Title	**Key Features of The Budget 2013 – MALAYSIA** **A Taxation Perspective**
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Date	1 November 2012

The Prime Minister cum Finance Minister of Malaysia, YAB Dato' Sri Najib Tun Razak tabled The Budget 2013 at Malaysia's Dewan Rakyat on Friday 28 September 2012. The Budget 2013 has a theme "Prospering the Nation, Enhancing Well-Being of the Rakyat: A Promise Fulfilled" by focussing on the following five key strategies :

- Boosting investment activity;
- Strengthening education and training;
- Inculcating innovation, increasing productivity;
- Fiscal consolidation and enhancing the public service delivery; and
- Enhancing the well-being of the Rakyat.

ECONOMIC PERFORMANCE

- In the first half of 2012, the Malaysian economy expanded 5.1% mainly supported by robust private investment and consumption. For the full year of 2012, the economy is estimated to expand strongly between 4.5% and 5%. Domestic demand is expected to remain the main economic growth driver given the negative external developments, with private and government consumption continuing as key economic growth drivers.
- In the first half of 2012, net inflows of foreign direct investment (FDI) amounted to RM13.6 billion. The trend reflects the growing vibrancy in domestic investment, particularly with the implementation of projects under the Economic Transformation Programme (ETP). This will support the construction sector to surge 15.5% in 2012 from 4.6% in 2011.
- In 2013, based on the prospects of an improved global economy, the Malaysian economy is forecast to expand between 4.5% and 5.5%. For the first time, the nominal GDP is expected to exceed RM1 trillion. This is spearheaded by private investment and domestic consumption, which are anticipated to rise by 13.3% and 5.7% respectively. The construction sector is expected to increase 11.2% followed by the services sector at 5.6%.
- The strong domestic economic environment also boosted the encouraging performance of the stock market. This was reflected in the increase of the Bursa Malaysia KLCI to reach a record high of 1,677 points on 31 October 2012. Per capita income increased to almost RM31,000 in 2012 compared with RM25,000 in 2009. The international reserves position remains strong at RM432.2 billion on 14 September 2012, sufficient to finance 9.5 months of retained imports and is 3.9 times the short-term external debt.
- In terms of budget deficit as a percentage of GDP, the Government forecast is for the deficit to reduce to 4% of GDP in 2013. This represents a continuing decline from 6.6% in 2009, 5.6% in 2010, 4.8% in 2011 and 4.5% in 2012.

BUDGET 2013 TAXATION PROPOSALS

A CORPORATE TAX

Non Business Income

With effect from (wef) YA 2013, interest income is not considered as a business source of income unless:

i. the interest income is derived from a source that forms part of the stock in trade of a business of that person;
ii. the interest is receivable from the business of lending money, licensed under Malaysian laws.

Any unabsorbed business losses and unutilised capital allowances for YA 2012 in respect of interest from a business source will be carried forward and deducted against the aggregate statutory income of that person from any other business source in YA 2013.

If there is no business source income for YA 2013, the unabsorbed business losses and unutilised capital allowances in respect of interest from a business source, will be deducted against any other source of income.

Capital Allowances

The following revisions have been proposed with regards to capital allowances:

Clawback rule on agriculture allowances

Wef 1 January 2014, an agriculture charge is made on a company where a farm asset on which agricultural allowances had been claimed, is disposed of within five years.

Asset deemed disposed

Wef YA 2013, a special provision is proposed to provide that an asset for which capital expenditure has been incurred shall be deemed to have been disposed, if the asset is held for sale in accordance with generally accepted accounting principles. The disposal value shall be deemed to be the market value of the asset or the net proceeds from the sale, whichever is greater.

Double Deduction For 1Malaysia Training Scheme

For applications made between 1 June 2012 and 31 December 2016, a double deduction will be given on training expenses incurred by government-linked companies and private companies that participate in the 1 Malaysia Training Scheme Programme. The training expenses include:

i. the payment of the monthly allowance (minimum of RM1,000) for each trainee for a maximum of 12 months;
ii. soft skill training to the trainees (maximum RM5,000 for each trainee per year of assessment); and
iii. payment to training providers to enhance the skills and to increase employability of the trainees (maximum RM5,000 for each trainee per year of assessment).

