Vol.4/No.3/2011/Q3
Official Journal of the Chartered Tax Institute of Malaysia

Tax Guardian

AUTHORITATIVE - RELEVANT - GLOBAL EXCELLENCE

RM28.00

MEMORANDUM ON 2012 BUDGET PROPOSALS

TAX-AN EFFECTIVE TOOL FOR TRANSFORMATION

MANAGEMENT RAISING PRODUCTIVITY

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CHARTERED TAX INSTITUTE OF MALAYSIA

ISSN 0128-7583
9 770128 758008
KDN PP7829/05/2012(029896)

National Tax Conference 2011
Economic Transformation: Role of Taxation

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CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: October 2011 – December 2011

Month /Event	Details				Registration Fee (RM)			CPD Points
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
OCTOBER 2011								
Workshop: New Public Rulings 2011 (re-run)	3 Oct	9a.m. - 5p.m.	Kuala Lumpur	Chow Chee Yen	350	400	460	8
Workshop: New Public Rulings 2011	4 Oct	9a.m. - 5p.m.	Ipoh	Chow Chee Yen	335	385	435	8
Workshop: New Public Rulings 2011 (re-run)	6 Oct	9a.m. - 5p.m.	Kuala Lumpur	Chow Chee Yen	350	400	460	8
2012 Post-Budget Seminar	15 Oct	9a.m. - 5p.m.	Kuala Lumpur	Various Speakers	335 (after 10% deduction)	425	475	10
2012 Post-Budget Seminar	17 Oct	1.30 a.m. - 5p.m.	Kuala Lumpur	Ministry of Finance	180 (after 10% deduction)	230	250	5
2012 Post-Budget Seminar	19 Oct	9a.m. - 5p.m.	Johor Bahru	Chow Chee Yen	300 (after 10% deduction)	385	435	10
2012 Post-Budget Seminar	20 Oct	9a.m. - 5p.m.	Penang	Sivaram Nagappan	300 (after 10% deduction)	385	435	10
2012 Post-Budget Seminar (in collaboration with ACCA Malaysia)	21 Oct	9a.m. - 5p.m.	Kuantan	Sivaram Nagappan	280	330	500	10
2012 Post-Budget Seminar	22 Oct	9a.m. - 5p.m.	Subang Jaya	Chow Chee Yen	315 (after 10% deduction)	400	460	10
2012 Post-Budget Seminar	24 Oct	9a.m. - 5p.m.	Ipoh	Chow Chee Yen	300 (after 10% deduction)	385	435	10
2012 Post-Budget Seminar	25 Oct	9a.m. - 5p.m.	Melaka	Chow Chee Yen	300 (after 10% deduction)	385	435	10
2012 Post-Budget Seminar	27 Oct	9a.m. - 5p.m.	Kuching	Vincent Josef	300 (after 10% deduction)	385	435	10
2012 Post-Budget Seminar	28 Oct	9a.m. - 5p.m.	Kota Kinabalu	Vincent Josef	300 (after 10% deduction)	385	435	10
Public Holiday *(Deepavali : 26 October 2011)*								
NOVEMBER 2011								
2012 Post-Budget Seminar (in collaboration with ACCA Malaysia)	8 Nov	9a.m. - 5p.m.	Kota Bharu	Sivaram Nagappan	280	330	500	10
2012 Post-Budget Seminar (in collaboration with ACCA Malaysia)	9 Nov	9a.m. - 5p.m.	Kuala T'gganu	Sivaram Nagappan	280	330	500	10
2012 Post-Budget Seminar (in collaboration with ACCA Malaysia)	9 Nov	9a.m. - 5p.m.	Sibu	Vincent Josef	280	330	500	10
2012 Post-Budget Seminar (in collaboration with ACCA Malaysia)	10 Nov	9a.m. - 5p.m.	Miri	Vincent Josef	280	330	500	10
2012 Post-Budget Seminar (in collaboration with ACCA Malaysia)	11 Nov	9a.m. - 5p.m.	Labuan	Vincent Josef	280	330	500	10
2012 Post-Budget Seminar	15 Nov	9a.m. - 5p.m.	Kuala Lumpur	Various Speakers	335 (after 10% deduction)	425	475	10
Workshop: Practical Issues on Stamp Duty	8 Nov	9a.m. - 5p.m.	Subang Jaya	Tan Sin Huat	350	400	460	8
Workshop: Stamp Duty Relief (Exemption) Under Section 15 & 15A	9 Nov	9a.m. - 5p.m.	Subang Jaya	Tan Sin Huat	350	400	460	8
Workshop: Maximising on Capital Expenditure	10 Nov	9a.m. - 5p.m.	Kuala Lumpur	Sivaram Nagappan	350	400	460	8
Workshop: Recent Tax Cases: Successes and Surprises in Court	10 Nov	9a.m. - 5p.m.	Penang	Saravana Kumar	335	385	435	8

Month /Event	Details				Registration Fee (RM)			CPD Points
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non-Member	
NOVEMBER 2011								
Workshop: Maximising on Capital Expenditure	15 Nov	9a.m. - 5p.m.	Johor Bahru	Sivaram Nagappan	335	385	435	8
Workshop: Maximising on Capital Expenditure	17 Nov	9a.m. - 5p.m.	Ipoh	Sivaram Nagappan	335	385	435	8
Workshop: Customs Exemptions & Incentives	17 Nov	9a.m. - 5p.m.	Kuala Lumpur	Thomas Selva Doss	350	400	460	8
Workshop: Maximising on Capital Expenditure	21 Nov	9a.m. - 5p.m.	Melaka	Sivaram Nagappan	335	385	435	8
Workshop: Recent Tax Cases: Successes and Surprises in Court	22 Nov	9a.m. - 5p.m.	Kota Kinabalu	Saravana Kumar	335	385	435	8
Workshop: Practical Issues on Stamp Duty	23 Nov	9a.m. - 5p.m.	Johor Bahru	Tan Sin Huat	335	385	435	8
Workshop: Stamp Duty Relief (Exemption) Under Section 15 & 15A	24 Nov	9a.m. - 5p.m.	Johor Bahru	Tan Sin Huat	335	385	435	8
Workshop: Recent Tax Cases: Successes and Surprises in Court	24 Nov	9a.m. - 5p.m.	Kuching	Saravana Kumar	335	385	435	8
Workshop: Recent Tax Cases: Successes and Surprises in Court	29 Nov	9a.m. - 5p.m.	Kuala Lumpur	Saravana Kumar	350	400	460	8
Public Holiday (Hari Raya Aidiladha : 6 Nov 2011)								
DECEMBER 2011								
Workshop: Practical Issues on Stamp Duty	1 Dec	9a.m. - 5p.m.	Penang	Tan Sin Huat	335	385	435	8
Workshop: Stamp Duty Relief (Exemption) Under Section 15 & 15A	2 Dec	9a.m. - 5p.m.	Penang	Tan Sin Huat	335	385	435	8
Workshop: Taxation Issues for SMEs	5 Dec	9a.m. - 5p.m.	Kuala Lumpur	Ramesh Ruben Louis	350	400	460	8
Workshop: Recent Tax Cases: Successes and Surprises in Court	6 Dec	9a.m. - 5p.m.	Johor Bahru	Saravana Kumar	335	385	435	8
Workshop: Customs Exemptions & Incentives	8 Dec	9a.m. - 5p.m.	Subang Jaya	Thomas Selva Doss	350	400	460	8
Workshop: Recent Tax Cases: Successes and Surprises in Court	12 Dec	9a.m. - 5p.m.	Melaka	Saravana Kumar	335	385	435	8
Seminar: To Be Advised	13 Dec	9a.m. - 5p.m.	Kuala Lumpur	Various Speakers	Early Bird 375 / Normal 425	Early Bird 425 / Normal 475	Early Bird 475 / Normal 545	
Workshop: Recent Tax Cases: Successes and Surprises in Court	14 Dec	9a.m. - 5p.m.	Ipoh	Saravana Kumar	335	385	435	8
Workshop: Maximising on Capital Expenditure	16 Dec	9a.m. - 5p.m.	Penang	Sivaram Nagappan	335	385	435	8
Workshop: Maximising on Capital Expenditure	20 Dec	9a.m. - 5p.m.	Kota Kinabalu	Sivaram Nagappan	335	385	435	8
Workshop: Maximising on Capital Expenditure	21 Dec	9a.m. - 5p.m.	Kuching	Sivaram Nagappan	335	385	435	8

DISCLAIMER : CTIM reserves the right to change the speaker (s)/date (s), venue and/or cancel the events without notice at their discretion.

ENQUIRIES : Please call Ridzuan, Fadeah, Yus or Nur at 03-2162 8989 ext 108, 113, 121 and 106 respectively or refer to CTIM's website ***www.ctim.org.my*** for more information on the CPD events.

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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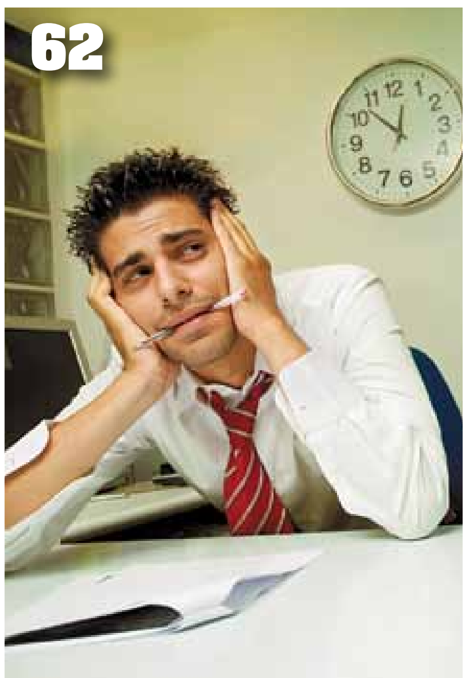
Tax Guardian

VOL.4/NO.3/2011/Q3
SEPTEMBER 2011



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.

Contributions may be sent to:
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No.12 Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Email: *publications@ctim.org.my*

DATO' RAYMOND LIEW LEE LEONG

Preparing for Change

As we move into 2012, never before has the platitude that "change is the only constant" seemed more appropriate and applicable in the volatile and risky times that we live in.

As resources become scarcer, wealth erodes and the global middle classes slip slide towards the poverty line, governments are urgently searching for ways to increase growth and alleviate economic pain for their citizens. Indeed, thought leaders are even calling for a revamp in the way that we measure and strive for growth, given that the 20th-century protocol of improving lives through annual GDP growth no longer seems sustainable.

But while we wait for frameworks to be rejigged (with inspiration from models such as Bhutan's Gross National Happiness Index and the Happy Planet Index), the way forward for individual nations seems to be by cultivating new sources of sustainable growth and innovation in order to ensure inclusive prosperity and quality of life for all.

This is the route being taken by Malaysia under the blueprint for transformation into a highly-developed and high-income nation. As a key tool for remodeling our economic and social fates, the annual Budget comes under a great deal of scrutiny from all quarters. In this issue of Tax Guardian, we analyse the potential impact of Budget 2012. Can it achieve its aims of fiscal prudence through balancing the budget and reducing tax leakages? Furthermore, can it incentivize the private sector sufficiently to urge them to economic partnership and leadership? And can it attract and retain the necessary talent through tax incentives for education and training and repatriation in order to alleviate the talent crunch?

In order to fund our ambitious transformation programme, Malaysia will need ample funds. We have been strongly urged to diversify our revenue and tax bases, and one means is through the implementation of the Goods and Services Tax (GST). Do take a look at our refresher article on GST this issue to update yourselves on the challenges and learn how businesses can smooth the path for implementation.

Apart from prudence and innovation, alliance with partners is another way forward to pursue growth. In this issue, we look at the potential of a US-Malaysia tax treaty to improve bilateral relations through trade and security measures, among others. At the time of writing, Malaysia has a navigational tax treaty with the US which only deals with air and sea transport operations. Should we embark on a comprehensive tax treaty with the US? What are the benefits?

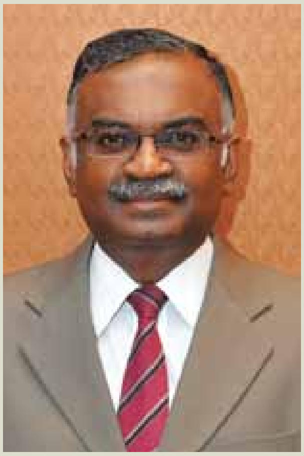
Speaking of the US, the global power has come up with the Foreign Account Tax Compliance Act (FATCA) which aims to counter tax evasion by US persons through foreign financial institutions. How will this affect Malaysia financial institutions?

Meanwhile, female empowerment is gaining strength as businesses and governments seek to harness the gentler sex to improve performance. How can companies leverage the feminization of business to their advantage? Learn how to bring out the best in your female colleagues and employees.

Prudence, sustainability, teamwork, and feminization are just a few of the larger key trends that look set to make a deep impact on the business environment as we move into the future. I strongly urge all tax professionals to learn all you can about these impactful trends and developments in order to be well-positioned in this 21st century of change. It is my sincere wish that Tax Guardian – and the CITM – can be a vehicle for your professional and personal development and an instrument for change and transformation within the broader local landscape. Do feel free to give us your feedback on how you think Tax Guardian can be improved to serve you better.

On behalf of CITM and Tax Guardian, I wish you a happy and prosperous new year.

Editor



CTIM Welcomes its New President SM Thanneermalai

SM Thanneermalai is a Fellow member of the Chartered Tax Institute of Malaysia. He has been a member of the Institute since June 1992. He was first admitted to the Council in 1997 and was elected as the President of the Institute at the recent 19th Annual General Meeting.

SM Thanneermalai was the Deputy President in 2010. He was the Co-Organising Chairman for the National Tax Conference for 2001, 2002, 2009, 2010 and 2011. He has served as a member and as the Chairman of various committees of the Institute.

SM Thanneermalai is a member of the Institute of Chartered Accountants in England and Wales and has worked closely with a range of regulatory authorities, namely, the Ministry of Finance (MoF), the Malaysian Industrial Development Authority (MIDA) and the Ministry of International Trade and Industry (MITI) etc. to contribute towards the development of government policies and legislation.

On the professional front, he is the Senior Executive Director at PriceWaterhouseCoopers (PwC) Malaysia. He has extensive experience in handling a vast variety of taxation matters. He has been in professional practice since 1975 specialising in taxation since 1980. He also leads the India Desk in PwC Malaysia assisting Malaysian companies to enter and operate in India. He has extensive exposure and experience in tax advisory and consulting assignments covering the whole range of taxation matters.

As the current President his aspirations for CTIM are:

- Enhance the standing of CTIM such that it is recognised as the premier tax institute by our key stakeholders i.e. the members, the Inland Revenue Board and the relevant Ministries such as the Ministry of Finance.

- Strengthen the secretariat by adding more capability in particular areas such as technical, continuing profesional development etc. in order to provide greater support to our members.

- Improve and expand our services to members through greater investment in information technology.

- Expand our linkages with the Government authorities especially the Inland Revenue Board, Royal Malaysian Customs, Ministry of Finance and other Ministries dealing with tax matters from time to time such as the Ministry of International Trade and Industry etc.

- Highlight and speak up on taxation issues which are of concern to our members and bring them to the attention of the relevant authorities and obtain outcomes which will result in a “win - win” situation for all parties concerned.

- To communicate activities undertaken by CTIM to the members as soon as possible.

- Finally to provide confidence to the members and to the general public and other stakeholders such as the government authorities of the unique benefits that differentiate CTIM as a specialist tax body in Malaysia.

He hopes that he will be able to fulfil the above aspirations during his tenure as the President of CTIM and leave behind a better and more robust Institute to his successors.

Courtesy Visit to Inland Revenue Board

On 7 September 2011, SM Thanneermalai, President of CTIM led a team comprising Poon Yew Hoe (Chairman of the Technical and Public Practice Committee), Aruljothi Kanagaretnam (Chairman of the Membership Committee) and the Executive Director of CTIM to meet the Chief Executive Officer of the Inland Revenue Board, Dato' Dr. Mohd Shukor Haji Mahfar and his senior officers. The primary purpose of this visit was to discuss the issue of penalties for late filing of returns.

CTIM Appoints New Executive Director

P. Thomas Simon, 52, joined the Institute on 15 July 2011 as the Executive Director. He started his working career with one of the big four accounting firms in 1980 as an audit trainee and went on to qualify as a Certified Public Accountant and subsequently acquired memberships in the Malaysian Institute of Certified Public Accountants and the Malaysian Institute of Accountants. In the early nineties, he left to join the commercial sector and eventually became the Chief Financial Officer of a Government Linked Company prior to joining the Institute.

Thomas believes that those employed in this profession should actively engage in other activities including family activities to bring about balance in their lives. In his case, he enjoys travelling to hike in mountainous terrains and bird watching. These leisure activities allow him to view his personal life in a completely different perspective.

In joining the Institute, Thomas is grateful for the opportunity to engage in a different field of work. Being from a corporate background, Thomas feels that he will be able to contribute positively to the Secretariat's operations in supporting the growth of the Institute's membership and membership services, Continuing Professional Development programmes and examinations. More importantly, he believes that the members must feel the Institute is able to engage positively with them and support their aspirations and requirements.

Workshop: Implementation of Single Tier Tax System

The workshop was successfully conducted on 1 June 2011 at the Hotel Istana, Kuala Lumpur. Participants felt that the workshop had achieved its objectives i.e. to understand and implement the procedures and responsibilities necessary during the transitional period in respect of dividends declared and the Section 108 Account. In addition, the speaker, Vincent Josef explained how the Section 108 balance was determined. Due to overwhelming response, CTIM conducted similar workshops across the country in the month of June.

Farewell to Ann Vong, Executive Director

The Chartered Tax Institute of Malaysia bade farewell to Ann Vong as she moved on to greener pastures. We wish her all the best.

CTIM Exhibition Booth at National Tax Conference (NTC)

(19-20 July 2011)

CTIM set up an exhibition booth at the NTC which was held at the KL Convention Centre from 19-20 July 2011. A 50% discount was given on the admission fee during the NTC for those who submitted their membership application forms.

The other exhibitors at the conference were Public Mutual Bhd, AXP, Maybank, Lembaga Kemajuan Tanah Persekutuan (FELDA), YGL, Direct Access, Etiqa Insurance Berhad, Superior Professional Consultancy, Labuan IBFC, Maxis Berhad, Association of International Accountants (AIA), Bizztax, CCH, Universiti Tun Abdul Razak, Pos Malaysia Berhad, Brasstax, Hans Advisory & Trust Co. Ltd, Bank Islam Malaysia Berhad, NAZA Kia Malaysia, Public Bank Berhad, Axiata Group Berhad (Celcom), Percetakan Nasional Malaysia Berhad (PNMB), UEM Group Berhad , Permodalan Nasional Berhad (PNB), Telekom and Lembaga Hasil Dalam Negeri Malaysia.

Branch Affairs Meeting

CTIM would like to congratulate the following Branch Chairmen namely Wong Seng Chong (East Coast Branch), Tan Lay Beng (Southern Branch), Andrew Ewe (Northern Branch) and Regina Lau (Sarawak Branch) for being re-appointed as Branch Chairmen for the 2011-12 term. In addition, CTIM would like to welcome the new Branch Chairmen i.e. Wee Hock Seng (Melaka Branch), Chak Kong Keong (Perak Branch) and Alexandra FL Chin (Sabah Branch).

The first Branch Affairs Meeting for the 2011-12 term was held on 19 July 2011 at the Kuala Lumpur Convention Centre. The meeting, which was chaired by SM Thanneermalai, the CTIM President, discussed the issues and challenges related to the branches. It was also an opportunity for the branch chairmen to present updates on their respective annual plans and activities such as to increase awareness of CTIM, to hold members' dialogues and to organise more CPD programmes.

Workshop: Maximising Tax Incentives

The workshops were held across the country in major cities such as Kuala Lumpur, Penang, Melaka, Kuching and Johor Bahru from 21 June 2011 to 23 August 2011. Various tax issues on tax incentives were presented by the speaker, Sivaram Nagappan.

NATIONAL TAX CONFERENCE 2011

• 19 & 20 July 2011 • Kuala Lumpur Convention Centre

A Big Thank You

The Chartered Tax Institute of Malaysia (CTIM) would like to express its appreciation to the following persons for making the National Tax Conference 2011 a success.

CO-ORGANISING PARTNER FROM THE MALAYSIAN TAX ACADEMY

Mr. Mohd Nizom Sairi
(Co-Organising Chairman, NTC 2011)

Mr. Mustafa Said
Mr. Jayendra Patel
ICT Team

Ms. Latifah Othman
Ms. Ranjeet Kaur
Multimedia Team

Madam Nor Azirah Mohd Said
Ms. Vijaya Suppiah
IRB Public Relations Officers

SPEAKERS

YB Senator Dato' Sri Idris Jala
Minister, Prime Minister's Department

Dr. Veerinderjeet Singh
Managing Director,
TAXAND MALAYSIA Sdn Bhd

YBhg Dato' Dr. Mohd Shukor Haji Mahfar
Chief Executive Officer,
Lembaga Hasil Dalam Negeri Malaysia

Prof. Dr. Jeyapalan Kasipillai
Chair of Malaysian Business,
Monash University

Mr. Abu Tariq Jamaluddin
Director, Tax Appeal Division,
Legal Department
Lembaga Hasil Dalam Negeri Malaysia

Mr. Mekar Satria Utama
Directorate General of Taxes, Indonesia

Mr. Sanjay Kumar Mishra
Joint Secretary & Competent Authority,
Department of Revenue,
Ministry of Finance, India

Mr. Ponlapat Kaewsumrit
Ministry of Finance, Thailand

Madam Nor'aini Ja'afar
Director of Corporate Tax Department,
Lembaga Hasil Dalam Negeri Malaysia

YBhg Datuk Redzuan Ismail
Malaysian Celebrity Chef

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Chairman, Ekuiti Nasional Berhad

Mr. Mohammad Sait Ahmad
Deputy Director General (Operations),
Lembaga Hasil Dalam Negeri Malaysia

Mr. SM Thanneermalai
President, Chartered Tax Institute of
Malaysia/Co-Organising Chairman,
NTC 2011

Mr. Mohd Nizom Sairi
Director, Malaysian Tax Academy/
Co-Organising Chairman, NTC 2011

YBhg Datuk Abdul Karim Abdul Jalil
Director General of Insolvency, Malaysia
Department of Insolvency

Noor Azian Abdul Hamid
Director of Multinational Tax Department,
Lembaga Hasil Dalam Negeri Malaysia

Mr. Khoo Chin Guan
Immediate Past President,
Chartered Tax Institute of Malaysia

Asriah Shaari
Director of Corporate Services Department,
Lembaga Hasil Dalam Negeri Malaysia

PANELLISTS

Madam Khodijah Abdullah
Senior Deputy Under-Secretary, Tax Analysis
Division, Ministry of Finance Malaysia

Mr. Abdul Aziz Hashim
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Lembaga Hasil Dalam Negeri Malaysia

Mr. Chari TVT
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Mr. Vijey M.Krishnan
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Welcoming Speech

by **SM Thanneermalai**
President, Chartered Tax Institute of Malaysia

National Tax Conference 2011 – Economic Transformation: Role of Taxation
19 & 20 July 2011, Kuala Lumpur Convention Centre

Yang Berhormat Dato' Seri Haji Ahmad Husni Mohamad Hanadzlah, Finance Minister II, Yang Berbahagia Dato' Dr. Mohd. Shukor Haji Mahfar, Chief Executive Officer / Director General of Inland Revenue, Lembaga Hasil Dalam Negeri Malaysia, Co-organising Chairman of NTC 2011, Mohd Nizom Sairi, Director of The Malaysian Tax Academy; and Lim Kah Fan, Deputy President of the Chartered Tax Institute of Malaysia,

Distinguished guests,
Honourable participants,
Ladies and gentlemen.

