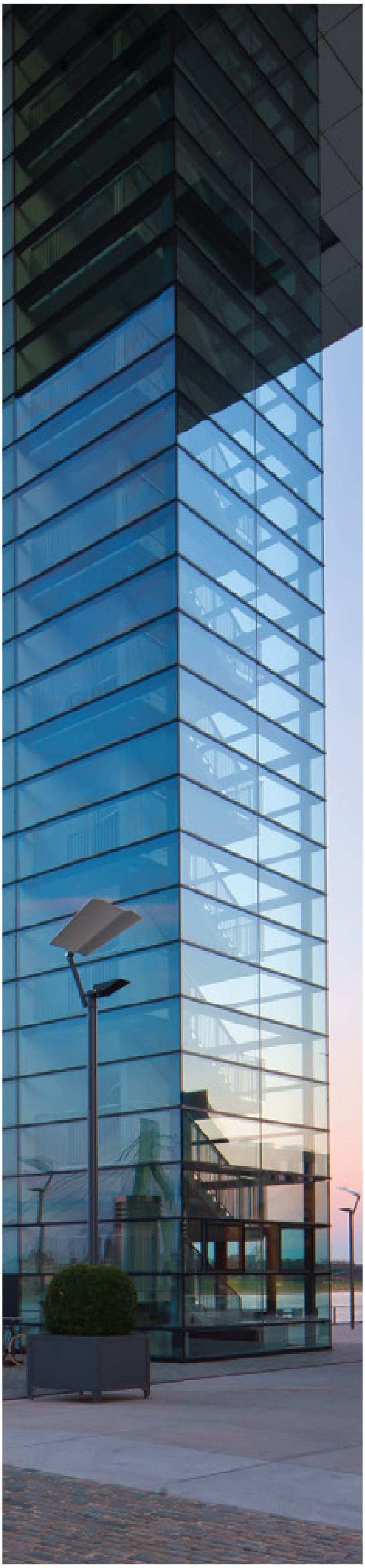
Monthly Tax Update: March 2023

Inside Monthly Tax Update: March 2023, we will cover the following updates:



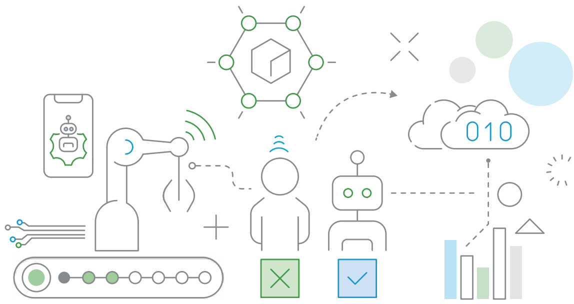
1. REVISED GUIDELINES ON RPGT

The Inland Revenue Board of Malaysia ("IRBM") has issued a revised guidelines on RPGT on 6 January 2023 to take into consideration the amendments for Real Property Gains Tax Act 1976 ("RPGTA") and Finance Act 2021.

The revised guidelines aims to provide clarification on the scope of charge, RPGT calculation, exemptions, responsibilities of the buyer and seller within a disposal of an asset which is chargeable to tax under RPGTA.

That being said, the previous RPGT guidelines dated 13 June 2018 would be applicable for past disposal of real property and shares in real property companies.

One of the salient points in the revised guidelines is that the grant of an irrevocable power of attorney for a consideration is considered a disposal on the basis that rights have been assigned from donor to recipient.



2. UPDATE ON WHT IN RELATION TO QUALIFYING PAYMENTS MADE TO ADD

The IRBM had issued guidelines for submission of WHT form and included an attachment in relation to WHT on certain payments made to ADD under Section 107D of the Income Tax Act 1967 ("The Act"). For background of the said WHT, you may refer to our earlier eNewsletters 03/2022 and 04/2022.

Based on the said guidelines, a company can only proceed to remit WHT to the IRBM upon receipt of the acknowledgement slip for submitted Appendix 107D(2) i.e. Slip Pengesahan Penghantaran Lampiran 107D(2) from the IRBM payment centre via email.