B ALTERNATIVE BUSINESS ENTITIES

Tax Treatment Of A Business Trust

A Business Trust (BT) is established under the Capital Market and Services Act 2007 and adopts the unit trust structure as a basis for its business. BT is essentially a listed vehicle established to offer investors strong and stable returns derived from investing in capital intensive assets. BT's business operations are conducted by the trustee-manager who acts as a trustee on behalf of BT and the unit holders. Being suitable for businesses which are capital intensive with stable cash flow, BT is able to distribute quicker returns. BT will comply with the following proposals:

i. a BT shall be treated in the same manner as a company in the areas of income tax, stamp duty and real property gains tax wef YA 2013;
ii. at the initial stage of the establishment of a BT, it will be given a one off stamp duty exemption on instruments executed from 1 January 2013, of transfer of businesses, assets or real properties acquired; and
iii. at the initial stage of the establishment of a BT, persons disposing real properties or shares in a real property company to a BT will be given real property gains tax exemption on any gains derived from the disposal made from 1 January 2013.

Tax Treatment Of A Limited Liability Partnerships

The following tax treatment of a limited liability partnership (LLP), which is governed by the Limited Liability Partnerships Act, 2012 (which is not instituted as yet), is similar to that of a company, trust body or cooperative:

i. Determination of basis period;
ii. Due date for filing of tax return and payment of balance of tax payable;
iii. The furnishing of the estimate of tax payable and payment of tax instalment;
iv. Tax rate including preferential tax rate on the first RM500,000 of the chargeable income;
iv. Profits paid, credited or distributed by a LLP to its partners are exempted from tax; and
v. The applicability of the control transfer provisions.

With the amendments, a LLP will be treated as companies for tax purposes and not as partnerships. This means that tax neutrality will be sacrificed if a partnership (where the individual partners are subject to personal tax at scale rates) was to convert to a LLP.

LLP will comply with the following proposals:

i. LLP is subject to income tax at a rate of 25%. Where the LLP is tax resident in Malaysia and has a total contribution of capital of RM2.5 million and less at the beginning of the basis period for a YA and is not more than 50% related to a company with an ordinary paid up share capital of more than RM2.5 million at the beginning of a basis period for a YA, the LLP shall be subject to tax at:
   a) 20% on its first RM500,000 of chargeable income;
   b) 25% on the chargeable income exceeding RM500,000;
ii. remuneration or similar payments to a partner of LLP is not tax deductible, where such remuneration or payment is not specified or provided for in the limited liability partnership agreement made in accordance with Section 9 of the Limited Liability Partnerships Act, 2012;
iii. where a partnership or a company is converted into a LLP:
   a) the unutilised tax losses of that partnership or company can be utilised by the LLP for a YA following the relevant year;
   b) the unutilised capital allowance of that partnership or company can be utilised by LLP for the following YA.

C PERSONAL TAX

Reduction In Tax Rates

For resident individuals, wef YA 2013, the tax rate is proposed to be reduced by 1% for chargeable income bands from RM2,501 to RM50,000 as shown below:

Chargeable Income Brackets	YA 2013 onwards	
RM	Tax Rate %	Tax Payable * RM
1-2,500	0	0
2,501-5,000	0	0
5,001-20,000	2	0
20,001-35,000	6	800
35,001-50,000	11	2,850
50,001-70,000	19	6,650
70,001-100,000	24	13,850
>100,000	26	

* after personal tax rebate of RM400 for chargeable income up to RM35,000

Tax Relief On Children's Higher Education

Tax relief for an unmarried child over 18 years old receiving full time education at a recognised university, college or other establishment of higher education, or who is serving under articles or indentures, has been increased from RM4,000 to RM6,000 per child wef YA 2013.

Tax Relief On Contributions To The National Education Savings Scheme

The Skim Simpanan Pendidikan Nasional, established under the Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997 is meant for the education of a child. Tax relief for amounts deposited into the Skim is limited to the net amount deposited in that basis year and the limit has been increased from RM3,000 to RM6,000 wef YA 2012 to 2017.

Withdrawal Of Contribution To A Private Retirement Scheme (PRS)

Where withdrawal of contributions from a PRS by an individual is made before the age of 55 (other than on death or permanently leaving Malaysia), the withdrawal will be taxed at a final withholding tax of 8%.

