一览2013年国家财政预算案税务变动的影响

TAX IMPLICATIONS OF THE 2013 NATIONAL BUDGET AT A GLANCE

The 2013 Budget was tabled at the Parliament by YAB Dato' Sri Mohd Najib Tun Abdul Razak, Prime Minister cum Minister of Finance of Malaysia, on 28 September 2012 Friday at 4pm. The theme of this Budget is **"PROSPERING THE NATION, ENHANCING WELL-BEING OF THE RAYKAT: A PROMISE FULFILLED".**

The Budget focus on 5 main areas:

1. **Boosting Investment Activity**
2. **Strengthening Education and Training**
3. **Inculcating Innovation, Increasing Productivity**
4. **Fiscal Consolidation and Enhancing the Public Service Delivery**
5. **Enhancing Well-Being of the Rakyat**

The purpose of this write-up is to provide an insight on the Budget proposals. The Budget proposals are subject to subsequent enactment by way of Finance (No. 2) Act 2012 and Gazetted Orders and thus the proposals may be amended by the Authority prior to the enactment. Professional advice should be sought in order to appreciate specific tax implications to you and your business.

The Budget proposals are effective from the year of assessment ("YA") 2013 unless stated otherwise. Certain tax matters are not mentioned in the Budget Speech and the Appendix, but they are detailed in the Finance (No. 2) Bill, 2012.

Significant points addressed by the Budget are detailed in this write-up.

Economy

- The **GDP Growth** in 2013 is estimated to expand at 4.5% to 5.5% (2012: 4.5% to 5%). The higher growth is supported by Private Investments at 13.3% and Private Consumptions at 5.7%. The Construction sector is expected to increase 11.2% followed by the Services sector at 5.6%.

  The nation's GDP is expected to exceed RM1 trillion in 2013.

- The Government proposed **Total Expenditure** of RM251.6 bn for the year 2013 (2012: RM252.4 bn) with Operating Expenditure RM201.9 bn (2012: RM202.6 bn) and Development Expenditure RM49.7 bn (2012: RM49.8 bn).

- The proposed **Revenue** is RM208.6 bn (2012: RM207.2 bn) with 55.5% (2012: 54.6%) from Income Tax and 17.8% (2011: 17.8%) from Indirect Taxes.

  Thus, it is expected that greater effort will be put in by the Inland Revenue Board (IRB) to increase income tax collections.

- The proposed **Operating Expenditure** represents 97% of the proposed Revenue and 80% of the Total Expenditure.

  Out of the Operating Expenditure, RM58.6 bn (29% of operating expenditure) is allocated for Emoluments, RM33.7 bn for Supplies and Services, RM107.3 bn for Fixed Charges and

Grants, RM1.1 bn for Purchase of Assets and remaining RM1.2 bn for Other Expenditure.

- Out of the **Development Expenditure**, RM30 bn is provided for the economic sector to support the needs of infrastructure, industrial and agriculture as well as rural development. A sum of RM11.1 bn is allocated to the social sector including education and training, health, welfare, housing and community development. RM4.6 bn is for development of Security sector, RM2 bn for General Administration and remaining RM2 bn for Contingencies.

- The **Budget Deficit** of RM43 bn (2012: RM45.2 bn) is equivalent to -4% (2012: -4.5%) of GDP and such deficit will be financed by Government's borrowings and other means.

  This is the 16th consecutive year of Budget Deficits. If we look back on the last few years, the Budget Deficit for years 2005 to 2007 was kept below -4% of GDP and the year 2008 increased to -4.8%. For year 2009, the deficit increased to -7.4% of GDP and this was due to the economic downturn. For years 2010 & 2011, the deficit was -5.6% & -5.4% of GDP respectively.

- In the first half of 2012, **Foreign Direct Investment** (FDI) net inflow was RM13.6 bn.

- **International Reserves** was RM432.2 bn as on 14 September 2012, sufficient to finance 9.5 months of retained imports and is 3.9 times the short-term external debt. Income per capita for 2012 is estimated to increase to RM31,000.

- The proposed Government's **Subsidies and Assistance** amount is RM37.7 bn for 2013.

Restriction on the manner in which Interest Income can be treated as Business Income

- With the proposed new section 4B and amendment to section 24(5) of the Income Tax Act 1967 (IT Act), interest income can only be treated as business income if the interest is receivable by a person from the business of lending money licensed under any written law.

  Thus, interest income derived from a Housing Development Account, interest charged to debtors on overdue balances etc must be treated as non-business income although such interest income is derived from the income from business source. As a non-business income, a lot of expenses are not allowed for tax deduction and any losses cannot be either set-off against other income sources or carried forward to subsequent years. This results in higher income tax liabilities.

