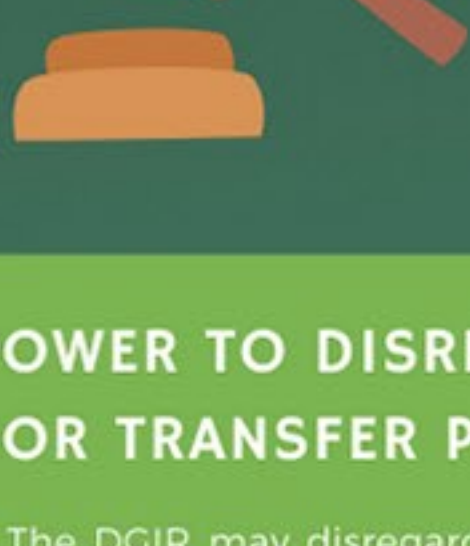


# FINANCE BILL 2020

## KEY HIGHLIGHTS: PROPOSED AMENDMENTS TO THE INCOME TAX ACT 1967

Brought to you by the LHAG Tax Team

### TAX PAYABLE DESPITE PROCEEDINGS



- A taxpayer is still liable to pay tax even though proceedings are instituted against the government or the Director General of Inland Revenue (DGIR).
- Our commentary: Stay is still available as it is within the court's inherent jurisdiction to grant. Parallels can be drawn to stay of proceedings granted by our courts over the years in tax recovery proceedings despite the wordings of s.103 and s.106.

### POWER TO DISREGARD STRUCTURES FOR TRANSFER PRICING PURPOSES

- The DGIR may disregard any structure adopted in a related-party transaction and make adjustments having regard to the economic substance of the structure or commercial reality.



- Our commentary: "Economic substance" can be subjected to differing interpretations in the context of factual-substance and arm's length-substance. Reliance can be drawn from OECD's TP Guidelines for interpretation.

### SURCHARGE ON TRANSFER PRICING ADJUSTMENTS



- The DGIR may impose a surcharge of up to 5% of the total TP adjustments.
- Our commentary: This provision seems harsh on taxpayers as penalty provisions are already in place. Further, surcharge can be imposed where there is no additional tax payable and where there is a reduction in profits arising from a structure being disregarded.

### CONTEMPORANEOUS TRANSFER PRICING DOCUMENTATION

- Any person who fails to provide contemporaneous transfer pricing documentation will be guilty of an offence. On conviction, such person is liable to a fine between RM20,000 and RM100,000 or to imprisonment not exceeding 6 months or both.



- Our commentary: Currently, there is no specific penalty for failure to provide contemporaneous TP documentation. Therefore, taxpayers that are obliged under the law to prepare TP documentation should be vigilant of this.

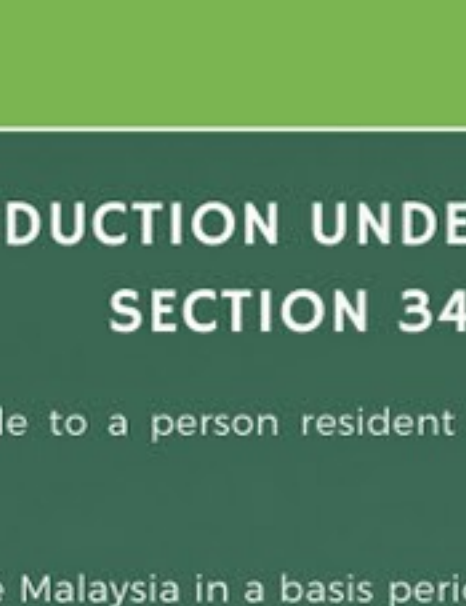
### TAX REBATE FOR COMPANIES OR LIMITED LIABILITY PARTNERSHIPS



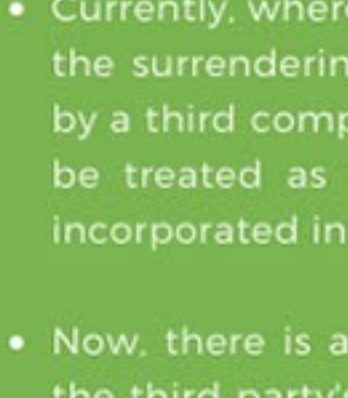
- A rebate limited to a maximum amount of RM20,000 for each year of assessment may be granted for 3 consecutive years from the year of assessment in which a company or limited liability partnership fulfils the conditions and requirements specified.

### EXTENSION OF REINVESTMENT ALLOWANCE

- Where a company has claimed reinvestment allowances for a consecutive period of 15 years of assessment and that claim ends either in the year before the year of assessment 2019, or in the year of assessment 2019, 2020 or 2021, that company is entitled to claim reinvestment allowances until the year of assessment 2022.



### RESTRICTIONS ON SPECIAL DEDUCTION UNDER SECTION 34A



- The special deduction will now only be applicable to a person resident in Malaysia.
- If the amount of expenses on R&D incurred outside Malaysia in a basis period for a year of assessment is more than 30% of the total expenses on research and development incurred in that basis period, only a single deduction equivalent to the amount of total expenses on R&D incurred shall be allowed.

