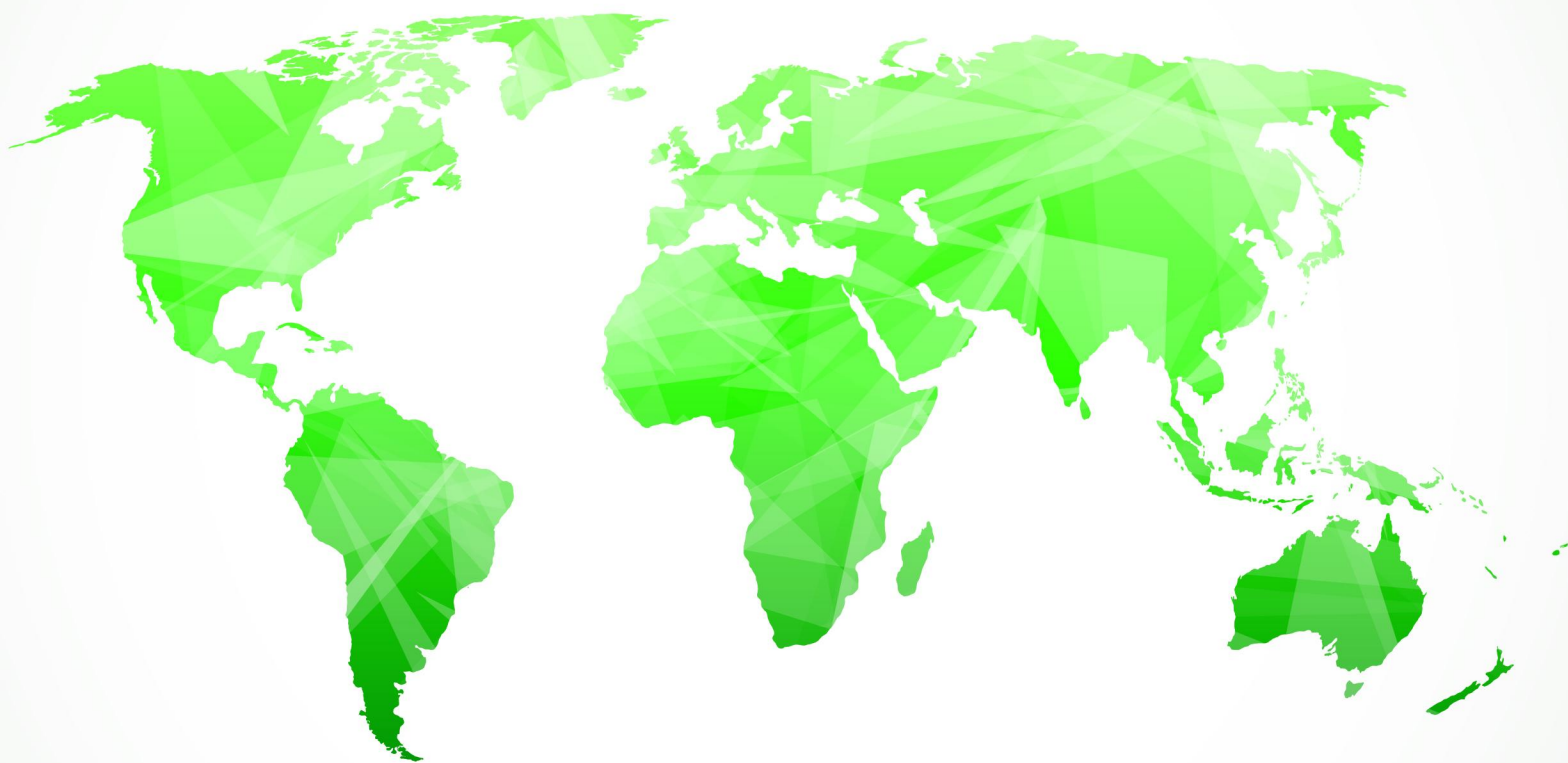


TAX BULLETIN



BUDGET HIGHLIGHTS 2017

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Chartered Accountants

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FOREWORD

The Budget proposals for 2017 were tabled in Parliament on 21 October 2016 by YAB Dato' Sri Mohd Najib Tun Haji Abdul Razak, the Prime Minister and Minister of Finance of Malaysia, with the theme "Ensuring Unity and Economic Growth, Inclusive Prudent Spending, Well Being of the Rakyat", and with an allocation of RM260.8 billion for operating and development expenditure and revenue collection of RM219.7 billion. The expected GDP growth is 4% to 5% and the expected fiscal deficit is 3% of GDP.

Notable tax measures proposed are as follows:-

❖ Corporate Tax

- (a) Reduction of corporate tax rate for SMEs on the first RM500,000 of chargeable income to 18%.
- (b) Reduction of corporate tax rate up to 4% on incremental chargeable income over the preceding year.
- (c) Amendments to permit owner cum operator of special classes of buildings that are partially let out to claim IBA which were previously disallowed.
- (d) Expansion of the scope of halal products eligible for incentives to include nutraceutical and probiotic products.
- (e) Extension of timeline for applicability of various tax incentives such as double deduction under SIP and VDP, tax exemption for ICBUs of Islamic banking and Takaful business and application for pioneer status and ITA for hotels.

The following amendments will further impact revenue collection and compliance:-

- (a) Widening of the definitions of royalty and public entertainer will impact withholding tax compliance on payments made to non-residents.
- (b) Disregarding deductions in relation to a single tier dividend income for ascertaining chargeable income.
- (c) Penal provisions for non-compliance of various requirements under the mutual administrative assistance arrangement.

❖ Personal Income Tax

Tax relief has been streamlined as follows:-

- (a) The current tax reliefs for the purchase of reading materials, sports equipment and a computer be merged into a single 'lifestyle relief' of RM2,500. This relief also covers the purchase of newspapers, smartphones/tablets, internet subscriptions and gymnasium membership fees.
- (b) Two new reliefs have been introduced to assist young families:-
 - Relief of RM1,000 will be given biennially for purchase of breastfeeding equipment for women taxpayers with children aged up to the age of 2.
 - Relief of up to RM1,000 will be given to a parent who enrolls his/her child in a registered child care centres or kindergartens.

❖ Goods and Services Tax (“GST”)

Various amendments were made and new sections added to the GSTA notably:-

- (a) Streamlining of GST treatment on supply or removal of goods as between and within Free Commercial Zone (FCZ) and Free Industrial Zone (FIZ), Designated Area and approved warehouses.
- (b) GST relief for additional range of equipment for the disabled.
- (c) Heavier penalty on nonpayment of GST.
- (d) Treatment of supply of land for no or nominal consideration to authorities or any other persons for public amenities and utilities as not a supply.
- (e) Installation of prescribed device in taxable persons’ premises to collect data.

❖ Others

- (a) While stamp duty exemption on the purchase of first residential property has been further extended with modification, stamp duty on instruments of conveyance, assignment and transfer of property has been increased to 4% for value in excess of RM1,000,000.
- (b) Whereas previously all gifts of property by an individual to spouse, parent, child, grandparent or grandchild were deemed to be made at “no gain no loss”, this treatment is now restricted to a citizen only.

The establishment of the Collection Intelligence Arrangement (CIA) under the MOF which involves the sharing of data between the Inland Revenue Board, the Royal Malaysian Customs Department and the Companies Commission of Malaysia will enhance revenue collection and compliance.

