RSM 2024 BUDGET

Finance (No. 2) Bill 2023

THE POWER OF BEING UNDERSTOOD
ASSURANCE | TAX | CONSULTING

RSM

INTRODUCTION

Further to the Budget 2024 which was presented on 13 October 2023, the Ministry of Finance ("MOF") has released the Finance (No.2) Bill 2023 which contains additional tax proposals and changes to the tax proposals announced during Budget 2024.

We are pleased to share with you some of the key updates in this newsletter on: –

- E-Invoicing
- Capital Gains Tax (CGT)
- Real Property Gains Tax (RPGT)
- Global Minimum Tax (GMT)
- Sales and Service Tax (SST)

GLOSSARY

Abbreviation / Acronym	Description
CGT	Capital Gains Tax
DGC	Director General of Customs
DGIR	Director General of Inland Revenue Board
DTT	Domestic Top-up Tax
ETP	Estimate of Tax Payable
GMT	Global Minimum Tax
IRBM	Inland Revenue Board of Malaysia
LLP	Limited Liability Partnership
LVG	Low Value Goods
MITA	Malaysian Income Tax Act 1967
MITRS	Malaysian Income Tax Reporting System
MNE	Multinational Enterprise
MOF	Ministry of Finance
MSME	Micro, Small and Medium Enterprise
MTD	Monthly Tax Deduction
MTT	Multinational Top-up Tax
OMP	Online Marketplace
RPC	Real Property Company
RPGT	Real Property Gains Tax
RPGTA	Real Property Gains Tax Act 1976
SAS	Self-Assessment System
STA 2018	Service Tax Act 2018
STAMPS	Stamp Assessment and Payment System
UPE	Ultimate Parent Entity
YA	Year of Assessment

KEY HIGHLIGHTS FROM FINANCE (NO. 2) BILL 2023

1. e-Invoicing

It is proposed that e-Invoicing be enacted under a new paragraph in the MITA.

a. Electronic invoice means an invoice or any document approved by the DGIR, issued by a person in respect of goods sold or services performed, transmitted electronically to the DGIR and validated by the DGIR.

b. The MOF shall prescribe the persons who shall issue the electronic invoice and particulars to be included in such electronic invoice.

c. The DGIR shall determine the conditions and specifications under which an electronic invoice is to be issued via guidelines to facilitate compliance of e-Invoicing.

d. **Non-compliance penalty** – On conviction, penalties ranging from RM200 to RM20,000 or imprisonment for a term not exceeding 6 months or both.

Effective: 1 January 2024

2. CGT

It is proposed that CGT be assessed under new paragraph under Section 4 of the MITA.

a. Scope

i. Capital assets situated in Malaysia: –
- Shares in unlisted companies incorporated in Malaysia
- Shares in foreign incorporated company deriving value from real property in Malaysia

ii. All types of capital assets situated outside Malaysia

**Capital asset means movable or immovable property including any rights or interests thereof.*

b. Taxable Persons

i. Companies
ii. LLPs
iii. Co-operatives
iv. Trust bodies (including unit trusts)

c. CGT rates

Capital assets	CGT rate (%)	
i. Capital assets situated in Malaysia which were acquired	On chargeable income	On gross disposal price
– Before 1 January 2024	10 or 2	
– On or after 1 January 2024	10	Not applicable
ii. All capital assets situated outside Malaysia where income is received in Malaysia from outside Malaysia for disposal of capital asset	Based on prevailing income tax rate of the taxpayer	

2. CGT (Cont'd)

d. Compliance requirements

i. CGT return is required to be submitted in a prescribed form electronically and CGT (if any) is required to be paid within 60 days from the date of disposal.

e. Exemptions

i. Exemptions be given under a new paragraph i.e. Paragraph 38, Schedule 6 of the MITA on gains or profits from the disposal of a capital asset situated in Malaysia except for: –
   - Disposal of shares of a company incorporated in Malaysia not listed on the stock exchange; and
   - Disposal of shares of a controlled company incorporated outside Malaysia which derives value from real property in Malaysia.

f. Others

i. Each disposal shall be assessed separately and treated as a separate source of gain or profits from disposal of capital assets.
ii. Capital losses can be utilised to offset against the gains from disposal of other capital assets.
iii. Unabsorbed capital losses can be carried forward for a maximum period of ten (10) consecutive YAs.
iv. Acquisition and disposal of RPC shares by the above taxable persons will be subject to MITA instead of RPGTA.

Effective: 1 January 2024

Note: The MOF has clarified via their letter dated 17 November 2023 that the imposition of CGT in respect of gains or profits from disposal of local companies' unlisted shares will commence from 1 March 2024. This will be implemented through subsidiary legislation.

