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Crowe Chat (Special Budget Edition)

Highlights of Finance Bill 2020 – Part 2

16 November 2020

Content



This Crowe Chat (Special Budget Edition) Part 2 is prepared based on the Finance Bill 2020. This Part 2 discusses the proposed changes mentioned in the Finance Bill 2020 which were not covered in our Crowe Chat (Special Budget Edition) Part 1.

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01: Highlights at a Glance – Corporate Tax



R&D expenditure

Introduction of additional conditions for tax deductions on research and development expenditure.



Group relief

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Labuan entities

Restriction on tax deductions for payments of allowable expenditure applies to all Labuan entities.

REITs
Withholding tax on distribution of Real Estate Investment Trust (REIT) income will be deemed as a final tax.



Transfer pricing documentation

Introduction of penalties for failure to furnish contemporaneous transfer pricing documentation.



Structure for TP and surcharge

The DGIR is empowered to disregard and make adjustments to the structure of a transaction and impose a surcharge of not more than 5% on the total transfer pricing adjustments.

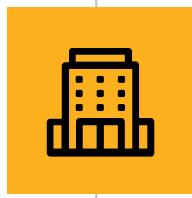


Remit surcharge

The Director General of Inland Revenue (DGIR) is empowered to remit surcharge imposed.



01: Highlights at a Glance – Corporate Tax



Tax rebate of RM20,000

Tax rebates equivalent to the operating expenditure or capital expenditure, capped at RM20,000 per year of assessment (YA) will be given to companies and LLPs for three (3) consecutive YAs, effective from YA 2021.



LLP tax returns

LLPs are required to submit Income Tax Return Form (ITRF) electronically effective YA 2021.



Taxpayers to settle tax first

Taxpayers are required to settle the tax payable raised under any assessment within the statutory deadline, notwithstanding the institution of any proceedings under any written law.

Electronic notification

The DGIR is allowed to issue an electronic notification to the Commissioner of Police or Director of Immigration Department for the purpose of recovery of tax due from a person leaving Malaysia.



Plant

The word “plant” is now defined in the schedule on capital allowances and charges.



Remit penalty

The DGIR is no longer allowed to remit the whole or part of the penalty arising from the self amended return whilst taxpayers are allowed to make a plea to the Court under a civil proceedings for recovery of tax due arising from the self amended return.

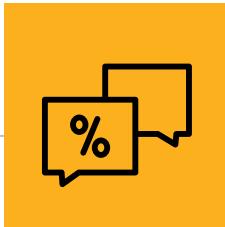


Consequential amendments

Consequential amendments are made to align the Income Tax Act, 1967 (ITA) and the Companies Act, 2016.



01: Highlights at a Glance – Individual Tax



Notification by employer

The notifications for employer's tax obligations must be made within 30 days to the Inland Revenue Board of Malaysia (IRBM). This includes death cases, whereby the employer is required to notify the IRBM within 30 days after being informed of the death.



Lifestyle relief

The lifestyle relief is reviewed to include a one-off special relief of up to RM2,500 for the purchase of computer, smartphone or tablet from 1 June 2020 to 31 December 2020 whilst the existing lifestyle relief is increased from RM2,500 to RM3,000.

01: Highlights at a Glance – Real Property Gains Tax



Remit sum imposed

The DGIR is empowered to remit all or part of any sum imposed on any person due to failure to retain and remit part of consideration.



7% retention sum

An executor of the estate of a deceased person who is not a citizen and not a permanent resident is subject to 7% retention sum.



Electronic notification

The DGIR is allowed to issue an electronic notification to the Commissioner of Police or Director of Immigration Department for the purpose of recovery of RPGT due from a person leaving Malaysia.

Taxpayers to pay first

Taxpayers are required to settle the tax payable raised under any assessment within the statutory deadline, notwithstanding the institution of any proceedings under any written law.



Furnishing of RPGT returns electronically

Tax agents, advocates and solicitors are authorised to furnish the RPGT returns on behalf of taxpayers via electronic medium.



Societies

Societies registered under the Societies Act, 1966 are subjected to the same RPGT rates as companies.



01: Highlights at a Glance – Stamp Duty



Duly stamped instruments

The definition of “duly stamped” instruments is expanded to include an instrument which is stamped by means of digital stamping.



Impressed stamp and digital stamping

Impressed stamp and digital stamping are now legislated as additional modes of payment of stamp duty.



Duplicates and counterparts

Digital stamping on duplicates or counterparts of an instrument is accepted as a means to deem that duplicates and counterparts have been duly stamped.

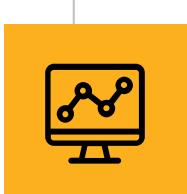
Penalties denoted on instruments

Any payment of penalties can be denoted on instruments by way of digital stamping and shall be certified by the DGIR.



Recovery of stamp duties

The DGIR and the employees of the IRBM authorised by the DGIR are empowered to recover the stamp duties due to the Government.



01: Highlights at a Glance – Stamp Duty



Electronic notification

The DGIR is allowed to issue an electronic notification to the Commissioner of Police or Director of Immigration Department for the purpose of recovery of duties, penalties or other sums due from person leaving Malaysia.



Power of Minister

The Minister is empowered to exempt, reduce or remit duties in relation to any instruments, or all instruments in relation to any schemes, which would be chargeable or charged with stamp duty.



Power of DGIR

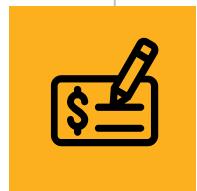
The DGIR is empowered to remit stamp duties, wholly or partly, on grounds of poverty.

Adjudication fees
The provision of the Stamp Act 1949 has been amended to reflect the current stamping practice of no longer imposing adjudication fees.



Means of digital stamping

The Minister is empowered to prescribe the means of digital stamping for the payment of stamp duty and to provide for the matters relating to the issuance and validity of digital stamping.



01: Highlights at a Glance – Labuan Business Activity Tax



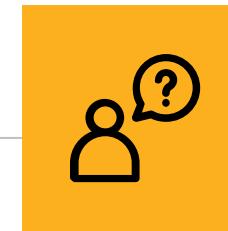
Business activity
The Labuan business activity definition is expanded to provide clarity on the substance requirements between a Labuan entity carrying on a Labuan trading activity and a Labuan non-trading activity.



Chargeable profits
The definition of chargeable profits of a Labuan entity is introduced to facilitate the preparation of its tax return.

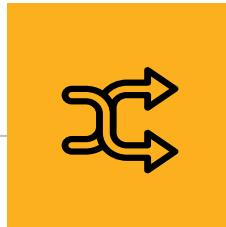


Extension of time
The DGIR is empowered to allow an extension of time to Labuan entities to make an irrevocable election to be taxed under the ITA.

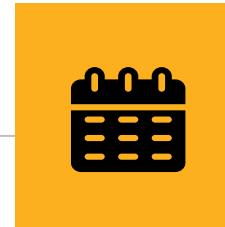


Appeal
A Labuan entity may appeal against a notice of additional assessment raised.

