TAX BULLETIN

2012 Budget Highlights

Folks DFK & Co (AF0502)
azman, wong, salleh & co (AF0012)
Chartered Accountants

Independent Member Firms of
DFK INTERNATIONAL
50th Anniversary 1962-2012

PP 10572/08/2012(030352)

FOREWORD

The 2012 Budget Speech was presented by YAB Dato' Sri Mohd Najib Tun Abdul Razak, the Prime Minister and Minister of Finance of Malaysia, on Friday, 7 October 2011.

With the theme "National Transformation Policy : Welfare for the *Rakyat*, Well-Being of the Nation", the 2012 Budget focuses on the well-being of the *Rakyat* and Nation, as well as the journey towards becoming a developed and high-income nation. The five main focus areas of the 2012 Budget are as follows: -

1. Accelerating Investment;
2. Generating Human Capital Excellence, Creativity and Innovation;
3. Rural Transformation Progamme;
4. Strengthening the Civil Service; and
5. Easing Inflation and Enhancing the Well-being of the *Rakyat*

Various tax incentives have been proposed to meet the Budget objectives as outlined above and these include:-

- Tax incentive in relation to setting up of Treasury Management Centre ("TMC") by Multinational Corporation ("MNC"):-
  - Income tax exemption of 70% of statutory income for a period of 5 years;
  - Withholding tax exemption on interest payments on borrowings; and
  - Stamp duty exemption on loan and service agreements.

- Tax incentive package to qualifying companies to accelerate the development of the Kuala Lumpur International Financial District ("KLIFD"):-
  - Income tax exemption of 100% for a period of 10 years;
  - Stamp duty exemption on loan and service agreements;
  - Industrial building allowance and accelerated capital allowance; and
  - Income tax exemption of 70% for a period of 5 years for property developers in KLIFD.

- Extending the scope of tax deduction on expenses incurred in the issuance of Islamic Securities under the principles of *Wakalah.*

- Extension of tax exemption period in relation to:-
  - Income of corporate advisors on the trading of non-Ringgit *Sukuk*;
  - 10% final withholding tax on dividend received by foreign institutional investors and non-corporate investor from Real Estate Investment Trusts ("REITs"); and
  - Full exemption on import and excise duties on the importation of new completely build-up ("CBU") hybrid cars, electric cars, as well as hybrid and electric motorcycles.

- Tax deduction for franchise fees incurred on local franchise brands.

- Extending the scope of tax incentive for new 4 and 5 star hotels to hotels located in Peninsular Malaysia.

- Tax incentive for profit oriented private schools and profit oriented private international schools:-
  - Income tax exemption of 70% for a period of 10 years;
  - Import duty and sales tax exemption for educational equipment; and
  - Double deduction for overseas promotional expenses.

- Double deduction on expenses incurred by companies involved in structured internship programs, granting of scholarship awards, and participating in career fairs abroad.

- Pioneer Status with income tax exemption of 70% on statutory income for a period of 5 years for provider of industrial design services.

House prices have increased significantly in the past several years. To curb speculation it is proposed Real Property Gain Tax be increased from 5% to 10% for real properties disposed within a period of 2 years from the date of acquisition.

In the area of stamp duty, it is proposed to grant full stamp duty exemption on loan agreements for the purchase of a residential property priced at not exceeding RM300,000 under the Skim Perumahan Rakyat 1Malaysia ("PR1MA") and loan agreements up to RM50,000 under the Micro Financing Scheme and Professional Services Fund.

In the area of taxation on individual, a separate tax relief of RM3,000 is proposed for contributions made to a Private Retirement Scheme approved by the Securities Commission and deferred annuity scheme in place of the RM1,000 separate relief previously granted.

In the area of tax administration, the 2012 Budget has introduced various mechanisms to provide greater efficiency in tax administration, accord taxpayers equitable treatment and to bring about greater tax compliance. The proposals include submission of tax returns through e-Filing via mobile devices, compensation of 2% to be paid to the taxpayers for late refund of tax overpaid, granting the Director General greater access to computerised data and the power to disregard information not provided within the specified time.

It is also worthwhile to note certain income tax offences are now included as serious offences under the Anti-Money Laundering And Anti-Terrorism Financing Act 2001 and among other things the Inland Revenue Board is now empowered to arrest and detain offenders without warrant and to seize all moveable assets.

CONTENTS

CONTENTS

1. TAX SYSTEMS AND ADMINISTRATION

1.1 ***Enhancing Tax Administration And Compliance***

Present

The e-Filing system introduced in 2004 was aimed at enhancing tax administration and increase tax compliance by facilitating taxpayers to furnish tax returns via computer. However, individual taxpayers are still required to key-in information such as total income, schedular tax deductions ("STD"), contributions to Employee Provident Fund ("EPF"), insurance and zakat while using the e-Filing system.

Proposed

To enhance the e-Filing system:-

(i) individual taxpayers be allowed to furnish tax returns through e-Filing via mobile devices; and

(ii) information such as total income, STD deductions, EPF contributions, insurance and zakat are pre-filled by the Inland Revenue Board ("IRB") for salaried taxpayers using the e-Filing system provided that such information is submitted by their employers to the IRB.

Effective

Year of assessment 2012.

1.2 ***Disregard Of Information Furnished After Expiry Date Of Notice***

Present

Pursuant to Section 81 of the Income Tax Act 1967 ("The Act"), the Director General ("DG") may require any person orally or in writing to give information or particulars which may be in the possession of that person, within a time specified in a notice issued by the DG.

Proposed

The DG may require any person orally or in writing within a time specified in the notice to give any information or particulars which may be in the "control" of that person.

New subsection 81(2) and 81(3) are introduced where the DG may disregard wholly or partly of any information or particulars produced by that person after the expiry of the time as specified in the notice issued by the DG. In addition, any information or particulars disregarded shall not be used by that person to dispute the assessment made including in any proceeding before the Special Commissioners or Court**.**

Effective

Upon coming into operation of the Finance (No.2) Act 2011.

