BUDGET 2021
"Resilient As One, Together We Triumph"

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On 6 November 2020, the Minister of Finance, YB Senator Tengku Dato' Sri Zafrul Tengku Abdul Aziz delivered the Budget 2021 speech amid an unprecedented virus outbreak which has not only claimed many lives but also crippled the economy locally and globally. With the theme "Resilient As One, Together We Triumph", this largest and expansionary budget in Malaysian history is aimed at helping the country to cope with the economic impact of COVID-19.

As a continuity of the PRIHATIN, PRIHATIN SME PLUS, PENJANA and KITA PRIHATIN stimulus packages, Budget 2021 was formulated based on Three Integral Goals:

- First: Rakyat's Well-Being
- Second: Business Continuity; and
- Third: Economic Resilience.

The three goals are subdivided into various strategies. This article looks at some of the Budget 2021 proposals in the light of these goals.

FIRST GOAL - RAKYAT'S WELL-BEING

Strategy 1: COVID-19 Pandemic and Public Health

This strategy focusses on allocations to the COVID-19 Fund and public health related expenditures. The government allocated additional assistance for the people's well-being, needs of our frontliners and also for the expected procurement of the COVID-19 vaccine. In this respect, a one-off payment of RM500 will be provided to the frontliners from the Ministry of Health. However, the Finance Minister told the Dewan Rakyat in his winding-up speech on the Supply Bill 2021 that the government has agreed to extend this assistance to all frontliners, whereby they will receive a one-off RM300 payment. In addition, the tax relief scope for medical treatment expenses will be expanded to cover vaccination expenses such as pneumococcal, influenza and COVID-19. This tax relief, which is limited to RM1,000 is given on vaccination expenses for the taxpayer, spouse and children. The government will also increase the tax relief limit on medical expenses for self, spouse and child for serious diseases from RM6,000 to RM8,000 and tax relief limit for expenses on full medical check-up from RM500 to RM1,000. In addition, the limit of tax relief on expenses for medical treatment, special needs and parental care is also increased from RM5,000 to RM8,000.

Strategy 2: Safeguarding the Welfare of Vulnerable Groups

Regardless of the current or coming health effects of COVID-19, the pandemic has affected and will likely continue to affect household finances for years to come. The government has introduced several measures to protect the needs of these vulnerable groups namely, the disabled, individuals in the B40 category, fishermen and farmers. More cash assistance in a selective and targeted manner has been introduced to alleviate the cash flow burden of these vulnerable groups. The M40 group who are also affected by pay cuts and jobs lost due to the pandemic, were not left out from Budget 2021. Income tax reduction was given for resident individuals by one percentage point for the chargeable income band of RM50,001 to RM70,000. Although this reduction effectively only translates to a tax saving of RM200, the impact of this tax cut should be looked at together with the other existing tax reliefs. In addition, to assist taxpayers who have lost their jobs due to the current economic condition arising from the COVID-19 pandemic, the income tax exemption limit for compensation for loss of employment is increased from RM10,000 to RM20,000 for each year of completed service. This proposal is effective for years of assessment (YAs) 2020 and 2021.

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Strategy 3: Generating and Retaining Jobs

This strategy is aimed at curtailing the increase in unemployment which had resulted from the slowing of the economy following the COVID-19 pandemic. In order to ensure individuals are able to retain their jobs and also generate new jobs, the government will enhance the existing hiring incentive programme under PERKESO. In order to encourage effective job creation by upgrading basic skilled and low-paying jobs, the scope of tax relief for study fees is expanded to cover expenditures incurred for attending up-skilling and self-enhancement courses. This tax relief which is limited to RM1,000 for each YA is effective for YAs 2021 and

2022. The Wage Subsidy Program which was announced through the stimulus packages is extended for another three (3) months with a more targeted approach specifically for the tourism and retail sector.

Strategy 4: Prioritising the Inclusiveness Agenda

The fourth strategy which prioritises the inclusiveness agenda contained measures in empowering the Bumiputera and extended to upholding Islamic tenets, enhancing the role of women, community-based initiatives, enhancing rural infrastructure as well as youth and sports development. A tax deduction is given for unit holders who endow their units into Amanah Saham Nasional Berhad wakaf funds. With effect from YA 2021, the existing income tax relief for disabled spouse will be increased from RM3,500 to RM5,000. In addition, the lifestyle relief for individual taxpayers is increased from RM2,500 to RM3,000 where the additional RM500 is specifically provided for expenditure related to sports including participating fee for sports competitions. The scope of relief is also expanded to include subscription of electronic newspapers.