The company also needs to ensure that the WHT is remitted according to the amount stated in the acknowledgement slip, failing which the payment may be rejected by the IRBM.

3. MEDIA RELEASE ON MOVEMENT RESTRICTION DUE TO OUTSTANDING TAX PAYABLE

The IRBM has released a media statement on 19 February 2023 as a reminder to taxpayers with outstanding tax payable to settle their tax.

Section 75A and 104 of the Act as well as Section 22 of the RPGTA gives IRBM the authority to restrict any individual from leaving Malaysia if the individual or their company has outstanding tax payable to the Malaysian Government. The IRBM will send relevant notice to the taxpayers' registered address with the IRBM.

Taxpayers who were imposed with stoppage order are required to settle their outstanding taxes or arrange for their outstanding taxes to be settled by instalments by contacting the IRBM offices handling their tax file in order for the restriction to be lifted.

For the purpose of settling outstanding tax, tax payment can be done via the following methods: -

- MyTax portal through ezHasil Services > ByrHasil or via BYRHASIL LHDNM;
- Internet banking facilities of commercial banks which are designated as tax collection agents by the IRBM;
- Cash deposit machine ("CDM")/ Automated Teller Machine ("ATM") for banks appointed as IRBM's collection agent;
- The service counter of Commercial Banks and Post Office which have been appointed as IRBM collection agent; or
- IRBM's payment counters at Peninsular Malaysia, Sabah and Sarawak using credit card/debit card.

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4. NEW DTA BETWEEN MALAYSIA AND POLAND

The new DTA between Malaysia and Poland was signed and will take effect from 1 January 2024 (except for Article 25 – Mutual Agreement Procedure and Article 26 – Exchange of Information which took effect from 12 January 2023).

This new DTA supersedes the earlier DTA which was signed on 16 September 1977.

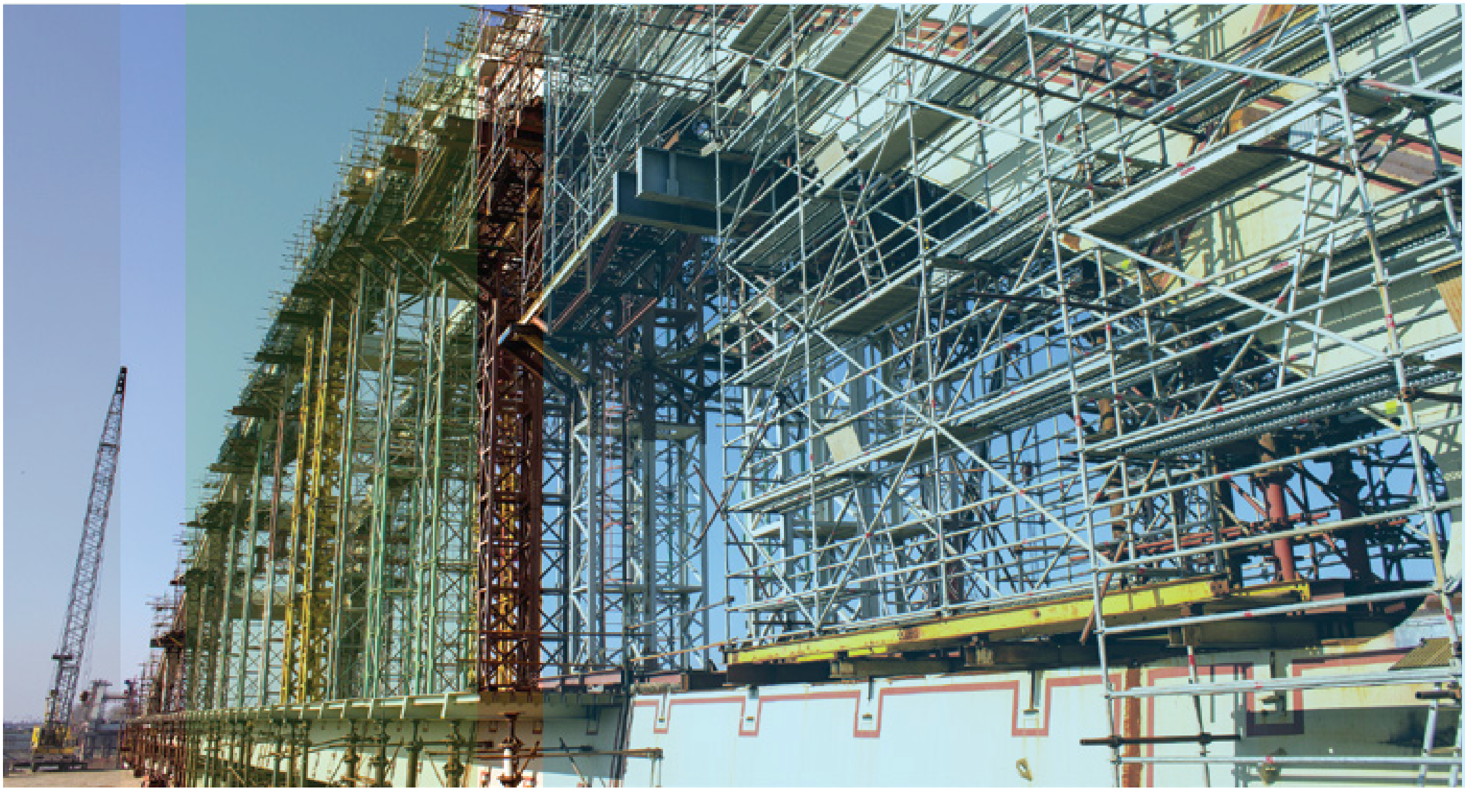
Some of the salient points of new DTA are as follows: -