01: Highlights at a Glance – Labuan Business Activity Tax



Settlement of tax
Taxpayers are required to settle the tax payable at the time of furnishing of tax returns to the IRBM.



Legal proceedings
Taxpayers are required to settle the tax payable raised under any assessment within the statutory deadline, notwithstanding the institution of any proceedings under any written law.



Confidential information
A minimum fine of RM20,000 will be imposed on a person that contravenes the treatment of confidential information received for the purpose of the LBATA as well as the restriction on the usage of such information.



Compound offences
The DGIR is empowered to compound offences with regards to Country-by-Country Reporting (CbCR) and Common Reporting Standards (CRS) compliances.

Details of Proposed Measures, Effective Date and Commentary

Corporate
Tax
Proposals

Details of Proposed Measures, Effective Date and Commentary

1. Introduction of additional conditions for tax deductions on research and development expenditure

Present	Presently, research and development expenditure incurred by a person is allowed for either a single deduction or a double deduction under the following sections of the ITA: i. Section 34(7) – single deduction; ii. Section 34A – double deduction; iii. Section 34B – double deduction.
Proposed	It is proposed that additional conditions be introduced for tax deductions on research and development expenditure as follows: i. For the purposes of Section 34(7) and Section 34B(1) of the ITA, the person claiming the deduction must be a resident in Malaysia; ii. For the purposes of Section 34A(4) of the ITA, if the research and development expenditure incurred outside Malaysia is more than 30% of the total research and development expenditure, the research and development expenditure will be given a single deduction instead of a double deduction; and iii. For the purposes of Section 34A(4A) of the ITA, the pioneer company must be a resident in Malaysia in order to enjoy the deduction on research and development expenditure in the basis period immediately after the pioneer status incentive has lapsed.
Effective Date	Upon coming into operation of the Finance Act.
Commentary	The introduction of the additional conditions would confine the claiming of tax deductions on research and development expenditure to persons who are tax residents in Malaysia.

Details of Proposed Measures, Effective Date and Commentary

2. Redefinition of “related companies” for the purpose of claiming group relief

Present	A surrendering company and a claimant company are considered as related companies if at least seventy per cent (70%) of the paid-up capital in respect of ordinary shares of the surrendering company and the claimant company are directly or indirectly owned by another company resident and incorporated in Malaysia.
Proposed	It is proposed that the surrendering company and the claimant company will only be considered as related companies for the purposes of claiming group relief if the indirect shareholdings of at least seventy per cent (70%) are held through the medium of a company resident and incorporated in Malaysia.
Effective Date	From YA 2022.
Commentary	The group relief provisions have been tightened over the years. The latest amendment will restrict the availability of group relief if either the surrendering or claimant companies are held by offshore companies and not held directly by Malaysian resident companies. Hence, it is important for companies to undertake a proper corporate structuring study in order to claim the group relief in the future.

Details of Proposed Measures, Effective Date and Commentary

3. Restriction on tax deductions for payments of allowable expenditure applies to all Labuan entities

Present	A Malaysian resident company who transacts with a Labuan entity is entitled for tax deductions on expenditure incurred but such deductions are generally restricted to three per cent (3%) of the expenditure incurred. However, this is only applicable for transactions with a Labuan entity that complies with the substance requirements.
Proposed	It is proposed that the restriction on tax deductions of the allowable expenditure be applied to all Labuan entities.
Effective Date	1 January 2021.
Commentary	<p>This proposed amendment will make the restriction on tax deductions of allowable expenditure to be applied consistently across all Labuan entities regardless of whether the Labuan entities meet the substance requirements or not.</p> <p>Hence, if the amount transacted by the Malaysian resident company with the Labuan entity is RM1,000, the Malaysian resident company may deduct 3% of the expenditure incurred but the Labuan entity will be taxed on 100% of the income received from the Malaysian resident company.</p>

Details of Proposed Measures, Effective Date and Commentary

4. Withholding tax on distribution of REIT income will be deemed as a final tax

Present	<p>Currently, the distribution of income to its unit holders (except for resident companies) made by a REIT which is listed on Bursa Malaysia and has been exempted from tax [i.e. ninety per cent (90%) or more of its total income is distributed to its unit holders] is subject to the relevant withholding tax rates:</p> <table><thead><tr><th>Unit holder</th><th>Withholding tax rate</th></tr></thead><tbody><tr><td>Other than a resident company (i.e. resident individuals, non-resident individuals and others excluding resident companies)</td><td>10%</td></tr><tr><td>Non-resident company</td><td>24%</td></tr><tr><td>Foreign investment institution</td><td>10%</td></tr></tbody></table> <p>The above withholding tax is treated as a final tax for the unit holders as stated in item 4.6 of the Public Ruling No. 9/2018 issued by the IRBM (i.e. Taxation of Unit Holders of Real Estate Investment Trust / Property Trust Funds) on 12 October 2018.</p> <p>However, the existing provisions in the ITA do not reflect the IRBM's practice as mentioned in Public Ruling No. 9/2018.</p>	Unit holder	Withholding tax rate	Other than a resident company (i.e. resident individuals, non-resident individuals and others excluding resident companies)	10%	Non-resident company	24%	Foreign investment institution	10%
Unit holder	Withholding tax rate								
Other than a resident company (i.e. resident individuals, non-resident individuals and others excluding resident companies)	10%								
Non-resident company	24%								
Foreign investment institution	10%								
Proposed	It is proposed that the above withholding tax on distribution of REIT income to the unit holders be treated as a final tax.								
Effective Date	From YA 2021.								
Commentary	The proposed amendment is to align the treatment in the Public Ruling No. 9/2018 as well as to provide the potential REIT investors a better clarity on withholding tax treatment and in turn encourages potential investors to invest in REITs.								

Details of Proposed Measures, Effective Date and Commentary

5. Introduction of penalties for failure to furnish a contemporaneous transfer pricing documentation (TPD)

Present	Presently, no penalty provision for taxpayers who fail to furnish a TPD is legislated in the ITA. Instead, the IRBM provides for such penalties under the Transfer Pricing Audit Framework 2019.
Proposed	<p>It is proposed that a new Section 113B of the ITA be introduced. Under the new Section 113B of the ITA, any person who defaults in furnishing a contemporaneous TPD in respect of any YA shall be liable to the following:</p> <ul style="list-style-type: none">a. a fine of not less than RM20,000 and not more than RM100,000; orb. imprisonment for a term not exceeding six (6) months; orc. to both. <p>Furthermore, the new proposed section also empowers the DGIR to impose a penalty of not less than RM20,000 and not more than RM100,000 if no prosecution is instituted against the taxpayers who fail to furnish a TPD. The taxpayers are allowed to appeal on such decision by filing an appeal with the Special Commissioners of Income Tax (SCIT) but the burden of proof of furnishing a contemporaneous TPD rests with the taxpayers.</p>
Effective Date	1 January 2021.
Commentary	<p>The introduction of a specific provision to empower the DGIR to impose a penalty for failure to furnish a contemporaneous TPD represents a move towards mandatory preparation of TPD. Failure to ensure that a contemporaneous TPD is readily available to be furnished to the IRBM may result in the taxpayers committing an offence with penalties being imposed.</p> <p>When read together with the prevailing Rule 3 of the Income Tax (Transfer Pricing) Rules 2012, the new proposed Section 113B of the ITA provides further enhancement of the current transfer pricing legislation and is a clear indication of the IRBM's expectation for taxpayers engaging in controlled transactions to prepare an up to date TPD for each YA.</p>