  Pursuant to the Savings and Transitional provisions, any unabsorbed loss and capital allowance for YA 2012 in respect of interest from a business source prior to such amendment will be carried forward and deducted against the aggregate statutory income from any other business source until it is fully deducted.

  This proposal impacts all companies other than Investment Holding Companies listed on the Bursa Malaysia because interest income received by such Investment Holding Companies is deemed business source income under section 60FA.

"Assets Held for Sales" treated as Deemed Disposals

- Financial Reporting Standard (FRS) 5 prescribes the accounting principles for "Assets Held for Sales" and the presentation and disclosure of discontinued operations. Actually, "Assets Held for Sales" is merely an accounting presentation and disclosure and should not be a subject for income tax because these assets have not been disposed yet and it is only illustrating an intention to sell the assets.

  With the proposed new paragraph 61A in Schedule 3 of the ITAct, such "Assets Held for Sales" are deemed to have ceased to be used. Three (3) scenarios arise as a result of this proposal:

1. Assets are <u>sold in the same basis period</u> as the classification of the assets as "Assets Held for Sales"

The disposal value of such assets shall be the greater of:

i. market value at the date the assets were classified as "Assets Held for Sales"; or

ii. net proceeds of the sales

If the market value as per item (i) is higher than the net proceeds of the sales, taxpayer ends up in a higher balancing charge and thus paying a higher income tax amount.

2. Assets are sold in the following basis period after the assets are classified as "Assets Held for Sales"

The disposal value of such assets shall be the greater of:

i. market value at the end of the basis period in which such assets were classified as "Assets Held for Sales"; or

ii. net proceeds of the sales

Notional annual allowance must be computed for the basis period in which such assets were classified as "Assets Held for Sales" and this reduces the residual expenditure of such assets.

If the market value as per item (i) is higher than the net proceeds of the sales and with the Notional Annual Allowance, taxpayer ends up in a higher balancing charge and thus paying a higher income tax amount.

3. Assets are NOT sold after the end of the following basis period after the assets are classified as "Assets Held for Sales"

Under scenario (3), such assets are treated as deemed disposal even thought they have not been disposed yet. Thus, taxpayer ends up in a balancing charge and pays income tax when such disposal has NOT taken place.

The disposal value of such assets shall be the market value of the assets at the end of the following basis period.

Where such assets are subsequently brought back into use in a business, the taxpayer can only claim annual allowance and claiming of initial allowance is not allowed. The qualifying capital expenditure for such assets is the market value at the date they are brought back into use.

Goods and Services Tax (GST)

- The Budget Speech mentions about "transition from income based taxation system to a more comprehensive and fair taxation system" which we reckon it must be referring to GST. Detailed GST guidelines have been published in the Kastam's website and thus, it is a matter of time that GST will be implemented.

Income Tax Administration

Time Bar for Income Tax Assessment Reduced from 6 years to 5 years

- Although the Time Bar period has been reduced to 5 years, the records must still be kept for 7 years. {effective from 1.1.2014}

  Consequence to such proposal, the time bar period for taxpayers to claim repayment of tax and make an application for relief in respect of error or mistake in a return has been reduced to 5 years.

  However, there is no time bar for fraud, wilful default and negligence. Thus, the IRB may go back unlimited number of years.

Changes affecting Individuals

Reduction in Income Tax Rates for Residents

- Income tax rates be reduced by 1% for chargeable income bands from RM2,501 to RM50,000. This results in tax saving of up to RM475 per annum for an individual. The PCD table (for monthly tax deductions) will have to be revised to take into account the proposed reduction in income tax rates.

Increase in Child Relief for Tertiary Education

- Child relief for tertiary education be increased from RM4,000 to RM6,000.

Increase in Tax Relief for Amount Deposited into Skim Simpanan Pendidikan Nasional

- Skim Simpanan Pendidikan Nasional tax relief be increased from RM3,000 to RM6,000. {effective for YA 2012 to YA 2017}

Withdrawal of Contribution made to a Private Retirement Scheme (PRS)

- Withdrawal from PRS will be taxed at a rate of 8% if such withdrawal is made before the age of 55 (other than by reason of death or permanent departure from Malaysia). The PRS payer is required to withhold the 8% tax and pays to the IRB within 1 month after making the payment to the individual; failing which the PRS payer is liable to 10% penalty. {effective from 1.1.2013}

Changes affecting Companies and Businesses

Limited Liability Partnership (LLP)

- LLP be given income tax treatments similar to those of SME Companies. A Compliance Officer shall be fully responsible for tax and administrative matters. {effective upon operation of the Limited Liability Partnerships Act 2012}

Co-operative Society

- Progressive income tax rates be reduced across all chargeable income bands for Co-operative Society.