It gives me great pleasure to wish all of you a good morning and a warm welcome to the National Tax Conference 2011 which is jointly organised by the Inland Revenue Board and the Chartered Tax Institute of Malaysia.

We are indeed honoured and grateful to Yang Berhormat Dato' Seri Haji Ahmad Husni Mohamad Hanadzlah for his presence this morning and for officiating our Conference today.

This is the eleventh consecutive year in which CTIM has co-organised together with the Inland Revenue Board this premier tax event, the National Tax Conference. I am very pleased to announce that we have approximately 2,500 delegates this morning – a 25% increase from the 2010 Conference. Thank you very much for your support. The co-organising of the National Tax Conference reflects the strong ongoing relationship between CTIM and IRB.

The theme for this year's Conference is "Economic Transformation : Role of Taxation". The Economic Transformation Programme is a focused, inclusive and sustainable initiative that will transform Malaysia into a high income nation by 2020. It will be driven by 12 National Key Economic Areas together with the second critical component, the Strategic Reform Initiatives (SRIs) to boost competitiveness. There will be a number of sessions specifically focused on the theme today to provide the participants the opportunity to understand the tax ramifications surrounding the ETP. I would not be wrong to say that most of these initiatives which showcase the private sector working with the Government will have tax implications as the parties concerned implement the projects and initiatives. Therefore it is imperative that we as tax advisors, whether in practice or in industry be aware of the taxation issues which will arise as the ETP progresses.

Since the last National Tax Conference in 2010, CTIM has been very active in carrying out numerous activities.

- CTIM has participated in dialogues and meetings with the relevant authorities such as the IRB, the Royal Malaysian Customs Department, the Ministry of Finance particularly the Tax Analysis Division, the Tax Review Panel, the Ministry of International Trade and Industry and most recently CTIM were also invited to participate in the three Tax labs organised by PEMANDU under the ETP.
- CTIM is constantly providing feedback to the IRB on its proposed public rulings and guidelines. CTIM has also through the joint tax working group on Financial Reporting Standards (FRS) submitted our joint views and subsequently have had dialogues with the MOF and IRB.
- CTIM has continued to keep its members abreast of the latest tax issues and developments through our CPD programmes conducted throughout Malaysia and through our journal, the *Tax Guardian*. Our regular – eCTIMs provide our members breaking tax news and updates on the Institute's activities.

My plan this year in this area would be to increase the frequency of the eCTIM emails to members so that members are brought up to date very quickly on the latest developments. Towards this end CTIM will add resources in the Secretariat and invest in improved technology. Member dialogues in the major cities throughout the country to obtain face to face feedback from members on technical and non-technical issues are also in the pipeline.

- CTIM has also signed 2 MoUs' with Universiti Teknologi MARA and Universiti Tunku Abdul Rahman to collaborate in the area of tax education. A MoU was also signed with CPA Australia to develop a Malaysian Tax variant paper for the CPA Australia professional programme.

Moving forward, it is CTIM's desire to play a more significant and important role in assisting the Government.

1. formulating tax policies
2. act as a bouncing board on any new fiscal policies the government plans to introduce in the future
3. provide feedback from the private sector's perspective.

I also like to take the opportunity to inform you that the formation of the Malaysia Tax Research Foundation was approved by the Prime Minister's Department on 7 June 2011 and with this approval, the Foundation can commence its activities. The Foundation is primarily committed towards encouraging, promoting and advancing the field of tax research in Malaysia. I assure you that the output from the Foundation will benefit the country at large and it is not intended to be confined to CTIM's members. It is here to serve the nation.

At our 2010 Tax Conference, Yang Berhormat Dato' Seri had very kindly agreed to give a grant to assist the Foundation to undertake its activities. I hope Yang Berhormat Dato' Seri will receive our application for the grant favourably.

I would also like to inform all of you that an application for S 44(6) exemption will be made soon to the IRB and in this matter CTIM will be very grateful if Dato' Dr. Shukor would support our application as the purpose and objectives of the Foundation are noble and intended to benefit the nation.

With the current membership strength of 3,000 and growing annually at the rate of 20%, CTIM's members serve a very significant portion of the taxpayers in the country. Although CTIM members would be taking care of their clients or employers interests, the members are here to serve another very important purpose of acting as a bridge between the IRB, Royal Malaysian Customs and the taxpayers in efficiently disseminating tax information and providing guidance to complying with the legislation.

Therefore CTIM have a very important and responsible role in the Malaysian economy and CTIM is offering its willingness to partner the Government in the area of taxation. We hope you will invite us.

In conclusion, on behalf of CTIM, I would like to extend my sincere thanks and appreciation to our joint organiser, the IRB for having made this Conference possible. Further, no conference can succeed without chairpersons, speakers and panellists and of course, the delegates. To each and every one of you, thank you.

I must also not forget the main sponsors for this Conference to whom we are grateful for their support:

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Various professional bodies should also be acknowledged for their support of this Conference. They are ACCA, CIMA, CPA Australia, MAICSA, MIA, MICPA, AMCHAM Malaysia, Institut Bank-Bank Malaysia, IIAM, MFPC and MICCI. Thank you for the great co-operative spirit that you have demonstrated.

My thanks also go to *The EDGE* for agreeing to be our Media Partner and for giving us a special advertisement package in their Business and Investment Weekly and for supplying complimentary copies of the *Edge Financial Daily*. Mention must also be made of *the Sun* and the *Malaysian Reserve* for their generosity in supplying complimentary copies of their newspapers over the two days of the Conference.

Last but not least, my thanks to the Co-organising Chairpersons of the Conference, namely Mohd Nizom Sairi from the Malaysian Tax Academy and Lim Kah Fan from CTIM, the Secretariat staff, Conference assistants and CTIM Council Members for their untiring efforts to make this Conference a success. To all of you present here today, thank you for your presence and for being part of this prestigious National Tax Conference.

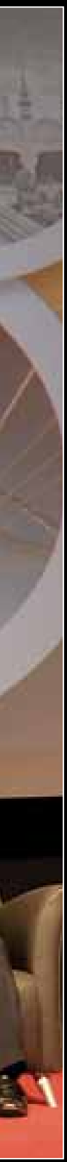
Once again, I thank Yang Berhormat Dato' Seri Haji Ahmad Husni Mohamad Hanadzlah for his gracious presence here today.

I wish you all a fruitful and beneficial Conference.

Thank you.


The arrival of the Guest of Honour.

(Pix above) From left to right: Lim Kah Fan (Deputy President, CTIM), YBhg Dato' Dr. Mohd Shukor Hj. Mahfar (Chief Executive Officer, LHDN), YB Dato' Seri Haji Ahmad Husni Mohd Hanadzlah (Finance Minister II), SM Thanneermalai (President, CTIM/Co-Organising Chairman NTC 2011), Mohd Nizom Sairi (Director, Malaysian Tax Academy, LHDN/Co-Organising Chairman NTC 2011)



NATIONAL TAX CONFERENCE 2011
ECONOMIC TRANSFORMATION: ROLE OF TAXATION

Jointly organised by Lembaga Hasil Dalam Negeri Malaysia (LHDN) and the Chartered Tax Institute of Malaysia (CTIM), the National Tax Conference (NTC) 2011 was held from 19 to 20 July at the Kuala Lumpur Convention Centre. Organised around the core issue the role taxation plays in the strategy to transform Malaysia into a high income economy by 2020, the two-day Conference saw attendance of an estimated 2,500 delegates, a 25% increase over the previous year.

LONG TRADITION OF COOPERATION

In his speech to welcome delegates, CTIM President SM Thanneermalai said that the successful co-organisation of the conference by LHDN and CTIM reflected the strength of their collaboration, and the high levels of cooperation between the two parties. "It is imperative that we understand the Strategic Reform Initiatives (SRIs) and the tax implications surrounding the Economic Transformation Programme (ETP)," he said. "Awareness of tax issues is important, and CTIM has already participated in three "Tax Labs" on the ETP. In doing so, we hope to keep members abreast of developments through our CPD events – and we will increase our efforts."

Emphasising the fact that the NTC was intended to bring together all parties involved to discuss tax issues, LHDN CEO Dato' Dr. Mohd Shukor Hj. Mahfar said in his opening address, "This year's theme is apt because of the ETP and its aim of achieving national development by 2020. The Conference is an opportunity for participants to update themselves on the ETP. LHDN's role is to ensure taxes are properly collected because taxes are needed to develop the country, fund programmes and provide public goods and services. But more than that, it is about fine-tuning procedures and practices. We have to make them work more efficiently and be responsive to current needs."

WHAT DRIVES US

In his keynote address, Guest of Honour Dato' Seri Hj. Ahmad Husni Mohamad Hanadzlah, Finance Minister II, said that almost 60% of treasury income comes from taxes. "But we are looking at broadening the indirect tax base while decreasing direct taxes, to encourage economic development. We need to drive the economy, make it more entrepreneurial," he added.

He acknowledged that globally, governments were struggling to make ends meet, citing the EU's financial troubles, and Greece's trillion-dollar debt as examples. "At present, about three to four per cent of GDP is lost, but overall, income tax collection has increased in recent years," he admitted.

At present, about three to four per cent of GDP is lost, but overall, income tax collection has increased in recent years.

Dato' Seri Hj. Ahmad Husni Mohamad Hanadzlah, Finance Minister II

"This is good, but we need more to enable us to move forward. Gross National Income (GNI) is projected to increase, particularly among the middle income group, and the private sector is expected to be the main driver of the economy. Malaysians will have more disposable income, but in parallel, there will be more taxes to improve the standards of living of everyone, with, for instance, better healthcare and education for the marginalised."

ETP UPDATE

The Conference's first paper was an update on the ETP by Senator Dato' Sri Idris Jala, Minister in the Prime Minister's Department and CEO of PEMANDU, the performance & transformation unit set up by the government to oversee Malaysia's turnaround programme. Announced in September 2010, the ETP will help triple Malaysia's GNI from RM660 billion (2009) to RM1.7 trillion by 2020. This means increasing per capita income from the current RM20,000 to RM46,500.

"Over the years, the government's expenditure has been rising to provide for the public's needs," Dato' Sri Idris stated. "The government's biggest source of revenue is taxes, but we are experiencing fiscal deficit because we don't have enough revenue. So the government borrowed, racking up government debt, but this cannot continue." He said that of the 8.5 million registered taxpayers, only 1.7 million had paid; tax collection must therefore be improved. "It is unfair to burden 1.7 million people," he pointed out. Clarifying that what the government was trying to do was to consolidate and work together. He said that areas which needed fixing had already been identified, and money had been allocated towards those that had been prioritised.

GLOBALISATION: MANY IMPLICATIONS

"We are living in a globalised world," said Mohammad Sait Ahmad, chairing the second presentation of the Conference on the topic "Liberalisation of Tax Services in a Globalised World." Business too was becoming more globalised, he said in his introduction of speaker Dr. Veerinderjeet Singh, and tax services will inevitably follow, but what of liberalisation – the easing

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of regulations on many things? There will be no choice other than working towards liberalisation because of globalisation; that was the thrust of Dr. Veerinderjeet's presentation.

"It will enhance productivity, improve efficiency and strengthen support for the services that the country already exports," he pointed out. "It doesn't mean that foreign companies will be just setting up businesses in Malaysia; it's also about the transfer of knowledge, and adding value to our services." He added that accounting services will see full liberalisation by 2012 but because tax laws are country-specific, foreign companies will not want to set up tax services in Malaysia. Rather, they will want to be tax-compliant in any country where they operate.

MAKING THINGS BETTER

Stating that the reason he keeps track of his days in office is that he has very little time before he retires, Dato' Dr. Mohd Shukor Haji Mahfar, CEO of LHDN spoke of the efforts that the body has been putting into collecting taxes. "There is always room for improvement," he said. "LHDN has instituted a transformation programme but it is not about to change drastically. Rather, it is fine-tuning existing procedures to make them more efficient. This is an ongoing process. Adjustments have to be made in response to the changing environment. As part of the government machinery, LHDN is committed to supporting the government's aspirations. Our task is to safeguard the national tax base and address anything that affects collection."

He emphasised that compliant taxpayers would be treated fairly while non-compliant taxpayers would be dealt with appropriately. "Non-compliant taxpayers have a negative impact on the economy," he continued. "LHDN has to be seen to be fair, or the public will have a bad impression of us – but hopefully, the percentage of honest taxpayers will increase. Our target is to collect RM91 billion this year; the revised target is based on the country's economic performance." In its efforts to improve collections and stop leakages, he said that LHDN was

focusing on the fundamentals of tax compliance, which include aligning strategy of compliance, increasing public understanding of the tax system, being more service-oriented and better focused on customers with improved customer care. Its aim was to constantly strengthen trust between LHDN and the public, and to achieve this, it was engaging with the unions and management at high levels.

TAXATION ISSUES

The Conference's first panel discussion, with speaker Prof. Dr. Jeyapalan Kasipillai, was on Malaysia's main taxation issues. "The old maxims of taxation are being challenged by modern realities," he said. "Only 12.4% of companies and 14% of individuals pay income tax because earnings are too low. Individual taxpayers are eligible for 17 types of personal relief, but this is burdensome to the authorities. Tax procedures need to be simplified. Malaysia relies too heavily on Oil & Gas for revenue; the tax base needs to be widened to increase revenues. The needs of SMEs, which make up the major portion of businesses, have to be considered. Incentives are required to lure investment, and we must consider the environment in the light of economic development – this is a perpetual problem that has to be addressed: the balance between investment, government revenue and environmental tax."

Besides all these, the tax system has redundancies, he added, hence the need for review of existing incentives (especially long-standing ones), the reinvestment allowance, pioneer status/investment tax allowance, and ineffective double-deductions claims. "Revenue leakage has to be concertedly addressed," he concluded, "and greater use made of withholding mechanisms. Also, GST should be implemented, primarily for the benefit of the lower income group."

Panellists Khodijah Abdullah (Senior Deputy Under-Secretary, Tax Analysis Division of the Ministry of Finance), Chari TVT of Celcom Axiata and Abdul Aziz Hashim, Deputy Director-General (Policy), LHDN, each gave different perspectives of the issues.

YOU CAN APPEAL

Day 2 of the NTC opened with a scintillating topic: updates of tax cases, presented by Abu Tariq Jamaluddin, LHDN's Tax Appeal Division Director. His presentation covered cases where the issues pertained to business and non-business incomes, donations, penalties, reinvestment allowance vs pioneer status, entertainment

expenses and Letters of Objection under Section 99 of the Income Tax Act.

Panellist Vijey M Krishnan, emphasising the importance of documentation in the course of commenting on Abu Tariq's presentation, said that a record of everything should be ensured; it is not enough to rely on court argument. "There is pressure from the government on LHDN to collect money, and LHDN has to perform – so it passes on this pressure to the taxpayer. The need is for education and awareness for taxpayers. It is hard to be compliant if you don't know what is going on."

WE ARE NOT ALONE

The second day also saw presentations from the Indian, Indonesian and Thai representatives, and the situations in their respective countries. Sanjay Kumar Mishra of the Indian Ministry of Finance said that the main issues facing the Indian authorities were India's burgeoning economy, the global economic downturn, the challenges of broadening the country's tax base, and the globalisation of trade.

Speaking on the challenges faced by the Indonesia tax authorities, Mekar Satria Utama of the Indonesian Large Taxpayers Office gave an update of the country's tax environment. "In 2006, only 32.04% of registered taxpayers contributed, but in 2010, a total of 57.76% was recorded," he said. "In 2010, IDR200 trillion was collected, but as at June 2011, we have already recorded IDR126 trillion, which is an increase of 42% over the same period last year."

Thailand, like Indonesia, has also increased interaction with its taxpayers, but in a slightly different way. For big businesses that file their tax returns, scrutiny is close; and for non-filers, scrutiny is even closer. Investigations and tracking of non-compliance is constant, although carried out in a friendly, non-threatening manner, said Dr. Pornlapat Kaewsumrit, Tax Economist in Thailand's Internal Revenue Department. "Depending on their classes, large individual and corporate taxpayers are subjected to scrutiny before they pay their taxes, to determine if they are entitled to deductions or refunds," he clarified. "Thailand is still mainly a cash-based economy; it is hard to keep track of transactions – but we encourage taxpayers to feel patriotic about paying taxes, that good taxpayers are helping the economy."

AUDIT ISSUES

Nor'aini Ja'afar, Director of LHDN's Corporate Tax Department, spoke on tax audits, and some common issues arising therefrom. Since 2001, self-assessment has been instituted for corporate taxpayers, which has given rise to more stringent and frequent audits. The objective of audits, she said, was generally perceived by the public to be part of the IRB's efforts to raise additional funds by fining wrongdoers. This is only partially true. "It is important to know how countries can have shortfalls but still survive," Nor'aini explained. "Audits are conducted at random; the selection of who to audit is made by Headquarters to avoid bias and ensure integrity. Taxpayers can be selected for audit at any time."

Following her presentation, Nor Syahrin Hamidon, representing the Malay Chamber of Commerce, and Lim Kah Fan, Deputy President of CTIM, gave their comments. Expressing appreciation of LHDN's willingness to listen to the business community's

perspective, he said that businesses, especially SMEs, have to manage a lot of things besides just paying taxes.

Offering the tax practitioner's views, Lim pointed out that records, regardless of their accuracy, often cannot substantiate the services rendered, or transactions conducted at arm's length. "Understatement of income, particularly in the cases of developers and construction companies, cannot be finalised for a few years, but are taxed immediately," he said. "Also, correspondence is often late. If we do not receive letters directly, we cannot respond in a timely manner and are penalised. Penalties are usually based on the tax audit framework, and we have to pay up, with no possibility of redress or appeal. Can LHDN be more lenient with genuine mistakes?"

The rather spirited final exchange came to a close with Nor'aini acknowledging that weaknesses do exist in the system, but she stood firm, concluding that although LHDN does take into consideration the limitations that businesses are subject to, especially when there are mitigating circumstances, the penalties would probably remain because they are meant to be punitive and a deterrent to non-compliance.

SAWARI

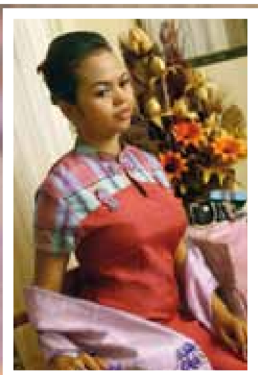
From the homes of enterprising settlers

Malaysia's **Federal Land Development Authority**, better known as **FELDA** has engineered one of the most successful plantation and resettlement models in developing world. Since, its formation in 1956, 112,635 pioneers have been resettled in 317 land schemes throughout the country. Up till today, not only Malaysia's economy, but more than one million people have also enjoyed a wide range of benefits from the activities of **FELDA**.

At **FELDA**, we have also encouraged further development of traditional arts and crafts as well as producing variety of food selections. This diversification is a move undertaken by **FELDA** to promote and encourage entrepreneurial activities among the rural community in **FELDA** settlements which is the known as **SAWARI**.

Satu Wilayah Satu Industri

(SAWARI) is a 'One Region, One Industry' Malaysian Government program promoted by FELDA to form a product-based industry that generates positive revenues and encourages entrepreneurial activities in non-plantation economy by FELDA's settlements community. This project will provide an opportunity for the settlers to diversify their source of income and minimize their dependency on plantation crops alone. FELDA settlers have the capability and talent to create and produce high valued products which are marketed through their respective branding names i.e. F Best Foods, Modern Malaysian and F Tenun Chini.



F Tenun Chini

It is FELDA's utmost aspirations to preserve Malaysia's unique weaving and spinning heritage. Such aspiration inspires the invention of Tenun Chini, an exclusive Tenun Pahang collection produced by FELDA's artisans. Today, everyone can help to preserve the arts and the heritage of Malaysia and contribute in generating income for the rural communities by purchasing these premium and high quality products. Undertaken by FELDA, Tenun Chini is proudly produced under One Region One Industry, SATU WLAYAH SATU INDUSTRI (SAWARI).

WILL YOU EAT ME | *F Best Foods*

F Best Foods is a proud brand under FELDA SAWARI project that offers a variety of food selections. From frozen foods to traditional local snacks and latest addition - cookies, cakes and mouth-watering chocolates are a must-have for everyone.
With attractive packaging such as custom chocolate boxes, it is a fitting gift to your loved ones. F Best Foods also offers unique, delightful as well as safe products for your consumption. The development and vast progress of this brand allows it to be marketed internationally.

