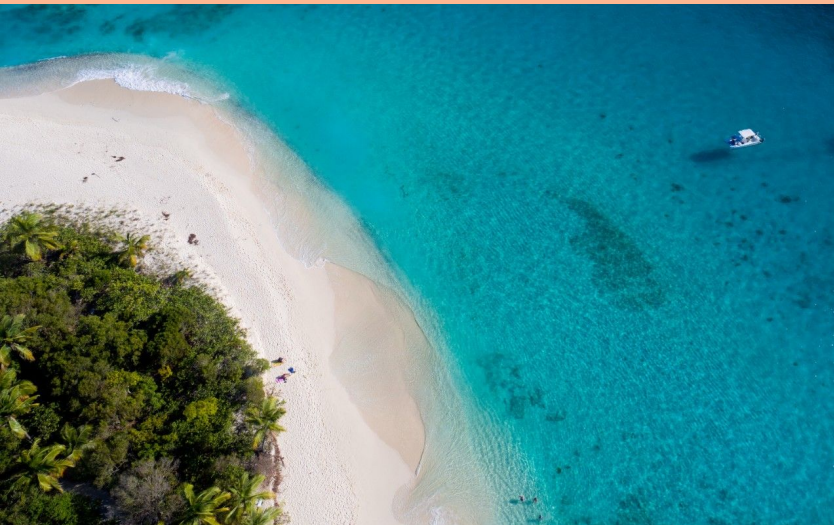
A SVDP was announced in Budget 2019 for direct taxes (income tax under the Income Tax Act 1967, Petroleum Income Tax Act 1967, real property gains tax and stamp duty). The programme covered the period from 3 November 2018 to 30 September 2019. The SVDP administered by the Inland Revenue Board (IRB), provided taxpayers with the opportunity to report any undeclared or under-declared income with lower penalty rates being imposed for voluntary disclosures made during the SVDP period.

The SVDP announced in the 2022 Pre-Budget Statement which will be administered by the Royal Malaysian Customs Department (RMCD), will cover indirect taxes. The programme is aimed at encouraging taxpayers to voluntarily declare to the RMCD any taxes and duties that have not been paid, underestimated or erroneously reported. Pending further announcement of details including the period of the voluntary disclosure, the SVDP is expected to cover sales tax, service tax, excise duties, import duties and export duties.

2. **Tax Compliance Certificate (TCC)**

The Government is proposing to introduce a TCC as a pre-condition for taxpayers to tender for Government projects. The concept of a TCC is not new and has been implemented in other countries as a requirement to tender for government contracts, to drive good tax behaviour among businesses.

Pending further details on how the TCC will be implemented in Malaysia, taxpayers can expect that they will be required to demonstrate good tax record and that their tax obligations are in good standing. It is hoped that details of the TCC will be made available soon, such as the effective date of implementation, the scope of application of TCC e.g. contract value threshold (if any), the number of years of records reviewed in issuing a TCC, and the validity period of the certificate.



3. Tax Identification Number (TIN)

The issuance of a TIN to Malaysians above the age of 18 was first announced in Budget 2020. It was to be implemented beginning from January 2021.

The 2022 Pre-Budget Statement states the implementation of the TIN, and in addition, that a review of tax treatment identified as having elements of harmful practices or revenue leakages will be undertaken. More details of these are expected to be announced in Budget 2022.

Strategies to strengthen the tax system

1. Tax Incentive Review

As part of the measures to provide a conducive investment environment for both local and foreign direct investments, the Government has made a statement on the comprehensive review of the Malaysian tax incentive framework which is currently underway. This initiative which was first announced in the 2020 Budget, will streamline the tax incentives to the current business landscape and is aimed at achieving the following objectives:

- An incentive framework that is responsive to the requirements of businesses and the economy as they evolve,
- Uniformity in the evaluation of investments,
- An incentive framework that complies with international commitments,
- Malaysia to remain as a major investment destination.

