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Malaysian developments

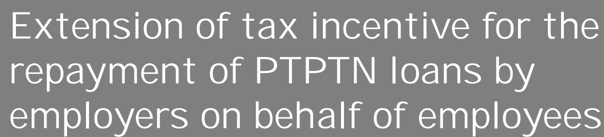
Budget 2020 Bills gazetted (except LBATA Bill)

The following Acts, incorporating the changes proposed in Budget 2020 (see Special Tax Alert: Highlights of Budget 2020, Tax Alert No. 22/2019 and Tax Alert No. 23/2019) were gazetted on 31 December 2019:

- Finance Act 2019
- Income Tax (Amendment) Act 2019
- Petroleum (Income Tax) (Amendment) Act 2019

The Acts adopt all the changes proposed in the respective Bills, including the additional amendments made when the Finance Bill 2019 was passed by the Dewan Rakyat (see Tax Alert No. 23/2019).

Please note that the Labuan Business Activity Tax (Amendment) Bill 2019 has not yet been gazetted and hence the legislative changes proposed therein are not yet effective.



Extension of tax incentive for the repayment of PTPTN loans by employers on behalf of employees

As highlighted in the earlier tax alert (see Tax Alert 14/2019), to enhance the Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN) loan repayments and ensure the sustainability of the PTPTN Program, the following were gazetted on 24 July 2019:

- Income Tax (Exemption) (No. 8) Order 2019 [P.U.(A) 205]
- Income Tax (Deduction for Payment of Educational Loan of Perbadanan Tabung Pendidikan Tinggi Nasional by Employers on behalf of Employees) Rules 2019 [P.U.(A) 206]

The Order provides that in ascertaining his gross employment income, an employee is exempted from the payment of income tax in respect of the value of the benefit (i.e. the amount of educational loan paid by the employer on behalf of the employee from 1 January 2019 to 31 December 2019) received as a gift from his employer.

Conversely, the Rules stipulate that in ascertaining the adjusted income of an employer from his business for a year of assessment (YA), there shall be allowed a deduction under Section 33 of the Income Tax Act 1967 (ITA), equivalent to the amount of educational loan paid by the employer on behalf of his employee from 1 January 2019 to 31 December 2019.

In Budget 2020, the Government proposed to extend the tax incentive period for the above. To legislate the proposal, the following were gazetted on 31 December 2019.

Income Tax (Exemption) (No. 8) (Amendment) Order 2019 [P.U.(A) 414]

The Amendment Order provides that employees will enjoy the income tax exemption on the loan repayment made on their behalf by their employers, from 1 January 2019 to 31 December 2021.

This Amendment Order is effective YA 2019 until YA 2021.

Income Tax (Deduction for Payment of Educational Loan of Perbadanan Tabung Pendidikan Tinggi Nasional by Employers on behalf of Employees) (Amendment) Rules 2019 [P.U.(A) 415]

Similarly, the Amendment Rules provide that the tax deduction period for employers on the repayment of PTPTN loans on behalf of their employees is extended to 31 December 2021.

The Amendment Rules are effective from YA 2019 until YA 2022.

Tax incentive for Structured Internship Programme

In Budget 2015, certain proposals were made in anticipation of an increase in future demand for workers with vocational and diploma qualifications, and to encourage private companies to provide internship opportunities to full-time students pursuing such courses. In this regard, the Government proposed that the double deduction on expenses incurred by companies participating in Structured Internship Programmes (SIPs) to recruit

students pursuing full-time degree programmes in higher education institutions, be extended to include full-time students pursuing courses at the vocational and diploma levels for YA 2015 and YA 2016.

Thereafter, in Budget 2017, to encourage more companies to participate in the SIP approved by Talent Corporation Malaysia Berhad (TalentCorp), the double deduction incentive that was effective up to YA 2016 was proposed to be extended for another three YAs, that is, until YA 2019 (see Special Tax Alert: Highlights of 2017 Budget – Part I).