- Permanent establishment ("PE") – The provision which prescribes that supervisory activities carried out for more than 6 months in connection with construction, installation or assembly project to be PE had been removed from the new DTA.

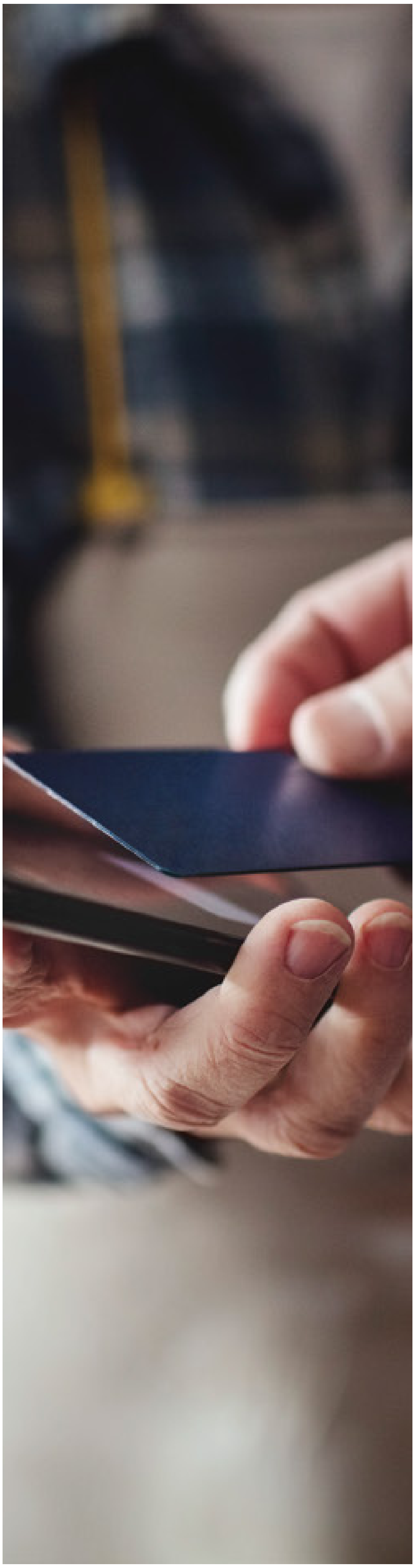
- Reduced WHT tax rates are revised as follows: -

Type of income	Old rate (%)	New rate (%)
Dividend	Exempted	5
Interest	15	10
Royalties	15	8
Technical services	Not specified	8

- Persons taxed under Labuan Business Activity Tax Act 1990 ("LBATA") will not be able to enjoy the benefits under DTA, unless the companies have made an irrevocable election to be subjected to tax under the Act.