- Review of tax treatments for Co-operative Society. {effective upon operation of the Finance (No. 2) Act 2012}

Business Trust

- Business Trust (BT) is a new investment vehicle in Malaysia under the amended Capital Markets and Services Act 2007. It is proposed that BT be given income tax, stamp duty and real property gains tax (RPGT) treatments similar to those of a company.

  BT be given stamp duty exemption on instruments of transfer of businesses, assets or real properties acquired. The disposer of real properties or shares in a real property to BT be given RPGT exemption. {effective from 1.1.2013}

Elimination of Agriculture Charges

- Government grants received for agriculture capital expenditure not subject to income tax. {effective upon operation of the Finance (No. 2) Act 2012}

Others

- Appeal to the Special Commissioners for withholding tax amounts not liable to be paid. {effective from 1.1.2013}

- Tax exemption on annuity fund. {effective from YA 2012}

- Tax treatment for Special Purpose Vehicle. {effective from YA 2012}

- Deduction for expenditure on Treasury Shares.

- Review tax treatments for Takaful business. {effective from YA 2012}

- Restrict the application of control transfer rule for REITs or Property Trust.

Tax Incentives

Double Deduction for 1Malaysia Training Scheme Programme (SL1M)

- Double deduction is given for training expenses incurred on the training programme implemented by Government-linked companies (GLC) and private companies to provide soft skills training or on-the-job training to unemployed graduates. Applications for the approval of the training scheme must be made to the Ministry of Finance (MoF) and such scheme must be implemented within 1 year from the date of approval. {effective for applications made between 1.6.2012 and 31.12.2016}

Other Incentives

- Tax incentives and stamp duty exemption to revive abandoned housing projects. The parties benefiting from such incentives are banking and financial institution, rescuing contractor/ developer and original house purchaser in the abandoned project. {effective from 1.1.2013 to 31.12.2015}

- Review of tax incentives for tour operators. {effective for YA 2013 to YA 2015}

  Take note that such incentives are not available for YA 2012.

- Tax incentive for Child Care Centre.

- Tax incentive for Pre-School Education.

- Incentive to acquire foreign companies for their state-of-art technology. {effective date yet to be determined}

- Incentive to small Malaysian service providers to merge into large entities. {effective for applications received within 3 years from 3.7.2012}

- Review of tax incentive for security control and surveillance equipment. {effective for YA 2013 to YA 2015}

- Investment Tax Allowance for investment in refinery activities. {effective date yet to be determined}

- Extending tax incentives for commercialisation of public sector research and development (R&D) findings. {effective for applications received by MIDA from 29.9.2012 to 31.12.2017}

- Review of tax deduction for investment in a venture company. {effective for applications made to the MoF from 1.1.2013 to 31.12.2017}

- Double deduction and stamp duty exemption for issuance of AgroSukuk, Retail Sukuk and Retail Bonds. {effective till YA 2015 or 31.12.2015}

Real Property Gain Tax (RPGT)

- In 2010 Budget, the Government brought back RPGT at 5% flat rate for disposal within 5 years with effect from 1 January 2010. Disposal of shares in Real Property Company (RPC) would also be affected as the shares in RPC are deemed chargeable assets within the meaning of the RPGT Act.

  RPGT has been suspended for the period from 1 April 2007 until 31 December 2009.

  The 2012 Budget stipulates that the RPGT rate for disposal of landed properties for holding period up to 2 years be changed to 10%. The same applies to disposal of shares in Real Property Company (RPC) for holding period up to 2 years. RPGT rate for disposals after 2 years and up to 5 years remains as 5%.

  Budget 2013 increases the RPGT rate by 5% for disposals within 5 years. That is RPGT rate 15% for disposal within 2 years and 10% for disposal between 2 to 5 years. {effective for disposal of real properties and RPC shares from 1.1.2013}

- Amendments to various provisions of Real Property Gain Tax Act 1976 to strengthen the enforcement. {various effective dates}

Stamp Duty

- Review of stamp duty exemption for purchase of first residential property. {for S&P agreement executed from 1.1.2013 to 31.12.2014}

- Amendments to various provisions of Stamp Act 1949 to strengthen the enforcement. {effective upon operation of the Finance (No. 2) Act 2012}

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