Vol.6/No.3/2013/Q3

Official Journal of the Chartered Tax Institute of Malaysia

Tax Guardian

AUTHORITATIVE - RELEVANT - GLOBAL EXCELLENCE

RM28.00

UP CLOSE & PERSONAL WITH YANG ARIF DATO' HJ. ZAINI BIN HJ. ABDUL RAHMAN

UNDERSTANDING THE FUNCTIONS OF THE SPECIAL COMMISSIONERS OF INCOME TAX

- **Understanding the Psychology of Taxpayers and Transforming the Tax System**
- **Ships and Water Snakes** *(Part 2)*
- **Interesting Facts About Capital Allowances**

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CHARTERED TAX INSTITUTE OF MALAYSIA

ISSN 0128-7583

9 770128 758008

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 economic advancement and to attain the highest standard of technical and professional competency in revenue law and practice supported by an effective secretariat.

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Tax Guardian

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JULY 2013

INVITATION TO WRITE

The Institute welcomes original contributions which are of interest to tax professionals, lawyers and academicians. They may cover local or international tax developments. Article contributions should be written in UK English. All articles should be between 1,800 to 2,000 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.

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From the President's Desk

SM THANNEERMALAI

GST - WILL IT BE IMPLEMENTED?

The topic of GST has been discussed seriously since 2005 and time and time again, we have been told that it is absolutely needed to meet our 2020 vision of becoming a developed nation. Minister in the Prime Minister's Department Datuk Seri Idris Jala made it clear at our National Tax Conference in 2011 that the GST was needed to finance the deficit gap and to fund the government expenditure needed to achieve the 2020 vision.

However, on 30 May the Second Finance Minister Dato' Seri Haji Ahmad Husni Hanadzlah said that the government will not impose GST in the near term as it is still reviewing the impact and the rate to be applied. So, here we go again with the continuing uncertainty as to when it will be introduced. This situation does not help the business community which needs to know when it will come; otherwise the government should provide an assurance to the "tax collectors" who will be the businesses in Malaysia, that whenever GST is to be introduced, a minimum 24 months should be provided to allow the business community sufficient time to gear itself to implement GST.

CTIM is of the view that GST is long overdue as it is a more efficient tax than the current single-stage service and sales tax which cascades down to the final consumer with a multiplier effect.

SHARING OF INFORMATION WITH MEMBERS

CTIM's technical department, headed by Mr. Lim Kok Seng, has commenced placing on the website (for the benefit of members only) the comments or feedback that CTIM provides to the IRB and any other authorities on issues; or comments following meetings with the authorities and the subsequent feedback we receive from them. Members are alerted on the same through the e-CTIMs.

In the past, CTIM only provided the members with the final version of the agreed minutes of meetings or final version of the documents, which were uploaded on the website. You may appreciate that there is the element of confidentiality or sensitivity as the authorities may not want to disclose policy/procedures at its preliminary stage. We will disclose to members as much information as possible, provided we do not compromise the trust between the Institute and the authorities. The purpose is, where appropriate, to provide all our members

across the country with a trail of events or the trail of the discussions which have taken place in Putrajaya or Cyberjaya or in Kuala Lumpur between CTIM and the authorities. It allows our members to understand the background of policy that ultimately come as rules or laws or guidelines which are then implemented principally by the Inland Revenue Board or the Royal Malaysian Customs.

I hope this new service will provide more information when dealing with the relevant authorities.

KNOWLEDGE WILL PROPEL YOU UP THE VALUE CHAIN

I notice that CPD events that focus on the common issues, such as tax case updates and any general tax planning events or common local issues such as reinvestment allowance attract a large audience from our members. However, courses that deal with more complex topics or international taxes attract a lesser audience.

If we, as a profession, are to grow and compete with the international players in the open market, CTIM members across the country need to equip themselves with knowledge about what is happening overseas and to deal with the new and complex areas such as being well versed with the tax provisions, say in the area of financial markets dealing with business trusts, Islamic finance; tax issues around derivative trades involving financial and non-financial products such as commodities and other areas such as international taxation, anti avoidance, transfer pricing, etc. These are examples of areas in which CTIM members need to equip themselves, through attending CPD events CTIM will be organising in the future, or through taxpayer forums which I plan to introduce next year. However, we can only think of implementing such actions if the members support such events at all our locations.

The gap in knowledge also creates a gap between the top firms in the country and others, and if our members are to move up the value chain, enhancing one's knowledge to service one's clients or bosses within the industry is an absolute necessity.

Editor'sNote

DATO' RAYMOND LIEW LEE LEONG

GAINING TRACTION THROUGH LEARNING

I have frequently stressed that if the Malaysian tax profession is to advance and become world-class and globally competitive, it is imperative that CTIM members across the country equip themselves with knowledge that lies outside their usual scope. Not only do CTIM members need to be primed on current local issues such as transfer pricing and reinvestment allowance, but we also require working knowledge of complex tax regulations which have an international impact e.g. in the area of financial markets dealing with business trusts, Islamic finance taxation; derivative trades, anti-avoidance and international tax law to name a few.

In this issue, we present a gamut of articles that we hope will be fresh and add value to your existing knowledge base. First up is an exclusive interview with the Chairman of the Special Commissioners of Income Tax (SCIT), Yang Arif Dato' Hj. Zaini Hj. Abdul Rahman. Little is known about the SCIT's role and we hope that this eye-opening interview helps CTIM members see exactly how the SCIT functions as an appeal tribunal to determine tax disputes between the taxpayers and the State. Looked at in a larger perspective, the SCIT is creating awareness of and upholding the taxpayer's constitutional rights, which in turn promotes a mature environment for tax enforcement and compliance.

Not surprisingly, tax compliance is an issue of perennial interest for CTIM. This time around, we explore how understanding the psychology of the taxpayer can actually help to promote tax compliance. In his analysis, Dr. Veerinderjeet Singh, the Chairman of TAXAND MALAYSIA and a past president of CTIM also lists some significant reforms that might be considered in order to make tax administration more effective and efficient and encourage better tax compliance.

Corporate social responsibility (CSR) is gaining traction as businesses seek to become more competitive and competent not only economically, but also in terms of their impact on the environment and people. This is also an area that CTIM members need to familiarise themselves with, since compliance with CSR-oriented regulations and best practices will have a business impact. Key stakeholders that need to be considered when formulating a CSR policy include customers, investors, employees and the environment, and our article on CSR alerts members as to what legislations and best practices we need to take into account to be compliant and sustainable, such as the Wildlife Conservation Act 2010 and the Whistleblower Protection Act 2010.

Finally, we run an informal Q&A on the interesting facts and common mistakes made in claiming capital allowances, since this is a subject which interests many members of CTIM. I trust that this will be a useful guide and do write in to us with suggestions for future Q&A topics which you would like to see in these pages.

Only by equipping ourselves with knowledge on a continuous basis can we CTIM members gain traction in the local and international marketplace. It is my hope that *Tax Guardian* will continue to improve and establish itself as a source of technical and specialist knowledge that can enable our members to advance to the apex of success.

Happy reading!

Sincerely,
Editor

SEMINAR ON TAX APPEAL AND RELATED MATTERS

On 18 April 2013, CTIM organised a seminar on tax appeal and related matters which featured Yang Arif Dato' Hj. Zaini Bin Hj. Abdul Rahman, Chairman of the Special Commissioners of Income Tax (SCIT). The learned speaker took the audience on an information-filled journey, as he spoke in depth about the SCIT. Starting from the vision, mission and functions of the Special Commissioners, through the appeal procedures to the transformation of the SCIT, the audience was informed of the many aspects of the appeal process. Some matters highlighted included (a) SCIT is not a court of original adjudication; (b) the 30-day timeframe for appeal under Section 99(1), Income Tax Act 1967 should be strictly followed; (c) further appeal from the SCIT's decision would be on a question of law; (d) communication with the SCIT should be in Bahasa Malaysia (except in Sabah and Sarawak) and the relevant party may apply for leave to use English and (e) with regard to the due date for filing of documents and application, the effective date is the date when the original is received by the SCIT either by personal delivery or courier.

On the same day, we also had the honour of listening to Mr. Rungit Singh, Chairman of the Customs Appeal Tribunal (CAT), who enlightened the audience with a professional presentation on the role of CAT. Much insight was provided on the handling of the appeals by CAT; guided by its tagline – fair, transparent and speedy – the public can be optimistic of a pleasant experience with CAT. In this context, anyone who is aggrieved by the decision of the Director-General of Customs may make use of the appeal system available. The other objective of CAT is to enhance the efficiency of the tax administration appeal system to make it more business and client-friendly; indeed, judging from the explanation provided by the speaker, and the examples of decisions of appeals made, CAT definitely appears an appealing option to the aggrieved party.

CHARTERED TAX INSTITUTE OF MALAYSIA'S PRIZE GIVING CEREMONY – 2012 EXAMINATIONS

The Chartered Tax Institute of Malaysia held its Prize Giving Ceremony for graduates and prize winners of the 2012 CTIM Professional Examinations on 15 June 2013 at the Renaissance Hotel, Kuala Lumpur. Prof. Datuk Dr. Md. Zabid Haji Abdul Rashid, President and Vice-Chancellor of Universiti Tun Abdul Razak was the guest of honour at the event. Graduates who have successfully completed the CTIM Professional Examination received their graduation certificates and four prize winners obtained awards of medals for best performance.

In his address, the Chairman of the Examinations Committee, Professor Dr. Jeyapalan Kasipillai, congratulated the 16 new graduates. He congratulated the winners for Best Performance in the taxation subjects and Prize winners for Best Performance in the Foundation level.

Also present at the Prize Giving Ceremony were representatives from various educational institutions, professional bodies, CTIM Council Members, families and friends of the graduates.

AWARD OF ICAA MERITORIOUS SERVICE TO PETER LIM

The Chartered Tax Institute of Malaysia wishes to congratulate Mr. Peter Lim Thiam Kee, Council Member of the Institute, for being awarded the prestigious Institute of Chartered Accountants in Australia (ICAA) Meritorious Service Award by Mr. Tim Gullifer, President of ICAA in March 2013. Mr. Peter Lim served ICAA, Malaysia Members Group since 2001 until 2012 as the Chairman. He has also been serving the profession through other organisations such as The Malaysian Institute of Accountants, The Malaysian Institute of Certified Public Accountants, The Malaysian Institute of Chartered Secretaries & Administrators and the Disciplinary Committee of the Advocates & Solicitors Disciplinary Board. He has also contributed his services to charitable organisations such as the Shepherds Centre Foundation.

The award serves to recognise Peter Lim's outstanding services in various capacities in the professional fields of accounting, corporate taxation and corporate advisory services and in charitable organisations. Peter Lim is the first Malaysian to be conferred with the prestigious Meritorious Service Award by ICAA.

CPD EVENTS

CTIM & IRB successfully organised the IRB-CTIM Roadshow with the theme "The Importance of Taxpayer Compliance" in Kuala Lumpur, Johor Bahru, Penang, Kota Kinabalu and Kuching in March and April 2013. The objectives of the roadshow were to highlight the issues that commonly arose during the tax returns & tax audit and investigations and how taxpayers can avoid such issues and consequent penalties. The roadshow were attended by tax professionals and practitioners.

Mr. SM Thanneermalai & Mr. Vijey M. Krishnan presented a half-day seminar on "Anti-avoidance" at selected venues i.e Kuala Lumpur (29 April 2013), Ipoh (20 May 2013) and Johor Bahru (31 May 2013). These seminars focused on the issues dealing with anti-avoidance; both from the practitioners and legal perspectives. Ms. Yeo Eng Ping participated as a panellist during the panel discussion session at the end of the seminar.

On 17 May 2013, a half-day seminar on "Transfer Pricing Documentation - Practical Issues in Implementing the Requirements of the Transfer Pricing Guidelines - Documentation Aspects" was conducted at the Seri Pacific Hotel, Kuala Lumpur. The speakers, Mr. SM Thanneermalai & Ms Anushia Joan Soosaipillai covered the practical issues faced in preparing contemporaneous transfer pricing documentation.

Various workshops were held from April to June 2013 to keep abreast of the latest tax developments for the tax practitioners. Amongst the workshops were the following:

Workshops	*Speaker/s*
Tax savings opportunities for exporters; exemptions and double deductions	Mr. Richard Thornton & Mr. Thenesh Kannaa
Insights to Malaysia's First Transfer Pricing Litigation	Mr. S Saravana Kumar & Ms. Siti Fatimah
Latest development & implications on withholding tax and the effectiveness of double taxation agreements in cross border transactions in 2013	Mr. Sivaram Nagappan
Withholding tax – the basic and the advanced	Mr. Richard Thornton & Mr. Thenesh Kannaa
Tax planning for Individuals	Mr. Vincent Josef
Tax planning for companies (in joint collaboration with MAICSA)	Mr. Vincent Josef
Common tax issues facing the SMEs	Ms. Farah Rosley

CESSATION OF MEMBERSHIP

The following members have been excluded from the Membership Register on 31 March 2013 in accordance with Article 28 of the Articles of Association of the Institute:-

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Roziela Binti Mohd Salleh	3317

UP CLOSE & PERSONAL WITH YANG ARIF DATO' HJ. ZAINI BIN HJ. ABDUL RAHMAN

UNDERSTANDING THE FUNCTIONS OF THE SPECIAL COMMISSIONERS OF INCOME TAX

The Special Commissioners of Income Tax ("SCIT") are sometimes eyed with wariness by taxpayers. The SCIT had been occasionally perceived as an extension of the Inland Revenue Board given that at one point of time, it was helmed by retired senior Revenue officers. But that, said Yang Arif Dato' Hj. Zaini bin Hj. Abdul Rahman, Chairman of the Special Commissioners of Income Tax, is not an altogether fair assessment of the role of the SCIT. "The SCIT is an appeal tribunal to determine tax disputes between the taxpayers and the State," he explained. Dato' Zaini added that "The SCIT is not an administrative body that makes administrative decisions pertaining to tax administration. Rather, we deal with personal rights, and we are a quasi-judicial body that interprets and enforces the laws pertaining to direct taxes namely the Income Tax Act 1967, Petroleum Income Tax Act 1967 and Real Property Gains Tax 1976 as intended by Legislation. Be assured that the SCIT do not take sides; we are impartial. We interpret the law in accordance to the established principles of statute interpretation and the doctrine of judicial precedents. Our decisions are also appealable and if the taxpayers or the Inland Revenue Board ("IRB") are dissatisfied with our decision, the course of law enables them to pursue an appeal to the High Court."

In a first interview of its kind, *Tax Guardian* presents to our readers an exclusive interview with Dato' Zaini by **Dato' Raymond Liew** and **Mr. S. Saravana Kumar**.

WHAT EXACTLY IS THE SCIT?

According to Dato' Zaini, "The public may not be aware that the SCIT is an appeal tribunal of law," he continued. "We may have been perceived as an organ of the IRB; and of course, we cannot stop

people thinking and talking as they like – but we want to prove that the SCIT is indeed an independent tribunal, and that the public can benefit from the law if the law is applied and construed accordingly. I wish to reiterate the jurisprudence of tax law in Malaysia as enunciated by the then Supreme Court in the landmark case of *National Land Finance Co-operative Society Ltd v Director-General of Inland Revenue [1993] 4 CLJ 449* that our Courts have refused to adopt a construction of a taxing statute which would impose liability when doubt exists. A subject is not to be taxed without clear words. In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. It has also been held that the intention to impose a charge upon a subject must be shown by clear and unambiguous language.

Emphasising that taxpayers need a strong body to adjudicate tax matters in accordance with the law, Dato' Zaini commented that the present members of the SCIT consist of one Chairman and five Commissioners who are all legally trained. "They have to understand the intention of the legislation and apply them without any fear or favour." he stressed.

The establishment of the SCIT is provided for under Section 98 of the Income Tax Act 1967 and the members are appointed by His Majesty the Yang di-Pertuan Agong. However, the said provision is silent on the appointment process of the SCIT. Presently, as a matter of practice, the Minister of Finance advises His Majesty on the appointment of the SCIT by recommending the names of individuals suitable for the post. Dato' Zaini explained that while the Chairman of the SCIT is required to be legally qualified, the person who holds the position does not necessarily have to come from the legal or judicial services. "However, when I was appointed as the Chairman of the SCIT, I learnt that the Treasury had obtained approval from the Public Services Department for five positions in the SCIT to be filled by qualified legal officers from the Judicial and Legal Service," he continued. "By virtue of this, all of the five SCIT members are legally qualified whereby four of them were seconded from the Attorney-General's Chambers, and the fifth member is a retired Sessions Court Judge appointed on contract for service."

Dato' Zaini remarked that collectively, all six members of the SCIT have more than 100 years of experience among them and as such, are well qualified to adjudicate on matters pertaining to income tax. This is absolutely necessary as the SCIT deals with tax disputes that are worth hundreds of million ringgit each year. Although these appointments were made at the highest level, Dato' Zaini expressed a wish for further reform. "It is my desire that the SCIT will be upgraded to a more authoritative and respectable body, perhaps of the status of a High Court that will look into income tax matters," he said. "Currently, all the SCIT members are or were from the judicial and legal services. Perhaps in the future, even private legal practitioners could be given the opportunity to apply to be a member of the SCIT as long as they understand the legal remedies available, and are able to guide others." Dato' Zaini pointed out that such practices already exist in the Industrial Courts where practising lawyers apply to join the bench.

However, when I was appointed as the Chairman of the SCIT, I learnt that the Treasury had obtained approval from the Public Services Department for five positions in the SCIT to be filled by qualified legal officers from the Judicial and Legal Service.

HEAVY ON THE LEGALITIES

Make no mistake about it, the SCIT is all about knowing, interpreting and enforcing the law. There is a lot of reading up ahead for anyone who aspires to this position. They have to be familiar with not just the Constitution but also with the Hansard and explanations given by Ministers during the tabling of legislation. It is also imperative that the SCIT also understand the principles of administrative law and the remedies available. "Being a quasi-judicial body, we have to fall back on the Constitution which is of supreme law when interpreting and enforcing the law as intended by the legislature" he explained. "Whatever we do must be based on the wordings of the statutes themselves, and we have to be very careful. The taxpayers' constitutional rights are at stake here, and the authorities can only impose tax in accordance to the law and not public rulings, or guidelines. On the same note, we must ensure that the taxpayers pay the taxes that are due. There is no room for tax evasion or tax avoidance. Matters of this nature involve, *inter alia,* balancing the needs of the Government to realise the taxes and the needs of the taxpayer to be protected against arbitrary or incorrect assessments."

Dato' Zaini gave the assurance that the SCIT acts according to the law, without sympathy or sentiment and with complete impartiality and independence. The SCIT is not part of the IRB. "Likewise, the Treasury does not interfere in our decisions," he stressed. "If the judgements of the SCIT or the superior courts are not adhered to by the relevant officers, I urge the taxpayers to lodge an appeal to the SCIT. I personally assure the taxpayers that the SCIT will examine the merits of their appeal. If the taxpayer has already paid, a claim can be made for a refund, and if no money

is given back, the taxpayer can take up necessary proceedings against the relevant authority." He added that once an order has been perfected and served, it has to be respected, and that every case is judged on its individual merits.

Since the need for in-depth knowledge of the law is a prerequisite, legally qualified individuals with experience in law practice would be the front runners to the SCIT positions, but has there been a flood of applications? According to Dato' Zaini, there has been growing interest. Experienced lawyers, of course, will have no trouble understanding the subject, but they may have to undergo training to be

acquainted with the role of being an adjudicator and the procedures at the SCIT. One point to note is the concerted efforts initiated by the SCIT to heighten its public profile, so that more taxpayers will understand and appreciate its role. Response to these efforts, said Dato' Zaini, has been most encouraging. "The engagement sessions organised by the CTIM branches in Kuching and Sibu, together with the local Bar Committee, was overwhelming," he said. "In fact, the venue was not big enough! Some of the participants had to stand. Although my public appearances as the Chairman of the SCIT are limited but we will be having as many as we can, subject to the availability of time, personnel and other resources. My commitment is to ensure that the SCIT continues to engage with its stakeholders."

CHALLENGES AND REFORMS

The increased interest in the SCIT among tax practitioners, accountants and lawyers coupled with the initiatives to make it more accessible to the public makes there a need for reforms. Existing methods may be rather outdated in present-day circumstances. In addition to a good knowledge of tax law, the SCIT must keep them constantly updated on court decisions. "We also have caucuses from time to time among the SCIT," Dato' Zaini divulged. "It is necessary to discuss the recent developments in law and examine whether they will affect the cases which we may be hearing. The law involves much thinking. Currently, all SCIT members are legally trained, but if non-lawyers are capable and appreciate the law as well as a qualified lawyer, there should be no problem with their appointment."

