TaXavvy

Budget 2023 Edition (Finance Bill 2023)

14 March 2023

This edition is a continuation of our Budget 2023 (Retabled) Edition and highlights the key tax proposals based on the Finance Bill 2023 which were not covered in Budget 2023 (Retabled) Edition.

Inside this issue

1 Corporate Tax

Reduced income tax rate for MSMEs

A reduced income tax rate of 17% is currently given to an MSME for its first RM600,000 of chargeable income. To qualify for this reduced rate, the MSME is required to observe a shareholding (or capital contribution) condition. Amongst the current key criteria which disqualifies an MSME from enjoying the reduced tax rate is when another related company in its group [more than 50% shareholding (direct or indirect) relationship] has a paid up capital in respect of ordinary shares of more than RM2.5 million. A MSME which does not meet the shareholding condition will be subject to the standard corporate tax rate of 24%.

It was announced that the preferential income tax rate for qualifying MSMEs is to be reduced by 2% for the first RM150,000 of chargeable income with effect from YA 2023 as follows:

Current (YA 2022)

Chargeable income	Income tax rate (%)
First RM600,000	17
Exceeding RM600,000	24

Proposed (effective from YA 2023)

Chargeable income	Income tax rate (%)
First RM150,000	15
RM150,001 - RM600,000	17
Exceeding RM600,000	24

Additional information from the Finance Bill

Alongside the further reduction in tax rate is the introduction of an additional shareholding condition which an MSME is required to observe in order to qualify for the reduced tax rates (i.e. 15% and 17%) from YA 2024 as follows:

MSME is a company	MSME is an LLP
not more than 20% of its paid up capital in respect of ordinary shares, at the beginning of a YA, is owned directly or indirectly by one or more: ● companies incorporated outside of Malaysia; or ● individuals who are not Malaysian citizens.	**not more than 20%** of its capital contribution (whether in cash or in kind), at the beginning of a YA, is owned directly or indirectly by one or more: ● companies incorporated outside of Malaysia; or ● individuals who are not Malaysian citizens.

** MSME refers to a company with paid up capital in respect of ordinary shares of not more than RM2.5 million or a LLP with total contribution of capital of not more than RM2.5 million, and with gross business income of not more than RM50 million.*

(Effective from YA 2024)

Definition of plant for capital allowance purposes

In YA 2021, the definition of "plant" was inserted into the ITA 1967 as *"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"*.

It is proposed that the exclusion of intangible assets from the definition of plant be removed. In addition, the MOF may prescribe any asset to be excluded as plant.

The current and proposed definitions of plant are depicted as follows:

Current	Proposed
An apparatus used by a person for carrying on his business but **does not include**:	An apparatus used by a person for carrying on his business but **does not include**:
• a building	• a building
• an intangible asset	~~• an intangible asset~~
• any asset used and that functions as a place within which a business is carried on	• any asset used and that functions as a place within which a business is carried on
	Notwithstanding the above, the Minister may prescribe any other assets as assets which are excluded from the definition of "plant".

(Effective from YA 2023)

Comment

The proposal to remove the blanket exclusion of intangible assets as plant is a welcomed move which signals the Government's recognition of the importance of incentivising capital expenditure on intangibles as a driver for growth. In place of the blanket exclusion on intangibles will be a list (a "negative list") of items to be prescribed by MOF which will not qualify for CA claims. It is hoped that the authorities will be selective in determining the items which fall within the negative list including early communication and consultation with stakeholders.

Corporate tax

Existing	Proposed
Deadline for remittance of withholding tax on payments made to agents, dealers and distributors	
Deduction of tax from each payment made by a company to a resident individual agent, dealer or distributor ("ADD") pursuant to Section 107D shall be remitted to the IRB within 30 days after paying or crediting the payment.	Tax deduction on all payments to ADDs which are subject to withholding tax under Section 107D are to be accumulated on a monthly basis and remitted to the IRB not later than the last day of the following calendar month. (Effective from 1 January 2023) **Comment** This proposal is to align the law with the IRB's current administrative practice for payment of withholding tax under Section 107D which was communicated via its media release dated 9 July 2022.