SAWARI
One Region One Industry

SAWARI products can be purchased at:

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Wisma FELDA,
Jalan Perumahan Gurney,
54000 Kuala Lumpur.
Tel: 03-2617 2617
Fax: 03-2698 8570

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Lot Seri Anjung,
Kuala Lumpur Craft Complex,
Section 63, Jalan Conlay,
50450 Kuala Lumpur.
Tel: 03-2164 0530
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WILL YOU USE ME | *Modern Malaysian*

Founded in 2006, Modern Malaysian has established itself as a brand of contemporary handmade products made from raw materials from Malaysia's very own tropical rainforests and rural settlements namely rattan, bamboo, screwpine and rubber leaves, various kinds of woods and metals. These products are immaculately crafted and beautifully showcased within FELDA's chain of retail boutiques together with other handmade crafts such as batik and Tenun Pahang.
The long-term goal of this initiative is to demonstrate Malaysians and the rest of the world that FELDA has the capability to adapt to the current market trends and produce high quality handcrafted products that are contemporary in design to meet the demands of the modern society.

MEMORANDUM ON 2012 BUDGET PROPOSALS

Together Driving Transformation

1 INTRODUCTION

Background

In line with Vision 2020, the Malaysian government has developed a new national transformation strategy forming the foundation of the national economic agenda. It aims at preserving and enhancing unity in diversity, effective delivery of government services and an economic transformation programme designed to bring the country into a sustainable and high income nation.

The Scope of the Memorandum
CTIM has been a tax partner in the government's endeavour to modify changes or amend the tax laws with a view to making it more amiable to the creation of a successful business climate to encourage the creation of a high end economy. Towards this end the 2012 Budget Proposal were submitted to the government highlighting some of the matters that need some consideration. These are reproduced here in a highly condensed form.

2 DEVELOPMENT OF HUMAN CAPITAL

Accumulation of Talent Pool

Transformation of existing human resources
There is an urgent need to enhance human capital competency and for the educational and training institutions to produce qualified and an industry relevant workforce. Quality of the workforce coming out of these institutions should match the demands of today's industry to enable global competition.

Training for excellence and nurturing local talents
CTIM suggests that the government collaborates with the private sector institutions to meet this need for excellence. Accordingly, tax incentives could be given by way of double deduction for expenditure incurred in respect of approved training – both professional and academic, and allowing building allowances on buildings used by training institutions for the training programmes.

To develop the professional talents to meet the needs of a knowledge economy, a liberal view needs to be taken of further education, courses and its professional status. Of course, this will require the overhauling of the existing system of recognising professional bodies and their status. In this context, professionals and their recognition mechanism should be reviewed and standardised to embrace all categories of professional services and not just those that are legally and statutorily recognised.

In line with the above, personal relief should be extended to various courses and fields of study and not restricted to selected courses and institutions. Deductions could be allowed for various professional and technical training courses attended by professionals to update their knowledge. The professional bodies themselves should be exempted from income tax on the income derived from the conduct of such professional and technical training.

This move will improve the standard of professionalism and its competency level for effecting global competitiveness.

Attracting and retaining foreign talents
The promotion of health tourism and turning Malaysia into a regional health centre requires at its core highly qualified and skilled medical professionals.

Costs incurred in respect of training of medical professionals at all levels, accreditation of the training institutes as well as wellness programmes carried out by these medical institutions could be given double deductions. As specialised and sophisticated medical instruments and equipment are expensive, investment in these apparatus could be given accelerated depreciation allowance or reinvestment allowance.

Widening the individual tax band

The current income tax rate structure could be reviewed to realign the corporate and individual tax structure to improve competitiveness while facilitating capital accumulation and development of local entrepreneurship, both SMEs and others. It is suggested that the tax band be revised as follows: First RM50,000 at 0%; next RM100,000 at 15%; next RM100,000 at 24%; above RM250,000 at 26%.

Facilitating innovation

Incentives for further investment in research and development activities

To enable continued high quality research and development (R&D) to be in at the cutting edge of technology, increased deduction could be considered for R&D expenditure, including accelerated capital allowance for building, plant, and machinery used for such R&D in the format of allowances under Schedule 7A.

Development of Centres of Excellence

Niche industries in which Malaysia has a lead should be enhanced to be resilient and globally competitive. Industries like the oil palm and oleo chemicals could be further promoted with incentives: double deduction of expenses relating to centres of excellence, building allowance and accelerated capital allowance on qualifying capital expenditure on buildings and assets used in the business promoting excellence, including incentive to mechanisation of farming and plantation operations – this will help to reduce dependence on foreign labour in the long run.

Incentives for innovator

Acquisition of foreign owned companies and proprietary rights

The incentive currently provided under the Income Tax (Deduction for Cost on Acquisition of a Foreign-Owned Company) Rules 2003, and the Income Tax (Deduction for Cost of Acquisition of Proprietary Rights) Rules 2002 could be extended indefinitely to the manufacturing and the service industries, including the knowledge-based industries, to provide the necessary impetus and head start to acquire high technology and access to export markets, allowing Malaysia to go on the fast track to evolve into an innovation driven economy.

3 PROMOTING ENVIRONMENTAL FRIENDLY AND SUSTAINABLE ECONOMY

Promoting environmental friendly measures

Extending customs and excise incentives on hybrid cars

The incentive for franchise holders of hybrid cars whose applications are received by the Ministry of Finance by 31 December 2010 will be given 100% exemption of import duty and 50% exemption of excise duty on new CBU hybrid passenger cars with engine capacity of below 2,000cc - this is on condition of fulfilling certain other specified criteria. CTIM is of the view that the incentive should be extended indefinitely and be given to all environment friendly and alternate fuel vehicles, without restriction as to engine capacity.

Green and Sustainable Township Development

Tax incentives could also be given to support the development of green and sustainable township development programmes that incorporate features of green technology, waste reduction and usage of natural resources for energy like solar and wind power for building functions. In addition, production and consumption of biofuel could be given tax incentive considerations.

Disparity in expectations between Budget announcement and implementation

Well conceived Budget proposals should be immediately translated into effective rules and regulation to be meaningful and useful to the taxpayer and the public. Sadly the current state of affairs is that the good intentions gets lost while winding its way down in the bureaucracy alleys and when it does finally emerge to see daylight it is either a mere ghostly shadow of its original intentions or is rendered useless for lack of effectiveness or non-application by some circumventious administrative and legal rules. Such state of affairs creates an expectancy gap that produces a kind of legal apathy. The government's image could certainly be uplifted by giving budget intentions its due legal infrastructure and force by acting immediately on proposals announced so that it will have the intended impact on business operations.

Adoption of international standards and practices

It is imperative for the tax laws to keep pace with the changes in accounting rules and standards, particularly with the Malaysian Accounting Standards Board (MASB)moving to fully converge with the International Financial Reporting Standards (IFRS) by 1 January 2012. Historical cost based approach would soon be untenable and it would help if the tax legislation metamorphoses itself to keep pace with the fair value based accounting system. This will reduce significantly the cost of doing business and increase efficiency both in the private and public sector.

Tax treatment of premium and proceeds from professional indemnity insurance (PII)

The Public Ruling No.3-2009 on PII discourages the provision of professional services in Malaysia. Insurance premiums paid are not deductible for service providers whose professional status have not been specifically recognised by Malaysian laws. It has also indicated that compensation paid is not deductible and the recoveries or proceeds from professional indemnity insurance are taxable. As this leads to some unsatisfactory situations, CTIM proposes that all professional service providers be allowed a deduction on premiums paid for PII purchased from a local insurer and proceeds paid out of recoveries to claimants be also given a deduction in determining the adjusted income.

Adoption of international industry standards

In view of globalisation and green environment awareness, the plantation industries particularly need to comply with sustainable agricultural practice (SAP) in order to be competitive and capture a fair share of the market. Recognised certification for SAP would give the added impetus for the industry. The cost of obtaining and complying with those certification and certification requirements should be given a double deduction under the ITA.

4 FACILITATING DEVELOPMENT OF DOMESTIC INDUSTRIES

Small and medium sized enterprise (SME)

Qualifying capital expenditure under hire purchase arrangements and pre-commencement expenses

The Income Tax (ACA) (Plant and Machinery) Rules 2008 [P.U. (A) No. 357/2008] could be reviewed and made applicable indefinitely to be in line with the objective of the said rules which is to assist SMEs financially, particularly in respect of hire purchase installments of qualifying capital expenditure.

Furthermore, to assist SMEs to start up, expenditure of a revenue nature incurred in the 24-months period prior to the commencement of the business be allowed a deduction in arriving at the adjusted income for the first year of assessment.

Strengthening growth in local property sector

Assessment on owners/purchasers

i. **Carry forward of unabsorbed rental loss**

Property maintenance in deriving rental income could be substantial especially in respect of high end and commercial properties. It is suggested that losses arising from the insufficiency of rental income to absorb the operating, maintaining and repairs costs of a revenue nature from a rental source be treated like a business loss i.e. any unabsorbed expenditure be carried forward to subsequent years of assessment and be allowed against the rental source in that year and in subsequent years of assessment , until fully absorbed.

ii. **Assessment on income from letting of real property**

The IRB's determination of income from the letting of properties - as to whether it is a business or rental source leads to some unsatisfactory state of affairs. For example, the requirement that the owner must actively provide maintenance services is not practical as in many instances the developer/management corporation takes responsibility for the provision of these services – for which the owner has to pay.

CTIM is of the view that the quantitative and qualitative criteria as adopted in the Public Ruling No.1-2004 should be restored for the determination of income from the letting of real property as business source. If the properties from which rental income is derived are maintained, and support and ancillary services are provided in a regular, organised and systematic way whether by the owner or by third parties on his behalf, then the criteria of providing maintenance services should be fulfilled and the rental income derived therefrom should be treated as income arising from a business source.

In addition, once it is established that the principal activity of a person is that of carrying on the business of letting properties, then all the properties of the person should be considered to form part of the business source.

iii. **Building allowances on non-industrial buildings**

Currently only buildings qualified or deemed as industrial buildings can claim industrial building allowances. CTIM is of the view that in line with FRS 116 where properties are now depreciable assets, expenditure on buildings used for the purposes of a business should be considered for building allowances, including expenditure on renovation, alterations and refurbishments.

iv. **Loan interest incurred on acquisition/construction of premises prior to commencement of business**

Interest expenses incurred on the acquisition of a building under construction prior to the commencement of a business should be allowed as part of the building capital expenditure qualifying for industrial building allowances.

v. **Stamp duty exemption on loan agreements for residential properties.**

The threshold for a 50% stamp duty remission could be considered for residential properties costing RM400,000 and below.

Streamlining the tax treatment of property developers

i. **Reducing compliance costs**

The scope of the Income Tax (Property Development) Regulations 2007 should be aligned with that of FRS 111 and that for income tax purposes the commencement of business and recognition of income should only be when the development project has reached a certain stage of completion as recognised for accounting purposes under the FRS.

ii. **Preparation of final accounts**
The date of completion of a project should be set at 18 months from the date of delivery of vacant possession, to be in line with the Housing Development Act.

iii. **Allocation of land costs**
Property developers should be allowed to adopt any method of allocation of land costs as long as the method adopted is applied consistently and the method used is in accordance with the acounting standards and practices prevailing at that time. The same principle should also apply for the determination of the estimated gross profits in relation to the project for the relevant year of assessment.

Real Property Gains Tax

i. **Property development companies being deemed real property (RP) companies**
The law be amended to include only real properties NOT forming part of the stock-in-trade and shares of real property companies be taken into account for the purpose of determining whether a company is an RP company.

ii. **Cost of financing acquisition of real property**
The Institute suggests that interest expenses paid to finance the acquisition of real properties be reinstated as part of the incidental cost of the acquisition price for computing RPGT, since in reality, the increase in value of properties is partly due to the interest costs in acquiring the properties.

Investment holding company (IHC)

i. **Deduction of expenses against non-investment income**

a. Expenses, other than the permitted expenses (which are partially allowed against the investment income) , should be allowed as a deduction against the non-investment income.

b. In addition, the balance of the permitted expenses after taking into account the amount allowed for deduction against the investment income should be made available for deduction against non-investment income.

c. Permitted expenses should include tax fees and other similar compliance expenses like EPF and SOCSO contributions and bank charges as part of the permitted expenses as these expenses are necessarily incurred in the business of holding investments

ii. **Treatment of investment income**
The tax treatment of investment income should be based on the concept of classes of income in accordance with Section 4 of the ITA. For example, dividend income should be treated as one source of income irrespective of the number of portfolios and whether each of those portfolios produce income or not. Similar considerations should apply to interest and rental income.

Automobile industry

Review of excise duty on motor vehicles

As an initiative to encourage the replacement of old cars with newer cars with lower carbon dioxide emission, it is proposed that the current excise duty rates on motor vehicles be reduced significantly.

Capital allowances and rental claims on private motor vehicles

The current restriction on qualifying capital expenditure for capital allowances and lease rental claimed on private motor vehicles should be removed or alternatively, the cap should be set at a higher sum.

E-commerce

Legislation on E-commerce

In respect of e-transactions, specific provisions and clear guidelines should be introduced as soon as possible to provide clarity and certainty on tax and tax related matters like witholding taxes, effect of DTA as well as payments for software.

Group of companies

Interest free loans among group of companies

The issue of interest free loans advanced to related companies in the group needs a re-think. If the IRB wants to impute a deemed interest expense or income, then the implementation of the new rule should be made with sufficient time given for the taxpayer to make readjustments and re-order their financial affairs. In this connection, too, the application of Section 33(2) restriction should also be removed

Services provided to parties outside the group

Taxable services provided to companies within the group should continue to be not subject to service tax. However, if the company provides taxable services to parties outside the group, then only that part of the services should attract service tax (and not all the taxable services including those provided for within the group).

Group relief

i. **Restriction on eligibility**
Group relief should be given to companies that fall under the definition of related companies as provided under the Companies Act, 1965 and the restriction of a 70% shareholding be removed.

The losses to be surrendered should be restricted only by the aggregate income of the claimant company (and not limited to only 70% being surrendered)

ii. **Unabsorbed capital allowances**
Unutilised capital allowances of one company should be allowed to be transferred to another company within the same group (which is similar to the current group relief provisions in respect of losses). The proposal would assist groups of companies to achieve better tax efficiency.

iii. **Extension of group relief to small and medium enterprises (SMEs)**
The above proposed relief for losses and capital allowances should also be made available to SMEs.

5 ENHANCING THE EFFICIENCY OF TAX SYSTEM

Recent years have witnessed the significant deployment of government revenue to operations expenditure. Steps should be taken to reduce this cost while further steps should be taken to stimulate and expand economic growth.

Reviewing tax system

An efficient tax system plays a crucial role in the generation of government revenue but taxation itself could encumber economic growth to some extent. As such, the Malaysian tax system should be reviewed in this perspective.

GST and its timely implementation

A credible alternative to direct taxation would be the goods and services tax (GST), and its implementation should be made within a framework of a definitive timeline. This will prepare the public for the new taxes and reduce uncertainties.

a) **Preparation for GST regime**
Royal Malaysian Customs should undertake a continuous education programme to educate the public as well as the tax practitioners and professionals (training for trainers concept) while engaging the relevant stakeholders in consultation for drafting proposals, orders, regulations and guidelines to ensure administrative ease of implementation, clarity of law and transparency of operations.

b) **Deduction of GST implementation costs**
The cost incurred in preparing for the implementation of GST should be made a deductible expense for tax purposes.

Introduction of a capital gains tax

Capital gains tax has the least impact on economic growth, and as such should be considered as an alternative revenue source for the government, and a study could be made towards this end as to its feasibility in the Malaysian context.

Abolishment of windfall levy

Windfall taxes have the effect of distorting economic performance. Besides, commodity prices fluctuate based on changes in the market forces (some of which are external) and hence any profits or 'windfall' should not be a subject of tax.

Weaknesses in the income tax regime

Accelerated capital allowances (ACA) on information and communication (ICT) equipment

Clawback provision in respect of ICT equipments should be reconsidered to take cognisance of technology advances and rapid obsolescence of such equipment.

Tax policy related to economic growth

Enhancing carry back of current year losses

CTIM proposes that the law on the deduction of the current year business losses against the income of prior years of assessment should be made a permanent feature of the tax law, with prescribed time limits for such claims.

Deduction of compliance expenditure

In line with the Income Tax (Deduction for Audit Expenditure) Rules 2006 [P.U.(A)129/2006] allowing tax deduction of statutory audit fees, CTIM proposes that tax deduction for other compliance cost for professional services be considered. (example-tax compliance fees, secretarial fees etc.) whether these cost are incurred in-house or outsourced.

6 PROMOTING EQUITABLE AND BUSINESS FRIENDLY ADMINISTRATION

Revenue collection target

It has become a trend in recent years for the IRB to set a target for revenue collection at the beginning of each year and announce the success of the targeted collection at the end of the year. Interestingly the targeted figures are increasing each year independent of the economic performance of the nation.

This practice is likely to create undue pressure on the IRB officers and some overzealous officers could attempt to do all things necessary to meet their individual revenue targets causing downstream pressure on taxpayers. Eventually this system could lead to some unhealthy practices to achieve set targets. CTIM urges that the revenue targets as one of the key performance indicators of the IRB officers be seriously reviewed.

Enhancement of Transparency

Public Rulings/Advance Rulings/ Guidelines/Legislative amendments

The above should be implemented

prospectively - and not retrospectively unless a beneficial element is a core issue. The current practice creates unfairness and discontent among taxpayers and practitioners. It is preferable if the stakeholders are consulted and feedback obtained before rules are implemented – this would give clarity and transparency to the issue ruled while providing a lead time for its compliance.

Similarly, advance rulings already made could be published for guidance of the tax practitioners and the taxpayers while taking all steps to maintain confidentiality of the parties.

Publication of decided tax cases

Cases decided by the Special Commissioners of Income Tax (SCIT), Customs Appeal Tribunal (CAT) and Courts should be made available to the public through timely dissemination via the respective agency's websites or other means of information dissemination for clarity and better transparency.

Simplifying tax compliance

Simplifying capital allowance claims

The current method of claiming capital allowance is cumbersome and truly taxing not to mention the complicated tax laws.

CTIM proposes that IRB consider convergence of capital allowance claims with accounting depreciation – this will free up professional resources for more productive output and effective compliance.

Consolidation of personal relief

Personal relief should be consolidated into a few broad categories and the total amount of personal relief due under the law be automatically granted to the taxpayer without reference to the actual quantum of the expenditure. This will simplify the completion of tax returns and reduce errors and potential overclaims.

E returns and submission of returns.

The due date for completion of Form EA should be amended to 15 March to allow more time for employers to compile details to complete the forms. In addition, the need to disclose tax exempt benefits in the EA form should be removed to free up resources.

Alternatively, in the case of single income employees, the IRB should consider waiving the need to file a return if the said employee is subject to MTD on his or her income.

In the case of e-filing, manual signing off should be dispensed with – retaining a copy of the documents submitted is sufficient for reference purposes in future disputes.

Basis periods for companies/ Malaysian branches

The IRB should adopt the accounting periods from the date of incorporation/ registration to the financial year-end for new companies or Malaysian branches as the basis periods to simplify the tax law and to facilitate compliance.

Simplifying deductibility of entertainment expenditure

Expense incurred in the provision of entertainment should be partially allowed (50%) while those which fall under Section 39(1)(l)(i) to (vii) of the ITA should be allowed in full.

Improving current tax practice

Appeals

To improve the appeal process, it is proposed that :-

a) The Courts of Judicature Act should be amended to allow cases first heard by the SCIT to be eventually heard at the Federal Court.
b) The time frame of 18 months for disposal of appeals by the DGIR should be reviewed.
c) An Administrative Appeals Tribunal (AAT) should be set up to hear appeals by taxpayers aggrieved by decisions of an administrative nature including the imposition of penalties. The status of SCIT be elevated to be equivalent to that of the High Court and any further appeals be made to the Court of Appeal.

Self-Assessment Regime

a) Improving effectiveness of self-amendment. The period eligible for self-amendment should be increased from 6 months to one year and no penalty should be imposed if the tax already paid exceeds the final tax after the self-amendment.

Tax audit and investigation

a) Appeal against tax audit/investigation;
A clear mechanism should be set for appeals against the manner in which an audit/investigation is carried out. Such appeals should be settled on a timely basis by an independent party such as an Administrative Appeals Tribunal (AAT).
b) Penalty on longer installment payment scheme;
Paragraph 12.6 of the Framework should be deleted. A taxpayer should not be penalised merely because he has applied for a longer payment scheme. Instead, taxpayers should be encouraged to make full payment upon finalisation of the investigation and the merits of each case should be considered in granting a longer payment scheme.

Removal of tax practices viewed with negative perception

Penalty imposed on technical adjustments

Where the amendment to a tax return results in a tax discharged, there is no interest refunded together with the tax discharged; hence it is equitable not to impose penalties when amendments to a tax return results in additional tax payable and these amendments are done in good faith alternatively, the amendments made are technical in nature.

Section 77B of the ITA should be amended by using similar wordings found in Section 107B(6) which empowers the DGIR to remit the increased sum.

This is because the amendment could be due to appeals to Courts which result in decisions which are not favourable to the taxpayers, or the amendment was due to errors/mistakes made in good faith and without any element of culpability. Thus, the penalties of up to 15.5% are not equitable and would discourage voluntary disclosure done in good faith.

Appropriate legislation should be introduced to the effect that no penalties would be imposed if tax adjustments are done due to technical issues or in good faith.

Self-amendment of tax computation in the self-assessment system

Specific sections of the ITA should be reviewed to allow self amendment especially in a no tax payable and in a deemed assessment situation.

Withholding tax on reimbursements/disbursements

Withholding tax should not be imposed on ALL reimbursements/disbursements as these are incidental costs for providing the service.

Taxpayers Rights

Taxpayers rights

With the implementation of the self-assessment system, the IRB appears to be placing emphasis on enforcing compliance via tax audits and investigations. As wide powers have been granted to the IRB, it is pertinent that the rights of the taxpayer is not infringed. Penalties imposed should commensurate with the degree of culpability of the offence. The tax system should be clear, transparent and equitable.

The following are proposed-

a) Introduction of the office of a Taxation Ombudsman as an avenue for taxpayers to forward complaints in relation to non-technical matters.

b) Introduction of an AAT (mentioned earlier) for taxpayers aggrieved by decisions of an administrative nature (including the imposition of penalties).

c) Establishment of a more effective Taxpayer's Charter or Client's Charter which not only sets out the rights and obligations of taxpayers and certain timelines for the IRB to follow but also effectively monitors the adherence to the Charter.

d) Criminal proceedings should only be initiated on repetitive or recalcitrant offenders and not as a first course of action.