The PRS provider, as approved under Section 139Q of the Capital Markets and Services Act 2007, is required to withhold and remit the tax to the Malaysian Inland Revenue Board within one month after paying the individual. Failure to do so will result in the imposition of a 10% penalty on the tax which should have been withheld.

The proposal is wef 1 January 2013.

D TAX INCENTIVES

Tax Incentives For Children Centres

Currently, operators of private childcare centres are not given any tax incentive.
The following tax incentives are given to only employers who provide childcare centres to their employees:

i. deduction on expenditure incurred for the provision and maintenance of childcare centres;
ii. deduction on childcare allowance given to employees; and
iii. industrial building allowance at an annual rate of 10% for buildings used as childcare centres.

Wef YA 2013, both employers and of private childcare centres (new and existing private childcare centres must be registered with the Social Welfare Department) will enjoy:

i. tax incentives for employers be enhanced as follows:
   a) double deduction on expenditure incurred for the provision and maintenance of childcare centres; and
   b) double deduction on childcare allowance given to employees.
ii. tax incentives for operators of new and existing private childcare centres as follows:
   a) tax exemption at the statutory level on all income for a period of 5 years; and
   b) industrial building allowance at an annual rate of 10% for buildings used as childcare centres.

Tax Incentives For Pre-School Education

Currently, operators running private pre-schools that are integrated with private primary schools are given the following tax incentives:

i. income tax exemption of 70% on statutory income for 5 years; or income tax exemption equivalent to 100% of capital expenditure incurred within a period of 5 years which is allowed to be set off against 70% of statutory income for each YA (this incentive is for applications received by Malaysian Investment Development Authority (MIDA) from 8 October 2011 until 31 December 2015); and
ii. industrial building allowance with an annual allowance rate of 10% for school building.

Wef YA 2013, private pre-schools (new and existing private pre-schools must be registered with the State Education Department) will enjoy:

i. tax exemption at the statutory level on all income for a period of 5 years; and
ii. industrial building allowance with an annual rate of 10% on preschool buildings.

Review Of Tax Incentives For Tour Operators

From YA 2007 to YA 2011, tour operators enjoyed a 100% income tax exemption on their statutory income derived from the business of operating domestic tour packages participated in by at least 500 inbound tourists per year or 1,200 local tourists per year.

Wef YA 2013 to YA 2015, it is proposed that tour operators be given a 100% income tax exemption on their statutory income derived from the business of operating domestic tour packages participated by at least 750 inbound tourists per year or 1,500 local tourists per year.

Commercialisation Of Research And Development ("R&D")

It is proposed that the existing tax incentive package be extended to the commercialisation of non-resource based R&D findings. The non-resource based activities / products are subject to the list of promoted activities / products under the Promotion of Investments Act 1986. The proposal is effective for applications received by the Malaysian Industrial Development Authority (MIDA) from 29 September 2012 until 31 December 2017.

As such, the following tax incentive package is given to companies which are engaged in the commercialisation of the resource-based R&D findings as well as non-resource based R&D findings of public research institutions or public institutes of higher learning in Malaysia:

i. A company that invests in a related company engaged in the commercialisation of resource-based R&D findings is given a tax deduction equivalent to the value of investment made; and
ii. The related company that undertakes the commercialisation of the resource-based R&D findings is given an income tax exemption of 100% of its statutory income for 10 years.

The qualifying criteria are as follows:

i. The application for approval for the commercialisation project shall be submitted to MIDA;
ii. The company is incorporated in Malaysia under the Companies Act 1965;
iii. The project of commercialisation shall commence within one year from the date of approval;
iv. At least 70% of the company is owned by Malaysians; and
v. The company which invests should own at least 70% of the equity of the company that commercialises the R&D findings.

Revival Of Abandoned Housing Projects

To encourage the involvement of the private sector in reviving abandoned housing projects, which must be certified by the Ministry of Housing and Local Government, the following tax incentives will be given:

i. Banking and Financial Institutions
   a) tax exemption on interest income received from the rescuing contractor;
      The proposal is effective for loans approved between 1 January 2013 to 31 December 2015 and the tax exemption would be applicable for 3 consecutive YAs from the year the loans are approved.

ii. Rescuing Contractor
   a) double deduction on interest expense and all direct costs incurred in obtaining loans to revive the abandoned project; and
      The proposal is effective for loans approved between 1 January 2013 to 31 December 2015 and the double deduction would be applicable for 3 consecutive YAs from the year the loans are approved.
   b) stamp duty exemption on all instruments executed for the purpose of transfer of land or houses and loan agreements to finance the cost of revival of the abandoned project;
      The proposal is effective for sale and purchase agreements executed between 1 January 2013 to 31 December 2015

iii. Original House Purchaser in the Abandoned Project
   a) stamp duty exemption on all instruments executed for the purpose of transfer of the house and loan agreements for additional financing.
      The proposal is effective for sale and purchase agreements executed between 1 January 2013 to 31 December 2015.