1.3 ***Deadline For Election Of Combined Assessment***

Present
Pursuant to Section 45(5) of The Act, the election in writing for combined assessment for husband and wife shall be made before the first day of April in the following year of assessment or any subsequent date as may be permitted by the DG.

Proposed
Section 45(5) of The Act is amended to state that the election referred to above shall be made in the return which is furnished in accordance with subsection 77(1) of The Act.

Effective
Year of assessment 2012.

1.4 ***Recovery Of Tax Due From A Principal***

Present
Pursuant to Section 67(4) of The Act, a representative appointed to be the agent of any other person is responsible for doing all acts and things as required by The Act to be done by him as representative or by the principal, and in particular for the payment of any tax and debt due from him as a representative or from the principal and for the payment of any debt so due to the Government under Sections 107A, 109 or 109A or 109B.

The representative is assessable and chargeable to tax in his/ her own name on behalf of the principal. The tax or debt due to the Government is recoverable from the "accessible moneys" of the representative.

"Accessible moneys" in relation to the representative and principal means any moneys (including any pension and any salary, wages or other remuneration) which:-

(i) from time to time are due from the representative to the principal or are held by the representative in his custody and control on behalf of the principal; or

(ii) being then moneys of or due to the principal, are obtainable on demand by the representative.

Proposed
A new Section 67(4A) be introduced, where for the purpose of subsection 67(4), where a representative is a person appointed as an agent by the DG under Section 68 of The Act, the DG may, by way of a notice in writing, require the representative to remit to him any accessible moneys for the purpose of payment of any tax due from the principal or for any debt so due referred to in that subsection, notwithstanding that no assessment in respect of such tax has been made in the name of the representative.

The accessible moneys shall not include moneys held by the agent in the custody and control on behalf of the principal.

Effective
1 January 2012.

1.5 ***Extending The Scope Of Notification Of Non-Chargeability***

Present
Pursuant to Section 97A(1), the DG may notify a person in writing that no assessment is made against that person by reason of the absence of adjusted income, statutory income, aggregate income or total income for any year of assessment.

Proposed
The notification of non-chargeability is to be extended to a case where exemption was granted to that person under The Act or the Promotion of Investments Act 1986 ("PIA 1986").

Where an assessment has been made in respect of a person but that person has no statutory income from a business source, the DG may notify in writing the adjustment, if any, together with the computation with regard to it.

The above notifications are deemed as a notice of assessment for the purposes of making an appeal to the Special Commissioners of Income Tax.

Effective
1 January 2012.

1.6 ***Power To Access Computerised Data***

Present
The DG has full access to all lands, buildings and places and to all books, documents, objects, articles, materials and things and may search such lands, buildings and places and may inspect, copy or extract from such books or documents.

Proposed
A new Section 80(1B) is added to empower the DG to have further access to computerised data whether stored in a computer or otherwise, be provided with the necessary password encryption code, decryption code, software or hardware and other means required to enable the comprehension of the computerised data.

Effective
1 January 2012.

1.7 ***Remission Of Interest On Judgment Debt Awarded By The Court***

Present
There is no provision under The Act that empowers the DG to remit interest on judgment debt awarded by the court to the Government in any civil proceedings.

Proposed
Section 106(4) is inserted which states that the DG may in his discretion for any good cause shown remit the whole or any part of the interest on judgment debt awarded by the court to the Government in any civil proceedings under this section.

Effective
Upon coming into operation of the Finance (No.2) Act 2011.

1.8 ***Compensation For Late Refund Of Income Tax***

Present
No compensation is given to the taxpayers if the DG is late in refunding any tax overpaid.

Proposed
A new Section 111D of The Act be introduced where the taxpayers who are due for a tax refund be given compensation of 2% per annum on the amount of tax to be refunded by the DG if the amount refunded for a year of assessment is made after:-

(i) 90 days from the due date a return for a year of assessment is required to be furnished, by way of e-filing; or

(ii) 120 days from the due date a return for a year of assessment is required to be furnished, by way of manual filing.

The amount of compensation to be paid shall be determined in accordance with the following formula:-

$$A \times \frac{B}{C} \times 2\%$$

Where A is the amount refunded under Section 111 for a year of assessment;

B is the number of days beginning from the first day after the period under Items (i) and (ii) above until the day the amount is refunded; and

C is the number of days in a year.

The compensation shall not apply to the following cases:-

(i) if a person fails to furnish return for a year of assessment in accordance with Section 77 or 77A;

(ii) in respect of excess amount payable referred in subsections 111(1A) and (1B) (arising from tax set-off under Section 110); and

(iii) if a person appeals against an assessment under Section 99.

Where the DG discovers that the whole or part of the compensation:-

(i) is wrongly paid to a person, the DG may require from that person a return of such amount already paid; or

(ii) ought not to have been paid to that person by reason of an incorrect return or incorrect information as furnished by that person, the DG may require from that person a return of such amount already paid together with a 10% increase of that amount which ought not to have been paid.

Effective
Year of assessment 2013.

1.9 ***Duty To Furnish Particulars Of Payment Made To An Agent, Etc.***

Present
There is no provision for company to furnish particulars of any payments made to agent, dealer or distributor.

Proposed
A new Section 83A will be introduced where every company shall, for each year prepare and provide to each of its agent, dealer or distributor a copy of the form prescribed by the DG containing:-

(i) particulars of payment (whether in monetary form or otherwise) made during that year of assessment to that agent, dealer or distributor;

(ii) name and address of that agent, dealer or distributor; and

(iii) such other particulars as may be required by the DG.

The prescribed form must be provided to the agent, dealer or distributor not later than 31 March in the year immediately following the year of assessment. The Company shall keep and retain the prescribed form in safe custody and shall make it readily accessible to the DG.

Any person who fails to comply with this provision without reasonable excuse, shall be guilty of an offence and, upon conviction, be liable to a fine of not less than RM200 and not more than RM2,000 or to imprisonment for a term not exceeding 6 months or both.