IMPORTANT NOTE

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CONTENT

	<i>Page</i>
ABBREVIATIONS	(i)
DEFINITIONS	(ii)
1. TAX SYSTEM AND ADMINISTRATION	
1.1 <i>Definition of Malaysia</i>	1
1.2 <i>Definition of Public Entertainer</i>	1
1.3 <i>Power to Make Rules</i>	2
1.4 <i>Furnishing Country-by-Country Report (CbC Report)</i>	2
1.5 <i>Review of Penalty for Incorrect Return</i>	2
1.6 <i>Failure to Comply with Rules Made under Paragraph 154(1)(c) on Mutual Administrative Assistance</i>	3
1.7 <i>Relief other than in respect of Error or Mistake</i>	3
1.8 <i>Appeal for Tax Returns Submitted with No Chargeable Income</i>	4
1.9 <i>Expansion on the Scope of Royalty</i>	5-6
1.10 <i>Donation to Approved Institutions and Organisations</i>	6
1.11 <i>Tax Exemption on Interest Derived by a Unit Trust</i>	7
1.12 <i>Income of Non-Residents</i>	7
1.13 <i>Deduction in relation to Exempt Dividend</i>	7
1.14 <i>Exemption of Interest Income Received by Non-resident Company</i>	7
1.15 <i>Tax Exemption on Interest Income in respect of Islamic Securities Originating from Malaysia</i>	8
1.16 <i>Donation to Approved Sports Activity</i>	8
1.17 <i>Income received by a Religious Institution or Organisation</i>	8
1.18 <i>Submission of Tax Estimates via Electronic Transmission</i>	9
1.19 <i>Tax Exemption on Income of REIT or PTF</i>	9
2. TAXATION – INDIVIDUALS	
2.1 <i>Lifestyle Relief</i>	10
2.2 <i>Tightening of Spouse Relief</i>	10
2.3 <i>Relief for Purchase of Breastfeeding Equipment</i>	11
2.4 <i>Payment of Child Care Fees</i>	11
2.5 <i>Output Tax borne by Employer</i>	11
3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES	
3.1 <i>Review of Income Tax Rate for Companies and Other Entities</i>	12
3.2 <i>Sponsorship of Approved Arts, Cultural or Heritage Activity</i>	13
3.3 <i>Derivation of Special Classes of Income</i>	13
3.4 <i>Claims of Industrial Building Allowances (IBA)</i>	14
3.5 <i>Deduction of Irrecoverable Debt for Banks</i>	14
4. TAX INCENTIVES	
4.1 <i>Expansion of the Scope of Halal Products Eligible for Incentives for Halal Industry Players</i>	15
4.2 <i>Extension of Tax Incentive and Stamp Duty Exemption for Islamic Banking and Takaful Business</i>	15
4.3 <i>Extension of Tax Incentives for New 4 and 5 Stars Hotels in Malaysia</i>	16
4.4 <i>Extension of Tax Incentive for Anchor Companies under the Vendor Development Programme (VDP)</i>	16
4.5 <i>Extension of Tax Incentive for an Approved Internship Programme</i>	17

CONTENT

	<i>Page</i>
5. STAMP DUTY	
5.1 <i>Extension of Stamp Duty Exemption for the Purchase of First Residential Property</i>	18
5.2 <i>Stamp Duty Rates</i>	18
6. REAL PROPERTY GAINS TAX	
6.1 <i>Returns Made by a Nominee.</i>	19
6.2 <i>Adjustment to Incidental Cost and Excluded Expenditure</i>	19
6.3 <i>Gifts</i>	20
7. GOODS AND SERVICES TAX	
7.1 <i>Review of GST Relief for Disabled Persons</i>	21
7.2 <i>Free Zone</i>	22
7.3 <i>Penalty for Failure to make Payment within the Stipulated Due Date</i>	23
7.4 <i>Issuance of Invoice by Registered Person</i>	23
7.5 <i>Determining Value of Supplies for GST Registration – Supplies to be Excluded</i>	24
7.6 <i>Introduction of Prescribed GST Device and Related Requirements</i>	24
7.7 <i>Power of Minister to Impose Tax</i>	25
7.8 <i>Time of Supply of Imported Services</i>	25
7.9 <i>Goods or Services Imported into or Supplied to or from Designated Area</i>	25
7.10 <i>Power of Minister to Grant Relief</i>	26
7.11 <i>Supply of Land in compliance with Requirement of Written Law, Government or Local Authority</i>	26
7.12 <i>Furnishing of Declarations and Payment of Tax by Person Other Than a Taxable Person</i>	27
7.13 <i>Recovery of Tax from Persons Leaving Malaysia</i>	28
7.14 <i>Refund of Tax, Etc., Overpaid or Erroneously Paid</i>	28
7.15 <i>Warehousing Scheme</i>	29
8. OTHERS	
8.1 <i>Labuan Non-trading Activity</i>	30
8.2 <i>Labuan Business Activity</i>	30
8.3 <i>Power to Make Rules (LBATA)</i>	30

ABBREVIATIONS

Act	Income Tax Act 1967
DG	Director General
DGIR	Director General of Inland Revenue
DTA	Double Taxation Arrangement
GST	Goods and Services Tax
GSTA	Goods and Services Tax Act 2014
HDC	Halal Development Corporation
IBA	Industrial Building Allowance
ICBU	International Currency Business Unit
ITA	Investment Tax Allowance
LBATA	Labuan Business Activity Tax Act 1990
LLP	Limited Liability Partnerships
MIDA	Malaysian Investment Development Authority
MOF	Minister of Finance
MITI	Minister charged with the responsibility for international trade and industry
OECD	Organization for Economic Co-operation and Development
PS	Pioneer Status
PTF	Property Trust Fund
R&D	Research & Development
REIT	Real Estate Investment Trust
RPGT	Real Property Gains Tax
RPGTA	Real Property Gains Tax Act 1976
SC	Securities Commission
SIP	Structured Internship Programme
Schedule 3	Schedule 3 of the Act – Capital Allowances and Charges
Schedule 6	Schedule 6 of the Act – Exemptions From Tax
SME	Small and Medium Enterprise
VDP	Vendor Development Programme
WHT	Withholding Tax
YA	Year of Assessment

DEFINITIONS

Approved loan	<p>as defined under Section 2 of the Act:-</p> <p>(a) any loan or credit made to the Government, State Government (including any loan or credit made to a person other than the Government or State Government where the loan or credit is guaranteed by the Government or State Government), local authority or statutory body; or</p> <p>(b) any loan or credit other than a loan or credit of the kind specified in paragraph (a), made to a person pursuant to an application received prior to 25 October 1996 where the amount of such loan or credit exceeds two hundred and fifty million ringgit,</p> <p>by a person pursuant to an application received prior to 25 October 1996 not resident in Malaysia:</p> <p>Provided that—</p> <p>(i) the loan or credit has been approved by the Minister of Finance; and</p> <p>(ii) the loan or credit agreement was executed in Malaysia or where the loan or credit agreement with the prior approval of the Minister was executed outside Malaysia.</p>
Country-by-country Report ('CbC Report')	<p>the term "CbC Report" means the country-by-country report to be filed annually by the Reporting Entity in accordance with the laws of its jurisdiction of tax residence and with the information required to be reported under such laws covering the items and reflecting the format set out in the report published by the OECD with respect to Action 13 of the Base Erosion and Profit Shifting project in September 2014, as may be amended following the 2020 review contemplated therein.</p> <p><i>(source: OECD/G20 Base Erosion and Profit Shifting Project. Action 13: Country-by-country Reporting Implementation Package)</i></p>
Free zone	<p>means any part of Malaysia declared under the provisions of subsection 3(1) of the Free Zones Act 1990 to be a free commercial zone or a free industrial zone.</p>
Hindu joint family	<p>means what in any system of law prevailing in India is known as a Hindu joint family or coparcenary.</p>
Input Tax	<p>as defined under Section 2 of the GSTA:-</p> <p>(a) Tax on any supply of goods and services to a taxable person; and</p> <p>(b) Tax paid or to be paid by a taxable person on any importation of goods,</p> <p>and the goods and services are used or are to be used for the purposes of any business carried on or to be carried on by the taxable person:</p> <p>provided that where the goods or services are used or are to be used partly for the purposes of any business carried on or to be carried on by the taxable person and partly for other purposes, tax on the supply and importation shall be apportioned so that only so much as is attributable to the purposes of his business is counted as his input tax.</p>

