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Crowe Chat Vol.8/2021 (Special Edition)

# Malaysia Finance Bill 2021

9 November 2021

This Crowe Chat (Special Budget Edition) Part 2 is prepared based on the Finance Bill 2021.

This Part 2 discusses the proposed changes mentioned in the Finance Bill 2021 which were not covered in our [Crowe Chat \(Special Budget Edition\) Part 1.](#)

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A wide-angle, high-angle aerial photograph of the Kuala Lumpur city skyline during sunset. The iconic Petronas Twin Towers are the central focus, standing tall against a sky transitioning from blue to warm orange and yellow hues. The surrounding urban landscape includes numerous other skyscrapers, modern office buildings, and a mix of green spaces and construction sites. The overall atmosphere is vibrant and captures the essence of a bustling, modern city.

# Key Highlights of the Finance Bill 2021

# Highlights of Finance Bill 2021

## Corporate Tax



### Tax on Income Received from Outside Malaysia

Malaysian tax residents will be taxed at the rate of 3% on gross income derived from foreign sources and received in Malaysia with effect from 1 January 2022 to 30 June 2022. From 1 July 2022 onwards, foreign sourced income received in Malaysia by Malaysian tax residents will be taxed at the prevailing tax rates.



### Withholding Tax on Payments Made To Agents etc.

Payments made to agents, dealers or distributors will be subjected to 2% withholding tax with effect from 1 January 2022.

### Extension of Tax Rebate for Establishment of New Entities for Companies / Limited Liability Partnership (LLPs)

The income tax rebate of up to RM20,000 per Year of Assessment (YA), for the first three (3) YAs will be extended for new Companies / LLPs established and commenced operations by 31 December 2022.



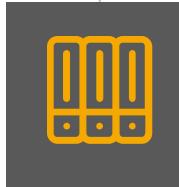
### Submission of Return Based on Financial Statements

LLPs, trust bodies and co-operative societies will be required to furnish their income tax return based on financial statements made in accordance with the requirement of the law governing the entity.



### Tax Identification Number (TIN)

TIN will be implemented with effect from 1 January 2022 to broaden the tax base.



# Highlights of Finance Bill 2021

## Corporate Tax (cont.1)



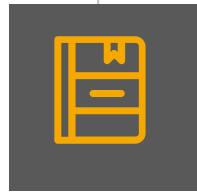
### Power to call for bank account information for purpose of making a garnishee order application

The Director General of Inland Revenue (DGIR) will be empowered to request for taxpayers' bank account information from the financial institutions for purpose of making a garnishee order application.



### Submission of application for relief to the Special Commissioners of Income Tax (SCIT)

Taxpayers will be required to send the request for DGIR to forward the application for relief to SCIT in a prescribed form.



### Failure to Furnish Tax Estimates

Penalty of 10% of the tax payable for a YA will be imposed on LLPs for failure to submit the tax estimates.

### Tax Treatment on Distribution to Unit Trust Holders

Income of non-individual unit holders of retail money market fund (RMMF) will be taxable.



### Withholding tax on distribution of income of unit trust to unit holders other than individuals

Unit holders except individuals receiving income from RMMF will be subject to a withholding tax of 24% with effect from 1 January 2022.



### Definition of Special Purpose Vehicle (SPV)

A SPV is now defined under Paragraph 37 of Schedule 6 of the Malaysian Income Tax Act, 1967 (MITA).



# Highlights of Finance Bill 2021

## Corporate Tax (cont.2)



### Non-application of exemption on interest from sukuk and debentures

Non-resident companies will be taxed in respect of interest paid or credited by a SPV from sukuk or debentures structured under an asset-backed securities (ABS) arrangement where the originator and the non-resident company are from the same group.



### Non-application of exemption on interest from sukuk issued in foreign currency

A person will be taxed in respect of interest paid or credited by an SPV from sukuk issued in foreign currency structured under an ABS arrangement where the originator and the non-resident company are from the same group.

