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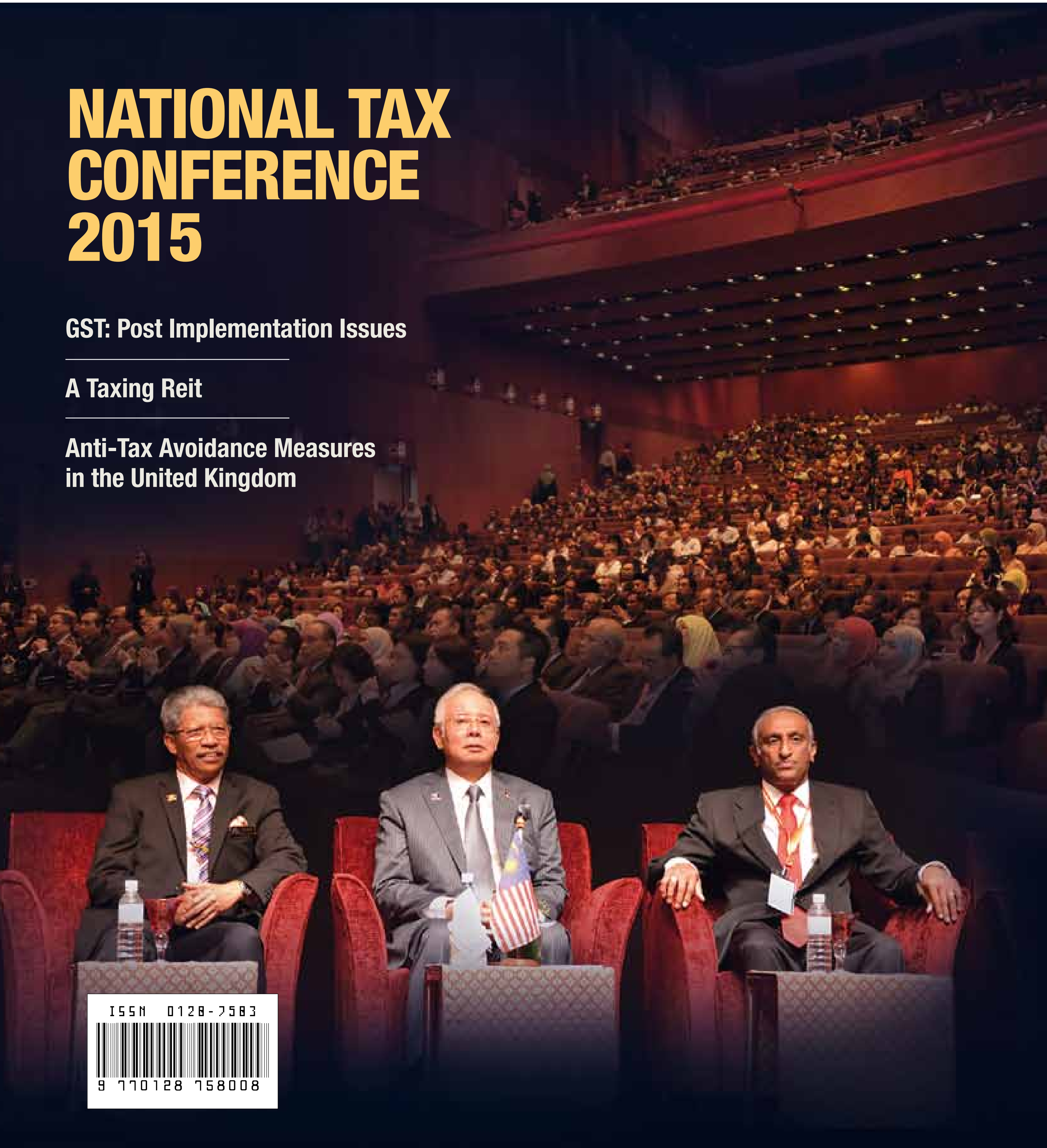

NATIONAL TAX CONFERENCE 2015

GST: Post Implementation Issues

A Taxing Reit

Anti-Tax Avoidance Measures in the United Kingdom

ISSN 0128-7583

The Chartered Tax Institute of Malaysia (CTIM) is a company limited by guarantee incorporated on 1 October 1991 under Section 16(4) of the Companies Act 1965. The Institute's mission is to be the premier body providing effective institutional support to members and promoting convergence of interest with government, using taxation as a tool for the nation's advancement and to attain the highest standard of technical and professional competency in revenue law and practice supported by an effective Secretariat.

INSTITUTE ADDRESS

The Secretariat, Unit B-13-1,
Block B, 13th Floor, Megan Avenue II,
No. 12 Jalan Yap Kwan Seng,
50450 Kuala Lumpur
Telephone : 603 2162 8989
Facsimile : 603 2162 8990
E-mail : secretariat@ctim.org.my
Website : www.ctim.org.my

PUBLISHING CONSULTANT

Executive Mode Sdn Bhd (317453-P)
Tel: +603-7118 3200, 3205, 3230
Fax: +603-7118 3220
e-mail: executivemode@executivemode.com.my
web: www.executivemode.com.my

PRINTER

BHS Book Printing Sdn Bhd (95134-K)
Lot 17-22 & 17-23, Jalan Satu, Bersatu Industrial Park
Cheras Jaya, 43200 Cheras, Selangor DE
Tel: +603-9076 0816, 9076 0825, 9074 7558
Fax: +603-9076 0785, 9074 7573
e-mail: bhsprint@tm.net.my

Tax Guardian

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Tax Guardian

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OCTOBER 2015

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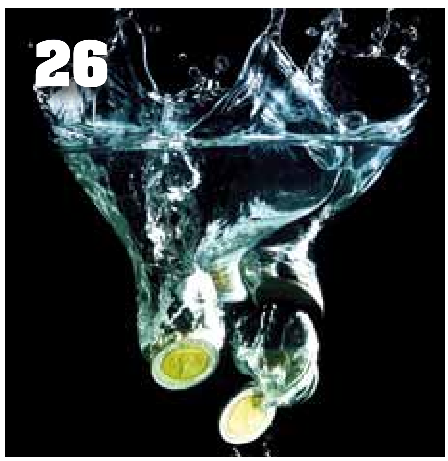

INVITATION TO WRITE

The Institute welcomes original contributions which are of interest to tax professionals, lawyers, academicians and students. They may cover local or international tax developments. Article contributions should be written in UK English. All articles should be between 2,500 to 3,500 words submitted in a typed single spaced format using font size 10 in Microsoft Word via email.

Contributions intended for publication must include the author's name, contact details and short profile of not more than 60 words, even if a pseudonym is used in the article. The Editorial Committee reserves the right to edit all contributions based on clarity and accuracy of contents and expressions, as may be required.

Contributions may be sent to:
The Chairman, Editorial Committee
Chartered Tax Institute of Malaysia
Unit B-13-1 Block B, 13th Floor, Megan Avenue II,
No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur.
Email: *publications@ctim.org.my*

From the President's Desk

ARULJOTHI KANAGARETNAM

HEADWINDS

Since the previous issue of the *Tax Guardian*, events have taken place which concern us as a country on a macro level and as a professional tax body on a micro level.

Both the Kuala Lumpur Composite Index (KLCI) and the Malaysian Ringgit (MYR) have been going through headwinds. The prices of petroleum and oil palm (our country's major export commodities) have been dropping for months. How will this impact our economy and how does this affect the ordinary man on the street? I have heard that business has slowed down recently for some of our members. Is this a sign that our economy could also be slowing down? Some of you may recall that economic downturns in the past saw a general reduction in business earnings which also meant a lower amount of tax revenue collected. At the National Tax Conference (NTC) 2015, the Prime Minister announced the setting-up of the Special Economic Committee (SEC), comprising of top economists and bankers, which will consider short-term and medium-term measures to strengthen the economy and to minimise the impact of any arising issues on the economy. Recently, the Prime Minister unveiled initiatives worth more than RM28 billion to keep the economy humming despite the global slowdown. In an immediate reaction to this, the KLCI jumped 36 points to 1,639 – its biggest single-day spike in recent months and the MYR gained 0.06 sen to close at 4.3060 against the US dollar. Hopefully further measures taken will improve the Malaysian economy.

NATIONAL TAX CONFERENCE 2015

The National Tax Conference (NTC) 2015 was held from 25 to 26 August 2015 at the Kuala Lumpur Convention Centre. The mutual co-operation between the event's co-organisers, the Inland Revenue Board of Malaysia (LHDNM) and the Institute, have made this an annual premier event not to be missed. I would like to thank Yang Berbahagia, Kolonel (K) Tan Sri Datuk Wira Dr. Hj. Mohd. Shukor Hj. Mahfar, Chief Executive Officer of the LHDNM for making this partnership possible. The success of this year's event is also due

to the overwhelming turnout by the participants (more than 2,000) and the tremendous contributions from the chairman, speakers, moderators and panellists for each of the topical conference sessions. I would like to take this opportunity to thank our members who year in and year out have been faithfully supporting this event. I would also like to recognise the efforts of the NTC Chairman, Committee and Secretariat for the successful running of this event. Finally, I would like to thank Yang Amat Berhormat, Dato' Sri Mohd Najib Tun Hj. Abdul Razak, Prime Minister and Finance Minister of Malaysia for officiating this event. An article on the NTC 2015 can be found in this issue of the *Tax Guardian*.

CTIM COUNCIL FOR THE 2015/2016 TERM

The Institute's Annual General Meeting took place on 13 June 2015 and saw several changes to the CTIM Council line-up. I would like to welcome Ms. Seah Siew Yun as the incoming CTIM Deputy President for the 2015/2016 term and I would like to thank Mr. Poon Yew Hoe as the outgoing CTIM Deputy President for the 2014/2015 term for his excellent service to the Institute. I would also like to thank the CTIM Council for their faith and trust in me to continue as CTIM President for the 2015/2016 term. I would like to thank Datuk Francis Tan Leh Kiah and Mr. Lew Nee Fook who retired from the CTIM Council for their years of service and support to the Institute. I would like to welcome Mr. David Lai back into the CTIM Council and also our new CTIM Council member, Mr. Koong Lin Loong, who is well known in the business community. I look forward to working with the CTIM Council to take on the challenges of building up the Institute and assisting its members for the 2015/2016 term.

INTERACTIONS WITH VARIOUS AUTHORITIES

The Institute had interactions with various authorities since the previous issue of the *Tax Guardian* including those listed below.

Interaction with the Malaysian Competition Commission (MyCC)

The Institute together with the Malaysian Institute of Chartered

Secretaries and Administrators (MAICSA) met with the MyCC in June 2015 to discuss the implications of the Competition Act 2010 on professional fees. During the meeting, the MyCC clarified that the scale of fees, recommended fees or the minimum fees will contravene the Competition Act 2010 because it would amount to price fixing. The Institute would not be allowed any exemption to this rule because it is formed under the Companies Act 1965 and has not been given any right by Parliament via a special Act to have a fee scale. The Institute updated the members on this matter via the e-CTIM PP 6/2015 dated 12 June 2015.

Interaction with the LHDNM

The Institute submitted an appeal to the LHDNM in July 2015 on the requirements in the year of assessment 2015 Form C to provide the date of commencement of operations and received a written reply from the LHDNM in August 2015. Members were updated on this matter via the e-CTIM TECH-DT 64/2015 dated 24 August 2015.

The Institute also wrote to the LHDNM in August 2015 to seek clarification on the LHDNM's requirement for officers/employees of subsection 153(3) approved tax agents who engage with LHDNM officers to register in the Tax Agent e-Filing (TAef) system. The LHDNM responded in writing in August 2015 which was circulated to members via the e-CTIM TECH-DT 65/2015 dated 27 August 2015.

Interaction with the Royal Malaysian Customs Department (RMCD)

The Institute was invited by the RMCD to join the Technical Committee for GST Implementation (TC-GST Imp), chaired by the Director of GST Division, to deal with major

issues *arising* from the implementation of the GST. Four meetings were held in March 2015, April 2015, June 2015 and July 2015. The minutes of the meetings are available in the member's section of the Institute's website.

The Institute also attended the Customs-Private Sector Consultative Panel (CPSCP) Meeting No.1/2015 hosted by the RMCD in June 2015. The minutes of the meeting has been uploaded in the member's section of the Institute's website.

Interaction with the Ministry of Finance (MoF)

The Institute submitted a summary of 2016 Budget proposals to the MoF and attended the 2016 Budget Consultation Meeting chaired by the Prime Minister in June 2015. Members can view the summary in the member's section of the Institute's website.

Members who have issues on public practice and technical matters may send these issues to the Institute at **secretariat@ctim.org.my** or **technical@ctim.org.my.**

CPD EVENTS

According to the schedule of upcoming CPD events from October 2015 to December 2015, the next 6-day GST Training Course is scheduled in October 2015 in Kuala Lumpur. There are also other direct tax, customs and GST events in the CPD schedule which may interest you. The Institute's CPD Committee and Secretariat are constantly working hard to put these events together and ensure that it is run efficiently and effectively.

MEMBERSHIP

I am pleased to inform you that the CTIM membership has grown in excess of 3,270 members. The Institute encourages eligible individuals to apply for CTIM membership. Conditions for eligibility and the application procedure can be found in the membership section of the Institute's website at *www.ctim.org.my.*

I would like to thank all members for supporting the Institute. I am grateful for this opportunity to continue to serve and be a part of this esteemed premier body.

Editor'sNote

K. SANDRA SEGARAN

GST ISSUES TAKE CENTRE STAGE

The introduction and implementation of GST has given rise to several administrative and business issues. In view of the input tax and output tax mechanism, administrative and cash flow hiccups are likely. Kenneth Yong in an article entitled "GST impact on cash flow" highlights the scenarios in which such instances can arise. Interestingly there are also scenarios where the cash flow situation is positive to some businesses depending on the business model adopted. In another GST related article, which has taken centre stage for both tax advisers and taxpayers, Thenesh Kannaa, a tax practitioner and author who has several publications to his credit examines post implementation issues. In this article, Thenesh examines the common and significant operational issues while keeping technical and policy issues to be deliberated perhaps in a later article. Amongst others, he has highlighted problems relating to filling in statutory forms, delays in refunds, incomplete tax invoices, credit notes and bad debts relief and registration. He also hopes that with efforts that can be undertaken by the authorities, these issues will be a thing of the past and the full force of the law applied only against tax evaders.

This issue also brings to you a lengthy and detailed summary of the presentations at the National Tax Conference 2015. The summary would benefit not only those who were unable to attend but also provides an excellent compendium and recapitulation for those who attended the biggest annual gathering of tax professionals in Malaysia.

Our regular contributor, Dr.

Nakha Ratnam examines the recently issued Public Ruling (PR) on Real Estate Investment Trust and Property Trust (REIT/PTF). For those unfamiliar, the taxation of REITs and PTFs can be a confusing area with the way income and expenses are treated and with several legislative amendments to decipher and comprehend. The writer opines that the task of taxing REIT/PTF is considerably elevated with the issuance of this public ruling which replaces the PR9 of 2012. This PR takes into account subsequent legislative changes, includes several illustrations and flow charts to assist both Revenue officers and taxpayers to work through the legal maze surrounding the subject.

On the international tax front, Dr. Kuek Tee Say examines "Anti-avoidance measures in the United Kingdom". The revenue loss to the exchequer on account of tax avoidance activity is substantial, leading the authorities to enact general anti-avoidance rules (GAAR). Besides the legislative approach, the Courts in UK have over the years played a crucial role in developing judicial doctrines to curtail tax avoidance in tandem with the growing complexity of tax law. The writer has examined the legislative, judicial and administrative approaches to counter tax avoidance which is expected to be on the revenue authority's radar for a long time to come.

Dr. Gunasegaran Muthusamy from the IRBM summarises the OECD's recommendations on reducing tax compliance costs in in relation to SMEs. This summary compiles a wide range of insights offered towards reducing SMEs' tax compliance costs from OECD's Right from the Start, Taxation of SMEs, Understanding and Influencing Taxpayers' Compliance Behaviour, Together for Better Outcomes and Study into the Role of Tax Intermediaries notes. The recommendations from the reviewed notes have been drawn together and fine-tuned to be listed as a single collection of indicators and country examples which can help policymakers identify strategies that could be undertaken to effectively reduce SMEs' tax compliance costs. The efficient application of these strategies could to a great extent support the emergence and growth of SMEs in years to come.

Lawyers from Lee Hishamuddin, Allen & Gledhill have summarised three recent Customs cases for the benefit of readers. With the above and the regular columns in place, this issue should be an interesting read.

~A Big Thank You~

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE 2015

25 & 26 AUGUST 2015 | KUALA LUMPUR CONVENTION CENTRE

The Chartered Tax Institute of Malaysia (CTIM) would like to express its appreciation to the Malaysian Tax Academy (MTA), our co-organising partner and all those who contributed to the success of the National Tax Conference 2015:

NTC 2015 MAIN COMMITTEE MEMBERS FROM MTA, LEMBAGA HASIL DALAM NEGERI MALAYSIA

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Mr Poon Yew Hoe
Council Member, Chartered Tax Institute of Malaysia

Mr SM Thanneermalai
Council Member, Chartered Tax Institute of Malaysia

Ms Khodijah Abdullah
Undersecretary, Tax Division, Ministry of Finance

Mr Shaharudin Datuk Ali
Senior Consultant, Messrs Adzly & Co

Mr Jagdev Singh
Senior Executive Director, Pricewaterhouse Coopers

SPEAKERS

YBhg Kolonel (K) Tan Sri Datuk Wira Dr. Hj. Mohd Shukor Hj. Mahfar
Chief Executive Officer,
Lembaga Hasil Dalam Negeri Malaysia

YBhg Datuk Mohd Nizom Sairi
Director, Investigation Department,
Lembaga Hasil Dalam Negeri Malaysia

Mr Abu Tariq Jamaluddin
Director, Dispute Resolution Department,
Lembaga Hasil Dalam Negeri Malaysia

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Fiscal & Economics Division,
Ministry of Finance

YBhg Dato' Dr. R. Thillainathan
Independent Non-Executive Director, Genting Berhad

YBhg Dato' Chua Tia Guan
Member of the Special Task Force to Facilitate Business of the Prime Minister's Department (PEMUDAH)

Mr Dónal Godfrey
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Organisation for Economic Co-Operation
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Ms Renuka Bhupalan
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Inland Revenue Authority of Singapore

Ms Noor Azian Abdul Hamid
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Ms Goh Ka Im
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Ms Theresa Goh
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PLEASE MARK YOUR DIARIES FOR NATIONAL TAX CONFERENCE 2016
9 & 10 AUGUST 2016, KUALA LUMPUR CONVENTION CENTRE

CPD EVENTS

The following CPD events were conducted in the last few months:

- Managing Income Tax Audits
- Getting Ready for GST Audit
- Understanding the Legal and Practical Aspects on Deductibility of Expenses Based on Public Rulings (with relevant Budget 2015 updates)
- Maximising on Capital Expenditure
- Understanding Malaysian Property and Tax Planning Strategy
- Submitting Your GST Return Correctly (re-run session)

On 11 June 2015, Mr. Renganathan conducted a workshop on "Managing Income Tax Audits" at the Impiana Hotel, Ipoh. The speaker explained the tax audit processes – pre, during and post audit to the participants. He also highlighted the rights and responsibilities of a taxpayer and tax agent.

Mr. Thenesh Kannaa together with Mr. Renganathan jointly conducted a seminar on 'Getting Ready for GST Audit' on 22 June 2015. In this seminar, the speakers described the proactive steps in preparing for GST audit. They also shared some practical tips with the participants.

The two-day workshop on 'Understanding the Legal and Practical Aspects on Deductibility of Expenses Based on Public Rulings (with Relevant Budget 2015 Updates)' was conducted by Mr. Kularaj for the first time at the Seri Pacific Hotel from 24 to 25 June 2015. This workshop focused on the relevant provisions of the ITA pertaining to deductibility of expenses together with its practical aspects by reviewing the various related Public Rulings which have been issued by the IRB as well as various tax cases.

The workshop on "Maximising on Capital Expenditure" was conducted by Mr. Sivaram Nagappan in all the major cities where CTIM branches are located. This workshop focused on implications arising on issues on capital allowances claims on plant & machinery and other assets as well as industrial building allowances.

On 7 July 2015, Dr. Tan Thai Soon conducted a workshop on "Understanding Malaysian Property and Tax Planning Strategy" at the Seri Pacific Hotel. In this workshop, Dr. Tan covered many aspects of Malaysian tax law, regulations and Public Rulings. In particular, tax issues on Real Property Gains Tax, Real Property companies, Tax treatment of Income from real property, and Investment Holding Company were discussed by the speaker.

Due to an overwhelming response, a re-run session on "Submitting Your GST Return Correctly" was conducted by Mr. Thenesh and Mr. Renganathan on 8 June 2015 at the Seri Pacific Hotel. The seminar focused on accounting software to generate the values for GST return and how to guide the accountant / tax advisors to take reasonable steps to ensure accuracy.

CPD Points Recognised by the Ministry of Finance (MoF)

The Institute would like to inform members that the CPD points awarded by the Institute are recognised by the MoF on the basis that CTIM is a recognised body under Guidelines for the Application/Renewal of Approved Tax Agent issued by MoF in line with Section 153 of the Income Tax Act 1967 and Section 170 of the GST Act 2014. Currently, recognition for the purpose of renewal of tax agent licence is based on the relevant content of the CPD events and such determination is made by the authority and not CTIM. CTIM does not obtain prior approval from the authority to determine recognition of CPD points. The Budget Seminar is the only event that is specifically recognised for renewal of both types of licences. The Institute is not aware of any other event organised by CTIM that is recognised by the authority for both types of licences. Tax agents are required to submit the relevant appropriate documents when renewing their licence.

Yeo Eng Ping

23RD ANNUAL GENERAL MEETING

The Chartered Tax Institute of Malaysia (CTIM) held its 23rd Annual General Meeting (AGM) on 13 June 2015 at the Seri Pacific Hotel Kuala Lumpur. A total of 70 members attended the AGM.

Pursuant to Article 59, Seah Siew Yun and K.Sandra Segaran A/L Karuppiah were re-elected to the Council.

Pursuant to Article 57 (ii), the following were elected as new members of the Council:-

- Koong Lin Loong
- Lai Shin Fah @ David Lai

The first Council meeting for the 2015/2016 term was held on the same day. Pursuant to Article 63, the Council elected from amongst the Council Members as listed below for the term 2015/2016, the President and the Deputy President.

President	Aruljothi A/L Kanagaretnam
Deputy President	Seah Siew Yun
Council Members	Thanneermalai A/L SP SM Somasundaram
	Poon Yew Hoe
	Prof. Dr. Jeyapalan A/L Kasipillai
	Phan Wai Kuan
	Ong Chong Chee
	Renuka Thuraisingham
	Nicholas Anthony Crist
	Yeo Eng Ping
	Farah Rosley
	Goh Lee Hwa
	Datuk Harjit Singh Sidhu A/L Bhagwan Singh
	Koong Lin Loong
	K. Sandra Segaran A/L Karuppiah
	Lai Shin Fah @ David Lai

CESSATION OF MEMBERSHIP

The following members have been excluded from the Membership Register on 30 June 2015 in accordance with Article 28 of the Articles of Association of the Institute:-

NAMES	MEMBERSHIP NO.
Toh Yong Lai	349
Wong Chok Ha	527
Lee Kim Seng	907
Low Yuen Cheng	913
Ler Leong Keh	940
Lawrence Sia Then Wah @ Sia Geok Huat	945
Chang Kwong Lee	961
Khatijah Bee Binti Ismail	1388
Ngiam Kwee Eng	1409
Ng Meng Huat	1515
Tan Lay Kheng	1575
Lim Kim Hai	1740
Khor Kee Lin	1829
Shim Siong Nyuk	1927
Lim Yaw Seng	2005
Robin Anthony Noronha	2054
Hiew Seng	2314
Jean Winifred Pereira	2391
Chin Kick Chong	2429
Ng Ying Huey	2494
Lam Ka Fok	2735
Nicolas Chen Seong Lee	2963
Soon Bee Eam	3097
Cheing Jin Lin	3097
Mohamad Zaidi Bin Omar	3156
Lim Jinn Chin	3168
Ng Tuck Ngah	3259
Sek Li Yee	3516
Fara Sunita Binti Ramli	3604
Hirzawati Aryani Binti Mohd Tahir	3608

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NATIONAL TAX CONFERENCE 2015

The National Tax Conference 2015 ("NTC") was held at the Kuala Lumpur Convention Centre from 25 to 26 August 2015. This two day signature event was a joint initiative and endeavour by the Chartered Tax Institute of Malaysia ("CTIM") and the Inland Revenue Board of Malaysia ("IRBM").

The underlying theme forming the edifice and touchstone of the current year's Conference was ***"PARTNERING STAKEHOLDERS in a Challenging Environment"***, and in tune with the said theme the scheduled sessions broached a myriad array of topics, including outlook on Malaysia's fiscal policy, new initiatives ushered in by the IRBM, Implications surrounding the Automatic Exchange Of Information ("AEOI") Regulations, mechanisms for simplifying Tax Compliance, Intricacies of Cross Border Taxation in the ASEAN Region, update on topical case laws in Taxation, and a concluding round table discussion on current issues affecting and impacting the taxpayer.

ONGOING PARTNERSHIP, CLOSE RELATIONSHIP AND MUTUAL RESPECT

(Welcoming Address by Aruljothi Kanagaretnam, CTIM President)

The President of CTIM, Aruljothi Kanagaretnam began his welcoming speech by thanking the Guest of Honour, YAB Dato' Sri Mohd Najib Tun Hj. Abdul Razak, the Prime Minister of Malaysia for having graciously accepted the invitation of the joint organisers, to deliver the Keynote Address, and also to officially declare the National Tax Conference, open. He also stressed upon the *"ongoing partnership, close relationship and mutual respect, between the CTIM and the IRBM. CTIM and IRBM have further enhanced their relationship. This year's theme brings together various subject matter experts"*. Alluding to such a collaboration he emphasised the need for a reciprocal sharing and exchange of knowledge and views that would further embellish the various advances in the taxation landscape.

REACHING OUT TO STAKEHOLDERS, ESTABLISHING RAPPORT AND SIMPLIFYING THE ACT OF PAYING TAXES

(Opening Address by YBhg Kolonel

(K) Tan Sri Datuk Wira Dr.Hj.Mohd Shukor Hj.Mahfar, Chief Executive Officer, Lembaga Hasil Dalam Negeri Malaysia)

Delivering the Opening Address, YBhg Tan Sri Shukor placed emphasis on the "carefully chosen theme" for the National Tax Conference. He elucidated that the theme depicted a "strong support of the stakeholders" and provided ample testimony to the ongoing relationship between the IRBM and its various stakeholders. He asserted the fact that the tagline "HASIL - Your Feel Good Partner" adopted by the IRBM was with an avowed objective of making the act of paying tax, "a pleasant and simple exercise". YBhg Tan Sri Shukor also brought the attention of the participants to the various mass media initiatives, social media inventiveness and road shows that were being organised by the IRBM with a view to enlightening the taxpayers regarding a multitude of simplification measures that were being ushered in by the IRBM to facilitate a smooth, expedient and seamless mechanism for the payment of taxes. He concluded by providing a flavour of the topics spanning the duration of the Conference before thanking the sponsors for their magnanimity and exhorting the IRBM's indispensable tenet of Upholding the Principles of Nationhood.

MAINTAINING ECONOMIC GROWTH MOMENTUM

(Keynote Address by Guest of Honour YAB Dato' Sri Mohd Najib Tun Hj. Abdul Razak, Prime Minister)

Delivering the Keynote Address, the Honourable Prime Minister dwelled upon the challenges staring Malaysia in the face as the country strove toward being a fully developed nation. Despite the *"unpredictable global economic factors, stakeholders' expectations raise the bar"*. *The Prime Minister highlighted the fact that "growth models since independence have had outstanding results"*. The need to strike a *"right balance between capital economy and people economy"* was inevitable. The Prime Minister also announced the establishment of a special committee whose stated objectives would be to ensure that Malaysia maintains its economic growth momentum. *"The committee's objective is to ensure Malaysia maintains the growth momentum that we have built since 2008, generating prosperity and higher quality of life for all Malaysians. The details of this will be announced shortly"*, the Prime Minister said.

