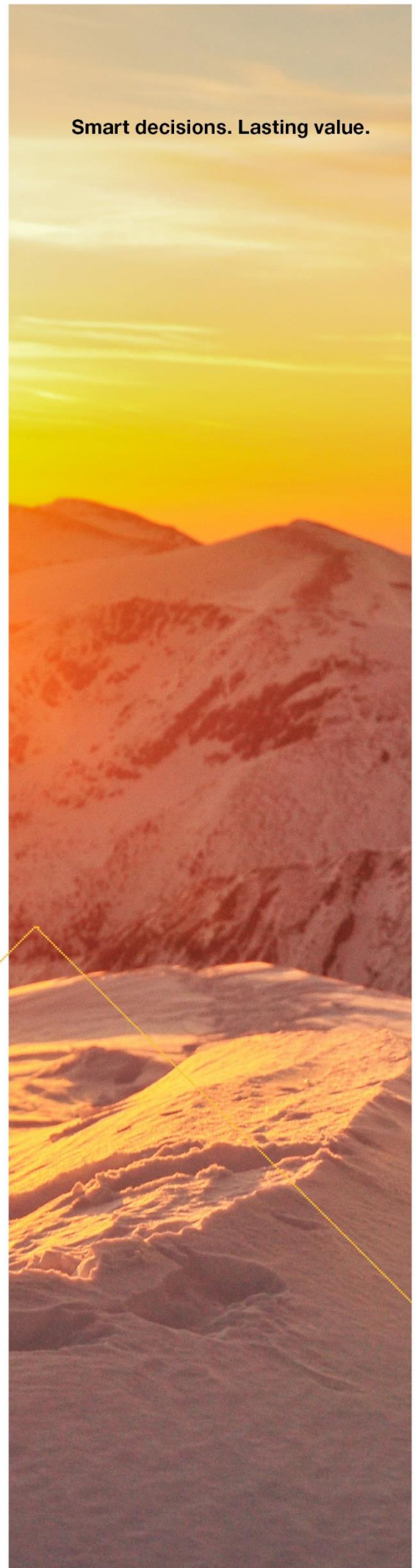




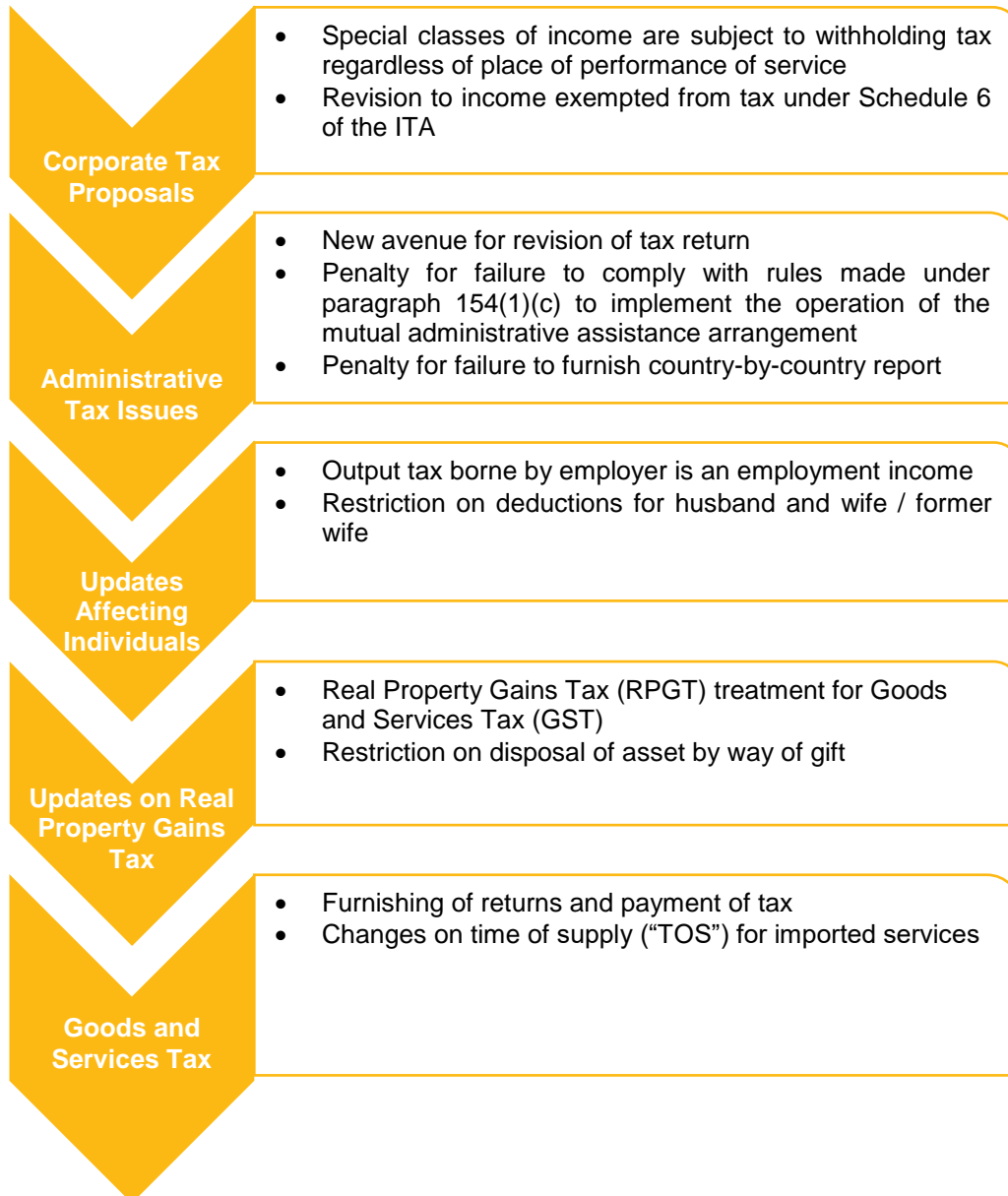
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2017 Tax Updates Highlights of Finance Bill 2016