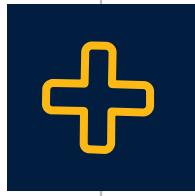
### Review of tax incentive for contract research and development (R&D) companies or R&D companies

Companies in the business of providing R&D services that wish to apply for such tax incentive will be granted R&D status instead of Pioneer status from 1 January 2022 onwards.



# Highlights of Finance Bill 2021

## Individual Tax



### Expansion of Tax Relief on Medical Examination Expenses

Tax relief of up to RM1,000 on medical examination expenses for self, spouse and child will be expanded to include examination costs and consultation services related to mental health as well as COVID-19 detection test.



### Extension of Tax Relief for Domestic Tourism Expenses

Special tax relief of up to RM1,000 on domestic tourism expenses (including domestic tour package) will be extended for expenses incurred until 31 December 2022.

# Highlights of Finance Bill 2021

## Real Property Gains Tax



### Increase of retention sum to be retained

Retention sum for disposal of real properties or shares in real property companies within a period of three (3) years from the date of acquisition by a company or a trustee of a trust or a body of persons registered under any written law in Malaysia will be increased from 3% to 5%.



### Leaving Malaysia without payment of tax

The scope of offence for leaving Malaysia without payment of tax will be expanded to include failure to pay a sum or debt payable and the penalty amount will be increased to a maximum of RM20,000.



### TIN in RPGT transactions

Taxpayers will be required to use TIN assigned by the DGIR in all RPGT transactions with effect from 1 January 2022.

### Expansion of scope for no gain no loss transactions

No gain no loss transactions will be expanded to include the transfer of assets owned by a nominee or a trustee of an individual, the wife of the individual or both to a controlled company.



### Expansion of losses disallowed for deduction

A loss arising from disposal of chargeable assets under Paragraph 34 of Schedule 2 of the RPGT Act 1976 (RPGTA) (transfer of shares to a controlled company) will not be allowed for deduction.



### Clarification on computation of exemption for part disposal of shares

A formula will be used to ascertain the amount of exemption to be given if shares are partly disposed of.



### Revision of chargeable persons under Part II of Schedule 5 of the RPGTA

Part II of Schedule 5 of the RPGTA will be revised to replace societies registered under the Societies Act 1966 with body of persons registered under any written law in Malaysia.



# Highlights of Finance Bill 2021

## Stamp Duty



### Stamp duty refund

Stamp duty refund will only be made when the assessment has become final and conclusive.



### Application of relief for misused stamps

Duty payers will be allowed to apply for relief for misused stamps within 24 months from the date of instrument or date of execution (if the instrument is not dated) effective 1 January 2022.



### Application of relief for spoiled stamps

Duty payers will be allowed to apply for relief for spoiled stamps within 24 months from the date when stamps are spoiled or the date of instrument or the date of execution (if the instrument is not dated) effective 1 January 2022.

### Imposition of processing fee for endorsement of exempt instruments

The DGIR will impose a processing fee of RM10 on instruments/documents which are exempted from stamp duty and brought to the IRB for endorsement, effective 1 January 2022.



### Application for Appeal and Refund

The application for appeal and refund can be done through electronic medium effective 1 January 2022.



### TIN in stamp duty transactions

Duty payers will be required to use TIN assigned by the DGIR in stamp duty transactions effective 1 January 2022.



# Highlights of Finance Bill 2021

## Labuan Business Activity Tax



### **Tax on intellectual property (IP) income of a Labuan Entity**

IP income of Labuan entities that do not meet the substance requirements will be taxed under the ITA.



### **Basis period for Labuan non-trading activity**

The DGIR will be empowered to direct the basis period for a Labuan entity carrying on a Labuan non-trading activity that does not have a basis period.



### **Filing of Return of profits of Labuan non-trading activity**

Labuan entities carrying on a Labuan non-trading activity will be required to file a return of profits in the prescribed form (Form LE1) to the DGIR. Failure to do so is an offence and shall upon conviction be imposed a penalty.

### **Payment of tax for a Labuan entity carrying on Labuan non-trading activity**

Labuan entity carrying on Labuan non-trading activity that does not comply with the substantial activity requirements is required to make payment of tax under the Labuan Business Activity Tax Act 1990 (LBATA).