Praising the IRBM on its stellar efforts in setting a new record for tax collections, the Prime Minister exhorted the IRBM to continue on its stated path. *"From RM110 billion in 2011 to RM125 billion in 2012, RM129 billion in 2013 and RM134 billion in 2014. This is indeed a remarkable achievement. In view of its sterling record, I have every confidence that for the period of the Eleventh Malaysia Plan,* IRBM *will succeed in collecting a total target of RM871 billion,"* he said. Extolling the resilience of the Malaysian economy, the Prime Minister stated *"The domestic financial market continues to function in an orderly manner and financial intermediation activities*

continue to function efficiently to support the financial and financing needs of the domestic economy"

YAB Dato' Sri Najib reminded the participants that financial and economic well-being of a nation was dependent upon the system of tax collections. Although the compliance rates for individuals was on the upsurge, the Revenue faces veritable challenges in the form of declining petroleum prices. However the fundamentals continue to remain strong with growth standing at 4.97% as at the second quarter of 2015. Trade and Current Accounts were having surpluses as unemployment plateaued at 3.1% as of May 2015.

The Prime Minister, before concluding his talk, proceeded to declare the National Tax Conference 2015, Open.

TOPIC 1: FORUM: OUTLOOK ON FISCAL POLICY – COUNTDOWN TO 2020

Moderator:

- **YBhg Tan Sri Dato' Sri Utama Nor Mohamed Yakcop** (Deputy Chairman, Khazanah Nasional Berhad)

Panel Members:

- **Tuan Haji Mohd Esa Abd.Manaf** (Undersecretary, Fiscal & Economics Division, Ministry of Finance)
- **YBhg Dato' Dr.R.Thillainathan** (Independent Non-Executive Director, Genting Berhad)

The National Tax Conference commenced with the first topic providing a macro level overview regarding the current fiscal policy and the general outlook for the future. The moderator provided a fascinating insight into the evolution of fiscal and economic policies in Malaysia by taking recourse to a stirring real life example. Since gaining its independence in 1957, an astounding 70% of the country was facing rampant poverty. Till the year 1970, the government persisted with a policy of *Laizzez faire*. In spite of letting things take their own course, the poverty rate was still a significant 49.3% in 1970. This was when the government instituted a sustained but selective course of intervention with the result that as of that date, poverty has been all but completely eradicated.

The Undersecretary, Fiscal and Economics Division in the Ministry of Finance, made a brief presentation that encompassed within its confines key economic indicators, short-term prospects, long-term outlook and policy directions.

Dato' Thillainathan, in his presentation introduced the primary goals of government intervention as being primarily directed towards *"stabilising economic activity, promoting growth, optimising resource management and reducing inequality"*.

Malaysia's Deficit and Debt Lessons

Dwelling at length on the fiscal deficit scenario in Malaysia, the current Non-Executive Director of Genting Berhad stated that the Federal government barring a few exceptional years, had always clocked a fiscal deficit since 1957. However *"fiscal surplus in the 90s was used to revive the economy, purge the banking system of its Non-Performing Loans ("NLP") & recapitalise it by relying on massive government borrowings"*.

He also expounded that the deficit in the years running up to 2014 and characterised by the term of the current Prime Minister, was reigned in on account of the twin pronged approach in the form of reducing development expenditure of the Federal government and the reclassification/re-labelling of such capital expenditure as capital expenditure being the prerogative of the larger Public Sector and Non-Financial Public Enterprises ("NFPE").

Causes of the Current Fiscal Deficit Problem

The key factor leading to a burgeoning exacerbation of the fiscal deficit problem has been the "extraordinary and inequitable extent to which fuel was subsidised thanks to the Administered Price Mechanism for fuel price control". The impact has been further amplified as a result of the escalation in oil price from 2008 onwards. The fiscal position was further made unenviable on account of a *"lack of buoyancy in the tax system and an over-reliance on oil as a source of revenue"*.

However, much of the post-2000 period, non-tax revenue has bolstered the total revenue to the extent of 6% of the Gross Domestic Product ("GDP"). This revenue is primarily made up of dividends declared and royalties paid by PETRONAS.

Fiscal Outlook

The decision of the current administration to cut much of the fuel subsidy from late 2014 and the imposition of Goods and Services Tax ("GST") has greatly improved Malaysia's fiscal outlook;

With the collapse in oil prices from the end of 2014, the above measures came just in the nick of time, else the fiscal position would have been subject to further erosion.

Future Best Practices

- Continued reliance on administrative action to adjust price may make it vulnerable to capture and reversal by populist forces;
- It would be appropriate to ensure that the fuel price is wholly regulated by the market forces as is the case with the price of all private goods in almost all countries;
- Sustained banking on fiscal incentives to promote investment is not satisfactory, except on a highly selective basis;
- A lower tax regime would serve the economic and fiscal prospects well.

Before concluding the session and opening up the stage for the customary Question & Answer session, the Chairman made a very salient point, which is summed up in the following lines:

In the mid-90s, though there was a surplus, there was a crisis. Wrong/ infeasible advice was proffered by the World Bank and the International Monetary Fund ("IMF"). The fiscal deficit at this time was at an all-time high of 5.5%. However concrete measures which at the time of implementation seemed unconventional enabled to reign in the fiscal deficit to as low as 3.3% in 2000. Post the onset of the financial crisis in 2008-09, fiscal deficit again soared to 5.3% in 2010, but was pegged back to 3.9% in 2013 and in the current year, the deficit stands at 3.2%.

TOPIC 2: NEW INITIATIVES FROM LHDNM

Moderator

- **Ms.Yeo Eng Ping**
  (Co-Organising Chairman, National Tax Conference 2015)

Panel Members:

- **YBhg Kolonel (K) Tan Sri Datuk Wira Dr.Hj.Mohd Shukor Hj.Mahfar**
  (Chief Executive Officer, Lembaga Hasil Dalam Negeri Malaysia)
- **YBhg Dato' Chua Tia Guan**
  (Member of the Special Task Force to Facilitate Business of

NATURE OF THE TAXPAYER	PERCENTAGE OF ACTIVE TAXPAYERS	AMOUNT OF TAX COLLECTED (RM)
Corporate	65	22,470,349,914
Individuals	47	4,702,081,543
SG	57	18,149,076,310

Table 1

the Prime Minister's Department {"PEMUDAH"})

Ms.Yeo Eng Ping chaired the second topic of the National Tax Conference 2015. This topic highlighted in substantial detail the various initiatives instituted by the IRBM with a view to serving its entire community of stakeholders.

Tan Sri Shukor set the ball rolling by presenting to the audience a whole plethora of initiatives that were promulgated by the IRBM. He began by asserting that IRBM "should adapt and evolve". He provided the following dispersal of the taxpayer base in Malaysia along with the attendant tax collections **(Table 1)**:

Breaking Barriers Hitting New Highs

The keynote underlying the presentation was the slogan "Breaking Barriers Hitting New Highs". This important slogan has the following relevance for the IRBM:

- Set the bar in standard setting;
- Changing its outlook in the international sphere of taxation;
- Collective and cohesive work ethic to avoid tax crime;
- AEOI, FATCA and BEPS meant that IRBM also ought to institute various compliance polices

Tan Sri Shukor reiterated the fact that the IRBM was in fact looking to partner with the taxpayer for the progress of the Malaysian economy. Ample testimony to this contention was bought about by a major rebranding exercise wherein the IRBM rebranded itself to demonstrate its amicable intentions.

The primary slogans HASiL4U and HASiL Your Feel Good Partner are intended to alleviate the concerns of taxpayers and to redress their concerns. However, any intentional tax abuses and evasion acts will be viewed with the utmost stringency and seriousness.

Tax Initiatives

- With effect from 1 January 2015, the Corporate Tax Department ("CTD") has been renamed The Large Taxpayer Branch. This Large Taxpayer Branch will assume jurisdiction over entities with a turnover exceeding RM30 million and individuals having an income higher than RM1 million;
- Setting up a Drafting and Law Revision Department with a view to making the issues of interpretation easier to resolve;
- Since the introduction of the e-filing initiatives in 2004 & 2005, there has been an explosive spurt in the use of the online medium for the filing of tax returns. In the year 2014, over 3.8 million taxpayers filed their returns online and the estimated number for 31 December 2015 is expected to reach a whopping 4 million;
- Under EzHASiL – a taxpayer can use his/her credit card to pay the requisite taxes. This measure has even received an approval rating from the World Bank and more Revenue Services Centres are expected to spring across the country;
- Under the BR1M initiative, around 4.8 million applications were received in 2012 and in 2015 thus far, 8.2 million applications have been received;
- Under the Tax Education Platform a Revenue Office has been inaugurated at Kidzania. This 'Edutainment' will foster an awareness regarding matters of taxation in young minds;
- A Financial Action Task Force established under the aegis of Malaysia Joint Mutual Evaluation Exercise held its plenary meeting from 21 to 26 June 2015.
- The IMF conducted a performance assessment of the Malaysian Tax Administration using 9 performance outcome areas. Malaysia has been commended for instituting the Dispute Resolution Department

("DRD");
- Cross Border Knowledge Transfers (Inland Revenue Department of Sri Lanka) The Indian Revenue Service, etc.) and International Networking (IBFD, IMF, World Bank etc.) have ensured a sustained and consistent transfer of knowledge

Ease of doing business

Dato' Chua Tia Guan in his presentation provided a few revealing insights regarding Malaysia's position as a destination of choice for conducting business. He brought attention to the World Bank Report dealing with the ease of doing business. Under this Report, Malaysia has been ranked 18th in 2015 as against a rank of 20 in the year 2014.

Other Initiatives

He also held forth on the following initiatives embarked upon by the FGPT since 2007:
- Enhancing the efficiency of processing tax refunds by the IRBM;
- Introduction of online applications for tax assessment and stamp duty;
- e-filing and e-payment of Withholding Tax;
- Reduction in time bar for assessments

Wish list

He also proposed the introduction of the following reforms:
- Reduction in the number of pages in Form B & BE:
- Option for taxpayer with single employment source of income not to file tax return;
- Reduction in the number of pages in the Form C;
- Reducing the number of years for the purpose of considering time-barred assessment, with a view to both provide certainty regarding the costs of conducting a business and improving investor confidence;
- Scalar model for increased compensation for delay in refunds so that by the year 2020, income tax refunds would be made without any delay whatsoever.

The topic ended on a highly satisfactory note with Tan Sri Shukor assuring the audience that new parameters for tax refunds would be announced at the subsequent National Tax Conference to be held in 2016. He also promised to take a relook into the existing statute of limitation norms.

TOPIC 3: AEOI & YOU: UPDATES AND IMPLICATIONS

Moderator

- **Ms.Khodijah Abdullah** (Undersecretary, Tax Division, Ministry of Finance)

Panel Members

- **Mr.Donal Godfrey** (Deputy Head of the Global Forum Secretariat, Organisation for Economic Co-operation and Development)
- **Ms.Noor Azian Abdul Hamid** (Deputy Chief Executive Officer (Policy), Lembaga Hasil Dalam Negeri Malaysia)
- **Ms.Theresa Goh** (Council Member, Chartered Tax Institute of Malaysia)

This session saw the overseas speaker from the OECD share his resourceful views on one of the most topical points of discussion in the arena of Taxation today, Automatic Exchange Of Information ("AEOI"). Using a series of artful presentations, Mr.Donal Godfrey explained the mechanisms underlying the functioning of an AEOI process. He also articulated the genesis underlying the introduction of the AEOI. According to a Global Forum on Transparency Report, approximately USD8.5 trillion was designated as "offshore wealth" in the year 2012. To curb the practice of booking assets in a country where the investor has neither legal residence nor domicile, a seamless exchange of information and networking was envisaged. This took the form of Common Reporting Standards ("CRS"). Mr.Godfrey elucidated the most common features of the CRS as possessing a wide scope, impacting everybody, and depending upon a level playing field. "AEOI will mean a massive increase in supply of information, changing the arithmetic of international tax evasion forever", he opined.

The Deputy Chief Executive Officer (Policy), in her presentation, laid emphasis on the imperative need for tax transparency measures to combat tax evasion. She stated that educating the taxpayers in this regard was a vital step towards achieving tax transparency. Talking about the AEOI Standards, Ms.Noor Azian informed the audience that 94 jurisdictions had committed to implement the standards by 2017 or 2018. She also asserted the willingness of Malaysia to comply with the standards by 2018.

Ms.Goh also referred to a sample of Amnesty Programmes that had been instituted in India and Indonesia as a harbinger towards making the transition to an AEOI regime. For example, in India, The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, which requires all taxpayers, including corporate entities to disclose undeclared income and assets by 30 September 2015 and The Foreign Assets Act which provides a one-time amnesty scheme for all persons who have not previously disclosed their foreign assets for the purpose of taxation. Ms. Goh also emphasised upon the Country

Malaysia will implement training programmes in October 2015 and is expected to sign the MCAA by 2016, introduce the regulations governing the MCAA, and complete a due diligence by 2017.

Ms.Theresa Goh in her presentation took the participants through a hypothetical global model of the AEOI based upon the participating countries signing either a bilateral or a multilateral model named as Competent Authority Agreement ("CAA"). Drawing reference to the Foreign Account Tax Compliance Act ("FATCA"), Ms. Goh stated that multiple countries had already signed the Model 1IGA.

by Country Documentation report (CbC) which has been issued by the OECD as part of its ambitious Base Erosion and Profit Shifting (BEPS) project. The guidelines under the CbC adopt a 3-tiered approach based on the preparation of a Master File, Country-by-Country Report and a Local File.

TOPIC 4: ENHANCING TAX COMPLIANCE: ISSUES AND FINDINGS

Moderator

- **Mr.Poon Yew Hoe** (Council Member, Chartered Tax Institute of Malaysia)

Speaker

- **YBhg Datuk Mohd Nizom Sairi** (Director, Investigation Department, Lembaga Hasil Dalam Negeri Malaysia)

Panel Member

- **Mr.Soh Lian Seng** (Executive Director, KPMG Tax Services Sdn Bhd)

In this very relevant and informative session, the Director of Investigation from the IRBM postulated the various means that have been employed by the IRBM to make tax compliance more effective. The following Tax Compliance Model embedded within a Guidance Note issued by the OECD titled "Managing and Improving Tax Compliance" was the edifice around which the discussion revolved. **(Diagram 1)**

The following table detailing the tax returns filed using the online facility was an encouraging aspect in so far as tax compliance data was concerned **(Table 2)**:

However as evidenced by the table set out herein below there was a slight dip in the total number of new individual as well as corporate taxpayers who had registered themselves in 2014 when compared to the corresponding statistics for 2013 **(Table 3)**:

The tax revenues collected by the IRBM also presented the following encouraging picture **(Table 4)**:

The moderator, speaker and Panel Member also identified broadly the most common findings arising out of tax compliance. These were:

- Incomplete Tax Returns;
- Wrong estimate of the tax payable;
- Errors in filling CP204/CP205;
- Failure to remit deduction;
- Insufficient Records and manipulation of records; and
- Abuse of incentives

The session ended with the Panel expressing a hope that taxpayers are prompt in getting themselves registered, paying taxes on time and

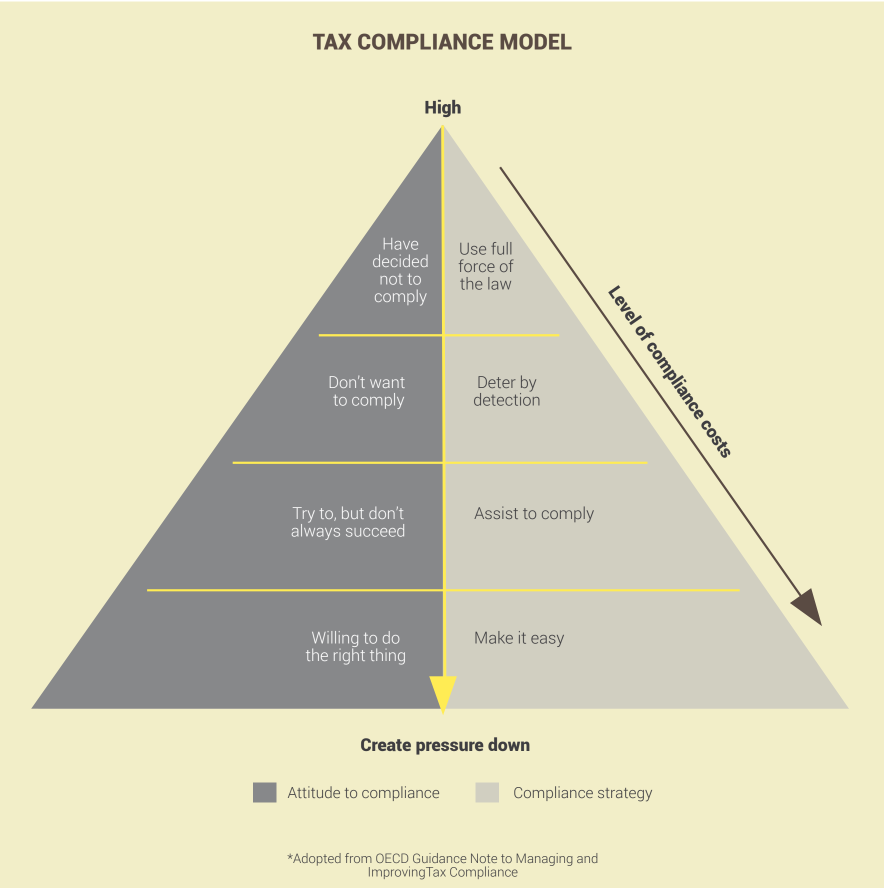


Diagram 1

filing returns unfailingly.

TOPIC 5: CROSS BORDER TAXATION IN ASEAN

Moderator

- **Mr. SM Thanneermalai** (Council Member, Chartered Tax Institute of Malaysia)

Panel Members

- **Ms.Wan Ramiza Wan Ghazali** (Director, Multinational Audit Division, Lembaga Hasil Dalam Negeri Malaysia)
- **Mr.Basuki Rakhmad** (Tax Expert, Directorate General of Taxes, Indonesia)
- **Mr.New Aik Meng** (Group Tax Specialist, Corporate Tax-Large Corporations Branch, Inland Revenue Authority of Singapore)
- **Ms.Dinh Thi Quynh Van** (General Director, PwC Vietnam)

The Moderator Mr.Thanneermalai in explaining the basic premise of this session stated *"the purpose here is not just to deal with ASEAN, but to bring out the issues that a Malaysian investor going out of the country needs to be aware of"*. Employing an innovative method of taking recourse to a hypothetical case law, the session went on to expound on the various intricacies adorning the cross border taxation in the ASEAN landscape. The various aspects that were discussed ranged from Entry and Exit Strategies, Financing Options and Incentives to Transfer Pricing and Thin Capitalisation Regulations. The Panel Members shared some interesting insights about their respective countries' taxation regime.

Mr.New Aik Meng for example, talking on incentives in Singapore elaborated on the availability of substantial business deductions: *"Double deductions to promote certain sectors. From 2009 onwards up to 2018, we have this Productivity and Innovative Credit Scheme. Basically 400% tax deduction is accorded to six categories of expenses. Companies incurring expenses falling within any of these six categories would qualify for an exemption amounting to six times the expenses incurred"*

Mr.Basuki Rakhmad adding his views regarding the incentives and investment climate in Indonesia stated: *"In Indonesia accelerated depreciation and investment allowances are granted. The incentives inter alia are based on factors such as the location of the business, the amount of investment and the nature of the industry"*.

Holding forth on the Malaysian outbound investment regime, Ms. Wan Ramiza explained: *"There are incentives for Malaysian companies that acquire foreign owned companies abroad. The purpose of acquiring the foreign owned company/(ies)*

YEAR	INDIVIDUAL TAX RETURNS	COMPANY TAX RETURNS
2010	1,903,542	134,713
2011	2,253,132	175,682
2012	2,514,089	208,430
2013	2,775,328	202,337

Table 2

JOHOR CORPORATION

Johor Corporation (JCorp) was established as a public enterprise and a statutory body via Johor Enactment No. 4 1968 (as amended under Enactment No. 5, 1995). As a State-owned Conglomerate, JCorp through its Group of Companies is involved in core businesses encompassing Palm Oils (Kulim), Specialist Healthcare Services, Foods & Restaurants Services, Property, Port Services, Hospitality, Entrepreneur Business as well as Oil & Gas.

JCorp has since become a prominent player in several of its core businesses, particularly in Specialist Healthcare Services as well as Foods & Restaurants Services. The Palm Oils sector has business interests and operations in Malaysia and Indonesia while the Foods & Restaurants Services sector spans Malaysia, Singapore, Brunei and Cambodia. Meanwhile, the Specialist Healthcare Services sector domestically spearheaded by JCorp has been expanded to Indonesia, Bangladesh, Australia and Thailand.

Over the 45 years since its incorporation, JCorp as a market-driven business entity is primarily focusing on the realisation of its goal underlined in its strategic business transformation plan while equally balancing its obligations and commitments. JCorp has translated its capacity to retain formidable financial and corporate performances amidst global economic uncertainties. Notwithstanding, with a strong business foundation, its human capital capacity, corporate ethical compliances and inculcation of virtuous values that are efficient and tactful, JCorp continues to magnify its market presence while exploring new businesses to continue discharging its role as a state development agent and implementing its corporate responsibility.

al-salām REIT · KULIM (MALAYSIA) BERHAD · KPJ HEALTHCARE BERHAD · AL-A'QAR KPJ REIT · E.A. Technique "the shipping people"

Palm Oils Business	Properties
Specialist Healthcare	Hospitality
Foods & Restaurants Services	Oil & Gas Enabler

Commercial Entity

With four companies listed in the Bursa Malaysia within the Group, JCorp is currently accelerating exponential growth in six main sectors, including being a national market leader in several of its core businesses, namely the Specialist Healthcare Business and the Foods & Restaurants Services.

Industrial Property	Investment
Housing Property	Central Business District
Commercial Property	Infrastructure

State Development

In line with its establishment objective of being the Johor State's development agency, JCorp takes part in the Economic Transformation Programme (ETP) through numerous sectors namely in Commercial and Residential Properties, Industrial Properties, Tanjung Langsat Port, Infrastructure as well as the Central Business District Development.

Social Development	Sports & Recreation
Public Welfare	Staff Welfare
Entrepreneur Development	Spiritual Activities

Corporate Responsibility

JCorp's Corporate Responsibility (CR) initiatives are carried out through 23 of its non-profit associations and bodies known as Amal Business Organisation (ABO). These activities and initiatives are planned to cater to Social Development, Public Welfare, Entrepreneur, Sports & Recreation Development, Staff Welfare and also Spiritual activities.

Primary Level Entrepreneur Development	Technical Skills
Secondary Level Entrepreneur Development	Management Skills
University Level Entrepreneur Development	Specialised Expertise

Human Capital Development

Building individuals' potential through skills and educational institutions with synergy to Johor Corp's core businesses, with the objective to produce highly skilled individuals and experts in many fields.

JOHOR CORPORATION
Level 11, Menara KOMTAR, Johor Bahru City Centre, 80000 Johor Bahru, Johor.
Tel : 607-219 2692 Faks : 607-223 3175

JOHOR CORPORATION KUALA LUMPUR OFFICE BRANCH
Level 11, Menara JCorp, No 249, Jalan Tun Razak, 50400 Kuala Lumpur
Tel : 603- 27872692, Fax : 603-27872700

E-mail : pdnjohor@jcorp.com.my

www.jcorp.com.my

must be either the establishment of a manufacturing or services entity within Malaysia or for the utilisation of such acquired technology within Malaysia. However this incentive is for a short period".

The choice between leasing and acquiring property or land for a Malaysian investor hoping to invest in the ASEAN region threw up a very interesting feature from the perspective of the Vietnamese legislations. In the words of Ms.Dinh Thi Quynh Van, *"In Vietnam it depends upon the sector in which you operate. If it is the service sector, then most of the companies lease the land. If it is the manufacturing sector, the practice is to lease the land simply because there are no facilities. In Vietnam there is no freehold and there is no ownership concept. The companies need to lease the land for the purposes of constructing a factory/ manufacturing unit. The rent is normally paid upfront by the investor and is amortised over a stipulated period."*

The invigorating discussion before concluding mulled upon the various tax implications bordering exit strategies. Factors such as administrative difficulties involved in the liquidation procedures, personnel issues related to retrenchment and the quantum and reasonableness of Capital Gains Taxes along with Stamp Duties were exhaustively deliberated.

YEAR	REGISTERED INDIVIDUAL TAXPAYERS	REGISTERED CORPORATE TAXPAYERS
2010	331,826	30,391
2011	446,200	35,500
2012	606,872	37,477
2013	543,895	60,886
2014	519,550	58,758

Table 3

YEAR	TAX REVENUES COLLECTED (RM BILLION)
2010	86.499
2011	109.610
2012	124.892
2013	128.933

Table 4

TOPIC 6: TAX CASES UPDATE

Moderator

- **Mr.Shaharudin Datuk Ali**
  (Senior Consultant, Shaharudin Sham Sunder & Partners)

Speaker

- **Mr.Abu Tariq Jamaluddin**
  (Director, Dispute Resolution Department, Lembaga Hasil Dalam Negeri Malaysia)

Panel Member

- **Ms.Goh Ka Im**
  (Partner, Shearn Delamore & Co)

Mr.Shaharudin Datuk Ali chaired the session. Mr.Abu Tariq presented several riveting and seminal case laws as decided by the Court of Appeal. The case laws included:

Maxis Communications Berhad v KPHDN
(Taxability of Equivalent Cash Consideration ("ECC") as a perquisite under the Income Tax Act 1967);

2. KPHDN v MERCEDES-BENZ MALAYSIA SDN BHD
(Whether cars sold in the secondary sales channel constituted withdrawal of stock for own use under Section 24(2) of the Income Tax Act 1967);

3. KPHDN v CLEAR WATER SANCTUARY GOLF MANAGEMENT BHD
(Whether Advance Payment can be taxed in the year in which it was received under Section 24 of the Income Tax Act 1967);

4. PIRAMID INTAN SDN BHD v KPHDN
(Whether the payments by the Taxpayer to Sarawak Timber Industry Development Corporation (STIDC) were allowable deduction);

5. BEDFORD DAMANSARA HEIGHTS DEVELOPMENT SDN BHD v KPHDN
(Whether expenses incurred to secure loan facilities are deductible under Section 33 of the ITA 1967);

6. KPHDN v JUARA TIASA SDN BHD
(Whether the taxpayer qualifies for industrial building allowance (IBA) for expenditure incurred on the construction of campus building by virtue of paragraph 42B, Schedule 3 to the Income Tax Act 1967);

7. KPHDN v BINTULU LUMBER DEVELOPMENT SDN BHD (Whether the cultivation of palm oil falls within the ambit of the words "cultivation of fruit" as set out under Paragraph 9(cc) of Schedule 7A to the Income Tax Act 1967);

8. KENNY HEIGHTS DEVELOPMENT SDN BHD v KPHDN
(Whether the subject land was

disposed in the year the sale and purchase agreement was signed or in the year the condition precedent was satisfied)

The panelist Ms.Goh Ka Im raised a very relevant and interesting point regarding the conflicts that exist between amendments and explanatory statements. She referred to this ambiguity in the context of making amendments to the statute consequent to a position drafted in the Public Rulings once a case had been decided in favour of the taxpayer by the Court. She also emphasised that all ambiguities in the law ought to be resolved invariably in favour of the taxpayer.

Ms. Goh also made some excellent observations regarding the interpretation of statutes in general and tax statutes in particular. Citing the example of the famous Palm Oil case in Malaysia and also a comparable case as decided by the House of Lords in the United Kingdom, she stated that whilst interpreting tax statutes it was of paramount importance that the intention of the legislature was ascertained. There is no "one size fits all" approach.