In the recent Budget 2020, the double deduction incentive was proposed to be extended for yet another two YAs, that is, until YA 2021 (see Special Tax Alert: Highlights of 2020 Budget).

To legislate the above proposals, the Income Tax (Deduction for Expenditure Incurred for Provision of Approved Internship Programme) Rules 2019 [P.U.(A) 398] were gazetted on 31 December 2019.

The Rules provide that in ascertaining the adjusted income of a qualified person from his business for a basis period for a YA, a double deduction shall be given for expenses incurred by the qualified person to conduct an approved internship programme.

The double deduction is given for the following expenses:

(a) Monthly allowance paid to the students of not less than RM500 per student;
(b) Expenditure incurred for the provision of training;
(c) Meals, travelling expenses and accommodation for the students during the internship programme

For items (b) and (c), the total deductions allowable for each student shall not exceed RM5,000.

The Rules shall apply to a qualified person who conducts or has conducted:

(a) An approved internship programme from YA 2015 until YA 2016 for a student pursuing a diploma programme in a higher educational institution and a student pursuing a qualified course being a vocational programme (minimum Malaysian Skills Certificate Level 4); and
(b) An approved internship programme for a student from YA 2017 until YA 2021

The following terms have also been defined in the Rules:

i. Higher educational institution
ii. Qualified course
iii. Qualified person
iv. Student
v. Approved internship programme
vi. Talent Corporation Malaysia Berhad

The qualified person claiming the deduction will also be required to provide a letter from TalentCorp confirming that the internship programme conducted is an approved internship programme.

Extension of tax exemption for angel investors

In Budget 2020, it was proposed that the application period for tax exemption for angel investors be extended for another three years, until 31 December 2023 (see Special Tax Alert: Highlights of 2020 Budget). To legislate this extension, the Income Tax (Exemption) (No. 3) 2014 (Amendment) Order 2019 [P.U.(A) 399] was gazetted on 31 December 2019.

Stamp duty exemption on rent-to-own (RTO) scheme

As highlighted in the earlier tax alert, rent-to-own (RTO) is a scheme where a financial institution (FI) will acquire a property (which has been identified by a tenant) from a housing developer. Thereafter, the

tenant will rent the property from the FI, and will be given an option to acquire the property after a stipulated timeframe.

Currently, stamp duty at ad valorem rates of 1% to 4% is imposed on each instrument of transfer, resulting in stamp duty applying at the following two levels:

i. Transfer of residential home from the housing developer to the FI
ii. Transfer of residential home from the FI to the buyer (previously the tenant)

In Budget 2020, the Government proposed that full stamp duty exemptions be given on the above-mentioned instruments, for the transfer of first residential homes priced up to RM500,000 (see Special Tax Alert: Highlights of Budget 2020).

To legislate this, the Stamp Duty (Exemption) (No. 4) Order 2019 [P.U.(A) 394] was gazetted on 31 December 2019. The Order provides a stamp duty exemption for the above-mentioned instruments for the transfer of a residential property which is valued at RM500,000 or less.

This Order will only apply if:

(a) The sale and purchase agreement (SPA) between the developer and the FI for the purchase of the residential property is executed between 1 January 2020 and 31 December 2022, and is stamped at any branch of the IRB;
(b) The RTO agreement between the individual and the FI for the rental of the residential property is executed between 1 January 2020 and 31 December 2022;
(c) The SPA between the FI and the individual for the purchase of the residential property is stamped at any branch of the IRB:
(d) The value of the residential property shall be based on the purchase price in the SPA between the developer and the FI; and
(e) The individual has never owned any residential property, including a residential property obtained by way of inheritance or gift, which is held either individually or jointly.

For the purpose of Point (b) above:

- The period of rental under the RTO agreement must not exceed five years; and
- The tenant may opt to purchase the residential property after a rental period of one year.

The application for the exemption will have to be accompanied by a declaration by the individual confirming Point (e) above.

The following terms have also been defined in the Order:

i. Residential property
ii. Individual
iii. FI
iv. Property developer
v. RTO scheme

The Order is effective 1 January 2020.