To the question as to exactly how does the SCIT handle complicated accounting matters, Dato' Zaini responded "That's where accountants and tax agents have to come in and clarify". "Judgements are always based on the principles of accounting or accounting system that is being used. So far I have not come across any case where the SCIT had difficulty with these as we rely on the expert witnesses and the submissions put forward by the legal counsel for both parties."

FOLLOW DUE PROCESSES

It is vital to realise and respect that the right of appeal is given to the aggrieved taxpayer to challenge an assessment raised by the Inland Revenue Board including the issuance of time-barred assessment and the imposition of penalty, Dato' Zaini emphasised. "Decisions taken by the Inland Revenue Board can be reversed by an appellate body, i.e. the SCIT in this case," he said. "We are the first avenue of judicial appeal." Section 99(1) of the Income Tax Act 1967 provides that if a person is aggrieved by an assessment, he may appeal to the SCIT using the prescribed form which is known as Form Q within 30 days upon the service of the impugned assessment. The Form Q must clearly state the grounds of appeal. If upon the filing of Form Q, the taxpayer and the Inland Revenue Board are able to come to an agreement, the assessment will be adjusted and determined accordingly – Section 101(2) ITA 1967. If this is not forthcoming, then Section 102(3) of the Income Tax Act 1967 provides that the Inland Revenue Board shall forward the Form Q to the SCIT.

Dato' Zaini explained that the SCIT evaluates the correctness of the assessment in accordance to the law. Conceding that presently there are no comprehensive rules governing the procedures before the SCIT, Dato' Zaini disclosed his intention to establish a Joint Rules Committee. The stakeholders' co-operation is necessary for this, and based on initial feedback, many responded positively to the idea. However, more work and discussion on the matter is required before things can move forward. Stressing that voluntary involvement by all parties will be necessary to make a body like this an effective one, he said, "If I compel stakeholders to come, it may not work very well. Compulsion is not a good thing when it comes to matters like these. Besides, starting out on a basis of compulsion won't be good for the institution in the future, either."

THINGS TO CONSIDER

There are certain parameters within which judgements can be made, and evidence is weighed against these parameters. But the SCIT, by reason of their training and experience, can "sense whether the evidence is the truth or not," he said. "It is a bit abstract to explain, and the evidence, of course, varies from one case to another but it can be sensed from many things, such as observing the demeanour of the witness, for instance. I come from the "Old School" so it's also about credibility, and its impact. Having legal qualifications alone is insufficient."

On this point, he added that tax lawyers and agents who appear before the Court should also have the confidence to speak up with opinions based on evidence, in support of their respective cases. "They have to cultivate the ability to communicate effectively with clients, counterparts and the Bench," he stressed. "Clarity of communication is ultra-important. Be clearly understood, be committed and prepared. Lawyers from both sides and tax agents have appeared before me unprepared – but we have read the files, and we read every document. The SCIT ensures that we read the files thoroughly before the proceedings begin, and we can anticipate how the case will go. We are able to narrow it down to the points of law, so most cases have been settled."

MOVING FORWARD

In its 45 years of existence, the SCIT have dealt with tax cases worth billions of ringgit. A quick check at the SCIT's website showed that in 1968, out of the 18 cases before the SCIT, 10 cases were withdrawn, 6 cases were dismissed, 1 was settled by agreement and 1 was allowed. The total amount of tax involved in those disputes for 1968 was RM1.8 million. In contrast, 80 cases were heard in 2011 of which 17 cases were withdrawn, 36 cases were dismissed, 15 cases were settled by agreement, and 12 cases were allowed. The total amount of tax involved in 2011 was RM1.9 billion. Clearly, the SCIT is not a high-profile body but it has been silently performing its work and delivering the deliverables.

Dato' Zaini views the SCIT as a quasi-judicial training specialising in tax matters and will continue to maintain its impartiality, authority and independence," he concluded. "But I sincerely would like to see the SCIT being creative and bold with its decisions, without fear or favour. It should continuously improve." His final word of advice to those who appear before him: "Be prepared. You always have to be prepared in a Court of Law."

WHAT IT TAKES TO BE THE CHAIRMAN?

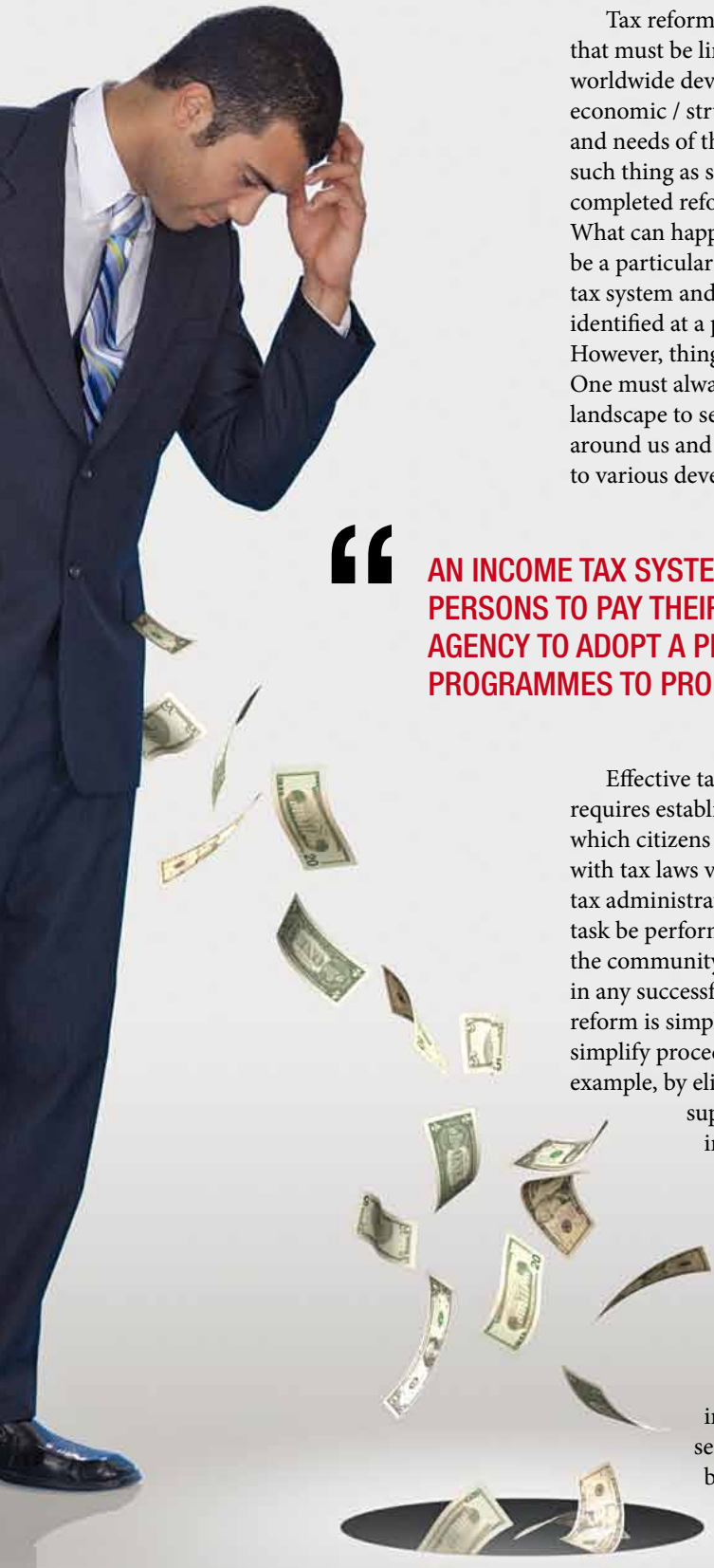
Dato' Zaini, the present Chairman of the SCIT has had a long and illustrious judicial career that more than adequately equips him for his current position. After obtaining his law degree from Universiti Malaya in 1978, he was absorbed into the legal and judicial services, and first became a magistrate in Penang, where he worked for two years before being transferred to the Seremban High Court as a Senior Assistant Registrar in 1980. Five years later, in 1985, he was appointed as the legal advisor to the Ministry of Labour, and after just a few months in the position, found himself appointed as a Senior Deputy Prosecutor. The end of 1988 saw him being transferred back to Seremban, this time as a Senior Sessions Court Judge.

In July 1992, he was posted to Melaka but by the end of that year, he was transferred to Kuala Terengganu as the Senior Sessions Court Judge. Two years later, in May 1994, he was transferred to the Georgetown Sessions Court, and in September 1995, he was appointed as the Training Director of the Institut Latihan Kehakiman dan Perundangan (ILKAP). Over the next few years, Dato' Zaini served as a Sessions Court Judge in Petaling Jaya, Kota Bharu, and Kuala Lumpur. In February 2002, he was appointed to the Industrial Court in Kuala Lumpur, where he served as a Chairman until February 2007. In March 2007, he was appointed to the coveted position of Principal Chairman of the Advisory Board in the Prime Minister's Department, a position he held until January 2011, when he was appointed as the Chairman of the SCIT. "I had retired on 15 September 2011," he said. "But just prior to my retirement, the Treasury invited me to continue as Chairman of the SCIT. So this is actually my second tour of duty. Looking back on my career, I must say that the time I spent as one of the Chairmen of the Industrial Court was probably the most intense; that was when Court-run mediation was introduced. I think I had a flair for it, and contributed to the improvement of its processes. That was also probably when I became quite well known among practitioners and litigants alike! I heard that I was very much missed by those who believe in mediation in the Industrial Court. But I had to move on to a new area then i.e. the Advisory Board. And now, the SCIT. What's next? Only God knows."

UNDERSTANDING THE PSYCHOLOGY OF TAXPAYERS AND TRANSFORMING THE TAX SYSTEM

Dr. Veerinderjeet Singh

One of the key thrusts of the Government has been to strengthen the nation's institutional and implementation capacity. The Government has stated its commitment to improve the efficiency and effectiveness of the public sector service delivery system so as to provide quality service and create an enabling environment for business. It has, over the years, taken various steps to improve service delivery. Although these initiatives have yielded commendable results in some aspects, the Government needs to step up its effort to further improve the public service delivery system in order to enhance Malaysia's competitiveness and attraction to investors. The tax system is one such area and a key enabler to energising investment activity.



Tax reforms are an ongoing process that must be linked to regional and worldwide developments as well as the economic / structural development and needs of the nation. There is no such thing as saying that we have completed reforming the tax system. What can happen is that there may be a particular focus on aspects of the tax system and specific approaches are identified at a particular point of time. However, things do not remain static. One must always be surveying the landscape to see what else is happening around us and how we should respond to various developments.

Effective tax administration requires establishing an environment in which citizens are induced to comply with tax laws voluntarily, while efficient tax administration requires that this task be performed at minimum cost to the community. An important element in any successful administrative reform is simplicity. It is important to simplify procedures for taxpayers, for example, by eliminating demands for superfluous information in tax returns. Tax administration requires facilitating compliance, monitoring compliance and dealing with non-compliance. Facilitating compliance involves improving services to taxpayers by providing clear instructions, understandable forms, and assistance and information as necessary. This would involve providing certainty and clarifying legal ambiguities, communicating clearly and assisting in lowering compliance costs to taxpayers. Timeliness is crucial.

An efficient tax system requires an effective tax administration structure. A well-designed tax which is poorly administered can become an instrument of injustice. In view of the importance of taxation to the funding of an economy, substantive reforms in tax administration have been undertaken in many countries. One such reform measure is the introduction of self-assessment which places the burden of determining tax liability on the shoulders of taxpayers with the tax authority/agency carrying out random tax audits to verify the accuracy of what had been declared in the tax return form.

> **“AN INCOME TAX SYSTEM IS BASED ON THE WILLINGNESS OF CITIZENS/ PERSONS TO PAY THEIR TAXES VOLUNTARILY. THIS REQUIRES THE TAX AGENCY TO ADOPT A PHILOSOPHY OF HAVING OUTREACH AND EDUCATION PROGRAMMES TO PROMOTE VOLUNTARY COMPLIANCE.”**

An income tax system is based on the willingness of citizens/persons to pay their taxes voluntarily. This requires the tax agency to adopt a philosophy of having outreach and education programmes to promote voluntary compliance.

The study of taxpayer compliance is an important aspect of this approach. One needs to understand the psychology of taxpayers i.e. appreciating why persons comply or fail to comply with tax laws is important. This is essential so that steps can be taken to try to reduce

non-compliance behaviour. With self-assessment, the monitoring of compliance levels and therefore, research into compliance should increase. It is also important to understand the behaviour of different groups of taxpayers (based on income level, occupational groupings, ethnicity, etc.) so that remedial steps and new strategies can be devised to try to overcome negative perceptions.

DETERMINANTS OF TAX COMPLIANCE

Various studies have been carried out in and outside Malaysia which indicate the possible determinants of the tax compliance behaviour of individuals. However, no cohesive and comprehensive study has been attempted yet in Malaysia due to the sheer size of such a project and other factors. Some of these determinants/ factors are summarised below:

(i) Attitude towards Government policies

The more pleased taxpayers are with the services provided by the Government, the more likely these taxpayers would feel obligated to comply with the law. Allowing individuals to voice their dissatisfaction and allowing one to have a say in shaping policy can have positive effects on behaviour patterns. Individuals who feel that they have been treated fairly by a Government agency are more likely to comply with the agency's requirements. In the Malaysian context, ethnicity certainly plays an important part in terms of attitudes towards Government policies. Perceptions of the way policies are/were implemented continue to be prevalent in the minds of some ethnic groups and that leads to non-compliance as there is a fear that the tax one contributes will not be used effectively.

(ii) Perception of fairness of the tax system

Research shows that an individual's perception of the fairness or equity of a law or regulation can influence his willingness to comply with the law. The more complex a tax system is, the more difficult it would become for individuals to understand it and this could lead to possible non-compliance. The more uncertainty there is about what is taxable or what can be claimed as a deduction, the more likely that there may be non-compliance with the law. The income tax rates also play a role in influencing behaviour. The higher the tax rate, the more one pays for working hard and the more likely one would try to find ways of trying to avoid tax on such additional income.

(iii) Probability of detection

This refers to the enforcement policy of the tax agency. The stronger the implementation of enforcement initiatives, the more likely that an individual would comply as the possibility of being detected would be perceived to be high.

(iv) Contact with the Tax Agency

Some research indicates that an individual who has been subjected to a tax audit and thus had personal contact with the tax agency is likely to be more willing to comply with the tax law. This, however, would be valid where the contact or experience has been a favourable one. In some cases, contact with the tax agency could lead to increased resistance. This points to the fact that the tax agency should be

seen as a service-oriented agency with the intention of assisting taxpayers to comply with the law.

(v) Tax ethics and attitudes of taxpayers

Ethical behaviour is a highly subjective area. Ethics is generally understood to describe moral principles or values. The tax compliance decision has an ethical content in that the decision requires the individual to draw on perceived values and codes of conduct regarding honesty, cheating, obligations, etc. to assess whether this behaviour is right or wrong. Research has shown that tax evasion of small amounts is generally not considered to be morally wrong nor considered to be a serious crime!

In one American study, although tax fraud was viewed as a crime, it was considered less serious than kidnapping, drunken driving, arson, embezzlement and bribery. Tax evasion, in that study, was ranked as being slightly more serious than stealing a bicycle.

(vi) Peer influence

Individuals do not operate in a vacuum. They live and interact in a society. The influence of others and the acceptance by others of their behaviour is important for their continued existence in that society. Peer influence is therefore an important factor in determining compliance behaviour. Peers usually include friends, relatives, acquaintances and co-workers. It is said that people are reluctant to commit criminal acts for which their family and friends would sanction them.

(vii) Sanctions/penalties

It is generally suggested that sanctions or the threat of sanctions will encourage voluntary tax compliance. The severity of the sanction (e.g. a fine or a jail sentence or a warning, etc.) would also have an effect on compliance.

(viii) Socio-economic variables

In some studies in Europe, it was found that those who were least educated were most likely to be ignorant about taxation as well as be among the lower paid and they tend to view taxation only in terms of its burden and ignore the benefits and services provided from the tax revenue collected.

The type or nature of income may also be a significant influence on tax compliance. Self-employed individuals are more likely to practice various forms of non-compliance with the tax law.

(ix) Demographic characteristics

The link between age and compliance has also been studied. Some studies found that the youngest and oldest segments of the population have the highest degree of compliance.

The majority of studies testing the compliance levels of males versus females have found females to be more compliant than males.

Research has also been done overseas on compliance among different ethnic groups. At the end of the day, compliance involves several elements and the difficulty in research is to try to isolate one variable so as to test its impact.

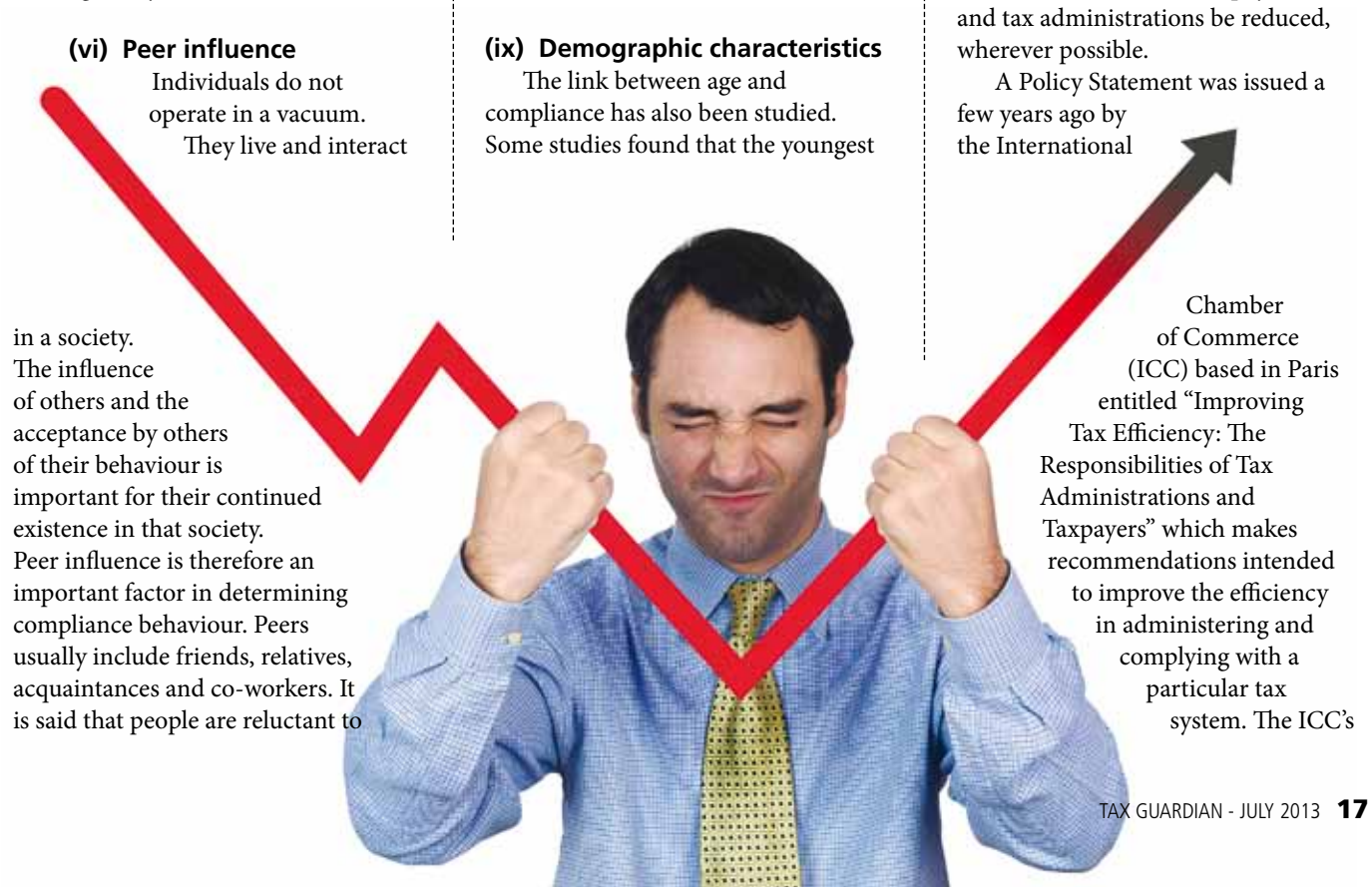
(x) Other determinants

There are various other factors that may have an impact on tax compliance. These include the cost of compliance, the influence of tax agents, marital status, etc.

TAX EFFICIENCY

We would all agree that Governments must assess and collect sufficient revenue to meet their goals and obligations. However, it is important that the costs of compliance and administration for taxpayers and tax administrations be reduced, wherever possible.