Access to IRB's records by taxpayers

A facility should be provided to taxpayers via an online system to enable taxpayers to access their own tax records with the IRB such as status of tax payment, issuance of assessments, imposition of penalties, etc.

Compensation on refund of tax overpaid

For the purpose of equity, the IRB should consider paying a fixed rate of compensation based on the duration of delay in making tax refunds.

Confidentiality of communications with tax advisers

The tax laws should grant statutory professional privilege to protect the confidentiality of communications between taxpayers and tax advisers. Confidentiality encourages people to seek professional advice and so supports compliance with the law.

Tax licensing

Eligibility

The eligibility criteria must be clearly specified and adhered to as follows:

i. Qualifications recognised for tax licensing purposes;
Clear criteria established in a transparent manner for any qualification to be recognised for tax licensing purposes. An applicant for a tax license should be a member of a recognised professional body, preferably a tax professional body.

ii. Accreditation of professional bodies for tax licensing purposes;
Any organisation recognised by the MoF as a professional body should have a full set of rules to govern its members, conduct CPD courses and events, conduct professional examinations, have membership criteria for admission of members, publishes journals/magazines regularly to update members, etc.

Licensing mechanism

i. **National Supervisory Body to administer licensing of tax agents**
A National Supervisory Body (NSB) with the authority to impose disciplinary sanction should be established by appointing an existing professional body to undertake administration of tax agents, licensing process or setting up a separate entity through legislation requiring all tax agents to be a member of the NSB.

ii. **Participation by professional bodies in licensing interviews**
Self-regulation is the key in enhancing the quality of services offered and the ethical standards in any profession. The participation of a professional body in the licensing process will strengthen communication and co-operation between tax practitioners and the MoF. It serves as a check and balance to prevent any deviation from the selection policy and will enhance confidence as well as improve the quality of selection.

Awarding of CPD points

i. **Widening the recognition of tax seminars/courses**
The MoF may specifically recognise the events organised by others or grant others the freedom to organise

such events and award CPD points in accordance with broad guidelines issued by the MOF in consultation with CTIM. Management and professional courses linked to tax practice should also be considered for CPD points.

ii. **Recognition of non-technical courses relevant to tax practice**
Non-technical courses linked to tax practice such as courses on information technology, management, accounting etc. should also be considered for CPD points.

iii. **CTIM as the approving body for awarding CPD points**
The Institute having been in existence for about 20 years, being well recognised locally and internationally, is prepared to offer its assistance in being the evaluating/approving body for the awarding of CPD points, if necessary.

7 EXTENDING SOCIAL SAFETY NET AND PROMOTING A CARING SOCIETY

Allowing basis year business loss to set off against income of the spouse

Section 45 of the ITA should be amended to allow a husband and wife to utilise the basis year business loss of one spouse to be offset against the income of the other.

Donations to approved institutions

The law should be amended to stipulate the higher of 10% of aggregate income or RM25,000 (or some other practical threshold). In addition, the provision should apply to all taxpayers, including individuals, instead of only companies.

Tax on interest income earned by associations / charitable bodies

The scope of Section 109C of the ITA should be extended to include associations i.e. interest income earned would be subject to a 5% final tax instead of subjecting the interest income to tax at the relevant rates applicable to such associations.

*Reviewed and edited by **Dr. Nakha Ratnam Somasundaram.** He retired as a State Director of the Kelantan IRB and was a Tax Consultant with Chua & Chu of Kota Bharu before joining the Multimedia University, Cyberjaya Campus as a Tax Specialist. He can be reached at nakharatnam@yahoo.com.*

Unravelling Practical Issues Surrounding Thin Capitalisation Law In Malaysia[1]

By S. Saravana Kumar

It has been three years since the legislation of thin capitalisation law in Malaysia. The announcement on the introduction of thin capitalisation law was first made in August 2008 by the then Prime Minister Datuk Seri Abdullah Ahmad Badawi in his Budget 2009 speech. However, a few months upon legislating the relevant provisions in relation to thin capitalisation law, the government announced that its implementation would be deferred. The author understands that the implementation will be deferred until 31 December 2012, during which he hopes that the government will address some of the issues raised in this article. Notwithstanding the deferment, there is a case pending before the High Court in which the taxpayer is challenging the decision of the Inland Revenue Board (IRB) to invoke the general anti-avoidance provision (i.e. Section 140 of the Income Tax Act 1967 (ITA) to challenge the taxpayer's method of funding and the debt-equity ratio[2]. Although, this case warrants further discussion, it is only appropriate to do so after the High Court has had the opportunity to determine the matter.

Interestingly, even though, the government did not initiate any public discourse on this matter, the introduction of thin capitalisation law did not come as a surprise. The local tax industry was abuzz with the government's intention to introduce thin capitalisation law. Unfortunately, there was no explanation from the authorities as to the need for such laws in Malaysia. This is all the more necessary as other trading nations in the Association of Southeast Asian Nations (or Asean) region such as Singapore, Vietnam, Thailand and Indonesia do not have or intend to introduce such legislation in the near future. Both the Budget 2009 speech and the Hansard (i.e. minutes of Parliamentary proceedings) are silent in this respect.

Further, it is also very disappointing that the government did not openly engage the public or the local tax industry in a dialogue prior to the introduction of that law. Shortly after the announcement, some respectable quarters within the industry questioned the government's wisdom of introducing thin capitalisation. Given the lack of clarity, it is hardly surprising that several practical issues remain unresolved in relation to thin capitalisation law in Malaysia. To the best of the author's knowledge, neither

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1. *This article was updated from its first version, which appeared in Tax Views Asia (2009). This article has been selected as the author's presentation paper at the upcoming 24th LAWASIA Conference in Seoul.*
2. *The author and his colleagues, Datuk D.P. Naban and Siti Fatimah Mohd Shahrom are representing the taxpayer in this case.*

the government nor the Inland Revenue Board of Malaysia (IRB) has made any attempt to address these issues.

Firstly, the thin capitalisation provision came into effect on 1 January 2009.

That means, legally speaking, the Director General of Inland Revenue (DGIR) may disallow the deduction of "excessive" interest payment as revenue expenditure from 1 January 2009 onwards. That said, the rules or regulations pertaining to the implementation of thin capitalisation law have yet to be issued by the government until today.

The first and foremost question is: "What is the acceptable debt to equity ratio?" The ratio adopted by other jurisdictions is 3:1. Will Malaysia adopt the same ratio or would it opt to be different? It is likely that details such as this will be contained in the regulations. Eventually, when the thin capitalisation rules are issued, when will it take effect? Will it take effect retrospectively from 1 January 2009?

Since Sec.140A(4) of the ITA is already in force, taxpayers are anxious and seeking advice from tax practitioners, despite the fact that thin capitalisation rules have yet to be issued. This puts tax practitioners in a dilemma as the advice or proposals that they suggest may be contrary to the thin capitalisation rules. This is all the more evident in instances where the taxpayer is subject to higher taxes if the thin capitalisation rules are followed. In such a case, the taxpayer may be subjected to additional taxes and penalty if the IRB decides to apply the thin capitalisation rules retrospectively. Furthermore, the tax practitioners are also exposing themselves to a possible action under Sec.114(1A) of the ITA as their advice can be construed by the IRB to have resulted in the understatement of the taxpayer's tax liability. In light of these potential problems, it would be welcomed if the government does not implement the thin capitalisation rules retrospectively from 1 January 2009.

The IRB has also yet to issue any guidelines or public ruling to guide taxpayers on how it intends to implement the thin capitalisation law. Such guidelines or public rulings are necessary as it provides an insight to the taxpayer on the approach taken by the IRB in enforcing the law.

The self-assessment system, which was introduced in Malaysia in 2001, requires taxpayers to determine their taxable income, compute their tax liability and submit their tax returns. In principle, the self-assessment system has shifted a substantial burden of responsibility from the IRB to the taxpayers. In that regard, it will be helpful if the IRB issues a Guideline or a Public Ruling on thin capitalisation before the thin capitalisation rules are issued.

The key words in the thin capitalisation law, namely, "interest", "financial assistance" and "fixed capital", are not defined. These words are not interpreted in Sec.2 of the ITA. At a tax seminar organised by the IRB in 2009, the participants were advised that the term "interest" for thin capitalisation law includes guarantee fees, commitment fees, representation fees, commission and borrowing bond fees. However, this definition by IRB contradicts its own policy as these types of payments are not recognised as interest for the purposes of business deduction.

Businesses are only allowed deduction for actual interest payment and not other expenditure that are akin or incidental to interest. It is certainly unfair to taxpayers as the IRB seems to be blowing hot and cold on the definition of interest. When it suits the IRB, a wide interpretation is given to the word "interest". Such an approach is certainly not professional and the IRB must be consistent with its views. If interest is treated to include guarantee fees for thin capitalisation rules, then it is only appropriate that the IRB allows the taxpayers to deduct guarantee fees paid in the course of business as business expenditure.

Interest paid by a Malaysian taxpayer to a non-resident is subject to withholding tax in Malaysia. If the IRB decided to disallow the Malaysian taxpayer from claiming deduction for the "excessive" interest paid to the non-resident, would the IRB refund the withholding tax on the excessive interest portion to the non-resident?

Otherwise, the IRB will be "benefiting" twice in the sense that the Malaysian taxpayer is not allowed to deduct the "excessive" interest paid to the non-resident but nevertheless, the IRB gets to tax the excessive interest by imposing withholding tax on it. It is only appropriate in circumstances where the excessive interest is disallowed that the IRB refunds the withholding tax on that portion back to the non-resident.

Further, since Sec.140A reads "in the basis period for a YA the value or aggregate of all financial assistance granted by a person to an associated person who is a resident", the question arises as to whether Sec.140A(4) applies to financial assistance that was rendered before 1 January 2009. The author's view is that if a loan was made in 2008, it will mean the financial assistance was granted in YA 2008 and not in YA 2009. In that regard, the IRB should not disallow the excessive interest (if any) that is payable in YA 2009 and subsequent years of assessment as the financial assistance was granted before Sec.140A(4) took effect. Any attempt by the IRB to invoke Sec.140A(4) on financial assistance that was granted before 1 January 2009 would be *ultra vires* and against the principles of natural justice. In such circumstances, the taxpayer should consider challenging the IRB's decision by way of judicial review or appeal to the Special Commissioners of Income Tax.

Interestingly, Sec.140A(4) states that the DGIR may disallow the deduction in cases where he is of the opinion that the financial assistance rendered is excessive. The language used is different from the one used for Sec.140A(3), which is the transfer pricing provision. Section 140A(3) states that the DGIR may adjust a transaction between associated persons where he has the reason to believe that the transaction is not at arm's length.

Notwithstanding the difference in the phraseology used for Sections 140A(3) and 140A(4), it is in the author's opinion that the DGIR must state the grounds that influenced him to invoke Sec.140A(4) against the taxpayer. This will surely enable the taxpayer to understand better why Sec.140A(4) was invoked and assist the taxpayer in preparing his defence.

The foundation for thin capitalisation rules in Malaysia is unclear and it is disappointing that greater thought was not given to this area before legislation was enacted. There are too many questions that remain unanswered and if they are not resolved soon, it will just create confusion among taxpayers and tax practitioners, which is clearly not healthy under the self-assessment system.

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TAX – AN EFFECTIVE TOOL FOR TRANSFORMATION

By David Lai Shin Fah

The government, under the Performance Management and Delivery Unit (PEMANDU), has launched the Economic Transformation Programme (ETP) as a comprehensive effort to transform Malaysia into a high income nation by 2020. The ETP focuses on the key growth engines, specifically the 12 National Key Economic Areas (NKEAs) which are anticipated to make substantial contributions to Malaysia's economic performance. The ETP is to be largely funded by the private sector and the government's role will be to partner with the private sector to ensure delivery.

With the NKEAs focused on delivering tangible outcomes through the 131 Entry Point Projects and 60 Business Opportunities, the government's recommended 51 policy measures are of high priority for implementation to transform the nation into a high income, sustainable and inclusive economy. Of this, 37 policy measures have been clustered into 6 Strategic Reform Initiatives (SRI).

PUBLIC FINANCE REFORM

To facilitate the transformation from a tax perspective, the Public Finance Reform initiatives were proposed to encourage investments and instill

EMPLOYMENT AND INVESTMENT IN APPROVED MANUFACTURING PROJECTS

	New		Expansion / Diversification		Total	
	Q1 2011	2010	Q1 2011	2010	Q1 2011	2010
Number of projects	115	537	72	373	187	910
Potential employment	11,095	47,560	14,022	49,759	25,117	97,319
(RM million)						
Total investment	6,430.8	23,894.7	5,737.4	23,282.3	12,168.2	47,177.0
- Domestic	4,029.4	12,183.9	3,522.1	5,936.5	7,551.5	18,120.4
- Foreign	2,401.4	11,710.8	2,215.3	17,345.8	4,616.7	29,056.6

Source: Trade and Investment Bulletin, First Quarter 2011, Ministry of International Trade and Industry Malaysia (as extracted from MIDA)

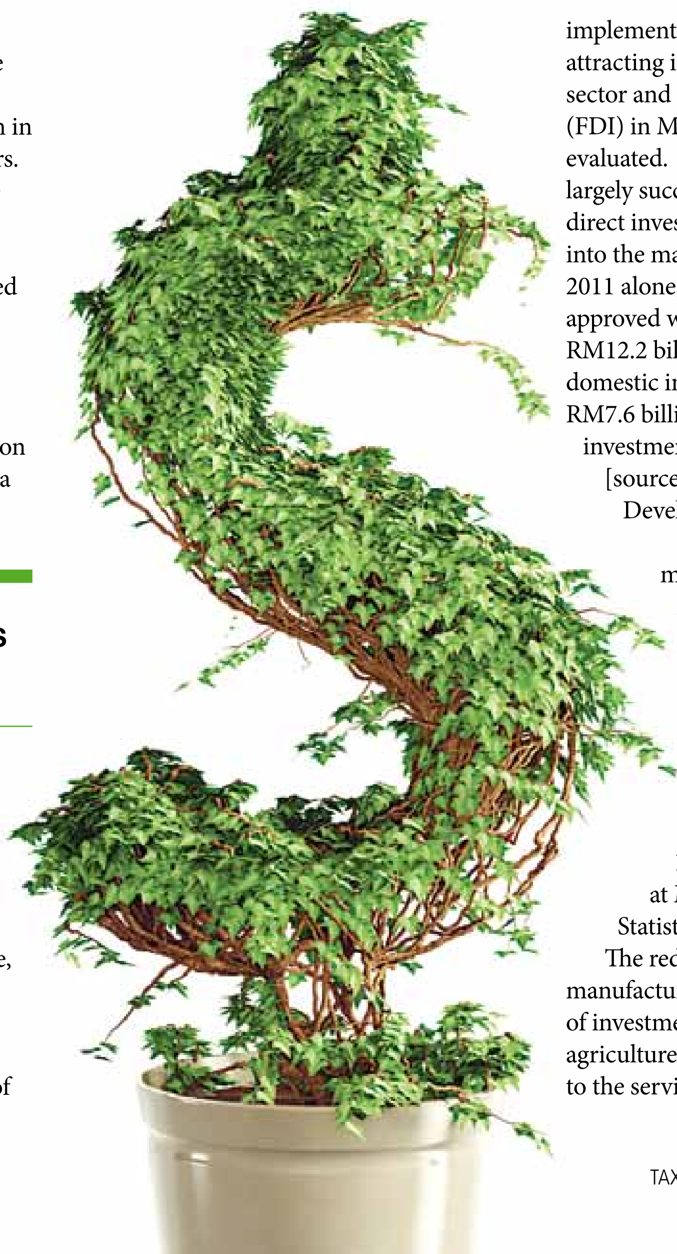
business confidence in Malaysia.
Over 20 initiatives (see Chart A) were developed through "The Labs" which are expected to generate RM13 billion in additional revenue in its first two years. The broad objectives were to improve tax administration and compliance, rationalisation of corporate tax incentives and introduce a broad based tax system.

Whilst these initiatives would undoubtedly facilitate the transformation process, its success depends on its effective implementation which requires a careful balancing of a number of key factors.

BALANCING ACT 1: ENCOURAGING INVESTMENTS WHILST RATIONALISING CORPORATE TAX INCENTIVES

Amongst the key initiatives set out include the 'Step-down' of Reinvestment Allowance and Exemption on Shipping Income and a review of the Incentives in the Promotion of Investments Act 1986 and special deductions i.e. single, further and double deductions.

Whilst these initiatives are projected to save the government at least RM507.8 million in its 1st year of implementation, any adverse impact on attracting investments from the private sector and Foreign Direct Investments (FDI) in Malaysia needs to be carefully evaluated. These tax incentives were largely successful in spurring foreign direct investments and local investments into the manufacturing sector. In Q1 2011 alone, a total of 187 projects were approved with investments totalling RM12.2 billion. This comprised domestic investment amounting to RM7.6 billion (62.1%) and foreign investment of RM4.6 billion (37.9%) [source: Malaysian Industrial Development Authority (MIDA)].



Many companies have made significant capital investments as a result of the manufacturing incentives. Any drastic scaling back of such incentives may result in the diminution of new investments into the manufacturing industry, which currently employs 1.02 million workers as at May 2011 (based on the Statistics Department of Malaysia).

The reduction of incentives for manufacturing may result in a shift of investments from the oil and gas, agriculture and manufacturing sectors to the services sector, which may be perceived to be more sustainable. Whilst this aim is laudable, achieving this will require an economy driven by skills, innovation and knowledge.

As such, in conjunction with the reduction of tax incentives, it would be essential to carefully restructure the incentives to incentivise the 'other' sectors such as education, science and technology and knowledge-based industries to boost rapid development into these areas and bring about long-term sustainable growth. Incentives which are previously channelled towards capital investments (e.g. factories, plant and machinery) can be redirected to human capital investment which is currently in short supply.

At present, many Malaysian individuals and businesses, especially in the less urban areas are involved in the agricultural and manufacturing related sectors. Substantial investments would have to be made to re-skill these workers and reinvent the businesses if we are to narrow the disparities and transform into a high income nation.

BALANCING ACT 2: REDUCING THE BURDEN ON TAXPAYERS WHILST BROADENING THE TAX BASE

Malaysia has been running budget deficits since 1998 (2010: RM43.3 billion). It is therefore necessary for the government to increase its tax revenue to restore the country's fiscal position and keep pace with operating and development expenditure.

However, there are several constraints faced by the government. The CEO of PEMANDU, Dato' Sri Idris Jala has recently noted that "currently only 1.7 million of the 28 million Malaysian population pay tax". With only a small proportion of Malaysians paying taxes, how can the government increase its tax revenue in line with the projected growth towards 2020 without over-burdening the taxpayers? What is more worrying is that at present, over 30% of the government's revenue is from petroleum income. With our natural resources gradually depleting, this cannot be relied upon as a sustainable source of revenue.

In order to plan for a long term sustainable source of revenue, the government has proposed to widen its tax base by replacing the existing Sales and Service Tax with Goods and Services Tax (GST). In fact, it is envisaged that RM6.3 billion in additional revenue can be generated in the first two years if GST is implemented at the rate of 4%. GST should also enable the government to reduce reliance on direct taxes in the longer term.

As GST is a broad-based consumption tax, it is levied on the supplies of goods and services at every stage of the supply chain with an input tax credit mechanism. The GST system is expected to be largely automated and 'self policing'. As a result, the incidence of tax evasion and non-compliance should theoretically be reduced so that more revenue is available to be deployed by the Government.

As GST is a broad-based consumption tax, it is levied on the supplies of goods and services at every stage of the supply chain with an input tax credit mechanism. The GST system is expected to be largely automated and 'self policing'. As a result, the incidence of tax evasion and non-compliance should theoretically be reduced so that more revenue is available to be deployed by the government.

Although the second reading at Parliament of the GST Bill was deferred since March 2010, this was decided to provide more time to prepare and communicate with the *Rakyat*. GST at 4% was set to be neutral in the first year of implementation and any increase in revenue would be offset by the removal of Sales and Service Tax, which although has a narrower base but is at higher rates. Increase in revenue will only happen in the longer term in tandem with the GDP growth and as we move towards a high income nation status. GST should enable the government to reduce income tax rates over time. Increase in government revenue from higher efficiency, compliance and reduced tax leakages should ultimately benefit the *Rakyat*.