Details of Proposed Measures, Effective Date and Commentary

6. The DGIR is empowered to disregard and make adjustments to the structure of a transaction and impose a surcharge on the total transfer pricing adjustments

Present	Presently, the DGIR is not empowered to disregard structure undertaken between associated persons. Further, the IRBM is not empowered to impose any penalty due to transfer pricing adjustments if there are no additional taxes payable by the taxpayers.
Proposed	<p>It is proposed that Section 140A of the ITA be amended whereby the following provisions will be introduced:</p> <p>The DGIR will be empowered to disregard any structure adopted if:</p> <ul style="list-style-type: none">a. the economic substance of that transaction differs from its form; orb. the commercial reality of that transaction differs from the arrangement which would have been adopted by an independent party. <p>In addition, the DGIR will be allowed to make adjustments to the structure of that transaction as he thinks fit to reflect the structure that would have been adopted by the independent party dealing at arm's length. Furthermore, the DGIR may impose a surcharge of not more than 5% of the total transfer pricing adjustments regardless of any resulting additional taxes payable by the taxpayers. Any surcharge imposed shall be treated as a tax payable by the taxpayers only for the purposes of Sections 103 to 106 of the ITA i.e. for the collection and recovery of tax, and would not be treated as a tax payable under any other provision within the ITA.</p>
Effective Date	1 January 2021.

Details of Proposed Measures, Effective Date and Commentary

6. The DGIR is empowered to disregard and make adjustments to the structure of a transaction and impose a surcharge on the total transfer pricing adjustments (cont'd)

Commentary

Taxpayers should be aware that the DGIR's powers to reconstruct transactions have been established under the proposed sections and the DGIR may use his discretion under Section 140A(3B) of the ITA to make adjustments to recharacterize the transaction as he thinks fit. Further, the imposition of surcharge will affect many companies especially non-taxable entities that are enjoying tax incentives, suffering losses, etc. as the surcharge is imposed on the total transfer pricing adjustment instead of the tax undercharged.

For example, an amount of RM100,000 of TP adjustments made by the IRBM during the TP audit on a taxpayer will result in a surcharge of RM5,000 (RM100,000 x 5%) payable by the taxpayer regardless of whether the taxpayer is in a taxable or non-taxable position.

This underscores the need for taxpayers to actively review their controlled transactions to ensure that such transactions have an economic substance that aligns to the form of the transaction and supported by transfer pricing analyses to show conformance to the arm's length principle.

Details of Proposed Measures, Effective Date and Commentary

7. The Director General of Inland Revenue (DGIR) is empowered to remit surcharge imposed

Present	Presently, the DGIR has the power to compound an offence and order the taxpayer who has committed any offence under the Act to pay the penalty, not exceeding the amount of the maximum fine and any special penalty. The DGIR is allowed to abate or remit any penalty imposed under this Act except a penalty imposed on conviction.
Proposed	It is proposed that the DGIR is empowered to remit surcharge imposed.
Effective Date	1 January 2021.
Commentary	The new proposed amendment empowers the DGIR to remit a surcharge arising from transfer pricing adjustments. This is to reflect the changes under Section 140A(3C) of the ITA whereby surcharge can be imposed on transfer pricing adjustments.

Details of Proposed Measures, Effective Date and Commentary

8. Tax rebates for company and limited liability partnership

Present	<p>The Government announced the introduction of tax rebates for newly established companies / LLPs under the PENJANA economic stimulus packages. However, the Government did not provide further details on the mechanism and workings of the tax rebates then.</p>
Proposed	<p>It is proposed that a new Section 6D of the ITA be introduced to provide the relevant details and conditions in relation to the tax rebates for companies / LLPs. Based on the new subsection, a tax rebate equivalent to the amount of operating expenditure or capital expenditure incurred, subject to a maximum amount of RM20,000 per YA will be given to the companies / LLPs which fulfill the following conditions:</p> <ul style="list-style-type: none">a) The Company / LLP is a resident in Malaysia;b) The Company / LLP is incorporated or registered in Malaysia;c) The paid up capital in respect of the ordinary shares / contribution of capital of not exceeding RM2.5 million at the beginning of the basis period for a YA;d) The gross income from source or sources consisting of a business not exceeding RM50 million for the basis period for a YA; ande) The Company / LLP commenced its operations on or after 1 July 2020 but not later than 31 December 2021. <p>The abovementioned tax rebate will be given to companies / LLPs for a period of three (3) consecutive YAs. If the total tax rebates exceed the income tax charged for the relevant YA, such excess amount would be disregarded. Additionally, if any of abovementioned conditions are not fulfilled by the companies / LLPs in any particular YA within the three (3) years period, the tax rebate will be withdrawn in the relevant YA in which the failure to comply with the conditions occurs and in the subsequent YAs.</p>
Effective Date	From YA 2021.

Details of Proposed Measures, Effective Date and Commentary

8. Tax rebates for company and limited liability partnership (cont'd)

Commentary	<p>The introduction of Section 6D in the ITA provides more clarity on the conditions in relation to the tax rebates. It should be noted that the rebate is a setoff against the tax payable and not a deduction against the gross income of the companies / LLPs. An additional point to take note is that newly established companies and LLPs should ensure that all conditions are fulfilled throughout the three (3) years period in order to avoid withdrawal of the tax rebate. Moreover, proper documents should be in place to support the tax rebate claims, as the amount of tax rebate will be given on an amount equivalent to the operating expenditure or capital expenditure incurred (capped at RM20,000 per YA) by companies or LLPs.</p>
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Details of Proposed Measures, Effective Date and Commentary

9. Limited Liability Partnerships (LLPs) are required to submit Income Tax Return Form (ITRF) electronically effective year of assessment (YA) 2021

Present	<p>Currently, LLPs are encouraged to use e-filing for the submission of their ITRF. LLPs that wish to file their ITRF manually are required to download the relevant form (i.e. Form PT) from the IRBM's website. LLPs are required to file the ITRF within seven (7) months from the end of their accounting period.</p> <p>Hence, submissions of ITRF for LLPs can be submitted manually or electronically (i.e. via e-filing).</p>
Proposed	It is mandatory for LLPs to submit ITRF electronically (i.e. e-filing).
Effective Date	From YA 2021.
Commentary	Submissions of ITRF electronically for LLPs are in line with the current ITRF filing for companies (i.e. Section 77A of the ITA). This may be a welcome proposal as submissions made electronically may reduce human errors in the return form and may speed up on the tax refund process for tax overpayment cases.