A Policy Statement was issued a few years ago by the International Chamber of Commerce (ICC) based in Paris entitled "Improving Tax Efficiency: The Responsibilities of Tax Administrations and Taxpayers" which makes recommendations intended to improve the efficiency in administering and complying with a particular tax system. The ICC's



comments are based on the following economic proposition:

"Given a particular targeted level of tax revenue, a tax system that requires fewer resources to administer (monitor, legislate, audit and collect) and to comply with (understand, comply, report and transfer tax payments) is better than a tax system that costs more."

This economic proposition is referred to as "efficiency." The ICC makes a number of suggestions or best practices (reproduced below) which can reduce the overall cost of tax compliance and administration for tax administrations and taxpayers, thereby promoting an efficient tax system. It states that a tax administration should view itself similar to a business that provides services to customers and should constantly strive to improve the manner in which they provide such services.

Shorter Timeframe for Tax Audits

A reduction in the time for tax administrations to begin and conduct a compliance audit would lead to considerable cost savings.

Tax administrations should strive to begin and conclude a tax audit as soon as possible after a tax return is filed. A taxpayer can more quickly respond to a tax audit when the needed information is readily available to the taxpayer. A taxpayer is more likely to recall and locate relevant information shortly after the filing of a tax return than many years after the filing. The passage of time makes it more difficult to locate documentation needed to responsd to a particular question even if such documentation is available as in a business entity, there would be the usual turnover of staff and new staff may not be fully aware of matters and this thus delays the extraction of information.

Delays in the tax audit also compound the potential impact of an audit adjustment as a taxpayer may have adopted a similar position (which is being challenged by the tax administration) on tax returns for subsequent years that have already been filed. A proposed adjustment by a tax administration is less likely to be resisted if future tax filings are not as heavily impacted, which will be the case if tax returns are reviewed promptly and tax audits concluded quickly.

Transparency

The increased transparency of tax rules should be a continuing goal of every tax administration. Taxpayers should know the rules of the game under which their economic activities

Simplification

Tax administrations should administer the tax system in a manner that is no more complicated than necessary to assess and collect tax.

In general, simplification should result in lower costs for tax administrations and taxpayers because:

- fewer resources are required to apply simple rules than to apply complex ones;
- the time to conduct a tax audit may be shortened and thus reduce the costs typically associated with protracted audits;
- fewer tax controversies/ disputes may be expected to arise; and
- simpler rules provide more certainty over tax reporting which thus improves financial reporting.

Tax administrations should accept that they cannot capture absolutely all of the taxable economic activity. The increased costs associated with a complex administrative tax regime may outweigh the additional tax revenue collected - so, there is a need for balance.

will be taxed.

A useful definition of transparency is provided by the International Monetary Fund (in its Manual on Fiscal Transparency) as follows:

"Tax laws, regulations, and other documents relating to administrative interpretation of tax law should be accessible to the general public. Explanatory materials (e.g., instructions and pamphlets), usually prepared by the tax agency, should also be kept up-to-date. New budget revenue measures should be given sufficient publicity so that taxpayers understand how they might be affected. To this end, the material the tax agency uses in applying the tax laws (e.g., manuals and legal opinions) should be publicly available and there should be mechanisms in place whereby taxpayers can have their queries answered (e.g. by setting up a dedicated office in the tax agency to do so)."

Training of Tax Administrators

Both tax administration staff and corporate tax professionals need to be properly trained to perform their duties. The training should permit both parties to operate on approximately the same level of tax knowledge. A tax system can only minimise costs if both "sides" are equally versed in the underlying rules.

Tax authorities should be adequately resourced to attract and retain appropriate personnel with the necessary skills.

Prospective Changes to the Rules

A tax administration that quickly audits tax returns will be able to respond to positions it believes are inappropriate. Such response may include a modification in administrative positions and practices. However, theses changes should be prospective only.

Business Records

The assessment of tax liability depends upon the review of the taxpayer's books and records. Three aspects of record-keeping are particularly relevant to the reduction in the costs of compliance and administration.

First, taxpayers should ensure that books and records appropriate to their economic activities are created and maintained. The cost of administration increases when taxpayer records are inadequate or unavailable.

Second, the books and records reasonably maintained by a taxpayer for the purposes of its enterprise should normally be sufficient for the tax administration. It should not normally be necessary for a taxpayer to create or reformat its books and records to comply with the requirements of tax compliance.

Third, once reasonable business records have been provided, the burden of persuasion should be on the tax administration to demonstrate that a taxpayer has not properly complied with the transparent tax regime.

Confidentiality

Tax administrations must continue to strive to maintain the confidentiality of tax return information they receive. Strict adherence to this standard is in the best interests of tax administrations as it facilitates the willingness of taxpayers to provide the information tax administrations need to carry out their task.

Impartial Appeal Process

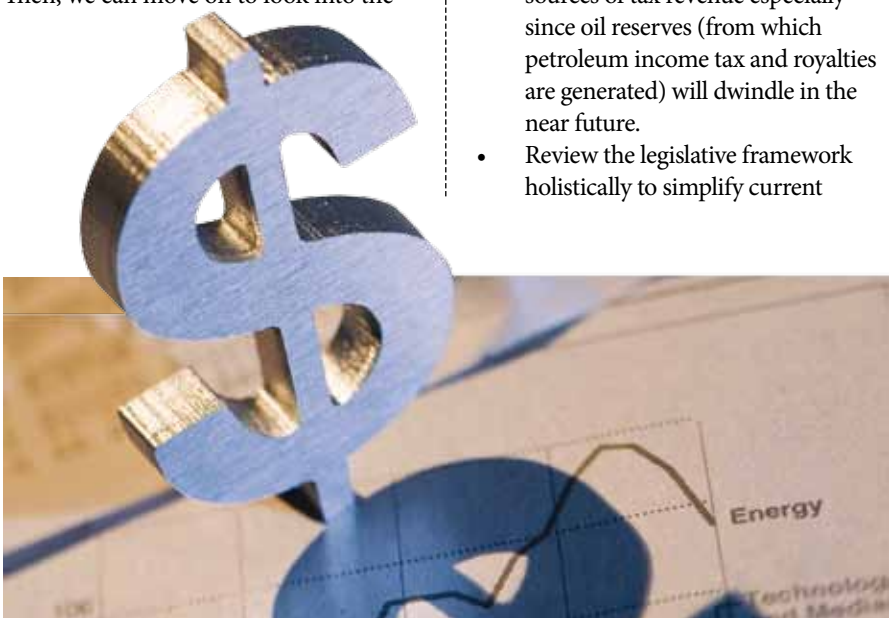
Inevitably, reasonable disagreements may arise even under the most transparent tax systems. In such situations, an impartial adjudication process should exist that has as part of its function the publication of its decisions, taking into account privacy concerns of the affected taxpayer. Such a procedure will promote confidence in the system, ultimately increasing voluntary tax compliance. An adjudication system that rarely sustains the position of a taxpayer is unlikely to be viewed by taxpayers as being fair.

The ICC encourages tax administrations to adopt the suggestions made in the Policy Statement so as to improve their tax systems including:

- Implementing rules that are no more complicated than necessary to assess and collect tax.
- Reducing the time to begin and conduct a compliance audit.
- Increasing the transparency of tax rules.
- Increasing the resources of tax administrations in order to perform tax audits in a timely manner and improving the training of tax administration personnel.
- Making only prospective changes to tax practices and

policies.
- Using business records created by enterprises.
- Maintaining the confidentiality of taxpayer records.
- Maintaining an impartial tax appeals process.

The ICC's recommendations provide us with a basic framework within which the tax administration should operate. In reviewing the tax system, this is the approach one needs to take. The basic building blocks must be there and must be enhanced. Service delivery will then function within this broad framework. Then, we can move on to look into the specific micro issues affecting relevant sectors and suggest changes that are in line with the economic aspirations of the Government in terms of enhancing economic growth of the nation.



SPECIFIC TAX REFORM MEASURES

In terms of specific tax reform measures that have been highlighted in various forums and articles, there are a number which are key towards transformation of tax administration.

There must be a core unit within the Ministry of Finance which should keep a finger on the pulse of the nation and also an eye on worldwide tax developments so that Malaysia NEVER falls behind in terms of having a dynamic tax system. A number of areas (including that of enhancing tax administration) have been suggested by various organisations which needs to be looked at so as to improve the tax system and make it efficient, simple and encourage effective compliance. These include the following:

- Introduce a strategic plan on the direction forward in respect of developing and improving the sources of tax revenue especially since oil reserves (from which petroleum income tax and royalties are generated) will dwindle in the near future.
- Review the legislative framework holistically to simplify current provisions and to remove archaic ones. In doing this, the private sector must be consulted to provide its input and assistance.
- Keep tabs on improvements in the tax legislation in the region and other parts of the world. Make proactive suggestions to reform and enhance the current structure so that we are in step with worldwide developments.
- To assist in making compliance easier, there should be a general convergence between accounting profits and taxable profits.
- Revise the income tax rates downwards after the Goods & Services Tax is introduced. The Government should look at committing itself to a phased reduction in income tax rates.
- Revamp the tax incentives legislation to remove certain incentives that have not been attractive, curtail certain incentives and review the type of incentives as the same type of incentive may not apply equally to different types of industries.
- Enhance the current group relief provisions to allow a transfer of 100% of current business losses to companies within a group.
- Review the way individuals with only employment income have to file tax returns. Why not make the deductions from salaries a final tax and avoid more paper circulating in the system?
- Consider setting up an Administrative Appeals Tribunal to make decisions relating to administrative matters such as imposition of penalties, etc.
- Enhance and protect taxpayers' rights by improving and monitoring the Taypayer's Charter. Perhaps, the Auditor-General's office should monitor the effectiveness of the Charter.
- With a framework for tax audits and tax investigations in place, there must be a mechanism to measure the adherence to the framework as well as to see how further improvements can be made. The same applies to the advance rulings system.
- Focus on the educational role so as to be able to disseminate tax information including using the website effectively. Make voluntary compliance a way of life.
- Service counters should be manned by experienced personnel with specific decision-making powers i.e. problem solving is the focus.
- Improve timeliness in responding

to queries from taxpayers, appeals, objections, etc. and measure adherence to these timelines and benchmarks.

- Collect what is due and penalise intentional non-compliance quickly. Attempt to avoid arrears and avoid chasing for collection of tax liabilities years after these have been established.
- Introduce an effective human resource policy so that technical capabilities are enhanced i.e. get the right personnel. Outsource certain aspects, for example the research into a highly technical area which may be the subject of an advance ruling so that there is an effective understanding of the specific issue and the industry.
- Train officers by getting contributions from even the private sector so that we develop staff with a broader mindset and more business knowledge.
- Utilise technology effectively to provide services to taxpayers, to assist staff to respond on a timely basis and to collect taxes quickly. We must use technology in a holistic manner and not in a piecemeal manner so that systems are integrated effectively. The authorities must also know the latest status and not force a taxpayer to prove that the tax liability for the relevant year of assessment has been paid.

In addition, there is a need for the tax authorities to be more forthcoming with the issuance of clear guidelines to ensure transparency in the tax system. It is hoped that the tax authorities will be more proactive/responsive in issuing timely clarifications on relevant areas which will assist taxpayers in making their financial decisions.

Clarity and consistent application of the law is essential so that business is not hindered. The tax system must be business-friendly rather than a bureaucratic system. To be fair, the tax agency has made some advances in terms of improving efficiency but more needs to be done and with the current reform-minded political leadership, this augurs well for taxpayers in general.

Our greatest failing is that we like to rest on our achievements and are contented with what we have done. In service delivery, continuous improvement is the key and who best to suggest improvements if not the public who use the service. There must be an effective channel to allow the tax policy-makers and tax administrators to get feedback from the users and the facilitators (i.e. the tax professionals). Let us hope that a holistic approach will be adopted in terms of reforming our tax system on a continuous basis for the well-being of the nation. We need to fast track this change and stop focusing on short-term measures!

Conclusion

Taxation is a very significant component of national revenue. To many individuals, taxation is also a significant cost. Appreciating the importance of tax revenue to the nation and how such revenue is used to meet the developmental needs of the nation is important. The importance of education, simplification of legislation, ensuring fairness, enforcing legislation in a proper and fair manner, providing adequate services to taxpayers, the need for an efficient and effective tax agency and understanding the psychology of taxpayers through appropriate research are essential components in attempting to meet the targets set for the nation. Self-assessment requires that all the factors outlined above need to be looked at in enhancing tax compliance behaviour so that there is a balance between taxpayer rights and the powers granted to the tax agency in enforcing the tax law.

This article is based on various articles written by the author and published in various magazines and newspapers as well as on presentations made at various think tank meetings/forums. The section on determinants of tax compliance has been extracted from the author's book "Tax Compliance and Ethical Decision-Making: A Malaysian Perspective", Pearson Malaysia Sdn. Bhd, Petaling Jaya, 2003.

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SHIPS AND WATER SNAKES

PART 2

NON-RESIDENT SHIPPING OPERATORS

Dr. Nakha Ratnam Somasundaram

SCOPE OF TAXATION

Unlike a resident operator who is assessable on his gross income from wherever derived, a non-resident shipping operator carrying on the business of transporting passengers or cargo by sea for a basis period for a basis year of assessment would be assessed on his gross income derived from Malaysia.

Under Section 54(5), gross income derived from Malaysia is deemed the total of all the sums first receivable by the operator in the basis period in respect of transporting by sea passengers or cargo embarked or loaded in Malaysia into ships owned or chartered by the operator.

However where passengers or cargo are merely transferred in Malaysia from one transport to another (called transshipment) or the particular call is a casual call or the payments received is a refund, then any such receipts would be excluded as gross income derived from Malaysia.

TRANSSHIPMENT AND CASUAL CALL

Transshipment refers to operations of the non-resident operator who brings in cargo or passengers into Malaysia solely for the purpose of transfer or transshipment from one ship to another or from a ship to an aircraft or alternatively from an aircraft to a ship.

A casual call on the other hand is where the cargo or passengers are embarked into a ship at a port in Malaysia and that call falls within the definition of a 'casual call' as defined in Section 54(6). A call at a port in Malaysia by a ship of the non-resident operator (whether the said craft is owned or chartered) shall be a casual call if the following conditions are fulfilled:

- Apart from that particular Malaysian call, there were no other Malaysian calls at a Malaysian port by that craft or any other relevant craft belonging to the owner or the charterer in the 24 consecutive months immediately preceding that particular Malaysian call; and
- The DGIR is satisfied that for the period of 24 months immediately following that particular Malaysian call, that the relevant craft won't be making another Malaysian call;
- And no other craft or crafts of the owner or the charter will be making a call at a Malaysian port or airport.

Essentially the law envisages an isolated call as a casual call and the time frame in which such call falls will be a continuous period of 24 months before that particular call and 24 months following that call. As such a ship that calls at a port in an emergency would not be caught.

In view of transshipment and casual calls, what constitutes 'income

derived from Malaysia' for a non-resident operator can be an issue. For example, if a local merchant ships his cargo to Singapore and then loads it on a ship belonging to a non-resident shipping operator, is the income from that shipment derived from Malaysia?

In the case of *OOCL v KPHDN*[1] for example, a Hong Kong shipping company resident in Hong Kong and with no permanent establishment in Malaysia operated a shipping route that bypasses Port Kelang, but calls at Singapore. However, merchants wishing to send their cargo through ships belonging to OOCL could approach a local agent who would load the merchant's cargo into feeder vessels and forward them to Singapore. In Singapore, the cargo are transshipped into OOCL's vessels to be carried to their respective destinations.

The IRB taxed the income as being derived from Malaysia. On appeal, the Special Commissioners held that since OOCL's vessels did not call at a Malaysian port, and the feeder vessels were neither owned nor chartered by OOCL, the gross income is not derived from Malaysia.

TAXATION OF FREIGHT INCOME OF NON-RESIDENT OPERATOR

In relation to freight income derived from Malaysia, non-resident shipping operators have the option of being charged Malaysian income tax using either of the following two methods:

(a) The five per cent method under Section 54(2); or

(b) The acceptable ratio certificate method under Section 54(3).

The chargeable income so determined would then be charged tax at the non-resident rate of 25%.

In respect of income received by the non-resident from time or voyage charter on a bareboat basis, Section 54 (2) or 54(3) would not apply; such income would fall under Section 4(A) and accordingly be subject to withholding tax under Section 109B.

THE 5% METHOD

Under this method (also called the arbitrary method), a hassle free, deceptively simple approach is adopted – the statutory income is deemed to be 5% of the gross shipping income received from the embarkation of passengers or cargo loaded on to the ships from Malaysia (and hence the reference to the computation as the 5% method). The income so determined would be taxed in the case of a company at the rate of 25%. As income so derived is deemed to be statutory income, no expenses or capital allowances are allowed to be deducted against the income so determined. However if the non-resident company donates to an approved institution in Malaysia, such donation would be available as a deduction at the aggregate income stage.

Example

Assume that the following information is available in respect of a non-resident shipping operator for the year ended 31 December 2012: **(see Table 1)**.

ACCEPTABLE RATIO CERTIFICATE METHOD

The alternative method of computing the chargeable income of a non-resident shipping operator is the use of the Acceptable Ratio Certificate Method (also known as the 'Certificate Method') under Section 54(4). Under this method, the statutory income of the non-resident shipping operator is computed using a formula as follows: **(see Table 2)**.

If the non-resident shipping operator incurs any loss, such losses would be deducted against the statutory shipping income in the

[1] *(2001) MSC 3,367*

INWARD SHIPMENT OF GROSS FREIGHT TO MALAYSIA	
	RM000
Receivable in Malaysia	11,520
Receivable outside Malaysia	17,280
Outward shipment of gross freight from Malaysia receivable in Malaysia	46,080
The computation of the tax payable for the year of assessment 2012 would be as follows:	
Year of assessment 2012	***RM000***
Income derived from Malaysia	46,080
Deemed statutory income (5% of 46,080,000)	2,304
Income tax at 25% on RM2,304,000	576

Table 1

Adjusted income		
Gross income (Malaysia) / Gross income (World)	x	World adjusted income/(loss)
Less: Capital allowance		
Gross income (Malaysia) / Gross income (World)	x	World capital allowance
= Statutory income		

Table 2

following year and subsequent years of assessment until fully allowed.

The term 'acceptable certificate' and 'certificate' are defined in Section 54(5). An acceptable certificate is a certificate produced to the DGIR in respect of which he is satisfied that the amount specified in the certificate has been computed by methods not substantially different from those provided by the ITA; while the term 'certificate' means a certificate which:

a. Is issued by the authority responsible for the administration of the tax laws of any country other than Malaysia in which the operator is resident for the purposes of the said law;
b. Specifies in respect of the business for the relevant period the amount of
   i. The gross income from wherever derived;
   ii. The income or loss computed for the purposes of foreign tax by that authority without making any allowance for depreciation;
   iii. The total depreciation allowance given by that authority, excluding any allowance or part thereof brought forward from a previous period.

The certificate issued by most of the countries with which Malaysia has a double taxation agreement is acceptable to the DGIR[2].

APPLICATION OF THE RATIO CERTIFICATE METHOD

In some circumstances, the 5% method would produce a higher chargeable income; and in other situations, the chargeable income as determined under the acceptable ratio certificate method may produce a chargeable income that is higher than that under the 5% method. In that case, the non-resident operator has an option not to submit the said certificate as there is nothing in the law to compel the non-resident operator to submit such a certificate.

If however the certificate needs to be submitted (because of the chargeable income being much lower under the certificate method), it must be produced to the DGIR within three years after the commencement of the relevant year of assessment. Upon receipt of the certificate, and if by that time an assessment for the relevant year has been made on the operator by reference to Section 54(3) i.e. the 5% method, the DGIR shall make such additional assessment or such repayment of the tax as may be necessary [Section 54(4)(d)].

It should also be noted that if by the time the certificate becomes an acceptable certificate and no assessment for the relevant year has been made on the operator under Section 54(3), then that subsection shall cease to have effect in relation to the business for the relevant year [Section 54(4)(c)].

Example

Assume that MGR Shipping Lines Pte Ltd, an Indian shipping company[3] (the operator) has gross income of RM902,500 derived from Malaysia from cargo embarked in Port Kelang for the year ended 31 December 2012. The operator was able to produce an acceptable ratio certificate within the time specified, which showed the following information:

	RM
Total world gross income	12,800,000
Taxable world income	3,200,000
World capital allowance	640,000

Given the above information, an assessment on the operator for the year of assessment 2012 would be as follows:

- An assessment under Section 54(3) would be made on the operator in the year the shipping income was derived from Malaysia i.e. year of assessment 2012.
- The operator may within three years after the commencement of the relevant year i.e. by the end of 2014, produce an acceptable certificate to the DGIR who shall make such additional assessment or such repayment of the tax as may be necessary in respect of the income of the non-resident company from shipping [section 54(4)(d)]. **(see Table 3)**.

