KPMG

Budget 2019

Key Changes in Existing Taxes

KPMG in Malaysia

2 November 2018

Overview and Commentary

Key Changes in Existing Taxes

Budget 2019 focuses on 3 key areas, namely to implement institutional reforms, to ensure the socio-economic wellbeing of Malaysians and to foster an entrepreneurial economy. The widely discussed capital gains tax and inheritance tax pre-Budget 2019 were not introduced by the Government but instead Digital taxes and Soda Tax were announced. In addition, the Government focused on tightening the current income tax treatments and tax incentives.

In that respect, the Government has proposed to restrict the carry forward of unabsorbed business losses and unutilized capital allowances ("CA") to 7 years of assessment ("YAs"), effective from YA 2019.

There is no restriction on the carry forward of unabsorbed business losses and capital allowances in jurisdictions like Hong Kong and Singapore. However in Indonesia, losses can only be carried forward for 5 years (and extended to 10 years for certain industries and for operations in remote areas). This restriction may deter potential foreign investments in Malaysia as Malaysia may be seen as less favourable compared to its neighbouring countries.

As for the unutilized reinvestment allowances, unutilized investment allowance for services sector, unabsorbed pioneer losses and unutilised investment tax allowances ("ITA"), it can only be carried forward up to 7 YAs from the expiry/end of the qualifying period. This may impact industries with long profit gestation periods as they will need to consider whether their investments are able to generate returns within 7 years after the expiry/end of the qualifying period. This proposal is also effective from YA 2019.

This would also likely increase the compliance burden on companies which are expected to have carry forward losses and allowances as they will need to start keeping track of the YAs in which the said losses and allowances arose to ensure that they are able to correctly utilise the said losses and allowances before the expiry period. It is also uncertain whether the carried forward losses and allowances from YAs prior to YA 2019 will be subject to the above restriction. The current proposals as announced have not clarified this matter and it will be of great interest to taxpayers with such accumulated tax benefits.

Key Highlights

1. Restrictions on unabsorbed losses and allowances carried forward.
2. Restrictions on group relief.
3. Changes in RPGT rates and exemption.
4. Increase in stamp duty rates.
5. Removal of RM20,000 election and loosening of certain conditions for Labuan companies.

Currently, as the unabsorbed losses and allowances are allowed to be carried forward indefinitely, these balances may be recognised as deferred tax assets. However, with the above restriction, such recognition would be impacted and the accounting treatment may need to be revisited.

Another proposal relating to corporate income tax is on the tightening of group relief provisions. It is proposed that the surrendering of losses is to be allowed only after the 12th month period of the surrendering company commencing its business operations and to be limited only up to 3 consecutive YAs. Whereas the claimant company which has unutilised ITA or unabsorbed pioneer losses upon the expiry of its ITA or pioneer status incentives, such company will not be eligible to claim the group relief. This is effective from YA 2019. The likely rationale of introducing this restriction is to ensure that the unutilised ITA or unabsorbed pioneer losses are fully utilised before the losses from another related company are claimed by the claimant company. In this regard, both multinational and domestic groups which are currently enjoying incentives will need to re-look at group relief claims moving forward as some of these companies may no longer be eligible for group relief.

The Government has also proposed several increases in real property gains tax ("RPGT") rates which is aimed at generating higher revenues to reduce the Budget deficit. The proposed increases are effective 1 January 2019. The RPGT rate for companies, non-residents and non-Malaysian citizens will be increased from 5% to 10% for disposals in the 6th year onwards.

For resident individuals and Malaysian citizens, the RPGT rate is increased from 0% to 5% for disposals in the 6th year onwards. The rate of 0% has been in place for many years. Notwithstanding that, it should be noted that there remains a once-in-a-lifetime exemption for disposals of private residence for resident individuals and Malaysian citizen and transfer/gifts between spouses (amongst others).

Notwithstanding the above change in RPGT rates, in the 6th year, RPGT will continue to be exempted for Malaysian citizens on low and medium cost housing and affordable housing that are below RM200,000.

It is also proposed that stamp duties for property transfers which are worth more than RM1 million be increased from 3% to 4%. This proposal does not come as a surprise as it was proposed previously in the Stamp Bill which was subsequently withdrawn in 2017. The proposed increase is effective 1 January 2019.

To increase the competitiveness of Labuan as an international financial hub, the Government has proposed to loosen the conditions to transact in Ringgit Malaysia and for transactions between Labuan entities and Malaysian residents. This is in line with efforts to comply with Forum of Harmful Tax Practices ("FHTP") on the issue of ring fencing (where tax treatment differs for domestic and foreign taxpayers). In addition, substance rules will also be put into place and the income from intellectual property assets held by Labuan entity would also be subjected to the prevailing income tax rate under the Income Tax Act, 1967.

Another change proposed is that the option to elect to pay tax of RM20,000 will be abolished whereby now the Labuan company will be assessed on the preferential tax rate of 3% on its audited net profits.

The flip side of this, it would seem is the proposal that Malaysian resident who transacts with Labuan entity is only entitled for tax deduction on expenditure incurred (limited to 3% of the allowable expenditure). This new condition may have adverse implications on industries such as banks and insurance companies which may have significant transactions with their respective Labuan branches or entities, i.e. the tax deduction may be limited. Further clarity will need to be obtained as to the deductibility of the above expenditure especially for Labuan entities with significant substance and operations.

AUTHORS

Tai Lai Kok
Executive Director – Head of Tax and
Head of Corporate Tax
ltai1@kpmg.com.my

Neoh Beng Guan
Executive Director – Corporate Tax
bneoh@kpmg.com.my

Benjamin Ang
Manager – Corporate Tax
benjaminang@kpmg.com.my

Contact Us

Petaling Jaya Office

Tai Lai Kok
Executive Director –
Head of Tax and
Head of Corporate Tax
ltai1@kpmg.com.my
+603 7721 7020

Long Yen Ping
Executive Director –
Head of Global Mobility
Services
yenpinglong@kpmg.com.my
+603 7721 7018

Ng Sue Lynn
Executive Director –
Head of Indirect Tax
suelynnng@kpmg.com.my
+603 7721 7271

Soh Lian Seng
Executive Director –
Head of Tax Risk Management
lsoh@kpmg.com.my
+603 7721 7019

Bob Kee
Executive Director –
Head of Transfer Pricing
bkee@kpmg.com.my
+603 7721 7029

Outstation Offices

Penang Office
Evelyn Lee
Executive Director –
Penang Tax
evewflee@kpmg.com.my
+604 238 2288 (ext. 312)

Kuching Office
Regina Lau
Executive Director –
Kuching Tax
reglau@kpmg.com.my
+6082 268 308 (ext. 2188)

Kota Kinabalu Office
Titus Tseu
Executive Director –
Kota Kinabalu Tax
titustseu@kpmg.com.my
+6088 363 020 (ext. 2822)

Johor Bahru Office
Ng Fie Lih
Executive Director –
Johor Bahru Tax
flng@kpmg.com.my
+607 266 2213 (ext. 2514)

Ipoh Office
Crystal Chuah Yoke Chin
Tax Manager –
Ipoh Tax
ycchuah@kpmg.com.my
+605 253 1188 (ext. 320)

kpmg.com/my

facebook.com/KPMGMalaysia

twitter.com/kpmg_malaysia

linkedin.com/company/kpmg-malaysia

instagram.com/kpmgmalaysia