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Budget 2024: Special Legal Insights

Introduction

On 13.10.2023, the Malaysia's Budget 2024, themed "MADANI Economy: Empowering the People" was tabled by the Prime Minister and Finance Minister. The key tax amendments include: (i) the introduction of Capital Gains Tax & High Value Goods Tax; (ii) the increase of service tax rate to 8%; and (iii) the implementation of E-invoicing in 2024.

In this Special Alert, we summarise the key tax changes by sectors and share our thoughts on the potential legal implications.

Capital Gains Tax ("CGT")

Traditionally, gains on share disposals are non-taxable in Malaysia, unless they involve shares in a real property company under the Real Property Gains Tax Act or if the disposer is engaged in the business of trading in shares. With effect from 1.3.2024, the following CGT rate on the disposal of unlisted shares by companies will be imposed:

Share Acquisition Date	CGT Rate
Before 1.3.2024	The taxpayers may choose: <ul style="list-style-type: none"> (a) 10% on the net gain of share disposal; or (b) 2% on the gross sales value
From 1.3.2024	10% on the net gain of the share disposal

It was also announced that an exemption will be given on disposal of shares related to an approved Initial Public Offering (“**IPO**”) and restructuring of shares within the same group.

As a comparison, our neighbouring countries adopt varying models for CGT, with the respective CGT range from 0% to 22%:

Countries	Description
Singapore	0%
Thailand	No separate CGT law. Thailand’s corporate tax law treats capital gains income derived by entities as normal assessable income subject to corporate income tax of 20%.
Vietnam	Capital gains are, generally, taxed as ordinary income at the corporate income tax rate of 20%.
Indonesia	Capital gains earned by a resident company are, generally, taxed as ordinary income at the corporate income tax rate of 22%. Gains

	from the sale of shares listed on the Indonesia Stock Exchange are subject to a 0.1% tax on the transaction value. An additional final tax of 0.5% applies to founder shares based on the share value at the time of an IPO, regardless of whether the shares are held or sold following the IPO.
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Moving forward, the legal issues concerning the scope of CGT in the amendments to the Income Tax Act 1967 (“ITA”) will be closely scrutinised, among others, as follows:

- (a) Acquisitions before the effective date are proposed to be taxed when disposed after 1.3.2024. The issue of retrospectivity and the manner in which taxpayers can voluntarily exercise their right to choose the tax rate will potentially raise legal issues. If the applicable tax rate is based on the higher amount, legal battles are expected to follow;
- (b) Whether there will be an automatic exemption for related party transactions or only granted upon a formal application similar to that for RPGT and stamp duty for greater efficiency will also be closely monitored; and
- (c) The manner of assets valuation to determine acquisition and disposal price is equally important. Circumstances where market value will apply must be set out clearly in the proposed legislation.

In addition, a potential issue that may arise from the introduction of CGT is whether the gains resulting from disposal are of a capital gains or trade revenue in nature. When assessing the taxability of gains from share disposal, the test of “badges of

trade”, used for real property transactions, remains applicable and has been successfully applied in the context of share transactions, including in *Hypergrowth Sdn Bhd*¹. More recently, by applying the same principles, taxpayers have succeeded in establishing an absence of trade in the context of real property transactions in *PFR Sdn Bhd*² (SCIT) and *Cash Band (M) Bhd*³ (High Court), where the taxpayers were represented by LHAG’s Tax Practice.

Based on the above, the taxpayers need to be mindful of these principles when determining whether the gains from share disposal are capital or trade receipts.

Corporate Tax

A. E-Invoice

The implementation timeline for e-invoicing has been revised as follows:

Qualifying Annual Turnover or Revenue Threshold	Initial Timeline	Revised Timeline
Exceeding RM100 million	1.6.2024	1.6.2024
Between RM50 million and RM100 million	1.1.2025	Starting from 1.7.2025 To be implemented in phases
Between RM25	1. 1.2026	

¹ *Director-General of Inland Revenue v Hypergrowth Sdn Bhd* [2008] 4 CLJ 250.

² *PFR Sdn Bhd v KPHDN* [2022] MSTC 10-151.

³ *Cash Band (M) Bhd v KPHDN PKCP* (R) 564 / 2018 and WA-14-12-08/2021.

million and RM50 million	
All taxpayers and certain non-business transactions	1.1.2027

Based on the e-Invoice Guideline issued by the Inland Revenue Board (“IRB”), the IRB acknowledged that “*there are various challenges in issuing e-invoices for certain types of income or expense*”. Thus, e-invoice is not required for employment income, pension, alimony, certain dividend distribution, zakat, and scholarship.