DEFINITIONS

Mutual Administrative Assistance Arrangement	an Arrangement between the Government of Malaysia with the Government of any territory outside Malaysia with a view to the mutual administrative assistance in tax matters which includes simultaneous tax examinations, automatic exchange of information or tax administrations abroad under Section 132B of the Act.
Output Tax	as defined under Section 2 of the GSTA means tax on any taxable supply of goods or services made by a taxable person in the course or furtherance of his business in Malaysia.
REITs	a unit trust which is approved by the SC as REITs or Property Trust Fund.
SME	<p>A SME is defined as a company incorporated in Malaysia with a paid-up capital in respect of ordinary shares not exceeding RM2.5 million and LLP with RM2.5 million capital contribution and below at the beginning of the basis period for the relevant YA. However, it excludes a company where:-</p> <ul style="list-style-type: none">(a) 50% of the paid up capital in respect of the company's ordinary shares is directly or indirectly owned by a related company;(b) 50% of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the company; or(c) 50% of the paid up capital in respect of ordinary shares of the company and the related company is directly or indirectly owned by another company. <p>“Related company” in this context is defined as a company which has a paid up capital exceeding RM2.5 million in respect of ordinary shares at the beginning of its basis period for a YA.</p>
<i>Sukuk</i>	<p><i>Sukuk</i> has the same meaning as provided in the SC's guidelines in respect of <i>Islamic</i> securities. <i>Sukuk</i> refers to certificates of equal value which evidence undivided ownership or investment in the assets using <i>Shariah</i> principles and concepts endorsed by the <i>Shariah</i> Advisory Council but does not include any agreement for a financing/investment where:-</p> <ul style="list-style-type: none">(i) the financier/investor and customer/investee are signatories to the agreement; and(ii) the provision of financing/investment is in the ordinary course of business of the financier/investor, including any promissory note issued pursuant to the terms of such an agreement. <p>(source : <i>Guidelines on Sukuk issued by SC dated 8 January 2014</i>).</p>
TalentCorp	Talent Corporation Malaysia Berhad was established on 1 January 2011 under the Prime Minister's Department to formulate and facilitate initiatives to address the availability of talent in line with the needs of the country's economic transformation.

1. TAX SYSTEMS AND ADMINISTRATION

1.1 *Definition of Malaysia*

Present

Malaysia means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living.

Proposed

Section 2(1) of the Act be amended to redefine ‘Malaysia’ in line with DTAs as follows:–

“the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, **and the airspace above such areas**, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as an area over which Malaysia has sovereign rights **or jurisdiction** for the purposes of exploring and exploiting the natural resources, whether living or non-living.”

Effective

Upon coming into operation of the Finance Act 2016.

1.2 *Definition of Public Entertainer*

Present

Public entertainer is defined under Section 2(1) of the Act to mean a stage, radio or television artiste, a musician, sportsperson or an individual exercising any profession, vocation or employment of a similar nature.

Proposed

Section 2(1) of the Act be amended to redefine ‘public entertainer’ as follows:-

- (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 2016.

1. TAX SYSTEMS AND ADMINISTRATION

1.3 *Power to Make Rules*

Present

Section 154(1)(ec) of the Act provides that the Minister is empowered to make rules prescribing fees charged in relation to **advance ruling** under Section 138B.

Proposed

Section 154(1)(ec) is amended to extend the Minister's power to make rules prescribing fees in relation to an application for **advance pricing arrangement** made under Section 138C of the Act.

Effective

Upon coming into operation of the Finance Act 2016.

1.4 *Furnishing Country-by-Country Report (CbC Report)*

Present

There is no specific provision governing the furnishing of CbC Report in relation to Transfer Pricing Documentation.

Proposed

A new Section 112A of the Act is introduced to provide that any person who fails to furnish a CbC Report in accordance with the relevant rules made by the Minister under paragraph 154(1)(c) (*rules in implementing and facilitating DTAs*) on arrangements under section 132B (*mutual administrative assistance arrangement*) shall be guilty of an offence and shall on conviction, be liable to a fine of not less than RM20,000 and not more than RM100,000 or to imprisonment for a term not exceeding 6 months or to both.

The new section also provides that the court may make a further order that the convicted person complies with the requirement of the section within a specified period as ordered by the court.

Effective

Upon coming into operation of the Finance Act 2016.

1.5 *Review of Penalty for Incorrect Return*

Proposed

A new Section 113A of the Act is introduced to provide that any person who makes an incorrect return, information return or report or gives any incorrect information in accordance with any rules under paragraph 154(1)(c) on mutual administrative assistance shall be guilty of an offence and on conviction be liable to a fine of not less than RM20,000 and not more than RM100,000 or to imprisonment for a term not exceeding six months or to both, unless he satisfies the court that the incorrect return, information return or report or incorrect information was made or given in good faith.

Effective

Upon coming into operation of the Finance Act 2016.

1. TAX SYSTEMS AND ADMINISTRATION

1.6 *Failure to Comply with Rules Made under Paragraph 154(1)(c) on Mutual Administrative Assistance*

Proposed

A new Section 119B be introduced to provide that any person who fails to comply with any rules under paragraph 154(1)(c) on mutual administrative assistance shall be guilty of an offence and on conviction be liable to be a fine of not less than RM20,000 and not more than RM100,000 or imprisonment for a term not exceeding 6 months or both.

This amendment also provides that the court may make a further order that the convicted person complies with the requirement of the section within a specified period as ordered by the court.

Effective

Upon coming into operation of the Finance Act 2016.

1.7 *Relief other than in respect of Error or Mistake.*

Present

Section 131 provides that any person who has paid tax for any YA alleges that an assessment relating to that year is excessive due to error or mistake in a return or statement made by him and furnished to the DGIR prior to the assessment becoming final and conclusive, he may within 5 years after the end of the YA, make an application in writing to the DGIR for relief.

Proposed

A new Section 131A be introduced for relief other than in respect of error or mistake under Section 131 as follows:-

- (1) Where a taxpayer has furnished to the DGIR a return for a YA and has paid tax for that YA alleges that the assessment relating to that YA is excessive by reason of—
 - (a) the law relating to any exemption, relief, remission, allowance or deduction which is gazetted after the YA in which the return is furnished;
 - (b) the approval for any exemption, relief, remission, allowance or deduction which is granted after the YA in which the return is furnished; or
 - (c) a tax deduction was not allowed on expenses payable to non-residents as the corresponding withholding taxes are not due to be paid when the return is furnished.
- (2) The application for relief shall be made:-
 - (a) in respect of paragraphs (1)(a) and (1)(b), within 5 years after the end of the year the exemption, relief, remission, allowance or deduction is gazetted or the approval is granted, whichever is the later; or
 - (b) in respect of paragraph (1)(c) above, within 1 year after the end of the year the withholding tax payment is made.

Effective

1 January 2017.

1. TAX SYSTEMS AND ADMINISTRATION

1.8 *Appeal for Tax Returns Submitted with No Chargeable Income*

Proposed

Section 97A of the Act be extended to include the following:-

- (1) A new Section 97A(1A) is added which provides that where a person has furnished a return to the DG and where there is no chargeable income and if the person is aggrieved by any public ruling or any practice of the DG prevailing at the time when the return is made, the return shall be deemed to be a notification made by the DG to the person on the day the return is furnished. This will enable the person to appeal against such deemed notification within 30 days from the date of being so notified.
- (2) It is proposed under a new Section 97A(5) that a person who has furnished his return with no chargeable income may make an application in writing to the DG for relief if that person alleges that:-
 - (a) there is an error or mistake in the return;
 - (b) the amount computed in the return is inaccurate by reason of:
 - (i) the law relating to any exemption, relief, remission, allowance or deduction which is gazetted after the YA in which the return is furnished;
 - (ii) the approval for any exemption, relief, remission, allowance or deduction which is granted after the YA in which the return is furnished; or
 - (iii) a tax deduction was not allowed on expenses payable to non-residents as the corresponding withholding taxes are not due to be paid when the return is furnished.
- (3) Under the new Section 97A(6) to be inserted:-
 - (a) The application of relief in respect of 2(a) above shall be made within 6 months from the date the return is furnished.
 - (b) The application for relief under 2(b)(i) and (ii) above shall be made within 5 years after the end of the year the exemption, relief, remission, allowance or deduction is gazetted or the approval is granted, whichever is the later.
 - (c) The application for relief under 2(b)(iii) above shall be made within 1 year after the end of the year the withholding tax payment is made.

Effective

1 January 2017.

1. TAX SYSTEMS AND ADMINISTRATION

1.9 *Expansion on the Scope of Royalty*

Present

Royalty includes—

- (a) any sums paid as consideration for the use of, or the right to use—
 - (i) copyrights, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks, or tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or reproduced in Malaysia or other like property or rights;
 - (ii) know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
- (b) income derived from the alienation of any property, know-how or information mentioned in paragraph (a) of this definition.