Existing	Proposed
Extension of scope for application for relief to include payments made to ADDs	
The gross amount in relation to a payment made to an ADD which is incurred by a company for a YA ("YA of incurrence") which is subject to withholding tax under Section 107D of the ITA 1967 is not eligible for tax deduction in the YA of incurrence if the withholding tax under Section 107D (including any increased sum arising from late payment of withholding tax) is not paid to the IRB by the due date of filing of tax return for the YA of incurrence. Currently, there are provisions under the ITA 1967 to allow a revision to be made to the income tax return to allow tax deduction to be claimed on the gross amount of an expense where the withholding tax (including any increased sum arising from late payment of withholding tax) is only paid to the IRB after the due date of filing the tax returns for the YA of incurrence. In particular, these are to be made by application for relief under Sections 97A and 131A of the ITA 1967. The scope of matters which are covered under these provisions include the following payments to non-residents which are subject to withholding tax: • Contract payment; • Interest and royalty; • Income of a public entertainer; • Special classes of income; and • Other gains or profits. However, payments made by a company to ADDs which are subject to withholding tax under Section 107D is currently not covered under those relief provisions.	The scope of application for relief under Sections 97A and 131A is to be expanded to cover payments by a company to ADDs which are subject to withholding tax under Section 107D of the ITA 1967. (Effective from 1 January 2023)

2 Real Property Gains Tax

Real property gains tax

Transfer of real property to a former spouse

Currently, the treatment of ‘no gain, no loss’, i.e. the transferor’s disposal price for a real property is deemed to be equal to his/her acquisition price, is available for a transfer of real property between spouses where the transferor is a Malaysian citizen.

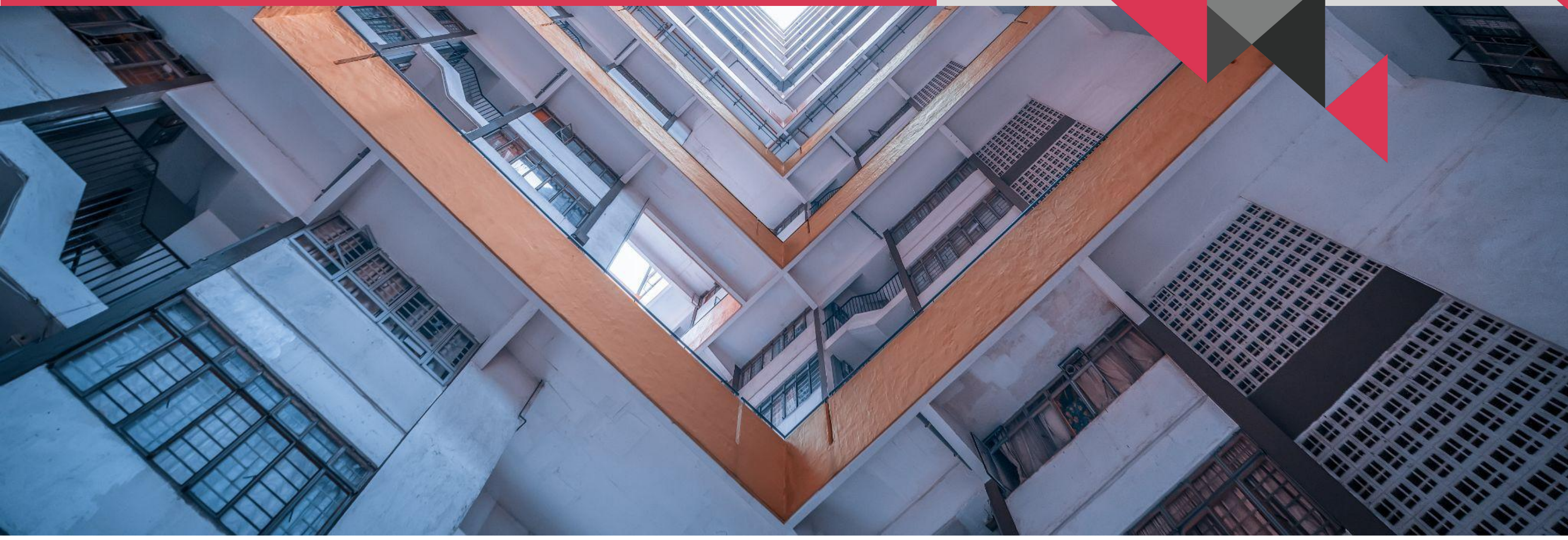
The ‘no gain, no loss’ treatment is not extended to transfers between former spouses. In such cases, the transferor would be subject to the prevailing RPGT rates as follows:

Disposal	RPGT rate
Within 3 years after acquisition	30%
In the 4th year after acquisition	20%
In the 5th year after acquisition	15%
In the 6th year after acquisition or thereafter	Nil

It is proposed that the ‘no gain, no loss’ treatment be extended to transfers of real property between former spouses which is carried out pursuant to an order of any court in consequence of the dissolution or annulment of their marriage where the transferor is a Malaysian citizen.

