一览2014年国家财政预算案税务变动的影响

TAX IMPLICATIONS OF THE 2014 NATIONAL BUDGET AT A GLANCE

The 2014 Budget was tabled at the Parliament by YAB Dato' Sri Mohd. Najib Tun Haji Abdul Razak, Prime Minister cum Minister of Finance of Malaysia, on 25 October 2013 Friday at 4pm. The theme of this Budget is **"Strengthening Economic Resilience, Accelerating Transformation and Fulfilling Promises".**

The Budget focus on 5 main areas:

1. **Invigorating Economic Activity**
2. **Strengthening Fiscal Management**
3. **Inculcating Excellence in Human Capital**
4. **Intensifying Urban and Rural Development**
5. **Ensuring 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 2013 ("Finance Bill") and Gazetted Orders and thus the proposals may be amended by the Government prior to the enactment. Professional advice should be sought in order to appreciate specific tax implications to you and your business.

Most of the Budget proposals are effective from year of assessment ("YA") 2014 onwards, but some are effective from YA 2015 or 2016 onwards, or on certain specific dates. There are certain significant tax matters not mentioned in the Budget Speech and the Appendix, but they are detailed in the Finance Bill, and these are denoted as '***'.

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

Economy

- The **GDP Growth** in 2014 is estimated to expand at 5% to 5.5% (2013: 4.5% to 5%). Growth will be supported by increase in Private Investments at 12.7% (2013: 16.2%) and Private Consumptions at 6.2% (2013: 7.4%).

  The services sector is the key contributor to economic growth. The sector's contribution to GDP has increased from 49.3% in 2000 to 55% in 2013..

- The Government proposed **Total Expenditure** of RM264.2 bn (2013: RM251.6 bn) with Operating Expenditure RM217.7 bn (2013: RM201.9 bn) and Development Expenditure RM46.5 bn (2013: RM49.7 bn).

- The proposed **Revenue** is RM224.1 bn (2013: RM208.6 bn) with 56% (2013: 55.5%) from Income Tax and 17.3% (2013: 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 97.1% (2013: 96.8%) of the proposed Revenue and 82% (2013: 80%) of the Total Expenditure.

- The **Budget Deficit** of RM40.1 bn (2013: RM43 bn) is equivalent to 3.5% (2013: 4%) of GDP.

This is the 17th consecutive year of Budget Deficits. Let us look back on the past 10 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 and 2012, the deficit was 5.6%, 5.4% and 4.5% of GDP respectively. There has been gradual reduction of deficit (as a percentage of GDP) since year 2010.

- The proposed Government's **Subsidies and Assistance** amount is RM39.3 bn (2013: 37.7 bn).

Goods and Services Tax ("GST")

- GST will be implemented effective from 1 April 2015 and will replace both Sales Tax and Service Tax. The proposed initial GST rate will be 6% for standard rate.
- GST is to be charged on goods and services at all levels namely production, manufacture, wholesale and retail.
- GST is to be charged on goods and services supplied within Malaysia or imported into the country.
- Supplies made by the Federal and State Government are not within the scope of GST except for some services prescribed by the Ministry of Finance ("MoF").
- Supplies made by the local authorities and statutory bodies in relation to regulatory and enforcement functions are not within the scope of GST.
- GST charged on all business input such as capital assets and purchases of materials and services is know as Input Tax whilst GST charged on all supplies made (sales) is known as Output Tax.

  For eligible businesses, the Input Tax incurred is used to set-off against the Output Tax in accordance with GST Laws.

  The businesses can ask for GST refund from the Kastam if the Output Tax is not sufficient to set-off against the Input Tax.

  The businesses must pay the difference to the Kastam if the Output Tax is more than the Input Tax.

- There are 3 types of supply: (a) Zero-rated supply (b) Exempt supply (c) Standard-rated supply at 6%
- The threshold for purposes of registration under GST is the annual sales value of RM500,000. Businesses below the threshold are not required to register but may register on a voluntary basis.
- GST returns must be submitted (together with the GST payment) to the Kastam every quarter, but those businesses with sales more than RM 5 million must submit/pay every month.
- The Kastam have prepared detailed GST Schemes for certain specific industries and will come up with GST rulings in due course.
- GST is now for real and we would advise the businesses to get ready. Do not wait till the last moment.