“Agent”, “dealer” and “distributor” is defined for the purpose of this provision as any person authorised by a company to act in such capacity and receives payment from the company arising from sales, transactions or schemes carried out by him as an agent, dealer or distributor.

Effective
1 January 2012.

1.10 ***Time Bar For Tax Audit***

Present
Under the Tax Audit Framework issued by the DG in January 2009, a tax audit will not be carried out to examine records pertaining to the years of assessment which are time barred. Pursuant to Section 91(1), the DG may within 6 years after the expiration of a year of assessment, make an assessment or additional assessment.

Proposed
The time bar for tax audit be reduced from 6 years to 5 years.

Effective
Year of assessment 2013.

2. TAXATION - INDIVIDUALS

2.1 ***Tax Treatment On Private Retirement Scheme***

Present

A. Tax relief

(i) a relief of up to RM6,000 on contributions made to the EPF, private pension fund, approved scheme and premium on life insurance; and

(ii) an additional relief of up to RM1,000 on deferred annuity scheme premium contracted on or after 1 January 2010, or additional premium paid on existing annuity scheme commencing from 1 January 2010.

B. Tax Deduction

Contributions to EPF or any approved schemes made by an employer on behalf of an employee are allowed for tax deduction in computing the employer's adjusted income. However, deduction on such contribution is restricted to a maximum 19% of the employee's remuneration.

Proposed

A. Tax Relief

(i) a separate tax relief of up to RM3,000 be given on contributions made by an individual to any deferred annuity scheme or a Private Retirement Scheme ("PRS") approved by the Securities Commission in accordance with the Capital Markets and Services Act 2007;

(ii) the existing tax relief of RM6,000 on contributions to EPF, approved scheme and premium on life insurance will not include contributions made to any deferred annuity scheme; and

(iii) the additional relief of up to RM1,000 on deferred annuity scheme premium contracted on or after 1 January 2010, or additional premium paid on existing annuity scheme commencing from 1 January 2010 would be withdrawn.

B. Tax deduction

Tax deduction on contributions made to EPF or any approved schemes made by an employer on behalf of an employee is extended to include contributions made to PRS. However, the deduction of the combined contributions will continue to be restricted to 19% of the employee's remuneration.

Withdrawals of contributions from PRS by an individual prior to maturity or prior to attaining the mandatory retirement age are taxable.

Effective

Item (A) : Years of assessment 2012 to 2021.

Item (B) : Year of assessment 2012.

2.2 ***Preferential Tax Rate For Returning Experts***

Present
There is no tax incentive for skilled Malaysian professionals who returned from overseas to work in Malaysia.

Proposed
Employment income of an individual approved by the Ministry of Finance under the Returning Expert Programme ("REP") be taxed at a flat rate of 15% for 5 consecutive years of assessment.

Effective
Year of assessment 2012.

3. TAXATION – COMPANIES & UNINCORPORATED BUSINESSES

3.1 ***Double Deduction On Scholarships Awarded***

Present
Scholarships awarded by companies to students are given tax deduction under Section 34(6)(l) of The Act.

Scholarships awarded are for students that fulfill the following criteria:-

(i) study for diploma or degree undertaken at a higher educational institution established or registered under the laws regulating such establishment or registration in Malaysia or authorised by any order made under Section 5A of the Universities and University Colleges Act 1971;

(ii) receiving full-time instruction at such higher educational institution;

(iii) have no sources of income; and

(iv) total monthly income of parents or guardian does not exceed RM5,000.

The scholarships are limited to payments required by such higher educational institutions relating to course of study, educational aids and reasonable cost of living expenses during the students' period of study at such higher educational institutions.

Proposed
Double tax deduction be given on scholarships awarded by companies to Malaysian students who fulfill the above criteria.

Effective
Years of assessment 2012 to 2016.

3.2 ***Tax Deduction For Franchise Fee***

Present
Franchise fee incurred for the acquisition of rights to undertake a franchise business is not allowed for tax deduction as it is capital in nature or incurred before the commencement of business.

Proposed
Tax deduction be given on franchise fees incurred on local franchise brands.

Effective
Year of assessment 2012.

3.3 ***Advance Payment Of Tax By Instalments***

Present
There is no provision to empower DG to direct a person to make payments by instalments on account of tax in a prescribed form which may be payable when the person fails to furnish a return or the DG has reason to believe that the person makes an incorrect return or gives incorrect information in relation to his chargeability to tax.

3.3 ***Advance Payment Of Tax By Instalments*** *(Cont'd)*

Proposed
A new Section 107D be introduced whereby the DG be empowered to direct a person to make payment by instalments on account of tax in a prescribed form which may be payable by that person for a year of assessment where the person fails to furnish a return under The Act or the DG has reason to believe that the person makes an incorrect return by omitting or understating any income or gives an incorrect information in relation to any matter affecting his own chargeability to tax.

The directive may be issued to the person before the making of an assessment or composite assessment under The Act.

The person served with the directive may within 30 days after the service of the directive apply to the DG for variation of the amount to be paid by instalments on account of tax and the number of instalments.

The directive issued shall cease to have effect when an assessment or composite assessment is made under The Act for the year of assessment concerned and any amount paid pursuant to the directive shall be applied towards payment of tax payable under that assessment.

Effective
Upon coming into operation of the Finance (No.2) Act 2011.

3.4 ***Double Deduction On Expenditure In Relation To Contract Research And Development Company And Research And Development Company***

Present
Double deduction is given on the expenditure, not being capital expenditure, incurred by a person in respect of:-

(i) contribution in cash to an approved research institute;

(ii) payment for the use of the services of an approved research institute or an approved research company; or

(iii) payment for the use of the services of a research and development company or a contract research and development company.

A contract research and development company is defined under Section 2 of the PIA 1986 as a company which provides research and development services in Malaysia only to a company other than its related company while a research and development company is defined as a company which provides research and development services in Malaysia to its related company or to any other company.