Furthermore, the IRB has developed the MyInvois System, an e-invoicing system, for implementation of e-invoicing. The IRB would have access to a substantial amount of personal data from taxpayers, as well as information regarding taxpayers' transactions. The IRB will process and store this data and information in its database.

In ***Genting Malaysia Bhd v Pesuruhjaya Perlindungan Data Peribadi & Ors***,⁴ the taxpayer operated an integrated resort, which included a casino. The IRB invoked S.81 of the ITA to request that the taxpayer provide them with all the personal data of the taxpayer's customers, especially those who held membership cards through the taxpayer's loyalty programme, and information about individuals who had significant wins or losses at the taxpayer's casino. The IRB's purpose in requesting this information was to expand its tax base, boost

⁴ *Genting Malaysia Bhd v Pesuruhjaya Perlindungan Data Peribadi & Ors* [2022] 11 MLJ 898

tax collections, and reduce tax evasion. The High Court held that the IRB was not allowed to conduct such exercise as it amounted to a "fishing expedition," which is not permitted under S.81 of the ITA, and it contravened the Personal Data Protection Act 2010 and the right to privacy under Art. 5(1) of the Federal Constitution.

With the MyInvois System, the larger legal issue is whether it will be in line with PDPA laws and any other law which protects privileged and confidential information.

B. Global Minimum Tax ("GMT")

The Government has announced that it will defer the implementation of Pillar 2 of Action Plan 1 from 2024 to 2025.

To recap, under Action Plan 1 of BEPS, the OECD introduced a two-pillar approach to ensure large multinational enterprises ("**MNEs**") pay a minimum tax on the income arising in each jurisdiction they operate.

Pillar 1 of Action Plan 1 requires large MNEs with EUR 20 billion of consolidated revenue or more and net profits more than 10% to pay tax in the locations where their customers and users are located ("**market jurisdictions**"). These profits will be allocated in proportion to the amount of revenue the MNEs derive from those market jurisdictions as determined under specific revenue sourcing rules.

Under Pillar 2 of Action Plan 1, the global anti-base erosion ("**GloBE**") rules are introduced. The GloBE rules impose an effective GMT rate of at least 15% on constituent entities of an MNE group with a global annual turnover of at least EUR 750 million or more in at least two of the four financial

years immediately preceding the tested financial year.

Pursuant to the expected implementation of Pillar 2, there is likely to be a shift from income-based tax incentives to expenditure-based incentives. This shift is due to the fact that income-based tax incentives for MNEs may reduce the effective tax rate to below 15% and are contrary to Pillar 2 of Action Plan 1. Expenditure-based tax incentives include relief on payroll costs, such as research and development tax incentives, training expenses, and incentives for investment in tangible assets, such as infrastructure or machinery.

C. Global Services Hub

Tax incentives for global services hub were introduced based on an outcome-based approach as follows:

	New Company		Existing Company	
	Tier 1	Tier 2	Tier 1	Tier 2
Exemption Years	5 + 5		5	
Tax Incentive	5% Tax Rate	10% Tax Rate	5% Tax Rate on Value-added Income	10% Tax Rate on Value-added Income
Types of Income Exempted	(a) Services income; or (b) Services and trading income			

<p>Qualifying Services & Additional Services</p>	<p>(a) Undertake the following activities:</p> <ul style="list-style-type: none"> (i) Regional profit & loss / business management unit (ii) Strategic business planning (iii) Corporate development <p>AND</p> <p>(b) Any two of the following qualifying activities under the services category:</p> <ul style="list-style-type: none"> (i) Strategic services; (ii) Business services; (iii) Shared services; or (iv) Other services
<p>Conditions (Outcome-based)</p>	<ul style="list-style-type: none"> (i) Annual operating expenditure; (ii) High-value full-time employees; (iii) C-Suite employees with a minimum monthly salary of RM35,000; (iv) Local ancillary services; (v) Collaboration with higher education institutions/Technical and Vocational Education and Training; (vi) Training for Malaysian students/citizens; (vii) Environmental, Social, and Governance (“ESG”) elements; or (viii) Other conditions as determined by the Minister of Finance

Additionally, three employees appointed by a new company approved for the Global Services Hub tax incentive will qualify for a reduced **income tax rate of 15% for three consecutive YAs** if they meet the following criteria:

- (a) Non-citizen individuals;
- (b) Holding key/C-Suite positions; and

- (c) Having a monthly salary of at least RM35,000.

In order to be eligible for the tax incentives, the relevant applications must be received by the Malaysian Investment Development Authority (“MIDA”) between 14.10.2023 and 31.12.2027.

