

# Tax Chat

## Special Edition Pt.2

### Finance Bill 2019



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# Major highlights of the Finance Bill 2019

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## Removal of additional 5% penalty

The additional 5% penalty imposed in certain situations will be removed.

## No time limit for Director General to raise assessment or additional assessment in consequence of a mutual agreement procedure (MAP)

No restriction of time for the Director General to issue assessment or additional assessment in consequence of a MAP will be introduced.



## Time bar for appeal for extension of time to file Form Q

A time bar period of 7 years to appeal for extension of time to file Form Q will be introduced.

## Revision of Real Property Gains Tax (RPGT) rate

The RPGT rate of 30% imposed on the disposal of real property in Malaysia or shares in a real property company in Malaysia within a period of 5 years by a non-citizen and non-permanent resident will be expanded to include a company not incorporated in Malaysia.

# Corporate Tax Proposals

## Removal of additional 5% penalty

Presently, an additional 5% penalty will be imposed on any tax due and payable after the period of 60 days arising under the following provisions in the Income Tax Act 1967 (ITA 1967):

Nature	Provisions under ITA 1967
Assessment	Sections 77 and 77A
Amended return	Section 77B
Deemed assessment	Subsection 90(3)
Assessment and additional assessment in certain cases	Section 91
Deemed assessment on amended return	Section 91A
Advance assessment	Section 92
Composite assessment	Section 96A
Failure to comply with instalments plan	Subsection 103(7)

It is proposed that the additional 5% penalty arising under the above provisions of the ITA 1967 be removed.

The above proposals are effective from 1 January 2020.

## Amendment to the provision of recovery from persons leaving Malaysia

It is proposed that the Director General may request for a person to be prevented from leaving Malaysia if that person has not paid the increase of tax under subsection 107C(10A) of ITA 1967.

This is effective upon coming into operation of the Finance Act.

# Corporate Tax Proposals

## Proposed changes affecting Small and Medium Enterprises (SME)

The Finance Bill 2019 has provided further clarification on the changes affecting SME. It is proposed that a company or a limited liability partnership (LLP) should fulfill the following conditions in order to qualify to be an SME:

- A company resident and incorporated in Malaysia which has a paid-up capital in respect of ordinary shares of RM2.5 million and less at the beginning of the basis period for a Year of Assessment (YA); or
- A LLP has a total contribution of capital (whether in cash or in kind) of RM2.5 million and less at the beginning of the basis period for a YA; and
- Gross income from a source or sources consisting of a business not exceeding RM50 million for the basis period for that YA (new condition introduced for both companies and LLPs).

In addition, the following amendments were proposed to be made to the relevant sections in the ITA 1967:

### Section 2(9) of the ITA 1967

The redefinition of SME does not affect the current exclusion of business trusts and companies established for the issuance of asset-backed securities as SME.

### Paragraph 2A of the Schedule 1 to the ITA 1967

The preferential tax rate of 17% on the first RM600,000 will only be given to companies which fulfil the definition of an SME.

### Paragraph 2D of the Schedule 1 to the ITA 1967

The preferential tax rate of 17% on the first RM600,000 will only be given to LLPs which fulfil the definition of an SME.

### Paragraph 19A of the Schedule 3 to the ITA 1967

Total special allowances given on small value assets (i.e. value of assets not more than RM2,000) will be limited to RM20,000 per YA if the new condition for SME is not met.

The above is effective from the YA 2020.

# Corporate Tax Proposals

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## **No time limit for Director General to make assessment or additional assessment in consequence of a MAP**

Presently, there is no provision in the ITA 1967 to empower the Director General to raise assessment as a result of a MAP.

It is proposed that a new Subsection 91(7) of the ITA 1967 be introduced to empower the Director General to raise assessment for a YA in respect of a person, at any time, as a result of a MAP in the double taxation arrangement effected under Section 132 of the ITA 1967.

This is effective upon coming into operation of the Finance Act.

## **Time bar for appeal for extension of time to file Form Q**

Presently, the application for extension of time to appeal against an assessment (i.e. filing of Form Q) can be made at any time by filing the Form N to the Director General.

It is proposed that the extension of time to file Form Q be restricted to 7 years after the end of the expiration of the period to make an appeal under Subsection 99(1) of the ITA.

This is effective from the YA 2020 and subsequent YAs.

## **Extension of 10% tax rate for income distributed by Real Estate Investment Trust (REIT) or Property Trust Fund (PTF)**

It is proposed that the period of application of the tax rate of 10% on any income distributed by a REIT or PTF to a unit holder which is an institutional investor or an individual unit holder to be extended for a period of 6 years from the YA 2020.

This has effect from the YA 2020 until the YA 2025.

## **Extension of scope on tax deduction for contribution made to a charity or community project in relation to maintenance of a building designated as a heritage site**

It is proposed that a tax deduction will be given on contribution made to charity or community project in relation to maintenance of a building designated as a heritage site by Commissioner of Heritage under the National Heritage Act 2005 pursuant to subsection 34(6)(k) of the ITA 1967.

