2023 Budget: Further Tax Implications Arising from Finance Bill 2023

Incidental to 2023 Budget, the Finance Bill 2023 was tabled in the parliament today. This e-Alert presents the implications of the Finance Bill.

For the avoidance of duplication, matters addressed in the previous e-Alerts on 25 February 2023 are not repeated in this write-up. The Past e-Alerts are accessible via our Linkedln.

1. Capital Allowances for Intangible Assets

The definition of plant was first included in the Income Tax Act, 1967 in year of assessment ("YA") 2021. The definition effectively denied capital allowance on costs incurred on intangible assets, save for selected items such as customised software for which capital allowance is granted by way of Ministerial order.

The Finance Bill proposes to remove the reference to intangible assets in the exclusion list effective YA 2023. Concurrently, the Minister is empowered to exclude any asset from the definition of plant.

Generally this move is welcomed as it provides scope for capital allowance for legitimate capital expenditure on intangible asset, which is vital for many businesses.

However, the full impact of this proposal can only be understood once the Minister's exclusion list is prescribed and published in the *gazette*. It is noteworthy that the proposed Minister's power to exclude assets from the definition of plant extends beyond intangible assets.

2. Exclusion of Foreign Owned Entities from Scope of SME Tax Rate

Presently, SME companies are defined with reference to paid up capital not exceeding RM2.5 million and gross income (such as revenue) from business source(s) not exceeding RM50 million. SMEs that fulfil the definition are presently granted lower corporate income tax rate of 17% (instead of the standard 24%) on the first RM600,000 of chargeable income.

The Finance Bill further reduces the rate to 15% on the first RM150,000 effective YA 2023 as detailed in our e-Alert on 25th February.

Additionally, the Finance Bill proposes that the preferential SME tax rate is denied for entities with more than 20% shareholding (including indirect ownership) by foreign companies or foreign individuals. This change impacts entitlement to both the 15% rate and the 17% rate. In other words, companies and LLPs with more than 20% foreign ownership would be subject to tax rate at the flat rate of 24% effective YA 2024 onwards.

It is noteworthy that the reduced rate of 17% is effective YA 2023 while the additional condition on foreign ownership is effective only from YA 2024. This appears deliberate to avoid retrospective application of the additional condition.

The proposed disqualification based on foreign shareholding is applicable only for the purposes of tax rate, and does not affect entitlement to other preferential tax treatment for SMEs such as unrestricted accelerated capital allowance on small value assets.

3. Payments to Agents, Dealers & Distributors (ADDs)

A two (2) percent withholding tax ("WHT") on domestic payments to individual ADDs was introduced effective 1st January 2022. To ease the compliance burden, an administrative concession was announced last year to allow payment of the withholding tax to be done on monthly basis. The Finance Bill proposes to make such concession a law. This is welcomed as it provides more clarity and certainty on the treatment.

To promote compliance, effective YA 2022 taxpayers were denied tax deduction on expenses relating to payments to ADDs until and unless the withholding tax is paid to the IRBM. Incidentally, the Finance Bill provides for a mechanism for any tax returns submitted prior to WHT compliance to be amended for a claim of tax deduction for such an expense upon payment of the applicable WHT.

4. Additional Flexibility on Tax Instalments

Presently, the power of IRBM to grant instalments is limited to additional assessments (and the like). In line with the spirit of proactive compliance, the power of IRBM is proposed to be extended to include deemed assessments upon submission of tax returns (for example, final tax payable upon submission of form C by a company) and amended tax returns.

In respect of advance tax payments during the year, individuals (other than those with only employment income) are now given two opportunities to revise their estimates. One opportunity lapses on 30th June (as always) and the newly introduced second opportunity lapses on 31st October of the respective year.

Both of these changes are effective YA 2023.

5. Mandatory Electronic Filing Requirements

At present, it is mandatory for companies to file tax returns (form C), tax estimates (CP 204) and employer tax return (form E) electronically. The Finance Bill proposes to further extend the scope of mandatory electronic filing to cover the followings effective YA 2024 onwards:

- Submission of personal income tax return (form B, BE or M)
- Submission of tax return by partnership (form P)
- Submission of tax return by a limited liability partnership (LLP)
- Submission of any amended tax return by a company, LLP, trust body and cooperative society
- Submission of employer tax return (Form E) by LLP, trust body and cooperative society

6. Other Tax Proposals Affecting Individuals

- The personal relief for SSPN contributions is discontinued effective 1st January 2023.
- The personal relief for child care fee to registered child care centre and kindergarten is maintained at the increased threshold of RM3,000 until YA 2024.
- Transfer of assets between former spouses pursuant to an order of court in consequence of the dissolution or annulment of their marriage is proposed to be accorded a no-gain-no-loss treatment for real property gains tax (RPGT) purposes. The effective date for this proposal is a future date on which the Finance Act comes into operation.

- The scope of no-gain-no-loss treatment for transfer of assets to a company (controlled by the individual/spouse) for a consideration at least 70% in shares is proposed to be restricted to only transfers to companies that are incorporated in Malaysia.

Complimentary Webinar

Our next webinar on 2023 Budget is apted timed tomorrow (15th March), 15:00 Malaysian time. Click here for registration. Limited virtual seats available. For further details, kindly contact us at corp@tratax.my.

With Regards

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