Strategy 5: Ensuring the Well-Being of the Rakyat

To emphasise the First Integral Goal of Budget 2021 which is the Rakyat's Well-Being, this strategy focuses on measures to improve the social development and ensure a more prosperous life for the people. The measures are targeted at enhancing digital connectivity, enabling access to quality education, increasing home ownership, improving public transportation and defending the nation's sovereignty and security.

A new tax incentive is introduced for the establishment of Global Trading Centres where such entities will be subjected to income tax at 10% for a period of five (5) years (renewable for a period of another five (5) years). This is effective for applications received by Malaysian Investment Development Authority (MIDA) from 1 January 2021 to 31 December 2022.

SECOND GOAL – BUSINESS CONTINUITY

One aspect of the budget proposals that is certainly welcomed is the initiatives to drive investments to Malaysia. Amid the COVID-19 pandemic, Malaysia remains an attractive investment destination in the ASEAN market due to the well-educated labour force, investor-friendly policies, well-developed Infrastructure as well as the various tax incentives on offer. To ensure business continuity, the government is focused on providing aid to encourage new companies, new investments and new economic opportunities. In this regard, several new tax incentives are introduced, and existing tax incentives are refined further.

i) Tax Incentive for Global Trading Centre

A new tax incentive is introduced for the establishment of Global Trading Centres where such entities will be subjected to income tax at 10% for a period of five (5) years (renewable for a period of another five (5) years). This is effective for applications received by Malaysian Investment Development Authority (MIDA) from 1 January 2021 to 31 December 2022. This measure will attract foreign multinational companies to shift their global trading activities into Malaysia. Further details on this new incentive scheme should be issued early as any delay may not maximise the objective of introducing this incentive.

ii) Review of Tax Incentives for Companies Relocating their Operations to Malaysia and undertaking New Investments

The tax incentives for companies relocating their operations to Malaysia and making new investments which were initially announced under the PENJANA stimulus package will be reviewed. The application period for the tax incentives will be extended for another one year and the scope will be expanded to companies in selected services sectors including companies adapting Industrial Revolution 4.0 and digitalisation technology (for services such as cloud computing, research and development, medical devices testing and etc.). In addition, income tax rate of 0% to 10% for up to ten (10) years is charged for new companies and an income tax rate of 10% for up to ten (10) years is charged for existing companies with new services segment.

iii) Tax Incentives for Companies Manufacturing Pharmaceutical Products Including Vaccines

An income tax rate of 0% up to 10% for the first ten (10) years and income tax rate of 10% for a subsequent period of ten (10) years will be charged on the income to encourage manufacturers of pharmaceutical products including vaccines to invest in Malaysia. This is effective for applications received by MIDA from 7 November 2020 to 31 December 2022.

iv) Enhancement of Existing Tax Incentives

The government will be embarking on a comprehensive study of the existing tax incentive structure to provide a competitive, transparent and more attractive tax incentive framework in Malaysia. In order to provide space for the study to be completed, the existing tax incentives such as tax incentives for maintenance, repair and overhaul activities for the aerospace industry, building and repair of ships, Bionexus status and the economic corridor developments which are due to end this year, will be extended until YA 2022.

THIRD GOAL - ECONOMIC RESILIENCE

The budget is also drafted to guide the nation towards a gradual economic recovery after the impact of the COVID-19 pandemic. In addition, measures were put in place to ensure an inclusive socio-economic development and a more prosperous and dignified society by the year 2030.

A new provision for AIS is included in the Income Tax Act 1967 (ITA). It is defined that the qualifying activities under the AIS include any high technology activity in the manufacturing and services sector and any other activities which would benefit the economy of Malaysia.

FINANCE ACT 2020

The Finance Bill 2020 (the Bill) was released after the first reading in Parliament on 16 November 2020. Subsequently, the Finance Act 2020 was gazetted on 31 December 2020. The amendments made to the Finance Act 2020 but which were not mentioned in the Budget 2020 speech include the following:

1. Approved Incentive Scheme (AIS)

A new provision for AIS is included in the Income Tax Act 1967 (ITA). It is defined that the qualifying activities under the AIS include any high technology activity in the manufacturing and services sector and any other activities which would benefit the economy of Malaysia. In addition, the Inland Revenue Board of Malaysia (IRBM) has indicated in the 2020 National Tax Seminar that the AIS include the following incentives which were announced in the Budget 2021 speech and also under the PENJANA stimulus packages:

i. Global Trading Centre.
ii. Companies relocating to Malaysia.
iii. Companies manufacturing pharmaceutical products.
iv. Principal Hub.

A qualifying person who carries on business in respect of a qualifying activity under the AIS will be granted a concessionary tax rate to be prescribed by the Minister of Finance of not more than 20%. This is effective from YA 2021.