[2] To date the Malaysian government has signed Double Taxation Agreements with more than 70 countries.

[3] Malaysia has signed a DTA with India and was effective in Malaysia from 1 January 2004. Under the treaty, the income tax on shipping and airline operations is fully exempted [See Malaysia Master Tax Guide, 2012, CCH]. However, in this example, for illustration purposes only, the tax on shipping is computed as if that income is subject to tax.

THE 5% METHOD	**RM**
Gross income	902,500
Deemed statutory income (5% of RM 902,500)	45,125
Income tax (25% of 45,125)	11,281.25
THE RATIO CERTIFICATE METHOD	**RM**
Adjusted income	
902,500 / 12,800,000 x 3,200,000	225,625
Less: Capital allowance	
902,500 / 12,800,000 x 640,000	45,125
Deemed statutory income	180,500
Income tax charged (180,500x25%)	45,125.00

Table 3

In this instance, it could be seen that the tax payable under the ratio certificate method is more than that payable under the 5% method. It is therefore more beneficial for MGR Pte Ltd not to be taxed under the ratio certificate method.

DOUBLE TAXATION AGREEMENTS

Where the non-resident shipping operator is from a country, which has concluded a tax treaty with Malaysia, the treaty may provide for full or partial exemption of the freight earnings of the non-resident operator. In order to qualify for the exemption (if applicable), in practice, the non-resident shipping operator is required to apply to the Malaysian tax authorities for confirmation of exemption by submitting the Certificate of Tax Residence and a confirmation letter stating that the company does not undertake domestic transportation between Malaysian ports. This is because generally, the relief under the tax treaty would only be applicable for shipping operations in international traffic.

PAYMENT TO NON-RESIDENTS, WITHHOLDING TAX AND LEASE PAYMENTS

A resident company carrying on the business of transporting passengers or cargo by sea making any payment for the rental of a movable property to any non-resident is liable to withhold 10% of the payment since such payment made falls under Section 4(A) (iii) and taxes must be withheld under Section 109B. However, with effect from 21 October 1993, any such payments made under an agreement or arrangement for participation in a pool is not liable to withholding tax[4].

Similarly, rental payments by a Malaysian resident shipping company to non-residents on ships under any voyage charter, time charter or bare boat charter is exempted from withholding tax of 10%[5].

WHETHER SHIPPING INCOME IS DERIVED FROM MALAYSIA?

Issues may arise as to whether shipping income is derived from Malaysia. For example, in the case of *OA Pte Ltd v KPHDN*[6] the issue of whether income received by a non-resident operator is derived from Malaysia was considered. A Singapore resident company carried on the business of shipping. It also let out on charter bare boats – and entered into an agreement with a Malaysian company for the charter of a vessel. The Singapore company did not have a permanent establishment in Malaysia. The payment to the Singapore company for the charter of the ship was treated as royalty and was charged to tax in Malaysia. It was held at the High Court that the lease rental for the ship constituted business income of the non-resident company and under Article IV of the *Malaysian-Singapore Treaty* would be business income derived in Singapore – and thus not taxable in Malaysia.

In the recent case of Alam Maritim (M) Sdn Bhd[7], a company in the shipping and shipping management business owned vessels that were leased out mainly to a local petroleum company. The company also entered into several charter agreements for supply of offshore supply vessels (OSVs) for which charter fees were payable to non-resident companies operating such charter services. During the years 1998 to 2004, the non-residents were paid the full charter fees without deduction of any withholding tax. The IRB contented that the payment falls

[4] *Income Tax (Exemption) (No. 25) Order 1995 P.U. (A) 322/1995*

[5] *Withholding tax on such payments is described in detail in the Public Ruling No. 4/2005 and its Addendum issued on 12.9.2005 and 30.11.2007 respectively.*

[6] *(1996) MSTC 2,752*

[7] *Alam Maritim (M) Sdn Bhd v LHDN Malaysia (2012) MSTC 30-048*

within the meaning of Section 4(A) (iii) and therefore the provision of Section 109B would apply i.e. withholding tax must be deducted and remitted to the DGIR accordingly[8]. The company appealed against the decision and at the Court of Appeal, it was held that the treaty protection of the Article VI of the old treaty is applicable since the Singapore company, while it derived business income from Malaysia, it did not have a permanent establishment in Malaysia[9]. It is understood that the IRB is appealing against the decision.

FURNISHING OF RETURNS – BY WHOM

In situations where the non-resident operator does not have an office or branch i.e. a permanent establishment in Malaysia, the master or the captain of the ship would act as the agent of the non-resident operator of the ship or aircraft, and must furnish an annual return to the DGIR. The return will set out the relevant information to enable the DGIR to compute the profits to be taxed in Malaysia [Section 71].

APPOINTMENT OF AN AGENT

In order to avoid any potential loss of revenue to the government in respect of income derived by non-resident shipping operators in Malaysia, the Malaysian tax authorities have in practice appointed shipping agents to be the income tax agents for all their non-resident shipping principals for whom they act as shipping agents either on a regular or ad hoc basis pursuant to Section 68 of the Act.

In order to avoid any potential loss of revenue to the government in respect of income derived by non-resident shipping operators in Malaysia, the DGIR would normally appoint a person in Malaysia as an agent for a non-resident shipping or aircraft operator. This can happen when the DGIR has difficulty in attaching liability to any particular operator. In this scenario, the shipping agents would normally be issued with such appointment letters by the tax authorities.

To appoint an agent, the DGIR would give a notice under Section 68 appointing the named person as the agent. An agent so appointed is then under statutory duty to furnish to the DGIR information as regards the name and address of the principal, the income tax reference and the date the agency appointment was made.

The appointment of an agent can be on a permanent basis or a temporary basis and carries the responsibility of informing the DGIR the appointment of his agency to any principal, and the movement of the ship or aircraft of that principal into Malaysia. The agent also has the onerous responsibility of paying the taxes due from the principal, including the tax from the freight collected.

In practice, under the appointment, the shipping agent of a non-resident shipping company is required to furnish certain particulars of the shipping operator to the Malaysian tax authorities. In addition, as and when freight is collected on behalf of the non-resident shipping operator, the shipping agent is required to deduct freight tax, currently at 1.25% before making any outward remittance. The Malaysian agent is also required to report the total freight earnings for each non-resident shipping principal annually to the Malaysian tax authorities.

However, if the non-resident shipping operator is dealing directly with the Malaysian tax authorities and is paying Malaysian taxes via the tax installment scheme, then strictly, the agent is not obliged to deduct the freight tax. However, the non-resident shipping operator must obtain a confirmation letter from the Malaysian tax authorities that it is on a tax installment scheme. In this situation, the agent would only be required to furnish to the IRB the income tax reference number of the operator.

ASSESSMENT TO TAX

Section 71 provides that the owner, his agent or representative or alternatively the master of the ship or the captain of the aircraft may be assessed to income tax and be held responsible for all and any payment of tax.

[8] *Under Section 4A(iii), the income of a person not resident in Malaysia for the basis year for a year of assessment in respect of …rent or other payment made under any agreement or arrangement for the use of any movable property which is derived from Malaysia is chargeable to tax under this Act. However, even prior to the introduction of Section 4A effective from 1983, the courts have relied on the principle (to put it simply) of 'no PE, no tax' approach. Note that under the [Income Tax (Exemption) Order 2007 with effect from 2 September 2006, rental payment of ships under voyage charter, time charter, or bare boat charter paid to a non-resident by a resident company in Malaysia is exempted from withholding tax (it would have suffered withholding tax otherwise).*

[9] *This area of the law can be confounding to the non-professional. For example, in the case of OA Pte Ltd v KPHDN (supra), the Special Commissioners found in favour of the IRB but the High Court and Court of Appeal found in favour of the taxpayer. Unfortunately, the decisions were not reported, adding salt to injury.*

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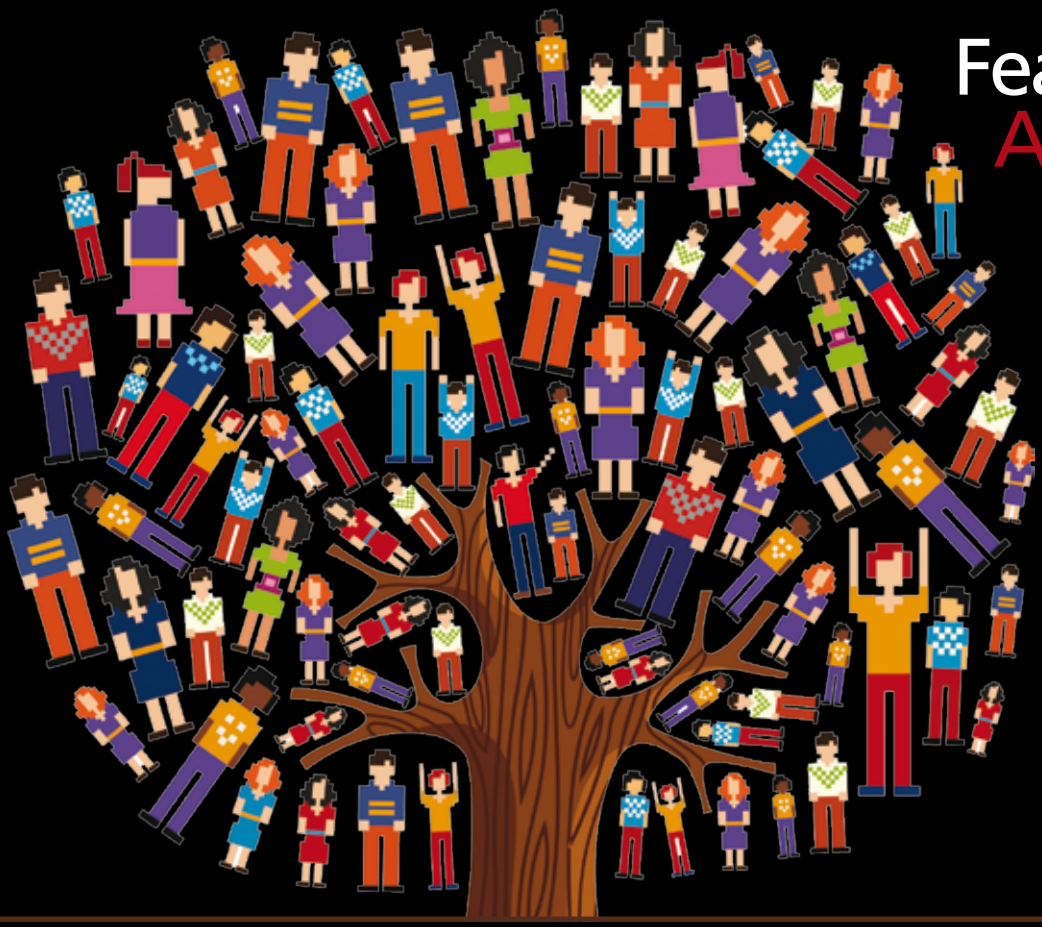

CORPORATE SOCIAL RESPONSIBILITY

Chandran Kasi

CORPORATE SOCIAL RESPONSIBILITY (CSR) IS THE ATTEMPT OF A COMPANY TO BALANCE ITS COMMITMENTS TO GROUPS AND INDIVIDUALS IN ITS ENVIRONMENT; INCLUDING CUSTOMERS, OTHER BUSINESSES, EMPLOYEES, INVESTORS AND LOCAL COMMUNITIES. IN MODERN TERMS, CSR IS THE DUTY OF A CORPORATE ENTITY TO CREATE WEALTH IN WAYS THAT AVOID HARM, PROTECT, OR ENHANCE SOCIETAL ASSETS.

Per se, most companies should *inter alia* have an objective clause on CSR in their Memorandum of Association when registering with the Registrar of Companies under the Companies Commission of Malaysia. Let's look at the following condensed four areas that CSR should embrace *vis-a-vis* responsibility towards the Environment, Customers, Employees and Investors -

RESPONSIBILITY TOWARDS THE ENVIRONMENT

The socially responsible role of management in relation to the environment is expected to be revealed by its policies with respect to Wildlife Conservation, Pollution Control, etc.

Wildlife Conservation

The long overdue Wildlife Conservation Act 2010 replaced the Wildlife Protection Act 1972, providing stiffer penalties for poaching and other wildlife crimes. The penalty is raised to up-to a RM500,000 fine (from RM 5,000 previously) and a jail term of not more than 5 years. There is also a provision that imposes a minimum of not less than RM100,000 for offences involving endangered species. Under the Act, authorities are given more control over Zoo operations,

ensuring that a proper standard of animal welfare is practiced in Zoos and Wildlife Parks e.g. Zoos, Circuses and Wildlife Exhibitions operators would have to obtain a licence from the Natural Resources & Environment Ministry, a vast improvement from the previous legislation that only required Zoo operators to have permits to keep endangered species. The law also covers more wildlife species and widens the list of agencies empowered to enforce wildlife laws by roping in the Police and Customs Departments. There was public outcry lately on the sentence meted out on a poacher who was only given two years jail for having 17 tiger skins etc.

Pollution Control

Perhaps the biggest problem confronting society today is pollution of air, water, green land and sound (measured by decibels). On the Air Pollutant Index (API), air quality is denoted as good (0 to 50), moderate (51 to 100), unhealthy (101 to 200), very unhealthy (201 to 300) and hazardous (above 300). In this millennium, Malaysia has been experiencing breaches of the moderate level almost annually. Installing pollution controlling devices and other related actions might cost the business considerably in terms of money and effort. It might also mean lesser pelf for stakeholders but the amount of goodwill and image that the business concern comes to enjoy as a result of such voluntary steps will more than offset the expenditures, if any, envisaged in the beginning. It is, therefore necessary that businesses take preventive measures for pollution control, viewing the costs involved as a long term investment in public image to protect public interest.

On matters relating to health and hygiene, if a manufacturing company or factory discharges and litters lot of wastes and chemicals, this will prove to be health hazards. Although normally businesses take preliminary precautions

to keep away from inhabited areas and to safeguard the health and hygiene of workers, it usually shirks its responsibility towards the people residing in the vicinity of the factory premises. If businesses conveniently adhere their obligation to safeguard the health of only the workers but not the people outside the manufacturing concern, government or society will force it to see reason for their blatant conduct which might prove most costly in terms of money and reputation. Therefore, it is pertinent for such businesses to realise the importance of protecting public interest.

RESPONSIBILITY TOWARDS CUSTOMERS

Businesses that demonstrate social responsibility to their customers treat them fairly and honestly by charging fair prices, honouring warranties, meeting delivery commitments and standing behind quality of the products that they sell or services that they provide - customers have the right to be safe, informed, to choose and be heard.

In a competitive market, serving customers is supposed to be a prime concern of management but in reality perfect competition does not prevail in all product markets. In the event of shortage of supply there is no automatic remedy. Besides consumers are often victims of unfair trade practices and unethical conduct of business. Consumer interests must thus be protected to the extent with amended laws given the pressure of organised consumer groups. Management should anticipate these developments, satisfy consumer needs and protect consumer interests. Goods must be of appropriate standard and quality and be available in adequate quantities at reasonable prices. Management should avoid resorting to hoarding or creating artificial scarcity, besides being involved with false and misleading advertisements – there is the Consumer Protection Act 1999.

As managers, concerned personnel are also responsible for ensuring that the dealers through whom they sell their product provide correct information about the products to the customers, charge the right price, use correct weightage and provide proper after sales support. A dealer who cheats on any one of these accounts is tarnishing the image of your product and company and one should discard such dealers immediately.

Often firms, in their anxiety to make a success of a new product, make very tall claims about the potential benefits of their product. Such a promotional effort may create a short-term effect but can never provide long-term stability. In India, there is a tendency on the part of many firms to bolster the image of their products by making claims far from the truth primarily because many customers are not in a position to challenge such claims either through a voluntary or legal framework. In the absence of pressure from consumers, it becomes the responsibility of managers to promote the products only on the basis of real and not 'window dressed' benefits.

Finally, there are always some product or service concepts the consumption of which is viewed to be unethical. For instance a private medical clinic promoting the concept of determining the sex of a foetus, knowing well that there is a distinct preference for a male child in most families, is certainly promoting an unethical service. Therefore, in terms of responsibility towards customers, the management of a firm should always target at marketing genuine products in the right quality and price.

Also of interest is the Price Control and Anti-Profiteering Act 2010. It prohibits traders from indiscriminately increasing prices of goods. It's implementation is seen as a form of control, to quell profiteering when the Goods & Services Tax (GST) comes into effect. Profiteering is described as making unreasonably high profit, an amount to be determined by a mechanism prescribed by the Domestic Trade, Cooperatives & Consumerism Ministry. A Price Advisory Council will monitor traders. The Price Controller, his Deputies and Assistants determine the maximum, minimum or fixed selling prices for goods and charges for services. It is an offence for a person to sell or offer to sell, and buy or offer to buy price-controlled goods or obtain price-controlled services at a rate other than that determined by the Controller. A Corporate body found guilty shall be liable to a maximum RM500,000 fine, and a penalty of RM1 million for the subsequent offence. An individual is liable to a maximum RM100,000 fine or three years jail or both, and a maximum fine of RM250,000 or five years jail or both for a subsequent offence.

In a competitive market, serving customers is supposed to be a prime concern of management but in reality perfect competition does not prevail in all product markets

RESPONSIBILITY TOWARDS EMPLOYEES

The definition is management's responsibility towards employees related to fair remuneration, a congenial work environment, good union management relationship and employee welfare e.g. safety and security of working conditions (compliance with OSHA 1994), medical facilities, housing, canteen, quality of life issues and retirement benefits. As regards women, adherence to the Code of Practice for the Prevention and Eradication of Sexual Harassment at the Workplace which is now legislated under the Employment Act (EA), seems imperative. There are now provisions in the EA relating specifically to mechanisms for redress *vis-a-vis* –

- The Employer (or any class of Employers) must hold an Inquiry upon receiving a complaint on Sexual Harassment.
- Should the Employer default, the

Complainant can refer the matter to the Director-General of Labour who can instruct the Employer to hold an Inquiry.

• In the event an Inquiry proves Sexual Harassment has taken place, disciplinary action will be taken against the perpetrators.

Managing a diverse workplace is a major factor in responsibility towards the discussions centering on employees. Its common guidelines, are that organisations must commit to diversity when hiring and establish a culture that is free from discrimination. This means doing more than just hiring diverse workers e.g. there should be no discrimination as more women; single parents, indigenous people, 'physically challenged' individuals, the elderly, foreigners etc. are now in the workforce. Besides, companies have to train employees to value each other, provide necessary support systems for people with different needs and have a system in place that encourages cultural acceptance.

Collective Bargaining is another part of responsibility towards employees. The management in cooperation with Union representatives must adopt updated Collective Agreements, which are fully compliant with Employment Laws, the contemporary job market and Consumer Price Index. In addition to rights provided by Law, the Agreement should include additional social benefits for company employees; harmonised with contemporary international standards *vis-a vis* additional insurance, hospitalisation benefits, scholarships, awards, gifts, corporate cultural activities, sports events, financial assistance and social amenities.

To ensure occupational safety, various measures and programmes must be implemented with the goal of reducing work-related injuries. This area of human resource capital is related to the National Institute of Occupational Safety and Health (NIOSH) which has reported a reduction in such incidents.

Employees must be compensated with fair wages and salaries. Fair wages should be fixed in the light of human resource productivity, prevailing wage rates in the same industry and the relative importance of jobs. Managers salaries and allowances are expected to be linked with responsibility, initiative and skills. Nonetheless, the spread between minimum wages and highest salaries should be reasonable. Employers are expected to build up and maintain harmonious relationships between superiors and subordinates. Another aspect of responsibility towards employees is the provision of welfare amenities like safety and security of working conditions, medical facilities, housing, canteen, compassionate leave and retirement benefits.

Responsible and respected employers provide their human capital opportunities for professional and personal growth in accordance with motivation theories. The conduct of management serves as a model of good internal relations. Companies must observe provisions of the Codes of Conduct and take cognisance of well-regulated internal communication, thus contributing to more effective working processes, better inculcation, commitment and satisfaction of their employees.

RESPONSIBILITY TOWARDS INVESTORS

Socially responsible investors are stakeholder activists under the Stakeholder Theory. Shareholders of companies they invest in, come with both rights and responsibilities. A growing number of social investors are using their roles as corporate owners to advocate their issues of concern,

whether it is deforestation or employee minimum wages.