5. GUIDELINES ON TRANSITION OF MSC MALAYSIA STATUS COMPANY TO MD STATUS



The Malaysia Digital Economy Corporation ("MDEC") has issued guidelines to transit MSC Malaysia Status Company to MD Status on 29 December 2022.

Below are the salient points from the Guidelines: -

- MSC Malaysia Status is now known as MD Status and MSC Status Company is now known as MD Status Company (for purpose of this section, referred to as "Company").

- Company is allowed to operate and undertake its approved activities in any location within Malaysia, and the minimum office space requirement is no longer applicable for the Company (effective 25 March 2022).

- Company is required to continue to adhere to the existing conditions (e.g. undertaking Approved Activities, percentage of Knowledge Workers, salary, etc) as stated in the approval letter and/or Conditions of Grants ("COG") issued to the Company including any approved variation of conditions.

- Non-compliance of the conditions may result in revocation of the MD Status.

- Company can continue to enjoy the offerings under MD Bill of Guarantees ("BoGs"). Existing approvals for incentives or benefits under the BoGs continue to subsist subject to compliance of existing applicable conditions.

- Some of the MD activities stated in Appendix 1 of the guidelines are big data analytics, data centre and cloud, and other emerging technologies deemed significant for the digital ecosystem (new activities are subject to approval by the Approval Committee).

  Companies that are currently undertaking one or more of the MD activities or planning to do so can visit the MDEC website at https://mdec.my/malaysiadigital/apply for further information on eligibility criteria, conditions to be complied with and application process. Please feel free to contact us for further discussion.

6. REMISSION OF PENALTIES AND SURCHARGES BY RMCD

The RMCD has offered remission of penalties and/or surcharges of up to 100% that were imposed on outstanding taxes and penalties / surcharges under the following Act: -

Goods and Services Tax Act 2014	Sales Tax Act 2018	Service Tax Act 2018	Tourism Tax Act 2017	Departure Levy Act 2019

The remission offer is applicable to Bill of Demand ("BOD") issued on or before 31 December 2022.

The details of the remission offer are as follows: -

- 100% remission of penalties and/or surcharges if outstanding taxes are fully settled between 1 February 2023 to 30 September 2023; or

- 90% remission of penalties and/or surcharges if the company does not have any outstanding tax but has only outstanding penalties / surcharges and the 10% of outstanding penalties/surcharges are fully settled between 1 February 2023 to 30 September 2023.

Companies which have obtained approval to settle outstanding taxes via instalments and certain BOD cases which have been escalated to the courts are eligible to enjoy the above remission offer.

Companies with penalties/surcharges imposed by RMCD should consider this opportunity to settle all outstanding taxes so as to minimize the penalties/surcharges to be paid.

7. UPDATES ON STODS AND IMPLEMENTATION OF SALES TAX ON LVG

The RMCD has shared various updates on SToDS and implementation of Sales Tax on LVG in a recent webinar conducted on 17 January 2023. Subsequently, a list of Q&A together with the RMCD's reply has been uploaded to address various common questions raised by the webinar participants.

The salient points of the Q&A in relation to Sales Tax on LVG are as follows: -

- A seller who sells LVG directly through his own website is liable to register as registered seller ("RS") for Sales Tax purpose and comply with relevant requirements for charging, collecting and remitting Sales Tax on LVG to RMCD.

- An online marketplace ("OMP") is liable to register, charge, collect and remit sales tax on LVG to RMCD if the LVG is sold through the OMP.

- A local seller who sells goods online and acquires LVG both locally and from abroad is required to identify which item are acquired from local source and which are acquired from overseas. Sales Tax on LVG is only applicable on goods acquired overseas.

- In a scenario where a local seller who sells goods online to customers in Malaysia only imports goods from overseas when a sale has happened, the importation of goods by this local seller is subject to Sales Tax on LVG if the imported goods satisfy the definition of LVG and are purchased through online from RS. When the said local seller sells and delivers the goods to local customers, it is not subject to Sales Tax on LVG.