Tax Incentives For Security Equipment

Wef YA 2013 to YA 2015, it is proposed that the 100% Accelerated Capital Allowance ("ACA") be given on security control and surveillance equipment installed in:

i. factory premises (for companies);
ii. buildings used for a business (for individuals);
iii. Global Positioning System (GPS) installed in lorry containers bearing Carrier License A and cargo lorries bearing Carrier License A and C; and
iv. companies that install security control and surveillance equipment in residential areas.

The list of security control and surveillance equipment eligible for ACA is as follows:

i. Anti-theft alarm system;
ii. Infra-red motion detection system;
iii. Siren;
iv. Access control system;
v. Close circuit television;
vi. Video surveillance system;
vii. Security camera;
viii. Wireless camera transmitter;
ix. Time lapse recording and video motion detection equipment;
x. Global Positioning System (GPS);
xi. Safety mirrors; and
xii. Panic buttons.

Tax Incentives For Issuance Of Agro-Sukuk, Retail Sukuk And Retail Bonds

Wef YA 2013 to YA 2015, it is proposed that double deduction be given for expenses incurred in the issuance of approved Agro-Sukuks (i.e. bonds) for the agriculture sector, which are approved by the Securities Commission.

To reduce the cost of issuance of retail sukuk and retail bonds and to encourage individual investors to participate in the capital market, a double deduction is proposed to be given on additional expenses involved in the issuance of such bonds. The issuance of retail sukuks and retail bonds involves additional costs such as rating fees, underwriting and placement fees, facility agency fees, advertising costs and costs of printing prospectus.

For instruments executed from 1 October 2012 to 31 December 2015, stamp duty exemption be given on instruments relating to the subscription for retail sukuks and retail bonds executed by individual investors.

Extension Of Commodity Trading Approved Under The GIFT Programme

The Government had launched the Global Incentive for Trading (GIFT) programme in 2011 with tax incentive at the rate of 3 percent for qualifying petroleum and petroleum-related trading companies. This programme will be enhanced with a 100 percent income tax exemption on statutory income for the first three years of operations for Liquefied Natural Gas Liquefied Natural Gas trading companies.

It is proposed that commodity trading approved under the GIFT programme be extended to include other commodities such as agriculture, refined raw materials, base materials and chemicals.

Details of the proposed extension of the GIFT programme and the proposed effective date have not been released.

Tax Incentives For The Refining, Storage And Trading Of Petroleum Products

To encourage and support the development of activities related to the refining, storage and trading of petroleum products, it is proposed that:

i. for investment in activities related to the refining of petroleum products, Investment Tax Allowance of 100% be given on the qualifying capital expenditure incurred within a period of 10 years; and
ii. for Liquefied Natural Gas (LNG) trading companies, the GIFT programme to be enhanced with a 100% income tax exemption on statutory income for the first 3 years of operations. This is in addition to the current tax incentives under the GIFT programme, which includes a flat corporate income tax rate of 3% of chargeable income.

Currently, details of the proposed incentives and their proposed effective dates have not been released.

Several large projects have already been given 100% income tax exemption or investment tax allowances for a period of 10 years, exemption of withholding taxes and stamp duties. Oil and gas companies that make investments to boost petroleum storage capacity in Johor will be exempted from corporate and withholding taxes for a period of 10 years. There is also a stamp duty exemption on land acquisitions and bank borrowings to facilitate such investments.

Tax Incentives To Attract Global Players To Tun Razak Exchange (TRX)

The Government is offering a 10-year income tax exemption to encourage major international financial institutions to make Kuala Lumpur their preferred investment centre.