Details of Proposed Measures, Effective Date and Commentary

10. Taxpayers are required to settle the tax payable raised under any assessment within the statutory deadline, notwithstanding the institution of any proceedings under any written law

Present	Presently, taxpayers are allowed to apply to the High Court for a stay of proceedings on enforcement of the payment of additional taxes and penalties payable raised under any assessment by the IRBM. There are a number of cases where taxpayers have been successful to stay collection procedures by the IRBM (e.g. Tenaga Nasional Berhad). In each of the cases, the taxpayers are able to prove that the IRBM did not have valid grounds in raising the assessments.
Proposed	It is proposed that a provision be made in the ITA whereby the institution of any proceedings under any written law against the government or the DGIR by a person shall not relieve that person from the liability for the payment of any tax or any debt or other sum for which that person is or may be liable to pay.
Effective Date	1 January 2021.
Commentary	<p>The proposed amendment would remove the possibility for taxpayers to apply to the High Court for a stay order for the payment of additional taxes. Under such circumstances, taxpayers are required to pay the additional taxes and penalties payable first while waiting for their cases to be heard in court which could take place many years later depending on the court's availability to hear the matter. This could result in significant cash flow issues for the taxpayers. In cases where the additional taxes and penalties raised in the additional assessments are substantial, this may cause financial hardship to taxpayers.</p> <p>This statutory power must be exercised with care as the eagerness of the IRBM wanting to collect outstanding taxes raised in the additional assessments may result in a situation where taxpayers may be instituted with bankruptcy or winding up proceedings even before the actual merits of the tax cases are being heard at the court.</p>

Details of Proposed Measures, Effective Date and Commentary

11. The DGIR is allowed to issue an electronic notification to the Commissioner of Police or Director of Immigration Department for the purpose of recovery of tax due from a person leaving Malaysia	
Present	The current provision is silent on the medium of notification of the certificate containing particulars of tax due by taxpayers from the DGIR to the Commissioner of Police or Director of Immigration Department to impose travel restrictions on a person leaving Malaysia.
Proposed	It is proposed that the DGIR is allowed to issue the said certificate to the Commissioner of Police and Director of Immigration Department through an electronic medium or by way of electronic transmission.
Effective Date	1 January 2021.
Commentary	The proposed amendment is likely to speed up the process in restricting any person who has outstanding taxes due to the IRBM from leaving Malaysia.

Details of Proposed Measures, Effective Date and Commentary

12. The word “plant” is now defined in the schedule on capital allowances and charges

Present	Presently, the word “plant” is not defined in Schedule 3 of the ITA. Hence, guidance on what constitutes a “plant” is sought from case laws.
Proposed	<p>It is proposed that the following definition of the word “plant” is introduced under Paragraph 70A of Schedule 3 of the ITA:</p> <p><i>“Plant” means 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.</i></p>
Effective Date	From YA 2021.
Commentary	<p>The introduction of the definition of the word “plant” is a welcome move as taxpayers are finding it difficult to determine the eligibility to claim capital allowances for certain uncommon assets acquired for business use. Now, taxpayers will have further clarity on what constitutes a “plant” for capital allowances purposes. Hence, it will be easier for taxpayers to determine the eligibility of claiming capital allowances on certain assets.</p> <p>In addition, the definition is also similar to the definition of “plant and machinery” stated in the Public Ruling 12/2014 - Qualifying Plant and Machinery For Claiming Capital Allowances issued by the Inland Revenue Board on 31 December 2014.</p> <p>The amendment may exclude all intangible assets including software which is the common driver of productivity in present times. As such, the amendment does not accord with the government’s objective of spurring the adoption of IT to foster productivity. The amendment may also hamper the government’s initiatives to spearhead the Fourth Industrial Revolution (IR4.0). In IR4.0, intangible assets including software are the engine to drive the new economy.</p>

Details of Proposed Measures, Effective Date and Commentary

13. The DGIR is no longer allowed to remit the whole or part of the penalty arising from the self amended return whilst taxpayers are allowed to make a plea to the Court under a civil proceedings for recovery of tax due arising from the self amended return

Present	<p>Taxpayers are allowed to submit an amended tax return (i.e. self amended return) within a period of six (6) months from the submission of the tax return. There will be a ten per cent (10%) penalty being imposed on the any additional tax arising from the self amended return.</p> <p>Currently, the DGIR may at his discretion for any good cause shown, remit the whole or any part of the penalty to the taxpayers.</p> <p>In addition, the taxpayers are not allowed to make any plea to the Court under a civil proceedings for recovery of tax due arising from the self amended return.</p>
Proposed	<p>It is proposed that the DGIR will no longer be allowed to remit the whole or part of the 10% penalty imposed on the taxpayers for self amended returns. In addition, taxpayers will be allowed to make a plea to the Court under a civil proceedings for recovery of tax due arising from the self amended return.</p>
Effective Date	1 January 2020.
Commentary	<p>The proposed amendments would mean that the taxpayers can no longer appeal to the DGIR to remit the ten per cent (10%) penalty for the self amended return. However, the taxpayers will be allowed to make a plea to the Court under a civil proceedings for recovery of tax due arising from the self amended return. This could result in additional legal costs for taxpayers and may prevent the taxpayers from challenging the DGIR if the legal costs outweigh the tax benefits.</p>

Details of Proposed Measures, Effective Date and Commentary

14. Amendments to the provisions of the ITA for the purpose of aligning with the Companies Act 2016

Present	<p>Currently, unabsorbed business losses and capital allowances are allowed to be carried forward for a period of seven (7) consecutive YAs. In addition, dormant companies are required to carry out substantial shareholders continuity test to determine the eligibility to continue to carry forward business losses. The relevant extracts of the current provisions of the ITA are as follows:</p> <ul style="list-style-type: none">• <u>Subsection 44(5B)(ii) of the ITA on carry forward of unutilized tax losses to future years</u> <i>“more than fifty per cent of the nominal value of the allotted shares in respect of ordinary shares in the company are held by or on behalf of the same persons”</i>• <u>Subsection 44(5C)(a) of the ITA on carry forward of unutilized tax losses to future years</u> <i>“a fixed amount or at a fixed rate per cent of the nominal value of the shares”</i>• <u>Paragraph 75B(ii) of Schedule 3 of the ITA on carry forward of unabsorbed capital allowances to future years</u> <i>“more than fifty per cent of the nominal value of the allotted shares in respect of ordinary shares in the company are held by or on behalf of the same person”</i>
Proposed	<p>It is proposed that the word “nominal” in each of the provisions stated above be removed.</p>
Effective Date	1 January 2021.
Commentary	<p>The Companies Act 2016 introduced the no par value regime whereby the share capital will be issued without a par or nominal value. The proposed amendments are mainly to align the provisions in the ITA with the Companies Act 2016 in relation to the applicable value of shares of a company.</p>