### ADDITIONAL GROUP RELIEF REQUIREMENT

- Currently, where 70% of the paid-up capital in relation to ordinary shares of the surrendering company and the claimant company are held indirectly by a third company, the surrendering company and claimant company will be treated as related companies if the third company is resident and incorporated in Malaysia.



- Now, there is a requirement that all the other companies through which the third party's ownership is held must also be resident and incorporated in Malaysia.

### TAX TREATMENT OF INCENTIVE SCHEME

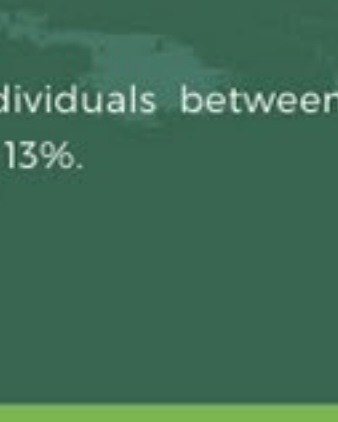


- The business of a person from the qualifying activity under an incentive scheme shall be treated as a separate and distinct business and source.
- Any loss which is carried forward to the following year of assessment can only be deducted from the source of income of the qualifying activity. Any unabsorbed losses shall only be utilised for a period of 3 consecutive years of assessment after the year of assessment in which the incentive scheme ends.

### DEFINITION OF "PLANT"

- "Plant" will now be specifically defined 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 where a business is carried on.

- Our commentary: While this insertion is targeted to restrict the definition of plant for capital allowance purposes, the word "building" is still subject to its ordinary definition. Structures that do not have a "permanently enclosed construction" are still considered as plant.



### REDUCTION OF TAX RATE

- The tax rate on the chargeable income of individuals between RM50,001 and RM70,000 is reduced from 14% to 13%.

# FINANCE BILL 2020

## KEY HIGHLIGHTS: PROPOSED AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

### REMISSION BY DIRECTOR GENERAL OF INLAND REVENUE



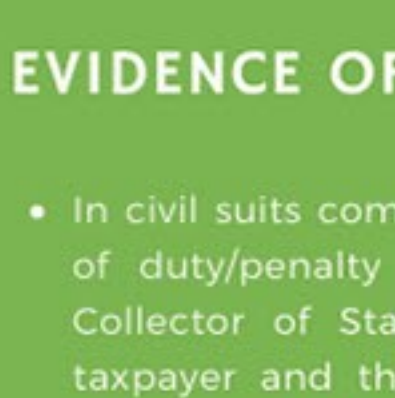
- Under the RPCT Act, where the acquirer of a property did not retain and pay part of the purchase consideration to the DGIR due to an incorrect notification by the disposer that there is no RPCT payable, an additional 10% will be included in the assessment in respect of the disposer.
- However, the DGIR can now remit the additional 10% for any good cause shown.

### TAX PAYABLE DESPITE PROCEEDINGS

- A taxpayer is still liable to pay RPCT even though proceedings are instituted against the government or the DGIR.



### USE OF AGENTS



- Taxpayers can now authorise a tax agent or lawyer to furnish any prescribed forms/returns for RPCT purposes electronically on their behalf.
- Taxpayers will be deemed to be aware of the contents of any such forms that have been submitted on their behalf.
- Our commentary: Taxpayers still bear the liability for any incorrect returns and should, therefore, ensure that their returns are accurate.

### RPCT RATES FOR SOCIETIES

- Where the disposer is a society registered under the Societies Act 1966, the following rates will now apply.

- Disposal within 3 years after acquisition - 30%
- Disposal in the 4th year - 20%
- Disposal in the 5th year - 15%
- Disposal in the 6th year or thereafter - 10%



# FINANCE BILL 2020

## KEY HIGHLIGHTS: PROPOSED AMENDMENTS TO THE STAMP ACT 1949

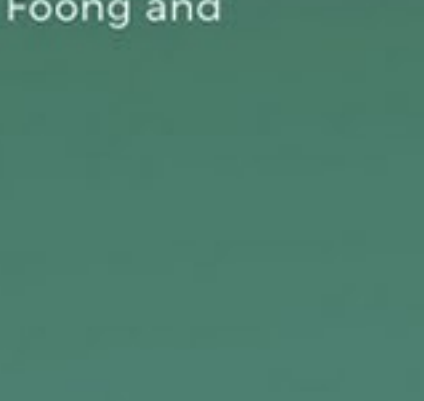


### DIGITAL STAMPING

- An instrument can now be stamped by digital stamping.
- The Minister of Finance may make rules to prescribe the type of digital stamping to be used and on the issuance and validity of digital stamping.

### EXEMPTION OF STAMP DUTY

- The Minister of Finance may now exempt any instrument from stamp duty. There is no longer a requirement that such instrument must be in relation to a scheme.



### REMISSION OF STAMP DUTY



- The Collector of Stamp Duty may now remit wholly or partly any duty paid or payable on grounds of poverty.

### EVIDENCE OF DUTY/PENALTY

- In civil suits commenced by the government to recover any amount of duty/penalty owed by taxpayers, a certificate signed by the Collector of Stamp Duty stating the name and address of the taxpayer and the amount of duty/penalty owed will be sufficient evidence of the amount due and authority for the court to give judgment for that amount.



#### About the team

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