Stamp duty remission for transfer of property by way of love and affection

In Budget 2020, it was proposed that the stamp duty remission of 50% given on the instrument of real property transferred between parents and children by way of love and affection be given to Malaysian citizens only (previously Malaysian citizens and non-citizens were eligible) (see Special Tax Alert: Highlights of Budget 2020).

To legislate the above proposal, the Stamp Duty (Remission) (No. 2) Order 2019 [P.U.(A) 369] was gazetted on 26 December 2019. With this, the Stamp Duty (Remission) (No. 7) Order 2002 [P.U.(A) 434] is revoked.

The Order is effective 1 January 2020.

Amendment to deduction from remuneration rules

The Income Tax (Deduction from Remuneration) (Amendment) Rules 2019 [P.U.(A) 387], gazetted on 31 December 2019, take effect from 1 January 2020 and amend the Income Tax (Deduction from Remuneration) Rules 1994 [P.U.(A) 507].

The Income Tax (Deduction from Remuneration) Rules 1994 provide that the employer must determine and make monthly tax deductions (MTD) from employees' salaries based on either the Schedule of MTD or the computerized calculation method. The Schedule is issued for employers who do not use a computerized payroll software. However, employers using the Schedule are advised to use the computerized calculation method if the employee receives a salary adjustment, elects for optional deductions or commences employment other than in January.

The amendments are to take into account the new tax bracket with effect from YA 2020, where:

(i) Individual taxpayers with chargeable income exceeding RM2,000,000 will be subjected to tax at 30%, an increase of two percentage points from 28%; and
(ii) The non-resident personal income tax rate will also be increased to 30%.

2020 Tax Investigation Framework

The Inland Revenue Board (IRB) has issued on its website the updated Tax Investigation Framework (TIF), dated 1 January 2020. This 16-page TIF replaces the previous TIF that was effective 15 May 2018 (see Tax Alert No. 11/2018), and comprises the following paragraphs:

1. Introduction
2. Legal provisions
3. Investigation activity
4. Objectives of investigation
5. Period of investigation
6. Selection of cases
7. Investigation procedures
8. Rights and responsibilities
9. Confidentiality of information
10. Offences and penalties
11. Payment procedures
12. Appeals
13. Investigation under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA)
14. Effective date

The contents of the new TIF are broadly similar to those of the earlier framework; it outlines the IRB's procedures and practices in conducting tax investigations, as well as the rights and responsibilities of the IRB, the taxpayer and the tax agent in a tax investigation situation.

Some of the important changes are as follows:

Paragraph 7.1 – Request for documents and information

The new TIF specifies that investigations can now be carried out by issuing letters requesting for documents and information from the taxpayer, tax agent or third parties.

Paragraph 8.2.6 –Taxpayers' rights and responsibilities

The new TIF provides that taxpayers are required to provide the IRB officers with access to (including passwords) and make copies or extractions of documents in the custody of / under the control of / belonging to the taxpayer without the IRB having to make any payments.

Paragraph 10.1 – Failure to furnish return or give notice of chargeability

The new TIF provides that under Section 112(1A) of the ITA, where a taxpayer has failed to furnish his income tax return form (ITRF) in accordance with Section 77(1) or 77A(1) in respect of any YA for two years or more, the taxpayer shall, on conviction, be liable to a fine of not less than RM1,000 and not more than RM20,000 or to both. The taxpayer shall also pay a special penalty of three (3) times the amount of tax which has been undercharged (previously "amount of tax charged").

Similarly, the new TIF stipulates that under Section 112(3) of the ITA, where no prosecution has been instituted in respect of failure to furnish the ITRF or give notice of chargeability, the Director General (DG) may require the taxpayer to pay a penalty equal to treble (3 times) the amount of tax which has been undercharged (previously "amount of tax payable").