TOPIC 7: ROUND TABLE DISCUSSION ON CURRENT ISSUES AFFECTING TAXPAYERS

Moderator

- **Mr.Jagdev Singh**
  (Senior Executive Director, Pricewaterhouse Coopers)

Panel Members

- **Mr.Mahmood Daud**
  (Director, Tax Operation Department, Lembaga Hasil Dalam Negeri Malaysia)
- **Ms.Renuka Bhupalan**
  (Council Member, Chartered Tax Institute of Malaysia)

The final session of the National Tax Conference 2015 represented a Round Table Discussion on the vital topic of issues currently affecting and impacting taxpayers. Moderated by Mr.Jagdev Singh, the session commenced with Mr.Mahmood Daud making a presentation on the most noticeable issues impacting the taxpayers. Mr.Daud started by explaining the basic essence of a Tax Ecosystem whereby there exists an unavoidable reciprocal dependency between the government enacting the tax legislation, the tax authority administering the mechanics of the tax laws and the taxpayer who is subject to the myriad tax law and is required to ensure voluntary compliance.

Citing the various issues relating to the submission of returns, Mr.Daud made use of the following matrix (**Chart 1**):

ISSUES RELATING TO SUBMISSION OF TAX RETURNS

Laziness	Forgetful	Inaccurate advice from practitioners
Voluntary vs compulsory	Destruction/ loss of record	Minimal assistance
Deliberate	Wrong perceptions	Ignorance

TYPE	ON TIME SUBMISSION	LATE / NON-SUBMISSION
PIT	95.46%	4.54%
CIT	61.66%	38.34%

Report based on YA 2013 reporting

Chart 1

He expounded on a very encouraging fact that in the year 2014, *"96.24% of the taxpayers paid their taxes on time as against 3.76% who either defaulted or delayed their tax payments. Based on these findings we can say that we are at par with some of the advanced nations."* Mr.Daud then went on to explain the subtle differences between tax compliance and conformance. *"We prefer to have more monitoring tools"* emphasised the Director of Tax Operation and went on to describe a few tools devised by IRBM such as CMS, 360, DMAS, ETP etc.

The moderator drawing attention to the IRBM's compliance monitoring strategy effusively exclaimed: *"It is really positive to hear the move towards the risk based approach, rather than getting everyone to spend time on an audit. A risk based approach is more efficient from a revenue as well as from a taxpayer perspective".*

Ms.Renuka Bhupalan then proceeded to elucidate lucidly the various problems that were being faced by the taxpayer in ensuring adequate compliance. Some of the common problems *inter alia* encompassed within their sweep:

- Gazette Orders: *"I think this is largely out of the IRBM's hands. Very often we have the budget proposals announced and the said proposals would be enacted by gazette orders. And then it takes a long time for the gazette orders to come out. Such delays hinder the taxpayer from adequate compliance. Sometimes gazette orders are not adequately worded thereby creating uncertainty for the taxpayer.*
- Guidelines coming out late;
- Automated tax collection system dichotomies;
- Increased and avoidable cost of compliance when it comes to Form E and Form C;
- Delays in routing the tax-payer correspondence to the concerned IRBM officer thereby causing inconvenience to the taxpayer. The IRBM might consider instituting a policy of introducing a reasonable time frame within which the taxpayer communications are responded to ;

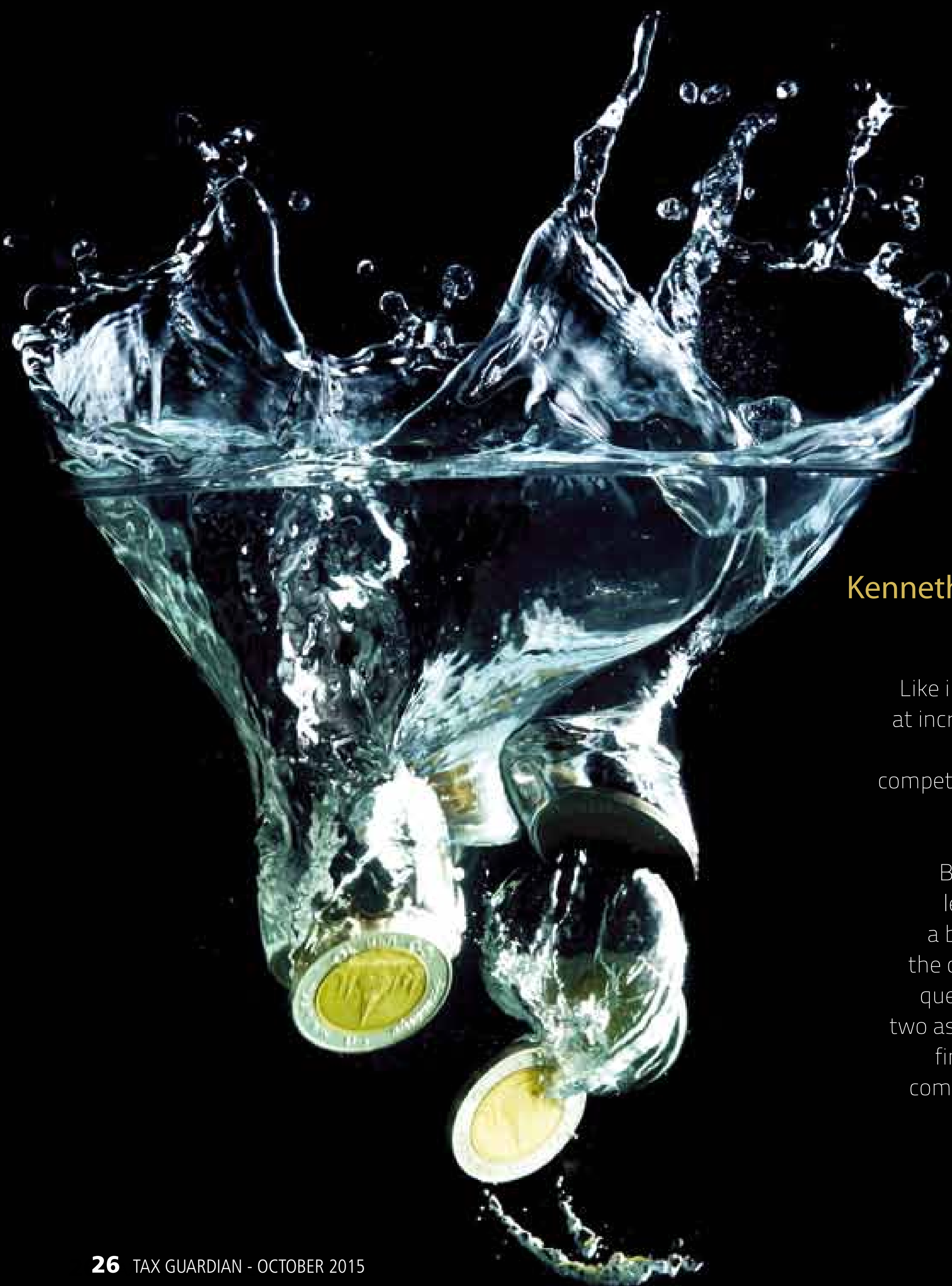
She concluded her talk nursing an expectation that *"taken the IRBM's ever increasing revenue targets and also given the Prime Minister's talk yesterday about collection targets of RM871 billion over the next five years, we hope despite these collection targets that an assurance would be provided to the taxpayers that tax audits will be handled reasonably".*

Mr.Daud assured the audience that adequate measures would be instituted to enhance the assurance of the taxpayers. He added that the taxpayer and the tax administration need to work in a reciprocal fashion to enhance the tax compliance landscape in Malaysia. He termed this a *"a balancing act"*

The moderator at this point made a very relevant suggestion, *"When we receive letters we are given a time frame to respond. But if there is a way of matching the number of days within which a response needs to provided with the kind of information requested for, it would be of very great help to the taxpayer".*

The session ended with the floor being opened up for Q&A.

GST IMPACT ON CASH FLOW



Kenneth Yong Voon Ken and
Lee Fook Koon

Like income tax, GST is a tax aimed at increasing government revenues while maintaining Malaysia's competitiveness in attracting foreign direct investments.

But unlike income tax, which is levied directly on the profits of a business, GST is 'passed on' to the customers of that business in question. Nonetheless, there are two aspects of GST that businesses find lamentable: administrative compliance and cash flow impact.

This article discusses the latter, examining how cash flow issues can be created in the following situations:

- GST cash flows under Invoice Basis
- Delays in GST Refunds
- Delays in GST Input Tax claims

GST AND CASH FLOW

GST Output Tax and Input Tax is to be settled on a net-off basis where only the net GST (Output Tax minus Input Tax) is payable to the Director-General of the Royal Malaysian Customs Department (RMCD). This is embodied in Section 38 of the Goods and Services Tax Act 2014 (GST Act):

"38(1) Any taxable person is entitled to credit for so much of his input tax … to be deducted from any output tax that is due from him."

Where net GST Output Tax is payable to the RMCD, this shall be settled not later than one month following the end of the taxable period to which the payment relates.

Depending on the magnitude of Input Tax versus Output Tax, the GST effect may either be a net payment to or net refund from the RMCD.

GST CASH FLOW UNDER INVOICE BASIS

Regulation 26 of the Goods and Services Tax Regulations 2014 describes 'Invoice Basis' as *"a basis where a taxable person shall account for tax in accordance with the time of supply under Sections 11, 13, 70, 72 and 73 of the Act."*

Invoice Basis is the default 'accounting basis'. The alternative - Payment Basis (which requires approval) – is not discussed in this article.

In many instances, the Invoice

Basis causes reporting GST Output Tax against GST Input Tax in the period of the associated sales invoices and purchase invoices.

This can be positive or negative depending on the business model used.

POSITIVE SIDE OF INVOICE BASIS

Businesses who sell on cash but who purchase on extended credit ultimately gain a 'double' cash flow advantage.

Firstly, they collect cash upfront where the GST Output Tax may only be due and payable in the following month (assuming a monthly taxable period).

Secondly, depending on the length of the purchase credit period, they get to claim input tax credits ahead of payments to suppliers, thus enabling them to ride their cash flow advantage further. Hypermarkets may typically fall into this enviable GST position.

NEGATIVE SIDE OF INVOICE BASIS

Conversely, certain businesses sell on credit terms where customer collection may only be received several months after the sales invoice date. But in the interim, such GST-registrant must still report, and pay, net GST Output Tax to the RMCD (before collecting the GST Output Tax from the customer).

This usually means a GST cash outflow (from the GST-registrant to the RMCD) while awaiting customer collections to play catch up, requiring a cash buffer to smoothen any cash flow mismatches.

Long credit periods (for sales) generally give rise to more pronounced cash flow deficits, requiring careful management of customer credit terms. In addressing this problem, certain businesses collect the GST portion upfront on invoicing - to fund the net GST Output Tax payable to the RMCD.

GST REFUNDS

Where Input Tax exceeds Output Tax, the taxable person can expect a refund from the Director-General as per Section 38(3):

"(3) … where … the amount of the credit … to the taxable person exceeds the output tax … the amount of the credit … shall be refunded to the taxable person by the Director-General…"

Furthermore, Regulation 67(1) prescribes that the Director-General shall make a GST refund:

(a) *within fourteen working days or within the time practicable, after the return … is received by the Director-General … where the taxable person … furnishes the return by electronic service …; or*

(b) *within twenty eight working days or within the time practicable, after the return … is received by the Director-General … where the taxable person furnishes the return other than by electronic service."*

ISSUES WITH GST REFUNDS

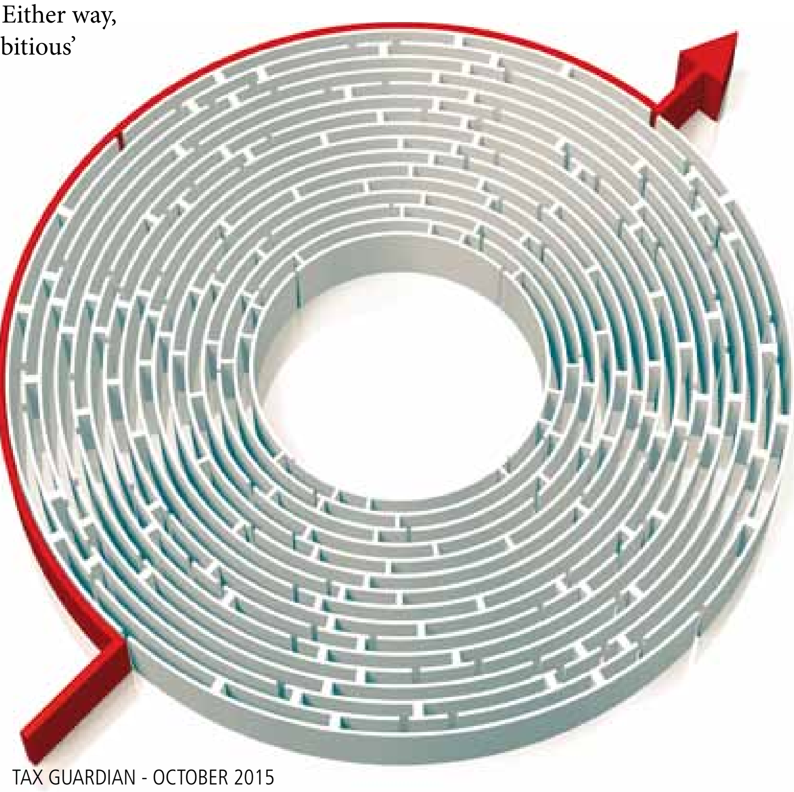
Since its announcement in 2014, the "14 working days" refund rule has attracted awe, scepticism and disbelieve in equal measure. Optimists herald this as a new era of public sector efficiency, while the sceptics remain just that – sceptical of its realisation.

Either way, 'ambitious' is probably a realistic way to describe this relatively speedy refund timeframe, especially when compared to the practices of other GST-enabled countries.

"The world average for the refund of the GST claims is 56 days from the date of filing" said Dato' Subromaniam Tholasi, Deputy Director-General of the RMCD. This statement, apart from being mere statistical information, is a shrewdly powerful phrase when Malaysia's mandated refund period is four times faster than everyone else!

In practice, Malaysia's initial GST refunds have somewhat missed the "14 working days" target, leaving a sizeable number of GST-registered businesses deprived of their GST refunds beyond the promised timeline, and driving certain trade associations to raise their displeasure in local newspapers – an unwelcome publicity for the authorities.

"Many businesses are facing very serious cash flow problems" says SME Malaysia national president Michael Kang as reported in the mass media, emphasising the impact of cash flow tied up in GST refund delays.



REASONS FOR DELAYS

This leads to the natural question: why? Given that the law has provided for a refund timeline, why should refunds still suffer setbacks?

Cited reasons for delays in GST refunds have included:

(a) Inconsistency between numbers in the actual GST-03 Form when compared to the expected profile from the GST registration form;

(b) Errors in the bank account number (eg. Typo error or bank account subsequently closed); or

(c) Keying-in the numbers into the wrong rows of GST-03 Form

(d) Other blatant errors in form-filling

The RMCD's Deputy Director-General, Dato' Subromaniam has further added that *"there is no profile of these companies on our records, so we are building their profiles as quickly as we can"* (The Star, 20 July 2015) Apart from confirming the RMCD's heavy reliance on data analytics in monitoring GST returns, this also hints that delays in refunds are one-off, and are unlikely to be recurrent – a source of relief for future refund seekers.

But even then, the question of law remains: can the RMCD legally detain GST refunds beyond the "14 working days" period stipulated in Regulation 67?

ESCAPE ROUTE

Unlike income tax law, which requires the Inland Revenue Board to compensate for late refunds of income tax, the GST Act 2014 does not have an equivalent provision.

Furthermore, the phrase used in Regulation 67 *"within fourteen working days or within the time practicable"* provides an escape route for the RMCD to secure a protracted refund timeline while still adhering to the letter of the law.

As the word "practicable" is not clearly defined in the GST Act or GST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Regulations, its application is less certain, throwing ambiguity to the duration of refund delays.

However, a reprieve of sorts is seen in Regulation 67(2) which provides that the *"Director-General shall make the payment of refund within ninety days after … the taxable person has submitted the returns; or … the receipt by the Director-General of all the information requested by him…"*

INTERNAL CHECKS FOR REFUNDS

In any case of refunds or repayments, internal checks and procedures for authorisation are inevitable to minimise non-qualifying refunds, or worse, fictitious refunds.

Based on what's known, the current practice for refund cases may involve the RMCD:

(a) Calling the GST-registered business for a telephone interview; or

(b) Requesting for listing of Output Tax and Input Tax invoices; or

(c) Requesting for *'Lampiran 2' (Jadual Ringkasan Maklumat Permohonan Pembayaran Balik Kredit Cukai Input)*; or

(d) Requesting for photocopies / scan copies of all Tax Invoices for Output Tax and Input Tax.

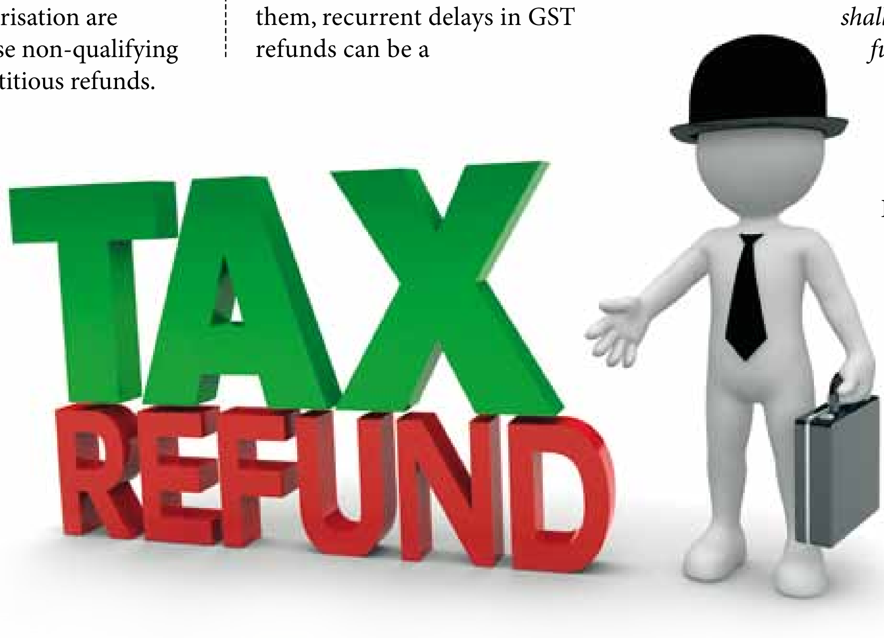
Counting the time needed by GST-registrants to attend to the above, the "14 working day" window does appear quite narrow.

With this constraint in mind, the RMCD has provided some impressive statistics where *"more than 60% of companies that submitted their GST have received their input tax refunds".* (The Star, 20 July 2015)

COMPANIES WITH RECURRENT REFUNDS

However, not all GST-registrants face GST refunds on a regular basis. Most businesses with a view towards profitability are expected to report larger sales than purchases/expenses, such that there would usually be a net Value-Added component necessitating a net GST payable to the RMCD.

Nonetheless, certain businesses or industries are in 'danger' of regularly encountering net GST refunds. For them, recurrent delays in GST refunds can be a major drag on cash flow.



Affected industries include:

(a) Companies which are heavily export oriented (eg. palm oil exporters, non-national airlines, export manufacturers etc.);

(b) Companies with significant zero-rated sales items (eg. vegetable and egg sellers)

ISSUES WITH GST INPUT TAX

In the eyes of GST-registered businesses, GST Input Tax is usually equated with excessive worthiness in reducing GST outflows. However, two visible problems can plague (and by extension, delay the cash flow benefits of) GST Input Tax claims:

(i) Tax Invoice (inputs) not available

(ii) Purchase of large capital assets resulting in GST refunds (and consequently, delays)

TAX INVOICE NOT AVAILABLE

The criteria to record an Input Tax is provided in Regulation 38: *"any taxable person claiming input tax … shall do so on the return furnished by him for the taxable period in which he holds … a tax invoice".*

Under the Invoice Basis, Input Tax is claimable once a registrant holds a tax invoice, even if the GST has not been paid to the supplier. This treatment for Input Tax is consistent with that of recognising Output Tax under Invoice Basis.

As easy as it may sound, a tax invoice (for purchase / expense) may not always be forthcoming. Certain industries have encountered difficulties obtaining tax invoices from their suppliers on a prompt basis, and this has resulted in their Input Tax claim being delayed to a future period, even though cash outflows have gone towards paying off their suppliers.

The conventional wisdom "don't pay until the supplier issues an invoice" may not be usable in certain circumstances, such as when making advance payments / deposits for supplies (eg. partial / full amount may have been paid but a tax invoice is not issued at the point of payment).

THE LAW ON ISSUING TAX INVOICE

There is currently no legal timeline to compel the issuance of a tax invoice. The often cited '21-day' rule under Section 11(5) merely explains the time of supply if an invoice is issued within 21-days of the supply; it does NOT impose a deadline for issuance of the tax invoice.

Furthermore, Section 33(2) merely states that *"any registered person who … fails to issue a tax invoice … commits an offence"*. It does NOT specifically penalise a registered person who 'delays' issuing a tax invoice (although provisions in the Interpretations Act 1948 and 1967 may require the application of "convenient speed" in addressing such matters).

Recognising such problems, the RMCD has issued DG's Decision 3/2015 as a partial attempt to stem this practice.

"Every registered person who makes any taxable supply of goods or services in the course or furtherance of any business in Malaysia shall issue a tax invoice to his buyer within 30 days from the date of payment made by the buyer on such supply (in full or in part)."

With this, it is hoped all suppliers will be driven to issue tax invoices promptly to enable buyers to claim their Input Tax Credits.

CAPITAL EXPENDITURE AND DELAYS IN GST REFUNDS

Many capital asset items are standard rated – buyers must pay GST on acquisition but are allowed to claim back Input Tax Credits. However, when the capital good purchased is so large, giving rise to a sizeable Input Tax, this can trigger a GST review before the RMCD approves the large GST refund.

Depending on whether there is any credit period ascribed to the acquisition, this raises the possibility that large asset purchases may cause a cash flow drain since the acquirer may have to pay the capital expenditure (and associated GST) while awaiting the Input Tax Credits and possible refund delays due to a GST review.

SPECIAL SCHEMES

Recognising that the GST system may disrupt business cash flow, the GST Act provides for numerous schemes that achieve a single purpose: alleviate GST cash flow constraints.

Such schemes include Approved Jeweller Scheme; Approved Trader Scheme; Approved Toll Manufacturer Scheme; Group Registration; etc.

CONCLUSION

Depending on their business models, the GST system causes some businesses to enjoy improved cash flow while other businesses suffer cash flow setbacks.

In exercising their duty, the RMCD is required to conduct necessary checks to ensure GST refunds are not erroneously made. As the RMCD gets to grips with GST processes, and as its analytic system gets populated with more information for trend-spotting, it would be natural to expect GST refunds to become smoother moving forward.

This is important because at a time of global slowdown and corporate conservatism, what needs to be avoided at all cost is disruption to cash flow – a resource so crucial to the survival of businesses.

The authors opine that for an authority charged with the goal of collecting as much GST as permissible, refunding GST is possibly not the top priority to be promoted, but may be the first to be compromised when time or resources run low.

Perhaps the tax case *"Pelangi Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri"* (which inspired the subsequent law on compensation for late refunds of income tax) can be instructive.

Kenneth Yong Voon Ken & Lee Fook Koon *are members of the Chartered Tax Institute of Malaysia and are practicing accountants. They can be contacted at kennethyong.main@gmail.com and fklee8@gmail.com respectively.*

GST: POST IMPLEMENTATION ISSUES

Thenesh Kannaa

After spending months (years for some) in preparation, we are now in the Goods and Services Tax (GST) regime for over six months. From what has been reported in the mainstream media and from experience (both as a tax advisor and as a consumer), teething problems are evident. While some of the problems disappeared within the first few weeks of the implementation date, there are still many issues in the queue.

In particular, with reference to **Chart 1**, there appears to be more hiccups and uncertainties at the operational level than at the policy and technical levels.

While it is impracticable to produce an exhaustive list of post-implementation issues faced by businesses of diverse sizes and industries, this article outlines the common and significant operational issues faced by businesses.

AMBIGUITY ON INFORMATION REQUIRED IN THE GST-03

Taxable persons are obliged to submit complete and correct GST return (GST-03). Otherwise, they may be slapped with penalties, or even imprisonment upon conviction. Thus, the information required in the GST-03 should be made crystal clear to businesses but unfortunately there are a number of ambiguous aspects – as summarised in **Table 1**.

Businesses should not be left to make any guesses or rely on verbal statements to complete the GST return because it is their fundamental and recurring obligation to lodge correct GST returns.

Further, it must be recognised that rounding differences inevitably arises in the course of business – both in respect of supplies and acquisitions. For example, there are some bank charges at 10 sen for which technically the GST is 0.6 sen but most banks impose 1 sen. Thus the effective tax rate is 10%, and not 6%. When businesses claim input tax credit, this would result in the value of cell 6b being greater than 6% of cell 6a. Of course, there are many other reasons for the rounding differences – and most are less obvious and are often offset over time. Ideally, the rounding differences should not trigger registered persons being chosen for audit by the Customs.

INCOMPLETE TAX CODES IN GAF

The Customs recommends accounting software to be able to generate GST Audit Files (GAF) in a particular format. Often businesses and tax advisors attempt to comprehend and analyse the GAF but end up being surprised with the incompleteness as only the tax codes used in the accounts receivable and accounts payable modules are captured by the GAF. Given that the tax codes for transaction posted in the general ledger module and the cash or banking module is not visible in the GAF, the values in the GST-03 often cannot be analysed and related from the GAF. This sometimes causes businesses to panic although they are in compliance with the Customs guides.

Moving forward, businesses should constantly monitor whether Customs make any changes to the GAF specifications to keep them in a compliant position.

DELAY IN RECEIVING REFUND

While the law has ambitiously provided for refunds to be generally made within 14 working days or time practicable from the time the relevant GST return is lodged electronically, it has also reserved the right for the Customs to request information, and when the Customs does so, the refunds are only required to be made within 90 days from the time information is received by the Customs (see Regulation 67(2) of GST Regulations 2014 P.U. (A) 190/2014). While it is understandable that the Customs has a duty to make sure refunds are made only for genuine cases, many businesses have complained that the delay in receiving refunds has been made painful for the business. Some have even suggested an interest to be paid by the government for the delay but the law does not expressly provide for this. Press statements reported by the mainstream media indicate improvement over the efficiency in making refunds.

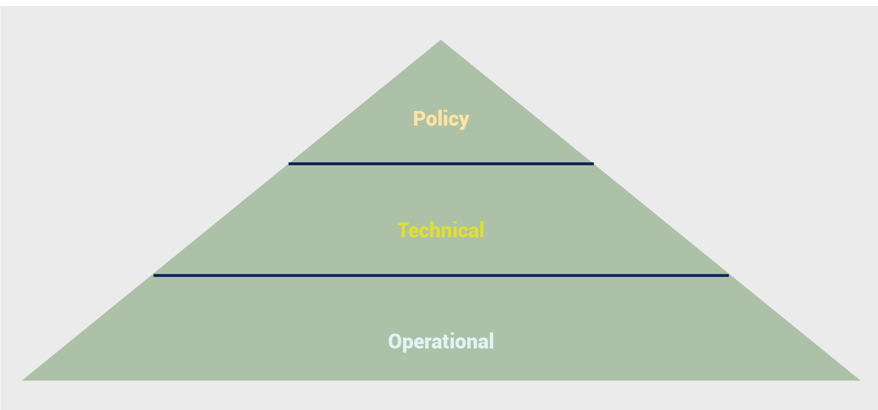


Chart 1

TAX INVOICE – INCOMPLETENESS AND AMBIGUITY

Another key issue faced by businesses is incomplete tax invoices issued by the supplier for expenses that they have genuinely incurred and paid. For example, the supplier's invoice may not have stated the price of the supply excluding tax (or it might be a debit note from the supplier where the reason or the date and number of the tax invoice to which it relates is not stated). There is no clear written guidance on what actions should the customer take when they receive such tax invoices (or debit note, or credit note).