Crowe Horwath Kuala Lumpur



Major highlights of Finance Bill 2016



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Corporate Tax Proposals

Special classes of income are subject to withholding tax regardless of place of performance of service

Presently, Section 15A of the Income Tax Act 1967 (ITA) provides that special classes of income under subsections 4A(i) and (ii) of the ITA shall be deemed to be derived from Malaysia if the services are performed in Malaysia.

It is proposed that Section 15A of the ITA be amended to provide that special classes of income under subsections 4A(i) and (ii) of the ITA shall be deemed to be derived from Malaysia regardless of whether the services were performed in Malaysia or outside Malaysia.

Now services under Section 4A of the ITA provided offshore will be subject to withholding tax.

Revision to income exempted from tax under Schedule 6 of the ITA

The Government has proposed that the following income will no longer be exempted from tax with effect from YA 2017:

Schedule 6 of ITA	Type of income	Existing tax treatment	Proposed tax treatment
Para. 18	Any income derived by a non-resident from trading in Malaysia through consignees in any kind of commodity produced outside Malaysia. (Commodity: rubber, copra, pepper, tin, tin ore, gambier, sago flour or cloves)	Exempt from tax	Taxable
Para. 27	Income derived by non-resident in respect of interest derived from Malaysia on an approved loan.	Exempt from tax	Taxable
Para. 33A	Interest originated from: (a) securities issued by the Government; or (b) Sukuk or debenture issued in Ringgit Malaysia, other than convertible loan stock approved by the Securities Commission ("SC") which is paid or credited to any non-resident company in the same group.	Exempt from tax	Taxable
Para. 33B	Interest in respect of Sukuk originated from Malaysia: (a) issued in any currency other than Ringgit; and (b) approved by the SC or Labuan Offshore Financial Services Authority which is paid or credited to the following parties: (i) a company in the same group; (ii) a bank licensed under the Financial Services Act 2013; (iii) an Islamic bank licensed under the Islamic Financial Services Act 2013; or (iv) a development financial institution prescribed under the Development Financial Institutions Act 2002.	Exempt from tax	Taxable

Review of industrial building allowance for buildings rented out

Presently, Paragraph 16B of Schedule 3 to the ITA prevents owners of certain buildings (i.e. private hospital, building used for research, building used for approved service project, school, hotel, etc.) from claiming industrial building allowance (IBA) on their industrial buildings which are solely or partly used for the purpose of letting out.