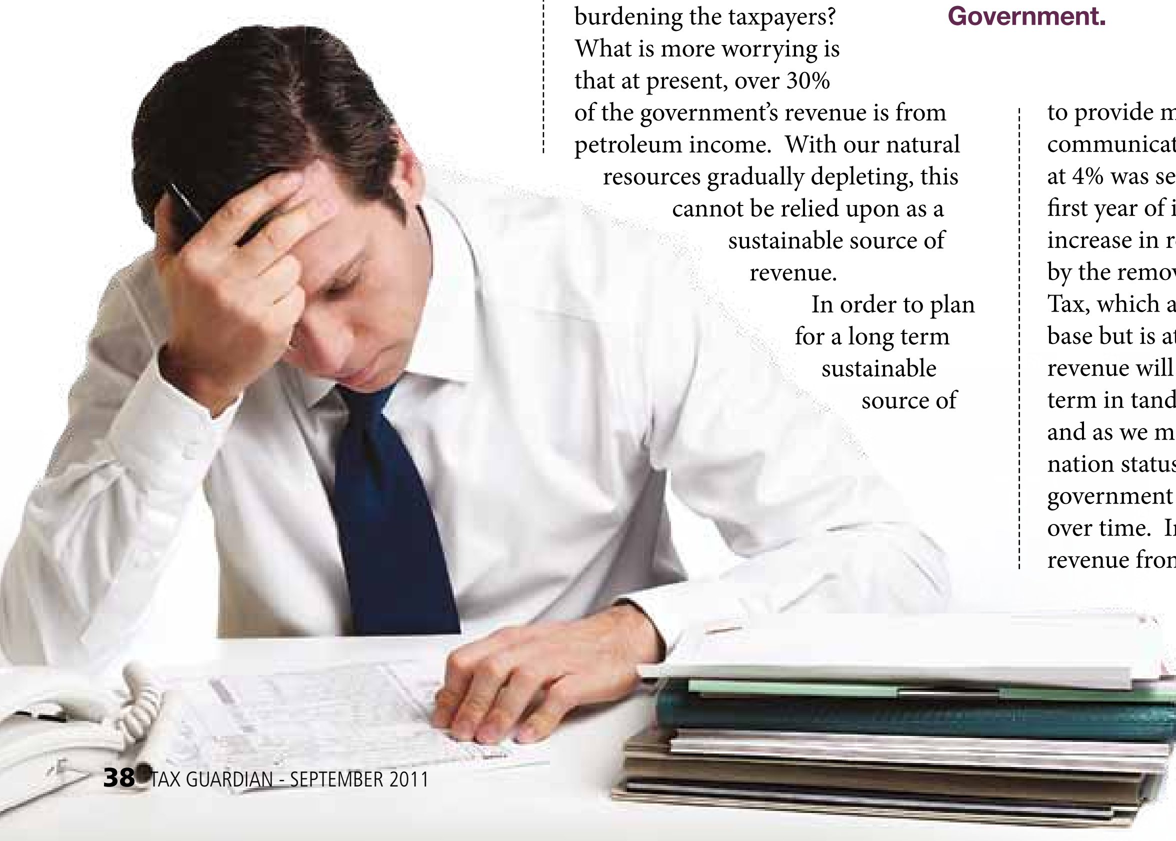


CHART A: PUBLIC FINANCE REFORM INITIATIVES

Improve Tax Compliance and Administration	Rationalisation of Corporate Tax Incentives	Expenditure Control	Transparent Procurement	Other Initiatives
Widen Field Audit & Investigation Coverage. Widening the Tax Base. Improve Efficiency in Tax Submission & Tax Collection. Revise depreciation rate of gazetted value of imported used cars. Audit based control on exporters and importers of liquor and cigarette in duty free islands & Free Commercial Zones. Enhanced Customs' enforcement/audit.	'Step-down' of Reinvestment Allowances. 'Step-down' (From Full to Partial) Exemption for Shipping Income. Review incentives in Promotion of Investments Act 1986. Review Single Deduction, Further Deduction, Double Deduction.	Increase cess for rubber replanting. Cost effective funding mechanism. Reduce overseas training. Optimise asset utilisation. Reduce Govt. travelling expenses by 15%.	E-Bidding (enhance & widen scope). • E-Bidding for Quotation & Tender (reduce existing threshold value from RM200k to RM50k) Value Management (VM). Enforce Procurement Plan. Eliminate Incompetent Suppliers / Service Providers.	Broad-Based Tax (GST). Accrual Accounting.

Source: PEMANDU's website, http://etp.pemandu.gov.my/Public_Finance_Reform-@-Overview.asp

WAY FORWARD

The Public Finance Reform initiatives have set the framework for the government to spearhead sustainable growth and to propel Malaysia into a high income developed nation. Nevertheless, as the saying goes "the devil is in the details", and its success hinges on the effective implementation and fine-tuning of the initiatives proposed and the proper distribution / usage of the additional revenue generated.

The tax incentives have to be carefully restructured to ensure they are properly aligned to support the 12 NKEAs (which comprise of 11 industry sectors and the Greater KL/KV region) and to minimise any possible adverse impact to domestic private sector investment and FDI. The government should rightly focus on attracting new talent and educating and equipping local talent with the right skills. The success of the ETP requires skills from all levels, and especially "professionals" or "knowledge/skilled workers" who will represent the key drivers of the ETP. When business productivity is enhanced, wages can be increased, hence translating into additional revenue for the country.

In light of the ETP being implemented, GST appears to be a much needed tool for the government to increase revenue by improving tax collection efficiency, reducing tax leakages and widening its tax base. In the longer term, GST is expected to also increase transparency and reduce reliance on direct taxes and petroleum income.

The estimated RM13 billion in additional revenue to be generated in the first two years of implementation of the Public Finance Reform initiatives should ultimately benefit the country. In addition, it is expected that administrative red-tape, inefficiency and leakages would be significantly eliminated in the process. The communication of the initiatives and rationale to the public must be clearly and consistently communicated for maximum effectiveness. Tax is only one of the many tools required for the economic transformation. However, given the far reaching effects of tax, it could be the most effective tool if it is tuned correctly and implemented well.

David Lai Shin Fah is the Head of Tax Advisory of BDO Tax Services Sdn Bhd and he can be contacted at davidlai@bdo.com. The views expressed are his personal views and do not represent the views of the organisation.

Judicial Review as the Correct Avenue for Appeal?

By Kok Fie See

The default appeal procedure under the Income Tax Act 1967 (ITA) is provided in Section 99 of the ITA. It sets out the appeal procedures to the Special Commissioners of Income Tax (SCIT) against any assessment or additional assessment made by the Director General of Inland Revenue (DGIR).

Judicial review is not the default appeal procedure provided under the ITA. The procedure for an application for judicial review is laid down in Order 53 of the Rules of the High Court 1980 (RHC). It allows the court *inter-alia* to review a decision of a public authority, therefore an aggrieved taxpayer may file an application for judicial review under Order 53 of the RHC against a decision of the DGIR. By virtue of the landmark case of *Government of Malaysia & Anor v Jagdis Singh*, in the presence of the statutory remedy under the ITA i.e. Section 99, an application for judicial review for revenue cases is only allowed in exceptional circumstances, and the examples given by the Supreme Court in Jagdis

Singh's case are clear lack of jurisdiction, blatant failure to perform some statutory duty and serious breach of the principles of natural justice.

This article discusses the applicability of judicial review procedure in certain circumstances under which judicial review could be the correct avenue for appeal under the ITA.

It is clear from the provisions in Section 99 of the ITA that the appeal can be filed against an assessment or additional assessment. There could be instances where a taxpayer is aggrieved and wishes to file an appeal against a decision of the DGIR under the ITA which does not amount to an "assessment" or "additional assessment". In such circumstances, Section 99 does not apply, judicial review in fact is the only appeal avenue of the aggrieved taxpayers.

In *Malayan United Industries Bhd v Ketua Pengarah Hasil Dalam Negeri & Anor*, the taxpayer, through its tax agent filed its income tax returns for the Years of Assessment from 1987 to 1989. In 1990, the DGIR requested the tax agent to provide certain information concerning the taxpayer under Section 108 of the ITA for the Years of Assessment from 1985 to 1989. The tax agent duly furnished the requisite information to the DGIR. Only in 2001, the DGIR issued a requisition under Section 108 of the ITA for the Years of Assessment from 1987 to 1993 in the prescribed Form S. The taxpayer disputed the liability to pay the requisition under Form S for the Years of Assessment from 1987 to 1993 on the basis that the requisitions under Form S were time-barred as they were issued more than six years after the expiration of the Years of Assessment from 1987 to 1993. Subsequently the DGIR issued a Notification of Civil Proceedings under Section 106 of the ITA to recover the amount stated in Form S. In allowing the application for judicial review for an order of *certiorari* to quash the decision of the DGIR in the Notification of Civil Proceedings, the High Court considered and explained the nature of a Section 108 requisition in length:-

"Section 108 of the ITA is a mechanism for the implementation of the imputation system in Malaysia. Under the imputation system, the income tax paid by a company on its profits is fully passed on or imputed to the shareholders when a dividend is paid. In Malaysia the company taxation is based on the imputation system which means that the full amount of income tax paid by a company is imputed to the shareholders. Under Section 108 every company resident in Malaysia or a company resident in Singapore and which has declared itself to be a resident in Malaysia for the purpose of Article VII on dividends of the double taxation agreement Malaysia-Singapore of which the respondent was such a company, is required to deduct income tax at the rate of 35% (applicable rate at the material time) from any dividend paid to the shareholder. However, the company is entitled to frank the income tax to be deducted out of the income tax which it has previously suffered on its taxable profits. For this purpose the company is required to maintain an account known as the 'Section 108 account' in order to keep track of the amount of tax franking credit available. Entries to Section 108 account are in the form of credits and debits. The credit total represents tax paid or payable by the company for the current or previous years of assessment. This is called the compared aggregate. The debit total represents the amounts of tax deducted or deemed deducted from dividends paid for the current year of assessment. This is called the compared total. At the end of the assessment year, the Director General of Inland Revenue (DGIR) will compare the compared total with the compared aggregate. When the compared total exceeds the compared aggregate, the amount of the excess is a debt due to the government from the company. In such a situation, the DGIR will issue a written requisition under Section 108(5) of the said Act calling upon the company to pay the amount of the debt. The rationale behind this is that, if not for this charge the government would be paying out (in the form of tax credit to a shareholder of the company) more money than the Government has received from the company on its profits since tax deducted or deemed deducted is imputed to the shareholders as income tax paid in advance."

Having considered the above and following an earlier decision in *Ketua Pengarah Hasil Dalam Negeri v Rheem (Far East) Pte Ltd*, the High Court ruled that Section 108 requisition is not an assessment, and thus it cannot be appealed to the SCIT. The High Court stressed that:-

"Accordingly, the only avenue to seek judicial resolution of the matter would be to apply for judicial review under O 53 of the Rules of the High Court 1980, which the applicant did in this case. Hence the submission by the respondents that judicial review is a wrong procedure adopted by the applicant cannot be right. To me, due to the DGIR's own conduct in Rheem's case, judicial review is the most appropriate, convenient and suitable procedure for the applicant to challenge the DGIR's decision on Section 108 of the ITA."

Although it seems to be a clear cut case thus far, the High Court in *Ngee Tai Shipping Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* expressed another view which is in favour of the revenue authority. The Ngee Tai Shipping Sdn Bhd case involves a requisition issued under Section 108 of the ITA and the taxpayer contended that the DGIR had erred in law in arriving at the decision to issue such requisition, hence the taxpayer filed an application for a judicial review to seek an order of *certiorari* to quash the decision of the DGIR. The High Court disagreed with the Rheem case and the Malayan United Industries case and held that a Section 108 requisition is essentially an assessment, hence it is appealable to the SCIT:-

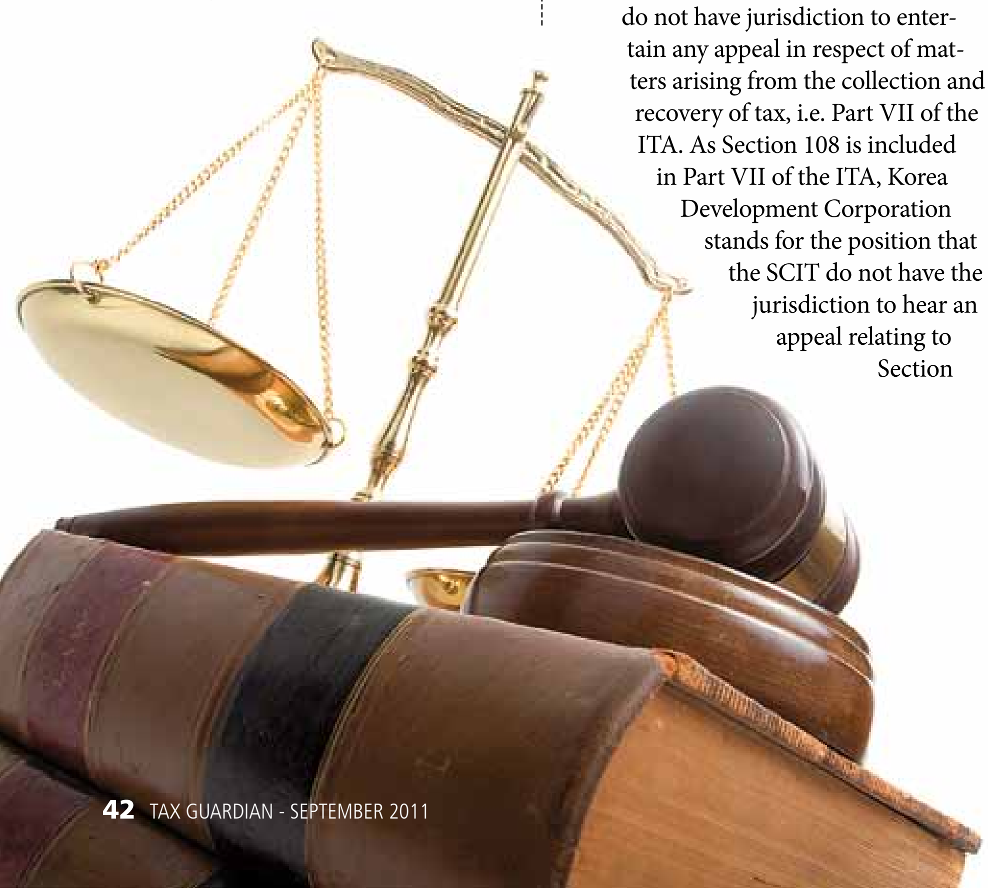
"… a requisition issued under Section 108 of the ITA 1967… only creates a statutory presumption that a statutory debt is created within the mechanism of Section 108. However, if one objects to the mechanism the statutory debt has arisen as in this case, then it is clear that there is a tax dispute, relating to assessment of tax. Support for the proposition is reflected in various provisions of the said section itself and other sections such as Section 110… the debt due and owing is inextricably interwoven with tax liability and/or assessment as the whole issue is anchored on whether there was profit or no profit subject to tax."

The learned High Court judge further said in his judgement that:-

"If one were to argue in reliance on Rheem's case, supra, that since Section 106 crystallises a sum due and owing as a debt, all disputes in relation to Section 106 must be referred to the court by way of judicial review and not to the Special Commissioners then such interpretation will totally make the Special Commissioners redundant. Further, to say Section 106 relating to an assessment has become a statutory debt and in consequence any claim in relation to assessment must be made within 6 years limitation period or it will be statute-barred, will create much loss of revenue for the government and the public will be affected."

Accordingly the High Court ordered the matter be referred to the SCIT and be dealt with under Section 99 of the ITA.

Different approaches have been taken by the High Court in cases on Section 108 requisition. It is submitted that the approach taken in the Malayan United Industries case should be preferred as in the circumstances of the case, judicial review could be the more expedient or suitable procedure to challenge a decision made by the DGIR under Section 108 or any other provisions in the ITA, and the courts should not forthwith dismiss an application for judicial review in the interest of justice. Further, in the case of *Korea Development Corporation v Government of Malaysia*, the High Court expressly held that the withholding tax under Section 107A was not an advance assessment under the ITA and ruled that the SCIT do not have jurisdiction to entertain any appeal in respect of matters arising from the collection and recovery of tax, i.e. Part VII of the ITA. As Section 108 is included in Part VII of the ITA, Korea Development Corporation stands for the position that the SCIT do not have the jurisdiction to hear an appeal relating to Section 108 requisition, and that judicial review is the most appropriate procedure to challenge such requisition.



Section 99(1) of the ITA says that, "*A person aggrieved by an assessment made in respect of him may appeal to the Special Commissioners against the assessment by giving to the Director General within thirty days after the service of the notice of assessment or, in the case of an appeal against an assessment made under Section 92, within the first three months of the year of assessment following the year of assessment for which the assessment was made (or within such extended period as regards those days or months as may be allowed under Section 100) a written notice of appeal in the prescribed form stating the grounds for appeal and containing such other particulars as may be required by that form.*"

[1978] 2 MLJ 185.

[2005] 6 MLJ 259.

[1998] MLJU 402.

(2008) MSTC 4308.

[1985] 1 CLJ 178.

The court said that:-

"Section 107A is within Part VII of the Act which deals with Collection and Recovery of Tax. Section 107A provides a method of collection of tax which may or may not have been assessed. The Special Commissioners do not have jurisdiction to entertain any appeal or complaint in respect of matters or questions that arise from or in respect of the collection and recovery of tax."

This article is for general information only. The author disclaims all liability to any person in respect of the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of this article. This article is a part of an academic project submitted by the author in partial fulfillment for her degree of Master of Laws in University of Malaya, which she completed in May 2011. The author can be contacted at fiesee1213@gmail.com.

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The Technical Updates published here are summarised from the selected Government Gazette Notifications published between 7 May 2011 and 31 July 2011 including Public Rulings and guidelines issued by the Inland Revenue Board, The Royal Customs Department and other regulatory authorities for the same period.

INCOME TAX

Public Ruling No.5/2011 – Residence Status of Companies and Bodies of Persons

The Public Ruling (PR) was issued on 16 May 2011 to explain how the residence status of companies and bodies of persons is determined. It clarifies the application of both Section 8 and Subsection 61(3) of the Income Tax Act 1967 (ITA) and links these provisions with other provisions in the ITA where residence status is relevant. The examples provided in the PR to illustrate the application of the laws are very helpful. The significance of the place of management and control is highlighted.

The ruling is effective from the year of assessment 2011.

Public Ruling No.6/2011 – Residence Status of Individuals

The Public Ruling was issued on 16 May 2011 to explain how the residence status of individuals is determined. It clarifies the application of Section 7 and Subsection 7(1B) of the ITA and links these provisions with other provisions in the ITA where the residence status of individuals are relevant. Helpful examples are provided to illustrate the application of the law. This ruling replaces Appendix A – Determination of Residence Status in Public Ruling No. 2/2005 – Computation of Income Tax Payable by a Resident Individual issued on 6 June 2005.

The ruling is effective from the year of assessment 2011.

Tax exemption on sale of Islamic securities

The Income Tax (Exemption)(No 2) Order 2011 exempts an individual, a unit trust or listed closed-end fund from income tax in respect of any gains or profits received from the investment in Islamic securities.

The Islamic securities refers to those securities other than convertible loan stock issued in accordance with the principles of *mudharabah, musyarakah, ijarah, istisna'* or any other principle approved by the Shariah Advisory Council established by the Securities Commission.

This Order is effective from YA 2007 to YA 2009.

Tax exemption for approved food production project

The Income Tax (Exemption)(No 3) Order 2011 exempts a qualified person (which includes companies, sole proprietorships, partnerships and associations solely engaged in agriculture or fishery), resident in Malaysia, from the payment of income tax in relation to:

(a) A new project for a period of 10 consecutive years of assessment in respect of its statutory income, commencing from the first year of assessment in which the qualified person derived statutory income in relation to that project, or

(b) An expansion project for a period of 5 consecutive years of assessment in respect of its statutory income from the existing and expansion projects, commencing from the first year of assessment in which the qualified person derived statutory income in relation to the existing and expansion projects, and the first year of assessment shall not be earlier than the year of assessment in the basis period in which the date of approval from the relevant Minister falls.

The Order is deemed to have come into operation on 1 October 2005.

Deduction for investment in an approved food production project

The Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2011, which are deemed to have come into operation on 1 October 2005, provides that for the purpose of ascertaining the adjusted income of a company which has made an investment in its related company undertaking a new approved food production project under the Income Tax (Exemption) (No 3) Order 2011 there shall be allowed as a deduction an amount equivalent to the value of the investment for the sole purpose of financing the project in the basis period for a year of assessment.

Deduction for contribution to Universal Service Provision Fund

The Income Tax (Deduction for Contribution to Universal Service

Provision Fund) Rules 2011, deemed to have effect from the year of assessment 2002, provides for a deduction for designated services under the Communications and Multimedia (Universal Service Provision) Regulations 2002 in ascertaining the adjusted income of a licensee.

Guidelines on tax relief for serious diseases

The Inland Revenue Board (IRB) has issued guidelines, dated 4 May 2011 regarding serious diseases for the purpose of claiming relief under Section 46(1)(g) of the ITA.

With effect from the year of assessment 2001, a taxpayer may claim relief of not more than RM5,000 on medical expenses expended on himself, his spouse and children for serious diseases suffered.

"Serious disease" is defined in Section 46(2) of the ITA to include "acquired immunity deficiency syndrome, Parkinson's disease, cancer, renal failure, leukaemia, and other similar diseases." The guidelines elaborate that serious diseases are acute and chronic illnesses that cannot be cured and require prolonged medical treatment. Some of the characteristics of serious illnesses include life-threatening, continuous and high cost of medical treatment, acute medical illnesses requiring hospitalisation, etc.

Appendix A of the guidelines provides a list of the types of serious diseases. The list is similar to the list of serious/chronic diseases for the purposes of Section 46(2) with additional diseases (items 14-19). Paragraph 4 of the Guidelines provides a list of other circumstances that may be considered for a claim for relief under Section 46(1)(g) of the ITA.

Guidelines on the tax treatment of interest income in the pawnbroking industry

Guidelines on the tax treatment of interest income received by pawnbrokers were issued by the Inland Revenue Board of Malaysia (IRB) in June 2011. To illustrate the tax treatment under various situations, the IRB has provided ample examples in the guidelines.

Although the guidelines are effective from the basis period for YA 2009, a concession is given during the transitional period (YA 2009, 2010 and 2011) and this is explained in the guidelines. The guidelines also cover the tax treatment of *Ar-Rahnu*, the Islamic version of the pawnbroking business.

Rules for the exchange of information

The Income Tax (Exchange of Information) Rules 2011 [P.U.(A) 219/2011] was gazetted on 1July 2011. The Rules, among other things, provide that the competent authority of a jurisdiction that has entered into a double taxation arrangement with the Government of Malaysia may request for information on any person from the Director General of Inland Revenue (DGIR).

"Competent authority" means the duly authorised servant or agent of a government of any territory outside Malaysia with which the Government of Malaysia has entered into a double taxation arrangement.

Upon receiving the request, the DGIR may by notice under Section 81 of the Income Tax Act 1967 (ITA), require the person referred to in the request to provide the information as requested by the competent authority within the time specified in the notice. Any person to whom a notice is issued, and whom, without any reasonable excuse, fails to comply with such notice will be deemed to have committed an offence under Section 120 of the ITA.

Should the person concerned, fail to provide the information, the DGIR can require a bank which has the information of a person to whom the relevant double taxation arrangement relates to provide the information as requested by the competent authority.

The Income Tax (Exchange of Information) Rules 2009 [P.U.(A) 311/2009] is revoked.

Income tax exemption on gains derived from Islamic bonds (sukuk).

Income Tax (Exemption) (No.4) Order 2011 which was gazetted on 28 June 2011 applies to *sukuk wakala*, other than convertible bonds issued in any currency by Wakala Global Sukuk Berhad. The Order exempts any person from income tax in relation to gains or profits received, in lieu of interest, in the basis year for a year of assessment, derived from the *sukuk wakala* under the concept of *Al- Wakala Bil Istismar*.

