2011 MALAYSIAN BUDGET HIGHLIGHTS

Executive Summary

- Discount expenses not set off against income from a source consisting of discounts or premium may be set off against income from other business sources.
- Extension of deductions of issuance expenses to Islamic securities issued under the principles of Murabahah and Bai' Bithaman Ajil based on tawarruq.
- Entitlement to double deduction for insurance premiums for exports credit based on takaful concept purchased from approved takaful operations.
- Application period for tax incentives for companies generating energy from renewable sources or providing energy conservation is extended to 31 December 2015.
- Tax exemption period for income from sales of Certified Emission Reductions is extended to Year of Assessment (YA) 2012.
- Application period for tax incentives for food production activities is extended to 31 December 2015.
- Application period for tax incentives for companies investing in last mile infrastructure is extended to 31 December 2012.
- Import duty and excise duty exemptions for new completely-built-up Hybrid cars are extended to applications received until 31 December 2011.
- Sales tax exemption is accorded for mobile phones.
- Service tax on all taxable services is increased from 5% to 6%.
- Service tax at 6% is imposed on paid television broadcasting services.
- 50% stamp duty exemption on transfer instruments and loan agreements are accorded for purchase of first residential property priced at RM350,000 and below.
- Existing income tax relief of up to RM6,000 for contributions to the Employees Provident Fund is extended to contributions made to the Private Pension Fund to be launched.
- The income Tax Act, 1967 (the Act) is amended to allow the Inland Revenue Board (IRB) to utilize excess tax paid under the Act against taxes arising under the Petroleum (Income Tax) Act, 1967 (PITA) or Real Property Gains Tax Act, 1976 (RPGTA). The PITA and RPGTA will also have similar provisions.

Corporate tax

Tax Deduction for Discounts

Generally for non-financial institutions, any expenses in respect of discounts or premium incurred on bonds issued or subscribed (as the case may be) by a company are deemed to be accrued over the whole period of the bond and deducted against the gross income from a source consisting of discounts or premium based on the prescribed formula or generally accepted accounting principles as allowed by the IRB. Section 34C appears to confine the deductibility of the expenses to the source of income consisting of discounts or premium. However, non-financial institutions generally do not have any source of income consisting of discounts or premium.

It is now proposed that in a case where discounts from the issuance of a bond are an expense to the company and the expense could not be deducted in full against the discounts or premium income or there are no discounts or premium income, such expense can be deducted from any gross business income of that company. However, the proceeds from the issuance of such bond must be used wholly for the production of gross income from the source consisting of a business and the bond must not form part of the stock in trade of a business of the company such as financial institutions. The proposal seems to rectify the restriction on the deductibility of the expenses in respect of discounts for non- financial institutions.

The proposal is effective from YA 2011.

Withholding Tax

It is proposed that where a payer fails to deduct and remit withholding tax under Section 107A, 109, 109B or 109F of the Act but claims a deduction for the payment in the tax return, the Director General may impose a penalty under Section 113(2) of the Act. Section 113(2) allows the Director General to impose a penalty of up to 100% on the tax undercharged where no prosecution is instituted. This is regardless that the withholding tax together with the penalty for failure to withhold is subsequently paid to the Director General.

The proposal is effective from 1 January 2011 for the YA 2011.

Capital Markets

Issuance of Islamic Securities

Currently, expenses incurred in the issuance of Islamic securities pursuant to the principles of Mudharabah, Musyarakah, Ijarah, Istisna' or other Syariah principles approved by the Ministry of Finance (MOF), are eligible for a tax deduction if the issuance of such Islamic securities is approved by the Securities Commission (SC) or the Labuan Services Authority (LFSA).

To strengthen Malaysia's position as the leading sukuk market, the government has launched the world's first Syariah-compliant commodity trading platform known as Bursa Suq al-Sila.

To encourage further innovation and to promote transaction in Bursa Suq al-Sila, it is proposed that expenses incurred in the issuance of Islamic securities under the principles of Murabahah and Bai' Bithaman Ajil based on tawarruq be given deductions. The issuance of such securities must be approved by SC or the LFSA.

The proposal is effective from YA 2011 to YA 2015.

Tax Incentives

Export Credit Insurance Premium for Takaful

Currently, conventional insurance premium is respect of export credit insurance with a company approved by MOF is given a double deduction.

To grant equal tax treatment between conventional insurance and takaful, it is proposed that a double deduction be given on premium for export credit insurance based on the takaful concept and insured with takaful operators approved by MOF.

The proposal is effective from YA 2011.