It is proposed that owners of building for the purpose of industrial, technical or vocational training approved by the Minister be included under Paragraph 16B(1) of Schedule 3 to the ITA.

In addition, the eligibility to claim IBA on such industrial buildings which are partly used for the purpose of letting out is clarified as follows:

Floor area	Eligible to claim IBA?
Less than 10% of the floor area of the whole building	The whole building is eligible for IBA
More than 10% of the floor area of the whole building (e.g 15%)	Only the floor area not let out is eligible for IBA (i.e. 85%)

The above is deemed to have effect from the year of assessment 2016.

Affected companies may need to do some planning and relook their current business arrangement in order to fully utilize the capital expenditure incurred on the let out area.

Redefinition of “Malaysia” and “Public Entertainer”

The words “Malaysia” and “Public Entertainer” have been redefined to provide consistency and clarity as follows:

Word	Proposed definition
“Malaysia”	the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and the airspace above such areas and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as an area over which Malaysia has sovereign rights or jurisdiction for the purposes of exploring and exploiting the natural resources, whether living or non-living;
“Public entertainer”	<p>“Public entertainer” includes –</p> <p>(a) compere, model, circus performer, lecturer, speaker, sportsperson, an artiste or individual exercising any profession, vocation or employment of a similar nature; or</p> <p>(b) an individual who uses his intellectual, artistic, musical, personal or physical skill or character in,</p> <p>carrying out any activity in connection with any purpose through live, print, electronic, satellite, cable, fibre optic or other medium, for film or tape, or for television or radio broadcast, as the case may be;</p>

The definition of “Malaysia” is much wider now which includes the airspace above the areas within Malaysia jurisdiction of sovereign rights.

“Public entertainer” has been expanded to cover lecturers, speakers and all artistes and the taxability of public entertainer is now clarified.

Redefinition of “Royalty”

The word “Royalty” has been redefined to provide clarity as follows:

Word	Proposed definition
“Royalty”	<p>“Royalty” includes any sums paid as consideration for, or derived from—</p> <ul style="list-style-type: none"> (a) <i>the use of, or the right to use in respect of any copyrights, software, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks or other like property or rights;</i> (b) <i>the use of, or the right to use tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or reproduced in Malaysia or other like property or rights;</i> (c) <i>the use of, or the right to use know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill;</i> (d) <i>the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by—</i> <ul style="list-style-type: none"> (i) <i>satellite; or</i> (ii) <i>cable, fibre optic or similar technology;</i> (e) <i>the use of, or the right to use, visual images or sounds, or both, in connection with television broadcasting or radio broadcasting, transmitted by—</i> <ul style="list-style-type: none"> (i) <i>satellite; or</i> (ii) <i>cable, fibre optic or similar technology;</i> (f) <i>the use of, or the right to use, some or all of the part of the radiofrequency spectrum specified in a relevant licence;</i> (g) <i>a total or partial forbearance in respect of—</i> <ul style="list-style-type: none"> (i) <i>the use of, or the granting of the right to use, any such property or right as is mentioned in paragraph (a) or (b) or any such knowledge, experience or skill as is mentioned in paragraph (c);</i> (ii) <i>the reception of, or the granting of the right to receive, any such visual images or sounds as are mentioned in paragraph (d);</i> (iii) <i>the use of, or the granting of the right to use, any such visual images or sounds as are mentioned in paragraph (e); or</i> (iv) <i>the use of, or the granting of the right to use, some or all such part of the spectrum specified in a spectrum licence as is mentioned in paragraph (f); or</i> (h) <i>the alienation of any property, know-how or information mentioned in paragraph (a), (b) or (c) of this definition.”</i>

The definition of “royalty” has been expanded significantly to include items such as software and communications via satellite.

Administrative Tax Issues

New avenue for revision of tax return

The Government has proposed that subsections 97A(5) to (10) and 131A be introduced as an avenue for the taxpayer to revise the tax return furnished previously with effect from 1 January 2017.