Section 109 of the Act (withholding tax) shall not apply to the income exempted under this Order.

New form for information on cross border transactions

The Inland Revenue Board (IRB) has issued "FORM MNE (1/2011): INFORMATION ON CROSS BORDER TRANSACTIONS" to selected taxpayers in order to gather information on their related party transactions.

The information required in this form is more detailed than the information required in the Income Tax return and is requested for the purpose of evaluating the addressee's transfer pricing risk profile. Readers who are interested in viewing the form may download it from the IRB's official website.

List of acccredited certification bodies for double-deduction

An updated list of accredited certification bodies for purposes of double-deduction claim under paragraph 34(6)(ma) of the ITA was issued on 5 July 2011.

Guidelines on tax relief for broadband subscription

The IRB has issued guidelines for the purpose of claiming relief for broadband subscription under Section 46(1)(m) of the ITA.

For years of assessment 2010 to 2012, subscriptions paid for broadband internet connection registered in the name of an individual are allowed relief in arriving at his chargeable income, subject to a maximum of RM500 per annum.

A connection through cable or Digital Subscriber Line (DSL) at a speed of 256kbps and above will be considered as a broadband connection and eligible for the relief. A dial-up service through a telephone line at a speed of 56kbps is not considered as a broadband connection.

REAL PROPERTY GAINS TAX

Revised guidelines on Real Property Gains Tax

The IRB issued the revised guidelines on Real Property Gains Tax (RPGT) on 5 May 2011. The guidelines are meant to explain the amendments to the Real Property Gains Tax Act 1976, from 1 Jan 2010 and enhance procedures for the submission of returns and payment of RPGT.

CUSTOMS AND EXCISE

Customs Duties (Goods Under The Malaysia-India Comprehensive Economic Cooperation Agreement) (Miceca) Order 2011, Customs Act 1967 [P.U. (A) 215/2011]

The Customs Duties (Goods Under The Malaysia-India Comprehensive Economic Cooperation Agreement) (Miceca) Order 2011 came into operation on 1 July 2011. Under this Order, the importation of goods (as specified in the Second Schedule) originating from India will be subject to preferential import duty rates, subject to compliance to the Rules of Origin and Operational Procedures/ Rules.

Customs (Prohibition Of Exports) (Amendment) Order 2011, Customs Act 1967 [P.U. (A) 217/2011]

Effective from 1 July 2011, export of goods listed below is to be accompanied with a Certificate of Confirmity of Agricultural Produce or letter of exemption issued by the Federal Agricultural Marketing Authority:-

1. Flowers, fresh (in excess of 5 kilograms per consignment);
2. Vegetables, fresh, chilled or frozen (in excess of 3 kilograms per consignment);
3. Coconuts, fresh (in excess of 3 nuts per consignment);
4. Fruits:-
   - Fresh, chilled or frozen (in excess of 3 kilograms per consignment) (excluding figs and pineapples); and
   - Dates and grapes, fresh or dried.
5. Coffee (in excess of 3 kilograms per consignment);
6. Spices (in excess of 3 kilograms per consignment);
7. Groundnuts (in excess of 3 kilograms per consignment); and
8. Sugar cane, fresh or chilled (in excess of 20 kilograms per consignment).

Customs (Prohibition Of Imports) (Amendment) Order 2011, Customs Act 1967 [P.U. (A) 218/2011]

Effective from 1 July 2011, importation of goods listed below is to be accompanied with a Certificate of Conformity of Agricultural Produce or letter of exemption issued by the Federal Agricultural Marketing Authority:-

1. Flowers, fresh (in excess of 5 kilograms per consignment);
2. Vegetables, fresh, chilled or frozen (in excess of 3 kilograms per consignment);
3. Coconuts, fresh (in excess of 3 nuts per consignment);
4. Fruits:-
   - Fresh, chilled or frozen (in excess of 3 kilograms per consignment) (excluding figs and pineapples); and
   - Dates and grapes, fresh or dried.
5. Coffee (in excess of 3 kilograms per consignment);
6. Spices (in excess of 3 kilograms per consignment);
7. Groundnuts (in excess of 3 kilograms per consignment); and
8. Sugar cane, fresh or chilled (in excess of 20 kilograms per consignment).

By Siti Fatimah Mohd Shahrom and Natasha Qystina Rahman

ME Holding Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri Appeal No. PKCP 6/ 2008 (Special Commissioners of Income Tax) (2011) MSTC 10-013

FACTS

The taxpayer was in the business of property development. In December 2001, the taxpayer launched its first development project (Project) consisting of 2 storey low-cost townhouses. In order to promote the sales of its townhouses, the taxpayer paid for the legal fees incurred by their customers i.e. purchasers of the townhouses on the sale and purchase agreements and bank loan agreements. The taxpayer treated the expenses as business promotion expenditure and deducted it under Section 33(1) of the Income Tax Act 1967 (ITA).

However, the Inland Revenue Board of Malaysia (IRB) disallowed the expenses on the basis that they were entertainment expenses and therefore were not deductible under Section 39(1)(l) of the ITA.

Separately, upon completion of the Project, the taxpayer was under a legal obligation to apply for strata title for the townhouses within 6 months once the first certificate of fitness was issued. The taxpayer made the necessary preparation for the application. However, due to financial issues, the taxpayer did not make the application to the relevant authority. Nonetheless, the taxpayer deducted the survey fee for the application under Section 33(1) of the ITA. The IRB disallowed the deduction on the grounds that the taxpayer had yet to incur the said survey fee.

ISSUES

The issues for determination by the Special Commissioners of Income Tax (SCIT) were:

a. whether the legal fees incurred by the taxpayer were entertainment expenses? and
b. whether the survey fee expenses had been incurred by the taxpayer?

DECISION

The SCIT decided in favour of the taxpayer.

On the first issue, applying the decision by the Court of Appeal in *Aspac Lubricants (Malaysia) Sdn Bhd v KPHDN* [2007] 5 CLJ 353, the SCIT held that promotional expenses incurred for the sole purpose of promoting the business are not entertainment and therefore deductible under Section 33(1) of the ITA. In the present case, the SCIT found that:

The expenses were incurred to solely promote the taxpayer's business. This was because by offering to cover the legal fees to the purchasers, the taxpayer had been able to successfully promote its Project;

The expenses were incurred by the taxpayer due to a contractual obligation. Here, the taxpayer was under a contractual obligation to provide the legal fees when the purchasers bought the unsold units. By advertising that the legal fees cover the sale and purchase agreement, loan agreement and stamp duty, the taxpayer was effectively making an offer to the purchaser. In turn, when the unsold units were bought, the purchasers were effectively accepting the taxpayer's offer. The taxpayer could not simply withdraw or refuse to honour the legal fees as, once offered, the taxpayer was contractually bound to it. Further, the taxpayer also obtained a practical advantage when the unsold units were purchased by the purchasers; and

There was no element of hospitality in the provision of the legal fees as the purchasers were actually paying for the legal fees which have been included in the sale price of the units.

On the second issue, the SCIT allowed the survey fees as a deduction under Section 33(1) of the ITA for the following reasons:

i. The SCIT found that the provisions of the Strata Title Act 1985 clearly illustrated that the taxpayer was under an obligation to apply for the strata title, but the obligation to pay the survey fees had yet to arise as the Land Administrator had yet to demand for its payment. In this regard, the taxpayer had incurred the expense as the taxpayer was under an obligation to pay the survey fees. The obligation to pay arose as it would have been impossible for the taxpayer to lawfully resist the Land Administrator's demand for payment (see *Exxon Chemical (M) Sdn Bhd v KPHDN* [2005] 4 CLJ 810 and *CIR v Lo & Lo* [1984] 1 WLR 986).

ii. In addition to the above, the expenditure on the survey fees were found to be sufficiently accurate or capable of reasonable estimate as it was an expenditure determined according to the prescribed rates in the Licensed Land Surveyors (Amended) Regulations 1997.

Counsel for the taxpayer: ***Datuk D.P. Naban, S. Saravana Kumar & Siti Fatimah Mohd Shahrom***

Counsel for the IRB: ***Neng Juliana Ismail and Seri Hanem Mohd Ayob***

MHL Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri Appeal No. PKCP 45 /2008 (Special Commissioners of Income Tax) (2011) MSTC 10-014

FACTS

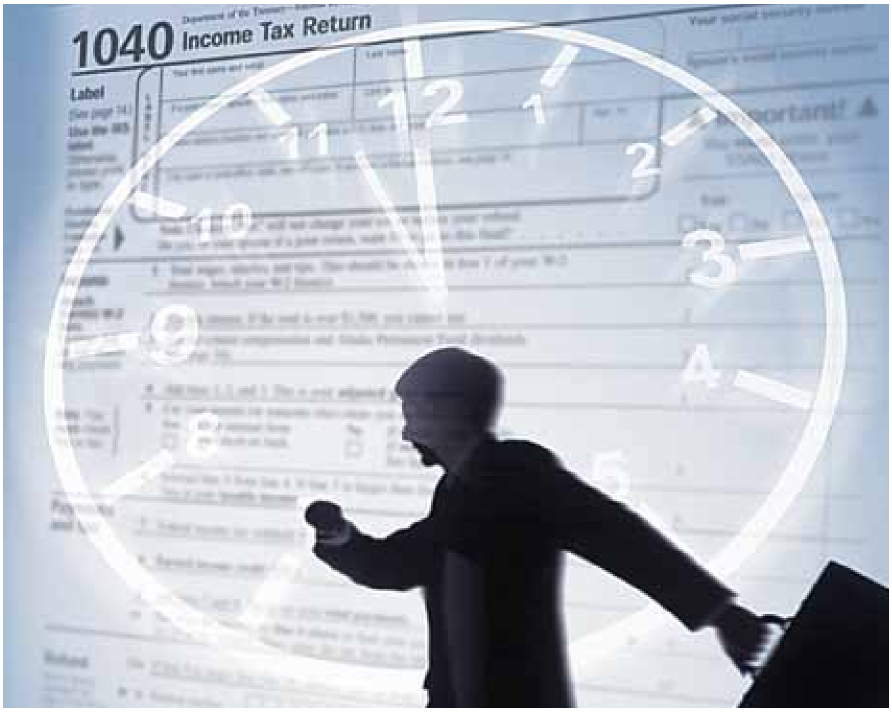
The taxpayer was in the business of manufacturing and distributing ophthalmic and eye-care products. The taxpayer sold prescriptive lenses for spectacles. Under the law, only opticians, optometrists and medical doctors are authorised to issue prescription for lenses. As the taxpayer did not employ opticians and optometrists and did not have its own chain of retail shops, the taxpayer could only sell its lenses through its retailers. In other words, the taxpayer depended on the retailers to sell its lenses. In order to promote the sale of its lenses, the taxpayer offered sales based incentives (Sales Incentives) to retailers who met the sales target set by the taxpayer. The incentives offered to the retailers were in the form of cash rebates, tours and valuable items like computers.

The IRB contended that the expenses for the Sales Incentives were entertainment as defined under Section 18 of the ITA and therefore not allowable for a deduction against the taxpayer's income pursuant to Section 39(1)(l) of the ITA.

The taxpayer contended that the Sales Incentives were not entertainment and were solely incurred to promote the taxpayer's business.

ISSUE

The issue for determination was whether the Sales Incentives paid by the taxpayer to its retailers were entertainment as defined under Section 18 of the ITA.



DECISION

The SCIT held in favour of the taxpayer.

The SCIT relied on the decision of the Court of Appeal in *Aspac Lubricants (Malaysia) Sdn Bhd v KPHDN* [2007] 5 CLJ 353 whereby it was found that promotional expenses incurred with the sole purpose of promoting the taxpayer's business were not entertainment and therefore were deductible under Section 33(1) of the ITA.

In arriving at their decision, the SCIT took the following factors into account:

i. The Sales Incentives incurred by the taxpayer successfully promoted the taxpayer's business as the retailers were motivated to work harder to increase the sale of the taxpayer's products. The Sales Incentives ensured that the retailers bought and maintained a good stock of the taxpayer's lenses, and encouraged the retailers to promote the taxpayer's brand name and products.

ii. Consequent to the Sales Incentives, the taxpayer had increased the sales of its lenses.

iii. The SCIT also found that the taxpayer was under a contractual obligation to provide the Sales Incentives once the retailers met the sales target. The taxpayer could not simply withdraw or refuse to honour the Sales Incentives once offered to the retailers, as the taxpayer was contractually bound to offer it. In this regard, there was consideration moving from the retailer to the taxpayer when the retailers sold the taxpayer's products to their customers and met the conditions imposed by the taxpayer.

For the reasons above, the Sales Incentives were found to have been wholly and exclusively incurred in the production of the taxpayer's gross income pursuant to Section 33(1) of the ITA.

Counsel for the taxpayer: ***Datuk D.P. Naban, S. Saravana Kumar & Siti Fatimah Mohd Shahrom***

Counsel for the IRB: ***Ahmad Isyak Mohd Hassan and Wan Hamdanie Wan Mohamad***

Ketua Pengarah Hasil Dalam Negeri v Metacorp Development Sdn Bhd (Court of Appeal) Civil Appeal No. W-01-239-2011

FACTS

The taxpayer was in the business of property development. In the course of its business, the taxpayer purchased two parcels of land. The said land was compulsorily acquired by the Land Administrator and the taxpayer was paid compensation. The taxpayer obtained legal advice and following the Court of Appeal's decision in Penang Realty, did not subject the gains arising from the compensation to income tax. The Inland Revenue Board (IRB) subjected the said gains to income tax and among others, relied on the Decision Impact Statement on the Penang Realty case (DIS). The IRB issued notices of additional assessment with penalty. The taxpayer being aggrieved by the IRB's decision, filed a judicial review application to quash the said notices of assessment on the basis that the IRB's decision was *ultra vires* and illegal.

The High Court ruled in favour of the taxpayer. The High Court held that the said gains were not subject to income tax following the Penang Realty case. The High Court applied the principle that the element of compulsion vitiated the intention to trade and thus, the gains were not the taxpayer's trading income. The High Court also ruled that the DIS has no legal effect. Further, it was also held that, in exceptional circumstances, a taxpayer may apply for judicial review and need not appeal to the Special Commissioners of Income Tax.

The IRB being dissatisfied with the decision of the High Court appealed to the Court of Appeal.

ISSUES

The issues before the Court of Appeal were as follows:

Whether the said gains were subject to income tax?; and

Whether the taxpayer may file for a judicial review application before exhausting the alternative remedy of SCIT?

DECISION

The Court of Appeal unanimously dismissed the IRB's appeal with costs.

On the first issue, the Court of Appeal agreed with the High Court's ruling that based on the decision of the Court of Appeal in *Ketua Pengarah Hasil Dalam Negeri v Penang Realty Sdn Bhd* [2006] 2 CLJ 835 and the Supreme Court in *Lower Perak Co-operative Housing Society Berhad v Ketua Pengarah Hasil Dalam Negeri* [1994] 3 CLJ 540, the gains arising from the compensation for compulsory acquisition of land are not subject to income tax. The principle established in these two cases is based on the premise that the element of compulsion vitiates the intention to trade. Since the gains derived by the taxpayer were on account of compulsory acquisition, they were not profit arising out of the taxpayer's business activity. The Court of Appeal added that there was no necessity for Section 24(1)(a) of the ITA to be considered in the Penang Realty case as it was of no relevance.

With regard to the DIS, the Court of Appeal endorsed the High Court's ruling that the DIS had no legal effect and could not override the decision of the superior courts.

In relation to the second issue, the Court of Appeal rejected the IRB's contention that the application for judicial review made by the taxpayer cannot be entertained by the High Court as there was an alternative remedy available under the ITA and, as such, there was no basis for the High Court to exercise its jurisdiction on this matter. The Court of Appeal agreed with the taxpayer's contention that the notices of additional assessment issued to the taxpayer were illegal, void and was an unlawful decision without any jurisdiction and in excess of authority. Such being the case, the IRB cannot be said to be immune from judicial process (see *Government of Malaysia v Jagdis Singh* [1987] 1 CLJ 110). The taxpayer further argued that the availability of appeal under the ITA cannot prevent the High Court from quashing an order by *certiorari*.

Counsel for the taxpayer: ***Datuk D.P. Naban & S. Saravana Kumar***

Counsel for the IRB: ***Abu Tariq Jamaluddin, Ahmad Isyak Mohd Hassan & Puan Seri Hanem Mohd Ayob***

Siti Fatimah Mohd Shahrom *and* ***Natasha Qystina Rahman*** *are tax lawyers with Lee Hishammuddin Allen & Gledhill. They can be contacted at tax@lh-ag@com*


Advancing Asia through connectivity, technology and talent.

InternationalNews

By Rachel Saw

This column only covers selected developments from countries identified by CTIM and relates to the period 16 April 2011 to 14 July 2011.

BRUNEI

Changes to excise duty on motor vehicles

The excise duty rate on all motor vehicles of 20% has reportedly been changed beginning 1 April 2011, as follows:

VEHICLE TYPE (CC)	NEW RATES (%)
1,700 and below	15
1,701 – 2,500	20
2,501 – 3,000	25
3,001 – 3,500	30
3,501 and above	35

The basic rates above are further reduced by 5 percentage points for hybrid cars, and further increased by 5 percentage points for vehicles powered by diesel. Buses used for public transport are subject to the minimum excise duty rate of 15% (previously 20%). The excise duty on heavy vehicles such as lorries and tankers remains at 20%.

CHINA (PEOPLE'S REP.)

Beijing Tax Bureau: Chinese company listed in Hong Kong – Chinese resident, withholding tax agent

It has been reported that a company listed in Hong Kong has been appointed as a withholding tax agent by the Beijing Tax Bureau, and has to withhold tax on dividends amounting to CNY2.43 billion. Although the Chinese company concerned is listed in Hong Kong, its place of effective management is considered to be in China by virtue of the place of effective management test and the relevant tax policy of the State Administration of Taxation (SAT). Accordingly, the company is a Chinese resident for tax purposes. The dividends distributed by these companies to non-residents (NRs) are therefore subject to withholding tax in China.

Applicable tax rate and FTC for new high-technology enterprises clarified

The Ministry of Finance (MoF) and the SAT jointly issued Cai Shui [2011] No. 47 on 31 May 2011, clarifying the applicable rate and foreign tax credit (FTC) for new high-technology enterprises. The preferential tax rate of 15% for qualified new high-technology enterprises also applies to the foreign income derived by such enterprises. In determining the limit of the FTC (maximum deduction), the total tax on total income must be calculated on the basis of the preferential tax rate of 15%.

The Notice retroactively applies from 1 January 2011 and refers to the Notice of 2009 on FTC, Cai Shui [2009] No. 125 for detailed rules on FTC.

Social security scheme extended to foreign employees

The new Social Security Law (SSL) was passed by the National People's Congress on 28 October 2010, and took effect on 1 July 2011. The new SSL provides that foreign employees working in China are required to contribute to the social security programme in China.

Accordingly, the Ministry of Human Resources and Social Security published a draft of the Provisional Measures of Social Security Programme for Foreign Employees for public consultation on 10 June 2011. The main features are as follow:

- Foreigners employed in China by lawfully incorporated enterprises, social organisations, foundations, law firms and accounting firms, and their employers, are obliged to contribute to basic old age pension, basic employee medical insurance, injury insurance, unemployment insurance and maternity insurance as from 1 July 2011. An "insured foreign employee" includes: (i) employees whose employment contracts are signed with an employer outside China, and who are sent to the employer's establishment or representative office in China; and (ii) employees from Hong Kong, Macao and Taiwan.
- An insured foreign employee is entitled to the benefits of the social security programme. If the employee leaves China before the pensionable age has been reached, he or she may claim the accrued amounts on the personal account by submitting a written application to the social security bureau. In the case of the death of the foreign employee, the accrued amount may be inherited by the heir.
- A retired insured foreign employee, who receives the

- benefits of the social security programme in a foreign country on a monthly basis, is required to present either (i) a "proof-of-life certificate" issued by, or (ii) the foreign country's notarial certification as authenticated by, the Chinese embassy or consulate in the foreign country.
- Where a bilateral or multilateral social security agreement with a foreign country is in force, that agreement prevails.

Issues on taxation of NR enterprises clarified

The SAT issued Gong Gao [2011] No.24 on 28 March 2011, clarifying the taxation of NR enterprises. It applies from 1 April 2011 and is summarised below.

Withholding tax on defaults

If a Chinese enterprise is in default on the payments of interest, rentals and royalties to a NR enterprise as agreed in the contracts, and the payments due have already been brought into account and deducted on the tax return, the enterprise must withhold tax on such defaults although no payment has actually been made.

In cases where the interest, rentals or royalties are discounted in the price of an asset or treated as start-up expenditure, the enterprise must withhold tax at the moment that such asset is depreciated or such expenditure is amortised.

Withholding tax on guarantee fees

The guarantee fees received by a NR enterprise must be treated as interest and taxed accordingly. Guarantee fee is defined as the fee or similar payment made or borne by an enterprise, institution or individual in China for the guarantee provided by a NR in connection with a loan, purchase and sale, processing assignment, rental business and construction work.

Withholding tax on gains from transfer of land-use rights

Gains derived by a NR on transfer of land-use rights is subject to enterprise income tax. The tax must be withheld by the withholding agent unless such gains are connected with a Permanent Establishment (PE) of the NR in China.

Withholding tax on fees under financial lease and rental income from real property

Under a financial lease arrangement, the difference between the total lease payments and the price of the leased asset (including the transfer price at the end of the lease) received by a NR lessor without a PE in China must be treated as interest on loan on which the paying enterprise has to withhold tax.

The income derived by a NR enterprise without a PE in China from lease of real properties such as houses and buildings is subject to tax on a gross basis and the tenant has to withhold tax at the time of each rent payment or when the rent has become due.