Renewable Resources, Energy Conservation and Greenhouse Gas Emission

i. Currently, companies generating renewable energy or providing energy conservation services are eligible for the following incentives:
   a. Pioneer status with an income tax exemption of 100% of statutory income for 10 years; or
   b. Investment tax allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years which can be set off against 100% of statutory income; and
   c. Import duty and sales tax exemption on energy generating equipment or energy conservation equipment provided that the equipment is not produced locally and sales tax exemption on equipment purchased from local manufactures.

   Other companies in the same group are also eligible for the above incentives even though a company in the group has already been granted the above incentives.

   Companies which incur capital expenditure for generating renewable energy or for energy conservation for their own consumption are entitled to:
   a. Investment tax allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years which can be set off against 100% of Statutory income; and
   b. Import duty and sales tax exemption on energy generating equipment or energy conservation equipment provided that the equipment is not produced locally and sales tax exemption on equipment purchased from local manufactures.

   Currently, the above incentives are given for applications received by the Malaysian Industrial Development Authority (MIDA) until 31 December 2010

   It is proposed that the above incentives are given for applications received by the Malaysian Industrial Development Authority (MIDA) until 31 December 2015.

ii. Companies importing or purchasing equipment for third party consumption are eligible for:
   a. Import duty and sales tax exemption on the following equipment:
      1. Solar photovoltaic system equipment; and
      2. Energy efficient equipment such as high efficiency motors and insulation materials.
   b. Sales tax exemption on the purchase of the following equipment produced by local manufacturers;
      1. Solar heating system equipment; and
      2. Energy efficient consumer goods such as refrigerator, air conditioner, lightings, fan and television.

   Currently, the above incentives are given for applications received by MIDA until 31 December 2010.

   It is proposed that the above incentives be extended for applications received until 31 December 2012.

iii. Currently, resident companies with investment in reduction of greenhouse gas emission from Clean Development Mechanism projects approved by the Ministry of Natural Resources and Environment, enjoy income tax exemption in respect of income received from the trading of Certified Emission Reduction certificates.

   Currently, the above incentive is available from YA 2008 until YA 2010.

   It is proposed that the above incentives be extended for another 2 years for YA 2011 and YA 2012.

Extension of Incentive for Food Production

Currently, tax incentives are granted, subject to conditions, to

i. A company that invests in its subsidiary company engaged in food production activities; and
ii. The subsidiary company that undertakes the food production activities.

Presently, these incentives are available for applications received by the Ministry of Agriculture and Agro-based Industry until 31 December 2010.

To ensure continuous development in the agro-food and agro-based industry, the current incentives are proposed to be extended for another 5 years and will be effective for applications received until 31 December 2015.

Extension of Incentives for last Mile Network Facilities Provider

Currently, the following incentives are given to companies investing in last mile broadband infrastructure:

i. Income tax exemption equivalents to 100% of the qualifying capital expenditure incurred for broadband infrastructure for a period of 5 years with the allowance to be set-off against 70% of statutory income for each YA. The application for the tax incentive is to be submitted to the MOF; and

ii. Import duty and sales exemption on broadband equipment and consumer access devices which are basic in providing the broadband services and which are not produced locally. The application for exemption is to be submitted to the MIDA.

The above incentives are given for applications received until 31 December 2010.

To encourage further investment in broadband services infrastructure, it is proposed that the application period for tax incentives to companies that invest in last mile broadband infrastructure be extended for another 2 years i.e. for applications received until 31 December 2012.

Indirect Tax

Excise Exemption on Hybrid Cars

To promote further Malaysia as a regional hub for hybrid cars and to support Malaysia's commitment to the reduction of carbon monoxide emissions, it is proposed that:

i. Full exemption of import duty and an increase from 50% to full exemption of excise duty be given on new completely built-up (CBU) hybrid cars; and
ii. Full exemption of import duty and excise duty be extended to electric cars as well as hybrid and electric motorcycles.

The proposal is effective for applications received by the MOF from 1 January 2011 until 31 December 2011.

Abolition of Import Duty on Tourist Products and Daily Use Products

To promote further Malaysia as the leading shopping destination, it is proposed that:

i. Import duty of between 5% and 30% currently imposed on handbags, wallets, suitcases, briefcase, apparel, footwear and hats be abolished;
ii. Import duty of between 5% and 20% currently imposed on jewellery, costume jewellery and ornaments be abolished; and
iii. Import duty of between 5% and 20% currently imposed on toys such as dolls and small scale recreational models be abolished.

To reduce the burden of the rakyat on the cost of daily use products, it is proposed that:

i. Import duty of between 10% and 20% currently imposed on talcum powder, face powder and shampoo be abolished; and
ii. Import duty of between 10% and 20% currently imposed on bedspreads, blankets, curtains and table cloths be abolished.

These proposals are effective from 4.00p.m on 15 October 2010.