Proposed

Section 2(1) of the Act be amended to redefine ‘royalty’ as follows:-

Royalty includes any sums paid as consideration for, or derived from —

- (a) the use of, or the right to use in respect of any copyrights, software, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks or other like property or rights;
- (b) the use of, or the right to use tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or reproduced in Malaysia or other like property or rights;
- (c) the use of, or the right to use know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
- (d) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by—
 - (i) satellite; or
 - (ii) cable, fibre optic or similar technology;
- (e) the use of, or the right to use, visual images or sounds, or both, in connection with television broadcasting or radio broadcasting, transmitted by—
 - (i) satellite; or
 - (ii) cable, fibre optic or similar technology;
- (f) the use of, or the right to use, some or all of the part of the radio frequency spectrum specified in a relevant licence;

1. TAX SYSTEMS AND ADMINISTRATION

1.9 *Expansion on the Scope of Royalty (cont'd)*

Proposed (cont'd)

Section 2(1) of the Act be amended to redefine 'royalty' as follows:

Royalty includes any sums paid as consideration for, or derived from —

- (g) a total or partial forbearance in respect of—
 - (i) the use of, or the granting of the right to use, any such property or right as is mentioned in paragraph (a) or (b) or any such knowledge, experience or skill as is mentioned in paragraph (c);
 - (ii) the reception of, or the granting of the right to receive, any such visual images or sounds as are mentioned in paragraph (d);
 - (iii) the use of, or the granting of the right to use, any such visual images or sounds as are mentioned in paragraph (e);
or
 - (iv) the use of, or the granting of the right to use, some or all such part of the spectrum specified in a spectrum licence as is mentioned in paragraph (f); or
- (h) the alienation of any property, know-how or information mentioned in paragraph (a), (b) or (c) of this definition;

Effective

Upon coming into operation of the Finance Act 2016.

1.10 *Donation to Approved Institutions and Organisations*

Present

Pursuant to Section 44(6), a gift of money to the Government, State Government, local authority or an institution or organisation approved by the DG are accorded the following tax treatment:-

Gift by	Tax deduction
Person other than company	not exceeding 7% of the aggregate income of that person in the relevant year.
Company	not exceeding 10% of the aggregate income of the company in the relevant year.

Proposed

- (a) Section 44(6) and 44(7) be amended to extend the above tax deduction on cash contribution made to a fund which is defined as a fund administered and augmented by an institution or organisation in Malaysia for the sole purpose of carrying out the objectives for which the fund is established or held and that fund is not established or held primarily for profit.
- (b) Such cash contribution made to the fund as mentioned in (a) above is exempted from income tax pursuant to amendment to be made to paragraph 13(1)(a) of Schedule 6 to the Act.

Effective

Year of assessment 2017.

1. TAX SYSTEMS AND ADMINISTRATION

1.11 *Tax Exemption on Interest Derived by a Unit Trust*

Present

Interest income derived by a unit trust from Malaysia and paid by a licensed bank or Islamic bank or prescribed development financial institution would be exempted from income tax.

Proposed

Paragraph 35A, Schedule 6 of the Act be amended to provide that where the unit trust is a money market fund, the tax exemption shall only apply to a wholesale fund which complies with the relevant guidelines of the SC.

Effective

Year of assessment 2017.

1.12 *Income of Non-Residents*

Present

Schedule 6	Income tax exemption is given on:-
Paragraph 18	Income of non-residents from trading in Malaysia through consignees in commodity produced outside Malaysia.
Paragraph 27	Interest income of non-residents derived from Malaysia on approved loan.

Proposed

Paragraphs 18 and 27 of Schedule 6 to the Act be deleted.

Effective

Year of assessment 2017.

1.13 *Deduction in relation to Exempt Dividend*

Present

Any **expenses** incurred in relation to exempt dividend under Paragraph 12B of Schedule 6 of the Act shall be disregarded for the purposes of ascertaining the **adjusted income** of the recipient.

Proposed

Schedule 6 Paragraph 12B of the Act be amended to provide that any **deductions** in relation to a dividend income exempted under that paragraph will be disregarded for ascertaining the **chargeable income** of a person.

Effective

Year of assessment 2017.

1.14 *Exemption of Interest Income Received by Non-resident Company*

Present

Interest income received by non-resident company on securities issued by Government of Malaysia, or Islamic securities or debenture in RM approved by SC, is exempted from tax.

Proposed

Paragraph 33A of Schedule 6 to the Act be amended to provide that the above exemption does not apply to interest income received by a non-resident company from another company in the same group.

Effective

Year of assessment 2017.

1. TAX SYSTEMS AND ADMINISTRATION

1.15 *Tax Exemption on Interest Income in respect of Islamic Securities Originating from Malaysia*

Present

Tax exemption is given on interest paid or credited to any person in respect of Islamic securities originating from Malaysia, other than convertible loan stock—

- (a) issued in any currency other than Ringgit; and
- (b) approved or authorized by or lodged with the SC, or approved by the Labuan Financial Services Authority.

Proposed

Paragraph 33B(2), Schedule 6 of the Act be inserted to exclude the above tax exemption on:-

- (a) interest paid or credited to a company in the same group;
- (b) interest paid or credited to—
 - (i) a bank licensed under the Financial Services Act 2013;
 - (ii) an Islamic bank licensed under the Islamic Financial Services Act 2013; or
 - (iii) a development financial institution prescribed under the Development Financial Institutions Act 2002.

Effective

Year of assessment 2017.

1.16 *Donation to Approved Sports Activity*

Present

Subsection 44(11B) of the Act provides that a deduction is allowed for gift of money or **cost of contribution in kind** for any sports activity approved by the MOF or to any **sports body approved by the Commissioner of Sports** appointed under Sports Development Act 1997.

Proposed

Subsection 44(11B) of the Act be amended to restrict the scope of deduction to **gift of money** for any sports activity approved by the MOF.

Effective

Year of assessment 2017.

1.17 *Income received by a Religious Institution or Organisation*

Present

Income tax exemption is given on **any income** received by a religious institution or organization which is not operated or conducted primarily for profit and which is established in Malaysia exclusively for the purposes of religious worship or the advancement of religion.

Proposed

Subparagraph 13(1)(b) under Schedule 6 of the Act be amended to limit income tax exemption on **contributions received** by a religious institution or organization for **charitable purposes**.

Effective

Year of assessment 2017.

1. TAX SYSTEMS AND ADMINISTRATION

1.18 *Submission of Tax Estimates via Electronic Transmission*

Present

Section 107C(7A) of the Act provides that a company shall furnish its estimate or revised estimates of its tax payable by way of electronic transmission (to take effect from YA2018).

Proposed

Section 107C(7A) of the Act be amended to additionally require a LLP, trust body or co-operative society to furnish its estimate or revised estimates of its tax payable by way of electronic transmission.

Effective

Year of assessment 2019.

1.19 *Tax Exemption on Income of REIT or PTF*

Present

Where in the basis period for a YA, 90% or more of the total income of the unit trust is distributed to the unit holder, the total income of the unit trust for that YA shall be exempted from tax. However such distribution will be subject to the relevant withholding tax under Section 109D of the Act.

"unit trust" means a unit trust which is approved by the SC as Real Estate Investment Trust or Property Trust Fund.

Proposed

Section 61A(2) be amended to restrict the above exemption to a unit trust which is approved by the SC **and listed on Bursa Malaysia**.

Effective

Year of assessment 2017.

2. TAXATION – INDIVIDUALS

2.1 *Lifestyle Relief*

Present

A tax resident individual is entitled to claim the following reliefs:-

- (1) Section 46(1)(i) – Tax relief of up to RM1,000 for purchase of reading materials (excluding newspaper and banned reading materials);
- (2) Section 46(1)(j) – Tax relief of up to RM3,000 for the purchase of a computer to be claimable once in every 3 years; and
- (3) Section 46(1)(l) – Tax relief of up to RM300 for the purchase of sports equipment for sports activities as defined under the Sports Development Act 1997.

In addition under Section 46(1)(m), tax relief of up to RM500 for the subscription of broadband, internet was granted from YA2010 until YA2012.