Shareholders with social or environmental concerns can express themselves through regular dialogue with company management. These approaches represent three levels of engagement but they share the common goal of making company management aware of how their practices effect all stakeholders e.g. customers, employees, vendors, communities and the Government.

Companies accordingly must disseminate and brief financial results to anxious institutional investors and securities analysts on the same day that the company announces its results. The CEO or Director responsible for investor relations should be the main speaker at these briefings, explaining annual returns and forecasts.

CASE STUDY

Casio considers the maintenance and expansion of returns for all its shareholders an important management issue. It constantly strives to improve its business performance and financial structure. The company's dividend policy calls for maintaining stable dividends and Casio determines the allocation of profit by taking into account all factors such as profit levels, financial position, dividend payout ratio, strategic business development planning and forecasts.

We will next look into the spate of recent international financial scandals and the obligation of good corporate governance. Good corporate governance is the managerial and directorial control of an incorporated organisation, which when well practiced, can reduce the risk of fraud, improve company performance and leadership and demonstrate social responsibility. Corporate scandals e.g. involving GLC Sime Darby (M) Berhad and belatedly the Enron-era misdeeds have drawn public outrage. Irresponsible and unethical practices by managers in varied organisations seem to be contemporary in businesses, as you've observed sceptical behaviours that took place at financial services firms such as Goldman Sachs and Lehman Brothers. Larger companies should have Ethics and Compliance staff to carry out social audits and present their findings directly to the board of directors. This is in tandem with the Sarbanes-Oxley Act which holds businesses to more rigorous standards of financial disclosure and corporate governance. There is also The International Ethics Standards Board for Accountants which recently released strengthened provisions in its Code of Ethics for Professional Accountants (the Code) to address conflicts of interest and a breach of a requirement of the Code. It also released amendments to the definition of the term 'engagement team' in the Code.

In Malaysia we have *inter alia* the Whistleblower Protection Act 2010 as part of several measures to help fight corruption in the country. Under the Act, the identity of the person revealing acts of corruption is protected, He or she will also get immunity from civil and criminal actions. The protection offered goes into effect immediately after information concerning the improper conduct is received. However, the protection can be revoked if and when the whistleblower himself is involved in improper conduct. There are prayers that more people will willingly come forward to report incidences of graft. With the enactment of this law, Malaysia honours its obligations under the United Nations Convention against Corruption to create a condition where there will be no tolerance and opportunity for corruption. It is regarded as a key piece of legislation under the Government Transformation Programme's National Key Result Areas. Besides, whistleblowers would also be kept informed of the progress of investigations and steps taken at every stage of inquiry. Whistleblowers are now also entitled to legal assistance under a special fund established by a prominent Opposition Party to protect whistleblowers, who have been abused after raising ethical issues. Additionally, a Centre has been set-up to educate and encourage the public to expose wrongdoings and corrupt practices.

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INTERESTING FACTS ABOUT CAPITAL ALLOWANCES

A STRAIGHT-FORWARD Q&A APPROACH FOR COMPLEX ISSUES

Richard Thornton and Thenesh Kannaa

THIS ARTICLE HIGHLIGHTS SOME OF THE INTERESTING FACTS AND COMMON MISTAKES MADE IN CLAIMING CAPITAL ALLOWANCES. AS MOST MEMBERS OF CTIM ARE WELL VERSED IN THE FUNDAMENTAL CONCEPTS OF CLAIMING CAPITAL ALLOWANCES, AN INFORMAL QUESTION AND ANSWER (Q&A) APPROACH IS USED TO ADDRESS SELECTED ISSUES.

Q Can a taxpayer claim capital allowances against the income from any rental income source?

Generally, industrial building allowance is available for set-off against adjusted income from either a business (Section 4(a)) source or a non-business (Section 4(d)) source. However, capital allowances for plant and machinery are available for set off only against a business source (N.B. The cost of replacing furniture and air-conditioners is given a deduction against gross income from a rental source).

Q My client, who closes his accounts on 30 June, acquired a machine costing RM900,000 and agreed to pay the non-resident supplier an additional RM100,000 for the installation services, which were performed in May 2012. The machine was operational

from May 2012 onwards, but the installation charges were paid only in March 2013. What is the qualifying plant expenditure on which capital allowances can be claimed?

Although the withholding tax on installation charges was due at the time for submitting Form C (31 January 2013), it was still unpaid. Thus, capital allowances are available only on the RM900,000 paid for the machine itself. A revised assessment will be necessary once the net payment to the non-resident and the payment of withholding tax to the Inland Revenue Board have been made.

Q My client is using some machinery in his business activities. He did not purchase the items but they were gifted to him by his ex-employer. I believe that my client is not entitled to capital allowances since he did not "incur" any capital expenditure. Am I right?

Not necessarily. If the ex-employer claimed capital allowances on the machines prior to gifting them, then your client is deemed to have incurred qualifying expenditure equivalent to the ex-employer's residual expenditure (see Sch. 3 Para 38(e) as well as Rules 2 to 9 of Income Tax (Capital Allowances and Charges) Rules 1969). Otherwise, your client is not entitled to any capital allowance in respect of the machinery.

Q My client is a company with a paid-up capital of RM1 million in respect of ordinary shares. Does the RM10,000 limit for small value assets apply to him?

It depends. If your client's holding company, subsidiary or another related company has paid-up capital in respect of ordinary shares exceeding RM2.5 million and the requisite degree of control (see Sch. 3 Paragraphs 19A(4) & (5)), then your client is subject to the overall limit of RM10,000 for the special allowances on small value assets.

Q My client, who commenced business 20 months ago, has now closed his business. Should I compute the balancing adjustments based on the difference between the disposal value and residual expenditure of the assets on which capital allowances have been claimed?

No. Prior to 2009 the 2-years claw-back rule (under Sch. 3 Para 71) applied only when the Director-General exercised his discretionary power. But the amendment in 2009 has brought about a subtle change. Now, the 2-years claw-back rule must be applied by the taxpayers unless the reason for the disposal is death of the person or other reasons that the Director-General thinks appropriate. As such, irrespective of the disposal value, the client suffers a balancing charge equivalent to the amount of allowances claimed by him in the previous year of assessment, unless the Director-General has given approval in advance to compute the balancing adjustments under the normal rules.

Q My client has a second hand non-commercial motor vehicle acquired under hire purchase agreement. The instalments paid during 2013 do not qualify for capital allowances as the limit of RM50,000 has already been reached.

(i) Can he still claim a deduction in respect of the interest or term charges element of the instalments paid?

Yes, the limit in Sch. 3 Para 2(2) is only for capital allowances. Deductions for interest or term charges are not restricted.

(ii) If the motor vehicle is disposed of within 2 years, will there be a claw-back of the deductions given in respect of the interest or term charges element?

No. Sch. 3 Para 71 does not require the deductions to be clawed back.

Q My client, who closes his accounts on 31 December, has disposed of a commercial motor vehicle in April 2013. This motor vehicle was acquired under a hire purchase agreement with 60 months instalment ending February 2013. Should the instalments paid during the year of disposal be taken into account in computing the balancing adjustments?

There is obviously no annual allowance in respect of the said instalments as the disposal took place in the same basis period. However, they are still part of the qualifying expenditure for the purpose of calculating the residual expenditure. Failure to include them in the computation will either overstate the balancing charge or understate the balancing allowance.

Q My client has a real property from which he generated rental income (Section 4(d) class of income) until 2012 and he has claimed deductions against rental income for the cost incurred by him on replacing items of furniture. During the year of assessment 2013, the nature of the income from letting the real property has changed to business income (Section 4(a) class) as my client began to provide actively and comprehensively maintenance and support services. Can he claim capital allowances for the furniture items situated in the property at the time of the change?

Pursuant to Sch. 3 Para 2A, your client is deemed to have incurred qualifying plant expenditure equivalent to the market value of the furniture on the day it is brought into business use, provided that it has never been used for a business purpose before. Even though a deduction has been claimed for the original expenditure and no new expense has been incurred, your client is entitled to claim capital allowance (but only annual allowance) on the deemed qualifying expenditure from the year of assessment 2013.

Q My client has leased a photocopy machine from a service provider. The lease falls under the "deemed sale" criteria under the Income Tax Leasing Regulations 1986. Should my client claim a deduction for the lease payments or claim capital allowances?

From the point of view of law, it appears that the Income Tax Leasing Regulations 1986 binds only the lessor, and not the lessee. Thus, there are parties who believe that the lessee's right to claim deductions under Section 33 for the lease payments should not be denied. However, it is noteworthy that the Form C 2012 Guidebook on item E12 (Page 15) reads as "Capital allowance on fixed assets under finance lease is to be included by the lessor for the relevant basis period; unless the lease transaction is a deemed sale transaction under the Income Tax

Leasing Regulations 1986 where the capital allowance is to be included by the lessee".

Q My client acquired a building during the basis period for the year of assessment 2009 and, until 2013, used the building for processing of goods without any machinery. During the basis period for the year of assessment 2013, he leased the building to a person who used the building for housing of machinery for processing of goods. Is he entitled for industrial building allowance?

When the building is used for processing without housing any machinery, it is not an industrial building and thus your client is not entitled for industrial building allowance until the year of assessment 2012. A building used for housing of machinery for processing of goods is, however, an industrial building and thus industrial building allowance (only annual allowance) can be claimed for the year of assessment 2013 and the subsequent years. The qualifying building expenditure would be the original cost incurred in 2009, plus any subsequent capital expenditure that qualifies. Notional allowances have to be computed in lieu of the annual allowances for the years of assessment 2009 to 2012 inclusive.

Q My client has just disposed of an industrial building which he acquired in 2002. This building was originally constructed during 1960. Does he have to make any balancing adjustment on the disposal?

Since your client has incurred capital expenditure prior to the year of assessment 2005 and the building disposed of has been constructed more than 50 years ago, your client is exempt from having any balancing charge (see Finance Act 2004 Paragraphs 28(c) and 30). However, if the disposal value is lower than the residual expenditure, he is still entitled for the balancing allowance.

Q My client, who closes his accounts on 31 December, constructed an industrial building at the end of 2012 and claimed initial allowance as the building was about to be used as an industrial building. Now, in March 2013, the intention has changed and the building is used for a purpose that does not qualify for industrial building allowance. Is there a disposal? Do I calculate the balancing charge?

There is no disposal within the meaning of Sch. 3 Para 48. But a balancing charge equivalent to the amount of initial allowance claimed is imposed by Sch. 3 Para 13(d).

Q My client's company has just been subject to a substantial change in shareholding. Will all of its unabsorbed capital allowances be forfeited?

The Ministry of Finance has confirmed that all companies (except for dormant companies) are not subject to forfeiture of unabsorbed capital allowances and business losses.

CONCLUDING REMARKS

The Law in relation to capital allowances is sometimes complex and inconsistent. Lack of in-depth understanding of the Law may result in higher tax bills or penalties. As such, each and every tax practitioner should have a thorough understanding of Schedule 3, Income Tax (Capital Allowances and Charges) Rules 1969, other relevant P.U. Orders and the related Public Rulings.

Richard Thornton *and* ***Thenesh Kannaa*** *are members of CTIM and MIA who have jointly produced the Manual of Capital Allowances and Charges (2013), CCH. They are also frequent speakers on various tax topics. They can be contacted at alricton@gmail.com and thenesh.kannaa@gmail.com respectively.*

TechnicalUpdates

The technical updates published here are summarised from the selected government gazette notifications published between 16 February 2013 and 15 May 2013 including Public Rulings and guidelines issued by the Inland Revenue Board (IRB), the Royal Customs Department and other regulatory authorities.

INCOME TAX

Income Tax (Exemption) (No. 5) Order 2013

The Income Tax (Exemption) (No. 5) Order 2013 [P.U.(A) 39] was published on 7 February 2013 and is effective from 10 October 2011 until 31 December 2021. It exempts a non-resident person from tax in respect of income under Section 4A, interest, royalty, contract payments under Section 107A and other gains or profits under paragraph 4(f) that are received from a qualifying person in relation to a qualifying activity as specified in the Order.

Income Tax (Exemption) (No. 6) Order 2013

The Income Tax (Exemption) (No. 6) Order 2013 [P.U.(A) 40] was published on 7 February 2013 and applies to a qualifying person who has made an application to the Malaysian Investment Development Authority (MIDA) on or after 10 October 2011. It comes into effect from the year of assessment (YA) 2011 and provides an income tax exemption on the statutory income amounting to 100% of the qualifying capital expenditure incurred for 10 consecutive YAs.

Income Tax (Exemption) (No. 7) Order 2013

The Income Tax (Exemption) (No. 7) Order 2013 [P.U. (A) 41] was published on 7 February 2013 and takes effect from the YA 2011. It provides an income tax exemption on the statutory income derived from a qualifying activity in the Refinery and Petrochemical Integrated Development (RAPID) Complex for 15 consecutive YAs.

Income Tax (Exemption) (No. 8) Order 2013

The Income Tax (Exemption) (No. 8) Order 2013 [P.U. (A) 44] was published on 7 February 2013 and takes effect from the YA 2011. It provides an income tax exemption on the statutory income derived from a qualifying activity in the RAPID Complex for 5 consecutive YAs.

Income Tax (Deduction for Pre-Commencement Expenses in Relation to Refinery and Petrochemical Integrated Development) Rules 2013

The Income Tax (Deduction for Pre-Commencement Expenses in Relation to Refinery and Petrochemical Integrated Development) Rules 2013 [P.U. (A) 43] was published on 7 February 2013 and takes effect from the YA 2010. It provides for a deduction on expenses as specified in the Schedule incurred by a qualifying person prior to the commencement of the qualifying activity.

Income Tax (Deduction for Investment in a Project of Commercialisation of Research and Development Findings) Rules 2013

The Income Tax (Deduction for Investment in a Project of Commercialisation of Research and Development Findings) Rules 2013 [P.U. (A) 51] gazetted on 15 February 2013 provides a deduction equivalent to the value of investment made in a related company for the sole purpose of financing a project on commercialisation of research and development (R & D) findings in a non-resource based activity or product as listed in the Schedule. To qualify for the deduction, the application for approval for the project of commercialisation must be made to the MIDA on or after 29 September 2012 but not later than 31 December 2017 and the project must commence within one year from the date of approval issued by MIDA.

Income Tax (Deductions for Freight Charges) (Amendment) Rules 2013

The Income Tax (Deductions for Freight Charges) (Amendment)

Rules 2013 [P.U.(A) 54] gazetted on 20 February 2013 amend the Income Tax (Deductions for Freight Charges) Rules 1990 that grant a double deduction for freight charges incurred by a manufacturer of rattan and wood based products (excluding sawn timber and veneer) for export. The Rules introduce a definition of "freight charges" and are effective from the YA 2013.

Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk) Rules 2013

The Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk) Rules 2013 [P.U.(A) 71] gazetted on 1 March 2013 provides that "additional expenses" incurred by a company resident in Malaysia on the issuance of retail debenture and retail sukuk approved or authorised by the Securities Commission under the Capital Markets and Services Act 2007 (CMSA) be allowed a double deduction on the issuance of the retail debenture and a single deduction on the issuance of the retail sukuk. The Rules are deemed to be effective from YA 2012 until YA 2015.

Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk) 2013 Corrigendum

The Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk) 2013 Corrigendum [P.U. (A) 142] was issued to replace references to "Part A" of Schedule 6 or 7 of the CMSA with "Part I".

Income Tax (Exemption) (No. 9) Order 2013

The Income Tax (Exemption) (No. 9) Order 2013 [P.U.(A) 88] gazetted on 12 March 2013 provides a 100% income tax exemption to a qualifying person on the statutory interest income derived from providing loans to the rescuing contractor or developer appointed or approved by the Minister of Housing and Local Government (MHLG) to carry out the rehabilitation works of abandoned housing projects.

The exemption will be given for a period of three consecutive years of assessment commencing from the first YA in which the interest income accrues to loans made to the rescuing contractor or developer on or after 1 January 2013 until 31 December 2015.

Income Tax (Deduction for Expenses in relation to Interest and Incidental Cost in Acquiring Loan for Abandoned Projects) Rules 2013

The Income Tax (Deduction for Expenses in relation to Interest and Incidental Cost in Acquiring Loan for Abandoned Projects) Rules 2013 [P.U.(A) 89] gazetted on 12 March 2013 provides a double deduction to the rescuing contractor on the interest expense and all direct expenses incurred in obtaining loans to revive the abandoned housing project for a period of 3 consecutive YAs from the YA in which the loan is approved. The deductions can only be claimed in the basis period when the abandoned project is completed and apply to loans approved from 1 January 2013 to 31 December 2015.

Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2013

The Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2013 [P.U.(A) 131] gazetted on 4 April 2013 provides that member institutions of the Malaysia Deposit Insurance Corporation (MDIC) are allowed to deduct an amount equivalent to their first or annual premium paid to the MDIC. The amount of premium paid shall be determined according to the relevant provisions under the Malaysia Deposit Insurance Corporation Act 2011. The Order revokes the Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2011.

Public Ruling No. 1/2013: Deduction for promotion of exports

Public Ruling (PR) No. 1/2013 issued on 4 February 2013 replaces the Inland Revenue Board's (IRB) guidelines and procedure for claiming deductions for promotion of exports (LHDN/BT/GP/POE/2005) and provides clarification on the type of expenditure eligible for single or double deduction for promotion of exports.

Public Ruling No. 2/2013: Perquisites from Employment

PR No. 2/2013 issued on 28 February 2013 explains the tax treatment of perquisites received by an employee. It merges PR No. 1/2006 issued on 17 January 2006, the Addendum dated 30 August 2007, the Second Addendum dated 25 February 2009 and the Third Addendum dated 30 July 2009.

Public Ruling No. 3/2013: Benefits in Kind

PR No. 3/2013 issued on 15 March 2013 explains the tax treatment of benefits in kind received by an employee. It merges PR No. 2/2004 issued on 8 November 2004, the Addendum dated 20 May 2005, the Second Addendum dated 17 January 2006, the Third Addendum dated 17 April 2009 and the Fourth Addendum dated 19 April 2010.

Public Ruling No. 4/2013: Accelerated capital allowances

PR No. 4/2013 issued on 15 April 2013 provides an explanation on the relevant provisions in the ITA and the relevant Income Tax Rules on accelerated capital allowances (ACA).

Guidelines for Application for Status and Incentive for Setting Up a Treasury Management Centre (TMC)

The MIDA has recently published the "Guidelines for Application for Status and Incentive for Setting Up a Treasury Management Centre (TMC)" dated 10 December 2012 on its website. The guidelines set out the eligibility criteria and the tax incentives that are available for TMC.

Guidelines on Taxation of Electronic Commerce

The IRB has made available on its website "Guidelines on Taxation of Electronic Commerce" dated 1 January 2013. The guidelines provide guidance on the circumstances under which income from electronic commerce (e-commerce) transactions would be deemed derived from Malaysia.

STAMP DUTY

Stamp Duty (Exemption) (No. 3) Order 2013

The Stamp Duty (Exemption) (No. 3) Order 2013 [P.U. (A) 42] was published on 7 February 2013. It provides for an exemption of stamp duty on instruments chargeable with *ad valorem* duty that are executed by a qualifying person in relation to a qualifying activity carried out in RAPID Complex on or after 10 October 2011 but not later than 31 December 2012.

Stamp Duty (Exemption) (No. 4) Order 2013

The Stamp Duty (Exemption) (No. 4) Order 2013 [P.U.(A) 52] gazetted on 18 February 2013 provides for an exemption on stamp duty on instruments relating to the sale and purchase of retail debenture and *sukuk* approved by the Securities Commission under the CMSA. The exemption applies to instruments executed by a qualifying individual retail investor on or after 1 October 2012 but not later than 31 December 2015.

Stamp Duty (Exemption) (No. 4) Order 2013 Corrigendum

Stamp Duty (Exemption) (No. 4) Order 2013 Corrigendum [P.U. (A)

143] was issued to replace references to "Part A" of Schedule 6 or Schedule 7 of the CMSA with "Part I".

Stamp Duty (Exemption) (No. 5) Order 2013

The Stamp Duty (Exemption) (No. 5) Order 2013 [P.U.(A) 91] gazetted on 14 March 2013 provides a stamp duty exemption on any loan instrument or loan agreement approved by the bank and financial institution to finance revived residential property and any instrument of transfer for the purpose of transferring the revived residential property in relation to the abandoned project, which is executed by the original house purchaser on or after 1 January 2013 but not later than 31 December 2015.