The above is effective from the YA 2020.

# Corporate Tax Proposals

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## Amendments and streamlining of tax deduction on approved donations, gifts or contributions for charitable, sports activities and projects of national interest

The Finance Bill 2019 has provided further clarification on the 2020 Budget proposals in relation to certain provisions under Section 44 of the ITA 1967 as follows:

A new Subsection 44(11D) of the ITA 1967 is introduced wherein a deduction equal to any gift of money in the form of *wakaf* or endowment made to any appropriate religious authority, body or public university approved by the Director General will be given subject to the following conditions:

- a) the *wakaf* or endowment is made for the purpose of achieving the objective of establishment of the appropriate religious authority, body or public university;
- b) the appropriate religious authority, body or public university is approved by the Director General; and
- c) the tax deduction is up to 10% of the aggregate income in the relevant year.

Further, it is proposed that in the event the appropriate religious authority, body or public university is aggrieved by the decision of the Director General in respect of an application for approval made under subsection 44(11D) of the ITA 1967, the appropriate religious authority, body or public university will be allowed to appeal to the Minister of Finance within 30 days from the date of the decision by the Director General.

In addition, the term “public university” has been introduced as follows:

*“a higher educational institution having the status of a University established under the Universities and University Colleges Act 1971 [Act 30] and the Universiti Teknologi MARA established under the Universiti Teknologi MARA Act 1976 [Act 173]”*

The above proposals are effective from the YA 2020 and subsequent YAs.

## Income tax exemption for appropriate religious authority or a body or a public university

Presently, no income tax exemption is given on the *wakaf* or endowment received by an appropriate religious authority or a body or a public university.

It is proposed that income tax exemption be given in respect of any *wakaf* or endowment received, including the income derived therefrom, by an appropriate religious authority or a body or a public university approved for the purposes of subsection 44(11D) of the ITA 1967, so long as the approval remains in force.

This is effective from the YA 2020 and subsequent YAs.

# Individual Tax Proposals

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## Amendments on the tax treatment for deferred annuity and private retirement scheme

Presently, no withholding tax at the rate of 8% will be imposed on withdrawal from deferred annuity and private retirement scheme by a person before reaching the age of 55 due to permanent total disablement, serious disease, mental disability, death or permanently leaving Malaysia.

It is proposed that the above position be extended to include withdrawal by a person before reaching the age of 55 for healthcare or housing, for which such withdrawal shall be in compliance with the criteria as set out in the relevant guidelines of the Securities Commission.

This is effective from 1 January 2020.

## Inclusion of conditions to claim the relief for the cost of fertility treatment

The Finance Bill 2019 has proposed that the following conditions should be fulfilled when claiming the relief for the cost of fertility treatment:

- The individual is married;
- The types of fertility treatment include intrauterine insemination or in vitro fertilization treatment or any other fertility treatment; and
- The claim must be evidenced by a receipt and certification issued by a medical practitioner registered with the Malaysian Medical Council that the individual and wife/husband has undergone a fertility treatment.

## Clarification on the condition to claim income tax rebate for departure levy imposed on outbound air passenger performing *umrah* and pilgrimage to holy places

The Finance Bill 2019 provided further clarification that the claim of income tax rebate for departure levy on outbound air passenger in the case of *umrah* must be evidenced by a copy of the visa issued by the embassy of the Kingdom of Saudi Arabia.

# Real Property Gains Tax Proposals

## Revision of RPGT rate and retention sum requirement for a company not incorporated in Malaysia

The Government has proposed the following revisions to the RPGT rates for the disposal of real properties and shares in real property companies within a period of 5 years by a company not incorporated in Malaysia:

Disposal	Current RPGT rates	Proposed RPGT rates
Within 3 years	30%	30%
In the 4th year	20%	30%
In the 5th year	15%	30%
In the 6th and subsequent years	10%	10%

Further, it is proposed that the duty of the acquirer of real properties or shares in real property companies to retain and remit a retention sum made up of the whole of the cash consideration or a sum of 7% of the total value of consideration, whichever is the lower, to the IRB be extended to include the disposal made by a company not incorporated in Malaysia.

The above proposals are effective upon coming into operation of the Finance Act.

## Amendment to Part II, Schedule 5 of RPGT Act 1976

It is proposed that the RPGT rates for a disposal of real properties and shares in real property companies by a company will only be applicable to a company incorporated in Malaysia and be expanded to include a trustee of a trust.

This is effective upon coming into operation of the Finance Act.

# Updates on Labuan Business Activity Tax Act

## Change of effective date

It is proposed that the effective date of the following provisions in the Labuan Business Activity Tax Act 1990 be amended as follows:

	Current	Proposed
Abolishment of election to be taxed at the fixed rate of RM20,000	Effective from 1 January 2019	Effective from YA 2020 onwards
Director General may give direction on the basis period for a YA in cases where a Labuan trading activity does not have a basis period for the YA		

# 2020 Budget Tax Conference



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