Also, sometimes the tax invoice issued by the supplier does not state the customer's name in full or has spelling mistakes. The Customs position on such issues is not clear. Also, there is no written guidance as to whether the addresses quoted on the tax invoice (both the supplier's and the customer's) should be the registered address, main business address or branch address – or whether businesses are given the flexibility to use any of these three addresses as it may wish.

CREDIT NOTES

Often businesses tend to overlook their statutory obligation to quote both the number and the date of the tax invoice to which the credit note relates. Also, some tend to overlook their obligation to quote the reason for the credit note (which is distinct from the description of the supply for which the consideration is being adjusted). Another common issue is the use of a particular reason indiscriminately – without realising that the failure to state a satisfactory reason on the credit note for the issuance of the credit note may jeopardise the output tax reduction, and attract penalties.

Also, it is vital for the customers to ensure an appropriate mechanism is implemented to receive and record the credit notes so that the input tax reductions are made in the appropriate taxable period.

BAD DEBTS RELIEF

While the law provides with certainty an adjustment to be made in respect of taxable acquisitions if the payment to supplier is not made within six months from the acquisition, the case of bad debts relief in respect of supplies made by a person is not very clear. First, the law provides that the taxable person may claim bad debts relief upon lapse of six months from the time of supply[2] provided sufficient efforts have been made to recover the debt. The Director-General's decision 1/2014 (as amended by amendment 1/2015) states that the relief must be claimed immediately after the expiry of the six months but contradictorily, it also states the taxable person may notify the Customs within five

CELL #	CELL DESCRIPTION	AMBIGUITY
6a	Total value of standard rate and flat rate acquisitions	Where an acquisition is attributable to both taxable supply and exempt supply, there is no clear written guidance on whether the entire value of standard-rated acquisition or only the proportion attributable to taxable supply should be declared.
10	Total value of local zero-rated supplies	There is no written guidance as to whether the supply of goods to designated areas (Labuan, Langkawi and Tioman) should be declared in this cell or cell 11.
11	Total value of export supplies	Based on Section 15 of the GST Act 2014, it appears that the consideration should be declared but the Customs has mentioned[1] that the value as per Customs declaration should be declared. Also, it appears that the time of supply as per Section 11 of the Act applies to export of goods and services and thus advances received in respect of the exports should be reported in this cell at the time of receipt – but again there is no written confirmation or illustration of this matter.
12	Total value of exempt supplies	Probably one of the most common issue is whether businesses that do not 'actively make' exempt supplies (such as hospitals, universities, financial institutions and property developers) should declare in cell 12 the value of interest received, foreign exchange gains and other incidental exempt financial supplies.
14	Total value of goods imported under Approved Trader Scheme	Whether this should be based on the value as per the supplier's invoice or as per the Customs declaration (K1). If former, in which taxable period should the declaration be made – it may be that the invoice is received in month 1, Customs declaration made in month 2 and the goods received by the importer's warehouse in month 3.
16	Total value of capital goods acquired	It is generally understood any capital acquired should be reported here. The GST-03 guideline dated 6 August 2015 provides that the acquisition value of capital assets is in accordance with accounting principal interpretation but does not include the acquisition of capital assets in the category: i. Blocked input tax. ii. Acquired from persons other than the taxable person. iii. Acquisition of motor vehicles which are subject to GST under the Margin Scheme. The guideline does not expressly address whether acquisition of capital goods which are exempt or relieved should be reported in this cell. There is also no clear written guidance whether value of capital goods imported (i.e. acquired from a foreign supplier) should be included.
17	Total value of bad debts relief inclusive of tax	Say, a supply is made for RM106,000 (inclusive of RM6,000 GST), RM6,000 would be reported as output tax. If six months' later the supplier is entitled to bad debts relief, RM6,000 would be claimed as input tax credit. Thus it appears that the relief is RM6,000 but there is no clear written guidance as to whether RM6,000 or RM106,000 (or any other value) should be reported in cell 17. Similar uncertainty affects cell 18.

Table 1 : Ambiguity on information required in GST-03

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days after expiry of the six months if it wishes to claim at a later date. The decision is silent on the legal basis for such requirement and the consequences of not making the notification. Businesses felt being left in the dark, not only because the mechanism for making the notification has not been spelt out but also because the decision does not expressly say whether it is still required to satisfy the 'sufficient efforts' criteria if it simply chooses to claim the relief at the lapse of six months. It is interesting that the Guide on Tax Invoice and Records Keeping (which has been revised after the decision 1/2014 and its 2015 amendment) has a heading for records in relation to bad debts and it requires documentary evidence to demonstrate the 'sufficient efforts' test is met (also note that it expressly states that merely sending letters of demand to debtors may not be treated as sufficient efforts to recover the debt). It is surprising that the guide and the decision does make any reference between them.

Businesses look forward for certainty on the treatment of bad debts, given that it is not an international norm to force businesses to claim input tax credit at the earliest possible instant[3] or to require notification when they choose not to claim within a particular time.

Also, there is no express written guidance on the treatment of bad debts relief on intra-group transactions. It has to be acknowledged that sometimes companies in the group do not contra or settle the payment for a long period – and thus it would be business-friendly if the Customs expressly provide more relaxed indicators of 'sufficient efforts' for supplies made to connected persons[4] (provided the customer is GST-registered and was eligible to claim

input tax credit on the whole of the GST incurred on the acquisition).

NEW REGISTRATIONS

In general, applications to register for GST may be made after 1 April 2015 by categories of persons. First, by those who have been carrying on a business for a while but now apply for registration either because they have met the threshold to register or because they would like to register voluntarily. Second, by those who either just commenced a business or are in the midst of commencing a business. This typically includes, but not limited to, newly incorporated companies and companies which have been dormant since incorporation. The Customs rightfully exercises caution in processing applications from this second category as the law[5] permits voluntary registration only where the Director-General is satisfied that the applicant is carrying on a business.

There is no statutory provision that dictates the time of commencement from which a person is regarded as carrying on a business. In Director-General's decision 2/2014, the Customs has relaxed the rules by stating that it will allow voluntary registration for pre-commencement of business, more specifically with mere commitment to do business (as supported by certain documents). But the relaxation comes with an onerous criteria - the total taxable supply must be expected to exceed the threshold of RM500,000 within 12 months from the date of application. In practice, registering new companies has not been an easy task thus far.

Any delays in registration may have a significant impact on the businesses as often significant capital expenditure (with GST) would be incurred at the commencement or pre-commencement stage. This does not mean that the business will never get any input tax credit on costs incurred prior to registration. The law[6] provides for the person to claim

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[1] Technical Committee 2/2015 on 29 April 2015 – see eCTIM TECH-IT 26/2015

[2] Or, if earlier, the time when the debtor becomes insolvent.

[3] In fact Regulation 70(1) of GST Regulations 2014 P.U. (A) 190/2014 expressly provides the claim for bad debts relief to be made within 6 years from the time of supply.

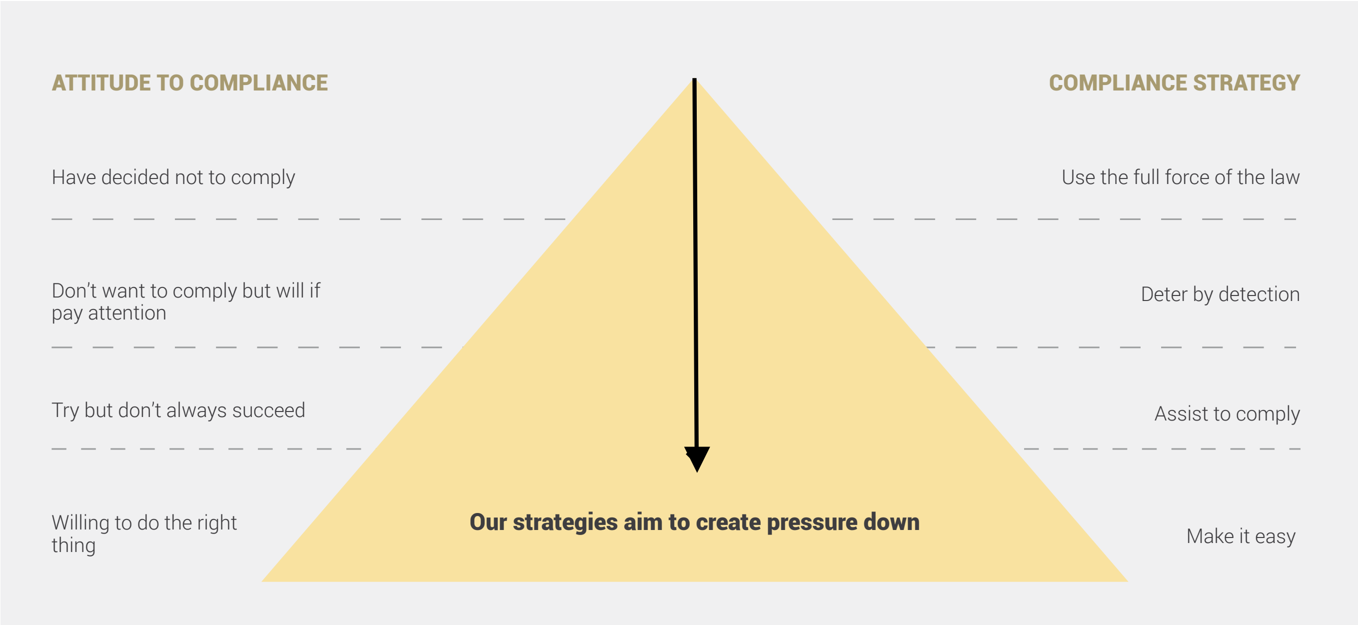

Diagram 2: OECD's compliance pyramid

the input tax credit upon registration in respect of GST incurred on acquisition of goods prior to registration – but this is subject to the discretion of the Director-General and even when the discretion is exercised in favour of the business, the business is still subject to a cash flow disadvantage as the registration (and thus the input tax credit) may take effect months or years later than the time of acquisition of goods.

In this aspect, the technical aspects (i.e. the provisions of the law) and the operational aspects (i.e. processing of the application for GST registration) should be aligned to the policy aspect where GST is characterised as a consumption tax which should not be a cost to businesses.[7]

CONCLUSION

As mentioned earlier the scope of this article has been deliberately focused on common and significant operational issues. Of course, there are many technical and policy issues not covered here - certain technical issues like 'disbursement versus reimbursement' deserve an article on its own. With reference to the OECD's compliance pyramid in **Diagram 2** above, I hope that the Customs will create more certainty over the operational matters and thus make compliance easy for those who are willing to comply - and would use the full force of law only against the evaders.

With the right approach, the issues would disappear over time. Also, the Customs should issue a comprehensive tax audit framework that outlines the audit process and the rights and responsibilities of the parties involved in the audit – namely the Customs officers, corporate accountants, business managers and tax agents. With that, hopefully businesses and tax advisors would feel that their role in the tax ecosystem are being appreciated. Moving forward, we should strengthen the self-policing characteristic of the tax by minimising requirement to seek approval from Customs and by developing checklist for self-check by the businesses and tax advisors – in respect of which one may cite Singapore's ASK[8] as an example.

The sooner this article gets outdated, the merrier the business community and tax advisors would be.

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[4] As defined in the Third Schedule of the GST Act
[5] Section 24 of the GST Act 2014
[6] See Regulation 46 of GST Regulations 2014 P.U. (A) 190/2014
[7] If GST on pre-commencement costs are not recoverable, they may form part of capital cost and thus lead to higher depreciation - and therefore the consumers may suffer the cascading effect.
[8] Assisted Self-help Kit issued by the authorities to assist with compliance

***Thenesh Kannaa** is a member of the Chartered Tax Institute of Malaysia. He is the co-founder and managing partner of Thenesh, Renga & Associates. He can be contacted at thenesh.kannaa@gmail.com*

A TAXING

Dr. Nakha Ratnam Somasundaram

This article looks briefly at the latest Public Ruling (PR) No 2/2015 issued by the Inland Revenue Board (IRB) on 19 July 2015 on the taxation of real estate investment trust (REIT) and property trust fund (PTF).

REIT/PTF is a trust fund, created and constituted when a trust deed is executed by the manager (usually a management company) and the trustees (who are the custodian of the unit trust) who hold units in trust for and on behalf of investors (the unitholders). It is a particular class of investment scheme with investments of at least 50% being placed in income generating real estate, meaning investments in land, building and shares in real estate companies. In recent years it had gained popularity on account of its ability to invest in a wide range of portfolios, minimising risk of investment and giving reasonable returns on investments for the ordinary man in the street.

An Islamic REIT/PTF is a trust similar in structure but distinguished by its management and operation mode based on Islamic principles.

For income tax purposes, a REIT/PTF is a trust body. Diagrammatically it can be illustrated as shown in **Chart 1.**

BASIS OF ASSESSMENT

The basis period (taxable period) for a year of assessment is the basis year (calendar year) or the financial period of the REIT/PTF as provided in Section 21A1 of the Income Tax Act 1967 (as amended).

REIT/PTF INCOME AND DEDUCTION OF EXPENSES

The ITA provides special concessionary treatment for the taxation

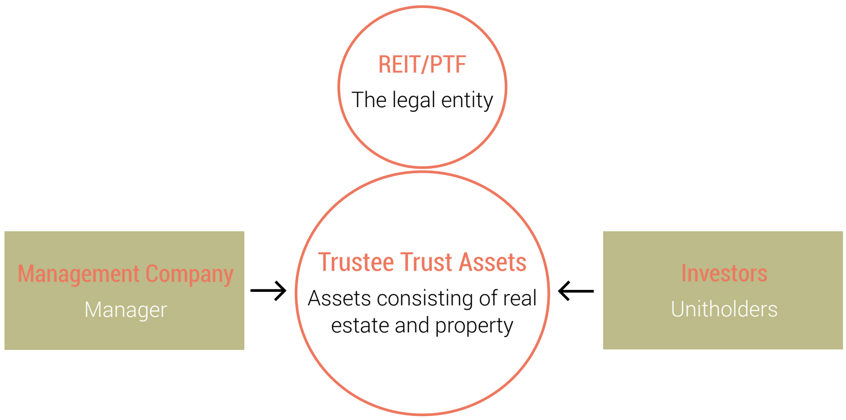

Chart 1 : REIT/PTF structural components

of the REIT/PTF income with a view to promoting Malaysia as a global financial centre. The main source of income for REIT/PTF is rental, but for income tax purposes, this is treated as a business source, with severe restrictions as to the deductibility of expenses and capital allowances.

The deductible expenses incurred wholly and exclusively in the production of gross income are limited to the gross income derived from the letting of the real property for the particular year of assessment. In case where that expenditure exceeds the gross income, the excess would not constitute a loss like in an ordinary business but would be disregarded for tax purposes – meaning it cannot be deducted against the aggregate income in the current year, nor can it be carried forward to be deducted against the statutory business income in the following and subsequent years of assessment.[2]

In the case of a building that has *not commenced* to produce any rental income, expenses relating to that building would be disallowed until such time it becomes available for rent.

The management fees incurred by REIT/PTF (for example the remuneration of the manager) are an allowable expense but not the fees paid to the trustee. However, the expenses incurred in *establishing* a REIT/PTF would be allowed a deduction as soon as rental income is derived. Such expenses include legal fees, valuation fees and consultancy fees incurred for establishing the REIT/PTF *prior* to an approval from the Securities Commission of Malaysia. However the deduction is subject to the limit of the gross income, any excess being disregarded as mentioned above.

REIT/PTF INCOME AND DEDUCTION OF CAPITAL ALLOWANCES

Since the rental income is treated as a business source, the REIT/PTF is entitled to claim capital allowance under Schedule 3 of the ITA in arriving at the statutory income.

Again, the claim of the allowance is restricted to the amount of the adjusted business income for the relevant year; and should there be an excess of capital allowance because there is no, or insufficient adjusted income to absorb the capital allowance, the excess of the capital allowance is disregarded – meaning it cannot be carried forward to be deducted against the adjusted business income in the following, and subsequent years of assessment.[3]

In a situation where the REIT/PTF disposes of an asset and balancing charge arises on account of the disposal, the charge cannot exceed the allowances previously allowed to the REIT/PTF, and the adjusted income would be increased by the amount of the balancing charge. The loss, if any (the excess of the expenses over the gross income) cannot be reduced by the amount of the balancing charge either.

INDUSTRIAL BUILDING ALLOWANCES

REIT/PTF can also claim industrial building allowances but such deduction would be allowed only against the rental income from that particular property; and if the industrial building is rented out, the tenant must use the building as an industrial building - otherwise, the REIT/PTF may not be able to claim an industrial building allowance.

The industrial building allowance is computed on the qualifying expenditure incurred on the construction of the industrial building (if constructed) or on the purchase price of the building (if it is purchased).

CONTROLLED TRANSFER OF INDUSTRIAL BUILDING

Under paragraph 38A, Schedule 3 of the ITA, control transfer provisions would apply to a company that disposes an industrial building to a REIT/PTF in which it holds *not less than 50%* of the residual profits of the REIT/PTF available for distribution, or *not less than 50%* of the residual assets available for distribution upon winding up.

The industrial building in these situations would be deemed to be disposed of for a sum equal to the residual expenditure on the first day

[1] *All sections referred to in this article refer to the Income Tax Act 1967 (as amended) unless otherwise stated.*
[2] *Section 63C(3)*
[3] *Section 63C(4)*

of the company's (i.e. the disposer's) final period. The effect of this deeming provision is that there will be no balancing allowance or balancing charge on the disposer.

As for the REIT/PTF it could claim industrial building allowance on the remaining value of the residual expenditure, assuming that the building is used as an industrial building by the REIT/PTF or if rented out, by its tenants.

CONTROLLED TRANSFER - RESIDUAL PROFITS AND RESIDUAL ASSETS TEST

The control position for the purposes of Section 38A is determined using two tests:

- The residual profit test; and
- The residual asset test

THE RESIDUAL PROFIT TEST

The residual profit is the net profit of the REIT/PTF, and is the profit *after* the deduction of interest payable to any licensed lending institutions or debenture holders. Where the REIT/PTF does not have any residual profit, a notional sum of RM100 is substituted as the residual profit for purposes of the residual profit test.

The applicable formula is:

$$\frac{\text{Number of issued units of a REIT/PTF held by a company}}{\text{Total number of issued units of a REIT/PTF held by unitholders}} \times \text{Residual profit available for distribution by a REIT/PTF}$$

THE RESIDUAL ASSET TEST

The residual asset is determined *after* a distribution is made to the creditors of the REIT/PTF in respect of loans from licensed lending institutions and debenture holders. As in the residual profit test, if the REIT/PTF does not have any residual assets, a notional amount of RM100 is substituted.

The applicable formula is:

$$\frac{\text{Number of issued units of a REIT/PTF held by a company}}{\text{Total number of issued units of a REIT/PTF held by unitholders}} \times \text{Residual asset available for distribution by a REIT/PTF}$$

Assuming using the formula a company is entitled to say 70% of the residual profit or residual asset in a REIT/PTF, and it disposed of an industrial building to the said REIT/PTF, then Para 38A of Schedule 3 applies and the company is deemed to have disposed of the industrial building for a sum equal to the residual expenditure on the first day of its final period – and no balancing charge or allowance would arise on the disposer.

The REIT/PTF would claim industrial building allowance on the remaining residual expenditure assuming the building is used as an industrial building either by the REIT/PTF or its tenant if rented out.

On the other hand, if using the formula, the percentage of residual profit or residual asset works out to be, say 30%, then Para 38A would not apply; and the disposer of the industrial building would be able to claim a balancing allowance or be subjected to a balancing charge on the disposal. In this instance, the REIT/PTF could claim industrial building allowance on the acquisition price of the industrial building.

SPECIAL TREATMENT FOR THE YEARS OF ASSESSMENT 2008-2012

The law during the years of assessment 2008-2012 *deemed* that when a company that had claimed an industrial building allowance disposes the building to a REIT/PTF, the disposal price is equal to the company's residual expenditure. Accordingly balancing allowance or balancing charge would not arise to the disposing company.

PLANT AND MACHINERY

The provision of Para 38A apply only to *industrial buildings* and not to plant and machinery. Thus in situations where an industrial building is disposed of together with all its plant and machinery, the disposal value need to be separately determined for the plant and machinery, and the balancing allowance or charge computed accordingly on those assets.

The value for the plant and machinery is the market value, or the net proceeds from the sale, whichever is greater.

HOTEL BUSINESS

Hotel building is treated as an industrial building if it is used by a

person solely for the purpose of a hotel *and* the hotel is registered with the Ministry of Tourism. Industrial building allowance could be claimed accordingly on the hotel building, and if the REIT/PTF lets it out, the tenant must use it for the purposes of carrying on a hotel business.

YEAR OF ASSESSMENT 2004 AND PRIOR YEARS - TRANSITIONAL ISSUES

The law on the taxation of REIT/PTF for the year of assessment 2004 and earlier years applied the provisions applicable to a unit trust. The transitional provisions therefore allow the REIT/PTF the continued application of those provisions. In other words any unabsorbed losses and unabsorbed capital allowances arising prior to the year of assessment 2005 can still be carried forward to the year of assessment 2005 and subsequent years of assessments until fully utilised.

EXEMPTION ON THE INCOME DISTRIBUTED BY A REIT/PTF

In the years of assessment 2005 and 2006 REIT/PTF was exempted on the income distributed to its unitholders; and the balance of income which is *not* distributed would be chargeable to income tax at the applicable corporate rate. The percentage of the total income distributed was not relevant then in determining the percentage of income that was to be exempted from tax.

However, from the year of assessment 2007, the law was amended to fully exempt a REIT/PTF if it distributed 90% or more of its total income to the unitholders in the relevant year of assessment. But should the distribution be less than 90% of the total income, the *whole* of the total income would be brought to charge.

CATEGORY OF UNITHOLDERS	YEARS 2009 - 2016
Foreign institutional investors	10%
Non-resident company	25%
Resident individuals	10%
Non-resident individuals	10%
Resident companies	0%

Table 1 : Deduction of withholding tax

It is possible for a REIT/PTF to make several distributions to its unitholders during a particular year and yet not achieve the 90% requirement and lose out on the exemption. In that case, it still has two months *after* the close of the accounts to make the balance of distribution necessary to reach the 90% requirement and enjoy the full exemption accorded under the law – a very thoughtful and kind gesture by the IRB, one must say.[4]

The total income of the REIT/PTF does not include any exempt income that may be received such as interest on savings certificate issued by the government, or single tier dividends declared by local resident companies (and, similarly expenses related to these exempt incomes are also ignored).

EXEMPTION AND TAX AUDIT

A REIT/PTF may be subject to a tax audit and the 90% benchmark for exemption may be affected if the audit results in an increase of the total income. If as a result of the audit adjustment, the amount distributed is now less than the requisite 90% of the qualifying level for exemption, the *whole* of the total income would now be subject to tax at the applicable corporate rate, with a penalty at the appropriate rate added on.[5]

ACCUMULATED INCOME, DISTRIBUTION AND TAX

Over a period of time, a REIT/PTF could accumulate its total income and these would be made up of two categories on account of the different law in force over the relevant period: (a) that which were exempted from tax at the REIT/PTF level; and (b) those that had been subjected to tax earlier.

The income that had been subjected to tax earlier (but were not distributed then) would not be subject to tax if they are distributed subsequently.

WITHHOLDING TAX

A REIT/PTF that distributes exempted income deemed to be derived from Malaysia to unitholders, other than a local resident company, must deduct withholding tax; and such tax is a final tax for the recipient unitholder.[6] Apparently it is the responsibility of the REIT/PTF to ascertain the residence status of the unitholder.[7]

For the period January 2009 to 31 December 2016, a REIT/PTF shall deduct withholding tax (and distribute only the balance) as shown in **Table 1:**

WITHHOLDING TAX AND ADMINISTRATIVE PROCEDURES

Where withholding tax has been deducted, the payer, i.e. the REIT/PTF must remit the amount withheld to the

[4] *See Para 11 of the Public Ruling No 2 of 2015.*
[5] *See example 13 of the Public Ruling No 2 of 2015.*
[6] *Section 109D*
[7] *See Para 11.3 of the Public Ruling No. 2 of 2015.*

Director-General within one month after the distribution of the income to the unitholder.

Failure to deduct and remit the withholding tax to the Director-General within the time limit would result in the amount which the REIT/PTF failed to pay being increased by 10%, and the tax and the increased amount shall be a debt due to the government.[8]

Record of the payments made to the unitholder must be submitted on a global basis (i.e. without the need to identify each and every unitholder) indicating only the details of the payer and particulars of the deduction made (e.g. period for which the distribution was made, date distribution was made, gross amount distributed etc.) using the prescribed form.[9]

A REIT/PTF must file its tax returns in Form TR within seven months from the close of the financial period.

CONCLUSION[10]

For those not familiar with the taxation of REIT/PTF, it may appear to be a confusing area to say the least, with strange treatment for the income earned (rent is a business income and yet not treated as business income), and stranger still, the treatment of expenses with 'this you can deduct, this you cannot deduct' approach, coupled with several hop, skip and jump law changes along the way, sometimes not knowing where you land (as seen in the several amendments and transitional provisions).

While it is an extremely attractive vehicle for investment offering full tax exemption, REIT/PTF can cause a boardroom tremor in the range of nine or more on the Richter scale for tax risk management! A high threshold of 90% for distribution of the total income (as computed for tax purposes) gives little margin for error in accounting or law, and should a tax audit flip over the tax status from 'no tax position' to a 'full tax position', with a punitive penalty to boot, then REIT/PTF can face a serious cash flow problem. Getting sound professional advice on tax matters (among others) therefore becomes most imperative.

But the task of taxing REIT/PTF is considerably elevated with this public ruling which replaces the Public Ruling No. 9 of 2012 issued on December 2012 taking into account the legislative changes in the Finance Act 2013 [Act 755], and including several examples and flow charts to assist both its officers and the taxpayers to work through the legal maze.[11]

***Dr. Nakha Ratnam Somasundaram** is a Tax Specialist with the Multimedia University, Cyberjaya Campus. He was the former State Director of the Inland Revenue Board, Kelantan, and Tax Consultant of Chua and Chu of Kota Bharu. He can be contacted at nakharatnam@yahoo.com*

8 Section 109D

9 The relevant form to be used is CP37E available on the IRB website.

10 The opinion expressed here is that of the writer's, and does not reflect that of the CTIM.

11 A Public Ruling is issued under Section 138A of the Income Tax Act 1967 (as amended) and is designed to assist the taxpaying public and the revenue officers to understand the Director-General's interpretation of the law, the policy, procedures and its application.

PNMB

MENERAJUI
INDUSTRI PERCETAKAN DIGITAL DAN KESELAMATAN MALAYSIA

PERCETAKAN NASIONAL MALAYSIA BERHAD (PNMB) ADALAH SYARIKAT MILIK PENUH MENTERI KEWANGAN DIPERBADANKAN DAN JUGA SALAH SEBUAH AGENSI DI BAWAH KEMENTERIAN DALAM NEGERI (KDN) YANG BUKAN HANYA MENUMPU KEPADA PERCETAKAN KONVENSIONAL MALAH TELAH MENTRANSFORMASIKAN PERNIAGAANNYA KEPADA PERCETAKAN DIGITAL DAN KESELAMATAN BAGI PIHAK KERAJAAN, SYARIKAT-SYARIKAT BERKAITAN KERAJAAN, SYARIKAT-SYARIKAT KORPORAT DAN LAIN-LAIN. SEBAGAI SEBUAH SYARIKAT PERCETAKAN DIGITAL DAN KESELAMATAN YANG TERULUNG DI MALAYSIA, PNMB MEMPUNYAI RANGKAIAN OPERASI YANG IBU PEJABATNYA TERLETAK DI KUALA LUMPUR DAN MEMPUNYAI 12 CAWANGAN DAN KEDAI DI SELURUH NEGARA.