Deemed interest income on loan or advances to directors

- A new section 140B of Income Tax Act 1967 ("ITA") be introduced to provide that where a company makes any loan or advances of any money from the internal funds of the company to Directors, the company shall be deemed to have derived interest income at end of each month based on the average lending rate of commercial banks published by the Bank Negara for those months. {the Bill states that this is effective from YA 2014 onwards, but the IRB clarifies that MoF will issue a concession for this to be effected from 1 January 2014} ***

  This proposal aims to expand the scope of company taxation by deeming interest income on loan or advances to directors as taxable income of the lending company. This is to counter-act on those companies which take advantage on tax-exempt interest income enjoyed by individuals.

The meaning of "Director" is defined in s75A(2) of ITA as amended by the Finance Bill. "Director" means any person who is occupying the position of director (by whatever name called) including any person who (a) is concerned in the management of the company's business and (b) is, either on his own or with one or more connected persons, the owner of, or directly or indirectly control 20% (this 20% is amended from 50% in the Finance Bill) or more of the ordinary share capital of the company.

If a company charges the director for interest on such loan or advances and the actual interest is less than the interest computed based on the formula, the actual interest is disregarded. There is no deemed interest income if the actual interest is more than the interest computed based on the formula.

Director's liability

- It is proposed that Director, who holds 20% (amended from 50%) or more of the ordinary share capital of the company, is responsible for any tax due and payable by the company. {effective upon operation of the Finance (No. 2) Act 2013} ***

Definition of "Entertainment"

- The definition of "Entertainment" under s18 of ITA be amended to include expenses incurred by a taxpayer or his employee with or without consideration paid whether in cash or in kind, in promoting the business carried by that taxpayer. {effective from YA 2014 onwards} ***

  The effect of such proposal is entertainment expenses incurred in promoting the business would be allowed for 50% tax deduction, other than the exceptions stated in s39(1)(l).

  "Entertainment" includes:

  a. provision of food, drink, recreation or hospitality of any kind; or

  b. provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in (a).

Deduction not allowed for failure to furnish information requested by the Director General of the IRB ("DGIR")

- A new sub-section 39(1A) of ITA be introduced to provide that where a taxpayer is required by the DGIR to furnish any information within the time specified in a notice or such other time as may be allowed by the DGIR, and that information concerns wholly or in part a deduction claimed by that taxpayer, the deduction shall be disallowed if the taxpayer fails to provide such information within the time specified or such extended time allowed. {effective from YA 2014 onwards} ***

  Taxpayers will need to ensure that the relevant information required by the DGIR be furnished within the stipulated timeframe to avoid the deduction be disallowed. If such information cannot be obtained with the stipulated timeframe, the taxpayer must ask for an extension of time from the DGIR.

Gains or profits from a business arising from stock in trade parted with by any element of compulsion

- A new section 4C of ITA be introduced to provide that business income includes gains or profits arising from stock in trade parted by any element of compulsion including compulsory acquisition by an authority. {effective from YA 2014 onwards} ***

  Property development companies would be affected by such proposal where the lands are treated as stock in trade in the accounts. Gains arising from compulsory acquisition by an authority would be treated as business income and thus subject to income tax, instead of real property gain tax.

Appeal on deemed assessment

- A new sub-section 99(4) of ITA be introduced to provide that the right of a taxpayer to appeal to the Special Commissioners of Income Tax ("SCIT") is not applicable to the deemed assessment, except where the taxpayer is aggrieved by the public rulings issued by the IRB. {effective upon operation of the Finance (No. 2) Act 2013} ***

  Under the system of self-assessment, the income tax returns or amended returns filed by taxpayers are deemed to be tax assessment. Currently, a taxpayer aggrieved by the deemed assessment is given the right to file an appeal to the SCIT via submission of Form Q to the DGIR (whether or not aggrieved by the IRB public rulings).

Company shall e-submit its income tax return

- New sub-sections 77A(1A) and 77A(4) of ITA removes the manual filing option and make it mandatory for a company to file its income tax return electronically to the DGIR. Such return has to be based on accounts audited by a professional accountant in accordance with the Companies Act 1965 ("CA"). {effective from YA 2014 onwards} ***

  Company under liquidation is not required by the CA to have its accounts audited. This proposal seems to have overlooked this.

