



# MOORE Advent

## TAX FLASH

FEBRUARY 2020 (SPECIAL EDITION)

### ***Finance Act 2019 and Other Amendment Acts of 2019***

Subsequent to the release of the Finance Bill 2019 after the Budget 2020 announcement, the following amendment bills have been passed:-

- *Finance Bill 2019 – Amendment in Committee;*
- *Income Tax (Amendment) Bill 2019;*
- *Petroleum (Income Tax) (Amendment) Bill 2019;* and
- *Labuan Business Activity Tax (Amendment) Bill 2019.*

In this respect, we provide you with the updates as proposed in the above amendment bills.

For your information, the following acts incorporating the proposed amendments in the amendment bills have been enacted:-

- Finance Act 2019 (enacted on 31<sup>st</sup> December 2019);
- Income Tax (Amendment) Act 2019 (enacted on 31<sup>st</sup> December 2019);
- Petroleum (Income Tax) (Amendment) Act 2019 (enacted on 31<sup>st</sup> December 2019); and
- Labuan Business Activity Tax (Amendment) Act 2020 (enacted on 10<sup>th</sup> February 2020).

For further information on the amendments proposed in the Finance Bill 2019 and Budget 2020 announcement, kindly refer to our *Tax Flash – October (Special Edition No.2) issue.*

- Moore Malaysia
- Moore Global
- Inland Revenue Board

## **A. Finance Bill 2019 – Amendment in Committee**

### **1. Approval or Renewal for Tax Agent’s Licence**

- It was previously proposed in the Finance Bill 2019 that:-
  - the Director General of Inland Revenue [“DGIR”] be empowered to approve or renew an approval for a person to act as a tax agent; and
  - if the person is aggrieved by the decision of DGIR in refusing to renew an approval or revoking an approval, he may appeal to the Minister of Finance [“MOF”] against the decision within one month from the date he was notified of the decision
- The above proposal has been removed and the power to approve or renew tax agent’s licence under Section 153 of the Income Tax Act 1967 [“ITA 1967”] shall remain with MOF

### **2. Determination of Acquisition Price of Real Properties for Malaysian Citizens and Permanent Residents**

- Currently, for real properties acquired by Malaysian citizens and permanent residents prior to 1<sup>st</sup> January 2000, the market value as at 1<sup>st</sup> January 2000 is used as the acquisition price
- It is proposed that the market value as at 1<sup>st</sup> January 2013 be used as the acquisition price for real properties acquired by Malaysian citizens and permanent residents prior to 1<sup>st</sup> January 2013
- It is now stipulated that the above proposal does not apply to the disposal of assets of controlled companies and acquisition and disposal of shares in real property companies under Paragraphs 34 and 34A of Schedule 2 to the Real Property Gains Tax Act 1976 respectively
- Effective 12<sup>th</sup> October 2019

## **B. Income Tax (Amendment) Bill 2019**

### **1. Changes on Hearing of Appeal by SCIT**

- Currently, every appeal shall be heard by 3 Special Commissioners of Income Tax [“SCIT”], at least one of whom shall be a person with judicial or other legal experience
- Paragraph 1A and new Paragraph 1B of Schedule 5 to the ITA 1967 be amended / introduced to provide that in the case where the Chairman of the SCIT deems it fit for the expeditious and efficient conduct of appeal, he may decide that the appeal be heard by any of the following persons sitting alone:-
  - The Chairman
  - The Deputy Chairman
  - Any other SCIT as the Chairman may determine
- In the case where the hearing of appeal is before a SCIT sitting alone and the hearing of the appeal is unable to complete due to the expiration of the term of the appointment of that SCIT or other reasons, with the consent of the relevant parties, the hearing of the appeal may be heard afresh or be continued by another SCIT
- Effective upon coming into operation of the Income Tax (Amendment) Act 2019

### **2. Changes on Procedures of Appeal to HC**

- Paragraph 34 and new Paragraphs 34A, 34B and 34C of Schedule 5 to the ITA 1967 be amended / added to introduce new procedures for filing an appeal to the High Court [“HC”]
- The new procedures of filing an appeal to HC by the party aggrieved by a deciding order of the SCIT are as follows:-
  - i. Filing of Appeal
    - The following actions shall be taken within 21 days from the date of the decision of the SCIT:-
      - A copy of the notice of appeal shall be extended to the Registry of the HC
      - A duplicate copy of the notice of appeal must be served by the appellant on every other party to the proceedings

- The appellant shall apply to the Secretary of the SCIT in writing for the notes of proceedings and the grounds of decision
- ii. Record of Appeal
  - o The appellant shall prepare and file to the HC a record of appeal (which includes the notes of proceedings, grounds of decision and memorandum of appeal) in a number of copies as may be required by the HC within 60 days from the date of the filing of the notice of appeal
  - o If the notes of proceedings or grounds of decision is not ready within the 60 days period, it may be filed by way of a supplementary record of appeal without leave of the HC once it is available. The said supplementary record of appeal may include an amended memorandum of appeal
  - o A draft index of the documents to be included in the record of appeal shall be sent by the appellant to the respondent who may, within 48 hours, object to the inclusion or exclusion of any documents
  - o In the event the parties are unable to agree on the documents to be included in the record of appeal, the matter shall be referred to the Registrar of the HC which may require the parties to attend before a Judge of the HC
  - o The appellant shall serve a copy of the record of appeal to the respondent within the 60 days period
- Effective upon coming into operation of the Income Tax (Amendment) Act 2019