(Effective from the coming into operation of the Finance Act)

Real property gains tax



Transfer of chargeable asset to a company by an individual

Currently, the transfer of real property owned by an individual* into a company which is controlled by the individual* for a consideration which consists at least 75% of shares ("exchanged shares") in that company, the individual is deemed to have transferred the real property at a 'no gain, no loss', i.e. the disposal price is deemed to be equal to the acquisition price.

** or by the wife of the individual or by an individual jointly with his wife or with a connected person, by a nominee for the individual, a nominee for the wife of the individual or a nominee for both, or by a trustee for the individual, a trustee for the wife of the individual or a trustee for both.*

Where the individual enjoyed the 'no gain, no loss' treatment, the exchanged shares received will be subject to RPGT when they are disposed of in the future.

It is proposed that in addition to the existing conditions, the above 'no gain, no loss' treatment be given only if the company which is controlled is incorporated in Malaysia. If the company is incorporated outside of Malaysia, the 'no gain, no loss' provisions will no longer apply and the transfer of the real property will be subject to RPGT at the prevailing RPGT rates.

(Effective from the coming into operation of the Finance Act)

3 Stamp Duty

Stamp duty

<table>
<tr><th>Existing</th><th>Proposed</th></tr>
<tr><td colspan="2">Stamp duty on security instrument in relation to discounting invoices or factoring agreement entered by small and medium enterprises</td></tr>
<tr><td>Stamp duty on the following instruments specified in the First Schedule of the SA 1949 is imposed at a fixed duty of RM10:
<table>
<tr><th>Item</th><th>Types of instrument</th></tr>
<tr><td>27(d)</td><td>Instrument of a charge or a mortgage on or an assignment by way of security of accounts receivables to a licensed financial institution, pursuant to an agreement for discounting invoices or hire purchase receivables</td></tr>
<tr><td>32(c)</td><td>Instrument on the absolute sale of any accounts receivable or book debts to licenced financial institutions, pursuant to a factoring agreement</td></tr>
</table>
</td><td>The scope of the fixed duty of RM10 is expanded to include similar instruments which are entered by small and medium enterprises pursuant to discounting invoices or hire purchase receivables or factoring agreement entered with government bodies/agencies that provide financing to small and medium enterprises.

(Effective from coming into operation of the Finance Act)</td></tr>
</table>

4 Tax Administration

Tax administration

Mandatory e-filing of tax returns and amended tax returns

E-filing is to be made mandatory for the following categories of taxpayers:

Form type	Current mandatory e-filing	Proposed mandatory e-filing
Income tax return	Companies and LLPs	All categories of taxpayers
Amended income tax return	-	Companies, LLPs, Trust Bodies, and Co-operative Societies
Return form of employer (Form E)	Companies	LLPs, Trust Bodies, and Co-operative Societies

(Effective from YA 2024)

Form type	Current mandatory e-filing	Proposed mandatory e-filing
Production tax return (Form CPP)	-	Chargeable persons under the PITA 1967
Exploration tax return (Form CPE)	-	
Amended production tax return (Amended Return Form CPP)	-	

(Effective from YA 2023)

Amended exploration tax returns under PITA 1967

Currently, there is no provision to provide for the amendment of an exploration tax return submitted under the PITA 1967.

A new section 30C of the PITA 1967 is to be introduced to provide for the amendment of the exploration tax return, to be made only once, in respect of the amount of exploration expenditure incurred in relation to petroleum operations during the exploration period, or

The amended exploration tax return is to be submitted to the IRB within 6 months from the due date for submission of the exploration tax return.

(Effective from YA 2023)

Tax administration

Existing	Proposed
Instalment payments on tax arising from deemed assessment	
The DGIR is empowered under the ITA 1967 to allow tax payable arising from assessment raised formally* by the DGIR to be paid in instalments. However, there is no specific provision in the ITA 1967 to empower the DGIR to grant instalment payments for tax arising from deemed assessment arising from tax returns filed by taxpayers. ** e.g. best judgement assessment, additional assessment*.	The power for the DGIR to grant instalment payments is to be expanded to include granting tax instalments for tax arising from deemed assessments. (Effective from YA 2023)
Second revision to estimate of tax payable in CP500 cases	
A person other than a company, LLP, trust body or co-operative society is allowed to revise his estimate of tax payable for a YA (CP500) one time only, by 30 June of that YA.	A person other than a company, LLP, trust body or co-operative society be allowed to revise his estimate of tax payable for a YA (CP500) for a second time. The second revision can be made by 31 October of the YA. (Effective from YA 2023)