Sales Tax on Mobile Phones

Currently, ordinary mobile phones are subject to sales tax of 10% whereas Personal Digital Assistants (PDAs) with Global System Mobile (GSM) which may also function as mobile phones are given sales tax exemption.

In order to harmonize the tax treatment of PDAs with GSM and ordinary mobile phones, it is proposed that mobile phones be exempted from sales tax.

The proposal is effective from 4.00p.m on 15 October 2010.

Excise Duty Exemption on National Vehicles for Disabled Persons

To reduce the financial burden of the physically disabled persons who wish to own vehicles to facilitate their mobility, it is proposed that:

i. The existing 50% excise duty exemption given on national vehicles purchased by physically disabled persons be increased to 100%. Such exemption is subject to the following conditions:
    a. The applicant must be registered as a disabled person and possess a Registration Certificate from the Social Welfare Department;
    b. The applicant must have a valid driving license;
    c. The vehicle bought must be from stock of unpaid duty and tax;
    d. The vehicle should not be sold or its ownership transferred until the expiry of 5 years except with written approval from the Treasury; and
    e. The exemption is given only for one vehicle within a period of 5 years.

ii. The exemption is extended to disabled persons who have hearing and speaking disabilities (previously only persons with handicapped limbs qualified for concession).

The proposal is effective for applications received by the MOF from 18 October 2010.

Service Tax Rate

It is proposed that the rate of service tax be increased from 5% to 6%. The scope of tax will be also extended to cover television broadcasting services.

The proposals are effective from 1 January 2011.

Personal Tax

Medical Expenses and care

At present, the medical expenses relief for parents of RM5,000 claimable by an individual resident taxpayer is limited to treatment in clinic and hospitals, treatment in nursing homes and dental care excluding cosmetic dental treatment.

It is proposed that the claim for the above relief be extended to include expenses to care for parents suffering from diseases or with physical or mental disabilities who require regular treatment as evidenced by certification of a qualified medical practitioner. The treatment and care provided include those provided at home, day care centres or home care centres.

The proposed qualifying expenses are:

i. Treatment and medical expenses supported with receipts issued by registered medical centres pharmacies or licensed medical stores; or
ii. Expenses for care of parents supported by receipts or written certification by carers (does not include the taxpayer claiming the relief, the spouse and the children) certifying that the care was provided and the total payments involved. Foreign hired carers are required to possess a valid visa/special work permit for the care of parents of taxpayers; or
iii. Expenses on special needs for parents certified y a qualified medical practitioner and supported by receipts as proof of purchase.

This proposal is effective from YA 2011.

Transfer of Residential Property

To encourage ownership of the first residential property and to reduce the cost of home ownership, it is proposed that instruments of transfer and loan agreements executed for the purchase of residential property not exceeding RM350,000 be given a 50% stamp duty exemption. This exemption is granted on the first residential property purchased by a Malaysian citizen and can be claimed once only within the exemption period.

The proposal is effective for instruments executed from 1 January 2011 to 31 December 2012.

Private Pension Fund

The government will launch a Private Pension Fund in 2011 for the benefit of private sector employees and the self-employed. The existing income tax relief of up to RM6,000 for employee's contributions to the Employees Provident fund will extend to the contributions made to the Private Pension Fund, including those made by the self-employed. Contributions by employers will be deductible.

Miscellaneous

Distributions by Unit Trust

It is proposed that for the purposes of Section 60F of the Act dealing with investment holding companies, Section 63B of the Act dealing with unit trust, the term dividend is deemed to include income distributed by a unit trust.

The proposal is effective from YA 2011.

Tax Instalments

It is proposed that the Director General may direct a company, trust body or co-operative society to make payments by instalments for a YA on account of tax which is or may be payable. Such tax shall be deemed to be the revised estimate of tax payable for the purpose of determining the thirty per cent excess between the deemed revised estimate of tax payable and the tax payable for that YA. Where the direction is made before the ninth month of the basis period for that YA, a revised estimate of tax payable may be furnished in the ninth month.

The proposal is effective from YA 2012.

Tax Information Exchange Arrangements

As part of its commitment to implementing the internationally agreed tax standard on transparency and exchange of information, the government may enter into an arrangement with the government of any territory outside Malaysia for the purpose of exchange of information. However, this arrangement is only made if there is no double Taxation Agreement in Force.

Outstanding Tax Liabilities

The proposed amendment provided that the Director General is empowered to use any amount of excess tax paid by a person under the PITA to pay any amount of tax due and payable under the Act or the RPGTA. Similar provisions are proposed in respect of Income tax and Real Property Gains Tax.

The proposals are effective on the coming into operations of the finance Act.

FOR MORE INFORMATION PLEASE CONTACT:

Vincent Teo, Director, Crowleys DFK
e: vteo@crowleysdfk.ie
t: 353 1 6790800