Proposed
Double deduction be given on payments made for the use of the services of research and development company or a contract research and development company as defined in the PIA 1986 which fulfills conditions specified by the relevant Ministry.

Effective
Year of assessment 2012.

3.5 ***Non-Application Of Certain Disallowed Expenses***

Present
Where payments are made to a non-resident and the payer fails to deduct and remit withholding tax attributable under any of the following categorisation under The Act, the DG is empowered to impose a penalty of 10% on the unpaid withholding tax and the gross payment would be disallowed as a deduction from income (even if the income is fully exempt under Section 127(3)(b) or Section 127(3A) of The Act or the PIA 1986) for tax purposes pursuant to Section 39(1)*(f)*, *(i)* and *(j)* of The Act:-

(i) contract payments under Section 107A of The Act;

(ii) interest or royalties under Section 109 of The Act;

(iii) special classes of income under Section 109B of The Act; or

(iv) any gains or profits under Section 109F of The Act.

Proposed
Section 39(1)*(f)*, *(i)* and *(j)* of The Act shall not apply if for a year of assessment the income from all sources of a person is fully exempt under Section 127(3)(b) or Section 127(3A) of The Act or the PIA 1986.

Effective
1 January 2012.

3.6 ***Review Of Tax Treatment For Life Insurance Business***

Present
Any unabsorbed business loss of a life business is allowed to be carried forward and deducted against the statutory income of the life fund of the insurer for the basis period for a year of assessment and subsequent years of assessment. The Act is silent on the treatment on current year adjusted loss.

Proposed
The current year adjusted loss of the life fund of an insurer shall only be available as a deduction against the statutory income of the life fund of the insurer for subsequent years of assessment until it is fully utilised.

Adjusted loss from a source or sources of an insurer (excluding a source consisting of a life fund) for a year of assessment shall be available as a deduction against the aggregate statutory income (excluding a source consisting of a life fund) in arriving the total income of an insurer for a year of assessment.

Any unabsorbed loss (excluding the unabsorbed loss from a life fund) to be carried forward to the subsequent years of assessment is not allowed for deduction against the statutory income of the life fund of the insurer for the subsequent years of assessment.

Effective
Year of assessment 2012.

3.7 ***Review Of Penalty On Withholding Tax On Takaful Income Distribution***

Present

Where a takaful operator distributes or credits any amount of income to a participant other than participant which is a resident company which is deemed to be derived from Malaysia, the takaful operator shall upon distributing or crediting the amount:-

(i) deduct from proportion of that amount, tax at the rate applicable to that proportion; and

(ii) whether or not that is so deducted, within one month after distributing or crediting such amount, render an account and pay the amount of tax to the DG.

When the takaful operator fails to pay the amount of withholding tax within one month after distributing or crediting such an amount, a penalty of 10% will be imposed on the gross income distributed or credited to the relevant participants.

Proposed

The 10% penalty on withholding tax be imposed on the unpaid withholding tax and not on the gross income distributed or credited to the relevant participants.

Effective

1 January 2012.

4. TAX INCENTIVES

4.1 ***Extension Of Tax Incentive Period For Real Estate Investment Trusts***

Present
Real Estate Investment Trusts (REITs) are given tax incentives as follows:-

(i) foreign institutional investors (a pension fund, collective investment scheme or such other person approved by the Minister) that receive dividends from REITs listed on Bursa Malaysia, are subject to final withholding tax at 10% from 1 January 2009 until 31 December 2011;

(ii) non-corporate investors (resident and non-resident individuals) that receive dividends from REITs listed on Bursa Malaysia, are subject to final withholding tax at 10% from 1 January 2009 until 31 December 2011;

(iii) RPGT exemption on gains from the disposal of real property by any person to REITs from 13 September 2003;

(iv) stamp duty exemption on instruments of deed of assignment relating to the disposal of real property to REITs from 26 October 2005;

(v) full income tax exemption on the total income of the REITs if 90% or more of such total income is distributed to unit holders from year of assessment 2007; and

(vi) income tax deduction on establishment expenditure (legal, valuation and consultancy fees) for the purpose of establishing the REITs from year of assessment 2006.

Proposed
The existing tax incentives in Items (i) and (ii) above be extended for another 5 years.

Effective
From 1 January 2012 until 31 December 2016.

4.2 ***Extension Of Tax Exemption Period On Income Derived From Non-Ringgit Sukuk***

Present
Tax exemption on income derived from the following regulated activities in relation to non-Ringgit *Sukuk* that originates from Malaysia and issued or guaranteed by the Government of Malaysia or approved by the Securities Commission under the Capital Markets and Services Act 2007 or the Labuan Financial Services Authority:-

(i) business of dealing in non-Ringgit *Sukuk*; and

(ii) advising on corporate finance relating to the arranging, underwriting and distribution of non-Ringgit *Sukuk*.

The above incentives are effective from years of assessment 2009 to 2011.

4.2	***Extension Of Tax Exemption Period On Income Derived From Non-Ringgit Sukuk*** *(Cont'd)*	**Proposed** The tax exemption period be extended for another 3 years. **Effective** Years of assessment 2012 to 2014.
4.3	***Tax Incentive For Providers Of Industrial Design Services***	**Present** There is no tax incentive provided to the providers of industrial design services. **Proposed** Pioneer Status with income tax exemption of 70% on statutory income for 5 years be given to providers of industrial design services that fulfill the following criteria:- (i) new service providers who employ at least 50% Malaysian designers; and (ii) existing industrial design service providers undertaking expansion and non-industrial design service providers which would be carrying out industrial design activities as follows:- (a) upgrading the design facilities by increasing the capital investment of at least 50%; and (b) employ an additional 50% qualified Malaysian designers. The incentive given is subject to the following conditions:- (i) the industrial design service providers and Malaysian designers must be registered with the Malaysia Design Council (a non-profit agency established in 1993 under the supervision of the Ministry of Science, Technology and Innovation); (ii) the industrial design service providers must be incorporated under the Companies Act 1965 or registered under the Business Registration Act 1956 and provide industrial design services to non-related companies; and (iii) the industrial design services provided are meant for the purpose of mass production. **Effective** For applications received by Malaysian Industrial Development Authority (MIDA) from 8 October 2011 until 31 December 2016.

