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Key Corporate Tax Measures to Focus on in Malaysia's Budget 2023

Malaysian Prime Minister and Minister of Finance Anwar Ibrahim re-presented Budget 2023 on Feb. 24, with the three main focus areas being to drive an inclusive and sustainable economy, inspiring confidence with institutional and governance reforms, and facilitating social justice by reducing inequality. At 388.1 billion Malaysian ringgit ($87 billion), it is the largest expansionary budget in the country's history.

This article analyzes the key corporate tax measures relevant to business and investors, including those subsequently presented in the Finance Bill 2023 before the Malaysian Parliament on March 14. Please note that at the time of publication, these tax measures have yet to be passed into law.

Capital Gains Tax

In line with international best practices, the government will hold consultation sessions with relevant stakeholders to consider the proposal of introducing capital gains tax for the disposal of unlisted shares by companies from year of assessment 2024.

At present, there is no capital gains tax regime in Malaysia save for the disposal of real property and shares in real property companies under the real property gains tax regime. The government has yet to provide further details on capital gains tax implementation—for example, what rate will be imposed, the method to compute the capital gains or losses, or applicable exemptions and reliefs.

The introduction of capital gains tax on the disposal of unlisted shares could potentially impact merger and acquisition and internal restructuring activities in Malaysia, as it may add to business costs. Businesses may need to allocate additional resources to compliance and administration, such as tracking and reporting capital gains and losses.

It's unclear at this stage whether there will be exemptions and reliefs under the proposed capital gains tax framework such as exemptions for intra-group transactions, so as not to discourage internal restructuring activities.

Global Minimum Tax

In line with the OECD's Pillar Two Global Anti-Base Erosion Model Rules, the budget proposed to introduce the following initiatives to combat perceived aggressive cross-border tax planning:

A minimum effective tax rate at the global level of 15%. According to the GloBE Rules, the 15% minimum tax rate would apply to multinational enterprises with consolidated revenues above 750 million euros ($823 million) annually. The minimum effective tax would ensure a level playing field between countries in attracting foreign direct investment and prevent tax base leakage and profit transfer to countries with low tax rates.

Qualified Domestic Minimum Top-up Tax. The QDMTT ensures that any top-up tax (due to a difference between the minimum tax rate of 15% and effective tax rate) for profits earned in Malaysia is collected in Malaysia and won't be ceded to other countries. Without the QDMTT, the country where the ultimate parent company of the MNE resides will be entitled to collect the top-up tax that Malaysia has forgone.

The government didn't announce a timeline to implement GMT and QDMTT in its budget text.

Affected MNEs should undertake early impact assessments on a group-wide basis to reduce the uncertainties of the impact of these changes on their operations and cash flow. Such MNEs also would need to start considering their group structures, especially if they have companies with tax incentives in certain jurisdictions that may impact the effective tax rate.

Capital Allowance for Intangible Assets

Under Schedule 3 of the Income Tax Act 1967, any person who incurred qualifying plant expenditure on assets used for the purpose of their business is eligible to claim capital allowance. Currently, the definition of "plant" expressly excludes intangible assets.

However, the Finance Bill 2023 has proposed to remove the exclusion of intangible assets from the definition of plant in Schedule 3 of the Act. This arguably allows capital allowance to be claimed on qualifying expenditure made on intangible assets.

This proposal is welcome given that intangible assets such as software and intellectual property are commonplace in businesses, particularly those in the technology sector and knowledge-based industries.

Voluntary Disclosure Program Relaunched

The Inland Revenue Board of Malaysia and the Royal Malaysian Customs Department will relaunch the Voluntary Disclosure Program, which will grant a 100% penalty waiver for voluntary disclosures made between June 1, 2023, and May 31, 2024, for both direct and indirect taxes.

This isn't the first time a VDP has been implemented in Malaysia. The IRB conducted the Special Voluntary Disclosure Program 1.0 for direct taxes from Nov. 3, 2018 to Sept. 30, 2019. The RMCD followed suit by introducing its VDP for indirect taxes, which took place from Jan. 1 to Sept. 30, 2022.

The SVDP 1.0 for direct taxes was largely considered a success—286,482 taxpayers participated, generating 7.877 billion Malaysian ringgit in additional taxes for the IRB. Since the proposed VDP offers a complete penalty waiver to taxpayers who voluntarily disclose their unreported taxes—compared to a 10 to 15% penalty imposed in the SVDP 1.0—more taxpayers are expected to participate in the program. Consequently, an increase in the collection of additional taxes under the proposed VDP is expected, compared to SVDP 1.0.

The success of this VDP will largely depend on several factors, such as a proper and defined process to make the disclosure, reassurance that there won't be any future audits for the years declared on the issues that have been voluntarily disclosed, and assurance that the terms for the additional tax to be paid won't be prohibitive.

Concluding Thoughts

Overall, the proposals under the budget are comprehensive, inclusive, and lay the foundation for sustainable economic growth. Businesses need to be vigilant and closely monitor developments surrounding the proposed capital gains tax and VDP to minimize risks and optimize their tax strategies.

With the expected introduction of the GMT and QDMTT to combat perceived aggressive cross-border tax planning, a wait-and-see approach may no longer be tenable for affected businesses. Businesses must act early by performing impact assessments and identifying risk areas.

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