Typically, conditions for tax incentives come in many forms, e.g., compliance condition:

- (a) In ***Latex Manufacturing Sdn Bhd***,⁵ the taxpayer was granted tax exemption as a pioneer company. One of the conditions to qualify as a pioneer company was that “*syarikat ini hendaklah mengeksport keseluruhan pengeluarannya.*” The IRB disputed the taxpayer’s entitlement to the tax exemption on the grounds that the products were not exported by the taxpayer itself but instead by its holding company. The IRB further requested the Ministry of Investment, Trade and Industry (“MITI”) to cancel the taxpayer’s pioneer status, which the MITI did. In contrast, the taxpayer argued that the condition simply required it to export all its products, with no specification regarding the export arrangement. The High Court held in favour of the taxpayer.
- (b) In ***Sim Leisure Adventureplay Sdn Bhd***,⁶ the taxpayer was granted tax relief as a pioneer company. One of the conditions to qualify as a pioneer company required the taxpayer to register its projects with the

⁵ *Ketua Pengarah Hasil Dalam Negeri v Latex Manufacturing Sdn Bhd* [2017] 7 MLJ 379.

⁶ *Sim Leisure Adventureplay Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2021] MLJU 1579.

Ministry of Tourism and Culture as a tourist project. The taxpayer registered the project under its holding company as a tourist project. With that, the taxpayer alleged that it had satisfied the condition of registering the project as a tourist project. The IRB disagreed and took the position that the project must be registered under the taxpayer. The High Court held in favour of the IRB.

As observed, these conditions leave a lot of room for interpretation, which can lead to disputes with the IRB. Disputes are generally triggered when IRB retrospectively revoke tax incentives on allegations of non-compliance with certain conditions. Therefore, it is imperative for taxpayers to scrutinise such conditions closely when applying for any form of incentive. Additionally, any arbitrary decision by IRB to revoke the same is subject to legal challenge.

D. ESG and Renewable Energy

ESG

Effective from year of assessment (“YA”) 2024 to YA 2027, a tax deduction of RM50,000 for each YA is introduced for the following ESG-related expenses:

Expenses	Description
Enhance sustainability reporting framework	ESG reporting by companies listed on Bursa Malaysia stock exchange
Climate risk and management scenario analysis	ESG reporting by financial institutions regulated by Bank Negara Malaysia

Tax corporate governance framework (“TCGF”) of the IRB	Preparation of reports related to TCGF by companies
Transfer pricing documentation	Preparation of transfer pricing documentation by companies
E-invoicing implementation	Consultation fee for implementing e-invoicing incurred by Micro, Small and Medium Enterprises
Any reporting requirement related to ESG	ESG reporting by companies to approved regulator by the Ministry of Finance

Typically, taxpayers would be entitled to claim deductions under S.33(1) of the ITA for these expenses provided that they are “wholly and exclusively” related to income production. However, with the introduction of this special tax deduction, taxpayers are exempted from complying with the requirements of S.33(1) of the ITA and can claim the deductions as long as they align with the provided descriptions.

Green Investment Tax Allowance (“GITA”) & Green Investment Tax Exemption (“GITE”)

The GITA and GITE are revised as follows:

(a) GITA for Business Project

Tier	Qualifying Activities	GIT A	Statutory Income to be Set-off	Incentive Period
1	Green hydrogen	100 %	100% or 70%	Up to 10 years (5 + 5 years)
2	(i) Integrated waste management (ii) Electric vehicle charging station	100 %	100%	5 years
3	(i) Biomass (ii) Biogas (iii) Mini hydro (iv) Geothermal (v) Solar (vi) Wind energy	100 %	70%	5 years

In order to be eligible for GITA on the qualifying activities, the relevant applications must be received by MIDA from 1.1.2024 to 31.12.2026.

(b) GITA for Own Consumption Asset

Tier	Qualifying Activities	GIT A	Statutory Income to be Set-off	Incentive Period
1	<ul style="list-style-type: none"> (i) List of qualifying assets approved by Minister of Finance (ii) Battery energy storage system (iii) Green building 	100%	70%	Qualifying capital expenditure incurred from 1.1.2024 to 31.12.2026
2	<ul style="list-style-type: none"> (i) List of qualifying assets approved by Minister of Finance (ii) Renewable energy system (iii) Energy efficiency 	60%	70%	

In order to be eligible for GITA related to capital expenditure on qualifying assets, the relevant qualifying capital expenditure must be verified by the Malaysian Green Technology and Climate Change Corporation between 1.1.2024 and 31.12.2026.