3. RPGT

It is proposed that RPGT be assessed under SAS, where: –

a. Taxpayer (i.e. disposer) is required to declare RPGT payable in the prescribed form – to be filed electronically.

b. Due date to submit the RPGT return is within 60 days from the date of disposal.

c. RPGT return submitted by the taxpayer will be deemed to be an assessment made by the DGIR.

d. Taxpayer is eligible to amend RPGT return by submitting an amended RPGT return. Due date to submit the amended RPGT return is within 6 months from the submission due date of such RPGT return. The amended RPGT return submitted by the taxpayer will be deemed to be an additional assessment made by the DGIR.

e. Amended RPGT return can only be made once and is not applicable where DGIR has raised additional RPGT assessment after submission of RPGT return.

f. **Penalty –**

   i. Additional RPGT payable resulting from the amended RPGT return is subject to 10% increase in tax.

g. Record keeping of 7 years is required.

Effective: 1 January 2025

4. GMT

It is proposed that DTT and MTT be enacted into MITA.

a. Scope

i. Applicable to Constituent Entities which are members of a MNE Group with **annual revenue of EUR750 million or more in the Consolidated Financial Statements of the UPE** in at least 2 or the 4 consecutive Financial Years immediately preceding the tested Financial Year.

ii. No applicable to excluded entities. Excluded Entity means –

- A governmental entity
- An international organisation
- A non-profit organisation
- A pension fund
- An investment fund that is an UPE
- A real estate investment vehicle that is an UPE
- An entity where at least 85% or 95% of its value is owned directly or through a chain of excluded entities by one or more of the above excluded entities except for a pension services entity (subject to meeting other conditions)

b. Minimum Rate

i. 15%

c. DTT

i. DTT shall be charged for each Financial Year on a Low-Taxed Constituent Entity located in Malaysia of a MNE Group in an amount equal to the MTT of a Constituent Entity calculated in accordance with MITA for a Financial Year.

d. MTT

i. MTT shall be charged for each Financial Year on a Constituent Entity that is an UPE located in Malaysia of a MNE Group equal to the amount calculated in accordance with MITA for a Financial Yea

e. Compliance Requirements

i. Information Return and Top-Up Tax Return are required to be submitted in a prescribed form not later than 15 months from the last day of the Reporting Financial Year.
ii. DTT and MTT are required to be paid on the due date of the submission for Information Return and Top-Up Tax Return.

Effective: 1 January 2025

5. Preferential tax treatment for MSME

It is proposed that the following additional condition for preferential tax treatment for MSME be enacted under MITA.

a. Not more than 20% of the paid-up capital in respect of ordinary shares of the Company at the beginning of the basis period for a YA is directly or indirectly owned by one or more companies incorporated outside Malaysia or by one or more individuals who are non-Malaysian citizens.

Effective: YA 2024

6. Foreign Income

It is proposed that the definition of foreign income be amended in MITA.

a. Foreign income means –

   i. In relation to unilateral credit, income derived from outside Malaysia charged to foreign tax;
   ii. In relation to bilateral credit, income derived from outside Malaysia and from Malaysia, charged to foreign tax.

Effective: YA 2024

7. Stamp Duty

a. Definition for "writing" or "written"

   i. It is proposed that "writing" or "written" includes any handwriting, typewriting, printing, electronic record or transmission which is in an electronically readable form.

   With the new definition, instrument, for purpose of Stamp Duty, now includes electronic instrument

   Effective: 1 January 2024

b. Instrument executed out of Malaysia

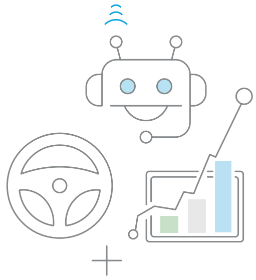
   i. It is proposed that for an instrument executed out of Malaysia which was received by way of electronic transmission, the date of receipt shall be verified by the production of a copy or print out of the electronic transmission.

   Effective: 1 January 2024

c. It is proposed to delete provisions in the Stamp Act 1949 as a result of termination of usage of adhesive stamp (revenue), postal franking machine and digital franking machine.

   Stamping and payments of stamp duty can be made online through the STAMPS portal at the link https://stamps.hasil.gov.my.

