


# **Amendments to Finance Bill 2018**

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Following the 2019 Budget Proposals which were announced by the Malaysian Finance Minister on 2 November 2018, the Finance Bill 2018 was tabled to incorporate the legislative amendments affecting revenue law. This year, the Finance Bill 2018 was passed by the House of Representatives on 10 December 2018 with Amendment in Committee (hereinafter referred to as “the amended Finance Bill 2018”). Essentially, some proposed revenue tightening measures announced in the Budget Proposals 2019 have been removed or modified.

The key changes resulting from the amended Finance Bill 2018 are summarised below:

## Corporate Tax

### 1. Review of restriction on carry forward of losses and allowances

- ❖ The restriction on carry forward of unutilised capital allowances and investment tax allowance has been removed from the amended Finance Bill 2018.
- ❖ Effective from the year of assessment (YA) 2019, time limit is to be imposed on the carry forward of the following losses and allowances:
  - Unabsorbed business losses – 7 consecutive YAs following the relevant YA
  - Unutilised reinvestment allowance and investment allowance for services – 7 YAs after expiry of qualifying period
  - Unabsorbed pioneer losses – 7 YAs after the YA in which the day post-pioneer business falls

### 2. Review of special classes of income under Section 4A(ii) of the Income Tax Act 1967 (“ITA”)

- ❖ Effective upon gazetting of the Finance Act, the scope of special classes of income is to be widened following the removal of the word “technical” from Section 4A(ii). The amended provision reads as follows:

*“Amounts paid in consideration of any advice given, or assistance or services rendered in connection with management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme”*

- ❖ The following provisions have been amended in tandem with the proposed amended Section 4A(ii):
  - Section 15A(b) – Derivation of special classes of income;
  - Section 109B(1)(b) – Withholding tax provision; and
  - Part V(ii) of Schedule 1 of the ITA – Rates of tax.
- ❖ Following these amendments, all services (whether technical and/or non-technical) rendered in connection with management or administration of any scientific, industrial or commercial undertaking will be viewed as a special class of income. Where such services are deemed to be derived from Malaysia, withholding tax of 10% on the gross amount paid to the non-resident will be applicable.



### 3. Review of tax treatment of Labuan entities

- ❖ Effective from 1 January 2019, a Labuan entity shall comply with the substance requirements, i.e. having an adequate number of full time employee and annual operating expenditure in Labuan, as prescribed by the Minister of Finance by regulations.

### 4. Review of tax treatment of transactions with Labuan entities

- ❖ In the Finance Bill 2018, the tax deduction claimed by a resident who transacts with a Labuan entity was to be restricted to 3% of the allowable expenditure incurred, effective from 1 January 2019.
- ❖ In the amended Finance Bill 2018, the restriction on the tax deduction has been removed. Instead, the deductibility of payments made by a resident to a Labuan entity will be governed by the rules to be prescribed by the Minister of Finance.

## **Real Property Gains Tax (“RPGT”)**

### 1. The acquisition price of real property acquired prior to 1 January 2000

- ❖ For a disposal made by a disposer other than companies, non-citizens and non-permanent resident individuals, the acquisition price of the real property acquired prior to 1 January 2000 shall be based on the market value as at 1 January 2000 in computing the chargeable gains or allowable losses on disposal.
- ❖ In this respect, all the incidental costs of acquisition (e.g. stamp duty on transfer, legal fees, etc.) incurred prior to 1 January 2000 will be disregarded.
- ❖ Similarly, in determining the disposal price of real property acquired prior to 1 January 2000, the relevant expenses (e.g. enhancement or renovation costs) will also be disregarded.
- ❖ This amendment would affect the acquisition price of real property acquired by Malaysian citizens and permanent residents prior to 1 January 2000.
- ❖ As announced in the 2019 Budget Proposals, RPGT rates for the disposal of assets made by Malaysian citizens and permanent residents after the fifth year is to be revised from 0% to 5%
- ❖ The reset of acquisition price to market rate as at 1 January 2000 would mitigate the impact of the revised RPGT rate on Malaysian citizens and permanent residents.



## 2. Disposal by way of a gift

- ❖ Where an asset is disposed by way of a gift and the donor and recipient are –
  - Husband and wife;
  - Parent and child; or
  - Grandparent and grandchildren,this transaction is deemed to be a no-gain-no loss transaction.
- ❖ In addition, the recipient shall be deemed to acquire the asset based on the acquisition price paid by the donor plus the permitted expenses incurred by the donor, irrespective of the holding period of the asset.
- ❖ Following this amendment, for the disposal of an asset which has been held by the donor for more than five years, the acquisition price to the recipient shall no longer be based on the market value of the asset when it is gifted. Instead, the acquisition price will follow the original acquisition price to the donor. Consequently, the chargeable gain / allowable loss on the subsequent disposal of the asset by the recipient would be affected.

## Withholding Tax on Special Classes of Income

The Inland Revenue Board has recently issued Public Ruling No.11/2018 (“PR No.11/2018”) – Withholding tax on special classes of income dated 5 December 2018 to replace the earlier Public Ruling No. 1/2014 (“PR No.1/2014”) dated 23 January 2014. The latest Public Ruling incorporates the recent changes to the law and the Inland Revenue Board’s interpretation on certain withholding tax issues.

### 1. Regrossing of payments

- ❖ Effective from 5 December 2018, where withholding tax is borne by the payer, payments to non-residents no longer need to be regrossed when determining the amount of income on which withholding tax should be charged.