Paragraph 11.2 – Payment procedures

The new TIF no longer stipulates that in cases where a taxpayer applies to settle his taxes and penalties by instalments, higher penalty rates will be imposed on longer instalment periods as compared to full payment or shorter instalment periods – this was reflected in the previous TIF.

2020 income tax return filing programme issued

The IRB has recently made available on its website the 2020 income tax return filing programme (2020 filing programme) titled "Return Form (RF) Filing Programme For The Year 2020". The 2020 filing programme is broadly similar to the position laid out in the 2019 filing programme (see Tax Alert No. 1/2019). Where a grace period is given, submissions shall be deemed to have been received by the stipulated due date if received within the grace period. The grace period also applies to the settlement of balance of tax payable under Section 103(1) of the ITA. Where the ITRF / balance of tax payable is not furnished within the grace period, the original due date will be taken for the purpose of calculating penalties (note that all references to "due date" in the table below refer to the original due date).

The key change to note is that the 2020 filing programme stipulates that the C.P.8D [i.e. Statement of Remuneration from Employment for the Year ending 31 December 2019 and Particulars of Tax Deduction under the Income Tax Rules (Deduction from Remuneration) 1994] must be submitted via the following methods:

1. Together with the Form e-E (e-Filing) [upload txt file format / C.P.8D e-Filing format]
2. Via e-Data Praisi [upload txt file format on or before 25 February 2020]
3. Compact disc (CD) / USB drive / external hard disk [txt file format or Microsoft Excel]

As such, the submission of C.P.8D by non-company employers together with the paper Form E (as provided under the 2019 Filing Programme) will no longer be accepted.

Summary of the 2020 Filing Programme

ITRF	Due date	Mode of submission	Grace period
Forms BE, BT, M, MT, TF, TJ and TP for YA 2019 for taxpayers not carrying on a business	30 April 2020	a) e-Filing N.B. e-Filing is not available for Form TJ	Within 15 days after the due date
		b) Via postal delivery	Within 3 working days after the due date

ITRF	Due date	Mode of submission	Grace period
		c) Hand-delivery	No grace period
Forms B, BT, M, MT, P, TF, TJ and TP for YA 2019 for taxpayers carrying on a business	30 June 2020	a) e-Filing N.B. e-Filing is not available for Form TJ	Within 15 days after the due date
		b) Via postal delivery	Within 3 working days after the due date
		c) Hand-delivery	No grace period
Form e-C for YA 2020	Last day of the 7th month from the financial year-end	e-Filing	Within 1 month after the due date
Form C1 for YA 2020	Last day of the 7th month from the financial year-end	a) e-Filing	Within 1 month after the due date
		b) Via postal delivery	Within 3 working days after the due date
		c) Hand-delivery	No grace period
Forms PT, TA, TC, TN and TR for YA 2020	Last day of the 7th month from the financial year-end	a) e-Filing N.B. e-Filing is not available for Forms TN and TR	Within 1 month after the due date
		b) Via postal delivery	Within 3 working days after the due date
		c) Hand-delivery	No grace period
Form E (Company / Labuan company employers)	31 March 2020	e-Filing	Within 1 month after the due date
Form E (Non-company / Non-Labuan company employers)	31 March 2020	a) e-Filing	Within 1 month after the due date
		b) Via postal delivery	Within 3 working days after the due date
		c) Hand-delivery	No grace period
Form CPE	Within 7 months from the date following the end of the exploration period	a) e-Filing	Within 1 month after the due date
		b) Via postal delivery	Within 3 working days after the due date
		c) Hand-delivery	No grace period
Form CPP	Within 7 months from the date	a) e-Filing	Within 1 month after the due date

ITRF	Due date	Mode of submission	Grace period
	following the end of the basis period		
		b) Via postal delivery	Within 3 working days after the due date
		c) Hand-delivery	No grace period

Overseas developments

Swiss Tax Authority clarifies that disclosure of worldwide turnover in Swiss VAT returns by non-Swiss entities is no longer required

After months of uncertainty, the Swiss Federal Tax Administration has clarified its position regarding reporting requirements for foreign entities registered for Swiss value-added tax (VAT) purposes. It has been clarified that foreign businesses are no longer required to declare their global turnover in their Swiss VAT returns.

