



## MALAYSIA

### IMPORTANT TAX DEVELOPMENTS — 2009 BUDGET

#### Personal tax

##### 1. Reductions in personal income tax rate

The following reductions in personal income tax rate took effect from year of assessment (YA) 2009:

- (1) reduction of tax rate from 13% to 12% for the income band from RM35,001 to RM50,000;
- (2) reduction of the highest marginal tax rate from 28% to 27%; and
- (3) in line with (2), non-resident individuals are taxed at the flat rate of 27% (reduced from 28%).

With this reduction, the gap between the corporate tax rate (25%) and the top tax rate for individuals for YA 2009 remains at 2%.

##### 2. More tax benefits for individuals

- (1) Exemption has been granted in respect of the following allowances/perquisites to reduce the tax burden of individual taxpayers:

Fully exempt:

- Allowance for parking and meals
- Other perquisites — Telephone, pager etc.; bills for telephone, pager etc.; gift of new personal computer; broadband subscription fee (registered in name of employer); employer's own services provided free or at a discount

Exempt with restriction [maximum amount (per year) in brackets]:

- Petrol/travel allowance for travel between home and work place (RM2,400)
- Petrol/travel allowance or toll card for official duties (RM6,000)
- Employer's own goods provided free or at discounted value (RM1,000)
- Allowance/subsidy for childcare (RM2,400)

- (2) The tax rebate given to an individual whose chargeable income does not exceed RM35,000 has been increased from RM350 to RM400.

#### Widening the tax net under Budget 2009

##### 1. Withholding tax on "other income"

The charging section of the Malaysian Income Tax Act listing out the various "sources" of income that are charged to tax includes a "sweeping up" section that charges to tax "income not falling under any of the foregoing paragraphs." Other than dividends and business income, the other sources of income that are subject to withholding tax requirement when payment is made to a non-resident are: interest and royalties; fees for services rendered in connection with technical management/administration and certain kinds of rental payments.

Budget 2009 has introduced new legislation which imposes withholding tax requirement on payments to non-residents representing income that falls within the "sweeping up" section. This proposal has the impact of extending withholding tax requirements to cover payments to non-residents representing income from all sources other than dividends, employment and business sources. The new requirement came into effect on 1 January 2009.

##### 2. Restricting the application of concessionary tax rate for small and medium enterprises

Prior to YA 2009, companies with paid up capital of RM2.5 million or less at the beginning of the basis period enjoy a concessionary tax rate of 20% on the first RM500,000 of chargeable income, while any balance of chargeable income is taxed at the normal corporate tax rate. With effect from YA 2009, a company that meets the above capital requirement but controls or is being controlled directly or indirectly by another company which has a paid up capital of more than RM2.5 million in respect of ordinary shares will not be eligible for the concessionary tax rate.

### 3. Tightening the conditions for reinvestment allowance

Reinvestment allowance (RA) is an incentive granted to resident companies which have been in operation for not less than 12 months and have incurred capital expenditure on qualifying assets for the purpose of certain qualifying projects in the basis period for a year of assessment. The amount of RA granted is 60% of the capital expenditure to be deducted from 70% of statutory income. Under Budget 2009, the following changes were effected:

- (1) the condition that the company must be in operation for at least 12 months to be eligible for RA has been extended to at least 36 months;
- (2) the provision for RA claimed to be “clawed back” if the asset is sold within 2 years has been amended to extend that period to 5 years;
- (3) “manufacturing” activity, which was previously not defined, is now given a very specific definition; and
- (4) a company purchasing an asset from a related company within the same group where RA has been claimed on that asset is not allowed to claim RA on the same asset.

These changes take effect from YA 2009. The general impact of these changes is to make it more difficult to qualify for claiming RA and increase the risk of a “clawback” of RA claimed through disposal of the asset within the extended period of 5 years.

### 4. Legislation for transfer pricing

The following new provisions have been inserted in the tax legislation to enhance transparency of tax treatment of issues related to transfer pricing and thin capitalisation:

- (1) provisions to enable the Director General of Inland Revenue (DGIR) to make adjustments on transactions of goods, services and financial assistance carried out between companies based on the arm’s length principle; and
- (2) provisions to allow a person undertaking cross border transactions with associated persons to apply for Advance Pricing Arrangement with the DGIR in order to determine the methodology to be used in any future allocation of income or deductions to ensure the arm’s length transfer prices to be used in relation to those transactions.