2. Implementation of Medium-Term Revenue Strategies

The objective behind the implementation of the Medium-Term Revenue Strategies (MTRS) is to ensure that the country's revenue collection is continually managed and sustainably increased in line with GDP growth. Comprising three components of taxation, i.e. Tax Policy, Tax Administration and Tax Legal Framework, this initiative is undertaken by a Technical and Steering Committee comprising the Ministry of Finance, the IRB, the Economic Planning Unit, Bank Negara Malaysia and the RMCD. A comprehensive report by the committee is expected to be published in 2022.

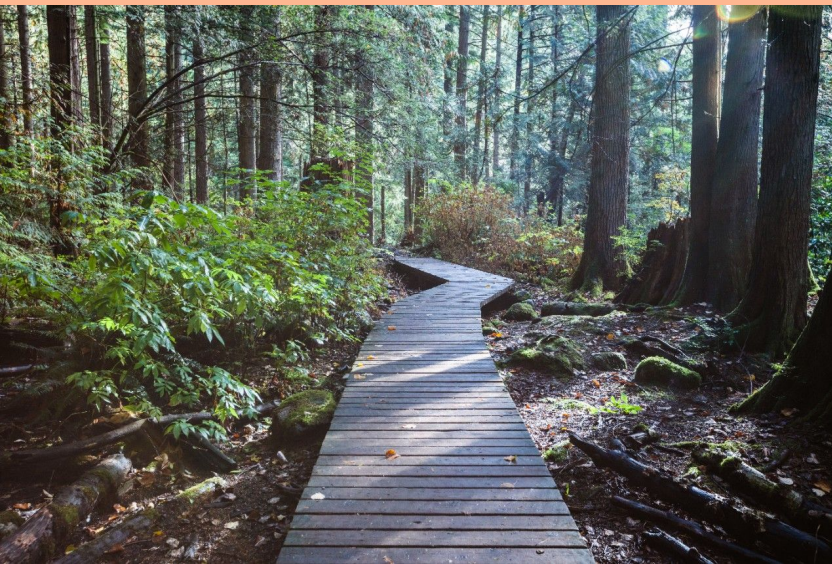
In addition to the above strategies, the Government has reiterated its continual commitment to the following international initiatives:

- BEPS 2.0 - This is a two-pillar solution to address tax challenges arising from the digitalisation of the economy. Pillar One focuses on the determination of a country's taxing rights based on the nexus approach where a share of the consolidated profits of a multinational enterprise will be allocated to market jurisdictions (where sales arise), while Pillar Two proposes a minimum tax rate which is currently expected to be 15 percent.
- Signing of the Intergovernmental Agreement with the United States of America for the purposes of implementing the Foreign Account Tax Compliance Act (FATCA).

Tax deduction for donations to vaccination centres (PPVs)

It was announced under PEMULIH that the scope of tax deduction under Section 34(6)(h) of the Income Tax Act 1967 (“ITA 1967”) is to be expanded to include donations made to vaccination centres (“PPVs”).

Following the announcement, the MOF has issued an updated *Special Guidelines on Application for Income Tax Deduction for Community/Charitable Projects to Handle the COVID-19 Pandemic*, dated 2 August 2021 (“Updated MOF Guideline”).



Salient points in respect of donations to PPVs in the Updated MOF Guideline are as follows:

1. Contributions to PPVs are now eligible for tax deduction under Section 34(6)(h) of the ITA 1967.
2. The deduction applies to contributions made from 19 April 2021 until the pandemic is declared to be over by the Government. Claims for deduction can be made from the year of assessment (YA) 2021 onwards.
3. Applications for deduction are to be submitted to the MOF within **30 days from the date of contribution**.
4. Qualifying contributions eligible for the deduction include the provision of COVID-19 vaccination facilities such as halls, equipment and supplies in respect of vaccination centres.
5. Qualifying recipients are the PPVs throughout the country which are managed by the COVID-19 Immunisation Task Force (CITF) or private sectors with the approval of CITF.