Tax incentives for global firms setting up business in the financial hub Tun Razak Exchange (TRX) include income tax exemption for 10 years, stamp duty exemption, industrial building allowance and accelerated capital allowance for TRX Marquee-status companies and tax exemption for property developers.

E CERTAIN STAMP DUTY IMPACTS

Stamp Duty Exemption For The Purchase Of First Residential Property

Instruments of transfer and loan agreements executed by Malaysians from 1 January 2013 to 31 December 2014, for the purchase of their first residential property not exceeding RM400,000 are given a 50% stamp duty exemption, which can only be claimed once.

Issuance Of Retail Sukuk And Retail Bonds

It is proposed that full stamp duty exemption to be given on instruments relating to subscription of retail sukuk and retail bonds executed by individual investors to encourage participation of individual investors in the capital market. This incentive is for instruments executed from 1 October 2012 to 31 December 2015.

Revival Of Abandoned Housing Projects

For sale and purchase agreements executed from 1 January 2013 to 31 December 2015, full stamp duty exemptions will be given to the following parties involved in the revival of abandoned housing projects:

i. Rescuing Contractor
   a) Loan agreements to finance the revival of the abandoned housing project; and
   b) Instruments of transfer of land or houses in the abandoned housing project.

ii. Original House Purchaser in the Abandoned Project
   a) Loan agreements for additional financing; and
   b) Instruments of transfer of the house.

F OTHER AREAS

Angel Investor

Currently, an investor (an individual or a company) who invests in a venture capital company in respect of seed capital financing, start-up financing and early stage financing is eligible to claim a deduction on the total value of investment. However, the deduction is available only against the business income of the investor.

Angel investors undertaking funding of venture companies will receive a tax deduction equivalent to the total investment made in a venture company against all income sources, subject to certain conditions:

i. the Angel investor is an individual who is not associated with the venture company prior to investing;
ii. the Angel investor is a tax resident with an annual income of not less than RM180,000;
iii. the Angel investor pays for the shares in cash and holds at least 30% of the shares in the venture company for a period of at least 2 years;
iv. 51% of the shares in the venture company is owned by Malaysians;
v. the venture company is carrying out qualifying activities that are approved by the Minister of Finance (MOF); and
vi. the venture company's accumulated profit is not more than RM5 million and has a track record of less than 3 years.

The proposal is effective for applications received by the MOF from 1 January 2013 until 31 December 2017.

Review Of RPGT Rates

Gains arising from the disposal of real properties and shares in real property companies from 1 January 2013 onwards will attract the following effective RPGT rates:

i. 15% tax where the property has been held for up to 2 years;
ii. 10% tax where the property has been held for more than 2 years and up to 5 years; and
iii. 0% tax where the property has been held for more than 5 years.

In addition, RPGT exemptions are available for the following:

i. RPGT exemption on gains from the disposal of one residential property once in a lifetime by individuals (citizens and permanent residents);
ii. RPGT exemption up to RM10,000 or 10% of the net gains, whichever is higher, from the disposal of real property by individuals (citizens, permanent residents and non-citizens); and
iii. RPGT exemption on gains from disposal of real property between husband and wife, parents and children, grandparents and grandchildren.

Review Of Time Bar For Tax Assessments

Currently, the Act empowers the DGIR to raise assessments and additional assessments within 6 years.

Wef 1 January 2014, it is proposed that the time bar for raising back years assessments be reduced from 6 years to 5 years. The time bar is not applicable for cases related to investigation, false declaration, willful late payment and negligence. The proposal will not change the requirement to keep records for 7 years in accordance with Sections 82 and 82A of the Income Tax Act, 1967.

Reduction In Co-Operative Income Tax Rates

For co-operatives, wef YA 2013, the income tax rates are proposed to be reduced as shown below:

Chargeable Income Brackets	YA 2013 onwards	
RM	Tax Rate %	Tax Payable RM
1-20,000	0	0
20,001-30,000	0	0
30,001-40,000	5	500
40,001-50,000	5	500
50,001-60,000	5	500
60,001-75,000	10	1,500
75,001-100,000	10	2,500
100,000-150,000	15	7,500
150,001-250,000	20	20,000
250,001-500,000	22	55,000
500,001-750,000	24	60,000
>750,000	25	

SOURCES

- Office of The Prime Minister of Malaysia www.pmo.gov.my
- Malaysia Ministry of Finance www.treasury.gov.my