## THE LATEST DEVELOPMENT — “MINI BUDGET”

On 10 March 2009, the Finance Minister presented a RM60 billion “mini Budget” containing measures to avert the economy from sliding into severe recession. The amount will be spent over 2 years based on the following allocation:

1. Fiscal injection (RM15 billion)
2. Guaranteed funds (RM25 billion)
3. Equity investments (RM10 million)
4. Private finance initiatives and off-Budget projects (RM7 billion)
5. Tax incentives (RM3 billion)

Tax measures proposed in the mini Budget are mainly aimed at helping to ease the cash flow burdens of workers/ wage earners, consumers, small and medium businesses and creating stimulus for the economy in general by providing the impetus for spending. Some of the more significant proposals are highlighted below.

### Corporate tax

#### 1. Loss carry back

Currently, there is no existing provision that allows carry back of trade losses. The proposed legislation allows the taxpayer to make an irrevocable election for current year loss to be carried back for deduction against income of the immediately preceding year, subject to a maximum deduction of RM100,000. The election may be made for YA 2009 and YA 2010.

#### 2. Incentive for banks to defer repayment of housing loans

As an incentive for banks to defer repayment of housing loans by retrenched workers, a proposal is made for interest accrued on such housing loans to be taxed only upon receipt (as opposed to on an accrued basis). This special treatment applies only to interest on deferred housing loans by borrowers who have been retrenched on or after 1 July 2008, and have applied for the moratorium on the loan from 10 March 2009 to 9 March 2010. The change takes effect from YA 2009.

## Personal tax

### 1. Deduction of interest expended on housing loan

Interest incurred on a housing loan by an individual who does not derive any rental income from the property is currently not allowed any tax deduction. It is proposed that house buyers be given tax relief on interest payments for housing loans for a maximum amount of RM10,000 per annum for 3 years of assessment, starting from the year in which the interest is first expended. The relief is only available to Malaysian citizens who are tax residents and is limited to the purchase of only one unit of residential property. Additionally, the Sale and Purchase Agreement for the sale must be executed from 10 March 2009 to 31 December 2010.

### 2. Increased exemption for compensation for loss of employment

Existing legislation provides for income tax exemption on compensation for loss of employment (including Voluntary Separation Scheme (VSS)) received by an employee for a maximum sum of RM6,000 for each completed year of service. The proposed legislation increases the maximum amount exempted to RM10,000 for each completed year of service. The increased exemption is only applicable to retrenchment/compensation for loss of employment/VSS payments made to an employee whose employment was terminated on or after 1 July 2008.

## Tax incentives

### 1. Double deduction for expenditure on employing retrenched workers

Under the current law, expenditure on employees' remuneration is only allowed a single tax deduction. In support of the effort helping retrenched workers to find new employment, employers who hire workers retrenched from 1 July 2008 will be allowed a double deduction on the remuneration paid to these workers, with a limit of RM10,000 per month for a maximum period of 12 months for each employee. This incentive is only applicable to workers employed from 10 March 2009 to 31 December 2010.

### 2. Renovation or refurbishment allowance

No tax deduction is given for expenditure incurred on renovation or refurbishment of business premises under the existing legislation, nor does such expenditure qualify for capital allowances. To provide impetus

for business spending, qualifying renovation and refurbishment expenses as prescribed by the Finance Minister and of up to RM100,000 will be eligible for accelerated capital allowances which can be claimed within 2 years (50% for each YA). The expenditure must be incurred from 10 March 2009 to 31 December 2010.

### 3. Accelerated capital allowance on plant and machinery

Currently, capital allowances at different rates are available on expenditure incurred on plant and machinery used in a business, which allow the cost incurred to be fully claimed within periods varying from 4 to 6 years. Certain assets specified by statute qualify for accelerated capital allowances whereby the full cost may be claimed within one year. To encourage businesses to continue investing in plant and machinery, qualifying expenditure incurred from 10 March 2009 to 31 December 2010 will be given accelerated capital allowances and the cost can be fully deducted within 2 years. This incentive is available from YA 2009.

## Windfall profit levy

Windfall profit levy is currently imposed when the price of crude palm oil exceeds RM2,000 per tonne. The threshold has been increased to the following from 10 March 2009:

| Area                | Revised threshold |
|---------------------|-------------------|
| Peninsular Malaysia | RM2,500 per tonne |
| Sabah and Sarawak   | RM3,000 per tonne |

## CONCLUSION

Budget 2008 had introduced positive developments that reflect the Government's commitment towards its objective of promoting businesses and investments, whether domestic or foreign. On the other hand, the thrust of Budget 2009 is generally seen to be more restrictive and stifling for business operations. Nevertheless, the global recession has made it imperative for the Government to shift to "rescue" mode and introduce tax measures aimed at reducing the tax burden of businesses and individuals. However, since tax incentives constitute only a minor portion of the allocation under the stimulus package, their impact on stimulating the economy may be somewhat limited.