Percetakan Nasional Malaysia Berhad (PNMB) merupakan pengeluar rasmi bagi khidmat mengeluarkan I-KAD yang berfungsi untuk membezakan pekerja asing yang didaftarkan secara sah oleh Kerajaan Malaysia. I-KAD dilengkapi dengan ciri-ciri keselamatan yang canggih seperti elemen biometrik dan kod bar serta kad cip berkeselamatan tinggi. Bagi memudahkan pihak keselamatan dan penguasaan, kad ini dikategorikan dengan warna yang berbeza mengikut sektor-sektor pekerjaan bagi pekerja-pekerja asing.

PNMB kini berdaya maju dengan perniagaan operasi percetakan data berubah (VDP), pengimejan digital dan juga percetakan keselamatan yang khususnya untuk dokumen-dokumen kerajaan yang bernilai tinggi.

Aktiviti perniagaan percetakan PNMB merangkumi seperti:

1. PERCETAKAN KESELAMATAN

- Percetakan Keselamatan yang dicetak di bawah PNMB bagi pihak kerajaan dan korporat antaranya mencetak laporan-laporan sulit, kertas undi, penyata gaji, saman, tiket dan baucer, sijil-sijil universiti serta transkrip dan laporan, jurnal dan borang-borang yang mempunyai tahap kerahsiaan tinggi dan perlu dilindungi.
- PNMB merupakan salah satu daripada syarikat yang menerima pengiktirafan daripada Kementerian Kewangan dan juga Ketua Pegawai Keselamatan Kerajaan Malaysia bagi Kod Bidang 221009 dan juga percetakan keselamatan.
- PNMB mempunyai kredibiliti untuk mencetak helaian-helaian yang mempunyai ciri-ciri keselamatan yang tinggi mengikut permintaan pelanggan dan membantu mengurangkan risiko pemalsuan dan penipuan dokumen-dokumen pelanggan seperti dokumen perjalanan antarabangsa dan sebagainya.

2. PERCETAKAN DATA BERUBAH *(VARIABLE DATA PRINTING)*

- Teknologi cetakan digital di mana elemen teks, grafik dan imej boleh berubah-ubah tanpa melambatkan proses percetakan secara keseluruhan.
- Percetakan VDP amat sesuai untuk mencetak surat, bil-bil, buku-buku cek, penyata-penyata bank, surat-surat persendirian, flyers atau dokumen dengan sumber data berbeza.

3. PENGIMEJAN DIGITAL *(DIGITAL IMAGING)*

- Pengimejan dokumen merupakan proses menukar dokumen dalam bentuk fizikal kepada format digital seperti PDF, GIF, JPEG atau TIFF.

4. PERCETAKAN AM

- Percetakan am terdiri dari percetakan yang melibatkan produk akhir seperti borang-borang kerajaan, majalah, buku-buku dan juga pelbagai hasil cetakan lain.

PNMB berhasrat untuk menjadi sebuah syarikat percetakan yang komprehensif dari segi perkhidmatan yang ditawarkan di samping memberikan khidmat dan juga produk yang berkualiti tinggi.

PERCETAKAN NASIONAL MALAYSIA BERHAD
Jalan Chan Sow Lin, 50554 Kuala Lumpur, MALAYSIA
T: +603-9236 6894 F: +603-9222 4773 E: cservice@printnasional.com.my
www.printnasional.com.my

ANTI-TAX AVOIDANCE MEASURES

IN THE UNITED KINGDOM

Dr. Kuek Tee Say

Tax avoidance is a serious problem in the United Kingdom (UK).[1] Although it is difficult to quantify the amount of tax loss resulting from tax avoidance, the government estimated the loss from tax avoidance to be **£3.1 billon** for **2012-13.**[2] The Public and Commercial Union estimates that tax avoidance cost the UK economy **£19.1 billion** in **2013-14.**[3] The UK government uses various methods to tackle tax avoidance such as judicial, legislative, and administrative measures.

Until recently, the UK has had no broad anti-avoidance provision for income tax, but relied on judicial anti-avoidance measures. The UK government has also relied on specific (targeted) anti-avoidance provisions to deal with specific abuses of tax avoidance. If a particular form of avoidance of tax is found to be unacceptable, then it is stopped by a specific legislative provision. As such, the British approach has been described as the 'hole and plug' approach. However, with effect from 1/4/2013, a narrow form of a general anti-avoidance rule was introduced.[4]

The various approaches to address tax avoidance are discussed below.

JUDICIAL APPROACH

Cases on tax avoidance have constituted one of the major areas of tax litigation in the UK and the Courts have developed judicial doctrines to curtail tax avoidance. Judicial anti-avoidance doctrines fill the void left either by the legislature or by the words of the tax act. The UK Courts have developed their judicial anti-avoidance doctrine gradually over the years, in tandem with the growing complexity of tax law. The traditional attitude of the UK Courts to statutory interpretation has probably created conditions that promote avoidance schemes, very much like in Australia. In turn, the

formalist and literalist approaches have inevitably influenced the framing of tax law.[5] The traditional view is that legislation should state clearly the circumstances in which tax liability arises and it is not for the Revenue authorities to determine those circumstances. Under this view, judges are reluctant to use statutory purpose to interpret statutes; they prefer to follow the text closely and are more sympathetic towards taxpayers. With the literalist approach to statutory construction, many artificial and tax-driven transactions are accepted at their face value.

The development of a judicial anti-tax avoidance doctrine in the conflict between literalism and statutory purpose has been examined in the UK Courts and the judicial anti-tax avoidance jurisprudence is still evolving. There are three phases in the evolution of English judicial attitudes towards anti-tax avoidance.[6] The first phase, the combination of literalism and formalism (which was pro-taxpayer), was regarded as approved by the famous Westminster case which prevailed during much of the 20th century.[7] The generally accepted view of the Duke of Westminster's case was that each matter or step had to be considered in isolation and that other matters could not be considered. The assumption after this case was that form took precedence over substance. Most likely, it was concern for the taxpayer that promoted literalism. This case indicated the high-water mark in favour of the taxpayer and remained very influential over many years. Based on the principle of this case, many highly technical schemes were marketed in the 1970s when the highest marginal rate on investment income was 98%.

In the second phase, the pro-taxpayer preference was weakened in two types of cases. These cases were those interpreting statutory language as implying a requirement that the taxpayer must have something more than a tax avoidance purpose and those dealing with statutory provisions aimed specifically at tax avoidance. After the Westminster case, the Law Lords took a negative view of tax avoidance as being unpatriotic,[8] and this was probably due to War World II where taxes were partly used to finance the war. Lord Simon stated that although taxpayers had a legal right to avoid "sharing in the appropriate burden of British taxation," there was "no reason why their efforts…should be regarded as a commendable exercise in ingenuity or as a discharge of the duties of good citizenship."[9] Further, he said that tax avoidance by one taxpayer increased the burden on others.

The third phase involved the Ramsay/Burmah/Dawson trilogy of cases[10] that appear to mark the

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1 *This article focuses on tax avoidance and not tax evasion.*

2 *HM Revenue & Customs, "Measuring_Tax_Gaps_2014" (HMRC Publications) at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364009/4382 viewed on 30 July 2015.*

3 *Finbarr Bermingham, UK Tax Evasion Widens on HMRC Cuts and Lack of Avoidance Law, (international Business Times) at http://www.ibtimes.co.uk/uk-tax-gap-widens-austerity-lack-avoidance-law-1466606 viewed on 30 July 2015.*

4 *Finance Act 2013, ss 206-15.*

5 *Tax Law Review Committee, Avoidance, IFS commentary no. 64, 1997, n. 4. at 9.*

6 *See William D. Popkin, "Judicial Anti-Tax Avoidance Doctrine in England: A United States Perspective", British Tax Review (1991), 283-289.*

7 *IRC v Duke of Westminster [1936] AC 1. A majority of the House of Lords held that the Duke should be taxed according to the legal form of the transactions, and not according to their economic substance.*

8 *Popkin, n. 166 at 291.*

9 *Latilla v Inland Revenue Department [1943] 1 All E.R. 265, 266 (H.L).*

10 *W. T. Ramsay Ltd. v. Inland Revenue Commissioners, Eilbeck (Inspector of Taxes) v. Rawling [1982] A.C. 300, 1982] S.T.C. 30, H.L.(Sc.), IRC v Burmah Oil Co. Ltd [1982] Brit. Tax Cases 56, Furniss v Dawson [1984] 55 TC 3240.*

beginning of a judicial anti-tax avoidance principle. In the 1970s, a new form of tax avoidance emerged. Tax avoidance became big business and schemes were commercially marketed. The purpose of many of the avoidance schemes was to create an allowable loss which could be set off against accrued capital gain. These were not conventional tax-planning schemes but were aimed at manufacturing a loss, which could be used to offset a tax liability. These schemes were often circular schemes in which transactions were contracted and payments and documents made legally. However, a taxpayer would be back to his original position apart from the payment of fees to the promoters of the scheme. The Westminster case was concerned with the tax consequences of a single transaction but in subsequent cases, the Courts began to limit the ambit within which this principle could be applied in relation to more sophisticated and artificial arrangements to avoid tax. After these cases came the Craven case,[11] where the majority of the Law Lords decided that the Courts had gone too far. Recent cases have emphasised the need of the judiciary to look to the purpose of a statute rather than the more mechanistic view as done previously. Cases such as *MacNiven v Westmoreland*[12] *and Barclays Mercantile Business Finance Ltd v Mawson*[13] stress the need to apply the parliamentary purpose of the relevant legislation to the reality of the transactions undertaken by the taxpayer.[14]

The conclusion from the cases considered is that the Courts have come to adopt a purposive approach to interpreting coherent sets of statutory rules. However, there are difficulties encountered in applying current legislation to tax avoidance where the law is considerably complex and uncertain. The Courts in the Bank of Ireland case[15] were clear as to what the purpose of the repo/manufactured dividend rules was but did not counter what was truly a tax avoidance scheme. There was no scope to insert terms to counteract a scheme when the legislation was clear and unambiguous. On the other hand, in the Limitgood and Prizedome case[16], the court could counteract the avoidance by taxpayers when the purpose of the provisions was clear and to interpret them in accordance with the purpose of the provisions. The approach of determining the purpose of statutory provisions and applying them accordingly is increasingly being adopted by common law jurisdictions.

LEGISLATIVE APPROACH

The other measure used in the UK to counteract tax-avoidance is the legislative approach. Generally, the UK government prefers specific (targeted) anti-avoidance provisions to deal with specific abuses. The UK government has introduced statutory anti-avoidance provisions for centuries and long, detailed tax legislation with wide anti-avoidance provisions is commonly found in the UK tax legislation. Unlike the civil law systems, the UK does not have a tradition of a Code. The statute is interpreted in detail in various tax cases by the judges who do not lay down profound principles but address the particular issue before the Court, and the response of Parliament is to introduce long, detailed legislation in an attempt

[11] Craven v White [1988] STC 476 HL.
[12] 2004 UKHL 6.
[13] 2004 UKHL 51.
[14] Bowler, n. 53 at 29.
[15] [2008] EWCA Civ 58.
[16] [2008] STC 361.

to cover every possibility of tax avoidance. These provisions will often take immediate effect after their enactment although there are instances where the specific anti-avoidance provisions are retrospective in operation.

Legislation used to counteract tax avoidance falls into two groups. The first is legislation that changes the way the tax system deals with a particular transaction or arrangement.[17] System rule change involves amending the rules applicable to relevant transactions and arrangements from time to time. Essentially this involves the way in which the tax system deals with a particular transaction by addressing the problems on a piecemeal basis rather than addressing whether the fundamentals underlying the particular area need to be changed. Piecemeal changes do not deal with the underlying issues and result in a complex system with loopholes, providing opportunities for taxpayers to avoid tax. The reason why this approach is not effective at countering tax avoidance is that the legislation is reactive rather than proactive and hasty changes are made with little consultation. Examples of such instances can be seen in the changing legislations on taxation of employee shares and securities and the changes to stamp duty arising in connection with the introduction of stamp duty land tax. It has been found that this approach is not effective at countering tax avoidance as the government had hoped and also has not been an efficient process for taxpayers as the standard of legislation is not as expected.

The second group is legislation that introduces specific anti-avoidance rules.[18] There are major provisions that have been enacted in attempts to deal with specific instances of tax avoidance in the UK. In many cases, they were designed

Some examples of specific anti-avoidance provisions are set out below:

(i) *Transactions in Securities*- Tax Act 1988 Sections 703-709 (originally enacted in Finance Act 1960). Bond washing and dividend stripping - various provisions under Sections 710 – 728 deal with these problems under this Act.

(ii) *Transfer of assets overseas*- Originally enacted in Finance Act 1936, these provisions were amended in 1981 as a result of *Vestey v IRC*[19] and again in 1997, partly as a result of the Willoughby[20] litigation.

(iii) *Artificial transactions in land*- Tax Act 1988 Section 776 statutory provisions also regulate sale and leaseback transactions (Tax Act 1988 Sections 779 – 784).

(iv) *Sale of income derived from personal activities*- Tax Act 1988 Section 775 prevents the conversion of taxable income into capital gains subject to capital gains tax.

(v) *The use of tax losses*- Tax Act 1988 Section 768 imposes restrictions upon the purchase of tax loss companies.

to prevent the conversion of income profits into capital gains, which are taxed at a lower rate.

One of the reasons for the increase in specific anti-avoidance measures in the UK lies in its adoption of a disclosure regime (see details below) whereby promoters and users of potentially abusive tax avoidance schemes are required to disclose details of those schemes when they are first available for implementation. This boost to real time intelligence has led directly to successive targeted legislative changes designed to negate the effects of unacceptable tax planning.

The UK's first general anti-abuse rule (GAAR) was introduced on 1 April 2013. The declared aim of the GAAR is simply to create a default position whereby any deemed 'abusive'[21] tax planning scheme can be reversed even if not technically in breach of any specific legislation or HMRC rules. Its purpose is to attack the aggressive tax planning schemes that professional tax planners and accountants would never have recommended in the first place. In the GAAR Report, Graham Aaronson QC concluded that a 'broad spectrum' anti-avoidance rule would undermine business confidence and would not be beneficial for the UK tax system, but recommended the introduction of a rule targeted at abusive arrangements (i.e. a narrowly focused GAAR). HMRC have recently issued guidance notes (which has been approved with effect from 15 April 2013 by the GAAR Advisory Panel) indicating how they will apply the GAAR. The GAAR is not an

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[17] *Bowler, n. 53 at 23.*

[18] *Id.*

[19] *(1980) STC 10.*

[20] *CIR v Willoughby [1997] 4 All ER 65*

[21] *See definition in Section 207(2) of Finance Act 2013 Part 5.*

extension to the normal principles of purposive interpretation, but rather is a separate rule that can apply where the relevant provisions themselves would not prevent an abusive tax result from arising. As this piece of legislation is relatively new, it will be some time before it can be determined whether it is effective in countering abusive tax planning (which is an attack on the integrity of the UK's tax regime) as well as reducing or simplifying the existing body of detailed anti-avoidance rules.

ADMINISTRATIVE APPROACH

The UK government has clearly indicated that it proposes a new approach to tackling tax avoidance by emphasising on strategic measures without undermining the predictability and stability of the tax system.[22] It focuses on three core elements, i.e. preventing avoidance at the outset where possible, detecting it early where it persists and countering it effectively through challenge by HMRC. To encourage greater transparency of the transactions carried out by taxpayers and to restrict tax avoidance activities, the Revenue authorities have implemented the Varney Review.[23] The purpose of this programme is to determine ways to improve the relationship between HMRC and large businesses. The 2006 Review of Links with Large Business focused on outcomes designed to improve the attractiveness of the UK business tax administrative environment. Under the "Risk Rating Approach", companies are allocated a risk rating by the Revenue authorities, which decides how much intervention the company can expect in its tax affairs and the nature of the working relationship between HMRC and the company. Further, the UK government has required senior accounting officers of major companies to certify personally that adequate systems to prepare accurate tax computations are in place in their organisations. In case of default, the penalty imposed would be a personal liability of the senior accounting officer.

Further, rules requiring the disclosures of tax avoidance schemes (DOTAS) substantially reduce the scope for tax avoidance.[24]

As mentioned above, one of the reasons for the increase in specific anti-avoidance measures in the UK lies in its adoption of a disclosure regime whereby, with effect from 1 August 2004, promoters and users of potentially abusive tax avoidance schemes are required to disclose details of those schemes when they are first available for implementation. Failure to disclose a tax avoidance scheme to the HMRC will attract penalties.[25] Since the rules requiring the disclosure of tax avoidance arrangements to HMRC were introduced, there have been approximately 14,000 such schemes. In some cases, the disclosure obligations are imposed on persons entering into transactions under such schemes. The administrative measures adopted by the UK are indeed very robust (especially with the real-time intelligence through the disclosure rules) and proactive.

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[22] *Her Majesty Revenue & Customs, "Tackling Tax Avoidance" (HMRC Publications) at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197112/Tackling_tax_avoidance.pdf viewed on 30 July 2015.*

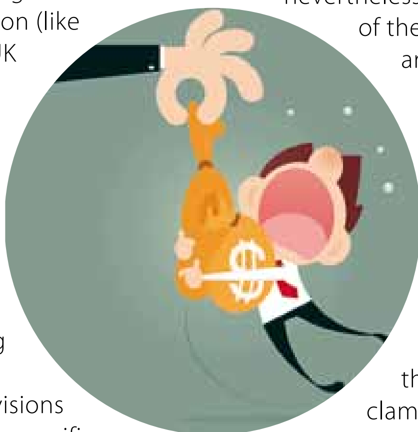
[23] *For the HMRC publications setting out the details of this programme see Review of Links with Large Business (HMRC, November 2006) ('Varney Report'); Making a Difference: Delivering the Review of Links with Large Business (HMRC, March 2007) ('Varney Delivery Plan'); HMRC Approach to Compliance Risk Management for Large Business (HMRC, March 2007) ('Risk Management Report').*

[24] *Her Majesty Revenue & Customs, "Disclosure of tax avoidance schemes: overview" (HMRC Publications) at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341960/dotas-guidance.pdf viewed on 30 July 2015.*

[25] *An initial penalty of £5,000 and penalties of up to £600 per day for continued failure to disclose.*

CONCLUSION

As discussed above, the UK government has adopted a variety of approaches to counter tax avoidance. In the absence of a broad spectrum general anti-avoidance provision (like in Malaysia) the UK has traditionally relied on judicial anti-avoidance doctrines. For this reason, the judiciary in UK takes a very proactive role in countering tax avoidance. Legislatively, provisions range from highly specific tax avoidance provisions to more general approaches. In the budgets of 2008 and 2009, the UK government introduced anti-avoidance measures, which were of a routine nature blocking identified loopholes in the legislation. Specific anti-avoidance provisions are an essential part of UK tax legislation, nevertheless from the experience of the UK, although they are effective against tax avoidance they also cause the complexity of the tax legislation. A General Anti-Abuse Rule was introduced for the first time into UK tax law by the Finance Act 2013, but it is uncertain whether the GAAR will succeed in clamping down abusive tax avoidance. The criticism is that the UK should tackle tax avoidance and not just tax abuse.



Administratively, the UK government has been very active in ensuring that their administrative machinery is well positioned to identify and counter unacceptable tax activities, and this can be seen especially in their disclosure requirements. The HMRC has indicated that they will continue to tackle tax avoidance using existing anti-avoidance methods as well as the GAAR, where appropriate.[26]

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[26] *Her Majesty Revenue & Customs, Dealing with HMRC – guidance (HMRC Publications) at <https://www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules> viewed on 30 July 2015.*

***Dr. Kuek Tee Say** is a Senior Lecturer at Taylor's Law School, Taylor's University. He can be contacted at TeeSay.Kuek@taylors.edu.my*

OECD's RECOMMENDATIONS ON REDUCING TAX COMPLIANCE COSTS IN ORDER TO ALLOW SMEs TO EMERGE AND GROW

Dr. Gunasegaran Muthusamy

Tax laws are applicable to businesses of all sizes and to all types of economic transactions. Consequently, fixed tax compliance costs, comprising of amount of time and resources needed in recording transactions, maintaining financial and tax accounts, calculating tax liabilities, making tax payments to government, and undertaking other compliance requirements under a self-assessment system are particularly more burdensome for small businesses. In Europe, SMEs have a ratio between tax related compliance costs and paid taxes of 30.9% whereas large companies have a ratio of only 1.9%[1]. Given this disproportionate regulatory scenario, significant steps taken to reduce tax compliance costs could considerably encourage the emergence and growth of SMEs. This summary draws together the various recommendations made by the OECD that address ways in which the burden on SMEs can be reduced.

Insights offered towards reducing SMEs' tax compliance costs by the **Right from the Start[2] note along with the OECD's Taxation of SMEs[3], Understanding, Influencing Taxpayers' Compliance Behaviour[4], Together for Better Outcomes[5] and Study into the Role of Tax Intermediaries[6]** notes are compiled in this summary. The OECD's 2012 **Right from the Start** note presents a synthesis of applicable strategies aimed to cost-effectively support compliance in the SME segment. The key emphasis of **Right from the Start** is to enable revenue bodies to create an environment which supports SMEs compliant behaviour. The approach is defined in terms of four dimensions that are considered central to the compliance environment: addressing compliance in real-time and upfront; focusing on end-to-end processes of the taxpayer; making it easy to comply; and actively involving and engaging taxpayers, their representatives and other stakeholders, in order to achieve a better understanding of the taxpayer's perspective. As the main objective of the initiatives are to increase tax compliance, most of the strategies are also directly geared towards reducing the tax compliance costs of SMEs. Thus, these four dimensions are utilised to present the summary of recommendations from all the reviewed papers.

ADDRESSING COMPLIANCE IN REAL-TIME AND UPFRONT

The **Right from the Start** note proposes that the first dimension is to monitor and address taxpayer processes in real-time and upfront. Revenue bodies tend to focus on working reactively with tax returns as their starting point. Instead, taxpayers' problems could be addressed and events influenced as and when they occur. This approach requires directing attention to the prefiling stage, proactively targeting high risk areas and segments and identifying key events in the life cycle of businesses to provide timely assistance to SMEs. This can be done by using a range of tools like legislation, co-operation with stakeholders, the application of new technologies, use of third-party data, education and support initiatives, field inspections, initiatives designed to influence social norms and other tailor-made interventions.

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1 'Final Report of the Expert Group: Simplified Tax Compliance Procedures for SMEs', European Commission, June 2007.

2 'Information Notes on Right from the Start: Influencing the Compliance Environment for Small and Medium Enterprises', OECD, January 2012.

3 'Taxation of SMEs: Key Issues and Policy Considerations', OECD, October 2009.

4 'Information Notes on Understanding and Influencing Taxpayers' Compliance Behaviour', OECD, November 2010

5 'Together for Better Outcomes: Engaging and Involving SME Taxpayers and Stakeholders', OECD, August 2013.

6 'Study into the Role of Tax Intermediaries', OECD, 2008

Thus, the recommendation is that as a starting point, revenue bodies could determine and monitor key defining moments and events in which these tools could be utilised to assist SMEs and effectively reduce their tax compliance costs. Successful implementation and evaluation of addressing compliance in real-time and upfront initiative include examples from Australia and Singapore.

The Small Business Assistance Program offered by the ATO include intensive one-to-one business assistance visits; one-to-many seminars and workshops; outbound telephone calls to new-to-business, new-to-employing, and newly incorporated taxpayers; and print and online information products and tools. The programme was at first directed at start-up businesses but has evolved to take into account all stages of the business lifecycle: business intenders, new to business, established, growing, and ceasing. The implementation of the programme revealed that stakeholders should ideally be involved from the early stages of the process when outcomes and goals are established; that assistance products and services should for optimum effects be targeted at businesses early in their business lifecycle; and that relevant online content should be developed early in the process to provide support to other channels of interaction like face-to-face meetings and phone conversations.

An outreach programme in Singapore aimed to assist newly incorporated companies by educating them on their tax obligations as well as to inculcate a voluntary compliance mindset during their infancy. A pilot run was done in 2010 for which a group of 113 newly incorporated companies was selected. Feedback from the pilot run show that almost 90% of taxpayers contacted found the outreach assistance useful and felt that it helped them become better informed about tax obligations and e-services. This example demonstrates that early and direct education to support businesses in their tax processes is an effective tool, which has the potential of saving substantial resources both in the revenue body and in the businesses.

FOCUSING ON END-TO-END PROCESSES

Focusing on **End-to-end processes** (from transaction to tax return and payment) from taxpayer viewpoint is a comprehensive approach to facilitate SMEs tax compliance. This approach includes building understanding through feedback from compliance activities, adapting or simplifying legislation in order to limit scope for error and/or allow for cost effective handling of error, addressing tax requirements as part of all legal obligations for business on a whole-of-government basis and introducing or extending obligations or requirements for book-keeping and accounts to prevent error and diminish failure. In line with these, initiatives that would greatly reduce SMEs compliance costs is the trimming of tax processes, the provision of end-to-end technological solutions and the simplification of tax legislation.

Lean production implies a trimmed production practice whereby the expenditure of resources for any other goal than the creation of value for the customer is considered wasteful and thus a target for elimination. The trimming of tax processes should strive for efficient and lean processes that are also reliable and difficult to manipulate. The use of standards could make it easier to build and support such processes. An example is the introduction of **Standard Business Reporting** (SBR) for tax purposes. Tax returns based on SBR use a standard taxonomy, tax return is extracted automatically from the bookkeeping records and data are subjected to quality checks. This procedure adds quality to the tax return. The technological **End-to-end solutions** is integral in reducing SME tax compliance costs. For example to adhere to SBR standards, software providers develop simple and easy to use products that can easily generate tax reports. The SMEs benefit in terms of more straightforward administrative procedures, increased

costs. Implementation of this initiative include examples from the Netherlands and France.

The Netherlands' Tax and Customs Administration is working with providers of on-demand accounting software to develop standards and promote **End-to-end solutions** to enhance certainty, reliability and integrity of data. The aim is to gradually develop a highly automated online administrative environment offering convenience, certainty and security to businesses while also reassuring the tax administration and other stakeholders of the integrity and reliability of the bookkeeping. In France, data exchange standards and standard business reporting have been designed and approved for the electronic filing of the annual profit tax return, allowing data for 70% of businesses to be extracted directly from the electronic bookkeeping records through an online data exchange solution. A next stage could make it possible for enterprises to provide bookkeeping records through a secure platform accessible by all public entities so that data would have to be provided only once. This would involve significant gains in terms of reducing the administrative burden, as businesses may at present be required to report the same information to various public entities six to nine times a year.

Simplification of legislation would also facilitate the provision of **End-to-end solutions**. OECD's SME Tax Compliance and Simplification section in the Taxation of SMEs note recommends VAT simplification provisions and income tax simplification provisions. The main options in the simplification of VAT include introducing a VAT collection threshold; using a single VAT rate; allowing a simplified VAT remittance calculation for small firms, allowing cash accounting and allowing less frequent filing of VAT returns.

The waiving of VAT collection for firms with small turnover has been proven as an effective mean to reduce tax compliance costs in both developed and developing countries. Compliance costs could also be reduced on average by roughly 30 per cent if a single rate system replaced a multiple rate system according to a study in Sweden. However, given the difficulties in introducing a single rate VAT system, compliance costs may be lowered by allowing small firms with turnover above a collection threshold, to calculate VAT payments to government under a simplified presumptive approach. For example, the **Flat rate scheme** (FRS) in the U.K. allows eligible small businesses to calculate the amount of VAT to pay to government as a percentage of their VAT-inclusive turnover. Similar methods have been successfully implemented in Canada, Japan and Poland.

Cash accounting for small firms is a simplification method where VAT is paid on sales only when the cash is received and similarly, input tax credits are claimed only when cash is paid on a purchase. Cash accounting systems targeted at SMEs, based on daily cash entries of payments and receipts, may significantly reduce compliance costs. For example, businesses in Australia with a turnover of $783,600 or less may account for VAT on a cash basis, with other simplified accounting methods available for qualifying businesses with a turnover of $1,567,200 or less.