Other notable matters which have been added to the Updated MOF Guideline are as follows:

1. Additional qualifying contributions:
 - Air purifier / filtration equipment
 - Food (fresh food/ingredients and ready-to-eat food)
 - Provision of infrastructure (e.g. marquee tent) now includes cost of renting the infrastructure
2. Additional qualifying recipients (donees) now include universities and educational institutions.

For additional details on tax deduction for COVID-19 relation donations, please refer to [TaXavvy 19/2020](#) and [TaXavvy 28/2020](#).

The Updated MOF Guideline is available on MOF website www.mof.gov.my (Tax > Exemption Guidelines).

Extension of tax exemption for tour operators

Pursuant to the PEMERKASA announcement on the extension of tax exemption for tour operators, the Income Tax (Exemption) (No. 9) Order 2021 has been gazetted.

The following are the key points of the Income Tax (Exemption) (No. 9) Order 2021:

- Income tax exemption is given on the statutory income from the provision of domestic tour packages for travel within Malaysia for local and foreign tourists.
- It is effective from YA 2021 to YA 2022 and is applicable to a resident tour operator which is licensed under the Tourism Industry Act 1992.
- The total number of local tourists (citizens or residents of Malaysia) must not be less than 200 persons in a YA.



Stamp duty exemption for instruments in relation to the PENJANA Tourism Financing facility

The following stamp duty exemption orders in relation to PENJANA Tourism Financing (PTF) facility for small and medium-sized enterprises (SMEs) and micro enterprises in the tourism sector have been gazetted:

- Stamp Duty (Exemption) (No. 6) Order 2021
- Stamp Duty (Exemption) (No. 7) Order 2021

The PTF facility was introduced under PENJANA to support SMEs in the tourism sector, by preserving their capacity and assisting them to undertake the necessary investments to adjust and remain viable post-COVID-19. Eligible micro enterprises and SMEs may apply to the participating financial institutions. General features of the PTF facility include:

- Financing of up to RM75,000 for micro enterprises
- Financing of up to RM300,000 for SMEs
- Financing rate of up to 3.5% per annum

Please refer to the Ministry of Tourism, Arts and Culture Malaysia's website www.motac.gov.my (Services > Announcement > PENJANA Tourism Financing) for details of the PTF facility, for further information.

Salient points from the stamp duty exemption orders in relation to the PTF facility are as follows:

	Stamp Duty (Exemption) (No. 6) Order 2021	Stamp Duty (Exemption) (No. 7) Order 2021
<i>Effective date</i>	30 July 2020	1 September 2020
<i>Instrument exempted from stamp duty</i>	Loan or financing agreement for the PTF facility approved under Bank Negara Malaysia (BNM)'s Fund executed between a participating financial institution with an SME.	Loan or financing agreement for the PTF facility approved under BNM's Fund executed between BNM with a participating financial institution.
<i>Key conditions</i>	Applicable to instruments executed pursuant to a letter of offer issued by the participating financial institution on or after 30 July 2020 but no later than 31 December 2021.	Applicable to instruments executed on or after 1 September 2020 but no later than 31 December 2021.



Stamp duty exemption in relation to Bank Negara Malaysia financing facilities for SMEs

The following stamp duty exemption orders have been gazetted:

- Stamp Duty (Exemption) (No. 8) Order 2021
- Stamp Duty (Exemption) (No. 9) Order 2021



Bank Negara Malaysia (BNM) has established several financing facilities to assist SMEs. They include:

- Special Relief Facility - Alleviates short-term financial difficulties of SMEs during the pandemic.
- Targeted Relief and Recovery Facility - Provides relief and support recovery for SMEs in the service sector affected by the reintroduction of containment measures.
- Disaster Relief Facility 2021 - Alleviates the financial burden of SMEs affected by floods.

The following stamp duty exemption orders have been gazetted on 12 August 2021 to provide exemption from stamp duty in relation to the above funds:

Stamp Duty (Exemption) (No.8) Order 2021

- It provides stamp duty exemption on an instrument of loan or financing facility under the Disaster Relief Facility 2021 which is executed between an SME and a financial institution.
- The application for exemption is to be accompanied by the letter of offer issued by the financial institution during the period 2 February 2021 to 31 December 2021.