Proposed

The above reliefs be combined into a new relief known as the lifestyle relief under a new paragraph 46(1)(p) of the Act with a limit of up to RM2,500 per YA. Further, the scope of lifestyle relief is expanded to include:-

- (a) Purchase of printed newspaper and other similar publications;
- (b) Purchase of smartphone or tablet (not being used for the purpose of his own business);
- (c) Gymnasium membership fees (annual subscription only); and
- (d) Internet subscription.

The relief in respect of purchase of sport equipment shall exclude motorized two-wheel bicycles.

Effective

Year of assessment 2017.

2.2 *Tightening of Spouse Relief*

Present

A relief of RM4,000 is given to a resident individual where his/her spouse:-

- (a) has no total income; or
- (b) has elected for his/her total income to be aggregated with the total income of the spouse.

An additional relief of RM3,500 is given if the spouse is disabled.

Proposed

The relief shall not be applicable if the taxpayer's spouse has an income which is derived from sources outside Malaysia and the gross income from those sources for a YA is more than the amount of deduction allowed under Section 45A or Section 47(5).

The proposed legislation would not be applicable if the spouse is disabled.

Effective

Year of assessment 2017.

2. TAXATION – INDIVIDUALS

- 2.3** *Relief for Purchase of Breastfeeding Equipment* **Proposed**
A new Section 46(1)(q) be introduced to provide tax relief up to RM1,000 be given biennially, to an individual for the purchase of breastfeeding equipment for that individual's own use for a child of that individual aged 2 years old and below.
- Breastfeeding equipment refers to breast pump kit and an ice pack, a breast milk collection and storage equipment, and a cooler set or bag.
- Effective**
Year of assessment 2017.
- 2.4** *Payment of Child Care Fees* **Proposed**
A new Section 46(1)(r) be introduced to provide that a relief of up to RM1,000 be given to an individual for payment of child care fees expended or deemed expended for his child aged 6 years and below.
- The claim shall be evidenced by receipts issued by the following:-
- (a) a child care centre registered with the DG of Social Welfare under the Child Care Centre Act 1984 [Act 308]; or
 - (b) a kindergarten registered under the Education Act 1996 [Act 550]
- The relief will be given either to the husband or wife should they elect to be separately assessed.
- Effective**
Year of assessment 2017.
- 2.5** *Output Tax borne by Employer* **Present**
Section 13(1) of the Act defines gross income of an employee.
- Proposed**
A new Section 13(1A) be introduced to provide that the amount of output tax which is liable to be paid by an employee under the Goods and Services Tax Act 2014 but borne by his employer shall be included as his gross income from employment.
- Effective**
Year of assessment 2015.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.1 *Review of Income Tax Rate for Companies and Other Entities*

The income tax rate for the following entities shall be revised as follows:-

Entities	Income Tax Rate	
	Present	Proposed
(a) Company with paid-up capital >RM2.5 million (b) Trust body (c) Executor of an estate of an individual who was domiciled outside Malaysia at a time of his death (d) Receiver appointed by the court (e) LLP with capital contribution >RM2.5 million	24%	Note* (ii)
(f) Resident SME and LLP with capital not exceeding RM2.5 million <ul style="list-style-type: none"> • Chargeable income up to RM500,000 • Chargeable income exceeding RM500,000 	19% 24%	18% (i) Note* (ii)

Note *

The income tax rate based on the percentage of increase in chargeable income (portion attributable to statutory business income) as compared to the immediate preceding YA are as follows:-

Percentage of increase in chargeable income as compared to the immediate preceding YA	Percentage point reduction	Income tax rates after reduction (%)
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 mechanics and conditions in relation to the above proposal are to be clarified by statutory order.

Effective

- (i) Year of assessment 2017.
- (ii) Applicable to years of assessment 2017 and 2018.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.2 *Sponsorship of Approved Arts, Cultural or Heritage Activity*

Present

Deduction shall be made from the gross income of a person from his business on expenditure incurred for sponsoring any arts, cultural or heritage activity approved by the Ministry of Information, Communication and Culture.

The amount of deduction made shall not in aggregate exceed **RM500,000** of which the deduction allowed for sponsoring foreign arts, cultural or heritage activity is limited to **RM200,000**.

Proposed

Section 34(6)(k) of the Act be amended to increase the above deduction to **RM700,000** in aggregate of which the deduction allowed for sponsoring foreign arts, cultural or heritage activity is limited to **RM300,000**.

Effective

Year of assessment 2017.

3.3 *Derivation of Special Classes of Income*

Present

Gross income in respect of -

- (a) amounts paid in consideration of services rendered by a person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;
- (b) 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;
- (c) rent or other payments made under any agreement or arrangement for the use of any moveable property,

shall be deemed to be derived from Malaysia—

- (i) if responsibility for payment of the above or other payments lies with the Government, a State Government or a local authority;
- (ii) if responsibility for the payment of the above or other payments lies with a person who is a resident for that basis year; or
- (iii) if the payment of the above or other payments is charged as an outgoing or expense in the accounts of a business carried on in Malaysia;

will be subject to withholding tax of 10% under Section 109B of the ITA if such income is paid to non-residents for services which are **performed in Malaysia**.

Proposed

The gross income from paragraphs (a) and (b) be deemed to be derived from Malaysia irrespective of whether the services were performed in Malaysia or outside Malaysia and if such income is paid to non-residents, it will be subject to withholding tax under Section 109B.

Effective

Upon coming into operation of the Finance Act 2016.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.4 *Claims of Industrial Building Allowances (IBA)*

Present

Pursuant to Paragraph 16B of Schedule 3, an owner cum operator of the following buildings will NOT be eligible for IBA if the building or part of the building is used for the purpose of letting of property:-

- (a) private hospital, maternity home and nursing home (Para 37A)
- (b) research and training (Para 37B)
- (c) warehouse for storage (Para 37C)
- (d) providing approved services and modernisation of operations (Para 37E)
- (e) hotel (Para 37F)
- (f) airport (Para 37G)
- (g) motor racing circuit (Para 37H)
- (h) living accommodation for employee (Para 42A)
- (i) school & educational institution (Para 42B)

Proposed

- (a) The application of Paragraph 16B be expanded to include buildings used for the purposes of industrial, technical or vocational training approved by the Minister under Para 42C.
- (b) Where part of the building used by the owner cum operator for the purpose of letting of property is:-
 - not more than one-tenth of the floor area of the whole building, the whole building qualifies as industrial building.
 - more than one-tenth of the floor area of the whole building, such part of the building shall not be treated as industrial building and that part of the buildings shall not be eligible for IBA.

Effective

Year of assessment 2016.

3.5 *Deduction of Irrecoverable Debt for Banks*

Present

In ascertaining the adjusted income, deduction is allowed on any debt as defined in Section 34(3) of the Act that is estimated to be irrecoverable.

Pursuant to Section 34(3A) the debt of a bank includes all interest in respect of a loan or credit facility accrued from the date that such loan or facility is classified as non-performing.

Section 34(3B) provides the definition of a “bank”.

Proposed

Section 34(3A) and Section 34(3B) above be removed due to the cancellation of guidelines on non-performing loans by the Central Bank of Malaysia.

Effective

Deemed to have effect from 1 January 2010.

4. TAX INCENTIVES

4.1 *Expansion of the Scope of Halal Products Eligible for Incentives for Halal Industry Players*

Present

Incentives for Halal Park operators, Halal Industry players and Halal Logistic operators include the following:-

- (a) Income tax exemption of 100% of statutory income for 5 to 10 years; or
- (b) ITA of 100% on the qualifying capital expenditure incurred within a period of 5 to 10 years and to be set off against 100% of the statutory income.
- (c) Import duty exemption on raw materials used for the development and production of promoted halal products; and
- (d) Double deduction on expenses incurred in obtaining international quality standards certifications.

The qualifying halal products are as follows:-

- (i) Specialty processed food;
- (ii) Pharmaceuticals, cosmetics and personal care;
- (iii) Livestock and meat products; and
- (iv) Halal ingredients.

Proposal

The existing incentives be extended to include production of nutraceutical and probiotic products by Halal Industry Players in Halal Parks.

Effective Date

For applications received by HDC from 22 October 2016.