Details of Proposed Measures, Effective Date and Commentary

Individual
Tax
Proposals

Details of Proposed Measures, Effective Date and Commentary

1. Notifications from Employers – Subsection 83(2),(3) and (4) of the ITA

Present	Presently, an employer is required to give a notice of any new employment, termination and leaver cases to the IRBM within one (1) month from the date of new employment, termination and departure.
Proposed	It is proposed that employers are required to give notice of a new commencement of employment in the prescribed form not later than 30 days to the IRBM. Further, employers are also required to notify the IRBM on any death of his employee not more than 30 days after being informed of the death of his employee.
Effective Date	1 January 2021.
Commentary	<p>The IRBM has taken the initiative to tighten the submission of the IRBM prescribed forms by the employers and there is a high possibility for the IRBM to enforce the audit of employers to be more effective from 1 January 2021.</p> <p>The standardisation of the due date from “one month” to “30 days” is a welcome move since there are many uneven odd-day months in a year. Besides, the IRBM is looking at the proper closure of individual taxpayers’ tax accounts (including deceased) through the issuance of the tax clearance letters.</p>

Details of Proposed Measures, Effective Date and Commentary

2. Review of the lifestyle relief

Present	<p>Presently, an individual taxpayer is eligible for tax relief of up to RM2,500 for expenses incurred in respect of the following:-</p> <ul style="list-style-type: none">i. purchase of books / journals / magazines / printed newspapers / other similar publications (not banned reading materials);ii. purchase of personal computer, smartphone or tablet (not for business use);iii. purchase of sports equipment for sports activity defined under the Sports Development Act 1997 and payment of gym membership; andiv. payment of monthly bill for internet subscription.
Proposed	<p>It is proposed that:</p> <ul style="list-style-type: none">i. A special income tax relief of up to RM2,500 will be given to individuals for the purchase of personal computer, smartphone or tablet (not being used for the purposes of his own business) from 1 June 2020 to 31 December 2020;ii. The limit for the existing lifestyle tax relief be increased from RM2,500 to RM3,000 where up to RM500 is specifically provided for expenses incurred relating to sports including entry/rental fees for sports facilities and entrance fees in sports competitions; andiii. Expansion of scope for printed newspapers to include subscription to electronic newspapers.
Effective Date	From YA 2021.
Commentary	<ul style="list-style-type: none">i. The special relief of RM2,500 will encourage employees to opt for flexible work arrangements. In total, the resident individual will be able to enjoy tax relief of up to RM5,000 for YA 2020. For YA 2021, the lifestyle tax relief will be increased to RM3,000.ii. The specific allocation of RM500 will indirectly encourage individuals to participate in sports competitions approved and licensed by the Commissioner of Sports under the Sports Development Act 1997 where most talents are usually discovered.iii. Expansion of scope for printed newspapers to include electronic newspapers is highly commendable, in line with the digitalisation era we are currently living in where we are updated on the current news electronically.

Details of Proposed Measures, Effective Date and Commentary

Real
Property
Gains Tax
Proposals

Details of Proposed Measures, Effective Date and Commentary

1. The DGIR is empowered to remit all or part of any sum imposed on any person due to failure to retain and remit part of consideration

Present	Presently, where an acquirer fails to retain and remit the amount required under subsection 14(5) and 15(4) of the Real Property Gains Tax Act 1976 (RPGTA) and such failure is caused by an incorrect or wrong notification given to the acquirer, the person giving such incorrect or wrong notification will be imposed a 10% penalty on the tax payable and such penalty will be included under the assessment or additional assessment of that person.
Proposed	It is proposed that the DGIR be given the power to remit the whole or any part of the sum imposed under subsections 14(5) and 15(4) of the RPGTA on any person and where the sum remitted has been paid by that person, the DGIR shall repay the same to the person.
Effective Date	1 January 2021.
Commentary	The proposed measure will provide an avenue to the taxpayers (i.e. disposers) to appeal to the DGIR on the 10% penalty on tax payable imposed due to incorrect or wrong notification given to the acquirers.

Details of Proposed Measures, Effective Date and Commentary

2. An executor of the estate of a deceased person who is not a citizen and not a permanent resident is subject to 7% retention sum

Present	Presently, there is an uncertainty on the rate of the retention sum (i.e. 3% or 7%) for a person who acquires real properties from an executor of the estate of a deceased person who is not a citizen and not a permanent resident.
Proposed	It is proposed that Section 21B(1A) of the RPGTA be amended to include all the disposals under Part III of Schedule 5 of the RPGTA that is to say, an executor of the estate of a deceased person who is not a citizen and not a permanent resident is subject to 7% retention sum.
Effective Date	1 January 2021.
Commentary	The proposed measure will align all disposers in the same category of disposal under Part III of Schedule 5 of the RPGTA and ensure that the retention sum of 7% (instead of 3%) is equally applied to all including an executor of a deceased person who is not a citizen and not a permanent resident.

Details of Proposed Measures, Effective Date and Commentary

3. Taxpayers are required to settle the tax payable raised under any assessment within the statutory deadline, notwithstanding the institution of any proceedings under any written law

Present	Presently, taxpayers are allowed to apply to the High Court for a stay of proceedings on enforcement of the payment of additional RPGT and penalties payable raised under any assessment by the IRBM.
Proposed	It is proposed that a provision be made in the RPGTA whereby the institution of any proceedings under any written law against the government or the DGIR by a person shall not relieve that person from the liability for the payment of any tax or any debt or other sum for which that person is or may be liable to pay.
Effective Date	1 January 2021.
Commentary	The proposed amendment would remove the possibility for taxpayers to apply to the High Court for a stay order for the payment of additional RPGT. Under such circumstances, taxpayers are required to pay the additional RPGT and penalties payable first while waiting for their cases to be heard in court which may take some time depending on the availability of the court to hear the matter. This could result in significant cash flow issues for the taxpayers and may cause financial hardship to taxpayers if the additional RPGT and penalties being raised by the IRB are substantial. This proposed amendment is similar to the proposed amendment to the ITA.

Details of Proposed Measures, Effective Date and Commentary

4. Tax agents, advocates and solicitors are authorised to furnish the RPGT returns on behalf of taxpayers electronically

Present	Presently, there is no specific provision in the RPGTA to allow tax agents or lawyers to submit RPGT returns on behalf of taxpayers via electronic medium.
Proposed	It is proposed that a new section be inserted to enable the tax agent, an advocate and solicitor of the High Court of Malaya or advocate of the High Court of Sabah and Sarawak to furnish a return via electronic medium on behalf of taxpayers.
Effective Date	1 January 2021.
Commentary	The proposed measure will allow taxpayers to authorise their tax agents, advocates and solicitors to furnish the RPGT returns on their behalf electronically.

Details of Proposed Measures, Effective Date and Commentary

5. Societies registered under the Societies Act, 1966 are subjected to the same rates of tax as companies

Present	Presently, the disposals of real properties by an association or a society registered under the Societies Act 1966 are subjected to the same rates of tax as individuals (citizen and permanent resident).
Proposed	It is proposed that an association or a society registered under the Societies Act 1966 be included in Part II of Schedule 5 of the RPGTA i.e. will be subjected to the same rates of tax as companies.
Effective Date	1 January 2021.
Commentary	The proposed measure will result in an additional five per cent (5%) RPGT payable for the disposals of real properties held for a period of more than five (5) years by an association or a society registered under the Societies Act 1966.