### **Director's Liability**

A director of a Labuan entity who is a resident will be jointly and severally liable to the Labuan entity tax that is due and payable.





# Details of Proposed Measures, Effective Date and Commentary

Corporate Tax Proposals

## 01

### Tax on income received from outside Malaysia

#### Present

Paragraph 28 of Schedule 6 of the MITA exempts any person, other than a resident company carrying on the business of banking, insurance or sea or air transport, from tax in respect of income derived from sources outside Malaysia and received in Malaysia for the basis year for a year of assessment.

#### Proposed

Paragraph 28 of Schedule 6 of the MITA will be amended whereby the exemption is only applicable to a person who is not a tax resident in Malaysia. Therefore, tax residents in Malaysia will be taxed at the prevailing tax rate on their income derived from foreign sources and received in Malaysia.

As a transitional provision, a new Subsection 6(1)(p) of the MITA will be introduced whereby residents in Malaysia will be taxed at the rate of 3% on their income derived from foreign sources and received in Malaysia from 1 January 2022 to 30 June 2022.

Beginning 1 July 2022, tax residents in Malaysia will be taxed at the prevailing tax rate on their income derived from foreign sources and received in Malaysia.

#### Effective Date

Amendment to Paragraph 28 of Schedule 6 of the MITA - From 1 January 2022.  
Introduction of Subsection 6(1)(p) of the MITA – From 1 January 2022 to 30 June 2022.

## 01

### Tax on income received from outside Malaysia (cont.)

Following the amendment to Paragraph 28 of Schedule 6 of the MITA, tax residents will be taxed on all foreign sourced income received in Malaysia regardless of whether the income is active income (e.g. employment income) or passive income (e.g. interest, dividends, rent, pension income). Nevertheless, income remitted back to Malaysia and subject to Malaysian income tax should be eligible for double tax relief (if the income is received from a resident in a double tax treaty country) or unilateral tax relief (if the income is received from a resident of a non-double tax treaty country).

Proceeds from disposal of foreign investments may include the original capital invested and foreign gains. If these proceeds are remitted to Malaysia, only the foreign gains are subject to Malaysian income tax if the gains are income in nature. Foreign sourced capital gains remitted back to Malaysia will not be subjected to Malaysian income tax. However, the tax resident has to prove that the capital gains are capital in nature and not income in nature.

The law is effective from 1 January 2022. Based on the Finance Bill issued, foreign income made before 1 January 2022 but remitted into Malaysia after 1 January 2022 will be liable to Malaysian income tax. The 3% tax rate during the period from 1 January 2022 to 30 June 2022 will be imposed on the gross income received but double tax relief or unilateral tax relief, as appropriate, should be available.

This amendment to the law may discourage Malaysian tax residents from remitting foreign sourced income back to Malaysia so as to avoid such income becoming taxed.

## 02

### Withholding Tax on Payments Made To Agents etc.

#### Present

Currently, there is no requirement for payers to deduct tax on the payments made to agents, dealers or distributors.

#### Proposed

A new Section 107D of the MITA will be introduced. Under this new Section, a company is required to deduct 2% of withholding tax from the gross payments made to agents, dealers or distributors. The withholding tax is only applicable under the following conditions:

- a. Payments in monetary form arising from sales, transactions or schemes carried out by the agents, dealers or distributors;
- b. Applicable when payments are made to resident individual agents, dealers or distributors who receive more than RM100,000 either in monetary form or otherwise from the same company in the immediately preceding YA; and
- c. The withholding tax should be remitted to the DGIR within 30 days after paying or crediting such payments.

The DGIR will be empowered to impose a penalty of 10% as well as the new consequential amendment of Section 39(1)(s) of the MITA which denies payers to claim the payment as an expense if the withholding tax requirements are not complied with.

#### Effective Date

From 1 January 2022.

#### Commentary

The proposed amendment on the withholding tax requirements will impact companies that engage agents, dealers and distributors such as insurance companies, multi-level marketing companies and stockbrokers. These companies need to consider the withholding tax compliance cost when setting the payment structure to resident agents, dealers and distributors who are individuals and who have received more than RM100,000 in the immediately preceding YA.