Stamp Duty (Exemption) (No. 6) Order 2013

The Stamp Duty (Exemption) (No. 6) Order 2013 [P.U.(A) 92] gazetted on 14 March 2013 provides stamp duty exemption on any loan instrument or loan agreement approved by a bank and financial institution to finance the abandoned project and any instrument of transfer for the purpose of transferring the revived residential property in relation to the abandoned project, which is executed by a rescuing contractor or a developer approved by the MHLG on or after 1 January 2013 but not later than 31 December 2015.

Stamp Duty (Exemption) (No. 7) Order 2013

The Stamp Duty (Exemption) (No. 7) Order 2013 [P.U. (A) 127] gazetted on 3 April 2013 provides a stamp duty exemption on instruments of transfer of business, assets or real properties acquired by a business trust that has been registered or approved by the Securities Commission pursuant to Division 1A, 3A or 3B of Part VI of the CMSA on or after 1 January 2013 but not later than 31 December 2017.

Stamp Duty (Exemption) (No. 8) Order 2013

The Stamp Duty (Exemption) (No. 8) Order 2013 [P.U.(A) 132] gazetted on 4 April 2013 provides a stamp duty exemption on instruments relating to the restructuring or rescheduling of loans executed between a participant of a debt management programme approved by the Credit Counselling and Debt Management Agency, a body corporate established under Section 48 of the Central Bank of Malaysia Act 2009, and a credit provider. The Order applies to instruments executed on or after 1 January 2013 but not later than 31 December 2017.

PROMOTION OF INVESTMENT ACT

Promotion of Investments (Criteria for the Grant of Pioneer Status to a Small Company) Order 2013

The Promotion of Investments (Criteria for the Grant of Pioneer Status to a Small Company) Order 2013 [P.U.(A) 139] gazetted on 15 April 2013 re-defines a small scale company and the criteria to be granted pioneer status. The Order revokes Promotion of Investments (Criteria for the Grant of Pioneer Status to a Small Company) Order 2008.

Promotion of Investments (Declaration of Shareholders' Funds in relation to a Small Scale Company under Section 2) (Amendment) Order 2013

The Promotion of Investments (Declaration of Shareholders' Funds in relation to a Small Scale Company under Section 2) (Amendment) Order 2013 [P.U.(A) 140] was gazetted on 15 April 2013. The Order amends the Promotion of Investments (Declaration of Shareholders' Funds in relation to a Small Scale Company under Section 2) Order 1989 to re-define the amount of the shareholders' funds to not exceed RM2.5 million (the previous amount was RM500,000). The Order is deemed to have come into operation on 3 July 2012.

PETROLEUM (INCOME TAX)

Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) Rules 2013

The Petroleum (Income Tax)

(Accelerated Capital Allowances) (Marginal Field) Rules 2013 [P.U. (A) 119] was gazetted on 29 March 2013 and deemed to have come into operation on 30 November 2010. The Rules provide an accelerated capital allowance that will allow qualifying plant expenditure incurred for the purpose of carrying out petroleum operations in a qualifying marginal field to be written off over a period of 5 years. This allowance is granted in the form of an initial allowance of 25% and an annual allowance of 15%. The Rules apply to qualifying plant expenditure incurred in the basis periods for the years of assessment 2010 until 2024.

Petroleum (Income Tax) (Investment Allowances) Regulations 2013

The Petroleum (Income Tax) (Investment Allowances) Regulations 2013 [P.U. (A) 120] was gazetted on 29 March 2013 and deemed to have come into operation on 30 November 2010. The Regulations grant an investment allowance of 60% on qualifying capital expenditure incurred in respect of a qualifying project within a period of 10 years that may be set off against 70% of the statutory income of the qualifying project.

Petroleum (Income Tax) (Marginal Field) Regulations 2013

The Petroleum (Income Tax) (Marginal Field) Regulations 2013 [P.U. (A) 121] was gazetted on 29 March 2013 and deemed to have come into operation on 30 November 2010. The Regulations apply to income derived from petroleum operations in a qualifying marginal field and provide for the ascertainment of gross income, adjusted income or loss, statutory income, unabsorbed capital allowances, assessable income and chargeable income.

Petroleum (Income Tax) (Exemption) Order 2013

The Petroleum (Income Tax) (Exemption) Order 2013 [P.U. (A) 122] was gazetted on 29 March 2013 and deemed to have come into operation on 30 November 2010. The Order provides a petroleum income tax exemption on qualifying statutory income derived from petroleum operations in a qualifying marginal field. The amount of statutory income (SI) which is exempted is determined in accordance with a formula provided in the Order such that the effective tax rate of the SI is 25% (instead of the 38% rate that applies to income from petroleum operations).

REAL PROPERTY GAINS TAX

Real Property Gains Tax (Exemption) Order 2013

The Real Property Gains Tax (Exemption) Order 2013 [P.U. (A) 128] gazetted on 3 April 2013 provides a real property gains tax exemption to a disposer of real properties or shares in a real property company to a business trust that has been registered or approved by the Securities Commission pursuant to Division 1A, 3A or 3B of Part VI of the CMSA on or after 1 January 2013 but not later than 31 December 2017.

LABUAN

Labuan Business Activity Tax (Exemption) Order 2013

The Labuan Business Activity Tax (Exemption) Order 2013 [P.U. (A) 99] gazetted on 21 March 2013 provides a 100% income tax exemption to a Labuan International Commodity Trading Company (LICTC) on income derived from the trading of physical and related derivative instruments of liquefied natural gas (LNG) in any currency other than the Ringgit for the first 3 years of operation. The Order shall have effect from YA 2013 onwards.

Labuan Business Activity Tax (Exemption) (No. 2) Order 2013

The Labuan Business Activity Tax (Exemption) (No. 2) Order 2013 [P.U. (A) 100] gazetted on 21 March 2013 exempts an LICTC from the election to pay a fixed tax of RM20,000 as provided in Section 7(1) of the Labuan Business Activity Tax Act 1990 on income derived from the trading of physical and related derivative instruments of petroleum and petroleum-related products including liquefied natural gas, minerals, agriculture products, refined raw materials, chemicals and base minerals in any currency other than the Ringgit. The Order takes effect from YA 2013 onwards.

CUSTOMS AND EXCISE

Customs (Anti-Dumping Duties) Order 2013 Countervailing and Anti-Dumping Duties Act 1993 and Customs Act 1967 [P.U. (A) 53/2013]

Effective from 20 February 2013 to 19 February 2018, the importation of goods listed on the right from the exporters (as specified) from the following countries is subject to anti-dumping duties **(see Table 1)**.

Please see P.U. (A) 53/2013 for details.

Customs (Anti-Dumping Duties) (No.2) Order 2013 Countervailing and Anti-Dumping Duties Act 1993 and Customs Act 1967 [P.U. (A) 146/2013]

Effective from 23 April 2013 to 22 April 2018, the importation of goods listed on the right from the exporters (as specified) from the following countries is subject to anti-dumping duties **(see Table 2)**.

Please see P.U. (A) 146/2013 for details.

Customs (Values of Imported Completely Built-Up Motor Vehicles) (New) (Amendment) Order 2013, Customs Act 1967 [P.U. (A) 61/2013]

This Order which took effect from 27 February 2013, shows the changes to the value of certain dutiable imported completely built-up (CBU) motor vehicles (new) listed in the Customs (Values of Imported Completely Built-Up Motor Vehicles) (New) Order 2006 for the purpose of levying and payment of customs duties.

Please see P.U. (A) 61/2013 for details.

No	HS Code/(AHTN Code)	Description of goods	Country	Exporter/producer	Rate of duty [% of the Cost, Insurance and Freight (CIF)]
1	1 7213.10 000, 7213.20 000, 7213.91 000, and 7213.99 000, (7213.10.00 00, 7213.20.00 00, 7213.91.10 00, 7213.91.20 00, 7213.91.90 00, 7213.99.10 00, 7213.99.20 00 and 7213.99.90 00	Steel wire rods of carbon content less than 0.6%	Chinese Taipei	1) China Steel Corporation 2) Feng Hsin Iron & Steel Co., Ltd 3) Others	10.83% 9.04% 25.20%
			Republic of Indonesia	1) PT Ispat Indo 2) Others	Nil 25.20%
			Republic of Korea	1) POSCO 2) Others	3.03% 25.20%
			People's Republic of China	1) Jiangsu Shagang International Trade Co., Ltd 2) Jiangsu Yonggang Group Co., Ltd 3) Others	Nil Nil 25.20%
			Republic of Turkey	1) Diler Dis Ticaret A.S. 2) Others	Nil Nil

Table 1

No	HS Code/(AHTN Code)	Description of goods	Country	Exporter/producer	Rate of duty [% of the Cost, Insurance and Freight (CIF)]
1	1 3920.20 200 (3920.20.10 00)	Biaxially oriented poly-propylene (BOPP) films of thickness between 13 to 50 microns and specifically excluding the printable shrink films, metallised films and tape	Chinese Taipei	1) Others	12.37%
			Thailand	1) A.J. Plast Public Company Limited 2) Thai Film Industries Public Company Limited 3) Others	Nil 12.37% 12.37%
			People's Republic of China	1) Guangzhou Shunlung Industrial Corporation 2) Zhejiang Kinlead Innovative Materials Co.Ltd 3) Others	Nil Nil 12.37%
			Republic of Indonesia	1) Others	12.37%
			Socialist Republic of Vietnam	1) Formosa Industries Corporation 2) Others	2.59% 12.37%

Table 2

*Contributed by **Ernst & Young Tax Consultants Sdn. Bhd.** The information contained in this article is intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgement. On any specific matter, reference should be made to the appropriate advisor.*

Cynthia Lian

In this article, Cynthia Lian considers the case of *Kyros International Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* on the issue of Appellate Interference.

CASE 1

Kyros International Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

The recent judgement of the Court of Appeal in *Kyros International Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*[1] dealt with the issue of appellate interference on the facts found by trial courts or tribunals.

In this case, Kyros International ("KI") appealed against the decision of the High Court on the basis that the High Court judge had interfered with the finding of facts by the Special Commissioners of Income Tax ("SCIT").

FACTS

KI is in the business of operating kebab fast food chains and is the registered owner of the trademark "Kyros". KI had granted sole and exclusive rights to its franchisee to establish and operate in a designated area and KI supported its franchisee in the operations by providing certain services such as auditing the operating system to ensure compliance with the standard operating procedures and giving advice to the franchisee on ways to improve operations and business development.

DECISIONS OF THE SCIT AND HIGH COURT

The SCIT held that franchise fees received by KI from Pakistan, China, Indonesia, Singapore and Brunei are exempt under paragraph 28(1) of Schedule 6 to the Income Tax Act 1967 ("ITA") which states:

"Schedule 6: Exemption from tax

28. (1) Income of any person, other than a resident company carrying on the business of banking, insurance or sea or air transport, for the basis year for a year of assessment derived from sources outside Malaysia and received in Malaysia."

In this regard, the SCIT found as a fact that the foreign franchise took place outside Malaysia and held:

"We find as a fact the execution or operations of business by the foreign franchisees took place outside Malaysia, through the evidence of the Respondent's witness (RW1). The foreign franchisees are independent i.e. not related to the Appellant. We therefore hold that all activities in respect of the agreements entered into with the foreign entities took place outside Malaysia."

The SCIT applied the principle enunciated in the case of *CIR v Hang Seng Ltd*[2] and held that the income is derived where the franchise was exercised.

Further, on the issue of whether the penalty imposed under Section 113(2) of the ITA was correct in law, the SCIT held that the incorrect return was made in good faith and waived the penalty.

On appeal to the High Court, Ketua Pengarah Hasil Dalam Negeri ("KPHDN") succeeded on the first issue that franchise fees received by KI were not exempt under paragraph 28(1) of Schedule 6 to the ITA. KPHDN's appeal on the issue of penalty was dismissed by the High Court.

DECISION OF THE COURT OF APPEAL

The Court of Appeal, in allowing KI's appeal (on the franchise fee) and dismissing KPHDN's cross-appeal (on penalty under Section 113(2) of the ITA), relied on the Privy Council case of *Chua Lip Kong v Director-General of Inland Revenue*[3] which succinctly held:

"Their Lordships cannot stress too strongly how important it is that, in every Case Stated for the opinion of the High Court, the Special Commissioners should state clearly and explicitly what are the findings of fact upon which their decision is based and not the evidence upon which those findings, so far as they consist of primary facts, are founded. Findings of primary facts by the Special Commissioners are unassailable. They can be neither overruled nor supplemented by the High Court itself; occasionally they may be insufficient to enable the High Court to decide the question of law sought to be raised by the Case Stated, but in that event it will be necessary for the Case to be remitted to the Commissioners themselves for further findings." (emphasis added)

[1] *Civil Appeal No: B-01-16-2010.*
[2] *[1990] STC 733.*
[3] *[1982] 1 MLJ 235.*

It is a trite principle of law that the finding of facts by a trial judge or tribunal must be given utmost respect and interference with findings of facts is only allowed in limited circumstances.

The Court of Appeal stressed the importance of appreciating the distinction between two types of facts under the Evidence Act 1950, namely physical fact which refers to "anything, state of thing, or relations of thing capable of being perceived by the senses" and psychological fact which refers to *"any mental condition of which any person is conscious of"*.

As a general rule, the Court of Appeal held that the finding of facts by a trier of facts is rarely disturbed by appellate courts, especially findings of physical facts. Findings of physical facts will not be ordinarily disturbed if the trier of facts *"has directed his mind to the relevant issues, and had acted in accordance with the law and the decision passes the test of reasonableness."* [4]

However, a stricter test applies when the finding of facts relates to psychological facts. In this regard, the trier of facts is required to provide further cogent reasons to ensure that every aspect of the relevant evidence has been considered in the right perspective to pass the test of reasonableness[5] and failure to give sufficient reasons on the grounds of judgement may result in appellate interference.

Where a court sitting in its appellate jurisdiction interferes in the finding of facts by a trier of facts, the Court of Appeal held that there is a duty and obligation by the appellate courts to meticulously go through the relevant documents such as pleadings, witnesses' evidence, memorandum of appeal and notes of proceedings. Further, grounds of judgement must provide three things namely:

i. the court has applied its mind to the reasons provided by the trier of facts;
ii. the court's cognisance that the trier of facts has had the benefit of seeing and hearing the witnesses, which is a benefit not available to the appellate court; and
iii. cogent reasons must be given for disagreeing with the trier of facts.

The Court of Appeal held that a stricter test is applied for appellate interference where the decision of the SCIT is appealed to the High Court by way of case stated. The Court of Appeal further held that the burden lies with the appellant to satisfy the court that the SCIT's decision was based on a misconception of the law or unsupported by the primary facts, and that such a conclusion on the facts and law was such that no other reasonable SCIT could have reached if they had correctly directed themselves.

It is settled law that the special position of the SCIT is generally recognised by the appellate court. In holding that the High Court can only disturb the finding of facts by the SCIT in limited circumstances, the Court of Appeal applied the principles enunciated in *Edward v Bairstow & Harrison and Chua Lip Kong*.[6]

It is recognised that courts exercising appellate jurisdiction have placed upon themselves various levels of self-imposed restrictions against appellate interference on the finding of facts by trial courts or tribunals, or statutory appeals by case stated and any such interference would only be exercised in limited circumstances. The Court further observed that the *"scope of appellate interference may be further restricted depending on the nature of the appeal as the jurisdiction relating to appeal, revision, review, reference etc. and the jurisprudence relating to such 'heads' are not one and the same."* [7]

Applying the principles above, the Court held that the finding of facts by the SCIT did not warrant appellate interference by the High Court.

CONCLUSION

The decision of the Court of Appeal reiterates an important principle of law: finding of facts by a trial judge or tribunal must be given utmost respect and interference by the appellate courts may only be exercised in limited circumstances.

[4] *Civil Appeal No: B-01-16-2010 at p 3.*
[5] *Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 MLJ 97.*
[6] *36 TC 207.*
[7] *Civil Appeal No B-01-16-2010 at p 3.*

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The column only covers selected developments from countries identified by the CTIM and relates to the period 16 February 2013 to 15 May 2013.

CHINA (PEOPLE'S REP.)

Individual income tax treatment of conversion of reserves to share capital clarified.

The State Administration of Taxation (SAT) issued Gong Gao [2013] No. 23 on 7 May 2013 clarifying the tax treatment of conversion of reserves to share capital after acquisition for the purposes of individual income tax, and is effective 30 days from the issue date.

In summary, where one or more individual investors purchase an enterprise by acquiring 100% of shares, the conversion of mandatory reserves, general reserves or undistributed profits to share capital is not subject to individual income tax if the purchase price of the shares is higher than the value of the net assets of the targeted enterprise and such reserves have been taken into account and incorporated in the purchase price of shares. However, if the purchase price of the shares is less than the ownership equity (capital plus reserves), the conversion of the part of reserves which has not been covered by the purchase price will be charged to individual income tax by applying the tax treatment of income category of "interest, dividends and bonuses". In determining the tax liability of the conversion, it is assumed that first the taxable reserves and then exempt reserves are converted to share capital.

Enterprises involved in the acquisition and conversion of reserves are required to report to the tax authority on shareholders, share transfer and amounts of reserves recorded on the balance sheet before the transactions within 15 days of the following month.

Tax rules on secondment of personnel by non-resident enterprises published

The SAT issued Gong Gao [2013] No. 19 on 19 April 2013 clarifying the enterprise income tax treatment of the secondment of personnel and is effective from 1 June 2013.

DETERMINATION OF AN ESTABLISHMENT/SITE OR PERMANENT ESTABLISHMENT (PE)

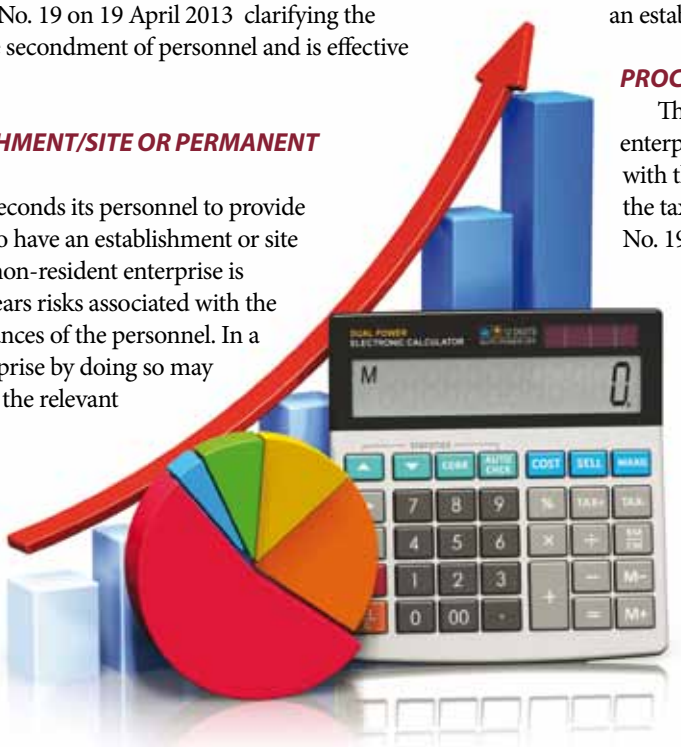
A non-resident enterprise which seconds its personnel to provide services in China may be considered to have an establishment or site for providing services in China if the non-resident enterprise is wholly or partly responsible for and bears risks associated with the personnel, and appraises the performances of the personnel. In a treaty situation the non-resident enterprise by doing so may be considered to have a PE in China if the relevant requirements of being fixed and permanency are met.

In determining the existence of such establishment/site or PE, the following factors must be taken into account:

- the service receiving enterprise in China (receiving enterprise) pays management fees, service fees or fees of similar nature to the seconding enterprise;
- the sum paid by the receiving enterprise outweighs the wages/salaries, social security contributions and other expenses attendant on the personnel paid by the seconding enterprise;
- the seconding enterprise has not paid out to the personnel the whole amount paid by the receiving enterprise, but withholds a certain amount instead;
- the personnel's wages/salaries borne by the seconding enterprise have not been taxed in full with individual income tax in China; and
- the seconding enterprise determines the amount, function, pay level and location (in China) of the personnel.

SAFE HARBOUR PROVISION

If the seconding enterprise seconds the personnel to China only to exercise its shareholder's rights and protect the shareholder's interests including providing investment advice and attendance of general meeting of shareholders and board meetings, such activities will not be considered to have an establishment/site or PE in China.



PROCEDURAL MATTERS

The seconding and receiving enterprises are required to register with the tax authority and pay the taxes according to SAT Order No. 19 on Provisional Measures of Tax Administration of Construction Projects or Furnishing Services by Non-Residents if they are considered to have an establishment/site or PE in China according to the Announcement.

The seconding enterprise has to calculate and to report the profits for the purpose of enterprise income tax. Where the profits cannot be ascertained, the tax

authority is authorised to determine the taxable income on a deemed basis.