4.4 ***Tax Incentives For Private And International Schools***

Present
Qualifying person establishing and managing the following non-profit oriented schools are given 100% exemption on statutory income:-

(i) Non Profit Oriented Private Schools
(ii) Non Profit Oriented International Schools
(iii) Non Profit Oriented Expatriate Schools

Profit Oriented International Schools are given investment tax allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years. The allowance is to be set-off against 70% of the statutory income for each year of assessment. Tax incentive is given for application received by MIDA from 14 July 2010 until 31 December 2015.

No incentive is given to Profit Oriented Private Schools.

Proposed
Registered private schools and international schools which fulfilled the requirements stipulated by the Ministry of Education be given tax incentives as follows:-

A. <u>Profit Oriented Private Schools</u>

(i) income tax exemption of 70% for 5 years; or

(ii) Investment Tax Allowance ("ITA") of 100% on the qualifying capital expenditure incurred within a period of 5 years. The allowance is to be set-off against 70% of the statutory income for each year of assessment.

B. <u>Profit Oriented International Schools</u>

Income tax exemption of 70% for 5 years.

C. <u>Profit Oriented Private Schools And International Schools</u>

(i) import duty and sales tax exemption for educational equipment; and

(ii) double deduction for overseas promotional expenses.

Effective

Items (A) and (B)	:	For applications received by MIDA from 8 October 2011 until 31 December 2015.
Item (C)(i)	:	For applications received by MIDA from 8 October 2011.
Item (C)(ii)	:	Year of assessment 2012.

4.5 *Tax Incentive For The Issuance Of Islamic Securities*

Present

Expenses incurred in the issuance of Islamic securities under the principles of *Mudharabah*, *Musyarakah*, *Ijarah*, *Istisna'*, *Murabahah* and *Bai Bithamin Ajil* based on *Tawarruq* and other Syariah principles approved by the Minister of Finance are eligible for tax deduction. The issuance of such Islamic securities must be approved by the Securities Commission or the Labuan Financial Services Authority.

The incentive is given from year of assessment 2003 until year of assessment 2015.

Proposed

The incentive be extended to include expenses incurred in the issuance of Islamic securities under the principles of *Wakalah* approved by the Securities Commission or the Labuan Financial Services Authority.

Effective

Years of assessment 2012 to 2015.

4.6 *Tax Incentive For New 4 And 5 Star Hotels In Peninsular Malaysia*

Present

Hotel operators undertaking new investments in 4 and 5 star hotels in Sabah and Sarawak are given the following tax incentives:-

(i) pioneer status with income tax exemption of 70% of statutory income for 5 years; or

(ii) ITA of 60% on the qualifying capital expenditure incurred within a period of 5 years and to be set off against 70% of the statutory income for each year of assessment.

Proposed

The incentive be extended to include hotel operators undertaking new investments in 4 and 5 star hotels in Peninsular Malaysia.

Effective

Application received by MIDA from 8 October 2011 to 31 December 2013.

4.7 *Incentive For Participation In Career Fairs Abroad*

Present

Expenses incurred by companies in participating in career fairs abroad is given tax deduction in arriving at its adjusted income for a year of assessment.

Proposed

Double deduction be given on expenses incurred by companies in participating in career fairs abroad that are endorsed by TalentCorp.

Effective

Years of assessment 2012 to 2016.

4.8 ***Tax Incentive For Treasury Management Centre***

Present
There is no tax incentive provided for the establishment of Treasury Management Centre ("TMC") in Malaysia.

TMC is a centre that provides financial and fund management services to a group of related companies within or outside Malaysia.

Proposed
A TMC be given the following tax incentives:-

(i) 70% tax exemption on the statutory income arising from the following qualifying treasury services rendered by the TMC to its related companies for a period of 5 years:-

   (a) all fees and management income from providing "qualifying services" to related companies in Malaysia and overseas;

   (b) interest income received from lending to related companies in Malaysia and overseas;

   (c) interest income and gains received from placement of funds with licenced onshore banks or short term investments (onshore or offshore) as part of managing surplus funds within the group;

   (d) foreign exchange gains from managing risks for the group e.g. exchange rate risk, interest rate risk and commodity risk; and

   (e) guarantee fees.

(ii) exemption from withholding tax on interest payments on borrowings by the TMC to overseas banks and related companies, provided that the funds raised are used for the conduct of qualifying TMC activities;

(iii) full exemption from stamp duty on all loan agreements and service agreements executed by TMC in Malaysia for qualifying TMC activities; and

(iv) expatriates working in a TMC are taxed only on the portion of their chargeable income attributable to the number of days they are in Malaysia.

4.8 ***Tax Incentives For Treasury Management Centre*** *(Cont'd)*

The "qualifying services" mentioned in Item (i)(a) are as follows:-

(i) cash management, which include maintaining cash pooling arrangement through a centralised account with licenced onshore bank.

(ii) current account management, which include:-

(a) managing account payables and receivables; and

(b) maintaining inter-company offsetting arrangement.

(iii) financing and debt management, which include:-

(a) arranging for competitive financing from surplus funds within the group or from financial institutions in Malaysia and overseas and through the issuance of bonds in ringgit or foreign currency; and

(b) providing or arranging for financial and non-financial guarantee for its group of companies.

(iv) investment services, which include:-

(a) investment funds within the group in domestic money market and in foreign currency assets onshore and offshore.

(v) financial risk management, which include hedging of:-

(a) exchange rate risk;

(b) interest rate risk;

(c) market risk;

(d) credit/ counterparty risk;

(e) liquidity risk; and

(f) commodity price risk.