### **C. Petroleum (Income Tax) (Amendment) Bill 2019**

#### **1. Changes on Hearing of Appeal by SCIT**

- To mirror the changes made under the ITA 1967 on hearing of appeal by SCIT, it is proposed that Paragraph 1A and new Paragraph 1B of Third Schedule to the Petroleum (Income Tax) Act 1967 [“PITA 1967”] be amended / added to reflect the abovementioned changes
- Please refer to Part B1 above
- Effective upon coming into operation of the Petroleum (Income Tax) (Amendment) Act 2019

#### **2. Changes on Procedures of Appeal to HC**

- To mirror the changes made under the ITA 1967 on procedures of appeal to HC, it is proposed that Paragraph 29 and new Paragraphs 29A, 29B and 29C of Third Schedule of the PITA 1967 be amended / added to reflect the abovementioned changes
- Please refer to Part B2 above
- Effective upon coming into operation of the Petroleum (Income Tax) (Amendment) Act 2019

### **D. Labuan Business Activity Tax (Amendment) Bill 2019**

#### **1. Tax Rate of a Labuan Entity which Fails to Comply with the Substantive Requirements**

- Under the existing Section 2B(1) of the Labuan Business Activity Tax Act 1990 [“LBATA 1990”], a Labuan entity must comply with the substantive requirements (i.e. adequate number of full time employees in Labuan and adequate amount of annual operating expenditure in Labuan) for the purpose of the Labuan business activity for the basis period for a year of assessment
- A new Section 2B(1A) be introduced to provide that a Labuan entity carrying on a Labuan business activity is to be charged at the rate of 24% upon its chargeable profits for that year of assessment if it fails to comply with the above substantive requirements
- Effective year of assessment [“YA”] 2020

## 2. Residence Status of Labuan Entities

- A new Section 3B of the LBATA 1990 be introduced to determine the resident status of a Labuan entity for the purpose of the double taxation arrangement effected under Section 132 of the ITA 1967
- A Labuan entity is regarded as resident in Malaysia for the basis year for a year of assessment as below:-
  - For a Labuan entity carrying on a business, the management and control of its business or any one of its businesses as the case may be, are exercised in Malaysia at any time during that basis year; and
  - For any other Labuan entity, the management and control of its business affairs are exercised in Malaysia by the directors, partners, trustees or other controlling authority at any time during that basis year
- Effective YA 2020

## 3. Power to Raise Assessment and Additional Assessment

- Section 6 of the LBATA 1990 be amended to empower the DGIR to make an assessment or additional assessment where it appears to him that no or no sufficient assessment has been made on a chargeable Labuan entity as follows:-

Type of Cases	
Normal cases	Within 5 years after the end of the year of assessment
Transfer pricing cases	Within 7 years after the end of the year of assessment
Fraud, willful default or negligent	No time-barred

- New Sections 6A, 6B, 6C and 6D of the LBATA 1990 be introduced to provide for:-
  - Form for making of assessment or additional assessment
  - Serving and raising of assessment or additional assessment
  - Determination of finality of assessment
  - Right of appeal and appeal procedures
- Effective YA 2020

## 4. Tax Due and Payable under a Notice of Assessment

- A new Section 13A of the LBATA 1990 be introduced to provide that:-
  - Tax payable under the assessment shall be due and payable upon service of notice of assessment under the new Section 6 of the LBATA 1990
  - Where the tax due and payable is not settled within 30 days after the service of notice of assessment, the tax unpaid will be increased by 10% and that sum shall be recoverable as tax due and payable under the LBATA 1990
- Effective YA 2020

## 5. Income Derived from Royalty and Intellectual Property Right

- Currently, a Labuan entity carrying on a Labuan business activity which is a Labuan non-trading activity for the basis period for a year of assessment shall not be charged to tax for that year of assessment
- Section 9 of the LBATA 1990 be amended to clarify that the profit of the Labuan entity referred to above that is not chargeable to tax under the LBATA 1990 does not include income derived from royalty and other income from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right
- Such income derived from royalty and intellectual property right shall be subject to tax under the ITA 1967.
- Effective 1<sup>st</sup> January 2019

## 6. Anti-avoidance Provision and Transfer Pricing Adjustment

- A new Section 17C of the LBATA 1990 be introduced to empower the DGIR to disregard and make adjustments in relation to certain transactions
- A new Section 17D of the LBATA 1990 be introduced to empower the DGIR to substitute the price in a related transaction if the transaction was not made at arm's length
- Effective YA 2020

## 7. Power to Call for Information and Documents, Access to Premises and Documents, Duty to Keep Records and Penalty for Offences

- New Sections 22B, 22C, 22D of the LBATA 1990 be introduced to provide power to the DGIR to call for / have access to:-
  - specific returns and production of books
  - statement of bank accounts or other documents
  - all lands, buildings and places including the power to inspect and take possession of any books, documents, objects, articles, materials and things to which he has access to
- Any person who is required to furnish a return of profits must keep all records for a period of 7 years after the end of the year assessment for ascertaining the chargeable profit and tax payable under new Section 22E of the LBATA 1990
- Any person who fails to comply with the DGIR's notice to call for information and document or access to premises and document constitutes an offence and shall, on conviction, be liable to a fine not exceeding RM1,000,000 or to imprisonment for a term not exceeding 2 years or to both
- A new Section 22F of the LBATA 1990 be introduced to provide that no prosecution for an offence shall be instituted except by or with written consent of the Public Prosecutor
- Effective YA 2020

## 8. Compounding of Offences

- Section 24 of the LBATA 1990 be amended to stipulate that the DGIR may compound the offence committed under Section 22 or Section 23 of the LBATA 1990 with written consent of the Public Prosecutor
- A saving provision be provided for compounding of offence committed prior to coming into operation of the amendment to Section 24 of the LBATA 1990 which shall continue to be valid and dealt with accordingly under the existing Section 24 of the LBATA 1990
- Effective upon coming into operation of the Labuan Business Activity Tax (Amendment) Act 2020

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