New Section	Tax return	Reason for appeal	Method of appeal	Timeline for appeal
S. 97A(5) to (10)	With no chargeable income	Error and mistake	Apply in writing for an amendment to be made	To apply within six (6) months from the date the return is furnished
	With no chargeable income	Incorrect return due to the following reasons: (i) Any exemption, relief, remission, allowance or deduction granted for that YA under the ITA or other written law published in the Gazette after the YA in which the return is furnished; (ii) The approval for any exemption, relief, remission, allowance or deduction is granted after the YA in which the return is furnished; (iii) A deduction not allowed in respect of payment not due to be paid under subsection 107A(2) or 109(2), section 109A, or subsection 109B(2) or 109F(2) on the day a return is furnished.	Apply in writing for relief	(i) & (ii) – To apply within five (5) years after the end of the year the exemption, relief, remission, allowance or deduction is published in the Gazette or the approval is granted, whichever is the later. (iii) – To apply within one (1) year after the end of the year the payment is made.
S. 131A	With chargeable income	Incorrect return due to the following reason: (i) Any exemption, relief, remission, allowance or deduction granted for that YA under the ITA or other written law published in the Gazette after the YA in which the return is furnished; (ii) The approval for any exemption, relief, remission, allowance or deduction is granted after the YA in which the return is furnished; (iii) A deduction not allowed in respect of payment not due to be paid under subsection 107A(2) or 109(2), section 109A, or subsection 109B(2) or 109F(2) on the day a return is furnished.	Apply in writing for relief	(i) & (ii) – To apply within five (5) years after the end of the year the exemption, relief, remission, allowance or deduction is published in the Gazette or the approval is granted, whichever is the later. (iii) – To apply within one (1) year after the end of the year the payment is made.

Previously, the avenue to appeal was only specifically provided for taxpayers with chargeable income. With the introduction of the above provisions, the appeal procedures under error or mistake are now available for taxpayers with no chargeable income. However, taxpayers have to comply with the required deadline closely to be eligible for the appeal.

Deemed notification of non-chargeability by Director General (“DG”)

With effect from 1 January 2017, a new Section 97A(1A) of the ITA is introduced where a person is aggrieved by the public ruling or any practice of the DG generally prevailing at the time when the return is made and has no chargeable income, the return furnished to the DG shall be deemed to be a notification made by and notified by the DG to the person on the day the return is furnished.

Filing of estimate or revised estimate of tax payable (“Form CP204 / CP204A”) by limited liability partnership, trust body or co-operative society via electronic medium

Presently, only company is required to furnish the Form CP204 / CP204A through electronic medium or by way of electronic transmission (i.e. via e-filing submission).

With effect from YA 2019, a limited liability partnership, trust body or co-operative society is required to furnish the Form CP204 / 204A via e-filing.

The proposal is in line with Government’s objective to encourage more taxpayer to use electronic medium for submission of return forms.

Penalty for failure to comply with rules made under paragraph 154(1)(c) to implement the operation of the mutual administrative assistance arrangement between the Government of Malaysia and the foreign countries who are a party to the arrangement

Mutual administrative assistance is an arrangement to enable Malaysia to share and receive country by country report and other information for mutual benefit of both countries. In an effort to ensure compliance by the taxpayers, the Government has proposed to introduce the following measures:

Section	Offence	Proposed penalty
113A(1)(a)	Makes an incorrect return, information return or report by omitting the information required to be provided	<ul style="list-style-type: none"> • Fine of not less than RM20,000 and not more than RM100,000; • Imprisonment for a term not exceeding six (6) months; or • To both.
113A(1)(b)	Gives any incorrect information in relation to any information required to be provided	
119B	Failure to comply with rules made by the Minister on mutual administrative assistance	

Introduction of fees for advance pricing arrangement

The change in Section 154(1)(ec) is to enable the Minister to prescribe rules to charge fees in relation to an application for advance pricing arrangement.

Penalty for failure to furnish country-by-country report (“CbCR”)

A new Section 112A of the Income Tax Act 1967 is introduced to address the implications on person who fails to furnish a CbCR. A person who fails to furnish a CbCR in accordance to the provisions made under Section 154(1)(c) and Section 132B of the Income Tax Act, 1967, shall be guilty of an offence and if proven, would be liable to a fine of not less than RM20,000 and not more than RM100,000 or to imprisonment for a term not exceeding 6 months or to both. The burden of proving that a CbCR has been furnished shall be upon the person being accused. The court may make a further order that the convicted person complies with the provision of the rules within a specified period as ordered by the court.