To recap: -

- LVG are goods or class of goods from outside Malaysia that are sold in the OMP at a price of not exceeding RM 500 and brought into Malaysia via air, sea or land modes.

- OMP refers to an online platform that provides facilities for the sale and purchase of LVG which includes marketplace operated via website, internet portal or gateway, distribution platform or any other type of electronic interface but excludes payment processor/payment gateway or internet service provider.

- RS means seller who is registered under Section 13 of the Sales Tax Act 2018 (LVG).

- Seller means a person (in or outside Malaysia) who sells LVG on an OMP or operates an OMP for the sales and purchase of LVG.

However, the RMCD announced on 10 March 2023 that the imposition of sales tax on LVG which was intended to be implemented on 1 April 2023 has been postponed until further notice.

8. PRESCRIBED FORMS TO BE USED UNDER THE CA, EA AND WPLA

The RMCD has released Practice Note ("PN") No. 1/2022 on 30 December 2022 (which will take effect from 1 January 2023) to address the form and manner of declaration of goods that are imported, exported, movement of goods and other procedures under CA and EA as well as registration of producer, payment of levy and application for refund under WPLA.

This PN has clarified the forms to be used under each relevant circumstances for ease of public and industrial reference.

9. CHANGE IN RMCD NAME FOR THE PURPOSE OF PAYMENTS VIA CHEQUE OR BANK DRAFTS

The RMCD has announced the change of name from "Pengarah Kastam Negeri" to "Ketua Pengarah Kastam" with immediate effect for all payments via cheque or bank drafts through the RMCD counters.

However, company tax agent is granted with a grace period until 30 June 2023 for using the name " Pengarah Kastam Negeri".

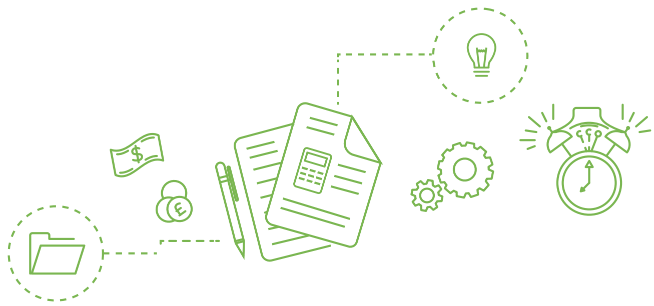
10. FOREIGN TOURIST WHO MAKES AN ONLINE BOOKING OF ACCOMMODATION PREMISE IN MALAYSIA VIA A REGISTERED DIGITAL PLATFORM SERVICE PROVIDER

The RMCD has released the Tourism Tax ("TTx") Policy No. 1/2023 on 16 February 2023 which is titled "Liability to Charge, Collect, Account and Remit TTx on a Foreign Tourist who Makes an Online Booking of Accommodation Premise in Malaysia via a Registered Digital Platform Service Provider ("Registered DPSP").

The Policy prescribes that, effective 1 January 2023, where a DPSP makes available accommodation premises in Malaysia through online booking platform, the DPSP will have to collect TTx from the tourist.

Nonetheless, the Minister of Finance ("MOF") has given a concession from 1 January 2023 to 31 March 2023 for registered accommodation premise operator ("Registered operator") to charge, collect, account and remit TTx to the RMCD where payment is received by the registered operator for booking of accommodation premises via a DPSP's platform.

Effective 1 April 2023, the registered DPSP will be wholly responsible for the charging, collection, accounting and remitting of TTx for online bookings of accommodation premises regardless of who is receiving the payment from the foreign tourist.



11. DRAFT SERVICE TAX GUIDE ON GOODS DELIVERY SERVICES

The RMCD has released a draft Service Tax Guide on Goods Delivery Services on 9 January 2023 to address the service tax implications on goods delivery services provided by a taxable person.

The salient points of the Guide are as follows: -

- Taxable service would consist of: -
  - Delivery services including courier of documents, packages or goods; or
  - Delivery services including courier of documents, packages or goods using e-commerce platform on behalf of other persons for the deliveries within Malaysia.