The final method, less frequent filing requirements for small firms reduces tax compliance costs, while at the same time provides firms with a cash flow advantage. For example, Austria and Sweden allow an annual rather than monthly filing for firms with turnover under $129,990 and $143,200 respectively. In Norway, a request for an annual declaration may be made for businesses with turnover under $157,030, while in the UK, an annual declaration is available for businesses with taxable turnover of up to $2.6 million. Voluntary VAT registrants in Australia have the option of filing (reporting and paying) VAT on an annual basis.

Income tax simplification provisions include three methods: replacement of regular income tax with a presumptive tax, simplified financial accounting for small firms and less frequent filing for small firms. Á replacement of regular income tax with a presumptive tax may ease the transition of firms into a country's regular income tax regime when the small business turnover threshold is crossed and thereby encourage continued participation in the formal economy. The introduction of a simple replacement tax that has insignificant compliance and administration costs would encourage the emergence and growth of these small businesses. For example, in Austria, presumptive tax to unincorporated businesses, a simplified regime, applies to businesses under a turnover threshold that varies by business sector, with the general threshold being $288,578.29

Simplified financial accounting for small firms determines taxable profit based on entries of revenues actually received and costs actually incurred. This method could significantly reduce SMEs compliance costs. For example, in Greece, simplified accounting rules and procedures apply to businesses with annual turnover thresholds under €300,000 for trading companies and €150,000 for services companies.

The final simplification measure is less frequent filing requirements

for small firms. This approach reduces tax compliance costs, while at the same time providing firms with a cash flow advantage. Cash flow savings realised by less frequent payments of tax may be used to help defray remaining compliance costs. For example, under the PAYG instalments system in Australia, most taxpayers pay income tax instalments quarterly. As from 1 July 2007, small business owners with turnover of less than $1.6m have access to make annual instalments.

MAKING IT EASY TO COMPLY

The key driver for revenue bodies when designing and building registration, filing and payment processes is to make it easy for taxpayers to comply. Making it easy to comply also focuses to enhance taxpayer services and educate taxpayers about the tax system and their rights and obligations. The core of the initiatives are on the following areas: revisiting internal processes, procedures, systems, interfaces, etc. in order to make it easy to comply and/or prevent errors; developing and expanding web facilities and interactive online tools for filing and educational purposes; and providing support throughout the life cycle through tailored education, information and guidance to taxpayers or relevant third parties (bookkeepers, accountants, advisors or others).

All revenue bodies could engage in efforts to make it easy to comply by improving processes, procedures and providing products that are easy to understand and by providing tailored and timely information and support. The most promising way to make it easier to comply in a cost-effective way is through information channel management and steering taxpayers towards online information and facilities. This area is still developing and it can reasonably be expected that over the next years innovative opportunities will arise and new best practices will continue to emerge. The recommendation is for revenue bodies to invest time and effort towards this endeavour as it could significantly reduce SMEs' compliance costs. Some examples of this initiative are from New Zealand, Japan, Australia, Chile and Canada.

The Inland Revenue (IR) in New Zealand set out to develop Tools for businesses (TFB), a tool making it easy for SME customers to quickly find information and guidance they require. Common misconceptions are covered quickly, and FAQs are available with quick answers and references to more help and information. There are also a range of different interactive elements and resources (such as

Excel spreadsheets) that have been created exclusively for the TFB. Feedback shows that small business owners find the tool easier and more helpful than the current IR website. Various briefings are held in tax offices in Japan in order to help corporations and sole proprietors better understand the tax procedures and tax reforms. Each initiative includes new businesses in its target group. For sole proprietors: briefings are held on how to prepare financial statements and implement guidance on bookkeeping in order to help taxpayers better understand the importance of keeping books and records.

The Australian Taxation Office (ATO) developed a suite of electronic tools (downloadable from the ATO website) to support new to business taxpayers. These products were developed through consultation and were co-designed with small businesses, including using simulation centre technology. This ensured that products were relevant, useable and targeted at the risks and issues of small business. The provision of free self help tools gives small businesses an ability to understand what is required without the need to necessarily engage a tax advisor. The **managing taxpayers' lifecycle by internet** in Chile initiative aims to reduce tax compliance costs and facilitate compliance by providing online information and guidance organised around main events in the business life cycle. The elements considered are: business start-up and registration; issuing of electronic documents; electronic ledgers; sworn statements, monthly and annual payments; modification or updating of taxpayer information; and close of business. The Canada Revenue Agency has developed several online tools to assist businesses in remitting payments accurately. One example is the payroll deductions online calculator, which is aiding businesses in calculating pay-cheques for their employees and remitting their deductions. The tool was first intended for use by payroll professionals. In order to reach a broader taxpayer segment, however, the tool was redesigned to be useable by first-time payroll users and the SME segment.

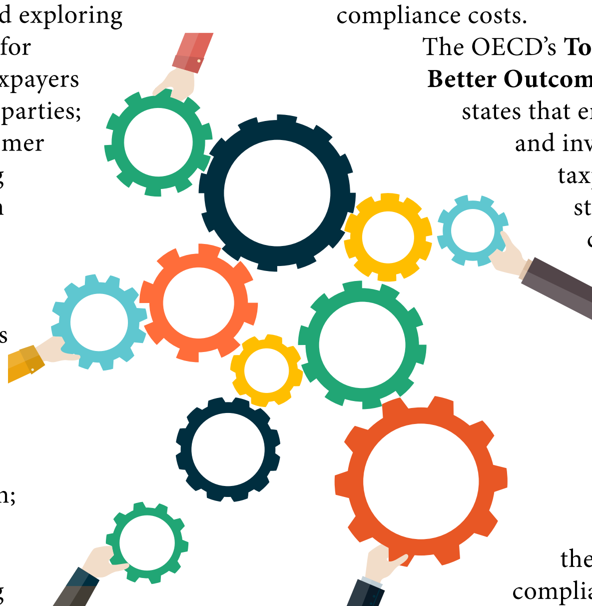
The OECD's **Understanding and Influencing Taxpayers' Compliance Behaviour** note states that based on research findings, the factors and drivers behind taxpayer compliance behaviour can be categorised into five main categories, one of which is **'Opportunity to comply'.** The findings suggest that since tax law is complex, it should be made very clear what is expected and made very easy for people to act accordingly. Since compliance costs, monetary and in terms of time and effort, can create barriers for tax compliance, the practical implications rest in increasing opportunities for compliance by reducing tax compliance costs. Some avenues recommended for making it easy to comply are communicating in plain (non-legal) language, easy accessible websites, easy tax forms, more automatic tax, accessibility of personal relevant information, and simplification of the tax system and reduction of rules. The recommendations provided are in line with the recommendations suggested by the **Right from the Start** note.

ENGAGING AND INVOLVING TAXPAYERS AND STAKEHOLDERS

The final dimension requires

revenue bodies to have adequate information about taxpayers' perceptions, processes and procedures. Revenue bodies must first consult with representatives of industry and stakeholders and conduct customer satisfaction and attitude research among different groups of taxpayers. Then, the changes and improvements of the compliance environment have to be designed with the involvement of taxpayers or other stakeholders. The basic level of involvement is consultation, followed by co-operation and the final level is co-design: involving taxpayers directly in the development and implementation of initiatives to create a pro-compliance environment and the tax system.

Some distinct ways of involving and engaging taxpayers include co-operating and co-designing with taxpayers or relevant third parties in order to improve procedures, systems, interfaces or control chains; identifying and exploring opportunities for influencing taxpayers through third parties; building customer understanding by engaging in dialogue with taxpayers or their representatives including formal or informal mechanisms of consultation; and building customer understanding through research conducted by the revenue body or partners or by taking onboard knowledge from the scientific community. Engaging and involving taxpayers provides opportunities for taxpayers to voice their concerns and complaints before processes and procedures are in place or implemented. The main objective should be to effectively assist SMEs, particularly towards reducing their compliance costs.



The OECD's **Together for Better Outcomes** note states that engaging and involving taxpayers and stakeholders could not only improve services rendered by revenue bodies but at the same time reduce the taxpayers' compliance costs and promote a more level playing field for SMEs. This in turn could create the circumstances for growth and a smooth operation of the economy. The Engagement and Involvement (E&I) initiative has been implemented in various countries including Australia, Chile and New Zealand. The ATO developed a suite of digital tools to support SMEs in managing their tax affairs with input and feedback from business owners and the accountancy profession. For example, a tool to help calculate capital gains tax liability was developed through a series of facilitated sessions with business owners and tax practitioners. Feedback whilst prototyping the solutions showed that most business owners would involve a tax practitioner. This led to the tool being tailored more to the needs of tax practitioners based on findings from these sessions.

The Chilean Tax Service collaborated with two major industry bodies to develop a web portal to strengthen accounting and tax compliance among small businesses. The collaboration with industry bodies helped tailor the product to better meet the needs and expectations of the target group. It also provided the revenue body with leverage in promoting the portal, as the trade confederations provide instructors and organise training

seminars. The New Zealand Inland Revenue collaborated with software developers and tax agents to develop a web solution facilitating the sharing of data between SMEs and their tax agents. The resulting Tax Agents B2B Web Service provides tax agents with a view of their client's transactions for all linked tax types (except PAYE and related taxes) on a daily basis and allows for the transfer of this data into their agency software.

The SME Tax Compliance and Simplification section in the **Taxation of SMEs** note states that there is a growing recognition that the different stakeholders in the tax chain have shared interests. The note recommends the need to identify these shared interests and set shared agendas for co-operation so that taxpayers will be able to save worries, time and other resources. For example, since tax is just one of the numerous obligations imposed by the government on SMEs, revenue bodies could coordinate their requirements, procedures and compliance strategies with other government agencies.

The Study into the Role of Tax Intermediaries note explores the relationship between revenue bodies, taxpayers and tax intermediaries. The key finding is that co-operation based on trust and mutual understanding offers significant benefits to all parties involved. These benefits include earlier certainty, smoother case resolution and lower compliance costs for businesses.

The **Together for Better Outcomes** note acknowledges that most revenue bodies have fairly consolidated mechanisms for consultation and collaboration with SME industry bodies and intermediaries. Against this background, the recommendations are for revenue bodies to assess: current experience and consider opportunities for more systematic and far-reaching approaches; current capabilities and consider opportunities for better supporting the mainstreaming of E&I approaches and; how E&I approaches fit with their current performance evaluation framework and consider opportunities for strengthening the outcome focus. The implementation of these recommendations could be geared specifically towards reducing the compliance costs of the SMEs.

The **Right from the Start** note recommends that revenue bodies utilise the four dimensions in a systematic way towards developing and implementing key processes, strategies and activities. The note also recommends that revenue bodies focus on technological developments and improved understanding of behaviour as these could bring about exciting opportunities and significant progress over the coming years. The final yet integral recommendation is for revenue bodies to take up the challenge of evaluating the outcome of the applied strategies.

CONCLUSION

This summary compiled a wide range of insights offered towards reducing SMEs' tax compliance costs from the OECD's **Right from the Start**, Taxation of SMEs, Understanding and Influencing Taxpayers' Compliance Behaviour, Together for Better Outcomes and Study into the Role of Tax Intermediaries notes. The recommendations from the reviewed notes have been drawn together and fine-tuned to be listed as a single collection of indicators and country examples which can help policy-makers identify strategies that could be undertaken to effectively reduce SMEs' tax compliance costs. The efficient application of these strategies could to a great extent support the emergence and growth of SMEs in the years to come.

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***Dr. Gunasegaran Muthusamy** is a director at the Information Processing Centre of the Inland Revenue Board, specialising in Tax Compliance. He can be contacted at: gunasegaran@hasil.gov.my. The views expressed are solely that of the author and do not represent either the views or opinions of the firm which he is a part of.*

International Issues

The column only covers selected developments from countries identified by the CTIM and relates to the period 16 May 2015 to 15 August 2015.

CHINA (PEOPLE'S REP.)

Preferential tax policy for energy-saving and new energy vehicles and vessels updated

On 7 May 2015, the Ministry of Finance (MoF), the State Administration of Taxation (SAT) and the Ministry of Industry and Information Technology (MIIT) jointly issued Cai Shui [2015] No. 51 updating the vehicle and vessel tax incentives for energy-saving and new energy vehicles and vessels. This notice replaces the previously issued Cai Shui [2012] No. 19. The tax reductions remain the same. Energy-saving vehicles and vessels enjoy a 50% exemption, and new energy vehicles and vessels are fully exempted from vehicle and vessel tax. However, the qualifying criteria for the relevant vehicles have become more restricted and detailed due to higher standards of environmental protection.

Tax treatment of transfer of assets (shares) clarified

The SAT issued SAT Announcement [2015] No. 40 on 27 May 2015 clarifying the tax treatment of the transfer of shares and other properties from one resident enterprise to another. The earlier notice, Cai Shui [2014] No. 109, provided that capital gains on the transfer of shares or other assets need not be recognised where the transferee is wholly owned by the transferor or vice versa, or where both the transfer and transferee are wholly owned by a common resident shareholder. SAT Announcement No. 40 clarifies that the tax deferral and special tax treatment apply mainly in transfers within a group.

Although SAT Announcement No. 40 mainly addresses the transfer of assets and shares by state-owned enterprises, the SAT has expressly stated that it applies to all resident enterprises.

The Announcement applies from tax year 2014.

Notice on tax incentives of Zhongguangchun National Innovation Demonstration Zone (trial) and other designated zones published

The MoF and the SAT jointly issued Cai Shui [2015] No. 62 on 9 June 2015 introducing a set of tax incentives for Zhongguangchun National Innovation Demonstration Zone, all other National Innovation Demonstration Zones, He Wu Bang Innovation Trial Zone and Mian Yang Scientific City (hereafter referred to as demo zone). The notice retroactively applies from 1 January 2015 and covers the following aspects:

- Tax treatment of options rewarded to individuals
- Tax treatment of distributions to a shareholder of venture capital partnership limited by shares
- Enterprise income tax treatment of gains on transfer of technology
- Tax treatment of distributions in shares to individuals

Deductibility of employee training fees incurred by high-tech enterprises clarified

The MoF and the SAT jointly issued Cai Shui [2015] No. 63 on 9 June 2015 concerning the deduction of employee training fees incurred by high-tech enterprises. According to the notice, fees incurred on employee training are deductible in determining taxable income for purposes of enterprise income taxation, provided that such fees do not exceed 8% of the total amount of salaries and wages paid. Any excess may be carried forward for deduction purposes in future years. The notice retroactively applies from 1 January 2015.

A high-tech enterprise is referred to as an enterprise established in China and assessed on the basis of actual accounting records (not on a deemed profit basis) and certified as a high-tech enterprise by the Chinese government.

Withholding tax on interest derived by Chinese overseas bank branch clarified

On 19 June 2015, the SAT issued SAT Gong Gao [2015] No. 47 clarifying withholding tax on interest derived by an overseas branch of a Chinese bank from (Chinese) domestic entities. According to the announcement, the interest derived by an overseas branch of a Chinese bank from domestic entities is not subject to withholding tax. However, if an overseas bank branch collects interest on behalf of a non-resident enterprise, then the domestic payers of interest have to withhold enterprise income tax when the interest is transferred to the overseas bank branch.

This announcement will apply from 19 July 2015; on that same date, Article 2 of Guo Shui Han [2008] No. 955 will cease to apply.

Supplementary rules on special tax treatment of corporate reorganisations published

The SAT issued SAT Gong Gao [2015] No. 48 on 24 June 2015 releasing supplementary rules on the special tax treatment (tax deferral) of corporate reorganizations referred to in Cai Shui [2009] No. 59 and Cai Shui [2014] No. 109. The content of these rules is summarised below.

The parties to a corporate reorganisation are:

- debtor and creditor in the case of debt restructuring;
- transferee, transferor and the target enterprise in the case of an equity acquisition;
- seller and buyer in the case of an asset acquisition;
- surviving corporation, merged corporation and the shareholders of the merged corporation in the case of a merger; and
- dividing corporation, divided corporation and the shareholders of the divided corporation.

An individual could be a transferor in an equity acquisition, a shareholder of a merged corporation or a shareholder of a divided corporation. The individual involved in a corporate reorganisation is taxed according to the individual income tax.

The dominant party

By special tax treatment of a corporate reorganisation whereby the tax may be deferred, the dominant party is: the debtor in a debt restructuring; the transferor in an equity acquisition; the merged corporation in a merger; and the divided corporation in a division.

Timing of corporate reorganisation

The year of corporate reorganisation is the year of tax assessment in which the date of a corporate reorganisation falls. The date of a corporate reorganisation is:

- the date on which the reorganisation agreement is signed or a court decision becomes effective in debt restructuring;
- the date on which the contract on transfer becomes effective and the procedures of conveyance have been completed in an equity acquisition;
- the date on which the contract on transfer becomes effective and the alteration for the accounting purposes has been done;
- the date on which the contract on merger becomes effective and the alteration in terms of accounting records and business registration has been done; and
- the date on which the contract on division becomes effective and the alteration in terms of accounting records and business registration has been done.

Filing obligation

The dominant party is required to report on the special tax treatment in a corporate organisation by a corporation in a form designated for this purpose when it files the annual enterprise income tax return.

Explanation of reasonable business purpose by special tax treatment

The report should include the following:

- the type of reorganisation; the actual results or the reorganisation; the alterations to the tax positions and financial positions of the parties involved in the reorganisation; and the involvement of non-resident enterprises in the reorganisation.

Step transactions

The parties involved in reorganisation are required to report on other transactions on equity and assets that are related to the reorganisation and have taken place in the consecutive 12 months before the reorganisation in determining whether the step transactions should be considered a single reorganisational transaction.

Monitoring by tax administration

When the equity or assets to which the special tax treatment has been applied are disposed of, the taxpayers are required to report on the gains or losses arising therefrom and on the tax bases and tax deferred.

HONG KONG

Two concessionary revenue measures proposed in 2015-16 Budget passed

On 10 July 2015, Amendment No. 2 to the Inland Revenue Bill 2015 was passed by the Hong Kong Legislative Council.

The legislative amendment enables Hong Kong to implement two major concessionary revenue measures proposed in the 2015-16 Budget. The measures include:

- a 75% one-off reduction in profits tax, salaries tax and tax under personal assessment for the year of assessment 2014-15, subject to a maximum of HKD 20,000 per case; and
- the child allowance and the additional one-off child allowance in the year of birth are increased from HKD70,000 to HKD100,000 from the year of assessment 2015-16.

Profits tax exemption extended to offshore private equity funds

An amendment to the Inland Revenue Ordinance on 17 July 2015 extends profits tax exemption for offshore funds to private equity funds.

Under the Amendment Ordinance, to qualify for the profits tax exemption, offshore private equity funds must carry out specified transactions through corporations licensed by the Securities and Futures Commission, or the offshore private equity funds must satisfy the following conditions:

- more than four investors must make investments in the offshore private equity funds;
- the capital commitment made by investors must exceed 90% of the total capital commitments; and
- the portion of net proceeds arising from the fund's transactions to be received by the originator must not exceed 30%.

To prevent abuse by local companies, an eligible portfolio company will be an overseas incorporated private company, and it must not hold any Hong Kong properties or carry out any business in Hong Kong within a stipulated time limit. Moreover, the existing deeming provisions, which provide that a resident person holding a beneficial interest of 30% or more in a tax-exempt private equity fund deemed to have derived assessable profits in respect of profits earned by the fund in Hong Kong, will equally apply to offshore private equity funds.

INDIA

Anti-black money bill passed by upper house of Parliament (Rajya Sabha)

On 13 May 2015, the upper house of Parliament (Rajya Sabha) passed the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill 2015 (the Bill).

CBDT releases draft transfer pricing rules for introduction of "range" and use of "multiple-year" data for public comments

On 21 May 2015, the Central Board of Direct Taxes (CBDT) released the draft transfer pricing rules to facilitate the introduction of the "range" concept and also the use of "multiple-year" data in a transfer pricing analysis.

As a background, the Finance Minister had announced in his Budget speech of 2014 that the concept of an arm's length range and multiple-year data analysis would be introduced in Indian transfer pricing regulations for determining the arm's length price (ALP).

Under this change, where more than one price is determined by the application of the most appropriate method, the ALP of an international transaction or specified domestic transaction undertaken on or after 1 April 2014 will be computed in such manner as may be prescribed.

The salient features of the draft rules are set out below.

Adoption of the range concept

The "range" concept will only be used in cases where the transfer pricing method used for determining the ALP is the transactional net margin method (TNMM), the resale price method (RPM) or the cost plus method (CPM).

The following steps would be required to construct the range:

- a minimum of nine companies would need selection as comparables based on a thorough function, asset, and risk analysis of the tested party;
- the 3-year weighted average data of each of the above nine comparable companies or more should be used to construct the data set. In certain circumstances, data of 2 out of 3 years can also be used;
- for calculating the weighted average, the numerator and the denominator of the chosen profit level indicator (PLI) should be aggregated for all years for every comparable company and the margin should be computed thereafter; and
- the data points lying within the 40th to 60th percentile of the data set of the series would constitute the "range".
- If the transfer price of the tested party falls outside the range, the median of the range would be taken as the ALP and adjustment to the transfer price

would be made. If the transfer price is within the range, then no adjustment would be made.
- Data sets to be used for testing and for making adjustments should be the same.

Use of "multiple-year" data

Current rules in the ITA require that the data to be used for determining an ALP compulsorily must pertain to the year in which the international transaction is entered into, unless a taxpayer can provide evidence that the data for the prior 2 years has a bearing on the transfer price. This creates significant issues for the taxpayer, because some industries may be cyclical, prices are generally set based on the past year's data, and current-year data may not be available at the time documentation is prepared. The draft rules propose as follows:

- Multiple-year data should only be used in cases where the transfer pricing method used for determining ALP is the TNMM, the RPM, or the CPM.
- Multiple-year data should comprise 3 years, including the current year (i.e. the year in which the transaction has been entered into) and its use for the above-mentioned transfer pricing methods would be mandatory.
- Use of data of 2 out of the relevant 3 years will be permitted if:
- the current-year data of the comparables are not available in the public databases at the time of filing of income tax returns by the taxpayers;
- a comparable fails to clear a quantitative filter in any 1 out of the 3 years; and
- commenced operations only in the last 2 years or terminated operations during the current year.
- The current-year data, however, can be used during the transfer pricing audit by both the taxpayer and the tax authorities, if the same is available at the time of an audit.

Continued use of "arithmetic mean"

- In cases where the "range" concept does not apply, the arithmetic mean concept will continue to apply in the same manner as it was applied before the amendment to Section 92C(2) by the Finance Act 2015 along with the benefit of the tolerance range.
- In cases where multiple-year data is to be used, the same would apply whether the "range" concept is used or the arithmetic mean is used for determining the ALP. Thus, in cases where arithmetic mean is used, the arithmetic mean would be the arithmetic mean of the multiple-year data.

The above draft rules are to be incorporated through an amendment in the Income Tax Rules 1962. Further, comments from stakeholders and general public on the draft rules are invited and have to be submitted by 31 May 2015.

Those rules, when incorporated, will align the Indian transfer pricing regime to international best practices. International guidance such as the OECD Transfer Pricing Guidelines, the UN transfer pricing manual and the transfer pricing regulations of developed countries adopt the concept of the interquartile range and the use of multiple-year data in a transfer pricing analysis.

◆◆ FATCA agreement between India and United States – Changes to Indian Income Tax Rules to comply with FATCA

On 7 August 2015, the Indian Central Board of Direct Taxes issued Notification No. 62/2015 to amend the Income Tax Rules 1962 for the purpose of implementing the US Foreign Account Tax Compliance Act (FATCA). The amendments enter into force upon publication in the Official Gazette.

The amendments include definitions of relevant terms, information to be maintained and reported, due diligence requirements for a reportable accounts, and Form 61B on Statement of Reportable Account together with the instructions for completion.

SINGAPORE

◆◆ Simplified option available for claiming rental expenses for individuals

On 5 June 2015, the Inland Revenue Authority of Singapore (IRAS) issued an e-Tax Guide to explain when and how an individual can opt to deduct an amount of deemed expenses against his rental income in lieu of rental expenses actually incurred.

It was announced in the Budget 2015 that, with effect from the year of assessment 2016, an individual may opt to deduct an amount of deemed expenses on a yearly basis, in lieu of the actual amount of deductible expenses incurred, against passive income from the letting of a residential property in Singapore. An individual who has opted to deduct an amount of deemed expenses against the rental income can (in addition) still make a claim for deduction on allowable interest expenses, if any.

The amount of deemed expenses allowable in respect of a residential property is 15% of the gross rental income, which is considered to be generally in line with the amount of common rental expenses (such as property tax, property maintenance fees and minor repairs) that a landlord will incur.

Where an individual has more than one tenanted residential property, the individual must claim his rental expenses using one option and apply it consistently across all his tenanted residential properties for that year of assessment.

An individual cannot opt to deduct deemed expenses against any rental income if:

- he has not incurred any deductible expense (excluding interest expense) in the

production of the rental income;

- his rental income was derived through a partnership; or
- his rental income was derived from a property held under a trust.

For a taxpayer who files his income tax return electronically, the amount of deemed expenses will be computed automatically based on the gross rental income pre-filled or declared by him. However, the taxpayer may opt to claim the actual deductible expenses by filling in the relevant amount of expenses instead.

Taxpayers are not required to keep a record of the rental expenses incurred if they opt to claim only the amount of deemed expenses. However, if any claim for interest expenses or a deduction based on actual expenses incurred is made, the taxpayer is still required to keep the relevant supporting documents for a period of 5 years from the year of assessment to which the claim relates.

Further details are available in the Frequently Asked Questions section of the e-Tax Guide,

Non-resident individual tax rates to be increased from year of assessment 2017

On 12 June 2015, the IRAS informed that tax rates for non-resident individuals (with the exception of certain reduced final withholding tax rates) will be increased to 22% from the year of assessment 2017 to maintain parity between the tax rates of non-resident individuals and the top marginal tax rate of resident individuals. The tax rate revision for resident individuals was announced during the Budget 2015 presentation.

The following income will be subject to a tax rate of 22% effective 1 January 2016: director's remuneration received by non-resident directors; net income derived by non-resident professionals (eg. consultants, trainers, coaches, etc) for services performed in Singapore; net property rental income; Supplement Retirement Scheme (SRS) withdrawals received by non-resident SRS holders; and interest and royalty income (if the reduced final withholding tax is not applicable).

Income tax treatment of real estate investment trusts

On 19 June 2015, the IRAS issued the third edition of the e-Tax Guide on the income tax treatment of real estate investment trusts (REITs). This e-Tax Guide replaces the e-Tax guide published earlier on 16 December 2013.

The contents of the e-Tax guide remain largely unchanged, except for the following salient points:

- Distributions made, on or after 1 January 2015, from specified income that is granted tax transparency treatment, by a REIT's trustee to a Singapore branch of a company incorporated outside Singapore are not subject to withholding tax. The branch is not required to obtain prior approval from IRAS.
- The trustee is no longer required to notify IRAS in writing prior to distributions being made, but can provide confirmation that the conditions for making distributions from specified income in units (in lieu of cash) are met at the time of submission of the tax return.
- Where the tax-exempt income computed by IRAS is different from that determined by the trustee for distribution purposes, the difference is to be included as Rollover Income Adjustments for the next distribution of the tax-exempt income.
- As announced in the Budget 2015, the tax incentive applicable to qualifying non-resident non-individual unit holders has been extended to 31 March 2020. During the period from 18 February 2005 to 31 March 2020, the final withholding tax rate applicable to distributions made to qualifying non-resident non-individual unit holders is 10%.
- From 1 July 2015, distributions made from non-income (for example, operating cash flows, unrealized revaluation gains on the REIT's properties, etc., which are regarded as "return of capital") by the REIT and paid/payable to unit holders on or after 1 July 2015 are no longer restricted from onward distribution as income by the unit holders and each subsequent level of unit holders. All unit holders (including traders) must reduce their cost of units by the amount of return of capital.

Revised e-Tax guide on mergers and acquisitions scheme issued

The IRAS issued a revised e-Tax guide on 13 July 2015 to provide more details on the refinements to the mergers and acquisitions (M&A) scheme as announced during Budget 2015. Under the M&A scheme, a Singapore company (acquiring company) making a qualifying acquisition of ordinary shares of another company (target company) may, subject to conditions, enjoy the following tax benefits: an M&A allowance on the purchase consideration; stamp duty relief on the sale agreement or instrument of transfer; and a double taxation deduction on transaction costs incurred in respect of the qualifying share acquisition.