Tier	Tax Exemption on Statutory Income	Incentive Period
More than three megawatts (“MW”) to less than or equal to 10MW	70%	5 years
More than 10MW to less than or equal to 30MW		10 years

In order to be eligible for GITE for solar leasing, the relevant applications must be received by MIDA from 1.1.2024 to 31.12.2026.

The GITA and GITE are granted under S.29 of the Promotion of Investments Act 1986 (“PIA”). It is important to note that, as per paragraph 7, Schedule 7A of the ITA, reinvestment allowance cannot be claimed for the basis year in which the taxpayer has been granted an investment tax allowance under S.29 of the PIA. However, the taxpayer may still be eligible for industrial building allowance even if GITA and GITE are claimed (*Saujana Hotel Sdn Bhd*).⁷

Tax Deduction on Contributions for Environmental Preservation and Conservation Projects

Tax deduction under S.34(6)(h) of the ITA is provided to entities contributing to or sponsoring activities related to tree planting or environmental preservation and conservation awareness projects verified by the Forest Research Institute Malaysia. In order to be eligible for this tax deduction, the

⁷ *Saujana Hotel Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2011] 9 MLJ 213

relevant applications must be received by the Ministry of Finance between 1.1.2024 and 31.12.2026. It is noteworthy that a tax deduction under S.34(6)(h) of the ITA is limited to RM100,000.00.

Tax Deduction for Voluntary Carbon Market

In 2022, Bursa Malaysia launched the Bursa Carbon Exchange. This is a voluntary platform for carbon credit trading between carbon development project owners with any entity that aims to shift to low carbon practices (“**Voluntary Carbon Market**”).

In accordance with Budget 2024:

- (a) A tax deduction of RM300,000 for the costs of Development and Measurement, Reporting, and Verification related to carbon project development is introduced.
- (b) This tax deduction is deductible against the income generated from trading carbon credits on the Bursa Carbon Exchange
- (c) In order to be eligible for this tax deduction:
 - (i) The carbon project development must be registered with an international standards body recognised by Bursa Malaysia.
 - (ii) The expenditure on carbon development must be certified by the Malaysia Green Technology and Climate Change Corporation (“**MGTC**”).
 - (iii) The relevant applications must be received by MGTC between 1.1.2024 and 31.12.2026.

This tax deduction, applicable to income generated from the Voluntary Carbon Market, is provided in addition to the existing tax deduction under S.33(1) of the ITA for expenses related to the development of carbon projects incurred by carbon credit trading

companies. Since this tax deduction is provided in addition to the deduction under S.33(1) of the ITA, it is not subject to the requirements of that section, namely, it does not have to be wholly and exclusively incurred for income production.

Tax Exemption for Green Sustainable and Responsible Investments (“Green SRI”) Sukuk Grant

The Green SRI Sukuk Grant, presently known as the SRI Sukuk Grant and Bond Scheme, is designed by the Capital Market Development Fund to assist Green SRI sukuk issuers to finance up to 90% of the costs incurred for independent expert reviews of sustainable sukuk and bonds issued in Malaysia, subject to a maximum of RM300,000 per issuance. Previously, the Grant only covers the expenses incurred for:

- (a) sukuks issued under the Securities Commission’s SRI Sukuk Framework; and,
- (b) bonds issued under the ASEAN Green, Social, and Sustainability Bond Standards.

However, on 23.8.2022, it was announced that the Green SRI Sukuk Grant is extended to include expenses incurred for:

- (a) SRI-linked Sukuk issued under Securities Commission’s SRI-linked Sukuk Framework; and,
- (b) bonds issued under the ASEAN Sustainability-Linked Bond Standards (“**ASEAN SLBS**”).

In this regard, the income tax exemption that is provided on the Green SRI Sukuk Grant from 1.1.2018 to 31.12.2025 is now extended to include the SRI-linked Sukuk Grants and bonds issued

under the ASEAN SLBS approved by the Securities Commissions as well.

E. Manufacturing

Reinvestment Allowance under the New Industrial Master Plan 2030

Presently, manufacturing and agricultural companies are eligible for a reinvestment allowance of 60% of the qualifying capital expenditure incurred under Schedule 7A of the ITA (“**Reinvestment Allowance**”). This allowance can be set off against up to 70% of the statutory income for 15 consecutive YAs.

In accordance with Budget 2024, the existing companies that have claimed the Reinvestment Allowance and exhausted it are eligible for further reinvestment allowances as follows on an outcome-based approach:

	Qualifying Capital Expenditure	Statutory Income to be Set-off
Tier 1	100%	100%
Tier 2	60%	70%

In order to be eligible for these further reinvestment allowances, the relevant applications must be received by MIDA between 1.1.2024 and 31.12.2028.