Stamp Duty (Exemption) (No.9) Order 2021

It provides stamp duty exemption on an instrument of agency agreement for the Special Relief Facility, Targeted Relief and Recovery Facility and Disaster Relief Facility 2021 for SMEs which is executed between BNM and Credit Guarantee Corporations Malaysia Berhad not later than 31 December 2021.

Public Ruling 4/2021 - Taxation of Income Arising from Settlements

The IRB has issued Public Ruling 4/2021 - Taxation of Income Arising from Settlements (“PR 4/2021”).

PR 4/2021 explains the tax treatment on income arising from a settlement created by a person for the benefit of another person under Section 65 of the ITA 1967.



PR 4/2021 explains the tax treatments of situations where income arising from settlement are deemed as the income of the settlor and assessable on the settlor (instead of the beneficiary). Salient points of PR 4/2021 are as follows:

Settlor

A settlor is a person who created a settlement for the benefit of another person (beneficiary) i.e. a relative or any other person. For income tax purposes, a settlor includes a person who puts or gifts money or other assets into a settlement created for the beneficiary.

Settlement

A settlement covers every transaction within the ordinary meaning of settlement as well as any disposition, trust, covenant, arrangement or agreement or any transfer of assets or income. Settlements may involve formal or informal arrangements or deeds where property or income (e.g. money, land, other types of physical assets, shares, rights and share options) belonging to one person (settlor) is passed to to another person (beneficiary).

In a settlement, there must be an element of giving or getting something for nothing or less than the open market value.

Exclusions

The following arrangements will not be regarded as settlements:

- A settlement which in the opinion of the Director General of Inland Revenue (DGIR) is made for valuable and adequate consideration.
- A settlement resulting from a court order.
- An agreement made by an employer to pay to an employee or his dependant after the employee’s death, a reasonable and fair remuneration, pension, etc.

Treatment of income of settlement

For income tax purposes, the beneficiary of the settlement is not automatically taxed on the income arising from the settlement as the income could, under certain circumstances, be deemed as income of the settlor and assessable on the settlor. These circumstances include:

1. Settlement for an unmarried relative under 21 years of age

By virtue of any settlement (whether directly or indirectly) and during the life of the settlor, any income arising under the settlement for the benefit of a minor or a relative of the settlor (beneficiary) would be deemed to be the income of the settlor and not income of the beneficiary provided that the relative is unmarried and has not attained the age of 21 years at the beginning of the basis period for a YA.

For example, the income arising from the settlement [where a father (settlor) who had provided the funds for his son (beneficiary) who is an unmarried minor to commence a sole proprietorship business] would be assessed on the father. The income derived from the settlement, i.e. income from the business carried on by the son would be assessed in the son's name when he attains the age of 21 years or gets married before the age of 21 years (refer to Example 12 of PR 4/2021).

2. Revocable settlement

Where the terms of the settlement enable the settlor to have power to revoke the settlement and cause the property comprised in the settlement to revert to the settlor or his/her spouse, the income arising under the settlement shall be deemed to be income of the settlor.

3. Income arising from a settlement made use of by a settlor who controls the settlement

Where a settlor (or company/relative controlled by the settlor) is able to make use of the income arising or any accumulated income which has arisen under the settlement, whether by borrowing or otherwise, the amount of that income or accumulated income so made use of would be deemed to be the settlor's income and not income of the beneficiary.

Recovery of income tax paid by settlor

Where tax charged on or paid by a settlor on income which is deemed to be his/her income under a settlement, the settlor is entitled to recover the tax paid from:

- (a) any trustee of the settlement in receipt of income arising whether directly or indirectly; or
- (b) the beneficiaries who actually receive the income deemed to be the settlor's.

PR 4/2021 is available on the IRB's website www.hasil.gov.my (Legislation > Public Rulings).

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