TAX ADMINISTRATION

The tax authorities are required to strengthen the tax administration of secondment of personnel and to examine the economic substance and execution of such arrangements where the following must be examined and verified:

- the contracts or agreements between seconding, receiving enterprises and the personnel;
- introduction of the seconding or receiving enterprise to the personnel including job responsibilities, duties and performance appraisal, and risks allocation, etc.;
- payments made by the receiving enterprise to the seconding enterprise and how they are recorded in the accounting records and the individual income tax returns of the personnel; and
- the existence of disguised payments of the receiving enterprise associated with the secondment such as offsetting trades, giving up debts, related transactions or other forms of disguised payments.

Finally, the tax authorities assessing the enterprise income tax are asked to exchange information with the tax authorities responsible for assessment of individual income tax and business tax.

Interest on local government bonds exempt from income tax

The Ministry of Finance (MoF) and SAT jointly issued Cai Shui [2013] No. 5 concerning the tax treatment of interest on local government bonds on 6 February 2013. The interest derived by enterprises and individuals on bonds issued by local governments in 2012 and onwards is respectively exempt from enterprise income tax and individual income tax.

This notice extends tax exemption to the bonds issued in the years after 2011.

VAT: consolidation for head office and branches

The MoF and the SAT jointly issued Cai Shui [2012] No. 84 on 31 December 2012 providing details on the limited consolidation for the purposes of VAT between head office and its branches. The limited VAT consolidation only applies to taxpayers covered by the VAT pilot programme in respect of the transportation service and "modern services" (such as R & D and technical services) and must be pre-approved by the MoF and SAT. The head office may consolidate the VAT on taxable services and input taxes of head office and branches, and pay the VAT due to the tax authority in the place where the head office is located. Calculation formulas are provided to guide the taxpayers in determining the consolidated VAT.

Reduced VAT rate for printing works

On 22 February 2013, the SAT clarified (Gong Gao [2013] No.10) that from 1 April 2013 printing works of approved foreign books assigned by a foreign entity or individuals are subject to VAT at a reduced rate of 13%.

Taxation of non-resident enterprise subject to VAT pilot programme clarified

The SAT issued Gong Gao [2013] No. 9 on 19 February 2013 clarifying that VAT shall not be included in the tax base when determining the enterprise income tax of a non-resident enterprise as per Paragraph 3 of Article 3 of the Enterprise Income Tax Law (EITL) if the non-resident enterprise is subjected to the VAT pilot programme.

Paragraph 3 provides that a non-resident enterprise without an establishment in China (or having an establishment, but income derived is not connected with such establishment) is liable to tax only on China sourced income including the income from services, sales of goods, rental income, dividends, interest and royalties and so on. In the VAT pilot programme a non-resident enterprise providing certain services is subject to VAT instead of business tax which apparently raises a question for some taxpayers whether VAT is included in the tax base in determining enterprise income tax on the basis of Paragraph 3 of Article 3 of EITL. The announcement clarifies that this is not the case.

HONG KONG

Budget for 2013-14

The Budget for 2013-14 was presented on 27 February 2013. The following tax-related proposals, which unless otherwise indicated, will apply

from 1 April 2013 :

DIRECT TAXATION

(a) Corporate taxation

- A 75% reduction of profits tax for YA 2012-13, subject to a ceiling of HKD10,000 per case.

(b) Personal taxation

- A 75% reduction of salaries tax and tax under personal assessment for YA 2012-13, subject to a ceiling of HKD10,000 per case.
- Child allowance and additional one-off child allowance in the year of birth increased to HKD70,000.
- Deduction ceiling for self-education expenses increased to HKD80,000.
- Extra one month's allowance for recipients of Comprehensive Social Security Assistance, Old Age Allowance, Old Age Living Allowance and Disability Allowance.

INDIRECT TAXATION

- Waiver of business registration fees for 2013-14.
- Waiver of property rates for 2013-14, capped at HKD1,500 per tenement per quarter.

Inland Revenue and Stamp Duty Ordinance (Alternative Bond Schemes) (Amendment) Bill 2012 gazetted

The Inland Revenue and Stamp Duty Ordinance (Alternative Bond Schemes) (Amendment) Bill 2012 was gazetted on 28 December 2012 and presented to the Legislative Council on 9 January 2013.

The Bill seeks to amend the Inland Revenue Ordinance (IRO) and Stamp Duty Ordinance (SDO) to provide a comparable taxation framework for some common types of Islamic bonds *(sukuk)* compared to conventional bonds, with a view to promoting the development of a *sukuk* market in Hong Kong. The generic term "Alternative Bond Scheme" (ABS) is used in the Bill instead of "*sukuk*".

The underlying principle is to treat arrangements in an ABS that meet the qualifying conditions as "debt arrangements" for the purposes of the IRO and SDO, and to apply the tax treatments as in a comparable case of conventional bonds.

The proposed amendments will provide for tax and stamp duty relief for transactions underpinning issuance of relevant Islamic bond products, as these transactions would normally not have existed in a comparable conventional bond structure of similar economic substance.

INDIA

Clarification on computation of arm's length price

On 15 April 2013, the government issued Notification No. 30/2013 on the computation of the arm's length price (ALP). Where the variation between the ALP determined under Section 92C of the ITA using the methods as prescribed and the transfer price, or the price at which a specified domestic transaction (SDT) has actually been undertaken, does not exceed 1% of the latter with regard to a wholesale trader and 3% for all other categories, the transfer price or the price at which SDT has actually been undertaken shall be deemed to be the ALP.

Clarification on tax residence certificate

On 1 March 2013, the Indian MoF issued clarifications on the Tax Residency Certificate (TRC). From 1 April 2013, a taxpayer is required to produce a TRC in order to claim the benefits under a tax treaty. The MoF has clarified that a TRC produced by a resident of a contracting state will be accepted as evidence that he is a resident of that contracting state and the tax authorities in India will not question his resident status.

Clarification on application of profit split method

The Indian Central Board of Direct Taxes (CBDT) issued Circular

No. 02/2013 dated 26 March 2013 promoting the use of the profit split method (PSM) over other methods for calculating the arm's length price (ALP) of transactions involving intangibles/multiple inter-related transactions and clarifying the factors to be considered while selecting the PSM as the most appropriate method.

The Circular re-emphasises the factors as prescribed in Rule 10C(2) of the Income Tax Rules 1962 (the Rules) for the selection of the PSM. It further clarifies that where the Transfer Pricing Officer (TPO) is of the view that the PSM cannot be applied to determine the ALP of international transactions involving intangibles due to non-availability of information and reliable data, the TPO must accord suitable reasons for non-applicability of the PSM before considering other methods. The TPO may consider other methods by selecting comparables used in the development of intangibles in the same line of business and make upward adjustments to account for the transfer of intangibles without additional remuneration, location specific savings and advantages.

Clarification on development centres operating as contract research and development units in India

The CBDT issued Circular No. 03/2013 dated 26 March 2013 detailing the conditions under which a development centre in India may be treated as a contract R&D service provider with insignificant risk. The conditions, which are to be cumulatively complied with, are as follows:

- the Foreign Principal performs most of the economically significant functions whereas the Indian development centre would largely be involved in economically insignificant functions;
- the Foreign Principal provides the required funding/capital and other significant assets including intangibles for the research/ product development and the Indian development centre utilises the same for research purposes;

- the Foreign Principal controls or supervises research or product development through its strategic decisions and also monitors the activities on a regular basis;
- the Indian development centre does not assume any economically significant risk; and
- the outcome of the research completely vests with the Foreign Principal and the development centre has no ownership right (legal or economic) on the outcome of the research.

The Circular emphasises that the above conditions should be borne out by the conduct of the parties and not merely by the contractual terms. Also, if the Foreign Principal is located in a country/territory perceived as a low or no-tax jurisdiction, there is a rebuttable presumption that the Foreign Principal is not controlling economically significant risks.

Budget for 2013-14 – details

The Budget for the fiscal year 2013-14 was presented on 28 February 2013. Generally, the following direct tax proposals take effect when passed and ratified by Parliament, while the indirect tax proposals take effect immediately:

DIRECT TAXATION

- A tax credit of INR2,000 to individual taxpayers with a taxable income of up to INR500,000;
- Increased surcharges for one year as follows :
  - 10% on persons (other than companies) whose taxable income exceeds INR10 million;
  - 10% on domestic companies whose taxable income exceeds INR100 million;
  - 5% on foreign companies whose taxable income exceeds INR 100 million;
  - 5% to 10% in all other cases, e.g. dividend distribution tax;
- concessionary 15% tax rate on dividends received by an Indian company from a foreign subsidiary will be extended for a year;
- 20% final withholding tax on profits distributed by unlisted

companies to shareholders via share buybacks;
- 1% withholding tax on the transfer of immovable property where the consideration exceeds INR5 million;
- the tax on royalty and technical service fee payments to non-residents to be increased from 10% to 25%;
- the current securities transactions tax rates are to be reduced in respect of certain transactions;
- a commodity transactions tax is to be introduced although agriculture commodities will be exempted;
- a 15% investment allowance is to be provided to manufacturing companies that invest more than INR1 billion in plant and machinery during the period 1 April 2013 to 31 March 2015;
- securitisation trusts are to be exempted from income tax, but taxed at the time of distribution to the investors;
- safe harbour rules to be introduced; and
- the General Anti-Avoidance Rules are to take effect from 1 April 2016.

INDIRECT TAXATION

- the current normal/basic rates for excise duty (12%), service tax (12%) and customs duty (10% for non-agriculture products) will remain unchanged;
- the excise duty rates were decreased for a number of products including for the garment industry; handmade carpet and textile flooring; and ship-building industry;

- specific excise duty on cigarettes and other tobacco products increased by 18%;
- excise duty on sports utility vehicles increased to 30%, and marble to INR 60 per square metre. Excise duty on mobile phones priced at more than INR 2,000 increased to 6%;
- vocational courses offered by approved institutions and testing services for agricultural produce were added to the service tax negative list, while air-conditioned restaurants will be subject to service tax;
- customs duty exemption for specified parts for electric and hybrid vehicles was extended to 31 March 2015;
- customs duty reduced for a number of products including specified machinery for the manufacture of leather goods (7.5% to 5%), and pre-forms of precious and semi-precious stones (10% to 2%);
- customs duty increased on a number of products including set-top boxes (5% to 10%), raw silk (5% to 15%), high-end motor vehicles, motorcycles, yachts, etc.;
- duty-free limit for the importation of gold has been increased to INR50,000 for male passengers and INR100,000 for female passengers;
- customs duty concessions will be provided to the aircraft maintenance, repair and overhaul industry; and
- the government remains committed to the introduction of the goods and services tax and will continue its work on the constitutional amendment and laws for the introduction of the tax.

INDONESIA

Lower effective VAT rates

From 1 March 2013, new lower effective VAT rates apply on the supply of certain goods and services, pursuant to MoF Regulation No. 38/PMK.011/2013 (PMK-38) dated 27 February 2013 as follows:

- 2% of the sales price of gold jewellery including repair and modification services; and
- 1% of the billing value for freight forwarding services.

SINGAPORE

Framework for international tax cooperation to be significantly strengthened

The MoF, Monetary Authority of Singapore and Inland Revenue

Authority of Singapore (IRAS) issued a press release on 14 May 2013 on the strengthening of its framework for international cooperation against cross-border tax offences.

This follows a comprehensive review of the current Exchange of Information (EoI) framework, and represents a further step to enhance cooperation following the changes made in 2009, when Singapore endorsed the internationally agreed Standard for EoI for tax purposes, and has since amended the laws to implement the Standard and started renegotiating tax agreements to incorporate the Standard. The Global Forum on Transparency and Exchange of Information for Tax Purposes recently affirmed that Singapore's practice of EoI has been in line with the Standard.

Singapore will take four key steps that will further strengthen its EoI framework:

- Extend EoI assistance in accordance with the Standard to all existing tax agreement partners, without having to individually update each bilateral tax agreement. The current approach of updating individual agreements is no longer necessary as most countries have adopted the Standard and have similar EoI requirements. This extension of EoI assistance will be subject to reciprocity.
- Sign the Convention on Mutual Administrative Assistance on Tax Matters. Based on the current signatories, the Convention will expand Singapore's network of EoI partners by 11 jurisdictions.
- Taken together, the above two changes will more than double the number of jurisdictions – from 41 to 83 – with which Singapore will be able to exchange information under the Standard.
- Allow IRAS to obtain bank and trust information from financial institutions without having to seek a court order, and without undermining the basic safeguards for taxpayers. IRAS will continue to assess whether the requests are in line with the Standard, and taxpayers will continue to have the right of appeal.
- Conclude with the United States an Inter-Governmental Agreement (IGA) that will facilitate financial institutions in Singapore to comply with the Foreign Account Tax Compliance Act (FATCA, which requires all financial institutions outside of the US to pass information about financial accounts held by US persons to the US Inland Revenue Service on a regular basis). The IGA will be in the form of Model 1, under which information is exchanged between Singapore and US agencies.

THE LEGISLATIVE AMENDMENTS NECESSARY TO EFFECT THE ABOVE CHANGES WILL BE MADE BEFORE THE END OF 2013.

It was also reiterated that Singapore is fully committed to working with international partners to combat cross-border tax offences, including assistance in connection with the recent disclosure that the tax authorities of Australia, UK and US are investigating complex offshore structures that may be involved in wrongdoing. It was noted that from 1 July 2013, Singapore will criminalise the laundering of proceeds from serious tax offences.

Director's fees and employee bonuses – clarification

On 8 March 2013, IRAS issued an e-Tax Guide providing clarification on the treatment of director's fees and bonuses from employment to replace the IRAS guide of 2 November 1993 on the same matter, and is summarised as follows:

- Director's fees and bonuses from employment are taxable in the year of entitlement.
- For non-contractual bonuses, an employee becomes entitled to such bonuses on the date the bonuses are paid. The entitlement to contractual bonuses is specified by the contract or bonus plan.

- Conditional bonuses that are paid in advance are considered to be income of the employee on the date of payment. Subsequent returning of the bonus in full or in part by the employee is treated as an adjustment of income in the year the amount is returned.
- For director's fees approved in arrears, the earliest date on which the director is entitled to the director's fees is the date the fees are voted and approved at the company's annual general meeting (AGM). Claims that directors were not entitled to

director's fees approved in arrears on the date of approval at the AGM must be supported.
- For director's fees approved in advance, the earliest date on which the director can be entitled to the director's fees is as and when he renders his services.
- Generally, a company may claim a deduction for director's fees and employees' bonuses only when such fees or bonuses become due and payable by the company. In practice, IRAS will typically allow deduction of director's fees approved in arrears and non-contractual bonuses for the year in which they are properly ascertained and accrued as expenses in the company's financial accounts as per generally accepted accounting principles.
- Director's fees approved in arrears and non-contractual bonuses are deductible expenses for the year in which they are accrued only if their payments are expected to occur shortly after they are accrued in the financial accounts. For non-contractual bonuses, the amount accrued should typically be paid within a year of the expense accrual. In the case of director's fees approved in arrears, the fees should be tabled and put to vote at the AGM in which the financial accounts for the accounting year concerned are voted and approved (the relevant AGM).
- Provisions for director's fees or employees' bonuses made for a year where the amount and/or the timing of its payment are not properly ascertained will not be allowed deduction for the year.

Taxation of property developers – details

IRAS issued an e-Tax Guide on the taxation of property developers on 6 March 2013, which is summarised as follows:

- the date of commencement of a property development business is the date of acquisition of any land/property acquired for development for sale;
- profits of a property development project is recognised when the Temporary Occupation Permit (TOP) is issued;
- taxable profit is generally computed as sale proceeds of the property units in accordance with the sale and purchase agreement payment schedule less development costs incurred up to that date;
- income from the lands/properties accruing before and during development is, depending on the nature of the income, either taxed upfront or set-off against development costs;
- expenses that are directly attributable to the acquisition of land and property development activities are to be capitalised and accumulated in the Development Cost Account up to the TOP year of assessment;
- provisions (e.g. for diminution in value, warranty liability etc.) are generally non-deductible;
- expenditure related to development projects that are held partly for sale and partly for investment, or for mixed uses should be apportioned based on actual costs incurred;
- all gains from the sale of land or uncompleted development projects and rental income earned from the letting out of unsold properties are taxable; and
- discounts on sale of properties to employees are taxable as benefits-in-kind.

Budget for 2013

The Budget for 2013 was presented to Parliament by the Finance Minister on 25 February 2012. Details of the Budget, which unless otherwise indicated will apply from the year of assessment (YA) 2014, are summarised below.

DIRECT TAXATION

(a) Corporate taxation

- A 30% corporate income tax rebate capped at SGD30,000 per YA for all companies from YA 2013 to YA 2015.
- Investment holding companies and property development companies incorporated from 26 February 2013 will be excluded from the start-up tax exemption scheme. However, they can still enjoy the partial tax exemption generally available to all companies.

(b) Personal taxation

- A personal income tax rebate for all resident individuals for YA 2013. The rebate is 30% for individuals below 60 years and 50% for those above 60 as at 31 December 2012, subject to a cap of SGD1,500 per taxpayer.
- From YA 2015, changes will be made to the taxation of certain accommodation benefits enjoyed by employees.
- The Equity Remuneration Incentive Schemes (ERIS) will be gradually phased out.

(c) Progressive Property Tax Regime (PPTR)

From 1 January 2014 the PPTR for residential properties will be restructured with an increase in tax rates. Additionally, vacant properties may no longer enjoy the property tax refund and will be taxed at prevailing property tax rates (unless certain conditions are fulfilled).

(d) Incentives

- The Productivity and Innovation Credit (PIC) scheme will be enhanced

whereby in addition to existing PIC benefits, businesses that invest a minimum of SGD5,000 per YA in qualifying activities will receive a dollar-for-dollar matching cash bonus subject to an overall cap of SGD15,000 for expenditure incurred in YAs 2013 to 2015. IP in-licensing will be included as a qualifying activity. Cost of IP acquisition and in-licensing of IPs will be eligible for enhanced allowance / deductions under the PIC scheme, up to a combined cap of SGD400,000 per YA and cost of IP acquisition and in-licensing of IPs will qualify for a cash payout under the PIC, subject to conditions. This change will take effect for IP in-licensing costs incurred from YA 2013 to YA 2015

- The Financial Sector Incentive (FSI) scheme (excluding FSI-Islamic finance award) will be renewed for five years to 31 December 2018. From 25 February 2013, withholding tax exemption will be granted automatically to the FSI-headquarter services award recipients on interest payments made during the qualifying loans period.
- The Qualifying Debt Securities (QDS) and QDS Plus schemes will be extended for 5 years to 31 December 2018.
- The tax exemption on income derived by primary dealers from trading in Singapore Government Securities will be extended for five years to 31 December 2018.
- The Approved Special Purpose Vehicle (ASPV) scheme will be extended for five years to 31 December 2018.
- From 25 February 2013, tax exemption for qualifying income derived from offshore Catastrophe Excess of Loss (CAT-XOL) reinsurance layers.
- With effect from 1 April 2013, insurance and reinsurance brokers can qualify for a new 5%-tier award under which they can enjoy a 5% concessionary tax rate on fees and commissions derived from the provision of offshore qualifying speciality insurance broking and advisory services.
- The maximum tenure of the Maritime Sector Incentive-Approved International Shipping Enterprise (MSI-AIS) award will be increased from 30 years to 40 years. Companies can be granted the MSI-AIS award for a 10-year period, with the possibility of renewal up to a maximum tenure of 40 years, subject to conditions.

INDIRECT TAXATION

- Excise duties for beedies, hoon and smokeless tobacco increases by 25%, and unmanufactured tobacco by 1.5%.
- From 1 July 2013, a 30% road tax rebate will be granted for goods vehicles, buses and taxis for one year.
- From 26 February 2013, a tiered additional registration fee (ARF) for passenger cars will be introduced.

OTHER MEASURES

- Beginning 1 January 2014, the central provident fund contribution rates for low-wage workers (incomes below SGD1,500) will be restored fully to the same level as workers of the same age who earn SGD1,500 or more.
- The Medisave contribution rates for self-employed persons earning net trade income of between SGD6,000 to SGD18,000 per annum will be increased beginning 1 January 2014.

UNITED ARAB EMIRATES

New financial free zone established

By way of Federal Decree No. 15 of 2013 dated 11 February 2013 the President of the United Arab Emirates (and Ruler of Abu Dhabi) established a new financial free zone named "Abu Dhabi World Financial Market". The geographical area of the zone will be in the island of "Maryah" (formerly "Sowwah").