Payment of withholding tax due

- A new sub-section 140(2A) of ITA be introduced to provide that DGIR be empowered to issue a notice to require a person to remit withholding tax that should be deducted and payable to the IRB within a specific timeframe. {effective upon operation of the Finance (No. 2) Act 2013} ***

Reduction in corporate income tax rates

- Reduction in corporate income tax rate from 25% to 24%. Tax resident SME Company's income tax rate will be reduced from 20% to 19% on chargeable income up to RM 500,000. {effective from YA 2016 onwards upon amendment to ITA in the future}

Reduction in income tax rates for co-operative societies

- Reduction in income tax rates for co-operative societies by 1% to 2% across various tax bands and the maximum tax rate is reduced from 25% to 24%. {effective from YA 2015 onwards upon amendment to ITA in the future}

Training expenses in line with Goods and Services Tax ("GST") implementation

- Expenses incurred for GST related training in accounting and Information Technology and Communications ("ICT") be given double tax deduction. {to be gazetted by way of Statutory Order for YA 2014 and YA 2015 only}

Secretarial and tax filing fees

- Secretarial fee and tax filing fee be allowed for deduction in computing the income tax liability. {to be gazetted by way of Statutory Order for YA 2015 onwards}

Accelerated capital allowance ("ACA") on ICT equipment

- ACA on ICT equipment be extended for 3 years. {to be gazetted by way of Statutory Order for YA 2014 to YA 2016 }

  The current ACA on ICT equipment expires in YA 2013.

Implementation of minimum wages

- The difference between the original salary and the minimum wages paid by the employers (which are SME Companies, co-operatives, associations, trust bodies and societies) be given a further tax deduction. {to be gazetted by way of Statutory

Order for the period from 1 January to 31 December 2014 only}

Flexible work arrangement ("FWA")

- Expenses incurred by an employer in training employees, supervisors and managers as well as consultancy fees incurred to design an appropriate FWA be given a further tax deduction. {to be gazetted by way of Statutory Order for applications for FWA status received by Talent Corporation Malaysia Berhad between 1 January 2014 and 31 December 2016}

Interest income from loan transactions between related parties

- A new sub-section 29(3) of ITA be introduced to provide that interest on loan transactions between related parties is deemed obtainable on demand when the interest is due to be paid. This aims to clarify on when interest income on loan transactions between related parties is to be recognised. {effective from YA 2014 onwards} ***

Deduction for interest on money borrowed

- A new sub-section 33(4) of ITA be introduced to provide that a taxpayer is only eligible to claim a deduction in respect of interest from money borrowed against its business income when such interest is due to be paid. However, the deduction would be given in the year the interest is payable. {effective from YA 2014 onwards} ***

  Thus, the new sub-sections 29(3) and 33(4) aims to align the timing taxing of interest income on the lender and deduction of interest expenses by the borrower.

Limited liability partnership ("LLP")

- Controlled transfer provisions shall apply in respect of the assets transferred by the converting partnership or company to the newly formed LLP. A LLP is not entitled to make a claim for capital allowances in respect of the assets transferred for the YA in which the conversion occurred unless a claim has not been made by the converting partnership or company in that YA. {effective upon operation of the Finance (No. 2) Act 2013} ***

Appeal to SCIT

- A new sub-section 102(1A) of ITA be introduced to provide that, for double taxation arrangement under s132 of ITA, it is proposed that mutual agreement procedure be applied first before the case is submitted to the SCIT. {effective upon operation of the Finance (No. 2) Act 2013} ***

Other proposals affecting Companies and Businesses

- Estimate of tax payable for SME Companies. {effective from YA 2014 onwards} ***

- Basis period of a company, LLP, trust body or co-operative society following change of financial year end date. {effective from YA 2014 onwards} ***

- Basis period of a company, LLP, trust body or co-operative society for the first year of assessment. {effective from YA 2014 onwards} ***

- Reduce the deduction of permitted expenses for investment holding companies. {effective from YA 2014 onwards} ***

- Extending the deductibility of contributions to chartable organisations. {effective from YA 2014 onwards} ***

- Taxation of withdrawals of contributions made to a deferred annuity or a Private Retirement Scheme ("PRS"). {effective upon operation of the Finance (No. 2) Act 2013} ***

- Double deduction for anchor companies under vendor development programme. {to be gazetted by way of Statutory Order for MOUs signed by both anchor companies and MITI from 1 January 2014 to 31 December 2016}

- Tax deduction for Takaful businesses. {effective from YA 2014 onwards} ***

- Withholding tax on profit distributed or credited to participants for Takaful funds. {effective from YA 2014 onwards} ***

- Extension of incentives under the Green Lane Policy Programme. {to be gazetted by way of Statutory Order for applications received by MoF on or before 31 December 2017}

- Mutual administrative assistance in tax matters. {effective upon operation of the Finance (No. 2) Act 2013} ***