(vi) corporate and financial advisory services, which include:-

(a) economics or investment research and analysis;

(b) treasury forecasting and financial trend analysis; and

(c) credit administration and control.

Effective
Application received by MIDA from 8 October 2011 to 31 December 2016.

4.9 ***Review Of Tax Incentive For Shipping Companies***

Present

Statutory income of a resident person who carries on the business of transporting passengers or cargo by sea on a "Malaysian ship" or the letting out on charter a Malaysian ship owned by him on a voyage or time charter basis is fully exempted from tax.

"Malaysian ship" means a sea-going ship registered as such under the Merchant Shipping Ordinance 1952, other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel.

Proposed

(i) The income tax exemption on Malaysian resident shipping companies be reduced from 100% to 70% of its statutory income;

(ii) The remaining 30% of its statutory income shall be deemed to be the total income for that year of assessment;

(iii) The income derived from each Malaysian ship shall be treated as income from a separate and distinct business source;

(iv) Any unabsorbed capital allowance for a year of assessment shall be carried forward to be utilised in arriving at the statutory income of that person from the same source in the subsequent years of assessment, until the unabsorbed capital allowance is fully utilized; and

(v) Any adjusted loss for a year of assessment in respect of a source consisting of a Malaysian ship shall not be deductible in arriving at the total income of that person for that year of assessment and shall be carried forward to reduce the exempt statutory income of that person from the same source in the subsequent years of assessment, until the adjusted loss is fully utilised.

<u>Savings and Transitional Provisions</u>

(i) In arriving at the statutory income for each separate business source from a Malaysian ship for the year of assessment 2012, the unabsorbed capital allowance for the year of assessment 2011 in respect of more than one Malaysian ship shall be apportioned to each of the ship, based on the following formula:-

$$\frac{A}{B} \quad X \quad C$$

Where A is the gross income of a person in respect of a Malaysian ship for the year of assessment 2011;

4.9 ***Tax Incentive For Shipping Companies*** *(Cont'd)*

B is the total gross income of a person in respect of all Malaysian ships for the year of assessment 2011; and

C is the unabsorbed capital allowances for the year of assessment 2011 in respect of any Malaysian ship referred to under paragraph 54A(2)*(a)* of The Act prior to the amendment of that paragraph under section 11 of this Act,

(ii) The unabsorbed losses from the year of assessment 2011 in respect of more than one Malaysian ship shall be apportioned to each of the ship, based on the following formula:-

$$\frac{A}{B} \text{ X } C$$

Where A is the gross income of a person in respect of a Malaysian ship for the year of assessment 2011;

B is the total gross income of a person in respect of all Malaysian ships for the year of assessment 2011; and

C is the unabsorbed losses for the year of assessment 2011 in respect of any Malaysian ship referred to under paragraph 54A(2)*(b)* of The Act prior to the amendment of that paragraph under section 11 of this Act.

Effective
Year of assessment 2012.

4.10 ***Incentive For Kuala Lumpur International Financial District***

Present
There is no specific tax incentive accorded to Kuala Lumpur International Financial District ("KLIFD").

Proposed
KLIFD be accorded the following tax incentives package:-

(i) 100% income tax exemption for a period of 10 years for KLIFD status companies;

(ii) stamp duty exemption on loan and service agreements for KLIFD status companies;

(iii) industrial building allowance and accelerated capital allowance for KLIFD Marquee Status Companies; and

(iv) 70% income tax exemption for a period of 5 years for property developers in KLIFD.

Effective
To be determined.

4.11 ***Tax Incentive For Structured Internship Programme***

Present
Pursuant to Section 34(6)(n) of The Act, expenses incurred by a person in providing practical training in Malaysia (including an internship programme), in relation to his business to resident individuals who are not employees of that person are eligible for a tax deduction.

Proposed
Double deduction be given on expenses incurred by companies that participate in "structured internship programme" implemented by the Ministry of Higher Education in collaboration with Talent Corporation Malaysia Berhad (TalentCorp). The qualifying criteria among others are:-

(i) the internship programme is provided to full time undergraduate students from the public/ private higher educational institutions; and

(ii) the internship programme is for a minimum period of 10 weeks with a monthly allowance of at least RM500.

"Structured internship programme" includes technical, communication and business skills.

Effective
Years of assessment 2012 to 2016.

4.12 ***Review Of Reinvestment Allowance Incentive***

<u>Qualifying project located in promoted areas</u>

Present
Pursuant to Paragraph 3, Schedule 7A of The Act, Reinvestment Allowance ("RA") of 60% on qualifying capital expenditure incurred in a basis period can be set off against 70% of statutory income.

However, such RA is allowed to set-off against 100% of statutory income if:-

(i) the qualifying project is located within the promoted areas which comprise the states of Sabah, Sarawak, the Federal Territory of Labuan, Perlis and the Eastern Corridor of Peninsular Malaysia; or

(ii) the qualifying project has achieved the level of productivity as prescribed by the Minister.

Proposed
The exception under Item (i) above will be removed from Paragraph 3, Schedule 7A of The Act.

Effective
Year of assessment 2012.

4.12 ***Review Of Reinvestment Allowance Incentive*** *(Cont'd)*

<u>Non application of RA</u>

Present
Paragraph 7(b), Schedule 7A of The Act provides that RA shall not apply to a company for "the period" prescribed under the relevant provisions of the PIA 1986 in respect of promoted activity or promoted product for which the company has been granted approval for investment tax allowance.

Proposed
The words "the period" in Paragraph 7(b), Schedule 7A of The Act is to be replaced by the words "the basis period".

Effective
Year of assessment 2011.

<u>Restriction of RA on production area</u>

Present
The word "factory" is not defined under Schedule 7A of The Act.

Proposed
The word "factory" is now defined in Schedule 7A of The Act to mean:-

"*portion of the floor areas of a building or an extension of a building used for the purposes of qualifying project to place or install plant or machinery or to store any raw material, or goods or materials manufactured prior to sale:*

provided that in respect of portion of the building or extension of the building used for the storage of raw material, or goods or materials, or both, it shall not be more than one-tenth of the total floor areas of that building or extension"

Effective
Year of assessment 2012.