2. Tax Rebate for Small and Medium Enterprises (SMEs) and Limited Liability Partnerships (LLPs)

The PENJANA stimulus package had previously announced an income tax rebate for SMEs. The tax rebate is extended to LLPs as well. The threshold for the amount of tax rebate that can be deducted against the tax liability of the company or LLP is equivalent to the operating or capital expenditure which it has incurred but limited up to RM20,000 for each YA, for a period of three (3) consecutive years from the YA of commencement of operations. The above is effective from YA 2021.

3. Review of Research and Development (R&D) Expenditure

The following incentives would be granted to a person resident in Malaysia only:

a) a tax deduction for R&D expenditure incurred in relation to its business;
b) a double deduction on cash contributions made to an approved research institute or payment for the use of the services of an approved research institute, approved research company, R&D company or a contract R&D company; or
c) a double deduction in respect of expenditure incurred on approved in-house R&D activities.

Additionally, only a single deduction would be given if the R&D expenditure incurred outside Malaysia in the basis period for a YA exceeds 30% of the total R&D expenditure incurred.

The above is effective on the coming into operation of the Finance Act 2020.

4. Group Relief

Amendment has been made to the group relief provision to clarify that a surrendering company and claimant company will only be considered as related companies for the purpose of claiming group relief if the indirect shareholdings of at least 70% are held through the medium of a company resident and incorporated in Malaysia. This is effective from YA 2021.

5. Definition of Plant

The word "plant" is defined for ITA purposes as "an apparatus used by a person for carrying on his business, but does not include a building, an intangible asset or any asset used and that functions as a place within which a business is carried on". This is effective from YA 2021.

6. Labuan Tax

The main amendment made to the Labuan Business Activity Tax Act 1990 (LBATA) is on the definition of "chargeable profits". "Chargeable profit" is defined as the net profit reflected in the audited accounts, in line with the charging section for a Labuan trading activity. The amendment is effective from YA 2020. With this change in the law, it is worth considering whether it will be more tax effective for a Labuan entity to be taxed under the LBATA or to elect to be taxed under the ITA.

7. Transfer Pricing

i. Failure to furnish contemporaneous transfer pricing documentation

Currently, there is no specific provision in the ITA that penalises a taxpayer who fails to furnish contemporaneous transfer pricing documentation on time, usually within 30 days from the written request from the IRBM. The following penalties as in the **Table 1** below is imposed for failure to furnish transfer pricing documentation to the IRBM on time:

The above is effective from 1 January 2021.

ii. Power to disregard structures adopted in a controlled transaction

The Director General of Inland Revenue (DGIR) is empowered to disregard any structure adopted by a taxpayer and to make adjustments to the structure of the transaction as he thinks fit to reflect the structure that would have been adopted by an independent party dealing at arm’s length having regard to the economic and commercial reality. This comes into operation on 1 January 2021.

iii. Surcharge on transfer pricing adjustment

A “surcharge” of up to 5% of the total transfer pricing adjustment is imposed whether or not the adjustment results in additional tax payable. This would suggest that transfer pricing adjustments made during a tax audit by the IRBM will not be sheltered by any tax incentives, unutilised allowances or business losses. This is effective from 1 January 2021.

8. Tax Payable Notwithstanding Any Institution of Proceedings Under Any Other Written Law

Currently, a taxpayer may appeal to the SCIT against an assessment made by the Director General. In this case, taxes are due and payable regardless whether the taxpayer appeals against the assessment. However, in cases where the taxpayer applies to the court for a judicial review, the courts may grant a stay order over the payment of taxes. With this amendment in the ITA, any proceedings against the government or the Director General by a taxpayer shall not relieve the taxpayer from the payment of any income tax, petroleum income tax, tax under LBATA or real property gains tax. The above comes into effect on 1 January 2021.

CONCLUSION

In summary, Budget 2021 was drafted to address the immediate needs of the economic environment to weather the unprecedented COVID-19 situation. A number of the amendments in relation to the tax incentives are crucial in boosting the economy and ensuring business continuity. In this respect, it is hoped that the enabling Orders will be issued early as any delay may complicate taxpayers’ investment decisions.

Table 1

	PROPOSED PENALTY
On conviction	• Fine of RM20,000 to RM100,000 or imprisonment up to six months or to both; and • Court may order the taxpayer to furnish the transfer pricing documentation within 30 days or any period decided by the Court.
If no prosecution is instituted	• Penalty of RM20,000 to RM100,000. • Taxpayer may appeal to the Special Commissioners of Income Tax against any order of penalty.

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The views expressed here are the writers’ personal views.