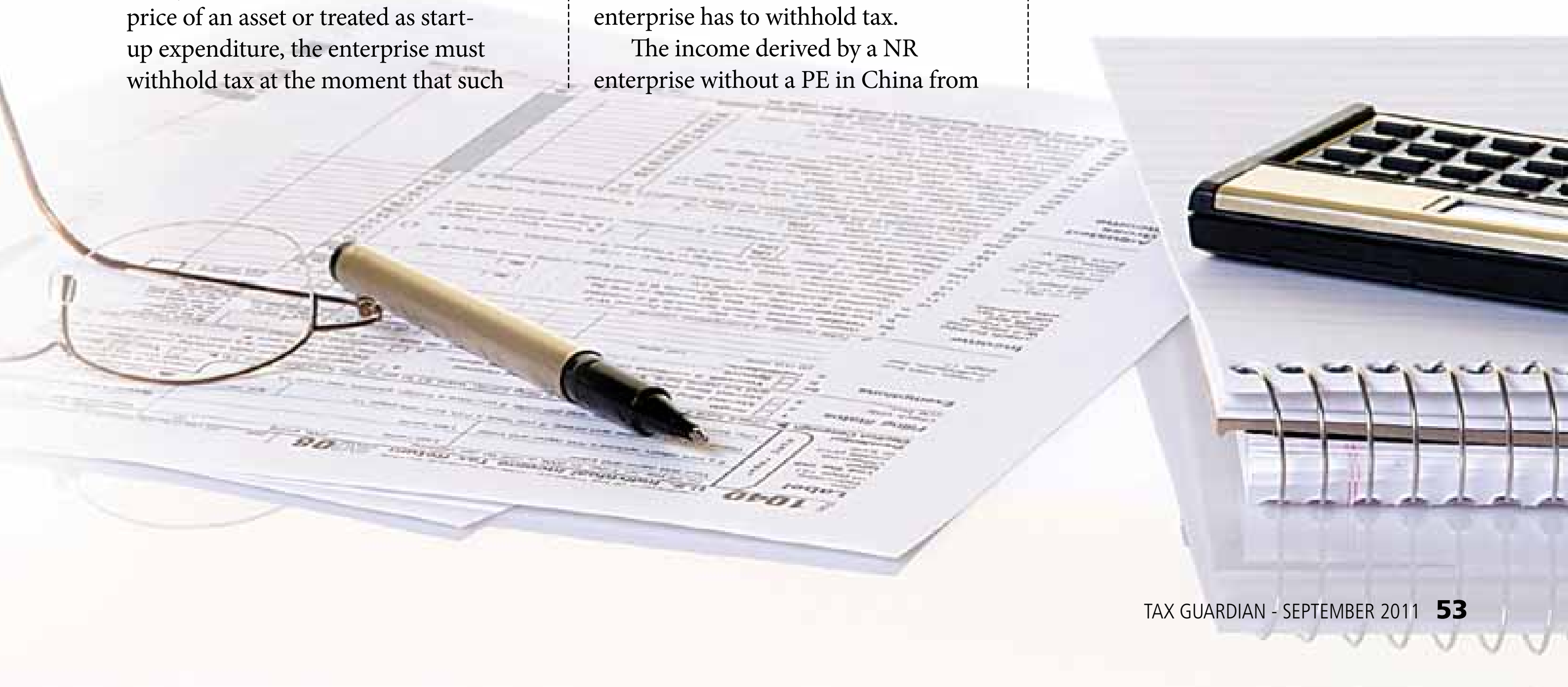
A NR enterprise which seconds to China a person, or commissions an entity or person in China, to carry on the day-to-day management of their real properties is considered to have a PE in China and is required to file the tax return for the purposes of enterprise income tax.

Timing of withholding tax on income from equity investment

A resident enterprise paying dividends/profits to a NR without a PE in China is required to withhold tax on the date that the distribution is decided. If the payment has already been made before that date, the paying enterprise must withhold tax on the date of the payment.

Several issues regarding Guo Shui Han [2009] No. 698 (taxation of gains on transfer of shares by NRs)

A NR enterprise directly transferring the shares in an enterprise in China must recognise the income, if the payment in instalments for the transfer is agreed in the contract or agreement, on the date that the



contract or agreement of the transfer enters into force and the formalities of transfer are completed.

A "foreign investor" (controlling party) referred in Arts. 5, 6 and 8 of the Notice 698 is any investor who indirectly transfers the shares in a resident enterprise in China. "Effective tax burden" and "exemption of income tax" mentioned in Art. 5 of Notice 698 are both only concerned with gains on share transfer, not other items of income.

In cases where two or more foreign investors indirectly transfer the shares in a resident enterprise at the same time, it is sufficient that one of the investors provides the documentation with the local tax authority of the transferee.

In cases where a foreign investor indirectly transfers the shares in two or more resident enterprises which are located in the different provinces (or cities) in China, the foreign investor may choose one of the local tax authorities of the places of the transferees for providing the documentation. However, the tax payments have to be handled with the different tax authorities of the places where the transferees are located once the taxes on the transfer are assessed.

Tax incentives for enterprises newly established in underdeveloped regions of Xinjiang

The MoF and the SAT jointly issued Cai Shui [2011] No.53 on 17 June 2011, promulgating new tax incentives for enterprises newly established in the underdeveloped regions or counties of Xinjiang. From 1 January 2011 to 31 December 2020, the enterprise income tax imposed on the enterprises newly established in the underdeveloped regions of Xinjiang will be exempt in the first 2 years starting from the first profit making year and reduced in the following 3 years by 50% (the effective rate will be 50% x 25% = 12.5%). The eligible enterprises must carry out at least 70% of the businesses as listed in a catalogue which will be drafted and published by the relevant department of the government.

Two issues of individual income tax clarified

The SAT issued Gong Gao [2011] No. 27 on 18 April 2011, clarifying two issues of individual income tax. The Announcement applies from 1 May 2011 and its content is summarised below.

Stock appreciation rights and restricted shares

The tax treatment of stock appreciation rights and restricted shares granted to employees as provided for in the Guo Shui Han [2009] No. 461 applies also to the employees of any enterprise which is held at least 30% by a listed company. The restriction of the applicable scope to the employees of the second-tier subsidiary has been removed. According to Guo Shui Han [2009] No. 461, the employment income received in the form of stock options or stock appreciation rights and so on may be calculated separately (not added to wages or other employment income to avoid the progression).

The formula used is: (income from stock options or stock appreciation rights)÷ (number of months working in China with maximum 12 months) x (tax rate)

Re-employed pensioner

To be insured within the social insurance programme is no longer a requirement for qualification as a "re-employed pensioner".

Individual Income Tax Law – amendments passed

It has been reported that the Standing Committee of the National People's Congress passed the amendment of the Individual Income Tax Law on 30 June 2011, as follows: (i) increase of the monthly standard deduction from CNY2,000 to CNY3,500; (ii) reduction of the number of the income tax brackets from 9 to 7; and (iii) reduction of the tax rate of the first tax bracket from 5% to 3%. The amendments are applicable from 1 September 2011.

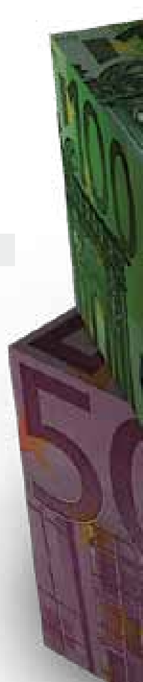
Exemption from customs duty, VAT and consumption tax for R&D equipment extended

The MoF, General Administration of Customs and SAT jointly issued a decree (SAT Lin No. 63), extending to 31 December 2015 the exemption from customs duty, VAT and consumption tax for research and development (R&D) and experimental equipment imported by scientific research institutions and schools, as provided under previously issued notices (SAT Ling [2007] Nos. 44 and 45). The exempted items are extended to scientific research equipment needed for scientific research, technological development and scientific education

INDONESIA

Land and building tax – new non-taxable threshold

The MoF issued Regulation No. 67/PMK.03/2011 dated 4 April 2011 which revises the taxable base of the land and building tax and revokes



MoF Decree 201/KMK.04/2000 dated 6 June 2000. Currently, a deemed fair value of up to IDR12 million is excluded from the taxable base of the land and building tax. The Regulation increases the threshold to IDR24 million effective 1 January 2012.

Tax incentives for oil, gas and geothermal industries

In order to increase national production of oil and gas as well as geothermal energy, the Minister of Finance issued Regulation No. PMK. 22/PMK.011/2011 on 7 February 2011, to provide an additional tax incentive under which the government bears the VAT arising on the importation of goods to certain entrepreneurs. The goods that are included are those that, based on the industry requirements, are not produced or available in Indonesia, and that are used to conduct the required research of potential gas or geothermal reserves.

Such incentive can be obtained by entrepreneurs:

- in upstream oil and gas activities who entered into binding contracts with the Indonesian Government after Law No. 22 of 2001 on Oil and Gas became effective; or
- in geothermal activities who entered into binding contracts with the Indonesian Government after obtaining their licences after 31 December 1994; or
- who conduct preliminary survey assignments from the Indonesian Government.

To apply for the incentive, the entrepreneurs should file an application to the Director General of Customs and Excise (DGCE) supported by a Goods Importation Plan and validated by the relevant department , and obtain the "*VAT borne by Government ex PMK.22/PMK.01/2011*" stamp from the DGCE on every page of Import Custom Notifications and Tax Payment Slips. The regulation is effective beginning 7 February 2011 until 31 December 2011.

Amendment to tax audit procedures

The Minister of Finance has amended MoF Regulation No. 199/PMK.03/2007 (PMK.199/2007) on tax audit procedures with the issuance of MoF Regulation No. 82/PMK.03/2011 on 3 May 2011. The new Regulation applies to tax audit processes commencing after the date of the Regulation. Ongoing tax audits based on Tax Audit Notification Letters issued prior to the issuance of the Regulation shall be conducted based on the old tax audit procedures (PMK.199/2007).

The main changes in the new tax audit procedures cover the tax audit time frame, the tax auditor's obligations, the quality assurance team's scope of work, the response to tax audit findings, closing conference, and tax audit completion procedures. More detailed regulations will be issued by the tax office in due course.

SINGAPORE

Budget for 2011 – FTC pooling: IRAS Circular

The Inland Revenue Authority of Singapore issued a circular on 22 June 2011, which provides details on the foreign tax credit (FTC) pooling system introduced in the 2011 Budget.

Currently, resident taxpayers who have foreign income that is subject to tax in the foreign jurisdiction and in Singapore, can claim a FTC against the Singapore tax payable on the foreign income. The FTC is the lower of the foreign tax paid and Singapore tax payable on the income, computed on a "source-by-source and country-by-country" basis.

Beginning from the year of assessment (YA) 2012, taxpayers may elect to pool the foreign taxes paid on any item of foreign income, if the following conditions are met:

- income tax was paid in the foreign jurisdiction from which the foreign income is derived;
- the headline tax rate of the foreign jurisdiction is at least 15% at the time the foreign income was received in Singapore;
- Singapore tax is payable on the foreign income; and
- the taxpayer is entitled to claim the FTC under the tax law.

The FTC pooling system works as follows:

- the amount of FTC is the lower of total Singapore tax payable and the pooled foreign taxes paid on the foreign income;
- where the foreign income is taxable at different rates, the Singapore tax payable under the different rates is aggregated and the amount of FTC is given based on the lower of total Singapore tax payable and total foreign tax paid on the same pool of foreign income;
- the current method of computing the amount of Singapore tax payable remains unchanged;
- the pool of foreign income can be changed from one YA to another;
- where a taxpayer suffers a loss, the foreign tax paid on the foreign income falling under that tax category is not allowed to be pooled as there is no Singapore tax payable on the foreign income;
- the foreign income tax to be pooled includes underlying tax paid on foreign dividends;
- where no election is made, the FTC is computed based on the "source-by-source and country-by-country" basis;
- where the foreign income meets the conditions for tax exemption under both the foreign source income exemption (FSIE) regime and the FTC pooling system, the taxpayer may choose, for each YA, which of the following applies to his foreign income: (i) tax exemption under the FSIE regime; (ii) FTC under the FTC pooling system; or FTC under the "source-by-source and country-by-country" method;
- tax sparing credit on foreign income does not meet the conditions of the FTC pooling system.

VIETNAM

Various tax regulations

The following regulations were recently issued:

PERSONAL INCOME TAX

- Official Letter (OL) 991/TCT-TNCN issued by the General Department of Taxes (GDT) on 28 March 2011 provides that the first tax year of an expatriate who is treated as being resident for tax purposes is 1 January to 31 December of the same year.
- Pursuant to OL 1136/TCT-TNCN issued by the GDT on 5 April 2011, dividends arising from 2009 and earlier and paid in the form of shares to individuals before 1 July 2010 are not subject to tax. Where the shares received are subsequently transferred and the transfer occurs on or after 1 January 2010, income tax would be imposed on income arising from the transfer, as income from capital transfer (for shares of non-public companies) or income from securities transfer (for shares of public companies).
- Pursuant to OL 1135/TCT-TNCN issued by the GDT on 5 April 2011, income from the transfer of stock options is subject to tax in the same manner as income from securities.

CORPORATE INCOME TAX

- The Prime Minister's Decision 21/2011/QD-TTg effective 6 April 2011 provides that the payment of corporate tax of small and medium-sized enterprises (as defined in Art. 3(1) of Decree 56/2009/ND-CP dated 30 June 2009) for the year 2011 will be deferred for 1 year from the statutory deadline. The deferral does not apply in certain group company situations and to corporate tax levied on certain types of income such as real estate, finance, banking, insurance, securities, lotteries and so on.
- The General Department of Taxes (GDT) issued OL 1042/TCT-CS on 30 March 2011 which provides that where an enterprise incurs expenses to generate goodwill, the value of the goodwill is to be gradually allocated to its business expenses over a maximum period of 3 years. This rule does not apply where the enterprise self-determines its goodwill value.
- OL 111/TCT-CS issued by the GDT on 4 April 2011 provides that where an enterprise has bad debts but does not make a provision for it, the bad debts would not be tax deductible (provisions for bad debts are deductible in accordance with Circular 130/2008/TT-BTC of 26 December 2008).

VAT AND IMPORT DUTY

Pursuant to the General Department of Customs' Letter No. 1101/TCHQ-TXNK dated 16 March 2011 in relation to a specific case, enterprises do not have to declare and pay back any import duty and VAT for duty-free imported goods used as fixed assets in investment incentive projects upon the re-export of the fixed assets, where the reason is due to a reduction in production scale.

◆ CIT incentives – change in joint venture status

The GDT issued OL No. 1333/TCT-CS dated 20 April 2011, confirming that joint-venture enterprises established under the Law on Foreign Investment, will no longer be entitled to certain tax incentives upon conversion to a limited liability company with 100% domestic capital.

◆ Treatment of damages for breach of contract

The GDT has issued OL No. 1355/TCT-CS dated 21 April 2011 on the funds received by enterprises in respect of damages imposed for breach of contract. It states that no invoices need be issued in respect of this income and that these damages should not be recognised as revenue. Instead, where the damages relate to the investment process or the construction of factories, the construction investment capital should be reduced accordingly

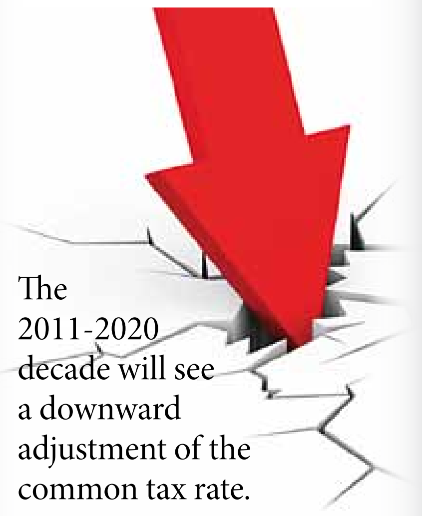
◆ Tax reform strategy for 2011-2020 decade

On 17 May 2011, the Prime Minister issued Decision No. 732/QD-TTg on the tax reform strategy for the 2011-2020 decade. The key areas of tax reform are summarised below.

Corporate income tax

The 2011-2020 decade will see a downward adjustment of the common tax rate. The existing tax incentive policy will be simplified and focused to encourage investments in: (i) the production of high value-add products; (ii) supporting industries; (iii) high-tech industries; (iv) bio-technology; (v) high-quality services; (vi) socialised sectors; and (vii) areas of difficult economic-social conditions.

Additional regulations will be introduced on deductible and non-deductible expenses and on new economic activities such as: (i) multi-level sales; (ii) e-commerce; (iii) economic groups; (iv) “thin capitalisation” phenomenon when determining expense, especially interest expense; (v) transfer or re-evaluation of assets when restructuring enterprises; and (vi) pre-agreement on the price of related companies.



The 2011-2020 decade will see a downward adjustment of the common tax rate.

Personal income tax

Personal income tax will be reformed via an expansion of the tax base and definition of taxable income. The tax calculation method, as well as the current differing tax rates for income from the same activity between natural persons and legal entities, is expected to be simplified and adjusted.

Value added tax (VAT)

VAT will see a move towards a single VAT rate by 2020. There will also be a reduction of the number of categories of goods and services subject to and exempt from VAT.

Special consumption tax (SCT)

A roadmap for the adjustment of taxes for products such as tobacco, beer, wine, cars, etc. to regulate consumption and implement international commitments will be developed. The objects subject to tax are expected to increase and additional regulations on the taxable price for certain cases, such as cooperation, allocation in the global production chain among countries, ensuring equality between domestically produced goods and services and imported goods and services, will be introduced. Research will also be conducted on the application of a combination of prorated tax rates and flat tax rates in respect of certain taxable goods and services.

Customs duties

Export duties will be restructured to encourage the manufacturing and exporting of high value-added products, whilst limiting the export of unprocessed minerals and natural resources, as well as reducing the processing of low value-added products. Import duties will be reduced and trade barriers removed in accordance with international commitments. The tax rates, tariffs and codes of goods will also be simplified.

Natural resource tax

The tax will be amended in order to manage, protect and promote the effective use of national resources, especially the non-renewable resources. It will also be restructured to promote resource exploitation associated with “deep processing”, and to minimise the export of unprocessed natural resources.

Environmental protection tax

With the Law on Environmental Protection Tax expected to take effect from 1 January 2012, research will be carried out on objects subject to tax collection and there will be an adjustment to the levy rates so as to limit the use of goods causing adverse impact on the ecological environment.

Levy from exploration and exploitation of natural resources

The levy collected from the exploration, exploitation and use of resources will be streamlined to match the proposed restructuring of the Law on Petroleum, the Law on Water Resource Exploration, Law on Minerals, Law on Forest Protection and Development, etc.

Amortisation of land use rights

The MoF issued OL 6580/BTC-TCT on 20 May 2011 on the amortisation of land use rights as follows:

- Long term land use rights. Long term land use rights are recognised as intangible fixed assets (FAs) at original cost, but shall not be amortised as deductible expenses when determining taxable income;
- Limited usage land use rights. Where an enterprise has amortised limited usage land use rights prior to 1 January 2010, and the respective land right has been used for production and business activities, the cost of the land use right may be amortised as a deductible expense when determining taxable income (subject to further conditions) from 1 January 2010

Payment for medical treatment received by employees

The MoF issued Circular 78/2011/TT-BTC on 8 June 2011 (effective 45 days from date of issue) on payments made by an employer to his employee for the medical treatment of fatal diseases. Such payments are tax exempt benefits if the payment is made out of after-tax profits or a welfare/reward fund as maintained by the enterprise. "Qualifying enterprises" are: (i) enterprises established under the laws of Vietnam; (ii) foreign firms (with/without permanent establishments in Vietnam); (iii) organisations established and operating under the Cooperative Law; and (iv) organisations having income from business activities.

The entitled recipients are employees who are diagnosed with a fatal disease, and the benefit may also be extended to include their relatives (i.e. father and mother, spouse, blood child or adopted child). The medical payment/allowance shall not exceed the actual medical expenses incurred for the employee or their relatives.

Foreign contractor tax – Bonded warehouses

The GDT issued OL 1749/TCT-CS on 23 May 2011, providing guidelines on foreign contractor tax (FCT) applicable to foreign enterprise(s) trading goods through a bonded warehouse. Where a foreign enterprise rents a bonded warehouse in Vietnam to store goods purchased from another foreign supplier for sales to its Vietnamese parties, the former's PE exposure is determined as follows:

- If the bonded warehouse in Vietnam is rented only to store goods purchased from another foreign supplier for direct sales to its Vietnamese parties, it shall not be deemed to have a PE in Vietnam.
- If, however, the goods stored in the bonded warehouse are sold to its Vietnamese parties through a foreign enterprise's representative in Vietnam (such as an office, local staff or another organisation in Vietnam) or the sale of goods is actually related to a service agreement between the foreign enterprise and its Vietnamese parties, it shall be deemed to have created a PE in Vietnam

Foreign contractor tax – Hybrid payment method

On 9 October 2009, Circular No. 197/TT-BTC reintroduced the so-called hybrid method for foreign contractors to pay foreign contractor tax (FCT) in Vietnam. The hybrid method allows for VAT to be paid under the deduction method and CIT to be paid under the deemed method. Circular 197, however, was silent on whether the hybrid method would be retroactively adopted for contracts that were signed between 1 January 2009 and 22 November 2009 (i.e. the transitional period between Circular 134 and Circular 197).

The Ministry of Finance has now issued OL 6274/BTC-TCT dated 16 May 2011 allowing the hybrid method to be adopted for qualifying contracts signed during the transitional period.

MALAYSIA – TREATY DEVELOPMENTS

- On 5 April 2011, South Africa and Malaysia signed an amending protocol to the income tax treaty of 26 July 2005.
- Qatar has ratified the amending protocol, signed on 16 February 2011, to the Qatar and Malaysia income tax treaty of 3 July 2008.
- Australia has ratified the amending protocol, signed on 24 February 2010, to the Australia-Malaysia income tax treaty of 20 August 1980, as amended by the 1999 and 2002 protocols.
- The comprehensive economic cooperation agreement (CECA) between India and Malaysia, signed on 18 February 2011, will be effective from 1 July 2011.

***Rachel Saw** is a Senior Research Associate at the International Bureau of Fiscal Documentation (IBFD). The International News reports have been sourced from the IBFD's Tax News Service. For further details, kindly contact the IBFD at ibfdasia@ibfd.org.*

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Management Raising Productivity

By Nazatul Izma

As economic growth globally grinds down and fears of recession bloom anew, companies will be looking to manage their costs and improve their return on investment and resources. This also means that companies will want employees who are more productive, or in other words, those who can deliver more bang for their buck.