Glossary

Abbreviation / acronym	Description
CA	Capital allowance
DGIR	Director General of Inland Revenue
IRB	Inland Revenue Board
ITA	Investment Tax Allowance
ITA 1967	Income Tax Act 1967
LLP	Limited Liability Partnership
MOF	Ministry of Finance
MSME	Micro, small and medium enterprise
PITA 1967	Petroleum (Income Tax) Act 1967
RPGT	Real Property Gains Tax
RMCD	Royal Malaysian Customs Department
SA 1949	Stamp Act 1949
YA	Year of assessment

PwC Budget 2023 Seminar - Penang

Date:
Tuesday, 21 March 2023

Time:
8:30am to 5:00pm

Contact:
Yew Siew Lay / Ong Bee Ling
(04) 238 9291 / 9170

Email:
siew.lay.yew@pwc.com /
bee.ling.ong@pwc.com

Online registration:
pwc.com/my/en/events/2023/pwc-malaysia-northern-region-seminar-2023

Complimentary Webinar on Indirect Tax
Special Voluntary Disclosure Programme

Date:
Monday, 27 March 2023

Time:
2:30pm to 4:00pm

Contact:
Mhalni Segar / Khoo Yun Fei
(03) 2173 1563 / 1303

Email:
my_itag@pwc.com

Online registration:
https://forms.gle/om2fcLb5aHrww9W88

Connect with us

Kuala Lumpur
Jagdev Singh
jagdev.singh@pwc.com
+60(3) 2173 1469

Labuan
Jennifer Chang
jennifer.chang@pwc.com
+60(3) 2173 1828

Penang & Ipoh
Kang Gaik Hong
gaik.hong.kang@pwc.com
+60(4) 238 9225

Melaka & Johor Bahru
Benedict Francis
benedict.francis@pwc.com
+60(7) 218 6000

Kuching
Lee Yuien Siang
yuien.siang.lee@pwc.com
+60(8) 252 7202

Cynthia Ng
cynthia.hh.ng@pwc.com
+60(3) 2173 1438

Corporate Tax Compliance & Advisory

Consumer & Industrial Product Services
Margaret Lee
margaret.lee.seet.cheng@pwc.com
+60(3) 2173 1501

Steve Chia
steve.chia.siang.hai@pwc.com
+60(3) 2173 1572

Emerging Markets
Fung Mei Lin
mei.lin.fung@pwc.com
+60(3) 2173 1505

Energy, Utilities & Mining
Lavindran Sandragasu
lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Financial Services
Jennifer Chang
jennifer.chang@pwc.com
+60(3) 2173 1828

Services & Infrastructure
Lim Phaik Hoon
phaik.hoon.lim@pwc.com
+60(3) 2173 1535

Technology, Media and Telecommunications
Heather Khoo
heather.khoo@pwc.com
+60(3) 2173 1636

Specialist Services

Corporate Services
Lee Shuk Yee
shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Dispute Resolution
Tai Weng Hoe
weng.hoe.tai@pwc.com
+60(3) 2173 1600

International Tax Services / Mergers and Acquisition
Gan Pei Tze
pei.tze.gan@pwc.com
+60(3) 2173 3297

Individual Tax
Michelle Chuo
michelle.sy.chuo@pwc.com
+60(3) 2173 1289

Indirect Tax
Raja Kumaran
raja.kumaran@pwc.com
+60(3) 2173 1701

Geeta Balakrishnan
geeta.b.balakrishnan@pwc.com
+60(3) 2173 1652

Tax Technology
Yap Sau Shiung
sau.shiung.yap@pwc.com
+60(3) 2173 1555

Tax Reporting & Strategy
Lavindran Sandragasu
lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Transfer Pricing
Anushia Soosaipillai
anushia.joan.soosaipillai@pwc.com
+60(3) 2173 1419

Workforce Tax
Kartina Abdul Latif
kartina.a.latif@pwc.com
+60(3) 2173 0153

Lee Shuk Yee
shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Mohammad Iesa Morshidi
iesa.morshidi@pwc.com
+60(3) 2173 3136

China Desk
Lorraine Yeoh
lorraine.yeoh@pwc.com
+60(3) 2173 1499

Japan Business Consulting
Yuichi Sugiyama
yuichi.sugiyama@pwc.com
+60(3) 2173 1191

Clifford Yap
clifford.eng.hong.yap@pwc.com
+60(3) 2173 1446

Korea Desk
Keegan Ong
keegan.sk.ong@pwc.com
+60(3) 2173 1684