This is effective upon coming into operation of the Finance Act 2016.

Updates Affecting Individuals

Output tax borne by employer is an employment income

A new subsection 13(1A) of the Income Tax Act 1967 is introduced to provide that any amount of output tax liable to be paid by an employee under the Goods and Services Tax Act 2014 but borne by the employer shall be treated as an employment income of the employee with effect from the year of assessment 2015.

For example, gifts given to the employees as long service award which is not stated in the contract of employment would be subject to the above provision.

Restriction on deductions for husband and wife / former wife

With effect from the year of assessment 2017, the deductions for husband and wife / former wife under Sections 45A and 47 of the ITA respectively shall not apply to the husband or wife, other than a husband or wife who is a disabled person, if the husband or wife has an income which is derived from sources outside Malaysia and the gross income from such sources for a year of assessment is more than RM4,000.

Updates on Real Property Gains Tax

Real Property Gains Tax (RPGT) treatment for Goods and Services Tax (GST)

New subparagraphs 6(1A) and 7(2) of Schedule 2 to the Real Property Gains Tax Act 1976 (RPGTA) are introduced to provide that the incidental cost or excluded expenditure incurred for the acquisition or disposal of an asset shall include the amount of input tax adjusted either in the year of assessment the disposal is made or at the end of the adjustment period as provided for under the Goods and Services Tax Act 2014 (GSTA), whichever is earlier, and

- i. any upward adjustment of input tax shall be deemed to be part of the incidental cost or excluded expenditure; or
- ii. any downward adjustment of input tax shall reduce the incidental cost or excluded expenditure.

The above is deemed to take effect from the year of assessment 2015.

Restriction on disposal of asset by way of gift

With effect from 1 January 2017, subparagraph 12(2) of Schedule 2 to the RPGTA is amended whereby disposal of asset by way of gift between donor and recipient is restricted to a citizen who is husband and wife, parent and child or grandparent and grandchild. The donor shall be deemed to have received no gain and suffered no loss on the disposal.

Following the above amendments, non-citizen and permanent resident are not able to enjoy the provision under subparagraph 12 of Schedule 2 to the RPGTA.

Developments in Goods and Services Tax

Furnishing of returns and payment of tax

The following table illustrates the existing and proposed penalty for non-payment of GST that is due and payable:

- (i) A taxable person

Late Payment Period (Days)	Existing Penalty Rate*	Proposed Penalty Rate**
1 – 30	5%	10%
31 – 60	10%	15%
61 or more	10%	15%
Total	25%	40%

* The penalty rate is charged on the amount of GST due and payable.

** The penalty rate is charged on any GST remain unpaid.

- (ii) Other than a taxable person

Late Payment Period (Days)	Existing Penalty Rate	Proposed Penalty Rate*
1 – 30	-	10%
31 – 60	-	15%
61 or more	-	15%
Total	-	40%

* The penalty rate is charged on any GST remain unpaid.

Previously, a person is not allowed to leave Malaysia without paying:

- any GST due and payable by him;
- any penalty payable in relation to GST registration;
- any surcharge which has accrued under payments instalments;
- any fee payable under public ruling, tax agent, and such fees as may be prescribed by DG; or
- any other money recoverable from him under this Act.

It is now proposed that any person that have yet to pay for the penalties mentioned in the above table is also not allowed to leave Malaysia.

Amendments to the calculation of the GST registration threshold

The following supplies would be excluded from the calculation for GST registration purposes:

- Any supply of capital assets made in the course of cessation of business; or
- Supplies made within or between the free zone.

The above is effective from 1 January 2017.

Changes on time of supply (“TOS”) for imported services

It is proposed that the TOS for imported services shall be the date when payment is made or the date where invoice is received from the supplier by the company, whichever is earlier.

The above is effective from 1 January 2017.

New insertion to the Second Schedule of GSTA 2014: Supply of Land in Compliance with Requirement of Written Law, Government or Local Authority

It is proposed that any supply of land by a developer or an owner of the land to the Federal Government, a State Government, a local authority or any other person in compliance with the requirement of any written law, the Federal Government, State Government or local authority for the purposes of providing public amenities and public utilities whether for no consideration or at nominal value shall be treated as neither a supply of goods nor supply of services.

The above is effective from 1 January 2017.

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