   Effective: 1 January 2024



7. Stamp Duty (Cont'd)

d. First Schedule

i. It is proposed that amendments be made on the following items in the First Schedule: –

Item	Description of Instrument	Proper Stamp Duty
27(a)(ii)	Where the loan is a foreign currency loan or the financing was made according to the syariah in currencies other than the ringgit	RM5.00 for every RM1,000 or part thereof
32(h)	Of any property – (ii) By way of release or renunciation by a beneficiary of a deceased estate to another beneficiary entitled under the same estate	RM10.00

ii. It is proposed that the following be added to First Schedule: –

Item	Description of Instrument	Proper Stamp Duty
32(aa)	On sale of any property (except stock, shares, marketable securities and accounts receivables or book debts of the kind mentioned in paragraph (c)) to a foreign company or a person who is not a citizen and not a permanent resident	RM4.00 for every RM100 or fractional part of RM100 of the amount of the money value of the consideration or the market value of the property, whichever is greater.

Effective: 1 Jan uary 2024

8. Tax administration

a. Revision of ETP

i. It is proposed that companies, LLPs, trust bodies or cooperative societies may revise their ETP in the 6th month, 9th month and / or **11th month** of the basis period for a YA by submitting the prescribed form to the DGIR.

Effective: YA 2024

b. Furnishing of prescribed form

i. It is proposed that persons stated under Subsection 75(1)* of the MITA may now authorise in writing its employee to furnish on its behalf any prescribed form under MITA electronically.

**Directors or any individuals who are jointly and severally responsible for doing all acts and things required to be done for a company or body or persons.*

Effective: When Finance (No.2) Act 2023 comes into operation

8. Tax administration (Cont'd)

c. Submission of documents for ascertaining chargeable income and tax payable

i. It is proposed for taxpayers to submit information and documents such as financial statements and tax workings for purpose of ascertaining their chargeable income and tax payable to the IRBM electronically*.

**During the IRBM's National Tax Seminar 2023 for Budget 2024 on 18 and 19 October 2023, it is proposed that the financial statements and tax workings be submitted through the MITRS.*

ii. Due date to submit financial statements and tax workings is within 30 days after the due date of submitting the tax return.

iii. **Non-compliance penalty** – On conviction, penalties ranging from RM200 to RM20,000 or imprisonment for a term not exceeding 6 months or both.

Effective: YA 2025

d. Furnishing of prescribed forms by employers

i. It is proposed that employers be required to submit the following prescribed forms to the IRBM electronically compulsorily: –

Prescribed Forms to be submitted to the IRBM electronically	Effective
▪ Return of remuneration by an employer (Form E)	Year ending 31 December 2023 and subsequent years
▪ Notification of departure from the country of an employee (expatriate) (Form CP21)	1 January 2024
▪ Notification of new employee (Form CP22)	
▪ Tax clearance form for cessation of employment of private sector employees (Form CP22A)	
▪ Tax clearance form for cessation of employment of public sector employees (Form CP22B)	

e. Notify DGIR of cessation of employment of an employee

i. It is proposed that employers be exempted from notifying the DGIR of cessation of employment of an employee provided that the following conditions are met: –

- The employer has made MTD on the employment income of the employee; or
- The total monthly employment income of the employee is below the minimum MTD threshold.

Effective: 1 January 2024

9. Service Tax

a. Restriction on deduction of service tax refunded to customer

i. Currently, a registered person may, subject to the approval of the DGC, deduct the amount of service tax which has been paid to Customs but subsequently refunded to his customer for various reasons, including cancellation of service or termination of service.

ii. It is proposed that Section 39 of STA 2018 be amended to state that the service tax deduction that is subject to the approval of the DGC would only be allowed, where the registered person's customers are not doing a business. This means that, if a registered person gives a refund of service tax to a customer who is still carrying on a business, the registered person would not be eligible to apply and obtain the approval of the DGC for such service tax deduction.

Effective: 1 January 2024

b. Changes relating to Service Tax on Digital Services

i. The following changes have been proposed in respect of service tax on digital services provided by foreign registered persons: -

- Taxable period for accounting for service tax – the DGC may, if he deems fit, re-determine the taxable period which he had earlier approved.
- Foreign registered person who ceases to be liable to be registered shall furnish a return to the DGC. It is proposed that such return shall be deemed furnished when the DGC receives the said return.

Effective: 1 January 2024

10. Sales Tax

a. Changes relating to particulars of credit notes or debit notes

i. It is proposed that a registered manufacturer has the option to submit a request to the DGC for the removal of any prescribed particulars from the credit note or debit note to be issued, subject to the approval of the DGC.