It must be borne in mind that to be eligible for the reinvestment allowance, the capital expenditure must pertain to factory, plant, or machinery used in Malaysia for a qualifying project. A qualifying project refers to an expansion, modernisation, automation, or diversification project related to the manufacturing business:

- (a) “Expansion” refers to an increase of product capacity or expansion of factory area. In *F (M) Sdn Bhd*,⁸ the High Court held that the company has fulfilled the requirement of “expansion” as it had proved increase in its annual turnover and production output.
- (b) “Modernisation” means upgrading of manufacturing equipment and process. The modernisation initiatives should lead to an increase in production capacity. (*Tenaga Nasional Bhd*)⁹
- (c) “Automation” refers to a process where manual operations are substituted by mechanical operations with minimal or reduced human intervention. In *Success Electronics & Transformer Manufacturer Sdn Bhd*,¹⁰ the High Court held that the taxpayer was engaged in an automation project as the initiatives “*enabled the Appellant to increase its production volume, enhance product quality and expedite production*” and led to “*greater efficiency*”.
- (d) “Diversification” means to enlarge or vary a company’s product range related to the same industry. In *Seiwa-Podoyo Sdn Bhd*,¹¹ the High Court held that “diversifying” cannot be given a restrictive meaning and must be allowed for instances where a taxpayer’s product range has been varied.

F. Commodity Sector

Tax Incentive for Automation

⁸ *F (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2013) MSTC ¶30-065.

⁹ *Tenaga Nasional Bhd v Ketua Pengarah Hasil Dalam Negeri* [2022] MLJU 396.

¹⁰ *Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturer Sdn Bhd* (2012) MSTC ¶30-039.

¹¹ *Seiwa-Podoyo Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2023] 7 MLJ 214.

Presently, manufacturing, services, and agricultural companies approved by MIDA and the Ministry of Agriculture and Food Security are eligible for:

- (a) a 100% Accelerated Capital Allowance on the initial RM10 million of qualifying capital expenditure incurred for automation equipment, which can be fully absorbed within one year; and,
- (b) a 100% tax exemption on the same qualifying capital expenditure.

With the Budget 2024, these tax incentives are extended to include the commodity sector under the Ministry of Plantation and Commodities (“**MPC**”). In order to be eligible for the tax incentives, the relevant applications must be received by the MPC between 14.10.2023 and 31.12.2027.

However, taxpayers may only claim for qualifying capital expenditure involving plant and building as per Schedule 3 of the ITA. Qualifying plant expenditure refers to capital expenditure incurred for the provision of machinery or plant used for business. On the other hand, qualifying building expenditure is incurred for the construction or purchase of an industrial building.

G. Capital Allowance for ICT Equipment and Computer Software

Effective from YA 2024, the capital allowance for capital expenditure incurred on information communication technology equipment and computer allowance are revised as follows:

Qualifying Expenditure	Current Capital Allowance		Revised Capital Allowance	
	Claim Period	Rate	Claim Period	Rate
Purchase of ICT equipment and computer software packages	4 years	Initial Allowance: 20%	<u>3 years</u>	Initial Allowance: <u>40%</u>
Consultation, licensing, and incidental fees related to customised computer software development		Annual Allowance: 20%		Annual Allowance: 20%

Despite the capital allowance claim period being reduced from four years to three years, the initial allowance rate is increased from 20% to 40%. This revision may enable businesses to deduct a larger portion of capital costs, which can be helpful for cash flow. However, businesses need to balance the utilisation of the capital allowance with their actual needs to prevent overinvestment solely for tax benefits.

Furthermore, it must be pointed out that taxpayers are entitled to claim expenses incidental to the ICT equipment and computer software. In **CIMB-**

Principal Asset Management Bhd,¹² the High Court held that a capital allowance claim for ICT equipment and computer software expenses would include the incidental charges, such as consultancy fees paid in connection with the implementation, customisation, development, integration, installation, licensing, testing, and other additional improvements to the computer software.

H. Oil & Gas

In the Budget for 2024, the following proposals were made:

- (a) The Pengerang Integrated Petroleum Complex (“**PIPC**”) is set to become a development hub for the chemical and petrochemical sector with the following tax incentives:
 - (i) A chemical and petrochemical manufacturing company with a minimum investment of RM500 million is eligible for:
 - a. an income tax rate of 5% or 10% on income from qualifying activities for up to 10 years; or
 - b. investment tax allowance of 100% for up to 10 years to be set-off against 70% of statutory income.
 - (ii) A developer of industrial areas in the PIPC is eligible for an income tax rate of 10% on income from the sale or rental of land for a qualifying project for 10 years.
- (b) New tax incentives will be introduced for carbon capture utilisation and storage, as well as hydrogen sulphide projects.