- Non-taxable services would include delivery of foods and beverages ("F&B") that are prepared by F&B establishments, logistics services, and delivery of goods from / to / between place(s) outside Malaysia.

- Taxable person are: -
  - Goods delivery service providers offering courier of documents, parcels or goods; or
  - Service providers who deliver goods even on behalf of others e.g. courier service providers and e-commerce platform service providers.

- Threshold to register – Service value exceeding RM 500,000 in a rolling 12-month period.

Currently, the above service tax, which was intended to be implemented on 1 January 2023, has been postponed until further notice. The finalised guidelines will be issued once the regulations have been gazetted.

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12. HIGHLIGHTS OF KEY TAX CHANGES BASED ON THE FINANCE BILL 2023

The Finance Bill is released on 14 March 2023 further from the re-tabling of 2023 Budget on 24 February 2023.

We highlight below the key proposed tax changes covering direct taxes, RPGT and stamp duty which were not covered in our RSM 2023 Budget Highlights .

Current / Proposed under Budget 2023	Proposed under Finance Bill 2023

Reduced income tax rate for Micro, Small and Medium Enterprises (MSMEs)

Current / Proposed under Budget 2023

Currently, MSMEs* are subject to tax at 17% on the chargeable income of up to RM600,000 and 24% on the remaining chargeable income whereas non-MSMEs are subject to tax at 24%.

*MSMEs refer to companies or Limited Liability Partnerships (LLPs) with paid-up capital/total contribution of capital not exceeding RM2.5 million and having annual gross business income not exceeding RM50 million.

It is proposed that the income tax rate for the first RM150,000 of MSME's chargeable income be reduced by 2%, as follows: -

Chargeable income	Current income tax rate (%)	Proposed income tax rate (%)
First RM150,000	17%	15%
RM150,001 to RM600,000	17%	17%
Exceeding RM600,000	24%	24%

The above proposal on the amended income tax rate is effective from Year of Assessment (YA) 2023.

Proposed under Finance Bill 2023

It is proposed that a new condition be imposed on companies/LLPs resident and incorporated in Malaysia not eligible to enjoy the preferential income tax rates if: -

a) 20% of the paid-up capital in respect of ordinary shares of the MSMEs at the beginning of the basis period for a YA is directly or indirectly owned by one or more companies incorporated outside Malaysia or individuals who are not Malaysian citizens; or
b) 20% of the capital contribution of the LLPs at the beginning of the basis period for a YA is directly or indirectly contributed by one or more companies incorporated outside Malaysia or individuals who are not Malaysian citizens.

The above proposal on the new condition is effective from YA 2024.

12. HIGHLIGHTS OF KEY TAX CHANGES BASED ON THE FINANCE BILL 2023 (CONT.)

Current / Proposed under Budget 2023	Proposed under Finance Bill 2023
Definition of plant for claiming capital allowances	
Currently, "plant" is defined under the Act as an apparatus used by a person for carrying on his business but does not include: - a) a building; b) an intangible asset; or c) any asset used and that functions as a place within which a business is carried on.	It is proposed that "plant" be defined under the Act as an apparatus used by a person for carrying on his business but does not include:- a) a building; b) any asset used and that functions as a place within which a business is carried on. Notwithstanding the above, the MOF may prescribe any other assets as assets which are excluded from the definition of "plant". The above proposal is effective from YA 2023.
Due date for remittance of WHT on payment made to ADD	
Currently, the due date to remit the 2% WHT under Section 107D of the Act on payment made to ADD is within 30 days after paying or crediting the ADD.	It is proposed that the due date of remitting the 2% WHT be amended from '30 days' to 'by the end of the calendar month immediately following the calendar month in which the payment was made'. The above proposal is effective from 1 January 2023.

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12. HIGHLIGHTS OF KEY TAX CHANGES BASED ON THE FINANCE BILL 2023 (CONT.)