### 2. Allocation of head office expenses

- ❖ Previously, the allocation of head office expenses from the non-resident head office/parent company to a Malaysian branch/subsidiary for ordinary day to day or routine administration expenses were excluded from the scope of special classes of income under Section 4A(ii) of ITA as it did not relate to the performance of any specialised service.
- ❖ The special exclusion has been removed in the PR No.11/2018.
- ❖ In line with the amendments to Section 4A(ii) which now covers both technical and non-technical services, multinational corporations need to re-examine if withholding tax is applicable to the head office expenses allocated to them.



### 3. Application of foreign exchange rates

- ❖ For withholding tax purposes, where payment to a non-resident is made in a foreign currency, the equivalent amount in RM has to be calculated at the time payment is made to the non-resident at the –
  - prevailing foreign exchange rate on the date the payment is made (the rate would be reflected in the telegraphic transfer);
  - rate published in the official portal of IRBM; or
  - rate published by Bank Negara Malaysia.

## Goods and Services Tax Updates

- ❖ Following the abolishment of the Goods and Services Tax (“GST”) Act 2014 on 1 September 2018, the Royal Malaysian Customs Department (RMCD) has announced that all GST appeals must be lodged with the Customs Appeal Tribunal.
- ❖ Taxpayers who are aggrieved by any GST matters will now have to submit an appeal directly to the Customs Appeal Tribunal rather than to the GST Unit within RMCD.

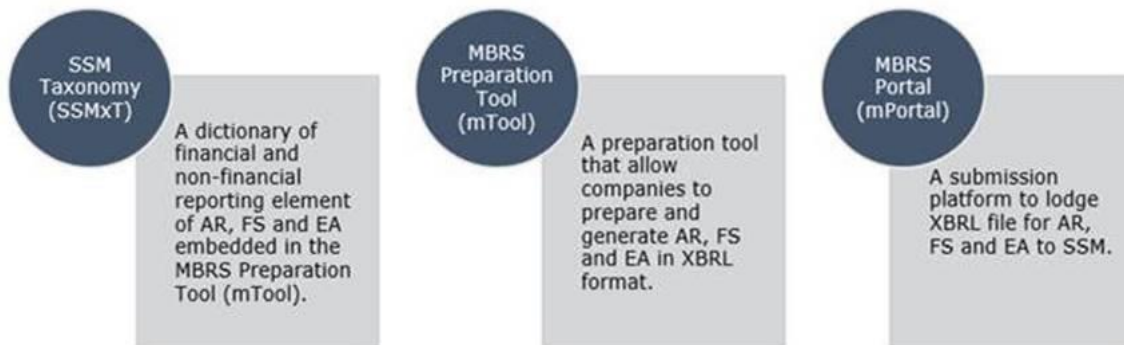
## Malaysian Business Reporting System (MBRS)

Suruhanjaya Syarikat Malaysia (SSM) has launched the submission platform known as the Malaysian Business Reporting System (MBRS) based on the eXtensible Business Reporting Language (XBRL) format. It is intended to phase out over-the-counter manual submissions of Financial Statements (FS), Annual Returns (AR) and Exemption Application Forms (EA).

Banking, financial and insurance institutions regulated under Bank Negara Malaysia are exempted from MBRS filing. MBRS will have an impact on the annual submissions of your Company's annual return and financial statements to SSM.

### Mandatory compliance

It is mandatory that all Malaysian incorporated companies and foreign companies registered under the Companies Act 2016, are required to digitally file a full set of financial statements in XBRL format under the MBRS, unless otherwise exempted.



## Is your company prepared?

- ❖ Have you fully understood the forthcoming MBRS filing requirements and the impact of these new requirements on your company's financial reporting process?
- ❖ Have you identified the person(s) within your company who will be responsible for managing the MBRS financial statements preparation process.
- ❖ The SSM announcement has reiterated that the responsibility is on the Company Director to engage a maker (authorised person to prepare) of the MBRS annual return and financial statements documents.
- ❖ Is your staff adequately trained to prepare your financial statements in accordance to MBRS requirements and ensuring completeness and accuracy of information?

## Why not consider this option?

Outsource the preparation of your financial statements in MBRS format to trained professionals to ease and facilitate your digital submissions to SSM. Our team of experienced MBRS professionals can assist you in this transition from manual to digital submission.

## A Comprehensive Human Resources Development Program.

Are you ready to mitigate a major strategic and operational risk? Failure to have in place the right people, with the right skills, at the right time is a major and unacceptable risk that most organisations have not attempted to correct. The answer is not simple, but the answer is available and necessary as part of the Government's initiative on Corporate Governance: A Comprehensive Human Resources Development Program.

Our Competency Based Human Capital Framework is a systematic effort to transform an Organization's work culture and ensure that a well-stocked cadre of qualified individuals are well equipped and ready to assume key positions within the organisation. The program is to develop business core competencies and build the leadership and Talent Pools, not only for upward movement but also for lateral movement. We document gaps between what is in place now, what will be needed in the future, and then assist with individual development plans to prepare individuals for that future.

## Your global tax partner



## What we can do?

1. Developing an organisation's core leadership competencies and functional competencies for all critical roles.
2. Institutionalise competencies-based career path and training needs for all levels company wide.
3. Develop and conduct an Employee Engagement Survey and develop an action plan to mitigate the gaps.
4. Developing Talent Pool & Leadership Development framework for succession planning.
5. Review the reward system by creating a policy that focuses on 'Pay for Performance'.
6. Creating a framework on high performance culture that links corporate objectives to Individual and team performance.