Details of Proposed Measures, Effective Date and Commentary

6. The DGIR is allowed to issue an electronic notification to the Commissioner of Police or Director of Immigration Department for the purpose of recovery of tax payable, sums payable and debt payable from persons leaving Malaysia.

Present	<p>The DGIR may issue a certificate containing particulars on the tax payable, sums payable and debt payable to the Commissioner of Police or Director of Immigration Department, with a request to prevent the persons from leaving Malaysia if the DGIR is of the opinion that such person could be leaving Malaysia without settling the outstanding tax, sums and debt payable under the RPGTA.</p>
Proposed	<p>The proposed subsection 22(1A) of the RPGTA allows the certificate to be issued by DGIR to any Commissioner of Police or Director of Immigration Department via electronic medium or by way of electronic transmission.</p> <p>It is also proposed that the word “person” be defined under subsection 22(6) of the RPGTA as follows:</p> <p><i>“includes a director of a company in subparagraph 5(1a) of Schedule 1 of the RPGTA”</i></p>
Effective Date	1 January 2021.
Commentary	<p>The proposed amendment allows the DGIR to issue a certificate to the Commissioner of Police or Director of Immigration Department via electronic medium or by way of electronic transmission. This would also expedite the process of refraining a person with outstanding tax payable, sums payable and debt payable from leaving Malaysia.</p> <p>Furthermore, a director of a company during the period in which the tax or debt is liable to be paid by that company may be prevented from leaving Malaysia as well. Hence, it is advisable for directors of companies to ensure timely payment of tax and debt due to the government.</p>

Details of Proposed Measures, Effective Date and Commentary

Stamp Duty
Proposals

Details of Proposed Measures, Effective Date and Commentary

1. Digital stamping

Present and Proposed	Relevant Provisions of the Stamp Act 1949	Present	Proposed
	Section 2 – definition for “duly stamped”	Presently, “duly stamped” instruments refer to the instruments which bear an adhesive or impressed stamp of not less than the proper amount or the amount of initial duty on the amount of advance duty paid and that such stamp has been affixed or used in accordance with the law for the time being in force.	It is proposed that the definition of “duly stamped” under Section 2 of the Stamp Act 1949 be expanded to include an instrument which is stamped by means of digital stamping.
	Subsections 7(1)(aa) and 7(1)(d)	Mode of paying and denoting duty is indicated on the instrument by an adhesive stamp, affixing an official receipt and attaching a stamp certificate.	It is proposed that subsection 7(1)(aa) and 7(1)(d) be included in the Stamp Act 1949 to provide for two (2) additional modes of payment of stamp duty on instruments that are by means of impressed stamp and digital stamping.
	Subsection 12(d)	The duplicate or counterpart of an instrument shall not be deemed to be duly stamped unless: a) It is stamped as an original instrument; b) It appears by a certificate endorsed by the Collector; or c) Denoted on the stamp certificate.	It is proposed that subsection 12 of the Stamp Act 1949 be expanded to accept digital stamping on a duplicate or a counterpart of an instrument as a means to deem that the duplicates and counterparts have been duly stamped.

Details of Proposed Measures, Effective Date and Commentary

1. Digital stamping (cont'd)

Present and Proposed	Relevant Provisions of the Stamp Act 1949	Present	Proposed
	Subsection 48(e)	<p>Presently, the payment of any penalty prescribed under Section 43 or 47A of the Stamp Act 1949 shall be denoted on the instrument concerned by -</p> <ul style="list-style-type: none"> a) a stamp duly cancelled; b) by means of an impressed stamp; c) by affixing an official receipt to the instrument; or d) by attaching a stamp certificate to the instrument and shall be certified by the DGIR. 	<p>It is proposed that a new subsection 48(e) of the Stamp Act 1949 be included to provide that the payment of penalty can be denoted on the instrument by way of digital stamping and shall be certified by the DGIR.</p>
	Subsection 82(ab)	<p>Section 82 empowers the Minister to make rules to prescribe the revenue stamps, stamp certificate and official receipt to be issued for the payment of stamp duty and to provide matters relating to the issue and validity of the revenue stamps, stamp certificates and official receipts.</p>	<p>It is proposed that a new subsection 82(ab) of the Stamp Act 1949 be included to empower the Minister to prescribe the means of digital stamping for the payment of stamp duty and to provide for the matters relating to the issuance and validity of digital stamping.</p>
Effective Date	1 January 2021.		
Commentary	<p>In line with the technological improvements, Digital Franking System was introduced in year 2011 as one of the alternative stamping system to Stamp Duty Assessment and Payment System (STAMPS). The above proposed amendments take into consideration digital stamping in the relevant provisions of the Stamp Act 1949.</p>		

Details of Proposed Measures, Effective Date and Commentary

2. The DGIR and the employees of the IRBM authorised by the DGIR are empowered to recover the stamp duties due to the Government

Present	Presently, all duties, penalties and other sums required to be paid shall be recoverable by way of any methods used to collect debts due to the Government. There is no explicit mention on who shall be responsible for the recovery of such debts due to the Government.
Proposed	It is proposed that a new subsection 50(2) be introduced to empower the DGIR and any employees of the IRBM authorised by the DGIR to be deemed as public officers authorised by the Minister. Further, the new subsection 50(3) of the Stamp Act 1949 provides that a certificate signed by the DGIR, showing the name and address of the defendant, the amount of stamp duty and penalty owing by the defendant would be an evidence of the amount of stamp duty due and would be sufficient for the court to give a judgement for that amount.
Effective Date	1 January 2021.
Commentary	The new subsections 50(2) and 50(3) of the Stamp Act 1949 empower the DGIR and any employees of the IRBM authorised by the DGIR to recover the stamp duty, penalties and any sums owing by taxpayers to the Government.

Details of Proposed Measures, Effective Date and Commentary

3. The DGIR is allowed to issue an electronic notification to the Commissioner of Police or Director of Immigration Department for the purpose of recovery of duties, penalties or other sums due from persons leaving Malaysia

Present	The DGIR may issue a certificate containing particulars on the stamp duties, penalties or other sums required to be paid, to the Commissioner of Police or Director of Immigration Department, with a request to prevent the persons from leaving Malaysia if the DGIR is of the opinion that such person could be leaving Malaysia without settling the outstanding stamp duties, penalties or other sums payable under the Stamp Act 1949.
Proposed	The proposed subsection 74(1A) of the Stamp Act 1949 allows the certificate to be issued by DGIR to any Commissioner of Police or Director of Immigration Department via electronic medium or by way of electronic transmission.
Effective Date	1 January 2021.
Commentary	The proposed amendment allows the DGIR to issue a certificate to the Commissioner of Police or Director of Immigration Department via electronic medium or by way of electronic transmission. This would also expedite the process of refraining a person with outstanding stamp duties, penalties or other sum payable from leaving Malaysia.