## 03

### Tax Identification Number (TIN)

Present

Currently, there is no TIN in Malaysia. Instead, a tax file number is assigned to taxpayers who are assessable and chargeable to tax or required under the MITA to furnish a return.

Proposed

A new Section 66A of the MITA will be introduced. Under the new Section 66A of the MITA, it is proposed that the following persons shall have a TIN:

- a. Any person who is assessable and chargeable to tax;
- b. Any person who is required under ITA to furnish a return; or
- c. Any person who is a citizen and age 18 years old and above.

DGIR shall issue a TIN to any person as he may determine. Any person who has been assigned a reference number on or before 1.1.2022 is deemed to be assigned a TIN, and that reference number shall be the TIN of that person.

Effective Date

1 January 2022.

Commentary

The introduction of TIN would lead to an increase in the number of registered taxpayers in the country. If TIN becomes a requirement to be disclosed in transaction documents (i.e. agreements, invoices, etc.), it would allow the IRB to cross-check transactions and identify potential tax evasion cases. By broadening the tax base through the implementation of TIN, it could reduce the number of tax evasion cases which would lead to an increase in tax collections.

## 04

### Power to call for bank account information for purpose of making a garnishee order application

#### Present

There is no specific provision to empower the DGIR to request for a taxpayer's bank account information from the financial institutions (FI).

This new Section 106A of the MITA will empower the DGIR to request for a taxpayer's bank account information from the FI for the purpose of making a garnishee order application. The FI is prohibited from disclosing to any person that the DGIR has requested for a taxpayer's bank account information from the FI.

Penalty will be imposed on the FI if the FI fails to comply with the DGIR's requests as follows:

Offences	Penalty
Failure to provide the taxpayer's bank account information within the specified time in the DGIR's notice – Section 120 (1)(a) of the MITA	<ul style="list-style-type: none"><li>• Fine of RM200 – RM20,000; or</li><li>• Imprisonment for a term of six (6) months; or</li><li>• Both of the above.</li></ul>
Disclose to any person that the DGIR has requested the taxpayer's bank account information – Section 120 (1)(d) of the MITA	

#### Effective Date

1 January 2022.

#### Commentary

The new proposed Section 106A of the MITA enables the DGIR to access the financial background of a garnishee before a garnishee order is given. Penalties for failure to comply with the IRB's requests under Section 120 of the MITA is intended to ensure the DGIR receives the taxpayer's bank account information on a timely manner and promote confidentiality of the subject matter.



# Details of Proposed Measures, Effective Date and Commentary

Individual Tax Proposals

## 01

### Review of income tax relief for medical treatment expenses for self, spouse and child

#### Present

A resident individual is entitled to claim up to RM8,000 on medical expenses for serious diseases for self, spouse and child, as well as fertility treatments for self and spouse. The claim of tax relief must be evidenced by receipts and certified by medical practitioners registered with the Malaysian Medical Council (MMC). The relief also includes the expenses incurred for a full medical check-up and vaccination expenses for a maximum amount of RM1,000 each.

#### Proposed

The full medical check-up will include examination cost and consultation services related to mental health and Coronavirus Disease 2019 (COVID-19) detection test.

**The examination and consultation for mental health must be from:**

- a) Psychiatrists registered with the Malaysian Medical Council under the Mental Health Act 2001 (Act 615); or
- b) Clinical psychologists registered with the Council of Health Professions Associated Health of Malaysia under the Allied Health Professions Act 2016 (Act 774); or
- c) Counselors registered with the Malaysian Board of Counselors under Counselors Act 1998 (Act 580).

**Coronavirus Disease 2019 (COVID-19) detection test must be evidenced by:**

- a) Receipts issued by a hospital or a medical practitioner registered with the Malaysian Medical Council; or
- b) Receipts of the purchase of Coronavirus Disease 2019 (COVID-19) self-detection test kit.

#### Effective Date

With effect from YA 2022: Mental health examination or consultation.  
With effect from YA 2021: COVID-19 detection test.