¹² *CIMB-Principal Asset Management Bhd v Ketua Pengarah Hasil Dalam Negeri* [2022] MLJU 2081.

Companies that are considering developing in the PIPC may also consider other applicable tax incentives, such as the marginal field tax incentive.

I. Islamic Finance

Tax Exemption for Income from Islamic Securities Selling and Buying (“ISSB”)

Presently, income, excluding from dividends, manufactured payments, lending fees, and interest earned on collateral, from Securities Borrowing and Lending (“SBL”) transactions are eligible for tax exemption. With the Budget 2024, income from ISSB is qualified for tax exemption as well, from YA 2024. The tax exemption for ISSB income ensures equivalent tax treatment as SBL income.

Tax Exemption for Shariah-Compliant Fund Management Services

The 100% tax exemption granted to Shariah-compliant fund management services companies approved by the Securities Commission on their statutory income from fund management services is extended for an additional four years with a 60% tax exemption. This extension of tax exemption period is effective from YA 2024 to YA 2027.

J. Tax Incentives: Extension

The periods for the following tax incentives are extended as follows:

Tax Incentive	Period of Extension	Effective Period
Tax exemption on management fee income derived from fund management services for SRI Funds	4 years	YA 2024 to YYA 2027

Tax deduction for issuance costs of SRI Sukuk approved, authorised, or lodged with the Securities Commission	
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K. Start-ups

The following income tax exemptions are extended as follows:

Tax Incentives	Update
<p>Until 31.12.2023, individual investors in equity crowdfunding (“ECF”) are eligible for a tax exemption on aggregate income equivalent to 50% of the amount invested, subject to the following conditions:</p> <p>(a) The eligible amount for tax exemption is limited to RM50,000 for each YA.</p> <p>(b) The deductible amount is limited to 10% of the aggregate income for that YA. Any excess amount that is not deductible will be disregarded.</p> <p>(c) The investor, investee company, and the amount of investment must be verified by the Securities Commission.</p>	<p>This tax exemption has been extended:</p> <p>(a) to be applicable to individual investors who make investments through a Limited Liability Partnership nominee company; and</p> <p>(b) for an additional three years, applicable for investments made from 1.1.2024 to 31.12.2026.</p>

<p>(d) The investor must not have any family relationship with the investee company.</p> <p>(e) The investment must be made through an ECF platform approved by the Securities Commission.</p> <p>(f) The investment is not allowed to be wholly or partially disposed of within two years from the date of the investment.</p>	
<p>Until 31.12.2023, angel investors in tech start-ups, who invest in the form of ordinary shares, are eligible to apply to the Ministry of Finance for a tax exemption on their aggregate income. The amount of aggregate income exempted is equivalent to the amount invested in a tech start-up company.</p>	<p>This tax exemption has been extended for an additional three years, applicable for investments made from 1.1.2024 to 31.12.2026.</p>

L. Non- profits & Social Enterprises

Revised Conditions for Deductions under S.44(6) of the ITA

Institutions/organisations/funds that are approved under S.44(6) of the ITA (“**Approved Entities**”) are granted a tax exemption on their income, except dividend income, under paragraph 13, Schedule 6 of the ITA. Pursuant to S.44(6) of the ITA, donors of

money to these institutions/organisations/funds are also qualified for a 10% tax deduction on their aggregate income.

In order to be approved under S.44(6), the institutions/organisations/funds are required to comply with certain conditions. With the Budget 2024, some of these approval conditions have been revised, particularly as follows:

Current Conditions	Revised Conditions
<p>Approved Entities can utilise up to 25% of their accumulated funds in their business. All income generated from the business must be channelled back into the fund to be used to fulfil its charitable objectives.</p>	<p>Approved Entities can:</p> <p>(a) utilise up to <u>25%</u> of their accumulated funds in their business and spend at least <u>50%</u> of their previous year's income to achieve the Approved Entities' objectives in the following year; or</p>
<p>Approved Entities must spend at least 50% of their previous year's income to achieve the Approved Entities' objectives in the following year.</p>	<p>(b) utilise between <u>25% and 35%</u> of their accumulated funds in their business and spend at least <u>60%</u> of their previous year's income to achieve the Approved Entities' objectives in the following year.</p>
<p>If the Approved Entities breached any of the approval conditions, the DGIR may withdraw the approval under S.44(6) of the ITA 1967.</p>	<p>If the Approved Entities breach any of the conditions during the period for which tax exemption has been granted, the approval</p>

	status under S.44(6) of the ITA will not be withdrawn. However, the Approved Entities will not be eligible for tax exemption, and the DGIR will raise a tax assessment on <u>ALL</u> income received by the Approved Entities in the YA in which the conditions are breached.
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The revised conditions will be effective from YA 2024 onwards.