5. REAL PROPERTY GAINS TAX

5.1 ***Review of Real Property Gain Tax Rates***

Present

The applicable rates for Real Property Gain Tax ("RPGT") are as follows:-

Disposal	RPGT rates		
	Companies	**Individual (Citizen & Permanent Resident)**	**Individual (Non-citizen)**
Within 2 years	30%	30%	30%
In the 3rd year	20%	20%	30%
In the 4th year	15%	15%	30%
In the 5th year	5%	5%	30%
In the 6th year onwards	5%	0%	5%

However, RPGT exemption is granted to any person where the disposal of real properties is made within 5 years from the date of acquisition of such real properties, on the condition that the amount of chargeable gain is determine in accordance with the following formula:-

$$\frac{A}{B} \times C$$

Where A is the amount of tax charged on the chargeable gain on person at the appropriate tax rate reduced by the amount of tax charged on such chargeable gain at the rate of 5%;

B is the amount of tax charged on such chargeable gain at the appropriate tax rate; and

C is the amount of such chargeable gain.

With the above exemption granted, the RPGT is computed based on an effective tax rate of 5% on the chargeable gain from the disposal of real properties within 5 years. However, RPGT is exempted if the holding period of the real properties prior to its disposal is more than 5 years.

Proposed

The effective RPGT rate on the gains from disposal of real properties is to be reviewed as follows:-

Disposal	Effective RPGT rates		
	Companies	**Individual (Citizen & Permanent Resident)**	**Individual (Non-citizen)**
Within 2 years	10%	10%	10%
Exceeding 2 until 5 years	5%	5%	5%
Exceeding 5 years	0%	0%	0%

Effective

Disposal of real properties commencing from 1 January 2012.

6. OTHERS

6.1 ***Stamp Duty Exemption On Loan Agreements Under The Skim Perumahan Rakyat 1Malaysia***

Present
Full stamp duty exemption is given on all instruments for the purchase of "low cost house" with sale and purchase agreements executed on or after 1 July 2002.

"Low cost house" refers to a unit of house built within a Low Cost Housing Project approved by a State Government of the appropriate authority, in respect of the Federal Territory of Kuala Lumpur, Labuan or Putrajaya and:-

(i) if situated in peninsular Malaysia, sold at a price not exceeding RM42,000; or

(ii) if situated in Sabah, Sarawak or the Federal Territory of Labuan, sold at a price not exceeding RM47,000.

A 50% stamp duty exemption is given on loan agreements for residential properties priced at not exceeding RM350,000. Such loan agreements are made between purchaser with the bank, financial institutions, insurance companies, cooperatives or employer under the employee housing loan scheme.

The exemption given is subject to the following conditions:-

(i) the sale and purchase agreements executed from 1 January 2011 to 31 December 2012;

(ii) purchase of only one unit of "residential property" by a Malaysian citizen, who does not own any other residential property at the date of execution of that sale and purchase agreement; and

A "residential property" includes a house, condominium, apartment or flat built as a dwelling house.

(iii) the exemption is to be claimed once only within the exemption period.

Proposed
Full stamp duty exemption be given on loan agreements for the purchase of a residential property under the Skim Perumahan Rakyat 1Malaysia ("PR1MA"), priced at not exceeding RM300,000.

Effective
For sale and purchase agreements executed from 1 January 2012 until 31 December 2016.

6. OTHERS

6.2 ***Assistance For Individual Owners Of Budget Taxis And Hire Cars***

Present
The owners of budget taxis and hire cars are given the following assistance:-

(i) 100% excise duty exemption on purchase of new locally manufactured cars used as budget taxis;

(ii) 100% excise duty exemption on purchase of new locally assembled cars used as hire cars; and

(iii) road tax at RM20 per year.

Excise duty would need to be paid on the current value when the budget taxis and hire cars are sold or the ownership is transferred.

Proposed
The individual owners of budget taxis and hire cars would be given the following:-

(i) 100% sales tax exemption on purchase of new locally manufactured cars used as budget taxis or hire cars;

(ii) exemption of excise duty and sales tax on sale or change of ownership of budget taxis and hire cars after 7 years of registration;

(iii) road tax on budget taxis and hire cars to be abolished;

(iv) interest rate subsidy of 2% per annum for 2 years on full loans for financing the purchase of new locally manufactured cars used as budget taxis and hire cars; and

(v) assistance of RM3,000 for replacement of budget taxis and hire cars aged more than 7 years but less than 10 years, and RM1,000 for budget taxis and hire cars aged 10 years and above.

Effective

Items (i) and (ii)	:	8 October 2011.
Item (iii)	:	1 January 2012.
Items (iv) and (v)	:	1 January 2012 until 31 December 2013.

6. OTHERS

6.3	***Extension Of The Scope Of Transaction In Which Disposal Price Is Deemed Equal To Acquisition Price***	**Present** The disposal price of chargeable asset pursuant to a scheme of financing in accordance with the principles of Syariah approved by the Central Bank or Securities Commission is deemed equal to the acquisition price pursuant to Subparagraph 3(g), Schedule 2, RPGT 1976. **Proposed** The above incentive be extended to disposal of chargeable asset pursuant to a scheme of financing in accordance with the principles of Syariah approved by Malaysia Co-operative Societies Commission ("MCSC"). **Effective** Year of assessment 2012.
6.4	***Extension Of The Scope Of Syariah Principles On Disposal Of Asset Or Lease Transaction***	**Present** The disposal of an asset or a lease transaction by or to a person pursuant to a scheme of financing in accordance with the principles of Syariah approved by the Central Bank, Securities Commission or Labuan Financial Services Authority is disregarded for taxation purposes pursuant to subsection 2(8) of The Act. **Proposed** The above incentive be extended to the disposal of an asset or a lease transaction by or to a person pursuant to a scheme of financing in accordance with the principles of Syariah approved by MCSC. **Effective** Year of assessment 2012.
6.5	***Extension Of The Scope Of Stamp Duty Exemption On Instrument Executed Under Syariah Principles***	**Present** Stamp duty exemption is given to an instrument executed pursuant to a scheme of financing in accordance with the principles of Syariah approved by the Central Bank, the Labuan Financial Services Authority or the Securities Commission pursuant to Paragraph 6, General Exemption, First Schedule of the Stamp Act 1949. **Proposed** The stamp duty exemption be extended to instrument executed pursuant to a scheme of financing in accordance with the principles of Syariah approved by MCSC. **Effective** Upon coming into operation of the Finance (No.2) Act 2011.