#### Commentary

Currently, a deduction of RM8,000 is given for treatment of serious diseases under paragraph 46(1)(g) of the MITA, with relief for complete medical examination expenses of RM1,000 forming part of that deduction. Based on the proposal, the relief for complete medical examination expenses will cover any expenses related to mental health and Coronavirus Disease 2019 (COVID-19) detection test. There is a potential tax saving of up to RM2,400 (RM8,000 relief x the maximum individual tax rate of 30%) for medical expenses incurred for self, spouse and child.

This proposal aims to alleviate the cost of medical treatment faced by most people who are impacted due to the COVID-19 pandemic.



# **Details of Proposed Measures, Effective Date and Commentary**

**Real Property Gains Tax  
Proposals**

## 01

### TIN in RPGT transactions

#### Present

Presently, there is no specific provision in the RPGTA in relation to the use of TIN for RPGT matters.

#### Proposed

Every person will be required to use the TIN number for RPGT matters as assigned by the DGIR under Section 66A of the MITA.

#### Effective Date

1 January 2022.

#### Commentary

The proposed measures will require taxpayers to include TIN in transactions documents (e.g. RPGT returns, sales and purchase agreement, etc.) This will allow the DGIR to cross-check transactions effectively and identify potential tax evasion cases. For example, when an instrument involved in a disposal of property transaction is presented for adjudication by the DGIR, the TIN included in the instrument could potentially be recorded in DGIR systems instantly. The TIN appearing in the instrument will allow the DGIR to cross-check and identify whether the disposer has filed the RPGT return and paid the RPGT for the disposal of the property.

## 02

### Increase of retention sum to be retained by the acquirer

#### Present

An acquirer is required to retain whole of that money or a sum not exceeding 3% of the total value of consideration whichever is the less and he shall within sixty (60) days after the date of such disposal pay that amount to the DGIR.

#### Proposed

The retention sum will be increased to 5% for disposals made within a period of three (3) years from the date of acquisition if the disposer falls under Part II of Schedule 5 of the RPGTA.

#### Effective Date

1 January 2022.

#### Commentary

This proposed measure will result in more upfront taxes being collected by the Government prior to RPGT assessment being issued by the IRB. Furthermore, the acquirer will have additional burden to enquire on the disposer's holding period and retain the correct amount of retention sum to avoid any penalty for short remittance of retention sum to the IRB.

## 03

### Revision of chargeable persons under Part II of Schedule 5 of the RPGTA

Present

Presently, the rates of tax under Part II of Schedule 5 of the RPGTA is applicable to the following chargeable persons:

- i. A company incorporated in Malaysia;
- ii. A trustee of a trust; and
- iii. Societies registered under the Societies Act 1966.

Proposed

Part II of Schedule 5 of the RPGTA will be amended to replace societies registered under the Societies Act 1966 with body of persons registered under any written law in Malaysia.

Effective Date

1 January 2022.

Commentary

This proposed measure will result in expansion of persons liable to RPGT when disposing of real properties moving forward.



# **Details of Proposed Measures, Effective Date and Commentary**

**Stamp Duty Proposals**

## 01

### Tax Identification Number (TIN) in stamp duty transactions

#### Present

Currently, there is no TIN in Malaysia.

#### Proposed

A provision will be introduced in the Stamp Act 1949 to require duty payers to use TIN assigned by the DGIR for all transactions chargeable with stamp duty.

#### Effective Date

1 January 2022.

#### Commentary

The proposed measures will require duty payers to include TIN in transactions documents (e.g. sales and purchase agreements (SPA), memorandum of transfer, transfer forms, etc.) This will allow the DGIR to cross-check transactions effectively and identify potential tax evasion cases. For example, when SPA and Memorandum of Transfer involved in a purchase of property transaction are presented by the duty payer and adjudicated by the DGIR, the TIN included in these documents could potentially be recorded in DGIR systems instantly. The TIN appearing in the relevant documents will allow the DGIR to cross-check and identify whether the duty payer has reported and paid sufficient taxes.