Details of Proposed Measures, Effective Date and Commentary

4. Remittance of stamp duties, wholly or partly, on the grounds of poverty

Present	Presently, the Minister of Finance is given the power to exempt, reduce or remit stamp duties on instruments or all instruments in relation to any scheme pursuant to Section 80 of the Stamp Act 1949.
Proposed	It is proposed that a new subsection 80B of the Stamp Act 1949 be introduced to empower the DGIR to remit stamp duty paid or payable, wholly or partially, on the grounds of poverty. Additionally, any stamp duty which has been paid but is subsequently remitted under the new subsection 80B of the Stamp Act 1949 will be entitled for a refund.
Effective Date	1 January 2021.
Commentary	A similar provision is found in the ITA. Pursuant to Section 129(1) of the ITA, the DGIR is empowered to remit tax paid or payable, wholly or partially, on grounds of poverty or on grounds of justice and equity. Nevertheless, further clarifications on the application of subsection 80B of Stamp Act 1949 is required. The DGIR should provide further clarifications on the type of arrangement or instruments that may qualify for such remission and the eligible persons for the application of subsection 80B of the Stamp Act 1949.

Details of Proposed Measures, Effective Date and Commentary

Updates on
Labuan
Business
Activity Tax
Act 1990
(LBATA)

Details of Proposed Measures, Effective Date and Commentary

1. The Labuan business activity definition is expanded to provide clarity on the substance requirements between a Labuan entity carrying on a Labuan trading activity and a Labuan non-trading activity

Present	A Labuan entity shall, for the purpose of a Labuan business activity, have an adequate number of full time employees in Labuan and an adequate amount of annual operating expenditure in Labuan as prescribed by the Minister.
Proposed	<p>It is proposed that the definition of a Labuan entity be expanded as follows:</p> <p>A Labuan entity shall, for the purpose of a Labuan business activity:</p> <ul style="list-style-type: none">a) In relation to a Labuan trading activity, have an adequate number of full time employees in Labuan and have an adequate amount of annual operating expenditure in Labuan as prescribed by the Minister by regulations made under LBATA; andb) In relation to a Labuan non-trading activity, have an adequate number of full time employees in Labuan, have an adequate amount of annual operating expenditure in Labuan and comply with any condition in relation to control and management in Labuan as prescribed by the Minister by regulations made under LBATA.
Effective Date	1 January 2021.
Commentary	The proposed amendment would provide clarity on the substance requirements for a Labuan entity carrying on a Labuan trading activity or a Labuan non-trading activity.

Details of Proposed Measures, Effective Date and Commentary

2. The definition of chargeable profits of a Labuan entity is introduced to facilitate the preparation of its tax return

Present	Presently, there is no definition of chargeable profits under the LBATA.
Proposed	<p>It is proposed that the definition of chargeable profits be introduced as follows:</p> <p><i>“Chargeable profits shall be the net profits as reflected in audited accounts in respect of the Labuan business activity of a Labuan entity”.</i></p>
Effective Date	From YA 2020.
Commentary	The proposed amendment would provide clarity on the meaning of chargeable profits for the purposes of preparation of the tax returns of a Labuan entity.

Details of Proposed Measures, Effective Date and Commentary

3. The DGIR is empowered to allow an extension of time to Labuan entities to make an irrevocable election to be taxed under the ITA

Present	A Labuan entity is given a period of three (3) months after the beginning of the basis period for a YA to make an irrevocable election to be taxed under the ITA.
Proposed	It is proposed that the DGIR be given the power to allow for an extension of time for a Labuan entity to make an irrevocable election to be taxed under the ITA.
Effective Date	Upon coming into operation of the Finance Act.
Commentary	The proposed amendment would allow the DGIR to give taxpayers an extension of time to make an irrevocable election to be taxed under the ITA. However, this would probably be allowed on a case to case basis whereby the taxpayer has a strong and valid reason requiring the extension of time.

Details of Proposed Measures, Effective Date and Commentary

4. A Labuan entity may appeal against a notice of additional assessment raised

Present	A taxpayer aggrieved by an assessment made on him under the LBATA may make an appeal to the Special Commissioners of Income Tax against the assessment in the same manner as provided under the ITA.
Proposed	It is proposed that the scope of appeal be expanded to also include a notice of additional assessment raised under the LBATA.
Effective Date	From YA 2020.
Commentary	The proposed amendment would provide an avenue to taxpayers to also appeal against a notice of additional assessment under the LBATA.

Details of Proposed Measures, Effective Date and Commentary

5. Taxpayers are required to settle the tax payable at the time of furnishing of tax returns to the IRBM

Present	Presently, there are contradictions in the provisions in the LBATA as to the timing of payment of tax payable under an assessment raised by the DGIR based on the tax returns filed by the taxpayers. Section 11 of the LBATA provides that the taxpayers should make payment of the tax payable upon furnishing of the tax returns to the DGIR whilst Section 13A of the LBATA provides that the tax payable under an assessment raised by the DGIR based on the tax returns filed by the taxpayers shall be due and payable by the taxpayers within thirty (30) days from the date of the notice of assessment, whether or not the taxpayers appeal against that assessment.
Proposed	It is proposed that Section 13A of the LBATA be amended to state that the existing provisions would only be applicable to an assessment raised by the DGIR whereby it appears that no or no sufficient assessment has been made on a person chargeable to tax, or to make good any loss of tax attributable to a case of fraud, willful default or negligence on the part of the taxpayer.
Effective Date	From YA 2020.
Commentary	The proposed amendment clarifies that a taxpayer is required to settle the tax payable at the time of furnishing of the tax return to the IRBM.

Details of Proposed Measures, Effective Date and Commentary

6. Taxpayers are required to settle the tax payable raised under any assessment within the statutory deadline, notwithstanding the institution of any proceedings under any written law

Present	There is no present provision in the LBATA.
Proposed	It is proposed that a provision be made in the LBATA whereby the institution of any proceedings under any written law against the government or the DGIR shall not relieve any person from the liability for the payment of any tax or any debt or other sum for which he is or may be liable to pay.
Effective Date	1 January 2021.
Commentary	The proposed amendment would align the LBATA with the ITA whereby a taxpayer is required to settle the tax payable raised under any assessment within the statutory deadline as provided under the LBATA, notwithstanding the institution of any proceedings under any written law.