However, creating a facilitative and nurturing workplace where productivity flourishes will be a tall order in an atmosphere of gloom and doom. Outlined below are some strategies for creating a workplace with good karma – and explain some factors that could be pitfalls for productivity.

THE BOSS CAN EITHER BE A BOON OR A BAR TO PRODUCTIVITY

Corporate governance experts often say that tone at the top determines office culture. Guess what, boss behaviour can be an accurate predictor of worker productivity. Research has shown that among other factors, employee productivity can be linked to their relationship with their immediate supervisor. Good boss equals productive employee, and vice-versa. When the bad boss reneges on promises, steals all the credit, passes negative comments, or blames others for his or her mistakes, the productivity level of employees is significantly impacted. On the other hand, a supervisor who is fully engaged with his subordinates will motivate, inspire, encourage and reward good performance. They will be able to empower their team and inspire them to go the extra mile and take the additional time and effort to do a better job.

HEALTH ISSUES

A sick employee is an unproductive employee. Reducing absenteeism due to ill health can be a big boost for organisational productivity.

Fatigue too can be a factor in lower productivity, reducing employee performance and capacity at work. According to a study in the Journal of Occupational and Environmental Medicine, nearly 40 per cent of U.S. workers experience fatigue which is widely related to physical and mental health problems. Fatigue costs U.S. employers an estimated overall bill of more than USD136 billion per year in health-related lost productivity, or USD101 billion more than for workers who don't suffer fatigue.

TECH EMPOWERMENT

Employees need the right tools to perform better, and among the key tools of the digital 21st century are tech tools and gadgets. To make an employee more efficient and productive in today's environment, companies must equip them with the right gear. If companies ignore the need for tech tools like computers, blackberries, cell phones and other efficiency-improving gadgets, they run the risk of diminishing employee productivity.

In a study by Intel, the world's largest semi-conductor maker, it was observed that wireless notebook PC or laptop users increased their productivity by 100 hours per year. They studied the work habits and productivity of more than 100 Intel employees who were upgraded to wireless notebooks and found a gain of more than two hours per week, which more than paid for the cost of the upgrades in the first year. It was also observed that when workers were able to control more of their time, that productivity increased as well.

WORK ON OUR ATTITUDES

Are happy employees also productive employees? We are frequently encouraged to love what we do and to have a passion for the job. Lack of inclination and negative attitudes can sink employee productivity much faster than the Titanic.

An employee equipped with a positive attitude usually enjoys his or her work and feels empowered and recognised for their contributions. Vice-versa, an employee that is part of the furniture and simply there to collect a pay cheque usually does not produce at a high level, develops a bad attitude and generally drags a team down. In these lean times, it is no longer safe to cultivate negative attitudes, with jobs on the firing line. It is also dangerous to have a sense of entitlement e.g. "I deserve to have a high-paying job" in an era where volatility is becoming the new normal.

While it pays to equip employees with the right equipment, it is also necessary to place controls on time-wasting activities that raise costs, such as social networking. Apparently, office workers represent the fastest-growing demographic on Facebook, which can hit employers in many ways, say human resource and business consultants. Apart from distracting workers from their work, excessive social networking can push up bandwidth demand and IT costs. According to global staffing firm

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Robert Half International, U.S. employees spend nearly an hour per day on personal Internet use, which ranges from checking e-mail to watching YouTube. While social media should be a tool for organisational branding, marketing and customer outreach, companies should put clear and practical policies in place to curb personal abuse of online networking and protect productivity.

KEEPING MORALE HIGH

During the Great Asian Crisis of circa-1998, many companies introduced severance pay schemes and voluntary separation schemes, neutral synonyms for downsizing and cost cutting. The problem is that downsizing and separation can impact the morale and motivation of the remaining employees, who are then often asked to take on more tasks in their job scope while feeling that their jobs are at risk. The psychological impact on employees from jobs being put on the chopping block has been shown to directly impact productivity and job security.

To preserve and even uplift morale, companies are encouraged to provide support and counselling to their remaining employees. Invest in employee learning and development to instil a sense of security in employees and provide assurance that their organisation has sustainability and longevity, despite the need to manage costs. The cliché has it that rats are always looking for a chance to leave a sinking ship; likewise, employees too will be on the lookout for another job if they feel their existing job is in jeopardy, which is frequently a signal sent out by voluntary separation schemes and downsizing exercises.

But productivity isn't solely in the hands of employers and management. Employees and people too have to take responsibility for becoming more productive, useful and relevant to the lean and mean organisations of the 21st century. What are the individual strategies that we can employ to become more productive?

TONE DOWN ON TECH

While tech is necessary to improve productivity and high technology engagement is the hallmark of a high performance workplace, there can be too much of a good thing. While Facebook and Twitter might be the greatest inventions since sliced bread, taking it easy on social networking during the work day might be better for productivity.

Productivity experts also caution against obsessively checking e-mail, which deters productivity. Instead, allocate a fixed time for answering e-mails, perhaps half-an-hour before work starts in the morning and another half-hour before clocking out.

KEEPING HEALTHY AND AVOIDING FATIGUE

Don't spend your health to gain wealth. In other words, don't prioritise your job until it affects your health. While work can be fulfilling, dynamic and challenging, it is also exhausting both physically and mentally. On average, we spend over eight hours a day at work, along with another couple of hours stuck in gridlock. Many working women probably go home after work only to wrestle with domestic household management e.g. the three Cs of cleaning, childcare and cooking. Our hectic schedules can easily cause exhaustion and fatigue, and lead to burnout.

To maintain optimal health, take up regular exercise and maintain a healthy balanced diet that limits sugar, carbs and excessive calorie intake. Sleep deprivation can also have a devastating impact on health, so everybody should try and get the requisite forty winks every night. Staying up on consecutive nights and sleeping in on weekends doesn't wipe out the sleep debt and could be a destructive pattern for health.

By making these key lifestyle changes, we could be well on the way to becoming more productive employees and happier, healthier human beings.

Other Business Deductions

continuation from vol.4/no.2

By Siva Subramaniam Nair

Having digested the rules prescribed in S.34(2) in the last article, we shall now look at the provisions in S.34(6). This is an interesting section because its provisions seem to allow a deduction for expenses that do not comply with the "wholly and exclusively incurred for the production of income" rule and even seems to defy the fundamental premise that capital expenses do not rank for a deduction! This is where the Minister inserts expenses, which benefit the general public and society at large, BUT which do not qualify for a deduction under the general rules. Therefore, by giving such expenditure a tax deduction it would encourage persons involved in business to willingly engage in such activities which would give rise to such expenditure.

PAYROLL & TURNOVER TAXES - SECTION 34(6)(A & B)

This deduction is not relevant as these taxes are no longer applicable. However these provisions have not been repealed.

MINING ALLOWANCE - SECTION 34(6)(C)

This is a deduction in respect of capital expenditure incurred in the working of a mine. The mechanics of computing the allowances will be discussed in a later article. Students should note that these are the only allowance that are deducted in arriving at the adjusted income as illustrated below. Others such as capital and industrial building allowances, agriculture allowances and forest allowances are deducted from adjusted income in ascertaining the statutory income:

Gross income	xx
Less: Mining allowances	(X)
Adjusted income	xx

REPLANTING EXPENDITURE - SECTION 34(6)(D)

Where a business consists of the working of a farm, any expenditure incurred in the

- replanting of the farm for the purpose of cultivation of crops or
- in effecting any improvement of the farm or any part of the farm in connection with such replanting will be deductible.

Replanting is defined as replacement of the crop of any product so as to produce a crop of the same product in the same area.

However, expenditure qualifying for capital allowances under Schedule 3 is excluded. Therefore, expenditure relating to initial planting of a new crop, which is a qualifying agricultural expenditure, does not rank for a deduction under this subsection but instead agriculture allowances can be claimed.

EXAMPLE 1

A company which is involved in rubber cultivation, incurred RM50,000 on the replanting of rubber trees and RM120,000 on the planting of oil palm seedlings for the year ended 31/12/2011.

Solution:

The cost of replanting of RM50,000 is specifically allowed under S.34(6)(d) of the Income Tax Act, therefore no adjustment is needed in the tax computation but the RM120,000 initial planting cost is not deductible and has to be added back to the profit before tax figure .

EQUIPMENT FOR DISABLED EMPLOYEES - SECTION 34(6)(E)

This represents expenditure incurred by an employer on the provision of any equipment or on the alteration or renovation of premises necessary to assist a disabled employee in the performance of his duties of employment. Although this would constitute a capital expenditure but it will still rank for a deduction under this subsection.

A disabled person is defined as:

- any individual
- certified in writing to be a disabled person
- by the Department of Social Welfare

EXAMPLE 2

The income statement of a company reflects the cost of a PABX system switchboard with keys in "Braille" amounting to RM29,850 acquired to assist two blind telephonists employed by the company to perform their jobs.

Solution

The cost of the switchboards will qualify for a deduction under S.34(6)(e) of the Income Tax Act because it was incurred to assist the company's disabled employees to perform their work and therefore no adjustment is needed to profit before tax.

EXAMPLE 3

JG Academy Sdn. Bhd. widens the doorway of some of its classrooms so that the wheelchair of a paralysed lecturer can go through. However this cost is capitalised in the company's statement of financial position.

Solution

The cost of renovation will qualify for a deduction. Therefore, the company can deduct this expense from the profit before tax figure in arriving at its adjusted income since it was not expensed to the income statement earlier.

PUBLICATION IN / TRANSLATION INTO BAHASA MALAYSIA – S 34(6)(F)

Any expenditure in respect of the above qualifies for a deduction. The features include:-

- translation into or publication in
- national language
- of cultural, literary, professional, scientific or technical books
- approved by Dewan Bahasa dan Pustaka

EXAMPLE 4

As part of its social service activities, a company incurred the cost of publishing a cultural book in the national language approved by the Dewan Bahasa dan Pustaka

Solution.

The cost of publication of a cultural book in the national language is specifically allowed under S.34(6)(f), as all the stipulated conditions are fulfilled. Therefore where the tax computation commences with profit before tax figure, no adjustment is needed.

PROVISION OF LIBRARY FACILITIES - SECTION 34(6)(G)

A deduction is also available for expenditure incurred on the provision of library facilities which are accessible to the public and contributions to

- public library
- schools
- institutions of higher learning

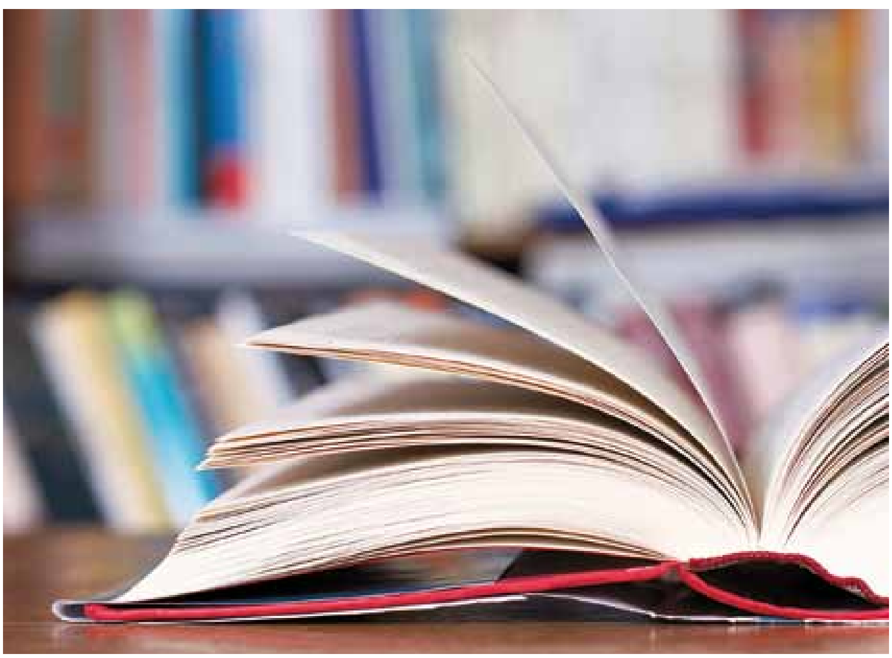
However, the maximum claim is restricted to RM100,000

Students will remember that deduction for library facilities is also given under S.44(8) of the Income Tax Act. However, this is only for "any gift of money". Further you should note that S.44(8) clearly states that it is applicable only to "a person to whom paragraph 34(6)(g) does not apply". So what does this mean?

Section 34 starts with "in ascertaining the adjusted income of a person from a business for the basis period for a year of assessment, deductions shall be made from the gross income from the business for that period in accordance with the following subsections."

Therefore, the logical conclusion to draw would be that if you have a business source you will have to claim for the above expense under S.34(6)(g). A claim under S.44(8) is only made in the absence of a business source. Of course, this is not a big issue since the maximum claim under S.34(6)(g) is RM100,000 whereas under S.44(8) its restricted to a maximum of RM20,000 only. Also, in the case of insufficient income to absorb the full extent of the contribution, a deduction under S.34(6)(g) will result in an adjusted loss, whereas under S.44(8) any unabsorbed portion cannot be carried forward.

However, for examination purposes candidates should claim the deduction in the correct manner.



EXAMPLE 5

The company made cash contributions to public libraries amounting to RM110,000.

Solution

Since the company has a business source, it should make a claim under S.34(6)(g). Therefore RM10,000 should be added back to the profit before tax figure.

However if the company had no business source then the whole RM110,000 should be added back to the profit before tax figure but RM20,000 can be deducted later in arriving at the total income of the company.

SOCIAL CONTRIBUTIONS - SECTION 34(6)(H) & (HA)

Section 34(6)(h) relates to the provision of:

- services
- public amenities
- contributions to a charity or community project approved by the Minister pertaining to :
- education
- health
- housing
- conservation or preservation of environment,

- enhancement of income of the poor
- infrastructure
- information and communication technology (acculturation projects at local community levels)

Section 34(6)(ha) allows a deduction for an amount equal to the expenditure incurred by a company on the provision of infrastructure in relation to its business which is available for public use, subject to the prior approval of the Minister:

A guideline issued by MoF has clarified that a deduction will only be allowed where the provision of infrastructure (for example roads, bridges, flyovers, car parks, toilets, gardens etc.) fulfills the following criteria:

- It should benefit the general public
- It is provided voluntarily and not enforced by any authority.
- It is not within the business premises
- It is made available for public use
- No payments or fees are levied on the public

A deduction is given for expenses incurred which benefit the public with a view to encouraging corporate social responsibility. Note that this infrastructure must be in relation to a business that is also available to the public and therefore this deduction will only be available in limited circumstances.

Once a deduction is given under this subsection no further claim can be made under S.44 (6) for the same expenditure.

EXAMPLE 6

Societal Sdn. Bhd., a manufacturing company applied for and obtained the approval of the Minister to construct a taxi stand immediately outside its factory premises. Although it would be used mainly by its employees, it was also available for public use

Solution

The cost of construction qualifies for a deduction because it represents the provision of infrastructure in relation to its business which is available for public use, incurred with the approval of the Minister:

In the next article we shall continue our discussion on the other subsections in S.34(6).

Siva Subramaniam 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.
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Thornton, Richard. Thornton's Malaysian Tax Commentaries, (Latest Edition) Sweet & Maxwell, Asia.
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Yeo, Miow Cheng, Alan. Malaysian Taxation, (Latest Edition), YSB Management Sdn. Bhd.

PENALTY ON LATE FILING OF TAX RETURNS

In the past, the Inland Revenue Board (IRB) had imposed penalties ranging from RM200 to RM2,000 for late submission of tax returns, similar to the fines as stipulated in Section 112(1) of the Income Tax Act 1967 (ITA), based on the number of offences committed. With effect from 1 June 2011, depending on the length of delay that the return is submitted, the IRB has imposed penalties at the rates of 20% and above on tax payable, before any set-off, repayment or relief. Under Section 112(3), ITA, the IRB may impose a penalty "equal to treble the amount of the tax payable."

The President of CTIM sent an email to the Deputy Director General (Tax Operations) on 27 May 2011 expressing the concerns of the Institute on the steep increase in penalty rates and tax agents and taxpayers were not notified in advance. CTIM appealed to the IRB to reduce the new penalty rate of 20% to 35%, and to apply this rate on a prospective basis after adequate notice has been given to the taxpayers.

Subsequently, the President was informed by the IRB of their position as set out below:

> Tax returns submitted to the IRB **on or before 1 June 2011** and processed thereafter will have the previous penalty rates applied. Should the new penalty rates be applied on the tax returns submitted before 1 June 2011, the taxpayers can appeal to the IRB assessment heads in the relevant IRB branches for a reduction in the penalty based on the old rates.
> Tax returns submitted to the IRB **after 1 June 2011** will have the new penalty rates applied for late submission of tax returns. Where taxpayers have special circumstances or valid reasons for the late filing, they may file their appeals to the IRB for consideration in reduction of penalties.

On 7 September 2011, the President together with the Chairman of the Technical and Public Practice Committee, Poon Yew Hoe, Senior Council Member, Aruljothi Kanagaretnam and the Executive Director met the Director General of Inland Revenue and senior officers of the IRB to raise the issue of revised penalties on late filing of tax returns.

CTIM presented feedback received on the issue of penalties for late filings and requested for a deferment of the implementation of the new penalty regime and to reconsider the structure of penalty rates. The IRB agreed to consider our request and will revert to the Institute with their decision.

CTIM would like to remind members to ensure filing of tax returns by due date to avoid such penalty being imposed and to enable the IRB to administer the tax affairs in a smooth and efficient manner.

THE LIMITED LIABILITY PARTNERSHIP BILL 2011 [D.R. 13/2011]

In its efforts to reform the corporate laws in Malaysia, the Companies

Commission of Malaysia (CCM) is introducing a new type of business vehicle, the limited liability partnership (LLP) to enhance the competitiveness of Malaysia in a globalised market. The LLP offers a hybrid of characteristics between a conventional partnership and a limited liability corporation.

A Limited Liability Partnership Bill 2011 [D.R. 13/2011] has been drafted by CCM and tabled for the first reading before parliament on 14 June 2011.

In determining the tax treatment of an LLP, CCM has invited the CTIM and other stakeholders to a Special Consultative Session to deliberate on the various issues involved. The participants were requested to submit written proposals for CCM to consider. The Institute, together with the Malaysian Institute of Certified Public Accountants have submitted a Joint Memorandum on the Proposed Tax Treatment for LLP in Malaysia on 9 September 2011.

DRAFT CODE OF ETHICS FOR TAX AGENTS (REVISED)

The IRB has sent a draft Code of Ethics for Tax Agents (Revised) to the various stakeholders via email on 26 July 2011, requesting for feedback. After having a joint meeting with other professional bodies on 18 August 2011 to discuss the issues arising from the draft Code, the Institute together with the Malaysian Institute of Certified Public Accountants (MICPA) and the Malaysian Association of Institute of Chartered Secretaries and Administrators (MAICSA) have submitted a Joint Memorandum on Proposed Code of Ethics for Tax Agents (Revised) to CCM on 6 September 2011. Members may view the Joint Memorandum at the website of the Institute at *"http://www.ctim.org.my/cms/news.asp?menuid=16" http://www.ctim.org.my/cms/news.asp?menuid=16*

UPDATED LIST OF CERTIFICATION BODIES UNDER SECTION 34(6)(MA) OF THE ITA

The IRB has issued an updated list of certification bodies under Section 34(6)(ma) for the purpose of claiming double deduction of expenses incurred in obtaining certification for recognised systems of quality and standards and *halal* certification. The updated list increases the number and accreditation period of certification bodies. A new certification body has been introduced for the Information Security Management System Programme.

The list was further updated on 14 June 2011 with more certification bodies and extension of accreditation periods of some certification bodies. Members may refer to the list at the website of the Institute at IRB-Updated List of Certification Bodies under Section 34(6)(ma) of the ITA (140611).

Additional information such as the list of legislation updates, members' e-circulars, professional practice developments, minutes of dialogues, archived updates and guidelines as well as reference resources are available in the "Member Only" section where only CTIM members can have access.

The Institute has assembled some useful hyperlinks in the "Link Section" for the convenience of members. More useful hyperlinks to international organisations, tax professional bodies and overseas revenue authorities can also be found at the "Resources" webpage in the "Members Only" section.

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*Source: The Edge-Lipper, 25 July 2011

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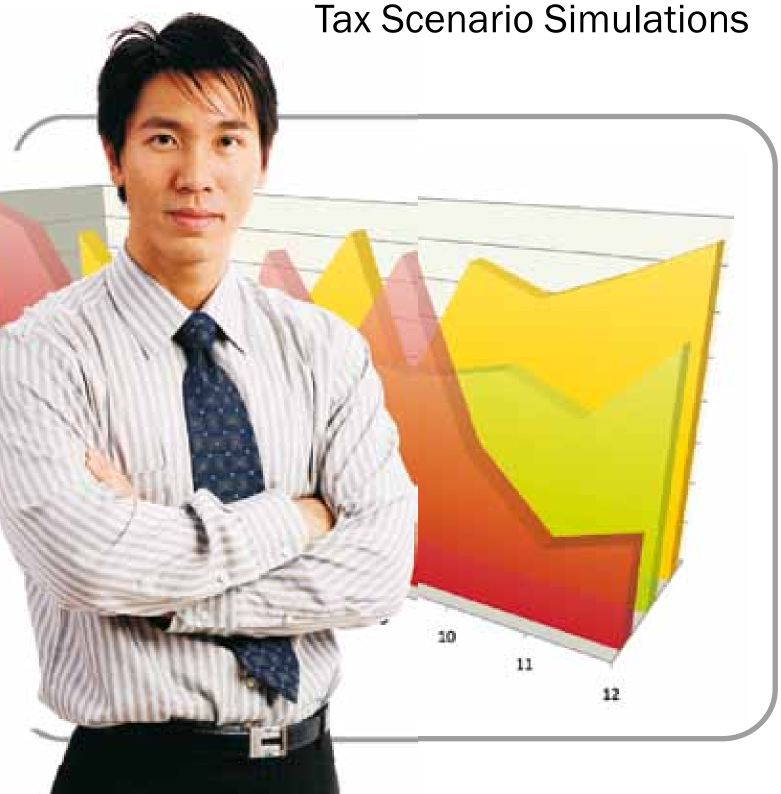

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