4.2 *Extension of Tax Incentive and Stamp Duty Exemption for Islamic Banking and Takaful Business*

Present

International Currency Business Unit (ICBU) which operate Islamic banking and takaful business are given tax incentives as follows:-

- (a) 100% income tax exemption is given to Islamic banks and Islamic banking units licensed under the Islamic Banking Act 1983 on income derived from Islamic banking business conducted in foreign currency including transactions with Malaysian residents;
- (b) 100% income tax exemption is given to takaful companies and takaful units licensed under the Takaful Act 1984 on income derived from takaful business conducted in foreign currency including transaction with Malaysian residents; and
- (c) Full stamp duty exemption on instruments executed pertaining to Islamic banking and takaful activities conducted in foreign currency.

Proposed

The above tax incentives be extended for another 4 years.

Effective

- (i) The tax incentive in Item (a) and (b) from years of assessment 2017 to 2020.
- (ii) The tax incentive in Item (c), is effective for instruments executed from 1 January 2017 to 31 December 2020.

(Appendix 6, budget speech)

4. TAX INCENTIVES

4.3 *Extension of Tax Incentives for New 4 and 5 Stars Hotels in Malaysia*

Present

Hotel operators undertaking new investments in 4 and 5 star hotels in Malaysia are given the following tax incentives:-

(a) Peninsular Malaysia

- (i) PS with income tax exemption of 70% of statutory income for 5 years; or
- (ii) ITA of 60% on the qualifying capital expenditure incurred within a period of 5 years and to be set off against 70% of the statutory income for each YA.

For application received by the MIDA from 8 October 2011 to 31 December 2016.

(b) Sabah and Sarawak

- (i) PS with income tax exemption of 100% of statutory income for 5 years; or
- (ii) ITA of 100% on the qualifying capital expenditure incurred within a period of 5 years and to be set off against 100% of the statutory income for each YA.

For application received by the MIDA from 30 August 2008 to 31 December 2016.

Proposed

The application period of the tax incentives in items (a) and (b) above be extended for another 2 years.

Effective

For application received by MIDA from 1 January 2017 to 31 December 2018 (*Appendix 1, budget speech*).

4.4 *Extension of Tax Incentive for Anchor Companies under the Vendor Development Programme (VDP)*

Present

Anchor companies are given double deduction up to RM300,000 per YA on the expenditure incurred to carry out the following activities in relation to the VDP:-

- (a) product development;
- (b) capability improvement; or
- (c) human capital.

An anchor company is a company that:-

- (i) is incorporated and resident in Malaysia;
- (ii) participates in the VDP; and
- (iii) signs an MoU with MITI under the VDP from 1 January 2014 until 31 December 2016.

The deduction is given for a period of three consecutive YAs commencing from the YA in which the first allowable expenditure is incurred.

Proposed

The above double deduction be extended for another 4 years.

Effective

For MoU signed from 1 January 2017 to 31 December 2020.

4. TAX INCENTIVES

4.5 *Extension of Tax Incentive for an Approved Internship Programme*

Present

Double deduction is given on expenses incurred by a person resident in Malaysia and approved by TalentCorp to conduct an internship programme with a minimum period of 10 weeks.

The students are Malaysian citizens pursuing a full-time degree programme in Higher Educational Institutions (“HEI”) or its equivalent and students pursuing courses at the vocational and diploma levels.

Double deduction is given on the following allowable expenses :-

Types of allowable expenses	Allowable sum
(a) internship monthly allowance paid to the students	Not less than RM500 paid
(b) expenditure incurred for the students:- <ul style="list-style-type: none">• provision of training• meals, travelling and accommodation	Not exceeding RM5,000 for each student for a YA
(c) fee paid to a person who has been appointed to conduct an approved internship programme	

Proposed

The above double deduction be extended for another 3 years.

This programme be expanded to include Malaysian students pursuing full-time vocational level (Malaysian Skills Certificate Level 3).

Effective

From YA 2017 until YA 2019.

5. STAMP DUTY

5.1 *Extension of Stamp Duty Exemption for the Purchase of First Residential Property*

Present

50% stamp duty exemption is given on the instrument of transfer and instrument of loan agreement in respect of the purchase of first residential property with a price not exceeding RM500,000 by a Malaysian citizen. A residential property includes a house, a condominium unit, an apartment and a flat built as a dwelling house.

The exemption given is subject to the following conditions:-

- (a) The Sale and Purchase Agreement is executed on or after 1 January 2015 but not later than 31 December 2016;
- (b) The purchaser does not own any residential property at the date of execution of that Sale and Purchase Agreement; and
- (c) The exemption is to be claimed once only within the exemption period.

Proposed

The above stamp duty exemption be increased to 100% on the instrument of transfer and loan agreement for the purchase of first residential property with a price not exceeding RM300,000 by a Malaysian citizen.

For purchase price exceeding RM300,000 up to RM500,000, the 100% stamp duty exemption is limited to the first RM300,000 of the value of residential property. The remaining balance of the value of the property is subject to prevailing rate of stamp duty.

Effective

For Sale and Purchase Agreement executed from 1 January 2017 to 31 December 2018.

5.2 *Stamp Duty Rates*

Present

The rates of stamp duty on instruments of conveyance, assignment or transfer of any property are as follows:-

	Value (RM)	Rate (%)
On first	100,000	1
On the next	400,000	2
In excess of	500,000	3

Proposed

	Value (RM)	Rate (%)
On first	100,000	1
On the next	400,000	2
On the next	500,000	3
In excess of	1,000,000	4

Effective

Apply to instrument executed from 1 January 2018 (*Appendix 7, budget speech*).

6. REAL PROPERTY GAINS TAX

6.1 *Returns Made by a Nominee.*

Present

Every nominee shall, within sixty days from the date of disposal by him of a chargeable asset on behalf of any person, make a return to the DG.

Pursuant to Section 13(4) the return shall be made to the income tax office nearest to the nominee's principal place of business or abode in Malaysia or if he has no place of business or abode in Malaysia, to the office of the DG in Kuala Lumpur.

Proposed

A nominee who has no place of business or abode in Malaysia, can make the return to any office of the DG.

Effective

Upon coming into operation of the Finance Act 2016.

6.2 *Adjustment to Incidental Cost and Excluded Expenditure*

Present

(a) Pursuant to Paragraph 6(1)(e) of Schedule 2, any amount paid or to be paid in respect of GST by the disposer if he is not liable to be registered under the GSTA or if he is a registered person and is not entitled under that Act to credit that amount as input tax, the amount shall be included in the incidental costs wholly and exclusively incurred for the purposes of the acquisition or disposal of the chargeable asset.

(b) Pursuant to Paragraph 7(1)(d) of Schedule 2, any amount paid or to be paid in respect of GST as input tax by the disposer if he is liable to be registered under the GSTA and has failed to do so, or if he is entitled under that Act to credit that amount as input tax, the amount shall be excluded in computing the acquisition price or disposal price of the chargeable asset.

Proposed

New subparagraphs 6(1A) and 7(2) to Schedule 2 be introduced to provide that the incidental cost for the acquisition or disposal of an asset which is subject to any adjustment required to be made on the total input tax under the GSTA shall be determined in accordance with the amount of adjustment made to such input tax in the year of assessment the disposal is made or at the end of the adjustment period as allowed under that Act, whichever is the earlier.

Effective

Year of Assessment 2015.

6. REAL PROPERTY GAINS TAX

6.3 *Gifts*

Present

Pursuant to Paragraph 12(2), Schedule 2 of RPGTA, where an asset is disposed of by way of a gift where the donor and recipient are husband and wife, parent and child or grandparent and grandchild:-

- (a) the donor shall be deemed to have received no gain and suffered no loss on the disposal;
- (b) in the case of a donor who is not a citizen or permanent resident, the recipient shall be deemed to acquire the asset at an acquisition price equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor; and
- (c) in the case of a donor who is a citizen or permanent resident and the gift is made within five years after the date of acquisition by the donor, the recipient shall be deemed to acquire the asset at an acquisition price equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor.

Proposed

Amendments to Paragraph 12(2) be made to provide that the disposal by way of gift between donor and recipient is 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 5 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.