Details of Proposed Measures, Effective Date and Commentary

7. A minimum fine of RM20,000 will be imposed on a person that contravenes the treatment of confidential information received for the purpose of the LBATA as well as the restriction on the usage of such information

Present	<p>Any return of profits, statutory declaration or information made or received for the purposes of the LBATA shall be treated as confidential.</p> <p>Any person contravening the above and on conviction shall be liable to a fine not exceeding one (1) million ringgit or to imprisonment or a term not exceeding two (2) years or to both.</p>
Proposed	<p>It is proposed that a minimum fine of twenty thousand ringgit (RM20,000) be imposed if a person is convicted with the offence. In addition, it is also proposed that the scope be expanded to restrict the use of any documents or information that a person may receive by virtue of a contravention of the LBATA.</p>
Effective Date	1 January 2021.
Commentary	<p>The proposed amendments would align the LBATA with the ITA whereby a minimum fine of twenty thousand ringgit (RM20,000) will be imposed on a person who is convicted with the offence as well as to restrict any persons to use any document or information that he may have received as a result of a contravention of the confidentiality of information as provided under the LBATA.</p>

Details of Proposed Measures, Effective Date and Commentary

8. The DGIR is empowered to compound offences with regards to Country by Country Reporting (CbCR) and Common Reporting Standards (CRS) compliances

Present	<p>CbCR is a reporting obligation introduced by the Organization for Economic Co-operation and Development (“OECD”) for multinational companies (“MNC”) to file a Country by Country report containing high level data on its global allocation of income, profits, fixed assets, headcount, taxes paid and any other economic activity measures. The Country by Country reports are to be submitted to the relevant tax authorities. In Malaysia, there is the Income Tax (Country-by-Country Report) Rules 2016 which are applicable to MNC Groups with the ultimate holding company incorporated in Malaysia and having achieved a total consolidated group revenue of at least RM 3 billion in a financial year.</p> <p>On the other hand, the CRS is a global standard and common approach for automatic exchange of information (“AEOI”) to combat tax evasions in different jurisdictions and protect the integrity of taxation systems. Malaysia has committed to exchanging CRS information, and in line with the AEOI standards developed by the OECD, has issued the Income Tax (Automatic Exchange of Financial Account Information) Rules 2016. The Rules set out the requirements for reporting financial institutions to report specific information of individuals and entities to the IRB.</p> <p>Presently, there is no provision pertaining to both CbCR and CRS in the LBATA.</p>
Proposed	<p>It is proposed that a provision be made in the LBATA whereby power is given to the DGIR to compound offences with regards to CbCR and CRS.</p>
Effective Date	1 January 2021.
Commentary	<p>The proposed amendment would align the LBATA with the ITA whereby the DGIR is given the power to compound offences with regards to CbCR and CRS compliances.</p>



Contact us

Crowe KL Tax Sdn Bhd
Level 15, Tower C
Megan Avenue 2
12, Jalan Yap Kwan Seng
50450 Kuala Lumpur
Malaysia

Tel. +603 2788 9898



Scan here to
start conversation
with us

Corporate Tax Compliance

Foo Meng Huei
Executive Director
menghuei.foo@crowe.my
+603 2788 9898 Ext 2501

Voon Yuen Hoong
Executive Director
yuenhoong.voon@crowe.my
+603 2788 9898 Ext 2522

Wong Man Yee
Executive Director
manyee.wong@crowe.my
+603 2788 9898 Ext 2519

Liza Ooi Yap Lin
Director
liza.ooi@crowe.my
+603 2788 9898 Ext 2557

Tax Advisory

Chong Mun Yew
Executive Director
munyew.chong@crowe.my
+603 2788 9898 Ext 2523

Mervyn Ong Hean Chong
Executive Director
mervyn.ong@crowe.my
+603 2788 9898 Ext 2587

Indirect Tax

Fam Fui Chien
Manager
fuichien.fam@crowe.my
+603 2788 9898 Ext 2504

Norhayati Ruslan
Manager
norhayati.ruslan@crowe.my
+603 2788 9898 Ext 2597

Transfer Pricing

Song Sylvia
Executive Director
sylvia.song@crowe.my
+603 2788 9898 Ext 2514

Global Mobility Services

Shalina Binti Jaafar
Executive Director
shalina.jaafar@crowe.my
+603 2788 9898 Ext 2505

Business Outsourcing

Esther Chan
Manager
esther.chan@crowe.my
+603 2788 9898 Ext 2546

Our offices (West Malaysia)

Kuala Lumpur

Level 16, Tower C,
Megan Avenue 2,
12 Jalan Yap Kwan Seng,
50450 Kuala Lumpur,
Malaysia

+603 2788 9898 Main
+603 2788 9899 Fax

Klang

Suite 50-3, Setia Avenue,
No. 2, Jalan Setia Prima
SU13/S,
Setia Alam, Seksyen U13,
40170 Shah Alam,
Selangor, Malaysia

+603 3343 0730 Main
+603 3344 3036 Fax

Ipoh

A-2-16, 2nd Floor, Wisma MFCB
1, Persiaran Greentown 2
Greentown Business Centre
30450 Ipoh, Perak Darul Ridzuan
Malaysia

+605 238 0411 Main

Penang

Level 6, Wisma Penang Garden,
42 Jalan Sultan Ahmad Shah,
10050 Penang, Malaysia

+604 227 7061 Main
+604 227 8011 Fax

Melaka

52 Jalan Kota Laksamana 2/15,
Taman Kota Laksamana, Seksyen 2,
75200 Melaka, Malaysia

+606 282 5995 Main
+606 283 6449 Fax

Johor Bahru

E-2-3 Pusat Komersial Bayu Tasek,
Persiaran Southkey 1,
Kota Southkey,
80150 Johor Bahru,
Johor, Malaysia

+607 288 6627 Main
+607 338 4627 Fax

Muar

8, Jalan Pesta 1/1,
Taman Tun Dr. Ismail 1,
Jalan Bakri, 84000 Muar,
Johor, Malaysia

+606 952 4328 Main
+606 952 7328 Fax

Our offices (East Malaysia)

Kuching - iCom Square

2nd Floor, C378, Block C,
iCom Square,
Jalan Pending,
93450 Kuching,
Sarawak, Malaysia

+6082 552 688 Main
+6082 266 987 Fax

Kuching - Brighton Square

2nd Floor,
Lots 11994 - 11996,
Brighton Square,
Jalan Song,
93350 Kuching,
Sarawak, Malaysia

+6082 285 566 Main
+6082 285 533 Fax

Miri

Lot 2395, Block 4,
Bulatan Business Park,
Jalan Bulatan Park, 98000 Miri,
Sarawak, Malaysia

+6085 658 835 Main
+6085 655 001 Fax

Bintulu

1st floor, Lot 4542-4543,
Jalan Abang Galau Shophouse,
Kampung Masjid, 97000 Bintulu,
Sarawak, Malaysia

+6086 333 328 Main
+6086 334 802 Fax

Sibu

1st & 2nd Floor, No. 1 Lorong
Pahlawan 7A2, Jalan Pahlawan,
96000 Sibu, Sarawak, Malaysia

+6084 211 777 Main
+6084 216 622 Fax

Labuan

Lot 36, Block D, Lazenda Centre,
Jalan OKK Abdullah, P.O. Box
81599, 87025, Labuan, Malaysia

+6087 417 128 Main
+6087 417 129 Fax

Kota Kinabalu

Damai Plaza 3, 3rd Floor, C11, Jalan
Damai 88300, P.O. Box 11003,
88811 Kota Kinabalu, Sabah, Malaysia

+6088 233 733 Main
+6088 238 955 Fax



Contact us

Crowe Malaysia PLT
Level 16, Tower C
Megan Avenue 2
12, Jalan Yap Kwan Seng
50450 Kuala Lumpur
Malaysia

Tel. +603 2788 9999

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