New 20% shareholding qualifying threshold

A new shareholding eligibility threshold of 20% was introduced with effect from 1 April 2015, whereby share acquisitions qualify for M&A tax benefits if they result in the acquiring company owning 20% of the ordinary shares of a target company, but not more than 50% (if the acquiring company owns less than 20% of such shares before the date of share acquisition). Specific conditions that must be met are:

- the target company being considered an associate of the acquiring company or acquiring subsidiary, as the case may be, upon the share acquisition; and
- the acquiring company or the acquiring subsidiary, as the case may be, being represented on the board of directors of the target company or its operating subsidiary.

Removal of 75% shareholding qualifying threshold

Effective 1 April 2015, the 75% shareholding threshold was removed. However, Singapore companies that had taken steps before 1 April 2015 to acquire ordinary shares in a target company with the intention of crossing the 75% threshold may still be eligible for the M&A tax benefits during a 1-year transitional period.

To be eligible for M&A tax benefits based on the 75% threshold during the 1-year transitional period from 1 April 2015 to 31 March 2016:

- the acquiring company or any of its acquiring subsidiaries must have acquired ordinary shares of the target company before 1 April 2015; and
- the acquisition referred to above and the acquisition that results in the acquiring company owning, whether directly or indirectly, 75% or more of the ordinary shares in the target company is not more than 12 months apart.

Removal of option to elect a 12-month look-back period

The option to elect a 12-month look-back period in a step acquisition was removed with effect from 1 April 2015. For Singapore companies having started step acquisitions before 1 April 2015, the election option is allowed during the 1-year transitional period from 1 April 2015 to 31 March 2016.

Administrative matters

For qualifying share acquisitions made on or after 13 July 2015, the conditions for a waiver of an independent professional valuation report are revised as follows:

- the acquisition is made by a company or registered business trust listed on the Singapore Stock Exchange, or its subsidiaries; or
- the value of the share acquisition is SGD5 million or below.

The complete e-Tax guide is available on the IRAS website.

INDONESIA

Tax incentives for investments in specified sectors and regions

On 6 April 2015, the government issued government regulation (GR) No. 18 of 2015 (GR 18/2015) regarding the income tax incentive facilities available for investments in specified business sectors and regions. GR 18/2015 became effective from 6 May 2015, replacing GR No. 1 of 2007.

Subsequently, on 28 April 2015, the Ministry of Finance (MoF) issued regulation No. 89/PMK.010/2015 (PMK-89) to provide guidance on the procedures to apply for incentives under GR 18/2015. PMK-89, which also became effective from 6 May 2015, replaces regulation No. 144/PMK.011/2012 of 3 September 2012. Under PMK-89, applications to obtain the income tax facilities under GR 18/2015 must be submitted by the taxpayer to the Head of the Capital Investment Coordinating Board (CICB) before starting commercial production. The MoF will then make a decision taking into account the proposals made by the Head of the CICB.

GR 18/2015 covers 143 types of investments in specified sectors and in specified sectors in designated regions. This regulation is applicable to corporate taxpayers making new investments and also expanding their existing businesses.

The tax facilities available under GR 18/2015 are:

- reduction of taxable income of up to 30% of the amount of total investment in the form of tangible assets, including land, which are used for the main business activity, at 5% per year over a period of 6 years from the start of commercial production;
- accelerated depreciation of tangible assets and accelerated amortization of intangible assets;
- reduced withholding tax rate of 10% on dividends paid to non-resident taxpayers other than a permanent establishment in Indonesia, or the lower rate applicable under a tax treaty;
- carry-forward of losses for more than 5 years but less than 10 years, with the following provisions: additional extension of 1 year provided that:
  - the new investments in specified business sectors are conducted in industrial areas and/or in bonded

zones;
- the taxpayer spends a minimum of IDR10 billion in capital investment for economic and/or social infrastructure at the business locations; and
- at least 70% of raw materials and/or components used must be locally produced, starting from the 4th year;

additional extension of 1 or 2 years if the project employs:
- at least 500 Indonesian workers for 5 consecutive years (1-year extension); or
- a minimum of 1,000 Indonesian workers for 5 consecutive years (2-year extension); and

additional extension of 2 years provided that:
- at least 5% of the capital investment is spent on domestic research and development for product development or production efficiency within a period of 5 years;
- the funding of investments to expand existing businesses in specified sectors and/or regions are partly from after tax earnings in a fiscal year before the issuance of the principal licence for the expansion investment; or
- for investments in specified business sectors outside a bonded zone at least 30% of the total sales value of the project is from exports.

Business activities in the KAPET (integrated economic development zone) region and taxpayers having obtained other tax exemptions and deduction incentives are not eligible for the incentives under GR 18/2015.

Tax enforcement programmes for 2016

The MoF has announced the Directorate General of Taxes' (DGT's) plans for 2016 include the following:
- increasing and securing tax revenue through improving tax compliance by corporates and individuals;
- increasing tax ratios and tax buoyancy through law enforcement;
- increasing tax coverage by exploring other tax revenue potential in sectors such as mining, manufacture, trade, construction and financial services; and
- strengthening and expanding the taxation database both internally and externally.

Taxpayer-friendly policies for tax payments made in 2015

In late May 2015, the DGT announced his intention to apply two tax-friendly approaches in order to guide taxpayers during the year 2015.

The DGT's first approach is to remove administrative penalties imposed on taxpayers settling their tax debts before 1 January 2016.

In his second approach, the DGT will guide taxpayers in paying their taxes correctly, either voluntarily or mandatorily, based on information obtained from the Financial Services Authority, Indonesian Financial Transaction Reports and Analysis Centre, and Bank Indonesia.

The DGT will not hesitate to conduct investigations into taxpayers refusing to cooperate when subjected to tax mandatorily.

Increase in personal allowances – regulation issued

The DGT announced on 4 August 2015 that the MoF issued Regulation 122/PMK.010/2015 dated 29 June 2015 to revise the personal allowances (Penghasilan Tidak Kena Pajak, PKTP) for individual taxpayers from tax year 2015 onwards. This regulation replaces MoF regulation 162/PMK.011/2012. Details of revisions to the PKTP are as follows:

	ALLOWANCE (IDR)
Taxpayer	36,000,000
Spouse	3,000,000
Wife's income combined with taxpayer	36,000,000
Each dependant (maximum of three)	3,000,000

Although legislated on 29 June 2015, the DGT has clarified that the PKTP revisions will apply from 1 January 2015 onwards. As such, income tax for the period of January to June 2015 that has already been reported based on the previous PKTP can be adjusted based on the new regulation. There are no details on how adjustments will be made but taxpayers may contact the DGT for further information.

In the event that the taxpayer has an overpayment due to the adjustment of PKTP for the period January to July 2015, the employer may offset the excess payment against the tax to be withheld for the period July 2015 to December 2015.

*By **Rachel Saw** and **Janice Loke** of the International Bureau of Fiscal Documentation (IBFD). The International News reports have been sourced from the IBFD's Tax News Service. For further details, kindly contact the IBFD at ibfdasia@ibfd.org.*

Technical Updates

The technical updates published here are summarised from selected government gazette notifications published between 16 May 2015 and 15 August 2015 including Public Rulings and guidelines issued by the Inland Revenue Board (IRB), the Royal Malaysian Customs Department and other regulatory authorities.

INCOME TAX

◆◆ Income Tax (Deduction for Consultation and Training Costs for the Implementation of Flexible Work Arrangements) Rules 2015

Income Tax (Deduction for Consultation and Training Costs for the Implementation of Flexible Work Arrangements) Rules 2015 [P.U.(A) 134/2015], gazetted on 29 June 2015, provide a double deduction on the expenses incurred in relation to the consultation fee and other specified costs incurred in training employees for the purposes of the implementation of flexible work arrangements (FWA) or the enhancement of existing FWA that have been certified by Talent Corporation Malaysia Berhad (TalentCorp). The double deduction shall be for a period of three consecutive years of assessment, commencing from the year of assessment in the basis period in which the certification is given by TalentCorp. The application of the certification must be received by Talent Corp between 1 January 2014 and 31 December 2016. The total amount of the expenses shall be verified by TalentCorp and the total amount shall not exceed RM500,000 for each year of assessment. The Rules are deemed to be effective from the year of assessment 2014.

◆◆ Public Ruling No. 2/2015 – Taxation of Real Estate Investment Trust or Property Trust Fund

Public Ruling (PR) No. 2/2015: Taxation of Real Estate Investment Trust or Property Trust Fund, which was published on 19 June 2015, explains the tax treatment accorded to an approved Real Estate Investment Trust (REIT) or a Property Trust Fund (PTF) in Malaysia. The new PR replaces PR No. 9/2012 issued on 26 November 2012.

◆◆ Public Ruling No. 3/2015 – Failure to Furnish Information Within a Stipulated Period

PR No. 3/2015: Failure to Furnish Information Within a Stipulated Period, which was published on 29 July 2015, explains the income tax treatment of a taxpayer who fails to furnish information within a stipulated period as provided in Section 39(1A) of the ITA. Section 39(1A) was effective from the year of assessment 2014 and subsequent years of assessment pursuant to Finance Act 2014. Section 39(1A) provides that where a notice is issued by the Director-General of Inland Revenue (DGIR) in accordance with Section 81 and a person does not furnish information within the time-line requested to justify the claim for a tax deduction, the deduction shall be disallowed.

◆◆ Public Ruling No. 4/2015 – Entertainment Expense

PR No. 4/2015: Entertainment Expense, which was published on 29 July 2015, explains the tax treatment of entertainment expense as a deduction against gross income of a business and the steps to determine the amount of entertainment expense allowable as a deduction. The new PR replaces PR No. 3/2008 issued on 22 October 2008.

◆◆ 2015 Tax Audit Framework (English translation)

The IRB had previously posted on its website the Bahasa Malaysia version of the 2015 Tax Audit Framework, titled *"Rangka Kerja Audit Cukai (Pindaan 1/2015)"*. The 2015 Framework took effect from 1 February 2015. The IRB has recently issued the English translation of the Tax Audit Framework.

◆◆ 2015 Tax Audit Framework on Finance and Insurance

The IRB issued on its website a 2015 Tax Audit Framework on Finance and Insurance. The Framework is currently only available in Bahasa Malaysia and is titled *"Rangka Kerja Audit Cukai – Kewangan dan Insurans"*. The Framework took effect from 1 June 2015. The new Audit Framework applies specifically to Financial Institutions and Insurance Companies (including Islamic Financial Institutions and Takaful Companies).

◆◆ 2015 Tax Audit Framework on Withholding Tax

The IRB has issued on its website a Tax Audit Framework on Withholding Tax dated 1 August 2015, that took effect on the same day. The Framework is currently only available in Bahasa Malaysia and is titled *"Rangka Kerja Audit Cukai Pegangan"*. The new Framework applies specifically to a withholding tax audit.

Guidelines on treatment of single-tier dividend and certain investment income in deferred annuity schemes

The IRB has issued on its website technical guidelines dated 5 May 2015, titled *"Garis Panduan Pengendalian Dividen Satu Peringkat Dan Pendapatan Daripada Pelaburan Dalam Skim Anuiti Tertangguh Di Dalam Lebihan Aktuari Daripada Dana Hayat Yang Dipindahkan Kepada Dana Pemegang Saham"* that are only available in Bahasa Malaysia. The objective of the guidelines is to provide clarification in relation to the treatment of single-tier dividends and income received from investments made out of deferred annuity schemes (DAS) that are included in the actuarial surplus (AS) from life funds (LF) that are transferred to shareholders' funds (SF). The new 10-page guidelines replace the previous seven-page guidelines in Bahasa Malaysia, titled *"Garis Panduan Pengendalian Dividen Satu Peringkat Dalam Lebihan Aktuari Yang Dipindahkan Kepada Dana Pemegang Saham"* dated 27 July 2012 and incorporate the 2013 Budget proposal (now legislated vide Paragraph 20A of Schedule 6 of the Income Tax Act 1967 (ITA)) to exempt income received from investments made out of DAS by the life insurer or takaful companies.

Guidelines on the tax treatment related to the implementation of MFRS 121 (or other similar standards)

The IRB has issued "Guidelines on tax treatment related to the implementation of MFRS 121 (or other similar standards)" dated 24 July 2015 that explain the income tax treatment related to the implementation of the Malaysian Financial Reporting Standards (MFRS) 121 or any other accounting standard that relates to foreign currency translation. In principle, the IRB states that it adopts the position that the tax treatment of the foreign exchange gain or loss will depend on the underlying transaction. The IRB also states that when a Ringgit Malaysia (RM) denominated transaction is translated into functional currency and functional currency to a RM presentation currency, any difference will be treated as translation gains or losses and the translation gains or losses will neither be taxable as income nor deductible as a tax deduction nor incurred as qualifying expenditure under the Income Tax Act 1967 (ITA). "Functional currency" is defined in the Guidelines to mean the currency of the primary economic environment in which the entity operates and "presentation currency" is defined to mean the currency in which the financial statements are presented.

Unapproved institution under Section 44(6) (Corporate Kifayah CSR Fund for Charity)

The IRB has announced on its website that cash contributions to the Corporate Kifayah CSR Fund for Charity organised by the "Bureau of Community Service Kifayah Management Corporate CSR - Corporate for Charity / Organisation Management Succession Young Entrepreneur Development Initiative State" will be considered an unapproved donation and not tax deductible under Section 44(6) of the ITA.

PETROLEUM INCOME TAX

Petroleum (Income Tax) (Deduction for Consultation and Training Costs for the Implementation of Flexible Work Arrangements) Rules 2015 [P.U. (A) 132/2015]

Petroleum (Income Tax) (Deduction for Consultation and Training Costs for the Implementation of Flexible Work Arrangements) Rules 2015 [P.U.(A) 132/2015], gazetted on 29 June 2015, provide similar double deduction incentive as per Income Tax (Deduction for Consultation and Training Costs for the Implementation of Flexible Work Arrangements) Rules 2015 [P.U.(A) 134/2015]. Please refer to the above-mentioned for details.

LABUAN

New LBATA tax registration form

The IRB has issued a new form (Form CP 600 LE) for Labuan entities to complete when registering and applying for an income tax file number under the Labuan Business Activity Tax Act 1990 (LBATA). The new Form CP 600 LE includes additional information for the taxpayer to complete.

STAMP DUTY

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2015 [P.U. (A) 86/2015]

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2015 [P.U.(A) 86/2015] was gazetted on 15 May 2015 and came into operation on the same date. The Order provides that any tax payable under the ITA by individuals/entities (specified in paragraph 2 of the Order) in respect of any money payable under any agreement, note, instrument and document in relation to the product, facility, programme and guarantee referred to in paragraph 4 of the Order shall be remitted in full. Also remitted in full is any stamp duty payable under the Stamp Act 1949 in relation to the said instruments.

Stamp Duty (Adhesive Stamp) Rules 2015 [P.U. (A) 97/2015]

Stamp Duty (Adhesive Stamp) Rules 2015 [P.U.(A) 97/2015] were gazetted on 26 May 2015 and are deemed to have come into operation on 1 February 2009. The Rules provide details on the issuance of adhesive stamps by the Director-General of Inland Revenue, who is responsible for the issuance and regulation of the sale and supply of the adhesive stamps.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2015 [P.U. (A) 114/2015]

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2015 [P.U.(A) 114/2015] was gazetted on 9 June 2015 and came into operation on the same date. The Order provides that any tax payable under the Income Tax Act 1967 (ITA) and any stamp duty payable under the Stamp Act 1949 in relation to the Commodity Murabahah Term Financing-*i* Facility Agreement of up to RM1.5 billion or the guarantee provided or to be provided by the Malaysian government on the Facility Agreement - by the Affin Hwang Investment Bank Berhad, the Affin Islamic Bank Berhad, the Perbadanan Tabung Pendidikan Tinggi Nasional and any party to whom the Facility Agreement is transferred or assigned - shall be remitted in full.

CUSTOMS AND EXCISE DUTIES

Customs (Prohibition of Imports) (Amendment) (No. 4) Order 2015 [P.U. (A) 137/2015]

The Order provides for an amendment in Part II of the Second Schedule and Part II of the Fourth Schedule of the Customs (Prohibition of Imports) Order 2012 [P.U. (A) 490/2012] which is referred to as the "principal Order" in this Order and is deemed to have come into operation on 1 October 2015.

The Customs (Prohibition of Imports) (Amendment) (No. 4) Order 2015 provides an amendment in Part II of the Second Schedule in relation to sub-item 4(1) in column (3) under the heading "Chapter/Heading/Subheading" by inserting after the numbers "8526.10 000, 8526.91 000", the numbers ", 8529.10 900, 8529.90 990". The Order also provides for a substitution for the particulars relating to items 7 and 8 within Part II of the Fourth Schedule of the principal Order.

Please refer to P.U. (A) 490/2012 and P.U. (A) 137/2015.

Customs (Prohibition of Imports) (Amendment) (No. 5) Order 2015 [P.U. (A) 165/2015]

The Order provides for an amendment in Part II of the Fourth Schedule of the Customs (Prohibition of Imports) Order 2012 [P.U. (A) 490/2012] and is deemed to have come into operation on 1 October 2015.

The Customs (Prohibition of Imports) (Amendment) (No. 4) Order 2015 provides a deletion of the words "9504.50 000," in relation to sub-item 6(2) in column (3) under the heading "Chapter/Heading/Subheading" within Part II of the Fourth Schedule.

Please refer to P.U. (A) 490/2012 and P.U. (A) 165/2015.

Customs Duties (Exemption) (Amendment) Order 2015 [P.U. (A) 98/2015]

The Order provides for an amendment in Part I of the Schedule within the Customs Duties (Exemption) Order 2013 [P.U. (A) 371/2013].

The Order provides for an amendment in Part I of the Schedule, in relation to item 66, in column (2) by inserting after paragraph (xvi), the paragraph "(xvii) MDC Oil & Gas (SK320) Ltd.".

Please refer to P.U. (A) 371/2013 and P.U. (A) 98/2015.

Customs Duties (Exemption) (Amendment) (No. 2) Order 2015 [P.U. (A) 110/2015]

The Order provides for an amendment in Part I of the Schedule within the Customs Duties (Exemption) Order 2013 [P.U. (A) 371/2013] and is deemed to have come into operation on 11 June 2015.

The Order provides for an amendment in Part I of the Schedule, in relation to item 100, in column (3) by deleting the numbers "7213.10 000, 7213.20 000, 7213.91 000, 7213.99 000, 7214.10 210, 7214.10 290, 7214.10 910, 7214.20 210, 7214.20 290, 7214.20 910, 7214.30 100, 7214.30 900, 7214.91 200, 7214.99 210, 7214.99 290, 7214.99 910".

Please refer to P.U. (A) 371/2013 and P.U. (A) 110/2015.

Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) (Amendment) (No. 2) Order 2015 [P.U. (A) 112/2015]

The Order provides for amendments in the Second Schedule of the Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2015 [P.U. (A) 277/2012] and is deemed to have come into operation on 11 June 2015.

The Order provides for an amendment in the Second Schedule in column 5, in relation to sub-headings 8429.51.00 00, 8430.41.00 00 and 8431.43.00 00, by substituting the figure "10%" with the figure "5%".

Please refer to P.U. (A) 277/2012 and P.U. (A) 112/2015.

Customs Duties (Goods under the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China) (ASEAN Harmonised Tariff Nomenclature) (Amendment) Order 2015 [P.U. (A) 44/2015]

The Order provides for an amendment in the First Schedule and Second Schedule of the Customs Duties (Goods under the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China) (ASEAN Harmonised Tariff Nomenclature) Order 2014 [P.U. (A) 248/2014], which is referred to as the "principal Order" in this Order and is deemed to have come into operation on 10 March 2015.

The principal Order is amended in Part 1 of the First Schedule, in Rule 6, by substituting the words "Appendix A" with the words "Attachment B".

The principal Order is amended in the Second Schedule in relation to heading 29.03 by deleting sub-heading 2903.77.00 25 and the particulars relating to it. Further amendments made to the Second Schedule relates to the substitutions of sub-headings and the particulars relating to it under headings 29.21, 39.17, 39.20, 39.21, 40.08, 57.04, 58.01, 70.03, 70.04, 70.05, 72.08, 72.11, 72.16, 73.15, 74.13, 84.18, 84.31, 84.80, 85.39, 87.11, 90.30, 96.19 and 97.01, and substitutions of symbols and the placements of symbols under heading 48.02, with those that are provided for in this Order.

Please refer to P.U. (A) 248/2014.

Customs (Definitive Safeguards Duties) Order 2015 [P.U. (A) 133/2015]

The Order provides for the definitive safeguards duties to be levied on and paid by the importers in respect of the goods specified in columns (1) and (2) of the First Schedule, exported from the countries specified in column (3) of the First Schedule into Malaysia, at the rates specified in column (4) of the First Schedule. This Order has effect for the period from 2 July 2015 to 1 July 2018.

The classification of goods specified in columns (1) and (2) of the First Schedule shall comply with the Rules of Interpretation in the Customs Duties Order 2012 [P.U. (A) 275/2012]. The imposition of the definitive safeguards duties under this Order is without prejudice to the imposition and collection of import duties under the Customs Act 1967 [Act 235] and the goods and services tax under the Goods and Services Tax Act 2014 [Act 762].

Please refer to P.U. (A) 275/2012 and P.U. (A) 133/2015.

Customs Duties (Goods under the Malaysia-Turkey Free Trade Agreement (MTFTA)) (ASEAN Harmonised Tariff Nomenclature) Order 2015 [P.U. (A) 168/2015]

The Order provides for an import duty to be levied on and paid by the importers in respect of the heading, sub-heading and goods specified in columns (1), (2) and (3) of the Second Schedule of this Order, originating from Turkey and imported into Malaysia, at the MTFTA rate of duty specified in column (5) of the Second Schedule to this Order. This Order is deemed to have come into operation on 1 August 2015.

The classification of goods in the Second Schedule shall be subject to the General Rules for the Interpretation of the Harmonised System under the International Convention on the Harmonised Commodity Description and Coding System.

Please refer to P.U. (A) 277/2012 and P.U. (A) 168/2015.

*Contributed by **Ernst & Young Tax Consultants Sdn. Bhd.** This material has been prepared for general informational purposes only and is not intended to be relied upon as professional advice. Please refer to your advisors for specific advice.*

Jason Tan & S. Sashi Sekaran

CASE 1

LEVI STRAUSS (MALAYSIA) SDN BHD V KETUA PENGARAH KASTAM, MALAYSIA (2011) MSTC 30-021 (HIGH COURT)

FACTS

The case concerned an application for a judicial review of, *inter alia*, an order for ***certiorari*** to quash the decision of the Director-General of Customs in imposing a sum of RM3,699,706.71 as additional customs duty payable and RM2,219,824.02 as additional sales tax payable on the products purchased by the taxpayer for the period 2000-2001. The Director-General of Customs had adjusted the customs value of all products purchased by the taxpayer by including royalties paid to Levi Strauss & Co. (**"LSC"**) pursuant to a license agreement and the adjusted customs value was used to determine the transaction value of products purchased, which resulted in the additional tax payable. It must be noted that the determination was done after a customs audit was performed on the taxpayer.

Regulation 5(1)(a)(iv) of the Customs (Rules of Valuation) Regulations 1999 provides for royalties and license fees to be adjusted in the determination of the transaction value, however it must be a *condition of the sale of the goods* for export to Malaysia. The License Agreement evidencing the arrangement between the taxpayer and LSC clearly indicates that the royalties were not a condition of sale of the goods because there are no conditions/terms restricting the purchase of the goods from LSC and/or its related parties, moreover in practice, the taxpayer manufactures on its own and outsources some manufacturing to related and 3rd parties based on a commercial viability perspective. The taxpayer was independent as to decide on its options of procurement and dealings in its operations/businesses.

The royalties paid to LSC was based on the *net sales price post-importation* (which is not the primary basis of valuation) and not on the purchase price paid by the taxpayer which is the scope of Custom's primary basis of valuation ***(the transactional value as provided in Regulation 4(1) of the Customs (Rules of Valuation) Regulations 1999)***. This evidently indicates further that Customs has adjusted the customs value by including royalties that were not in relation to the point of calculative scope of the Customs. In addition, the royalties were payable on *all products*, irrespective whether imported or not, making the royalties chargeable across the board including the products imported from LSC, but not exclusively to.

In the present case, the royalties paid by the taxpayer were to exploit and use the trademarks and trade names licensed by Levi Strauss & Co. and for the rights to reproduce the products in Malaysia (which is expressly excluded in ***Regulation 5(1) (a) (iv) of the Customs (Rules of Valuation) Regulations 1999)*** and the royalties were independent of the purchase price paid by the taxpayer; it was based on a post-importation point of calculative reference.

The Court in its decision to allow the appeal, supported by its reliance on ***Nike Sales Malaysia Sdn Bhd v Jabatan Kastam Diraja Malaysia Sdn Bhd & 2 Ors [2011] 5 MLJ 123*** on similarity of facts, concluded that taxing statutes are to be interpreted strictly and in accordance to the intention of Parliament. Royalties paid in relation to an export of goods if need be adjusted are to be strictly interpreted in accordance to ***Regulation 5(1) (a) (iv) of the Customs (Rules of Valuation) Regulations 1999.*** In addition, the decision of *Levi Strauss (Malaysia) Sdn Bhd* amplifies the importance of considering economic realities and observation of the legal nexus between parties in a business transaction, to supplement the process of administering additional tax impositions and this clearly is an indication to tax authorities to avoid acting mechanically and arbitrarily moving forward.

The Director-General of Customs' appeal before the Court of Appeal was unanimously dismissed with costs. The Director-General of Customs subsequently applied for leave to appeal to the Federal Court, which was later withdrawn.

CASE 2

POWER ROOT (M) SDN BHD & ORS V KETUA PENGARAH KASTAM (NO.W-01-295-08/2013) (COURT OF APPEAL)

The case concerned an appeal by the Director-General of Customs against the decision of the High Court in reversing the Customs Appeal Tribunal's decision. The Customs Appeal Tribunal had previously dismissed the taxpayers' appeal against the decision of the Director-General of Customs which classified its manufactured drinks **("drinks")** as "Other non-alcoholic beverages" rather than "extracts or concentrates of coffee". The result of the former tariff code classification attracted a sales tax of 10%, instead of 5% for the latter.

The issue appealed against was essentially the Customs Appeal Tribunal's failure to follow the proper principles of interpretation to the Schedules of the Customs Duties Order 2007 and its rules of interpretation, para 4 rule 1, 3 (a) & (b) of the 2007 Order.

The very nature of the contents of the manufactured drinks in question proved complex in matters of classification as they consisted of a mix of various ingredients and elements, in a single product form; namely coffee,

water, milk, sugar, herbs in a 250ml can. The findings of the Tribunal in arriving at its decision to classify the drinks as "other non-alcoholic beverages" were based on the following; consideration of the alcohol content, water content, coffee powder content, sugar and milk powder addition, drinks were pleasant to consume, expectation of the consumer, amount of consumption by a normal person, the effect of the addition of water and carbon dioxide. The taxpayers and the Director-General of Customs were in contention as to the classification due to differing interpretations and considerations of the facts. The taxpayers contended, among others, the Customs Appeal Tribunal's failure in following the proper principles of interpretation, failure in taking into account the chemistry department reports on the drinks and that the drinks are not beverages.

As per para.4 Rule 3(a) of the 2007 Order, when goods are prima facie classifiable under two or more headings, the heading that provided the *most specific description* should be preferred than a more general description. In the present case, the Customs Appeal Tribunal failed to consider the most specific heading that described the taxpayers' products. The Court of Appeal held that the heading 2101.12.900 "preparation with a basis of coffee" was more specific than "non-alcoholic beverages". **Following para.4 Rule 3(b) of the 2007 Order,** which provides for determining by looking at the material or component that gives them their *"essential character"* and in the present case, a consumer would generally expect the product to be a coffee drink containing health and nutritional benefits, as coffee would be the essential character of the product and the addition of water and sugar were for taste and dilution purposes and there was no change in the physical properties of the drinks.