Current / Proposed under Budget 2023	Proposed under Finance Bill 2023
Extension of scope for application for relief to include payment made to ADD	
Currently, the application for relief other than error or mistake under Sections 97A and 131A of the Act ("the provisions")* only caters for the following payments to non-residents which are subject to WHT: - - Contract payment; - Interest and royalty; - Income of a public entertainer; - Special classes of income; and - Other gains or profits. *The provisions refer to revision to be made to the income tax return to allow for tax deduction to be claimed on the gross amount of an expense where the WHT (including any increased sum arising from late payment of WHT) is only paid to the IRBM after the due date of filing the tax returns for that YA.	It is proposed that the provisions be expanded to include claim for tax deduction of expenses subject to 2% WHT on payments made to ADD under Section 107D of the Act. The above proposal is effective from 1 January 2023.
Mandatory filing of tax returns via electronic medium	
Currently, only companies are mandatory to file tax return (Form C) and employer tax return (Form E) whereas LLPs are mandatory to file tax return (Form PT) electronically.	It is proposed that the filing of tax returns via electronic medium be extended to the following types of forms: - - Personal tax return (Form B/BE/M); - Partnership return (Form P); - Amended tax return by a company, LLP, trust body and cooperative society; - Form E by LLP, trust body and cooperative society. The above proposal is effective from YA 2024.

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12. HIGHLIGHTS OF KEY TAX CHANGES BASED ON THE FINANCE BILL 2023 (CONT.)

Current / Proposed under Budget 2023	Proposed under Finance Bill 2023
Second revision for payment of tax instalments under CP500 scheme	
Currently, persons other than a company, LLP, trust body or co-operative society (other than those with only employment income) ("the persons") is only allowed to revise his estimate of tax payable for a YA under CP500 scheme one time i.e. by 30 June of that YA.	It is proposed that the persons are now given two time in a YA to revise their tax estimates i.e. by 30 June / by 31 October of that YA. The above proposal is effective from YA 2023.
Transfer of real property between former spouses	
Currently, the transfer of Malaysian real property between former spouses is subject to RPGT at the prescribed rates ranging from 0% to 30% depending on the holding period and residence status of the disposer.	It is proposed that the scope for 'no gain no loss' transaction be expanded to include the transfer of assets between former spouses under an order of any court in consequence of the dissolution or annulment of their marriage. The transfer of assets shall involve assets owned by a citizen. The above proposal is effective on the coming into operation of the Finance Act.
Limitation to the scope of no gain no loss transaction	
Currently, the transfer of assets owned by an individual, his spouse, jointly owned with his spouse or connected person, or by his and/or her nominee/trustee, to a controlled company is a 'no gain no loss' transaction, regardless of whether the controlled company is Malaysian resident, provided that the transfer is for a consideration consisting of shares in the company, or for a consideration consisting substantially of shares (i.e. not less than 75% of shares) in the company and the balance of a money payment.	It is proposed that the 'no gain no loss' provision be limited to the transfer of assets to a controlled company incorporated in Malaysia. The above proposal is effective on the coming into operation of the Finance Act.

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12. HIGHLIGHTS OF KEY TAX CHANGES BASED ON THE FINANCE BILL 2023 (CONT.)

<table>
<tr><th>Current / Proposed under Budget 2023</th><th>Proposed under Finance Bill 2023</th></tr>
<tr><td colspan="2">Stamp duty on education loan/scholarship agreement</td></tr>
<tr><td>Currently, stamp duty at the fixed rate of RM10 is applicable to education loans/scholarship agreements for the purpose of pursuing higher education in higher educational institutions.</td><td>It is proposed that the stamp duty at the fixed rate of RM10 be extended to education loans/scholarship agreements for the purpose of pursuing any courses of study in any institutions.

The above proposal is effective from 1 June 2023.</td></tr>
<tr><td colspan="2">Security instrument relating to discounting invoices/hire purchase receivables/factoring agreement entered by Small and Medium Enterprise (SME)</td></tr>
<tr><td>Currently, stamp duty at the fixed rate of RM10 is applicable to the following instruments:

<table><tr><th>Item in First Schedule of Stamp Act 1949</th><th>Type 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 bank or 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 a licensed bank or financial institution, pursuant to a factoring agreement.</td></tr></table></td><td>It is proposed that the stamp duty at the fixed rate of RM10 be extended to similar instruments entered with any statutory body, agency of the Government or of the State Government, or any company in which the Government or the State Government has interest, which provides financing to SME.