6.6 ***Tax Information Exchange Arrangements***

Present
There is no specific provision for tax information exchange arrangements under the Labuan Business Activity Tax Act ("LBATA") 1990 for non-treaty countries.

Proposed
Section 22A of LBATA 1990 on disclosure of information will be widened to cover "tax information exchange arrangements" with non-treaty countries.

"Tax information exchange arrangements" means an arrangement between the Government of Malaysia and the Government of any territory outside Malaysia under Section 132A of The Act.

Effective
Deemed to have come into operation on 28 January 2011.

6.7 ***Stamp Duty Exemption On Loan Agreements For Micro Finance And Professional Services Fund***

Present
Loan agreements up to RM250,000 executed by small and medium enterprises ("SMEs") are subject to stamp duty at the rate of 0.05% on the loan value (or RM0.50 for every RM1,000).

Loan agreements executed by parties other than SMEs are subject to stamp duty at the rate of 0.5% on the loan value (or RM5.00 for every RM1,000).

SMEs are interpreted as follows under the Stamp Act 1949:-

Sector	Annual Turnover	Number of Employee
Manufacturing	Less than RM25 million	150 persons
Services	Less than RM5 million	50 persons

Proposed
100% stamp duty exemption be given on loan agreements up to RM50,000 under Micro Financing Scheme. Such exemption is given on loans executed between micro enterprises and SMEs with any banking and financial institutions.

In addition, 100% stamp duty exemption be given on loan agreements up to RM50,000 undertaken from the Professional Services Fund. Such exemption is given on loans executed between any professionals with Bank Simpanan Nasional.

Effective
Instruments executed from 1 January 2012.

6.8 ***Extension Of Duties Exemption Period For Hybrid And Electric Cars***

Present
100% exemption on import duty and excise duty are given to franchise holders of hybrid cars, electric cars as well as hybrid and electric motorcycles, subject to the following conditions:-

Hybrid Car :

(i) comply with the United Nations' definition as follows :-

"A vehicle with at least 2 different energy converters and 2 different energy storage systems (gasoline and electric) on-board the vehicle for the purpose of vehicle propulsion"

(ii) limited to new completely-built-up ("CBU") hybrid passenger cars with engine capacity below 2000cc;

(iii) engine specification of at least Euro 3 technology;

(iv) it should be certified by the Ministry of Transport, obtaining Vehicle Type Approval and is certified to have achieved not less than 50% increase in the city-fuel economy or not less than 25% increased in a combined city-highway fuel economy relative to a comparable vehicle that is an internal combustion gasoline fuel; and

(v) emission of carbon monoxide of less than 2.3 gram per kilometre.

Electric Car :

(vi) comply with the United Nations' definition as follows:-

"A vehicle with bodywork intended for road use, powered exclusively by an electric motor whose traction energy supplied exclusively by a traction battery installed in the vehicle"

(vii) limited to new CBU electric cars with electric motor power below 100kW;

(viii) engine specification of at least Euro 3 technology; and

(ix) it should be certified by the Ministry of Transport, obtaining Vehicle Type Approval as electric car.

The exemption is given for applications received by the Ministry of Finance from 1 January 2011 until 31 December 2011.

Proposed
The period of duties exemption be extended for another 2 years.

Effective
For applications received by the Ministry of Finance from 1 January 2012 until 31 December 2013.

A publication by : **Folks Management Services Sdn Bhd (178398-K)**
Suite 1102, Wisma Tun Sambanthan
No.2, Jalan Sultan Sulaiman
50000 Kuala Lumpur
☏ 03-22732688
🖷 03-22742688

Printed by : **Akitiara Corporation Sdn Bhd**
1 & 3, Jalan TTP 1/3
Taman Industri Puchong
47100 Puchong, Selangor
☏ 03-80619988
🖷 03-80619933

~ KUALA LUMPUR ~ (Headquarters)
Folks DFK & Co.
Azman, Wong, Salleh & Co.
Folks Taxation Sdn Bhd
Folks Management Services Sdn Bhd
Folks Corporate Services Sdn Bhd
Folks Consultancy Sdn Bhd
12th Floor, Wisma Tun Sambanthan
No 2, Jalan Sultan Sulaiman
50000 Kuala Lumpur
🖰 general@folksdfk.com
☎ 03-22732688
🖶 03-22742688

~ IPOH ~
Folks DFK & Co.
48A, Persiaran Greenhill
30450 Ipoh, Perak
🖰 ipfolks@streamyx.com
☎ 05-2551606, 05-2547807
🖶 05-2535877

~ JOHOR ~
Folks Management Services Sdn Bhd
Suite 5-02, Level 5, Plaza DNP
59, Jalan Dato' Abdullah Tahir
80250 Johor Bahru
☎ 07-3333502
🖶 07-3333601

Azman, Wong, Salleh & Co.
Suite 2, 20th Floor, TAR Complex
(Letter Box 180), Jalan Wong Ah Fook
80000 Johor Bahru
🖰 awsjb@tm.net.my
☎ 07-2234753, 07-2234530
🖶 07-2232723

~ AFFILIATES’ OFFICES ~

We have affiliate offices in the following cities:

- PENANG
- KUCHING
- SIBU
- SARIKEI
- MIRI
- BINTULU
- KOTA KINABALU