Changes affecting Individuals

Monthly tax deduction as final tax

- A new section 77C of ITA be introduced to provide that, to facilitate employees whose total income is equivalent to the amount of monthly tax deducted ("MTD") throughout the year, it is proposed that such taxpayers will no longer be required to submit the annual income tax returns, and thus render the amount of MTD as the final tax paid. {effective from YA 2014 onwards}

  This proposal is only applicable to:

  a. employees who receive employment income prescribed under s13(1)(a), (d) and (e) of ITA

  b. employees whose MTD are made

  c. employees serving under the same employer for a period of 12 months in that YA

  d. employees whose MTD are not borne by the employer for that YA

  e. employees who have not elected for joint assessment

  However, the DGIR retains the power to raise a deemed assessment or an additional assessment and disregard the deeming of the total amount of MTD deducted as final tax.

Reduction in individual income tax rates

- Reduction in individual income tax rates by 1% to 3% across various tax bands and the maximum tax rate is reduced from 26% to 25%. The maximum chargeable income band is raised from RM100,000 to RM400,000. {effective from YA 2015 onwards upon amendment to ITA in the future}

Special tax relief for middle income taxpayers

- Special tax relief of RM 2,000 be given to resident middle income taxpayers earning up to RM8,000 per month (aggregate income of up to RM96,000 p.a.). {to be gazetted by way of Statutory Order for YA 2013 only}

Other proposals affecting individuals

- Withdrawal from deferred annuity scheme or PRS will be taxed at a rate of 8% if such withdrawal is made before the age of 55, other than reasons of permanent total disablement, serious disease, mental disability, death or permanent leaving Malaysia. This is to encourage contributors to retain their savings for retirement, not for short-term. {effective upon operation of the Finance (No. 2) Act 2013} ***

- Government to increase its contribution to 1Malaysia Pension Scheme ("SP1M") from 5% to 10% and maximum of RM60 to RM120 per year. {effective from 1 January 2014 to 31 December 2017 by way of EPF regulations}

- Individual be given a one-off incentive of RM500 if the individual participates in PRS. The individual must have a minimum of cumulative investment of RM1,000 within a year and is of age 20 to 30. This proposal is to encourage youths who are 20 to 30 years old to save for their retirement. {effective from 1 January 2014 to 31 December 2018 but there is no proposed legislation yet}

Tax Incentives

- Extension of tax incentives for new four and five-star hotels. {to be gazetted by way of Statutory Order for applications received by MIDA from 1 January 2014 to 31 December 2016}
- Tax incentive for use of green technology. {to be gazetted by way of Statutory Order and the effective date is to be determined}
- Tax incentive for research and development of bio economy. {to be gazetted by way of Statutory Order for applications received by BiotechCorp from 1 January 2014 to 31 December 2018}

Real Property Gain Tax ("RPGT")

- The 2014 Budget increases RPGT rates on the gains from disposal of real properties or shares in real property companies ("RPC") from 1 January 2014:

Date of disposal	Companies	Citizen & PR	Non-Citizen
a. within 3 years	30%	30%	30%
b. in the 4th year	20%	20%	30%
c. in the 5th year	15%	15%	30%
d. thereafter	5%	nil	5%

The proposed RPGT rates are even more stringent than those rates before RPGT was suspended. RPGT has been suspended for the period from 1 April 2007 until 31 December 2009.

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 RPC would also be affected as the shares in RPC are deemed chargeable assets within the meaning of Real Property Gain Tax Act 1976.

The 2012 Budget stipulates that the RPGT rate for disposal of real properties or shares in RPC for holding period up to 2 years be changed to 10%. RPGT rate for disposals after 2 years and up to 5 years remains as 5%.

The 2013 Budget increases the RPGT rate by 5% for disposals within 5 years, i.e. RPGT rate 15% for disposal within 2 years and 10% for disposal between 2 to 5 years.

- Amendments to various provisions of Real Property Gain Tax Act 1976 to strengthen the enforcement. {effective upon operation of the Finance (No. 2) Act 2013} ***

Stamp Duty

- Exemption of loan agreements under the soft loan incentive scheme for SME. {effective upon operation of the Finance (No. 2) Act 2013}
- Amendment to s9 and s47A of Stamp Act 1949. {effective upon operation of the Finance (No. 2) Act 2013} ***

Indirect tax

- Import duty exemption on research and development equipment for companies that invest in pilot plants for the purpose of pre-commercialisation.

Prepared by
Mr. Lee Hooi Seng,

National Council Member of ACCCIM on 31st December 2013.