7. GOODS & SERVICES TAX

7.1 *Review of GST Relief for Disabled Persons* **Present**

Item 7, First Schedule, GST (Relief) Order 2014 provides that GST relief is given to Private Charitable Entities (PCE) for persons with disabilities registered with the Social Welfare Department on the purchase of equipment specially designed for disabled persons as follows:-

- | | |
|---|---------------------------|
| i. Artificial limbs; | vi. Text telephone; |
| ii. Wheelchair; | vii. Whistling cup; |
| iii. Electrically/mechanically adjustable bed designed for handicapped; | viii. White canes; |
| iv. Braille embossers; | ix. Specialised footwear; |
| v. Pick-up sticks; | x. Hearing aid; and |
| | xi. Low vision aid. |

The relief is subject to the condition that the equipment are to be given free or sold at a nominal value to members of the PCE concerned and the members who are registered under the Persons with Disabilities Act 2008.

Proposed

Relief be given directly to the valid OKU (disabled person) card holders, including non-PCE members, on the purchase of approved equipment from the suppliers designated by the Social Welfare Department.

The list of equipment that are eligible for the GST relief is expanded to include the following:-

- i. Callipers;
- ii. Artificial prosthetic and orthotic;
- iii. Motorized wheelchair;
- iv. Home care/hospital bed;
- v. Braille display;
- vi. Vibrating alarm indicators;
- vii. Flashing/signalling device;
- viii. Magnifier;
- ix. Special lenses;
- x. Optical character recognition (OCR) equipment;
- xi. Medical cushion;
- xii. Ripple mattress;
- xiii. Walking frame;
- xiv. Crutches and rubber ends;
- xv. Vehicle wheelchair lift and restraints;
- xvi. Portable ramps;
- xvii. Hand controls for driving;
- xviii. Shower chair;
- xix. Commode chair; and
- xx. Teletypewriter.

Effective Date

From 1 January 2017.

7. GOODS & SERVICES TAX

7.2 Free Zone

Present

GSTA is applicable to free zones namely Free Commercial Zone (FCZ) and Free Industrial Zone (FIZ) established under the Free Zones Act 1990. Special treatment is provided under Section 162(a) of the GSTA whereby GST is not imposed on imported goods into FCZ for the following purposes:-

- (i) Commercial activities; or
- (ii) Retail trade activities approved under the Free Zones Act 1990.

GST is imposed on goods imported into the FCZ if it is to be consumed within the zone. GST is also levied on goods imported into the FIZ, on the supply or removal of goods made within FIZ and between FIZ and FCZ.

The removal of goods made from FCZ and FIZ to the Designated Areas i.e. Langkawi, Labuan and Tioman, vice versa and also removal to an approved warehouse under the Warehousing Scheme, vice versa is subjected to GST.

Proposed

To streamline the GST treatment in the free zones, GST treatment be determined as follows:-

- (a) GST is not chargeable on the supply and removal of goods made:-
 - (i) within and between FCZ;
 - (ii) within and between FIZ; and
 - (iii) between FCZ and FIZ;
- (b) GST shall not be due and payable on goods imported into FIZ;
- (c) GST is suspended on the removal of goods from free zone to
 - (i) Designated Areas i.e. Langkawi, Labuan and Tioman, vice versa; and
 - (ii) an approved warehouse under the Warehousing Scheme, vice versa.

The above GST treatment shall not be applicable on the following supplies:-

- (a) Goods as prescribed under the Free Zones (Exemption of Goods and Services) Order 1998;
- (b) Goods and services as prescribed under GST (Imposition of Tax for Supplies in Respect of Designated Areas) Order 2014; and
- (c) Any other goods prescribed by the Minister.

Effective

1 January 2017.

7. GOODS & SERVICES TAX

7.3 *Penalty for Failure to make Payment within the Stipulated Due Date*

Late payment penalty under Section 41(8) be amended as follows:-

Period of default	Penalty rate *	
	Present	Proposed
First 30 days after the stipulated due date	5% of the amount of tax due and payable	10% of the amount of tax remain unpaid
Second 30 days after the stipulated due date	Additional 10% of the amount of tax due and payable	Additional 15% of the amount of tax remain unpaid
Third 30 days after the stipulated due date	Additional 10% of the amount of tax due and payable, subject to a maximum penalty of 25%	Additional 15% of the amount of tax remain unpaid

Effective

1 January 2017.

7.4 *Issuance of Invoice by Registered Person* **Present**

Section 33(10) provides that no invoice showing an amount which purports to be a tax shall be issued—

(a) by any person—

- (i) on any supply of goods or services which is not a taxable supply;
- (ii) on any zero-rated supply; or

(b) by any person who is not a registered person.

Proposed

(a) Section 33(10) be amended to apply strictly to a registered person. Accordingly Section 33(10)(b) be removed.

(b) A new Section 33(10A) be introduced to restrict a **non-registered** person from issuing -

- (i) an invoice showing an amount which purports to be a tax or an amount inclusive of tax; or
- (ii) an invoice which purports to be a tax invoice with or without tax.

The new section does not apply to an auctioneer under Section 65(4) and (5) of the GSTA.

Effective

1 January 2017.

7. GOODS & SERVICES TAX

7.5 *Determining Value of Supplies for GST Registration – Supplies to be Excluded*

Present

In determining the value of any person's supplies for the purposes of GST registration, the following supplies shall be excluded:-

- (a) supplies of goods that are capital assets of the business in the course or furtherance of which they are supplied or to be supplied;
- (b) supplies of imported services;
- (c) supplies made in accordance with the Warehousing Scheme under Section 70;
- (d) supplies made by a person who belongs in a country other than Malaysia or a recipient, in accordance with the Approved Toll Manufacturer Scheme under Section 72; or
- (e) supplies made within or between designated areas under Section 155 except where such supply is subject to an order under Subsection 160(1).

Proposed

The above exclusions be amended as follows:-

- (i) Item (a) above only be applicable if such supplies is due to cessation of business.
- (ii) The above exclusion is extended to supplies made within or between free zones under Section 162 unless the supplies are supplies specifically directed as taxable supplies under Section 163(1).

Effective

1 January 2017.

7.6 *Introduction of Prescribed GST Device and Related Requirements*

Proposed

A new Section 34A be introduced to allow the DG to collect information on all supplies made and payment received by a registered person using a device and in a manner as prescribed by the Minister.

The DG may approve any person to install, maintain and inspect the prescribed device at the premises of the prescribed registered person and that person shall not interfere with the functioning of the device and shall notify immediately the DG of any failure of the device.

Under a new Section 34B, any person who has access to any information on device shall not disclose such information to any other person unless the disclosure is required or authorised -

- (a) under the GSTA;
- (b) by any court; or
- (c) for the performance of his duties or the exercise of his powers under GSTA.

Any person who contravenes the above commits an offence.

Effective

1 January 2017.

7. GOODS & SERVICES TAX

7.7 *Power of Minister to Impose Tax*

Present

Section 160 provides that the Minister may, by order published in the Gazette, prescribe any supply within or between the designated areas and any goods or services supplied to, imported into or exported from the designated area to be chargeable to tax.

Proposed

The above be amended to enhance the power of the Minister to prescribe:-

- (a) any supply of goods or services within or between the designated areas to be chargeable to tax;
- (b) any goods imported into a designated area, or removed from a designated area through Malaysia to another designated area, to a free zone or to a warehouse under Section 70, to be chargeable to tax; or
- (c) any services imported into a designated area to be chargeable to tax.

Effective

1 January 2017.

7.8 *Time of Supply of Imported Services*

Present

Time of supply of imported services shall be treated to have been made at the earlier of the following dates:-

- (a) The date when any payment is made by the recipient; or
- (b) The date when any invoice is *issued by* the supplier who belongs in a country other than Malaysia or who carries on business outside Malaysia.

Proposed

Section 13(4)(b) be amended by replacing the word “issued by” with the word “*received from*”.

Effective

1 January 2017.

7.9 *Goods or Services Imported into or Supplied to or from Designated Area*

Present

Section 156(a) provides that tax shall be due and payable upon all goods including any goods under any lease agreement supplied from a designated area to Malaysia to all intents as if the removal were importation into Malaysia.

Proposed

The above be enhanced to include any removal of goods under lease agreement from a designated area to another designated area through Malaysia.