The above proposal is effective on the coming into operation of the Finance Act.</td></tr>
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TAX PROFESSIONAL TEAM

Ng Ah Bah
Head of Tax
T +603 2610 2827
E ngab@rsmmalaysia.my

Dato' Robert Teo
Managing Partner
T +603 2610 2886
E roberteo@rsmmalaysia.my

Corporate Tax Compliance

Anston Cheah
Executive Tax Director
T +603 2610 2829
E anston.cheah@rsmmalaysia.my

Nicole Chong
Tax Director
T +603 2610 2830
E nicole.chong@rsmmalaysia.my

Lim Sok Jiuan
Associate Tax Director
T +603 2610 2842
E limsj@rsmmalaysia.my

Soong Kim How
Associate Tax Director
T +603 2610 2848
E soongkh@rsmmalaysia.my

Tax Advisory

Ng Ah Bah
Head of Tax
T +603 2610 2827
E ngab@rsmmalaysia.my

Prabu Chaloraju
Tax Director
T +603 2610 2828
E prabu.chaloraju@rsmmalaysia.my

Indirect Tax

Mayadevi Karpayah
Tax Director
T +603 2610 2831
E mayadevi@rsmmalaysia.my

Kalvinder Singh
Senior Tax Manager
T +603 2610 2863
E kalvinders@rsmmalaysia.my

Field Audit and Investigation

Ng Ah Bah
Head of Tax
T +603 2610 2827
E ngab@rsmmalaysia.my

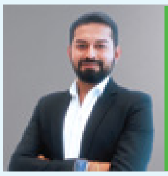
Chang Suang Yue
Tax Manager
T +603 2610 2862
E changsy@rsmmalaysia.my

Expatriate Employee Tax

Mayadevi Karpayah
Tax Director
T +603 2610 2831
E mayadevi@rsmmalaysia.my

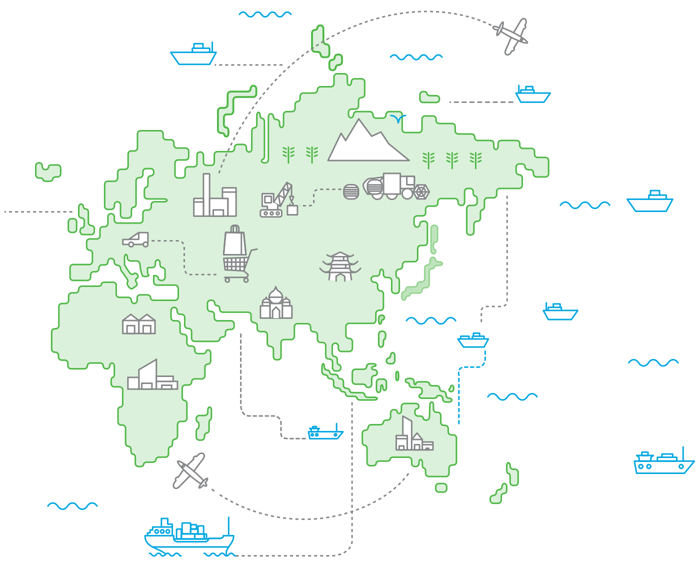
Lynda Harun
Senior Tax Manager
T +603 2610 2832
E lynda@rsmmalaysia.my

Transfer Pricing



Prabu Chaloraju
Tax Director
T +603 2610 2828
E prabu.chaloraju@rsmmalaysia.my

Jeyapriya Pereyamy
Associate Tax Director
T +603 2610 2844
E jeyapriya@rsmmalaysia.my



RSM Tax Consultants (Malaysia) Sdn Bhd
5th Floor, Penthouse, Wisma RKT,
Block A, No.2 Jalan Raja Abdullah Off Jalan Sultan Ismail,
50300 Kuala Lumpur,
Malaysia

Johor Bahru Office
Suite 16-02, Level 16, Menara Landmark,
No. 12, Jalan Ngee Heng,
80000 Johor Bahru,
Malaysia

General Email askus@rsmmalaysia.my
Website www.rsmmalaysia.my