The argument in terms of the drinks not being beverages was that people would not drink it for refreshment nor as thirst quenchers and the Customs Appeal Tribunal had acknowledged that the drinks are not intended as thirst quenchers. The Court of Appeal held that the Tribunal's description of the product as 'tonic beverages' was conclusive that the products were tonics in nature, consumed for nutritional and health benefits distinguishable from beverages, as described above. There was no reference made by the Customs Appeal Tribunal as to the chemist report for the products. The Court of Appeal held that the chemist report analysed the physical properties of the products and should have been considered in light of the contention as to the effect of the addition of water and carbon dioxide to the physical properties of the products in question.

On these grounds, the Court of Appeal upheld the decision of the High Court that the drinks ought to have been classified as "preparation with a basis of coffee" (Heading 2101.12.900). The Court of Appeal dismissed the Director-General of Customs' appeal with costs.

CASE 3

POWER ROOT (M) SDN BHD & ORS V DIRECTOR-GENERAL OF CUSTOMS [2014] 2 MLJ (HIGH COURT)

Consequent to the decision of the Court of Appeal in Power Root (M) Sdn Bhd & Ors v Ketua Pengarah Kastam (2011) MSTC 30-032, the taxpayers had written to the Director-General of Customs: requesting for the refund of the 5% excess from the 10% sales tax paid in respect of the four drinks. The Director-General of Customs: although aware of the decision of the Court of Appeal, said the request for refund could not be considered as there was no

order of court stating the 5% should be refunded.

The taxpayers filed an application for a consequential order to give effect to the High Court Order and the Court of Appeal. In response, the Director-General of Customs filed an application to re-open the original proceedings as if begun by writ of summons.

The issue in question was if the court was functus officio to grant the consequential order, as contended by the Director-General of Customs because the Court has already decided on the matter and cannot raise the issue now. The Court held that in the original appeal before the High Court was 'for other and further relief that the Court deems fit and proper'. Considering the undisputed fact that the taxpayers had already paid the sales tax of 10% to the Director-General of Customs and the declaration (by the High Court and Court of Appeal) that the Director-General of Customs had erred in imposing a tax rate of 10% instead of 5%, the Court held that the imposition of additional duties was *ultra vires* and the collection of the same was illegal. The Court added that it was a breach of constitutional principle to allow the Director-General of Customs to retain the *ultra vires* tax and an abuse of process to refuse to refund.

The Court rejected the notion of the Director-General of Customs that the sales tax overpaid by the taxpayers was passed on to the consumers and therefore any refund of the sums would unjustly enrich the taxpayers. The Court found that by retaining the additional duties, it was the Director-General of Customs who was unjustly enriched because the Director-General of Customs had no right to retain the illegally collected taxes. Such a conduct was a breach of Article 96 of the Federal Constitution of Malaysia. Thereby, the taxpayers had recourse to restitution as of right in obtaining the refund of the taxes paid in excess. The Court accordingly allowed the taxpayers' application with costs.

Meanwhile, the taxpayer's reply that the Director-General of Customs was procedurally defective was founded on the basis that for conversion of originating summons into a writ, the proper procedure is set out expressly under O28 r8 of the Rules of Court, not O92 r4 of the Rules of Court. Besides that, the Director-General of Customs had relied on an element which was procedural in nature and not substantive law; and the Courts inherent jurisdiction must be used to prevent injustice or an abuse of the process of the Court. The Court cannot exercise its inherent jurisdiction under O92 r4 ROC to encroach into the substantive elements that would further, foster or maintain injustice. The Court accordingly dismissed the Director-General of Customs' application with costs.

The Director-General of Customs subsequently appealed to the Court of Appeal, which was later withdrawn.

Jason Tan *is a tax lawyer with Lee Hishammuddin Allen & Gledhill where he specialises in Customs, Trade Facilitation & Investments Practice. He is presently assisting the firm's tax partners, Datuk D.P. Naban and S. Saravana Kumar in 3 major Customs valuation disputes. Jason Tan read law at Cardiff University and was admitted both to the English Bar and the Malaysian Bar.*

S. Sashi Sekaran *is a Customs & GST paralegal with Lee Hishammuddin Allen & Gledhill. He has previously worked as a banking associate with a leading investment bank in Kuala Lumpur. Sashi read law at the University of Liverpool.*

OTHER BUSINESS DEDUCTIONS

Theft
Embezzlement
Losses

Siva Subramanian Nair

ALTHOUGH AT ANY INTERVIEW FOR JOBS INVOLVING THE HANDLING OF CASH, EVERY CANDIDATE WILL PROFESS TO UPHOLD HIGH STANDARDS OF ETHICS AND MORALITY AND YET MANY A TIMES WE HEAR OF BUSINESSES INCURRING LOSSES DUE TO THEFT AND EMBEZZLEMENT OF CASH BY EMPLOYEES. AS THESE ARE CONSIDERED AS BEING INCURRED IN THE NORMAL COURSE OF BUSINESS, THEY ARE GENERALLY DEDUCTIBLE IN ARRIVING AT THE ADJUSTED INCOME OF A BUSINESS.

This is further reiterated in *PUBLIC RULING NO. 4/2012 on DEDUCTION FOR LOSS OF CASH AND TREATMENT OF RECOVERIES* which states that:

"Loss of cash caused by theft, defalcation or embezzlement may happen in the course of business. This loss of cash is allowable as a deduction in computing the adjusted income of a business for the basis period for a year of assessment provided such loss is incidental to the business carried on."

A point to note here is that theft and embezzlement does not constitute an expense; it does not entail an outlay of cash nor does it represent a legal obligation to pay. However, it qualifies for a deduction under Section 33(1) as an outgoing. This differentiation has been deliberated in many cases although the words used are slightly different.

*"In relation to trading operations the word [loss] is sometimes used to signify a deprivation suffered by the loser, usually an involuntary deprivation, whereas expenditure usually means a voluntary payment of money." explains Watermeyer CJ in **Joffe & Co (Pty) Ltd v CIR, 1946 AD 157. Findlay J in Allen (HM Inspector of Taxes) v Farquharson Brothers and Co 17 TC 59** draw a distinction between 'disbursements' i.e. "something or other which the trader pays out…he chooses to pay out…something which comes out of his pocket" and 'losses' i.e. "not a thing which he expends or disburses…[it] is a thing which, so to speak, comes upon him ab extra". Again **Beadle CJ in COT v Rendle 1965 (1) SA 59 (SRAD)** distinguished designed and fortuitous expenditure stating that the former is "money voluntarily and designedly spent by the taxpayer for the purpose of his trade" whilst the latter constitutes "money which is what I might call involuntarily spent because of some mischance or misfortune which has overtaken the taxpayer".*

Similar to fines and penalties in the last article, the Income Tax Act 1967 does not provide any specific provisions in relation to the deductibility of losses arising from theft and embezzlement, therefore, the general ' wholly & exclusively' rule in Section 33(1) will apply. However, many tax cases have deliberated on this matter and we shall draw guidance from the precedents established in these cases.

The general principles established in these cases are that to qualify for a deduction the theft must be incidental to the carrying on of the business and that the act is done by a subordinate employee to whom the management had to delegate duties involving the handling of funds.

BADRIDAS DAGA VS CIT [1959 SCR 690].

FACTS OF THE CASE

The appellant engaged an agent for the purposes of carrying on his business and conferred on him large powers of management including the authority to operate its bank accounts. While acting under such authority the agent withdrew money from the bank and used them for the discharge of his personal debts. The appellant was able to recover from the agent only a part of the amount misappropriated by him, and the balance had to be written-off at the end of the accounting year as irrecoverable. The question was whether the amount which was misappropriated and found irrecoverable was allowable as a deduction in determining the profits of the appellant.

DECISION OF THE COURT

It was held that the amount in question is **NOT ALLOWABLE** either as a bad debt or as a business expenditure **BUT** it can, however, be deducted in computing the profits of the appellant as a loss incidental to the carrying on of his business.

In operating a business, agents or employees will have to be given authority to operate bank accounts and withdraw money and in consequence any loss resulting from the misappropriation of funds under their control would be incidental to the carrying on of the business

A similar situation arose in ***SASSOON J DAVID & CO VS CIT (98 ITR 50).***

FACTS OF THE CASE

A director of the company was vested with the authority to manage the company's business, to transact in monies which would come to his hands as an agent of the company, to withdraw the amounts standing to the credit of the company in banks and to invest the same in the name and for the benefit of the company.

However, he withdrew a sum of Rs27.5 lakh from the company's accounts and utilised the amount for his private ends. He was later adjudicated an insolvent and the properties which he had purchased were recovered and Rs18.5 lakh were received by the company from the court. The balance amount of Rs9 lakh was written-off by the company and claimed as a business loss from the taxable profits.

DECISION OF THE COURT

It was held that the employment of the agent by the company was incidental to the carrying on of its business and therefore the amount withdrawn by the agent and misappropriated for his own personal ends was deductible. Yet again in ***VENKATACHALAPATHY IYER VS CIT (20 ITR 363).***

FACTS OF THE CASE

The accountant of a firm of merchants engaged in the business of selling yarn entered all the transactions in the cash book but while striking the balance at the end of each day, he used to short-total the receipts and over-total the disbursements.

DECISION OF THE COURT

It was held by the Madras High Court that the amount misappropriated by him was deductible

Also in ***LORD'S DAIRY FARM LTD VS CIT (27 ITR 700).***

FACTS OF THE CASE

The cashier of a limited company in the business of dairy farming, who was authorised to withdraw money from the company's account in the bank, defalcated various amounts of money.

DECISION OF THE COURT

It was held by the Bombay High Court that, as it was necessary for the company to employ the cashier and to depute to him the duty of withdrawing monies from the bank, the loss directly arose from the necessity of deputing that duty to the cashier and was, therefore, a trading loss.

Similarly in ***CHARLES MOORE AND CO (WA) PTY LTD VS FEDERAL COMMISSIONER OF TAXATION (1956) 6 AITR 379*** the High Court held that, as the daily banking of takings by a department store was an ordinary part of its income-producing activities, the loss of the takings by armed robbery en route to the bank was deductible as a loss incurred in gaining or producing assessable income.

However, if the theft and embezzlement was committed by someone who was the proprietor of the business or a director of the company or by a person owning the funds than it would not be deductible. This was illustrated in the case of ***CURTIS VS J & G OLDFIELD LTD [1925] 9 TC 31.***

FACTS OF THE CASE

The managing director of a private company controlled the business although he did not have a majority shareholding. After his death, an investigation revealed that some £14,000 was due from his estate to the company. Many private transactions had gone through the company's books. The debt was valueless and was written-off by the company who claimed a bad debts deduction.

DECISION OF THE COURT

The Commissioners found in favour of the company but this decision was overturned by the High Court. One of the salient points noted by Rowlatt J is that defalcations by subordinate employees are normally deductible for tax purposes whereas money misappropriated by a controlling individual is an application of profits not an expense of earning profits and no deduction is due. He explained that "where, owing to the negligence or the dishonesty of the subordinates, some of the receipts of the business do not find their way into the till, or some of the bills are not collected at all, or something of that sort, then any loss arising is a loss of the trade and should be allowed but the situation in this case was quite different. It was the managing director who had taken the money in question. He controlled the company and making away with the company's money was something altogether outside the trade".

Similarly in ***BAMFORD VS ATA ADVERTISING LTD [1972] 48 TC 359,*** a sum of £15,000 misappropriated by a director responsible for the financial affairs of the company was refused a deduction. Brightman J stated:

"I can quite see that the Commissioners might find as a fact that a 5 pound note taken from the till by a shop assistant is a loss to the trader which is connected with and arises out of the trade. A large shop has to use tills and to employ assistants with access to those tills. It could not trade in any other way. That, it seems to me, is quite a different case from a director with authority to sign cheques who helps himself to 15,000 pounds, which is then lost to the company. I find it difficult to see how such a loss could be regarded fairly as "connected with or arising out of the trade". In the defaulting director type of case, there seems to be to be no relevant nexus between the loss of the money and the conduct of the company's trade. The loss is not as in the case of the dishonest shop assistant, an incident of the company's trading activities. It arises altogether outside of such activities. That, I think, is the true distinction."

The Public Ruling clearly states that under the following circumstances a deduction is not available for theft and embezzlement:

- The employee who is involved in the theft or embezzlement is a relative of the proprietor, and there is clear evidence that the proprietor proposes to overlook the theft and even continues to employ the offender. Such a loss would not be regarded as a trade loss.
- Loss of cash or embezzlement by a sole proprietor, a partner, a director of a company or an administrator of a deceased person's estate or any person who is in control of the business operations.
- Loss of cash caused by theft, burglary or robbery which is not incidental to the business is not allowable as a deduction.

Further it specifies that any claim for a deduction for loss of cash caused by theft, defalcation or embezzlement should be substantiated by supporting evidence.

Now let us look at an examination question relating to deductibility of theft and embezzlement.

TAX IV JUNE 04 QUESTION 6(B)

Crest Trading Sdn Bhd carries on a retail supermarket business located in the golden triangle of Kuala Lumpur. Crest Trading Sdn Bhd's financial year end is 30 June. Mr. Tan Boon Keng, the managing director of Crest Trading Sdn Bhd would like to know whether tax deduction can be claimed in respect of the following losses suffered by the company for the financial year end 30 June 2003:

(i) RM500,000 misappropriated by Encik Samad bin Jujor, the finance director who was entrusted with the financial operation of Crest Trading Sdn Bhd. He was also the sole signatory of the company's current account operated with Maybank Bhd. The current account was used for the trading operations of the company. Encik Samad who was in financial difficulties made an unauthorised withdrawal of RM500,000 from the current account to settle his personal debts owed to loan sharks. The company is unable to recover the RM500,000 from Encik Samad since he has absconded and his whereabouts are not known.

(ii) RM100,000 cash lost due to robbery when two employees of Crest Trading Sdn Bhd were taking the previous day's cash takings to be deposited in the company's current account operated with Maybank Bhd, Bukit Bintang Branch.

Required:

State, with reasons and by reference

to the provisions of the ITA and decided cases, whether Crest Trading Sdn Bhd can claim deductions for the year of assessment 2003 for the losses suffered in respect of the following:
(i) RM500,000 misappropriated by Encik Samad; and
(ii) RM100,000 cash takings stolen by the robbers.
(10 marks)

SOLUTION

The general tax principle applicable here is that the business losses are deductible if they are not capital in nature and not remotely connected with the trade but really incidental to the trade itself. **Strong & Co 5 TC 215.**

(i) Misappropriation of RM500,000 by the finance director is not deductible. Generally loss due to theft by employee is deductible if there was a need to delegate certain duties connected to the trading operation of the company to the employee concerned. A distinction is drawn between misappropriation perpetrated by a junior employee and senior employee. The former is deductible whereas the latter is not. Therefore the RM500,000 pocketed by En Samad, the finance director will not be allowed deduction. Candidates may discuss briefly the following decided cases and the principles laid down therein to support their answers.

Curtis v J & G Oilfield Ltd 9 TC 319
Bamford v ATA Advertising Ltd

(ii) The general rule applicable here is that losses caused by burglary and robbery which are only incidental to the business will be given deduction. Therefore, losses not incidental to the business will be denied deductions. Since the banking of cash takings was a necessary part of the business operation of Crest Trading Sdn Bhd in gaining the income of the year concerned and the loss by robbery is a risk inherent in the procedure adopted in banking the takings, the loss of RM100,000 due to robbery is tax deductible for the year of assessment 2003.

Charles Moore Co. & CWA Properties Ltd FC of T. 6 AITR 379.

That ends our discussion on the deductibility of theft, embezzlement and losses.

***Siva Subramanian Nair** is a freelance lecturer. He can be contacted at sivasubramaniannair@gmail.com*

FURTHER READING

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CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: October – December 2015

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
OCTOBER 2015								
Workshop: Accounting Issues for GST	1 Oct	9a.m – 5p.m.	Johor Bahru	Zen Chow	350	400	450	8 WS/026
Workshop: Malaysian Taxation Principles & Procedures – Module 1: Business & Employment *(in collaboration with MAICSA)*	6 Oct	9a.m. – 5p.m.	MAICSA Training Room, KL	Vincent Josef	400	450	500	8 JV/012
Seminar: Customs Law – Procedures, Audits & Investigations, Appeal Processes & Analysis of Customs Cases	15 Oct	9a.m. – 5p.m.	Kuala Lumpur	Saravana Kumar	400	450	500	8 SE/017
Workshop: Accounting Issues for GST	15 Oct	9a.m. – 5p.m.	Penang	Zen Chow	350	400	450	8 WS/027
Workshop: Malaysian Taxation Principles & Procedures – Module 2: Allowances & Deductions *(in collaboration with MAICSA)*	20 Oct	9a.m. – 5p.m.	MAICSA Training Room, KL	Vincent Josef	400	450	500	8 JV/013
Workshop: Understanding the Legal & Practical Aspects of Withholding Taxes	21 Oct	9a.m. – 5p.m.	Malacca	Kularaj	350	400	450	8 WS/030
Training Course for the GST Tax Agent (6 days) GST Examination Day *(subject to RMCD confirmation)*	4, 5, 9,10, 18, 19 31 Oct	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs Dept.	2,200 (fee for 6 days course)	2,700 (fee for 6 days course)	3,000 (fee for 6 days course)	JV/011
Public Holiday *(Awal Muharram : 14 October)*								
NOVEMBER 2015								
Workshop: Accounting Issues for GST	2 Nov	9a.m. - 5p.m.	Ipoh	Zen Chow	350	400	450	8 WS/028
Workshop: Accounting Issues for GST	12 Nov	9a.m. - 5p.m.	Malacca	Zen Chow	350	400	450	16 WS/029
Workshop: Understanding the Legal & Practical Aspects of Withholding Taxes	16 Nov	9a.m. - 5p.m	Penang	Kularaj	350	400	450	8 WS/031
Seminar: Customs Law – Procedures, Audits & Investigations, Appeal Processes & Analysis of Customs Cases	16 Nov	9a.m. - 5p.m	Kota Kinabalu	Saravana Kumar	350	400	450	8 SE/018
Seminar: Customs Law – Procedures, Audits & Investigations, Appeal Processes & Analysis of Customs Cases	17 Nov	9a.m. - 5p.m	Kuching	Saravana Kumar	350	400	450	8 SE/019
Workshop: Understanding the Legal & Practical Aspects of Withholding Taxes	17 Nov	9a.m. - 5p.m	Ipoh	Kularaj	350	400	450	8 WS/032
Workshop: Understanding GST-Post Implementation Issues	19 Nov	9a.m. - 5p.m	MAICSA Training Room, KL	Vincent Josef	400	450	500	8 JV/014
Seminar: Customs Law – Procedures, Audits & Investigations, Appeal Processes & Analysis of Customs Cases	26 Nov	9a.m. - 5p.m	Ipoh	Saravana Kumar	350	400	450	8 SE/020

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: October – December 2015

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
Workshop: Understanding the Legal & Practical Aspects of Withholding Taxes	26 Nov	9a.m. - 5p.m	Johor Bahru	Kularaj	350	400	450	8 WS/033
Workshop: Malaysian Taxation Principles & Procedures – Module 4: Advanced Subjects II *(in collaboration with MAICSA)*	26 Nov	9a.m. - 5p.m	MAICSA Training Room, KL	Vincent Josef	400	450	500	8 JV/015
DECEMBER 2015								
Seminar: Customs Law – Procedures, Audits & Investigations, Appeal Processes & Analysis of Customs Cases	1 Dec	9a.m – 5p.m.	Malacca	Saravana Kumar	350	400	450	8 SE/021
2016 BUDGET SEMINAR								
2016 Budget Seminar	5 Nov	9a.m. - 5p.m.	Kuala Lumpur	CTIM, MoF, LHDNM, RMCD	350	400	450	10 BS/001
2016 Budget Seminar	23 Nov	9a.m. - 5p.m.	Petaling Jaya	CTIM & LHDNM	350	400	450	10 BS/002
2016 Budget Seminar	24 Nov	9a.m. - 5p.m	Kota Kinabalu	CTIM & LHDNM	350	400	450	10 BS/003
2016 Budget Seminar	25 Nov	9a.m. - 5p.m	Kuching	CTIM & LHDNM	350	400	450	10 BS/004
2016 Budget Seminar	25 Nov	9a.m. - 5p.m	Malacca	CTIM & LHDNM	350	400	450	10 BS/005
2016 Budget Seminar	1 Dec	9a.m. - 5p.m	Penang	CTIM & LHDNM	350	400	450	10 BS/006
2016 Budget Seminar	2 Dec	9a.m. - 5p.m	Ipoh	CTIM & LHDNM	350	400	450	10 BS/007
2016 Budget Seminar	3 Dec	9a.m. - 5p.m	Johor Bahru	CTIM & LHDNM	350	400	450	10 BS/008
2016 Budget Seminar	8 Dec	9a.m. - 5p.m	Kuala Lumpur	CTIM & LHDNM	350	400	450	10 BS/009

DISCLAIMER : The above information is correct and accurate at the time of printing. CTIM reserves the right to change the speaker (s)/date (s), venue and/or cancel the events if there are insufficient number of participants. A minimum of 3 days notice will be given.

ENQUIRIES : Please call Ms. Yus, Ms. Ramya, Mr. Jason, Ms. Jas or Ms. Ally at 03-2162 8989 ext 121, 119, 108, 131 and 123 respectively or refer to CTIM's website **www.ctim.org.my** for more information on the CPD events.

2016 Budget Seminar

CHARTERED TAX INSTITUTE OF MALAYSIA

The 2016 Malaysian Budget Proposals will be announced and tabled in Parliament on the 23rd October 2015 by the Prime Minister/Minister of Finance, YAB Dato' Sri Najib bin Tun Abdul Razak. The theme for this year's Budget Proposals **"Strengthening Growth, Enhancing Inclusiveness, Ensuring Fiscal Sustainability"** is in line with the Government's focus on invigorating the economy and improving the well-being of the people. Join us at this year's CTIM Budget Seminars which will provide participants with a practical understanding of the key tax changes presented in the 2016 Budget Proposals.

PROGRAMME:

8:00 am	**Registration & Welcome Coffee/Tea**
9:00 am	SESSION 1: **Summary of 2016 Budget Proposals**
10:15 am	Q & A Session
10:30 am	Morning Refreshments
11:00 am	SESSION 2: **Forum Discussion on 2016 Budget Proposals** **– Its Changes & Impact to Taxpayers**
12:15 pm	Q & A Session
12:45 pm	Networking Lunch
2:00 pm	SESSION 3: **Tax Updates & Latest Developments**
4:00 pm	Q & A Session
4:30 pm	End of Seminar & Refreshments

BENEFITS TO PARTICIPANTS:

- Obtain information and clarification from the Ministry of Finance (MOF), Inland Revenue Board of Malaysia (IRBM), and Royal Malaysian Customs Department (RMCD) on the latest changes and impact to taxpayers with regard to the 2016 Budget Proposals.
- Get to know the key issues arising from the major Budget changes in 2016 and their impact on your business
- Gain knowledge on IRBM's significant current practices and processes.
- Receive 10 CPD points recognised by MOF as one of the mandatory Budget Seminars for the purposes of application and renewal of tax agent licence under Section 153 (3) of the Income Tax Act 1967 and GST tax agent licence under Section 170 of the GST Act 2014.
- Receive a complimentary copy of the 2016 Budget Commentary & Tax Information booklet. *

  ** Subject to stock availability*

DATE / Event Code	VENUE	Session 1: 9.00 am – 10.15 am Summary of 2016 Budget Proposals	Session 2: 11.00 am – 12.15 pm Forum Discussion: 2016 Budget Proposals – Its Changes & Impact to Taxpayers	Session 3: 2.00 – 4.00 pm Tax Updates & Latest Developments
Thursday 5 Nov 2015 (BS/001)	Renaissance Hotel Kuala Lumpur	Chairman : Mr Aruljothi Kanagaretnam Speaker : Ms Khodijah Abdullah (MOF)	Chairman : Mr Aruljothi Kanagaretnam Panelists : Ms Khodijah Abdullah (MOF) Ms Hanisah Dukes Abdullah (RMCD) Ms Nor'aini Ja'afar (LHDNM) Ms Phan Wai Kuan	Chairman : Ms Renuka Bhupalan Speakers : Ms Farah Rosley Mr Vijey M Krishnan
Monday 23 Nov 2015 (BS/002)	The Saujana Hotel, Subang	Chairman : Ms Seah Siew Yun Speaker : Ms Hazlina Hussain (LHDNM)	Chairman : Ms Seah Siew Yun Panelists : Ms Hazlina Hussain (LHDNM) Mr Chow Chee Yen	Chairman : Datuk Harjit Singh Sidhu Speakers : Mr Nicholas Crist Ms Theresa Goh
Tuesday 24 Nov 2015 (BS/003)	Hyatt Regency, Kota Kinabalu	Chairman : Ms Angeline Wong Speaker : Mr Abu Tariq Jamaluddin (LHDNM)	Chairman : Mr Chu Vun Henn Panelists : Mr Abu Tariq Jamaluddin (LHDNM) Mr Goh Chee San	Chairman : Ms Lim Yan Kee Speaker : Mr Chris Low
Wednesday 25 Nov 2015 (BS/004)	Riverside Hotel, Kuching	Chairman : Ms Farehan Hussin Speaker : Mr Muhammad Farid Jaafar (LHDNM)	Chairman : Ms Farehan Hussin Panelists : Mr Muhammad Farid Jaafar (LHDNM) Mr K.Sandra Segaran	Chairman : Mr Philip Lim Su Sing Speaker : Ms Tham Lih Jiun
Wednesday 25 Nov 2015 (BS/005)	Ramada Plaza, Malacca	Chairman : Mr Choo Ah Kow Speaker : Ms Rosnita Ahmad (LHDNM)	Chairman : Mr Choo Ah Kow Panelists : Ms Rosnita Ahmad (LHDNM) Mr Soh Lian Seng	Chairman : Mr A.V. Varan Speaker : Mr Zen Chow
Tuesday 1 Dec 2015 (BS/006)	Jen Hotel, Penang	Chairman : Ms Kellee Khoo Speaker : Mr Marsidi Zelika (LHDNM)	Chairman : Ms Kellee Khoo Panelists : Mr Marsidi Zelika (LHDNM) Mr Koong Lin Loong	Chairman : Mr Paul Ang Speaker : Ms Gwendolyn Lau
Wednesday 2 Dec 2015 (BS/007)	Impiana Hotel, Ipoh	Chairman : Mr Chak Kong Keong Speaker : Dr Marliza Mohamad (LHDNM)	Chairman : Mr Chak Kong Keong Panelists : Dr Marliza Mohamad (LHDNM) Ms Theresa Wong	Chairman : Mr Lam Weng Keat Speaker : Mr Poon Yew Hoe
Thursday 3 Dec 2015 (BS/008)	Mutiara Hotel, Johor Bahru	Chairman : Mr Bernard Wong Speaker : Ms Noraini Ismail (LHDNM)	Chairman : Mr Bernard Wong Panelists : Ms Noraini Ismail (LHDNM) Mr Benedict Francis	Chairman : Ms Tan Lay Beng Speaker : Mr Mohd Salleh Yusof
Tuesday 8 Dec 2015 (BS/009)	Seri Pacific Hotel, Kuala Lumpur	Chairman : Mr SM Thanneermalai Speaker : Mr Abu Tariq Jamaluddin (LHDNM)	Chairman : Mr SM Thanneermalai Panelists : Mr Abu Tariq Jamaluddin (LHDNM) Ms Yeo Eng Ping	Chairman : Mr K.Sandra Segaran Speakers : Mr David Lai Mr Lim Kah Fan

PLEASE MARK YOUR DIARIES !

Please contact CTIM Secretariat at 03-2162 8989 or visit website at www.ctim.org.my
Unit B-13-1, Block B, 13th Floor, Megan Avenue II No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur, Malaysia

10 CPD points

CLAIMABLE UNDER THE SBL SCHEME HRDF
Based on the merit of each applicant.