Tax Exemption for Social Enterprises

Until 31.12.2023, social enterprises are eligible to apply for income tax exemption on all income, subject to the validity period of accreditation by the Ministry of Entrepreneur Development and Cooperatives. With the Budget 2024, this income tax exemption has been extended for an additional two years. To be eligible for this tax exemption, the relevant applications must be received by the Ministry of Finance between 1.1.2024 and 31.12.2025.

M. Industrial Building Allowance for Private Nursing Home for Senior Citizens

Private nursing homes for senior citizens approved by the Ministry of Health will be eligible for industrial building allowance at an annual rate of 10% for qualifying expenditure on the purchase or construction of a building, including renovation costs, incurred from 1.1.2024 to 31.12.2026.

N. Special Income Tax for Production of Foreign Film in Malaysia

Film production companies, foreign actors and film crews who carry out film production in Malaysia are eligible for a special income tax rate of 0% to 10%.

Indirect Tax

A. High Value Goods Tax (“HVGT”)

During the re-tabled Budget 2023, it was proposed by the Government that luxury tax on goods will be imposed. However, no details were made available at the time. In Budget 2024, it is proposed that a new legislation will be enacted to implement HVGT, where a tax rate ranging from 5% to 10% will be imposed on certain high value items based on the threshold value of the goods.

The introduction of a distinct HVGT system, separate from the existing sales tax, import duty or excise duty, is undoubtedly a positive development. Firstly, it offers greater clarity and efficiency in taxation and eliminates any potential complexities that could arise from incorporating HVGT into existing indirect tax structures.

The obvious difference between HVGT and the Luxury Goods Tax announced in the re-tabled Budget 2023 lies in the terminology employed. This difference may be attributed to the inherent challenges of defining what constitutes “luxury goods”, where the subject goods are expected to possess elements of extravagance. This characteristic is open to interpretation and debates. Conversely, the concept of “high value goods” appears to be more straightforward, as it is taxable based on threshold value of the goods.

One key consideration for the implementation of HVGT is the level at which HVGT should be levied, with one option being at the retail level. This approach is preferable as it provides transparency to consumers regarding the amount of taxes they have

paid and simplifies the tax collection process. This is likely be more effective than levying the tax at the import/manufacturing level (compared to the current Sales Tax mechanism), which is often criticised for its opacity and for causing cascading taxes along the supply chain.

Simultaneously, determining the threshold of “high value goods” is also important. In this modern day and age, items traditionally considered exclusive to the upper class, such as jewellery and watches, have become more accessible to a broader segment of the population. With a growing middle class and changing consumer preferences, these items are no longer the sole domain of high-income individuals.

In light of this evolving landscape, it is crucial for the Government to exercise prudence when determining the appropriate threshold that defines “high value goods”. Striking the right balance is essential to ensure that the new tax regime accomplishes its intended purpose, which is to boost tax revenue, without unduly burdening taxpayers within the middle-income bracket. A well-considered and adaptive definition of “high value goods” will be crucial to prevent unintended consequences and ensure the tax system remains fair and effective in the face of changing economic dynamics.

B. Increase of Service Tax Rate & Expansion of Taxable Services

It was announced during the Budget 2024 that with effect from 1.3.2024, the service tax rate would be increased to 8% from the current 6% (with the exceptions to food & beverages, vehicle parking, logistics and telecommunications services where service tax rate remains at 6%), and the scope of taxable services would be widened to include logistics, brokerage, underwriting and karaoke services. The reform in service tax regime could be a preferred option at present for the Government to increase tax revenue while not introducing /

reintroducing new taxes (i.e., goods and services tax / value-added tax).

Nonetheless, it should be noted that the legal provisions on service tax under the Service Tax Act 2018 do not specifically cater for the change in service tax rate, especially for provision of taxable services that extend beyond the effective date. In this regard, it is anticipated that the upcoming Finance Bill may insert a transition provision in ensuring a seamless transition and also provide clarity for businesses, particularly on taxable services that extend beyond the effective date.

As for the introduction of new taxable services, a specific provision (i.e., Reg. 3A) was inserted into the Service Tax Regulations 2018 (“STR”) with effect from 1.1.2019, to address situation where a new taxable service is introduced. Specifically, under Sub-reg. 3A(b) of the STR, it is stated that where a new taxable service is introduced, and the provision of the said service spans beyond the effective date of such change, service tax shall only be charged on the proportion of service attributable to the part of the period after the effective date. It is also noteworthy that if any payment is received before the effective date of such change, no service tax shall be charged, even if the service is provided on or after the effective date (see Sub-reg. 3A(c) of the STR).