Effective: 1 January 2024

b. Changes relating to Sales Tax on LVG

i. Change in definition of "seller" for LVG

- The definition of "seller" for the purposes of sales of LVG, is proposed to be amended to *"a person, whether in or outside Malaysia, who sells LVG on an online platform or operates an OMP for the sales and purchase of LVG"*.
- The change is intended to include sellers who sell LVG via their own online platforms and not just via online 'marketplaces' that would be operated by other parties.

ii. Credit notes or debit notes for LVG

- Currently, the sales tax legislation excludes the seller from being allowed to issue a credit note or debit note to adjust any sales tax previously charged on the sale of LVG.
- It is proposed that this exclusion be removed to allow a seller to issue credit notes or debit notes to their buyers to adjust any previous sales tax charged on the sale of LVG.

iii. Exemption and refund of sales tax to be considered for LVG

- Currently, the sales tax legislation excludes the power of the MOF to exempt any goods, class of goods or person from sales tax on LVG, and to direct the payment of a refund of sales tax on LVG.
- It is proposed that this exclusion be removed and therefore, grants the MOF the power to exempt or refund sales tax on LVG.

iv. Preventing double taxation of sales tax on import of LVG

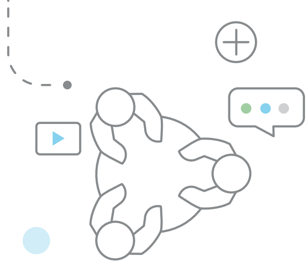
- Currently, there are no specific provisions in the sales tax legislation to prevent existing sales tax (on taxable goods) being charged at the point of import of LVG (that fall within the class of "taxable goods"), where sales tax had already been charged at the point of sale of the LVG by the registered LVG seller.

- It is proposed that a specific provision be introduced so that no sales tax shall be levied on the LVG at the point of import, if it is proven to the proper officer of sales tax that sales tax has been charged by the registered seller and being paid on the LVG.

v. Change to first taxable period for LVG

- The provision to determine the first taxable period of a registered seller has been amended to begin from the date the taxable person should have been registered and end on the last day of the following two months.

Effective: Upon coming into operation of the Finance (No. 2) Act 2023



11. Indirect Tax – Others

a. Amendments to the rate of duty or tax
(Customs Act 1967, Excise Act 1976, Sales Tax Act 2018, STA 2018, Departure Levy Act 2019 and Tourism Act 2017)

i. Currently, the MOF may, by Order published in the Gazette,

- Legislate customs duties to be levied on goods
- Legislate excise duties to be levied and paid, as well as the method in which the duty shall be levied and paid
- Legislate, vary or amend the rate of sales tax
- Legislate, vary or amend the rate of service tax
- Legislate, vary or amend the rate of departure levy
- Legislate the rate of tourism tax.

ii. These Orders then have to be laid before the *Dewan Rakyat* (House of Representatives) at its next meeting and be approved by way of resolution within 120 days. If the Order is not approved, then the Order shall cease to have effect.

iii. It is proposed that, an Order by the MOF to legislate or amend the rates of duties or taxes, is merely to be laid before the *Dewan Rakyat*. There is no longer any requirement for the Order to be approved by resolution of the *Dewan Rakyat*.

Effective: Upon coming into operation of the Finance (No. 2) Act 2023

b. Change to prescribed forms and manner of submission of application
(Sales Tax Act 2018, STA 2018 and Tourism Tax Act 2017)

i. Currently, any changes to the prescribed forms has to be made by the MOF, by going through the process of gazetting into the relevant subsidiary legislation.

ii. The prescribed forms include: –

- Application for registration
- Filing of returns
- Application for refund of tax
- Application for customs ruling
- Letter of authorisation to transact business with Customs on behalf of a taxable person
- Application for review of a decision by the DGC

iii. It is proposed for the DGC to determine the form and manner in which such applications, returns, etc. are to be made. This change would allow the DGC to amend the related forms. These changes were similarly made to forms relating to the laws on customs, excise, windfall profit levy and free zones.

Effective: 1 January 2024

TAX PROFESSIONAL TEAM

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

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

CORPORATE TAX COMPLIANCE

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

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

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

Soong Kim How
Associate 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

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

INDIRECT TAX

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

Kalvinder Singh
Senior 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
Manager
T +603 2610 2862
E changsy@rsmmalaysia.my

PERSONAL TAX

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

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

TRANSFER PRICING

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

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

CONTACT US

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

Contact our office for an immediate response

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

RSM Tax Consultants (Malaysia) Sdn Bhd is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and advisory firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction. The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London, EC4N 6JJ.

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

This article is not intended to provide specific business or investment advice. No responsibility for any errors or omissions nor loss occasioned to any person or organisation acting or refraining from acting as a result of any material in this website can, however, be accepted by the author(s) or RSM International. You should take specific independent advice before making any business or investment decision.

RSM