However, a new Subsection 156(aa) be introduced to provide that the payment of tax under Paragraph (a) above shall be suspended on any goods removed from a designated area through Malaysia to another designated area, to a free zone or to a warehouse under Section 70, unless the Minister otherwise directs in an order under Section 160.

Effective

1 January 2017.

7. GOODS & SERVICES TAX

7.10 *Power of Minister to Grant Relief*

Present

Section 56(5) provides that where any person who is granted relief by the Minister from the payment of the whole or any part of the tax which may be charged and levied on any taxable supply of goods or services or any importation of goods or class of goods, but has failed to comply with the condition subject to which the relief was granted, any tax that has been the subject of the relief shall become due and payable by the person at the time when the condition ceased to be fulfilled.

Proposed

The above be extended to the circumstances where the relief granted is revoked by the Minister.

In addition, a new Subsection 56(7) be introduced to enable any person who has been granted relief to claim for refund of tax which has been paid.

Effective

1 January 2017.

7.11 *Supply of Land in compliance with Requirement of Written Law, Government or Local Authority*

Present

Second Schedule, GST (Relief) Order 2014 provides that any supply of land by the developer or land owner to government, local authority or any other person in compliance of the requirement by the Government or local authority for the purpose of providing public amenities and public utilities for no consideration or for a nominal value is relieved from charging tax on supplies of goods and services. The relief is subject to the following condition:-

- (a) the project has been approved and fulfilled all the conditions under the:-
 - (i) Department of Town and Country Planning;
 - (ii) Public Works Department;
 - (iii) Department of Drainage and Irrigation; and
 - (iv) Fire and Rescue Department; and

- (b) That the building plan is approved by Local Authority.

Proposed

New paragraph 8, Second Schedule of the GSTA be introduced to provide that any supply of land by a developer or an owner of the land to the Federal Government, a State Government, a local authority or any other person in compliance with the requirement of any written law, the Federal Government, State Government or local authority for the purposes of providing public amenities and public utilities whether for no consideration or at nominal value shall be treated as neither a supply of goods nor supply of services.

For the purposes of the above, public amenities and public utilities means the amenities and utilities provided in the layout plan for a project which has been approved by the relevant local authority.

Effective

1 January 2017.

7. GOODS & SERVICES TAX

7.12 *Furnishing of Declarations and Payment of Tax by Person Other Than a Taxable Person*

Present

Section 42(1) provides that where any person other than a taxable person is liable for tax under the following:-

- (a) a recipient of imported services under Section 13(3);
- (b) a person under Section 58;
- (c) an auctioneer who's supply is treated as supply made by his principal under Section 65(4)(b);
- (d) a person who sells goods in satisfaction of any debt owed by a taxable person under Section 65(5); and
- (e) a recipient who receives the treated or processed goods from an approved toll manufacturer under Section 72(5).

The person shall account for the tax in a declaration to the DG and pay the tax due not later than the last day of the subsequent month from the month in which the supply is made or treated as taken place or payment is received under those provisions.

Any person who fails to pay the amount of tax due commits an offence and on conviction, be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 3 years or to both.

Proposed

Section 42(1)(b) be amended by substituting the reference to Section 58 with Section 56(5) relating to a person who is granted relief from the payment of tax but fails to comply with the condition subject to which the relief was granted.

A new Section 42(4) be introduced to provide penalty for tax due and remain unpaid.

Section	Period of default	Penalty rate
42(4)(a)	First 30 days after the stipulated due date	10% of the amount of tax remain unpaid
42(4)(b)	Second 30 days after the stipulated due date	Additional 15% of the amount of tax remain unpaid
42(4)(c)	Third 30 days after the stipulated due date	Additional 15% of the amount of tax remain unpaid

Prosecution for the offence may be instituted after the expiry of the period specified in Section 42(4)(c).

Where the tax is allowed to be paid by instalments under Section 51(1A), the penalty shall cease to be calculated from the date the DG allows the payment by instalments.

Effective

1 January 2017.

7. GOODS & SERVICES TAX

7.13 *Recovery of Tax from Persons Leaving Malaysia*

Present

Section 49(1) provides that where the DG has reason to believe that any person is about or is likely to leave Malaysia without paying:-

- (a) any tax due and payable by him;
- (b) any penalty payable under Section 21;
- (c) any surcharge which has accrued under Section 51;
- (d) any fee payable under Sections 77, 170 and 173; or
- (e) any other money recoverable from him under this Act,

the DG may issue to any Director of Immigration a notice with a request that the person be prevented from leaving Malaysia.

Proposed

Section 49(1)(b) be expanded to include any penalty due under Sections 41 (furnishing of return and payment of tax by a registered person) and 42 (furnishing of return and payment of tax by a person other than a registered person).

Effective

1 January 2017.

7.14 *Refund of Tax, Etc., Overpaid or Erroneously Paid*

Present

Section 57(1) provides that any person who has overpaid or erroneously paid any tax, surcharge, penalty, fee or any other money may make a claim within 6 years of the overpayment and the DG may refund the claim after being satisfied that the person has properly established the claim.

Proposed

The above be extended to include any person who:-

- (a) is entitled to a refund of tax upon relief being granted by the Minister under Subsection 56(7); or
- (b) has been granted remission by the Minister and is entitled to the refund of tax, penalty or surcharge under Subsection 62(3).

Effective

1 January 2017.

7. GOODS & SERVICES TAX

7.15 Warehousing Scheme

Present

Warehousing scheme under Section 70 provides that goods which tax would be chargeable, have been imported and deposited in the warehouse, the scheme allows:-

- (a) tax chargeable on the imported goods to be suspended when the imported goods are deposited in the warehouse;
- (b) supplies of goods made between the warehouses to be disregarded; and
- (c) supplies of goods made within the warehouses to be disregarded except for the last of such supplies of goods which are removed before the duty point.

No person shall remove any goods subject to tax and duty from a warehouse unless:-

- (a) tax and duty on the goods have been paid;
- (b) the goods are deposited from a warehouse or to another warehouse; or
- (c) the goods are removed for re-export from Malaysia.

Warehouse defined under Section 70(7)(g) as:-

- (a) any customs warehouse;
- (b) any licensed warehouse;
- (c) any duty free shop;
- (d) any inland clearance depot.

Proposed

Section 70 be amended to provide that the Warehousing Scheme shall only be applicable for goods approved by the proper officer of customs to be deposited in the warehouse.

GST is due and payable for goods removed from a warehouse under the Warehousing Scheme as if the removal were importation into Malaysia except for goods removed with the approval of the proper officer of customs:-

- (a) for export;
- (b) for deposit to another warehouse under the Warehousing Scheme;
- (c) to a free zone; or
- (d) to a Designated Area.

The Warehousing Scheme shall not be applicable to goods as may be prescribed

Effective

1 January 2017.

8. OTHERS

8.1 *Labuan Non-trading Activity*

Present

“Labuan non-trading activity” means an activity relating to the holding of investments in securities, stock, shares, loans, deposits or any other properties by a Labuan entity on its own behalf.

Proposed

The above definition be amended to provide that an activity relating to the holding of investments in properties by Labuan entity on its own behalf be restricted to properties **situated in Labuan**.

Effective

Upon coming into operation of the Finance Act 2016.

8.2 *Labuan Business Activity*

Present

“Labuan business activity” means a Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan in a currency other than Malaysian currency, by a Labuan entity with non-resident or with another Labuan entity subject to certain provision as stipulated in Section 2 of LBATA.

In relation to the **holding of investments** under such activity by a Labuan entity in a domestic company, such holding may be with residents and in the Malaysian currency.

Proposed

It is proposed that for the definition for “Labuan business activity”, the holding of investments in a domestic company as per proviso above be amended to the **holding of shares** in a domestic company.

Effective

Upon coming into operation of the Finance Act 2016.

8.3 *Power to Make Rules (LBATA)*

Present

The Minister may make regulations generally for the purpose of carrying out, or giving effect to, the provisions of the LBATA.

Proposed

Section 21 of the LBATA be amended to provide that the Minister may make regulations –

- (a) generally for the purpose of carrying out, or giving effect to, the provisions of the Act.
- (b) for the purpose of implementing or facilitating the operation of an arrangement having effect under Section 132B of the Income Tax Act 1967 and prescribing penalties for any contravention or failure to comply with any of the provisions of any regulations made under this paragraph.

Effective

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