As a result of this change of practice, non-Swiss entities no longer have to report non-Swiss revenues in their Swiss VAT return and can thus limit the reporting in box 200 of the return to turnover generated in the Swiss territory. Foreign-established taxable persons should however continue to report their VAT exempt without credit revenues, as well as subsidies, as this might have an impact on their Swiss input VAT recovery rate.

The long-anticipated news is linked to the revision of the Radio and Television Fee (RTV), which was initially intended to be levied on all VAT-registered persons in Switzerland. The fee is calculated based on global turnover and was initially intended to be assessed on both Swiss as well as foreign businesses. The scope of the RTV was however reviewed in August 2019, resulting in an exclusion of non-Swiss businesses.

Implications

The withdrawal of this compliance requirement does not mean that all turnover generated from business activities outside of the Swiss territory can be excluded from the Swiss VAT return. For instance, taxable services rendered to Swiss-established recipients that fall under the default place of supply rule are to be declared with Swiss VAT by all suppliers that are registered for VAT in Switzerland.

It is also important to note that in the event of a VAT audit, foreign businesses have an obligation to provide evidence supporting that all supplies of goods and services with a place of supply in the Swiss Customs territory (Switzerland, Liechtenstein, Büsingen) have been appropriately reported in the VAT returns. This can be achieved by preparing internal year-end audit readiness reports, retracing differences between worldwide and Swiss turnover, and documenting that no Swiss supplies have been booked under foreign accounting entries and vice versa. If the distinction between turnover generated in the Swiss territory and abroad is not appropriately documented, the Swiss authorities can determine that some of the foreign revenues should actually have been subject to Swiss VAT.

The outlined documentation exercise is part of the mandatory turnover reconciliation and is to be prepared by VAT-registered businesses at the end of the financial year. The turnover reconciliation is typically subjected to a thorough review by the authorities during the course of a VAT audit.

Hong Kong clarifies certain issues regarding treaty benefits

In its 2019 annual meeting, the Hong Kong Tax Authority (HKTA) clarified the following matters:

"Foreign tax minimization steps" must be taken if taxpayers are to maximize claims for tax credits in Hong Kong

The tax law provides that the amount of tax credit granted must not exceed the amount that would be granted had all foreign tax minimization steps been taken. For example, if a Hong Kong company did not apply for a Hong Kong certificate of residence (CoR) and accordingly could not claim a treaty benefit, the tax credit granted is limited to the reduced treaty rate.

A company is not entitled to a tax credit in Hong Kong if the HKTA rejected its CoR application

If the HKTA rejected the CoR application of a Hong Kong company, such Hong Kong company will not be regarded as a Hong Kong tax resident and thus will not be entitled to a tax credit in Hong Kong under the treaty, despite the income being subject to tax in Hong Kong.

Hong Kong applicants for the "same-treaty-benefit" rule under PN 9 are required to demonstrate sufficient economic nexus with Hong Kong

The HKTA's position is that even if a Hong Kong applicant is deemed as a beneficial owner (BO) in respect of dividends received from mainland China under the "same treaty benefit" rule as prescribed in PN 9, such Hong Kong applicant is required to have sufficient business activities in Hong Kong before the HKTA will issue a CoR for the purpose of PN 9.

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Important dates

15 January 2020	Due date for monthly instalments
31 January 2020	6th month revision of tax estimates for companies with July year-end
31 January 2020	9th month revision of tax estimates for companies with April year-end
31 January 2020	Statutory deadline for filing of 2019 tax returns for companies with June year-end
15 February 2020	Due date for monthly instalments
29 February 2020	6th month revision of tax estimates for companies with August year-end
29 February 2020	9th month revision of tax estimates for companies with May year-end
29 February 2020	Statutory deadline for filing of 2019 tax returns for companies with July year-end

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