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THE GRASS ISN'T GREENER ON THE OTHER SIDE

ONE OF THE MAIN REASONS EXPANSION PLANS FAIL IS WHEN LEADERS LOOK FOR GROWTH IN NEW INDUSTRIES INSTEAD OF TRYING TO WIN IN THEIR OWN, SAYS **BOOZ & COMPANY**. BOOZ RESEARCH SHOWS THAT SHAREHOLDER RETURNS ARE BETTER WHEN COMPANIES FOCUS ON STRENGTHENING THE CORE CAPABILITIES THEY NEED TO WIN IN THEIR INDUSTRY, RATHER THAN SEEKING OUT NEW AREAS IN DIFFERENT INDUSTRIES.

> Getting better at what you already do is what gives you the biggest upside.
>
> Evan Hirsh
> Booz & Company partner

Leaders often try to expand into hot new growth industries, looking for accelerated performance they think isn't available in their core business. But that's a significant mistake, according to research by Booz & Company. In fact, companies perform better and produce better shareholder returns when they strengthen the key capabilities that help them win in their core industry. Companies that try to grow into new industries are likely to fail.

A Booz & Company study of total shareholder return (TSR) for 6,138 companies in 65 industries shows that, except for the best-performing (tobacco) and worst-performing (computers and peripherals) industries, mean 10-year TSR compound annual growth rates (CAGRs) across all industries were within 15 per cent of one another. But within each industry, the top company outperformed the worst company by an astonishing 69 per cent, on average.

"The analysis indicates that the best performance improvement and growth opportunity for a company is to rise to the top of the industry it's already in," said Evan Hirsh, Booz & Company partner. "Getting better at what you already do is what gives you the biggest upside," Hirsh added.

"Many leaders spend a lot of time and energy on finding a 'better' industry to get into," he

continued. "They convince themselves that their company's growth is slowing because their core industry is unattractive, and the way out is to shift into a fast-growing industry. And boards routinely accept that conventional wisdom."

But the study found that in fact, moving into another industry generally isn't the best way to grow. "When we reviewed shareholder returns over the past decade, we found that median performance across most industries was strikingly similar," explained Hirsh. "What this indicates is that if a company expands into a new industry, the odds are not good that it will exceed its current performance. In fact, by focusing its attention on trying to compete in the new industry, the company will probably neglect its core business and fall behind there."

The better move is for companies to improve their performance and try to rise to the top of their own industry. "We've found huge differences in returns within each industry," said Kasturi Rangan, Booz & Company principal. "In every industry, there are companies that greatly exceed median performance. For example, the airline industry is often thought of as being a laggard, but the top performer there, Latin America's LATAM Airlines Group SA, has a 10-year TSR CAGR of 35 per cent - better than the median performers in any other industry, better even than the median performer in the best-performing industry, tobacco, where the median was 21 per cent. The computer and peripherals industry is the worst-performing industry in the study. But the top performer there, Apple Inc., had a 10-year TSR CAGR of 54 per cent. As the Spanish like to say, it's better to be the head of a rat than the tail of a lion. That is, it's better to win in a so-called bad industry than be an also-ran in a supposedly good one."

The authors reported on why companies' expansions into new industries failed - and why companies succeeded when they instead stuck to and strengthened their core capabilities. Among the lessons:

LEADERS overestimate their ability to manage in new industries. Mattel's 1999 acquisition of the Learning Company failed because CEO Jill Barad and other senior managers didn't know how to turn around a company in the interactive industry - actually, they didn't have the know - how to recognise the Learning Company's weaknesses in the first place.

HOT industries don't stay hot. Booz & Company's research shows that of the industries that were in the top TSR quartile in 1991–2001, 50 per cent fell into the bottom quartile in the following decade. Only 8 per cent remained in the top quartile in2001–11. When AOL acquired Time Warner, for example, AOL had a five-year TSR of 40 per cent. But after the dot-com bubble burst, the combined company's share price fell from $90 to $33.

SUCCESS comes when companies focus on those few capabilities that are truly key for success while minimising all other costs. Off-road vehicle maker Polaris Industries resisted the temptation to look for easier growth areas. Instead, the company chose to focus on investing in two core capabilities - rapid innovation using deep customer insights, and flexible manufacturing. This allowed Polaris to develop new vehicles in both the utility and the performance-enthusiast markets. The company's market share in off-road vehicles surged from 25 per cent to 35-plus per cent, and is now more than double its nearest competitor's share.

CEOs should steer the business toward market share gains rather than revenue growth. Many leaders manage by issuing numerical targets - for revenue growth, profitability, and expenses. "But it's often better to focus solely on market share and develop a plan for increasing it," Hirsh said. IBM CEO Lou Gerstner famously kept his managers focused on market share and customer satisfaction - a strategy that kept their attention on serving customers and beating the competition. He was betting that the industry wasn't the problem, and he was right.

OTHER BUSINESS DEDUCTIONS

Siva Subramanian Nair

• continuation from vol.6/no.2

We continue with our discussion on the deductibility of business expense where the Income Tax Act 1967 does not contain an express provision relating to such expense. This article will focus on subscriptions and contributions for political purposes.

SUBSCRIPTIONS

In determining the deductibility of subscriptions, the general deduction rule in Section 33(1) is applied. In all cases the payment for entrance fees does not rank for a deduction since it is to acquire a long term privilege and as such capital in nature. However the annual subscriptions will rank for a deduction in ascertaining the adjusted income because it constitutes a payment to exercise the privilege once it is acquired and is generally a necessity for conducting the company's business.

PROFESSIONAL BODIES

It is not uncommon for companies to pay for or reimburse their staff for the cost of subscriptions to their respective professional bodies. For example, its accountant may be a member of the Malaysian Institute of Accountants or its engineer may be a member of the Institution of Engineers Malaysia therefore, the annual subscriptions borne by the employer will be allowed as a business deduction since it is a staff cost and usually that staff needs the membership to maintain their professional qualifications and for having access

to relevant Continuing Professional Development/Education courses, usually at discounted rates.

CLUBS

Similarly, many companies maintain membership with exclusive clubs to facilitate entertainment of clients or business associates. These too rank for a deduction since it is wholly and exclusively incurred for the production of income. The cost of entertaining itself is subject to restriction under Section 39(1) of the Income Tax Act 1967.

TRADE / INDUSTRY ASSOCIATIONS AND SOCIETIES

Subscriptions paid to trade or industry association and societies will also qualify for a deduction provided it is related to the business of the company. For example a barber's subscription to the "Malaysian Barbers' Association" will rank for a deduction but obviously one to the "Malaysian Coffee Shop Owners' Association" will not.

These are clearly illustrated in the following examples from past CTIM examination questions **(Table 1).**

Now we turn to contribution and payments for political purposes. Generally such donations or subscription do not rank for a deduction because it is quite difficult to establish a connection or nexus between this expenditure and the production of business income or even if a relationship does exist, it would be highly remote.

This was illustrated in *Boarland v Kramat Pulai Ltd [1953] 35 TC1.*

EXAMPLE 1: CTIM TAX II - DECEMBER 2003 QUESTION 1		
Subscriptions	**RM**	**Added back / Claimed- RM**
Entrance fee for golf club membership	8,000	8,000
Annual membership subscriptions	6,200	
Registration fee for access to supplier's website	800	800
EXAMPLE 2: CTIM TAX II - DECEMBER 2004 QUESTION 1		
Subscriptions	**RM**	**Added back / Claimed- RM**
Annual subscriptions for professional memberships	1,200	
Annual credit card subscription fees	300	
Annual gun licence fee for a director	500	500
Entrance fee for recreational club membership	6,000	6,000
EXAMPLE 3: CTIM TAX II - DECEMBER 2005 QUESTION 1		
Subscriptions	**RM**	**Added back / Claimed- RM**
Registration fee - trade association	500	500
Annual membership subscriptions - golf and recreational clubs	1,900	

Table 1

FACTS OF THE CASE

The case concerned a claim to deduct the costs incurred by a company in printing, publishing and circulating a political pamphlet entitled 'Chairman's supplementary remarks at annual general meeting'. The pamphlet carried criticism of the policies and acts of the government of the day and only incidentally discussed the effects of these policies on the operations of the company. The contention of the company was that these costs were incurred solely for the advantage of the company's trade, to protect its assets, preserve its goodwill and in consequence enable it to carry on and earn its profits whilst the Revenue's rebuttal was that the pamphlet was of a general political nature, bearing little or no direct relation to the company's trade plus it was made with an eye to effect the General Elections.

DECISION OF THE COURT

The Commissioners decided in the company's favour but in the High Court Dankwerts J reversed their decision, saying:

It seems to me that it is a question of law on the authorities whether a pamphlet in this particular form is capable of being wholly and exclusively for the purposes of advancing the trade of the company…

Dankwerts J goes on to say that one only had to peruse the pamphlet to see if it had a trade purpose, as contended by the company, such was not the only purpose. Dankwerts J said that he is entitled to hold as a matter of law that the expenditure was incapable of satisfying the statutory test i.e. no sum shall be deducted in respect of …any disbursements or expenses not being money wholly and exclusively laid out for the purposes of the trade, profession or vocation;…

However, another case provided an exception to this general contention i.e. *Morgan v Tate and Lyle, Ltd (1954) 35 TC 367, HL*

FACTS OF THE CASE

The company carried on a business as a sugar refiner. At that time the sugar refining industry was threatened with nationalisation if the Labour Party was re-elected to power. Therefore, in fearing compulsory acquisition of all or most of the assets of the business, the company conducted a publicity campaign, incurring an expense of £15,339, to prevent nationalisation and in consequence defend the company's title to its assets. The Revenue argued that the expenditure was merely to ensure that the ownership of the business remained in private hands and was not transferred to the government and not incurred for the purposes of trade and therefore, not deductible in ascertaining the taxable profits of the company.

DECISION OF THE COURT

The House of Lords (with two Lords dissenting) took the view that the expenses of a campaign to oppose nationalisation of the sugar industry were deductible because the object of the expenditure was to preserve the assets of the company from seizure by the government.

LORD JENKINS L.J. SAID

"It has long been well settled that the effect of these provisions as to deductions is that the balance of the profits and gains of a trade must be ascertained in accordance with the ordinary principles of commercial trading, by deducting from the gross receipts all expenditure properly deductible from them on those principles, save in so far as any amount so deducted falls within any of the statutory prohibitions contained in the relevant Rules, in which case it must be added back for the purpose of arriving

at the balance of profits and gains assessable to tax"

Candidates should note the analysis of the above two cases provided by Dr. Veerinderjeet which facilitates a comprehension of why one was decided in favour of the taxpayer whereas the other was for the Revenue as summarised below:

FACTS OF THE CASE

The company was a brewery which incurred expenditure to campaign for the anti-prohibition side in a poll being conducted to decide whether prohibition of the sale of intoxicating liquors should be introduced. The polls resulted in an anti-prohibition majority.

Boarland v Kramat Pulai Ltd	Morgan v Tate and Lyle, Ltd
A general attack was launched on the government policies which could only be for political purposes	The propaganda was directed solely on one facet of government policy i.e. the nationalisation of the industry and was undertaken to enable the company to continue to earn profits.

He also emphasises that the precedent established in the Morgan case might not be very relevant for Malaysian cases because it was decided based on the UK legislation which uses the words "wholly and exclusively laid out or expended for the purpose of trade " whereas in Malaysia our law reads "wholly and exclusively incurred …in the production of income".

This was also clear from the case of *Ward & Co. Ltd. v Commissioner of Taxes [1923] AC 145* decided in the Privy Council in respect of an appeal from the Court of Appeal in New Zealand.

DECISION OF THE COURT

Viscount Cave L.C. rejected the company's expenditure in printing and distributing anti-prohibition literature as being expenditure "not exclusively incurred in the production of assessable income". He continued to state:

"It is only necessary to add that the decision on the English Income Tax Acts, the language of which is different from that of the New Zealand Act have no real bearing upon the question now under decision".

However, a contrasting view is seen in *Kulim Rubber Plantations v DGIR [1979] 2 MLJ 298* where Vohrah, J. regarded the above dictum as "…at best *obiter dicta* (which effectively means 'said in passing') and to say that the English decisions have no bearing upon the issue before them because the language in the Ordinance is different from that in the English Act is too sweeping a statement".

Candidates should not confuse donations to political parties with cash donations to government, State governments and local authorities. The latter enjoys a clear deduction under Section 44(6) with no restrictions unlike donations to approved institutions which is restricted to 7% (10% for companies) of aggregate income.

This concludes our discussion on the deductibility of subscriptions and contribution for political purposes.

Best wishes to all candidates taking their examinations in November / December 2013 and God bless!

Siva Subramanian Nair is a freelance lecturer. He can be contacted at sivanair@tm.net.my

FURTHER READING

Choong, K.F. Malaysian Taxation - Principles and Practice, (Latest Edition), Infoworld.
Kasipillai, J. "A Comprehensive Guide to Malaysian Taxation under Self-Assessment" (Latest Edition), McGraw Hill.
Malaysian Master Tax Guide, (2013), CCH Asia Pte. Ltd.
Singh, Veerinderjeet: Veerinder on Taxation (latest edition), CCH Asia Pte. Ltd.
Thornton, R. Thornton's Malaysian Tax Commentaries, (Latest Edition), Sweet & Maxwell, Asia.
Thornton, Richard. 100 Ways to Save Tax in Malaysia for Partners and Sole Proprietors (latest edition), Sweet & Maxwell Asia.
Thornton, R. 100 Ways to Save Tax in Malaysia for SMEs (latest edition), Sweet & Maxwell Asia.
Yeo, M.C., Alan. Malaysian Taxation, (Latest Edition), YSB Management Sdn Bhd.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: July 2013 – September 2013

Month /Event	Details				Registration Fee (RM)			CPD Points
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
JULY 2013								
Workshop: Tax Penalties - Updates on Tax Penalties and Addressing the Matter	4 July	9a.m. - 5p.m.	Kuala Lumpur	Farah Rosley & Khoo Yuet Meng	350	400	460	8 WS / 053
Workshop: Pioneer Status or Investment Tax Allowance; Making a Choice	4 July	9a.m. - 5p.m.	Penang	Thenesh	335	385	435	8 WS / 054
Workshop: Pioneer Status or Investment Tax Allowance; Making a Choice	9 July	9a.m. - 5p.m.	Ipoh	Thenesh	335	385	435	8 WS / 055
Workshop: Pioneer Status or Investment Tax Allowance; Making a Choice	11 July	9a.m. - 5p.m.	Melaka	Thenesh	335	385	435	8 WS / 056
Workshop: Understanding Public Rulings on Tax Deductibility of Expenses	16 - 17 July	9a.m. - 5p.m.	CTIM Training Room	Kularaj	500	700	800	16 WS / 060
Workshop: Pioneer Status or Investment Tax Allowance; Making a Choice	22 July	9a.m. - 5p.m.	Kota Kinabalu	Thenesh	335	385	435	8 WS / 057
Workshop: Pioneer Status or Investment Tax Allowance; Making a Choice	23 July	9a.m. - 5p.m.	Kuching	Thenesh	335	385	435	8 WS / 058
Workshop: Understanding Public Rulings on Tax Deductibility of Expenses	23 - 24 July	9a.m. - 5p.m.	Ipoh	Kularaj	670	770	870	16 WS / 061
Workshop: Pioneer Status or Investment Tax Allowance; Making a Choice	25 July	9a.m. - 5p.m.	Johor Bahru	Thenesh	335	385	435	8 WS / 059
Workshop: Employment Tax Issues - Impact on Employers & Employees	29 July	9a.m. - 5p.m.	CTIM Training Room	Krishnan KSM	250	350	400	8 WS / 073
Workshop: Understanding Public Rulings on Tax Deductibility of Expenses	30 - 31 July	9a.m. - 5p.m.	Penang	Kularaj	670	770	870	16 WS / 062
AUGUST 2013								
Workshop: Understanding Public Rulings on Tax Deductibility of Expenses	14 -15 Aug	9a.m. - 5p.m.	Melaka	Kularaj	670	770	870	16 WS / 063
Workshop: Tax Savings Opportunities for Exporters; Exemptions & Double Deductions	15 Aug	9a.m. - 5p.m.	Ipoh	Thenesh	335	385	435	8 WS / 067
Workshop: Understanding Public Rulings on Tax Deductibility of Expenses	20 - 21 Aug	9a.m. - 5p.m.	Johor Bahru	Kularaj	670	770	870	8 WS / 064
Workshop: Tax Savings Opportunities for Exporters; Exemptions & Double Deductions	22 Aug	9a.m. - 5p.m.	Kota Kinabalu	Thenesh	335	385	435	8 WS / 068
Workshop: Tax Savings Opportunities for Exporters; Exemptions & Double Deductions	23 Aug	9a.m. - 5p.m.	Kuching	Thenesh	335	385	435	8 WS / 069

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: July 2013 – September 2013

Month /Event	Details				Registration Fee (RM)			CPD Points
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
AUGUST 2013								
Workshop: Tax Savings Opportunities for Exporters; Exemptions & Double Deductions	29 Aug	9a.m. - 5p.m.	Penang	Thenesh	335	385	435	8 WS / 070
Public Holiday *(Hari Raya Aidilfitri : 8 & 9 August 2013, National Independence Day: 31 August 2013)*								
SEPTEMBER 2013								
Workshop: Employment Tax Issues: Impact on Employers & Employees	2 Sept	9a.m. - 5p.m.	Ipoh	Krishnan KSM	335	385	435	8 WS / 074
Workshop: Understanding Public Rulings on Tax Deductibility of Expenses	3 - 4 Sept	9a.m. - 5p.m.	Kota Kinabalu	Kularaj	670	770	870	16 WS / 065
Workshop: Tax Savings Opportunities for Exporters; Exemptions & Double Deductions	5 Sept	9a.m. - 5p.m.	Johor Bahru	Thenesh	335	385	435	8 WS / 071
Workshop: Employment Tax Issues: Impact on Employers & Employees	5 Sept	9a.m. - 5p.m.	Penang	Krishnan KSM	335	385	435	8 WS / 075
Workshop: Understanding Public Rulings on Tax Deductibility of Expenses	10 - 11 Sept	9a.m. - 5p.m.	Kuching	Kularaj	670	770	870	16 WS / 066
Workshop: Tax Savings Opportunities for Exporters; Exemptions & Double Deductions	12 Sept	9a.m. - 5p.m.	Melaka	Thenesh	335	385	435	8 WS / 072
Workshop: Employment Tax Issues: Impact on Employers & Employees	30 Sept	9a.m. - 5p.m.	Johor Bahru	Krishnan KSM	335	385	435	8 WS / 076
Public Holiday *(Malaysia Day : 16 September 2013)*								

GOODS & SERVICES TAX (GST)

Event	Details				Registration Fee (RM)			CPD Points
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
GST Training Course (10 days)	Aug 21, 22, 24, 28, 29 Sept 4, 5, 7, 11, 12	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days course)*	4,200 *(fee for 14 days course)*	4,500 *(fee for 14 days course)*	JV / 008
GST Revision Course (3 days)	14, 18 & 19 Sept	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days course)*	4,200 *(fee for 14 days course)*	4,500 *(fee for 14 days course)*	JV / 008
GST Examination Day (1 day)	21 Sept	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days course)*	4,200 *(fee for 14 days course)*	4,500 *(fee for 14 days course)*	JV / 008

DISCLAIMER : 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 three days notice will be given.

ENQUIRIES : Please call Yus, Jason, Ally or Nur at 03-2162 8989 ext 121, 108, 123 and 106 respectively or refer to CTIM's website ***www.ctim.org.my*** for more information on the CPD events.

McMillan Woods GLOBAL AWARDS 2013

McMillan Woods Global Awards 2013
31st October 2013 at the Shangri-La Hotel, Kuala Lumpur, Malaysia

The McMillan Woods Global Awards is conceptualised to recognise the exemplary leaders who have successfully aligned their visions and missions on a defined course, steering their ships against the tidal waves of global economic challenges and attained great success. The awards progrqamme is to highlight the achievements of the global business visionaries across all industry sectors and to honour their contributions towards the global economic development. The awards programme is aimed to target the crème de la crème leaders who have the aspirations to chart the uncharted territories across the unknown horizon.

McMillan Woods Global is one of the world's most respected and fastest growing global business advisory firms and its awards are regarded as a true recognition of achievement by the award recipients and the business community at large.

Corporate social responsibility (CSR) drive
At McMillan Woods, we pledge our continual commitment to CSR drive. On 10-10-2011, we scaled the highest mountain in Southeast Asia - Mount Kinabalu in Sabah and raised RM100,000.00 with the theme "Climb for charity" and donated the collection to various charity organisations. In 2012, we donated all surpluses from the inaugural McMillan Woods Global Awards to charity organisations.

For more information:
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