## 02

### Stamp duty refund by the DGIR in the event of an appeal to the High Court

#### Present

Presently, the High Court has rights to order the DGIR to refund the excess stamp duty together with fines and penalties paid by the duty payers due to erroneous assessment by the DGIR. However, the timeline for the refund of the excess stamp duty is not specified in the Stamp Act, 1949.

#### Proposed

The stamp duty refund by the DGIR will only be made when the assessment has become final and conclusive. An assessment will become final and conclusive if:

- no valid notice of appeal has been given under section 39 of the Stamp Act 1949;
- an assessment has been determined on appeal and there is no right of further appeal; or
- the appellant dies before the hearing of the appeal and no personal representative of the estate of the deceased appellant applies to the High Court within two (2) years after his death to proceed with or complete the hearing.

#### Effective Date

1 January 2022.

#### Commentary

The proposed measure provides more clarity on the timeline for the DGIR to refund the excess stamp duty after the assessment is determined by the High Court.

## 03

### Application for Appeal and Refund through electronic medium

#### Present

Presently, duty payers are required to submit an application of appeal or application of refund of stamp duty in writing.

#### Proposed

Duty payers who are dissatisfied with the assessment issued by the DGIR will be allowed to make a notice of objection through electronic medium. Further, the duty payers will also be allowed to apply for stamp duty refund electronically.

#### Effective Date

1 January 2022.

#### Commentary

The proposed measure will ease the administrative process and expedite the process of the application of appeal and refund. It is expected that the current STAMPS system will be updated with the relevant features which allows taxpayers to submit application of appeal and refund online and receives status of applications electronically.



# Details of Proposed Measures, Effective Date and Commentary

Labuan Business Activity Tax  
Act 1990 (LBATA) Proposals

## 01

### Tax on intellectual property (IP) income of a Labuan Entity

#### Present

Currently, any income derived from IP by a Labuan entity carrying on Labuan trading and non-trading activities will be taxable under the MITA.

#### Proposed

Section 2B of the LBATA will be expanded to introduce subsections 2B(1C), 2B(1D) and 2B(1E) whereby any income derived from IP by a Labuan entity that does not comply with the substance requirements will also be taxed under the MITA.

#### Effective Date

From 1 January 2019.

#### Commentary

The proposed amendment would provide confirmation that a Labuan entity that does not comply with the substance requirements which is taxed at 24% under the LBATA would still be required to tax their IP income at 24% under the MITA.

## 02

### Filing of return of profits of Labuan non-trading activity

#### Present

Currently, a Labuan entity carrying on a Labuan non-trading activity is required to file a statutory declaration in the prescribed form (Form LE5) to the DGIR within three (3) months from the commencement of a year of assessment.

#### Proposed

Section 10 of the LBATA will be amended whereby a Labuan entity carrying on a Labuan non-trading activity will be required to file a return of profits in the prescribed form (Form LE1) together with the statutory declaration (Form LE5) to the DGIR within three (3) months from the commencement of a year of assessment.

Paragraph 23(b) of the LBATA will be amended whereby a Labuan entity carrying on a Labuan non-trading activity that fails to file its return of profits shall be guilty of an offence and shall, on conviction, be liable to:

- a fine not exceeding RM1 million; or
- imprisonment not exceeding ten (10) years or
- both.

#### Effective Date

Amendment to Section 10 of the LBATA - From YA 2022.

Amendment to Paragraph 23(b) of the LBATA – From 1 January 2022.

#### Commentary

The proposed amendments would require a Labuan entity carrying on a Labuan non-trading activity to also report its return of profits for each year of assessment to the DGIR.

## 03

### Director's Liability

#### Present

Currently, there is no provision in the LBATA on a Labuan entity's director's liability.

#### Proposed

Section 16A of the LBATA will be introduced whereby a director of a Labuan entity that is a resident shall be jointly and severally liable to the Labuan entity's tax that is due and payable.

#### Effective Date

From 1 January 2022.

#### Commentary

The proposed amendment would align the LBATA with the MITA whereby a company's director (also a resident under the Section 16A of the LBATA) shall be jointly and severally liable to the company's tax that is due and payable.



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conversation



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