Stamp Duty

The Government has also announced two main changes for Stamp Duty with effect from 1.1.2024, namely:

(a) Stamp Duty on Transfer of Property Ownership by Renunciation of Rights

- (i) Currently, a fixed stamp duty of RM10.00 is chargeable for property ownership transfer involving inheritance property

pursuant to Item 32(i), First Schedule of the Stamp Act 1949 (“SA”) if the ownership is transferred from the administrator to an eligible beneficiary in accordance with a will/faraid or the Distribution Act 1958 (“DA”). However, ad valorem duty is charged under Item 66(c), First Schedule of SA if the eligible beneficiary renounces his rights to another eligible beneficiary or non-beneficiary.

(ii) During Budget 2024, it is proposed that a fixed stamp duty of RM10.00 would apply to property ownership transfer when the eligible beneficiary renounces their right to another eligible beneficiary in accordance with a will/faraid or the Distribution Act 1958.

(b) Stamp Duty on Instrument of Property Ownership Transfer

(i) Currently, the stamp duty rate for property ownership transfer instruments ranges from 1% to 4% based on the sale price or market value of the property.

(ii) A flat 4% stamp duty rate is proposed for the transfer instrument executed by foreign-owned companies and non-citizen individuals (excluding Malaysian permanent residents).

Individual / Personal Tax

The Budget 2024 has also introduced tax incentives and tax relief for individual taxpayers with the aim of encouraging / enhancing / promoting employment, healthier lifestyle and higher standard of living in Malaysia. In particular:

(a) Tax Incentive for Women Career Comeback Programme

Currently, women who return to work after a career break are eligible for income tax exemption on employment income received for a maximum of 12 consecutive months, subject to the following criteria:

- (i) Women return to work after a career break at least two years before or up to 27.10.2017
- (ii) Application received by Talent Corporation Malaysia Bhd not later than 31.12.2023
- (iii) Employment income received from YA 2018 to 2024.

The Budget 2024 proposes that the eligibility criteria be enhanced as follows:

- (i) Women return to work after a career break of at least two years before the date of application received by Talent Corporation Malaysia Bhd.
- (ii) Employment income received from YA 2025 to 2028.

(b) Income Tax Relief for Lifestyle

Currently, income tax relief up to RM2,500 is provided to individual taxpayer on the purchase of reading materials, personal computers, smartphones or tablets, internet subscriptions, sports equipment and gymnasium membership fees.

To promote / improve the lifestyle of Malaysian citizens, it is proposed that the limit and scope of tax relief be restructured. Particularly, the tax relief provided for lifestyle and sports are separated, as follows:

- (i) The scope of relief be expanded to include fees for self-skills enhancement courses,

such as language courses, photography, tailoring classes, and others. The taxpayer can enjoy income tax relief of up to RM2,500.

- (ii) Taxpayers can enjoy income tax relief of up to RM1,000 for "Sports Equipment and Activities", which covers the purchase of sports equipment, rental or entry fees for sports facilities, registration fees for participating in sports competitions, and gymnasium membership fees. This relief is also extended to cover sports training fees imposed by associations, sports clubs, or companies registered with the Sports Commissioner or Companies Commission of Malaysia and engaged in sports activities listed under the Sports Development Act 1997.

Conclusion

While Budget 2024 is the largest budget tabled in Malaysia, it is evident that the Government is also actively working to boost revenue by introducing new taxes, such as the CGT and high value goods tax. Additionally, the service tax rate has been raised from 6% to 8%, which is anticipated to generate revenue of RM900 million in 2024.¹³ However, it is important to note that many tax incentives have also been introduced. Nevertheless, many questions remain regarding Budget 2024. For example, how will the CGT be imposed on shares acquired before 1.3.2024? Do taxpayers genuinely have a choice between a 10% CGT on the net gain from the disposal of shares or a 2% CGT on the gross sales value? Does imposing a 2% CGT on the gross sales value mean that the tax will be imposed even if there

¹³ Bernama, "Govt expected to generate extra service tax revenue of RM900mil in 2024 — Deloitte Malaysia" (New Straits Time, 14.10.2023) <<https://www.nst.com.my/news/nation/2023/10/967039/govt-expected-generate-extra-service-tax-revenue-rm900mil-2024-%E2%80%94-deloitte>> accessed on 17.10.2023.

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are no gains? Further information is anticipated to be provided when the corresponding Finance Bill is gazetted.

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